



## ORIGINAL PAPER

# The Scope of the Presumption of Innocence in Romanian Law

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### **Abstract**

The present article considers the contemporary criminal procedural doctrine treating the presumption of innocence both as a procedural guarantess enjoyed by prosecuted or tried persons, but also as a reflection of the constitutionally protected fundamental right (Art. 23, par. 11 of the Romanian Constitution). Moreover, the article presents other legal dispositions, for example the European legal protection, the Romanian Code of Criminal Procedure and the current juridicial practice.

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## The Scope of the Presumption of Innocence in Romanian Law

The contemporary criminal procedural doctrine treats the presumption of innocence both as a procedural guarantee enjoyed by prosecuted or tried persons, but also as a reflection of the constitutionally protected fundamental right (Art. 23 par. 11 of the Romanian Constitution: “Until the judgment of conviction remains final, the person is considered innocent”, a text regulated in the section entitled “Fundamental Rights and Freedoms”). The presumption of innocence was formulated in the “Declaration of human and citizen rights” of 1789, which was used in different wordings in various international documents<sup>1</sup>. In the Code of Criminal Procedure of 1968 the presumption appeared initially as a probation rule in art. 66<sup>2</sup>, and subsequently<sup>3</sup> consecrated as a basic rule in criminal trial.

The European protection standard is found in Art. 6 par. 2 of the Convention, according to which “Any person accused of an offense is presumed innocent until his/her guilt is legally established”.

This regulation mainly produces two categories of consequences: (1) as far as judicial bodies are concerned, according to the text they have to prove their impartiality during their entire activity and to safeguard the procedural rights of the accused. The judge must be cautious in summarizing the indictment and to emphasize objectively both the prosecution and the defense arguments. An example in this regard may be art. 374 par. 2 Code of Criminal Procedure: “the President explains to the defendant what the charge is, informs the defendant of the right not to make any statement ...”. Or if in the prior stage of the pre-trial chamber after the defendant is served with the indictment against which he/she can formulate criticisms, what is the usefulness of reading the indictment and what explanations” must the judge give? If at this stage the defendant asserts that he/she did not “understand” the judge that would “explain” to him should not be presumed as being biased<sup>4</sup>; (2) as far as the accused is concerned, the presumption of innocence implies for him/her the right to propose evidence in his/her defense and not to testify against himself/herself. These are included in art. 14 paragraph 3 of the International Pact on Civil and Political Rights, which states that “any accused has the right not to be forced to testify against himself/herself or to acknowledge his/her guilt”. The European Court ruled that, despite the fact that art. 6 par. 2 of the Convention does not expressly mention the right to silence and the right not to contribute to its own accusation (*nemo tenetur se ipsum accusare*), these are generally recognized international rules that bears the notion of “fair trial” consecrated in art. 6.

The jurisprudence and also the doctrine (Lefterache, 2015: 50) state that by adopting the presumption of innocence, there have been multiple restructurings of the criminal process that must meet the following requirements: the guilt is set in a trial, meeting the procedural guarantees, because the mere accusation does not mean establishing the guilt; the burden of evidence lies with the judicial bodies, which is why the interpretation of the evidence is done at each stage of the criminal process, the conclusions of a judicial body not being mandatory and definitive for the next phase of the trial; until the conviction decision is taken, until it remains final the defendant has the status of an innocent person, when a final conviction decision is taken, the presumption of innocence is overturned with *erga omnes* effects; the conviction must be based on clear evidence of guilt, and in case of doubt that can not be removed by evidence, it must be pronounced an acquittal decision.

