BABES-BOLYAI **UNIVERSITY C L U J – N A P O C A**
Doctoral school of international relations and security studies

DOCTORAL THESIS - SUMMARY

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CLUJ-NAPOCA 2016

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The Philosophy of Punishment

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ARGUMENT

Activating in the field of penitentiaries I am related to the way in which the application of criminal punishments is accomplished in our country. Over the years we could see, on the one hand, the evolutions from the juridical thinking in the field of penalty, and on the other hand, we could participate to the transformation of the Romanian penitentiary system in accordance with the international evolutions and especially with the ones that this problem of the European Union has come to know, from the international structures to which Romania belongs to since 2007.

We considered that a paper consecrated to the philosophical interpretation of punishment would mean a proper theoretical framing of the real criminal process, dependent on the legal framework, on the culture of punishment in the Romanian spirituality and also on the material possibilities available to our society in order to ensure the conditions of detention to the current standards of civilization.

The paper is placed exclusively in the sphere of the theory so, it confers large discussion spaces to the meanings that the law has, with its correlations related to the interpretation, to Juridicity and justice, to the access to justice in order to better understand the phenomenon of deviation, of abnormality, in particularly diverse forms and degrees, to which punishment intervenes.

As a matter of course the most part of the paper (chapters III and IV) was consecrated to the theories of punishment and to the concepts to which it is relating: social, political, religious life, order, equity, social security, freedom, equality, happiness.

In the end of the paper we presented a few directions of interpretation of what is European criminal law within the transnational criminal law of which the Romanian theory and practice must take into account.

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SUMMARY

This paper desires to present the main philosophical meanings of the idea of punishment seen as a reaction of the society towards those behaviours that contradict its norms and values. Over time, punishment has known different definitions, depending on the field in which it was applied, on the cultural, social and political context, but it can be appreciated that the legal aspect is the most important because it refers to the general organization and management of a society which – *through the political power – builds a legal framework, a set of legal norms which allow the punishment of some deviant behaviours overpassing subjectivism and voluntarism*.

The concern for what is called *jus puniendi* appears as being related to the first legal codifications, in the process of State building itself as an institution of organization and management of a society, the one which also assumes the role of establishing and enforcing punishments. Modern era brings in history, in Europe, a codification in which we assist to an abstraction of the norms, definitions and determination of the subject of law. As John Vervaele shows, in the modern codification there subsists only the citizen with his legal equality in relationship with the other power, of the state, which disposes of the right to define and to carry out *ius puniendi*".[1]

Hereby it is marked the difference between public and private law in the field of punishment which becomes the object of a criminal policy. The relationship between social normality and performance of law does not stand under the sign of an internal legal logic but is conditioned by the socio-economical and political data external to it.

A new ideology of punishment based on mercantilism transforms it into an opportunity of compulsion of man through labour, a factor of appreciating the individual in quantitative and not qualitative terms which is today also operative within the carceral system.

The constitutional rule of law has the duty of making the criminal law publically known so that to guarantee the functioning of the civil society, as a neutral protector of freedom.

According to these ideas Montesquieu is considered the father of the criminal politics because he underlined the need for a rational legislation as the only way for building a just human society.

The enlightenment's programme of the criminal policy was – according to Vervaele – formulated by the marquess Claude-Emannuel Pastoret in the work about "Criminal Laws" which can be shortly reproduced in the following sentences:

[1]John Vervaele, Les grandes théoriés de la peine aux XVIII e et XIX e siècles, in vol: La peine – punishment, Ed. De Boeck – Wesmael, Bruxelles, 1989, p.10.

1. The conviction of an innocent is an evil greater than the acquittal of a guilty *("in dubio pro reo"*).
2. The accused must be considered innocent until the moment of his conviction.
3. The evidences must be absolute in order for them to be valid.
4. Without the explicit will to commit a crime there is no crime.
5. The first criterion for the application of punishment is the damage suffered by the society.
6. In the application of the punishment is considered only the public utility.
7. The purpose of punishment is rather prevention of crimes than their punishment.
8. Only the person who committed the crime can be punished.
9. The punishment must be reversible, which excludes death penalty.
10. The measure of punishment is satisfactory if it prevents second offence.
11. Punishment is unjust when is futile.
12. Punishment is unjust when is too severe.
13. The fact that punishments are too severe has as a consequence the fact that many crimes remain unpunished.[2]

Hence, modernity marked a historical moment in the evolution of the relationships between punishment and law which obligates to a theoretical overview on them destined to the understanding of both their evolution and consequences for the life of the contemporary society.

