Law Review ● vol. VIII, issue 2, July-December 2018, pp. 154-169

THE ROLE OF SOCIAL REACTION REFLECTED IN THE DINAMICS OF THE CRIMINAL CODES - PAST, PRESENT, FUTURE -

Ph.D. student Vereş Crina – Bianca,
Legal Counselor – The Romanian Academy

Abstract

The change in legal norms is closely related to the change in public power, the only social force capable of making modifications at this level. Thus, criminal law is the result of legislating society's reaction to dangerous acts for the values established by the community. These social values are realities whose importance is given by the role they play in the formation and development of society. Once these values are undermined, the social order is undermined and thus it needs to be reintegrated through a set of pre-criminal and post-criminal measures and means, which can be both judicial and extra-judicial, and through which society has understood to prevent and combat deviant behavior.

It is therefore interesting to observe how criminal law is redefined by the changes in society's mentality. From the point of view of criminal code modifications, we can see the traits of a community given by how they defend their values.

Key words: *social reaction, criminology, criminal law, evolution of criminal codes, changes*

A legal institution can be understood by knowing the historical circumstances that took place at the time of its constitution. History reminds us that during the course of human civilization there was a complex and dynamic reality in which there were periods of progress but also periods of crisis. History thus sets the determinant roles of morality and customs in the organization and functioning of societies.

The social reaction to criminality refers to all the measures and means both pre-criminal and post-criminal, legal and extra-judicial, through which society has understood to prevent and combat crime. In the doctrine, the following models of social reaction against crime were outlined: the repressive model, the preventive model, the mixed model (doctrine of "social defense"), the curative model. In addition to the four models, two modern trends have also developed: the neoclassical trend and the moderate trend.

The repressive model

For a long time, the anti-criminal social reaction had a repressive essence. Information on this topic can be found in some of the earliest known legal texts from various geographical areas.[1] The repressive model has been in the past the "natural solution" against any kind of aggression. This type of social reaction evolved from the original idea of revenge, as a method of punishing offenders, to staged repression and composition. [2]

As an innovator of his time[3], Cesare Beccaria, in his work entitled "*Dei delitti e delle pene*", criticized the arbitrariness and corruption that existed in the judiciary and penitentiary systems which were dominated by repression at the time. He was the first to advocate equal treatment and respect for the human being. Among his claims, for the first time, there was the idea of death penalty abolition.

Subsequently, British philosopher Jeremy Bentham resumes Beccaria's classical theory and advances it through the famous formula "What justifies punishment is its usefulness or, more precisely, its necessity." [4]

The author's vision was one in which the punishment had as its main objectives: the prevention of offenses being committed; determining the perpetrator to commit less serious deeds (crimes); keeping criminality rate as low as possible. Beccaria and Bentham can be considered the founders of the classical school of criminal law which is based on characteristics such as:

- considering free will as the foundation of any human action[5]

- the proportionality of the punishment in relation to the seriousness of the act.[6]

It can be seen how the classical school presents man as an abstract being and does not take into account the personality of the offender, his social or family situation. [7]

Through the humanization of the judiciary system, the two illustrious representatives Beccaria and Bentham succeed in creating a transition between justice done under the Talion Law and the idea of prevention brought forth by the subsequent trend of thought - positivism. [8]

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[1] Eshnunna Code, Hammurabi's Code, Law of the XII Table, Egyptian Royal Orders, and so on.

[2] E.Ferri, *Principii de drept criminal (Criminal Law principles)*, Revista Poyitivă Penală Publishing House, vol. I, Bucureşti, 1940, pg. 7

[3] Cesare Beccaria lived between 1738 and 1794.

[4] J.Bentham, *Traité de législation civile et pénale*, Paris, 1830, *apud* R.M.Stănoiu, *Introducere în criminologie (Introduction in criminology)*, Bucureşti, The Academy's Publishing House, 1989, p.155.

[5] The theory of "free will" was based on three principles: all people were considered equal before the law; man's conduct was controlled by reason; having a free will, man had to bear the consequences of his deeds.

[6] R.M. Stănoiu, *Criminologie (Criminology)*, the 7th edition, Oscar Print Publishing House, Bucureşti, 2006, pg. 9.

[7] E. Ferri, *previously refered to work*, pg. 23.

[8] Ibidem.

