Challenges of the Western European countries facing contemporary criminality

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Abstract: *The social and economic changes occurred during the recent decades in the European countries as well as the massive movement of the population from the East to the West part of the continent have had multiple implications in the field of criminality, which have caused increasing phenomenon, at present more than ever. These consequences are one of the main threats to the democracy and the rule of law as well as to the human rights seen as traditional values of the Western Europe. Moreover, everyday individual insecurity is becoming increasingly endangered by new forms of criminality more diversified. Considering all these in practical matters, the paper will approach the issue of criminality from the point of view of the various contemporary forms it presents that tend to threaten the civilized world. On the other hand, I seek the way in which law enforcement agencies are able to fight against the criminality phenomenon and, at the same time, to find mechanisms and implement strategies in order to remove such dangers. If the Western countries are facing contemporary forms of criminality and how they react to the threats produced are issues that concern penalists and I would like to propose pertinent responses, as close to the contemporary realities as possible.*

Keywords: *contemporary criminality; individual security; human rights; irregular migration*;

Introduction

Taking into account the different reactions which are presented at the European Union level on the background of the increasing enlargement of migration, at the moment an important inquiry arises. Are the Western countries weak when facing contemporary forms of criminality? It is a very difficult question, whose answer is not just difficult, but a sensitive one, due to the many and various forms of criminality, which occur in the contemporary societies in Europe and all over the world. Discussing about the various forms of criminality existed in the societies I am referring in the current chapter to, it is important to focus attention on the causes that produce the phenomenon as well as on the consequences it produces. It is considered a balance between them already exists and, in these circumstances, the doctrine has to analyse the characteristic of its elements in order to provide more and relevant information on how the authorities of the Western European countries have to make decision for stopping the phenomenon.

One of the criteria that must be taken into account in defining the phenomenon of criminality is based on the migration of people from the East of Europe to the West part of the continent. In these circumstances, their human rights and also respecting them is always viewed as one of the most important exponent of their habitual life as well as their existence away from the home countries. However, the living standard of the migratory people is equally important and, last but not least, their level of culture and civilisation as well as the education, which could affect in any way the Western people too has also to be reappraised.

At the same time, it is considered the manner in which the law enforcement bodies of the Western states have managed the real situation from a judicial point of view in order to prevent and control those new forms of criminality occurring as a result of irregular migration, from pretty offences to serious ones. They are new issues arising on the increasingly rapid background of unprecedented development of the criminality in the East of Europe and its mutations from East to West.

On the other hand, the way in which the local population has perceived the effects of this phenomenon will be pointed out in the current paper and how much the law enforcement agencies both at the national and European level have made huge efforts in purpose to diminish any kind of irregular migration and the contemporary forms of criminality too. It is about the instruments of fighting criminality used by the law enforcement bodies and also the well-known judicial instruments of the cooperation in criminal matters, which have consequences as well. Adopting newer documents containing provisions for respecting the human rights of the migratory people are only certain elements which convinced us that fighting everyday criminality is and must be a priority for authorities. Basically, in approaching the current issue, I should make a distinction between the contemporary forms of crime perceived by civil society, on the one hand, and by the competent authorities, on the other hand, because, as I will highlight below, some differences exist.

1. Contemporary forms of criminality

First of all, in creating a general background of the resistance of the Western countries to the contemporary forms of criminality, it is necessary to analyse what kind of crimes, serious ones or just petty offences are committed in the territory I am referring to.

The unprecedented development of criminality in Europe as well as the various forms of criminality, which are committed in the contemporary society, makes us reflect on this topic, examine the causes and formulate some conclusions, which hope to contribute to the improvement of existing explosive situation in these states.

Thus, without stigmatising the role and the place of the judicial authorities confronting with this kind of danger and the threats we confront everyday, but analysing and appreciating their contribution to diminishing this phenomenon, it is necessary to visualise the forms of criminality that are currently met in the European society.

Moreover, remaining in the area of researching criminal phenomenon in the West of Europe, I cannot omit recognising the nexus East - West criminality in Europe and the consequences it produces.

Speaking about the contemporary forms of criminality present in the Western European countries, I have to emphasise the East-West dual element and the common dimension of criminality in both parts of the continent. I consider that because, in fact, it is frequently observed the forms of criminality committed in the East and the West of the continent are the same, and moreover, a dialectical relation of both already exist. It is a resemblance, which was the basis of starting and strengthening cooperation in criminal matters between the European Union Member States [1].