The concept of law enjoyed a special attention along the history in philosophy, morals, law, religion because the whole life of man is put under its sign, of the norm and its value, conferred by each society, in each historical moment of its evolution. Law supports the identity of a collectivity, ensures its balance and functioning. Hence the attention *awarded to the value of law in the European culture, alongside Truth, Good and Beauty* was explicable and received the most diverse theoretical expressions.

In fact, each of the roots of the European spirituality, the one of the Ancient Greek culture, of Rome, of Judeo-Christianity and paganism, contributed to the assertion of a facet of the value of law and of the way in which it converts into norms, which alongside the moral, political and religious ones supported an organized social life, able to make the most of the creating capacities of the people.

[2]Des lois pénales, published in 1970 at Paris: it can be read on Goagle Books in facsimile afte a copt belonging to the Library of Princeton University

Depending on the sense that a society confers to the law, there can be understood that it functions, that it is capable to lead. If in the starting forms of the human conditions the norms were undifferentiated, during the historical evolution there can be distinguished the legal norms towards the moral ones, but for a long period in history they will all be influenced by the Churches so that law too will be considered an expression of the Divine will. Towards these relationships there were born the conceptions for which within the field of human relations law is the expression of the laws of nature. It is both about nature in its global sense and about the human nature which impose upon the law to be a rational, conscient construction applied in society by the power institutions of the society.

Hence the idea that law is created by people organized in a society as *zoon politikon.* J. Locke insisted during the modern era on the idea that man organizes and leads according to the laws, using his intelligence and language for knowing himself, for understanding his condition and for legislating laws through which to control his instincts. Man's freedom to think and act cannot be accomplished but with along with the other fellows, free within a framework of norms among which the legal ones have the role of balancing the liberties.

It is worth being reported, under this aspect, the position of J. Habermas, for whom communicational action has become the explanatory core of the way in which relationships are born in the contemporary world between people who mutually transmit information which should be based on truth. Hence there aren't the class positions that are important but the capabilities to support a message, to discuss it with the others within a dialogue in which the freedom and equality of the participants are respected. Thus and so it is born the scenario for the development of a society and within it the system of norms too.

In the 20th century a significant accent was put on the idea that as a positive construction, the law is a norm built by the Sovereign, by the holder of the political-legislative State power. This current of thinking was illustrated – according to the historians of the law – by John L. Austin and Herbert Hart. The first considers that law foresees the behaviour of men in relationship to what is just and permitted through a resolution whose author is a sovereign organisational institutional power. The particularity of the legal norm consists of its relative autonomy towards other values so that it must be supported through a coercion which is maintaining order and balance.

The fact that these ideas left room for the display of any system of law raised critics especially from the part of those who saw what means a system of law which is disrupted by the great values of humanity, as it was created by the totalitarian regimes.

The law must respond to the needs of a society. If they are more and more complex, the legiferation too will become richer and more shaded precisely to meet the real social, economical, and political needs.

This finding made H. Hart consider that a law must be internalized in the people's conduct, it must not be exterior to their way of being and of living normally. At the same time, law must refer to all the members of the society and also to its institutional system, including to the forum that adopts it. Hence, for him, the supreme legislative act of a State is the Constitution from which it derives, then the "primary laws" which are valid for the entire society and "the norms of a secondary law" which validate the first and contribute to their application.

The authentic source for a law is represented – according to Hart – by the social facts that can be brought forward by the philosophy, anthropology, sociology, culture. The entire legal system must be submitted to some "minimal natural laws" as for example the deterrence of violence, in all its forms, which derives from a universal human nature, related to order.

So, law should be judged from an internal perspective – one related to the fact that it is a specialized field of social rate setting – and an external one – which shows how it is internalized by people for becoming a support of their behaviour. The attempts to synthesize the two perspectives lead to the idea that only an interdisciplinary study of the law can dimension it in the life of a society.

