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**Some Considerations on Criminal  
Policy and Crime Prevention**

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**Abstract:** The paper deals with the issue of criminal policy as an integral part of the general policy of a state and its main component - the prevention of the crime phenomenon. Although the notion of criminal policy is used in the legal language, and not only, for more than two centuries, during which various definitions of this concept have been issued, there are enough indications that it is not correctly understood at this time. For this reason, we attempted to present a possible definition of what was considered to be the position of any government over criminality and a few landmarks of this particularly important activity. At the same time, given the unanimously accepted opinion that the prevention of criminality must precede the fight, I tried to present some opinions regarding this prophylactic enterprise, starting from its delimitation in relation to other notions and activities and continuing with the responsibilities that can be distributed in a rational and timely manner to state authorities.

**Keywords:** the criminal policy; policy of government; crime prevention

## **1. Introduction**

The events at the beginning of 2017, which took place in Romania, having the stated reason the opposition to the initiatives of the power to decriminalize certain facts, revealed, more than the disputes on the realm of doctrine, the nebula surrounding the notion of criminal policy. This is all the more so since the specialized dictionaries, defining politics, explain notions such as: internal politics, foreign policy, economic policy, nonalignment policy, customs policy, etc. (Political Dictionary, 1975, pp. 461-464).

Beyond the slogans in the market, the attitudes of some institutions and individuals have been especially distinguished in this matter, invested with attributions and responsibilities that, instead of clarifying things, have made them even more disturbed. Those concerned about the problem had the opportunity to find out that the judge called to judge on law, wanted to be the law maker, and the prosecutor called to discover offenses and identify offenders, charged those charged with making the laws. Of course, the course of events (if any) could be interpreted in many ways, could identify faults and culprits, evil intentions, lucid and less lucid people, one thing, however, pierces among all these uncertainties: the notion of criminal policy is not clear to those called to conceive it, for those called to apply it, and even less for those who are obliged to respect it.

And, as a consequence of this blurring, the practice of an incoherent and ineffective criminal policy is in the natural order of things. Since an efficient management of the phenomenon of crime depends

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mainly on a systematic and orderly criminal policy, it is all the more necessary to define this notion, to identify its main characteristics and, consequently, their usefulness in developing strategies and tactics of prevention of the phenomenon in question.

Not to be understood that until the events mentioned, the Romanian state would not have and would not have promoted a criminal policy. Our intention is to point out that this policy has not been enough well-related to the realities and has not been developed coherently, the precariousness of the effects being visible, one of the causes being also the confusion on the definition and characteristics of the criminal policy. Apparently, this approach to clarify things can be theoretically cataloged, after all didactic, ultimately - useless in an increasingly pragmatic world.

Our opinion is that, on the contrary, the more precise and correct definition of the individualization of the notion of criminal policy is a guarantee of the elaboration of some rigorous laws, resistant to the pressures of reality, harmoniously framed in all the social relations whose ordination and regulation are called upon to accomplish, capable of constituting a strong barrier to abuse and arbitrariness. The examples of everyday life that support such an assertion are countless. We are confined only at highlighting the syncope encountered by the two codes (the Criminal Code and the Criminal Procedure Code) from their implementation to the present. The multitude of decisions taken by the Constitutional Court in resolving some exceptions of unconstitutionality or by the High Court of Cassation and Justice in appeals in the interest of the law forced the legislator to operate regularizations and agreements on numerous texts.

Here again, unfortunately, has imposed itself the insufficient attention given to the criminal policy, so that a number of modifications and additions have not been made by the legislator enshrined in the Constitution, respectively by the Parliament, but by the Government through emergency ordinances. Moreover, the adoption of the codes was done in an unnatural manner for this kind of normative acts (organic laws), that is, not through debates in Parliament, but through the procedure of engaging the liability of the Government. It is only for these reasons that a closer focus on criminal policy is needed. And closely related to this policy is the issue of crime prevention, because its purpose, translated by the drafting and enforcement of criminal law, is the prevention. No matter how risky such an assertion, which circulates more and more in judicial environments, and not only, prevention is the primary purpose of the criminal norm, and penalty - the second purpose, subsumed to prevention. In other words, prevention is the very essence of the modern criminal policy.

