

MOVING TOWARDS THE RULE OF LAW: ROMANIAN DEMOCRACY AND HUMAN RIGHTS

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It has been said that "for a lawyer to fight against the abuse of human rights is to engage in the most important fight of all",¹ and that "The *United Nations Charter* ... makes it clear that in this modern age a state's treatment of its own citizens is a matter of international concern."² This is nowhere more true than in the case of the emerging democracies in Eastern Europe, and particularly in Romania. Lawyers inside and outside Romania and the international community as a whole have a role to play in assisting Romania's evolution into a democratic society and monitoring its observation of the rule of law.

This paper will examine past and present human rights abuses in Romania, the role of law in human rights and the role of the international community with respect to human rights. It will consider the progress being made to eliminate human rights abuses in post-revolutionary Romania and attempt to evaluate the chances of a successful flowering of this fragile new state into a democracy.

In order to gain a more complete view of the scope of the problems and their potential solutions in post-revolutionary Romania, it is necessary to look at the antecedents to the revolution. Nicolae Ceausescu, the former dictator, came to power in communist Romania in 1965. Shortly thereafter he consolidated his power as supreme leader and ruled virtually without internal opposition until the revolution of December 1989.

Although some commentators now feel that Ceausescu was not a bad leader at the beginning of his rule,³ the historical verdict will probably be that "absolute power corrupted absolutely". Human rights abuses in Romania were rampant throughout the 1970s and 80s. A snapshot of human rights abuses, written in the last months before the revolution, was prepared by the staff of the Commission on Security and Cooperation in Europe.⁴ *Revolt Against Silence* begins with a quote

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²E. Milstein, *Remarks* in "Transitions to Democracy and the Rule of Law" (1990) 5 Am. U. J. Int'l L. & Pol'y 965 at 966.

³*Filariga v. Pena-Irala* (1980), 630 F.2d 876 at 881.

⁴See, for example, G. Galloway and B. Wylie, *Downfall: The Ceausescus and the Romanian Revolution* (London: Futura, 1991) at 21-22.

⁵*Revolt Against Silence: The State of Human Rights in Romania* (101st Congress, 1st session of the House of Representatives, Washington: December 1989).

from Romanian dissident poet Mircea Dinescu:

Not only are basic human rights disregarded in Romania, but even the institutions that are supposed to defend them ... the judiciary and the press ... have become instruments of intimidation and terror against the population.

It's an absurd land where the border guards point their weapons towards their own country, where wheat is harvested on television but rots in the fields, where workers are called "proprietors" so that they can be made to buy what the Constitution says is rightfully theirs ...⁵

Revolt Against Silence records massive violations of civil, political, social, cultural, and economic rights. It categorizes the Ceausescu régime's attitude towards human rights and humanitarian values as "contemptuous", and the country as "a nightmare world".⁶ Among the worst of the violations was the policy of "systematization", the systematic razing of rural towns and villages in order for the government to reconstruct "agro-industrial centres".⁷ This program of forced deportation of rural people to different parts of the country produced grave cultural and historic loss, and economic havoc.

The situation of women under the Ceausescu regime was abhorrent. Birth control was denied to any woman under 40 (later 45) years old who had fewer than four living children.⁸ This policy produced a plethora of butchered back-room abortions, family hardship and a demotion of the position of women in society.⁹ The results today are seen in the enormous number of orphans and abandoned children in Romania and the serious problem of childhood AIDS (Romania has the highest rate of childhood AIDS in Europe).¹⁰

Religious groups were highly regulated and controlled by the State. Priests were continually beaten and harassed, believers were demoted at their jobs, many

⁵"Le désespoir de la caserne Ceausescu," *Libération*, 17 March 1989, translated and reprinted in *Uncaptive Minds*, Vo. II No. 3 (7) May-July 1989 at 33-34.

⁶*Supra*, note 4 at 1.

⁷*Ibid.*

⁸*Supra*, note 3 at 54, and U.S. Department of State, Committee on Foreign Affairs and Foreign Relations of the House of Representatives and the Senate, *Country Reports on Human Rights Practices 1989*, (Washington: 1990) at 1232-33.

⁹*Ibid.* Galloway and Wylie, at 55-56, tell of meeting a woman with two living children who had had 36 abortions in order to avoid bearing more children, which she and her husband simply could not afford.

¹⁰*Ibid.* at 53-64 for a general discussion. According to the authors, the Black Sea town of Constanta alone has one in four of all the child AIDS cases in Europe, spread by its "social cocktail of sailors [and] prostitution" and by the abysmal hygiene procedures for blood transfusion in the Constanta hospital (*ibid.* at 59). On this same point D. Pavel claims that "What is generally left untold is that Gypsies constitute the majority of the children" in "Wanderers: Romania's Hidden Victims" *New Republic* (4 March 1991) 12.

churches were destroyed, and a barrage of religious hatred permeated the press.¹¹ Freedom of association was an illusion during the Ceausescu régime (permits were required for assemblies), thus, even if the state allowed services at some churches, believers were unable either to engage in gatherings outside of the Sunday service or perform any social ministering.¹² Protesting pastors had their licenses revoked, and the state so closely controlled the finances of individual churches (by requiring that a "competent authority" sign a cheque) that a church found itself unable to operate if its pastor was unlicensed.¹³

Officials in communist Romania proudly touted the "right to work" as indicative of respect for human rights in Romania. However, according to *Revolt Against Silence* this right was actually an obligation. Romania had laws against "parasitism" under which the unemployed were criminally prosecuted.¹⁴ The state regulated wages, and it ensured through a system of earnings tied to unrealistically high production quotas that workers never actually received the remuneration they were promised. If workers were dissident in any way — including holding religious beliefs — they were given hazardous work or "corrective" labour. Any attempt at labour organization resulted in severe crackdowns by the Securitate, the secret police.¹⁵

The policies of the communist government towards ethnic minorities have been described as "cultural genocide".¹⁶ Hungarians, Jews,¹⁷ and Romany (the Gypsies' preferred term for themselves) were all persecuted. The worst off of these ethnic groups appears to have been the Hungarians.¹⁸ *Revolt Against Silence* spoke of beatings, disappearances, discrimination in employment and education, and cultural assimilation by means of forced relocations to ethnic Romanian areas (while ethnic Romanians were moved into the gaps left in the ethnic Hungarian communities). The Danubian Research Institute report spoke of the "Transylvanian Holocaust"¹⁹: the forced labour of 100,000 ethnic Hungarians in labour camps and the alleged perishing of 40,000 of them.

¹¹*Revolt Against Silence*, *supra*, note 4 at 16-17.

¹²*Ibid.* at 18.

¹³*Ibid.* at 19.

¹⁴*Ibid.* at 12.

¹⁵*Ibid.* at 13.

¹⁶See T. Gilberg, "Ethnic Minorities in Romania under Socialism" (1974) 7:4 *East European Quarterly* 435 for one account.

