



THE ROMANIAN CRIMINAL PROCESS – BETWEEN “FORMS WITHOUT SUBSTANCE” AND THE NEED FOR ADAPTATION TO CONTEMPORARY REALITIES

Thesis summary

This habilitation thesis constitutes a synthesis of our teaching, professional, and research activities carried out subsequent to the conferment of the PhD, reflecting the contributions made to the field of law, in particular within the areas of Criminal Procedure Law, Enforcement (Execution) Law, and Criminal Law. The paper aims to highlight the coherence of our scientific and academic approach, as well as our perspective on the future directions for the development of these fields in the context of the evolving society in which we live.

The structure of the thesis is organized into two fundamental parts: the first is dedicated to the presentation of relevant aspects concerning career development in the period following the attainment of the PhD, while the second addresses our vision regarding the future development of our academic and professional career.

Chapter I of the first part addresses the evolution of our research activity. Within the *section concerning introductory aspects*, we emphasized that, throughout our entire research endeavor, we have considered two issues to be of particular relevance, these having guided us over the years.

The first concerns the necessity of ensuring all materials required by those who aspire to become legal practitioners. We have consistently reflected upon our younger colleagues who intend to pursue a legal profession upon completing their studies. We have endeavored to look back and consider what we ourselves would have needed at their stage in order to facilitate a more effective preparation. Thus, in addition to collections of multiple-choice tests and case studies, as well as lecture notes, there emerged annotated codes incorporating case law and summaries of non-uniform judicial practice, and, in recent years, courses on Criminal Procedure. Although it might be argued that these aspects should be addressed when analyzing our teaching career, we nevertheless consider it difficult to draw a clear distinction between these dimensions.

Secondly, we submit that our entire career has sought to integrate three components: teaching, scientific research, and professional activity. The latter has provided us with an extensive perspective on the functioning of the national judicial system in criminal matters. As a practitioner, we have encountered numerous practical situations that have simply never been addressed in legal literature. At the same time, our professional activity has enabled us to develop an overarching understanding of the criminal process as a whole. In our capacity as a judge, we have been required to consistently examine issues relating to the manner in which the criminal investigation was conducted. Furthermore, as we began to carry out our activity within appellate courts, it became considerably easier to understand, beyond purely theoretical considerations, the concrete architecture of the criminal process, with all its mechanisms and shortcomings. Moreover, in our capacity as a judge at the largest court of appeal in the country, we have been confronted with a highly diverse caseload.

This has proven extremely beneficial to our scientific research activity, as it has significantly facilitated the identification of relevant case law and the explanation of the manner in which each legal institution operates. However, the relationship has not been unidirectional. Our entire research activity has, in turn, contributed to our professional

development. Not infrequently, we have found ourselves in situations where, when confronted with a practical issue, it was easier to identify an appropriate solution given that we had previously analyzed the matter and identified the relevant judicial practice.

In preparing each paper we have carried out, we initially sought to identify all controversial issues addressed in the legal literature in relation to the respective institution, and subsequently examined the practical difficulties encountered by practitioners. At the same time, drawing upon our practical experience, we endeavored to anticipate any other problematic situations that might arise.

On numerous occasions thereafter, in our professional activity, we have encountered—or have been called upon to provide our opinion on—issues that had formed the subject of our prior research.

The title of the habilitation thesis must be understood in this context. The criminal process must evolve in parallel with societal developments. However, this requires a thorough understanding of how the entire system functions. Only in this manner can viable solutions be proposed for adapting the activity of judicial authorities to contemporary realities. Equally indispensable in this regard is an in-depth study of comparative law. It is necessary to examine the solutions adopted in the legislation of other states, naturally insofar as they are compatible with the realities of our own legal system. Otherwise, they risk becoming mere “forms without substance.”

Section II is dedicated to the presentation of our principal achievements in the field of Criminal Procedure Law. The treatise on Evidence in criminal proceedings represents the culmination of more than ten years of work and is, to the best of our knowledge, the only work addressing this subject in an exhaustive manner (exceeding 850 pages). In 2025, it was awarded the “Vintilă Dongoroz” Prize by the Union of Jurists of Romania.

