THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Presumption of Innocence and Truth - between Ambition and Reality of Criminal Proceedings. Case Studies from the Practice of the European Court of Human Rights

Alina Ana Dumitrache[1], Răzvan-Alexandru Condunina[2], Emil Alin Nedelcu[3]

Abstract: Presumption of innocence and the principle of finding the truth is fundamental Principles underlying criminal proceedings. The role of these principles is relevant in terms of a fair criminal trial and to keep alive the idea of protecting the individual against any abuse of State Authorities. Principles of criminal procedure that any advantage doubt suspect/accused (in dubio pro reo - an integral part of the principle of finding the truth) and that guilt will be proven beyond a reasonable doubt, have the pillars that support Even the criminal justice process. The main target of these principles have even those in respect of the burden of proof rests Which, that the state authorities, which in the case of offenses will have to find out those who committed crimes and to impose a sentence commensurate with their guilt. Through this article we wanted, if possible, to realize year analysis of the applicability of these principles in the romanian legal system given that our country still has a form of democracy early, relatively young, having emerged from a long period of dictatorship. Taking as reference the above, we propose that the content of this article is to outline whether the reality these principles of Romanian criminal trial or a dream, a goal to achieve and most importantly, how we can improve how to apply these principles.

Keywords: fundamental Principles; abuse of State Authorities; burden of proof; in dubio pro reo; fair trial

Motto:
"*When condemned an innocent, it is relegated part of the country*"
Publilius Syrius – "Sentences"

Introduction[4]

In criminal proceedings, both in terms of judges and of the prosecutors, the principles and rules of law, the indissoluble link between them should be applied and interpreted both in letter and in their spirit the sole purpose of finding the truth and criminal liability only the guilty who will respond in proportion to his guilt.

Therefore, judges should apply strictly the principles and rules of law for the case that was given to the settlement, to know the truth and even put to the legislature any inequities and shortcomings of the rules

[1] Senior Lecturer, PhD, Faculty of Law, Danubius University of Galati, Romania, Address: 3 Galati Blvd., Galati 800654, Romania, Tel.: +40372361102, Corresponding author: alinadumitrache@univ-danubius.ro.
[2] Student, Danubius University of Galati, Romania, Address: 3 Galati Blvd., Galati, 800654, Romania, Tel.: +40372361102, Corresponding author: razvan_alex_86@yahoo.com.
[3] Student, Danubius University of Galati, Romania, Address: 3 Galati Blvd., Galati, 800654, Romania, Tel.: +40372361102, E-mail:
[4] This article was prepared based on extracts bachelor of two authors, namely: "*Presumption of innocence and truth: Fundamental principles of criminal law. Analyze the implications of these general principles of the Constitution and the International Covenants on human rights*" Author Condunina Răzvan-Alexandru - "*And evidence samples. The processes of discovery and lifting*"Author Emil Alin Nedelcu.

for the continuing improvement of justice "not enough to do everything I can" (which the law confers specifically), but "must do and what we need."

Specifies the links between legal principles and rules of law - have to qualify that general principles of law apply in the every legal system, even if they are not specifically mentioned, but can be derived from the rational structure of a set of rules .

Rule must not be confused with principle, because it is for a number of facts or legal acts unfinished, but which fall strictly under the effect instead applicability of the principles spans the entire objective.

Concluding the above, we determine that the law rules or exceptions are applications of the principles of law.

Specifies the links between legal principles and rules of law - have to qualify that general principles of law apply in the every legal system, even if they are not specifically mentioned, but can be derived from the rational structure of a set of rules .

Rule must not be confused with principle, because it is for a number of facts or legal acts unfinished, but which fall strictly under the effect instead applicability of the principles spans the entire objective.

Concluding the above, we determine that the law rules or exceptions are applications of the principles of law.

Benefit of the doubt is an idea that emerging confidence in man, revealing everyone's right not to be subjected to abuse in society to fight crime phenomenon. The presumption of innocence principle defined human freedom, which brings together the interests of society as a whole to individual interest.