On the other hand, discussing about various forms of criminality committed in the Western Europe, I have to keep in mind the degree of development of the phenomenon in this part of the continent, because, as I noted above, the most serious forms of transnational criminality, for example, committed in West require the involvement of the organised criminal groups came from the East of continent or they are collaborating with similar groups from West, whose result is obviously.

Analysing from a different point of view, the social values damaged as a result of development of the contemporary criminality phenomenon, it could be noticed an increase in the number of cyber-crimes, which have achieved an alarming level at present. The attacks on the holders' bank accounts and their credit cards have become so common, that are a real insecurity threat against the banking systems in these countries. However, analysing the perpetrators of this kind of offences and their *modus operandi*, I have to provide they come from countries situated geographically in Eastern Europe, from the former communist coalition countries, poor ones, which still pass the transition period, an important element, which produces consequences in this way. And, if I discus about the configuration profile of criminality of the source - countries, I could remark the nexus between these features and the global economic crisis the European societies pass.

The crime scene shows us that the activities of the criminal groups in the East over the Western democratic values are developed. In other words, the phenomenon is seen as "*attacking poverty against wealth*". From this point of view, the most affected countries are Belgium, the United Kingdom and the Netherlands. But this fact cannot be attributed to the incapacity of the authorities of the above mentioned stated of defending themselves against the criminal activity affecting the human security or other values of the rule of law, for example.

Another contemporary form of criminality is and remains one referring to prostitution and trafficking in human being. The main route of human traffic in Europe is also performed in the countries situated in the East of Europe to the West of the continent and aims mainly at the exploitation of forced labour or prostitution and other sexual services. The victims of this type of crime are both men and women. The huge profit and frauds obtained by perpetrators in this kind of offences is alarmingly increased, a fact which is proven by increasing number of this type of causes discovered in the last 10 year period of time.

Minors also become victims of the traffickers on the same route, from East to West and for the same purposes - sexual services and forced labour. As a rule, children, usually very young, are trained to commit street offences. At the first sight, these facts seem rather minor but, if the everyday human insecurity is considered, the social danger is quite high having consequences in a negative manner. And, if I think of the possibility of its spreading in the future, the danger is increasing [2].

It has been shown that, the most recent form of criminality, a "modern" one, committed in the United Kingdom is one referring to the benefit frauds. In this respect, children are involved in this type of offences, most of the time with their parents' agreement.

On the other hand, discussing the way in which the Western countries are prepared to face imminent dangers I am finding appropriate that it is very important to analyse the dimensions of the contemporary society penetrated by crimes when it faces the various forms of criminality.

Thus, the impact of crimes upon the population seen as a receiver of criminality and as a reality of everyday life looks quite numerous in the countries of the West of Europe and, on the one hand, the moment in which offences meet the law enforcement agencies and the legislation into force with the legal mechanisms and instruments implemented in this field, on the other hand. It is true that the difference between them is very important, which is highlighted in both structural and institutional elements differentiating them.

Relating to the first issue I pointed out above, the way in which the population inhabiting states in the West of Europe comes across various forms of criminality is obvious. However, discussing in this respect, there should be another aspect to be taken into consideration. I have to distinguish between the minor offences, also called "petty offences" and serious crimes, having a

transnational feature, or organised ones. In other words, the distinction of two categories of crimes, which have a low level of social danger and the offences having a high level of social danger must be taken into account when the impact of these categories with the social environment is analysed [2]. They are obviously considered more carefully and the legislator has regulated a special incrimination, those in another category, in spite of the fact that those included in the first category are not to be ignored. A better protection of the individual as victim of the petty offences and its rights is considered, while the serious crimes are also seen as a serious attack against the major values of democracy due to their increased danger. And I can add that the danger is higher when this kind of offence is committed in an organised manner. However, beyond all these specific features, the person and the human security are elements that would be considered in presenting the next chapter.

2. Human security - particularities in the Western European countries

In a world of the democratic governance with international organisations fighting for respecting human rights that combines three elements of analysis, such as *the human being, the state and the international system*, a new paradigm for the development of the national legal order [3] is provided and the concept of human security could be seen as a notion that provides answers for the questions of "*how we can place the security of the individual on the same level as the security of the state*?" [3].

I am considering convenient to ample refer to the human factor, even if the social values defended by criminal law occupy a vast area in criminal matters. It is about protecting property, justice and other public authorities, the state and the other social values. Implicitly, human security, owing to its content, essentially contributes and must be taken into account when the protection of the individual's rights in criminal matters is considered.