The two courses on Criminal Procedure (General Part and Special Part) were conceived as useful instruments for both students and practitioners, this being, in essence, as previously indicated, the primary objective we pursue in the drafting of any work. Both works have already reached their second edition. Their structure follows the mandatory syllabus for the Bar admission examination and/or the entrance examination to the judiciary or to the National Institute of Magistracy.

However, by virtue of the amplitude of the commentary (the first edition comprising 766 pages and the second 772 pages, in the case of the General Part, and 644 pages for the first edition and 650 pages for the second, in the case of the Special Part), both works may also serve as valuable resources for professionals operating at the highest level of the judicial system, who require detailed answers to issues less extensively addressed in the legal literature. We have sought to strike a balance between, on the one hand, the practical capacity of a student to study the material corresponding to a semester-long course, and, on the other hand, the needs of a legal practitioner, who requires a rich body of case law.

During our doctoral studies, as can be seen from the attached record, we have authored two monographs dedicated to the Plea Agreement and the Reopening of Criminal Proceedings in Cases of Trial in Absentia. We were pleased to note that some of the proposals advanced in these works were subsequently taken into account by the legislator or were reflected in the jurisprudence of the Constitutional Court.

The third monograph addressed the issue of Procedural Measures. In this case as well, the interpretation we proposed with regard to certain controversial issues was later confirmed by the High Court of Cassation and Justice within the mechanisms for ensuring the

unification of judicial practice. In 2026, the second edition of this work was published, further demonstrating the appreciation it has received.

A fundamental work, published to date in four editions (2014, 2017, 2020, and 2023), to which we had the pleasure of contributing in the last two editions, is the Criminal Procedure Code. Commentary on Articles, coordinated by Mr. Mihail Udroi. Our contribution to this work consisted in commenting, together with Mr. Mihail Udroi, on Articles 29–30, 32–34, 95, and 96. The commentary on these provisions, in the latest edition, spans approximately 100 pages.

A few years after the entry into force of the current Criminal Procedure Code, we considered that the publication of a work analyzing the institutions of criminal procedural law from a jurisprudential perspective was necessary. For me, a young scholar at the beginning of my career at that time, it was a great opportunity and honour to participate in the drafting of an annotated Criminal Procedure Code alongside Professors Ion Neagu and Mircea Damaschin (published in 2018). Given the numerous additions, the work was subsequently republished in two volumes in 2021.

From the earliest years of our activity as a young judge, we considered it of utmost importance to participate in the judicial practice meetings organised on a quarterly basis at the level of the Bucharest Court of Appeal and to study the minutes of similar meetings held by the other courts of appeal. In this context, the need arose to systematise this information, as it is almost impossible for an individual to retain all the issues discussed over the years, as well as the opinions adopted.

Accordingly, several years ago we began annotating each article of the Criminal Code and the Criminal Procedure Code by indicating the practical issue discussed and the conclusion reached. To these were added the minutes of judicial practice meetings organised at national level. Thus, the idea emerged of publishing an annotated edition of the Codes which, in addition to decisions of the Constitutional Court and the High Court of Cassation and Justice (appeals in the interest of the law and preliminary rulings on questions of law), would also include annotations referring to the minutes of meetings concerning non-unitary judicial practice. The work is already in its fourth edition.

Reference was also made to articles published in both international and national journals, as well as to papers presented at international and national conferences in which we have participated. In selecting the topics addressed in our articles, we have pursued, on the one hand, the identification of controversial or insufficiently examined issues (although of significant importance for the evolution of criminal proceedings), and, on the other hand, the commentary of judicial solutions which, by virtue of the issues they raise, we consider to be particularly relevant.

In *the third section*, dedicated to the presentation of achievements in the field of Criminal Enforcement Law, we noted that an important place in the legislative architecture that entered into force in 2014 is occupied, alongside the criminal codes, by the laws governing the execution of penalties. Although more than ten years have passed since the adoption of Law no. 253/2013 on the execution of penalties, educational measures, and other non-custodial measures ordered by judicial bodies in the course of criminal proceedings, no commentary on this act had been published until 2023.