¹⁷See *supra*, note 3 at chapter 6, "The Romanian Jews", for an account of their persecution.

¹⁸See *Genocide in Transylvania: Nation on the Death Row* (Astor, Florida: Transylvanian World Federation and Danubian Research Center, 1985).

¹⁹*Ibid.* at 56.

“Expressing discontent, telling a political joke or listening to foreign broadcasts were sufficient causes to be sent to the canal [a “concentration camp” on the Danube delta].”²⁰

Accounts of persecution of the Romany are now also well-documented.²¹ Barany summarizes the situation of this much-persecuted people under Communist régimes:

In the Post-World War II states of Eastern Europe the unwavering determination of many Gypsies to maintain their traditional lifestyles [of nomadism] constituted a daring defiance of communist power, which was intent on shaping the ideal of the “new socialist man,” the epitome of conformity. Moreover, the Gypsies’ prominent status in virtually all statistics on crime, unemployment, illiteracy, and other negative social phenomena served to make them even less popular with the leaders and populations of the socialist states.²²

Ian Hancock, one of the world’s foremost scholars of Romany culture, tells of 50 Romany being shot and killed by border guards after having been turned back to Romania at the Hungarian border in 1989. Others were apparently wounded in similar incidents at the [former] Yugoslav border.²³ Another account quoted by Hancock is of Romany being first starved and then brutalized by Ceausescu’s militia: “We were stripped naked, our legs and hands were tied and we were made to lean on a table. Then they beat our backs using a rubber hose with iron nuts which they had taken from a tractor.”²⁴

Throughout the 1970s and 1980s there were strong underground movements of dissent in Poland and the former Czechoslovakia.²⁵ In Romania, however,

²⁰*Ibid.* at 29.

²¹See D. Tong, “Gypsies: A Selected Bibliography (Central and Eastern Europe)” (1991) XIX:3 Nationalities Papers 413, and her book *Gypsies: A Multidisciplinary Annotated Bibliography* (New York: Garland, 1993).

²²Z.D. Barany, “Democratic Changes Bring Mixed Blessings for Gypsies” (1992) 1:20 *Radio Free Europe Research Report* 40.

²³I. Hancock, “Gypsy History in Germany and Neighboring Lands: A Chronology to the Holocaust and Beyond” (1991) XIX:3 Nationalities Papers 395 at 409.

²⁴*Ibid.* at 410.

²⁵Current Czech president Vaclav Havel described the underground movement in his country as a “parallel society” see M. Shafir, “Romania: Toward the Rule of Law” (1992) 1:27 *Radio Free Europe Research Report*, 34.

Referring to the “Velvet Revolutions” of Eastern Europe, M. Scammell states in “The Prophet and the Wilderness: How the Idea of Human Rights Crippled Communism” *New Republic* (25 February 1991) 29:

there was virtually no underground protest movement until late in 1988. The reason for this can be found in the Romanian government's complete silencing of any dissenting voices. *Revolt Against Silence* quotes a Bucharest dissident as saying that "a very large number of Romanian intellectuals don't do anything because they can't."²⁶ Dissent was minimized by economic sanctions, by the stripping of the dignity and culture of Romanian citizens through the policy of systemization, and by the dreaded Securitate's arbitrary arrests, imprisonments, torture, and killings. Censorship was rife and emigration was tightly controlled to prevent any remaining dissent from leaking beyond the borders.

As a result of this absolute internal crackdown, it was only too easy for the international community to turn a blind eye to internal Romanian policies. Ceausescu's public denunciation of the Russian invasion of Czechoslovakia in 1968 made him an instant hero with the west. They perceived him as a benevolent dictator, and they mistook the lack of an underground movement in Romania (such as always existed in most of the other eastern European Soviet-bloc states) as a sign of the overwhelming support of his people.²⁷ During the Ceausescu régime, the international community for the most part reacted very favourably to Romania. Foreign heads of state received Ceausescu with full honours as an equal. In the final analysis, one must blame Western leaders' willingness to accept, nay, welcome, Ceausescu into their ranks in the 1960s, 70s, and early 80s on the widely held view of the time that absolute state sovereignty was the cornerstone of international law.

Romania was a vigorous proponent of the principle of state sovereignty. An analysis of Romania's view of international law and international relations is presented in R. Weiner's article, "Romania and International Law at the United Nations".²⁸ Weiner described Romania's philosophy of international law: "[T]he purpose of international law is to guarantee the national sovereignty of members of the international community."²⁹ Weiner said, "The Romanians view[ed]

Not nearly enough has been understood about the role of human rights movements in promoting the recent political transformation of the Soviet Union and Eastern Europe. ... The true magnitude of [the dissenters'] achievement, however, goes beyond the practical and the pragmatic. What has been consistently overlooked, in the East and the West, is the vital role that human rights has played as an ideological force.

²⁶*Supra*, note 4 at 4.

²⁷For an account of the various honours heaped on Ceausescu by foreign nations (such as the British Order of Bath) see R. Maxwell, *Nicolae Ceausescu: Builder of Modern Romania and International Statesman* (Oxford: Pergamon Press, 1983). This is an unabashedly worshipful piece of propaganda, but serves as an illustration of the esteem in which, even at this late date, Ceausescu was still held by members of the international community.

²⁸(1983) 32 *Int. and Comparative L. Q.* 1026.

²⁹*Ibid* at 1034.

international organizations as the creatures of sovereign States. International organizations are formed by States on the basis of the free will of their members. ... [I]n no instance is an international organization to assume the attributes of a world government ...".³⁰

The Romanian government under Ceausescu was an active proponent of efforts to fully codify international law, to reflect, it hoped, "a set of ethical and cultural values superior to and more equitable than the value system of capitalist international law."³¹ At the U.N. in 1974, Romania voted for the adoption of a charter on the economic rights and duties of states. The Romania delegate's speech praised the proposed charter for expressing: "the legitimate hopes of those peoples which sought to abolish the old structures of the world economy based on exploitation and domination and to replace them with a new international economic order based on the equality of all States."³²

According to Nastase in 1976 at the U.N. Romania proposed a Universal Code of Conduct for States to:

[c]reate favourable conditions for the unabated observation of the norms and institutions of international law construed as a homogeneous body of democratic rules adapted to the new requirements of a steadily changing world so as to serve the people's aspirations for peace, justice and progress.³³

Weiner talked idealistically of Romania's international contributions to "a more ethical world cultural system" and more "progressive" international laws³⁴ and its calling for "international morality and ethics".³⁵ This article, written in 1983 by a professor at the University of Massachusetts, is yet another illustration of the deference with which the Ceausescu régime was treated by the West into the mid 1980s.

It was not until after 1985 that the outside world began to be more aware of human rights abuses in Romania.³⁶ At the same time, the movement of dissent in Romania was at last gaining some ground. Events elsewhere in Europe in the 1980s, notably in Poland, could not be kept forever from Romanian intellectuals.

