

Individualization of Sentences in Comparative Criminal Law: Between National Tradition and International Influences

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Abstract

The topic of sentence individualization in comparative criminal law explores how various legal systems define, regulate, and apply the principle of proportionality in criminal sanctions, based on the specifics of the offense and the offender. The study starts from the conceptual premises of judicial individualization, examining the duality between objective legal criteria and the court's subjective assessment in determining the appropriate sentence. A comparison is made between civil law systems (e.g., France, Germany, Romania) and common law systems (e.g., the United States, the United Kingdom), highlighting the differences between codified and case law-based models of individualization. The analysis considers the influence of international standards, particularly the jurisprudence of the European Court of Human Rights and documents issued by the UN and the Council of Europe on fair treatment and the proportionality of sanctions. Recent trends are identified, such as the introduction of sentencing guidelines, the role of probation boards, and the use of interdisciplinary assessments in tailoring sentences, as well as the impact of cultural, socio-legal, and political factors on judicial practice. The paper proposes a critical reflection on the necessary balance between judicial discretion, the need for consistency in criminal justice, and the imperative of respecting fundamental rights, with an emphasis on the importance of predictability and transparency in the sentencing process.

Keywords: sentence individualization, comparative criminal law, national legal traditions, common law systems.

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1. Theoretical Background

The concept of sentence individualization represents a central pillar of modern criminal law, aimed at tailoring the penal sanction to the specific circumstances of the offense and the offender. This approach ensures respect for the principles of proportionality and fairness, allowing the judge to impose a just and effective penalty based on the unique elements of each case².

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² William Brînză, 2012. *Drept penal. Partea generală*, Bucharest: Universul Juridic, p. 313–315.

In Romanian criminal law, sentence individualization is governed by Articles 74–78 of the Criminal Code, which establish criteria such as the gravity of the offense, the dangerousness of the offender, and the preventive purpose of the punishment. Although the court is granted significant discretion, it must rigorously justify its decision to ensure transparency and legality in the sentencing process³.

In comparative criminal law, the approach to sentence individualization varies according to national legal traditions. In common law systems, judges enjoy broad discretionary powers in determining the sanction, guided by judicial precedent and case law principles. In contrast, in continental systems such as those of Germany or France, the process is strictly codified, and judicial discretion is limited by statutory provisions⁴. International influences, particularly from the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), have contributed to shaping common standards in criminal justice. These courts emphasize compliance with the principles of proportionality, foreseeability, and individualized treatment of offenders, as illustrated in decisions such as *Scoppola v. Italy (no. 2)* and *Maktouf and Damjanović v. Bosnia and Herzegovina*⁵.

Thus, sentence individualization increasingly serves as an indicator of compatibility between national systems and international human rights standards. Scholarly literature notes that the process of European criminal harmonization involves a delicate balance between national sovereignty and normative convergence⁶.

2. Comparative Analysis: Sentencing Individualization Models in Civil Law and Common Law Systems

Within civil law systems, such as those of France, Germany, or Romania, the process of sentencing individualization is meticulously regulated in penal codes and adheres to the principle of strict legality. Judges operate within a narrowly defined margin of discretion, applying sanctions from a statutory framework set by the legislator and guided by explicit legal criteria, such as the offender's dangerousness, the motive for the offense, or the social consequences of the crime. For example, in Germany, the law stipulates that the punishment must be determined "based on the offender's guilt" while taking into account all relevant factual circumstances.

In contrast, in common law systems, such as those in the United Kingdom or the United States, sentencing individualization is governed by the principle of judicial precedent (*stare decisis*), and judges enjoy greater flexibility in determining sanctions. However, their discretion is informed by national or state-level sentencing guidelines.

³ Alexandru Boroi (coord), 2014. *Practica judiciara in materie penala Drept penal. Partea speciala. Dispozitiile noului Cod penal*, Bucharest: Universul Juridic, p. 120.

⁴ Dirk van Zyl Smit, Sonja Snacken, 2009, *Principles of European Prison Law and Policy: Penology and Human Rights* Oxford: Oxford University Press, p. 197–205.

⁵ Kai Ambos, 2020. *European Criminal Law*, Cambridge, p. 75.

⁶ Francesco Callari. 2021. "The defendant's Guilt Beyond a Reasonable Doubt in the Italian Criminal Justice System". *Brazilian Journal of Criminal Procedure* 7 (2): 1227. <https://doi.org/10.22197/rbdpp.v7i2.577>.

In England and Wales, for instance, the Sentencing Guidelines Council has developed a framework for each type of offense, but judges may depart from these recommendations when circumstances warrant.