The presumption of innocence is legal in nature and relative, can be countered, removed by proving the guilt found by a final criminal judgment. It should be noted that

according to the Romanian Constitution the presumption is removed in the case of a conviction judgment while art. 4 Code of Criminal Procedure does not include the mention of conviction. As such, according to the Code of Criminal Procedure, any final criminal judgment constitutes a reference in this matter and not only those of conviction. Thus, the presumption also operates in the situation in which the court pronounces a final criminal judgment ordering the cessation of criminal proceedings (Theodoru, 2008: 98). This approach enshrined in art. 4 Code of Criminal Procedure is found as an example in the ECHR decision of 14.04.2009<sup>5</sup> which stated that “A distinction must be made between decisions that reflect the feeling that the person concerned is guilty and those who merely describe a state of suspicion. The former violate the presumption of innocence, and the others have many times been considered in accordance with the spirit of art. 6 of the Convention ... The Court reiterates also that the presumption of innocence is violated if without legally establishing in advance that the accused is guilty and in particular without he/she having had the chance to exercise the rights of defense, a judgment given against him/her reflects the view that he/she is guilty. The same can happen without a formal finding. It is sufficient a motivation to believe that the judge considers the party concerned to be guilty ... The Court of Appeal has established the limitation of criminal liability ... The Court has ruled on the offenses of forgery and the use of falsehoods to be sure... it considered that all of the evidence adduced shows that the plaintiff had committed that offense. Then it closed the proceedings by applying the rules on criminal liability limitation. In the Court's view that reasoning might give the impression that the plaintiff had committed the offenses for which he/she was indicted.... it did not limited to describe a “state of suspicion or a hypothesis”, it presented as established certain facts mentioned in the indictment ... It follows that, by closing the proceedings, the court of appeal called into question the applicant's innocence”.

If we assume that the beneficiary of the presumption of innocence is the person on trial for which the court pronounced a solution to close the criminal trial it arises naturally the question whether it is or not fulfilled the requirement of impartiality of the same court called to rule bindingly on the civil side in that criminal trial.

It should be noted that by the decision 586 of 13.12.2016 of the Constitutional Court we returned to the legislative solution of the Code of Criminal Procedure of 1968, which by art. 346 par. 4 obliges the criminal court to resolve the civil side in the case of termination of the criminal proceeding as a result of the intervention of the criminal prescription. The considerations of this decision are structured on the need to solve the judicial proceedings for the recovery of damages within a “reasonable time” notion that, in the view of the Constitutional Court, constitutes “an imperative that results from the principle of the lawfulness of the criminal trial provided in art. 2 of the Code of Criminal Procedure” (par. 22) and on the fairness of the procedure<sup>6</sup>.

The question arises whether a defendant in respect of which the court ordered the cessation of the criminal proceedings as an effect of the prescription may be considered “innocent” if the same court ruling the civil side obliges the defendant to pay the sums representing the damages claimed by the injured person who was civil party.

It remains to be seen whether this comeback will re-launch the debate on the meaning of the notion of “guilt” as having a different meaning in criminal proceedings than the meaning used in the Criminal Code ( Pavel, 1978: 10).

Recent doctrine (Ghigheci, 2014: 68) highlighted that “the presumption of innocence is different from the assumption of innocence because the latter would be compatible (only with a solution of acquittal but not with any solution of acquittal)

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because it clearly demonstrates the innocence of the defendant while the innocence solution is also compatible with other solutions, such as those ordering the cessation of the criminal proceedings because it was prescribed the criminal liability or those in which a person could not be held guilty by procedural reasons ...”.

The beneficiaries of the presumption are the suspect and the defendant but also any other persons even if it was not filed a criminal charge against them. Such situations may arise, for example, in the situation provided by art. 61 Code of Criminal Procedure when “there is a reasonable suspicion of committing a crime, “but there is still no criminal prosecution initiated even in rem. The presumption of innocence has been extended beyond the criminal proceedings in areas such as contraventions, having as a benchmark in ECHR jurisprudence, the gravity of the sanction that the person sanctioned by contravention<sup>7</sup> might receive.

The presumption of innocence is operative even when there are indications or even evidence of guilt, the defendant being a beneficiary of the presumption throughout the criminal proceedings. The authorities of the state in general, the judicial bodies in particular have to respect the presumption that the suspect or the defendant benefits from. The existence of the presumption of innocence has as a consequence the freedom of the person accused of having a passive attitude, not being obliged to prove anything. The burden of proof is on the accuser during the criminal proceedings (*eius incumbit probatio qui dicit, non qui negat*).

