

ILLEGALITY OF THE REPRESSIONS DURING THE REVOLUTION OF DECEMBRE 1989*

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ABSTRACT:

In order to present real events that led to what happened in december 1989 in Romania must have in mind that our country which was last to give up communism. We could not escape the change so that the end of '89 the antitotalitarian movement made his presence felt on the streets of Romania. Ceaușescu's removal could not be stopped or postponed be peaceful but if he had understood that stubbornness will help him maintain its totalitarian leader. The article actually tried to present, legally, illegal orders that were given during the demonstration. We draw your attention to the illegality, as required by law at that time, and present ways to be operated. Fact that the population of Romania decided that Nicolae Ceausescu lead the country in an abusive and dangerous way not entitled the latter to act as it did[1].

KEYWORDS: Communism, Vasile Milea, State of emergency, Illegality, Ceausescu

Our approach aims at presenting scientific, using both the 1965 Constitution of the Socialist Republic of Romania and the report of indictment prepared by the magistrate Dan Voinea infringements by decreeing a state of necessity and approving the order to fight. We will focus on these flagrant violations of the legislation when we bring up three important points: the inviolability of the person, opportunity and empowerment prohibitions bodies to use fire arms and provisions of the Constitution in force at the date that refer to national defense.

1. INVIOIABILITY OF THE PERSON

Regarding the *inviolability of the person*, the Constitution of the Socialist Republic of Romania, consecrated clearly personal inviolability *"RSR citizens are guaranteed inviolability of the person. No person may be detained or arrested if there is evidence against them or indicate to have committed an act grounds provided and punished by law. Research bodies may retain a person has a duration of 24 hours.*

No one may be arrested except under a warrant issued by the court or prosecutor. The right to defense is guaranteed during the whole process. "[2]

This provision of Article 31 of the Constitution RSR create cetatanului right to have his guilt or innocence in the trial process and judicial proceedings in such cases were regulated both

by the Criminal Procedure Code and special procedures which, if they were met, guaranteed correct implementation of justice.[3]

2. THE POSSIBILITY AND THE PROHIBITIONS OF THE ORGANS AUTHORITY TO USE FIREARMS

During the events of December 1989, the bodies of the militia, security and military have made use of service weapons in clashes with protesters. According to the law in force at that time could make use of fire only if the rule of law and protection of social values and only in situations strictly regulated by the Decree no. 367/1971 regarding the regime of weapons, munitions and explosives.[4]

Art. 36 clearly stipulates that *"individuals who are equipped with firearms, can make use of a weapon, for doing the job or military missions, only if absolutely necessary and if other means of preventing or coercion is not possible, the following conditions:*

- a) Against those who attack by surprise those serving in the guard, escort, guard or security, and against those who, by the act committed by surprise, seriously threatening the goal guarded;*
- b) Against persons entering or leaving, illegally or guarded perimeters or areas established in confinement;*
- c) For immobilization or detention of offenders who fight back or try to fight back with weapons or other objects that may endanger the life or physical integrity;*
- d) To prevent the escape of escorted or escape the legal status of those in detention or detention;*
- e) To immobilize criminals after committing serious crimes, trying to escape, and their remaining at large would create a very serious threat. "[5]*

Art. 37 provides that in cases referred to in art. 36 lit. b), d) and e) will make use of the weapon only after you legal notice is made by cucantul "sit". If the injunction is not responding then summons whistled again, using the words "stay the fuck" and will be fomst with warning shot vertically. Only after these steps have been taken, and the ordered not respond to warnings, can make use of fire against it. Were not taken into account these provisions, and most victims were only possible due to lack of training of the military who are within. Disposal were established that were attacked by protesters and the military had failed to summon, opening direct fire. We regard the episode in front of the Cathedral of Timisoara where he opened fire on demonstrators.[6]

