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## COMPLIANCE WITH THE PRINCIPLE OF EQUAL FINDING THE TRUTH IN CRIMINAL PROCEEDINGS – "SINE QUA NON" PRINCIPLE

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### **Abstract**

*Criminal procedural law includes a series of fundamental and specific principles and strict rules according to which the judicial bodies have the obligation to find out the truth in the criminal process.*

*Finding the truth is subject to the collection of evidence related to the facts and circumstances of the case, the suspect, the defendant, as well as the other parties and the injured person.*

*In order to fulfill this principle, it is necessary to comply equally with other basic rules embodied in the presumption of innocence, the right to defense, respect for human dignity, in fact all the rules that govern the conduct of the criminal process.*

*Searching, discovering and finding out the truth are, in essence, the elements of a knowledge process. We can conclude, therefore, that any criminal trial fundamentally represents an extensive process of knowledge.*

**Key words:** *criminal process, fundamental principle, finding out the truth, evidence, judicial bodies.*

### **INTRODUCTION**

The new content of the principle regulated by the provisions of art. 5 CPC, "discovering the truth" is much better articulated and provides that in the criminal process the truth can be based exclusively on the evidence administered in each case. In fact, analyzing ritos, this is the basic task with which the legislator has invested the judicial bodies.

In parallel with the judicial duel between the prosecution and the defense, which we encounter in the criminal process, the correct establishment of the factual situation, through the administration and correct assessment of the content of the entire evidentiary material, represents the constant concern and is the sine qua non condition, both in what concerns the avoidance of a judicial error as well as the support used by the magistrate in pronouncing the solution<sup>1</sup>.

The implementation of criminal justice cannot be conceived without full knowledge of the truth regarding the criminal case that is the subject of the criminal trial, that is, the truth about the existence or non-existence of the imputed act and the innocence or guilt of the accused person, as well as about all the circumstances that serve to put in the light of this truth. The truth, in any field of human activity, is not revealed spontaneously even at the moment when the deed is done; it must always be discovered and proved, under all its aspects; only in this way can it be considered that the truth was otherwise. (*Buneci, 1975, p.44*)

**I. Before being a legal category, truth is a philosophical category.**

Well, delimiting truth from untruth, most philosophers over more than two millennia have emphasized the objective nature of truth, which does not depend in any way on the will of man, on humanity in general (*Volonciu, 1996, p. 93*).

It is well known that in the course of history, philosophers have looked at the notion of truth differently and hence the different approach of the institution in criminal procedural systems. Both the adversarial system and the continental system deal with the notion of truth - but from different perspectives - the adversarial system - as is well known, does not address finding out the truth - as a fundamental principle of the criminal process, while from the perspectives of the continental judicial system, the judicial truth is imperatively necessary to superimpose on the objective truth, existing in reality.

Without going into the justifying details of the mentioned legal systems, it is worth noting that "the difference between the two systems regarding the importance given to the procedure, results from their difference of vision in relation to the judicial truth. In the adversarial system, procedure is more important than substantive law, because it is what guarantees judicial truth. In the continental system, the substantive law is more important than the procedure, because finding out the truth about the facts and circumstances of the case is a priority (*Chigheci, 2017, p.20*).

The continental procedural systems, like the Romanian one, have as their model the system adopted in France after the Revolution. In our procedural system, so that repressive justice can achieve its goal directly or indirectly, it must know the real truth, drawn from the reality of the facts, and not from their a priori

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<sup>1</sup> Codul de Procedura Penala din 2010 - forma sintetica pentru data 2020-05-25 (snppc.ro)

COMPLIANCE WITH THE PRINCIPLE OF EQUAL FINDING THE TRUTH IN CRIMINAL PROCEEDINGS –"SINE QUA NON" PRINCIPLE and fictitious evaluation; so the material (real) truth, and not the formal (fictitious) truth (*Chigheci, 2017, p.22*).

Starting from the statements made, corroborating with the provisions of art. 5 NCPP, which stipulates that "judicial bodies have the obligation to ensure, based on evidence, the discovery of the truth regarding the facts and circumstances of the case, as well as regarding the person of the suspect or the defendant", it follows that in the Romanian legal system, from the point from a procedural point of view, the judicial bodies have the mission to find out the material (real) truth. It should be mentioned that the provisions of art. 5 refers to "judicial bodies" in the content of para. (1) and to "criminal investigation bodies", in the content of para. (2).