The presumption of innocence cannot be an impediment in carrying out the criminal proceedings. Each judicial authority facing a criminal case has as its starting point the presumption of innocence, the bringing of the criminal case in the next procedural stage can be done in the presence of certain evidence of guilt. For the prosecutor who orders the prosecution of a defendant, the presumption of innocence is not operative in relation to the evidence on which the indictment is based. For the Pre-trial Chamber judge, the presumption is fully applicable, including when it orders the trial to begin, for the court (first instance or appeal) the presumption operates during the settlement of the case, becoming inoperative for the judge of the first instance if it pronounces a conviction and *erga omnes* if it remains the conviction on appeal, at the same time with pronouncing the final judgment.

The presumption of innocence has all its effects during the criminal proceedings until the final judgment is pronounced and in the case where preventive measures have been taken against the accused person because taking preventive measures is conditioned by the existence of a reasonable suspicion that a person has committed an offense, suspicion that results from “reasonable evidence or indications” (article 202 of the Code of Criminal Procedure), whereas “the conviction shall be pronounced if the court finds beyond reasonable doubt that the deed exists, constitutes an offense and has been committed by the defendant” (article 396, par. 2 Code of Criminal Procedure). This text is corroborated with art. 103 par. 2 Code of Criminal Procedure which establishes the obligation to make a decision “with reference to all the assessed evidence” the conviction may be ordered “only when the court is convinced that the allegation has been proven beyond any reasonable doubt”.

Taking, prolonging or maintaining preventive measures during the criminal proceedings is not incompatible with respecting the presumption of innocence, it does not imply that the court rules on the case merits<sup>8</sup> but only on the existence of reasonable evidence or indications that leads to a reasonable suspicion that a person has committed a criminal offense. At this stage, the evidence is not assessed by reference to the guilt or

innocence of the defendant on the merits of the criminal case. The presumption is not removed in case of doubt as to the factual determination of the facts, doubt that is in the benefit of the suspect or defendant. The jurisprudence has raised the question of the scope of the rule in dubio pro reo. More precisely when can it be capitalized? The question is legitimate given the words at the beginning of art. 4 par. 2: "After acquiring the entire rules of evidence ...".

The current judicial practice seems to incline towards the solution that this rule can be capitalized at the end of the criminal prosecution phase and appropriately at the end of the substance judgment and respectively in the appeal. The problem arose when the defendants invoked in the course of criminal prosecution when the judge of rights and freedoms solved the proposal for a preventive measure formulated by the prosecutor. The recourse to this rule at the time of the mentioned trial has attracted the interpellation of the judge of rights and freedoms, which, through a semi-rhetorical wording (emphasizing that the proposal explicitly indicates that there is still evidence to be acquired) it asked for explanations on the possibility of invoking the rule in dubio pro reo. Simply listening to the recordings of such meetings is sufficient to show the frequency of such situations. This interpellation is the best situation because it raises the idea that the problem deserves at least attention. However, it is common practice that in the conclusion of the proposal to avoid simply recalling the rule in dubio pro reo which implicitly points to the orientation of the judicial practice to pay attention to the rule at the exhaustion of the mentioned procedural phases. It is possible that this approach is based on the idea that since the existence of reasonable suspicion is verified in the light of reasonable evidence or indications referred to in art. 202 Code of Criminal Procedure, including, it is not appropriate to recourse to dubio pro reo.

It should be noted, however, that the rule is set by the legislator in the title reserved for the principles and not as a rule in the titles governing different phases of the criminal proceedings. It is no less true that in the procedure the more a norm is "special" (in the sense that it has been decreed to solve certain situations), the more that norm is considered to be justified to be applied than a norm that has a broader field of application and it is obvious that the matter of preventive measures is regulated in a special title.

A practical solution to this problem would be that this rule can be invoked in the course of criminal prosecution taking into account the "entire evidence" acquired up to that point, in the given example - the proposal to take a preventive measure. In favor of this view it is also the argument that the proposal can only focus on preventive arrest or home arrest (the others may also be ordered by the prosecutor), and the legislator conditions<sup>9</sup> ordering them by the existence of evidence without or "indications" expression which is part of a norm referring to all preventive measures.

