

President Emil Constantinescu's Speech at the
MENA RULE OF LAW CONFERENCE 2010.
The Road to Justice in MENA:
National, International and Traditional Justice Systems Working Together

June 25th, 2010

Panel "Why Does The Rule of Law Matter to MENA?"

Mr. Chairman, distinguished audience, ladies and gentlemen,

When president Newkom invited me to sign together the invitation letter at the MENA Rule Of Law Conference 2010, I felt not only honored, but also emotionally involved. This is because in my capacity of professor at the Faculty of Geology I had tens of students from the Middle East and North Africa region. Also as a rector of the Bucharest University I signed a great number of diplomas for graduates that are today part of the academic, political or economical elites in the countries of this region.

After the conclusion of my term as President of Romania, I had the honour to lead commissions for monitoring the presidential or parliamentary elections that marked the transition towards a democratic regime of some African countries. When the World Justice Project Board asked me to speak, during the "Why Does The Rule of Law Matter to MENA?" panel, about Romania's and my own experience in establishing the Rule of Law, the democracy and the fight against corruption in the post-communist transition, I felt that it can be really useful for this symposium. It is so because we are talking about not only laws and institutions, but also about transforming some worldviews, of which the ones in South-Eastern Europe have many similarities with those in the Middle East and North Africa.

The question of restoring the Rule of Law in a state and a society that were submitted for more than 50 years to a succession of arbitrary regimes in which the Law itself was deeply corrupted and distorted is a complex endeavor. It exceeds the simple facts of the use of legislated powers by officials of all kinds for illegitimate private gain. We all know that no individual is above the law and that everyone must answer to it. But do not forget that, for more than 50 years, many of the Romanian citizens were not above, but *under* the law. They were not citizens, but second rank subjects, be it for political or social reasons discriminated. After the genocide, this *classicide*, as we may call it, distorted the very foundation of the law. The perpetrators were protected according to their rank in the Communist Party for the most violent crimes – illegal arrests, abuse, torture and even murder. The illegal behaviors were sharply condemned only when it was convenient for the political power, but were tolerated, even cultivated, when the play for power of the communist elites needed it. This hidden face of the communist economies and societies is still waiting its researchers.

This illegality was quickly transformed into a predatory capitalism by the nomenclature of the second rank that took power in 1989. Very few of the fortunes of the first years did not have a connection with the former networks of the political police or of the higher levels of the communist hierarchy. As in Russia, the first privatizations were made to the benefit of the communist elites, quickly converted to the market economy.

The theme of corruption invaded the public consciousness, wrapping in one simple word this knot of collusions which revealed everywhere in the post-communist world. The new style corruption exploded on the front pages of the medias, now free and judgmental or simply in search of sensational news. All of the frustrations for the people left out in the cold of this painful process come together to make of the struggle against corruption the most popular theme, but also the most populist one — not only for the impoverished masses of the Eastern societies, but also for the well-to-do elites of the West. Without taking into account, however evident, that, to have corrupt people, there must be some corrupters, the West developed its discourse on corruption in South-Eastern Europe countries and called for immediate and radical solutions without preaching too much on their own involvement into this process through the transnational companies.

The responsibility for the corruption in Romania is often placed in a distant history, especially in the Ottoman times, characterized by the practice of “Bakshish”, “Peshkesh” and so on. There was a system in which the contractual relationships went hand in hand with older ones that became a formal practice, as is for instance the gift exchange. But, above all, it is the lawlessness of the communist dictatorship which was openly above the law, that destroyed in depth the very sense of justice. My essential mission as a democratic president was to restore it. I do not pretend to have succeeded in every way, but I was able to prove openly and by my own acts, that power can be obtained and exerted fairly and legally, in the full and complete respect of the Rule of Law.

Soon after being installed as a president, in 1996, I realized that the action of justice was blocked not only by the parallel system of power relationships coming from the Old regime, but also by an aspect present even in the developed democracies: the lack of communication between the different governmental law-enforcement agencies. That is why I initiated, under the aegis of the National Security Council, a *National Committee for Combating Corruption and Organized Crime*, CNAICO, with notable results, above all in insuring the necessary communication between the police, the General prosecutor’s office, and the different information services.