From the very beginning, the doctrine dealt with the definition of the human security concept, which was considered in relation with the human rights one. Taking into account the different definitions offered by doctrine [4], [5] establishing the international community to start focusing on discussing *de facto* its implications in the international law of human security, a large study towards a common understanding human security seems to be indispensable. For a long time, it has had no clear "theoretical grounding" [6]. For this reason, a threshold definition has been proposed [7], which added certain aspects in accordance with the Commission on the Human Security's ones presented in its Report of 2002. In its respect, human security is the protection of the vital core of all human lives "*from critical and pervasive environmental, economic, food, health, personal and political threats*" [8].

The transposition of the notion of security by an individual dimension has been instrumental in paving the theoretical way to the human security. Although the human security was more viewed on its international dimension, at present, it is a national security related to the international one, which was often found in an absolute reading of national sovereignty.

As a social concept, security is viewed as an ambiguous characteristic in its meaning. Doctrinally speaking, it is pointed out on the basis of the reconceptualisation of the security as a social concept since 1990. The authors, who agree with this idea, emphasise two sides of the security concept: "*security in an objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked. For social constructivists security is what actors make of it, thus adding an intersubjective meaning. In the UN system at least*

three different security concepts coexist. The Hobbesian concept focuses on the political and military dimension of national security. The extended Grotian concept aims at «cooperative security» that includes economic, societal and environmental security dimensions …" [8].

In this regard, approaching human security is promoted by the Commission on Human Security [9], as being a cooperative security deals also with the human rights and its values determined by all these sides discussed above. It is unanimously recognised that, since 1990 the scope of the "securitisation" changed, but still has its reference from a national to a human-centred security concept, both in the UN system [10], and in the academic security community. Despite its centred feature, the human security concept and the expanded reconceptualisation of the security has gradually emerged within an integrated concept.

All these considering, I have to point out that the human security is a relevant issue towards the protection of individual by the national criminal law. Thus, the human security is viewed as a general concept, while the protection of individual is a particular one seen in a restricted way. This is the main reason for which a parallel analysis between these two issues is indispensable. Moreover, it seems to be an inevitable contribution to the substantive aspects of the contemporary forms of criminality.

3. How weak is the Western society?

The topic requires, as I have pointed out in the previous chapter, a pertinent approach from two points of view. It has to be discussed from the point of view of the impact of criminality upon the social life of the people, on the one hand, and it should be analysed from the point of view of its impact with the law into force, which incriminates the contemporary forms of crimes, on the other hand.

The democracy has confirmed the fact that all the states situated geographically at the West of Europe were open to receiving the foreign citizens from Asia, Africa and also the Central and Eastern Europe. This fact has become notorious within the European Union, once the internal borders were abolished between the Member States in the Schengen area, occasion with which some fundamental principles of the free movement of the people within the European Community has been affirmed. To this fundamental principle another one was devoted. It is called the free movement of labour into the EU area. This phenomenon allowed a massive migration of the population from East to the West of the continent. In spite of these fundamental rights, which offer people the opportunity not only to travel, but much more, including the right of searching a job, right of residence, the family right, many people prefer not to travel abroad in order to find a legal job, but most of them have chosen an illegal route to penetrate the labour market. Another purpose for their illegal activity is to develop a sexual "*industry*" [11].

Thus, I can notice how multicultural the societies of the West of Europe are and how massive the migration of the above-mentioned people to this part of the continent has been. I could state that it is about an irregular phenomenon if I take into account the current situation of the society in relation with the high degree of criminality committed in the last years. It is true that, when there is an irregular migration, there is a high degree of criminality too. In this respect, the Romanians' migration to Italy and the Polish migration to the United Kingdom are well known and their consequences in the matter of fact in particular in criminal matters as well. At the same time, the high level of criminality in these two countries ascribed to this phenomenon is also notoriously.

The phenomenon of irregular migration creates serious problems relating to the perception of criminal threat as well as of the level of its development in the West of Europe. It is known that a deterioration of the social situation and an assault upon its security has been produced by the Romanians in Italy as much as the home authorities have promptly reacted. A huge scandal was launched a few years ago in peninsula, which was caused by the crimes committed by Romanian citizens settled in Italy in order for them to work in that country. The types of crimes committed are mostly burglaries associated with rapes and even murders. The same "treatment" had the English population once the Polish people massively migrated to the United Kingdom where they were attracted by the excellent economic condition of the country and its high living standard which they couldn't find at home. Actually, the mirage of the Western societies, found not only in Italy or in the United Kingdom, but in the Netherlands, France, Germany too, created the stronger causes for the Eastern population they did not find in the home countries. After a short analysis upon the migration phenomenon in Europe, I can notice the fact that the causes that have produced it are similarly and they refer mainly to poverty and lack of jobs insecurity or its instability, very low salaries and last, but not least, corruption that the states of the East of Europe can "boast" about. All these premises as well as other causes have led to the migration of population and at the same time, to mutations of criminality in the same direction.