The idea of finding the truth, Will make an appearance every time the situation will take the form of a breach of the rule of law, are necessary to remedy that situation and preventing possible that that does not happen again. "Truth" is the center of all court proceedings, but its relevance is more obvious in criminal proceedings, maintaining however the difference in hue between objective truth/real and judicial truth (which can be proved), AIM trial is that the two approaching possible, ideally they confuse.

I. The Presumption of Innocence in the Romanian Legal System

The criminal is a set of activities that take place in a criminal investigation and trial deducted by the competent authorities. This activity is participation of the parties (the accused, civil party and civilly responsible), lawyer and procedure subject in order to establish the facts constituting the offense, the circumstances applicable to the facts in question and the criminal responsibility of persons guilty .

Benefit of the doubt it is a fundamental principle of internationally accepted and applied in all criminal proceedings. This principle is taken of the Criminal Procedure Code in Article 4[1]And it is also stated in the laws that relate to fundamental human rights: Universal Declaration of Human Rights (art. 11), the European Convention on Human Rights and Fundamental Freedoms (art. 6, paragraph 2), International Covenant on Civil and Political Rights (art. 14, para 2), Charter of Fundamental Rights of the European Union (art. 48, para. 1).

[1] Presumption of innocence, the Criminal Procedure Code, Art. 4. (1) *"Everyone is presumed innocent until proven guilty by a final criminal judgment. (2) After administration of the entire evidence, any doubt in belief formation judicial bodies shall be construed in favor of the suspect or the accused.*"

Benefit of the doubt is a procedural guarantee applicable to all persons participating in criminal proceedings, not intended exclusively for certain qualities or the suspect or defendant, representing also a basic rule of criminal proceedings.

Moreover, we observed concomitant right of the suspect or defendant to combat the evidence adduced by the prosecution bodies, enabling them to present arguments to the contrary which give rise to a doubt formation conviction judicial bodies, doubt that will play in favor of the suspect or the accused (in dubio pro reo).

Benefit of the doubt it has a relative character, in that it may be rebutted by establishing rigor and obtaining of evidence, considering plano that guilt is proved. Rebut the presumption of innocence is done by the court pronouncing a sentence, waiving penalty or conditional sentence. This reversal will occur only if it is found that the act exists, meets elements of an offense and was committed by the person having the status of defendant[1] .

We will need to bring up the issue of custodial measure of remand in relation to the presumption of innocence. This apparent conflict will lead to a seemingly natural question: "*If any person is presumed innocent until a judgment of conviction permanently, then this may be deprived of liberty in preventive detention before this time?*" The answer lies in that recognition of the presumption of innocence will not rule out taking a preventive measure involving deprivation of liberty (as a provisional taken in strictly prescribed by law in order to ensure the proper conduct of criminal proceedings and to prevent theft defendant the stage of criminal prosecution or trial)[2].

Perspective constitutional presumption of innocence lies in the many international regulations, this principle is enshrined in most Member representing a benefit and legal protection for the accused, with "*order to balance the ratio forces in criminal proceedings*". (Muraru & Tanasescu, 2008, p. 223) Presumption of innocence is a specific regulation under Article 23, paragraph 11 of the Constitution constitutes a genuine support of the rights of defense and other procedural rights guaranteed to all the accused. Applying this principle will result that a mere accusation will lead to the finding of guilt, but it would need to be established by a judgment defintiv motivated based on solid evidence.

Pregnancy judicial bodies to clarify all circumstances of the case based on evidence is to the truth, and the connection with the presumption of innocence arises when after administration of all samples doubt that will benefit the accused (in dubio pro reo) - presumption of innocence is removed.

Typically, the presumption of innocence finds applicability to the facts that have connotations criminal, but it does not apply strictly only trial but will be extended to government representatives who will create an obligation not to make public statements in which showing that the prosecuted or indicted is guilty before his guilt is established by a final sentence.

II. The Role of Evidence in Rebuttal of the Presumption of Innocence

One of the fundamental principles of the criminal trial is the presumption of innocence. Removing the presumption of innocence is only through sample data, so to complete a trial with a conviction is necessary to prove beyond reasonable doubt the fact that the judgment upon the offender for to be held responsible for therefore, evidential activity is one of the most complex and important operations in a criminal trial.