## **2. A Possible Definition of Criminal Policy**

Criminal policy can be tackled in two ways: as a science and as part of a general policy promoted by a government. The notion of criminal policy was used for the first time by German criminal law specialist Feuerbach<sup>1</sup> at the beginning of the nineteenth century, and the first work on this concept was the Handbook of Criminal Law and Criminal Policy of German jurist E. Henke,<sup>2</sup> issued in Berlin in 1823. However, the concept of criminal policy was used with greater frequency in legal, political and sociological language only at the beginning of the twentieth century and towards the middle of it. The

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<sup>1</sup> Paul Johan Anselm von Feuerbach (1775-1833), German jurist, has made an important contribution to reforming the Bavarian Criminal Code.

<sup>2</sup> Eduard Henke (1783-1869), German jurist and criminologist, author of the paper *Handbuch des Criminalrechts und der Criminal politic*.

work of Franz von Liszt<sup>1</sup>, *Traite de droit penal allemand*, vol. I issued in Paris in 1913 has laid the foundations for the concept of criminal doctrine and criminal policy. (Daneş, 1995, p. 42).

Over time, the opinions and attitudes towards this concept have been different, although some of the decisions in the reference field of criminal policy have been taken in some organizations such as the UN. In this context, of course the question of formulating a definition that individualizes the concept of criminal policy and identifies its main features has been raised.

It is noteworthy that it has been generally left from the etymological meaning of the expression which, in the opinion of many authors, the criminal policy designates only the activity of repression of the crime phenomenon (Cioclei, 1994, p. 3). In French literature, are used in parallel the notions of penal policy (*politique penale*) and criminal policy (*politique criminelle*). Naturally, criticism have been brought to the second wording, pointing out that it would suggest the opposite of what it is actually intended to express. This is why the term anti-criminal policy has been proposed (*politique anti-criminelle*), but this was not imposed in the specialized language. Some authors, like Marc Ance<sup>2</sup>, consider criminal policy as a science and art at the same time, others propose its identification with a “management of the criminal phenomenon”. Cristine Lazerges<sup>3</sup> considers that criminal policy is “the analysis and understanding of a particular business of the city - the criminal phenomenon (on the one hand) and the implementation of a strategy to respond to delinquency or deviance situations (on the other hand).

In the Romanian doctrine, the preoccupations in this sense have started also from the etymological meaning of the expression, considering that, in general, through politics is meant the activity of social groups, parties, bodies of power and the state leadership that reflect the social state and the economic structure of a country (Political Dictionary, 1975, p. 461). In this respect, some authors, appreciating the social importance of criminal policy, considered necessary to point out that it “has, or in any case should have nothing in common with politician...politics” (Cioclei, 1994, p. 2). Despite such attitudes (natural under certain circumstances determined by the general policy inconsistency promoted by the government), even they have admitted that “criminal policy circumscribes the wider scope of a state's general policy, but only to the extent that it is understood and practiced in its traditional sense of managing the city's affairs” (Cioclei, 1994, p. 2). It has also been admitted that criminal policy can only be a “criminal phenomenon management” (Cioclei, 2009, p. VII) and that it cannot be detached from the wider context of “criminal sciences”, namely criminal law and criminology.

In view of this diversity of opinions, the definition has emerged that “criminal policy is the whole of the means and methods used at one time by governments, educational actors and state bodies to fight against and prevent crime” (Daneş, 1995, p. 42). In another sense, the criminal policy is “a part or an aspect of the general policy of the state, which includes all the measures and means of preventing and fighting against the criminal phenomenon, as well as all the principles of elaboration and application of these means and measures, adopted at some point in a particular country” (Bulai, 1992, p. 14). Finally, it was appreciated that “criminal policy elaborates and implements strategies to fight against the criminal phenomenon” (Cioclei, 1994, p. 12).

From the analysis of those presented, it results that in formulating the evoked definitions some elements were considered such as: the criminal policy - part of the general state policy, the criminal

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<sup>1</sup> Franz von Liszt (1851-1919), German jurist, professor at the University of Berlin.

