Resilience and the criminal justice system

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Abstract
The paper presents a brief introduction in the relationship and connections between resilience and law and examine the possible roles that resilience may have in the field of the criminal law science and the place where it finds applicability in the criminal justice system. This analysis led to the definition of a relatively new concept, that of juridical resilience.

The emergence of the concept of juridical resilience, directly related to the science of criminal law should not be confined only to this area, but can be approached in various other dimensions of juridical sciences, starting from any legal demarch whose consequences can produce disruptions both at the individual level and any other forms of organizations made by it. Moreover, the veneers of the legal phenomenon, the legal doctrine, jurisprudence and legal science, can generate as many forms of research and expression.

1. Judicial sciences and resilience
Judicial sciences are sometimes presented as a simple body of inert knowledge and technical rules and the relevant scientific research and its results are limited to an ordered description and a rigid inventory of law. From this reductionist perspective, the researcher is perceived, seen and identified with a technician, more or less profound, equipped with precise knowledge of legal norms relating to a branch of law or another, but without his approach to get beyond this restraint, in order to seize and analyze the implications of the place and role of law in the society.

Resilience is a term frequently met with a growing frequency and in a wide variety of disciplines. The proliferation of resilience approach, can be partly attributable to the recent enthusiasm for finding viable solutions for the most various aspects of social life. However, the focus on resilience reflects a paradigm shift, for example for disciplines of ecology and natural resources management, since 1970. This is a paradigm shift marked by attempts to seize and develop conceptual resources to manage complexity in natural and social systems. Therefore, resilience theories, together with adaptive governance, is a conceptual mature framework of thinking about how law can contribute to sustainable development in a complex world.

In order to guide the concept of law to social sciences, this not being only a remarkable development in academic law, law must use the prerequisites and results of other disciplines for its own purposes, in a proper approach. This is done, obviously, with some difficulties as a scientific rule is a prediction of future events based on past experiences, while a legal norm is the expression of thinking and mentality of others. In academic law, the image of science as a paradigm of thinking, including legal thinking, has a great force, and the inherent dehumanization of this kind of thinking threatens law and democracy at their base. Claiming law, even in the face of these forces of dehumanization and trivialization, maintains an adaptive force of resilience, on which we can build.

The language used more and more in academic law reflects these developments in an important and challenging way for rethinking and identification of law as a social science. The confrontation of law with the accomplishments in other areas of science, including evolutions in technology, and their use within its own sphere, are challenges, but equally, developments and likely to get new achievements. One of the developments was particularly important in protecting human individual understanding as something more than the product of genetic and environmental systems. Clearly, we are discussing also about a number of legal limitations on human individuals experimentation, that arena where the legal vision on human beings and the social scientific vision explicitly confront one another.

In the evolution of law there are tensions generated by the researchers thinking, as it happens in all other sciences. The location of law in the sphere of social sciences is a definite evidence of these tensions and thus, evolutions.

2. Orientations of criminal law sanctions

Particularly, criminal law sanctions are consequences that criminal law imposes for breaches of its precepts, coercive measures which they draw for committing acts under the criminal law and also tools for the implementation and restoring the rule of law. Criminal sanctions are necessary to express abstract gravity of the prohibited act and the intensity of warning that the criminal law addressees to its recipients. Among the criminal sanctions, custodial sentences are the most severe.

To assess the psychological consequences thereof, we should consider a determining factor, the "time" factor. Time is an essential criterion for the systematization of human life. The attitude towards time is different for each participant to the act of justice. Thus, for the legislator, time is only a degree of social
abstract danger of the deed provided by the criminal law; for the judge, time is the reflection of concrete social danger of the crime committed by the individual, and, for the prisoner, time is perceived in a totally different way than the other participants to justice perceive it. The person in custody has knowledge of the fact that enters the prison against his will, with a status of subordination on a long term and feels the loss of freedom even more painful since freedom was richer in perspectives and alternatives and the concrete conditions of the prison are harder.