[1] Art. 396, paragraph 2, of the Criminal Procedure Code.
[2] High Court of Cassation and Justice, Criminal Division, Decision no. 4284/2009.

Samples can be defined as elements relevant information on all facets of criminal case. (Neagu & Damaschin, 2015, p. 421) It is essential for the legally and a fair criminal trial especially if it is to result in a conviction.

Pursuant to Art. 97 para. (2) of the Code of Criminal procedure, the samples obtained by the following means: statements of the suspect or the accused; declarations person; the civil party or civilly liable party; witnesses; documents; means sample material; photographs and any other means not prohibited by law.

The object of proof is governed by the Criminal Procedure Code, in its Article 98 Code of Criminal Procedure, and can be defined as "*Assembly of all facts and the facts to be proved in order to clarify a criminal case*". (Neagu (coordinator), Damaschin & Iugan, 2016, p. 202)

In literature, samples are classified mainly according to three criteria, namely: character (function) of their sources of origin and proof of a connection object.

a) Depending on their character samples are:

- incriminating: they serve to prove the guilt of the suspect or defendant Also here they may serve to establish the existence of an aggravating circumstance.

- evidence defensive: they are used to prove the innocence of the suspect or defendant, also may be used to establish the existence of mitigating circumstances.

b) sources (sources) they come from:

- primary samples (immediate) obtained from the original source, these samples directly attest to certain facts, circumstances, events, etc. (Example: the content of the original document, an eyewitness, a camera records)

- secondary samples (average) from sources other than the original (for example, a copy of the contents of the original document)

c) Depending on the link with the subject of proof:

- direct evidence: they act directly prove the suspect or defendant, such as catching the perpetrator in the act or those stated confessions.

- circumstantial evidence: they do not prove the direct charge of the suspect or defendant, but combined to suggest that beyond a reasonable doubt, the accused committed the act for which he was indicted, so it can be sentenced without the existence of direct evidence.

Assessment of evidence - are representative of the final activity concerning evidence through which judicial bodies form their conviction on the existence of an offense, the offender's degree of involvement in the offense and the form of guilt attributable to the latter.

Romanian law is characterized by the principle of free assessment of evidence so that no evidence has no value before established, the court decision being based on a thorough analysis of each sample, after which showing the defendant's guilt beyond a reasonable doubt in otherwise, any uncertainty interpreting it in favor of the defendant.

To rebut the presumption of innocence is not only necessary mere existence of evidence proving the guilt of the suspect or the accused beyond reasonable doubt to be used in court, they must be obtained through legal means.

There are several reasons that by law attract exclusion of evidence in criminal proceedings, including the exclusion of evidence obtained illegally, the penalty is expressly provided for in art. 102 of the Criminal Procedure Code, which regulates the legislature, in the same article situations where a sample is taken for granted unlawfully:

- evidence obtained by torture – "although the nature of the evidence that this way violates the law, the legislature has chosen to express regulation of procedural penalty because of the gravity of the infringement of criminal law judicial body which bears the burden of proof. In this case, how to obtain the sample would seriously harm human dignity". (Neagu (coordinator), Damaschin & Iugan, 2016, pp. 440-441) The evidence obtained by torture torture means both physical and psychological.

- derived samples - samples are those obtained by legal means, but which are based on a sample obtained unlawfully other and could not be obtained otherwise.

Not every violation of regulations regarding the evidence points automatically exclude them, so the person requesting the exclusion of proof must come with evidence and arguments to support its claim (eg the fact that the witness has sworn before a hearing does not attract exclude his statement).

Evidence obtained illegally, including through torture are not excluded if they are in favor of the person whose rights are violated.

There is some evidence leading to reasonable suspicion that a person has committed an offense under the criminal law does not lead to rebut the presumption of innocence, but to advance prosecution or the commencement of trial orders, so if evidence adduced leading to reasonable suspicion that a person has committed a crime but through them is not wasting any reasonable doubt can not reach conviction, which follows from the principle "in dubio pro reo".

