*Corresponding Author's Email: stefanoaiamihai@yahoo.com
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The Evolution of Criminal Policy in Romania and the European Union

Mihai Ștefănoaia
Faculty of Law and Administrative Sciences, Ștefan cel Mare University Suceava, Romania

Abstract

The evolution of criminal policy in Romania and the European Union reflects a complex process of adaptation to profound social, political, and legal transformations. In Romania, the shift from a socialist-inspired legal system to a democratic one required substantial reforms, culminating in the adoption of the new Criminal Code in 2009, designed to align national legislation with constitutional guarantees and international human rights standards. This reform not only sought to strengthen the fight against crime but also to modernize penal institutions by introducing alternative sanctions and reinforcing the principle of proportionality. At the European level, criminal policy has gradually transcended national borders, focusing on harmonization and mutual recognition of criminal judgments across Member States, especially in combating cross-border crime, terrorism, and human trafficking. The European Union has played a central role in fostering judicial cooperation, while the European Court of Human Rights has contributed to the humanization of criminal law by setting higher standards for the protection of detainees' rights and ensuring fair trial guarantees. Overall, contemporary criminal policy stands at the intersection of safeguarding public order and respecting human dignity, within a framework increasingly shaped by the interplay between national sovereignty and supranational European standards.

Keywords: Criminal Policy, Proportionality, Fundamental Rights, European Judicial Cooperation, Humanization of Sanctions

1. Introduction

The need for a coherent criminal policy arises from the necessity to ensure consistency between legislation, judicial practice, and social realities. Criminal policy functions not only as a legal framework, but also as a socio-political instrument that reflects a state's priorities in combating crime, protecting society, and safeguarding individual rights (Tonry, 2016). A fragmented or incoherent approach can result in contradictions between substantive and procedural law, unequal application of justice, and diminished public confidence in state institutions.

In Romania, criminal policy has been deeply influenced by historical transformations, shifts in political regimes, and the country's integration into the European Union. The transition from liberal codifications in the 19th century, to the highly centralized and repressive model during the socialist period, and later to democratic reforms after 1989, illustrates how criminal policy is closely tied to broader social and political developments (Dobrinoiu & Al, 2014). The adoption of the 2009 Penal Code, in force since 2014, symbolized a decisive step toward humanization of punishments, proportionality, and alignment with European standards.

At the European level, the EU has gradually developed a criminal policy dimension within the broader framework of the Area of Freedom, Security and Justice (AFSJ). This dimension is built upon principles of mutual recognition, judicial cooperation, and mutual trust, reflecting the need to address cross-border crime in an increasingly interconnected world (Peers, 2016). The Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) have also played a decisive role in shaping Member States' criminal policies by setting standards for procedural fairness, proportionality, and protection of fundamental rights (Mitsilegas, 2015).

Against this background, the present study pursues four main objectives:

1. To trace the historical evolution of criminal policy in Romania, highlighting the main phases and codifications.
2. To analyze the influence of EU law and jurisprudence on Romanian criminal justice.
3. To identify the challenges that Romania faces in aligning its criminal policy with European standards.
4. To propose future perspectives for a more coherent, rights-oriented, and effective criminal policy at both national and European levels.

2. Literature Review

The study of criminal policy in Romania, as well as within the broader framework of the European Union, has generated increasing academic interest. This is largely attributable to the complex interplay between national legal traditions and supranational norms, which continuously shape both the theoretical foundations and the practical orientations of criminal justice systems.

2.1 Conceptual Foundations of Criminal Policy

In scholarly literature, criminal policy is generally conceptualized as the ensemble of principles, strategies, and measures through which the state seeks to prevent, control, and sanction criminal behavior (von Hirsch & Ashworth, 2005). It is acknowledged as possessing a dual nature: on the one hand, it is normative, shaping the legislative framework; on the other, it is instrumental, guiding judicial practice and the functioning of institutions. Building on this perspective, Braithwaite (2002) emphasizes the restorative dimension of criminal policy, stressing its capacity to repair harm, promote reconciliation, and facilitate the reintegration of offenders into the social fabric.

2.2 Historical Development in Romania

The Romanian trajectory of criminal policy has been profoundly influenced by successive codifications and shifting political regimes. The 1865 Penal Code, inspired by the French legal model, enshrined liberal principles such as legality and proportionality. By contrast, the 1969 Penal Code, adopted under the socialist regime, reflected a markedly repressive orientation, subordinating individual rights to the protection of state interests (Dobrinoiu & Al., 2014).