³⁰*Ibid.* at 1030.

³¹*Ibid.* at 1031.

³²29 UN GAOR Economic Comm. (1642nd meeting) at 410, quoted in Weiner, *ibid.* at 1032.

³³A. Nastase "International Law and the New International Economic Order" (1978) 22 *Revue Roumaine des Sciences Sociales - Sciences Juridiques* 215 as quoted in Weiner, *ibid.*

³⁴*Ibid.* at 1031.

³⁵*Ibid.* at 1033.

³⁶One study that helped break the silence was *Genocide in Transylvania: Nation on the Death Row*, *supra*, note 18.

In 1988 Ceausescu renounced his country's "most-favoured nation" status with the U.S., just as the U.S. was about to suspend it over human rights violations.³⁷ In August of 1988 Doina Cornea courageously wrote an open letter to President Ceausescu complaining of the systemization program. In the following months other voices of opposition joined in the letter-writing. Some were arrested, some placed under surveillance; one was charged with "illegally trafficking in coffee" and "treated" at a psychiatric hospital. In March of 1989, Mircea Dinescu published an interview (quoted, *supra*, note 5) in the French magazine *Libération*. The U.N. Human Rights Commission condemned Romania in March of 1989.³⁸ But before the international community fully woke up to the magnitude of the atrocities, the December revolution occurred.

Nineteen-eightynine has been called the year of the Velvet Revolutions. In Poland, in former Czechoslovakia, in Hungary and in Germany, revolution came and communist governments were overthrown with barely any bloodshed. The situation in Romania was completely different. The uprising began on 14 December 1989 in Timisoara. By 21 December it had spread to Bucharest. The Ceausescus were captured on 23 December and executed after a summary trial on 25 December. The number of lives lost in the revolution was in the thousands.³⁹

Initial world reaction was that, because of the level of atrocities of the Communist régime and the almost total silencing of protest for so long, Romania stood the least chance of all the Eastern European nations of successfully flowering into a full democracy based on the rule of law.⁴⁰ The first indication of the difficulties that lay ahead was the provisional government's response to international accusations of lack of due process in the execution of the Ceausescus.

The tribunal that tried Nicolae and Elena Ceausescu was a military one. The only civilians were the two defense lawyers, recruited "not from any particular brilliance of reputation but purely from the expedient reality that they lived in the residential area ... that is adjacent to the grounds of the Ministry of Defense."⁴¹

³⁷See M. Shafir and D. Ionescu, "Romania: A Crucially Uneventful Year" (1994) 3:1 *Radio Free Europe Research Report* 122 at 125.

³⁸*Revolt Against Silence*, *supra*, note 4 at vi.

³⁹The events of the revolution are described in dramatic detail in Galloway and Wylie, *supra*, note 3 at chapters 8-16.

⁴⁰See especially M. Shafir, *supra*, note 25 at 34, and S. Ramet, "Balkan Pluralism and its Enemies (How Democracy Fares)" (1992) 36:4 *Orbis* 547 at 547.

⁴¹Galloway and Wylie, *supra*, note 3 at 182.

Both defense lawyers wore tri-coloured arm bands, "openly signalling their solidarity with the revolution".⁴²

The charges against the Ceausescus were the genocide of more than 64,000 victims, the organization of armed rebellion against the people and the state, the destruction of public assets and buildings, the sabotage of the national economy, and the attempt to flee the country with more than a billion dollars deposited in foreign banks.⁴³ The Ceausescus denied all the charges, refused to recognize their defense lawyers, and demanded to be tried before the Grand National Assembly (Ceausescu's hand-picked parliament). This request was refused, and the trial proceeded. It was videotaped by a Colonel of the Romanian army. No witnesses testified; no proof was presented. The questions put to the Ceausescus amounted to a string of accusations such as "Why did you mistreat the peasants?" After 40 minutes of questioning, the tribunal pronounced the inevitable guilty verdict. Then, strangely, one of the defense lawyers rose and gave a speech acknowledging the guilt of his "client":

They have therefore been tried here as ordinary citizens, and the norms of legality have been observed for this ... It is an error for the two accused not to accept defense ... If this were not a legal process, we would have been first to say so. They [the Ceausescus] refer to the constitution, but they do not know its contents. The tribunal was and is legally constituted.⁴⁴

According to Kozinski (a U.S. superior court judge of Romanian origin), it is the conduct of the defense lawyers that is the fatal flaw in the proceeding as far as its legality is concerned:

The Romanian government has made no excuse for the manner in which the so-called trial was conducted. It has not repudiated the proceedings as contrary to law and good conscience or taken any action against the perpetrators. ... A rash act in the midst of crisis might be excused: a deliberative proceeding that has the trappings – but none of the substance – of legality is an affront to the legal order.⁴⁵

Almost immediately after the execution of the Ceausescus, the provisional government outlawed the death penalty in early January 1990.⁴⁶ The National Salvation Front could have openly admitted that the process under which the Ceausescus were executed was unlawful, or it could have excused this as necessary at a time when counter-revolutionaries were threatening the existence of the

⁴²A. Kozinski, "Death, Lies & Videotape: The Ceausescu Show Trial and the Future of Romania" (1991) 77:01 *A.B.A. Journal* 70 at 71.

⁴³Galloway and Wylie, *supra*, note 3 at 184, and Kozinski, *ibid.*

⁴⁴*Ibid.*, Galloway and Wylie, at 192.

⁴⁵Kozinski, *supra*, note 42 at 73.

⁴⁶Shafir, *supra*, note 25 at 35.

tenuous new government. To try instead to pass it off as a legally proper criminal execution plainly hurt the new government's credibility.

The political and social problems faced by the new government have been legion; the riots of 1990, the conflict between revolutionary leaders Iliescu and Roman, and the election as President of the enormously popular communist-affiliated Iliescu twice (in May of 1990 and in September of 1992) have all left doubts in world opinion as to whether the Romanian people are capable of democracy. The political situation lends itself to speculation that the people of Romania have followed blindly for so long that what comes the most naturally to them is to continue simply blindly following new leaders.⁴⁷ Indeed, the lack of public objection to the sub-standard performance of Prime Minister Vacaroiu's left-wing minority government in 1993 "prompted some analysts to speak of Romanian society's having relapsed into a political apathy reminiscent of the communist era".⁴⁸

The legal problems faced by the new government with respect to improving the country's human rights record are also formidable. In order to develop a legal framework capable of supporting human rights Romania first needed a new constitution spelling out its political and judicial institutions, and the protections to be granted to its citizens by its government.