In this context, it was an honour for us to be part of the collective that carried out an exhaustive analysis of this normative act (the work comprising approximately 800 pages). In this regard, we note that we authored, in a single-author capacity, the commentary on Articles

14–17, 19, 25, 26, 34–42, and 82–86, and as co-author the commentary on Articles 47–56, 57, and 89.

In the early years of our career as a magistrate, we served as a judge at the District Court of Sector 5, Bucharest, within whose territorial jurisdiction two penitentiary institutions are located: Rahova Prison and Rahova Prison Hospital. A significant proportion of the cases we were required to adjudicate concerned issues relating to the exercise by detainees of rights provided for by Law no. 254/2013. This gave rise to the need to study the case law of courts in resolving complaints lodged under Article 56 of Law no. 254/2013. In these circumstances, we felt the need to publish the results of this study, the work also including a selection of the most significant cases with which we were confronted.

With regard to the subject matter of our research in the field of Criminal Law, the doctoral thesis must first be mentioned: *Judicial Individualisation of Punishment. Alternatives to Custodial Sentences*, published in 2017 by Universul Juridic Publishing House.

Two fundamental works to which we had the honour of contributing are the *Commentary on the Criminal Code. General Part* and the *Commentary on the Criminal Code. Special Part*. In the General Part volume, we co-authored the commentary on Articles 113–134 concerning the criminal liability of minors. As regards the Special Part, we co-authored the commentary on Articles 295–324, 326–328, 342–347, and 367–375, and we also authored, in a single-author capacity, the commentary on Articles 301 and 346¹.

As previously mentioned, one of the concerns we have pursued in our capacity as a judge has been the study of judicial practice. This was carried out both in our personal time, with the aim of improving our professional training, and in the context of the cases with which we were confronted. The result of this research was an *Annotated Criminal Code*, published in two volumes (one dedicated to the General Part and the other to the Special Part), published by Universul Juridic Publishing House, which includes exclusively decisions delivered after 2014.

At the same time, at the request of the Supreme Court, we have participated over the past two years in the drafting of ten legal opinions, both in cases concerning preliminary rulings on questions of law and in cases concerning the resolution of appeals in the interest of the law.

With regard to our *teaching activity* carried out after obtaining the PhD, as presented in Chapter II of the first part of this paper, we note that we joined the academic staff on a permanent basis in 2017, primarily delivering seminars in Criminal Procedure Law – General Part, within the Faculty of Law of the “Nicolae Titulescu” University of Bucharest.

Since 2021, we have collaborated with the Faculty of Law of the Bucharest University of Economic Studies within the postgraduate programme Criminal Law of Business. Within this programme, we have taught courses and seminars in the subjects Criminal Liability of Legal Persons and Offences against the Financial Interests of the European Union. Our involvement in this programme has continued in subsequent years, as the holder of the courses Criminal Law of Business and Criminal Procedure.

Since 2022, we were designated as the Criminal Procedure Law course holder within the Faculty of Law of the Bucharest University of Economic Studies. Concurrently, we have conducted seminar activities both in the subject we teach and in Criminal Law – Special Part. We are currently also the course leader for Advanced Criminal Procedure (I). Evidence in Criminal Proceedings and Advanced Criminal Procedure (II). Trial in Criminal Proceedings, within the master’s programme organized by the same faculty.

Teaching is complemented in an integrated manner by a series of related activities which we carry out on a regular basis and which also contribute to our primary objective in this field, namely the training of legal professionals. For example, we have participated as members in the committees of various competitions and examinations specific to the professional environment of the judiciary.

In the second part, devoted to our vision for career development, we indicated that our career development plans must focus on the three pillars along which our professional activity has evolved to date, namely: research activity, teaching activity, and practical professional activity. In our view, only such an approach, in which these three components are harmoniously integrated and mutually reinforcing, can lead to the desired outcome, namely the conduct of in-depth research that is useful for the judicial system and relevant for the students and practitioners with whom we engage in teaching and training activities.

With regard to research activity, the path we intend to follow will be an integrative one, in which the solutions we identify are primarily aimed at practical utility for practitioners, and the topics we address are connected to real issues that have a significant impact on judicial practice and, consequently, on the way in which the judicial system is perceived in society.