This fact generated a theme of reflection concerning the way in which a law is interpreted, in its internal sense, as logic of the clear formulation of its previsions and in its external, linguistic, cultural, psychological sense, related to the context. Legal interpretation firstly refers to the descriptive aspect of the law (the psychology of interpretation, its practice, the logical-semiotic aspects); but it also aims the processes of justifying the law, of pertaining to the values of a society.

The observation is important because a legal norm, with the same content previsions, can be differently interpreted from one people to another and from one historical moment to another. Hence there are introduced norms of law interpretation that known, in the research literature, a rich typology in which, as some authors show, ideologization is presented, either static because it supports a perenniality of the laws, or dynamic because it desires an interpretation of the law in concrete socio-historical conditions.

Another reflection theme is given by the *Juridicity* through which we understand the passage of a norm into the system of law which equates with assuming the role of elaborating it, defending it, promoting it and sanction it by the state. This passage is related to what a society understands through *justice*, the general principle of social life according to which each man

receives what he deserves. This fact is assumed by an institutional political and juridical order considered to be just. Aristotle, Thomas Aquinas, Kant, and different legal philosophy schools have given points to the need of promoting justice, of defending and supporting it for all. The concept of justice was largely debated over the past century and had an important interpreter in the person of J. Rawls, for whom a natural right of each individual confers him a dignity that the basic structures of a society should respect. This is accomplished through an equitable social negotiation for all. He extended this principle to the scale of international relations which to accomplish a new form of justice.

We must also underline, within this context, the issue of the access to justice under the aspect of the conscience of each citizen, that by virtue of his freedom and dignity he can search for justice, but also under the aspect of the opening of justice institutions towards the society, reducing the barriers that stop the access to justice, financially, culturally, and psychologically. From this point of view, there are established a series of previsions in legal codes related to the free access to justice, as a true barometer of the democratic character of a society and of its political-legal system.

A theme of ample discussions concerning the law was also related to the breaking of the law, to the failure to comply with its previsions in the most diverse forms. This determined the use of many *terms* through which to designate a behaviour that deviates from what a society considers to be normal, meaning according to the norm:

- *lie, theft, murder* were framed into some synthetic terms as for example *delinquency, criminality*;
- towards the different terms that have precise senses within the legal theory, we preferred the one of *delinquency*, to which we attach the idea of *degree of deviation from the norm, which correlates to the circumstances in which it manifests, and also to the personality data of the one who breaks the law*.

As far as delinquency produces within a society that is organizing and leading according to a certain system of values it becomes necessary its under standing in relationship to the degree of culture and civilization of a people, which explains the fact that there must be taken into consideration the way of framing the norm and its degree of social coverage, which means that we must distinguish between general – human laws, with a universal value, laws with a general character for a cultural space (for example the laws that govern within the European Union) and national laws, among them existing different intermissions.

The appreciation of deviation and of its gravity therefore belongs to the three pillars for which there are specific courts of justice, and among whom there also are intermission relationships.

Judgement on deviation has many *ways of expression*:

- *moral, political, religious*,
- towards which it can be differentiated the *legal* one because once associated with the political power it becomes specific to a certain political regime and it involves its defence, during the promotion of its own values.

M. Foucault analysed the way in which a society establishes the control over its members, forming them into the spirit of its own values and establishing the mechanisms of punishment for what is considered devious. Hence there is a dependence of deviation on the mechanisms of social control.

Deviation was explained from different perspectives over time so that it is spoken about the school of rational choices, about the biological, psychological, and somatotypological explanations, about the criminal personality, the religious one, about the one related to the class membership, about the labelling, the genre and the generations or about the genetics or cultural appurtenance. Each of them are searching for an explanation of the deviation which to highlight a basic factor, but we believe that in fact the explanation of the anomic behaviour can be accomplished only from a multifactorial perspective[3].

Only this way may be understood the significance and role that must be detained by the enforcement of the deviant behaviour through what is called *punishment*. Because there is no innate deviant, all research related to the characterization of the criminal lead towards the idea that, besides the pathological situations, he relates his behaviour to the social, cultural, economical, political factors so that punishment must take into account all these factors.

In all theories about punishment there are large debates related to whether the sanction must relate to the law, to the criminal, to his behaviour or to the society that feels affected by the deviant behaviour.

