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**New Institutions and Institutions that Have Suffered Some
Changes in the New Code of Criminal Procedure
(General Part)**

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Abstract: Although the new code of criminal procedure has not yet entered into force (and it the date when this will happen has not been set), we have found it necessary to examine the contents of the new law and to express our point of view on the novelty that it proposes, but also in relation to certain amendments to existing texts, which are to be found in the law adopted by the Parliament on 15 July 2010.

Keywords: judge of rights and freedoms; judge of preliminary chamber; suspect; undercover investigator

We will examine the text of the new Code of Criminal Procedure, the order of articles as follows:

1. In article 3 of the new code, the separation of judicial functions is provided for, except that they are not three, as now, but four, two of which have a new name and refer to the duties belonging to **the judge of rights and freedoms** and to **the judge of preliminary chamber**, two emerging institutions.

Under the new regulations, the designated magistrate is required to rule on acts and measures that restrict fundamental rights and freedoms of individuals, such as, for example, the use, maintenance or extension of preventive measures, but also the legality of sending to court, ordered by the prosecutor.

2. In terms of participants to criminal proceedings, the new code, when referring to the judiciary, states, - in art. 30 – that besides those currently present (criminal investigation officers, prosecutor and courts), the judge the rights and freedoms and that of preliminary chamber. They have distinct responsibilities, stipulated under articles 53 and 54 of the new document. It should be mentioned that, while the former magistrate has jurisdiction to hear requests, proposals, complaints and appeals arising in the prosecution phase, the latter acts in court, after the prosecutor had ordered the prosecution of a person, verifying the legality of such measures, but also dealing with complaints against solutions not to prosecute.

3. As regards the prosecutor's jurisdiction, it can be noted the provision contained in article 56 par. 4 and 5 of the new CCP, which shows that military prosecutors are involved in separate sections in other offices. Currently there is only one military section belonging to the Prosecutor's Office by the High Court of Cassation and Justice.

4. The competence of the Special Criminal Investigation officers was amended, too (art. 57 of the new CCP), not only in terms of formulating the new text, so that they remained competent to investigate, but mainly when it refers to crimes committed by the military. But these special organisms have, under the new provision, the power to conduct investigations for crimes of corruption and of service, committed by civilian Navy seafarers. In this way, the port captains have been removed from the

category of special investigators (see the current regulation, which is covered by art. 208 par.1 letter e of the new CCP).

5. A new, necessary, and especially useful provision is that under art.101 par. 2 of the new CCP, text from whose content results that no listening techniques or methods that affect a person's ability to remember and report knowingly and voluntarily the facts which constitute the object proof can be used, even where that person consents thereto. Thus, any evidence obtained through torture or derived from such methods is explicitly excluded (see provisions of art. 102 of the new CCP).

6. In art. 117 par. 1 letters a and b of the new CCP, the people who are not obliged to give evidence are explicitly specified: the spouse, the ascendants and descendants in direct line, the brothers and sisters of the suspect or accused, and also those who acted as their spouse, unlike the current text (article 80 par. 1) stating only that: the spouse and the close relatives of the accused (term which no longer exists, being replaced by that of the suspect) or of the defendant are not obliged to give evidence.

Article 118 of the new Code of Criminal Procedure provides a necessary thing, although I believe that there are very few cases where the judiciary has made use of the absence of this provision. The current text states that a witness' statement cannot be used during a trial held against him, because, consequently, such a way of looking at things could mean, possibly, a recognition of guilt, for example in a case in which that person would be considered a suspect or defendant.

7. In Section 5 of the new code, which relates to the protection of witnesses, a series of provisions were shown. They aimed particularly at threatened witnesses, people who are consistently and effectively protected, both during the prosecution (art. 126 of the new CCP) and during the trial stage (art. 128 of the new CCP). In the first stage of the trial, the protective measures are ordered by the prosecutor, by reasoned order, while in the second stage they are ordered by the court competent to hear the case on the merits, by motivated conclusion, decision which is not subject to any appeal review.