Post-1989 reforms marked a decisive turn toward democratization and alignment with international human rights standards. This process culminated in the adoption of the 2009 Penal Code, which consolidated the principle of proportionality and affirmed Romania's integration into the European legal order (Cardos, 2016).

2.3 The European Dimension

At the European Union level, the consolidation of the Area of Freedom, Security and Justice (AFSJ) has been a central driver in the development of criminal policy. According to Peers (2016), the principle of mutual recognition of judicial decisions constitutes the cornerstone of EU criminal justice, operationalized through instruments such as the European Arrest Warrant. Nevertheless, as Mitsilegas (2015) observes, the effectiveness of mutual recognition hinges on the fragile equilibrium between mutual trust among Member States and the safeguarding of fundamental rights, a balance that is continually negotiated through the jurisprudence of the Court of Justice of the European Union (CJEU).

2.4 Influence of Human Rights Jurisprudence

The jurisprudence of the European Court of Human Rights (ECHR) has exerted a profound influence on national criminal policies, establishing minimum standards in areas such as detention conditions, fair trial guarantees, and the proportionality of sanctions. Romania, in particular, has been repeatedly condemned for violations of Article 3 (prohibition of inhuman or degrading treatment) and Article 6 (right to a fair trial) of the European Convention on Human Rights. These judgments have acted as powerful catalysts for reforms in both the penitentiary system and criminal procedure (European Court of Human Rights, 2022).

2.5 Contemporary Challenges and Trends

Contemporary scholarship identifies a series of pressing challenges for criminal policy, arising from the rise of cybercrime, terrorism, and transnational organized crime (Tonry, 2016). Moreover, digitalization and the application of artificial intelligence within the justice sector are seen as bringing both significant opportunities and potential risks for ensuring efficiency and fairness Chiao, 2019). In the Romanian context, persistent problems such as prison overcrowding and high recidivism rates reveal a substantial gap between legislative aspirations and practical implementation (Cardos, 2016).

3. The Concept of Criminal Policy

Criminal policy is a central concept in both national and comparative criminal law scholarship. It can be broadly defined as the set of principles, strategies, and measures through which the state seeks to prevent, control, and sanction crime (von Hirsch & Ashworth, 2005). Unlike the technical framework of criminal law, criminal policy encompasses both normative choices—regarding what should be criminalized and how punishments should be structured—and practical strategies—concerning the effective enforcement of laws and administration of justice.

Criminal policy is intrinsically linked with substantive criminal law, which delineates crimes and sanctions, and procedural criminal law, which governs investigation, prosecution, and trial. Substantive law cannot be understood without reference to the policy choices that shape its scope (e.g., whether certain acts should be punished with imprisonment or alternative sanctions), while procedural law reflects criminal policy in its concern for efficiency, fairness, and protection of individual rights (Tonry, 2016).

Scholars generally identify three core dimensions of criminal policy:

1. **Repressive Dimension**
    - Focused on punishment and deterrence, this dimension seeks to protect society by imposing sanctions on offenders.
    - It embodies the classical functions of criminal law: retribution, deterrence, and incapacitation.
    - Historically dominant in most legal systems, the repressive dimension remains essential but is increasingly moderated by preventive and restorative approaches (von Hirsch & Ashworth, 2005).
2. **Preventive dimension**
    - Emphasizes addressing the root causes of criminal behavior before offences occur.
    - Includes social policies such as education, employment programs, community policing, and interventions targeting at-risk groups.
    - It reflects a shift from a purely punitive approach to one that integrates broader social, economic, and cultural factors in reducing crime (Tonry, 2016).
3. **Restorative dimension**
    - Seeks to repair harm caused by crime by facilitating dialogue between offenders, victims, and communities.
    - Promotes offender reintegration through alternatives to imprisonment, such as mediation, probation, or community service.
    - Restorative justice has gained ground internationally as a more humane and participatory approach, aiming not only to sanction but also to heal social relationships (Braithwaite, 2002).

