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Romania's Rapid Rule of Law

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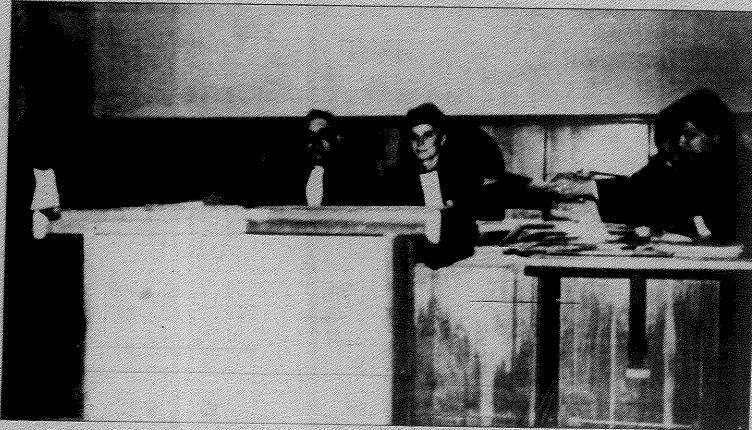
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Commentary

Romania's Rapid

With resources limited and antiquated, Romanian courts provide results that are speed



In Romanian courts, the prosecutor (left) sits at the same level as the judges (center) and clerks (right), all wearing the same garb to promote egalitarianism.

By **KAREN KRAMER** and **CLIFFORD RECHTSCHAFFEN**

Civil litigation, American style, is famous for depositions that go days on end, document productions that fill warehouses, multiple motions that occupy entire file cabinets, and grueling witness examinations that leave no factual nuance unturned. Litigation, Romanian style, could not be more strikingly different. Indeed, some of the contrasts are simply astonishing.

Romania is perhaps best known, in recent years, for the dramatic summary trial and televised execution, by firing squad, of its former Communist leader Nicolae Ceausescu and his wife, Elena. While many have theorized that the summary nature of their trial had much to do with braking the revolution underway, and protecting party members who wished to retain power, the summary nature of the proceedings is also symbolic of the general approach to adjudicating disputes. Reforms are likely to be underway in coming years as Romania moves to integrate itself in the European Community; the current judicial system, however, is somewhat akin to a fast-moving small claims court.

SPEEDY TRIALS

Under the auspices of the American Bar Association's Central and East European project, we observed and evaluated the Romanian judicial system for two weeks earlier this year. We saw typical criminal and civil trials conclude — from start to finish — in 10 or 15 minutes, although a particularly complicated matter might take up to an hour, or perhaps even a day in some cases.

In one criminal case we observed, a defendant was charged with robbing a drunken man at night of his money and a watch. Because the Romanian judicial system is based on a civil, not common law, model, there are no juries. (Pointing to the first Rodney King verdict, Romanian judges we spoke with were skeptical

of the jury system because jurors are not trained to evaluate evidence and apply the law).

Also, consistent with the civil law model, judges handle all questioning of witnesses. With the press of dozens of cases on calendar for any given day (for either status or trial), judges, out of necessity, cut right to the chase and spend little time exploring details or asking follow-up questions.

In the robbery case, the prosecutor

attorney also made a few brief remarks regarding sentencing. Altogether, the proceedings lasted about 10 minutes.

REPORTING THE PROCEEDINGS

Because Romania lacks the money to pay for court reporters, the judge simply dictates, on the spot, a summary of each witness' testimony to a courtroom clerk, who simultaneously types it out on a noisy manual typewriter, making it difficult to hear the judge's dictation. The

At the first court appearance, the attorneys are asked to identify the witnesses and produce the relevant documents.

began with a brief, two-minute overview. The judge then asked the victim to explain what happened and the defendant to respond. The defendant admitted to taking the money but not the watch. A third man then testified that he had bought a watch from the defendant the day after the robbery. The defendant's

witness is then handed the typed summary and instructed to sign. Even where the witness is instructed to read the statement before signing, we never saw this happen. Thus, for the most part, witnesses, including defendants making confessions, sign someone else's summary of their testimony without ever

having read it.

Lawyers can (but rarely do) object to a judge's summary of the testimony, but these objections need not be addressed, or even noted in the record. Judges deliberate for a few hours and at the end of the day return to open court to announce decisions in the matters they just heard, while written decisions generally follow within two weeks. In the robbery case, the defendant was found guilty and sentenced to reform school.

In the civil arena, trials move just as quickly. Partly this is because Romania simply does not have the myriad of public law that leads to complex civil litigation so familiar in the United States. Romania has no Employee Retirement Security Act, Clean Air Act, Civil Rights Act, securities laws or class actions.

Except in very narrow circumstances, citizens cannot sue the government. Rather, civil litigation in Romania is primarily the domain of ordinary contract disputes, inheritance claims, pension disputes and family law matters, although new types of property and commercial cases are becoming more prevalent. Civil matters arising from a criminal case, such as restitution, are heard simultaneously with the criminal case.

SIMPLE, OR UNDEVELOPED?

However, the fast pace of justice is also a reflection of the fact that Romania essentially dispenses with pretrial procedures and discovery. To begin with, complaints are exceedingly simple and brief. While Rule 8 of our Federal Rules of Civil Procedure calls for a "short and plain" statement of the claim, this is truly the practice in Romania.

Answers are optional and, thus, often not provided. There is also no written motion practice or any concept of a legal brief, including pretrial or post-trial briefs. If there is a jurisdictional problem, it is either addressed by the judge initially assigned to review newly filed cases, or taken up orally at the first status conference.

