**FREE INTERNATIONAL UNIVERSITY OF MOLDOVA**
**DOCTORAL SCHOOL**

As a manuscript
UDC:

**NĂVODARIU ELENA TANIA**

# THE CONTRIBUTION OF TRANSITIONAL JUSTICE TO THE ESTABLISHMENT OF THE RULE OF LAW IN A POST-CONFLICT SOCIETY

**Specialisation: 552.08 – INTERNATIONAL AND EUROPEAN PUBLIC LAW**

**SUMMARY**
**the doctoral law thesis**

**Chisinau, 2022**

The thesis was developed within the Doctoral School of the International Free University of Moldova.
**Scientific leader:**
**GAMURARI Vitalie**, doctor of law, associate professor (docent)

**Members of the Steering Committee:**
**OSMOCHESCU Nicolae**, doctor of law, university professor
**DORUL Olga**, doctor of law, associate professor (docent)
**CAUIA Alexandru,** doctor of law, associate professor (docent)

**Composition of the Commission for public defence of the doctoral thesis:**
**POALELUNGI Mihail**, doctor habilitat of law, associate professor (docent) - president
**GAMURARI Vitalie,** doctor of law, associate professor - scientific leader
**BURIAN Alexandru,** doctor habilitat of law, professor - member-referent
**CIUCĂ Aurora**, doctor habilitat of law, professor - member-referent
**CAUIA ALEXANDR**, doctor of law, associate professor - member of the Steering Commitee, reference member
**RUSNAC Svetlana**, doctor of psychology ,associate professor - reference member
**ROȘCA Valentin**, doctor of law, university lecturer - reference member

The presentation of the thesis will take place on the 6th of May,2022, at 14:00 in the meeting of the Commission for the public defence of the doctoral thesis within the framework of the International Free University of Moldova at the address: MD-2012, Chisinau county, 52 Vlaicu Pârcălab street , office 212.
The doctoral dissertation and the abstract can be consulted at the Library of the Free International University of Moldova and on the website of the Free International University of Moldova (https://ulim.md/doctorat/sustain-doctoral-theses/) and the National Insurance Agency of Quality in Education and Research (http://www.cnaa.md/).
The summary was sent on 5th of April, 2022.

**Scientific Secretary of the ULIM Scientific Council**
**ROBU Elena,** PhD in economics, associate professor (docent)

_____
*signature*

**Scientific leader**
**GAMURARI Vitalie,** doctor of law, associate professor (docent)

_____
*signature*

**Author, NĂVODARIU ELENA TANIA**

_____
*signature*

**CONTENT**

## 1. CONCEPTUAL LANDMARKS OF RESEARCH

**The topicality and importance of the research topic.**

Transitional justice arises as a pragmatic response of international law to the problems faced by societies facing armed conflicts or authoritarian / dictatorial regimes. In this regard, we note that the Republic of Moldova has been severely affected by the effects of the 1992 Dniester conflict, which in turn had its origins in the previous authoritarian period.

The concept of transitional justice was born in the conditions in which it does not exist, nor can there be an express solution in the vision of international law, which would ensure the passage of the post-conflict period without consequences that could affect society and without generating the premises of a possible desire for retaliation. future. However, this "euphoria" of the winner, often characterized by the desire to take revenge, leads to the creation of conditions that lead to an impossibility to reconcile the respective society, including the restoration of the institutions of the rule of law.

From the 20th century onwards, we notice that the mechanisms of the concept of transitional justice are beginning to be applied in European, Latin American, African, Asian countries, and at the beginning of the 21st century this concept remains relevant - we are talking about the situations and crises in Bosnia and Herzegovina, Kosovo, Nagorno-Karabakh, Ukraine, but also the Republic of Moldova. In the context of implementing good practices in this regard, but also in order not to repeat the mistakes made in the past, this research topic is of great interest to the Republic of Moldova and Romania, but also to neighbouring states such as Ukraine.

The approached subject is a new one for the international law, being an interdisciplinary one, context in which the conducted study allowed us to identify facts and objectives, which unquestionably argue the topicality and importance of the nominated research topic.

**Degree of study of the research topic**. The topic is very little known in the Republic of Moldova and Romania. As an example, we refer to the fact that in Romania the term “transitional justice” or “transitional justice” is used until now, despite the fact that at the level of experts in the field of international humanitarian law the term “justice” is accepted as a customary norm transitional”, a term taken from studies in English and French - transitional justice and justice transitionally.

However, as a concept, transitional justice is seen as a product of the post-Cold War period - initially in the context of the process of eliminating apartheid in the Republic of South Africa, the reconciliation of post-authoritarian Latin American societies - Chile, Argentina, Colombia, but also of some countries that have faced armed conflicts - states in Africa, Asia

and Europe. In the latter case, we are referring in particular to the Balkan conflict. However, if we refer to the European continent, we cannot give the example of Northern Ireland, a conflict which was based on its religious character and lasted for more than 30 years, but which in the meantime is one that must be examined in the light of the effects on British society. The truth is that the University of Belfast, Northern Ireland, has established and operates a specialized Institute for Transitional Justice, which is appreciated by most universities and research centres in states that promote the concept of transitional justice. Or, among the recommendations made following the study, there is also one of these kinds.

Therefore, this study is the first of its kind, perhaps even having the status of a pioneer, not only in the Republic of Moldova and Romania, but also in the states in the region, thus creating a foundation, the right ones largely theoretical, for initiating a dialogue on the role and contribution of transitional justice in the process of consolidating and reconciling a post-conflict society.

**The aim of the research** is to determine the role of transitional justice in the process of national reconciliation of post-conflict societies, including the restoration and consolidation of the rule of law. In this regard, we will examine different mechanisms and instruments of transitional justice in a comparative study which, in turn, will allow the assessment of the level of applicability, by analogy, of transitional justice in various other post-conflict societies, taking into account of the geographical, traditional, cultural, evolutionary, civilizational, etc. specificity, specific to each society.

**The objectives of the research** in question were set in order to effectively achieve the proposed goal, being the following:

- determining the concept of transitional justice;
- characterization of the instruments and mechanisms of transitional justice;
- description of the forms and methods of implementation of transitional justice;
- appreciating the role of transitional justice in the context of consolidating and reconciling a post-conflict society;
- the contribution of transitional justice to the restoration of trust in state institutions and the consolidation of the rule of law in a post-conflict society;
- determining the level of application by analogy of the institutions of transitional justice in various societies through armed conflicts or authoritarian regimes;
- determining the co-ratio between the capacity of sanctions and amnesty, as instruments of transitional justice to restore a certain level of trust between the enemy parties in a divided society; avoiding the inevitable in such situations - imposing revenge.

**Research hypothesis.** In the context of the proposed study, we started from the importance of promoting and subsequently implementing the mechanisms and instruments of transitional justice to create the necessary conditions that would allow the reconciliation of a society that has gone through an armed conflict or authoritarian regime. In the meantime, based on a study of the practices accumulated by several states, we set out to make a classification of instruments and mechanisms, in light of the possibility of their application in the case of the Republic of Moldova and Romania, in particular.

**Synthesis of the research methodology and justification of the chosen research methods.** In the context of the analysis of the concept of transitional justice, but also of the effects produced on the process of consolidating the rule of law, we used the following methods of scientific research:

- the historical method, which allowed us to establish the evolutionary stages of the institutions and mechanisms of transitional justice, which, in the end, allowed us to consolidate this concept in international law;

- the comparative method, which allowed us to examine the practice of different states with different legal traditions, which in turn allowed the creation of favourable conditions for the implementation of the instruments and mechanisms of transitional justice, thus highlighting the most competitive ones, and applicable in the case of the Republic of Moldova, but also of Romania, as well as of some situations of regional crises;

- the logical method, by which we carried out a comprehensive study of the effects produced by the instruments and mechanisms of transitional justice in relation to a post-conflict society or post-authoritarian regime, including in the light of the possibility of their application by analogy;

- the quantitative method aimed to accumulate that volume of knowledge, of theoretical sources existing in a crisis situation, but also of case studies, which could serve as sources for the implementation of the concept of transitional justice;

- the prospective method supports the intentions of the coordination between the states that have faced situations such as an armed conflict or authoritarian regime, of the capacity of the respective companies to achieve the proposed objectives;

- the systemic method allowed us to highlight the positive effects, but also the negative ones of the process of implementing transitional justice, having the possibility to consolidate the good practices, including by familiarizing the society with them;

- the method of synthetic analysis is the one that allowed to achieve the objectives in the context of formulating the conclusions and recommendations.

