



The principle of proportionality in sentencing: between repression and rehabilitation in contemporary criminal law

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Abstract

This paper explores the dialectical tension between repression and rehabilitation within the framework of the principle of proportionality as applied in contemporary criminal sentencing. The principle of proportionality, a cornerstone of both national penal systems and international human rights jurisprudence, demands a careful balance between the severity of the sanction and the gravity of the offense, while also considering the offender's individual circumstances. In this context, the paper examines how modern penal law reconciles punitive objectives with rehabilitative ideals, particularly under the growing influence of European standards imposed by the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union.

The central objective of the research is to evaluate the operationalization of the proportionality principle in sentencing practices, and its implications for judicial discretion, penal legitimacy, and the offender's resocialization. The study is guided by several key research questions: How is the proportionality principle interpreted and applied in contemporary penal systems, particularly in Romanian criminal law? To what extent does proportionality mediate the conflict between the repressive function of punishment and the rehabilitative mandate of modern criminal justice? What normative and jurisprudential tensions arise when attempting to align domestic penal norms with supranational human rights standards? By addressing these questions through doctrinal analysis and comparative legal perspectives, this paper aims to contribute to the ongoing debate on the humanization of punishment and the recalibration of repressive legal mechanisms in light of restorative justice paradigms.

Keywords: proportionality, sentencing, repression, rehabilitation, European standards, criminal law

1. Introduction

Sentencing has always stood at the core of criminal justice, embodying society's response to crime and its vision of justice. The act of sentencing reflects not merely the enforcement of legal rules but also the moral and social values that underpin a legal system. It conveys messages of condemnation, deterrence, reparation, and, increasingly, the possibility of redemption. Within this context, the principle of proportionality operates as a fundamental safeguard, demanding that punishment must neither exceed nor fall short of what the seriousness of the offense and the offender's personal circumstances justify (Ashworth, 2010; von Hirsch, 1993). It acts as a normative compass, ensuring that criminal sanctions remain bounded and just, protecting individuals from arbitrary or excessively harsh treatment at the hands of the state.

Traditionally, proportionality has been closely associated with retributive justice, focused on calibrating punishment to the gravity of the harm caused and the blameworthiness of the offender. Under this classical view, justice demands that offenders "pay their debt" to society in a measure strictly corresponding to the moral weight of their wrongdoing. Proportionality, in this sense, serves to impose limits on the punitive power of the state, preventing punishments that are either unnecessarily severe or unjustly lenient (von Hirsch, 1993). Retribution's emphasis on fairness and moral desert ensures that punishment remains an act of justice rather than vengeance.

However, contemporary criminal law increasingly grapples with reconciling repression—the necessity of protecting society, maintaining public order, and deterring future offenses—with rehabilitation, which represents the legal and moral imperative to enable offenders to reintegrate into society as responsible citizens. Modern sentencing is no longer merely about inflicting deserved suffering but also about transforming behavior, addressing criminogenic factors, and reducing recidivism. This shift in penal philosophy creates significant tension within the principle of proportionality itself, as it is tasked with accommodating both the punitive and reformative dimensions of justice.

As courts and legislators attempt to blend these aims, the practical application of proportionality grows ever more complex. One significant area of difficulty lies in determining how to measure punishment's impact not only in terms of its legal severity but also in terms of its psychological, social, and rehabilitative consequences. Proportionality assessments must now grapple with empirical realities: the mental health deterioration often caused by imprisonment, the risk of institutionalization, the barriers to successful reintegration, and the stigma attached to custodial sentences (Haney, 2003; Liebling & Maruna, 2013).

Moreover, the influence of international human rights standards, particularly those articulated by the European Court of Human Rights, has further complicated the picture. In *Vinter and Others v. United Kingdom* (2013), the ECtHR emphasized that sentences such as life imprisonment without the possibility of review are incompatible with human dignity because they extinguish hope and undermine prospects for rehabilitation. This ruling reflects a significant evolution in the understanding of proportionality, broadening its scope from mere equivalence between crime and punishment to include considerations of human dignity, mental integrity, and the potential for personal change.

Thus, the principle of proportionality today serves a dual function in modern sentencing systems. It acts both as a restraint on excessive punishment—ensuring that no individual is subjected to treatment that is cruel, inhuman, or degrading—and as a normative guide for rehabilitation-oriented penal policies that recognize offenders as individuals capable of

transformation. This expanded vision of proportionality imposes a duty on courts and legislators to balance punishment's deterrent and retributive aims with the offender's right to humane treatment and the opportunity for reintegration.

