„THE EUROPEANIZATION" OF THE CRIMINAL PROCEEDINGS

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ABSTRACT: *Between the various branches of law, criminal law and criminal procedural law were among the last to be influenced by supranational law of European origin. However, almost all criminal regulations today seek to be in line with the European perspective. A thorough knowledge of the rights and guarantees underlying European criminal law is therefore essential for the national judge who is called upon daily to apply the rules of his own code of criminal procedure in a manner consistent with European principles, as interpreted by the case law of the European Court of Human Rights and the Court of Justice.*

KEY WORDS: *criminal proceedings; Europeanization; CJEU jurisprudenc; constitution; universal declaration of human rights*.
JEL Code: *K14, K38*

Criminal law and criminal procedural law are pervaded, as has been shown in the doctrine (Fausto, 2020) of a nationalist tradition, characterized as domestic or sovereign, being historically linked to some identity characteristics typical of the nation as a concept, such as people, language and territory. That is why a unification of criminal law and criminal procedural law at European level is not yet possible. However, the mechanisms are diverse, in addition to unification, and assimilation, harmonization, or cooperation can be seen as processes of Europeanization.

Regarding the matters of substantive criminal law, namely the establishment of facts requiring the application of criminal sanctions, as well as the establishment of minimum thresholds for sanctions, states have accepted and implemented European regulations with some ease. Initially, in the European legal system, the need to ensure the "survival" of the Union gained also a criminal relevance, thus trying to preserve, through the most appropriate protection measures, the assets that guarantee its functioning, financial interests, fair and legal management of Community resources (Spangher, 2022).

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Environmental protection has also been an area of major interest in which common measures have been taken (Comșa, 2021). Framework Decision 2003/80 / JHA of 27 January 2003 on environmental protection through criminal law measures was considered compatible with the provisions of the Treaty, although there was no explicit European competence in establishing criminal rules in the field of the environment, as the provisions of the Treaty had to be interpreted as it gives the Union institutions an implicit power to legislate in the field of criminal law, provided that they demonstrate that such a legislative measure is necessary for the protection of the environment - a common sectoral policy. The implementation of the Framework Decision, at national level, was done by OUG 195/2005 on environmental protection, which includes rules on criminal, civil, administrative liability (Manu, 2021).

It then moved to a broader sphere, which outlined certain directions for Member States to punish serious acts such as trafficking in human beings, cybercrime, and child pornography. The sphere of European law therefore had as its primary objective only substantive criminal law, not criminal procedural law.

Focusing on procedural rights at EU level first involved the creation of judicial structures (Europol, Eurojust, OLAF) followed by an important moment, with particular relevance in the field of criminal proceedings - the introduction of the European arrest warrant.

However, states have been reluctant to accept the rules on criminal proceedings because the procedural safeguards offered are different (eg maximum terms of pre-trial detention, time limits for reviewing preventive measures). There is a fear that some countries will not have to provide more guarantees, because they have inquisitorial procedural systems, but others that, having procedural mechanisms that tend to be accusatory, are afraid to see their guarantee thresholds jeopardized.

That is why, although there is a constant concern for respecting the rights of accused or suspected persons in criminal proceedings, as well as victims of crime, European regulations in the field of criminal proceedings are reduced. However, these "shortcomings" are increasingly being remedied by the European court. Through its decisions, the Court of Justice of the European Union develops and uses general principles of law, extending them more and more to the field of procedural rights in criminal proceedings. Together with the European Court of Human Rights (Coman S. , 2020), which has a wider territorial jurisdiction than the CJEU, but which still covers all EU states, the Court of Justice has created real rules applicable to criminal proceedings, which aim at a Europeanisation of criminal law.

1. THE CONSTITUTION AND THE SUPRANATIONAL REGULATIONS IN THE FIELD OF CRIMINAL PROCEEDINGS

Romania's 1991 Constitution was drafted and adopted at the beginning of a period of transition from a totalitarian to a democratic system, a period that was followed by essential changes, substantial and structural reforms in the country's political, economic and social evolution. Therefore, in 2003 the revision of the Constitution took place, which was the expression of a historical necessity, characteristic of the evolution of contemporary democracies.

