

Natural Law and Positive Law in Criminal Law

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ABSTRACT: The essence of rights is the fact that they largely correspond to the surrounding nature and the way humans relate to it. In this sense, over the course of time, from antiquity to the present day, two major directions have been distinguished in which the law, in general and the laws in particular, must be thought about, interpreted and applied. One of the great currents of thought in law has its essence in the natural norms of nature and the environment of which we are also a part. The second one refers more to the applicative character of the law, in the sense that a legal norm must be thought of in the extent to which it produces its effects and not in one in which it prohibits their production. The problem that arises in criminal law is that of the prohibition of certain behaviors, being considered at the same time to be Positive Law. The article aims to treat, briefly, this issue by identifying the aspects that link criminal law to the two great currents of legal thought, showing through concrete examples what exactly this science has gathered from each of them. Some conclusions at the end of the paper will aim to unify all the information and synthesize the paper.

KEYWORDS: natural law, criminal law, psychology, criminal act, positive law, Criminal Code, philosophy, constituent elements, social values

Criminal Law from the perspective of Natural and Positive Laws

Criminal Law is part of that branch of law that belongs to the public domain, i.e. it regulates the social relations that are born or change between the citizens of a community in relation to the entire population, the set of rules of conduct that must be respected for the smooth development of social life and whose position of strength the state is in, dominating the other legal subjects with which it is related (Mitrache C., and Mitrache C. 2019, 116).

From the point of view of Natural Law, Criminal Law respects all the qualities that an individual receives guaranteed by his birth and all aspects that he acquires during his life as a result of the development and contribution to the dynamic life of society (Păiușescu 2016, 18).

Also as a result of respecting Natural Law, Criminal Law criminalizes those conducts that, through their adoption, can seriously affect some rights and civil liberties guaranteed by the Romanian Constitution, the state thus understanding to protect citizens in the exercise of their rights and, at the same time, to -make them comply with their obligations (Hotca 2020, 73).

In the situation of the analysis of Criminal Law from the perspective of a Positive Law, through the very negation of certain social behaviors, the possibility of citizens to be insured against all forms of activities that could harm their health, integrity and the rights acquired through their quality as individuals of society is implicitly affirmed (Păiușescu 2016, 26).

Therefore, positive rights should not be considered in criminal matters in the sense of the provisions that must be fulfilled, but in the sense of those acts of manifestation of the will that are prohibited by law and which, by their use, attract the criminal liability of the subject who adopts such conduct (Neagu 2020, 73).

Criminal Law, thus, achieves an excellent harmony between the notions of Natural Law, respectively Positive Law, with the acceptance of both those elements of strict interpretation such as those relating to the possibility of acquiring, and with the respect of those that are imposed, by their nature, their innate rights.

The fields of application of the two great currents of legal thought are divided according to whether the legislator's attention fell either on the object determined by the commission of the crime, or on the subject who suffers as a result of it (Butoi T., Butoi I., Butoi A., and Put 2019, 113).

When we refer to the material object of the crime, the legislator distinguishes between the consideration of a natural right, of the life and integrity of the person, as social values guaranteed and protected by law and a positive one, of goods, social, personal and conjunctural relations, protected by law and guaranteed by the state.

Thus, we can speak of a legislative bivalence, in the sense that the legislative authority took into account, in the elaboration of the legal norms that impose certain types of behavior on all individuals, on the one hand the natural nature of man, and on the other hand the whole personal social freedoms in relation to the sum of all collective ones (Ionescu 2012, 236).

Therefore, Criminal Law is called to respond to all the legal needs of human beings in relation to public law, taking into account the possibilities of transformation during its evolution and the previous factors that led to the realization of the present relations (Mața 2018, 127).

