**THE REPORT BETWEEN EUROPEAN CRIMINAL LAW AND**

**NATIONAL CRIMINAL LAW**

**Summary of the doctoral thesis**

Criminal law has a vital role in our life and we can say that it is a reflection of our society, the criminal justice system being a tool of democracy. Expression of how society evolves, criminal law's task is to restore the balance and to retaliate against those tendencies to undermine peace and good coexistence and take measures against those who impede social life.The emergence of uniform rules of criminal law at European level raises controversial discussions because of the role that this branch of law posed in national systems of law.

In today's Europe criminal law is not the exclusive result of decisions taken by national legislatures but is influenced by international conventions and other initiatives coming from different international organizations either established worldwide, like the United Nations, either at regional level, and we refer in this context to the Council of Europe and the European Union.

Considering that compliance with national sovereignty is required by the specific features of each state, approximation of national criminal laws is part of the objective requirements of an effective, organized and unitedriposte of the states against crime.

It is difficult to conduct a criminal investigation and a criminal trial in Europe, and this is justified by the issue of national sovereignty of European states, given the fact that official documents, both for the prosecution and for enforcement, comply with judicial proceedings in the Member States.

As main objectives proposed to be accomplished, I have considered: first, the determination of the existence of an European criminal law, and its incidence and relation to the national law, the identification of the obstacles in achieving effective criminal cooperation, the evolution of regulations in the European criminal law over the course of time, the incidence of the rules of European criminal law in national criminal law and the effects they produce, analysis of forms of cooperation in European criminal law - to highlight the efficiency of joint actions and common regulations in the crackdown of international crime and not least the analysis of procedural safeguards, on to how to cooperate in matters of extradition and in the enforcement of penal decisions.

The conducted research is divided into four titles: The concept of European criminal law. Historical and theoretical references; The report between European criminal law and National criminal law; Regulatory harmonization in European criminal law, respectively Other aspects regarding European criminal law.

The first title, entitled TITLE 1. The concept of European criminal law. Historical and theoretical references, analyzes the evolution of European criminal law. At first glance European, criminal law would include the regulations of the European Union, the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE). Some authors consider European criminal law as a law of the European Union, opinion justified by the mode of application of the rules in the Member States,while others consider European criminal law as one of the Council of Europe and the European Union the ground being not just a historical grandfathering of the adopted regulations in this matterbut mainly due to the impact thatthe European Convention on Human Rights and the jurisprudence of the European Court of Human Rightshave on the development of European criminal law,opinion that I share and that I shall develop in the following.

If we analyze the currently existing regulations in the matter we would be tempted to talk about a bipolarity of the European criminal law, being distinguished a criminal law in the Council of Europe and another one in the European Union. The first category includes human rights and police and judicial cooperationand the second is given by the area of ​​freedom, security and justice, as governed by the rules of the European Union. In both cases we obviouslynotice an internationalization of the criminal law, that comes to give a different connotation to the two principles of law - that of sovereignty and territoriality.

Thus, we can ascertain the existence of "two Europes" - one of the Council of Europe and one of the European Union, motivated by the fact that Member States are not the same, and in such circumstances not all Member States of the Council of Europe can benefit from EU rules, the latter being seen as a restricted club. European Union rules benefit from the mutual recognition principle**, that the European Council regards as "the cornerstone" of judicial cooperation.**

**On the other hand, the Council of Europe has its bastion, represented by the European Convention on Human Rights and its gendarme European Court of Human Rights, and in this area the European Union is only an imitator. Paradoxically, in matters of criminal cooperation the European Union is more creative than the Council of Europe, even if on human rights matters the Council of Europe is the one who created it all.**

There is in fact a complementarity of the legal instruments related to this subjectenacted by the Council of Europe (Conventions) and EU(conventions, framework decisions, directives). Thus, we note that the European Union has developed standards in areas already covered by the Council of Europe, standards that comes to complete them and obviously refers to.

We can not perform an analysis of the European criminal law without analyzing the principles governing the relationship between European criminal law and national criminal law, analysis that I have performed in Title II entitled The report between European criminal law and national criminal law.

The Union legal order is autonomous from the law of the Member States but at the same time, it is taken automatically into national law, European Union law having its effectiveness conditioned by the take over in the national legal systems of each state. There is thus a complementarity, the European Union law, in the context of its primacy, needs the support of national legal systems. Furthermore this is also the rationale of the analysis in this chapter, European criminal law being tributary to its transposition by Member States.

The main title of the work, entitled Harmonisation of the regulations in the matter of European criminal law , examines the ways of cooperation in matters of European criminal law, cooperation that arouses the attention of both the European Union and the Council of Europe and how these rules were taken into our internal law. The analysis is regarding offenses governed mainly by the Council of Europe but also a large part of euro offenses provided by art. 83 of the Treaty on the Functioning of the European Union (offenses against the physical integrity of persons, torture and cruel, degrading or inhuman punishment, offenses against the right to freedom, terrorism, human trafficking, drug trafficking, racism and xenophobia, cybercrime, money laundering).