Under the old constitution of 1965, "The PCR [Romanian Communist Party] and the Ceausescu régime placed a far greater emphasis on order than on the rule of law."⁴⁹ According to Bachman, the constitution of 1965 bore a superficial resemblance to the constitutions of Western democracies. Among the theoretically guaranteed rights were: equal rights for all citizens regardless of ethnic origin (Article 17), freedom of association (Article 27), freedom of speech (Article 28), and freedom of conscience and religion (Article 30). However, an override clause provided that no citizen could exercise his or her rights when they conflicted with the socialist order, nor if the result of that exercise would be "hostile to the interests of the Romanian working people".⁵⁰ These latter "interests" were

⁴⁷See M. Shafir, "Romanian Elections: Why the Democratic Convention Lost" (1992) 1:43 *Radio Free Europe Research Report* 1.

⁴⁸*Supra*, note 37 at 126.

⁴⁹This understatement is taken from R.D. Bachman, ed., *Romania: A Country Study* (research completed in July 1989) Washington: Federal Research Division, Library of Congress, 1990 at 294. This study is remarkably low-key about human rights violations in Romania, giving further credence to our realization that the magnitude of human rights violations in communist Romania did not become fully known until after the revolution.

⁵⁰*Ibid.*

defined solely by the ruling régime, effectively taking away any force the human rights provisions of the constitution might otherwise have had.⁵¹

What legal foundations existed for human rights in Communist Romania were further undermined by the fashion in which the judiciary was controlled by the government. Under the judicial system of the Communist régime, judges were appointed by the Party and took their orders from the Ministry of the Interior, the department largely responsible for the greatest number of human rights abuses. "Under the Constitution, it [the court system] was charged with defending the socialist order, protecting individual rights, and reeducating those who violate[d] the country's laws, in that order of precedence."⁵² Many professional judicial functions were given to ordinary citizens, who were chosen and tutored by the party. These "popular" judges formed "working peoples' judicial councils" to take charge of complaints and presumably to maintain order, if not law.⁵³

To distance itself from the old régime, the post-revolutionary government had drafted a new constitution by the summer of 1991. This was debated in the Constituent Assembly in September. After consideration of over 1000 amendments, a final constitution with 152 articles was approved. On 9 December 1991, the amended version was ratified by the electorate in a referendum. Constitutional advisors included American *Bill of Rights* experts⁵⁴ and commissioners from the Council of Europe's Commission for Democracy Through Law.⁵⁵

⁵¹Under Communism, the constitutions of other East European countries also purported to guarantee legal and political rights, but, as Peter Hogg points out in *Constitutional Law of Canada*, 3d ed. (Toronto: Carswell, 1992) at 796:

[A constitution] will never become the main safeguard of civil liberties ... The main safeguards will continue to be the democratic character of ... political institutions, the independence of the judiciary and a legal tradition of respect for civil liberties. [Constitutional guarantees are] no substitute for any of these things, and would be ineffective if any of these things disappeared. This is demonstrated by the fact that in many countries with bills of rights in their constitutions the civil liberties which are purportedly guaranteed do not exist in practice.

⁵²*Supra*, note 49 at 294.

⁵³*Ibid.* at 295.

⁵⁴See H. Schwartz, "The Bill of Rights in American and Central East Europe" (1992) 15 *Harvard J. of Law and Public Policy* 93, and R. Rotunda, "Exporting the American Bill of Rights: The Lessons From Romania" (1991) 4 *U. Of Illinois L. Rev.* 1065.

⁵⁵See Council of Europe, Information Sheets on Human Rights Nos. 28 and 29 (Strasbourg, 1991 and 1992) at 66 and 76 respectively. The Commission, formed in 1990, holds "consultative activities with both member and non-member states which wish to avail themselves of its expertise in constitutional law." Romania is an associate member.

The new constitution has been criticized as being too long.⁵⁶ However, the justification is that, with a history of massive human rights abuses, a detailed constitution is necessary to establish judicial legitimacy.⁵⁷ The constitution spells out the role of the media; radio and television stations must be autonomous, grant equal air time to "important social and political groups" and be "civically responsible".⁵⁸ Censorship "of any kind" is prohibited. The new constitution allows for the greater protection of civil liberties than the 1965 constitution by providing, in Article 16, that "no-one is above the law". Article 23, consisting of several clauses outlining civil and political rights, specifies house search, detention and imprisonment to be among the conduct of government which is allowed only in circumstances "determined by law and in accordance with established legal procedures". Freedom of conscience and religion are again spelled out (in Article 29), this time with an express prohibition on activities that promote hostility between people and groups of different faiths. The teaching of religion in schools is also constitutionally guaranteed. Moreover, individual freedom, personal security, freedom of expression, private ownership and freedom of association are expressed to be "inviolable". This ought to alleviate the problem found in the previous constitution whereby rights could be over-ridden when they conflicted with the goals of the state.

The new constitution requires that judges be "independent, being answerable to the law alone".⁵⁹ Romania claimed in 1990 to have removed 90% of the presidents of county tribunals and almost 200 other judges of the Ceausescu régime. Only 20% of the judges appointed by the former government to the High Court of Justice remained by July of 1991, and these were said to have exhibited "irreproachable behaviour" during the Ceausescu era.⁶⁰ On the constitutional court, one third of the nine members are replaced every year. Two major criticisms of the new judicial system have been the provision in the *Constitution* for the demotion of judges,⁶¹ and the lack of life tenure for judges.⁶²

In spite of its lofty goals, the new *Constitution* provides some windows of opportunity for a return to dictatorship. The new constitution still leaves too much

⁵⁶See Schwartz, *supra*, note 54 at 97, and M. Shafir, "Romania: Constitution Approved in Referendum" (1992) 1:2, *Radio Free Europe Research Report* 50 at 51.

⁵⁷Schwartz, *ibid.*

⁵⁸Shafir, *supra*, note 56 at 51.

⁵⁹Shafir, *supra*, note 25 at 39.

⁶⁰*Ibid.* at 38.

⁶¹*Ibid.* at 39.

⁶²*Ibid.*, Shafir quotes American constitutional law specialist Jerome Baron as warning that "without life tenure, those who serve in the constitutional courts in Eastern Europe may become vulnerable to the usual temptations of the human condition."

power in the hands of the president. True to Romania's communist history, the president is also the chief of the armed forces and president of the defense council. He may dissolve parliament under certain circumstances and may unilaterally (after a non-binding parliamentary consultation) declare a state of siege or emergency.⁶³ The only parliamentary limit on these presidential powers are articles, added in the September 1991 parliamentary debates, allowing a two-thirds majority of the two chambers of parliament to "indict the president for high treason".⁶⁴

While some human rights are said to be inviolable, others are subject to limitation by the government in circumstances of "natural disaster or calamity of grave proportions" or to safeguard "national security".⁶⁵ Presumably to balance these limitations, the constitution provides that "where there are discrepancies between domestic laws and international agreements regarding fundamental human rights, the latter should take precedence."⁶⁶ This proviso is potentially of great importance given the international agreements to which Romania is now a signatory, but it is not yet clear how it will play out.

