

Project Name: Constants of criminal law and
normative identity of Romanian society (1939-1969-2009)

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SUMMARY SCIENTIFIC PROGRESS REPORT PREPARED FOR THE PERIOD OF EXECUTION OF THE PROJECT IN 2013

The research was conducted through a combination of individual and collective efforts of the team. Monthly team meetings were organized to assess progress in research of each team member and any difficulties encountered. In carrying out the research were discussed the following issues: developing research premises and assumptions of scientific progress of the law science from the early nineteenth century in the context of the distinction between logical dimension of legal concepts and the social dimension a specific order, with special focus on the impact of totalitarian ideology on the relationship between these dimensions; identifying and obtaining relevant national and European foreign literature; prioritizing the purchase of logistics and travel planning needed to run targets in 2013 and subsequent years; identifying legal issues arising from legislating in an area where EU institutions jurisdiction is limited to national sovereignty (criminal law) as a particular case of the general issues of practical importance.

In identifying, treating and working hypotheses in goals have contributed the following training documentations:

I.1. Dr. Norel Neagu: Participation in the Annual Conference of the Academy of European Law on European criminal justice (Trier, Germany, October 10 to 11, 2013)

- Confirmation in the field of European criminal law of the validity of the working hypothesis on de facto separation of criminal law theory of real social order to which the criminal law belongs;
- Highlighting the special difficulties involved to justify the separation of criminal law policy and specific configuration of judicial institutions such as the European prosecutor.

I.2. Dr. Tudor Avrigeanu: documentation stage at the Max Planck Institute for foreign and international criminal law (Freiburg im Breisgau, Germany, November 12 to 22, 2013)

- Update documentation on science genesis of criminal law as a science in the general context of the evolution of legal theory at European level;
- Confirmation of working hypotheses concerning the genesis and evolution of so-called finalism theoretical current and especially the so-called logical structure of things closely related to the imperative distancing of the postwar science of criminal law from the specific distortions of the National Socialist ideology;
- Checking the elements of continuity and discontinuity between theoretical developments in terms of criminal law in Germany and Romania.

II. Scientific results of the research directions

II. 1. Restoring the original political dimension of (criminal) law science

II.1.1. The conducted research has fully confirmed the existence of the link between the displacement of the criminal law theory from a theory of the real social order towards a

logical construction of concepts. The reason of this displacement was the imperative necessity to protect the theory of criminal law considered still as a science from any distortions due to the inevitably ideological constraints originating by the ideological totalitarianism in the twentieth century which did not allowed any different perspective on the social order outside the one officially propagated. This link has manifested itself in Germany and Romania both because of the imperative overcoming a totalitarian past (criminal law science since 1945 manifestly apolitical precisely in order to separate itself most clearly from the ideologically marked discourse en vogue during the National-Socialist regime) and as a measure towards the survival of the theory of criminal law as a science under the conditions of a totalitarian ideological pressure (criminal law science in Romania focuses on so-called constants of criminal law claimed independent of any social order and political regime). Although different in terms of content, both Welzel's ontological structures and Dongoroz' normative constants find themselves on the same plane of abstract logical construction, that is: they are considered as separate from the actual order of society of their time.

II.1.2. The separation of the logical plan of abstract legal concepts and the real plan of social order cannot be fully understood if considered only in the particular context of the twentieth century totalitarianism. This separation is really an essential feature of modern legal science that is: of a legal science which was born as a science about the law of a rationally justified social order and in opposition to traditional legal science which at its turn considered itself only as an interpretation of the historically given order by specific legal categories. The difference became obvious through the development of the modern natural law theory during the sixteenth and seventeenth century. This is the theory to which the modern legal science owes the formal logical structure of fundamental legal concepts, and it is of greatest importance that the same structure can be found both in the case Welzel's ontological structures and in the normative structures of Dongoroz. This aspect, usually taken in consideration only by legal philosophers and historians of the (private) law was further developed by examining the difference between the "political element" and the "technical element" of law, promoted by Friedrich Carl von Savigny - the founder of the Historical School of Law and founder of the modern private law science in Germany during the early nineteenth century. The results achieved so far by the investigations conducted within the area of private law had highlighted the ideological factor affecting already Savigny so-called political element of the right as well as the dynamic through which the legal science was transformed into a pure "jurisprudence of concepts" understood as purely logical tools. These conclusions could then be used in turn to explain science identical structural dynamics of criminal law in the twentieth century.

II.2. Politics and techniques in the institutional context of European criminal law: the particular case of the European Prosecutor

II.2.1. Modern criminal law is the direct product of modern doctrines of natural law (rational) and state theory arising from these doctrines. This conclusion is valid in terms of the existence of a European Criminal Law, European Union assimilating an early modern federal state model. A European criminal law can be imagined when there are legal property / common European social values, of social realities, traditions and common aspirations. In any other circumstances one can talk about a European law imposed by force by the state or by political compromise.

II.2.2. There are at the moment premises for a European criminal law system and several areas where intervention of the European legislator does not violate the fundamental principles of modern minimal intervention (subsidiarity and proportionality) have been identified, bringing extra added value to EU regulation to protect certain legal goods against transnational acts. In other words, we can talk about a justified intervention of the European legislator in areas of interest to European citizens such as human trafficking, drug trafficking, organized crime, cybercrime, where the transnational character of the facts is increasingly highlighted more European Union statistics reported by Member States. Action of the European legislator would be justified in these areas either by protecting significant interests of European citizens by these facts (the theory of harm - harm principle), or by protecting legal goods (person's life, liberty, health) (legal goods theory); both uniform incrimination and efficient judicial cooperation to criminal prosecution and trial of the perpetrators of these acts are needed at EU level. Moreover, by creating an area of freedom, security and justice in the European Union, it enables criminals to operate in a common area without borders. Consequently, to protect the fundamental interests shown, it is necessary that judicial bodies also benefit from such a possibility. It follows that to protect the functionality of the area of freedom, security and justice in the European Union, a judicial body with jurisdiction extended to the whole space and union jurisdiction within the transnational actions affecting the fundamental interests of European citizens is required. Hence the idea of European Public Prosecutor's Office.

II.2.3. But the European Public Prosecutor has an investigating material competence, which is the protection of the European Union financial interests. Leaving aside the fact that the financial impact of fraud affecting the EU budget (as shown in the statistics) is below 0.5% annually, and that the mainly transnational nature of such fraud is not proved (hence the need to criminalize such acts and the need create a European body for monitoring them are not shown), we should note that the European legislator uses in criminalizing both acts affecting the financial interests of the European Union and the creation of European Public Prosecutor, the theory of economic analysis of law and not harm principle or the legal goods theory. The message to Europeans, is, as of consequence, terrible: one cannot create, for lack of political consensus, a European Public Prosecutor's Office to investigate crimes against transnational fundamental legal goods (life, physical integrity, freedom, health), but one can create an institution to protect the financial interests of the European Union. In other words, although in principle the European Union follows the basic principles and fundamental rights arising from traditions common to the Member States, what matters is basically political compromise in making decisions and creating tools in the field of criminal procedural law. You should notice that at the moment hierarchy of values is reversed at European level in criminal matters, and the creation of a European Criminal Law from healthy premises, scientifically based and grounded in practical realities and traditions common to the Member States is still a dream to be achieved in the European Union at this time.