Modern criminal policy represents a dynamic balance among these three dimensions, adjusted to social needs, human rights standards, and international obligations. In Europe, this balance has been profoundly influenced by supranational legal orders, particularly the European Union and the European Convention on Human Rights, which increasingly shape the contours of national criminal policies.

4. Historical Evolution in Romania

4.1 The Evolution of Criminal Policy in Romania

The historical evolution of criminal policy in Romania mirrors, in many respects, the broader political, social, and legal transformations experienced by the country. Each codification of the Penal Code not only marked a new stage in the institutional development of Romanian criminal justice, but also reflected the interplay between external influences, domestic political regimes, and, in more recent times, the imperatives of European integration.

4.2 The 1865 Penal Code

The first modern codification of Romanian criminal law, the Penal Code of 1865, was heavily inspired by the French Code pénal of 1810. It incorporated liberal principles such as the legality of crimes and punishments and the proportionality of sentencing (Dobrinoiu & al, 2014). Beyond its strictly legal significance, this codification expressed Romania's aspiration to modernize its institutional framework in accordance with Western European models, thereby consolidating the authority of the newly unified principalities and embedding the country within the broader legal traditions of continental Europe.

4.3 The 1936 Penal Code

A second stage of reform occurred during the interwar period, with the adoption of the 1936 Penal Code under King Carol II. More elaborate and systematic than its predecessor, it drew inspiration from Italian and Belgian criminal law and sought to integrate the criminological insights of the early twentieth century. Its modernizing ambition was, however, undermined by the political instability of the period and by the outbreak of the Second World War, factors that curtailed both its consistent application and its long-term influence (Roth, 2010).

4.4 The 1969 Penal Code

The 1969 Penal Code, adopted during socialist regime, reflected a radical shift in orientation. In line with the ideological imperatives of the time, it prioritized state security, public order, and political stability, relegating individual rights to a subordinate position. Criminal law became an overtly political instrument, deployed to suppress dissent and consolidate authoritarian control (Dobrinoiu & Al., 2014). Punishments were predominantly severe, while preventive and restorative dimensions were virtually absent, replaced by an overarching emphasis on repression and deterrence.

4.5 The Post-1989 Democratic Transition

The collapse of the communist regime in 1989 inaugurated a period of profound transformation, in which criminal policy was gradually reoriented toward democratic principles and international standards. The Constitution of 1991, revised in 2003, institutionalized fundamental guarantees such as the presumption of innocence and the right to a fair trial. At the same time, Romania's ratification of the European Convention on Human Rights brought binding supranational standards into the domestic legal system, compelling a continuous process of legislative reform and institutional adaptation (Cardos, 2016). Criminal law thus became a key arena for dismantling the authoritarian legacy and consolidating the rule of law.

4.6 The 2009 Penal Code (In Force Since 2014)

The most significant reform of the post-communist period was the adoption of the 2009 Penal Code, which entered into force in 2014. This codification embodies the principle of proportionality in the application of sanctions, strengthens procedural safeguards, and expands the recourse to alternative measures such as probation, fines, and community sanctions (Dobrinoiu & Al., 2014). Explicitly designed to align Romania with European Union directives and the jurisprudence of the European Court of Human Rights, the Code reflects a paradigmatic shift toward a more balanced criminal policy—one that integrates preventive and restorative dimensions alongside traditional mechanisms of repression.

5. Criminal Policy in the European Union

The development of a criminal policy dimension within the European Union (EU) represents one of the most significant manifestations of supranational integration in the field of justice and home affairs. Initially conceived as a form of intergovernmental cooperation, criminal policy gradually evolved into a fully-fledged component of the Union's legal order. This trajectory reflects both the functional necessity of addressing crime in a borderless Europe and the normative ambition of safeguarding fundamental rights through common standards.

5.1 The Maastricht Treaty (1992): Intergovernmental Beginnings

The Maastricht Treaty marked the first formal step toward a European criminal policy by introducing Justice and Home Affairs (JHA) as the Union's "third pillar." At this stage, the focus was primarily on intergovernmental cooperation in policing and judicial matters, with Member States retaining control over substantive and procedural criminal law (Peers, 2016). The EU institutions themselves held no direct legislative powers in this field, illustrating the prevailing reluctance of Member States to cede sovereignty in such a sensitive area. Nevertheless, Maastricht laid the groundwork for a gradual shift toward deeper integration, recognizing the transnational character of emerging security threats.

