CRIMINAL LAW’S PRINCIPLE OF HUMANISM IN ROMANIA AT THE BEGINNING OF 21ST CENTURY

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Criminal Law’s Principle of Humanism in Romania at the Beginning of 21st Century

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Abstract

The principle of humanism as a fundamental principle of criminal law has no express devotion, but undoubtedly arises around criminal regulatory institutions.

It is undeniable that criminal law is not aimed to cause physical suffering or injury to human dignity, the whole ensemble of rules that see man as supreme value, even when he has an antisocial behaviour, becoming in this way a criminal.

Looking at the individual from these two perspectives, on one hand the victim protected by criminal law and on the other hand, the offender accused of its violation, the principle of humanism gets a double meaning, giving force to this undeniable value that is man.

On the morning of the 21st century, when the death penalty was abolished, when we have a special juvenile sanctioning regime, when is especially followed the idea of rehabilitation, Romania is making notable efforts to make these concepts operational, in orientation towards respect for human being and human liberty and to create a system of guarantees of personality.

This paper aimed to approach from both legal and philosophical perspective the principle of humanity putting the human value above all and giving man a sacred duty: finding truth.

Keywords:

principle of humanity, supreme value, criminal, victim, social norm, criminal law.

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I will start by defining the notion of humanism as given by the Romanian explanatory dictionary in order to make an introduction to a work that is meant to be a human approach to the principle of humanism in the current Romanian criminal law.

Humanism, in broad sense, is “any doctrine that is centred on well-being and human dignity, confidence in human reason, without outside help; mode of action arising from this conception and which advocates for the free development of human personality. I will stop at this broad definition, without going to the restricted one that presents the Renaissance movement and which does not make the subject of our paper.

No denial that we can talk pretty much about welfare, dignity and confidence in human reason. We can talk about free development of human personality. About man as an indisputable value. We can place the individual at the centre of any universe. Because that is normal. Because unwritten laws, customs, religions, edicts, axioms made man to be a building in the image and likeness of God. Imperfect because the man is just a copy of Him. And because God in his infinite goodness, when created man, gave him free spirit, the boundary between moral and immoral is just an imaginary line. In this way, the individual, from the Creation onward is walking on a highway with double sense. Having the sense of time only goes forward. The way each of us is going through life is different. Some go moral, amoral others. Some are good, some are bad. And yet, forgiveness, either human or divine is given to each. Still different.

What binds man indestructible to God is life. Because only who gave it is entitled to take it back. The only divine punishment for its creation. Otherwise, people usually get punished between them. Whether in a social and legal framework, or any other way in which the spirit with which he was invested at birth dictated him.

Coercive speaking, one can take man everything. But, not the life. Because someone else gave it to him. Society may restrict his freedom, for any reason, you may leave him homeless or you may take his children because he is not able to grow them, you may force him to work or to go to war. But you cannot take him his life. And yet, in the morning of the 21st century, in the beginning of the 3rd millennium which is wanted to be one of enlightenment, it still happens in some places on our planet.

The story is called death penalty. “The death penalty is provided by law as a punishment for a crime for which man was found guilty. Usually, it is preceded by a trial, which ends with a death sentence. This is implemented through execution.

From a historical point of view, the execution of criminals and political opponents was a common practice in almost all societies. Now, the death penalty has a more isolated area of use, but is still practiced.” (Wikipedia)
As indicated above, its area of use is isolated, but unfortunately is still practiced.

Returning to the free spirit of divine creation that we talked about before, we have to admit that man, in certain situations and driven by some factors indulge antisocial behaviour. And then, the society which throughout history has created social norms and measures of coercion against those who violate then, punishes MAN.

Punishes the one who despised the social norm and produces the forbidden evil, becoming a criminal.

In the European area in which we live, the death penalty was abolished. I will not insist on the places where it is still practiced. I want to believe that the criminal is no longer sentenced to death penalty. Because after he committed a criminal offence, he can pay for the harm done and return in the society.

