

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

Financing Contract no. 33 / 29.04.2013

SUMMARY SCIENTIFIC PROGRESS REPORT PREPARED FOR THE EXECUTION OF THE PROJECT IN 2014

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.

By clarifying the methodological framework in which the difference between political and technical element manifests itself in criminal law and explains the genesis of theoretical systems built by Hans Welzel and Vintilă Dongoroz, the research conducted in 2013 in the project opened up the prospect of a comprehensive comparative analysis of how each of these two authors operate with this difference when studying fundamental concepts of criminal law theory and action, guilt or participation forms. The results of this analysis carried out in 2014 was able to explain both failures faced today (mostly) in the science of criminal law in Romania and to provide an alternative solution for the construction of a conceptual system that explains the Romanian criminal law from the perspective of the real social order of Romanian society today.

In identifying, treating and working hypotheses in goals and travel contributed researchers:

DOCUMENTATION

I.1. Dr. Tudor Avriganu: documentation stage at the Max Planck Institute for foreign and international criminal law (Freiburg im Breisgau, Germany, June 22 - July 4 2014)
- Updating documentation and confirmation of working hypotheses regarding the methodological framework in which the difference between political and technical element manifests itself in criminal law and explains the genesis of theoretical systems built by Hans Welzel and Vintilă Dongoroz;
- Checking the elements of continuity and discontinuity between theoretical developments in terms of criminal law in Germany and Romania.

The presentation of the project in general, assumptions and preliminary results of research in 2014, were made in a number of participations in international conferences. The final results of the comparison between developments in the science of criminal law in Germany and Romania will be presented in a conference held by the project manager at the Max Planck Institute for foreign and international criminal law on 17 December.

CONFERENCES

I.2. ISI International Conference: New criminal law-milestone in the development of Romanian law, Bucharest, March 21, 2014.

Tudor Avriganu: Constants of Criminal Law?

(Accepted for publication in the Proceedings of the conference)

I.2. The International Criminal Law Conference: Crimes, Criminals and the New Criminal Code: Assessing the Effectiveness of the Legal Response, Cluj-Napoca, 27 to 29 March 2014

Tudor Avrigeanu: Criminal Guilt: 20 years (1994 - 2009/2014)

I.4. Max-Planck-Institut für internationales und ausländisches Strafrecht, Freiburg: Lecture Series "Wednesday Lecture Series

"Presentation Tudor Avrigeanu, December 17: "Hans Welzel und Vintila Dongoroz: Strafrechtswissenschaft in Deutschland und Rumänien im 20. Jahrhundert"

II. Sectorial approach compatibility between traditional Romanian doctrine and functional approach promoted in Germany

II.1. Even on the application of the more favorable criminal law institution, functional theory finds its applicability to resolve controversial issues encountered in judicial practice. Thus, by a literal and systematic interpretation of the notion of "special maximum law provided punishment" in accordance with art. 6 Criminal Code and by linking this notion with the "punishment prescribed by law" in art. 187 Criminal Code, one arrives at different interpretations of data in respect to similar legal issues in solving judicial differences in concrete cases in Supreme Court rulings.

Instead, the functional interpretation, using normative reasons that determine the functionality of what one usually calls "principles of law" (principle of legality, equality and non-discrimination), succeeds in reaching a common understanding of the term "special maximum of an offense" in more favorable criminal law enforcement after final judgment of the case: this term must be interpreted as the maximum of the punishment for the offense (or plurality of offences) committed, specifically applicable to a person who would be judged at the time of analysis, taking into account all causes mitigating or aggravating circumstances in question. To judge differently means to reach contradictory solutions, while being in breach of the principle of legality or the principle of equality and non-discrimination, or of both principles.

II.2. Analysis of the stage reached in the matter of Romanian literature in respect to crimes committed by omission opens the way to implementing the concept of guarantor and the difference between personal and institutional guarantees that offers both simple and elegant solution to the problems that perpetuate the naturalistic difference between commission and omission poses in the field of the general theory of crime.

II.3. Global approach to compatibility between traditional Romanian doctrine and functional approach promoted in Germany

Regarding divergent developments in Germany and Romania, the comparison between Dongoroz's formalistic and Welzel's finalist approach, the research has shown that the two doctrines led to the development of doctrines antithetical dominant (mainstream). Developed in turn as dogmatic opposition to the German mainstream, but no less an integral part of German criminal law doctrine, the functional approach is presented as a true synthesis of the two perspectives (Dongoroz and Welzel), so connecting Romanian criminal doctrine to this

approach can be achieved naturally without upsetting the structural and terminological innovations that characterized and still characterizes this reception in Romanian law of the German mainstream.

III. Dissemination of research results; completion of the performance criteria set for the midway point of the project (2014)

III.1. Articles published

III.1.1. T. Avrigeanu

"Savigny and constants law", Published in Romanian Pandectele, no. 10/2014,

BDI Publication: <http://www.wolterskluwer.ro/pandectele-romane-2014/>

III.1.2. N. Neagu

"The application of more favorable criminal law after final judgment of the case"
Published in the journal Law no. 11/2014

Publication BDI: <http://ujr.revistadreptul.ro/>

III.1.3. I. Ifrim

"Some reflections on the crime of commission by omission", Published in the journal Studies and Legal Research, no. 1/2014

Publication BDI: <http://www.rscj.ro/>

III.2. Articles accepted for publication

III.2.1. T. Avrigeanu

"Constants of crimes in the law?", Proceedings of the international conference "New criminal Legislation - important phase in the development of Romanian law".

The performance criteria set for the midway of the project (2013-2014) were fully implemented, with 4 articles in mainstream journals (BDI) - point III.1., and 1 study in foreign language in a collective volume disseminated in more than 12 libraries of prestigious foreign universities - point III.2 (forthcoming volume Monduzzi Publishing House - Italy).

IV. Prospects for research in 2015

Analysis of the functional approach, realized in 2014, creates prerequisites for overcoming differences in perspective by showing the synthesis of formalistic approach of Dongoroz and Welzel's finalist in Contemporary German functionalist theory. The synthesis of the two

approaches is to be developed as a system of general theory of crime on the coordinates of Romanian criminal law in force.