5.2 The Tampere European Council (1999): Toward Integration

A decisive breakthrough occurred with the Tampere European Council, which endorsed the creation of the Area of Freedom, Security and Justice (AFSJ). Tampere was a turning point, as it elevated the principle of mutual recognition of judicial decisions to the status of "cornerstone" of EU criminal justice (Mitsilegas, 2015). This principle embodied the idea that judicial decisions in one Member State should be trusted and executed across the Union, without re-litigation. By doing so, Tampere signaled the transition from mere cooperation to a genuinely integrated European approach, reflecting both functional imperatives and a political commitment to shared values of justice and security.

5.3 The European Arrest Warrant (2002): A Paradigm Shift

The adoption of the European Arrest Warrant (EAW) was the most visible expression of this new philosophy. By replacing cumbersome extradition procedures with a simplified and fast-track system of surrender, the EAW revolutionized judicial cooperation. It enabled swift cross-border action against serious crime and terrorism, thus enhancing the efficiency of criminal justice across the Union. However, the EAW also sparked intense debates concerning fundamental rights, as surrender could be executed with only limited scope for judicial review in the executing state (Weyembergh, 2004). This tension highlighted a recurring dilemma in EU criminal policy: the need to reconcile efficiency in combating crime with robust protection of individual rights.

5.4 The Lisbon Treaty (2009): Full Supranationalization

The Lisbon Treaty represented a constitutional milestone in the consolidation of EU criminal policy. By abolishing the "pillar" structure, it fully integrated criminal law cooperation into the Union's legal framework. Lisbon expanded the role of the European Parliament as co-legislator and strengthened the jurisdiction of the Court of Justice of the European Union (CJEU) in criminal matters (Peers, 2016). For the first time, the EU acquired direct competences to adopt directives in substantive areas of criminal law (such as terrorism, trafficking in human beings, and cybercrime), as well as in procedural fields relating to the rights of suspects, defendants, and victims. This integration not only enhanced democratic legitimacy but also entrenched supranational oversight in a domain previously dominated by state sovereignty.

5.5 Recent Legislative Developments: Balancing Security and Rights

In the years following Lisbon, the EU has enacted a series of directives that aim to harmonize minimum standards across Member States while addressing new security challenges. The *Victims' Rights Directive* (2012/29/EU) established a common framework for access to support, protection, and information. A set of procedural rights directives reinforced guarantees

such as access to a lawyer, the presumption of innocence, and the right to interpretation and translation. Furthermore, the *Directive (EU) 2017/541 on combating terrorism* underscored the Union's responsiveness to evolving global threats, while simultaneously embedding safeguards to ensure compliance with the European Convention on Human Rights and the Charter of Fundamental Rights of the EU.

5.6 Comparative Perspective with Other Post-Socialist States

The evolution of criminal policy in Romania reflects broader regional transformations experienced across post-socialist Central and Eastern Europe, where legal systems have been reshaped through simultaneous processes of democratization, Europeanization, and institutional consolidation. A comparative perspective with states such as Poland, Hungary, the Czech Republic, Bulgaria, and the Baltic countries reveals both convergent trajectories and structural divergences in the alignment with EU and Council of Europe standards.

Following the collapse of socialist legal models, most post-socialist jurisdictions adopted similar reform priorities: depoliticization of the judiciary, strengthening procedural safeguards, redefining criminal sanctions, and improving penitentiary conditions (Pratt, 2008; Solomon & Foglesong, 2000). Romania's trajectory broadly parallels these developments, particularly through its progressive harmonization with the acquis and the influence of the Cooperation and Verification Mechanism (CVM), which acted as an external driver of reform—more pronounced than in countries such as the Czech Republic or Slovakia, which entered the EU without additional monitoring frameworks (European Commission, 2019).

In comparison to Poland and Hungary, Romania demonstrates a more consistent alignment with supranational human-rights jurisprudence, especially regarding detention conditions and proportionality in criminal sanctions. Whereas recent legislative changes in Poland and Hungary have raised concerns regarding judicial independence and rule-of-law backsliding, Romania has maintained formal commitments to the authority of the CJEU and the European Court of Human Rights (ECtHR), particularly in cases concerning overcrowding, ill-treatment, and the requirement of effective remedies (ECtHR, 2017).

