International Conference for Doctoral, Post-Doctoral Students and Young Researchers in Humanities and Social Sciences
May 31-June 2, 2023, Iași, Romania
SECTION: LEGAL SCIENCES
DOI: 10.47743/kaleidoscope.law.2023.1.01

Particular Features Regarding Incrimination against the Administration of Justice in the Legislation of the Member Countries of the European Union: A Comparison to the National Regulations

Diana-Mihaela CHEPTENE-MICU[1]

Abstract

The European regulations in the field of justice and their connection to the domestic legislation are benchmarks that point out the contemporary period by the need for increased adaptability in the field of legislation, but also in the field of jurisprudence, in order to harmonize the two levels of the European and national norms, autonomous but interdependent at the same time. The alignment with the European standards justifies the balance between the results of the justice administration activity and the protection that the legislation offers to this field, because the legal instruments to protect the administration of justice are likely to ensure its effectiveness.The amendments brought to the Romanian Penal Code in the matter of offenses against the administration of justice, by the incrimination of new acts as offenses or by rethinking already existing offenses, are a solid basis for the need to make an analysis in this matter, to verify to what extent the law responds to the current needs. This main reason is joined by the correlations or correspondences that must exist with the existing norms in the community space, in order to find out whether the legal regulations still need to be updated and whether they meet the European requirements. The evolution of these penal incriminations proves the existence of common concepts and benchmarks in the European space, whereas the comparative view of the penal rules enables the use of the appropriate tools for the complete and

[1] Faculty of Law, "Alexandru Ioan Cuza" University, Iasi, Romania.

correct identification of their scope in the spectrum of the criminal protection of justice.

***Keywords**:* The European regulations in the field of justice; European requirements; crimes against justice; the evolution of criminal offenses; criminal protection of justice.

General benchmarks on the concept of justice

Justice is an indispensable tool by which it is carried out at the European democratic level; justice represents a fundamental value in the current modern state, eminently entrusted with the idea of the full supremacy of the law, the protection of which has preoccupied and continues to preoccupy all the legislators in the space criminal community because, as judiciously stated by the famous American political philosopher John Rawls (1999), justice constitutes the most important virtue of an ideal society, in the absence of which individuals would return to the primary state, prior to the organization in the society.

Justice represents an essential component of the rule of law, with equally philosophical, political, ethical and moral valences; it has always been distinctly understood by the successive societies that undertook their own ideals of justice; however, separately from the socio-political context where it operated, it has the common goal of see to the making of the rights and freedoms of individuals, as well as the restoration of the social balance disturbed by behaviours contrary to the conduct standard dictated by each state.

The idea of justice presents a common core, but also multiple valences that vary from one people to another and it evolved simultaneously with the development of law (Cristian Ionescu, 2017). Therefore, the social relations and the execution of the act of justice have been normalized and continue to be normalized according to justice standards laid out and imposed upon the communities by each legislative power; it is exclusively competent to establish the methods of reconciling public order with safety and individual liberty. Special institutions emerge from the needs of each society, just as the legislators sometimes draw distinct conclusions from the same needs (Mircea Djuvara, 1995). It is the task of everyone to guide their legislation masterfully, according to the skills, needs and objectives of the people which they represent.

Beyond the existence of common precepts and guiding ideas, generally adopted by most of the modern world states, legal relativity naturally persists since law is a social science that starts from facts and from particular cases; it is

absurd to be conceived that there could be universal laws laid out in advance and that could be applied, with comparable efficiency, in all the societies, regardless of the period (Mircea Djuvara, 1995). As the German philosopher Gottfried Wilhelm Freiherr von Leibniz also showed (as quoted by Paul Janet, Felix Alican), there are no two absolutely indiscernible real beings in nature; if there were, God and Nature would have behaved irrationally by treating each other differently, from where we deduce the impossibility of aspiring to a perfect identity between two peoples, as long as this ideal cannot be made even on a small scale between the individuals that make up the society.

Each people is characterized by its own facts, circumstances, mentality and history, whereas the legal provisions invest exactly the social reality to which they apply, so that each state must have its legislation perfectly adapted to these indicators of uniqueness (Mircea Djuvara, 1995). Thus, it results that the legislation sets certain rights and it can only do so by reference to the factual situation, to the reality that characterizes its society, but when the factual situation exceeds the framework of the existing legislation and comes into conflict with it, the needs force the laws to be changed, either by legislation or by other means – such as jurisprudence, interpretation or completion (Mircea Djuvara, 1995).