"Under the procedural rules, the presumption of innocence finds, most often, the applicability of the rules of evidence, the suspect or defendant is not obliged to prove his innocence, can make use of the right to silence, the burden of proof incubate prosecuting authorities, which are required to manage the necessary evidence to prove beyond reasonable doubt the existence of the offense, the constituent elements of the offense, in terms of subjective and objective, and the lack of any impediment to the initiation or pursue criminal action provided by art. 16 NCPP" (Udroiu, 2014, p. 15)

For a person to be sentenced to a punishment of a criminal nature and therefore to rebut the presumption of innocence, the evidence on which it was disposed the conviction should be obtained by lawful means to be both relevant and conclusive although must be examined by the court according to the principle of free assessment of evidence, they should remove any doubt about the guilt of the defendant, otherwise the court is obliged to order payment. The same requirement is analyzed and samples which lead to the aggravating circumstances for the defendant, therefore if they can not be proven by evidence of sufficient strength will not be taken into account in determining the penalty.

"*Violation of the presumption of innocence can come both from a judge or a court, as well as from other public authorities, such as police, prosecutors, especially since the latter exercise functions cvasijuridice and control the investigation. A ASEM touch can be provided by their statements or documents reflecting the impression that a person is guilty and encourages the public to believe in his guilt or which prejudge the assessment of that person by the competent court facts*". (Udroiu, 2014, p. 13) This violation of the presumption of innocence, even if not clearly preceded condemnation, seriously undermine the person of its occurrence.

III. Indissoluble Link between the Burden of Proof and the Principle of Finding the Truth in Criminal Proceedings

Indissoluble link between the principle of finding the truth and the taking of evidence in criminal proceedings will lead us to outline the importance of this principle. Of evidence in criminal proceedings is that activity are collected facts and circumstances established relevance in solving the case and finding the truth.

Probative procedures is the means for administration is in the hearing samples and consist procedure subject/parties/witnesses, lifting items/documents in the case of egregious offenses, the performance of expert technical supervision, etc.

The burden of proof in criminal will always competent judicial bodies, whose main objective truth involved and whom rests the obligation to collect and produce evidence both for and against the suspect or defendant, *ex officio* or *upon request*.

During prosecution, the prosecuting authority will collect and produce evidence on its own initiative and at the request of the injured person, the suspect or parts. During the trial phase, of evidence it will be made mainly by the court, but may require new evidence by the prosecutor/injured party/parties. It is important to note that these requests management new evidence before the court will be made before the completion of the inquiry and the evidence disputed by the parties in criminal proceedings can not be re-stage inquiry but will be regarded as such.

Requests for new evidence can be dismissed by the court if the following conditions persist:

- sample is not relevant to the case (case is irrelevant compared to the object);
- sample is useful (there is sufficient evidence to prove the actual object element of proof);
- sample consists of an obvious fact / notorious that should not be shown;
- proposed unavailability of the sample (the law does not allow obtaining the evidence suggested mode);
- process the sample by the sample is obtained unlawfully.

The principle underlying loyalty of evidence of the administration of evidence, but has an essential influence on the principle of finding the truth. This principle is based on three essential prohibitions breach of which will lead to the exclusion of evidence obtained illegally:

- can not use violence/threats (any physical or moral constraint means) or promises/call to action by the judicial authorities to obtain some samples;

- can not be used even if there is consent, methods/listening techniques that can affect cognitive ability of the person from which desired to obtain evidence to report freely and consciously works which he knows. Moreover, if people are heard in an inability to be able to report the facts, judicial authorities are obliged to postpone the hearing until the person will be able to relate consciously facts/circumstances as perceived reality;

- is prohibited by the judicial authorities conduct that causes/calls a particular person to commit an offense or to continue committing a crime in order to obtain a given sample.

The principle finding the truth[1]Mix the link between public policy and public good every time we are faced with a need to sanction conduct contrary to public policy and public good. This principle is in conformity conclusions reached by the prosecution and the objective reality in terms of the act and its author. To implement this principle is that judicial truth (found by the judicial bodies) to meet the objective truth.