**The scientific problem solved** is to determine the content of the concept of transitional justice, in the context in which it is designed as an institution capable of reconciling a post-conflict society, including in the light of restoring trust in state institutions, which can lead to the rule of law. Achieving this goal can be achieved, in particular, by examining the instruments and mechanisms of transitional justice, by analysing the practice of other states implementing transitional justice, but also, perhaps most importantly, by analysing the effects produced in relation to a post-transitional society conflict following the implementation of instruments and mechanisms of traditional justice.

Equally, the scientific problem solved is to determine the balance between the punitive and restorative means of transitional justice. As far as we are concerned, we appreciate that only by maintaining a fair balance can we restore trust between former opponents, but also trust in the sincere intentions to ensure the restoration of the interests and rights of victims, of society in general, but also of not admitting widespread impunity for those guilty of the most serious violations of international human rights law and international humanitarian law.

For the Republic of Moldova, the solved scientific problem consists in identifying and analysing the possible ways of elaborating a concept regarding the implementation of the institutions and mechanisms of transitional justice, which could create the necessary and favourable conditions for starting a long dialogue. banks of the Dniester, but also the establishment of a civilizational dialogue, in the current conditions of East-West confrontations, which has lasted for over 30 years.

At the same time, for Romania, the solved scientific problem could have a practical applicability, not only theoretical. We refer to the situation that is being discussed so far, regarding the events that took place between 1989-1991. However, transitional justice is the field that aims to overcome tense situations that last a long time, with the aim of finding a common denominator for conciliation, first and foremost, the prosecution of guilty persons. of certain illegal acts, which are sometimes heavily politicized.

**Scientific novelty and originality** are determined by the fact that this concept of transitional justice is a new one, first formulated only three decades ago, even if certain elements and institutions of it were known before, in the context in which International Law was put into practice. facing an important dilemma. This dilemma began to take shape in the post-conflict society situation in the 1990s, with the question: "What tools and institutions could be able to respond expressly to the challenges facing post-conflict societies?" in the context in which the reconciliation of such a society is conditioned by the restoration of the functionality of the institutions of the states, in general, and of the rule of law, in particular".

In fact, the challenge of our study, from the point of view of novelty and originality, is to answer the question: vitality of state institutions and, at the same time, the construction and proper functioning of new national institutions is conditioned by the capacity and level of national reconciliation".

The concept of transitional justice is a universal one, which has been implemented on various continents, such as: Europe (in Spain, Northern Ireland, Croatia, Bosnia and Herzegovina, Kosovo), Asia (in Cambodia and East Timor), Africa (in Morocco, Tunisia, Algeria, the Republic of South Africa, the Democratic Republic of the Congo, Rwanda and Sierra Leone). However, the concept of transitional justice does not have a "formula" that could be applied, indigo, in post-conflict societies, which are marked by fundamentally different traditional and cultural orientations.

**The scientific originality** of this doctoral thesis is determined by the fact that the concept of transitional justice as presented in this study is one of the few in terms of transitional justice to which is added the fact that due to the regional conditions in which the Republic of Moldova is located as a determining factor. In this sense, since the Republic of Moldova went through an armed conflict in 1992, the entire period of the state's existence was characterized by a state of division of society on political grounds. Also, at the regional level, Ukraine is still going through an armed conflict, starting in 2014, in the southeast of the country, and part of its territory - the Crimean peninsula - is under occupation. For its part, Romania, although not facing an armed conflict, continues to be a politically divided society, after a long period following the events of 1989, a context in which there are still ubiquitous terms of transitional justice, such as are: lustration, sanctions, amnesty, reconciliation, national unity, etc.

## 2. SYNTHESIS OF CHAPTERS

**Chapter I "The Relationship between the Concepts of the Rule of Law and the Transitional Justice"** examines the evolution of the concept of the "rule of law" and its effects in relation to modern societies that have been affected by regional crises, including armed conflicts or authoritarian regimes. Equally, a study on the concept of "transitional justice" is proposed, a relatively new concept, but which aims to assess the role of a field that seeks to find solutions for a society in difficulty, but also lacking prospects for a civil dialogue. in the presence of a rupture between the antagonistic parties.

*Subchapter 1 "The concept of 'rule of law' in the vision of law schools at national and international level"* is dedicated to a classic subject, but also in the light of a specific

approach. The notion of the rule of law therefore expresses the embodiment of democratic values in the political organization of society. The social and legal development of any state has as a starting point, always, the respect of rights and freedoms, being inherent to any person, starting with the right to life and continuing with the patrimonial rights, freedom of opinion and expression, etc.

The concept of the rule of law is the natural link between the state and the law, which determines the need for interdependence between the legal norm and the state political reality. The state, through its competent institutions, first of all through the legislative power, issues the norms of law, based on which, then, even these institutions are obliged to function. Therefore, the establishment and functioning of the rule of law takes place on the basis of the law, an existing law precisely due to the legislative activity carried out by the rule of law. However, as we will explain below, the legislative attribute of the state must not be a discretionary one, but one mandated by the people, an extremely difficult and controversial process both in the practice of government and in legal doctrine.

In Western democracies, as is normal, there are also tendencies to desecrate the rule of law, in the new European democracies the rule of law becomes an objective necessity, to move to a new stage, which should be idealized even in order to achieve success in which is aspirated.

Considering those analysed in the doctoral thesis, in our view, the rule of law is characterized by the following features:

- is based on the separation of powers;

- implies strict observance of the laws;

- the mutual responsibility of the state and the population is provided within the limits established by law;

- the existence of a real constitutional democracy (including pluralism in society, participation in the formation of public authorities and in government, consultation of the population on issues of major state interest, etc.);

- human rights and freedoms are respected;

- there is a real separation and independence of powers;

At the same time, in order to guarantee the fulfilment of the requirements of the rule of law, we consider that it is necessary to observe clear rules, which refer to: establishing a supreme, modern status, in accordance with current realities, after which to lead the power - Constitution; the organization of the powers and the realization of its prerogatives only under the conditions and limits established by law; making connections between all legal norms in a

unitary and coherent legislative system and ensuring their compliance with the provisions of the Constitution; guaranteeing and effectively realizing fundamental rights and freedoms; free access to justice and its justification in the name of the law by independent and impartial courts; compliance with the rules of the citizen-power relationship and vice versa; equality of all before the law and of power; non-retroactivity of laws; non-retroactivity of harsher laws; political pluralism.

*Subchapter 2 "The doctrinal positions on the concept of" transitional justice "as an institution of international law"* is dedicated to research in the field, even if they are quite limited, both in the Republic of Moldova and in Romania. The truth is that this area has been studied and discussed largely by representatives of the common law, in other words, by representatives of English pragmatism, whether it is directly the territory of the United Kingdom - Northern Ireland or the territories of the former colonies, such as would be the Republic of South Africa, Sierra Leone, but also certain territories that have taken over this theory and practice - Argentina, Chile, Spain, Morocco, Algeria, Tunisia, etc. We must keep in mind that this concept of transitional justice is one that has evolved in societies that have gone through crises such as armed conflict or authoritarian rule, largely developed by specialized institutions and its experts, such as example the International Committee of the Red Cross. However, some of the references are attributed to these experts, thanks to whom the concept of transitional justice is known at the moment and promoted in order to reconcile post-conflict societies.

The concept of transitional justice is a relatively new one, so we cannot bring many examples of works that have focused on this topic. However, analysing this topic from a positive perspective, we notice that in this regard there is a lot of creativity and originality in the case of this doctoral thesis, but also in other studies and theses that can take thinking and creativity further.

In principle, the papers that served as the basis in the process of our study were published in specialized centres, including international organizations, but also in some universities, especially in states whose societies have gone through armed conflicts or authoritarian regimes. .

The concept of transitional justice as implemented in post-conflict societies emerges from studies based on various publications that focus on the implementation of transitional justice in these societies, but also on the effects produced in the process of reconciling those societies. . However, the geography of these studies is quite wide - from the countries of Europe after the Second World War, France, Belgium, Spain - to the states of the former

Yugoslavia, Croatia, Bosnia and Herzegovina, Kosovo, after the bloody conflicts in the Balkans decade of the twentieth century. At the same time, the cases of some Latin American countries, such as Chile, Argentina, as well as North Africa - Tunisia, Algeria, Morocco, and Libya were examined.

An important conclusion from the studies mentioned in the doctoral thesis, with which we fully agree, is that the institution of amnesty is a crucial one for transitional justice. In this sense, we have in mind that "forgiving" or "forgetting" are two distinct things, practically diametrically opposed, in the process of reconciling a post-conflict society. As a result, such an approach is the foundation of this paper, examining studies of the multiple post-conflict situations, from the perspective of trying to find a common denominator to the various challenges that such societies face.