The preventive model

At the end of the nineteenth century the preventive model of criminal policy was outlined in the positivist doctrine[9] which emerged under the influence of evolutionary and deterministic theories. The preventive model is a social reaction that takes place before the offense was committed, its primary purpose being to prevent offenses from being committed. Enrico Ferri[10] shows that the difference between the repressive model and the preventive model results from the method used in analysis: *deductive* - abstract logic, in the case of the classical school (which was the basis of the repressive model), and *inductive* - specific to the experimental sciences, in the case of the positivist school (which was the basis of the preventive model). [11]

The aformentioned indicates that the offense is, above all, a natural and social phenomenon; therefore, prevention should be placed in the foreground.[12] Enrico Ferri indicated the need to take social and economic measures to eliminate or limit the role of the factors that generate the criminal phenomenon, including: street lighting, administrative decentralization, reducing working time, reducing alcohol consumption, and so on. [13] He believes that measures of this kind are more important and can prove to be more effective in limiting the criminogenic factors. Crime prevention is reflected in the safety and promptitude of punishment, not in its severity. From the above it can be shown that the object of the preventive model is given by the factors (causes) of crime.

Unlike the classical school, the positivist doctrine is characterized by:

- centering the criminological study on the perpetrator;
- determinism as the foundation of human choice;
- the proportionality of the punishment in relation to the perilousness of the perpetrator; [14]
- the sanction had a curative purpose, and was supposed to have a tendency to cure the anomalies that made one person a dangerous killer. [15]
- criminal liability was based on the need to defend society; [16]

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[9] The representatives of the positivist doctrine were Cesare Lombroso, Enrico Ferri. Raffaele Garofalo, Adolphe Jacques Quélelet, André-Michel Guerry and Henrz Mazhew.

[10] Enrico Ferri, in his Ph.D. thesis titled *La teoria dell'imputabilita e la negazione del libero arbitrio*", 1878,, challenges the virtues of the repressive system as it was conceived by the classical school (the doctrine behind the repressive model).

[11] E.Ferri, previously refered to work, p.34

[12] Ibidem.

[13] Gheorghe Alecu, *Criminologie. Note de curs (Criminology. Course notes)*, Spiru Haret University, Faculty de Juridical Sciences and Economics Sciences, Constanța, Department of Legal Sciences, 2017, pg. 35.

[14] R.M. Stănoiu, *Criminologie,[...]* , pg. 10.

[15] Lavinia Valeria Lefterache, *Drept penal. Partea generala (Criminal law. General part) Second edition*, Hamangiu Publishing House, Bucureşti, 2018, pg. 27.

[16] Ibidem.

- the person's manifestations are absolutely determined by biological, economic, anthropological and social factors; [17]

It can be seen how within the preventive model the center of gravity moves from the "*deed*" to the "*perpetrator*". However, starting from the idea that a person has a predetermined behavior, the guarantees of a person's freedom that were promoted by the classical school (such as the presumption of innocence, accountability based on the guilty act) were denied. [18]

The mixed model

As it comes natural, with the emergence of a new trend, the debate that stimulates scientific research in the criminal field also arises. Subsequent research into the two doctrines has led to the emergence of new trends that have tried to harmonize the positivist school with the classical school, and so the school of social defense was born. According to this new school, the purpose of criminal law is given by the social defense that is possible as long as institutions include both a preventive element and a repressive element (mixed social response model).[19] Thus, Franz von Liszt and Adolf Prins took into account the results of criminological studies and "*openly declared that punishment is not the only means of fighting crime.*" [20]

Since the offense was perceived as a socio-human deed, the need to study the personality of the offender was highlighted. It appears that one of the main objectives of the mixed model is not to provoke suffering, but to treat and resocialize the offender (criminal).[21] In order to obtain positive results, the individualization of the treatment in order to re-socialize the offender should not be achieved only when the punishment is applied, but also during the execution of the punishment. Furthermore, safety measures have been proposed as distinct elements of punishment in order to eliminate the danger and to prevent the perpetrators from committing deeds under the criminal law. Such safeguards are: medical coercive measures; educational coercive measures; special confiscation. [22]

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[17] Ibidem.

[18] Ibidem.

[19] One of the representatives of the mixed model of social reaction was Mark Ancel, who in 1954 published in his work The New Social Defense a number of ideas such as: the use by society of both economic, social and educational means, as well as means of repression aimed at neutralizing offenders.

[20] A.Prins, *La défense sociale et le transformation du droit pénal*, 1910, cited by Gian Domenico Pisapia, *Marc Ancel et la Défense sociale nouvelle*, în Cahiers de défense sociale, 1990/1991, p.14

[21] R.M.Stănoiu, *Introducere în criminologie (Introduction in criminology)*, Bucureşti, The Academy's Publishing House, 1989, pg. 157.

[22] Ibidem.

The curative model

In the second half of the 20th century, the curative model of social reaction was developed, based essentially on the results of the scientific research in criminology, obtained by knowing the personality of the offender that came along with the launch of the idea of his re-socialization.