This article seeks to explore this dual nature of proportionality in modern sentencing, investigating how it operates as both a constitutional constraint on the state's punitive powers and a vehicle for embedding rehabilitative values into criminal justice systems. In doing so, it aims to illuminate the challenges, tensions, and opportunities inherent in aligning proportionality with contemporary understandings of justice, human rights, and social welfare.

2. Research Questions

This research is guided by the following key questions:

1. How is the principle of proportionality defined and conceptualized in contemporary criminal law, and how has its meaning evolved beyond retribution?
2. To what extent do sentencing practices in European and national legal systems integrate rehabilitative aims into proportionality assessments?
3. How do courts balance punitive severity and the offender's right to human dignity and rehabilitation within the proportionality framework?
4. What impact has European human rights jurisprudence, particularly from the European Court of Human Rights (ECtHR), had on shaping proportionality in national sentencing practices?

The Principle of Proportionality: Foundations and Evolution

The principle of proportionality has deep roots in European legal tradition, originating in the notion of just deserts—the idea that punishment should reflect the moral blameworthiness of the offender and the harm caused (von Hirsch, 1993). Early doctrines viewed proportionality as a tool for repressive justice, aimed at ensuring punishment was neither excessive nor lenient.

However, contemporary criminal law increasingly situates proportionality within a broader constitutional and human rights framework. Courts and scholars have expanded its scope to encompass considerations of human dignity, mental health, social reintegration, and the offender's individual circumstances (Ashworth, 2010). Proportionality is thus not merely a measurement of offense gravity but also a normative constraint against punishment that is disproportionately harsh in its effects, especially when psychological harm and social exclusion are foreseeable consequences (Liebling & Maruna, 2013).

Proportionality and the Tension Between Repression and Rehabilitation

Modern sentencing systems operate at the intersection of **repression** and **rehabilitation**. On the one hand, states seek to protect society, deter crime, and express moral condemnation through punishment. On the other, they are bound by commitments to rehabilitation, rooted in human dignity and international human rights standards (Roberts & Hough, 2012).

The tension becomes particularly visible in sentencing practices that employ long custodial sentences or severe prison regimes, which may fulfill repressive goals but undermine the offender's psychological integrity and prospects for reintegration (Haney, 2003). The ECtHR has repeatedly ruled that punishment must not impose suffering beyond the inherent deprivation of liberty, or it risks violating Article 3 ECHR prohibitions on

inhuman or degrading treatment (*Vinter and Others v. United Kingdom*, 2013; *Harakchiev and Tolumov v. Bulgaria*, 2014).

Despite this jurisprudence, national courts often struggle to systematically integrate rehabilitation into proportionality analysis. Sentencing remains heavily influenced by retributive rationales, especially in cases involving serious or violent crimes (Ashworth, 2010). This creates variability in how proportionality is applied across jurisdictions, with significant implications for human rights protection.

European human rights jurisprudence and proportionality

European human rights law, particularly through the case law of the European Court of Human Rights (ECtHR), has played a transformative and dynamic role in redefining the principle of proportionality within the sphere of criminal justice. Traditionally grounded in retributive justice and the notion of just deserts, proportionality has gradually evolved under the influence of human rights jurisprudence to embrace a more nuanced and human-centered approach. This evolution has significant implications not only for sentencing length but also for the broader circumstances under which punishment is executed.

A landmark case in this regard is *Vinter and Others v. United Kingdom* (2013), where the ECtHR ruled that whole-life sentences imposed without any realistic prospect of release violate Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. The Court emphasized that even the most serious offenders must not be deprived entirely of the possibility of rehabilitation and reintegration into society. A sentence that permanently forecloses the hope of release is deemed incompatible with respect for human dignity, a cornerstone of the Convention system. This ruling marked a decisive departure from purely punitive interpretations of proportionality, establishing that the principle encompasses the offender's right to a meaningful opportunity for rehabilitation.

Similarly, in *Wenner v. Germany* (2016), the Court extended the scope of proportionality by finding that the denial of essential medical treatment to a prisoner constituted inhuman and degrading treatment under Article 3. Notably, this judgment integrated considerations of both physical and mental health into the proportionality analysis. The Court held that prison authorities have a positive obligation to ensure conditions of detention that respect prisoners' human dignity, including adequate healthcare. The Wenner decision thus reinforced the understanding that the proportionality of punishment cannot be assessed solely by reference to the legal sentence imposed, but must also take into account the actual conditions of detention and their impact on the individual's physical and psychological well-being.