Minority rights continue to be a serious problem in post-revolutionary Romania. Romanian national chauvinism re-emerged quickly after the initial rush of goodwill produced by the revolution. It is troubling to read a summary of the minority situation in Romania as described in *Country Reports on Human Rights Practices 1990*:

Romanians live under a government that generally respects the fundamental liberties of the individual. The government took several positive steps in 1991 ... On the other hand, severe discrimination against Gypsies, a problem endemic to the region, was in evidence in Romania as well. ... Although ethnic Hungarians enjoy broad legal and cultural rights, historical tensions between ethnic Hungarians and Romanians persisted; anti-Semitism surfaced in ultranationalist publications. Extremist groups, espousing nationalism and authoritarianism, if reinforced by populist discontent with market-oriented economic reforms, could constitute a threat to the country's fledgling democratic institutions.⁶⁷

⁶³Shafir, *supra*, note 56 at 52.

⁶⁴*Ibid.* at 51.

⁶⁵*Ibid.* at 52.

⁶⁶Shafir, *supra*, note 25 at 35-36.

⁶⁷U.S. Department of State, Committee on Foreign Affairs and Foreign Relations of the House of Representatives and the Senate, *Country Reports on Human Rights Practices 1991*, Committee on Foreign Affairs and Foreign Relations of the House of Representatives and the Senate, (Washington: 1991) at 1218.

Some minority rights that had been drafted into the July 1991 version of the constitution were retracted in subsequent amendments.⁶⁸ Political allies of an anti-Hungarian nationalist organization exerted their influence to have certain sections guaranteeing minority rights struck down in the parliamentary debate. As a result, Romanian was declared the only official language, with members of ethnic minorities guaranteed an interpreter for a court appearance only if their command of the Romanian language is insufficient for the purpose. Minority cultural rights are guaranteed only vaguely with the grant of the "right to a separate identity".⁶⁹ Hungary abstained in the 1993 vote on Romania's admission to the Council of Europe in protest over Romania's treatment of its Hungarian minority.⁷⁰

The Hungarian minority is not the only ethnic minority experiencing continued problems in the new Romania. Romania has the highest number of Romany of any European nation. According to Barany and Hancock, the situation of the Romany in Eastern Europe is in some ways worse under democratic governments than it had been under the Communists.⁷¹ In Romania, the situation of Romany has deteriorated since 1989. Pavel, social and political editor of 22, a Romanian opinion journal, stated bluntly, "[T]hey're being persecuted more brazenly and brutally than before."⁷² Some of this escalating violence against the Romany may be explained by a widespread popular belief among ethnic Romanians that Romany were accorded favour by Ceausescu. It was rumoured (apparently falsely) that Ceausescu himself was Romany. Some Romany apparently believed this, for they nicknamed the dictator "our Daddy". After Ceausescu's fall from power, it was popularly said that his Romany origin accounted for his corruption.⁷³

Prime Minister Roman in 1990 denounced the Romany, tarring them with one brush as "leaders of prostitutes and the world of the underground".⁷⁴ A 1990 editorial in the national newspaper *Romania Mare* (Great Romania) was blatantly

⁶⁸See Shafir, *supra*, note 56 at 51.

⁶⁹*Ibid.* at 52. The right to preservation and development of these identities would have given ethnic minorities much stronger legal rights, such as are included in the *Charter of Paris*, discussed *infra*, notes 87-93 and the accompanying text.

⁷⁰The Hungarian minority's situation is described in detail in D. Ionescu & A.A. Reisch, "Still no Breakthrough in Romanian-Hungarian relations" (1993) 2:42 *Radio Free Europe Research Report* 26 and in M. Shafir & A.A. Reisch, eds., "Roundtable: Transylvania's Past and Future" (1993) 2:24 *Radio Free Europe Research Report* 26.

⁷¹*Supra*, notes 22 and 23 at 410.

⁷²See Pavel, *supra*, note 10 at 12.

⁷³*Ibid.* at 13.

⁷⁴*Ibid.* at 12.

racist, saying that "some people will have to leave the country fast, and of course it won't be the Romanians."⁷⁵

According to Pavel, the miners' attack of June 1990, initially directed at demonstrating students, later turned into a pogrom against Romany:

[The miners] accompanied by their civilian guides (typically Securitate members) – suddenly appeared at the doorsteps of Gypsy homes. Men who were found inside were subjected to rapid executions; some of them had their heads cut off with a single swipe of the sickle. Women were beaten and raped in front of their horrified children and parents, who were themselves tortured in an attempt to force them to reveal hidden merchandise destined for the black market. Some men and women were tied by the hands and feet and lifted onto trucks that took them to unknown destinations. Many never returned.⁷⁶

This tragedy, asserts Pavel, dispelled a longstanding myth: "the idealized historical and literary image of Romanians as a peaceful and hospitable people incapable of racism, anti-Semitism, chauvinism, and nationalism."⁷⁷ At the establishment of the European Romany Parliament (EUROM) in 1991, a report was released stating that during 1990 "the brutalizing, rape, incarceration and murder of Gypsies [in Romania] were monthly occurrences."⁷⁸

Ionescu and Shafir, commentators on Romanian affairs for the Radio Free Europe Research Institute, note that:

Hungarian-Romanian tension notwithstanding, the two ethnic communities seemed to have common ground on at least one point: their animosity towards the Gypsies. In September [1993] a mob of Romanians and Hungarians killed three Gypsies and burned down a dozen or so Gypsy houses in the Transylvanian village of Hadareni, in what the International Federation of Human Rights termed "a veritable pogrom". The ambiguity of the government's press release on the incident, which seemed to place the blame equally on the victims and the culprits, determined the Gypsies' representatives on the Council of National Minorities to announce that they were withdrawing from it as well. [The Council had been formed in March of 1993 as part of Romania's quest to gain admission to the Council of Europe, but

⁷⁵Quoted in Barany, *supra*, note 22 at 44.

⁷⁶Pavel, *supra*, note 10 at 12.

⁷⁷*Ibid.*

⁷⁸*Supra*, note 23 at 411, quoting from N. Gheorghe and I. Hancock, "Report of the International Romani Union on the Current Situation of Roma Throughout the World" (Manchaca, Texas: International World Romani Union, 1991) [emphasis on human rights violations in Romania]. See also H. Cartner, *Destroying Ethnic Identity: The Persecution of Gypsies in Romania* (New York: Helsinki Watch, 1991).

a Hungarian group had already withdrawn in protest of the government's failure to implement the Council of Minorities' recommendations.]⁷⁹

The present government justifies its ethnic harassment as an attempt to eradicate the black market. However, Pavel sees it as pure racism, fed by extreme nationalist sentiment in the wake of the revolution. Whatever the cause, violence against Romany is commonplace, and the police seem unable or unwilling to stop it.