The recent evolution of the regulations regarding the criminal protection of justice in Romania

This mechanism was also the basis of the numerous rectifications made in the Romanian law by the criminal offenses against justice; therefore, in the period after the Revolution of 1989, due to the political and economic-social changes, the criminal phenomenon registered a significant increase, which way why it became urgent to have the efficient and correct functioning of the judicial system.

The proclamation of Romania as a lawful, democratic and social state, in which the judicial power occupies a primary role and, subsequently, its accession to the European Union, implicitly accompanied by the necessity to undertake community standards and values, determined the need to adapt the criminal legislation to the realities and the ideals of those times.

Thus, in 2006, the offenses of insult and slander started to be no longer incriminated, by virtue of the subsidiary of the criminal protection means of the individuals' rights and liberties, established jurisprudentially by the court in

Strasbourg. The aim was to create a balance between the relative right to the freedom expression, registered in art. 10, paragraph 1 of the European Convention on Human Rights [2] and the dignity of the human beings, as a fundamental value, protected in any democratic society, a series of behaviors offensive to the individual's honour and reputation of the person. It was considered that in such a situation, the incurring of the offensive civil responsibility is an adequate, sufficient form of protection corresponding to the severity of the injury caused.

Subsequently, by Law no. 286/2009, New Penal Code, in Romania, it was considered necessary to expand the scope of crimes aimed at the administration of justice, for which it started to incriminate behaviours that, according to the previous regulations, were not considered offenses, and it made the premises for the possibility of incurring criminal responsibility for committing various facts[3] having as a purpose the obstruction of justice, the revenge for the help given to justice, the compromise of its interests or assistance and the unfair representation in judicial cases and notarial procedures.

Also, having in view the severity of acts of posterior complicity subsequent to committing criminal offenses involving the illegal purchase of goods, it was preferred to transfer the offense of concealment to the category of those against justice, contrary to the fact that in the Romanian state, it was incriminated for a long time as a patrimonial offense. It was prevalent the circumstance that such an act obstructs the discovery of the truth in criminal cases by considering that, by its concrete content, concealment primarily affects the execution of the act of justice, beyond the consequences caused in material terms, from the pecuniary point of view.

Several already existing incriminations were equally reconfigured because it was noted that they were insufficiently able to contribute to the protection of the administration of justice in good conditions. A series of behaviours pointed

[2] According to which every person has the right to the freedom of expression. This right includes the freedom of opinion and the freedom to receive or communicate information or ideas without the interference of public authorities and regardless of borders. It does not prevent states from making broadcasting, cinematography or television companies to be subjects to an authorization regime.

[3] Such as preventing, without right, the criminal prosecution bodies from carrying out, under legal conditions, a procedural act or the commission of criminal acts for the purpose of revenge for the help given to the judicial bodies by statements or evidence presented in civil or criminal cases or any other proceedings where witnesses are heard.

out in the Romanian practice revealed certain shortcomings of the old regulation; there is an obvious discrepancy between, on the one hand, the significant number of cases where people interfered with the proper conduct of judicial procedures and, on the other hand, the infinitesimal number of convictions for this kind of acts (Sergiu Bogdan, 2007), a circumstance that justified, once more, the need for reform.

However, this preoccupation of the national legislator regarding the guarantee of legality, independence and impartiality in the process of administering justice was not a singular effort, given that, at the local level, the incrimination of offences against justice seems to be in a continuous improvement since they recently made an object of the constitutionality control[3] and of the mechanisms for the unification of judicial practice[4]. They were brought back to the general attention, as a result of the pronouncement of certain decisions that developed specific concepts and clarified essential issues regarding the area and their concrete application method. At the level of the community, the comparative examination of the criminal law certifies that, regardless of the type of organization, peoples have paid and continue to pay special attention to the main social relations specific to the protection of justice under all its components, justified by the fact that in the European criminal area there are multiple forms of the regulated common criminal offense, but also particular incrimination ways, which confirms the legal relativity mentioned in the previous paragraphs.