Depending on how it will look "kind of truth", the judiciary or the lens, we see the birth of two systems of law:

- inquisitorial system - is defined as any method of obtaining objective truth;

- adversarial system - this system considers the discovery of objective truth an illusion, and the criminal procedure can be found only judicial truth that emerges from the evidence gathered rigorously, which may differ from the objective truth.

The two systems within a third system, continental, a mixed system which requires that in criminal proceedings, the objective truth to be confused with the judiciary, the courts can not find anything other than what actually happened.

It creates in charge of criminal investigation bodies obligation to the truth both on offense and its circumstances, and on the suspected or accused only on the basis of evidence:

• evidence - any evidence which lead to determine the existence or nonexistence of a crime, to identify the person who committed the offense and determine the circumstances/circumstances that help fair settlement of the case, thereby uncovering the truth in criminal proceedings[2];

• evidence - have no probative value established by law, which are at the discretion of the judges, establishing the value of the evaluation and interpretation of the whole entire evidence.

Base achieve the purpose of criminal proceedings is based on the finding just and timely facts as crimes that no innocent person may not be prosecuted, and anyone who has committed a crime to be punished in proportion to his guilt within the law[3] - the case be decided by the courts must be done to guarantee the rights of subjects management process and ensuring rigorous and accurate evidence in order to establish the truth[4].

Another essential duty which rests criminal investigation bodies under this principle, it is to manage the evidence both for and against the suspect or defendant. Criminal investigation authorities have the duty of care in the management of conclusive evidence, but the court is not obliged to present all evidence offered by them and the defendant, but only those that will lead to the truth.

Based on the above mentioned ideas, we outline that ***obligation judicial bodies*** It is to find the following under the principle finding out the truth:

- to state **existence offense** forming the subject of the charge;

[1] Truth, Criminal Procedure Code, Art. 5 "(1) The judicial bodies are obliged to ensure, based on evidence, truth of the facts and circumstances of the case and on the suspect or defendant. (2) The prosecution are required to collect and produce evidence both for and against the suspect or defendant. Rejecting or failing maliciously suggested evidence for the suspect or the accused is punishable under the provisions of this Code."
[2] Art. 97, Code of Criminal Procedure.
[3] Art. 8, Code of Criminal Procedure.
[4] Art. 349, para. 1 Code of Criminal Procedure.

- to state precisely **circumstances of place and time** the offense was committed, the ways and means of committing thereof;

- **motive and purpose** the perpetrator pursued by the act, and the form and manner his guilt;

- if after committing the offense has caused damage will be established *its scope and circumstances that influence the criminal and civil liability* the offender and possibly the person responsible civilly;

Implementation and observance of the principle analyzed will result in a *variety of procedural safeguards*:

- *systematic control* and cross consists of judicial control organ hierarchically superior consistency between reality and the conclusions made by a criminal investigation body that previously had case to:

• superior prosecutor will control and approve or not the documents issued by the prosecutor of the case;

• ***gathering*** and production of evidence is controlled and verified by the court receives the case to that also can check and data solutions prosecutor not to indict;

- any person who has suffered injury after performing procedural acts may exercise the right to complain against them;

- it is possible appeals procedures - in criminal procedure is instituted instance double obligation that stems from the European Convention "*any person convicted of a criminal offense by a court is entitled to examine the statement of his conviction or sentence by a higher tribunal*"[1] ;

- inevitably there will be cases of miscarriage of justice, and in these cases will be compensated, possibly involving patrimonial liability of judges Judges "*when a criminal conviction final is subsequently reversed, or he has been pardoned, because a new or newly discovered fact shows that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or practice of the State*"[2].

The principle finding the truth finds applicability throughout the trial and not just to a final decision of criminal conviction (which is the final moment of trial orders, followed by the execution of the final sentence) is in constant coordination with other fundamental rules and special trial.