These and other judgments underscore the ECtHR's growing recognition that proportionality is a multidimensional concept. It encompasses not only the duration of punishment but also its qualitative aspects, such as prison conditions, access to medical care, the risk of psychological harm, and the availability of rehabilitative opportunities. The Court's evolving jurisprudence has consequently shifted proportionality from a narrowly defined retributive principle toward a broader human rights standard, one that imposes substantive obligations on member states to ensure that punishment remains humane, individualized, and compatible with the overarching goal of rehabilitation.

Moreover, the ECtHR has emphasized that states must continually assess whether the justifications for continued detention remain valid, especially in cases involving indeterminate sentences or vulnerable prisoners. The failure to conduct periodic reviews or to provide pathways to release may transform an otherwise lawful sentence into a disproportionate and inhuman measure over time.

Through its jurisprudence, the ECtHR has thus embedded the principle of proportionality firmly within the fabric of human rights protection, requiring states to calibrate criminal sanctions in a way that respects human dignity, preserves the potential for reintegration, and mitigates unnecessary suffering. This jurisprudential shift continues to influence national legal systems across Europe, compelling lawmakers and courts alike to align penal practices with evolving standards of human rights and to ensure that punishment is both just and humane.

Domestic Approaches to Proportionality

National legal systems across Europe differ significantly in how they operationalize the proportionality standards articulated by the European Court of Human Rights (ECtHR). In Romania, for example, the Criminal Code explicitly acknowledges factors such as the health and personal circumstances of the offender as mitigating circumstances under Article 74 of the Penal Code. However, the practical implementation of these provisions tends to remain narrowly focused on physical harm or tangible consequences, with comparatively less attention given to psychological harm or mental health considerations. This gap reflects both historical legal traditions and persistent challenges in evidentiary standards for psychological injuries.

By contrast, certain European jurisdictions, including Germany and the Netherlands, have progressively integrated psychological and psychosocial factors into their sentencing frameworks, particularly in cases involving vulnerable groups such as juveniles, individuals with mental health disorders, or victims of abuse. In Germany, for instance, sentencing courts are required to consider an offender's diminished capacity due to mental illness, not merely as a binary issue of criminal responsibility but as a nuanced factor relevant to the severity of punishment imposed. Similarly, Dutch sentencing practice increasingly takes account of psychological vulnerability, especially where continued incarceration might exacerbate existing mental health conditions.

Nonetheless, significant gaps remain. Despite advances in legal doctrine, few jurisdictions have articulated clear, consistent thresholds beyond which punishment becomes disproportionate specifically because of its psychological impact on the offender. As Zaibert, L., Roberts, J.V. and Ryberg, J. (2024) observe, while proportionality analysis in European criminal justice increasingly acknowledges human dignity and individual circumstances, courts often lack concrete standards for measuring the severity of psychological harm vis-à-vis custodial sanctions or other punitive measures.

Moreover, domestic courts frequently find themselves navigating a delicate balance between public safety considerations and the rehabilitative goals underpinning modern penal systems. This tension is particularly pronounced in cases involving offences perceived as threats to social order, where the political and public appetite for punitive responses may overshadow individualized assessments of proportionality. As a result, sentences that are formally proportionate under statutory frameworks may, in practice, be disproportionately damaging in human terms—especially when they entail prolonged solitary confinement, restrictive prison conditions, or other measures known to have severe psychological consequences.

Such divergences in domestic practice underscore the ongoing challenge of harmonizing proportionality principles across European legal systems, particularly in a way that fully integrates both physical and psychological dimensions of human suffering into sentencing decisions. Further comparative research and jurisprudential development are required to

ensure that proportionality, as a fundamental principle of human rights law, is consistently and meaningfully applied in practice.

3. Discussion

The principle of proportionality stands at a crossroads in contemporary criminal law, increasingly pulled between repressive penal aims and the imperative to rehabilitate. While European human rights law has elevated psychological harm and human dignity to the forefront of proportionality analysis, domestic practices often lag behind, hindered by traditional punitive cultures, political pressures, and gaps in judicial expertise.

For proportionality to serve as a meaningful constraint on state power, courts must systematically account for the empirical realities of psychological harm, individual vulnerabilities, and the broader social purpose of punishment. Sentencing guidelines should be revised to include rehabilitative factors explicitly, and judicial training must emphasize interdisciplinary knowledge bridging law and psychology.