However, this preoccupation of the national legislator regarding the guarantee of legality, independence and impartiality in the process of administering justice was not a singular effort, given that, at the local level, the incrimination of offences against justice seems to be in a continuous improvement since they recently made an object of the constitutionality control[4] and of the mechanisms for the unification of judicial practice[5]. They were brought back to the general attention, as a result of the pronouncement of certain decisions that developed specific concepts and clarified essential issues regarding the area and their concrete application method. At the level of the community, the comparative examination of the criminal law certifies that, regardless of the type of organization, peoples have paid and continue to pay special attention to the

[4] As an example, we mention the grounds in the Decisions no. 53/2019, 236/2020, 638/2021, 133/2022 and 1/2023 made by the Constitutional Court of Romania.

[5] By reference to Decisions no. 1/2019, 10/2019 and 1/2020 pronounced by the High Court of Cassation and Justice.

main social relations specific to the protection of justice under all its components, justified by the fact that in the European criminal area there are multiple forms of the regulated common criminal offense, but also particular incrimination ways, which confirms the legal relativity mentioned in the previous paragraphs.

Thus, by reference to the dynamism registered by the criminal phenomenon in the community states and to the own conceptions of national sovereigns regarding the assessment of the criminal nature of the acts, the means of preventing and fighting against them and the role of the punishments in each society, it is noted the occurrence of more or less distinct systematizations of crimes against justice, as well as a series of new regulations in certain foreign legislations.

General comparative aspects in the European legislations

Without any intention to make detailed analyses, we show that currently in Romania, there are 22 offences incriminated against the administration of justice and the national legislator grouped them together in the Special Part of the Penal Code. This type of organization was also preferred by the Austrian, Greek and Hungarian legislators, given that each of these states reserved a separate chapter for crimes and misdemeanors the commission of which affects the best and efficient operation of the judicial system.

A different perspective and increased attention of the community legislators regarding the complex and detailed structuring of offences aimed at the administration of justice are found in Spain, Italy and France, for which, as an example, we mention that in the Italian Penal Code there are 32 offenses incriminated, classified according to the way in which their commission harms the actual activity of administering justice, or the authority of the courts and the decisions made by the latter.

In addition, a new aspect compared to the Romanian codification, it is worth noting the third part of the Italian regulation that, in art. 392-401, lays out a series of acts likely to be committed by the ones who arbitrarily arrogate to themselves the right to do justice for themselves, by stipulating the sanctioning of persons who want to exercise a claimed right and have the possibility to address to a court, but they do not request the participation of the state authorities in order to do justice to them, instead they prefer to exercise abusively acts of violence on the property of other people.

There is a similar incrimination in the Spanish legislation that, in art. 455 of the Penal Code, lays out that the person who acts illegally to make his own right, by using violence or force on things, is punished. An aggravated variant of the offence can be committed when the offender uses weapons or other dangerous objects for intimidation.

These particular legal provisions result in an insufficiency of the natural law, based on the individual conscience, in the societies specific to Spain and Italy and the necessity to transpose into the positive law the elementary obligation to respect the goods, the rights and the liberties of other people, by incriminating the acts of the ones who arrogate to the themselves the prerogative to do their own justice by disregarding the judicial power. As Thomas Hobbes (1651, who was translated into Romanian and published in 2011) says in one of the most important works of political thoughts that has ever been written:

War is in human nature, and everybody is governed by their own reasoning, and there is nothing that they can use against their enemies. Therefore, in such a condition everybody has a right to anything, even to another's body and, as long as this right of every man to everything lasts, nobody has the guarantee to live as long as nature ordinarily allows people to live. It is a precept or a general reasoning rule that everybody must pursue peace as long as they hope to obtain it – in the contemporary age, by the contest of justice (our note) – and when they cannot obtain it, that they may seek and use all the facilities and advantages of war. (p. 19)

Non-reporting of offences and assistance given to perpetrators

A distinct approach of the modern European criminal legislators is also noticeable regarding the regulating way of the non-reporting offence, i.e. the obligation of persons to notify the authorities about the commission of criminal activities considered to be of particular severity, which comes from the concept of the moral duty (Jac. Novelus, 1575, as quoted by I. Tanoviceanu, V. Dongoroz, C. Chiseliță, Ș. Laday, E.C. Decusară, 1924) and in the general principle of the old French customary law: “Qui peut et n'empêche, pèche” (Antoine Loysel, as quoted by I. Tanoviceanu *et al*.), according to which whoever can prevent but does not do it makes a sin.