Until the nineteenth century, more than 200 offences were punished by death, and juveniles older than 8 were counted adult offenders. Juvenile offenders were sent to the same prisons before trial, judged by the same courts and sentenced to the same punishments, including death, deportation or imprisonment as adults. The twentieth century came with the same behaviour towards juveniles: punishments that included through their nature, also physical suffering. In 1912, for example, 625 prisoners were beaten, of which 4500 were juveniles; in 1919, the number of those receiving such a penalty reached 18625 prisoners, of which 9500 juveniles. The penalty was introduced in England in 1963 by law known as Act Garotters (a known torture by strangling used in Spain and Portugal) implemented in 1880 in order to escape the nightly attacks. In our country, beat existed in all ancient statutes, being applied lawfully in prisons until 1874. (Tanoviceanu, 1912: 219)

With respect to this, there is a concept called penal policy. The term was first used by the German penalist A. Feurbach in a criminal law book in 1803 and which defines it as „the ensemble of repressive procedures through which the state reacts against crime. This means that this is the piece of resistance of criminal policy in order to fight against the criminal phenomenon.

I got off after the sophist and slightly philosophical territory, where man is the centre of universe, and also the one who makes the harm, and I arrived in this incursion on the legal territory, where the technique is unbeatable, things are precise and the punishment exists..."if a thief is discovered while stealing he will be killed. If someone accuses someone else, without being able to bring any evidence, the accuser will be killed. If someone has a debt and cannot pay it, he can sell himself, his wife, his son and his daughter to work: after three years, they will be released. If a man is caught in the war and the woman leaves the house, although the food is enough, she will be thrown in the river. If a slave strikes a free man, his ears will be cut. If somebody does not respect the rules, he will
be let in a lake with crocodiles, and if he tries to resist it, he will die black from the blows of the whip.”

At present, penal policy is defined as a set of means and procedures, proposed to the legislature or used by the state, at a time in a certain country, to combat and prevent crime. (Daneș, Papadopol, 1985: 6)

Criminal policy is equally a science and an art which consists in discovering the best possible solutions to various substantive and procedural issues involved in the phenomenon of crime. (Mitrache, Mitrache, 2003: 27)

I will continue in legal terms, talking about a fundamental principle of criminal law. In this way I will make the connection between the first part of the paper, which to a certain point was a tribute to human, a course of miracles or worship God. Actually, this is how the truth looks like. We ascribe to God all the beauty of the world because we create the evil. As Gabriel Sihăstru said: „In successes I recognize God, in failures I recognize me”.

From this area of consciousness was born the principle of humanism in the sense that „the offender is and remains a human person; corporal punishments are contrary to this principle, death penalty is abolished” (Streteanu, 2008: 97)

The link between crime and punishment, between the offender and execution of the sentence, is established, among other fundamental principles of criminal law, by the principle of humanism.

And because we are European citizens, who live in the Carpathian-Danubian-Pontic area, we show that in the Romanian criminal law this principle does not have a particular devotion, but it results from the entire regulation of criminal law institutions.

One of the Romanian legal dictionaries defines the principle of humanism as „the fundamental principle of criminal law that, to determine the purpose of criminal law and means of achieving it, it starts from the understanding and protection of fundamental human interest” and also the principle of humanism of criminal procedural law ,”general and defining features on the entire procedural criminal legislation of our country, according to which, in determining the purpose of the criminal trial and its means for achieving it is taken into account the understanding and protection of legitimate fundamental interests of human being. Being a reflection of the humanism of the entire Romanian criminal procedure, case law establishes with specific and suitable means the humanism in criminal proceedings. In the centre of all activities is the permanent care for the man and his interests. This proves that the criminal procedure law has provided for everyone in the trial (both parties and other participants), not only procedural extensive rights, but also many procedural guarantess through which these rights are secured to become effective and to be achieved with maximum of consistency”.

I will lean with the desire to show that there is express devotion in certain laws. The closest is the Criminal Code of Moldavia, in Article 4, called the Principle of humanism: „The whole legal regulation is meant to protect, as a priority, the person as a supreme value of the society, his rights and freedoms. The criminal law does not aim to cause physical suffering or to violate human dignity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment”.

Romanian Constitution in Article 22 in a form quite accurate regulates the right to life and to physical and mental integrity as follows:” The right to life and the right to physical and mental integrity of person are guaranteed. No one shall be subjected to torture or to any kind of punishment or inhuman or degrading treatment. The death penalty is prohibited.”

Romanian Criminal Procedure Code in the general part, Title 1, Principles and limits of the criminal procedure law, in art. 11 sets Respect for human dignity and private life. (1) any person who is under criminal investigation or trial must be treated with respect for human dignity.
(2) The respect for privacy, inviolability of home and secret of correspondence are guaranteed. The restriction of such rights shall be allowed only in accordance with the law and whether it is necessary in a democratic society.

It is the reflection of Romania’s accession to the Convention against Torture and other sentences or inhuman or degrading treatment, adopted in New York on December 10, 1980.