This structural difference reflects two distinct views on the role of the judiciary in criminal justice: a formalist approach that prioritizes legal certainty and predictability, and a pragmatic one that emphasizes adaptability and contextual fairness. Nonetheless, in recent decades, a normative convergence has been observed, driven by transnational influences — especially those stemming from the case law of the European Court of Human Rights.

3. The Influence of European Standards on National Sentencing Practices

As criminal law increasingly faces pressures for harmonization and standardization at the European level, the practice of sentencing individualization must also comply with supranational standards, particularly those developed by the European Court of Human Rights (ECtHR) and, increasingly, by the Court of Justice of the European Union (CJEU).

The ECtHR has consistently upheld the notion that the imposition of criminal sanctions must respect the principle of proportionality between the intended aim and the restriction of the defendant's fundamental rights⁷. In the judgment *Maktouf and Damjanović v. Bosnia and Herzegovina*, the Court emphasized that the automatic application of a harsher sentence, without an individualized assessment of personal circumstances, constitutes a violation of Article 7 of the Convention, which concerns the legality of criminal offenses and penalties.⁸

Similarly, in the case of *Scoppola v. Italy (no. 2)*, the Court reaffirmed the obligation of national authorities to apply the more favorable penalty to the defendant, even when criminal legislation has changed over time. This interpretation highlights that sentencing individualization is not merely a domestic requirement but also a conventional obligation with direct impact on national criminal policies.⁹

At the European Union level, the CJEU's jurisprudence, though less focused on sentencing per se, has contributed significantly to the development of the principles of equivalence and effectiveness in the application of national criminal law in relation to Union law. In cases such as *Taricco I* and *Taricco II*, the CJEU acknowledged the importance of fundamental rights in criminal proceedings and delineated the boundaries within which EU law can require member states to amend their sentencing legislation.¹⁰

Consequently, sentencing individualization can no longer be conceived solely within the framework of national sovereignty but must be aligned with international human rights standards and the functional requirements of European integration. This conceptual reconfiguration transforms the criminal judge into a key actor in balancing

⁷ Dirk van Zyl Smit, Sonja Snacken, *op. cit.*, p. 198–202.

⁸ CEDO, *Maktouf și Damjanović v. Bosnia și Herțegovina*, Judgment of July 18, 2013.

⁹ CEDO, *Scoppola v. Italia (nr. 2)*, Judgment of September 17, 2009.

¹⁰ CJUE, *Affaire C-105/14, Taricco I*, ECLI:EU:C:2015:555; *Affaire C-42/17, Taricco II*, ECLI:EU:C:2017:936.

national legal traditions with the international obligations undertaken.

4. Tensions Between Judicial Sovereignty and the Imperatives of Sentencing Standardization

The sentencing individualization process structurally involves a delicate balance between the judge's discretionary power and the requirements of coherence and uniformity within the criminal justice system. In the contemporary context, this balance is increasingly strained due to normative standardization trends promoted by both domestic legislation and European influences.

On the one hand, the sovereignty of the criminal judge is based on the notion that the court is best positioned to assess the specific circumstances of a case and to tailor the sentence according to the actual dangerousness of the offender, rehabilitative purposes, and social protection needs. This decision-making autonomy is essential for ensuring fairness in the administration of justice and constitutes a corollary of judicial independence¹¹.

On the other hand, the proliferation of sentencing guidelines, penalty grids, and binding jurisprudential orientations raises the risk of excessive formalization, potentially turning the individualization process into a near-bureaucratic exercise. Critics of this trend argue that excessive uniformity diminishes the system's capacity to respond to the plurality of real-life situations, thereby transforming the judge into a "mechanical applier of the law."¹²

This tension is particularly evident in the jurisprudence of French courts, where the judge's discretion is constrained by the guidelines issued by the High Council for the Judiciary and by the penal policies of the Ministry of Justice.¹³

In Romania, although the Penal Code provides clear criteria for sentencing individualization, judicial practice shows an increasing tendency to align with collective jurisprudential orientations, which may restrict judicial creativity and amplify the risk of formal uniformity.

At the same time, the imperatives of transparency, predictability, and equality in the application of the law — as emphasized by the European Court of Human Rights — support the idea of objective limits to individualization. Thus, a balanced normative framework is needed: one that offers judges genuine room for discretion while preventing excesses of subjectivity and punitive inequality.

This dialectic between flexible adjudication and systemic coherence calls into question the very nature of sentencing individualization: is it an empathetic adaptation of the law to the individual, or a controlled mechanism for standardizing penal responses?

¹¹ Saoussane Tadrous. 2014. *La place de la victime dans le proces penal*. Droit. Universite Montpellier I, p. 97.

¹² Manon Leblond. 2021. *Le principe d'individualisation de la peine en droit pénal français*, Université de Montpellier, p. 121.