In fact, all these correlates of punishment must be considered but along the history prevailed the idea that punishment applies to the criminal because he is the one who entered into the conflict with the norms of the society, irrespective of the Sovereign who elaborated them. This is why punishment was considered as being "a price of the crime" which must be payed through acts that produce pain, because the injured one suffered too. This explains the variety of the

[3]D. Shoemaker, Theorie of Delinquency, Oxford Univ. Press, Oxford, 2010

unpleasant things applied to the offenders: ostracism, cooler, galley, gaol, physical torment, rack, burning at the stake, halter or bullet, guillotine or stoning.

Each time punishment was applied by an authority which had or did not have legitimacy, but which certainly had the power to punish. It was not by chance that in applying the punishments for a long time the subjectivism of the Sovereigns took priority until gradually, along with the birth of modernity, the philosophy of punishment started to change. As we have seen, the precepts of Humanism and Rationalism manifested through the understanding of the law extended also to the understanding of the meanings and purposes of the punishment.

The research literature speaks about an objectivity degree of punishment founded on the real damages that the devious brings to the society and its members, judged in relation to an institutionalized law, meaning a public law defended by a specialized body of the society and about a subjective side through which it is aimed at the perception of the punished one, the acceptance of the sanction and the desire of social reinsertion or on the contrary, the refuse of the punishment, the indignation towards the sanction.

This is why the application of justice must establish a relationship as correctly as possible between the offender's degree of injuriousness for the society and the dimension of the punishment, and respectively the form that it takes: economical, civic, moral, legal. Also, it must be taken into account the fact that punishment applies as a rational, conscious act, with precise rules to some alive, real human beings whom are needed by the society and who through the punishment it desires to reintegrate into the social system. Therefore any punishment is submitted to a followed purpose and it is not conceived and executed only for the sake of punishment or in its name. The exercise of the authority in the field of punishment does not accomplish but within a parameter which is by itself legal. The term consecrated by some authors is the one of "*criminal economy*" through which there are expressed the relations between the punitive system and the whole of the economic, social and political life of a society which disposed of a certain set of resources (including cultural ones) for developing its own philosophy of punishment.

There can be seen a historical evolution of the conceptions about punishment and also of the forms used by the society in order to apply it. Its analyse was accomplished by Norbert Elias who saw the fact that society passed through the processes of diversifying its social structures and through an increase of their degree of complexity which determined the multiplication of the interdependences between people, and so, the perfecting of the forms of organization and management based on law and not on subjectivism. Hence it increased the need of man to self-control through education, through self-discipline in relationship to his fellows.

Society has become more concerned with cultivating a rational, responsible man, less and less impulsive, but confident in the role of the state and of its social mechanisms. The myth and fantasy are replaced by expertise in the social relationships which increases the responsibility with which people engage in mutual relations. As a consequence the nature and the forms of threats towards social life change which imposes a rethinking of punishment, correlated both with the demands of the social life and with the conditions of social insertion of the person.

Offenders are characterised depending on their age, gender, social class, race, nationality, family, personality, and spiritual universe so that punishment must take into account all these parameters. There is no offender by itself, but only deviant behaviours in relationship with the exigencies of a society, with the rigour or the permissiveness that it manifests towards a deviation. As it has come to talk about a positive deviation, as a source of society renewal and about an evolution of the criteria of appreciation which make so that some acts to be decriminalized and other act to become incriminated (for example, forms of information storage, processing or manipulation, especially in the financial field).

Some authors underline the fact that the increase of the degree of culture and civilization does not necessarily mean a diminution of the criminality, as a social fact, but only of the fact that what formerly meant ferocity today takes the form of totalitarism, of terrorism, over against the human need for politeness, gentleness, mental and physical health. Civilization must fight against the new forms of anti-humanism, increasing the role of reason in front of the fanaticism and superstition, of progress in front of degeneration, of science in front of magic, of freedom, security and order in relationship with the irrational and with destructive violence.

The evolution of criminality in history, in the social life generated a great variety of theories about punishment. They structured around a few key-problems: what is the purpose of punishment? What is its justification? How is the "criminal economy" adapting to the evolution of culture and civilization? Generally, these theories were structured in three main families:

a. the theories of *deterrence and prevention* affirm that by applying punishments there is offered an example related to the general capacity of the society to control the behaviours of its members and to apply punishments that represent an example for any deviant attempt, for any second offence or new tentative.