According to art. 5, para. (2) "criminal investigation bodies have the obligation to collect and administer evidence both in favor and against the suspect or defendant. The rejection or non-recording in bad faith of the evidence proposed in favor of the suspect or the defendant is sanctioned according to the provisions of this code."

It is necessary to clarify that the role of administering evidence to find out the truth also rests with the court, even if in the current regulations the principle of the active role of the judge is no longer expressly provided for (art. 374, paragraph 8 CPP), an activity that the court carries out then when the evidence administered during the criminal investigation was not disputed by the parties or by the injured person.

The provisions of para. (10) of art. 374 provide that "the court can ex officio order the administration of evidence necessary to find out the truth and just settlement of the case."<sup>2</sup>

Even if according to the provisions of art. 99 CPC, para. (1) in the criminal action, the prosecutor (as the holder of the criminal action) has the burden of proof, proving the accusation, it does not mean that the judge remains passive, only that, as it follows from the statement of reasons of the NCPP "the role of the judge is rethought in meaning that he will ensure, with the preponderance, that the procedures that take place in front of him have a fair character."<sup>3</sup>

Well, through the opening provisions, art. 3, paragraph (4) CPP provides that "in the exercise of the function of criminal investigation, the prosecutor and the criminal investigation bodies collect the necessary evidence to establish whether or not there are grounds for prosecution".

In the trial phase we meet again with the presence of the prosecutor, who played an active role in finding out the truth and respecting the legal provisions, having the opportunity to formulate requests, raise exceptions and put reasoned conclusions in favor of the truth.

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<sup>2</sup> Codul de Procedura Penala din 2010 - forma sintetica pentru data 2020-05-25 (snppc.ro)

<sup>3</sup> Drept Penal. Partea Generală - M. Udroi - 2019 | PDF (scribd.com)

In order to give effect to the content of the "Finding the truth" principle and to be able to eliminate judicial errors, the legislator felt the need for an express regulation contained in the provisions of art. 100 CPC - according to which the bodies during the criminal investigation have the obligation to collect and administer evidence both in favor and against the suspect or the defendant, ex officio or upon request, and in the trial phase, the court has the authority to administer the evidence requested by the prosecutor, the injured person or the parties.

The legislator also provided for the possibility of the court to administer evidence ex officio, when it deems necessary, in order to form its conviction.<sup>4</sup> This is how "discovering the truth" is the cardinal principle of the criminal process because it represents its purpose, all other principles and basic rules can be considered means by which the truth will be manifested. The success of the fair process depends on whether the truth has been found out, and the components of the fair process are at the same time guarantees of finding out the truth (*Teodor Viorel Gheorghe, 2021, Foreword*).

In order to "find out the truth", we need tools for the judicial bodies to work with. Thus, the entire "crew" of the fundamental principle, but also the principles specific to the phases of criminal investigation and trial, represent support in the concretization of finding the truth. It is clear that the purpose of the criminal process - even if it is no longer expressly regulated in the current regulation - is represented by the permanent concern of the judicial bodies to ascertain in time and completely the facts that constitute crimes, so that any person who has committed a crime to end up enduring the punishment that the court pronounces and to limit judicial errors as much as possible".

We find the content of the purpose of the criminal process in the regulation contained in art. (8) CPP, "the fair nature and reasonable term of the criminal process". And here, as in the other regulations of the fundamental principles, it is stipulated the obligation of the judicial bodies to "manifest" their competence in the criminal investigation phase, as well as in the trial phase, respecting exactly all the procedural guarantees provided by the law and all the rights both of the parties and of the other procedural subjects participating in the criminal process<sup>5</sup>.

But to be able to pursue the object of the criminal investigation - regulated by the provisions of art. 285 CPP – it is necessary for the judicial bodies (criminal investigation bodies, in the criminal investigation phase, to proceed with the collection of evidence).