The Second World War caused a natural reaction of rejection of the idea of repression, which led to the development of clinical criminology, a domain that places the offender in the center of concern, following his treatment and resocialization. Ideas of the social defense doctrine were added to the scientific data provided by clinical criminology, and thus the curative model has gained more and more followers, imposing itself, to a certain extent, also on a legislative level. [23]

The name "curative model" comes from the analogy of clinical medicine[24], because the purpose was to treat the offender in the way a doctor treats his sick patient. This type of social reaction was based on the fact that criminal policies cannot be based solely on re-socialization, but also on the introduction of the concept regarding the offender's reintegration into society.

For this reason, the penalties were to be based on treatment methods established following a biological, psychological, and social examination of the offender. [25] Thus, for each individual a diagnosis was to be established, and, in the end, an individual re-socialization treatment was to be developed. [26]

Through this type of programs the aim was to improve the reactionary tendencies of the offender, to improve his skills, to renew motivation and to change his / her attitude. [27] Applying this type of treatment requires the offender to actively engage and cooperate to transform his / her own personality. [28]

In addition to the treatment described above, among the methods outlined in the curative model, there are also: suspension of punishment, execution of imprisonment in a state of "semi-freedom", reform of the penitentiary system, etc.

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[23] Gheorghe Alecu, *previously refered to work,* pg. 37.

[24] R.M.Stănoiu, *Metode şi tehnici de cercetare în criminologie (Methods and techniques of research in criminology)*, Bucureşti, The Academy's Publishing House, 1981, p.75-80.

[25] J.Pinatel, *La société criminogene*, Paris, Calmann-Levy Publishing House, 1971, p.448

[26] B.di Tulio, *Le traitement des délinquants, ses aspects d'ordre médical, psychologique et social,* in "Bulletin de la Societé Internationale de Criminologie", 1959, p.223, cited by R.M.Stănoiu, *previously refered to work,* p.163.

[27] Ibidem.

[28] Ibidem.

Modern trends

More recently, the criminal law policy has been characterized by modern trends such as the neoclassical trend and moderate trend. The development of the two took place based on the idea that crime has no borders, thus the phenomenon is not just a internal (national) issue but a global (international) one. The types of crime that go beyond borders stand as proof of the aformentioned: organized crime, terrorism, money laundering and cybercrime. [29] Thus, the specialized conferences organized by O.N.U. have resulted in resolutions in the field aimed to stimulate cooperation between states in order to find the most effective ways of preventing and fighting crime.

The neoclassic (repressive) trend

The neoclassical (repressive) trend, in line with the Havana Convention's Criminal Policy Recommendations, Appendix A, should be particularly relevant to terrorism, organized crime, environmental crime, and corruption among civil servants.[30] The neoclassical trend emerged as a reaction to the curative model, harshly criticized for the presence of psychiatric abuse, ineffective treatment methods and techniques, and neglect of global crime prevention programs. Some judicial procedures (such as the undetermined punishment system, probation and "word-of-honor" releases) have led to individuals' inequality in chances, depending on their social or financial position, shortcomings being placed in the area of legal and executive arbitrage. [31]

Some authors appreciated that the curative model of criminal policy was based only apparently on the idea of social reintegration of offenders. In fact, treatment measures have contributed both to label and stigmatize them, and to keep prisoners in prison for longer periods than necessary. [32]

During 1970-1975 there were disputes that led to the re-establishment of repressive methods from the classical school, their followers being supported by the

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[29] Gheorghe Alecu, *previously refered to work,* pg. 40.

[30] Eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders, Havana, 27 August – 7 September 1990, Report prepared by the Secretariat, UNITED NATIONS, New York, 1991, p.2-5.

[31] Hans W.Mattick, *Reflections of a former prison warden*, în vol. *Delinquency, Crime and Society*, edition taken care of by James Short jr., Ed.The University of Chicago Press, Chicago, 1976, p.287-315; Larry Siegel, *Criminology,* University of Nebraska, Omaha, 1987, p.556-558

[32] Conf. Jose Luis de la Cuesta Arzamendi, *Le système pénitentiaire: réforme ou abolition*, în "Revue de droit penal et de criminologie", nr.6/1985, p.549-556, cited by R.M.Stănoiu, *Introducere în criminologie*, Bucureşti, The Academy's Publishing House, 1989, p.173

concrete criminal reality and the extent of criminality in the Western countries. [33] On this occasion, the old theories about the deterrent effect of punishment and the importance of short-term imprisonment, which would have a beneficial impact on the perpetrators, reiterated the need to renounce alternative prison measures and to strictly limit the incidence of being released on probation. [34] It has also been proposed to increase the severity of the punishment and limit the possibilities for judicial personalization of the criminal sanction. [35] Thus, both in the US and in Europe, punishment individualization and re-socialization of criminals have lost ground, and the states have returned to the classical system of fixed punishments that are applied by taking into account the severity of the committed antisocial deeds. [36]

