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New Issues Concerning the Architecture of Romania's Criminal Law Principles

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Abstract: *In the present study, we show that the principles of criminal law constitute a complex, interdependent, mutually conditional whole, each of them characterising the whole of criminal law as a whole about the principles of European Union law. We then point out that, in general, the means of criminal coercion are restricting their scope of application in favour of extending their preventive, educational and social values, through a gradual decompression of criminal law in favour of other forms of legal intervention and coercion (contraventional, administrative, disciplinary, etc.). We also stress that there are principles enshrined throughout criminal law (1865 - to date), recognised as constants of criminal law; what developments in society have promoted new ideas? Is the range of constants widening or narrowing?*

Keywords: *principles of criminal law; European; configuration; constants of criminal law.*

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1. As we know, (Antoniu 1996, 2015) principle originates from the Greek "arhe", which the Romans called "*principle*" meaning beginning, origin, with the meaning of fundamental element, leading head. At the same time, the word principle has several other meanings, all linked to the idea of generality (Terre, 1994). About this problem, it may be noted that no contrary solution has been pronounced, and this is for reasons that are easy to grasp since principle implies the fundamental element, the basic idea on which a theory is based, the fundamental law of a science or an art, a primordial, original element or basic component of the physical world or a constituent element of material things, a law of a general nature applicable to a set of phenomena and verified by the accuracy of its consequences. (*Law Dictionary*, 1990).

In addition, it was also pointed out that, (Antoniu, 1996), in general, the principle represents a scientific generalization based on the study of the phenomena themselves, it is drawn from the surrounding phenomena, it is discovered and not invented. In this sense, the literature states (Djuvara, (1936), that it would be wrong to consider the principle as a product of pure speculation and that it appears in our minds before any experience. In reality, principles are a generalisation of experimental facts and concrete facts.

2. From the perspective of law, (Boboş, 1936), the view has been expressed that the principle would be a foundation of the legal system, as well as a way of classifying legal norms within the system around guiding ideas. In this sense, principles of law characterise the whole system of law and reflect scholars' views about the law in general, whether or not they have succeeded in establishing themselves in positive law. On the other hand, with reservations, it has been pointed out that principles, no matter how well formulated they are supposed to be, always remain abstractions. When it comes to giving life to abstract things, the difficulties are innumerable. It is therefore up to doctrine to resolve them, to find the principle of communication between elaboration and application (Dogaru et al., 1996).

It has also been demonstrated (Bulai, 1992) in the criminal doctrine that principles are fundamental requirements because they also reflect the most general and fundamental needs of society, needs so general and fundamental that these requirements are reflected in all criminal law regulations (Bettiol, 1994; Hall, 1960).

In another view, it is argued that the principles are of maximum generalizability, have a mandatory legal value, independent and unitary character (Cosmovici, 1990). From this, it could be deduced that the

fundamental principles (Dongoroz, 1960) of each branch of law appear as characteristic and defining features of the autonomy of that branch within the legal system. (Antoniu, 2005[1]). They are principles that are reflected in all the rules and institutions that make up the branch of law in which they operate.

In this connection, we would also point out that, in addition to the fundamental principles[2] (Dongoroz, 1969; Mitrache & Mitrache, 2019) studied in national (Feller, 1960) or European criminal law doctrine, (Pradel et al., 2009) positive criminal law also has general (basic) principles and institutional principles. The general principles are to be found in the three basic institutions of criminal law: the offence, criminal liability and criminal sanctions (Mitrache & Mitrache 2019). Here we show that the general principles are rules of law that cannot be disregarded by the legislator or the judiciary, and they guide all criminal legal regulation and the work of combating crime using criminal law provisions (Antoniu, 2007).

Unlike the fundamental principles, (Popa, 1996; Vecchio, 1938) which have a general and absolute incidence, the general principles are derived from the former and subordinate to them, having a general (basic) incidence in criminal law. As for institutional principles, they are subordinate both to the fundamental principles (national, European, international) and to the general, basic principles, and are applied only within the institutions in which they operate (Djuvara, 1940). We consider that these objectively determined principles (theses, requirements according to some authors), which are reflected in all criminal law regulations, constitute the principles of criminal law.

3. In the following we will mention fundamental, general, institutional (constant) principles about the evolution of legal thought and criminal law. Thus:

A. **The Penal Code of 1864**, which came into force on 1 May 1865, was drawn up under the influence of Beccarie's principles and, in general, of the legal concepts of the classical criminal school, (Beccaria, 1965) which placed the offence, the criminal act committed by the offender, at the centre of its concerns (Antoniu 2015; Dongoroz, 1939; Mitrache & Mitrache, 2014).

[1] Manzini points out that the principles established by criminal dogmatics have value not only for the process of knowledge but also the value of norms armed with *vis ac potestas*.

[2] It is argued that there are three fundamental principles of our criminal law: *democratism, humanism and legality*.

The criminal law enshrines in its general provisions the following general (*basic*) principles: the legality of the offence and the penalty (*nullum crimen, nulla poena sine lege*), (Dongoroz, 1929), in Article 2 of the Criminal Code as follows: "no offence shall be punishable unless the punishment has been decided before it is committed". Thus, offences committed during the old law will be punished after that law, and when the penalties provided for by the present law are lighter, the lighter penalty will be applied. Offences committed under the old codicil but not provided for by the present codicil shall not be punished.

In this regard, we also note maxims such as "the law should advise before striking" or "the Penal Code, "whip at one end and a hiss at the other end", metaphorically express the value of principle and the importance of the legality of incrimination and punishment.

Article 2 of the Penal Code also stated that "the most humane law shall be applied...Thus, since the purpose of repressive laws is above all to stem the tide and set an example for the benefit of the general public, (of the state) for reasons of humanity (the principle of humanism), the criminal law has retroactive power whenever it is easier". The reason, in this case, was the feeling of humanity that underlies criminal laws, said Dimitrie Alexandrescu. The article quoted also laid down the principle of non-retroactivity of laws (a law can only apply to the future, it has no retroactive power). In addition to the principle analysed, other principles should also be noted, namely: individualisation of criminal liability; personalisation of the penalty and exclusion of family liability; respect for individual freedom through lawful arrest, investigation without torture and prohibition of prolonged pre-trial detention; application of the penalty after trial, using a reasoned decision; humanisation of penalties, with the exclusion of the death penalty and mutilating penalties; execution of the penalty in conditions that tend to correct the guilty party (Bulai & Bulai, 2007; Ionaş, 1999; Pajişte, 1935).

Criminal law also admitted the moral responsibility of the perpetrator, as a result of free will, guilt, equality before the criminal law and other principles of the classical criminal school (Dongoroz, 1939).

Its provisions were based on the principle of the legality of incrimination and punishment also laid down in Article 16 of the Romanian Constitution of 1866.

At the same time, the Penal Code of 1865 adopted a formalistic conception of crime, considering crime as a legal entity - any act incriminated by law and punishable by a penalty. Under these conditions, crime presupposed that there was an action or inaction, that the act was provided for by criminal law and that there was a penalty for the

commission of that action or inaction. At the heart of the Criminal Code was the principle that criminals are rational people, aware of the consequences of their actions, who have antisocial tendencies and, as such, should be excluded from society[3] (Pinatel, 1963; Saleilles, 1927).

We think it is worth remembering that the principle of punishment was the seriousness of the offence. It was conceived with suffering that the law imposes as an equivalent for the harm caused by committing the crime and therefore it must correspond as exactly as possible to this harm and not to the person of the offender (Schina, 1920).

However, on the positive side, we note that basic institutions and principles of criminal law were missing, such as the institution of rehabilitation of convicted persons, the institution of the conditional suspension of the execution of the sentence, the principle of ex-communication of the unjustly convicted, etc.

Referring to this code (Oprescu, 1922) Ioan Tanoviceanu wrote that "*nothing has spoiled the Romanian character more than exotic and unwise legislation*", (Tegăneanu, 1964, p.508) a statement that is equally valid for all the codes adopted at that time, given that those who took inspiration from foreign legislation made no effort to give them "*the palest local colour*" (Nicolcioiu, 1971, p. 58).

