

THE SOCIAL CONSTRUCTION OF JUSTICE, BETWEEN NORMALITY AND DEVIENCE*

CRISTINA GAVRILUȚĂ**
MARIA LORENA ȚĂRUȘ***

Abstract

In this study we propose to analyze the way the act of justice behaves a series of social engineering. Starting from the building social theory measure expressed by the P. Berger and Th.E. Luckmann and taking into account the research made by A. Cicourel in the 1960's, we believe that we can talk about a phenomenon of social construction in the field of justice. Research of two criminal papers, direct observations and the documentation made, have highlighted this fact. Moreover, our research led to the finding of two types of social construction of justice, one that is part of the normality logic (innocent social construction) and one which subscribes to abnormality (guilty social construction).

Keywords: *social construction, deviant, standard, social control, social mentality, categorizing, justice.*

A. Justice and social construction

The problematic with making the law has aroused controversy since the oldest times. Philosophers, theologians, historians, sociologists and jurists have tried to explain and to find more consistent and correct ways for exercising the law and the realization of justice.¹ How can you make social control² in modern

* This work is the support received from the scientific research project: "The influence of religion on social processes in Romania - A Neo-Weberian Approach Using Quantitative Techniques of Perspective Statistical Survey", code number 1809, project director Claudiu Herțeliu. The project is won in competition in 2008 "Ideas" of PNCDI II and is funded by UEFISCSU. "

** Associate Professor Ph.D., „Al. I. Cuza” University, Iasi, cristina_gavrilita@yahoo.fr

*** Masters, The Faculty of Philosophy and Social-Political Sciences, „Al. I. Cuza” University, Iasi.

¹ We can remind here a series of authors who had brought new perspectives in the deviance, delinquency and justice analysis: Emile Durkheim makes the analysis of crime in the book „The rules of the social science method” from the perspective of distinction between normal and pathological; Max Weber analyzes the regulations and, implicit, the act of justice, in the registry of domination and authority; Michael Foucault links punishment to the evolution of corpus representation in society.

² Social control names “the all means, mechanisms and institutions of psychological, social, cultural, judicial or political nature, through which any society imposes to its members the demands for respecting social and moral order. Amongst these means and institution there can be found both the law, culture, traditions, customs, public opinion intervention, as well as any type of formal or informal influence, spontaneous or organized, which ensures by constraint, violence, persuasion, or manipulation, the request of morality and social order”. (Rădulescu, S., 1994, 58)

societies, which are the limits beyond which you cannot pass, which aspects can be transferred to the institutions in charge, which are the exceptions from the law, etc., all have constituted questions and challenges that have generated in return modifications according to their époque, political regime and the dominant ideology.

The rules³ of law and the justice system have evolved. In turns, society has suffered important changes which entailed the adaptation of the act of justice at the social standards that turned up. (Carpinschi, A.,2004: 57) Thus, legal science with all its directions, both theoretical and practical bear a series of transformations. The sociologic approaches take an important role in this context.

For example, scientists emphasize the idea according to which social life is a intersubjective construction. Alfred Schütz and its predecesors Peter Berger and Thomas Luckmann show that personal experiences, the stereotypes, cultural luggage, ideologies, daily practis have an impact on this permanent construction. They reflect their composition and materialize in the practic and action components of the social, more precisely in social institutions. In terms, justice institutions reflect and are subjected to a permanent construction and reconstruction.

These pretty brave and provocative theoretical approaches are all the more interesting as the justice institution in general and, in particular, the act of justice have a symbolic capital and a built authority, a series of good principles fully settled into the collective mentality. The idea of justice, justice and objectivity, unbiased and impartial have a vigorous resonance at the level of collective mentality, fact that relates to their absolute value and not to conjectural nuances that relate to daily life. In fact, this can be encountered in te current language form different socio-cultural spaces : “no one is above the law”, “where there’s law, there’s no bargaining”, “the law doesn’t lie”, “law and justice”, “american justice”, etc. All of these are nothing but the result of legitimating and institutionalizing of standards, a fact that can be reflected from the language level through a process of reification . “Reification is the perception of human phenomena as if these would be things, as if they had a non-human or even superhuman form. (...) In other words, the human is paradoxically capable of producing a reality which denies himself as a person” (Berger,P., Luckmann, Th., 2008: 124-125). In practice, the law, the standards, the products of human experience and intellect transform themselves as if they would be autonomous, natural expressions of divine force through reification. According to this approach, the law appears as if it would have

³ *Norm* comes from the Greek *nomos* and it signifies *order*. In the Greek mythology, the person in charge of the compliance with the norm by gods, was Nemesis. She was “regulating the division of the world by gods” (Rădulescu, S., 1994, 58). Though, norm in the *nomos* way, regards human order and not nature order (*physis*). (to see in this way Rădulescu, S., 1994, 57-63)

been given and not created, built. Thus, the symbolic capital and the authority of which the institution of law and its servants are held in.