The Romanian Constitution of 1991, revised in 2003, guarantees human rights, as enshrined in the legal instruments of public international law. Article 11 of the Constitution stipulates the obligation of the Romanian State to fulfill exactly and in good faith the obligations that incumbe on it from the treaties to which it is a party, treaties which, once ratified by the Parliament, are part of domestic law (Valea , 2014).

Also, in art. 20 states that the constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants and the other treaties to which Romania is a member. Although it makes express reference only to the Universal Declaration of Human Rights, being considered by Romanian doctrine one of the bases of human rights regulations, the notion of "pacts and treaties" refers to other international instruments. Although this article was introduced in the Romanian Constitution in 1991, at which time Romania had not yet acceded to the European Convention on Human Rights or the European Union, the text did not consider only those treaties to which Romania was already a member at the time of its adoption, but all that were to be ratified. As shown in the doctrine (Mihai Constantinescu, 1992), the constitutional solution given by art. 20 expresses not only the attachment to international regulations, but also the great receptivity to possible and predictable dynamics, given that in the field of human rights new regulations were expected from that moment.

The Constitution gives priority to international human rights law, unless domestic law contains more favorable provisions. Moreover, it lays down the principle of the priority of the Treaties and other Community regulations over the contrary regulations of national law (Constantin, 2010).

Recently,the EU Court of Justice has emphasized in several rulings the principle of the supremacy of European Union law over national law, a principle which allows, or even requires, a lower court to set aside a decision of the Supreme Court or the Constitutional Court if they infringe the law. European.

In its judgment of the Court of Justice of 21 December 2021[1], the Court ruled that European Union law precludes the application of case law of the Constitutional Court in so far as it, in conjunction with national statutes of limitations, creates a systemic risk of impunity. Based on the principle of the supremacy of Union law, national judges must set aside a decision of a Constitutional Court that is contrary to this law. The Court of Justice had taken the same view in its judgment of 18 May 2021 establishing the supremacy of Union law over the constitutional rules of a Member State, as interpreted by the constitutional court of the State.

The supremacy of Union law was also examined by the Court and reported to the decisions of the national Supreme Courts. The Court has ruled that the principle of the supremacy of European Union law requires a lower court to overturn a decision of the Supreme Court of the Member State (in the case of Hungary) if it considers that this infringes the prerogatives recognized by Article 267 TFEU and consequently , the

[1] C-357/19 Euro Box Promotion and others C379/19 NAD- Oradea Territorial Service, C-547/19 *Romanian Judges Forum Association*, C-811/19 FQ and others and C-840/19.

effectiveness of the cooperation between the Court and the national courts, established by the referral mechanism[2].

2. LEGISLATIVE CHANGES IN ORDER TO EUROPEANIZE THE CRIMINAL PROCESS

The Code of Criminal Procedure has undergone various amendments, which were the result of the execution of some decisions of the European Court of Human Rights, immediately after Romania's first convictions at the ECHR. Among the problems faced by the criminal justice system, the most significant were related to the overloading of prosecutor's offices and courts, the excessive length of proceedings, the unjustified delay of cases.

Several cases pending before the European Court of Human Rights against Romania concerned issues of pre-trial detention, length of trials, the establishment of jurisdiction and the administration of evidence in criminal matters. Thus, the need to eliminate the reasons that led to the repeated condemnation of Romania was obviously imposed.

That is why a legislative amendment has been imposed to address issues such as reducing the length of trials and creating simpler criminal justice procedures. This has been achieved through the introduction of new institutions such as the plea agreement, the compatibility of current evidence or evidence with European standards, the reduction of jurisdiction from three to two, and the regulation of the appeal in cassation as an extraordinary means of attack.

This was the context in which the need for the adoption of the new Code of Criminal Procedure was concluded. It was to ensure the establishment of a unified jurisprudence at national level, respecting international standards in criminal matters.

The legislative amendments in this field also sought to respond to the requirements of predictability of judicial proceedings arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms and, implicitly, from those established in the jurisprudence of the European Court of Human Rights[3].