This aggressive reaction coming from society was justified by the alarming rise in crime rates. Jean Pinatel also drew attention to a worrying aspect, namely that the penitentiary had become a crime-enhancing environment, so that criminals were, due to frustrations, specialized in committing criminal offenses. [37]

After several discussions, the governments[38] (especially the Swedish government) concluded that: "*The prison sentence is described as a sanction which, in the vast majority of cases, can not bring about any improvement in the personal or social situation of those who are convicted, "which is why" (resocialization) by deprivation of liberty is an illusion. ... this punishment leads to minor rehabilitation and high recidivism, in addition to having destructive effects on personality.* "[39]

In the conclusions of the seminar, it is indicated that imprisonment is considered to be necessary in the case of serious crimes and in the case of incorrigible criminals, whom non-custodial sanctions would no longer have any effect. [40] Moreover, national laws need to be revised to ensure more appropriate measures for new forms of crime, and not to rely solely on the application of criminal penalties, but also to take into account legislative measures in the civil or administrative field. [41]

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[33] R.M.Stănoiu, *Introducere în criminologie(Introduction in criminology)*, Bucureşti, The Academy's Publishing House, 1989, p.173

[34] Ibidem.

[35] Ibidem.

[36] Gheorghe Alecu, *previously refered to work,* pg. 42.

[37] Idem, pg. 43.

[38] European Seminar on Alternatives to Prison Penalty, held in Helsinki on 26-28 September 1987 in the organization of the Helsinki Institute for Crime Prevention and Control (HEUNI).

[39] Ibidem.

[40] Ibidem.

[41] Documents of the Congress of Havana, Annex A, point 3.

The moderate trend

The last trend is the moderate one, which appeared as a compromise attempt between the last three models of social reaction described above: the preventive model, the curative model and the neoclassical (repressive) trend. This emphasizes the moderate policy of the states in the 21st century, also known as "*common sense policy".* This includes the idea that the very severe repression doubled by the complete renunciation of it will result in the continuous increase of the criminal phenomenon. [42]

The moderate trend promotes the idea that the fight against criminality can not be carried out only by repression, and this battle is not strictly a matter for public authorities. An appeal is made for the active contribution of all citizens to solve the community problems (including crime). [43]

According to this doctrine, imprisonment must be applied with moderation and only in the case of serious crimes or when the active subjects of criminal acts are incorrigible offenders, while also seeking to create alternatives that could provide more accessible methods for administration of justice, such as mediation, arbitration and conciliation courts and alternatives to detention such as community work.[44] In conclusion, the moderate trend in the criminal policy is a humanized one, oriented towards the idea of alternation and involvement of the members of society in solving the problem of the criminal phenomenon.

Criminal Code of 1865 (Al. I. Cuza)

The ruler Alexandru Ioan Cuza, as his close counselor Mihail Kogalniceanu liked to say, wrote his own story: "*The face of the country is the page of the history of Alexandru Ioan Cuza. Alexandru Ioan does not need a historiograph. He himself wrote his history through laws, through acts which he used to make a state, a society other than what was given to him when we proclaimed him ruler.*" [45]

The necessity of elaborating a unitary (criminal) law occurred as a natural reaction to the act of unification of the Romanian Principalities in 1859.[46] Thus, the

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[42] Gheorghe Alecu, *previously refered to work,* pg. 44.

[43] Ibidem.

[44] Ibidem.

[45] Constantin Chiper, *24 IANUARIE 1859 – EVENIMENT ISTORIC CU O SEMNIFICAȚIE DEOSEBITĂ (24th of JANUARY 1859 – HISTORICAL EVENT WITH A SPECIAL SIGNIFICANCE)* , published in *Istorie şi societate: studii şi comunicări - sesiune de comunicări ştiinţifice- Ploieşti, 9th of mai 2012*, Mileniul III Publishing House, Ploieşti, 2016, pg. 117.