The collective mentality give the law, and especially justice, a privileged status in the entire scenery of social constructions. It represents the basis, the system of reference of modern societies named, and not by accident, law societies. However, the scientists studying these phenomena and the erectors emphasize the fact that the social reality, including the legal and the regulatory ones, are created societies, objectivized in social institutions. Like divine law, this objectivization and automatization of standards inside institutions assure a type of social redemption⁴, a social transcendence in the case of modern democratical societies.

Standards change, they are transformed, are created and recreated according to their situational contexts, to definitions and to principles on which society operates at a certain moment in time. (Afloroaei, □t., 2008: 114).

Ultimately, this scientific approach expresses a new paradigm, which is specific to the (post)modern world, to rethink reality as subjected to a continuous transformation and moulding. At its limits, reality itself is put in brackets under the spectrum of the relative. Thus, the idea of truth, justice, law, etc, in the classic way of the inviolable principles that subscribe to the tough thinking in Gianni Vattimo's philosophy⁵, disappear. Although we live under the sign rule of the state of law and we give this fact a big amount of importance, we can determine that, in (post)modern times, the law has a greater perish, it suffers adjustments, transformation and repeated amendments. Sometimes it is replaced or it coexists with newer ones. There can be seen a never seen before multiplication of moral, social and symbolic markers. Thus there are more truths, more types of justice, each one with its own justification. This fact can be explained, since the new social paradigm under which we can find ourselves is the one of generalized communication and of the multiplication of symbolic markers, as noted by Claude Dubar in the „Crisis of identity”. At the same time this inflation determines a continuous adaptation/construction of the normative markers, fact that generates the construction of the act of justice.

⁴ We have in our attention here the notion of *social redemption* in which Jean Baudrillard talks about the modern society, which, thanks to consumerism and new social and moral markers, has managed to bring redemption from the transcendent to the mundane. The new regulations and social standards give value to an entire series of social concrete aspects: from prescriptions and new egalitarian principles to social status and new valorisation of the body. More precisely, social redemption is about that system of regulations and explicit or implicit rules which tend to give value to certain data of our existence as if they become last, transcendent values. (to see Baudrillard, J., 2005)

⁵ We can remind here the well known paper of Gianni Vattimo, “The transparent society in which weak thinking, specific to modern societies, is the result of mass communication and value relativization.

The application of construction theories in the legal domain bring a double perspective up close :

1. On one side it is about the regulatory system and the way the deviant and the punishment are regarded in society. More precisely, we can analyze the social structure of justice from the perspective of the law system, its harmonization with the cultural and mental background of the space in which they perform. Each socio-cultural space generates a certain system of regulations and conceives a certain way of making justice. We can mention here the talion, the ordeals, the laws from the rural environment of traditional Romanian territory (the ancestors' law or the modern states law). In this case, what the sociologists are primarily interested in, is the functionality of rules (ensuring social order and the social control) and secondary the ways through which this takes place. The few, simple, traditional, mostly oral regulations were sufficient to ensure social control. In the present, a highly sophisticated law system can hardly cope to the social expectations and challenges. The permanent reconstruction of regulations can be the expression of a society, but, at the same time, can represent a necessity or a form of imitation, of connection to the pulse of the civilized world. (Frunză, M., 2008: 194-195)

Thus, in the last cases, we are confronted with a series of regulations which do not resonate whatsoever with the society they are applied to. The most suitable example is the one of the well-known *shape with no basis*, in the Romanian space, perfectly highlighted by T. Maiorescu. That is how it can be explained how up until now, the eternal “implementation” of rules, regulations and community IQs haven't had a more resonating effect among our nation. In other countries, a higher degree of respect is given to the same rules. This situation can be explicable as long as these are the expression of a specific social construction that integrates a certain historical experience, a certain social and mental structure.

At this level, the social construction of justice and, implicit, of deviance is resumed to the way the deviant situations and, in consequence, the punishments at a legislative level are defined. We can observe that the definitions can vary according to the significance given to this fact. It can be considered either very serious or, on the contrary, can be passed in the area of smaller crime. There are cases when the fact may lack the severity. These definitions of rules are generated in turn by a series of important factors, such as :

- *the cultural context* and a series of mental data (collective mentality);
- *human resources* that are involved in the process of generating rules (an important role here is played by the formation, quality, expertise of those involved);
- *the political context and the dominant ideologies;*
- *the international judicial context*

So the entire construction of law is the expression of an entire system. This fact demonstrates that rules have a limited life and warranty. They must always be changed and rethought. For example, some of the new situation the jurisconsults from the Romanian space are confronted to (person trafficking, organized crime, the new criminality who use the newest technologies, etc.) as well as the whole world are requesting an adjustment to the law in the new conditions. Regarding our study, we can observe a series of difficulties as it regards the harmonization of the regulations system with the new penal situations and the harmonization of the system with the European regulations system.

2. On the other hand, the exercise of the act of justice itself has a subjective component which derives from the professional, routine practices of different institutions.. In 1968 Cicourel (Cicourel, A., 1968) studies the phenomenon of juvenile delinquency and gets to the conclusion that the variation of the crime rate between two American cities, which appear in the same state, depends directly on the differences of organizing the activities of the suppressive institutions.