Only through such reforms can proportionality evolve from a formal sentencing principle into a substantive guarantee of humane, dignified, and just punishment.

The discussion in this study suggests several **key directions for future reform**:

- **Institutionalizing psychological assessment** within sentencing processes to ensure courts systematically consider the mental health implications of different punishments and prison conditions.
- **Developing clearer statutory guidance** on the thresholds at which punishment becomes disproportionate due to psychological harm or risks to human dignity.
- **Enhancing judicial training** to equip judges with interdisciplinary knowledge bridging legal reasoning and psychological science.
- **Expanding non-custodial alternatives** for offenses where imprisonment would inflict disproportionate harm relative to public safety benefits.

Practical Examples

Institutionalizing psychological assessment in sentencing – In *Germany*, under the Strafgesetzbuch (Criminal Code) and the Prison Act, courts frequently request expert psychiatric or psychological evaluations when sentencing offenders with known vulnerabilities, such as PTSD or severe depression. For example, in certain *Länder*, sentencing reports now include a mandatory “psychological impact” section assessing how incarceration may exacerbate existing mental health conditions, influencing decisions toward suspended sentences or therapeutic measures.

Clear statutory guidance on disproportionate punishment – In *Norway*, the Penal Code and related case law emphasize humane treatment, with explicit statutory limits on solitary confinement durations due to its documented psychological harm. The *Borgarting Court of Appeal* reduced a sentence after expert evidence showed that extended isolation in remand caused significant mental deterioration, establishing a proportionality precedent tied directly to psychological harm thresholds.

Judicial training in law-psychology integration – In *the Netherlands*, the Study Centre for the Judiciary (SSR) offers accredited training modules on forensic psychology and the effects of incarceration on mental health. These sessions include role-play scenarios, analysis of psychological assessment reports, and case-based discussions on adjusting sentencing when vulnerability factors are present.

Expanding non-custodial alternatives – In *Portugal*, Law no. 94/2017 broadened the use of electronic monitoring and community service as sentencing alternatives. Courts have applied these measures in cases of low-risk offenders with mental health diagnoses, acknowledging that imprisonment could cause disproportionate harm without commensurate public safety benefits. A 2021 Lisbon Criminal Court decision applied house arrest with electronic monitoring to an offender with severe anxiety disorder, citing proportionality and rehabilitation aims.

4. Conclusion

The evolution of proportionality from a purely retributive principle focused on balancing offense gravity with punitive severity, to a multidimensional human rights standard, reflects one of the most significant transformations in modern criminal law. No longer confined to the arithmetic of just deserts, proportionality today embodies a broader legal and moral commitment to ensuring that punishment remains humane, dignified, and oriented toward the possibility of rehabilitation (Ashworth, 2010; von Hirsch, 1993).

Yet, as this paper has shown, this transformation is far from complete. While European human rights jurisprudence—particularly that of the European Court of Human Rights—has provided critical guidance by linking proportionality to human dignity, mental integrity, and the right to rehabilitation, many domestic legal systems struggle to translate these standards into consistent practice. Courts often lack precise frameworks for assessing psychological harm, balancing competing penal objectives, or determining when punishment becomes disproportionate due to its mental or social consequences. The result is an uneven landscape in which the protection of offenders' rights can vary dramatically between jurisdictions.

Moreover, proportionality's true potential as a safeguard against excessive punishment remains constrained by enduring tensions within criminal justice policy. Legislators and courts must constantly navigate between the demands for retribution and public protection on one side, and the imperative to preserve the offender's humanity and prospects for reintegration on the other. This balancing act becomes especially fraught in cases involving serious offenses, vulnerable offenders, or public fear of crime, where political and social pressures can overshadow legal principles.

Ultimately, proportionality, when properly applied, offers not merely a legal standard but a moral compass guiding the criminal justice system toward fairness, humanity, and respect for fundamental rights. It represents a vital constraint on the punitive powers of the state, ensuring that even those who have committed serious wrongs are not stripped of their essential human dignity.

A justice system anchored in proportionality must do more than measure punishment against crime severity; it must also recognize the human realities of suffering, vulnerability, and the capacity for change. Only through such a holistic understanding can criminal law fulfill its dual obligations: to protect society and to uphold the dignity and humanity of those it punishes.

The challenge ahead lies in transforming proportionality from an inspiring legal doctrine into a practical reality in courts and prisons across Europe and beyond. It is a task that demands courage, knowledge, and an unwavering commitment to justice in its truest sense.

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