Subsequently, European Union regulations and the jurisprudence of the CJEU have had an increasing influence. The implementation and enforcement of EU law is primarily done at national level. Article 4 (3) of the Treaty on European Union (TEU) requires EU Member States to take appropriate measures to ensure that obligations under EU law. This is the principle of loyal cooperation. In addition, Article 19 TEU requires Member States to provide sufficient remedies to ensure effective legal protection in areas covered by EU law.

Secondary legislation also plays a significant role in the Europeanization of criminal proceedings. For example, Directive 2012/13 / EU[4] regarding the right to information in criminal proceedings stipulates that Member States must inform suspected or accused persons of their rights, including the right to be assisted by a lawyer and the right to remain

[2] Judgment of March 2, 2021 2021, A. B. and others (Appointment of judges to the Supreme Court - Appeals), C-824/18, EU:C:2021:153, point 141

[3] Reasons for the New Code of Criminal Procedure, http://www.senat.ro/Legis/PDF/2013/13L010EM.pdf

[4] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, JO 2012 L 142.

silent, the Interpretation Directive and translation in criminal proceedings[5], the Directive on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings[6], the Commission Recommendation on the right to legal aid for suspected or accused persons[7].

The right to a reasoned decision is another fundamental aspect of the right to a fair trial[8]. A reasoned judgment demonstrates that a case has been properly tried and allows the parties to bring an appropriate and effective remedy. Thus, the recent amendments to the Code of Criminal Procedure provide for the obligation to motivate the decision resolving the criminal and civil action, at the time of the judgment.

The implementation of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings strengthens the application of the right to silence, the right not to self-incrimination, as recently recognized by the national legislator and in the case of the witness (amendment of art. 118 CPC).

The direct application of European law is the responsibility of any national judge. However, when it comes to interpretation issues, the CJEU provides important support, developing the Europeanisation of criminal proceedings. For example, by a recent decision in Case C - 282/20 concerning a reference for a preliminary ruling from the Specialized Criminal Court in Bulgaria, it was stated that, in assessing whether the conditions were met in order to hear the parties and to give judgment, that court found certain ambiguities and shortcomings in the indictment which had not been identified at the preliminary hearing. The Court found by its judgment of 21 October 2021 that the lack of a procedural remedy to resolve the defects in the indictment prevents the accused person from knowing in sufficient detail the charges against him, which is likely to prevent the effective exercise of the the right to defense. The referring court is therefore required to make, as far as possible, a proper interpretation of national law amending the indictment to enable the prosecutor to remedy the ambiguities and gaps in the indictment at the hearing, while at the same time protecting active and real right of defense of the accused person. Specifically, the court must provide the prosecutor with the opportunity to make relevant changes to the content of the indictment so as to eliminate ambiguities and gaps, and then inform the defense and allow her to prepare for such changes, including, where appropriate, by submitting new requests for evidence

3. THE FUTURE OF CRIMINAL PROCEEDINGS

The interest of European law is visibly moving from the sphere of substantive law to a wider, procedural sphere. With a view to unifying procedures at European level, the creation of the European Public Prosecutor's Office is the concrete evidence of the focus on one of the main actors in the criminal process - the Public Prosecutor's Office. Even

[5] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ 2010 L 280.
[6] Directive 2013/48/UE of the european parliament and of the council of 22 October 2013 on the rights of access to a lawyer and to communicate in criminal proceedings, OJ 2013 L 294/1
[7] European Commission (2013), Commission Recommendation of 27 November 2013 on the right to assistance * of persons suspected or accused in criminal proceedings, OJ 2013 C 378.
[8] Council of Europe, CCEJ (2008), Opinion no. 11 on "the quality of judgments", December 18, 2008

with defined and limited powers, this is clearly a new step towards unifying procedures, following the creation of Europol and OLAF. However, European criminal jurisdiction remains an issue for which states are not yet prepared. Until then, however, the Europeanization of the criminal process is limited to a uniformity of legislation in criminal matters, in which the jurisprudence of the CJEU has a significant contribution.

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