In stake here is the phenomenon of social structure of the crime. The announced research offers a new perspective regarding the constructive approach of delinquent phenomena. „The cognitive orientation that Cicourel gives to the sociologic intercession modifies the content of the social construction notion : thus, this doesn't lead to the idea of defining the situation, in which the significance attributed to facts results from common activity of the interaction partners, but to the analysis of practical argument phenomena, used by persons to elaborate this definition.” (Ogien, A., 2002)

In turns, the act of justice implies the assessment of facts as they result from the materials gathered in the prosecution file (about the way the crime is constructed) and from the defense tactics. Or, this game between prosecution and defense makes the facts, for which a person is blamed with, to be different from the real facts and from the ones he receives his final punishment.

More precisely, each step of the trial has a rise of guilt construction. From the recording of evidence by policemen and the onesc abilitated, until the enquiry and the construction of prosecution by the prosecutor, there are numerous episodes which can lose, deform, influence or modify an event. In our attention here we have the cases in which the facts under investigation are treated with professionalism. Even in this situation, a construction of the case interferences, which results from the routines and professional rituals. The institutions provide models of case management. These have a certain degree of generality, which makes a series of particular aspects not to be observed or hard to intercept. Cicourel (Cicourel, A., 1968) uncovers some element which make up the crime :

- there are a series of codifications/typification with which a delinquent is recognized;
- the professional experience of policemen makes them to emphasize less the material evidence contrary to certain specifications (belonging, clothes, backslide, education, background, etc.);
- there is often a mismatch between the way the police works and the way justice works;
- the pieces of evidence gathered in a file are fragmented, out of context, but, still, with value on objective facts;
- the evidence will be modified whilst being under criminal investigation.

Both the prosecution and the defense will try to gather as many pieces of evidence as they can for the file. These have a value as objective facts and they are the ones who will weigh at the final trial. The entire process of raising the evidence is a lengthy labor of construction. „From this point of view, the crime is not concluded from the nature of the committed act : it is a social construction, meaning that it is defined in the kind of practice which serves to perceive it and is represented as an accumulation of elements which come from different interpretations.” (Ogien, A., 2002)

Finally, the objectiveness is limited. It derives from the institutionalized construction itself and the means of work. The act of justice represents a institutionalized lengthy labor of building up the guilt and punishing it. This fact is as normal as it can get, as long as the work is being done with certain regulative definitions and with a certain human capital in various situational contexts. Even with all of these the act of justice can satisfy the will for justice in society: guilt can be punished, the truth can arise. The big problems appear when there is pressure, obscure interests, when some evidence is overlooked, when the ways of work are not respected, when there are false statements, when the investigator's volume of work is too heavy and he cannot cope with it, when evidence is too little, etc.

The research we are about to present demonstrates the fact that the entire intercession of justice can be subscribed in a constructive logic. All of these having in mind that in our case the frames of normality are exceeded (a construction of justice which is derived from the normality of the system's functioning).

B. Study regarding the social construction of justice

This study represents a microresearch that tries to highlight the measure in which the act of justice can represent a social construction. The research has a qualitative character and thus, it gives privilege to a series of specific methods : research, direct observation, content analysis.

The effort of research regards the study of two files in which similar facts are incriminated : the skimming of journals which covered the incriminating facts in the files and the skimming of a speciality bibliography. Direct observation had as purpose the observation of several trials in order to overlook the pattern of unreeling of the act of justice in practice and the possible drawbacks. The content analysis of the two files, alongside with the discovering of the incriminating facts and the way these were put together, wishes to identify the key moments in which this „construction” of the act of justice can intervene. In this way we made up a picture of the evolution of the cases, indicating the significant moments (Addendum 1 and 2).

So, the main purpose of this research has been to point out the social construction of the penal juridical cause from the time of the crime to the settlement of the conflict.

The objectives had in attention were :

- the analysis of the content of two penal cases
- the prominence of stages in a law act through the implication of more actors.
- the prominence of different connected aspects that go in the social construction of justice
- the emphasis of differences between the juridical procedure and the trial itself.

Taking into account the theoretical data stated before, we tried to follow up on a series of elements : from the routine practices of the persons involved (professionals but also the sides involved in the act of justice), to the distance between the procedure and what really happens during trials, from the roles played by each actor at one time to the differnt forms of influencing the act of justice, etc.

The hypothesis from which we started from in this study were :

- *The judicial institution is caught up in the dynamics of social change. The philosophical approach of justice and the pretty elaborate intercessions can slow down and change the final decision.*
- *Each step of the act of justice can bring major alteration to the final decision, just by making activities, intercessions, procedures as routine.*
- *The importance of the punishment lose their intensity once the delinquent is a known person to the police, justice and prison.*
- *If the actors in a trial are many and from differnt domains, the approaches will be more different. Specialists and experts who are implied in the act of justice will file up their own versions regarding the incriminating facts. These professional egos will affect the activity of following and punishing the guilty ones, as long as they are hiding*

other interests or are ingoring the idea of a certain complementary character.