[46] V. Dongoroz, *Drept Penal,* Asociația Română de Ştiinţe Penale (Romanian Association of Criminal Sciences), Bucureşti, 2000, pg. 63 - "*Immediately after the unification of the Romanian Principalities, (1859) the thought of all our great patriots was to give the country a new and uniform legislation.*"

draft Criminal Code (inspired by the French Criminal Code of 1810 and the Criminal Code of Prussia of 1851, as amended until 1863) together with the draft Code of Criminal Procedure (inspired by the French criminal code of 1808) are presented to the Parliament in 1864 and promulgated by the ruler Alexandru Ioan Cuza, coming into force in April 1865[47] and unifying the criminal legislation marking the beginning of the modern criminal law. [48]

The 1865 Criminal Code was presented as one of the most gentle criminal laws in Europe. [49] The reason for this characterization is the abolition of the death penalty[50], beating, exile, public exposure and property confiscation. [51] This legislation has elements found in the repressive model (especially the ideas given by the classical school), but also some elements of the preventive model (e.g. alternatives to the punitive measures).

Thus, the repressive reaction can be observed by consecrating the principle of the lawfulness of incrimination and punishment, admitting the moral responsibility of the perpetrator, as a result of free will, guilt as grounds for punishment, equality before criminal law, and so on. [52]

The Criminal Code was based on the concept that "*offenders are rational people, aware of the consequences of their actions, who have antisocial offenses and as such have to be excluded from society.*" [53] The reasoning described implies a psychological attitude in where there can be found both an intellectual element (consciousness) as well as a volitional element (will). In this respect, the offense is dictated by man's conscience and triggered by his will. For this reason, the criminal code provided for intent as a constituent element of the offense.[54] As an example, we can see the following intentional offenses: murder committed voluntarily (article 225), murder (article 234) and premeditated murder (article 232). [55] Other elements that indicate rational man's conception in criminal law are: the purpose of the offense (which is found, for example, in the crime of high treason - article 67 C.Pen.1865), causes that

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[47] Ion Ifrim, *Explicațiile Noului Cod Penal (The new criminal code explained)*, Universul Juridic Publishing House, Bucureşti, 2015, pg. 23.

[48] V. Dongoroz, *op. cit.*, pg. 63 –"*With all the hardship lived by the Romanian people, the evolution of repressive justice in the Romanian lands does not differ much from the evolution present in the Western countries.*"

[49] Lavinia Valeria Lefterache, *previously refered to work*, pg. 30.

[50] The French criminal code maintains the death penalty. Although the Romanian Criminal Code was based on the French criminal code, Beccaria's theory in the book "Dei delitti e delle feene" published since 1764 has not been put into practice everywhere. For this reason, criminal law in Romania could be qualified as one of the most gentle, despite the predominance of the repressive model of social reaction in its structure.

[51] Ion Ifrim, *previously refered to work*, pg. 23.

[52] Ibidem.

[53] Ion Ifrim, *previously refered to work*, pg. 23.

[54] Ibidem.

55 Criminal Code of 1864.

excluded imputability and culpability. [56]Another argument that supports the idea of a rational man aware of the consequences of his actions is the regulation of the phases of an offence: the oratory phase of the preparatory acts[57]; the attempt, and the consumed offence phase. The complexity of the code was also given by the regulation of some institutions, such as: relapse, cumulation of crimes, pardon, amnesty, rehabilitation, etc. [58]

What is interesting to observe is that although in this particular Criminal Code the ideas of the classical school predominate, the regulation also provided some safety measures (an element that is typically found in the preventive model of social reaction). For example, safety measures were provided for minors who acted without discernment, such as their internment to a monastery to be corrected (Article 62 of the 1865 Criminal Code); there was also a ban on being in some localities, a measure being taken regarding convicts in order to prevent future criminal activity. [59] Another regulated measure was the special confiscation that could be ordered by judges when certain goods were produced by offenses, used for, or destined to be used for the commission of crimes if these were the property of the offender or of any other accomplice. [60]

The Code also included another rule typical of the preventive social response model, namely: the regulation of the criminal treatment of minors by which a relative presumption of the lack of "understanding" was established. The Code has undergone numerous modifications and additions in the 72 years since it was applied, without altering its content.

The Criminal Code of 1937 (Carol the second)

The second criminal code appears in a historical context that involves a new unification. It is about the accomplishment of "Great Romania" (1918), which came with the necessity of elaborating unitary criminal legislation in relation to the country becoming complete. Immediately after the union, the Old Kingdom legislation was extended to Basarabia in 1919. Also, some procedural provisions and some special laws were extended throughout the country. [61] The essential feature of this development was the increase in the number of incriminations and the increased seveity of punishments. [62]

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[56] Ion Ifrim, *previously refered to work*, pg. 23.
[57] The Criminal Code provided for the principle of impunity for preparatory acts.
[58] Ion Ifrim, previously refered to work, pg. 23.
[59] Idem, pg. 24.
[60] Ibidem.
[61] Ion Ifrim, *previously refered to work* pg. 24.
[62] Idem, pg. 25.