The synthesis of this issue was made by the Supreme Court<sup>10</sup> that retains the complementary character of the rule in dubio pro reo, pointing out that to the extent that the evidence adduced in support of the person's guilt contains information that is doubtful about the perpetrator's guilt in relation to the imputed act, the criminal judicial authorities cannot form a conviction that becomes a certitude so that the accused must be acquitted. The same decision states that "before being a matter of law, the rule in dubio pro reo is a matter of fact". The criminal justice requires judges not to rely on probability but on the certainty acquired on the basis of decisive, complete, certain evidence in the judgments they pronounce.

All lawyers (and not only) know the saying "better than ten guilty persons unpunished than an innocent in prison". The number of "unpunished guilty persons" may

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be higher or lower than “ten” depending on the emphasis that is being made on respecting the presumption of innocence and its corollary, “the accused benefits from doubt”. The justification for this claim lies not only in the need to avoid a judicial error that has resulted in the punishment of an innocent person but also in the argument that once the innocent person is punished the real guilty person is free.

The principle of the presumption of innocence is not equivalent to the expectations of the judicial bodies (the burden of proof is mainly on the prosecutor), but presupposes the necessity of proving the guilt through certain evidence.

Voices authorized in doctrine (Volonciu, 2015: 15-16) support the choice of a “middle way”, the need that the application of the presumption of innocence to make possible for persons who have committed crimes to be held criminally responsible without violating their fundamental rights and freedoms. Carefully and charily, this desiderate can be found in everyday legal reality.

The relative recent past of jurisprudence has provided numerous examples of whether or not to retain the presumption of innocence in the case of arrested accused persons present in court in prison uniforms or the exposure of the accused persons in handcuffs or keeping the accused persons in a “box” during the debates etc. The penitentiary uniform is no longer a topical issue, but it did not take too long since ECHR judgment of 04.03.2008<sup>11</sup> that stated the violation of the presumption of innocence, referring to the fact that a prisoner in pre-trial detention had to wear a penitentiary uniform, during the hearing for the examination of the application for release, where we can ask ourselves how long it will pass (hopefully that there is no need for ECHR decisions in advance) to give up the so-called “boxes” for the defendants arrested in the meeting rooms. The more it is necessary to dismantle those enclosed places, the more their use not only affects the presumption of innocence, but also impedes seriously the right to defense.

The existence of the defendant’s criminal record among the papers of the file raised the issue of respecting the presumption. There is no text in the Code of Criminal Procedure governing the express obligation to submit the suspect or defendant's criminal record by the criminal prosecution bodies, but always the criminal record is attached and sometimes if the length of the trial is long, coming close to the end of the debates the court ex officio or upon request orders updating<sup>12</sup>. Although there is no express rule in the Code of Criminal Procedure implicitly, it results from disparate rules the obligation of submitting the criminal record<sup>13</sup>.

Fear that the existence of the criminal record in the case file could affect the presumption of innocence, the judicial practice gave a negative answer arguing that the representatives of the judiciary bodies, in particular magistrates, are law professionals, specialized persons that it is difficult to admit that they could be influenced in their decisions in a concrete case by a criminal record that reflects the existence of a criminal history. The impartiality of judges is indeed a requirement that must be accepted ab initio, but it may be possible that during the procedures to receive diffusely or even explicitly solutions that the contents of the criminal record may play a role. As long as the criminal record has no repercussions on the merits of the criminal case deducted from the trial, the presumption of innocence is not affected.

The connection between the presumption and the impartiality is otherwise seen in the context in which it affects the merits. Thus in a case<sup>14</sup> the court rejected the request for an expert examination to determine whether or not the knife corpus delicti had or did not have blood traces and, if so, to determine whether it belonged to the defendant, the injured party or none (provided that they accused each other of using the knife) with the

inherent motivation of the sentence: “considering that there is evidence that the defendant is the owner of the knife and that by using this instrument, he/she applied to the injured party XY two knife strokes” and “finding the cause in the state of proceedings it has granted the floor on the merits to the parties”. This violation of the presumption of innocence was sanctioned by the Court of Appeal<sup>15</sup> because it can no longer hold impartiality and correlatively that the presumption of innocence would have worked since before the closing of the debates the judge had told who was guilty and what were the facts.