- *The interpretation of judicial regulations can lead to abuse, law frauds and can influence the act of justice.*

The analysis units we are monitoring are two penal files of approximately 1000 pages each. The crimes contained in the files are almost the same, with minor differences. So, in file A the reference to court is made for undertaking the following crimes : „procurement”, „human trafficking” , „money laundering”, „trafficking of minor persons”, „initiation, constitution, adherence and supporting an organized crime group, having as purpose the perpetration of serios crime”, „the non-compliance to the gun and ammunition regime”, and in B case the reference to court were exposed in the following order: „participating in a criminal organization, the facilitation and helping to illegally enter and stay in Holland, the employment of illegal foreigners or trafficking minor persons(minors), rape”.

As it comes out from the registration mentioned, the entire judicial undertake stretched over a long period of time (10 years). In fact, this situation is not the only one in Romania. During this period, the defendants had the possibility to build their defense or even to ignore the act of justice by not being present at the trial, others leaving the country. This fact prevented the application of the verdict itself. From what was mentioned, the defendants can be found in other countries, developing the organizations which are object of other penal files...

From the materials we researched, we only extracted the data relevant to this research, as well as the factors which influence the final verdicts in the case of a trial, the individuals present in the courtroom, as well as the relationship, attitude and/or behavioural aspects.

In actual facts, we had in our attention the following aspects :

- *The formation of the crime group;*
- *The purposes and the activity of the crime group (the structure of the crime group, the inveigling and the route of the victims, the way of constraint);*
- *The examinations started, the unwounded procedures and other elements from the judicial cause.*

The created data base for the two files have permitted a better outlining of the incriminated facts and the judicial intercession. This way, we could then accomplish a better analysis of key elements, which could reconstruct the act of justice. The data bases of the two files are the following :

The data base built for file A

The action developed	Date	Place	The source of information	Observations
The formation of the organized crime group	2001	Main action areas: counties Sibiu, Neamț, Prahova	The indictment of the penal file (17.10.2004)	The crime group was discovered as a result of informative actions on the line of fighting the cross-border human trafficking activity.
The structure and the crystallization of the network	2001-2004	Members of the group were working in almost all the areas of the country	The indictment of the penal file (17.10.2004)	The responsibilities were very clearly and concisely divided, under the coordination of one leader.
The commencing of the criminal prosecution	20.04.2004	Prosecutor's Office		The criminal prosecution is begun
Ordinances for starting the criminal prosecution	06.05.2004	Prosecutor's Office	The existent resolution in the indictable file The existent resolution in the indictable file	The criminal action against the defendants is put in motion
Prosecuting in preventing arrest	17.10.2004	Prosecutor's Office	The indictment of the penal file (17.10.2004)	The actual evidence is checked and confirmed by evidence contained in the file.
Researching the defendants in preventive custody	05,06.05.2004- 21.10.2004	Bucuresti Courthouse	The indictment of the penal file (17.10.2004)	They were held through ordinances, the arrest warrants were emitted, this measure being extended until 21.10.2004
The arrest in missing of the criminal group leader	07.05.2004	Bucuresti Courthouse	The indictment of the penal file (17.10.2004)	He was put in general and international pursuit
Trial of the preventive arrest state of the defendants	20.10.2004	Bucuresti Courthouse	File no. **/2004 Concluding meeting of the council chamber	The lawfulness and rationality of taking the measure to preventive arrest the defendants is taken and the state of arrest is maintained. The measures provided will be communicated to the administration of the detention site.

The police cannot apprehend the organization leader	08.11.2004		<i>Monitorul de Botoșani (archive)</i>	„He will remain free , although huge forces were mobilized for apprehending him.”
The organization leader is apprehended by the Spanish police.	04.04.2005	Spain	<i>The Guardian (archive)</i>	„...in a letter of the Romanian embassy from the Spanish capital from May, in which they show he was living in Spain”
Organisation annihilated	06.04.2005		<i>Realitatea românească (archive)</i>	“The human trafficking network was the first of its kind annihilated by Romanian investigators, being a very complex structure, with a structure and a division of work very well established.”
“*** ” caught in Spain	07.04.2005		<i>Ziua (archive)</i>	„... he was put under international pursuit, being gone from Romania since March 2003.”
Debate of the case on its merits	16.11.2005	Sibiu Courthouse	Criminal sentence no**/2005	The parties were not present, but the conclusions of those present were recorded at the end of that day.
Ruling on the criminal case	28.12.2005	Sibiu courthouse	Criminal sentence no**/2005	The defenders, through their lawyers, have raised a series of exceptions regarding the way the penal prosecution was made, asking for it to be redone and filled out. Also the liberation of the defendants is made and the action of preventive arrest of the leader is revoked.
The liberation of “***” clan went under CSM investigation	16.01.2006		<i>Averea (archive)</i>	“The thing is that the trial court(after a year and eight months it has prolonged and maintained the arrest, being considered that the individuals were a social threat and that nothing had come up to change this state), did not motivate how the motives of the arrest have disappeared, so that the liberation would be possible.”
The criminal leader hides in Monaco	23.03.2007		<i>Agencia Națională de Presă AGERPRESS (archive)</i>	„According to sources heavily involved in the operation of apprehending the mobster, he could be found in Monaco”