It is spoken even today about an exemplary punishment rather than about a just punishment which represents a reminiscence of a thinking consecrated by history in which punishments were applied publically: flagellation in the public square or the executions in front of crowds.

Within this orientation was more known the utilitarian philosophy for which a behaviour, a norm, an institution are better, more concrete and more just if they have a greater utility than the others. To this effect, different correlates can be attached to utility: pleasure or pain, fulfilment, satisfaction, prosperity and welfare. Thus punishment too must be judged through the angle of total (social) utility that it brings, making a "calculus of utility" which considers that a punished man can usefully relapse into the social life. This means that under the angle of the law all members of the society are equal.

So, punishment applies insofar it is useful because this way it is a bad thing that is more useful than the evil made by the criminal. Punishment must make good people remain good and it must discourage the bad ones from second offences. Despite of the fact that theory was attached to the idea of a minimal punishment there can be seen a contradiction due to the fact that the exemplariness of punishment grows along with its severity.

b. Towards this conception it was asserted the one that proposes the *rehabilitation of the offender*, on the terms of the modern era which laid emphasis on the individual and on his behaviour. Hence, it was developed a new approach of the punishment which meant probation, conviction for an unlimited period of time, punishments not involving the deprivation of liberty, psychiatric evaluation, labour and education in the prisons.

What is important to underline is the fact that the theory of rehabilitation put to the issue the factors that determined deviation, proposing an intervention of the society in their direction (the lack of education cured through schooling, violence treated through work). Beyond the humanist aspects that it puts into issue, the theory appreciates the obligation of the society to correct itself the forms of life that generate a deviant behaviour.

c. The third class of categories of punishment calls them *retributive*, in the sense that the offender deserves his punishment, that he must receive the reward for his actions, the social sanction, proportionally with the harm done, no matter its consequences.

If the one who does good deeds must be positively retributed, according to his merit, then it is naturally that the one who does bad deeds to deserve the reward of punishment. The theory takes a "rigorist" form (tooth for a tooth) and a "soft" form which demands the individualization of punishment depending to all the factors that can explain it. To this effect, the paper brought into discussion the issue of the capital punishment, analysing the arguments that suggest its abolishment form the actual criminal codes of the world.

Philosophy concerned over time with punishment because its discussion is related to a series of significant reflection themes: characteristics of the society, its cultural peculiarity, freedom, equality, social integration, high standards, responsibilities, etc.

It must be remarked that the theories evoked above have a strong philosophical dimension when they discuss about the justification of punishment seen under a moral aspect, first of all, and then politically or about the correlates of justice and punishment with other reflection themes as are the ones about the meaning of human life, the rationality of the norm.

The paper awards a significant space to the vision about punishment that was supported by the two classics of the modern philosophy *Kant and Hegel*. The appreciations related to the philosophy of punishment at Kant are different in the sense that he is related to the *retributivist school* that he did not illustrate very well but as far as he opposed to utilitarianism. *Kant* pleaded that punishment is justified as long as an offence was committed because through it the principle of equality between men is broken. Punishment is applied not for the good of the society or of the offender because he is a human being and cannot be treated as a means for achieving some purposes. So, there are not the effects of punishment that are important (prevention, rehabilitation, deterrence) for its justification but the act itself of the criminal who freely and rationally breaks the freedom and reason of the others. The act of justice transcends society and history and must be accomplished towards the guilty ones so that they receive their reward for the suffering caused. Punishment is a means of securing the right to freedom of every man and also of redressing the offender.

For Hegel, between crime and punishment there is a logical and necessary connection because it refers to what Hegel calls “the right itself”, the value of law as the expression of the universal will. He expresses in order to be operative in the system of law that the state elaborates and that it’s in relation with civil society. Within it there are evil manifestations, crimes that people commit: civil facts of denial of the right, fraud and murder. They are in different relationships with the law and demand specific sanctions. The one who makes the connection between law and its concrete fact is the judge, who in the name of the State relates the universality of the law with the peculiarity of the evil act. In turn, it is related to the consequences on the victim, on the society and on the law and also on the offender because each time the principle of law is attacked, so that justice must deny the denial brought by crime. Punishment becomes necessary, objective and universal, and it is applied from an impersonal perspective of the rule of law.