The criminal code of 1937 was marked by both the repressive model and the preventative model of social reaction. The regulation thus enshrines the principles of the classical criminal school (the moral responsibility of the individual, the freedomof will, the lawfulness of incrimination and punishment, the guilt, etc.), but it was also influenced by the positivist school (admitting the safety measures for the state of peril of the perpetrator, in order to re-socialize the convict, educational measures for juvenile offenders). [63]

The Criminal Code of 1937 provided in the first book the principle of the personality of the criminal law and regulated double criminality for all crimes committed by a Romanian citizen abroad. Thus, the facts are not incriminated by the Romanian law, the conviction would be contrary to the Romanian public order, and if the foreign law does not criminalize the same deed, it means that the Romanian citizen committed an act that was allowed at the place of the commission. [64]

The repressive model is felt by the founding of the criminal code on the principle of the classical school regarding the moral responsibility of the offender, but the regulation also took into account the necessity of defending the society through awareness of the danger that the offender would represent for it. [65] The second element is a preventative one, indicating that the preventive trend from the 1865 code is also highlighted in the 1937 code by a harmonious connection with the repressive elements. [66] The Criminal Code regulates the offense institution, which it considers a strict legal phenomenon, the crime and punishment appearing as legal entities, as violations of certain regulations existing in society and whose danger was determined by the gravity of the facts of disregarding these rules. [67]

European criminal codes have been a source of inspiration for the Criminal Code of 1937 regarding the notions of legitimate defense, state of necessity, order of law, victim's consent are justifying causes, distinguishing (implicitly[68]) between justifiable causes, which produce *in rem* effects, and the causes of lack of culpability, which produce *in personam* effects. [69]

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[63] Idem, pg. 25-26.

[64] Vintilă Dongoroz, *previously refered to work*,pg. 154.

[65] Ion Ifrim, *previously refered to work* , pg. 26.

[66] Tudor Avrigeanu, *Actualitatea operei lui Vintilă Dongoroz din perspectiva dreptului comparat* (*The Vintilă Dongoroz Opera from the Perspective of Comparative Law),in* Vintilă Dongoroz (1893-1976) - *personalitate marcantă a ştiinţei juridice româneşti (outstanding personality of Romanian legal science),* Romanian Academy Publishing House, Bucuresti, 2013, p. 63.

[67] George Antoniu, *Contribuţiile profesorului Vintilă Dongoroz la dezvoltarea dreptului penal roman (Contributions of Professor Vintilă Dongoroz to the development of Romanian criminal law)*, in Vintilă Dongoroz (1893-1976), *Personalitate complexă a dreptului românesc (Complexity of Romanian law)*, Romanian Academy Publishing House, Bucureşti, 2013, pp. 40-41.

[68] In the texts on the causes of lack of culpability the expression "the accused is not responsible for the offense". The texts referring to the justifying causes used the expression "the act is not considered a crime".

[69]Ion Ifrim, *previously refered to work,* pg. 26.

The purely repressive tendency to raise the severity of the punishments is brought about by the reintroduction of the death penalty, as well as the regulation of deprivation of liberty, such as lifetime labor, labor for a time between 5 and 25 years, and heavy dungeon from 3 to 20 years. [70] In addition to the main punishments, the penal code provided complementary punishments and accessories such as deprivation of rights (civic degradation, correctional interdiction and loss of parental authority, which applied both as an accessory punishment and as a complementary punishment). [71] The preventive element in this area is presented by pecuniary punishment (fine, confiscation of property and bail). [72]

What can be observed is a tendency to resocialize (reintegrate) offenders, which is specific to the mixed model since it imposes certain security measures for the moral restoration of offenders (in Book l, Title IV, Chapters I and II, which had a distinct regulation from that of penalties). The Criminal Code provided security measures that involved depravation of liberty: the internment of dangerous offenders because of mental alienation, abnormality or vice; the internment of dangerous criminals for their criminal perseverance; the internment of dangerous offenders due to parasitic life (stragglers, beggars). [73]

The prevention of the criminal phenomenon has also been attempted through interdictions such as: the ban on entering certain pubs and other party places, the prohibition to leave the city/village/town or to be in certain city/village/town and expulsion (these are measures restrictive of liberty) and the prohibition to exercise a profession or job, closing the premises of a pub, suspension or dissolution of legal entities (these are measures restrictive of rights). [74]

The 1938-1969 period (Communism)

The 1937 Criminal Code continued to be enforced after the establishment of the communist regime. However, changes have been made to counteract any opposition to the new social order (we are talking about a purely repressive trend - the death penalty[75] for some serious offenses against the order and measures initiated by the new government). Also, a series of criminal laws of this period

[70] Ibidem.