Criminal Law, Natural Right to the Life and Integrity of the Person

In the consideration of Criminal Law as a legal branch that fulfills the criteria necessary for its consideration as Natural Law, the aspects that favor the application of the law, i.e. the respect of the conduct imposed by the Criminal Law, in the matter of the innate attributes of the human being, are taken into account (Butoi T., Butoi I., Butoi A., and Put C. 2019, 27)

This characteristic of criminal discipline finds its applicability in the field of crimes against life, against physical and mental integrity, against the freedom of action and of the manifestation of the person's will (Boroi 2019, 113).

When reference is made to crimes against the life of the individual, those elements that cannot be the object of personal patrimony, that cannot be transferred through the right of ownership and that are proper to the person, such as the very life of the individual and his physical integrity, are taken into account, and psyche (Ungureanu 2013, 119).

Offenses against life are criminalized by the Criminal Law among the first in hierarchical order that the legislator had in mind when drafting the Romanian Criminal Code, a fact that shows his concern for the natural rights of individuals.

In order to be able to view the commission of crimes against the life and physical and mental integrity of persons as manifestations contrary to Natural Law, the idea must be accepted that the human being acquires life through its very inner nature, and not as a manifestation of the express will of the parents who are they can make the decision to give birth to an individual, or it can occur spontaneously outside the exercise of their will (Trusca P., and Trusca A. 2016, 81).

Thus, in the case of the crimes of murder or manslaughter, where its material object consists in affecting a natural right within the individual, the legislator took into account both the body of the person viewed in its entirety, as well as the spiritual aspects of human psychology that can be injured by committing the act (Nour 2020, 120).

As regards the natural disposition of the person to use, at will and through the personal manifestation of will, his body with a view to its valorization in relation to individual social and socio-economic relations, this freedom is one of its own and, therefore is the subject of Natural Law.

Thus, Criminal Law criminalizes any improper conduct likely to affect a person's freedom of choice, restricting the right to use one's own body, through laws that refer to rape, illegal deprivation of liberty, sexual harassment, the which prohibit any form of slavery, as well as the facilitation of suicide by the help given to those who wish to violate, of their own free will, their right to life (Cioclei 2020, 86).

A special case of damage to the person's body is that of the crime of robbery, where both the person's body and the goods that are part of his patrimony are damaged by the same action (Gheorghe and Ivan 2019, 98).

In this case, it can be observed how, in Criminal Law, there are also certain rules of incrimination that find applicability, both in the current of thought of Natural Law and in that of Positive Law.

Criminal Law, Positive Law for the Protection of Collective Freedom and Social Relations

We can talk about Criminal Law, in particular, under the aspect of the current of thought of positive rights, most of the existing norms in this matter, promoting rules of conduct aimed at protecting those social relations that concern the freedom of all individuals to acquire and transform certain rights during life (Butoi T., Butoi I., Butoi A., and Put 2019, 119)

When referring to rights that have the ability to be transformed through capitalization during the individual's life, it is considered, in particular, those of a patrimonial nature born, modified or transmitted as a result of the individual's manifestation of will, which can alienated during his lifetime or can be left by inheritance (Trusca P., and Trusca A. 2017, 111).

Therefore, the Criminal Law is called to protect the personal patrimony of individuals against any acts of a nature to harm or affect in any way the assets that natural and legal persons may accumulate, capitalize or alienate during the existence of the them (Ungureanu and Munteanu 2013, 78).

Seen as a whole, although the Criminal Law prohibits, through its rules, certain acts of conduct that can be produced with regard to the aforementioned, these prohibitions should not be seen as a negative manifestation of the legislator's will, but in the sense of the values that they protects them, being the current of thought of Positive Law.

The crimes that can be mentioned as being part of this category are numerous, each aspect related to patrimony being analyzed and criminalized separately, but certain categories can be discussed. Thus, the category of assets, patrimonial rights and personal-patrimonial rights such as debt rights, pledge, use and usufruct, which can be affected individually by acts of illegal conduct (Chelaru 2012, 99) can be subject to attention.

From the category of social relations that can be affected with reference to goods, the crimes of theft, robbery and forgery in any form of material goods or of economic value in view of the distortion of economic patrimonial relations are distinguished.