8. We find a new institution in chapter III of the new Cod of Criminal Procedure, art. 131-137. This chapter refers to identifying persons and objects, wherever this is necessary in order to clarify the circumstances of the case. Analyzing the content of these texts, it results that these measures are disposed by the prosecutor during the prosecution and by the competent court during the trial stage, according to a developed procedure, which is meant not to lead to unfortunate mistakes or errors. By specific methods, one may proceed in order to identify voices, sounds or other items subject to sensory perception (art. 136 of the new CCP).

9. Regarding the chapter relating to special surveillance or research techniques, the number of institutions has increased in the new code of criminal procedure, to the extent of the diversification of 'methods' used by those who argue the law today.

Thus, in art.138 of the new CCP, there are listed no fewer than 11 such 'techniques', some of them existing in the current legislation, such as: interception of communications and access to a computer system, video surveillance, audio or by taking photographs, using undercover investigators and supervised delivery, others - like getting the list of phone calls, detention, surrender or postal searches, as well as controlled delivery or the finding of a crime of corruption or the conclusion of a convention, all of them having a new or more complete name, but, which, one way or another, have been used and are still used today. In terms of specific regulations to use these 'techniques', there are not new provisions, which require an analysis of the texts of the new code of criminal procedure. However, we should mention this clearly: the authorization to use the techniques set out in the code is ordered by the judge of rights and freedoms, an institution which, as we stated earlier, is entirely new.

10. It should be noted, however, an extremely important thing for the criminal proceedings, in the light of the new code provisions, namely that in respect of the undercover investigators, who are more and more used by the judiciary, they cannot be punished for criminal activities for which they have been

authorized (article 148, paragraph 6), and in terms of corruption or of concluding illegal agreements, challenge is not punishable. (article 150 paragraph 3 of the new CCP).

11. Among the 'techniques' that appear in the Code of Criminal Procedure, we could mention controlled delivery, which is authorized by the prosecutor supervising or conducting the criminal investigation, only under certain conditions specifically required under the art.151 of the new CCP. They are effected by the magistrate, who "establishes, coordinates and controls the implementation of controlled delivery", as it results from par. 6 under the same text. And here is a very important statement, namely: the implementation of controlled delivery is not a crime (article 151 paragraph 7 of the new CCP).

12. It is also worth outlining the express provisions regarding the lack of punishment of those who, for the discovery of offenders and offenses, have a certain conduct, not always legally, because, by inserting them, the possibility to invoke that the illegality was committed by 'representatives of judicial authorities' is removed, especially during the prosecution, to defend persons who have violated criminal law. This also applies to cases which were related to crimes of giving and taking bribes (if it was a challenge or not, what was the moment when the offense was committed, the lack of action, if there is an exemption from criminal liability, etc.). Identifying the subscriber, the owner or the user of a telecommunications system and obtaining the list of telephone calls is performed by competent bodies of law at the request of the prosecutor, who is obliged to seek prior approval from the judge of rights and freedoms, provisions contained in article 152, and 153, respectively, of the new code. Another novelty, also generated by the evolution of technology, refers to computer searches and access to a computer system, text which is covered by the article 168 of the new CCP. We need to remember that the provision of approval is given by the judge of rights and freedoms, at the reasoned request of the prosecutor who supervises or conducts the prosecution. Another special 'technique' special, as is stated in art. 196 of the new CCP, refers to photographing and fingerprinting the suspect, the defendant or other persons, activities authorized by the prosecution and that can be achieved even without the consent of the persons concerned.

13. Without including new provisions, essential for the proper conduct of criminal proceedings, and for the institution of compulsory medical treatment and that of article 247 et seq. of the new CCP on temporary medical hospitalization, the texts under art. 245 and the subsequent ones of the new CCP require that the provision be ordered by the judge of rights and freedoms or by the judge of preliminary chamber, where appropriate, instead of the judge referred to in article 161 and 162 of the current code.

14. These are but a few of the main novelties that are to be found in the Code of Criminal Procedure. They are likely to lead to activities of a higher level of quality in terms of efficiency, both in the first stage of the trial and in the second one. In addition, should not forget that, throughout the year 2010, the Law no. 202 on 'Little Reform' was also adopted by the Parliament, which has already been applied, in particular to the courts.

References

The Constitution of Romania.

The current Code of Criminal Procedure.

The future Code of Criminal Procedure.

Law no. 202/2010 on "Little Reform".