Hearing with witnesses with protected identity during the restart of the trial	18.04.2007	Sibiu Courthouse	<i>Monitorul de Sibiu (archive)</i>	„The hearings were made according to SRI standards: a monitor and microphones were installed and the distorted voice of the people who have presented testimony was heard in the speakers.”
Admission of the appeal regarding putting the defendants under trial in freedom	29.05.2007	Alba Iulia Court	<i>Agenția Națională de Presă AGERPRESS (archive)</i>	“...they will be trialed under a state of freedom, after a three years detention in the Aiud prison, as a result of the Appeal Court from Alba Iulia on Monday replacing the order for preventive arrest to the order not to leave their residence”
One of the most wanted Romanian criminals in the last few years, has left Spain and is hiding „closer” to Romania”	22.10.2007		<i>Agenția Națională de Presă AGERPRESS (archive)</i>	“We know that he is hiding somewhere in Europe. It is certain that he is not on Romanian territory. We are receiving support from policemen all across Europe. We have some locations identified. He is under international pursuit, he has an European arrest warrant. It seems he has changed his location, Spain. He is closer to Romania.”

The data base built for file B

The developing actions	Date	Place	Source of information	Observations
The police was called from the “prostitution are” that there’s a fight going on.	30.06.2000	The Amsterdam-Amstelland regional Police/Central Investigation Center/ Tactics Bureau/Traffic king Unit/Persons Smuggling	Extras from the informational data base of the Police	These are information recorded by the Amsterdam-Amstelland Police in the informational data base
The declaration of an exploitant man of North Amsterdam Sexclub	01.03.2001		Extras from the informational data base of the Police	

Research is made as a result of a phone call to the police regarding threatenings at a certain adress	11.02.2002		Extras from the informational data base of the Police	There were six Romanian women who were illegally been in Holland and the person who had brought them and forced them to prostitute
Research made by the police regarding a notification about the disturbance of public order at a certain adress	19.07.2002		Extras from the informational data base of the Police	Locuința era folosită ca bordel și totodată au fost găsite cărți de vizită cu textul “Rita’s Escort” și “Fetele lui Iwan”.
Hearing of a witness, as he was a driver at the Rita Escort Office	16.10.2002		Extras from the informational data base of the Police	He made the physical description of Rita, also mentioning the way the young girls were picked-up
The Escort Office is recorded at the local Chamber of Commerce			Extras from the informational data base of the Police	So, it was discovered there a sex club
The beggining of a criminal investigation with the “Trafficking or human commerce unit”	January 2003	Holland		The investigation is aimed against a criminal type organization.
Short time after this organization made its debut.				It was dealing with mass picking-up of women from Romania and bringing most of them, minor women, to prostitute themselves in Holland
The visit of some Spanish Police memebers as a result of an application for legal aid.	23-25.04.2003		Extras from the informational data base of the Police	From this info, it resulted that another group member is the leader of the criminal group from the first file
Phone tapping were relevant evidence	10.02.2003-30.04.2003		Extras from the informational data base of the Police	Thus, close relationships between the two crime groups were discovered, the leaders calling each other “brother”

The leader of the Dutch crime group is put under international pursuit by the Spanish authorities			Extras from the informational data base of the Police	In Spain, he was a suspect regarding the trafficking of women and participation in an organized crime group even since 1999.
Many of the cases referred by the Dutch Police were made as a result of the tapping and the search of the addresses.				From the conversations there are certain key elements highlighted during the investigations. Also, the roles played by the organization's members, their position were seen, in this case flexibility being absolutely present.
Physical and psychological violence were utilized to keep women into prostituting.				
Over the investigation there came up more Escort Offices.		Amsterdam-Amstelland Regional Police		The owners of escort offices had the role to make the women work
The arrest of the crime group leader	17.02.2003			Even if the role of some women suspects were not clear until the arrest, some of them took over the tasks of those arrested and continued the activity
During investigation, the lawyers of different arrested and sent to trial suspects played a role in the information of the other suspects in the group				This way, the information moved around, so that the members could track down and convince the victims to withdraw their complaints.
Suspect's interrogation	18.03.2003-22.05.2003		The recordings of proceedings of the questioning, extracted from the informational data base of the Police	Suspects had translators, through which they communicated and got along.

The attachement of the facts and the findings regarding the suspects to the file.	05.05.2003		The recordings of proceedings of the questioning, extracted from the infromational data base of the Police	These add in : the determination of identity, historical data, condition, adress investigation, the residency statute of the suspect, means of communication of the suspect, means of transportation of the suspect, implication of the suspects in other files, the investigation of other facts, telephone communication.
Hearing, witnesses, victims	2003		The recordings of proceedings of the questioning, extracted from the infromational data base of the Police	
At the same time, in Romania more investigations were made.				These were made to continue the measures taken by the Dutch Police. They resumed from handouts from the general direction for evidence informatics, extracted from birth registers, data asked for from mobile and fixed telephone companies.

As it can be observed, the two legal causes have as a main vein the formation of crime groups. The criminals had more than one activities to take care of, which made up press subjects that took a lot of space and made the public

interested at that time. The journalistic comments and inquiries have highlighted the importance of the phenomenon (the fact that is cross-border), its complexity and that there are a lot of disfunctionalities and pressures which could influence the road between investigation to final verdict.