We consider it particularly important that this entire analysis be carried out within an integrated framework in which elements of comparative law are taken into account. At present, Romanian legal doctrine includes monographs on the most important institutions of Criminal Procedure Law. Moreover, approximately 12 years after the entry into force of the current Criminal Procedure Code, numerous studies and works have emerged which have comparatively examined both the current provisions and the previous ones, as well as the newly introduced institutions.

The legal doctrine in our country lacks works addressing the main institutions of criminal procedural law from a comparative law perspective. We consider this issue to represent a genuine problem of legal doctrine and one of the main causes of certain deficiencies within the Romanian judicial system.

In general, within published monographs, comparative law elements are reduced to a mere reproduction of the relevant statutory provisions from other jurisdictions. With very few exceptions, Romanian doctrine does not provide detailed analyses of the case law of courts in legal systems similar to our own (or of systems from which certain institutions have been adopted). Likewise, there is no consistent, issue-based examination of foreign legal provisions in relation to the practical problems they have generated and the manner in which such issues have been resolved.

In our view, only through such an approach could viable solutions be identified for improving the functioning of the judicial system. A genuine study of the experience of other states—learning from the mistakes of those legal systems and identifying solutions that have proven effective—is a fundamental prerequisite in this regard. Consequently, legal research in our country should pay particular attention to these elements. As already noted in the introductory part of this paper, they must not become mere “forms without substance.”

Unfortunately, however, in recent years amendments to criminal procedural legislation have arisen exclusively in the context of the need to transpose European directives (these being incorporated through literal translation and adopted as such), to bring the legislation into conformity with decisions of the Constitutional Court (an exercise occurring once every

few years), and—most problematically—through the adoption of legislative proposals which appear to serve primarily electoral purposes.

The existence of works that provide an exhaustive analysis, including comparative law perspectives, could contribute to improving the quality and effectiveness of future legislative amendments.

As is only natural, we will further outline the fundamental directions of research that we intend to pursue. Some of these have concerned us for a considerable period of time, while others are of more recent origin. All, however, share a significant practical dimension.

These research directions are as follows:

- a. Compliance with the reasonable time requirement in criminal proceedings
- b. The plea agreement
- c. The advisability of the preliminary chamber procedure
- d. The conduct of trial proceedings in the absence of the accused
- e. The principle of loyalty in the administration of evidence

Furthermore, in developing the above-mentioned research directions, but without limiting ourselves thereto, a long-term project consists in the development of the Criminal Procedure Law course into a treatise (in four volumes), with the aim of achieving a comprehensive analysis—including comparative law elements—of the manner in which criminal proceedings are conducted. We consider that such a work is necessary in the context of a legal system that is in a continuous process of adaptation to the needs of a society whose values are changing at an increasingly rapid pace.

From a didactic perspective, the Criminal Procedure Law course will remain our primary area of concern. In this context, we consider that continuous pedagogical improvement is necessary, so that students may benefit from the best possible learning conditions. The use of examples drawn from judicial practice, both in the form of new case studies and well-established precedents, will remain a priority for us.

Irrespective of our professional development in the academic field, we intend to continue conducting seminar activities. We consider that the combination of lecturing and seminar teaching is essential in order to gain a genuine understanding of the level of knowledge of our younger colleagues and their specific learning needs.

At the same time, our attention will also be directed towards the improvement of teaching and seminar activities in the master's-level courses Advanced Criminal Procedure – Evidence in Criminal Proceedings and Trial in Criminal Proceedings, within the postgraduate programme organised by the Faculty of Law of the Bucharest University of Economic Studies, for which we act as course holder.

As already indicated, the understanding and teaching of legal theory cannot be achieved without practical experience. For this reason, our activity as a judge represents an important element of our future development. We are particularly satisfied that our activity within the Bucharest Court of Appeal allows us to engage with virtually every institution of the Criminal Procedure Code. Moreover, the complexity of the cases with which we are confronted requires continuous professional development. At the same time, through the related activities we carry out (drafting materials on non-unitary judicial practice, preparing quarterly reports on relevant case law of the First Criminal Division of the Bucharest Court of Appeal, and participating in meetings on non-unitary practice), we remain in constant contact with the jurisprudence of the courts within the Bucharest Court of Appeal's jurisdiction and with the legal issues they face.