Conversely, Romania shares structural challenges typical of Bulgaria and some Western Balkan states, including chronic prison overcrowding, infrastructural deficits, and uneven implementation of alternatives to incarceration. While all post-socialist states have been influenced by the Council of Europe's standards—especially the CPT recommendations—implementation capacity varies significantly. The Baltic states, for example, have demonstrated faster institutional modernization and lower incarceration rates, influenced by stronger administrative stability and smaller penal populations.

Moreover, although most post-socialist criminal codes incorporated modern principles such as restorative justice, diversion, and proportionality, their operationalization differs. Slovenia and Estonia integrated community sanctions early and effectively, whereas Romania and Bulgaria progressed more gradually, with reforms often reactive to ECtHR pilot judgments. These comparisons indicate that Romania's criminal-policy evolution is neither atypical nor linear; instead, it reflects a hybrid model shaped by internal political oscillations and strong external Europeanization pressures.

Overall, the comparative lens suggests that while Romania aligns with a regional pattern of harmonization with EU norms, its trajectory is strongly conditioned by monitoring mechanisms, judicial dialogue with European courts, and persistent structural limitations. These factors position Romania between more robustly consolidated post-socialist systems (e.g., Slovenia, Estonia) and those marked by significant rule-of-law regressions (e.g.,

Hungary, Poland), highlighting the need for continuous institutional adaptation and evidence-based penal reforms.

6. Influence of ECHR and CJEU

6.1 The Jurisprudence of the ECHR and the CJEU: Drivers of European Criminal Policy

The jurisprudence of the European Court of Human Rights (ECHR) and of the Court of Justice of the European Union (CJEU) has exerted a decisive influence on the trajectory of criminal policy across Europe. While distinct in mandate and institutional design, the two courts have converged in shaping a legal space where efficiency in combating crime must coexist with robust protection of fundamental rights. Their case law has not only consolidated EU-wide standards but has also compelled national systems—such as that of Romania—to adapt legislation, practice, and judicial reasoning to supranational expectations.

6.2 ECHR Case Law on Fundamental Rights

The ECHR has long been a cornerstone in ensuring that national criminal justice systems operate within the boundaries of human rights law. Its jurisprudence on Article 6 of the European Convention on Human Rights has reaffirmed fundamental guarantees such as the presumption of innocence, the right to legal assistance, and the principle of equality of arms (Mowbray, 2018). For Romania, the Court's supervision has been particularly consequential. Repeated condemnations for violations related to detention conditions, excessive pre-trial detention, and the unreasonable length of proceedings have revealed systemic deficiencies (European Court of Human Rights, 2022). A landmark case, *Iacov Stanciu v. Romania* (2012), underscored the structural nature of prison overcrowding and poor conditions, obliging Romanian authorities to initiate both legislative and infrastructural reforms.

Beyond procedural fairness, the ECHR has emphasized proportionality in sentencing and special protections for vulnerable groups such as minors, persons with disabilities, and detainees in precarious health conditions. This body of jurisprudence reinforces the idea that criminal policy cannot be reduced to repression and deterrence alone, but must integrate restorative and human rights–oriented dimensions.

6.3 CJEU Rulings on Mutual Recognition

The CJEU, by contrast, has shaped European criminal policy primarily through the interpretation of instruments grounded in the principle of mutual recognition. The European Arrest Warrant (EAW) provides the clearest example. In *Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU), the Court held that Member States are not obliged to execute an EAW where surrender would expose the individual to a real risk of inhuman or degrading treatment in the issuing state's prisons. This ruling had direct implications for Romania, given the persistent concerns over overcrowding and substandard detention conditions.

Equally significant was the *Melloni* judgment (Case C-399/11), which clarified the relationship between EU law, national constitutional standards, and the ECHR. The Court affirmed that while Member States may maintain higher levels of rights protection domestically, they cannot compromise the primacy, unity, and effectiveness of EU law. This reasoning illustrates the delicate balance between uniformity in mutual recognition and respect for constitutional pluralism.