In the realization of transitional justice, in our opinion, an important emphasis must be placed on the capacity of state institutions to apply the principles of this concept, in the specific conditions of each country, from a political, economic, social and cultural point of view.

It should be noted that, with regard to the concept of transitional justice, it has sought to change the approach to criminal proceedings by taking into account the interests of victims, recognizing the principle of universal jurisdiction and establishing clear and explicit criteria in the context of promotion. amnesty, in particular by abolishing the statute of limitations for international crimes and not applying amnesty in relation to persons who have committed international crimes. However, the concept of international justice in the light of the European schools, necessarily includes the regulation of the post-conflict reconciliation process or in other words - transitional justice.

From the above, it is clear that transitional justice has become a new trend in national and international politics, in post-conflict, authoritarian and dictatorial states, where violence and atrocities have taken place against the population, sometimes en masse.

It is noteworthy that the atrocities of previous periods did not concern so much the subjects of international law before 1989, a phenomenon that acquired a totally different contour after this historical moment. We have in mind here that after 1989, extensive phenomena, which characterize a remarkable evolution of the international justice system, such as the appearance of a large number of commissions to establish the historical truth, remedy human rights violations by repairing the damage caused to victims of these illegalities and even the phenomenon of public apologies, characterized the next period.

Undoubtedly, the period we are referring to has drawn certain guidelines, which have given concrete character to transitional justice, which, in turn, could not be an isolated phenomenon from what characterized the period of the '90s, of the previous century. On the one hand, what is attributed to this period is happy, positive events, such as the consolidation of democratic societies in Latin America, or the phenomenon of the liquidation of communist authoritarian regimes in the states of Central and Eastern Europe. On the other hand, however, as it is natural to highlight, being relevant for the completion of the picture we want to describe, we will also mention events / phenomena with a negative, even tragic tone. We have in mind here the policy of ethnic cleansing in the Balkans, as well as the genocide in Rwanda. These crises, in different parts of the world, have not been unique. The totality of the actions included in the current of overcoming the imprints of the past, accompanied in parallel by the fight against the crimes whose committing characterizes that period, have generated initiatives characterized by a great diversity.

*Subchapter 3 "The rule of law, a concept achievable only in the context of the success achieved through the specific mechanisms of transitional justice"* is a continuation of the research through which we set out to analyse the role of institutions and mechanisms of transitional justice in the context of post-conflict reconciliation. it is an armed conflict, or an authoritarian regime. Our aim is to examine, this time, the effects of post-conflict justice on the reconciliation process following an armed conflict, regardless of how it is qualified, in the sense that it may be international or non-international, or of an authoritarian / dictatorial regime.

In the context in which transitional justice can take place through various forms, such as: truth-finding commissions, the establishment of ad hoc international criminal tribunals, reparations, public apologies, and other transitional justice mechanisms, all these are symbols of a new era, which began with the end of the "cold war." The purpose of these transitional justice modalities is to reconcile in societies that have gone through a process of mass violation of human rights, but also to implement reforms, to develop democracy and, finally, to minimize the level of tension in society.

As a result of studying these mechanisms, we ask ourselves: What is really the effectiveness of these mechanisms, who’s functioning, politically and financially, is supported by the international community? In this paragraph we have analysed the various hypotheses that give rise to the idea of transitional justice and we have examined various shortcomings of the functioning of this system, in order to arrive at the most relevant answers.

In the pursuit of transitional justice, justice, peace and democracy are not mutually exclusive objectives, on the contrary, they are mutually reinforcing, their objective being common - the rule of law. However, in order to make them progress at the best possible pace, in a post-conflict territory, it is necessary to intervene through strategic planning, rigorous integration and a judicious scheduling of activities. This is vital in order to bring back the natural breath of the evolution of life towards democracy, within the state.

Transitional justice, which today has become a widespread and very useful concept, must nevertheless allow for a real transition from an authoritarian system to the rule of law, in particular through the use of internal mechanisms aimed at establishing a democratic regime that respects human rights. In our opinion, this is a real passage and not just a declaratory one or one enshrined in legal acts, but which have no applicability or continue to be ignored. To this end, the objectives of transitional justice must be achieved through internal mechanisms, consisting of: restoring violated rights, repairing damages, punishing the perpetrators of the most serious crimes, restoring the dignity of victims, excluding the impunity of those guilty of serious crimes (e.g. genocide), crimes against humanity, etc., the establishment of the rule of law and the shaping of democracy and a better world.

*Subchapter 4* of this chapter reflects the main conclusions on the topics covered in this chapter, in the sense that in our view there is a close complementarity between the concept of the rule of law and the concept of transitional justice, each of which depends on each other.

**Chapter II "Institutions and mechanisms of transitional justice"** aims to analyse the factors that ensure and guarantee the process of implementing transitional justice in post-conflict societies, despite the fact that this process requires a level of maturity from society as a whole, but also the political class in particular.

*Subchapter 1 "Forms and methods of implementing transitional justice"* comes to appreciate for certain institutions of transitional justice, especially for truth commissions, which focus on the past, on human rights violations. Or, under optimal conditions, they establish the truth about the nature and extent of human rights violations committed in the past. They encourage accountability for perpetrators by accumulating and preserving evidence, publicly identifying those responsible.

In presenting and analysing the forms and methods of implementing transitional justice, we have in mind its purpose, which is to restore the dignity of victims and establish mutual trust between antagonistic groups. However, we believe that such a process is extremely difficult and must involve the whole of society, namely public authorities and civil society.

At the same time, we point out that the objectives of transitional justice include the creation of effective structures to give confidence to public institutions, including by restoring the rule of law. Therefore, this objective could guarantee the elimination of the conditions that allowed the possibility of retaliation, but also to ensure the prosecution and bringing to justice of those who committed illegal acts, which contributed to the division of that society.

The most recognized mechanism of transitional justice, as it appears both in theory and in practice, is the truth commission. In principle, historically, the truth commission has emerged as a result of the impossibility of mass prosecutions. In addition, it is perceived as a definitive alternative to the competent criminal jurisdictions. Internationally, the establishment of truth commissions has become a fairly common practice, being one of the options in the range of judicial alternatives for the transition. They are the most balanced choice between the possible extremes in relation to the modalities applicable in the situation of establishing those responsible for the atrocities committed and other human rights violations.

Truth commissions also provide a public forum for victims so that they can tell their own stories directly to the whole nation, thus guaranteeing a better future. Their actions aim to cultivate reconciliation and tolerance at the individual and national levels and ensure that past events are not repeated.

Truth commissions are victim-oriented. They are extrajudicial proceedings which, depending on the context, supplement or replace the criminal investigation. As far as reconciliation is concerned, the Commission does not do it, it only has the power to promote it, which means that the terms "truth" and "reconciliation" do not have the same force.

We can say that the notion of the truth commission is usually associated with the notion of reconciliation and amnesty, following the best-known model of the Truth and Reconciliation Commission in South Africa. This commission is one of the few of the more than thirty truth commissions in the world since 1983 and is the only commission in the world to have adopted a truth amnesty procedure.

Although the commissions differ from country to country, they have some general characteristics in common, and the truth commissions are a provisional official body set up to investigate past periods of human rights and humanitarian law violations.

Even if truth commissions are not permanent bodies such as ordinary courts or international courts, these bodies are provisional, extrajudicial and have de jure independence. Their purpose is to find out the truth, to establish the circumstances and the situation that led to the facts for which that commission was set up, and the implementation of justice being seen as a subsidiary activity. Of course, through the steps taken, they can be a real help in

carrying out the act of justice, but this, as we have shown, is not their main purpose. The final result of the commission's activity consists in drawing up a report to recall facts, situations, and circumstances, being useful in the end and for justice.

Conflicts sometimes have disastrous consequences for state institutions. Dictatorial regimes generally use the country's institutions, especially those in the security system, to commit abuses. This situation makes it inevitable that at the end of a war or a period of tyranny, certain reforms will be initiated to ensure that abuses are not repeated. The spectrum of institutional reforms initiated is very wide and adapts to the specific context of the country. There is a rule that is recognized by many experts as an axiom - a society that has faced mass violations of the rules that protect fundamental human rights and freedoms, finds it relatively difficult to take a long time to overcome the state. and the spirit of uncertainty and confusion. It is about a lack of trust in state institutions, especially those that ensure or should ensure the security of the state and society. Under such conditions, the "new" authority, as a rule, faces the so-called personnel problem, when it is necessary to "appreciate" the personnel that ensure the security system of the company. This is a problematic situation that most post-conflict companies face - under the pretext of "cleaning up" security structures, certain programs or repressive systems are set up, the express purpose of which is to eliminate employees from the system who do not share the views of the new authorities. on the contrary, the attempt to cover up the past illegal actions of some employees, thus ensuring them social security in return for loyalty in the future.