Formal discovery, as we know it, simply does not exist. There are no deposi-



The typical Romanian courtroom is a basic affair, in which wood trim is an adornment.

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Old Rule of Law

ts that are speedier, if less sophisticated, than their American counterparts

tions, no interrogatories, no document requests or requests for admissions. At the first court appearance, akin to a status conference, the attorneys are simply asked to identify who the pertinent witnesses are and to produce the relevant documents.

In fact, attorneys are not allowed to interview witnesses, whether adverse or friendly, before trial, on the assumption that attorneys will coach witnesses or otherwise influence testimony. If an expert opinion is required, the court obtains one from a court-appointed expert.

All in all, the life of the average civil case lasts no more than six months from the time of filing. Unlike many of their American counterparts, Romanian litigants do not face the prospect of waiting years for a final judgment.

ROMANIAN RECORDKEEPING

The lack of resources available to Romanian courts also provides another



The power of the state, with a defendant in the dock.

stark contrast. While courts in the United States may feel strapped for money (two months ago, federal civil jury trials were suspended for lack of funds), a visit to the Romanian courts provides a whole other perspective. There, courts must do without electric typewriters, much less computers. They must also do without filing cabinets or file drawers; rather, case files are stacked in 31 wooden cubbyholes (one for each day of the month), based on the next scheduled court appearance in the matter.

File folders with metal fasteners are scarce, so court files are painstakingly maintained by clerks who sew the individual documents to the file folder with a needle and thread. (Luckily, the lack of discovery and written motion practice keeps files relatively thin). All court docketing and recordkeeping is also done by hand, often using an old-fashioned pen and inkwell. Also, many courts have no copy machines — thus requiring parties to recopy documents by hand or pay a clerk to retype them.

Who are the judges behind this system? For one thing, a significant number are young, as law school graduates can join the bench straight out of law school (although they spend their first six

months observing). The majority are also women. Unfortunately, as one might guess from this fact, judging is not considered a high status profession, primarily because the pay — even for experienced judges — languishes far below that enjoyed by practicing attorneys and government prosecutors; plus, the heavy workload has made the job increasingly stressful.

The number of cases filed since 1989 has literally doubled from prior years, and the number of judges, while rising, has not kept pace. Nor are judges lavished with fancy offices. Except for court presidents and vice presidents, who enjoy spacious, well-appointed offices, most judges work in spartan quarters, with two to four judges sharing a small office, and no law clerks to assist them. And in the minds of some Romanians, judges are still perceived as servants of the state.

POLITICAL INFLUENCE

Under the Ceausescu regime, political

stealing some leftover, rotting potatoes from a field, to a suspended sentence. For her "leniency," she was later harassed and criticized.

While such coercion is a thing of the past, and judges are now appointed for

dent matter of factly told us that he keeps the more controversial and politically sensitive cases for himself.

Human rights activists in Romania, as well as foreign investors, are anxious to create a strong and independent judiciary that will command greater respect and uphold democratic norms and the rule of law. This, however, will require substantial changes in Romanian legal culture, and in the mind-set of some judges.

Romanian judges have far less authority than their counterparts here — they have no inherent equitable power, no power to impose deadlines and no power to fine attorneys. Moreover, there is no tradition in Romania of the judiciary acting as a check on the power of the State, and many judges continue to view themselves as state functionaries.

JUDGING THE RESULTS

Does the system dispense justice? For lawyers frustrated with the endless game-playing, and delays of civil litigation endemic in the United States, the system is disarmingly straightforward. On the other hand, it seems unlikely that Romania is equipped to handle a heavy load of complex civil litigation, and the increasingly fast pace already has judges, particularly trial judges, justifiably concerned that time pressures are hurting the quality of justice.

Of course, this is not to say that, as Romania becomes more integrated with the Western world, it should strive to emulate American-style litigation, lock, stock and barrel. Our American system is too expensive for most, and plagued by waste and delay. Indeed, complaints from litigants finally prodded Congress to enact the Civil Justice Reform Act of 1992, which requires federal courts around the country to adopt measures designed to reduce cost and delay in civil litigation.

The American and Romanian judicial systems represent two ends of a continuum; perhaps as Americans move to streamline their system and Romanians move to strengthen theirs, they will one day come closer to meeting in a happy medium.

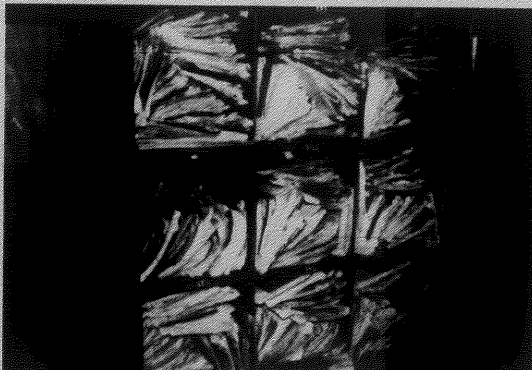


Romanian judges, pictured here with the "court president" at lower left, are frequently young, and female, recent law graduates. The position does not have the prestige accorded in American courts.

The current Romanian judicial system is somewhat akin to a fast-moving small claims court.

influence in the courts was common and not limited to politically charged cases. One judge told of getting phone calls at night dictating the outcome of cases. That judge also recounted the story of sentencing a 70-year-old man, accused of

life, opportunities for political influence still exist. The court presidents and vice-presidents — who tend to be the more senior holdovers from the old regime — control the workloads of other judges and the assignment of cases. One court presi-



Court files are grouped into cubbyholes for each day of the month, even if cases are calendared for separate months, not organized by case name or number.