6.4 Impact on Romanian Legislation and Practice

The combined effect of ECHR and CJEU jurisprudence has functioned as a corrective mechanism in Romania, steering criminal policy toward greater alignment with European standards. Several concrete transformations can be identified:

- Expansion of procedural rights, such as guaranteed access to interpretation, translation, and legal counsel, reflecting the EU directives and ECHR jurisprudence.
- Introduction and strengthening of alternative sanctions, including probation and community measures, designed to alleviate prison overcrowding and respond to Strasbourg Court condemnations.
- Enhanced judicial dialogue, with Romanian courts increasingly citing ECHR and CJEU case law in their reasoning, signaling the internalization of supranational principles (Cardos, 2016).

7. Contemporary Trends

Contemporary criminal policy in both Romania and the European Union reflects a growing shift from purely repressive measures to more **balanced approaches** that integrate prevention, rehabilitation, and the protection of human rights. These developments are influenced by global security threats, technological innovations, and evolving societal expectations.

7.1 Prevention and Rehabilitation

There is an increasing recognition that punitive measures alone cannot sustainably reduce crime. Scholars argue that criminal justice systems must address the **root causes of offending** through education, employment opportunities, and social support (Tonry, 2016). In Romania, the expansion of **probation services** and the use of **alternative sanctions** (e.g., community service, suspended sentences) illustrate this preventive orientation (Dobrinoiu & Al., 2014).

7.2 Digitalization and Artificial Intelligence

The digital transformation of justice systems is a central trend across Europe. Courts increasingly rely on **electronic case management systems** and secure digital communication. Moreover, experimental uses of **artificial intelligence (AI)** for risk assessment, predictive analytics, and legal research are emerging, though these raise concerns about transparency and accountability (Chiao, 2019). The EU has already initiated discussions on regulating AI in judicial contexts, emphasizing compliance with fundamental rights.

7.3 Harmonization of Incriminations

The EU continues to promote convergence in the criminalization of serious offenses with a **cross-border dimension**, such as terrorism, cybercrime, corruption, and human trafficking. Directives like **Directive 2017/541/EU on combating terrorism** and **Directive 2011/36/EU on preventing and combating trafficking in human beings** exemplify this harmonization effort (Peers, 2016). Romania, as a Member State, has transposed these instruments, thereby reshaping its domestic criminal policy.

7.4 Human Rights Orientation

Modern criminal policy increasingly integrates a **human rights perspective**, ensuring proportionality in sentencing, strengthening victims' rights, and incorporating **restorative justice** practices (Braithwaite, 2002). EU directives on procedural safeguards and the

jurisprudence of the ECHR reinforce the principle that security and fundamental rights must be pursued jointly rather than in opposition (Mitsilegas, 2015).

In sum, contemporary trends indicate a shift toward a **multi-dimensional model of criminal policy**, balancing repression with prevention, rehabilitation, and restorative practices, while adapting to technological change and transnational challenges.

8. Research Methodology

This study adopts a qualitative and doctrinal research design, relying on a combination of historical, comparative, and analytical methods to explore the evolution of criminal policy in Romania and its interaction with European developments.

8.1 Research Design

The analysis is primarily doctrinal, focusing on legislation, jurisprudence, and academic commentary. The study is interpretative rather than empirical, aiming to provide a comprehensive understanding of how criminal policy has developed in both Romania and the EU.

8.2 Research Aim

The overarching aim of this study is to provide a comprehensive analysis of the evolution of criminal policy in Romania within the broader European context. More specifically, the research seeks to:

- Trace the historical trajectory of Romanian criminal policy, from early codifications in the 19th century, through the socialist era, to the adoption of the 2009 Penal Code.
- Examine the role of the European Union, particularly the impact of EU directives, regulations, and judicial mechanisms, in shaping Romania's contemporary criminal justice system.
- Assess the influence of ECHR and CJEU jurisprudence, with special attention to fair trial rights, proportionality of sanctions, and judicial cooperation.
- Explore the intersection between national reforms and supranational obligations, highlighting the dynamic process of convergence between Romanian and European criminal policy.
- Identify current challenges and future prospects, balancing security imperatives with the protection of fundamental human rights in an era of globalization, digitalization, and transnational crime.

In essence, the research aims to demonstrate how Romania's criminal policy has been progressively Europeanized, reflecting both historical legacies and modern pressures, while still facing significant implementation challenges.

8.3 Research Objectives

- To trace the historical evolution of Romanian criminal policy, from early codifications to the post-2009 Penal Code.
- To analyze the impact of EU law and directives on Romania's criminal justice system, with emphasis on harmonization and mutual recognition mechanisms.
- To examine the influence of ECHR and CJEU jurisprudence, focusing on fundamental rights, proportionality of sanctions, and fair trial guarantees.