As for the Romanian Constitutional Court, its role is to delineate the concept of human dignity from other form of dignity. The Court held that „as the sense of honor or dignity is characteristic for the individual, in the same way we can talk about fame and good name of an institution or public authority”. (Decizia nr. 74 din 2002)

Court held that human dignity is a specific concept applicable only to individuals, recognizing the human nature of the individual (Decision no. 1190 of 8 September 2009). This orientation of the Court if confirmed by the Decision no. 1576 of 7 December 2011, when it held that „human dignity is an inalienable attribute of human person” and it is an „intrinsic value of human being.” (Puskás, 2011: 9-12) That is way, the Court concludes that human dignity is a supreme value of state of law. (Decizia nr. 841 din 2007)

If you were to look at the new Romanian Penal Code we can identify enough „humanism-containing” institutions or as an expression of the principle in question. Thus, we can talk about more favourable criminal law, which enables the magistrate that from two pieces of legislation to enforce the more favourable law.
The justificatory causes defend the man who, one way or another, possibly justified, committed a criminal act. Exactly the fact that he is protected from the punishment reflects the humanist thesis that the legislature intended to use to save the person who acted in different circumstances.

The sanctioning regime of juveniles is an admirable example of the application of the principle of humanism, the institution being completely changed in order for the minor who committed a mistake to be trained and supervised under other circumstances and forms, without getting into contact with the concentrationist environment only as an absolutely exceptional measure.

Replacing imprisonment for life, suspended under supervision, conditional sentence, parole, rehabilitation, decrease the amount of punishment in the new penal code, come to demonstrate that the principle of humanism is omnipresent, just like man, and its interests, dignity and honor are protected values.

„Romanian principle of humanism requires that the legislature, both in the process of drafting and adoption of criminal laws and courts in applying the rykes of criminal law, to start from the interest and fundamental rights of man, from achievement and enrichment of the personality of each in accordance with the requirements of modern society. The principle of humanism must manifest in the interest of those who committed offences, in order to establish precise criminal liability conditions, and in these ratios to take into account the human condition of the defended, to respect the rights to legal and medical assistance, to use useful means of rehabilitation that serve to transformation and re-socialization of the offender and not to stoop personal dignity. Restraint should not lead to the infliction of physical or mental suffering of the inmate, others than those inherent in the execution of punishment.” (Pascu, 2007: 36)

I am convinced that we find humanity in establishments where people – offenders, people – convicted people serve sentences. I found necessary not to leave this aspect untapped. The contemporary legislation is thoroughly regulating the execution of sentences, with rights and obligations of both parties. With precise rules. Perfectible in this grey area of human existence.

Beyond consacrated and doctrinal definitions, I have to say bluntly that the pillory of infame does not exist anymore. Just like Inquisition, it is just another chapter in history, like slavery which was abolished like death penalty, just like the Second World War which we find only in books in library and the broken chains of communism. The history of humanity produces so much reckless death...

Law has always existed. Better or worst. It is always susceptible of change or improvement. Even in the times we live in. Nothing is perfect, as long as man is an imperfect God, but worthy. La Rochefoucauld said that
"There is a dignity that does not hang on luck; it is a certain attitude that distinguishes us and which seems to destine us to great things; it is the appreciation that we give to us without realize”.

I will quote below some excerpts from the Universal Declaration of Human Dignity developed by the International Committee of Human Dignity, which sometimes seems to me to be perfect... "Considering that in his true nature, the MAN is not an animal, but a human being created in the image and likeness of God, his Creator, considering that precisely this Imago Dei that MAN recognizes in itself with profound awe and respect, confers sacredness to human life; and that this recognition allows morality to declare certain inalienable attributes as indelible in every human being from conception to natural birth and that these attributes have become popular in the modern state, secular as fundamental rights of individual”, deeply recognize that a society which keeps in its cultural depths the belief that God’s full revelation towards humanity was the person of Jesus Christ, that He created all men equal, that the central commandment towards His people was to love each other, that MAN is the intentional creation of a benevolent God – such a society will have a radically different political praxis against a society that sees MAN as an accidental and insignificant product of survival of one the fittest, the strongest and eliminating the weakest, firmly conclude that the promotion of human dignity should not be misunderstood as a demonstration of exclusion or intolerance towards other religions, and, indeed, many other religions are kept unaltered, and their influence in shaping its own cultural and political model may be clearly seen”.

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