Subsequently, criminal law doctrine took the position of the positivist school of criminal law, *a philosophical conception of criminal law that was quite different from that based on which the criminal legislation then in force had been drawn up* (Theodoru, 1970, p.70).

During this period, Ion Tanoviceanu wrote in 1890-1891 and published in 1912 Curs de depot et procédure penală, in three volumes. In this connection, it should be pointed out that the author is "very closely concerned with the history and philosophy or, in other words, with the past and future of criminal principles and institutions", illustrating the various principles with numerous case-law examples, because "today doctrine can no longer live in isolation from case-law" which "shows the present and sometimes makes the future of criminal principles and institutions understandable" (Theodoru, 1970, p. 70).

[3] "The law was supposed to fix the punishment according to the evil committed and by this was meant objective evil. The person of the criminal does not matter. For criminal justice, the criminal was nothing but an abstract, anonymous individuality, just as a 'number' would become in the slave labour camps or in the detention centres".

In addition, we note that IoanTanoviceanu[4] is a "forerunner of the principle of individualization of punishment not only according to the seriousness of the facts but also according to the social danger posed by the offender", a forerunner of security measures, preventive measures of education and re-education of the offender. The legislator - wrote Professor Ioan Tanoviceanu - must avoid equally dangerous extremes: neither severity nor excessive indulgence is needed" (Tanoviceanu, 1912, p. 1593).

"This work marked the most important moment in the history of the beginnings of the science of criminal law in our country", representing "the model of systematization, the treasure trove of rare information, the source of light from which no one can dispense", ... "a complete exposition of the general principles of criminal law and procedure" (Schina, 1924, p. 9 -11).

We believe that the work of Professor Ioan Tanoviceanu[5], through the analysis and substantiation of basic principles of criminal law, through the clarity of his arguments and the finesse and subtlety of his legal reasoning in the interpretation of principles and solutions of criminal law, although it refers to the provisions of an abrogated criminal code and belonging to a social order outdated by the course of history, still presents today interest and reasons of scientific satisfaction for researchers in the field of criminal law.

B. In the 1937 Criminal Code[6], or the "fundamental law of social defence", as it was called, we note, in the explanatory memorandum, several basic principles promoted by the classical criminal school, which have been preserved (moral responsibility of the individual, free will, the legality of incrimination and punishment, guilt, etc.) (Antoniu, (201) and, on the other

[4] Referring to the Course and its author, Emile Garçon appreciates: ... "his erudition is great, and his knowledge profound. ... His volumes are of great scientific value - they deserve to be ranked among those which are becoming classics in universal science. Gr. Theodoru, *op. cit.,* p. 74.

[5] It should be recalled that Ioan Tanoviceanu's scientific work was continued by his successor at the chair, Professor Iulian Teodorescu, who also organized the Criminal Studies Circle, "broadening the field of research and intensifying contacts with foreign countries". Also, on the initiative of Nicolae C. Schina, former president of the Court of Appeal in Bucharest, between 1924-1927 the Cursul de direito e procedure penală was reprinted in the form of a five-volume Treatise on Criminal Law and Procedure, the subject being developed and updated by the contribution of a prestigious team of theorists and practitioners of criminal law, Vintilă Dongoroz providing the doctrinal part, Corneliu Chiseliță and Ștefan Laday making references to the criminal legislation of Transylvania and Bucovina, and Eugen C. Decuseară providing case law additions.

[6] A new penal code was promulgated on 17 March 1936 and came into force on 1 January 1937.

hand, "adopting everything that experience and practice have been able to verify and enshrine in the new ideas of the positivist school" (Pop, 1937), (safety measures for the offender's dangerous state, with a different character from that of punishments, individualisation of the punishment, with a view to re-socialising the convicted person, educational measures for juvenile offenders[7]) (Buzea, 1934, p.19).

By the new principles, the 1937 Criminal Code paid greater attention to the person of the offender and regulated criminal institutions and principles whose absence had been noted in the 1864 Criminal Code.

The penal code - while maintaining the classical principle of the moral responsibility of the offender - affirmed the need to *protect society* (Ancel, 1966) by taking into account the social danger of the offender (Avrigeanu, 2013). Thus, the positivist conception of social defence gave priority to the protection of society over all other considerations. Such a defence required the systematic elimination of the offender's state of danger in whatever guise it might appear.

We emphasize the fact that, in the positivist school's view, society should be less concerned with repressing crime than with adopting a system of preventive measures, according to an adage which "it is better and easier to prevent than to cure" by making criminal manifestations impossible or even more difficult (Fiandaca & Musco, 1995).

Under these circumstances, the existence of criminal law as a whole and each of its rules and institutions was determined by the need to protect society "*against socially* (Dongoroz, 1939) dangerous acts and was achieved by the possibility that the law itself created for the correct classification and classification of specific acts in the incriminating provisions, as well as for the establishment and application of a penalty capable of preventing the commission of new offences by those to whom it applies".

We also note that the entire activity of the state bodies had to protect the social order, to guarantee the effective implementation of public rights and freedoms, (Hauriou & Gicquel, 1980) to ensure the right of every citizen to be protected against anyone who attacks his life, health, freedom and legitimate interests. This defensive activity could only be carried out within a legal framework, and this framework was constituted precisely by

[7] The first definition of these is provided by Enrico Ferri, who considered them to be legally repressive provisions ordered by the judicial authorities against perpetrators, because of the crimes committed and in the interest of social defence. Subsequently, the positivist doctrine emphasised that the safety measure differs from punishment in that it refuses any connection with the idea of guilt, the basic idea being to defend society and not to punish or reward offenders.

criminal law, but subsidiary, developed according to the principle of social defence, as an expression of the need to protect the social values mentioned (Golliard, 1982).

Punishment was no longer exclusively expiatory, the legislator posed the problem of the offender's socialisation and rehabilitation, for which purpose it provided for the principle of individualisation and proportionality of punishment, as well as a progressive system of execution.

At the same time, we note that the criminal law has maintained the tripartite division of offences, correcting several crimes, but not because of any humanising tendency, but to reduce the number of cases that could be referred to the court with juries, which "in our country, as elsewhere, is far from functioning in perfect and satisfactory conditions" (Kahane, 1961, p. 323).

We note that both the 1864 and 1936 penal codes, adopting an abolitionist approach, did not include the death penalty among the penalties (based on the principle of humanism). Subsequently, this view was overturned, as Article 15 of the Constitution of 23 February 1938 allowed the Council of Ministers to impose the death penalty for several offences, which it decided in its Journal No 1022 of 24 May 1938, for one year, which was extended by successive journals until 1944.

The 1936 Penal Code was amended by the Act of 24 September 1938, Article 24 of which provided for capital punishment as a common law penalty. The profoundly reactionary nature of the criminal legislation resulted not only from the broadening of the scope of the most severe penalties but also from the use in the criminal laws of very vague and general terms to determine the actions or inactions which constitute the material element of the offence[8].

C. The 1936 Criminal Code remained in force, as we know, until 1 January 1969, but after 23 August 1944, it was continually subjected, as we shall see, to structural changes, additions and adaptations to make it fit to serve the interests of the new social order.

In this respect, we note the conscious restriction of the repressive scope of criminal law, while at the same time extending its educational and preventive character and resorting to certain forms of state influence to combat and prevent criminal acts of less social resonance.

Although the crime was one of the fundamental legal categories of criminal law, the Criminal Code did not define crime in any of its provisions. Giving expression to the new social-political content of criminal law, the

[8] Official Gazette No. 48 of 27 February 1948.

legislator thus amended the content of Article 1 of the 1936 Criminal Code by Decree No 187 of 30 April 1949, drawing up a scientific definition of the offence and, at the same time, referring to the purpose of criminal law in combating offences.

We note that the principle of partiality in criminal law was of prime importance and was reflected in all criminal law regulations, it was the "guiding thread" of the content of all criminal rules. It was also the "guiding thread" in the application of these rules. The principle implied that the rules of criminal law and their application had to meet the need to defend the conditions of existence of society. The principle was expressly stated in the provisions of Article 1 of the Criminal Code which, in para. 1, states that "the criminal law aims to protect Romania and its legal order against acts dangerous to society", and in para. 2, it was specified that "any act or omission that harms the economic, social or political structure, or security, or disturbs the order of law, shall be dangerous to society within the meaning of the preceding paragraph".