In October of 1992 Germany announced that it planned to expel a great number of its refugee Romany population back to Romania. The deportation was labelled the "reinsertion program" by the government.⁸⁰ This was not a new story; it had been brewing since the fall of the Berlin wall in 1989, when, according to Hancock, West Germany took action against the Romany to make room for the flood of East German refugees. When the U.S. House of Representatives protested, Chancellor Helmut Kohl responded that "the federal [German] government does not deem it necessary or expedient to introduce special rules for this category of persons [the Romany] whose situation cannot be compared with that of East German refugees."⁸¹

Today, according to Barany, most Romany have abandoned their nomadic lifestyle. However, with the growing tide of racism even in the Western European countries such as Germany, the "Romany problem" could become Eastern Europe's largest refugee crisis of the 1990s, as the Romany try to find a homeland where their distinctive culture will find acceptance. Romania, given its new theoretical acceptance of international principles of human rights, may have no choice but to "welcome" them back; it may be in breach of international law if it does not.⁸² Romania will need international moral and financial support to combat the social disruption that will result from any large-scale Romany immigration.

Bednarczyk believes that dealing with the volatile area of minority rights will be the key to maintaining democracy and security in Eastern Europe.⁸³ To

⁷⁹*Supra*, note 37 at 126. See also M. Shafir, "Minorities' Council Raises Questions" (1993) 2:24 RFE/RL Research Report 35.

⁸⁰I. Foneska, "Of No Fixed Abode" (book review of A. Fraser, *The Gypsies* (Oxford: Blackwell, 1992)), Times Literary Supplement (29 January 1993) 7.

⁸¹*Supra*, note 23 at 409.

⁸²It can forcefully be argued that by expelling all or a part of its Gypsy population Germany is in breach of international and regional refugee conventions and in breach of the principle of self-determination of peoples enshrined in the *U.N. Charter*.

⁸³"Nationalism, Ethnic Minorities and Human Rights in Post-Cold War Central and Eastern Europe", Occasional Paper No. 2, Nato Defence College, Rome, Italy, 1994 at 2.

implement real protection for the Hungarian and Gypsy minorities it will be necessary for Romania to add constitutional guarantees of separate schools and other civil and cultural rights for these ethnic groups. More important, the international community must help to purge Romanian society of ethnocentric, ultranationalist and racist views through condemnation of these attitudes, through education towards tolerance, acceptance, and welcoming of diversity, and through continued monitoring of the human rights situation. As Fruling comments:

If we do not scrutinize violations that seem minor in comparison to what happened in the near past we will not be able to build a strong democratic and human rights abiding culture ... This requires a policy or rejection – of denunciation – of abuses, and reaction to actions that violate or infringe upon human rights. Furthermore, it requires a policy that goes towards proposing alternatives and getting things done.⁸⁴

On the international scene, Romania was slower than the other countries of Eastern Europe to gain admittance to the Council of Europe, the pre-eminent European body of states and defender of human rights.⁸⁵ However, like the other emerging democracies of Eastern Europe, it used its membership in the Conference on Security and Cooperation in Europe (CSCE) (which had been formed during the Cold War in an early effort towards detente) as a stepping stone towards full membership in the Council.

The first summit meeting of the CSCE was in 1975, when it adopted the *Helsinki Final Act*, an optimistic call for the acceptance of human rights standards into international law. However, the signatures of the Soviet-bloc states did not guarantee an intention on the part of those states to follow the spirit of the *Act*, and, as NATO security analyst Buguslaw Bednarczyk points out, Ceausescu in particular signed the 1989 Vienna Concluding Document with the reservation that his country would not be bound by any clause it considered objectionable.⁸⁶

⁸⁴H. Fruling, *Remarks, supra*, note 1 979 at 980 and 982.

⁸⁵Beginning in the 1950s, Western European countries, impatient with the long process of obtaining an internationally ratified treaty on human rights through the U.N., had formed the Council of Europe and proclaimed their own treaties on human rights, first the *European Convention for the Protection of Rights and Fundamental Freedoms* of 1950, then the *European Social Charter* of 1961, guaranteeing social, economic, and cultural rights, and then the *European Convention on Human Rights* of 1963. The *Convention*, one of the most successful international treaties on human rights, guarantees fundamental civil and political rights and mandates a remedy at the national level, "notwithstanding that the violation has been committed by persons acting in an official capacity" (Article 13). Three bodies are authorized to ensure the enforcement of this treaty: the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, and the European Court of Human Rights. An optional protocol allows individuals to bring a suit before the European Court of Human Rights.

⁸⁶*Supra*, note 83 at 18.

By 1990 the entire Eastern European situation had changed. In November of that year the CSCE, in a wave of democratic enthusiasm, issued the *Charter of Paris for a New Europe*, a major international legal document, to mark the beginning of "a new era of democracy, peace and unity" in Europe. The *Charter of Paris* begins with poetic words of optimism:

We, the Heads of State or Government of the States participating in the Conference on Security and Co-operation in Europe, have assembled in Paris at a time of profound change and historic expectations ...

Europe is liberating itself from the legacy of the past. The courage of men and women, the strength of the will of the peoples and the power of the ideas of the *Helsinki Final Act* have opened a new era of democracy, peace, and unity in Europe.

Ours is a time of fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries ...

Human rights and fundamental freedoms are the birthrights of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice, and peace.⁸⁷

The *Charter of Paris* goes on to declare that freedom of thought, conscience, religion or belief, freedom of expression, freedom of association and peaceful assembly, freedom of movement, protection from arbitrary arrest, detention, torture, and other cruel and degrading punishment, the right to fair and public trials, the right to political participation, the right to own property, the right to enjoy economic, social and cultural rights, and the rights of ethnic minorities to the protection, preservation, and development of their identities are all necessary components of the new Europe. The *Charter of Paris* spells out principles of economic liberty, social justice, and environmental responsibility. It stresses friendly relations among states and a commitment to settling disputes by peaceful means. To this end it entreats reductions of armed forces among signatory states. Significantly for Romania, given its past opposition to expanding the influence of international bodies, the treaty "recognize[s] with satisfaction the growing role of the United Nations in world affairs and its increasing effectiveness, fostered by the improvement in relations among our States."⁸⁸

The CSCE since 1989 has been affiliated with the Council of Europe through various working parties formed to exchange views of human rights issues. The Council of Europe requires that states seeking membership must first ratify the

⁸⁷CSCE, *Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter*, (1991) 30 I.L.M. 190 at 193-194, [hereinafter *Charter of Paris*].

⁸⁸*Charter of Paris, ibid.* at 198.