Broadly speaking, institutional reforms are mechanisms of transitional justice, a profound restructuring of public institutions, indispensable for the protection of citizens and the establishment of the rule of law. They contribute to the achievement of the essential objectives of a genuine and legitimate transitional justice policy: the prevention of future human rights violations.

The implementation of transitional justice is a closely related process and strongly influenced by the legal system of that state, by historical traditions, approaches to the place and role of justice in a society in general and in a society in transition. , in particular. Born out of English pragmatism, transitional justice largely embodies the tasks facing a society in transition, given that state institutions are unable to respond to society's wishes and the public's confidence in the bodies involved in promoting justice is below any limit.

The applicable justice system in the context of local reconciliation proceedings contains elements of restorative justice, while also covering the functions of other transitional justice objectives, such as prosecuting and prosecuting guilty persons, granting reparations to victims,

finding the truth or institutional reforms. The existence of these local reconciliation processes has led to a form of promotion of trust between ex-combatants, including their communities.

In order to be aware of how the problems imposed by post-conflict situations can be managed, we need to focus on the analysis of the state of affairs that preceded the outbreak of the armed conflict. One of the rules recognized as an axiom is that states that were in a state of conflict were characterized by a state of instability even before the outbreak of the conflict, but we say that they will certainly remain vulnerable in the post-conflict period. In this regard, it is imperative to point out the elements of fragility in the context of post-conflict societies, which, in turn, will reduce the risk of turning a possible crisis into an armed conflict.

Despite all the uncertainty about the concept of transitional justice, it is certain that in the absence of truth there is no justice, and in the absence of justice impunity can generate a state that would result in revenge on those who have taken certain measures outside the legal framework. Thus, when we refer to the concept of transitional justice, it can and must serve as that necessary mechanism in ensuring lasting peace, which will make it inadmissible for the past to intervene in a violent way.

*Subchapter 2 "Considerations on the importance of non-legal factors in the process of implementing transitional justice mechanisms",* contains an analysis of the role of legal factors in the process of implementing transitional justice mechanisms, highlighting that transitional justice goes beyond the views of law and not We can only regard it as a qualification of legal norms as the implementation of mechanisms and institutions of transitional justice focuses on ways to protect the interests of victims, and thus creates a favourable situation for the beginning of a dialogue between victims and those who they violated their rights by bringing them to this institution. Therefore, the preventive factor plays an important role in case some societies face various challenges, as it is much more complicated to re-establish a civilizational dialogue after committing atrocities, both in the armed conflict and in the authoritarian system that has its own its repressive tools.

In order to achieve the proposed objectives, respectively, to minimize the negative effects of a conflict situation and to ensure the best interests of the victims, transitional justice seeks to oscillate between different applicable rules, as is the case in the international normative system. it is created from rules between which we observe that there is, however, a close connection. In this context, we turn our attention to the study of non-legal factors that influence the situation of committing serious violations of human rights and fundamental freedoms or IUD rules. This analyses the solutions to prevent serious violations in conflict

situations in the context of the application of non-legal factors, as well as the role of the ICRC in knowing the rules of international humanitarian law.

In general, during the war, a favourable framework is created for committing crimes, but a small number of people take advantage of the situation to commit crimes to satisfy their own pleasure. However, during the fight the situation is different, the percentage of combatants who can resort to committing crimes is higher and due to the fact that they may lose control, sometimes due to the consumption of alcohol or other psychoactive substances.

Between consciousness, behaviour and attitude is a great vacuum generated by the difference that practice has shown in the sense that it is not enough for the combatant to know the IUD rules but there must also be a desire to comply with those rules during conflicts in which participate.

Therefore, just knowing the rules of law is not enough, practice has shown that as a rule, combatants know and respect the imperative nature of the rules of law such as banning certain actions during the war or banning the attack on the civilian population.

The causes often invoked by those who violate the rules of international humanitarian law - are in the sense that "this people, ethnic group, race or country, which defends its right to exist, cannot afford to take into account humanitarian goals and the rules of international humanitarian law, as this may weaken them. For such a people, the goal justifies the means. "

There are situations in which combatants realize that their actions are illegal, but at the time of their commission, depending on the particular circumstances in which they find themselves, they may consider them to be legal. If the other party violates or is suspected of violating the rules of international humanitarian law, the combatants' perception is that this violation of international humanitarian law is fully justified.

It is important to specify how the combatant views the act and its consequences as opposed to how the victim sees the event.

After committing an illegal action, any other action committed in the same direction is influenced by the previous one and in this way it becomes difficult a possible process to change the behaviour. If the person stops committing illegal acts, he will have to admit that he will have to admit the mistakes made, so it is easier to change a person who chooses the path of recognition than a person who seeks justifications to show that she was entitled to commit those acts.

In order to choose a strategy to influence the behaviour of an armed person, it is necessary to be aware of what factors determine a certain behaviour. As I have shown before in the case of the ICRC, the same problem must be addressed in the case of other bodies or

authorities, which is to persuade groups to comply with IUD rules and not to try to persuade each individual. This observation is also relevant due to the way in which armed groups are organized, which are usually structured, based on the hierarchical principle of being subject to mechanisms of moral self-isolation and submission to the authority whose legitimacy they accept by executing orders received from them they agree with the moral norms accepted by them or not.

*Subchapter 3 "Sanctions at national and international level in the context of transitional justice"* focuses on the need to ensure that the best possible functioning of relations between states is to be united in a system that requires compliance with the rules of international law , and as a matter of priority to implement international responsibility. In this way we will see a decrease in direct coercion and an increase in the means adopted by international bodies.

In the context in which we will look at coercion as a means of enforcing the law, an element of the method that ensures the functioning of international law can in no way be seen as a way of violating IUD rules. Legality is the basic element of coercion, both in terms of origin and method of application and volume, but in order to achieve the implementation and observance of the basic purposes and principles of international law it is necessary to resort to coercion.

The functioning of international law is closely linked to the way in which the issue of coercion is approached when IUD violations are found or as a means of preventing such violations. In the absence of a legally regulated centralized coercive apparatus, international liability has in the past been considered a moral good, but the role of coercion cannot be underestimated as it plays an important role in the functioning of international law and represents, at the same time, a characteristic element of its functioning. The institution of international criminal liability has been largely influenced by international law, with sanctions taking precedence over the codification process.

The objective of analysing the importance of sanctions at the international level is that the methods and forms used in the process of national reconciliation of a society that has gone through either armed or social conflicts, leads to the establishment of elements that characterize transitional justice.

The four Geneva Conventions (1949) and the Additional Protocols (1977) set out the legal framework for the obligation of states to enforce the criminal liability of persons who have committed international crimes. Further Protocol I (1977) defines them as war crimes. These acts, as can be seen, state with certainty that the commission of war crimes must categorically attract the legal liability of the guilty subjects. However, what is not found in the

text of these acts is neither the sanction nor the jurisdiction in relation to those responsible for committing war crimes. However, it is certainly up to the states to take the necessary legislative measures to bring those responsible for violating the rules of international humanitarian law to justice. This is analysed in the context of paragraph 3 of chapter 2 of our doctoral thesis.

*Paragraph 4 "Amnesty in the light of transitional justice as a factor in the national reconciliation of post-conflict societies"* reflects a rather progressive but at the same time quite debatable institution that over the years has aroused debate between supporters of punitive and restorative politics. Starting from the idea of turning the page of the past, there is the opinion shared by several subjects of law, that in order to achieve the objectives of a successful transition, it is absolutely necessary to overcome the past by clearly drawing a definite line. In other words, it is necessary to leave behind the events of the past, without the possibility of returning to it.

The seemingly punitive direction of the evolution of international law found by experts in the field is not necessarily the optimal one. In this regard, we will express our opinion on the possibility of shifting the emphasis to the punitive direction, manifested in particular by the insistence on criminal repression that would result from violations of the rules of international humanitarian law and international human rights law towards national reconciliation and peaceful development a state through the intervention of amnesty, as an element of transitional justice.

Proponents of the prosecution are convinced that the reconsolidation of moral values inevitably requires the intervention of justice that in the first months after the regime change, the viability of the new power largely depends on concrete and decisive actions against those who served the former authoritarian regime.