Corruption is perceived as the most serious social problem of the states in the East of Europe, coming before other social problems the population is confronting with, such as poverty, lack of houses, excessive bureaucracy, etc. Relating to the last issue - corruption - I can state that it has encompassed the public institutions which have the very mission of fighting against them [12]. It is painful that in a democratic society of the 21st century, in a state where the officials are endorsed with authority to ensure legality, more often we hear news about the judicial bodies mysteriously related to dangerous delinquents and who, due to their behaviour, endanger the citizens in their greed for money [12].

At the same time, I consider that it is very difficult to make suggestions for stopping phenomenon, but I bear in mind some of these to prevent and control the corruption, which is considered to be more important: hardening criminal punishment for corruption, adopting efficient anti-corruption laws which will be applied irrespective of the individual and its position, correct publishing of the politicians wealth statements, judicial reform, respect for professional deontology by civil servants.

4. Legal instruments of fighting contemporary criminality

The diversity and diversification of the forms of contemporary criminality are actually not new concepts in the field of criminal sciences, both nationally and internationally. Frequently, the doctrine [13] has been involved in theoretical study of these serious forms of antisocial facts, correctly appreciating the fact that they are more dangerous when they are committed on the territory of different states or the preparatory acts are committed on the territory of a state and the criminal activities are consumed in another state or many states. Thus, it is considered that the criminal activity performed in this way has a transnational feature. Some of these several forms of criminality are stipulated in various international documents or documents adopted at the European level by the officials involved in this area of interest. Among these, the most intense activity against the contemporary criminality has been developed by the European Union institutions, in particular the

Council of the European Union, the European Commission and by the other competent forums at international level, such as the Security Council and other UN organisations.

At the same time, the most frequent types of contemporary criminality are already known to doctrine. In this respect, the specialists devoted an ample space to the organised crime phenomenon especially to the cross-border one [14]. This is because, some categories of crimes although committed in some states or neighbouring states have produced serious consequences in the European states, managing to affect the European Union interest area. In the latter case, the danger is higher when the warning signs coming from the European officials, show the necessity of strengthening the capacity of defending the Member States against this serious forms of criminality, which tend to affect the area with the most sensitive European dimension – the financial interests of the European Union [15]. Among other strategies, this fact has attracted the judicial cooperation in criminal matters of the Member States as a part of the system of fighting against this phenomenon, in a more comprehensive legal framework. Of course, this concept has been extended in the sense of attracting some non-Member States situated in their proximity, in order to strengthen the fight against transnational criminality.

Thus, the legal framework of the judicial cooperation in criminal matters at the European level is provided by the document of the European Council adopted on 29 May 2000 which establishes, in accordance with the Article 34 of the European Union Treaty, the Convention on mutual assistance in criminal matters between the Member States. The stated purpose of this convention is that of strengthening cooperation between judicial authorities, police and customs, by supplementing provisions and facilitating application of the European Convention of Mutual Assistance in Criminal Matters of 1959 and its Protocol of 1978 as well as the Convention implementing Schengen Agreement of 1990 and the Benelux Treaty of 1962. As mutual assistance, the basic principles of each Member States and of the European Convention of Human Rights adopted in 1951 will be observed.

As it can be noticed, even since the end of the past century the European and international organisations have been constantly preoccupied in strengthening capacity of international community for fighting various forms of contemporary criminality. The even increasing dangers, coming from the organised crime groups which mostly acted transnationally, were the main reasons of determining the concern to achieve this goal. Only by joining forces in this area of interest the practical results that will be discussed below were possible. But, the strengthening of the defence capacity of the states from the West arose not only on the background of finding greater and greater cases of criminality – including the transnational ones, it was most of all a prevention factor, felt and desired as a necessity by the law enforcement and also meant to impose a certain behaviour to the criminal groups.