IV. Case Studies of European Court of Human Rights Concerning the Violation of Presumption of Innocence and the Principle of Finding the Truth in Criminal Proceedings

Cause Pavalachi against Romania (breach of the presumption of innocence) - the applicant was arrested for corruption (influence peddling) on 18.10.2002 by the judicial police and prosecutors for NAPO, followed a complaint lodged by two businessmen. Retention occurred after an act done by prosecutors. Subsequently, not only during the criminal investigation and during the trial several trusts the media and politicians in high-ranking Romanian state and even the case prosecutor gave statements issued opinions and prepared items as it showed the applicant as being guilty, without be a final sentence this (conviction became final on 07.10.2004 - sentence of six years imprisonment for the offense of trading in influence).

[1] Art. 2, paragraph 1 of Protocol No. 7 European Convention.
[2] Art. 3 thesis I of the Protocol. 7 European Convention.

European Court of Human Rights admitted that the presumption of innocence can be achieved both by the statements of judicial bodies and other public authorities and granted the plaintiff's claim, finding quite rightly that the statements reflect the applicant's guilt and incited the public to believe that the person sought is guilty. Moreover, information media even by the prosecutor of the case on remand of the applicant and the support that all evidence gathered converge toward establishing guilt and to ensure that it will be convicted is a serious violation of the presumption of innocence, in our view even imposing a disciplinary investigation of the prosecutor concerned. Finally, the ECHR

Cause Opriş against Romania (Breach of the principle to establish the truth) - On 05.06.2003 the complainant was introduced as a suspect in the investigation of drug trafficking (heroin). On 03/20/2003, following a flagrant applicant was arrested. It calls into question the applicant's arrest in this case even as it has agreed to carry a suspicious package, under precarious financial situation was at the instigation and suggestion of an undercover investigator. The applicant requested the prosecution phase of confrontation with the undercover agent in order to establish the facts, investigation to pinpoint the person required to deliver the psychoactive substances and also requested expertise on the substance of the package. On the day of the request, they rejected the applicant's requests regarding the confrontation with the undercover agent and expert on substance, but was initiated in terms of identifying the recipient of the substance. During the criminal proceedings were heard four witnesses who could provide information regarding drug trafficking.

The applicant was sentenced to five years imprisonment on statements obtained parquet, the list of dialed numbers and based on images obtained during the operation of the act.

European Court of Human Rights noted that the evidence in the file does not support the version of the complainant and judicial bodies. The applicant had not been involved in drug-related activities, and after the search conducted at his home there was no evidence that could connect him to the rest of the smuggling. The Court also tends to accept version applicant stating that he was the victim of a provocation on the part of judicial and police because they believe that state bodies should administer tests to eliminate any doubt about the applicant's guilt, or hearing on appeal undercover agent, it could not provide answers eloquent to prove intent and the applicant's guilt. Thus, recognition of crimes committed after challenge is unable to challenge or eliminate its effects. Given the fact that there is a decision of the superior court to motivate detailed and complete solution, but joined simplistic to the reasoning of the lower courts, Court held that the applicant had not had a fair trial and should be granted reparations amounting to 2.400 EUR 425 EUR injury morals costs.

V. Conclusions

The idea, which was the basis of our election to simultaneously analyze in this paper the principle of presumption of innocence and finding the truth in criminal proceedings is to link cause and effect between the two principles, failing and failing undoubtedly one leading the other. Moreover, their importance is emphasized and close connection with other criminal procedural guarantees (right to a fair trial, the right not to testify, the right to defense, etc.) that can be affected essential violation of presumption of innocence and finding the truth.

Burden of proof the essence of the principle of finding the truth, and the degree of efficiency and certainty of the evidence is the element that may or may not presumption of innocence.

The rule of law It is by definition the absolute supremacy of the law in order to protect fundamental rights and freedoms of the individual. Criminal and criminal procedure, these rights are likely to be

broken easily, which could be observed in countries were governed by totalitarian systems, including Romania until the '90s.

Looking from the perspective of duality presumption of innocence-preventive deprivation of freedom on one hand and the principle of finding the truth-of evidence on the other hand, is born a conclusion complex consists of two large planes creates many problems in the legal system Romanian namely liability perspective magistrates and judges separate careers.