After making up a basic image on the basis of the two data bases, our analysis unfolds on which the attorneys name *the phases of the trial*. These are made up of: *criminal prosecution, trial and the execution of the criminal decision*.

I. Criminal prosecution

This phase represents the judicial action of collecting evidence to prove the guilt of the criminal. The actions before the trial phase take place during this step, being defining in the evolution of the legal route. Because criminals perfect their methods, the techniques to execute the actions flawless, adapted to the modern age, a special concern has been imposed by the state to fight back on the criminal phenomenon.

„So, the need to establish some specialised body to discover, identify and apprehend and send to trial the criminals, was felt. These bodies have a well established by law competence and are conducting their activities in the phase of criminal prosecution.” (Neagu, I., 1997: 398)

In the case of both files . the criminal prosecutions were established by the bodies of criminal prosecution, which started on its own will, as a result of the informative activities developed on the fighting against cross-border person trafficking.

In 2004 the criminal prosecution against the guilty ones from file A is put in motion, the guilty being held by arrest warrants. The measure was gradually prolonged until October 2004. The leader of the crime group was put under international and general pursuit.

In file B, the leader of the network was arrested in February 2003. From that moment on, the place of the leader was taken by the second echelon (women who used to be the object of traffic and who ended up being traffickers themselves). The network continues to undergo criminal activities. On the other hand, in the Dutch case, during investigations, the lawyers of different arrested suspects played a role in the informing of the other suspects of the group. With the information circulating, the members could locate the victims and make them take back their complaints.

In both of the cases, we can observe the fact that the crime group leaders have been under investigation and arrested before. After executing parts of sentences and after their bailing out they resumed their criminal activities and had set the bases of the groups under investigation found in the files.

The vulnerability points that can be seen in this phase are:

- *The prosecutor, who has made the criminal prosecution and who has issued the indictment, is not complied the legal criteria regarding*

functional competence. He has 8 years of practice, as the law asks for when it comes to judicial organization in order to have the legal functional authority.

- *The facts for which the defendants have been set to trial are crimes for which the criminal prosecution is set mandatory to the prosecutor. According to the law, provisions done by research bodies from delegating power from the prosecutor are absolutely void.*
- *In the A file there were acts of criminal prosecution, especially eyewitness hearings, on Spansih territory, infringing the principle of territorialism in the progress of criminal prosecution*
- *There were pieces of evidence administrated in the preparatory acts phase, meaning before the start of the criminal prosecution, with no probatory value due to lack of verbal records through which they are found done. This entails their nulity.*
- *From what the concerns the leader of crime group A, it has been sustained that he hadn't been told about the start of the criminal prosecution and neither were the legal procedures for his citation during the criminal prosecution done.*

All of these come out from the study of the first file, the criminal procedure being very explicit on what concerns the correctness of the intercession we enumerated and, so, not being accomplished in key points of the criminal prosecution.

II. The trial

The trial is the second phase of the criminal procedure and it allows the continuation of the criminal solving of the cause. During this step publicity is permitted, the right for each part of the trial to learn about each other's⁶ evidence and the practice of defense. The purpose of this stage resides in the verdict with e definitive character. It must state the truth about the fact put to trial and the degree of guiltyness of the offender. The verdict must also contain the criminal penalty for the guilty one.

The trial must also contain several typical procedural activities which must take their course regarding deliberation and debate for the decision. Each of the trial activities can suffer alterations, amplifications depending of the elements in the file, certain approaches, witness depositions, etc., but any of these have a

⁶ The adversarial principle expresses request that process functions of accusation, or defense to be done by different subjects, on equal court positions and having the same procedural rights. To make the contradiction it is necessary that the parts and prosecutor to be present in court and to follow up on the procedural which the law puts at hand to support its interests in the face of the judge. This way, the defense and prosecution are fighting in front of the judge on contradictory positions, so that the judge could tell the truth in their dispute and to give a legal and thorough solution to the cause. (Plaesu, T., 2008, 18).

special relevance in the different trial phases. So, this can be restrained or extended depending on the necessity, depending on the components of the criminal action or the nature of new facts, it being a criminal construction declining in the end into a social construction.

For the sociologist, this step is important for the fact that it has an interactive component. The defense and prosecution have the chance to use all the legal aid they can to sustain their cause. „Unveiling in a specific picture, the trial is the main activity of the criminal trial, because only on the basis of the things discussed and demonstrated in trial, the the belief of the judges can be based on, belief that will ultimately be materialized in the verdict.” (Neagu, I., 1997: 478)

In the second step of the trial, the consideration, in both of the files different evidence were brought up (f.e. psychological expertise). In this part, the defendants in preventive arrest were interrogated (these have stated superficial, incomplete, lacking coherence declarations). In this phase the facts and findings regarding the suspects were attached, so that for file A at the end of the year 2005, the defendants and their lawyers have raised a series of objections regarding the way the criminal prosecution was done, soliciting its completion and to re-do it. Also, in the same case the defendants are liberated and the action of preventive arrest of the leader is revoked.

