BABEŞ-BOLYAI UNIVERSITY

Faculty of History and Philosophy

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OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE AT EUROPEAN LEVEL

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Offenses against the realization of justice, at the European level

The current dynamics of the international system represent the materialization of the historical evolution and the emergence of new current (of thinking or action), generated by the apparition and development of new necessities, both at the individual level and at the national and non-national level.

The collective security is a basic element of the international relations and this because the manner how it is seen security affects and directions and the manner how the theories in field are researched and approached. In the first half of the 20th Century, the two great streams of thought, the realism and liberalism, used a small understanding of security, this have been seen as the case when a state is not involved or threatened by any war. Also, it was thought that the most efficient mechanism for avoiding a war, within an archaic and competitive international system, is the equilibrium of power. But the evolution of the issues on the international stage proved that this mechanism is not the most adequate for maintaining a favorable peaceful climate. The previous vision was presented by the realists and given the proof of its partial falsity, the liberals' have not been delayed in presenting their answer. Their reaction in maintaining a peaceful state was the institution of the collective security.

For the followers of the realism system, the world is seen, as we mentioned earlier, as being an archaic and competitive environment, and the relations between actors are determined by a permanent mutual distrust. For each state, the survival is the central goal, and this leads to situations like the security dilemma. The security dilemma represents one of the central ideas of the political realism. Due to the anarchy of the international system, the states see the security as a consequence of power. In order to

ensure their security, they elaborate and practice policies that might lead to the development of their military capacity, thus, increasing their power. The issue is that the other states, so put in a position of inferiority, on their turn, design also and practice policies that could narrow the gap of capabilities or even to obtain on their turn, an advantage, cancelling this way the initial advantage of the first state and thus, countering the security advantage initially gained by the others.

At the level of the entire system, the suspicion, in the realist vision, towards the other's intensions, is the one imposing for the most adequate and efficient manner for maintaining security to be a permanent counterattack of the actors that might gain to much power, and thus, might become threats for the other actors. Therefore, the power balance was and in at a certain level still is an institution by which many actors can block the ascension of an actor that has revisionist claims or hegemonic tendencies. In order to function it is required for the states to identity that element that can be transformed in a threat and to form a coalition in order to restrict the rise.

The liberals believe and sustain the cooperation between states. They accept and recognize the importance held by the military elements within the international relations, but their vision includes also the ideas and the manner how the system is seen by the actors. The liberals say that the actors are not convicted by their nature towards the mutual distrust, and the cooperation is possible. This shall lead to the partial elimination of the negative effects that might be raised by the security dilemma. The solution proposed by the followers of this vision implies the overcome of the state of fear and abandonment of the balance of power, by a permanent coalition of the status, so called quo states.

By the simple mutual recognition and acceptance, the actors directly undertake to preserve the international peace and security. In case one of them will breach them, it shall deal with the conjugated power of all the other states. Thus, the entire international community shall act in order to punish the aggressor and to reestablish the initial order. As a consequence, the fundamental principle of the collective security is also the reestablishment of the initial order, this being translated by the expression “all for one”. Moreover, the international peace and security are two interdependent and indivisible aspects.

By collective security and the other principles promoted by liberals, the balance of power from an archaic environment is replaced with a regulated and institutionalized one. In practice, this aspect would be translated by the fact that any element of the system shall consider itself threatened by an attack to which it is subjected any element of the community. A system of the collective security requires, in order to function, a basic condition, namely: no state shall be sufficiently powerful to allow itself to ignore the wish of the all other ones. If this would not happen, any imposed sanction would not reach its purpose.

For maintaining the aforementioned, since ancient times, the actors established international rules and norms of conduct. The international legal system represents the foundation of the international relations and regulates the conduit of the actors in relation with the others or in relation with other elements like: regional, local authorities, communities, groups, individuals, etc. The public international law is one of the law branches including legal principles and rules, written or unwritten, created by the actors of the international system, based on a will agreement. All these formalities, as we know them in their current state, represent the agreement and negotiation between the actors of the international system since centuries ago, but mainly after the First

and Second World War. The peace desiderate and maintaining a climate favorable for development and evolution are only several of the aspects that made the states and not only to cede their sovereignty in order to achieve the objectives.

Moreover, at the regional and even global level, the actors, especially the state ones, established a wide variety of forms of organization, within which they have associated depending of each interests and availability. In the last decades, the evolution and the more and more profound transformation of such international entities, and also the need to answer jointly against risks, threats and vulnerabilities has produced a phenomenon with an exponential increase, namely: the uniform legal and judicial rules.

