

„ALEXANDRU IOAN CUZA" UNIVERSITY OF IAȘI
FACULTY OF LAW

DOCTORAL THESIS
CRIMES COMMITTED BY MAGISTRATES

Supervisor:

Prof. univ. dr. Tudorel Toader

PhD student:

Costică Ciocan

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The Magistrate – a special active subject of certain offenses

Introduction. This doctoral thesis explores, in a nearly exhaustive manner, the criminalizations related to magistrates, whether judges or prosecutors, not only from the

perspective of contemporary paradigms in criminal law but also from fundamental sociological and philosophical principles.

Chapter I is dedicated to exploring the legal and semantic etymology of key terms, contextualizing the issue within a framework that will later allow for distinctions between civil, disciplinary, and criminal liability of magistrates. Through a dialectical and synchronic analysis, it highlights the most common paradoxes in judicial ethics and deontology.

Chapters II and III, through a historical study of the Penal Codes of 1864, 1936 and 1968, demonstrate how legal norms have synergistically integrated with crucial events in the country's history. However, the analysis retained its relevance, as only capturing the legal-normative evolution could provide some axiomatic reconfiguration conclusions of the criminalizations present in the Penal Code of 2009 concerning judges and prosecutors. At the same time, the thesis successfully descended from the abstract level, emphasizing the heterogeneity of case law when analyzing the elements constitutive of offenses such as illegal arrest and abusive investigation (article 266 of the Penal Code of 1986).

The thesis aims to surpass conventional interpretations in legal literature by applying a deconstructivist and hermeneutic approach to reconstruct the understanding of justice issues during the communist period, in which there were both judges and prosecutors, as well as laws and moral principles.

Chapter IV focused on analyzing the conduct standards for judges and prosecutors as provided in European and international norms (The Bangalore Principles of Judicial Conduct; the Consultative Council of European Judges), using an important and complex analytical toolkit, enriched by case law from the High Court of Cassation and Justice.

Chapter V concentrated on a detailed investigation of the criminalizations of offenses committed by magistrates in the legal systems of EU member states such as France, Spain, Italy, Germany, Slovenia, Greece, Croatia, the Czech Republic, Bulgaria, and Hungary, demonstrating the variability of legal norms and their applicability in different European legal and cultural contexts. Throughout the chapter, both similarities and substantive differences in the criminalizations concerning judges and prosecutors were highlighted, offering a comprehensive perspective on how principles of fair trial and truth-finding in criminal investigations can be integrated into a reconfiguration of existing legal paradigms.

Chapter VI includes the analysis of debates on current issues in the Romanian judicial system (Critical Perspectives on the Romanian Judicial System), identifying possible solutions to improve the functioning of courts and prosecutors' offices.

Chapter VII contains proposals for *lege ferenda* and conclusions inspired by the detailed analysis of the penal norms related to magistrates in the Penal Codes of 1864, 1936, 1968, and 2009, as well as the previously mentioned European norms. The critical and interdisciplinary approach highlighted the need for a dynamic adaptation of the substantial legal framework to the procedural one, in the context of contemporary challenges posed by political instability. It also provided an innovative perspective and personal interpretation of the evolution of legal normativity, especially concerning the communist period and the transition towards a genuine democracy.

The *lege ferenda* proposals and conclusions not only enrich the existing theoretical framework regarding the criminalizations related to magistrates but also open new perspectives for further development of special criminal law, emphasizing the importance of an intersectional and adaptive approach.

Bibliography. The doctoral thesis is based on an extensive bibliography, including reference works from general and special criminal law, as well as essential contributions from related fields (criminology, psychology, sociology, etc.). The bibliography provides a solid theoretical and practical foundation for an in-depth exploration of the issues addressed regarding judges and prosecutors, supporting the arguments and conclusions presented in Chapter VI.