The legal transposition of this notification obligation shows obviously that the social relations related to the activity of making justice are a current necessity in the European space, justified by the importance for the society and

for the rule of law of the discovery and the prosecution of the persons guilty of committing various offences.

From this perspective, it is noted that in Austria, Estonia, France, Greece, Latvia, the Grand Duchy of Luxembourg, the Kingdom of Sweden, the Republic of Croatia, the Slovak Republic and the Kingdom of Slovenia, the persons have a general obligation to report any serious offence – "*offences*", according to the tripartite classification existing in the French penal law, "*acts punishable by the death penalty or by the freedom deprivation*", according to the Greek legislator, "*offences punishable by the imprisonment of five years or a harder penalty*" according to the Croatian law. In other states, such as Malta, Poland, Romania or Germany, the reporting obligation applies exclusively to determined, exhaustively listed criminal offences that are considered by the society among the most severe, such as: high treason, acts that endanger national security, criminal offences of terrorism and genocide, criminal war offences, criminal offences against humanity, acts that violate the supreme right to life of any person, the right to freedom or the right to sexual integrity.

According to the nature of the criminal acts to which non-reporting refers, it is placed in various chapters of criminal offences, some protecting justice, others state authority or public order. Thus, in the view of the Austrian, Czech, Danish, German, Dutch and Slovak legislators, by non-reporting, the perpetrator mainly harms public order and peace, whereas in the view of the Croatian, Estonian, Finnish, French, Greek, Italian, Latvian, Polish, Slovenian and Spanish legislators, just as in Romanian law, the failure to announce that criminal offences have been committed or are about to be committed seriously endangers social relations related to the administration of justice.

One of the most important differences in the regulation of this criminal act consists in the incrimination on the territory of several European states of not complying with the general obligation to report offences in progress or to be committed, to the extent that their negative consequences are more can still be prevented or limited by the intervention of the state authorities. There are three ways of approaching the criminal legislators in the community space, respectively: states that incriminate non-reporting before the offence it refers to has been committed (Austria, France, Greece, Latvia, the Grand Duchy of Luxembourg, Poland, the Kingdom of Sweden, the Republic of Finland and Spain), states that incriminate non-reporting either before or after the respective offence has been committed (Lithuania and the Federal Republic of Germany) and states that

incriminate non-reporting only after the respective offence imposed to be brought to the attention of the authorities has been committed (Estonia, Italy, the Republic of Croatia and Romania).

However, this different manner of approach proves that, although it tends towards standardization at the European legislation level, national sovereignties cannot be repressed in a legal-penal way, there are different conceptions about the assessment of the criminal nature of the failure to report the commission of criminal acts, as long as in some countries the legislative intention to prevent the commission of several criminal offences prevails, and in other countries the intention of sanctioning the persons guilty of committing illegal activities.

Moreover, the history of criminal law certifies that the offense of non-reporting has had, since ancient times, distinct conceptions of the various criminal legislators in what we define today to be a European legal space. On the one hand, in ancient Greece, it was considered that the person who could prevent the commission of a bad action but did not, became an accomplice to the criminal activity (I. Tanoviceanu *et al.*). In the Romanian law, in the middle of the first millennium, such an obligation was admitted exclusively by reference to persons involved in the state authority, it was considered that only officials had the duty to devote themselves to the general social interest since the citizens made sacrifices precisely to give the government the task of taking care of public order, with the natural consequence that private individuals should be preoccupied only with their personal interests.

As for the historical concept from ancient Greece mentioned above, in the current national practice, reflected jurisprudentially in recent years, it is considered that the lack of involvement in stopping an offence committed in the presence of a person can, under certain circumstances, constitute complicity in that offence, imputable to the one who assisted and did not intervene, although he should have done it, and who, subsequently, did not even report the committed crime, although he would have had the objective opportunity to do it. In this way, the failure of the person to act is distanced from the concept of incrimination regarding the failure to report an offence. In case where, in the conduct of the person who assisted and did not intervene to stop the offence, there are actions to help the perpetrator after committing the crime are also included (for example, in order to enable the disappearance of the traces of the illegal activity), it is necessary to analyze the possible crime of helping the defender.