European Convention on Human Rights. After the events of 1989, when many of the former East Bloc countries expressed a desire to ratify the *Convention* in order to join the Council of Europe, the Council considered the state of advancement of the particular state along the road to democracy and the rule of law before making a decision on whether to admit that state to the Council.⁸⁹ On 21 February 1991, the former Czechoslovakia was admitted to the Council of Europe, and on 6 November 1991, Poland was admitted. In Madrid in February 1991, Ministers of the Council of Europe affirmed their desire to develop cooperation with Romania as it progresses on the path to democratic reform, in view of its eventual entry into the Council of Europe.

In addition to its subscription to the *Charter of Paris*, in 1990 and 1991 Romania subscribed to the United Nations protocol on the abolishment of the death penalty and the United Nations convention on the prohibition of torture and inhuman and degrading treatment, and removed its reservation concerning the obligatory jurisdiction of the International Court.⁹⁰ In February of 1992, the United Nations Commission on Human Rights decided that Romania had advanced sufficiently towards fulfilling the goals enshrined in the *Universal Declaration of Human Rights* that it was no longer necessary to monitor human rights in that country through a special rapporteur.⁹¹ Finally, on October 4 1993, Romania was admitted as a full member of the Council of Europe.

In Oslo, Norway in November of 1991, the CSCE held a seminar in accordance with provisions contained in the *Charter of Paris* in which representatives of all member states, including Romania, jointly tabled a report on "Practical measures to Strengthen Democratic Institutions and the Rule of Law", "Constitutional Reforms", "Strengthening CSCE Cooperation in Human Rights, Democratic Institutions and the Rule of Law", and "Proposals for Cooperation" [regarding, *inter alia*, training, education, NGO participation, and free legal aid].⁹² At the Oslo seminar, the representatives recalled their commitment to the principles of the *Charter of Paris* and had full and frank discussions on

⁸⁹Countries that accede to conventions of the Council of Europe can, even before they gain the status of full membership, participate in relevant Council activities. For example, Romania acceded to the *European Cultural Convention* on 19 December 1991, and has since that date participated in all Council activities in the areas of education, culture, sport and youth, Council of Europe Information Sheet on Human Rights No. 29 (Strasbourg, 1992) at 76.

⁹⁰*Supra*, Shafir, note 25 at 35.

⁹¹*Ibid.* at 37-38.

⁹²"Conference on Security and Co-operation in Europe: Report to the CSCE Council From the CSCE Seminar of Experts on Democratic Institutions" (1992) 31 I.L.M. 374 at 374, hereinafter the Oslo report.

“suggestions for practical measures to strengthen democratic institutions and the rule of law.”⁹³

The Oslo report engaged in a general discussion of the independence of the judiciary as a fundamental element in “safeguarding the rule of law and securing effective implementation of human rights and fundamental freedoms.”⁹⁴ The judiciary must have its role strengthened in a new democracy, said the report, be well-trained, and with appropriate appointment procedures, remuneration, and security of office.⁹⁵ In addition, plurality of political parties, electoral systems, and the role of NGOs and trade unions were also listed as methods through which the rule of law could be more securely implemented.

With regards to constitutional reform, the consensus in the Oslo seminar was that, “[a]s long as the core values of democratic government were assured, no single overall approach to the institutions and procedures of democratic government could be considered as having universal validity.”⁹⁶ However, the report reiterated the “urgent need” to make a break with previous totalitarian systems “in an appropriate legal form.”⁹⁷ The Oslo report warned the developing democracies that “a decision on a definitive new constitution, adopted before a society has fully clarified and developed its vision of democratic government, might have to be reconsidered before long.”⁹⁸

Vital to the Oslo seminar’s consensus is the Oslo report’s discussion of national implementation of international human rights instruments. Various options for signatory states were left open, including incorporation or transformation of international instruments as national legislation. “[I]t was emphasized that it was the responsibility of each State to give full domestic effect to its international human rights obligations, irrespective of the means of implementation chosen.”⁹⁹

Domestic legal remedies for violations of human rights were given an important place on the agenda of the seminar. The availability of the ordinary

⁹³*Ibid.* at 376.

⁹⁴*Ibid.* at 377.

⁹⁵*Ibid.* at 380. These latter traits of a truly independent judiciary are arguable still lacking in the new Romania, as can be seen by the allegations of *Romana Libera, infra*, note 107, and the discussion *supra*, notes 59 to 62 and the accompanying text.

⁹⁶*Ibid.* at 378.

⁹⁷*Ibid.* at 379.

⁹⁸*Ibid.*

⁹⁹*Ibid.* at 384.

court system, including administrative courts, as well as constitutional courts, human rights commissions, ombudspersons and mediators were all suggested as effective methods to control human rights abuses.¹⁰⁰ The conference noted that recourse for individuals to international human rights bodies would complement domestic systems of remedies. Finally, the Oslo report dealt with the future role of the CSCE in the areas of human rights, developing democracies, and the rule of law.¹⁰¹

The Oslo report talks of the development of the rule of law in a new democracy as being premised on many factors. However, the report recognizes that the phenomenon of a "democratic culture" is the single most important factor in the evolution of a society that follows and will continue to follow the rule of law:

When a democratic tradition of long duration has not had the chance to develop, or had been interrupted, it would be necessary to develop a democratic culture, on the local, regional and national level, in order to sustain new democratic institutions ... The growth of a democratic culture can be fostered by society at many levels: in basic civic education, in the media, within religious and civic movements and organizations, in political parties, in the professions, notably the legal profession, in the judiciary, in public administration, within the armed forces and the police by securing the absolute allegiance to the civil power and democratic government.¹⁰²

In the early post-revolutionary period in Romania there was unfortunately little public discussion within Romania of the elements necessary for the implementation of a state based on the rule of law. According to Shafir the situation in 1992 was that:

since the removal of the Ceausescu, theoretical discussions concerning the concept of a state based on the rule of law have been extremely rare in both specialist journals and in the popular press; and it is also no surprise that there has been a similar neglect of the relationship between the rule of law and political culture, which affects the former's translation into practice.¹⁰³

Shafir went on to note that although the popular press in the immediate post-revolutionary period was not devoid of discussions of the component elements of a state based on the rule of law, such as democratic institutions, there was a singular lack of "theoretical elucidations of the concept of the constitutional state".¹⁰⁴ One notable exception to this paucity of debate was an article by

¹⁰⁰*Ibid.* at 385.

¹⁰¹*Ibid.* at 386-8.

¹⁰²*Ibid.* at 377. See also Peter Hogg's comments, *supra*, note 51.

¹⁰³*Supra*, Shafir, 25 at 34.