This principle was to be achieved primarily through the establishment of criminal law, which, through its inhibiting-educational action, influenced the conduct of social relations in society.

The inhibition caused by the general obligation to abstain from committing offences, under criminal sanction, prescribed in the criminal law, with its educational effects on negative elements, determining their restraint from committing offences, led to the implementation of conduct that corresponded to the law and the rules of social coexistence.

The principle of the partiality of criminal law was then implemented in the application of the criminal law, when the social and political assessment of the facts given by the law had to be given concrete form by including in the criminal law only those facts which constituted an offence, by accurately classifying them in law and by establishing a penalty appropriate to the seriousness of the acts committed.

It has been argued that the principle of the partiality of criminal law is realized in any rule of criminal law, both in the incriminating rules of the special part of the criminal code and special laws and in those of the general part. For example, the criminal rules on recidivism reflect the interest of the ruling class that the person against whom the first conviction did not achieve its educational effect should be punished more severely. It also reflects the interest of the dominant class, as the criminal law rules governing self-defence give the person attacked the right to defend himself against an aggressor, thus fulfilling the function of the law enforcement bodies which, if they had been at the scene of the aggression, would have intervened.

Moreover, the very definition of law (socialist society) was elevated to the rank of law, expressing the parties of law and, therefore, of all its branches, including criminal law.

Indeed, another principle that permeated the entire criminal legislation was also criminal liability only for acts presenting a certain degree of social danger.

Humanism and democratism require that the nature of liability should not exceed the seriousness of the acts and the need to combat them, both in the process of criminalising the acts that constitute offences and in that of applying the criminal rules.

The legislator's concern in this respect was well reflected in our legislation. Thus, Article 1 of Decree No 320 of 21 July 1958, concerning the boards of judges in enterprises and institutions, stipulated that certain acts which "not having the gravity of offences, constitute contraventions" were removed from the sphere of criminal offences, were judged by certain state bodies and were punished by certain measures other than criminal penalties. The following were thus considered as not presenting the degree of social danger corresponding to a crime: theft in any form of state property, negligence or abuse in office causing damage to state (public) property, negligent destruction or degradation of public property, as well as theft between workers or civil servants committed for the first time at work if the amount of damage caused did not exceed 200 lei[9].

Article 1 of Decree No 184 of 21 May 1954, regulating the punishment of contraventions, states the same principle, i.e. that "acts which, because of their lesser degree of social danger do not constitute offences and are punishable by-laws or by normative acts of the people's councils or the central or local bodies of the state administration, constitute contraventions" (Feller, 1954, p.23; Râpeanu, 1955).

Based on the criterion of the degree of social danger, i.e. that a crime can only constitute an act that presents a certain degree of social danger, administrative offences have also been removed from the scope of criminal offences.

The principle that criminal liability should apply only to acts that present a certain degree of social danger is also reflected in the existing internal rules and disciplinary regulations which, for misconduct which is not

[9] See for details: the Penal Code was republished on 27 February 1948, with amendments up to 1 December 1960, and an appendix covering some special criminal laws. Ed. Scientific, 1960, p. 149.

a serious offence, provide for liability other than criminal liability, i.e. disciplinary liability.

The principle that criminal liability can only be incurred for acts that present a certain degree of social danger was, moreover, present in all the criminal law provisions. Any such text, examined, leads us to the conclusion that not every negative act is incriminated as a crime, but only acts which present a certain degree of social danger, which require, to combat them, criminal law means. As a result, when the general definition of crime, as a generalisation of the essential and common features of all crimes, defined crime as a socially dangerous act, it referred to a certain degree of dangerousness specific to the sphere of criminal acts.

The provisions of the new paragraph 3 of Article 1 of the Criminal Code, laid down by Decree No 212 of 17 June 1960 amending the Criminal Code[10], expressly enshrined the principle that criminal liability may be incurred only for offences which present a certain degree of social danger. However, the text states that "the act criminalised by law does not constitute an offence if, by its concrete content and the conditions in which it was committed, it does not present the social danger of an offence, being manifestly lacking in importance". It follows from this text that, in addition to the concern not to criminalise acts which, because of their social danger, cannot constitute offences and to leave them within the framework of administrative or disciplinary offences, the legislator has also given the judicial body the possibility, in specific cases, where the act, although formally covered by an incriminating text, does not present the social danger of an offence, not to consider it an offence. If the judicial body finds that the act "does not present the social danger of a criminal offence, since it is not significant", there can be no criminal liability. The principle thus has two aspects.

On the level of lawmaking, in which acts that did not present the social danger of a crime were removed from criminalisation and were always removed from the sphere of criminal acts by decriminalisation, replacing criminal liability with disciplinary or administrative liability - those acts that, due to social development, no longer present the social danger of crimes, with less vigorous liability being sufficient to defend legality and the rules of social coexistence.

On the other hand, in terms of judicial activity, the competent bodies were obliged to verify in each specific case whether or not, about the

[10] See, at length, Amendments to the Criminal Code and the Code of Criminal Procedure by the 1956-1960 legislation, Ed. Academiei Române, 147 et seq.

specific content of the act committed and the conditions under which it was committed, it presented the social danger of a crime and therefore whether or not it constituted a crime, being liable to criminal liability.

For criminal law to achieve its objectives by ensuring respect for the rules of conduct it established and the conditions of existence of the society is protected, it was necessary for the acts criminalised as offences to be regarded as such by social conscience.

The principle of concordance between social conscience and the social dangerousness of the acts incriminated and punished as offences was reflected in all the provisions of criminal law. For example, the state of necessity was a cause that removed the criminal nature of the act committed, not just because the law contained provisions to this effect. Even if the law did not expressly regulate it, social conscience, including that of the perpetrator, could not consider an act that meets the objective characteristics of a crime to be socially dangerous if it was committed to averting a serious, imminent and fortuitous danger, especially as the act could be committed not only to save oneself but also to save another. On the contrary, such an act enjoyed the approval of the social conscience.

On the other hand, under normal conditions of social relations, neither the perpetrator nor any other person would have committed the act, so that it did not present a social danger, since it did not endanger the conditions of existence of society protected by the criminal law. The error of fact, as a cause for removing the criminal nature of the act committed, also ultimately owes its effects to this principle, since, in the case of error, the act does not present social danger in terms of the offender's conscience.

In both examples given, and many others could be given, it was stated that social conscience did not recognise any social danger in the acts committed under these conditions so that criminalising and punishing them could only lead to the creation of criminals. Moreover, how the criminal law excluded errors of law from the list of grounds for criminal liability also reflects and confirms this principle. Only 'ignorance or misunderstanding of the criminal law' constituted an error of law within the meaning of that law and was not a defence to criminal liability. But ignorance or misunderstanding of an extra-criminal law does not rank as an error of law but becomes an error of fact, which, on the contrary, can protect against liability.

Thus, the criminal law, determined by the conditions of material life, of social existence, must also necessarily reflect social conscience. That is why no one could or would make a mistake about the criminal law, and the

citizen was required not to break it, regardless of whether he knew it, since he was aware that the criminal law could not incriminate that violation.

The importance of the responsibility that the commission of a crime entailed required that the criminalisation of acts that constituted offences - in other words, the consideration that an act constituted an offence - and the determination of the punishment for its commission, should be made only by law, by the supreme organ of state power or by decree.

We also note that the principle that the law is the source of criminal law was fully realised as regards punishment. All criminal punishments were laid down by law. There was no case that any normative act subordinated to the law provided for any criminal punishment.

Criminal law was also the basic source for determining what constituted offences. In the vast majority of cases, the hypothesis giving rise to criminal liability was completely determined, in all its objective and subjective features, by the text of the law which also laid down the penalty. This is the case of criminal rules with fully determined content. The same is true of criminal rules of reference, which are characterised by the fact that they borrow the penalty laid down in other criminal rules. The referral rule, containing the fully determined hypothesis and referring only for the penalty to another rule, could only be contained in the law. Otherwise, it would have led to the criminalisation of acts by legislation subordinate to the law, which was inadmissible. On the other hand, the sanction to which it refers and which it absorbs can, as we have seen, only be contained in the law.