On the other hand, there are opposing views that prosecuting those guilty of criminal offenses in the past is not the best solution in the long run. In their opinion, there can be no guarantee that the effects of the prosecution will be positive and will lead to the consolidation of democracy and the rule of law. The analysis of these arguments, their contrast with those of the proponents of the concept of prosecutions and the synthesis of conclusions regarding the long-term effects of amnesty, are found in the final part of Chapter 2 of the doctoral thesis.

*Chapter III "Approaching transitional justice in the light of the restoration of the rule of law" in post-conflict societies: a comparative aspect "*comes to describe real situations of some societies that have gone through armed conflicts, as an example serving societies from

various continents with a solid argument, in the sense that the field under study is a universal one, which cannot be limited from the point of view of a territory or a society.

*Subchapter 1 "Transitional justice in the Arab world and its effects in the light of the 'Arab Spring' launched in 2011"* aims to analyse the situation of recovery in the North African countries after the events that took place in Tunisia, but also in Algeria, Morocco.

We note that studies in transitional justice are widespread, being found in Africa (South Africa, Egypt, Libya, Morocco, Alger, Tunisia), Latin America (Colombia, Argentina, Guatemala, Chile), Asia (Cambodia, Timor Eastern Europe) but also in Europe (Bosnia and Herzegovina, Spain, Kosovo, Northern Ireland). An important aspect is that the field of transitional justice is an interdisciplinary one, being largely a component of public international law with strong elements of international humanitarian law, which results from analyses made over time by experts in the field of transitional justice, including in this category of experts including lawyers, historians, political scientists, etc.

One of the objectives of this study is to analyse the effects produced in Arab countries that have gone through totalitarian regimes, but have tried to change the situation by applying institutions and mechanisms specific to transitional justice, even if these countries did not have traditions in this regard.

Through a broader examination of the rise of transitional justice, we can see that regardless of its characteristics, a double dimension is being rediscovered that leads the respective society to a level of democratic development. Firstly, we are in the presence of an ethical dimension, the search for truth, justice and socio-political recognition, and secondly, we are talking about a dimension that aims at peace and stability. We note that the instruments of transitional justice are not exclusively judicial, as they are not sufficient to deal with the aftermath of a dictatorial regime or a violent conflict.

Attempts by North Africa and the Middle East to overcome the status quo as a nation that persists in such enduring authoritarianism have led to the cessation of the view that Arab countries are still open to political change. . However, the revolutionary events of 2011 brought significant changes, dismantling this thesis and bringing to the fore the magnitude of issues related to justice in the context of the transition, such as the events in Tunisia and Egypt, which are less publicized, and cases Morocco and the Elegy.

For example, progress has been made in Morocco as a result of the transitional justice process, and it has responded, albeit only partially, to the expectations of victims and mobilized communities. It is also important to note that during the reign of King Mohammed VI and King Hassan II, the implementation of transitional justice mechanisms has developed

through the opening of public space to accept new ways to ensure the circulation of the memory of political violence and, at the same time, of the contemporary political history of the country. Thus, the establishment of the EIR took place when Mohammed VI came to the throne and wanted to stand out and build his own image through new approaches that would bring stability and harmony. This wish is justified since his legitimacy and power were given by his father's reign.

*Subchapter 2 "Transitional justice in the Balkans as a result of the conflicts in the former Yugoslavia"* aims to analyse the situation in the former Yugoslavia, in the context in which the break-up of this state led to several armed conflicts, in which multiple international crimes were committed crimes against humanity, war crimes and crimes of genocide. The severity of the armed conflict in Croatia and Bosnia and Herzegovina in 1991-1995, as well as the ensuing conflicts in Kosovo and Northern Macedonia, has put the international community in great difficulty. The inability of national courts to prosecute perpetrators of crimes and the international community's unwillingness to influence developments in the Balkans not only through political and military means but also through an international judicial body have led to the establishment of the Tribunal. International Criminal Tribunal for the Former Yugoslavia (ICTY), the first international tribunal since World War II to set up and judge war criminals.

Here are reflected and analysed the legal and moral criteria leading to the commission of international mass crimes and some aspects of the guarantees provided by the rule of law in relation to applicable sanctions, as well as the innovative aspects introduced by the ICTY to increase the efficiency of judicial processes and the connection of national judicial systems. to international standards.

Subchapter 3 "Implementation of transitional justice institutions in Bosnia and Herzegovina as a factor of national reconciliation" shows that the process of restoring credibility to justice in Bosnia and Herzegovina, followed by the bloody conflict of the last decade of the twentieth century, has been and remains be quite complicated, even if there is express support, including logistical and financial support, from the international community. The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 had a positive effect on Bosnian society at first, arousing a spirit of confidence after a total despair in the international institutions responsible for maintaining security at the international level, including regional, only very quickly the enthusiasm began to fade. In the view of the majority of the population, the guilt of those who committed war crimes, crimes against humanity and acts of genocide (especially Srebrenica) was evident, while experts in international criminal law fully understood the difficulties that a trial could face. international

criminal law, given that the Tribunal is far from the conflict zone, and the accumulation of evidence, the hearing of witnesses, the detention of persons who have committed international crimes, in the conditions of a total lack of cooperation at regional level and the protection of its compatriots after the dissolution of the former Yugoslavia, the procedures become extremely complicated.

Unlike the Nuremberg Trials, which took place under the occupation of Germany, the ICTY was active in the context of the need to maintain a "dialogue" with sovereign states, which had their own legal system in accordance with the basic principles of the functioning of justice, the states being a component part of the European legal traditions, thus, the processes being logically long.

To all this is added the particular conception of criminal justice at the international level and at the level of the European Union. However, unlike the European judicial institutions, whose magistrates are generally based on the same training, the ICTY magistrates were representatives of different law schools, which could not leave its mark on any differences that arise as a result of the conception of the role and the place of criminal justice in a post-conflict society, whose tasks include national reconciliation.

Following the adoption of the latest indictment, the International Criminal Tribunal for the former Yugoslavia (ICTY) has begun to refer some cases back to the national jurisdictions of the former Yugoslavia.

The UN Security Council, in 2002-2004, called for the support of the international community and donor countries to provide assistance to the judicial institutions of the former Yugoslav states, in order to support them in the best possible management of their processes. war crimes requiring the Tribunal to take an active part in strengthening judicial institutions through its multi-country awareness-raising program.

The efforts made by the Tribunal and the international community have contributed to the establishment in Bosnia and Herzegovina, Serbia and Croatia of bodies to investigate war crimes and bring to justice the perpetrators them.

Chambers for the investigation of war crimes have been set up in both Serbia and Croatia. , chambers have been set up in cantonal courts such as Zagreb, Osijek, Rijeka and Split. It should be noted that the help of the international community played an important role in the creation of these specialized bodies.

In Kosovo, tribunals have been set up consisting of international or mixed judges comprising both international and local judges, working under the auspices of the United

Nations Interim Administration Mission (UNMIK), who have jurisdiction to examine war crimes cases.

The Tribunal's efforts have been made to improve the capacity of national judicial institutions to combat the impunity of perpetrators of war crimes.

Thus, in order to shed light on the mechanisms for the implementation of transitional justice institutions in Bosnia and Herzegovina as a factor of national reconciliation, this paragraph also analyses the following: Balkan military cooperation, regional cooperation, approaches to international criminal law and traditional European "values" towards criminal justice in Bosnia and Herzegovina.

*Subchapter 4 "Transitional justice in post-authoritarian societies: a comparative aspect (Argentina, Spain, Romania, Moldova)"* focuses on some concrete cases, when real efforts have been made to implement the instruments and mechanisms of transitional justice being necessary a multi-faceted process, which, in proposing legal solutions, remains difficult to achieve without political will. Both aspects - legal and political - aim on the one hand to ensure the rights of citizens, which is seen as a tactic, and on the other hand - to develop a concept with a clear determination of the criteria for implementing transitional justice, is seen as a strategy.

At the same time, we return to a natural finding that transitional justice cannot provide a valid answer to all post-conflict situations, for the simple reason that it is a product of the real situation in that society, it can be affected either by internal factors or of external factors, to which we referred several times during the study in question.

The case of Spain, a country that went through a civil war and later through the authoritarian regime of General Franco, but which still found the ability to negotiate, although even today there are still negative traces due to the two factors that have Divided into Spanish society for decades, it is of particular interest in the context of examining the concept of transitional justice.