The huge efforts, which the Council of Europe has made in order to control as much as possible the contemporary criminality have been intensified at the end of the 20th century, while the Criminal Law Convention on Corruption was adopted. It is the first attempt to define the common international rules in the field of criminal law and corruption. In its preamble it is stated: "*The criminal law convention on corruption is an ambitious instrument aiming at the coordinated criminalisation of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international cooperation in the prosecution of corruption offences. The convention is open to the accession of non-member states. Its implementation will be monitored by the Group of States against Corruption - GRECO, which started functioning on 1st May 1999*" [16]. Its three chapters contain measures to be taken at national level, the international cooperation, monitoring of implementation and final clauses. However, the states undertake to incorporate the convention

principles and its rules into their domestic law, taking into account their own particular circumstances, when ratifying convention. One of the particular features consists in the fact that this convention is open to the CoE Member States, to non-Member States, which took part in drawing it up (Belarus, Bosnia and Herzegovina, Canada, Japan, Mexico and the USA, as well as to the European Community).

Due to the serious problems, which computing crimes as a form of the contemporary criminality occur, the Council of Europe has been involved in developing instruments of protection in this area. In this matter, the Convention on Cyber-crime [17] aims principally at harmonising the domestic substantive criminal law elements of offences and connected provisions in the field of cyber-crimes. On the other hand, this convention aims at setting up a fast and effective regime of international cooperation.

One of the additional Protocols to the Criminal Law Convention on Corruption of 15 May 2003 provides for a fellow-up mechanism in change of implementing new procedure regarding the reservations as well as other tasks related to follow-up of the convention. Actually, the mechanism adopted by this additional Protocol will operate in addition to the classic and more general competence of the European Committee on Crime Problems in relation to European conventions in criminal matters.

Fighting organised crime, including corruption, cyber-crime, economic crimes, money laundering, trafficking in human being, has been one of the major priorities of the Council of Europe. In the 2005 Convention on money laundering, search, seizure and confiscation of the proceeds from crime, the Council of Europe decided to update and widen its 1990 convention to take into account the fact that not only the terrorism could be financed through money laundering from criminal activity, but also through legitimate activities. The new Convention is the first international treaty covering both the prevention and control of money laundering. Its content highlights the fact that quick access to financial information or information on assets held by criminal organisations in the key to successful preventive and repressive measures and the best way to stop them. Moreover, the convention includes a mechanism to ensure the proper implementation by parties of its provisions.

The Organisation for Security and Cooperation in Europe (OSCE) has also been involved in controlling corruption and other forms of serious crimes which mean a threat for contemporary society. It has recommended some publications, such as: Trafficking in human being in South Eastern Europe, OCEEA Activity Report, OSCE Handbook on best practices in combating corruption, Index of documents adopted by the Summits and the Ministerial Council, which are relevant for this topic. Its activity is already recognised as being involved in combating sexual exploitation of children, enhancing efforts to combat trafficking in human being, including for labour exploitation, through a comprehensive and proactive approach. Its activity has also continued with other documents on preventing and combating violence against women, combating threat of illicit drugs and the special needs for child victims of trafficking for protection and assistance. On the other hand, within the OSCE, Permanent Council works are important for the international anti-drug cooperation and combating any forms of trafficking.

At international level, the situation seems to be hardly approached by the organisations, which have been involved in the fight against contemporary criminality. A large area of this issue, which gives an overview of the diverse UN bodies and institutions as well as their activity related to organised crime will be taken into account.

Since 2000 the UNO's activity in this field has been intensified. The UN Convention against the transnational organised crime was signed on 15 November 2000. At the same time, the organisation adopted the Protocol against smuggling of migrants by land, sea and air, supplementing the UN Convention against transnational organised crime of 15 November 2000. Moreover, the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN convention against transnational organised crime was adopted on that occasion. Other conventions and treaties related to the fight against serious crimes were also signed. In 2001, the Protocol against illicit manufacturing and trafficking in firearms was adopted, supplementing the UN Convention against transnational organised crime.

Conclusions

The effective management of migratory flows is one of the greatest challenges facing the European Union in the next coming years, especially in the context of an ageing population at European level. The comprehensive approach of phenomenon is an innovative, coherent framework that should be developed. In order to achieve this goal, the European Union and its Member States should control more effectually illegal immigration and trafficking in human being by developing information on the migration routs, promoting cooperation on surveillance and border controls, and facilitating readmission by promoting support measures for returning.

Taking into consideration the major role that the concept of human rights has at the moment for the international community and *stricto sensu* for the individual, I am confident that in the next future an efficient *corpus juris* in criminal matters will be adopted by the European authorities and implemented it by the home ones.

Actually, the fight against these phenomena is a proof of the law enforcement agencies' efforts, which is in a continuous development.

Moreover, the cooperation in criminal matters between the states or the European and international organisations as well as the newer strategies adopted in order for them to control and combat serious forms of criminality could be viewed at the high level of legal competence in this field.

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