The best example for this purpose is the European Union, entity within which the member states become more and more convergent and they are integrated in cooperation and collaboration relations, on increasingly diverse plans. The free movement of goods and people and the borders' opening, in relation with the economic flows, are only several of the aspects developed in the last decades, generating new challenges and hypotheses that require a solution. Also, along with the intensification of such practices appeared also cross-border flows of organized crime, new structures and more and more challenges that had to be solved by communitarian instruments that would include the national ones.

From another perspective, namely, from the point of view of this paper, the legal systems of the member states are subjected to new challenges, partially due to the communitarian level and partially due to the national, respectively regionally level. Therefore, it was considered appropriate, as we shall see in this research that the legal systems should refer to each other and to reach convergence points on certain levels. Along with the Romania's integration within the European Union, the national

legal system reports the internal rules to the judicial experience of the European Court of human Rights and also to the jurisprudence of certain developed countries, at the level of the modern regulation of the criminal law and criminal procedural rules.

"The realization of justice", as a social value protected by the incriminations provided in the statements of the offenses that obstruct the realization of justice, should be understood in relation with the criminal protection and including the complex of functions by which the justice is realized, meaning the functional activities, characteristic for the realization of justice. This broad understanding is reflected also on the meaning of the term "body that realizes the justice". Thus, the "realization of justice" includes, in addition to its main function of jurisdiction, the complementary functions of criminal prosecution and execution of the legal orders and legal measures, all these being corroborated for the realization of justice. This desiderate is defended by the criminal law, both in relation with the offenses committed by individuals, and also against the abuses committed by those assigned with the realization of justice, itself.

Given the multitude of the European Union states and the differences of the laws within it, it is not easy to compare the criminal law of the member states, but we can talk about a direction at the European level, to which the member states undertook to endorse. Although the European Union can be seen as a set of states, it should not be considered a conglomerate, because the legal rules, although wanted aligned are subjected to the social realities, traditions and customs that differ from one state to another, as it differs the level of adhesion of a certain people to a certain set of rules of social coexistence.

At the level of each member state of the European Union we are witnessing today to a comprehensive improvement process and

to the standardization of laws and legal activity, a hard path due to the social-cultural diversity and the perception of each community in relation with the rules of conduct that should be applied at the European level. The main purposes of the European fundamental act were to replace the current overlaps from the current treaties and to have a clear form for human rights compliance on the European Union territory, along with facilitating the manner of taking decisions within the current organization of the member states.

This research aims to contribute to the development of the international relation field by the materialized contribution, in the general effort to clarity how, at the European level, the national laws are transformed, so the cooperation and collaboration between states to be more efficient and to be provided a social, political and legal context, relatively even for individual, in the entire community.

The main hypothesis that was the base of this research is represented by the fact that at the European level, in order to achieve an evolved level of integration and towards effectively combating the risks, threats and vulnerabilities addressed to the community or individuals, it is necessary to deepen the process of training and standardization of laws and activity of the legal systems. Moreover, the existence of these two systems, namely, the Roman-Germanic and the Anglo-Saxon, impose certain blockages and impediments in relation with the communitarian development and integration.

In terms of legislation, we appreciated as significant that, on the one hand there hahe been made many efforts untill today, directly connected to this issue (the standardization of the act of justice), materialized by the community acquis and other approaches made at the level of the European Union institutions,

but such appoaches which in certain moment were considered sufficient, have suffered significant deformations following the increase of the importance of other normative aproaches at the community level and as a direct result of the fact that the member states have not been fully involved in the continuing and ensuring the sustainability of this process. This thing happened also due to the fact that in the last decades the geopolitical realities transformed the national aims and interests, these knowing an unprecedented dynamic at the community level, a thing facilitated also by the expansion of the European Union, after the cancellation of the Warsaw Treaty.

The analysis of the law systems and how they appeared, evolved and transformed, allow a better understanding of the current times and additionally argues for the proposal presented in the conclusions.

In order to meet the research objectives, the main one and the secondary ones resulting from the main one, I structured this paper in eight chapters, thematically different. The paper evolution was elaborated so it would follow a logical thread and to introduce the reader to the basic aspects of the issue, so later to approach the particularities related to a prior specialization.

Thus, chapter I – *„ European Union – Unity in Diversity. Meeting the Needs and Ensuring the Community Integrity”*, surprises the evolution process that was the base of the European Union, along with analyzing the manner how the entity managed to obtain convergence in the interests of the involved actors. **The 2nd Chapter** *“Development of sources of law and national laws in the European Union-a current perspective ”* starts with the idea that the European Union law is represented, at the moment, by a concrete set of treaties and legal documents, materialized in regulations and directives. These might have,

differentially, direct or indirect effects on the national laws of the member states. Thus, it was aimed the identification of the main roots of law within the community and how they evolved in time.