As for the transformations that the Romanian judiciary has undergone in the process of transitioning from the dictatorship regime, existing before 1990, to a democratic one, established after the events of December 1989, they are different from those previously analysed from several points of view. We say events because the regime change produced then continues to be controversial and, as the loss of value at the national level has intensified and, as a consequence, Romanians feel the adverse effects in their own existence, the term "revolution" has begun to be spoken with more and more reluctance, gaining, instead, more credibility the "coup d'etat".

The question of how justice has adapted to the new political climate, how it has received the new requirements of legality and public order, how the legal conscience of the judiciary has been prepared with the new values specific to a democratic regime and how all these changes have begun to be reflected in jurisprudence. an extremely complicated subject of analysis. This difficult work is mainly due to the contradiction between the concepts that define the current form of the state, described, for example, as a "rule of law", or, as far as we are concerned, "separation of powers" and "independence of justice", from - a point of view, or, from another perspective as that state of affairs, with arbitrary accents and eccentric, conservative authoritarianism, as well as acts contrary to human rights and freedoms, some of which were not possible even before, in a dictatorship regime, how he was qualified to justify the popular "revolt."

First of all, in order to understand the complex process of transitional justice to the specifics of post-December Romania, it was absolutely necessary to look at the previous statehood and architecture of that type of state, architecture of which justice was part, inevitably bearing the imprint of political coloration what is done in this section of the thesis.

Regarding the Republic of Moldova, it was and is involved in the process of implementing and interpreting the concept of transitional justice, which is evident from the specifics of the "conflict situation" it went through. The practice of states has highlighted a clear rule - the implementation of transitional justice is quite problematic if there is a lack of political will at the national level and there is no logistical and financial support from external partners. These two factors are dictated by the need to internationalize the process, as well as by the limited capacity of national authorities, imposed even by the lack of consensus in this regard. In this case, we see the presence of both situations that transitional justice is concerned with - a society divided on political criteria, with an authoritarian past, but also the presence of a "frozen" conflict, without real visions on its solution. We show that the term "frozen conflict" is not one of international law, it comes from geopolitics, and the solution must be sought in international law, which is also logical.

Analysing the practice of other states that have gone through political crises or armed conflicts, we can say that in terms of the concept of transitional justice for the Republic of Moldova is of major importance. We refer to the current situation in the sense that we can see the state of the Moldovan society that is in the process of formation, but which is difficult to consolidate in the absence of symbols.

Transitional justice is not limited to those institutions mentioned above, but in the case of the Republic of Moldova will certainly have to implement the concept of DDR (disarmament,

democratization and reintegration), especially when we refer to the territory on the left bank of the Dniester. At the same time, the process should not be seen as necessary only for Tiraspol. On the contrary, its implementation by the Chisinau authorities will make the Republic of Moldova more credible in the eyes of the participants in the negotiation process.

We focused on restorative or unpunished justice in the case of the Republic of Moldova, so we must take into account, in particular, the uncertain situation in the case of the legal status of the region on the left bank of the Dniester. The topic basically combines the two processes listed above - the presence of an armed conflict and an authoritarian regime in the area, although both obviously need to be seen in the context of the situation created within the borders and jurisdiction of the Republic of Moldova.

Paragraph 5 reflects the general conclusions of the entire Chapter 3 of the paper, and we will dwell on the fact that there is no single solution to resolve such conflicts, moreover, any solution applied in a particular context cannot be considered as being safe for other situations as well. In order to ensure the effectiveness of the legal framework to be applied to such conflicts, we consider that political will is necessary, an indispensable factor for the successful implementation of the instruments of transitional justice.

## 3. GENERAL CONCLUSIONS AND RECOMMENDATIONS

We aim to determine the **role of transitional justice** in the process of national reconciliation of post-conflict societies, including the restoration and consolidation of the rule of law. In this regard, we will study the different mechanisms and instruments of transitional justice in a comparative study which, in turn, will allow the assessment of the level of applicability, by analogy, of transitional justice in various other post-conflict societies, taking into account of the geographical, traditional, cultural, evolutionary, civilizational, etc. specific, specific to each society, we formulate the following **general conclusions**:

1. Transitional justice appears as a unique solution in the process of restoring the rule of law in a post-conflict society. However, the consolidation of state institutions in a divided society following an armed conflict or authoritarian regime, in the absence of a dialogue and the search for a common denominator, is a task if not impossible, then at least difficult. In order to implement the institutions and mechanisms of transitional justice only through legal norms is a difficult goal to achieve, thus, an important role belongs to psychological, political, religious norms, etc.

2. One of the main objectives of this research was to identify relevant aspects of transitional justice; in particular we focused on identifying the role of criminal repression but also amnesty in the process of national reconciliation for the peaceful development of the country. At the same time, we point out that the questions addressed in the paper cannot have unique and categorical answers because each answer is influenced by different circumstances or characteristics of a region. We believe that, from a moral point of view, we cannot come up with imperative recommendations in the context in which each society has its own legal system, its own traditions, customs and habits that have evolved for centuries and have influenced society in his ensemble.

3. In promoting the concept of transitional justice, it is important to keep in mind that it involves both elements - punitive justice and restorative justice. Thus, we cannot reconcile a society only by applying sanctions, and in this way avoid the institution of forgiveness and amnesty. At the same time, we must take into account the fact that both the theory of international humanitarian law and the jurisprudence, especially the international one, expressly prohibit the application of amnesty to persons committing war crimes, crimes against humanity, genocide.

4. The relevance of a European scale for raising awareness of international criminal justice in the former Yugoslavia is a topic that needs to be developed as it does not follow unequivocally from the data presented. Its evaluation focuses on extreme positions - that of

common law research that ignores it and that of the European Union, which overestimates it. A more accurate awareness of this scale presupposes, first of all, the distinction between Europe and the European Union, the first being decisive - the former Yugoslavia undoubtedly belongs to a European space in terms of its historical, legal and philosophical heritage. Some Eurocentrism is present there and identifies the highest values of international justice with those of Europe. We can thus assume that we should move away from the idea of a representation of the European Union as an actor and a determinant of progress towards European integration, including law and justice. This view, associated with the European Union's conditionality policy, may be relevant in some ways. However, it gives an appearance of unity to a European Union which is not, most often, seen by the divergences or conflicts of the Member States with the ICTY. It presents the European Union as a decisive and indispensable player, while its action can be visible, fragmented or uncertain.

5. The study confirmed the hypotheses submitted to the study during the analysis of the subject approached in the sense that transitional justice is a relatively new field, which has its objectives, principles, mechanisms, institutions, sources, but whose purposes are not explicitly provided. Here we have to come with a clarification, in the sense that it is not the fault of the transitional justice for the lack of concrete purposes, the reason was found during the study, namely that the reconciliation of a post-conflict society is a long process and quite difficult. Thus, as already mentioned, the abusive application of an instrument such as lustration can create favourable conditions for the birth of revenge. At the same time, promoting impunity in relation to the perpetrators of the most serious crimes and crimes can lead to ignoring the concept of transitional justice and restarting the conflict or restoring the authoritarian regime, which would ultimately have the opposite effect to the objectives of transitional justice.

6. Regarding the Republic of Moldova, in order to implement transitional justice in the context in which its mechanisms and institutions will lead to the promotion of a social dialogue within the Moldovan society, a society divided according to political and geopolitical criteria, but also as a result of the existence an unresolved conflict for three decades. In this situation, we believe that the solution to the resolution of domestic crises in the interest of Moldovan society can come only from within. In this regard, we refer to the practice of other states that demonstrate that only where there is the will of the political class that must be in line with that of civil society, have mechanisms and tools been identified to restore confidence in state bodies, in ideals democratic, in the rule of law and finally in a prosperous future. Thus, a success in the process of conciliation of the company could create a positive image of the Republic of Moldova and thus, could become an example for other divided companies.

Therefore, the doctoral thesis on **"Transitional justice in the context of the influence on the process of consolidating the rule of law"** consists in researching the content of the concept of transitional justice, in the context in which it is designed as an institution capable of reconciling a post-conflict society, which can be interpreted as a consolidation of the rule of law.

The scientific problem solved is to determine the content of the concept of transitional justice, in the context in which it is designed as an institution capable of reconciling a post-conflict society, including in the light of restoring trust in state institutions, which can lead to the rule of law. Achieving this goal can be achieved, in particular, by examining the instruments and mechanisms of transitional justice, by analysing the practice of other states implementing transitional justice, but also, perhaps most importantly, by analysing the effects produced in relation to a post-transitional society. conflict following the implementation of instruments and mechanisms of traditional justice.