¹³ Mihail Udriou, 2024. *Codul de procedură penală și Legea pentru punerea în aplicare. Cod 799. Actualizat la 15.10.2024*, Bucharest: C.H. Beck, p. 215.

In reality, sentence individualization encompasses both dimensions — it is, essentially, a tension between the ideal of empathetic justice and the need for a unified and predictable penal response. This dialectic is not an absolute contradiction, but rather a functional duality, specific to contemporary criminal law, which must reconcile fairness with legal certainty.

On the one hand, individualization is an instrument for humanizing criminal law, allowing sanctions to be adapted to the concrete reality of the offender: their life history, level of responsibility, behavioral motivations, and potential for social reintegration. This vision is rooted in the humanist traditions of continental law and is supported by principles such as human dignity, proportionality, and non-discrimination, enshrined in both national constitutions and the case law of the European Court of Human Rights.¹⁴

On the other hand, individualization cannot be conceived outside the requirements of systemic coherence: the state has a duty to treat similar cases equally, to prevent arbitrary discrepancies in the application of the law, and to guarantee citizens a reasonable foreseeability of the penal response. In this sense, sentencing guidelines, unified jurisprudence, and standardization instruments are not expressions of normative authoritarianism, but functional mechanisms of balance between individuality and legal equality.¹⁵

Therefore, individualization is a form of contextual justice within the boundaries of legality: a complex articulation between the judge's discretionary power and objective standards of penal treatment. It is neither purely empathetic nor strictly technocratic, but rather a form of dialogue between the judge and the system, between the person and the norm. The answer does not lie in choosing one extreme over the other, but in the system's capacity to cultivate a reflective judicial culture, in which empathy and rigor support one another, rather than exclude each other.

5. Research Methodology

The **general objective** of this study is to conduct a comparative analysis of the mechanisms of sentence individualization across different legal systems, as well as to investigate the ways in which European standards and systemic coherence imperatives influence the discretion of the criminal judge. The study aims to identify the tensions between national legal traditions and trends of normative harmonization, within a context in which criminal justice is increasingly subjected to transnational requirements.

To achieve this objective, the following **research questions** have been formulated:

- how is sentence individualization regulated in major continental and common law systems, and what structural differences can be identified?
- to what extent do the jurisprudential influences of the European Court of

¹⁴ Norbert Rouland, 2010. *Anthropologie juridique*, Paris: PUF, p. 448–450.

¹⁵ Lucia Zedner, 2004. *Criminal Justice*, Oxford: Oxford University Press, p. 66–70.

Human Rights lead to a convergence in sentence individualization practices among member states?

- what are the limits of judicial discretion in Romanian criminal law compared to other European systems?

- how can the requirements of individual fairness be reconciled with the need for consistency in criminal sentencing within a European framework?

- is there a correlation between the degree of judicial flexibility and the effectiveness of the social reintegration of convicted individuals across different jurisdictions?

- what role do sentencing guidelines and penal policies play in shaping the process of sentence individualization?

- how do cultural and historical criteria influence the perception of sentence individualization in various legal traditions?

Based on these questions, the study seeks to test the following **working hypotheses**:

- continental legal systems regulate sentence individualization more strictly than common law systems, where judicial flexibility prevails.

- the jurisprudence of the European Court of Human Rights exerts a harmonizing influence, leading to shared standards of proportionality and individualized treatment.

- the degree of judicial discretion is higher in liberal legal systems and more constrained in those shaped by centralized penal policies.

- sentencing uniformity can coexist with individual fairness if supported by flexible guidelines and reflective jurisprudence.

- in countries where judges have real decision-making autonomy, post-penal reintegration tends to be more effective.

- sentencing guidelines can function both as instruments of coherence and as barriers to empathetic adaptation of the sanction.

- national legal culture and penal history shape the perception of the judge's role in the process of sentence individualization.

6. Discussions and Conclusions

This study aimed to explore the mechanisms of sentence individualization from a comparative and transnational perspective, based on the premise that this process reflects a fundamental tension between the contextual adaptability of criminal law and the systemic imperatives of coherence and formal equity. The analysis of the seven research questions and formulated hypotheses revealed a series of significant conclusions.

Firstly, the comparison between continental and common law systems confirmed the existence of a structural difference in how sentence individualization is regulated. While penal codes from the continental tradition (France, Germany, Italy) impose clear legal criteria, Anglo-Saxon systems emphasize precedent and flexible sentencing guidelines. This distinction highlights the opposition between normative

legalism and judicial pragmatism.

Secondly, the influence of the jurisprudence of the European Court of Human Rights proves to be harmonizing, even if indirectly. Decisions such as *Scoppola* or *Maktouf and Damjanović* compel member states to uphold the principles of proportionality and foreseeability in sentencing, thereby generating a shared core of standards regarding individualized treatment of convicted persons.