- To identify contemporary challenges, including prison overcrowding, cybercrime, terrorism, and cross-border criminality.
- To evaluate the convergence between Romanian and European criminal policy, highlighting both progress and persisting gaps.
- To propose perspectives for future reform, balancing security needs with the protection of individual rights.

8.4 Research Questions

1. How has Romanian criminal policy evolved from the 19th century codifications to the present-day Penal Code?
2. What influence has the European Union exerted on Romania's criminal legislation and institutional practices?
3. In what ways has the jurisprudence of the ECHR and CJEU shaped national approaches to criminal justice and fundamental rights protection?
4. How do contemporary trends (digitalization, prevention, restorative justice) reshape the balance between repression and rehabilitation in Romania and the EU?
5. What challenges remain in aligning Romania's criminal policy with European standards, particularly regarding prison conditions, recidivism, and cross-border crime?
6. Which directions of reform could strengthen the coherence, fairness, and efficiency of criminal policy at both national and European levels?

9. Conclusions and Future Directions

The analysis of Romania's criminal policy reveals a trajectory marked by significant transformations that mirror the broader historical and political context of the country. From its early codifications inspired by Western European models, through the centralized and repressive system of the socialist period, and culminating with the EU-oriented reforms of the 21st century, Romanian criminal policy has undergone a gradual but steady evolution. Each stage reflects not only a change in legal doctrine, but also a shift in societal values and political priorities.

The adoption of the 2009 Penal Code, which came into force in 2014, represents a decisive turning point. This codification embraced the principles of proportionality and humanization of sanctions, promoted the use of alternative penalties, and aligned Romanian criminal justice with European Union directives and the jurisprudence of the European Court of Human Rights (ECHR). Moreover, it institutionalized a more balanced vision of criminal policy, one that combines repressive mechanisms with preventive and restorative elements.

The influence of European law and jurisprudence has been particularly significant. The Court of Justice of the European Union (CJEU) has shaped the implementation of mutual recognition mechanisms, especially through rulings on the European Arrest Warrant, while the ECHR has compelled Romania to address systemic issues such as prison overcrowding and deficient detention conditions. Together, these supranational courts have functioned as corrective forces, ensuring that national criminal policy develops in harmony with broader European standards of fundamental rights protection.

Looking forward, several future directions emerge as essential for consolidating a coherent and rights-based criminal policy. First, strengthening preventive approaches is critical, with greater emphasis on education, social inclusion, and early interventions to reduce the structural causes of crime. Second, comprehensive prison reform remains urgent, particularly in addressing overcrowding and aligning detention conditions with Article 3 ECHR standards. Third, the

digital transformation of justice offers both opportunities and risks: while artificial intelligence and digital tools can enhance efficiency, they must be integrated responsibly, with safeguards for transparency and accountability. Fourth, the growing threat of transnational crime—from cybercrime to terrorism—necessitates deeper cross-border judicial cooperation within the EU framework. Finally, a sustained human rights orientation must underpin all reforms, consolidating restorative justice practices, protecting victims' rights, and ensuring fairness and proportionality throughout the criminal justice process.

A deeper examination of Romania's criminal policy evolution requires a clearer connection between the jurisprudence of European courts—both the CJEU and the ECtHR—and the measurable reforms implemented domestically. Romanian criminal policy has been repeatedly shaped by supranational judgments addressing structural deficiencies, especially in areas such as detention conditions, fair-trial guarantees, judicial independence, and proportionality of sanctions. The transformative impact of these decisions becomes evident when assessed through concrete indicators: legislative amendments, budgetary allocations, prison-capacity data, probation uptake, or improvements in procedural safeguards.

The ECtHR's pilot judgment in *Rezmiveș and Others v. Romania* (2017), which found systemic overcrowding and poor detention conditions, generated a series of internal reforms, including the construction and renovation of facilities, expansion of probation services, and the introduction of compensatory remedies (ECtHR, 2017). However, measurable progress remains uneven. While prison overcrowding rates temporarily decreased, recent Council of Europe statistics show a partial reversal of gains, revealing an implementation gap between judicial mandates and administrative capacity (Council of Europe, 2023). Similarly, the ECtHR's consistent jurisprudence on fair-trial rights, legal certainty, and the principle of foreseeability—such as in *Drăgan v. Romania* or *I.B. v. Romania*—has prompted doctrinal realignments, but challenges persist in areas like trial duration, access to legal aid, and consistency of judicial practice.