The legislator "divided" their activity into three levels - evidence that helps to establish the crime; evidence that contributes to the identification of all participants in the commission of the crime; as well as evidence that leads to

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<sup>4</sup> Codul de Procedura Penala din 2010 - forma sintetica pentru data 2020-05-25 (snppc.ro)

<sup>5</sup> Codul de Procedura Penala din 2010 - forma sintetica pentru data 2020-05-25 (snppc.ro)

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criminal liability - that helps to set the criminal action in motion. Here - in conclusion - only in the criminal investigation phase - in order to be able to find out the truth, the activity of gathering evidence is subordinated to the reason "to be" the truth.

So, finding out the truth about the circumstances of the case means "establishing the existence or non-existence of the deed for which the criminal trial is taking place, the form of guilt, the motive and purpose, the nature and extent of the damage, as well as the aspects that influence the liability of the perpetrator.

Therefore, the rules of procedure must provide criminal justice with the opportunity to establish the real (material) truth, and not a formal truth (*Anastasiu Crisu, 2020, p.77*)

Also in support of finding the truth, in the preliminary chamber procedure - according to the competence with which he was vested, the judge of the preliminary chamber verifies whether the evidence was legally administered and the procedural documents of the criminal investigation bodies were legally carried out (art. 54, para. (b)) CPP in conjunction with art. 342 CPC. Here, then, is the constant concern of the judiciary.

The court, as I have already mentioned, has the possibility to administer or re-administer evidence during the trial phase, in order to find out the truth.

Evidence - this institution with "weight" in the criminal process is the basis of finding out the truth.

Both the judicial bodies and the main procedural subjects and the parties can use the evidence in the criminal process - but each from his own procedural position.

In the process of extinguishing and administering evidence, the Romanian legislator provided for a series of institutions whose compliance gives authority to the evidence.

Well, the "principle of the loyalty of the administration of evidence" looks after the methods of collecting it, in the sense of the prohibition to "use violence, threats or other means of coercion, as well as promises or exhortations in order to obtain evidence".

In the same spirit, the procedural provisions include regulations aimed at prohibiting the use of listening methods and techniques in order to be able to cause the person being heard to remember certain aspects, and sometimes even to answer the questions from the hearing in a certain way. The provision provided in art. 101, para. (2), sentence II, which prohibits the use of eavesdropping methods even when the person being listened to gives his consent to the use of such methods and techniques.

Obtaining the evidence used in a criminal process is also not allowed even by determining a person to commit a crime by the judicial bodies.

We cannot ignore the fact that to be able to use evidence in a criminal process, it must be pertinent, conclusive, useful and admissible.

It is important to mention that the evidence does not have a value established in advance by law, being subject to the free assessment of the judicial bodies, following the evaluation of all the evidence administered in the case.

The obligation of the judicial bodies to exploit all the collected evidence - both in favor and against the suspect or the defendant, both ex officio and at the request of the interested parties, falls under the obligation they have, to find out the truth.

The current criminal procedural provisions provide for certain legal impediments, the existence of which leads to the impossibility of finding the truth in the case in which they appear - for example - art. 16, para. (9) - there is no prior complaint or another condition required by law, or reconciliation has taken place, or an agreement to acknowledge guilt has been concluded.

### CONCLUSION

*As a guarantee of compliance with the principle of "finding the truth" in the criminal process, we invoke the right to defense, which "represents a fundamental, traditional, universal right, included in the first generation of rights recognized by international documents and enshrined in the most important such of documents that proposed the affirmation of the rights and freedoms inherent to the human being and essential for respecting his dignity" (Anastasiu Crisu Crisu, 2020, p.80).*

### BIBLIOGRAPHY

1. P. Buneci, *Criminal procedural law. General part*, Ed. Universitara, Bucharest, 2008, page 40, with reference to V. Dongoroz (coord). *Theoretical explanations of the Romanian Criminal Procedure Code, General Part*, vol I, Romanian Academy Ed., Bucharest, 1975;
2. Anastasiu Crisu, *Criminal procedural law - General part - 4th edition*, revised and added, Ed. Hamangiu, 2020;
3. Chigheci C - *in the Criminal Procedure Code - commented - 3rd Ed.*, revised and added - Hamangiu Publishing House 2017;
4. Teodor Viorel Gheorghe, *Finding the truth, fundamental principle of the criminal process* - Ed. Hamangiu, 2021, Foreword;
5. N. Volonciu, *Treatise on criminal procedure*, General part, Vol. 1, ed. a-IIa, Ed. Paideia, Bucharest, 1996.



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