

Habilitation thesis
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Criminal law – where to?
**End and from the beginning *versus* the illusion of a
transformation**

Summary

The habilitation thesis represents a synthesis of the scientific and professional activity carried out and a presentation of the directions of development that I would like the research activity and teaching career to have in the future.

The title of the paper presents in a synthetic form the current concerns regarding the evolution of criminal law. The development of society in recent years has brought about a change in the structure of crime. The mobility of the population, the technological advance, the globalization of the economy and information, the new forms of social relations have given rise to new forms of danger and new forms of criminality.

Criminal law has tried to keep up with these changes, therefore, in addition to values traditionally protected, in recent years we have witnessed an avalanche of new crimes, which protect values that did not previously exist or did not benefit from the protection of criminal law. We can also note the tendency to sanction the attempt or the preparatory acts of some crimes by means of distinct texts or to sanction other forms of participation (complicity or instigation) in the form of authorship. Criminal law, once focused on the protection of individual interests, today tends more and more towards the protection of collective interests.

However, specialists point out that such an evolution could endanger the current procedural guarantees. Subjective criminal liability, specific to classic criminal law, tends to be replaced by objective liability.

Correlative to this evolution of criminal law, today more and more people are questioning whether the punishments in their current configuration, especially the imprisonment, are still adequate. That is why discussions about the foundation of punishment and the foundation of criminal law are more relevant than ever.

All the concerns related to the new crimes, the state's right to intervene with the instruments of criminal law in areas where the protected social value is uncertain, the type and severity of the sanction, its suitability to achieve certain goals justify the question: the criminal law of the next decades will preserve the fibre of classical criminal law, undergoing only the corrections necessary to adapt to the current society, or are we talking about the sunset of this form of control over society, which can be seen as ineffective and inadequate?

The content of this work tries to create a parallel with the evolution of criminal law at the beginning of the millennium, mirrored in the reforms of Romanian criminal law. I conceived this work starting from the main pillar, the doctoral thesis entitled *Fundamentul pedepsei, moderne teorii* (*The foundation of punishment, modern theories*), which I defended in 2004, and which guided my entire career, both teaching and magistrate.

The first part of the work is dedicated to scientific and professional achievements. Regarding the research activity, I developed in this thesis in particular the themes that I approached in certain studies and that are not part of the subject of the subjects that I teach at the faculty: "Criminal Law, Special Part", respectively, „Offenses in special laws" from the "Judicial Career" master's program.

I have highlighted here the research on the foundation of punishment and the contribution to affirming the need to delimit the purpose from the foundation and functions of punishment, for the construction of an adequate criminal policy, which will keep pace with social transformations.

Another issue dealt with was that of the contribution to establishing the benchmarks of a fair criminal trial in the Romanian judicial system, and I tried to present aspects of the evolution of judicial practice and legislation in criminal matters after Romania's accession to the European Convention on Human Rights, through studies drawn up regarding the right to free movement, the right to freedom and safety, the right to protect private life and correspondence, the right to a fair trial from the perspective of defending procedural guarantees in appeals, ensuring an effective investigation in cases involving crimes against sexual freedom and integrity with minor victims.

The evolution of Romanian criminal law after Romania's accession to the European Convention on Human Rights meant a continuous transformation of the institutions of criminal procedural law in order to adapt them to the conventional standards, but also changes made especially in the special part of the Criminal Code, a process that culminated with the appearance of new codes, the criminal code and the code of criminal procedure.

Regarding the Criminal Code, one of the major changes consisted in the reassessment of the importance of the social values protected by means of the criminal law and a reset of the punishment scale in accordance with the abstract gravity of the crimes. Participating in the drafting committee of the Law on the Implementation of the New Penal Code, which carried out an evaluation of all the crimes in the special laws and an alignment of the sanctions provided for them with those in the new Penal Code, allowed me to capitalize on the knowledge regarding the establishment the legal limits of punishments, acquired during the documentation for the doctoral thesis.

The entry into force of the new Criminal Code and the new Code of Criminal Procedure represented a difficult moment for the courts, faced not only with the novelty of certain legal provisions, but also with the task of applying two criminal codes in parallel, as an effect of the principles which governs the application of criminal law over time.

As a judge at the High Court of Cassation and Justice, a member of panels to resolve appeals in the interest of the law or to resolve legal issues, as a member of the Department of Criminal Law, who drafted legal opinions for the resolution of pending cases The panel for solving some legal issues in criminal matters, as a member of the Department of Criminal Law at the National Institute of Magistracy, called to contribute to the solutions offered at the meetings of the presidents of the Courts of Appeal for the unification of judicial practice and last but not least, as the author of to some studies developed during this period, we contributed to the clarification of some notions and to the consolidation of a unitary judicial practice after the appearance of the new codes.

The second part of the work concerns the scientific activity carried out in the team, and I highlighted here the manuals drafted together with other colleagues from the department, the participation in inter-institutional working groups, the activity carried out as a member of some judicial networks, the participation in the commissions for the elaboration of some normative acts, the activity of guiding and coordinating students for participation in competitions or for the publication of articles, coordination of Spanish students within the Erasmus Program, participation in the editorial board of some magazines in the field of legal sciences.

The third part of the work is dedicated to future projects and I have detailed the objectives in terms of scientific research - aimed at the elaboration of a criminal law treatise, special part together with other colleagues from the department, the publication together with fellow judges from other countries of a

volume regarding the reforms in the matter of crimes regarding sexual freedom and integrity, the elaboration of a monograph on money laundering, a theme that very well reflects the trends of criminal policy in recent years, participation in international research projects - as well as career goals, namely the continuation of the framework activity university teacher and trainer at the National Institute of Magistracy, the development of didactic methods to ensure an effective training of students for the future activity carried out in the legal professions.

If such a paper can also have *conclusions*, I think they should refer to the theme proposed in the title.

The experience accumulated as a judge and teacher entitles me to hope that, regardless of the magnitude of the transformations in society, criminal law, as long as it will be an instrument for maintaining social order, will not be stripped of the guarantees that accompany the conduct of a criminal trial today.

In the whirlwind of so many reforms from us or from other parts, necessary or not, we should take some time to reflect and analyse if we are ready to decide: "full stop!" and if we really have the foresight to what comes after the period.