Next, we note that the criminal law expressly enshrined the principle of the legality of criminalisation, first of all, by stating that only the acts provided for by law as such were criminal offences (nullum crimen sine lege). From 1948 to 1956, this principle was followed by the exception, which was not unlimited but very circumscribed, of criminalisation by analogy. Thus, Art. 1 para. 2 of the Criminal Code, as it stood before Decree No. 102 of 29 February 1956, provided that "Acts considered dangerous to society may be punished even when they are not specifically provided for by law as offences, the basis and limits of liability being determined in this case according to the provisions prescribed by law for similar offences". In any event, after the repeal, by Decree No 102 of 29 February 1956, of the former paragraph 1 of Article 3 of the Criminal Code, the following provisions were repealed 3 - reproduced above - of Article 1 of the Criminal Code, the principle of the legality of incrimination in criminal law has acquired an absolute value (Rămureanu, 1960).

It should be noted that the principle of legality of criminalisation is not to be confused with the principle that the law is the basic source of

criminal law. The principle that the law is the basic source of criminal law refers to the form of the incriminating rule, restricting the nature of the normative acts, in which the criminal incriminating rule may be included, to laws and decrees and eliminating those subordinate to them.

The principle of the legality of the incrimination relates to the content of the incriminating rule, requiring that the act committed, to give rise to criminal liability, must have been provided for as an offence at the time and place of its commission.

The principle of legality of incrimination also expresses the requirement that the criminal rules must make a precise determination of the content of each particular type of offence. In this respect, we note that the principle of legality of incrimination was linked to the achievement of the entire purpose of the criminal law. The ultimate aim of criminalising acts as offences were to prevent the commission of such acts by warning of their criminal nature and the consequences of their commission. Otherwise, when it is not known in advance what is permitted and what constitutes a criminal offence, this aim cannot be achieved, leading to the commission of acts that the perpetrators would not have committed if the law had previously prohibited them as criminal offences.

The principle of legality of criminalisation is enshrined in Article 11(11) of the Treaty. 2 of the Declaration of Human Rights adopted on 10 December 1948 by the United Nations General Assembly. No one shall be held guilty of any criminal offence if, at the time when it was committed, it was not provided for by law. The legality of criminalisation is therefore a principle of generally recognised importance.

Another principle was the generality of the criminal law and its territorial applicability throughout the country. Closely linked to the generality of the criminal law was the principle of territoriality of the criminal law in terms of its application in space, as a basic principle concerning the application of Romanian criminal law in space, which stemmed directly from the sovereignty of the state throughout its territory. In this respect, it was pointed out that the principle was that Romanian criminal law applied to any offence committed on Romanian territory by any person, regardless of his or her status, whether he or she was a Romanian citizen or a foreigner or had no nationality. It was inconceivable that any person, regardless of quality, committing an offence on Romanian territory and being tried by Romanian courts, should be tried under a criminal law other than Romanian law. Therefore, the generality of the criminal law presents two equally important aspects: as its applicability, without exception, throughout the territory, as regards the acts considered as offences, and as its applicability, also without

exception, for all courts in Romania, as regards the perpetrators who commit offences on Romanian territory. This double applicability of the criminal law, in territorial terms, throughout the country, constituted the substance of the principle of the generality of the criminal law, since it was inconceivable that an act could constitute an offence in one part of the country and be lawful in another, just as it was equally inconceivable that an act committed on Romanian territory could be tried by a court under a law other than Romanian law, regardless of who the offender was.

Then, the criminal law did not conceive of criminal liability for the mere intention of a person to commit a crime or for a so-called state of danger of a person, about the commission of crimes. Without a concrete act committed, provided for by law as a crime, there is no criminal liability.

The only basis for criminal liability was only the commission of a specific act (the principle of criminal liability is based only on the commission of a specific act). The principle was reflected in criminal law in that the criminal law did not recognise a criminal liability for the state of danger.

The principle was also reflected in the fact that criminal law rejected any kind of liability for mere intent not materialised by objective acts. It has been said, for example, that the fact that Article 227 of the Criminal Code provides that the offence of conspiracy is committed when two or more persons, by mutual consent, have decided to commit one of the offences provided for in Articles 184, 185, 186, 188, 207, 210 and 221 of the Criminal Code does not invalidate the principle that liability is based only on the commission of a specific act. The principle that criminal liability can only be based on the commission of a specific act is reflected in all the provisions of criminal law which only incriminate as offences specific criminal acts, all of which constitute a shift into the realm of objective realisation and not a mere subjective position, a shift from the realm of possibility to that of reality.

Another principle was the personal nature of criminal liability and expressed the requirement that criminal liability should only arise for one's actions and not for the act of another. This principle was also reflected in the fact that criminal law only envisaged criminal liability for natural persons and not for legal persons. The legal person acts only through the intelligence and will of others who, if they contravene the criminal law, commit the crime themselves, and not the legal person. We note that the principle that criminal liability is only personal is reflected in all the provisions of the criminal code.

We also note the principle of the educational and coercive nature of punishment. Since the criminal law was designed to combat acts of conduct

that undermined the conditions of existence of society protected by the criminal law and using criminal penalties, these penalties had to meet the requirement of being educational and coercive (Bettiol, 1973)[11]. Punishments had to be educational to convince the offender that the rules of social coexistence and the conditions of existence of society had to be respected. They had to be coercive because, given the seriousness of the harm caused by the crime, the offender could only be re-educated under conditions of coercion, either in terms of freedom or in terms of material resources.

We would also point out that Romania was one of the first countries to ensure that offences against peace and humanity were punishable under domestic criminal law, with appropriate penalties for their commission, by Decree No 8 of 16 December 1950 and Decree No 212 of 17 June 1960.

In the literature, it has been pointed out that these amendments to the Criminal Code, including new incriminations or reassessments of criminal liability for certain offences, took place at a time when the principle of the humanism of criminal law was extended, one of its most striking expressions being the introduction into Article 1 of the Criminal Code, by the material definition of the offence, of the provision that a criminal act loses its character if it does not present, in practice, the social danger necessary to characterise it as an offence. Moreover, (Dongoroz et al., 1962) it has been argued that all these amendments, additions and adaptations to the Criminal Code over time demonstrate that 'its degree of responsiveness and sensitivity to all the changes in social life is much greater than in other branches of law' and that it 'can only function effectively if and to the extent that it is brought and kept in line with the real needs of the areas of relations and activities it protects'. The successive amendments, additions and adaptations of criminal law 'have been made to achieve specific objectives.

Summarised, these objectives referred to, we quote: the most appropriate reflection of class interests in the content of criminal law, through the importance given to the criminal protection of those social relations which are primarily and directly linked to the vital interests of the entire people, such as the defence of state security, the defence of peace as an expression of our state's consistent policy of peace and international cooperation, the defence of the common property, the national economy and the rules of social coexistence; ensuring respect for the rule of law, which was one of the fundamental concerns of the state; gradually restricting

[11] It has been held that the principle of non-retroactivity cannot be invoked in the case of serious crimes which constitute crimes against humanity recognised by civilised nations

the scope of coercion through criminal law sanctions; the absorption into the special part of the Criminal Code of the incriminating provisions contained in special laws, insofar as this was possible, in order to achieve a concentrated and unified regulation of the field of criminal law; the extension of the application of certain principles of criminal law such as, for example, the principle of the parity of the penalty applicable in the event of an attempt with the penalty provided for by law for the completed offence and the principle of punishing all participants, regardless of the type of participation, with the same penalty as the perpetrator, principles which differed from those regulated in the general part of the 1936 Criminal Code with subsequent amendments (1948).

However, the explanatory memorandum noted that the criminal law[12], being outdated, no longer corresponded to "new realities, contemporary concepts regarding the assessment of the criminal nature of certain acts, the means of preventing and combating them, the role of punishment as a measure to correct and re-educate the offender, as well as to prevent the commission of new crimes. It has thus become necessary to draw up a new penal code that corresponds to the country's stage of development".