Far from trespassing the independence of justice, the committee was instrumental in providing the inquests with solid proofs, on important affairs that had a political implication. Between 1997 and 2000, more than 3,500 files of corruption went before the tribunals of which 1545 were judged. In more than 80 important cases of contraband and of embezzlement of all sorts, more than 1000 convictions, often at the highest levels, were pronounced. In the first year only of my administration, the State was able to recover more than a billion dollars. Unfortunately, after the power change in 2000, many of the condemned were

pardoned, almost without exception the lawsuits were blocked and the Prosecutors Office was encouraged to draw up appeals for the annulment of sentences. The government of the years 2000-2004, acquired a sad reputation by the manipulation of justice for personal ends and in the institutionalization of corruption at the highest levels, with the result that the struggle against corruption became the central focus of the objections to the integration of Romania in the European Union.

A government of law and not of men needs a legal system in which rules are clear, well-understood, and fairly enforced, including property rights and enforcement of contracts. One of the elements least taken into account by public opinion during my term was that of the legislative effort. Eager to see palpable results and not very careful about formal legality, the public at large lost patience each time it was explained that it was necessary to first of all debate in the Parliament and then adopt laws, establish institutions assigned to set them into effect—and all that took time. This was the case in a goodly number of areas of public life, and notably those of the struggle against corruption.

During the first seven years after the fall of communism up to my term, the legislative system did not punish either the money laundering, or the insider trading, or the conflict of interests, or the unsecured credit. The law bearing on ministerial responsibility stipulated in the 1991 Constitution had not been adopted yet. Combined with the insufficient number of special magistrates with expertise in the cases of corruption, money laundering, or bank fraud, with an infrastructure that was still insufficient, these deficiencies made the area of justice, an area still badly waiting to be dealt with.

Corruption is far from posing a simple problem that can be resolved by simple means. Passionately endorsed by liberal institutions like the International Monetary Fund and the World Bank, and NGOs like Transparency International, the rhetoric of the fight against corruption complicates the very fight they promote, at least in two ways. First, as I already said, we cannot have corrupt people whether there are not an equal number of corrupters. It is difficult to establish unilaterally the Rule of Law. As long as the corrupters are tolerated and shielded by the consolidated democracies, those from young democracies will continue to be submitted to temptation.

On the other hand, the anti-corruption became a popular story. Many of the post-communist citizens had experienced a collapse in their social and economic status, and they came to see accusations of corruption as the only way to express their disappointment with the political elites, and to deny any responsibility of their own for their eventual failures.

There are lots of reasons, good or bad, for politicians to pick the rhetoric of the anti-corruption fight as the main instrument and the “Royal way” to win the elections. That is how populists are winning elections as anti-corruption movements. Populism turns into a worldview that considers society ultimately separated into two antagonistic groups, the "pure people" and the "corrupt elite" – and that anti-corruption politics is the ultimate embodiment of this worldview. Liberals see anti-corruption discourse as a chance to legitimize capitalism. The conspiracy-minded majority sees it as an opportunity to delegitimize the competition in society and to

prone egalitarian ideas without the risk of being accused of communism or other ideological diseases.

Governments that talk about transparency create even wider suspicion in the eyes of the public – who then choose to vote not for "transparent institutions" but for "honest politicians". Democratic politicians view corruption as an institutional issue requiring institutional reforms. But in the eyes of the public, fight against corruption means fight against corrupted people, and it simply requires honest politicians in power. Corruption is seen as a moral issue: *fairness* or even a question of faith: *God does not take bribes*. The anti-corruption imagination of society displays a growing anger: people begin by believing that everybody in power is corrupt, and that everything the government is or does is pervaded by corruption.

This kind of anger is dangerous for the democratic Rule of Law, because it fosters precipitated and mock trials, as well as the popular mistrust against the legal institutions of the State. Politics is reduced to the choice between the corrupt government and the not-yet-corrupt opposition, while the popular and populist war-cry of the anti-corruption crusade is: "get rid of them all!" To the extent that it substitutes the Rule of Law with a so-called popular, informal justice, that cry opens the way to the 'rule of man', as opposed to the Rule of Law: governance and rules of conduct are set and altered at the discretion of a single person, or a select group of persons.

Corruption is an undeniable fact in the very heart of Romanian society, as it is in most of the post-communist societies. Corruption is a general phenomenon, and political corruption is only part of the problem, that does not exhaust the topic. Corruption follows a decreasing spectrum from East to West, it devastates Russia and the Ukraine and fades gradually away in Central Europe without totally disappearing however. It is compulsory to contain and control it in all its components. That does not mean that we should give away democracy for the sake of the struggle against corruption. The Rule of Law, as a fundamental cornerstone of democratic society means that everyone is subject to the law. At its turn, the State, no less than the individuals it governs, must be subject to and obey the law. It should be a guardian of democracy both against the tyranny of one, and the tyranny of the many. That is the truth for Romania as it is probably the same for the Middle East and North Africa region.