In concrete cases, when exposing reasons why some evidence is rejected, we may encounter inappropriate formulations that may “shade” the presumption of innocence. Is it likely that this particularity to cause a lack of concrete reasoning often encountered in the case of rejection of the evidence, almost standardized rejection by reducing to “the evidence is not pertinent, conclusive and useful”?

The approach of the presumption of innocence is sometimes made in a wider context, in connection with the incidence of other principles, in particular with freedom of speech. This is because it is true that the obligation to respect the presumption rests primarily with the state authorities and especially with the courts but there are cases (e.g. ECHR Rupa c. of Romania) in which transcripts of audio recordings have come into the hands of the press representatives. Often, press representatives have “firm” beliefs for or against an accused person based on “sources” or external arguments in the course of judicial proceedings and such as to undermine the presumption of innocence. The objective of attracting the audience leaves out the presumption even though it is acclaimed on screen simultaneously with “analyzes” that leave room for a different belief than that of the speaker itself. Harmonization may have as a starting point a better civic education of the receptors that may diminish the audience of media campaigns in which the presumption is pronounced declaratively, followed by a series of reasons why the “criminal” that has not yet been judged “is going to answer for all deeds and research will continue to discover all the facts he/she has committed”.

This rhetoric is also found in the conduct or vocabulary of some representatives of the authorities usually in the early stages of inquiries. In the later phases of the criminal trial, it is worth mentioning the coincidence of the appearance in the press of articles in which usually fragments of the indictment are displayed about the time when the cause is ruled on the merits.

The need for information, the right to information, the obligation to inform are imperative”, the satisfaction of which can be achieved without transforming the defendant into the “outlaw”, without the presumption of innocence losing its content at least in public space.

Although art. 4 par. 1 Code of Criminal Procedure circumscribes the beneficiary of the presumption as being “any person” as opposed to art. 6 of the Convention, which states in paragraph 1 “criminal charges and in paragraph II, the person accused of an offense” which denotes a broader scope of the presumption in the internal norm, however contrary to the ECHR jurisprudence which extended the scope of the application of the presumption in other areas (eg the Anghel case cited above) domestic law is reluctant to make this extension.

One of the issues around which the discussions do not seem to be exhausted is whether or not the presumption of innocence is affected in the context of its invocation in another litigation of an extra-criminal nature but which arose as a result of the existence of a criminal case. Specifically, X a civil servant is being investigated for committing an

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offense “during his/her service or in connection with the duties of the civil service<sup>16</sup>”. If the civil servant is put on trial mandatorily, “it will be ordered the civil servant to be suspended”.

The act of suspension (administrative act) that the “person that is entitled to appoint in the public office” is obliged to issue may be appealed against at the administrative contentious court. Constantly the Constitutional Court, through numerous decisions (decision 48/2003, decision 482/2006, decision 748/2007 and others) rejected the unconstitutionality exception of art. 86 par. 2 stating that this text does not violate art. 23 par. 11 on the presumption of innocence because the constitutional text “establishes the presumption of innocence exclusively for criminal liability” and “the ground for the suspension of the civil servant is not of a criminal nature”.

It should be noted that the legal basis for the suspension is putting on trial. It results that during the prosecution, regardless of the nature or the gravity of the accusation<sup>17</sup> and regardless of the length of the prosecution phase, the civil servant exercises his duties unhindered. Putting on trial is marked by the issue of the indictment followed by the registration of the case at the competent court. The Judge of Rights and Freedoms, the Judge of Pre-trial Chamber or the Criminal Court have no prerogative to verify the suspension which is the direct effect of putting on trial. Putting on trial is legally left to the prosecutor's sovereign. The contentious court invested with the settlement of the application for annulment of the suspension administrative act, issued *ope legis* at the time when it was ordered to be put on trial, is obliged to analyze the administrative act and cannot ignore the decisions of the Constitutional Courts, so that the rejection solutions prefigures from itself.

A “settlement” solution of the problem in question could be the following: Suspension from office may be ordered by the prosecutor by ordinance, provided the criminal action has been initiated. This argument is explained in reality by the fact that from the moment when the criminal action is initiated and until the court is notified, the exercise of the service duties by a person who becomes the defendant for one of the offenses listed in art. 54 lit. h of L. 188/1999 would call into question the legitimacy of the acts and measures taken and could even affect even the duties of the officials adjacently organized (hierarchically superior or inferior or horizontal hierarchical).