<sup>2</sup> Marc Ancel (1902-1990), magistrate and theorist of French law, the author of the paper *La Defense sociale nouvelle, un mouvement de politique criminelle humaniste*, 1954, 3-e edition, Cujas, Paris.

<sup>3</sup> Cristine Lazerges (n. 1943), professor of Law and Criminology at Pantheon Sorbone University, author of the paper *La politique criminelle, Que sais – je?*, 1987, Paris, Press Universitaires de France (PUF).

policy cumulates a set of measures, means and methods designed for a certain purpose, the criminal policy elaborates strategies to combat the criminal phenomenon.

It therefore appears beyond doubt that criminal policy is an integral part of the general state policy promoted by a government, whatever it may be. And this is a natural consequence of the democratic rules governing a society. Whoever holds power and governs imposes their policy, including criminal policy.

Criminal policy can only be a set of means, methods and measures to prevent and combat crime as a reaction of the social body to the disregard of the law and the rule of law, with negative effects on life, health, patrimony, order and public peace.

Criminal policy is materialized in the final analysis of a government program aiming at combating the phenomenon of crime, this involving legislative initiative measures to obtain the legal instruments and of implementation from the legislator.

In consideration of the above, we can define the criminal policy as that part of the general policy of a state, which aims at the measures necessary to combat and prevent the phenomenon of crime.

### **3. Benchmarks of Criminal Policy**

Any criminal policy is guided by certain benchmarks or principles that guide the rule of law specific to a state.

a) A first benchmark is compliance with the law that is the promotion of the principle of legality and rule of law. Combating crime can only take place in accordance with legal provisions, whatever they may be. This presupposes that the acts that constitute offenses, as well as the penalties to be applied for such acts, must be provided by the criminal law. The judge and the prosecutor cannot decide instead of the law, that is, they cannot create the law. They can only decide according to the law. Criminal policy should target the fight against the phenomenon of crime exclusively through legal means.

b) A second benchmark of the criminal policy considers the fact that, in the legislative framework, it is being implemented by the legislator, meaning by the Parliament, the only organ of the state of law empowered to impose penalties for the acts incriminated as crimes. In concrete terms, the criminal policy is carried out by the judicial bodies on the basis of the legal norms enacted by the legislator. Concerning the implementation of the criminal policy it is worth noting that the solutions adopted by the judicial bodies must constitute inaccurate acts of justice in order to produce the inhibiting effect, narrowing the scope of the phenomenon of crime (Daneş, 1995, p. 43). From here it results that the means of reaction to crime are determined by the general evolution of society.

c) The third benchmark of criminal policy is its position towards crime prevention. It has been appreciated in the specialized literature that prevention has an alternative role in relation to combat activity when it has not necessarily been imposed. On the other hand, it was considered prevention to be a stand-alone measure, prior to the fight (Daneş, 1995, p. 44). We appreciate that crime prevention is an integral part of the criminal policy, which is the most important. Its importance is not derived from the immediate social impact, which can sometimes be eclipsed by the effects of the fight but by the medium and long-term effects, consisting in stopping the upward trend of the criminal phenomenon and reducing it to reasonable limits.

The Romanian criminal policy had a coherent course in a few periods from the existence of the modern Romanian state. In general, it has been affected by some issues, more or less acute, in relation to the government's vision in this area. The main shortcomings of the current criminal policy have been determined by several factors, including: legislative inflation, inconsistencies in the determination of penalties, inappropriateness of some incriminations, lack of clarity of some texts of law (Cioclei, 2009, p. VII).

Legislative inflation, in addition to the fact that it denotes the weakness of a state in managing its own problems, lacks the content of the principle of legality. Apart from the other two guarantees provided by the principle of legality, namely the prohibition of limitation of citizens' rights other than by the will of the legislator and the protection against the abuses of the executive power, the third one, that is the possibility of the citizen to know the law is impaired by the avalanche of normative acts which succeed in short periods of time. In such circumstances, the rule *nemo censetur ignorare legem*<sup>1</sup> seems meaningless and the courts have been forced in some situations to admit ignorance of the law.

