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PROTECTION OF HUMAN PERSONALITY THROUGH CRIMINAL PROCEDURAL MEANS

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Abstract

The protection of human personality in criminal proceedings is a fundamental pillar of the justice system, based on a series of essential principles and procedural means. In this regard, the fundamental principles leading to the protection of human personality are presented, such as the benefit of the doubt, the right to a fair trial within a reasonable time, respect for human dignity and privacy, the right to defense and freedom, but also the right to an interpreter for persons who do not understand the official language. Procedural means such as legal aid, the exclusion of illegally obtained evidence, the protection of witnesses and victims, as well as the regulation of preventive measures are also analyzed, all of which contribute to ensuring respect for fundamental rights and freedoms. Respect for these norms and guarantees is essential to prevent abuses and to maintain the fairness and integrity of the judicial system.

Key words: *human personality, principles, law, criminal process, judicial organization.*

INTRODUCTION

The protection of human personality is done through criminal procedural means within the criminal process, but this is primarily provided for in art. 8 of Law no. 304/2022 on judicial organization in which any person may address the justice system to defend their rights, freedoms and legitimate interests in exercising their right to a fair trial, and access to justice cannot be restricted. The constitutional provisions regarding fundamental rights and freedoms must be respected within any criminal process.

In the Criminal Procedure Code, in the provisions of Articles 2 - 13, we have a series of principles that are based on the norms of criminal procedural law,

guiding the behavior of judicial bodies and those participating in the criminal process, regardless of the procedural phase in which the process is.

Among these principles we can mention the legality of the criminal process, the separation of judicial functions, the presumption of innocence, the discovery of the truth, *ne bis in idem*, the obligation to initiate and exercise criminal proceedings, the fairness and reasonable term of the criminal process, the right to liberty and security, the right to defense, respect for human dignity and private life, the official language and the right to an interpreter, and the application of criminal procedural law in time and space.

Although these principles are applicable throughout the criminal process, as principles relating to the protection of persons involved in criminal proceedings, we have the benefit of the doubt, the fairness and reasonable term of the criminal trial, the right to liberty and security, the right to defense, respect for human dignity and private life, the official language and the right to an interpreter.

I. FUNDAMENTAL PRINCIPLES THAT ENSURE THE PROTECTION OF HUMAN PERSONALITY

The fundamental principles apply to all criminal procedural rules, so they must be respected in all phases of the criminal trial.

a) *benefit of the doubt*. This principle has a universal vocation that historically appears in the American Declaration of Independence of 1776 and in the Declaration of the Rights of Man and of the Citizen of 1879, being later enshrined in the Universal Declaration of Human Rights – art. 11 para. 1, the Charter of Fundamental Rights of the European Union (art. 47-48), in art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) – any accused person is presumed innocent until proven guilty according to law. This principle is also enshrined in art. 4 para. 1 of the Code of Criminal Procedure and provides that any person is presumed innocent until his or her guilt is established by a final criminal judgment. In practice, any person who has a certain capacity in the criminal process is guaranteed the right not to be treated as a guilty person who has committed one or more crimes and is consistent with art. 23 para. 11 of the Constitution according to which "until the final judgment of the court, the person is presumed innocent." (*Bogdan Buneci, 2022, p.30*)

This principle is also found in the provisions of art. 99 paragraph 2 of the Code of Criminal Procedure according to which the suspect or defendant benefits from the presumption of innocence, not being obliged to prove his innocence, and has the right not to contribute to his own accusation.

It should also be noted that after the administration of all the evidence, any doubt in the formation of the conviction of the judicial bodies is interpreted in favor of the suspect or defendant. In this sense, the rule *in dubio pro reo* that complements the presumption of innocence excludes the use of evidence whose content is doubtful in terms of the guilt of the accused.

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b) *the fairness and reasonableness of the criminal trial*. It is a principle derived from the provisions of art. 10 of the Universal Declaration of Human Rights which states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of the merits of any criminal charge against him.