¹⁰⁴*Ibid.*

Teofil Pop, President of the High Court of Justice from July 1990 until June 1992, published in December of 1990. Pop emphasized that, in a state based on the rule of law, the individual occupied the centre of political and social life, and that the Romanian people must begin to view the state as existing to serve the interests of individuals.¹⁰⁵ Pop said that the state must be governed by legislation that treats "the protection of the individual, of his rights and his dignity, as axiomatic".¹⁰⁶ When this condition is fulfilled, according to Pop, "popular sovereignty, the separation of the branches of power, and a democratic, pluralist system" would result.¹⁰⁷

However, the paucity of writings on the rule of law is beginning to be alleviated as time advances and growing confidence permits. Recognizing that post-communist lawyers, politicians and citizens need advice on the nuts and bolts of the implementation of democracy and the protection of human rights, Shafir addressed the necessity for the development of a "civic political culture",¹⁰⁸ and stressed its vital role in the transformation of the theory of the rule of law into practice. The elements of this culture, Shafir states, are "a "participatory" approach to politics (individuals' involvement in political life) rather than a "subject" [approach] (acceptance of the uncontrolled right of rulers to establish the norms of the polity)."¹⁰⁹ The concept of a "civic political culture", or "democratic culture", contains within itself an exhortation for the active involvement of all citizens that is so necessary for the true implementation of the rule of law.¹¹⁰

¹⁰⁵*Ibid.* at 35.

¹⁰⁶*Ibid.* at 35.

¹⁰⁷*Ibid.* Ironically, for all his concern with the rule of law and democratic theory, Pop's appointment as Chief Justice was not renewed by the parliament in 1992 because of his alleged close collaboration with the former régime. In March of 1992 the daily newspaper *Romana Libera* published a "Moral Profile" in which it claimed that Pop had been one of the *nomenclatura*, hand-picked by Elena Ceausescu, and had been in charge of the entire [corrupt] process of legal adjudication (*ibid.*, at 38).

¹⁰⁸*Ibid.* at 34.

¹⁰⁹*Ibid.* He went on to state that it is ironic that, to date, the best discussion of the concept of a political culture was made by Ovidiu Trasnea, "a sociologist and a political scientist known for his propagandist output under the former régime."

¹¹⁰In contrast to this practical approach see K.E. Klare's article, "Legal Theory and Democratic Reconstruction: Reflections on 1989" (1991) 25 U.B.C. L. Rev. 69. In this highly theoretical treatise the author considers two approaches to legal discourse on human rights that post-communist lawyers may take: the technical, and the creative. The technical, Klare argues at p. 72, is flawed in that it assumes that an exhaustive vision of democracy can be implemented by postcommunist lawyers if they follow an "array of rules and forms that together make up the legal structure of the market and human rights guarantees" with these all in turn founded upon the autonomous rule of law. The creative approach, according to Klare at 102, is the correct one: instead of a formula of rules and precedents, lawyers need to be "politically and morally engaged ... to create a new conception of legality." Klare suggests that only with creative moral engagement will new and diverse visions of

Now what is necessary is simply time. Romania has already taken strides towards fulfilling its human rights obligations. Dialogue between interest groups is beginning to spring up. The Romanian Helsinki Committee, the League for the Defense of Human Rights (LDHR), the Prodemocracy Movement, the 16-21 December Association, and the Romanian Association for Individual Liberty and Personal Privacy are all new NGOs. The Romanian Institute for Respect of Human Rights was established by the government in January of 1991.¹¹¹ These organizations have been quick to point out to the new government when it has taken actions abridging human rights.¹¹² The LDHR sent thousands of observers to polling stations for the local elections of February 1992. Shafir says:

Society's contribution to the process of establishing a state based on the rule of law ... has been quite impressive, particularly in view of its past passivity. Although such social "input" is restricted to a minority of the population, (as indeed is the case even in democracies that are long established), this minority has been quite active and is likely to become more so in the future.¹¹³

One of the very first successes of the new government was the reversal of the ban on birth control in early 1990.¹¹⁴ Other rectifications will be more complex. The functioning of Romania's new judicial and penal system will determine whether Romania can live up to its civil and political rights obligations; Romania must attempt to resettle or otherwise compensate its citizens displaced by the Ceausescu policy of systemization in order to comply with international laws against arbitrary interference with family and home; churches must retain their newfound autonomy and believers must be given equal treatment in society before it can be said that Romania allows true freedom of religion; dissent must be tolerated even when this becomes uncomfortable for the new government or when the dissenters are vociferous in protesting the inevitable mistakes a new government will make; the high ideals with which Romania began its system of free elections¹¹⁵ must not be compromised; the unreasonable production quotas and sub-poverty-line wages of the old régime must be abandoned if the right to just and favourable conditions of work is to be achieved – the new government's

democratic societies come into being.

Although Klare and Shafir may be trying to say the same thing, the writings of Shafir are more compelling and, in the final analysis, much more likely to be influential.

¹¹¹Shafir, *supra*, note 25 at 39.

¹¹²U.S. Department of State, Committee on Foreign Affairs and Foreign Relations of the House of Representatives and the Senate, *Country Reports on Human Rights Practices 1992* (Washington, 1993) noted that "respect for human rights continued to improve in 1992, particularly with regard to institutionalizing democratic principles and respect for human rights in Romania's legal system and the conduct of generally free and fair elections" at 881.

¹¹³Shafir, *supra*, note 25 at 40.

¹¹⁴*Ibid.* at 1233.

¹¹⁵See M. Shafir, "Romania's New Electoral Laws" (1992) 1:36 *Radio Free Europe Research Report* 24.

progress in alleviating the hardships suffered by workers will undoubtedly be closely monitored by newly formed trade unions.¹¹⁶

The social rights mandated by such international instruments as the *Universal Declaration on Human Rights* and by the *Charter of Paris* will be the most problematic to implement and maintain. According to the *Covenant on Economic and Social Rights*, Romania is only expected to provide social rights "in accordance with its resources",¹¹⁷ however, these are presently very limited, particularly compared with the country's vast social problems. In fact it is because present social conditions and the standard of living are so appalling in Romania (by Western standards) that the country may serve as a model of the human rights standards an emerging democracy is capable of providing.¹¹⁸

There will be many factors working both for and against Romania's new democracy in the coming years. However, if the positive attitude evidenced by Romanian activists and by Romania's new representatives at the CSCE and at the Council of Europe is indicative of what lies ahead, Romania will develop into a western-style democracy. The chief role of the international community towards aiding the development of this fragile democracy is in providing moral and practical support to its democratic institutions, in educating Romanians with the aim of embedding a "democratic culture" in their character, and in continued monitoring and condemnation of human rights abuses. We should go into the future with optimism.

¹¹⁶The summoning of miners to suppress dissent in June 1990 was clearly an illegitimate use of the trade union movement. It may be rationalized as a mistake by a provisional government in a time of political upheaval, but it has hurt the international credibility of Romania's commitment to the new norms of international human rights law.

¹¹⁷*Universal Declaration of Human Rights*, Article 22.

¹¹⁸See D. Ionescu, "Romania's Winter of Shortages" (1993) 2:6 *Radio Free Europe Research Report* 45 for a description of recent conditions in Romania. Ionescu suggests that it is economic hardship that poses the most severe threat to the continuation of democracy in Romania.