As already mentioned, in the case of robbery, in particular, natural and positive rights are confused, as it is about both the person's body and his property in terms of individual freedom of personal disposition.

From the category of patrimonial and personal-patrimonial rights, with reference to the acts of illegal conduct that can be committed in order to affect them, the crimes of fraud, abuse of service and giving or taking bribes can be distinguished (Sergiu and Șerban 2020, 70). A very important aspect to mention in the case of positive rights is that they correspond, exceptionally, not only to natural persons, but also to legal entities as abstract entities but which can acquire, during their existence, rights and freedoms recognized by law that can be affected by the commission of crimes.

This aspect finds, in an exceptional way, its applicability in the field of crimes that can be committed against the state as a regulatory authority and control of compliance with laws in criminal matters and which bears legal responsibility for the good functioning and organization of society as a whole (Chiuariu 2020, 61).

On the territory of this field, the collective character of positive rights can be found, that is, the way in which the private interest of the citizen is combined with the public interest in order to fructify the relationships that make up the set of national social rights and freedoms (Stănilă 2020, 13).

In this way, crimes committed by the authorities in the exercise of law enforcement activities are distinguished, such as the case of aggravated abuse of office by a public official,

and those committed against the authorities, as in the case of contempt of court (Ristea 2020, 83). Of course, in this context, it can be stated that Criminal Law is, to the same extent, a branch of public law that respects both the principles of the current of thought of natural rights and, in particular, that of positive rights.

Conclusions

During the evolution of the legal system, two major currents of legal thought were formed, namely that of natural rights and that of positive ones.

Natural Law is that legal form of the norms regarding social relations born from the sum of all the elements that the human being receives through his birth and which remain constant over time, not being subject to transformation.

From the point of view of positive rights, they include in their principles, those social relationships of a personal nature that, during the existence of an individual as a natural person or a legal entity as an abstract entity, are born, change and extinguish through the contact between its particular right and the sum of all others that fall under the aspect of society as a whole.

References

- Boroi, A. 2019. *Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Butoi, T., Butoi I., Butoi A., and Put C. 2019. *Behavioral Analysis from the Perspective of Forensic Psychology, Victimology and Forensic Tactics*. Bucharest: Prouniversitaria Publishing House.
- Chiuariu, T. 2020. *Romanian Administrative Litigation*. Bucharest: Hamangiu Publishing House.
- Ciocei, V. 2020. *Criminal Law. Special Part I*. Bucharest: C. H. Beck Publishing House.
- Chelaru, E. 2012. *Civil Law. The persons*. Bucharest: C.H. Beck Publishing House.
- Gheorghe, I., and Ivan C. 2019. *Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Hotca, M. 2020. *Handbook of Criminal Law. General Part. 3rd Edition*. Bucharest: Universul Juridic Publishing House.
- Ionescu, C. 2012. *Constitutional Law and Political Institutions*. Bucharest: Hamangiu Publishing House.
- Mața, D. 2018. *Administrative Law*. Bucharest: Universul Juridic Publishing House.
- Mitrache, C., and Mitrache C. 2019. *Romanian Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Neagu, N. 2020. *Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Nour, A. 2020. *Criminal Law. General Part*. Bucharest: C. H. Beck Publishing House.
- Păiușescu, A. 2016. *Elements of the general theory of law and the state*, Bucharest: DIO Publishing House.
- Ristea, I. 2020. *Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Sergiu, B., and Șerban A. 2020. *Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Stănilă, L. 2020. *Criminal Law. General Part II*. Bucharest: Universul Juridic Publishing House.
- Trușcă, P., and Trușcă A. 2016. *Civil Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Trușcă, P., and Trușcă A. 2017. *Civil Law. The persons*. Bucharest: Universul Juridic Publishing House.
- Ungureanu, O., and Munteanu C. 2013. *Civil Law. The persons*. Bucharest: Hamangiu Publishing House.
- Ungureanu, T. 2013. *Civil Law. General Part*. Bucharest: Hamangiu Publishing House.