In addition to the fact that this principle is also found in the Convention for the Protection of Human Rights and Fundamental Freedoms in art. 6 paragraphs 1 and 3 in which everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal which will decide on the merits of any criminal charge, as well as in the provisions of art. 47 paragraph 2 of the Charter of Fundamental Rights of the European Union.

The right to a fair trial is also included in Directive (EU) 216/343, in which the accused in a criminal trial may appear at trial but has the right to remain silent and the right not to incriminate himself.

In domestic law, the principle is found in the Romanian Constitution, art. 21 paragraph 3, in which the parties have the right to a fair trial and to the resolution of cases within a reasonable time, in art. 12 of Law no. 304/2022 on judicial organization, as well as in the provisions of art. 8 of the Criminal Procedure Code - judicial bodies have the obligation to carry out criminal prosecution and trial in compliance with procedural guarantees and the rights of the parties and subjects of the proceedings, so that the facts constituting crimes are ascertained in a timely and complete manner, no innocent person is held criminally liable, and any person who has committed a crime is punished according to the law, within a reasonable time.

A fair trial must recognize the parties and subjects of the proceedings the right to be informed of the accusation brought by the indictment, to benefit from the right to defense, as well as the time and facilities necessary to prepare the defense, to propose evidence in his defense, to be assisted free of charge by an interpreter if he does not understand the language used at the hearing, to benefit from free of charge by an interpreter if he does not understand the language used at the hearing, to raise requests and exceptions. Moreover, the term fairness signifies the meaning of justice, honesty, impartiality, equality. For this reason, compliance with this principle implies the protection of the person in whom the judicial bodies have the duty to carry out both the criminal prosecution and the trial with respect for procedural guarantees and the rights of the parties.

Regarding the reasonable term according to art. 224 of Law no. 303/2022 on the status of judges and prosecutors, it is specified that they are obliged to complete the work within the established deadlines and to resolve the cases within a reasonable period, depending on their complexity, and to respect professional secrecy. Also in the sense of respecting the protection of persons involved in criminal proceedings, the legislator introduced in the provisions of art. 4881 – 4886 of the Criminal Procedure Code the challenge regarding the duration of the

criminal trial (which can be introduced within the term provided for in art. 4881 paragraph 3), which can be made by the suspect, defendant, injured person, civil party and civilly liable party, to notify the court if the criminal investigation or trial activity is not carried out within a reasonable period. This can also be done by the prosecutor, but only during the trial.

c) the right to liberty and security.

Since fundamental freedoms constitute the very foundation of justice and peace in the world, as stated in Article 5, paragraph 1, of the European Convention on Human Rights (ECHR), *any person has the right to liberty and security of person. No one shall be deprived of his liberty except in the following cases and in accordance with the law:*

a. if he is lawfully detained pursuant to a conviction by a competent court;

b. if he has been the subject of lawful arrest or detention for failure to comply with a judgment passed by a court in accordance with the law or for the purpose of securing the execution of an obligation prescribed by law;

c. if he has been arrested or detained for the purpose of bringing him before the competent judicial authority on reasonable grounds for suspecting that he has committed an offence or for the purpose of preventing him from committing an offence or from fleeing after having committed it;

d. if it is a question of the lawful detention of a minor for the purpose of his education under supervision or of his lawful detention for the purpose of bringing him before the competent authority;

e. if it concerns the lawful detention of a person likely to transmit a contagious disease, of a lunatic, an alcoholic, a drug addict or a stray person;

f. if it concerns the lawful arrest or detention of a person for the purpose of preventing illegal entry into the territory or against whom expulsion or extradition proceedings are in progress.

The right to liberty and security is also provided for in art. 4 of the ECHR, art. 6 of the ECHR as well as in the preamble of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in proceedings, and in the internal provisions we refer to art. 23 of the Romanian Constitution in which individual liberty and security of persons is inviolable.