In cases of this type, there have been divergent opinions[6] regarding the legal classification of the inaction of the wife who assists the husband to kill another person, even a relative of the wife, without intervening, and after the consummation of the murder, she helps the author to get rid of the corpse and to erase the traces of the offence. One opinion made reference to the existence of the offence of complicity to murder, whereas other opinions were expressed, mostly, to apprehend the offences of helping the offender and the failure to report some offences.

The central arguments of most opinions focused around the concept of moral complicity. It was argued that the simple presence with the perpetrator is considered moral complicity only in the case when it made for the perpetrator a mental state favourable to commit that crime, encouraging him to implement the criminal decision made or to continue the action. Moreover, it is argued that, for the existence of the moral complicity, it is necessary to establish that the accomplice also realized that their presence is such help, because complicity can only be committed with direct or indirect intention.

It was found that after the defendant had committed the offence, his wife helped him to erase the traces of the offence and fled the country with him, aspects of which, most opinions pointed out that, in the absence of a marital relationship between the perpetrators, these elements external to the committed murder could have been the constitutive elements of other offences, such as helping the criminal and the failure to report. Also, for this behaviour of the female defendant, there was a logical explanation taken into account, namely the medical-legal document drawn up after the psychiatric examination, the conclusions of which showed that she had a dependent personality disorder and she left it entirely up to the husband to make decisions.

In the least divergent opinion, it was considered that the defendant's attitude seen as meeting the constitutive elements of the offence of helping the offender would mean a distortion of reality, in obvious contradiction with the evidence in the case file, and to accept that a person, a family member (the husband/ the wife of the author), who assists in the commission of a murder on

[6] As an example, the Decision no. 142/A/2015, made by the High Court of Cassation and Justice – Penal Section.

another family member (child, mother-in-law, mother) in the described[7] way and circumstances and who does the activities done by the female defendant immediately after committing the act, is exempted from criminal responsibility in the form of simultaneous moral complicity, and will not be liable for acts of favoritism or concealment, motivated by the capacity of spouses between the author and the one who favours, respectively, between the author and the one who conceals. Thus, it was considered that this situation has the constitutive elements of the objective and subjective side of complicity in the offence of aggravated murder, respectively, that there is evidence to prove, beyond any reasonable doubt, that, by her attitude, the defendant helped the author of the offence – her husband – the mental comfort necessary to make the decision made spontaneously, to suppress the victim's life. As she did not have any reaction, the defendant by successive blows, persevered in the criminal activity and finally cut the victim's neck. The support given by the defendant to the author of the deed by favoring activities proves the existence of that subjective causal relationship between the author and the accomplice from the moment of committing the offence until its end. The common steps undertaken by the author and the accomplice after the commission of the act actually pursued their exoneration from criminal responsibility.

Therefore, the separation line is thin between the offence of complicity to murder, in the form of participation of this type (moral and simultaneous) and favouring the offender, according to the factual elements of each case, but also to the taken concept, derived from those enunciated in ancient times. The subsequent character of favoring in the realm of the penal law is also found in the legislation of other states, as it is a regulation that fulfills the criminal offense after a criminal act is committed by another person.

"The favoring the perpetrator" is provided in most European penal codes as an offence directed against justice or the public authority. It has a general and subsidiary character; it is incidental only in those situations where the help given to the person who committed an act provided for by the penal law does not cover the constitutive content of any other offence.

In all the analyzed legal systems, the starting point is a premise situation consisting in the previous commission of an act laid out by the criminal law by

[7] Accepting the exercise of acts of violence without any intervention, except for words such as "it's enough (...) let her go" and which, in fact, anyway aimed the final part of the attack made by the aggressor against the victim.

the person who is the beneficiary of the favoritism. The difference is that the Croatian, Greek, French and Italian law impose that the favored person adopted a very severe illegal conduct, qualified as “murder” or “misdemeanor” in Greece, “offence” or “act of terrorism punished by at least 10 years in prison” in France, “crime for which the law provides for the death penalty or life detention or imprisonment” in Italy or an “offence punishable by five years' imprisonment or a more severe penalty” in the Republic of Croatia. The Romanian law does not make such a distinction, it is sufficient that the person who benefits from the favor to have committed an act incriminated by the criminal law, regardless of its severity and the capacity in which he acted (a perpetrator, an accomplice, an instigator).