D. The Criminal Code of 1969, the work of a team of legal experts from the Ministry of Justice, the Institute of Legal Research, under the direction of Professor Vintilă Dongoroz, in consultation with numerous theorists and practitioners of criminal law, was a regulation of *socialist essence*, (Dongoroz, 1969) which reflected the social realities of the country, the development of democracy in contemporary Romanian society and expressed particular concern for the continued strengthening of legality.

Conceived on the fundamental principle that only the law establishes the antisocial acts that constitute offences, determines the punishments and educational and preventive measures to be applied to persons who have committed such acts, the 1969 Criminal Code, through its provisions, has taken advantage of the principles and regulations introduced in the previous Criminal Code after 23 August 1944 and has enshrined new regulations with a value of principle that ensures the functional stability and social effectiveness of the Criminal Code (Dongoroz, 1969).

The criminal law explicitly provided for criminal law and recognised the existence of three fundamental principles of criminal law: democratism, humanism and legality, principles which, in the view of Professor Vintilă

[12] Criminal Code, Explanatory Memorandum, Official Bulletin of Romania, no. 79 - 79 bis of 21 June 1968.

Dongoroz (Dongoroz, (1969) underpinned all the regulations, is reflected in all the institutions and rules forming the content of these regulations while serving to characterise the overall system of provisions and to explain and apply them correctly (Dongoroz, 1966; Iliescu, 1964).

It has been argued (Antoniu, 1966) that the principle of democratism derives from the whole content of the Criminal Code regulations and first of all from the text of Article 1: "The criminal law protects against crimes Romania, the sovereignty, independence and unity of the state, socialist property, the person and its rights, as well as the whole order of law". This text of the provisions of the Criminal Code was the fundamental rule, the guideline for understanding, explaining and applying all the other rules of the Code. The close interweaving of the concern for the defence of the system and the concern for the defence of the legitimate rights of citizens showed the democratism of the Criminal Code.

Another manifestation of the democratism of the Criminal Code was to be found in the way in which it regulated the causes that preclude the criminal nature of the act (self-defence, necessity, physical and moral coercion, fortuitous event, irresponsibility, accidental and complete drunkenness, minority, factual error). This regulation took account of the solidarity which had to exist between individuals, and consequently, the effects of these causes were extended to all situations in which the act was committed to saving a person from danger, regardless of whether or not the perpetrator was a relative or friend of the person saved.

Also, a manifestation of democratism was the regulation of 'substitution of criminal liability (Articles 90-99), an institution designed to broaden and strengthen the role of state organisations in the fight against crime. From this, it can be argued that, for the first time in Romanian criminal law, the institution of replacing criminal liability with another type of liability (administrative or through forms of state influence) was regulated, using which the application and execution of penalties for the commission of offences with a not very high degree of social danger could be avoided (Daneş, 1970).

The principle of humanism was consistently applied in the Criminal Code, without being expressed in an express provision, but it characterised all the provisions of the Code. Among the many examples that can be given, we cite the institution of substitution of criminal liability, already mentioned. It is not only democratic but also humanist, sparing those who have committed minor offences and are likely to make amends even without punishment from criminal sanctions.

The Penal Code extended the application of the rule of the more favourable law (mitior lex) to cases in which a final judgment had been handed down before the entry into force of the new Penal Code (Articles 14 and 15 of the Penal Code).

Thanks to this innovation, the principle of the legality of the penalty operated at all times when the penalty was to be referred to the rules of the criminal law, the moment of application, the moment of execution, the moment of invocation as a criminal precedent. This regulation, which extended the effects of the more favourable criminal law even to persons who had been definitively sentenced, highlights the humanist nature of the provisions of the Criminal Code.

The fundamental guarantee of the whole law was the principle of legality (Bulai, 1971).

All the provisions of the Penal Code were included in this principle. But, in addition to its general fundamental aspect - the principle of legality also had a special form concerning the rule of the legality of incrimination and punishment (nullum crimen, nulla poena sine lege), a principle expressly enshrined in Article 2. Thus, "the limits of criminal law may not be exceeded either by analogy or by free interpretation of the rules of criminal law".

We would also point out that other principles were also enshrined, such as guilt; individualisation of the criminal penalty; the existence of safety measures about the offender's state of danger, educational measures for the punishment of minors, provisions that gave expression to the principles of the classical school, the positivist school and neoclassical concepts.

The legislator of the Criminal Code abandoned the principle of double criminality, unlike the previous Criminal Code, which explicitly provided for double criminality. The reason given for this was the questionable idea that the citizen of a country must respect national law wherever he or she is, regardless of the provisions of foreign law. If an act was criminalised in one country and the perpetrator committed an offence, the act was to be treated as such regardless of where the perpetrator committed the act and regardless of the provisions of the criminal law in force at the place where the act was committed.

Article 52 of the Criminal Code defined punishment as "a measure of constraint and a means of re-education of the convicted person" and the purpose of punishment as "the prevention of further offences".

Giving expression to the educational nature of punishment and the humanism of the criminal law, the text enshrined the principle that "the execution of the sentence is intended to form a correct attitude towards work, the rule of law and the rules of social coexistence" and that "the

execution of the sentence must not cause physical suffering or demean the convicted person".

Then, we note that the Romanian legislator has renounced perpetual punishments, such as life imprisonment, as they are contrary to the educational purpose of punishment and at odds with the principle of reintegrating the convicted person, after serving the sentence, into social life, as a useful and honest element.

In the same context, the division of penalties into 'political' and 'ordinary' penalties was also abandoned, as a consequence of the principle that penalties are distinguished only by their seriousness, which is determined in turn by the social danger of the offences for which they are provided, and the division of offences into 'crimes' and 'misdemeanours', bearing in mind that the method of enforcement of custodial penalties had become the same, still under the previous criminal code, for all categories of penalties and offences. The various types of punishment generally specific to the previous criminal codes were also abolished: hard labour, hard time, rigorous imprisonment, correctional prison, etc.

An important moment in the refinement of the penal principles was Law No 6 of 29 March 1973 amending the Penal Code. The experience of four years of application of the provisions of the Criminal Code showed the possibility of broadening its preventive, educational and social scope through a "gradual decompression of the criminal law in favour of other forms of legal intervention and coercion (contraventional, administrative, disciplinary, etc.)" and through wider use of social pedagogical means, "under the sign of which the entire 'penal' policy of the State is being placed more and more effectively".

The law amending the Criminal Code has, first and foremost, made important clarifications and additions to the rules on criminal offences, taking a new approach to the social danger of the act provided for by the criminal law and the correlation between this and the correct understanding and application of the principle of the legality of the offence and the penalty.

By amending Art. 18 to the effect that an act that harms one of the values referred to in Art. 1 of the Criminal Code is a social danger within the meaning of the criminal law. for the punishment of which a penalty prescribed by law is necessary, the legislator has made a conceptual change, leaving the possibility to the judicial authorities to assess, depending on the concrete social danger of the criminal act committed, whether it is necessary to apply a penalty, leaving the principle according to which the application of a penalty was necessary, as required by the text in its original wording,

whenever an act was committed which formally presented the essential features of a crime.

In this view, Article 181 was introduced into the Criminal Code, supplementing the regulation on the social danger of the offence, which contributed to a more scientifically accurate definition of the functionality of the provisions contained in Article 17 of the Criminal Code defining the offence.

The text of Article 181, resulting from the synthesis of the positive practice in the application of Article 1(1) of the Criminal Code, was based on the principle of the right to life. 3 of the previous penal code and the opinions expressed in the legal literature, has set the regulation on the absence of social danger of the offence on a higher level, bringing new elements and useful clarifications that ensure a correct interpretation and application of the text.

According to Article 181 of the Criminal Code, the act provided for by the criminal law does not constitute an offence if, because of the minimal harm done to one of the values protected by the law and its concrete content, being lacking in importance, it does not present the degree of social danger of certain offences (Nicolcioiu, 1973).