[71] Ion Ifrim, *previously refered to work* pg. 27.

[72] Ibidem.

[73] Ibidem.

[74] Ion Ifrim, *previously refered to work* pg. 27

[75] The death penalty was introduced into modern legislation in Romania on September 24, 1938; then it was abolished in 1948, by the republished Criminal Code, being reintroduced in 1949 (Law No. 16/1949), as well as by other decrees (for example Decree No. 202/1953, Decree No. 469/1957, Decree No 318/1958, Decree 212/1960)

provided for the protection of socialist state's property or of the collective households' property, the confiscation of property.[76] A trait of the criminal measures adopted during the totalitarian dictatorship was the intensification of incriminations, the increasing severity of punishments, and the diminution of the procedural guarantees to the point of their extinction .[77]

In order to meet the requirements of the new regime, the criminal code was republished in February 1948. The principle of legality (classical school) lost its essence with the introduction by Decree no. 187/1949 of the analogy according to which "*Acts considered dangerous to society may also be punished where they are not specifically provided for by law as offenses, the grounds and limits of liability being determined in this case according to the provisions prescribed by law for similar crimes.*" [78]

From the progress made in the field of social reaction regarding the Criminal Code, elaborated during Carol the second during communism, legislation has come to regress and to re-establish repression as a form of control of society. It is also regrettable that the typical repression and humanistic elements of the classical school (Beccaria, Bentham) found in both the regulations analyzed above have led to the repression existent before the aforementioned school's emergence. Thus, criminal institutions have come to be applied against society and not as a way of social defense (typical of the mixed model that occurred up until 1948).

The Criminal Code of 1969 (Vintilă Dongoroz)

On the 1st of January 1969, the criminal code, developed by reputable specialists, under the leadership of Professor Vintilă Dongoroz came into force. It is noteworthy that the criminal law re-establishes the modern principles of criminal law such as: the principle of the lawfulness of incrimination and punishment. Also, other principles were enshrined, such as: guilt; individualisation of criminal sanctions; the existence of safety measures in relation to the perpetrator's dangerous nature, educational measures for the punishment of minors, provisions expressing the principles of the classical school, the positivist school as well as the conceptions of the neoclassical trend.[79]

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[76] George Antoniu, *Cercetarea ştiinţifică în domeniul dreptului penal (Scientific research in the field of criminal law),* scientific communication presented at the scientific session of the Institute of Legal Research "Acad. Andrei Rădulescu "of the Romanian Academy, on the subject of *Doctrinajuridică românească: tradiţie şi reformă din data de 7 martie 2014 (Romanian Doctrine, Tradition and Reform from the 7th of March 2014) apud* Ion Ifrim, *previously refered to work.,* pg. 27

[77] Ion Ifrim, *previously refered to work.,* pg. 27

[78] Lavinia Valeria Lefterache, *previously refered to work,* pg. 30.

[79] Ion Ifrim, *previously refered to work* ,pg. 29.

The purpose of the criminal law as well as the three fundamental principles of criminal law: democracy, humanism and legality[80] were explicitly written in the code of 1969. According to Professor Dongoroz, the principles would be the cornerstone of the whole regulation, reflected in all institutions and norms that form the content of these regulations.[81] These serve to characterize the system as a whole, and to explain and correctly apply them. [82] The principle of double criminalization has been dropped, the motivation being that the citizen of a country must comply with national law wherever he/she may be, regardless of the provisions of foreign law.

The scientific criterion for distinguishing between offenses and crime groups was now the type of socially protected relations by the criminal law and the social values related to these relationships. The idea of defending social values is brought to the forefront, so that criminal unity (continued crime and complex crime) is regulated (for the first time). The motivation (essentially one that establishes a society's fairness against the offender) is that in both cases there is one offense, but its content is made up of a plurality of actions. [83]

In order to avoid imprisonment in the case of deeds with a low social risk, the scope of the punishment of the fine has been widened, the recidivism was restrained, the correctional labor institution was introduced (later called execution of the punishment at the workplace), the replacement of liability criminal penalties, suspension of the execution of the punishment under supervision, security measures, by adopting the newest principles of criminal policy.[84] Significant changes, which especially highlight the neoclassical trend, are also taking place through a series of other normative acts: Law no. 51/1991 on the national security of Romania, Governmental Urgency Ordinance no. 105/2000 on the state border of Romania and Law no. 678/2001 on preventing and combating trafficking of human beings.