It is noted that in all the examined legislations, the material element of the offence has been attached an essential requirement regarding the purpose of the aid, which can be that of avoiding investigations, from the freedom deprivation or from the execution of the imposed punishment, with the mention that the Romanian regulation is wider, including in the scope of the offence of favoritism and the aid given for the simple hindrance of the judicial procedures or for the prevention of them from being carried out, even in those situations where the favoured person does not evade.

It is noted that the corresponding incriminations, identified in the German legislation, have a narrower scope, they are incident only in the early phase of the criminal trial, in the criminal prosecution stage. This is why, according to the German law, the alternative ways of making the material element can only consist in hindering or preventing the application or the enforcement of a measure or sanctions, but their hindering during the period when it is executed is excluded from the applicability scope of the offences regulated by art. 258 and 258.a, Penal Code of the Federal Republic.

In none of the compared legislations, the criminal responsibility of the favorer is not conditioned by the criminal responsibility of the favored person, which is why it is possible for the favorer to be sent to court and/or convicted, even if the beneficiary of the criminal activity has not been sent to court for the act he committed. This aspect is expressly pointed out in art. 378, Italian Penal Code which, in the last paragraph, lay out: “*The provisions of this article also apply when the helped person cannot be held responsible or when it turns out that he did not commit the offence.*"

From the perspective of incidental sanctions, in the Penal Codes of Bulgaria, the Czech Republic, Croatia, France, Germany, Portugal, Slovakia, Slovenia and Spain, as well as in Romania, it is mentioned that the concrete sentence enforced to the favorer cannot exceed the sanction that even the favored person risks.

False statements

Starting from the idea that the concealment of the illegal acts and those responsible for committing them means violating moral rules and seriously harming social interests, perjury is another tangential point of the penal legislation adapted to the current European societies, it is circumstantially regulated in some legislations, depending on the capacity of the active subject and the cause in which the willful distortion of the reality is made.

For this purpose, as an example, there is a distinct systematization, by matters, of the offence of "perjury" in the Republic of Malta, which regulates in art. 104 the offence of perjury committed in penal proceedings, and in art. 106, the offence committed in civil cases. Similarly, in Greece, Sweden or Hungary, legislators punish perjury distinctly as it occurs in penal trials, civil proceedings or in contraventions, disciplinary or in other legal proceedings.

The importance of issuing during the penal trial some statements that have a counterpart in the factual reality is pointed out by the Penal Codes of France, Malta and the Netherlands, by regulating aggravated versions of the offence of perjury when "*the person against whom or in whose favor it was committed is liable to a penal sentence"*[8] or "*when the false statement is made to the detriment of a defendant or a suspect in a penal trial"*[9]*.*

In most states, perjury can be committed during any procedure where witnesses are heard (a criminal case, a civil case, a case before other jurisdictional bodies such as, for example, disciplinary commissions operating under special laws), but the premised situation will not obligatorily suppose a judicial

[8] According to paragraph (2) of art. 434-14 of the French Penal Code, perjury is punishable by 7 years in prison and a fine of 100,000 euros if the person against whom or in whose favor the perjury was committed is liable to a penal sentence.

[9] According to section 207, paragraph 2 of the Dutch Penal Code, if the false statement is made to the detriment of a defendant or a suspect in a criminal trial, the perpetrator is punished with imprisonment of up to nine years or a fine of the fifth category. Perjury committed in the basic form, regulated in point 1 of the same section, is punishable by imprisonment of up to six years or a fine of the fourth category.

procedure. In particular, in France, the false statement is an offence when it is made before any court or judicial police officer acting in the execution of a rogatory commission.

There are also important distinction elements regarding persons likely to make false statements, namely it is noted in Latvia that the active subject of this offence can be the injured person or any other person who has been warned about the consequences they risk in case they make false statements. In the Danish legislation the false statements are incriminated, without circumscribing the active subject by referring exclusively to the capacity of a witness, with the consequence that any person can be held criminally responsible if they make untrue statements before a national or foreign court, or before the Court of Justice of the European Union.