Over time European criminal law has been influenced by a number of factors, of which the most common is an increase in cross-border crime, phenomenon that naturally imposed cooperation between European states. If initially this cooperation was a intergovernmental one, subsequently this method of working no longer represented a viable solution for combating transnational crime.

Freedom of movement of persons in an common 'area of freedom "requires an inefficacy of national legislation based on the principle of territoriality. Harmonisation of the criminal law involves an approximation of rules, without eliminating the existing differences of system, differences that preserves the indelible uniqueness of any national legal system. Also the legislator should consider the fact that you cannot find solutions to crime by analyzing it independently of place, time or circumstance.

From an institutional perspective this analysis of European criminal law provides an answer related to the eternal conflict between traditional cooperation versus integration. Furthermore, European legal construction foreshadows a new concept of a future global legal order. Unlike cooperation, harmonization of criminal law approximates the national legislation in relation to a supranational norm.

From the perspective of criminal law harmonization is not a panacea for preventing and combating crime, but a mechanism of reform in law and a form of intergovernmental cooperation. Thus, one can easily conclude that only a centralized authority might enforce identical rules of conduct and to provide criminal liability of those responsible in aidentical legal framework, as well as the uniform application of penalties to which they were subjected by law.

Harmonization, unlike regulatory uniformity, explicitly or implicitly protects the principle of national margin of appreciation. In fact,the harmonizing of the European criminal lawrules is rare, given that the adoption of common rules, integrated equally in each of the national systems, without the possibility of invoking the margin of appreciation,is difficult to imagine in the context of large concessions of sovereignty that it would entail.

In Title IV, Other aspects of European criminal law, I have performed a double analysis: firstly procedural safeguards found in European criminal law, both in terms of perception of protection mechanisms in the domestic proceedings and in light of the existence or nonexistence of a convergent system, of a single European system of fundamental rights; and secondly I have analyzed judicial cooperation in criminal matters is the support that Member States ensure mutually, in all stages of criminal proceedings, whether it be criminal prosecution, trial or punishment execution.

The mere transposition of European legislation into national rules is not sufficient to assert the obligations arising from our quality of member of the Council of Europe and the European Union. Hence, it is imposed a correlation both normative and factual with the provisions of the EU, in order to improve judicial cooperation in criminal matters.

A first obstacle to a European criminal law is the safeguard of national sovereignty, and criminal justice is in its essence one of the most important attributes of sovereignty, as are the the exercise of foreign policy as well as state's right to coin money. Criminal law is the heart of national sovereignty, which is why European countries citizens can experience these efforts to unify the European criminal rules as an attack on their own culture.

Another obstacle to the unification of European criminal law is the national peculiarities of the European criminal legislations,especially if we consider that there are two different legal systems - the Anglo Saxon and Germanic Roman. These systems influence both the substantive criminal law but especially the processual criminal law.

Political authorities of the Member States are aware that European integration implies new challenges for the criminal justice system and requires its reform. There is no doubt that the process of Europeanization has encompassed the areas of criminal law and criminal justice. In the future, the development directions of this phenomenon are clearly foreseeable: an ever more intense interstate cooperation in criminal matters, a more striking harmonization of criminal legislationand the establishment of new competent common organizations in the fight against crime.

At the opposite pole, the essential argument in harmonizing criminal legislation and cooperation in this regard is that while the crime has become international, criminal law is also expected to become international.

So, in order for the European criminal law to be truly effective, is imposed the conduct of an objective and impartial assessment of the way of transposition and implementation by Member States effectively.

We must keep in mind the fact that Romania, as a member of both the Council of Europe and the European Union, must keep pace with the changes taking place in European legislation. The manner in which these changes influence the evolution of our criminal law is an important focus of this scientific project.

The proposed theme has generated great interest both in theory and among practitioners, different positions being recorded the existence of a European criminal law, towards the need to adopt common rules and especially about how these regulations affect national sovereignty. It is certain that in the face of the international dimension of crime, states can no longer handle it individually and a joint strategy is a solution not only viable but also possible, especially if we take into account the already existing international structures created in Europe in the last century and a habitude in cooperation in various areas of the law. To the question of whether there is or not a European criminal law, we can answer - There certainly is.

There is a European criminal law - in truth in formation, being at the confluence of criminal law, international criminal law and European law.

Criminal legislation plays different roles depending on how a community is organized. Thus, if in an authoritarian state it is part of state power suppressing those who do not recognize the legitimacy, in a State based primarily on democracy, criminal law is the means by which society relates to those who break the rules and protect the rights of all.

European criminal law bears the burden of supporting European identity, coherent and diverse. The solutions bestowed by European law are precluded by the needed guarantees of compatibility between national criminal systems.Creation of European criminal law is founded on confidence in the choices that other jurisdictions embrace, Member States understanding consequently to limit their sovereignty in order to combat transnational crime.