The lack of clarity of some legal texts is also a consequence of legislative inflation, explained only by the rush of legalizing at any price, neglecting the clear, unequivocal expression, thus giving way to non-uniform interpretations and applications in similar cases up to identity. There have been stages or periods when the Romanian criminal policy has marched to the increase of exigency, translated into the increase of penalties in the case of some crimes such as theft of components of irrigation systems, electrical networks, components from safety installations and management of railway, road, naval and others traffic. Judicial practice has shown that this optic is not productive and that the increase in penalties has not produced any effect on the phenomenon of crime as a whole. At the same time, it was observed what Beccaria<sup>2</sup> had yet to find out in the eighteenth century that not the severity of the penalties impressed the offenders, but the promptness and certainty of their application. Or precisely this promptitude has been missing and still missing from the Romanian justice arsenal. When prosecution in cases of offenses of bodily injury, economic frauds, copyright offenses, etc. has been going on for 1-2 years, plus 1-2 years of trial and appeal, it is hard to believe that the law has been applied promptly and that its preventive effect has worked. It may be that a severe punishment, applied so late, would have adverse effects on the prevention of crime. The new Code of Criminal Procedure contains provisions on the speeding up and shortening of the length of the criminal trial by means of some procedures such as the recognition of guilt agreement and the simplified court procedure, but as practice shows and appreciated in doctrine, these tools have great deficiencies of regulation and, as a consequence, sometimes are applied in unusual ways. On the other hand, they are in fact aimed at alleviating the task of the judicial bodies and not the promptness of law enforcement.

#### **4. Crime Prevention**

Crime prevention has been and still is a challenge both for theoreticians, but especially for criminal policy practitioners everywhere. It is undoubtedly an essential component of the social reaction against crime, the fight against this phenomenon, which, regardless of costs, aims to eliminate the antisocial facts and their consequences, namely the reduction of the number of victims, the consequences suffered by them, as well as of the persons guilty and liable to criminal penalties. "Regardless of costs" means the preoccupation of the rule of law to protect the rights and freedoms of its citizens, but

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<sup>1</sup> No one is allowed not to know the law, or no one can invoke the ignorance of the law.

<sup>2</sup> Cesare Bonesana – Beccaria (Marchiz de Gualdrasco și Villaregio) n. 1738, d. 1794 – Italian jurist, philosopher and politician, the author of the famous work „*On Crimes and Penalties*”, promoter of the removal of corporal penalty.

also to avoid the failure of some in the criminal territory, with all that implies such a possibility (criminal prosecution, trial, reparation of damages, reinstatement in the previous situation, etc.).

There was a time when the criminal policy was essentially constituted by the repressive element (Daneş, 1995, p. 44). The reaction of society to the criminal phenomenon was limited to the means of criminal law, the investigation of criminality only serving to substantiate the repression measures in the idea that they be as effective as possible. This aspect of the criminal policy is what the practitioners and theorists of criminal law consider to be the fight against the criminal phenomenon, some of them considering it a complementary side of prevention (Dincu, 1993, p. 173). Other authors consider the prevention and the fight against crime different activities, with their own specific and purpose, carried out by institutions, bodies, specialized courts, having strictly defined competences. Finally, opinions were also expressed that prevention would include both pre-tort and post-tort measures, while combating always occurs post-tort.

We consider that from a terminological point of view, prevention is the species, and the fight - the genre, in other words, prevention is a form of combating crime, which does not contain any measures of criminal repression. Naturally, the mere fact of incriminating some facts produces or should produce a preventive effect translated into a warning or intimidation of those predisposed to commit crimes, as the finding of criminal offenses, the application of penalties and their execution also produce effects with preventive aspect. It is that prevention known in doctrine as prevention by law, based on the inhibitive nature of the criminal law. We cannot, however, ignore the fact that all these activities and measures mainly aim at repression, what produces as a result of the repression has an adjacent character.

The social reaction to crime cannot be limited only to repression and its preventive effects, or if such a situation is accepted, the results will be insignificant, as evidenced by a long practice. In order to give a firm and effective response, the social body felt the need for other remedies as well, rather than repression, which, of course, cannot be ignored. These remedies constitute what we consider to be crime prevention.