We consider that these two penal regulations correspond to the idea of Thomas Hobbes according to which the crimes that lack effects judgments are more severe than the prejudice caused to a few persons because:

The fact of receiving money in order to issue a false judgement or to make a false statement is a greater offence than cheating a person with a similar amount or a greater sum, not only because it prejudices the one who suffers from such judgements, but also because all the judgements become useless and there is an occasion for violence and private revenges. (Thomas Hobbes, 1651, translated into Romanian and published in 2011, p. 237)

But, beyond this traditional precept, whose moral foundation is indisputable, the standard imposed in the European space by the international conventions on the rights and freedoms of individuals cannot be ignored, given the impact they have on the appreciation margin of the legislative powers regarding the regulation of the offence of perjury, as long as the possibility of forcing an accused to incriminate himself is vehemently excluded at the community level.

It should be specified that the penal procedural legislation of most states in the European community expressly regulates the right of the witness to remain silent and not to incriminate themselves, so that both persons suspected/accused of committing acts provided for by the criminal law (so-called *de jure suspects*) and witnesses (*de facto suspects*, i.e. persons suspected before making an official notification) benefit from identical protection regarding the rights to silence and non-self-incrimination (Decision no. 236/2020 made by the Constitutional Court of Romania), and they are excluded from the scope of

potential active subjects of a crime of false statements committed about one's own cause.

Another offence incriminated in all the current European legislations aims to ensure the right of any person to express freely their procedural behaviour. It is represented by the offence of influencing statements, regulated analogously in the Penal Codes of Belgium, Cyprus, Croatia, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and Hungary, with small distinctions regarding the essential requirements necessary to qualify concretely manifested antisocial behaviours as grounds capable of incurring the criminal responsibility of the perpetrators.

Thus, for example, we show that in Greece and in the Federal Republic of Germany, the attempt to determine or the determination of a person to make false statements in a judicial procedure corresponds to the penal law regardless of the way in which the penal activity is carried out. They emphasized on the importance of the sincerity of individuals before the judicial authorities, while in countries such as Romania, Bulgaria, Cyprus, Croatia, Italy, Estonia or France, these actions acquire the necessary weight to be included in the criminal sphere only if they are committed by coercion, corruption, intimidation or other acts likely to put the concerned person in difficulty, by limiting their possibility to guide their procedural behavior according to their will and beliefs.

Torture, inhuman and degrading treatments

We refer not only to the regulating way of the previously presented offences, but we refer to the entire codification by which the national legislators provided criminal protection to the judicial system and its activity. Thus, there is no doubt that the exponents of the legislative power in the European space were guided by minimum standards, derived from the values and requirements of the community block, from which it is inconceivable to make a derogation.

This appreciation finds its justification by analyzing the way in which the appropriation and the transposition of the international provisions on the prohibition of torture and cruel, inhuman or degrading treatments in the national legislation was preferred. Therefore, some states are distinguished by the option of cataloguing such acts as offences against justice, while most of the other states promote the idea that the use of torture mainly damages the physical and mental integrity of the person, by putting the effect on justice in the background, obviously without the intention of challenging it. By the regulatory

way of art. 282, Penal Code, Romania belongs to the first group, whereas Belgium, the Czech Republic, France or Portugal prefer the concept according to which by committing such offenses, the personal integrity is primarily affected.

In none of the examined legislations there is no precise definition of torture and degrading or inhumane treatments, which proves that all the European legislators referred to the standard meaning conferred to these concepts by the New York Convention adopted on 10th December 1984, according to which torture means any act by which severe physical or mental pain or suffering, is intentionally inflicted with the main purpose of obtaining information or punishing a certain person for an act which they or a third party committed or are suspected of having committed would have committed it either for the purpose of intimidation or discrimination, so that such conduct originates from a state agent or from any other person acting in an official capacity or at the instigation or with the express or tacit consent of such clerk.

It is universally accepted that torture does not refer to the pain or suffering inherent in the enforcement of the legally applied sanctions. Inhumane treatment means any other acts of exceptional severity, which cause the victim severe pain and suffering, but which do not reach the intensity level entailed by torture.

According to the European Court of Human Rights, a degrading treatment involves humiliating the individuals in front of themselves or others, causing them to act against their will or conscience, and is part of the category of ill-treatment, being on their lowest scale.

Penal protection of persons participating in the administration of justice

From the same perspective of the primacy of the fundamental right to health and bodily integrity, it is interesting to note that in most penal legislation in the European space, there is no distinct incrimination of the judicial contempt, respectively of acts of physical and verbal violence committed directly or indirectly against a magistrate or of a lawyer during their official assignments or in connection with these assignments. Therefore, these participants in the execution of the act of justice benefit either from protection equal to the protection conferred on the representatives of the other public authorities in the country, or from the general protection, ensured to any private person.