Equally, the scientific problem solved is to determine the balance between the punitive and restorative means of transitional justice. As far as we are concerned, we appreciate that only by maintaining a balance can we restore trust between former opponents, but also trust in the sincere intentions to ensure the restoration of the interests and rights of victims, of the divided society in general, but also of non-admission of widespread impunity for those guilty of the most serious violations of international human rights law and international humanitarian law.

Especially for the Republic of Moldova, the solved scientific problem consists in identifying and analysing the possible ways of elaborating a concept regarding the implementation of the institutions and mechanisms of transitional justice, which could create the necessary and favourable conditions for starting a long dialogue. the two banks of the Dniester, but, equally, the establishment of a civilizational dialogue, in the current conditions of the East-West confrontations, which has lasted for over 30 years.

At the same time, for Romania, the solved scientific problem could have a practical applicability, not only theoretical. We refer to the situation that is being discussed so far, regarding the events that took place between 1989-1991. However, transitional justice is the field that aims to overcome tense situations that last a long time, with the aim of finding a common denominator for conciliation, first and foremost, the prosecution of guilty persons. of certain illegal acts, which are sometimes heavily politicized.

The recommendations resulting from the research concern both measures that can be implemented at the level of each company with the involvement of authorities and members of

civil society, but also projects aimed at involving international institutions, research centres and experts in the field, in their meaning is to promote the concept of transitional justice in post-authority societies, to set up a Conciliation and Truth Commission to resolve the Transnistrian dispute, to draft a Lustration Bill by national and international experts, and to set up three specialized centres for exclusively on the subjects named in the North, Centre and South Zones, established and composed of specialists, the establishment of a Centre for Transitional Justice, the establishment of a Scientific Advisory Board under the Presidency, the Government or the Reintegration Bureau, composed of experts, the creation of a Commission Non-government investigation 1989-1991, the elaboration of a Program or Strategies for the Investigation of Events in the Republic of Moldova that will serve the field of Education and Research, and last but not least the ratification of the UN Convention on the Protection of All Persons from Enforced Disappearance and the elaboration of a bill in this regard.

Following the formulation of the general conclusions of the research, we intend to advance the following **recommendations:**

1. In post-authoritarian societies, such as the Republic of Moldova and Romania, post-conflict, such as the Republic of Moldova, promoting the concept of transitional justice must become a priority - by familiarizing oneself with this concept of decision makers, authorities, magistrates, since it is largely up to them to implement the process of reconciling a divided society.

2. For the Republic of Moldova, we propose the creation of a Conciliation and Truth Commission, which will include representatives of Chisinau and Tiraspol in order to have the widest possible dialogue, the Commission being composed of well-known persons, accepted by both parties, with the direct participation of the states involved in the process of resolving the “Transnistrian” dispute, but also of the specialized international organizations, such as for example the International Committee of the Red Cross.

3. The drafting of a Drafting Law by a group of national and international experts, without the involvement of the political factor, which, until it is widely debated, can be examined by specialized institutions, such as the International Committee of the Red Cross, the Council for UN Human Rights, certain university centres of states that have had similar situations in the past, etc.

4. The creation of three centres specializing exclusively in the subjects named in the North, Centre and South Zones, established and composed of specialists who will do special internships in certain centres abroad, especially development partners, following the example

of Croatia and Bosnia and Herzegovina's war crimes and crimes against humanity, given that one of the factors that constitutes the "apple of discord" in Moldovan society is the so-called "theft of the billion" and the fight against corruption.

5. It is necessary to establish a Centre for Long-Term Transitional Justice on the basis of a University modelled on such practices - the United Kingdom of Great Britain and Northern Ireland, the University of Belfast, Ukraine, the University of Kharkov, Colombia, the University of Bogota etc. It is usually about creating an Institute, with internal and external funding, with the invitation of experts from various states and regions, which would promote the practice and theory of transitional justice applicable to the case of the Republic of Moldova and Romania.

6. Establishment of a Scientific Advisory Board under the Presidency, Government or the Reintegration Bureau, composed of experts in the field, including from the Republic of Moldova, Romania and abroad.

7. In the case of Romania, we propose the creation of a non-governmental Commission of Inquiry, which would present an independent but comprehensive analysis of the events of 1989-1991, the objectives of which would be transformed into the formula of a Conciliation and Truth Commission. took place during this period in the context of conciliation, apology and mutual forgiveness, which inevitably, as the practice of other states shows, leads to conciliation and the consolidation of that society.

8. The Republic of Moldova is divided not only as a result of the 1992 conflict, but also on the basis of diametrically opposed approaches to events, symbols, periods, etc. In this sense, we propose the elaboration of a Program or Strategies with the involvement of the representatives of both camps, which would have as objective the creation of working groups on different historical segments, whose reports will later be submitted to public debates. Research, in particular.

9. Ratification of the UN Convention on the Protection of All Persons from Enforced Disappearance, adopted on 20.12.2006, in force since 23.12.2010, signed by the Republic of Moldova on 06.02.2007, and by Romania on 03.12.2008 and the elaboration of a Draft Law on the Protection all persons against enforced disappearances, and as an example could serve the legislation of Chile, Argentina, Colombia and other countries.

The results of this study reflect the importance of knowing the concept of transitional justice, of all instruments and mechanisms of transitional justice that can be taken into account by the legislature, the executive body, to some extent and the judiciary, in the context in which

responsible or political leaders, will be aware of the effects of the implementation of transitional justice.

Therefore, in **a new research perspective,** we can start from the way in which public authorities, public institutions, national and international organizations are willing to cooperate in order to implement the institutions and mechanisms of transitional justice set out in the thesis, to be carried out. a thorough research, in order to finally reach the issuance of solutions that can be applied according to certain criteria, respectively, the specifics of the company in question, the geographical location, the civilizational evolution, as well as other factors.

**LIST OF PUBLISHED SCIENTIFIC PAPERS**

1. GAMURARI V., NĂVODARIU E.T. Amnesty and its role in the context of the implementation of transitional justice. In: Materials of the scientific conference with international participation "Scientific research - unquestionable support for state authorities in the context of ensuring the achievement of the development objectives of society". Chisinau. ULIM. 10/18/2018 pp. 20-34. ISBN 978-9975-3471-1-2.

2. GAMURARI V., NĂVODARIU E.T. Aspects of the relationship between the concepts of "rule of law" and "transitional justice". In: Materials of the scientific conference with international participation "The contribution of the academic environment to the consolidation of the dialogue between the Republic of Moldova and the strategic partners in the context of regional crises". Chisinau, ULIM. 16.10.2017, p.91-98. 0.7 c.a. ISBN 978-9975-3371-9-9.

3. GAMURARI V., NĂVODARIU E.T. Transitional justice in the Arab world and its effects through the prism of the "Arab Spring" launched in 2011. In: University Legal Studies. ULIM. № 3-4. Year XIII / 2020, p. 13-26. ISSN 1857-4122.

4. GAMURARI V., NĂVODARIU E.T. The role of non-legal factors in the process of implementing transitional justice mechanisms. In: University Legal Studies. ULIM. № 3-4. Year XI / 2018, p. 32-46. 1.1 c.a. ISSN 1857-4122.

5. GAMURARI V., NĂVODARIU E.T. Amnesties and punishments according to the objectives of transitional justice. In: The International Scientific Conference Globalization and National Identity. Alpha Institute for Multicultural Studies. Dimitrie Cantemir University Tirgu Mureș. 7 th Edition. Tîrgu Mureş, Romania. 23.05.2020. Printing House „Arhipelag XXI" Press, Tîrgu Mureş, 2020, p.122-135. ISBN: 978-606-8624-10-5. Available: http://www.icsumures.ro/manifestari-stiintifice/2020/Brosura-GIDNI-7th-edition.pdf

6. NĂVODARIU E.T. Bosnia and Herzegovina's criminal justice objectives in the context of the implementation of transitional justice institutions as a factor in national reconciliation. In: University Legal Studies. ULIM, no. 1. Anul XIV / 2021, p.167-177. ISSN 1857-4122.