From a psychological viewpoint, detention determines the change of each element characteristics of the personality. Affection is the element of personality that suffers most intense changes. When punishment is considered to be as intense as the act committed, emotionally, the inmate expresses a submissive acceptance of all the rigors of prison life. When the punishment is seen as more severe than the committed act, the prisoner believes he has been wronged and suffers an undeserved penalty.

3. Succinct introduction into juridical resilience

The red thread of a new niche for the concept of resilience, named by us juridical resilience, starts from its developments in many branches of science, from psychology to economic, organizational, cultural resilience, etc.

In criminal law, one of the pillars of law science, there are conducted several studies and researches aimed at the causes-etiology of delinquent behavior, and also interventions made by specialists in the period of criminal sanctions execution. Increasingly, the focus is shifted from retributive justice to component restorative one. Thus, therapeutic and restorative justice, became gradually popular alternative forms as they are answering to the real role of justice and bringing concrete elements that lead to its achievement and to increasing its efficiency. Not ultimately, it is measured by the degree of recidivism that is the manner in which interventions made during the criminal sanction enforcement, manage to end the recurrence of the criminal activities of individuals.

Therapeutic and restorative justice are, thus, facets of justice viewed through the lenses of the community, the one that they actually serve.

To examine potential links between resilience and law science, the initiators of the concept of juridical resilience (defined for the first time in 2014 at the Second World Congress devoted to resilience by Predescu and Tomita) showed that this scientific demarch is based on a multidisciplinary, interdisciplinary and even transdisciplinary approach [1].

The triad crime-victim-offender brings in terms of research a series of challenges meant, on the one hand, to analyze the reasons and factors that determined it, and, secondly, to identify recuperative solutions for the two protagonists of the criminal act, namely the victim and the offender. If for the victim the study of resilience can be analyzed based on the principles of victimology and restorative justice, from the perspective of the offender, it may be shaped based on the results recognized in the areas of activity belonging to disciplines such as psychology, psychiatry, criminology, sociology, social work etc. and, not least, from those of criminal law science.

In a systemic acception, Predescu and Tomi?? defined juridical resilience as the Capacity of the judiciary system and the interventions of social actors throughout the criminal proceedings (prosecution, trial, execution of criminal sanctions), to restore the infringed rule of law and, especially, to treat its main protagonists, so they revert to their initial state, recovered also emotionally. In view of this way of definition, it is not just a concept, but an evolving process, a strategy of social healing.

The complexity of the juridical resilience study results not only from its intersection with a series of
sciences towards it becomes solidary, but especially from the new valences that it acquires through its applied component, relevant for the necessary recuperative treatment, both for victims and the offenders. This type of resilience is specialized for the field which feeds it, namely criminal law science and is a complex process that involves ultimately an integrative approach of the crime phenomenon.

It is necessary to start from emphasizing that the traumas suffered by the offender and the victim are very different. Thus, while the offender will suffer because of the penalty imposed, as a consequence of his actions through which he violated the criminal law, the victim will have a deep sense of victimization because of its location in the criminal trial, of physical, psychological trauma, etc., and the need for justice, that through which a part of his healing is related to the penalty imposed to the offender, which appears as its legitimate interest. Therefore, in accordance with the principles of restorative justice, we believe that the administration of criminal justice should not be limited to determining guilt and imposition of a sentence which means a repressive justice, but should be accepted as an emotional, relational and material restoration between the victim, offender and community.

On the line of the interdisciplinary efforts undertaken by researchers to identify new practices in the criminal treatment applied to offenders, for a more efficient recuperative intervention, leading to strengthening the role of criminal justice (the one through which the judicial bodies must resolve criminal relationship conflicts) aimed at a real society healing, as well as a fair and objective assessment of the harm produced to the victim, also directed toward a more complete healing, resilience, as a process, seems to find a deserved place in the manifestation of criminal justice. However, these interventions can not be achieved without some knowledge of domains belonging to disciplines such as psychology, victimology, criminology, social work, etc., whose borders, in the postmodern era, are wide open to interdisciplinary researches, and the concepts and notions with which they operate become related and complementary.

The basis veneers for this analysis target the three categories of social actors involved in the criminal justice system, victim, offender and specialists. In addition, because crimes are offenses with very serious gravity, whose negative consequences concern not only the injured individuals but also some social relations, we appreciate the importance the perspective of the community affected by the production of such acts.