The innovation of the regulation was the specification that, in determining the degree of social danger, the account was taken of the manner and means of committing the offence, the purpose pursued by the offender, the circumstances in which the offence was committed, the consequences produced or which might have been produced, and the person and conduct of the offender. In contrast to the previous Criminal Code, the text also established the treatment of offences falling under Article 181, providing that the prosecutor or the court shall apply one of the administrative sanctions provided for in Article 92 of the Criminal Code.

The same law also gave a new regulation to the institution of recidivism, eliminating the first term of recidivism for offences committed with fault, raising the minimum limit for the second term of post-conviction recidivism from 6 months to 1 year of imprisonment and establishing, in the case of post-conviction recidivism, when the second offence is punishable by a fine, that the prison sentence of 15 days to 3 months is replaced by an increase of not more than one-third of the special maximum fine provided for that offence.

With these amendments, recidivism has been regulated in a more nuanced way, bearing in mind that, from a criminological point of view, what makes the repeated commission of an offence more socially dangerous

is the fact that the offender has become accustomed to committing offences or tends to "specialise" in committing a particular type of offence.

At the same time, the legislation has taken account of the trend in modern criminal law theory against the use of short-term custodial sentences, for which the offender should not be sent to prison and which, consequently, should not constitute the first or second term of recidivism.

The law amending the Criminal Code has given new rules to the fine, to emphasise the educational and preventive principle, ensuring a fairer individualisation and extending the possibilities for achieving its purpose. To achieve this aim, the legislator has amended the general and special limits of the fine, increasing them and linking them to administrative fines, in particular, the fine for a minor offence.

To ensure the educational and punitive effect of the fine, a text was introduced into the Code (Article 631) which provided for the possibility of replacing the fine by imprisonment in certain cases and under certain conditions if the offender evades the fine in bad faith. In this respect, however, we would point out that substitution in such a case was not an obligation for the court, but an option and that substitution could not take place if the law did not provide for imprisonment with an alternative penalty of a fine for the offence committed.

However, the most important amendment made to the Criminal Code by Law No. 6/1973 was the introduction in a separate section of the chapter on "Individualisation of penalties" of regulation of original inspiration, correctional work, as a new way of individualising and executing prison sentences of up to 2 years, pronounced by the courts for certain specific offences, reflecting "an advanced conception of our legislator regarding the ethical and social value of work and its quality of re-educating the person who has committed a crime" (Turianu, 1984).

In the light of this legislation, "the most important consequence of the sentence of imprisonment with an obligation to perform correctional work was that the process of re-education was carried out in a state of freedom, without the convicted person having to pass, even for a short time, through a place of detention".

It should be pointed out that, since the prison sentence was served by compulsory labour, the sentenced person had to be receptive to the educational action initiated within and through the labour collective, thus emphasising the role of the State in the success of the sentenced person's re-education, which had to create working conditions for him so that he could fulfil his obligations and, through the labour collective, supervise his conduct and support him in his rehabilitation. In this respect, it has been stressed

that the legislator has emphasised the obligations and responsibility of the social influence in achieving the purpose of the sentence, which is to re-educate and reintegrate the sentenced person into society fully and without any stigmatising consequences of a moral, social or personal nature arising from the execution of the sentence (Dongoroz, 2013).

Summarising the principles set out above, we can conclude that scientific research in the field of criminal law conducted during this period had the major aim of reflecting and promoting new principles of criminal law and providing a scientific basis for new positive criminal law regulations[13].

E. Important changes are also taking place through several other pieces of legislation, such as Decree-Law No 6/1990 abolishing the death penalty.

In this regard, we show that there were at least two considerations, the exploration of which, even briefly, could help to explain and, we hope, understand the abolitionist act.

The first consideration could be built on the theoretical and practical concerns, both individual and collective, that capital punishment has aroused as a criminal sanction. A quick look at the history of the death penalty reveals that the development of ideas about the death penalty has been closely linked to the development of penal, ethical and sociological concepts, and of all aspects of the culture concerned with human knowledge and its problems, since the death penalty and, more generally, the basis of punishment is not just a question of justice. Discussing the issue of capital punishment implicitly means discussing the issue of man, his existence and destiny, human values, the relationship between human values and society, relationships that sometimes come into conflict as a result of committing a crime. Many modern laws no longer include capital punishment among the punishments that can be imposed for the commission of a crime, however heinous it may be, and in most cases, it is replaced by deprivation of liberty. Thus, we can cite the penal codes of Austria, France, Norway, Sweden, Switzerland, etc. But even the laws which still maintain the death penalty do not include it in the general system of penalties, but provide for it as an exceptional measure, which can be applied only in times of war or in very exceptional cases, the number of which is becoming increasingly limited.

[13] In particular, we mention the 4 volumes of Theoretical Explanations of the Romanian Criminal Code, in which a valuable team of authors from the Institute of Legal Research of the Romanian Academy, under the coordination of Professor Vintilă Dongoroz, presented a complete interpretation and analysis of the provisions of the 1969 Criminal Code.

Romanian society could not remain and has not remained, it is understood, outside these concerns. Limiting ourselves only to the legislative level and only to one period, we note however that the history of Romanian criminal law records numerous criminal laws which give expression to the humanist principle to which the Romanian people have linked their criminal thinking.

Taking into account, therefore, the humanist traditions of Romanian concepts and laws, we believe that the only conclusion we can draw is that Romania should have joined, in the name of the same principles and traditions, the removal of the death penalty, replacing it with life imprisonment, as a punishment to be applied for acts of very particular gravity. This punishment fully meets both the human and legal desire to recognise and respect the right to life as an inviolable attribute of the human being, not to deprive him of this right, and the social need not to leave society unprotected, to isolate, by perpetual deprivation of liberty, those who have committed crimes. It is not without interest to point out that multiple multidisciplinary studies of a criminological nature have concluded that the penalty of life imprisonment is even harsher than capital punishment.

Several legislative acts that amended the Criminal Code were Law no. 51/1991 on Romania's national security; O.U.G. no. 105/2000 on Romania's state border; Law no. 678/2001 on preventing and combating trafficking in human beings; Law no. 104/1992, as well as Law no. 45/1993, including Law no. 141/1996, contained massive amendments to regulations drafted at the time by previous governments, etc.

F. The issue is all the more important today because following the accession of our country as a member state to the European Union, (Antoniu, 2003; Fuerea, 2016) there have been major changes, including the re-evaluation of criminal legislation (Isaac & Blanquet, 2006; Stoisavlevici, 2011). Based on this premise, a new Criminal Code was drafted and adopted by Law No 286/2009, applying from 1 February 2014[14].

In this respect, it has been pointed out in legal doctrine that the new criminal law is thus anything but the expression of a system of criminal law, as was, instead, the 1969 Criminal Code (Avrigeanu, 2013).

Another, the majority opinion (Antoniu, 2003; Antoniu, 2012; Basarab, 2004; Păvăleanu, 2009; Streteanu & Nițu, 2014) argues that the legislator has endeavoured and succeeded in drafting a more systematic, more complete law (absorbing many of the hitherto disparate criminal

[14] M. Of. no. 510 of 24 July 2009. From this point of view, Matei Cantacuzino expresses himself as follows: "The new law must have preference over the old law because in theory it achieves, or is intended to achieve, social progress, a better state".

legislation), more appropriate to the criminal phenomenon with which we are confronted, more thoroughly based on the principles of European Union law. From the regulatory point of view, these are: the principle of immediate applicability, which leaves it up to the Member States to decide how to transpose it into their national systems, by the dualistic or minimalist theory; European Union law, by its very nature, (Isaac & Blanquet, 2006) is immediately applicable in the legal order of all the Member States, by the concept that these States have adopted about international law. It could therefore be said that European Union law is automatically integrated into the internal legal order of the Member States by simply entering into force, without the need for any special form of transposition; the principle of the supremacy of European Union law over national rules means that all rules of European law have the effect, about the national law of the Member States, by the mere fact of their entry into force, not only of rendering inapplicable in law any contrary provision of existing national law but also of preventing the valid adoption of new legislation in so far as it is incompatible with European rules; (Jacqué, 2010) and the principle of the direct effect of European Union law, which consists in its capacity to create rights in the assets of natural and legal persons which they can invoke before national institutions, which are obliged to guarantee them.