In the sense of the above, the criminal procedural provisions reflect the protection of persons in the provisions of art. 9 of the Criminal Procedure Code, *namely during the criminal trial, the right of any person to liberty and security is guaranteed. Any measure depriving or restricting liberty is ordered exceptionally and only in the cases and under the conditions provided for by law. Any person arrested has the right to be informed promptly and in a language which he understands of the reasons for his arrest and has the right to appeal against the order of the measure. When it is established that a measure depriving or restricting liberty was ordered unlawfully, the competent judicial bodies have the*

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obligation to order the revocation of the measure and, where appropriate, the release of the detained or arrested person. Any person against whom a measure depriving of liberty was ordered unlawfully or unjustly, in the course of criminal proceedings, has the right to compensation for the damage suffered, under the conditions provided for by law. There is a guarantee provided by law that when a preventive measure of arrest has been taken, the person has the right to be informed promptly and, in a language, he understands of the reasons for his arrest.

d) the right to defense. It is a principle with universal validity, as it is provided for in art. 11, point 1 of the Universal Declaration of Human Rights, which states that any accused person must be assured of all the guarantees necessary for his defense, a right also provided for in the provisions of art. 6, paragraph 3, letters b-c of the ECHR. Being a right with a universal vocation, this principle is also included in art. 48 paragraph 2 of the Charter of Fundamental Rights of the European Union, in Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2013, in Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and subsequently in EU Directives 2016/343 and 2016/1919 on the exercise of the rights of the defense and the obligation of legal aid.

In domestic law, this principle is provided for in the Romanian Constitution in art. 24, in art. 17 of Law no. 304/2002 on judicial organization, and in the Code of Criminal Procedure it is provided for in art. 10 which shows that the parties and the main procedural subjects have the right to defend themselves or to be assisted by a lawyer.

The parties, the main subjects of the proceedings and the lawyer have the right to benefit from the time and facilities necessary for the preparation of the defense. The suspect has the right to be informed immediately and before being heard about the act for which the criminal investigation is being carried out and its legal classification. The defendant has the right to be informed immediately about the act for which the criminal action against him was initiated and its legal classification. Before being heard, the suspect and the defendant must be told that they have the right not to make any statement. The judicial bodies have the obligation to ensure the full and effective exercise of the right to defense by the parties and the main procedural subjects throughout the criminal trial. The right to defense must be exercised in good faith, according to the purpose for which it was recognized by law.

Any failure to exercise the right to be assisted by a lawyer chosen during the criminal proceedings must be voluntary and unequivocal and does not prevent the subsequent exercise of this right at any time during the criminal proceedings. In case of non-exercise of the right to be assisted by a lawyer of his choice, the suspect or defendant shall be informed by the judicial bodies, in a simple and

accessible language, about the content of the right and the possible consequences of not exercising it.

The parties, the main procedural subjects and their lawyer have the right to benefit from a certain time for the preparation of the defense, taking into account the complexity of the case, and according to art. 109 para. 2 of the Code of Criminal Procedure, the suspect or defendant has the right to consult with the lawyer both before and during his hearing or to be allowed to use notes.

Moreover, the provisions of Article 83 of the Code of Criminal Procedure provide for the rights of the defendant, and in Articles 85 and 87 the rights of the civil party and of the civilly liable party. If the provisions regarding the provision of the right to defense are not observed, the legislator provided in art. 281 para. 1 letter f of the Code of Criminal Procedure the application of absolute nullity in the situation where this right has not been respected, when legal aid is mandatory.

e) respect for human dignity and privacy.

Respect for human dignity has been a permanent concern both at international, European and domestic level, so that this principle is regulated in various acts with legal force. We could mention here Article 3 of the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 in New York to which Romania has also acceded, the Charter of Fundamental Rights of the European Union Articles 1, 4 and 7 in which it is essentially shown that human dignity is inviolable, As it must be respected and protected, no one may be subjected to torture or to inhuman or degrading treatment or punishment, and everyone has the right to respect for private and family life, home and the secrecy of communications.

Similar provisions can be found in domestic law in the Romanian Constitution – Articles 22 and 27, and according to Article 11 of the Code of Criminal Procedure, any person who is under criminal investigation or trial must be treated with respect for human dignity. Respect for private life, the inviolability of the home and the secrecy of correspondence are guaranteed. The restriction of the exercise of these rights is admitted only under the conditions of the law and if it is necessary in a democratic society.