The Criminal Code of 2014

In principle, the New Criminal Code of 2014 has the same traditional scheme and structure unit that all codes have kept, stating similar provisions (criminal law

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[80] Vintilă Dongoroz and colab.., *Explicații teoretice ale Codului penal roman (Romanian Criminal Code theoretical explanations),* vol. I, Romanian Academy's Publishing House, Bucureşti, 1969, p. 7; Vintilă Dongoroz, *Sinteze asupra noului Cod penal al României*, în SCJ nr. I/1969, p. IO; Ion Oancea, *Tratat de drept penal(Criminal Law Treaty)*, AII Publishing House, Bucureşti, 1995, p. 16. *apud* Ion Ifrim, *previously refered to work* pg. 29.

[81] Ion Ifrim, *previously refered to work.*, pg. 29.

[82] Ibidem.

[83] Ibidem.

[84] Ion Ifrim, *previously refered to work* pg. 30.

enforcement in time and space, provisions regarding offender, offense, punishment, as well as the causes excluding crime and punishment). [85] In addition to the traditional provisions (in which we observe the reflection of both the ideas of the classical criminal school[86] and the ideas of the positivist school[87]), some new provisions more suited to the new vision dominated by the moderate trend (the policy of common sense) have been added.

Therefore, in order to follow this trend, both at the level of criminal law in Romania and in other states there is either a process of deincrimination of offences/deeds that no longer pose a social danger, or their removal from the field of criminal law, followed by their sanctioning through other means (administrative - contraventions, civil - civil offenses).

Regarding the new definition of the offense, it is noticed the elimination of the requirement that the deed presents a social danger. In this respect, the new definition is a step forward and brings the Romanian doctrine closer to the other doctrines that define the offense in this way *(the offense is the deed stipulated by the criminal law committed with guilt ...)* [88]. The new definition of offense also includes two new features, namely that the act is *unjustified* and *attributable* to the person who committed it.[89] The legislator explicitly provided the justifying reasons, separated the author's definition from the co-author's and of the participants' definition, and provided for more rational, lesser penalty limits for some offenses and others.

Moreover, the progressive ideas related to the execution of criminal sanctions, as much as possible in an open environment, were reflected in the provisions of the new Criminal Code, which indicates the alignment of the Romanian Criminal Code to the great currents of science in criminal law. [90]

Modification of the criminal codes (2018 – future)

As expected, some provisions of the current criminal code are more susceptible to discussion than others. The doctrine and jurisprudence criticized several provisions, and changes were suggested to address some shortcomings in the desire to continuously improve the criminal law worthy of the modern trend of "common sense policy."

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[85] Ion Ifrim, *previously refered to work* pg. 31.

[86] Principles such as: the lawfulness of criminalization and the lawfulness of criminal law sanctions, guilt, individualization of punishment, personal liability, etc.

[87] Introducing safety measures (Article 108 of the Penal Code); of educational measures (Article 15 of the Penal Code); individualization of punishment (Article 74 of the Penal Code).

[88] Ion Ifrim, *previously refered to work* ,pg. 31.

[89] Ibidem.

[90] Ibidem.

Thus, as a result of the criticisms made not only internally (for example, by the Constitutional Court, for example, decisions of unconstitutionality: no 265/2014, 508/2014, 732/2014, 11/2015, 405/2016 , 68/2017, 368/2017 and 224/2017) but also internationally (in relation to Directive (EU) 2016/343 of the European Parliament and of the Council of 9th of March 2016 on the strengthening of certain aspects of the presumption of innocence and the right to be heard in criminal proceedings by Directive 2014/42 / EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and the proceeds from crime in the European Union, as well as the decisions of the European Court of Human Rights in the matter), a problem solving is currently being attempted through the Legislative Proposal for amending and completing the Law no.286 / 2009 on the Criminal Code, as well as the Law no.78 / 2000 for the prevention, detection and sanctioning of corruption. [91]

Some of the proposed changes include: reducing prescription periods, changing the conditions under which extended confiscation may be ordered, shortening the time limits for granting conditional release (release on probation), reducing sentences for service offenses, reducing punishment for the offense contest (multiple offences), modifications of offenses (such as abuse of service, influence trafficking, bribery and compromising the interests of the judiciary system), as well as decriminalization of offenses (such as negligence in the service of the public).

It is premature to comment on the effectiveness of the proposed measures (both for and against). One thing is certain: the law is behind the evolution of society. Being a social science, changes in the level of social relationships (and social values) inevitably lead to the need to change their legislative regulation. For this reason, we can say that the last chapter in the history of criminal law has not yet been written.

[91] The legislative proposal is currently registered at the Chamber of Deputies under PLx.406 / 2018