It is easy to observe that the defence has contributed heavily to a total change of the situation already created. The cause gets a new shape, is rebuilt thanks to this moment. In practice, the entire effort of prosecution (construction of accusation) is put between brackets thanks to certain procedure vice, which were easily observed by the defence. So, if for a year and eight months the measure to arrest the guilty ones was held and extended, then court did not explain how the evidence of arrest had disappeared so that the defendants could be liberated.

Other sequences which caught our attention on their unwinding were:

- The hearing of the suspects and the witnesses. For example, in Holland, they had translators. We do not know to what extent the translations could have made the correct understanding and recording of depositions
- Data collection regarding the biography of the defendants. This accounting presumes a certain bureaucratic thicket generated by the collaboration with different institutions and empowered bodies. Not putting to doubt the value and utility of this data, we can easily realise that they also have the quality to slow down the legal route. On one side there are pages added to the file, making it more complex and making it harder to follow up on the essential, and on the other side these types of action can adjourn their appearance and lengthen the trial period.
- Cross-border institutional collaboration. A good collaboration of Romanian with both Spanish and Dutch authorities can be seen. Each time there were ways searched to harmonize them.

- The use of legal ways and close to the edge of law served to the defence. In both of the files a special capacity to pass on the edge of law was reflected, the defendants risking, using different techniques and exceptions, perfecting their methods to fool justice and always find an escape route that could open new ways.

Even in this phase we identified a lot of punctual elements that have fully contributed to the rebuild of the cause and have influenced the criminal route :

- *There was a week coordination of thh institutions, both internally and internationally, the absence of evidence, the absence of the defendants, etc. (file A)*
- *The rejection, without a motive, of the administration of evidence asked for by the defendants, thought to be useful to the cause by the instance(file A)*
- *The lack of dispatch of the Romanian authorities, which led to the adjournment of the trial for a certain period (f.e. in file A). Although the defendant had been arrested by the Spanish authorities, the Romanian ones could not intervene in time. The effects : the defendant formed connections in other foreign countries an managed to convince a local authority ti legalize the” black or white” game in that city.*
- *In file B, the role of the attorneys was not only for defence, but to mediate between the defendats and the ones who occupied the leader role. It is about one of the former victims who had become a partner in the act of crime. A situation like this can confirm some theories according to which social context can determine spectacular change of roles : the victims turn into criminals, the lawyers to mediators and collaborators, etc. What is certain is that such a change can influence the act of justice.*

III. The execution of the verdict

In this step the verdict is „brought to life” (Neagu, I., 1997: 7), put to practice, when the defendant is made to execute a penalty, according to law.

„All the accomplished activities in the taking place of a standing phase have as fnction and own ending the assurance and easement of the development of the next standing phase.” (Dongoroz, 1976, 23). In this way, the entire legal route sustains the final moment, the one of putting to execution of the verdict. The accomplishment of this phase signalises that justice has ended a road, that truth has been set and that social order has been reestablished („any person who has done a crime must be punished according to its guilt and no innocent man will be put to justice” (Codul de procedură penală, 2008, 9)).

In our case, this step is almost non-existent. As it comes out of the files, the defendants can be found in other countries at te moment, continuing their activities. The entire procedural effort hasn't fount its ending. The files have entered a shadow cone, the last official information being two years old. *Maybe the condemned are hidden, or there are a series of legal impediments (for example the*

impossibility of extradition), or is about institutional deficiency, ill-belief or simply ignorance, anyways, ten years of trial and investigations cannot find their finality.

There have been ten years from the moment of the official identification of the criminal groups, years of investigations, of trial, a lengthy period of time in which different resources have been spent, in which different factors have come up and changed the normal course of things, have shaped and built the file and the inculpatory facts. It is worth saying that all this effort didn't even bring the criminals in front of the competent organs...

C. Instead of conclusions: about the non(guilty) social construction of justice

Heading off from the theoretical data and from the research done we cannot notice a multitude of perturbatory elements that interfere in different phases of the act of justice. In the cases analyzed, these have visibly influenced the legal approach. True as it may be, some changes interfere as a result of the course of the whole trial. For example, the gathering of evidence or the building up of defence are perfectly legal elements if they respect the legal frame and serve to find out the truth. This is, if we want to, a sort of innocent construction of the act of justice, which derives from the regulative system. In our cases, all of these are rather ingredients that have stopped the finding of truth or have rebuilt it depending on a series of interests. The hypothesis which we set out have confirmed as following.

- *Firstly, we can observe that the pretty elaborated intercessions of justice (a multitude of regulations, steps and procedures which must be respected) can slow down, influence and change the verdict. At least this demonstrates the 10 years of criminal prosecution in the two cases we analyzed.*
- *Each step of the justice act can bring important modifications over the verdict through the routine making of the activities, intercessions and procedures. In our case, this fact is more visible especially in the gathering of evidence period, related to the guilty persons and the relentless defence strategies*
- *The harshnesses of the punishment lose their intensity once the delinquent is a known person to the police, justice and prison. The fact that the defendants of the two files were not „immaculate”, each having criminal background and, by this, having developed a way to „collaborate” with the repressive organs. In this case, the theories according to which delinquency can be socially thought assuming taking roles is confirmed.*
- *The more actors in a trial and the more fields they are coming from, the more diverse will the approaches be, representing different gravity in taking decisions. The fact that the crimes committed had a cross-border*

character, the fact that the crimes were made in an organized manner, in well built networks, has complicated the effort of the investigating and trial organs. The numbers of institutions and the human resources working in this trial, each with their own professional requirements, have generated different perspectives over the crime phenomenon. We do not know if this fact has made the criminal investigation become lighter or to deform it.