The analysis of the evolution of punishment in time and space lead to the idea that there are different perspectives on it from one country to another, from one culture to another. Today has become obvious that the universal value of law translates in extremely different legal systems that

make punishment a particular form of sanction which is specific to the deviant behaviours. As deviation, punishment too can be understood only from a multidisciplinary perspective and especially under the angle of the meanings and finalities, from a synthetic vision in which the normative opinions to combine with the teleological, descriptive ones, in which the political, moral and law to involve in the elaboration of a philosophical perspective on what man is, with the lights and shadows of its behaviour.

This is why we considered necessary to develop in a different chapter the correlates of punishment with the different visions about the natural and social order, about the political order and the social life in general, about equity, freedom, equality, and even about happiness and bioethics. This scope of punishment in a larger vision is imposed by the fact that in the contemporary world the human condition stands under the sign of globalization and mondialization, of some new type influences that are exercised by the communicational, educational, military economical factors (energy, technology, finances) which make people's life *different* than in the previous centuries, the adaptive ability being sometimes solicited at a pinch.

The diversity of rate setting forms of the conducts also brings a richness of deviant manifestations which lead some authors to the idea that they must come back to the appreciation of punishment in relation to the natural order which would have long lasting laws and in the field of the social life would bring a certain universality of the human condition. It becomes necessary a comparison of the images that the different cultures and peoples promote about punishment. To this effect in the paper it is widely evoked the position of C. Beccaria the one who, at the beginnings of the modern era elaborated a vision which influences up to now the conceptions on punishment.

For Beccaria, the social contract of some people seen in their individuality was meant to build a store of values and norms resulted from the contribution of each one who deferred a part of his freedom and who in exchange receives the guarantee through law of his remaining freedom. Offence becomes an appropriation form of the freedom of the others by despotic spirits, hereby threatening the social aggregate. Any society elaborates its laws which to establish the respect for its collective and individual earnings, so that the ones who break them, in reality make an attempt to a natural order needed by the society in order to develop. Acting in the name of the personal, selfish interest, some individuals brake the law which is an effort of the society to rationalize its conducts. In order to eliminate subjectivism, laws must be written, made public and applied by specialized institutions, which to consider only the facts, reconstructed as exactly as possible, and not the intentions of the criminal or of the judge. Social equality in front of the law allows the

judge to individualize punishment, to apportion it in relationship with the damage brought to the balance between freedoms, and to the social security.

Beccaria shows that human self-interest must be educated in the spirit of responsibility of each person who calculates the inconvenience of a deviant conduct. Politics and the law established by the Sovereign power becomes an art of balancing the particular interests which imitates the actions of nature for balancing its behaviours. Hence the right to punish becomes a component of the state policy. But between state and law on the one hand, and citizen, in the process of applying the law, does not need to intervene anyone besides the judge. Hence the judicial power must be absolutely independent.

Beccaria opposed to death penalty in the name of a conception of certain actuality according to which life is the supreme good of man which cannot be the object of the social contract, so its suppression cannot be legal. This type of punishment is useless because a man devoided of freedom cannot threaten the social contract. Being of a maximum severity it does no longer have an educative purpose and a man deprived of liberty no longer has a social, spiritual existence but only a physical one that is pointless to kill.

These ideas were appreciated by Kant, Fichte and then widely developed by the physiocratic school, by the French encyclopaedists, by the fathers of the American law, by the utilitarians, jus naturalists, and then by many theorists of our times, all of them leaded by the fact that natural order is a good adviser of the social one.

Correlating punishment with the political order was a subject always present in the history of philosophy because the power to legislate belongs to the one who has the power within the society, and first of all the political power. Through the work of M. Foucault it was accomplished a demonstration of this relationship in the field of punishment. The way in which a political order understands to use punishment is an expression of its nature and of the finalities it promotes. The basic idea is that of the legitimacy of the power that punishes because in its absence punishment is an abuse. Injustice becomes a source for challenging political power generating conceptions and political movements that desire the return to the norm of justice.