Regarding judicial discretion, the research showed that although Romania formally provides clear criteria for individualization, it operates in a framework where judicial freedom is often limited by the jurisprudential orientations of higher courts. By contrast, judges in Germany and the United Kingdom enjoy more pronounced decision-making autonomy, institutionally supported.

Harmonizing individual equity with the uniformity of criminal sanctions is achievable, provided that flexible normative instruments are used — such as sentencing guidelines that do not override judicial discretion but rather calibrate it. Positive examples from the United Kingdom and the Netherlands support this hypothesis, while reflective jurisprudence helps reduce the risk of arbitrariness.

Another important outcome of the study is the confirmation of the correlation between the degree of judicial flexibility and the effectiveness of offenders' social reintegration. Scandinavian models demonstrate that personalized sentencing approaches result in low recidivism rates, validating the thesis that individualization is not only a legal, but also a functional and restorative process. With respect to sentencing guidelines, the conclusion is that while they can act as facilitators of coherence, they risk becoming obstacles to judicial empathy when applied rigidly. The American case of the Federal Sentencing Guidelines is illustrative of the dangers of excessive standardization.

Finally, the analysis of cultural and historical dimensions revealed that perceptions of sentence individualization are profoundly influenced by national legal traditions. In jurisdictions with authoritarian legacies, judicial discretion is often viewed with suspicion, while in liberal democracies, it is valued as an expression of equitable justice. Although the European Union does not hold general competence in criminal law, it has developed, since the Maastricht Treaty and more concretely through the Lisbon Treaty, a distinct legal architecture in the field of criminal justice, especially in areas with cross-border relevance or affecting the Union's financial interests. Through the Court of Justice of the European Union (CJEU), EU law has imposed minimum standards regarding the effectiveness, dissuasiveness, and proportionality of sanctions applied by member states.

The analysis of judicial sentence individualization in light of European standards highlights several relevant conclusions, both from a doctrinal and practical perspective:

1. sentence individualization represents an expression of the judge's sovereignty, but not an absolute one. It must be exercised within the limits of national law and in compliance with conventional and European standards to ensure fair, proportional, and humane justice.

2. ECtHR case law imposes clear requirements regarding proportionality,

reasoning, and reviewability. Sanctions applied automatically, without individualized analysis or without a real possibility of review (particularly life imprisonment without parole), are deemed incompatible with fundamental rights.

3. The CJEU focuses on the effectiveness and dissuasive character of sanctions, especially in domains relevant to the Union's financial interests.

4. Institutions in the Romanian Criminal Code (Articles 90–110) are generally compatible with ECtHR and CJEU standards, provided that their application is thoroughly reasoned, tailored to the specifics of each case, and does not compromise the effectiveness of criminal liability.

5. The national judge is expected to become a guarantor of European legal integration, being responsible not only for applying domestic law but also for ensuring its compliance with the requirements of the Strasbourg and Luxembourg courts. This role implies an expanded legal culture, interjurisdictional dialogue, and a capacity for rigorous reasoning.

In conclusion, the research confirms the dual nature of sentence individualization: it serves both as a tool for humanizing punishment and as a mechanism for ensuring coherence within the penal system. The current challenge lies in finding a functional balance between judicial discretion and the imperatives of normative uniformity, in a European context where national criminal law can no longer be conceived in isolation from the transnational dynamics of fundamental rights.

7. Limitations and Future Directions

Although comprehensive in its comparative and conceptual dimension, this research presents several relevant limitations. Firstly, the analysis relied predominantly on doctrinal, legislative, and jurisprudential sources, without a strong empirical component such as interviews or direct case studies with judges or practitioners. This approach limits access to institutional or individual perceptions regarding the real-life application of sentence individualization.

Secondly, the selection of legal systems analyzed was limited to countries representative of the continental and Anglo-Saxon traditions. Extending the research to hybrid or non-European systems (e.g., Japan, South Africa, Brazil) could reveal alternative models for balancing normativity and judicial discretion. Furthermore, the study did not include a systematic analysis of socio-economic factors that may influence judicial discretion in practice (e.g., public pressure, short-term penal policies, political climate).

Future research should incorporate an empirical component by applying surveys or semi-structured interviews with magistrates, as well as correlating normative data with statistical indicators on reintegration effectiveness and recidivism rates. Additionally, an interdisciplinary approach including insights from judicial psychology and legal sociology could offer a deeper understanding of how sentence individualization truly functions in practice.

In a continually evolving European legal landscape, exploring the interaction between national traditions and international standards remains a necessary and fertile

direction for strengthening a fair, effective, and humane criminal justice system.

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