In general, prevention has been defined as a set of measures against the action of the generating and enhancers factors of the crime (Chipăilă, 2009, p. 344). Therefore, by acting on the causes and conditions of crime, prevention is outside the judicial environment, it is essentially extrajudicial (Dincu, 1993, p. 173). It addresses the annihilation of the generating causes of the crime and the conditions that favor its perpetration. It is a civil activity, which must involve the community more than the judicial institutions. In this configuration, crime prevention can only be a succession of coherent and permanent measures, organized and managed in relation to the evolution of the considered phenomenon.

If we admit that crime has a dual causality, which at the same time is related to the human being and society, it means that prevention also has to take into account the man and the social environment in which he lives. Thus we come to the idea that prevention must be done through social (relating to the person or persons prone to committing crimes, as well as their living environment) and economic (which addresses the economic causes of crime) means. From this perspective, it must be noted that the Romanian criminal policy of the last period has been shy in the sense that were insufficiently addressed social elements and almost neglected elements of economic nature. Thus, the lack of jobs and the lack of motivation to get a job have generated a whole range of alcohol-grafted, psychoactive substances offenses, lacking any ideological horizon, or any existential landmark. Also, excessive economic polarization, resulting in the emergence and widening of some social categories at the

extreme limit of poverty, has generated, as expected, a sharp rise of offenses with patrimonial impact. These findings are beyond doubt and cannot be challenged. The problem that arises is what counter-measures envisaged and envisages the Romanian criminal policy.

The measures are those mostly practiced in most European countries: measures implemented by law and police. In other words, legislation and clear competencies for police agencies. It is possible that in other communities, with other educational configurations and especially with other socio-economic conditions, the stated measures have the expected effects. Referring to the situation in Romania, we can appreciate that such a system of measures is, certainly, ineffective.

From an institutional point of view, Romania, pressed also by the requirements of European integration, has created a system that could be effective if it would be used in the parameters imposed by the evolution of the phenomenon whose management is called to do it.

There is a National Crime Prevention Council, as a governmental structure that has developed a National Crime Prevention Strategy for 2011-2016. Within the Ministry of Justice functions the Directorate for Crime Prevention, whose tasks are to study the phenomenon, to develop some programs and projects, to implement them, to ensure the collaboration between the institutions with attributions in the field, etc. Within the General Inspectorate of Police, the Crime Research and Prevention Institute has been operating since 1998 with corresponding structures in the territory. Finally, there is a National Institute of Criminology, having, among other functions, the prevention of crime. We also add the National Anti-drug Agency and NGOs such as the International Crime Prevention Agency and Security Policies.

All these entities have carried out analyzes and studies on the phenomenon, developed strategies, programs, projects, initiated and carried out campaigns and activities meant to stop, diminish, reduce the scale of crime. But there is no analysis or assessment of the effects of these measures. However, in order to realize their effectiveness, it is enough to consult the judicial statistics and compare them from one year to the next. Thus, we find that the crime has not been reduced in its entirety, but on the contrary it has registered significant increases and this relates only to the revealed (known) crime, regarding the actual crime, being impossible to make any appreciation. If there have been some decreases, they have been on some segments and insignificant in relation to the whole phenomenon.

What would be the explanation for such a situation? There is an institutional framework, strategies, projects, programs, campaigns and actions have been developed, with modest results. The explanation can be found in the fact that all these measures neglected the causes that are not related to the offender's person, namely the socio-economic ones, on the one hand, and on the other hand, the weight center of the whole preventive ensemble was placed in the police yard.

## **5. Conclusions**

Crime prevention activity is a basic component of the criminal policy of a modern rule of law. Continuing cantoning on the repressive side and the so-called legal prevention is a kickback in the field of modern prevention. Prevention should be conceived and carried out based on some in-depth criminological studies on objective reality data. The weight center of all preventive activities should be placed under the responsibility of entities other than the police, reserving it the role of principal partner.

As long s preventive measures addressing the socio-economic causation of crime will be neglected, any preventive action will remain without effect.

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