

@COVER = Trials in Romania

@HEAD = A Rush to Appease...And to Conceal

In late January, Helsinki Watch sent representatives to Bucharest, Romania, to observe the trial of four of Ceausescu's former aides. In part, the purpose of the mission was to evaluate the procedural fairness of the proceedings. However, Helsinki Watch also wanted to determine to what extent the past abuses of the Ceausescu era would be exposed by testimony and documentary evidence presented at the trial. In addition to attending the trial, Helsinki Watch representatives met with the defendants' counsel, other prominent Romanian lawyers and intellectuals, and the Minister of Justice.

The trial began just five short weeks after the revolution had resulted in Ceausescu's downfall. The Minister of Justice indicated that the speed with which the trial was begun had been dictated by the Romanian people's demand that Ceausescu's top aides be quickly brought to justice. He also expressed his concern to a representative of Helsinki Watch that public pressure had resulted in the appointment of judges and lay assessors who were not the best qualified for the job. The Minister of Justice, as well as other Romanian lawyers, expressed concern to Helsinki Watch that this trial, the first major trial since the revolution, was not emphasizing scrupulous attention to legal procedure, but more attention to satisfying the public's desire for revenge.

The trial was most interesting for what it did not reveal. The evidence presented by the prosecutor was narrowly limited to the defendants' activities during the revolution between December 17-22, 1989, activities as to which the defendants readily acknowledged their guilt. The defendants and witnesses were not asked or allowed to testify about the policies of the past 25 years which had resulted in enormous suffering for the Romanian people.

By restricting the evidence to the five days of the revolution, many people who were deeply involved in supporting Ceausescu's policies and who are still in positions of power appear to have been protected. It seems quite probable that important information would have surfaced regarding past abuses had the defendants been given more latitude in testifying about the Ceausescu era. Helsinki Watch emphasizes the importance of a thorough investigation of past abuses and a complete and public presentation of the evidence. Helsinki Watch expresses its concern that this trial and others that follow not be conducted in a way that restricts this process, regardless of who may be implicated thereby.

As this newsletter goes to press, the trial of 21 Securitate officers has just begun in Timisoara. It is too early to evaluate the conduct of the trial, but the shaven heads and prison uniforms in which the defendants were photographed in the courtroom would indicate that the proceedings are designed to secure quick convictions as in the Bucharest trial. Like that trial, evidence relating only to December 17-22 is to be considered. Helsinki Watch believes that a just and decent society in Romania cannot be built until there is full disclosure of the abuses that occurred, not just at the end of December, but throughout the Ceausescu era.

@HEAD = The Background

On January 27, 1990, the trial of four of Ceausescu's most powerful aides began in Bucharest. Tudor Postelnicu, the former interior minister; Emil Bobu, member of the permanent bureau of the political executive committee of the Communist Party; Ion Dinca, a deputy prime minister; and Manea Manescu, the former vice president, were charged with the crime of complicity to commit genocide which, since the abolition of the death penalty in January, carries a maximum sentence of life imprisonment.

The crime of genocide is defined in Article 357 of the Romanian Penal Code as

the killing of "members of the collectivity of any group," but also committing "grave attempts on the physical or mental integrity of the collectivity or group" or exposing "the collectivity or group to living conditions or treatments that are capable of destroying persons physically." Furthermore, Article 28 of the Romanian Code of Criminal Procedure provides that a defendant charged with the crime of genocide shall be tried before the military tribunal for the territory. Thus, the four defendants were tried by the Military Tribunal for the territory of Bucharest.

The Military Tribunal was composed of five judges: two professional military judges and three "lay assessors" who are military officers with no legal training. The President of the Tribunal, Col. Andrei Nitoiu, had been a military judge during the 1970s, but was apparently sentenced to a seven-year prison term for his opposition to Ceausescu and actually served four years in prison. After Nitoiu was released from prison he worked as a military lawyer and was not reassigned as a judge until the fall of 1989. The Minister of Justice, Teofil Pop, stated that normally judges are selected for a panel by the Chief Judge for the Military Tribunal. However, for this particular trial, the Chief Judge, recognizing that some judges might prefer not to preside over a case raising such "delicate" issues and with such foreign press coverage, asked for volunteers. After no military judge expressed an interest, Col. Nitoiu agreed to preside over the trial.

In Romanian criminal procedure, which is similar to that of other civil law countries, the investigative stage of the case takes on great importance because no effort is made to set forth all of the evidence at trial. The investigation is carried out by prosecutors who compile testimony by defendants and witnesses as well as documentary evidence for presentation to the Military Tribunal in the form of a dossier. The President relies on the dossier for questioning of the defendants and witnesses at the trial. During this important pre-trial stage, defendants are not represented by counsel. It is only after the dossier is complete that it must be presented to the defendant and defense counsel for review. At that point, objections may be made and defense counsel may request that additional information be added.

@HEAD = The Trial

The first day of the trial was broadcast live on Romanian television and each of the following four days of the trial were taped and broadcast each evening for the nation to view.

As a preliminary matter the indictment was read, revealing that at least 689 persons died and well over 1,200 were wounded during the revolution. No effort was ever made to prove that these figures were accurate. In fact, no effort was made to establish that the crime of genocide, as defined in Romanian law, had actually occurred. However, Col. Nitoiu stated that the dossier contained two volumes of names and pictures of those killed or wounded during the revolution. Each defendant was examined by Col. Nitoiu based on statements contained in the dossier. The testimony was strictly limited to the time period between December 17 - 22, 1989, with particular emphasis on two meetings of the political executive committee which were held to discuss measures to crush the uprising.