Law as a science has generated a number of developments in various direct connections to other sciences, that provides important bridges of connections for the concept of juridical resilience. Thus, victimology, criminology and penology provide a good proportion of these elements together with the already established perspectives of psychology and psychiatry field, lead us to a new approach and possible new responses for the effectiveness of criminal justice.

Regarding the concepts of resilience and victimology, they are placed at the interface of law-psychology-psychiatry, being analyzed from the perspective of criminal justice of the triad victim-offender-community both before committing the criminal act, and throughout the period it takes effect. In the case of victimology, as in that of resilience, there is no universally accepted definition. Among the many definitions of the concept of victimology, we can show one of the examples that through its content offers us the link bridge with a number of established definitions of psychological resilience. In the acception of Hotca, victimology can be defined as "a multidisciplinary science that aims to study the causes of victimization, legal protection of victims and prevention of victimization through effective measures" [2].

This definition generates a series of connections with that of resilience, offered by A.Masten, “resilience refers to the capacity of a dynamic system to adapt successfully to disturbances that threaten the viability,
the function or the development of that system. If you are interested in understanding the impact of major traumatic events […]], you have to think in terms of multiple interacting systems” [3], and S.Ionescu, “despite the absence of a single universally accepted definition of resilience, there is in fact an agreement on two main points: (a) resilience characterizes a person who had experienced or is experiencing a traumatic event or chronic adversity and shows good adjustment (which has different meanings depending on age and on socio-cultural context) and (b) resilience is the result of an interactive process between the individual, his/her family and his/her environment”[4].

By trying to operationalize the concept of juridical resilience, we appreciate that we have a possible answer to a highly discussed and controversial scientific subject, that of re-socialization and social reintegration of offenders.

Formulating definitions for juridical resilience can address both crime victims and offenders against which were applied punishments or were taken educational measures for committing crimes in order to ensure the specific framework for helping these people to reintegrate into the society by using means and methods of resilience. We can thus bring into question out of the psychological resilience developments, both natural resilience and the assisted one, which require specific interventions at all stages of criminal proceedings, prevention and protection.

### 4. Discussions and conclusions

**Juridical resilience, as a new concept emerged from the interaction of sciences consecrated to law, in general, and to criminal law, in particular, with those which have the human psyche as an object of activity, represent a common denominator for the social actors involved in the criminal phenomenon.**

Therefore, at the interface between them, in the process of building a new emancipatory development of active and passive subjects of the criminal phenomenon, there appears a new level of reality - also independent against the two, but closely related thereto - namely the juridical resilience. For this new reality to take shape, it is necessary that both law and sciences related to human psyche to establish regarding the issue in question a real dialogue, permanent, substantial, in a complementary and integrative vision. It is about establishing a normality in the field of research, and the real connection with the new requirements of our society.

Projecting the scientific trajectory for juridical resilience (similar to the economic, organizational one, etc.) requires a close connection with other sciences mentioned and achievement of comparative studies, based on a methodology specific to it. Scientific debates in criminal matters bring in the focus of specialists, the concrete forms of operationalization and use of resilience under the scope of the criminal justice system and, even more, interests the relationship between resilience and the specialized institutional environment, and the bodies involved in the prevention and combating crime and victimization.

Viewed from a legal perspective, resilience acquires new meanings and significant theorization, being able to comprise a number of processes and strategies that lead not only to a more effective restoration of social damaged ties, but also to an infrastructure of justice with preventive (victimization of the victim and offender’s recidivism) and recuperative role. Given this conceptual construction, we appreciate that juridical resilience is a polycentric-integrative concept, linking the classic, traditional axis of justice, with the latest developments in the traditional or niche sciences.

Last but not least, we believe that juridical resiliency may acquire an independent character, through its specific object and purpose, and by using appropriate theoretical and practical methods.
References


TAG: Resilienza giuridica, sistema di giustizia criminale, Diritto dell'Unione Europea, diritto penale europeo, Diritto penale internazionale

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