However, it is noted that, in a minority, Romania and France preferred the autonomous incrimination of judicial contempt, reserving separately written legal texts for this offence.

Thus, from the analysis of art. 279, Penal Criminal Code, it results that the Romanian penal legislator placed the exponents of the judicial power at a high level of penal protection, by establishing a special regulation and by increasing by half the punishment limits, in comparison to the increase by a third of the incident limits in case the contempt aims at other categories of officials vested with the exercise of state authority.

This special protection beach is even wider in France whose legislation protects not only magistrates, lawyers and members of their families, but also interpreters, experts and arbitrators who participate in the settlement of cases, by virtue of the important assignments they have in carrying out the act of justice, by sheltering them from all those manifestations of physical and verbal violence to which they could be exposed during the exercise of their assignments in the judicial procedure.

It is easy to anticipate, as it represents a mirror regulation of the judicial contempt, even the offence of revenge for the help given to justice is not popular in the European penal area. Therefore, a series of illegal behaviors committed against the people who participated in the execution of the act of justice are regulated as distinct offences exclusively in the legislation of three states: Romania, Estonia and Sweden are the only ones that provided an additional type of protection to the procedural subjects involved in a legal case.

Conclusions

Although there are numerous distinctions between the legislations, the previous examples prove the existence of common benchmarks that guide national legislators to protect justice as a fundamental pillar in the European democratic space, so that in all the analyzed Penal Codes, there are similar incriminated types of conduct, but also private ones, which tends to disregard the general obligation not to obstruct the state in the judicial activity. This is because justice is made not only in the name of the law, but especially with the support of the law which, as shown in this paper, is called to use various instruments of penal law in order to make and provide an adequate and necessary framework for its functioning in good conditions.

On the other hand, the permanent verification of the correspondence of national legislations with European benchmarks is a milestone in order to keep at the same level the balance between the efficient activity of making justice and the protection that this field must benefit from for the wanted functionality. Only

in this context of balancing the instruments made available for the defense of the mechanisms for the administration of justice can it be considered that all the possible measures are taken to achieve the optimal efficiency level in this direction. The comparative look at the methods by which the European states thought to regulate the natural defense shield of the means and persons entrusted with the administration of justice offers various sources of analysis of the ways to increase the efficiency of the criminal protection of the justice administration process.

Therefore, by using the existing indicators in the European legislative space, it is possible to bring elements to improve what each state has already regulated, while keeping the internal specificity, adapted to the society and the national legislative architecture, so that the process of maximizing the criminal protection of justice leads to the optimization of its results, the common goal of all the European states.

References

Bogdan, S. (2007). Scurte considerații privind unele infracțiuni în legătură cu înfăptuirea justiției. *Studia Universitatis Babeş-Bolyai*, 2/2007. http://arhiva-studia.law.ubbcluj.ro/articol/264.

Djuvara,M. (1995). *Teoria generală a dreptului (Enciclopedia Juridică). Drept rațional, izvoare și drept pozitiv*. Editura All, p. 101 și 240.

Hobbes, T. (2011). *Leviatanul. Despre om și societate.* Editura All, p. 19-20.

Ionescu, C. (2017). O perspectivă constituțională asupra justiției ca serviciu public. Comentarii pe marginea articolului 124 din Constituție, *Revista Dreptul,* 5/2017, p. 57-73.

Janet, P., Alcan, F. (1900). *Oeuvres philosophiques de Leibniz, Recueil des lettres entre Lebniz et Clarke – Cinquième réplique de M. Leibniz.* Ancienne Librairie Germer Bailliere, p. 765-797.

Rawls, J. (1999). *A Theory of Justice. Revised Edition.* Harvard University Press, p. 3.

Tanoviceanu, I., Dongoroz, V., Chiseliță, C., Laday, Ș., Decusară, E.C. (1924). *Tratat de drept și procedură penală. Ediținea a doua a Cursului de drept și procedură penală, revăzut și completat* (Vol. 2). Tipografia Curierul Judiciar, p. 43.

Toader, T. (2018). *Codex penal – Codurile penale ale statelor membre ale Uniunii Europene,* C.H. Beck.