There is a European criminal law, even in the absence of a codification, given that we have principles that govern the harmonization of the European criminal law rules with the national ones, There are clear rules in the matter of general criminal law, even if insufficient, there are harmonization rules in key areas of criminality and not least there are forms of enhanced cooperation in criminal matters.

In terms of the relationship: the Council of Europe Criminal Law - the European Union Criminal Law, the conventions adopted in the Council of Europe in matters of criminal law have a legal existence that depends on the will of Member States, who may become parties to these legal instruments through signature and ratification, unlike EU norms, which enjoy direct effect and immediately integrate into national law. In these circumstances we can state that the European Union takes first place in the creation of a European criminal law without ignoring the role of the European Court of Human Rights, a role which can not be denied, especially in matters of criminal procedural safeguards.

European criminal law complies with the policy of small steps considering the sensitive area in which the regulatory harmonization takes place. Although not within the classic patterns of criminal law by the method of preparation, structure and application, European criminal law is an undeniable reality, which is becoming increasingly coherent and well structured, protecting European society from the danger of cross-border crime.

For a correct sedimentation of the European criminal law is necessary to make comparative studies of the criminal laws of the Member States in order to establish common standards specifying the situations where it is necessary and also possible. This analysis must be conducted by experts from the European Union and not in an isolated and uncoordinated manner.

The role of European criminal law is to encourage cooperation between Member States in the area of freedom, security and justice, reducing the inconveniences generated by national borders and legislative discrepancies.

The creation of minimum standards in more and more extensive areas of crime and the enhancement of cooperation are designed to create a genuine space where criminal law can be applied harmoniously.

Report between European criminal law and national criminal law is governed by a number of guiding principles, specific to European law, and we consider especially the principles of subsidiarity and proportionality and the margin of appreciation of the states.

Protecting national sovereignty and the fear of interference from the government in the upper level, in an area as sensitive as criminal law are obvious obstacles in the development of an European criminal law. One of the problems caused by these factors is the lack of common definitions in the framework decisions and directives that introduce incriminations. In this sense, nationwide implementation of definitions and general concepts established by the rules of European criminal law would most likely cause a "in cascade" harmonization, inevitably expanding the enforcement of European criminal law to other categories of offenses. This would cause the need for more profound changes in the criminal laws of the Member States including in the areas they considered untouchable.

The role of establishing common definitions and notions for criminal law is taken over by the European Court of Justice by way of the preliminary procedure, offering a range of solutions in responding to the questions raised by the courts of the Member States.

The establishment of an EU criminal code might seem attractive, but on the short and medium term the target is not achievable, primarily due to lack of general competencies of the European Union in the field of criminal law.

Creating a model similar to the US criminal code could be a flexible solution to meet the requirements of a balance between what is necessary for regulatory harmonization on the one hand and respect for national particularities on the other hand.

Nevertheless such model of European criminal code might not be compatible with limited competences established by art. 82 TFEU and the subsidiarity principle governing a possible intervention.

Judicial and police cooperation in criminal matters was unquestionably a significant contribution to the creation of effective mechanisms with a strong role in reducing crime and increasing security for citizens. Legal instruments that have been created at the level of Council of Europe and the European Union have strengthened the already established forms of cooperation, like extradition, as well as new innovative forms, such as the European Arrest Warrant.

The Europeanization of criminal law is imposed primarily by the need to create common protection, and secondly the need to combat cross-border crime forms generated by the disappearance of national borders.

The manner in which Member States organize their own criminal policy plays an important role in the functioning of the European Union and Council of Europe. The rules adopted in matters of criminal law are aiming towards harmonizing the laws of the Member States. Limiting sovereignty in favor of creating a common framework for combating cross-border crime is fully justified in terms of internationalization of the crime. Romania, as a member country of both the Council of Europe and the European Union has made significant efforts to harmonize national legislation with the European one.

The new Criminal Code meets the requirements imposed by the international instruments and given the fact that the transnational offenses are in permanent transformation, our legislation needs to become more flexible, in order to provide real protection in the exercise of the right of free movement of persons.

As shown throughout the thesis, our domestic criminal law is perfectible, lex ferenda changes being necessary both in the interests of harmonization as well as in the interests of better adaptation of national legislation to the national specific. In this sense, we should not overlook the fact that, in this matter, the national margin of appreciation in this matter is designed precisely to correlate criminal law with the social, economic and cultural realities of the Member States.

In some situations, taking the European criminal law rules tale quale is not an effective solution for combating the phenomenon of criminality, given that the application of these rules cannot be done effectively.

European criminal law is not intended, nor can it be similar to a Procrustean bed for the criminal laws of the Member States. This aspect is required to be understood by the internal legislator, which, keeping away from overzealousness, should really pursue the harmonization of our national law with the European criminal law and not its uniformity

The manner in which Member States organize their own criminal policy plays an important role in the functioning of the European Union. Harmonisation of criminal law is imposed also by the need to achieve the objectives set by the European Union treaties.

The harmonized national legislations meet the minimum requirements imposed by the European Union and have the role of creating the area of freedom, security and justice.