The CJEU has likewise exerted significant influence. The *Aranyosi* and *Căldăraru* (2016) line of cases, focusing on detention conditions in the context of European Arrest Warrant (EAW) proceedings, imposed a heightened requirement of individualized assessment and verification of prison conditions before surrender. Romania has introduced administrative reporting mechanisms and expanded transparency on penitentiary standards in response. Yet, cooperation difficulties remain apparent: several Member States continue to delay or refuse transfers to Romania due to concerns regarding compliance with minimum standards (Fair Trials, 2022). This illustrates a key structural tension between mutual trust, the foundational principle of EU judicial cooperation, and the obligation to protect fundamental rights under Articles 4 and 49 of the Charter. Romania's situation demonstrates how mutual trust may be rebutted when systemic deficiencies persist, challenging the assumption of automatic equivalence among Member States.

A further dimension concerns constitutional pluralism. Romanian courts occasionally navigate conflicting interpretive authorities between the CJEU, the ECtHR, and domestic constitutional norms. Although Romania has generally upheld the primacy of EU law, debates echo broader regional tensions evident in Poland, Hungary, and other post-socialist states. The Constitutional Court has intervened in high-profile cases involving judicial independence, retroactivity of criminal legislation, and the limits of EU oversight. These dynamics reflect the complexity of what Kelemen (2020) identifies as "differentiated integration of rule-of-law norms," where constitutional identity claims may affect the depth and speed of compliance with European criminal-law standards.

Taken together, these elements reveal a nuanced picture: European jurisprudence has acted as a robust catalyst for reform, but domestic implementation remains inconsistent, constrained by institutional capacity, political fluctuations, and structural legacies of the post-socialist transition. At the same time, critical perspectives—conflicts between mutual trust and rights protection, and the realities of constitutional pluralism—highlight that Europeanization in the field of criminal justice is neither linear nor uncontested. Romania's progress is therefore best understood as an ongoing, adaptive process, shaped by continuous judicial dialogue and the interplay between supranational mandates and national constraints.

In conclusion, Romania's criminal policy has moved from a repressive and state-centered model to a more Europeanized and human rights–oriented system. Yet, the process remains ongoing. The future of Romanian criminal policy depends on its ability to reconcile security imperatives with democratic values, to harness innovation while respecting fundamental rights, and to fully integrate into the evolving landscape of European criminal justice.

10. Limitations

Although this study provides a comprehensive analysis of the evolution of criminal policy in Romania and its interaction with European developments, several limitations must be acknowledged.

First, the research is primarily doctrinal and qualitative, focusing on legislative texts, case law, and academic literature. While this approach allows for a detailed conceptual and normative analysis, it does not capture the full complexity of how criminal policy operates in practice. The gap between the law "on the books" and the law "in action" remains an important area that requires further empirical research, particularly concerning the effectiveness of reforms in courts, prisons, and probation services.

Second, the scope of the analysis is geographically limited to Romania and the European Union. While this focus is justified by the research objectives, it excludes broader international perspectives, such as comparative insights from other post-socialist states or non-European jurisdictions, which could have enriched the analysis.

Third, the temporal scope is largely restricted to the period from the 19th century to the present, with emphasis on the 2009 Penal Code and subsequent reforms. Earlier historical influences and customary traditions, while relevant, are only briefly acknowledged.

Fourth, the dynamic nature of EU criminal policy and jurisprudence presents challenges for analysis. EU directives, regulations, and CJEU or ECHR case law are constantly evolving, which means that some conclusions of this study may be affected by future developments.

Finally, there is an inherent implementation gap in Romania, where formal compliance with EU and ECHR standards often coexists with structural deficiencies in enforcement. This study highlights such issues, but a deeper empirical investigation into institutional capacities, resource constraints, and societal attitudes would be needed to fully assess their impact.

Despite these limitations, the findings of this research contribute to a clearer understanding of the interplay between national criminal law reforms and European integration, offering a foundation for further theoretical and empirical inquiry.

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