Although the provisions of art. 11 refer to the person who is under criminal investigation or trial, this must also be observed in the pre-trial chamber phase, in the execution phase of criminal decisions, as well as in cases of postponement of the execution of the sentence or interruption of the execution of the sentence.

Within the criminal provisions there are sanctions within the framework of non-respect for human dignity and we could mention here the abusive investigation provided for by art. 280 of the Criminal Code, subsection to ill-treatment – art. 281, torture – art. 282 of the Criminal Code. In essence, any person who has a certain capacity in the criminal process (we include the criminal

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investigation, the pre-trial chamber, the trial phase and the execution phase of court decisions) must be treated with respect for human dignity, torture, inhuman or degrading treatment being prohibited.

Regarding private life, the inviolability of correspondence is provided for in Article 28 of the Romanian Constitution, and respect for private life and the inviolability of the home are protected by law.

Personal data and confidential information obtained during criminal proceedings must be protected so as not to affect the reputation and privacy of the person. This is especially essential in high-profile cases, where disclosure of information can cause irreparable harm.

f) official language and the right to an interpreter.

This principle is provided for in art. 13 of the Constitution of Romania, which provides that the official language is Romanian, and in art. 128 it is stated that all judicial procedures are conducted in Romanian, and Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the court under the conditions of the organic law. The same is also provided for in the provisions of art. 16 of Law no. 304/2022 on judicial organization.

According to art. 12 of the Code of Criminal Procedure, the official language in criminal proceedings is Romanian. Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts, and procedural documents are drawn up in Romanian. Parties and procedural subjects who do not speak or understand Romanian or cannot express themselves are provided, free of charge, with the opportunity to familiarize themselves with the documents in the case file, to speak, as well as to submit conclusions in court, through an interpreter. In cases where legal assistance is mandatory, the suspect or defendant is provided with the opportunity to communicate, through an interpreter, with the lawyer free of charge in order to prepare for the hearing, to file an appeal or to make any other request related to the resolution of the case. In judicial proceedings, authorized interpreters are used, in accordance with the law. Authorized translators are also included in the category of interpreters, in accordance with the law.

For citizens belonging to national minorities, they can express themselves in their native language, but all documents are drawn up in Romanian.

When appropriate, interpreters may be used, being incidental to the case also the provisions of art. 81 paragraph (1) letter g2) of the Criminal Procedure Code when it is provided the right to communicate the translation to the injured person in a language, he understands of any solution not to prosecute and art. 83 letter f) when the defendant has the right to an interpreter, if he does not understand Romanian.

Romanian legislation includes sufficient elements regarding the right to an interpreter, as provided for as provided for in the Directive 2010/64/EU..

II. PROCEDURAL MEANS THAT CONTRIBUTE TO THE PROTECTION OF HUMAN PERSONALITY

II.1 The right to legal assistance

In criminal proceedings, the lawyer assists or represents the parties or subjects of the proceedings under the terms of the law (art. 88 paragraph 1 of the Criminal Procedure Code). In addition to the legal provisions of the Romanian Constitution, the Law on Judicial Organization no. 304/2022 and Law no. 51/1995 on the organization and status of the legal profession, provide legal provisions on legal assistance and representation, as well as in the provisions of art. 88 – 96 of the Criminal Procedure Code.

The legal provisions on the matter indicate the right of the suspect or defendant to legal assistance by a lawyer throughout the criminal investigation, the preliminary chamber procedure and the trial, and the judicial bodies are obliged to inform them of this right.