Then, on an overall examination of the principles governing the application of European Union law by national authorities, several essential elements can be identified around which the content of these principles revolves and to which the Member States have agreed to attach the greatest importance to promote security and cooperation. Thus: the principle of loyal cooperation, stems from Article 4(3) TEU, according to which "Member States shall take any general (Marty, 2008) or specific measures required to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the European Union. In short, Member States have not only a positive obligation to take all necessary measures for the effective application of Union law, but also a general negative obligation to refrain from acting in breach of that law; for example, according to Article 4(3) TEU, "Member States shall take all necessary measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the European Union". of Framework Decision 2004/757 on illicit drug trafficking, each Member State shall take the necessary measures to ensure that the offences referred to in that Framework Decision are punishable by effective, proportionate and dissuasive criminal penalties.

On the other hand, the European Court of Justice has ruled that in cases where the offence committed is less serious, certain penalties, in

particular imprisonment, are disproportionate. For example, failure to comply with the formalities necessary for establishing the right of residence of a worker covered by European Union law cannot be punishable by imprisonment, as such a penalty is disproportionate to the seriousness of the offence and thus constitutes a restriction on the free movement of workers; (Antoniu, 2008) the principle of the autonomy of the Member States in choosing the means of enforcing European Union law means that the Member States are free to choose the means of enforcing European Union law. If the Directive does not provide for specific penalties, Member States are free to criminalise conduct that infringes its provisions, in so far as they consider that the provision of criminal penalties is the most appropriate means of ensuring the full effect of the Directive. However, the penalties provided for must comply with the principles laid down in the Greek Corn judgment, namely that they must be equivalent to those applicable to similar infringements of national law and that they must be effective, *proportionate* and *dissuasive* (Stoisavlevici, 2012).

In the criminal law literature, (Antoniu, 2001; Pradel & Carstens, 1999) it has also been pointed out that, although there is not yet a European Union criminal law, only national criminal law systems of the Member States, the Europeanisation of national criminal law systems is increasingly emphasized (Vlădilă, 2013). Moreover, with the entry into force of the Treaty of Lisbon (2009), Article 3(2) of the Treaty on European Union (TEU) states that "the European Union (Jacqué, 2010) shall offer its citizens an area of freedom, security and justice, without internal frontiers, in which the free movement of persons is assured in conjunction with appropriate measures concerning... preventing and combating crime".

In addition to these principles attributed to the European Union (Art. 82 TFEU[15], (Zapatero, & Martin, 2008), Art. 83 TFEU[16] and Art. 325 TFEU) in the field of harmonization of national criminal law, the principle

[15] Judicial cooperation in criminal matters within the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws, regulations and administrative provisions of the Member States in the areas referred to in paragraph 2 and in Article 83.

[16] The European Parliament and the Council, acting by means of directives in accordance with the ordinary legislative procedure, may establish minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These crime areas are terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, cybercrime and organised crime.

of attribution of competence (fundamental principle of European Union law) has been revealed, the European Union acts only within the limits of the competences attributed to it by the Member States by the Treaties to achieve the objectives set by these Treaties[17]. For example, in the area of fraud, Article 325(2) of the Treaty on European Union states that 4 TFEU also gives the Union the power to adopt its measures to prevent and combat fraud affecting its financial interests. It, therefore, follows that any competence not conferred on the Union by the Treaties belongs to the Member States.

In addition to this, it has also been mentioned in criminal law doctrine (Antoniu, 2005) that the exercise of these powers is also governed by the principle of subsidiarity (the European Union intervenes only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States) (Munteanu, 1998; Renucci, 2001).

The principle of subsidiarity applies only in areas which do not fall within the exclusive competence of the Union, which is also the case in the field of criminal law[18]; and the principle of proportionality (action by the European Union, in content and form, does not go beyond what is necessary to achieve the objectives of the Treaties) (Bogdan & Floru, 1969).

These principles constitute the most general rules of law and conduct, compliance with which by the Member States is essential for the development of normal relations between them and for the security of the European Union.

However, it should be noted that the principle of the legality of criminal offences and penalties is defined in different texts, depending on whether it refers to the offences (legality of criminal offences, Article 1 of the Criminal Code) or criminal law sanctions, i.e. penalties, security measures or educational measures (legality of penalties, Article 2 of the Criminal Code). In terms of the theory of criminal rules, abandoning the dualism between precept and sanction leads to an insoluble controversy (Avrigeanu, 2006).

[17] In this respect, we would point out that following the entry into force of the Treaty of Lisbon, Article 3(2) of the Treaty on European Union provides that the Union shall offer its citizens an area of freedom, security and justice, without internal frontiers, in which the free movement of persons is assured in conjunction with appropriate measures to prevent and combat crime.

[18] According to Article 4(2)(j) TFEU, the area of freedom, security and justice, which includes criminal law, is one of the areas in which the Union's competence is shared with the Member States.

Let us see in the following what is meant by the legality of incrimination and the legality of punishment.

By legality of incrimination we mean the idea that the criminal law must provide for the acts that constitute offences (Article 1(1)), and Article 1(2) shows that the criminal law must provide for the act that constitutes an offence before the act is committed. Both ideas form the substance of the general principle of the legality of criminalisation, a principle which is also enshrined as the marginal title of this article. It follows from this that if the act does not have the characteristics required by law to constitute a criminal offence, the provisions of the Code of Criminal Procedure consider the criminal action to be groundless and oblige the prosecuting authority to dismiss the case because "the act does not exist" (Article 16 of the Criminal Procedure Code) and the court to acquit because the act "does not fall within the provisions of the criminal law" or "lacks any of the constituent elements of the offence".

This principle has become dominant in all modern legislation as a permanent guarantee of respect for human beings and effective protection of fundamental rights and freedoms. Recognising the universal significance of human rights and fundamental freedoms, the provision stipulates that the Member States shall consistently respect these rights and freedoms in their mutual relations and promote their effective universal enforcement.

As regards the content of human rights, it provides that the Member States will act by the purposes and principles of European Union law and the Universal Declaration of Human Rights and fulfil their obligations under the Charter of Fundamental Rights of the European Union, including the Covenants on Human Rights.

In addition to this justification, we point out that, after a correct interpretation of the fundamental law, both the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights are part of domestic law and have, in principle, priority over it (Article 20(2)). Moreover, according to settled case law, the national court is obliged to interpret its national law within the limits set by European law to achieve the result laid down in the European rule.

From this principle, some basic rules enshrined in criminal law also follow, namely: the rule of non-retroactivity of criminal law, which prohibits criminal liability for an act which, at the time it was committed, was not provided for by law as a crime. In other words, the law must incriminate an act and describe it before the act has been committed and the perpetrator is subject to punishment. As is well known, criminal law is not, as a rule, retroactive. This principle is also enshrined in the fundamental law, which

provides in Article 15(15) that 2 that "the law shall apply only to the future, except for more favourable criminal or misdemeanour laws (Antoniu, 2002).

The legality of criminal law sanctions (Article 2(1) of the Criminal Code) underlines the idea that the criminal law must also provide for penalties and educational measures that may be taken against persons who have committed offences, as well as safety measures that may be taken against persons who have committed offences provided for by the criminal law. Paragraph 2(2) of Article 2 of the Criminal Code requires that the penalty that may be imposed, or the educational or safety measure that may be taken against a person who has committed an offence provided for by criminal law must have been provided for by criminal law before the date on which the offence was committed. Further, Article 2(3) of the Criminal Code regulates the prohibition of a penalty being determined and imposed outside its general limits.

From this point of view, we would point out that such a solution does not coincide either with the wording of the legislation of other European Union Member States, such as, for example, the Italian Penal Code[19], which defines the legality of the incrimination and punishment only by reference to the first idea, the existence of the law, or with the solution of French criminal law[20] (Article 111-3), which is similar to the Italian one, or

[19] The Italian Criminal Code provides in a single text, art.1, the principle of legality of incrimination and punishment (Nobody can be punished for an act that has not been explicitly provided for by law as a crime, nor can punishments be applied that have not been established by law).