The order may be appealed at the judge of rights and freedoms and at the time the court starts the trial to verify, on request or *ex officio*, whether the grounds for the suspension subsist.

Suspension of service relationships may be given the legal nature of a procedural measure that can be taken or revoked starting with the initiation of criminal proceedings until the final judgment on the merits when in case of acquittal, the suspension ceases to be lawful and in case of conviction the court will also decide on complementary punishments among which the discussed situation provided in art. 66 par. 1 lit. g C.p.<sup>18</sup>.

However, it cannot be denied the direct link between the criminal case and the cause of the appeal against the suspension ordered as a result of prosecution. Finally, it should be noticed the obvious contradiction between art. 86 par. 2 and the full content of art. 54 lit. h of L. 188/1999<sup>19</sup>.

Any comment is superfluous when you find that according to art. 86 par. 2 when putting on trial the public servant is suspended and according to art. 54 a public office may be occupied by a person who “has not been convicted” for committing the same offenses for which the officer sued has been suspended.



The presumption of innocence is not applicable in the enforcement stage of the punishment or in the case of exhaustion of the criminal proceeding with the pronouncement of a solution for the termination of the criminal trial (in which it has not been established whether the defendant is guilty or not, for example, the prescription has intervened). In this example, the official cannot request in a subsequent trial to retake its office by invoking the presumption<sup>20</sup> (Chiriță, 2008: 292).

“The subsistence” of the presumption of innocence can be addressed in other varied situations, among which illustrative is the case of prosecuting 2 (three, four or more) co-authors. “A” recognizes the facts and asks for a simplified procedure, “B” does not recognize, disputes the evidence from the prosecution, asks for new evidence. The agreed solution in practice is often the disjunction. “A” is tried in a simplified procedure and convicted. The judge giving this solution refrains from hearing the case in which the defendant is “B”, but the judge's decision on A's case corroborates (how much?) significantly the presumption of innocence that “B” should benefit. It is undoubtedly more equitable a common judgment not only to preserve “appearances” in respecting the principles (although in the procedure in a beneficial sense, appearances have their weight) but to ensure a unitary judgment, a just balance.

The European Court has held that the existence of so-called presumptions of guilt in national law is not necessarily contrary to the European Convention. However, these must be provided within reasonable limits, in order not to deprive the presumption of innocence of its substance. In the doctrine, it was shown that according to ECHR jurisprudence, they are compatible with the observance of the right provided by art. 6 parag. II: recording of telephone conversations, biological sampling, body or home search, fingerprinting, alcohol tests, blood tests, etc. Like the presumption of innocence, the presumption of guilt is not conclusive, it must be possible to look for the evidence to the contrary.

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<sup>1</sup> For example. The Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10.12.1948 provides in art. 11: “any person accused of having committed an offense is presumed innocent as long as the guilt has not been established in a public trial with the necessary guarantees for defense.

<sup>2</sup> Code of Criminal Procedure 1968 art. 66 par. 1, “The accused or defendant enjoys the presumption of innocence and is not obliged to prove his innocence”.

<sup>3</sup> By L. 281/2003 it was introduced art. 5<sup>2</sup>: “Every person is considered innocent until the determination of its guilt by a final criminal judgment”

<sup>4</sup> Maybe art. 374 par. 1 and 2 should be reworded.

<sup>5</sup> Didu c. of Romania, published in the Official Journal 740 of 30.10.2009 paragraphs 38-42

<sup>6</sup> Constitutional Court Decision 586/2016 parag. 30: “The Court therefore finds that the choice of the person injured by committing an offense for the recovery of his claims through the civil action promoted in the criminal proceedings is justified by the speedy resolution of the criminal cases and the various procedural incidents occurring during this procedure, independently of the will of the injured party and which it can not anticipate at the time of the choice between the criminal and the civil courts must not affect the fairness of the settlement of its action by extending it beyond a reasonable time”.