On December 17, 1989, shortly before Ceausescu left for a trip to Iran, the political executive committee met to discuss demonstrations in the western city of Timisoara. According to testimony by each defendant, Ceausescu was very angry that more force had not been used to control the demonstrators, and voiced special displeasure with the performances of defendant Postelnicu, Minister of Interior, and General Vasile Milea, Minister of Defense. Ceausescu's threat that Postelnicu and Milea would be brought before a firing

squad for their failure to take firm measures against the protestors met with rare opposition from members of the executive committee. In response, Ceausescu told members of the executive committee to elect another general secretary if they did not agree with him.

Col. Nitoiu emphasized that this December 17 meeting presented a unique opportunity for the defendants to accept Ceausescu's resignation, and thereby, to prevent the deaths of many Romanians. Instead, according to Col. Nitoiu, each defendant rushed to support Ceausescu's order to shoot at the protestors. However, Manescu testified that Ceausescu never intended to resign and that his threat was merely a test to see if there were any traitors among the committee's members.

Defendants' testimony revealed that Postelnicu relayed Ceausescu's order to send 22,000 members of the Patriotic Guard to Timisoara and that Dinca contacted First Secretaries of the Communist Party in the counties to arrange that troops be sent from the counties as well. Finally, Bobu testified that he personally was sent to Timisoara on December 20 to calm the demonstrators but found it impossible to do so. Bobu also testified that he told Elena Ceausescu that there were 57 dead and suggested that some of the bodies be sent to Bucharest for cremation.

The defendants also testified that on December 22 an emergency meeting of the political executive committee was called at which Ceausescu asked if any member opposed the measures being taken against the demonstrators. Testimony revealed that most of the members, and all of the defendants, stated that they supported the use of force and promised to "fight to the end." Shortly thereafter, Ceausescu and his wife fled Bucharest.

In addition to the defendants' own testimony, approximately seven witnesses were called by the prosecution. These witnesses testified that defendants Postelnicu and Dinca were out in the streets of Bucharest on the night of December 21 urging the soldiers to take firm measures against the demonstrators. For example, Florin Maris, an active officer in the Romanian Army, testified that Dinca specifically stated he would take full responsibility for shooting at the crowds. Similarly, two non-commissioned officers, Ion Savai and Marcel Martiescu, testified that they had observed Postelnicu hitting a demonstrator and ordering that other demonstrators be arrested.

The defendants were represented by counsel, who had been hired by the defendants or their families. The defense attorneys, as well as the defendants, were allowed to call their own witnesses and to cross-examine witnesses for the prosecution. Defense counsels' theory of the defense appears to have been two-pronged: (1) that defendants were merely passing on orders from Ceausescu to those who actually carried them out, and (2) that defendants feared for their lives if they showed any opposition to Ceausescu. Thus, for example, in response to questions by their attorneys, Postelnicu testified that he did not shoot or torture anyone personally, and Dinca testified that he did not have direct responsibility for repressing the revolution. In addition, two witnesses were called by defense counsel, both of whom testified that Ceausescu's personal security police guarded the doors at the political executive committee meetings on December 17 and 22, thereby presumably causing the defendants to fear the consequences of opposing Ceausescu.

While the defense attorneys gave the appearance of properly defending their clients by consulting with the defendants before the trial and calling and cross-examining witnesses on their behalf during the trial, the defense appeared to be only half-hearted at best. The questioning of many witnesses did

not seem intended to lead to helpful testimony for the defense, and certain aspects of the trial which might properly have been opposed by an aggressive defense attorney were never questioned. For example, the evidence presented during the trial more directly implicated Postelnicu, Dinca and Bobu in the repression of the demonstrators. Little evidence was presented regarding the activities of Manescu during the revolution other than his failure to oppose Ceausescu during the December 17 and 22 meetings. Nevertheless, Manescu's defense attorney made little effort to distinguish his client from the others and when interviewed by Helsinki Watch, he expressed no concern whatsoever that his client had been tried together with the other defendants.

In any event, all four defendants were quick to acknowledge their guilt, ridicule their former leader and apologize to the Romanian people for their crimes. Dinca even testified that the revolution had been "fully justified because [the Romanian] people were asking for liberties set out in international accords."

At the end of the fourth day, the prosecutor asked that the charge be changed from complicity in genocide to co-authoring genocide. While the new charge of co-authorship carried a higher degree of moral culpability, and presumably required a higher degree of proof, the maximum sentence for both crimes is life imprisonment. After two hours of deliberation, all four defendants were found guilty and sentenced to life imprisonment with confiscation of their property. Three of the four defendants stated that they would appeal the sentence, though the grounds for appeal have not been made known at this writing. Only Dinca stated that he would not appeal.

@IDTAG = This edition of *News from Romania* was written by Holly Cartner and is a publication of the U.S. Helsinki Watch Committee, a nongovernmental organization founded in 1979 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki accords. Its Chairman is Robert L. Bernstein; its Vice Chairmen are Jonathan Fanton and Alice H. Henkin; its Executive Director is Jeri Laber; its Research Director is Catherine Fitzpatrick; its Research Associate is Janet Fleischman; its Washington Representative is Catherine Cosman; its Consultant is Lois Whitman.

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