[20] French Criminal Code in Art. 111-2 para. (1) formulates the principle of the legality of incrimination and punishment in a single text. "The law determines the crimes and offences and fixes the penalties applicable to their perpetrators", and in Art. 111-3 the same idea is repeated in another form: "No one may be punished for a crime or an offence whose elements are not defined by law." [art. 111-3 para. (1)], "No one shall be punished with a penalty which is not prescribed by law." [art. 111-3 para. (2)]. As can be seen, French criminal law makes no mention of educational or security measures, expressing itself generically, understanding punishment to mean both criminal penalties (correctional penalties) and custodial or restrictive penalties (Article 131-6), including security and educational measures. At the same time, it makes no mention of minors to whom, according to Article 122-8, protection, assistance, supervision and education measures shall be applied if they have committed an offence, under the conditions laid down by a special law. This law also determines the cases in which penalties may be imposed on minors who are over 13 years of age. By inference, it follows that the principle of the legality of the incrimination and punishment formulated in Articles 111-2 and 111-3 also applies to these forms of punishment, even if they are not specifically mentioned in the above texts.

with that of German criminal law[21] (§1), which defines the legality of the incrimination and punishment only by reference to the second idea (anteriority of the law about the act committed).

We note that Spanish criminal law provides a somewhat different solution. Thus, the Criminal Code, first of all, regulates the legality of the incrimination separately [Article 1(1)] "no act or omission shall be punished unless it was provided for by law before it was committed". Secondly, Art. 2 of the Spanish law refers to punishment: "No one shall be punished for a misdemeanour or a light offence unless it was provided for by law before it was committed." [art. 2(1)]. Then, Spanish criminal law explicitly mentions the situation of security measures [Art. 8(2) and Art. 2, 2nd sentence], extending the principle of legality of incrimination and punishment to them as well (Antoniu &Toader, 2015). 52).

In our doctrine, (Pascu, 2014) this provision has been interpreted in the sense that the regulation in different texts of the principle of legality of incrimination and the principle of legality of criminal law sanctions does not lead to the separation of the structural elements of the norm of incrimination of the act. In addition, (Zolyneak, 1993) it was also argued that this was consistent with the provisions of Article 73(h) of the revised Romanian Constitution, according to which "offences, penalties and the system of enforcement of penalties shall be regulated by organic law".

In another view, it is argued that there is the legality of incrimination, a legality of penalties and a legality of measures (safety or educational), the principle of criminal legality being presented in all these aspects. The arguments put forward to justify the two general principles in two separate texts do not seem convincing to us, since the rules are unitary, perfect, as a rule, as opposed to incomplete, imperfect, divided rules[22] (Manzini, 1961) (the precept and the sanction are not part of the same legal text, but two different texts), which are the exception.

Secondly, the majority of criminal doctrine maintains that the criminal sanction cannot be separated from the description of the criminal

[21] The German Criminal Code regulates the principle of legality of incrimination and punishment in paragraph 1, which has the marginal title "No punishment without law", and the content of the rule states: "An act may be punishable when the law has determined the content and punishment before the act is committed. ' As can be seen, German criminal law makes no special mention of security measures, educational measures or punishments for minors (see the special law of 11 December 1979), but the principle of legality also extends to measures and punishments which may be taken or imposed in such cases.

[22] Moreover, Manzini shows that the two components of the incrimination rule are inextricably linked, even when they are not contained in the same incrimination rule.

offence (except, possibly, for didactic reasons), because the criminal rule contains in a single unit both the description of the acts that the criminal law prohibits and the sanction[23] (Pannain, 1962). According to Professor Vintilă Dongoroz, such a solution would unjustifiably separate the elements of the structure of the criminal law, which is made up of a *precept and a sanction*[24], (Biro, 1968) which would imply a unitary formulation of the precept (description of the offence) and the sanction within the principle of legality. Together, these two aspects constitute what is known as the legality of the incrimination". Reasoning in this way, the author argued that "it is not possible to conceive of a rule designed to ensure order which is not always composed of two elements: the precept and the sanction.

Professor George Antoniu also justifies the same, (Antoniu, 1996; Antoniu, 1998; Antoniu, 2007) pointing out that the text expresses the idea that only by law can an act acquire the status of an offence, a thesis which is opposed to the idea that offences can also be constituted by normative acts inferior to the law (ordinances or government decisions, decrees, etc.). In essence, it is stated in this context that it is excluded [except in extraordinary circumstances, as stated in Article 115(1)(a) of the EC Treaty] from the scope of the law. (4) of the Constitution[25]], (Aghenitei, 2009), the criminalisation of certain acts using Government Emergency Ordinances and even more so the practice of frequent use of emergency ordinances (Art. 115 (5) of the Constitution) without verifying the existence of those extraordinary situations to which the constitutional text refers.

Moreover, the Court of Justice of the European Union, referring to the principle of the legality of penalties, points out that, as enshrined in Article 7 of the European Convention on Human Rights and Fundamental Freedoms, being a general principle of European law inspired by the constitutional traditions of the Member States, it prohibits the criminalisation of, for example, the transit of counterfeit goods through Austrian territory even if the national rule would be contrary to European

[23] The sanction, as Pannain pointed out, has the role not only to show the consequence of the non-observance of the precept, but it also expresses the index of the seriousness of the violation of the precept, by fixing the limits of punishment by the legislator.

[24] As Biro notes, the rule of conduct contained in the incriminating norm is not a mere precept but a sanctioned precept.

[25] In criminal doctrine, the view has also been expressed that the rule of 3 days after publication for the entry into force of the emergency ordinance must be respected. Thus, the cited article of the Constitution, providing a specific procedure for the entry into force of the emergency ordinance, implicitly derogated, also constitutional, from the 3 days provided in Article 78 of the Constitution. This rule therefore no longer applies.

law. From this we deduce that the principles of Romanian criminal law can only be interpreted in a unitary manner, complementing the provisions of Article 49 of the Charter of Fundamental Rights of the European Union (Puşcaşu & Ghigheci, 2020).

4. **In conclusion**, it can be said that more recent or more distant theoretical experience has shown that there are principles enshrined in all criminal legislation (1865 to the present day) that are recognised as constants of criminal law[26], such as humanism, democratism, the legality of incrimination and punishment, the application of criminal law in time, space, to offenders, to the offence, to punishment, and cooperation between the Member States. These principles form an interdependent complex, each of them mutually conditional and characterising the whole of criminal law.

It would also be useful to merge the two legal texts (Art. 1 and Art. of the Criminal Code) into a single text with the marginal title of the legality of incrimination and criminal law sanctions. At the same time, the principle would also be in full agreement with the principle of legality and proportionality of offences and penalties laid down in Article 49 of the Charter of Fundamental Rights of the European Union[27].

At the same time, we note that the degree of social danger has varied in the development of society from one period to another, which has led either to changes in the legal limits of punishment or to the decriminalisation of certain offences and their transfer to the administrative sphere.

Then, nowadays, the process of Europeanisation has a decisive influence on Romanian criminal law.

Finally, we recall that the architecture of the principles should be analysed, in part, only for study purposes, but they cannot be separated from each other in terms of their content and purpose (unity of principles). Thus,

[26] In this regard, Professor Vintilă Dongoroz points out that what has changed, what has been removed and replaced, is the social-political context of these principles, institutions and incriminations, a content that has given these rules "another normative character, another value, another aptitude and functional efficiency.

[27] The provision contained in para. 1 provides that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor may a heavier penalty be imposed than that applicable at the time of the commission of the offence. If, after the offence has been committed, the law provides for a lighter penalty, the latter shall apply. Paragraph 2 provides that this Article shall be without prejudice to the prosecution and punishment of a person who is guilty of an act or omission which, at the time of its commission, was criminalised based on the general principles recognised by the community of nations. Finally, paragraph 3 states that penalties must not be disproportionate to the offence.

criminal liability is based only on the commission of a crime, which is inextricably linked to the legality of incrimination and criminal law sanctions, which requires that the acts constituting the offence be provided for in the criminal law at the time and place of the commission of the offence, the personal nature of criminal liability, which requires that such liability should apply only to acts committed by the person held liable, the concordance between the seriousness of the act and criminal liability, which requires, first and foremost, the existence of a specific act to proportion the liability to its seriousness, etc.

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