<sup>7</sup> Anghel c. of Romania, Decision of 31.03.2008; par. 67-68: “Although States have the possibility to exclude from the criminal law some offenses and penalize them rather by means of a contravention rather than a criminal offense, the perpetrators of the offenses must not be in an unfavorable situation simply because the applicable legal regime is different from the applicable law in criminal matters ... In short,

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the Court thinks that removing the contravention outside criminal law does not raise problems in itself, breach of fundamental safeguards - including presumption of guilt - that protects citizens against possible abuses by the authorities, is an issue to be examined under Art. 6 of the Convention ... The Court considers that in the present case the plaintiff has not been fairly tried, as provided by art. 6 of the Convention”.

<sup>8</sup> Decision of CC: 73/200, Decision 38/2007, Decision 76/2005, Decision 245/2006

<sup>9</sup> Art. 218, art. 223 Code of Criminal Procedure.

<sup>10</sup> For example, decision 3465/2007 of ICCJ, Criminal Section

<sup>11</sup> The Samoilă and Cionca case c. of Romania – In ECHR Bulletin no. 5/2008, pag. 75 et seq.

<sup>12</sup> Notifications to county police inspectorates or inquiries from criminal enforcement offices, or ordering judgments concerning the defendant, etc.

<sup>13</sup> In the early stage of the criminal trial - art. 107 Code of Criminal Procedure regulates under the marginal name “questions about the suspect or defendant” the need that at the hearing to be asked questions about “criminal history or other criminal proceedings”. Texts that lead to the same obligation are those governing the content of the indictment or reference to the “criminal history” that makes art. 223 par. 2 Code of Criminal Procedure, etc.

<sup>14</sup> Judgement in criminal case 58 of 27.03.2013 unpublished, pronounced by the Court of Vânu Mare in the file no. 1110/332/2012

<sup>15</sup> Decision no. 1525 of 05.07.2013 pronounced by the Court of Appeal of Craiova, unpublished

<sup>16</sup> Art. 86 of L. 188/1999 (1) The liability of a civil servant for offenses committed during his service or in connection with the duties of the public office he/she occupies shall be accounted according to the criminal law.

(2) If the civil servant is sued for committing an offense of the nature provided in art. 54 lit. h, the person having the legal capacity to appoint in the public office will order the suspension of the civil servant from the public position he/she holds.

<sup>17</sup> The condition that the crime be part of the enumeration contained in art. 54 lit. h of L. 188/1999: “... crimes against humanity against the state or against authority, corruption and service offenses, crimes that prevent the execution of justice, forgery crimes or intentional crime that would make it incompatible with the exercise of public office”.

<sup>18</sup> Art. 66 par. 1 lit. g) Code of Procedure: “The complementary punishment of prohibiting to exercise certain rights consists in the right to occupy the post, to exercise the profession or job or to carry out the activity which was used for committing the offense”.

<sup>19</sup> Art. 54 lit. h of L. 188/1999; A person who fulfills the following conditions may hold public office: ... h) has not been convicted of committing an offense against humanity, against the state or against the authority, corruption and service offenses, crimes which prevents the execution of justice, forgery crimes or intentional crime which would make it incompatible with the exercise of public office”.

<sup>20</sup> ECHR, Moullet case c. of France, Dec. 13.09.2007.

### References:

Chiriță, R. (2008). *Dreptul la un proces echitabil (The right to a fair trial)*, Bucharest: Universul Juridic, 2008

Code of Criminal Procedure (1968)

Ghigheci, C. (2014). *The principles of the criminal proceedings in the new Code of criminal procedure*, Bucharest: Universul Juridic.

Lefterache, L. V. (2015). *Probe și prezumții în procesul penal (Evidence and presumptions in criminal trial)*, Bucharest: Universul juridic., 2015

Pavel, D. (1978). Considerations on the presumption of innocence, R.R.D. no. 10/1978.

Theodoru, G. (2008). *Tratat de drept procesual penal (Criminal procedure Law Treaty)*, Bucharest: Hamagiu, 2008.

Volonciu, N. et al. (2015). *Noul Cod de Procedură Penală comentat (The new Code of Criminal Procedure)*, Bucharest: Hamagiu

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