7. NĂVODARIU E.T. Protection of victims before the International Criminal Court. In: Volume of the national conference with international participation. Deviance and crime. Evolution. Trends and Perspectives. 4th edition 2018. Legal Universe. Bucharest. 2019, pp.202-207. ISSN 2559-4915. Available:
http://www.ugb.ro/Downloads/Info%20Studenti/20182019/Vol_conf_DECRET.2018

8. NĂVODARIU E.T. Transitional justice in South Africa. In: Deviance and Crime - Evolution, Trends and Perspectives, the volume of the national conference with international participation. Deviance and crime. Evolution. Trends and Perspectives. Fifth Edition 2019. In:

Universul Juridic Publishing House, Bucharest, 2020, pp.480-486. ISSN 2559-4915. Available: http://old.ugb.ro/Downloads / Info% 20Studenti / 20182019 / Vol_conf_DECRET.2019.UJ.pdf

9. NĂVODARIU E.T. Applying the Mechanisms of Transitional Justice in Solving Social Conflicts During the Miners Mutiny SPECTO Conference. International Conference Multidisciplinary Perspectives in the Quasi-Coercive Treatment of Offenders. The 7th Edition groups with special needs in community measures. West University of Timişoara 13-14 September 2018. Filodiritto Publisher, p.150-157. ISBN 978-88-85813-25-0. Available: https://specto2018.uvt.ro/

10. NĂVODARIU E.T., BLAGOCI C.A. International criminal jurisdiction. International Criminal Court: the driving force behind the application of international law. In: Acta Universitatis George Bacovia. Juridica, no. 2, vol. 9, 2020, pp.407-431, ISSN 2285-0171

11. SZABO A.I., NĂVODARIU E.T. The right to asylum and the protection of refugees against national security. ECHR jurisprudence on cases in Romania, In: Acta Universitatis George Bacovia. Juridica, no. 2, vol. 8, 2019, pp. 375-414. ISSN 2285-0171- print edition.

**ANNOTATION**
**To the doctoral thesis of Mrs. Năvodariu Elena Tania,**
**"The contribution of transitional justice to the establishment of the rule of law in a post-conflict society ",**

**Free International University of Moldova, 2022**

**Thesis structure**: Introduction, three chapters, general conclusions, recommendations and bibliography of 239 titles, 228 pages of basic text. The obtained results are published in 11 scientific papers..

**Keywords:** transitional justice, rule of law, sanction, amnesty, reconciliation, post-conflict society.

**Field of study**: International and European public law.

**The purpose** of this paper is to determine the role of transitional justice in the process of national reconciliation of a post-conflict society, including the restoration and consolidation of the rule of law.

**Research objectives:** determining the concept of transitional justice; characterization of instruments and mechanisms of transitional justice; description of the forms and methods of implementation of transitional justice; appreciation of the role of transitional justice in the context of consolidating and reconciling a post-conflict society; the contribution of transitional justice to restoring trust in state institutions and consolidating the rule of law in a post-conflict society; determining the co-ratio between the capacity of sanctions and amnesty as instruments of transitional justice to restore a certain level of trust between the enemy parties in a divided society; avoiding the inevitable in such situations - imposing revenge.

**Scientific novelty and originality** are determined by the fact that this concept of transitional justice is a new one, formulated three decades ago, in the context in which International Law has been faced with a dilemma - what would be its instruments and institutions that could be able to give an express response to the challenges facing post-conflict societies in the context in which the reconciliation of such a society is conditional on the restoration of the functioning of state institutions in general and the rule of law in particular.

**The results obtained that contribute to solving an important scientific problem lie** in the formulation of the concept of transitional justice, especially in the context of restoring the rule of law, including the trust of a post-conflict society in state institutions.

**Theoretical significance**. The approach to the concept of transitional justice as opposed to the rule of law is a new one, which is still in the process of consolidation. Transitional justice is a new concept, with its own objectives, principles, sources, subjects, object, as opposed to "rule of law", which is an express, recognized, accepted and does not need an additional approach.

**The applicative value of research.** The study could be used by decision-makers in the negotiation process of post-conflict situations, such as the case of the Republic of Moldova - the 1992 armed conflict, but also the need to reconcile a divided society of over 30 years. The study can be used to train specialists focusing on areas such as conflictology, victimology and international law, such an approach would allow the establishment of a research centre on various aspects of transitional justice.

**Implementation of scientific results**. The scientific results can and should be part of the preparation of the teams participating in the negotiations on the "Transnistrian" issue, as well as of a broad dialogue at the national level in the context of a long-term process of reconciliation of Moldovan society, the inclusion of the study in question as a scientific-didactic material for the students from the faculties of Law, International Relations, Politology etc.

## ADNOTARE

**La teza de doctor în drept a dnei Năvodariu Elena Tania,**

**“Contribuirea justiției tranziționale la instaurarea Statului de drept într-o societate post-conflictuală”,**

**Universitatea Liberă Internațională din Moldova, 2022**

**Structura tezei**: Introducere, trei capitole, concluzii generale, recomandări şi bibliografie din 239 titluri, 228 pagini text de bază. Rezultatele obţinute sunt publicate în 11 lucrări ştiinţifice.

**Cuvinte cheie**: justiţie tranziţională, stat de drept, sancţiune, amnistie, reconciliere, societate post-conflict.

**Domeniul de studii**: Drept internaţional şi european public.

**Scopul lucrării** constă în determinarea rolului justiţiei tranziţionale în procesul de reconciliere naţională a unei societăţi post-conflict, inclusiv restabilirea şi consolidarea instituţiilor statului de drept.

**Obiectivele cercetării**: determinarea conceptului justiţie tranziţională; caracterizarea instrumentelor şi mecanismelor justiţiei tranziţionale; descrierea formelor şi metodelor de punere în aplicare a justiţiei tranziţionale; aprecierea rolului justiţiei tranziţionale în contextul consolidării şi reconcilierii unei societăţi post-conflict; aportul justiţiei tranziţionale la restabilirea încrederii în instituţiile statului şi consolidarea statului de drept într-o societate post-conflict; determinarea co-raportului dintre capacitatea sancţiunilor şi amnistiei ca instrumente ale justiţiei tranziţionale de a restabili un anumit nivel de încredere între părţile inamice într-o societate dezbinată; evitând inevitabilul în astfel de situaţii – impunerea revanşismului.

**Noutatea şi originalitatea ştiinţifică** sunt determinate de faptul că acest concept al justiției tranziționale este unul nou, formulat acum trei decenii, în contextul în care Dreptul Internaţional a fost pus în fața unei dileme – care ar fi instrumentele și instituțiile sale care ar putea fi capabile să dea un răspuns expres provocărilor cu care se confruntă societățile post-conflict în contextul în care reconcilierea unei astfel de societăți este condiționată de restabilirea funcţionalităţii instituţiilor statelor în general și al statului de drept, în special.

**Rezultatele obţinute care contribuie la soluţionarea unei probleme ştiinţifice importante** rezidă în formularea conceptului justiţiei tranziţionale, în special în contextul restabilirii statului de drept, inclusiv a încrederii din partea unei societăţi post-conflict în instituţiile statului.

**Semnificaţia teoretică**. Abordarea conceptului justiţiei tranziţionale spre deosebire a celui de stat de drept este una nouă, care este încă în proces de consolidare. Justiţia tranziţională este un concept nou, cu propriile obiective, principii, izvoare, subiecte, obiect, spre deosebire de „stat de drept”, care este unul expres, recunoscut, acceptat şi care nu are nevoie de o abordare suplimentară.

**Valoarea aplicativă a cercetării**. Studiul în cauză va putea fi utilizat de factori de decizie în procesul de negocieri ale unor situaţii post-conflict, cum este de exemplu, cazul Republicii Moldova – conflictul armat din 1992, dar şi necesitatea reconcilierii unei societăţi dezbinate de peste 30 de ani. Studiul poate fi utilizat la pregătirea specialiştilor ce se axează pe domenii cum ar fi – conflictologia, victimologia şi drept internaţional, o astfel de abordare ar permite instituirea unui centru de cercetare pe diverse aspecte ale justiţiei tranziţionale.

**Implementarea rezultatelor ştiinţifice**. Rezultatele științifice pot şi trebuie să facă parte din materia de pregătire a echipelor ce participă la negocieri pe subiectul „transnistrean”, precum şi al unui dialog larg la nivel naţional în contextul unui proces de durată de reconciliere a societăţii moldoveneşti. Includerea studiului în cauză în calitate de material ştiinţifico-didactic pentru studenţii din cadrul facultăţilor de Drept, Relaţii Internaţionale, Politologie etc.

**NĂVODARIU ELENA TANIA**

**THE CONTRIBUTION OF TRANSITIONAL JUSTICE TO THE ESTABLISHMENT OF THE RULE OF LAW IN A POST-CONFLICT SOCIETY**

**SPECIALISATION: 552.08 – INTERNATIONAL AND EUROPEAN PUBLIC LAW**

SUMMARY of the doctoral law thesis

---

Aprobat spre tipar: Formatul hârtiei A4
Hârtie ofset. Tipar digital Tiraj 50 exemplare
Coli de tipar:_____

Tipografia SRL „Rucan Invest”
Str. Vlaicu Pârcălab, nr. 12. Chișinău MD-2012