3. CONSTITUTIONAL PROVISIONS RELATING TO THE NATIONAL DEFENCE

The army went into battle alarm on December 17, starting at 13:30. The order was emitted by Vasile Milea and is nothing but an abuse of its since the state of emergency was proclaimed. This action can be classified as representing the first order given in Timisoara and serious at the same time the first great abuse because both of Ceausescu's order and the order sent by General Milea stood outside the law because it was not given sign of struggle Peter alarm partial battle, and the state of emergency had been decreed by law. The proclamation represent only the formal aspect of establishing the state of emergency. Before proclaiming must be a decision document. Therefore, for the president to proclaim the state of emergency had to use

one of two ways: 1) Normal Way: convene Defense Council, proposing and examining the text declaration of a state of necessity and submit it to the Council of State. This, given that MAN was between sessions, proclaiming the state of emergency law; 2) Way Emergency: according to Art. 75, para. 14 of the Constitution, the President declares state of emergency, but only after there is the legal document, that a presidential decree.[7] Ceausescu did not observe any of these ways. Experts of the Legislative Council and the Constitutional Court confirmed the unconstitutional and illegal quality of the orders given by Ceausescu in period 17 to 20 December 1989[8]. Also, according to Article 28[9] of the constitution RSR civilians had the legal right to demonstrate. The order of battle was considered illegal because the state of emergency was proclaimed at that time. The illegal order emitted by Vasile Milea to shoot demonstrators was sent by General Eftimescu, deputy chief of the General Staff, which responded specifically the legality of orders concerning battle indicatives to indicatives of alarm, other indicative and legality of declaration of of necessity etc[10]. The sign "*Radu the Handsome*" illegal alarmed entire Romanian army, and it could take effect only if the triggering of an armed attack by surprise of a foreign army. In this case we see that the only condition that allowed the issuance of such an order of battle, was missing.

One of the key issues revolve around the fact that those who were in command garrisons and military units, were aware of the illegal order given that art. 28 of the RSR Constitution clearly provided that "*the citizens of RSR are guaranteed freedom of speech, the press, of assembly, of rallies and demonstrations*".

According to the constitution armed duties were stipulated very clearly: 1) art. 40 stated that "*military service in the armed forces is mandatory and is an honorable duty of every citizen*" and art. 41 states the purpose of "*defending the motherland is the sacred duty of every citizen of RS Romania*"; 2) Title II of the Constitution were listed the supreme bodies of state power and functional responsibilities of each of these: Grand National Assembly - the sole legislative the organs (art. 42); State Council - the organs with permanent activity, under M.Ap.N (art. 62); President R. S. Romania - the head of state and representative of state power in domestic and international relations of the country (art. 71). Each of these state supreme organs of power have, among other things, is responsible for the national defense. Thus, among the duties of the Grand National Assembly were: 1) The proclamation, in the interest of defending the country, public order or state security, the state of emergency in some town or across the country (art. 43, pt. 21); 2) partial or general mobilization declaration (art. 43, pt. 22); 3) The declaration of a state of war: "*a state of war be declared only if an armed aggression against RS Romania, or against another State to which RS Romania has mutual defense obligations assumed under international treaties, if the situation occurred for which the obligation to declare the state of war is steadiness*" (art. 43, pt. 23). State Council have the powers to declare emergency, general mobilization or partial (art. 64, pt. 7); 2) To declare, in an emergency, state of war (Art. 64, pt. 8). President R. S. Romania was as President of the State Council (art. 66), Supreme Commander of the Armed Forces and Chairman of the Defense Council (art. 74). In performing its duties, the President shall issue decrees and decisions. It is noteworthy that the state of emergency was declared regular attribute MAN in "emergency", the President of the State Council have no such powers.[11]

We mention that through presidential decree could not establish primary regulations and rules set by it had the obligation to comply with the law. Upon proclamation of state of

emergency and to raise its special legal rules apply adopted by the Grand National Assembly or the Council of State[12]. Hence, the presidential decree could not amend or supplement the law and could not produce more primary rules. So it was not a source of law.[13]

CONCLUSIONS

First you have understood and pointed out that the 1989 demonstrations against the totalitarian communist regime did not qualify, according to law, constitute grounds for declaring a state allowing necessity presidential decree. There is no imminent danger, even in words, the state came from foreign armies.

At the time the legislation does not provide for allowing repression, and act presidential, as we previously demonstrated, was not a source of law. Given this, we understand that a new law could be created only applied existing law (no law refers to *repimare*) - allowed only taking measures by individualizing the deed and the doer, in the strict procedures.[14]

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