Without a trace of disbelief is that when violated the presumption of innocence and the principle of truth finding damage occurs, significant both moral and patrimonial rights of which have not been respected rights in criminal proceedings being hijacked essentially even fundamental purpose of criminal proceedings. To counter these possible negative effects, the Romanian legislator established by Law 303/2004 regarding the statute of judges and prosecutors[1]under Title IV (Arts. 94-101) accountability of judges and prosecutors in terms of civil, disciplinary and criminal. From my personal point of view, even if this liability was adjusted over time through various laws, implementation thereof is difcilă for the injured magistrates who have violated fundamental rights and freedoms as it will be proceed with an action against the Romanian state, and the latter will move the action for recourse against the magistrate who violated the criminal procedure. All this procedure is extremely thick, finally reaching the injured to appeal to European Court of Human Rights to recover damages caused by judges, be they judges or prosecutors,[2] Romanian state in the European courts decisions.

Lex ferenda we consider that this institution the responsibility of magistrates will be coupled with beneficial changes that will be introduced by the draft amendment of the Criminal Code and Criminal Procedure, the proximity principle of subsidiarity, where the injured will have easier access to repair damage , as follows:

- ***assuming liability magistrates***- to develop applicant is able to notify the inspectorate of the jurisdiction where the court or prosecutor who caused the injury claimed. Judicial Inspection to have a role in organ research and claim to be processed in ways similar to the procedure for interim (emergency and priority) in front of a panel appointed by the Department of prosecutors or district judge (as the rights have violated) of the Superior Council of Magistracy. Panel appointed to be in the Court of Appeal in the district court or prosecutor who was claimed to be infringed petitioner or of the High Court of Cassation and Justice, as appropriate;

- ***assuming disciplinary liability of magistrates*** – we consider the current regulation that is beneficial that polling judge or prosecutor of the Superior Council of Magistracy examines disciplinary cases and make decisions regarding this liability, and including where appropriate disciplinary sanctions;

- ***assuming criminal liability of judges***- establishment of the Department of Justice Investigation of Crimes of the Prosecutor's Office by High Court of Cassation and Justice is in my view a first step towards ensuring individual rights and liberties, of fair trials and that all procedural safeguards. Subordination to the Attorney General is only administrative. That both the chief prosecutor of this department and prosecutors shall be appointed by the contest by Department prosecutors of the Superior Council of Magistracy ensures their independence from political environment, a measure of appointment which from our point of view it It is extended to the appointment of senior prosecutors of the National

[1] Republished in the Official Gazette of Romania, Part I, no. 826 of September 13, 2005, as amended and supplemented under amending normative acts published in the Official Gazette of Romania, Part I, until October 16, 2018.

[2] Because Didu vs. Romania (breach of the presumption of innocence), Case Pavalachi vs. Romania (breach of the presumption of innocence), Case Torje vs. Romania (violation of fair trial), Case Cognac VS Romania (violation of fair trial), Case Comorasu vs. Romania (violation of fair trial), etc.

Anticorruption Directorate (DNA) and the Directorate for Investigating Organized Crime and Terrorism (DIICOT)

VI. Bibliography

John Muraru Elena-Simina Tanasescu (2008). *Constitution - Comment on articles*. Bucharest: C.H. Beck.

Ion Neagu (Coordinator); Damaschin, Mircea & Iugan, Viorel Andrei (2016). *Criminal Procedural Law General Part-Portfolio seminar*. Bucharest: Legal Publishing House.

Neagu, Ion & Damaschin, Mircea (2015). *Treatise of Criminal Procedure - The General - In light of the new Code of Criminal Procedure*. 2nd Edition. Bucharest: Juridical Universe.

Poiana, Ion & Păcuraru, Ioana (2014). *Criminal Procedural Law - General Part*. Bucharest: Publishing House Law.

Udroiu, Michael (2014). *Criminal proceedings. General Part - New Criminal Procedure Code*. Bucharest: CH Beck.

Damaschin, Mircea (2013). *Criminal Procedural Law - General Part*. Bucharest: Juridical Universe Publishing House.

Puşcaşu, Voicu (2010). *Presumption of innocence*. Bucharest: Juridical Universe Publishing House.

https://www.echr.coe.int.