The norming introduced by a state expresses its desire to materialize a political project so that punishment intervenes for obtaining the agreement with this project from the part of the members of the society. Weber remained famous for his determination of the state as an institution that has the monopoly of the legitimate violence that it puts at work towards its citizens, so that the legitimacy of a political regime becomes important. In the face of history the desired legitimacy is the one that is founded on the will of the people, which leads to the building of a democratic regime. It is based on the respect of human rights, on the idea of law supremacy and on the

separation of powers which gives policy the possibility to act for the collective Good and Justice the capacity of being independent, acting in the sense of the popular will. A system of punishments with practices that trenches upon the values of the civil society risks to violate the trust in the State's authority. This is why punishment, applied in the name of a democratic society means the maintenance of a cohesion, of an order which is bothered by crimes but which through their punishment maintains its balance.

In such a framework there can be discussed the correlates of law to punish with the idea of responsibility which precedes the act of punishment but it follows it too. Responsibility must not be understood as an abstract feature of personality but as a dimension of the civic behaviour which consciously assumes the acts in relationship with the ones of the fellows. In fact, responsibility correlates with a personality determined in a complex manner, through all the data that compete to its identification (age, education, character, etc.).

Hence it is opened the perspective of framing punishment in the whole of the social life. It is important in this case to determine its quality based on its economical, social, moral, religious life, based on its "closed" or "opened" character according to the terminology used by K. Popper. His work, to which we awarded an important place and in which we made place to some significant appreciations, pleads for the idea that the opened society is characterized by dialogue, by tolerance and as E. Fromm asserts, by the assumption of freedom.

Also, in the paper there are other correlates of punishment with religion and bioethics and also with the concepts of equality, freedom, equity, security and happiness.

They highlight the fact that punishment, as a philosophical problem, generated reflexions in other disciplines, and first of all in *morals*. To this effect we underline the fact that *religion* promoted the idea that love for the close ones must also mark the understanding of punishment as invested with a complex role and placed as a corollary of the responsible life. This did not prevent churches to punish their opponents with fire, with the sword and with the burning on the stake.

Separating laic, legal law from the religious precept, the contemporary law considers man as being submitted to judgement only as a citizen who is responsible in front of the State and its society. He is applied the law in the spirit of equity. Equality places every man in an equal position in front of the applying law. It is the expression of the comparison between different things, between different behaviours, between facts that are submitted to the same legal norms, judged without partiality. *The consecrated expression is the one that states that justice is a virtue, law a science and freedom a fact through which justice is accomplished*. It demands legal security and equal distribution of the law within a society.

The relationship between freedom and justice is considered in a more complex manner because the legislator has the freedom to norm the conducts within a society respecting the liberties of the man – citizen and the later has the freedom to respect or not the law. As far as the law provides the deprivation of liberty according to the degree of deviation, regaining freedom becomes a social and personal purpose of punishment ransom, of rewinding the happiness.

The paper also debates a few legal and moral aspects raised by bioethics, by the limits in which punishment affects man's life and also by the issue of considering abortion, suicide, euthanasia and the beginning and ending of human life as facts that must be judged, appreciating that it's all about regulations that maintain the cultural values of a society.

In the last chapter we searched to highlight the meanings of a transnational criminal justice, as a basis for the understanding of the relationships between national and European law, which is important first of all for Romania as a Member State of the European Union and then to mark out the process of building a transnational criminal justice with the objective of building legal processes directed against international criminality.

The arising of a criminal law of the European Union meant the building of a European legal framework for judging criminality and then the affirmation of the principle of mutual recognition as a foundation of the legal cooperation in the criminal field. Up until the Lisbon Treaty the issue of justice and home affairs created the field of the third pillar which based on the idea of intern-governmental, interstate cooperation. Renouncing to the structuring of the European policies on pillars made possible the elaboration and implementation of some politics in the area of Justice and Home Affairs as community politics.

Through the Hague Programme since 2014 there was followed the consolidation of the European space of freedom, security and justice through the harmonization of the laws and regulations that have a transboundary dimension, with reference both to the material criminal law and to the procedures related to the implementation. A set of minimal rules and an institutional cooperation were put at work.

Lisbon Treaty consecrated the need for an harmonization of the European criminal law for terrorism, organized crime and illegal drug trafficking.

European legislation aims at other fields of criminality too within a ceaseless historical process of building a European common vision about what criminality means. Romania's efforts are fully integrated to the desire of the European Union of creating an area of human rights, of freedom and security for its citizens.

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