- *The interpretation of the criminal regulations can lead to abuse, frauds and can influence the act of law. This hypothesis has also been confirmed by a series of observations made during the trial of other criminal investigation files. Both the accusation and the statements of lawyers are sometimes marked by an excessive hermeneutical intercession regarding the law.*

As we've shown from the start, there is a phenomenon of social building of justice. It exists through the very nature of things. Social life itself generates this fact. Justice, as any human and social creation, has always been submitted to perfecting according to an ideal (for example the ideal of justice and rithfullness). Even in the case of this limitation, which derives from its human part, the act of justice can be done honestly. Evil, in its many ways, can be identified and punished so as the collective and individual wrong doing could be compensated through punishment. Justice can still be a main, order establishing social control instrument.

Suspicious come up when this natural and not-guilty social construction process is viced with interventions, procedures meant to influence the course of the act of justice. This can easily turn out to overrun situations, when the victims turn to defendants or contrary situations of the „guilt without the guilty” type occur. The difficulty in noticing and incriminating these types of „guilty social constructions” is the more difficult as they happen on the edge of law. Moreover, to the ones who are caught in their professional routine and taken over by a certain scenario generated by the putting together of the file, is harder to notice how easily the situation can slide away from its usual criminal course.

The sociologic analysis of this criminal intercession has the quality to highlight those certain types of (not)guilty construction which can mix up with the stages of the whole trial. The purpose is to raise attention to more or less perceivable threats which can affect the act of justice. As the data was presented in our theoretical part, but also the examples we analyzed, it seems to lead us to a pessimistic conclusion. If it's either guilty or not, the social construction of justice is a fact in front of which we are overwhelmed. Is it possible to get out of this vicious circle of human construction? Honestly, not. We can instead control our losses and the guilty constructions by education, culture, civilization, good-sense and professionalism.

References

1. Afloroaei, Șt. 2008. Aurel Codoban: Despre comprehensiune și reflecție critică (Aurel Codoban: On Comprehension and Critical Reflection). In *JSRI*, **21**.
2. Baudrillard, J. 2005. *Societatea de consum. Mituri și structuri* (The Consumption Society. Myths and Structures). Editura comunicare.ro., București.
3. Berger, P., Luckmann, Th. 2008. *Construcția socială a realității* (The Social Construction of Reality). Editura Art, București.
4. Carpinschi, A. 2004. *Criza politică și construcția instituțională democratică. O analiză comparată a douăzeci și opt de constitutii* (The Political Crisis and the Democratic Organizational Construction. A Compared Analysis of Twenty-eight Constitutions). In *JSRI*, **7**.
5. Cicourel, A. 1968. *The Social Organization of Juvenile Justice*. J.Wiley, New York.
6. Dongoroz, V. (ed.). 1976. *Explicații teoretice ale codului de procedură penală român* (Theoretical Explanations of the Romanian Criminal Procedure Code). Editura Academiei, București.
7. Durkheim, E. 2002. *Regulile metodei sociologice* (The Rules of the Sociological Method). Polirom, Iași.
8. Foucault, M. 2005. *A supraveghea și a pedepsi* (To Watch and to Punish). Editura Paralela 45, București.
9. Frunză, M. 2008. O incursiune în etica socială și politică (A Foray into the Social and Political Ethics). In *JSRI*, **21**, Winter.
10. Ionescu, I. 1998. *Teorii constructiviste* (Constructivist Theories). Polirom, Iași.
11. Neagu, I. 1997. *Tratat de procedură penală* (Treaty of Criminal Procedure). Editura Pro, București.
12. Ogien, A. 2002. *Sociologia devianței* (The Sociology of Deviance). Polirom, Iași.
13. Plăeșu, T. *Drept procesual penal. Partea generală* (Criminal Procedural Law. The General Part), Suport curs, Anul III, Universitatea Alexandru Ioan Cuza, Facultatea de Drept.
14. Rădulescu, S. 1994. *Homo sociologicus. Raționalitate și iraționalitate în acțiunea umană* (Homo Sociologicus. Rationality and Irrationality in the Human Action). Casa de editură și presă Șansa –SRL, București.
15. Rotaru, C. 2006. *Fundamentul pedepsei. Teorii moderne* (The Basis of Penalty. Modern theories). C.H. Beck, București.

16. Tanoviceanu, I. 1924-1927. *Tratat de Drept și procedură penală* (Law and Criminal Procedure Treaty), vol. II și III. Editura Curierul Judiciar, București.
17. Vattimo, G. 1995. *Societatea transparentă* (The Transparent Society). Editura Pontica, Constanța.
18. *Codul de procedură penală* (Criminal Procedure Code). 2008. Editura Hamangiu, București.