In the 3rd Chapter – ***„ General and common considerations concerning the evolution and normative regulation of the offenses that affect the realization of justice within the legal systems used in Europe”***, is an introduction in the specialization of the normative rules for the offenses that affect the realization of justice, representing an approaches oriented towards the issue of precedence and its authority in the legal practice.

In the 4th Chapter *„The offence characteristics - elements of comparative law: the Romano - German legal system vs. Anglo-Saxon law system*" I focused on the notion of offense, making a comparative study on how it is approached and used the concept within the Roman-German and Anglo-Saxon system,

In the 5th Chapter I analyzed *„The offenses that affect the realization of justice, in the Roman-German law sistem - analysis from the qualitative and quantitative perspective”* and **In the VI Chapter** I analysed *„The offenses that affect the realization of justice, in the Anglo-saxon law sistem - analysis from the qualitative and quantitative perspective”* . I elaborated a similar analysis, qualitatively and quantitatively, concerning the offenses that affect the realization of justice from the bouth law systems . Thus, the 5th and 6th chapter represent, if seen together, a comparative study on the issue of offenses from the two law systems. Also, the analysis is not a superficial one, but enters the depths of some national law systems, like the French, British, American, Belgian one, and others.

The 7th chapter represents the use of the analytical experience gained during the previous sections and its application for Romania. This Chapter has as subject the analysis of the main modifications in the Romanian laws, occurred following the

continuous evolution of the society, the emphasis being on the social, economic or political aspects. This approach is a historical one, offering a retrospective on the modification of the provisions of the Criminal Code from Romania, with a focus on the comprehensive approach of the offenses committed against the social-cultural and economic values of the Romanian society, as they are presented by Constitution and other legal provisions that treat this subject.

In the end, **the 8th Chapter**, „***A historical perspective on the crime affecting justice. The trial of the Knights Templar***” brings for the reader a historical perspective on the offenses made against the realization of justice. Thus, we considered a good example of a huge mistake of a criminal trial, the events that preceded and succeeded the fall of the Knights Templar. Moreover, we can observe also the effects of perjury and torture in the correct settlement of a trial.

In the chapter devoted to conclusions and proposals, showed the fact that no matter how much you struggle with crime, arrest and sentencing of guilty people has more a role of moral compensation of injured, and the solution to the European level would be a change of strategy to combat crime through prevention .

At European Union level were organised on the topic of countless seminars and crime prevention were developed many decisions of Justice and Internals Affairs, but haven't managed the drafting of decisions requiring Member States to draw up a strategy of active prevention of crime fighting

In my opinion for a real crime prevention, it is necessary the establishment by law, in every european country, of a " **National Institute for Research and Prevention of Crime**" and to receive from all law enforcement institutions all the information relating to

primary offences which are to be compiled, so the Institut actualy can make a go prevention of many of them.

In Romania, the "**National Institute for Research and Prevention of Crime**" should have a general competence throughout the country, structured according to the courts of appeal and with competence for all antisocial deeds.

For a real efficiency of the "**National Institute for Research and Prevention of Crime**" the law of establishment thereof, shall contain penalties for the representatives of law enforcement institutions which do not take measures immediately to inform the Institute to prevent the crime.

Make an exercise of imagination and think of how, instead of having a year ago to observe in order to get evidence, a group of drug dealers, who sell their wares around schools and high schools where our children are studying, we act immediately and proceed to prevent committing antisocial deeds which may have repercussions which will not be able to be repaired and put into their previous situation, regardless of the efforts or indifferent how many years in jail will be convicted traffickers.

The fact that those who are guilty of producing an antisocial acts are covicted, can't resolve than a moral and ethical issue and can be considered to be as a preventive nature side example, but the resolt of the criminal act, most of the times, can not be rebuild in its original state.

Analyzing my proposal of „lege ferenda" of establishing "**National Institute for Research and Prevention of Crime**"", you will find that the very establishment costs and good conduct in terms of this Institute are well below the costs which are carried out by all institutions of law enforcement, in order to obtain the means of proof and the responsibility of those who are guilty of producing them.

Through the establishment of „**National Institute for Research and Prevention of Crime**" through a law to compel all law enforcement agencies, from the police, public prosecutor's offices and the secret services to communicate without delay any information regarding that promised to be a crime will greatly reduce the number of crimes and as a result will be saved lives, destinies, and the damage created will be greatly diminished and the society will be more secure.