Also, the detained or arrested person has the right to a lawyer, ensuring the confidentiality of communications, and mandatory legal assistance is also provided when the suspect or defendant is a minor, if the judicial body considers that the suspect/defendant cannot defend himself/herself, or in the case of trial (pre-trial chamber and trial), in cases where the law provides for the crime committed, the penalty of life imprisonment or imprisonment for more than 5 years (art. 89 and 90 of the Code of Criminal Procedure). Also, during the criminal trial, there is the right to legal assistance for the injured party, the civil party and the civilly liable party. In order to respect human personality, even for witnesses in a criminal trial, the right to appear at the hearing accompanied by a lawyer, who may assist at the hearing, has been established (art. 118 para. 4 of the Criminal Procedure Code).

II.2. Exclusion of illegally obtained evidence

In general, evidence administered by judicial bodies enjoys the presumption of legality and therefore it should only be excluded in circumstances where the relevant legal provisions regarding its administration have been flagrantly violated.

Thus, as stated in Article 100 of the Code of Criminal Procedure, it is prohibited to use violence, threats or other means of coercion, as well as promises or exhortations in order to obtain evidence.

Regarding the principle of respect for human dignity, it is prohibited to use listening methods or techniques that affect the person's ability to remember and report consciously and voluntarily the facts that constitute the subject of evidence. Even in the situation where the person questioned gives consent to the use of such evidence. For this reason, evidence obtained through torture, as well as evidence derived from it, cannot be used in criminal proceedings, as well as those that were obtained illegally (art. 100 para. 1,2 Code of Criminal Procedure). Even in the situation where the person questioned gives consent to the use of such evidence.

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For this reason, evidence obtained through torture, as well as evidence derived from it, cannot be used in criminal proceedings, as well as those that were obtained illegally (art. 100 para. 1,2 Code of Criminal Procedure).

When the illegality of the evidence used is found, it leads to the nullity of the act by which the administration of evidence was ordered or authorized, so that the evidence used is removed from the case file.

Similar provisions are also provided regarding the witness's right to silence and non-self-incrimination, who has the right not to declare facts and circumstances that, if known, would incriminate him. Therefore, the judicial body is obliged to inform the witness of this right before each hearing, and evidence obtained in violation of these legal provisions cannot be used against the witness in any criminal trial (art. 118 para. 1 and 2 of the Code of Criminal Procedure).

II.3. Protection of witnesses and victims

The protection of threatened witnesses is provided for in the provisions of Articles 125 – 129 of the Code of Criminal Procedure and in the provisions of Law No. 682/2002 on the protection of witnesses.

Thus, during the criminal investigation (art. 126 paragraph 1 of the Criminal Procedure Code), once the threatened witness status is granted, the prosecutor orders the application of one or more of the following measures:

- a) surveillance and guarding of the witness's home or providing temporary housing;
- b) accompanying and ensuring the protection of the witness or his/her family members during travel;
- c) protection of identity data, by granting a pseudonym with which the witness will sign his/her statement;
- d) hearing the witness without his/her presence, through audio-video transmission means, with distorted voice and image, when other measures are not sufficient.

The same measures can be taken in the pre-trial chamber or during the trial. There are special ways of hearing the protected witness which can be carried out only by means of audio-video means, without the witness being physically present in the place where the judicial body is located.

In addition to protected witnesses, there may also be vulnerable witnesses when the witness has suffered a trauma as a result of the commission of the crime or as a result of the subsequent behavior of the suspect or defendant, as well as in situations where the witness is a minor. In this situation too, the prosecutor and the court may order protective measures such as surveillance and guarding the witness's home, providing temporary housing, and accompanying and ensuring the protection of witnesses or family members during their travels.

With regard to the injured party and the civil party, the provisions of art. 113 of the Code of Criminal Procedure provide for their protection when the conditions provided for by law regarding the status of a threatened or vulnerable

witness, or for the protection of private life or dignity, are met. These protective measures also apply if the release or escape of the perpetrator of the crime may endanger the private life or dignity of the injured party or the civil party or may cause them damage, regardless of its nature and extent. Child victims, victims who are in a dependent relationship with the perpetrator, victims of terrorism, organized crime, human trafficking, violence in close relationships, sexual violence or exploitation, victims of hate crimes and victims affected by a crime due to prejudice or discrimination, victims with disabilities, as well as victims who have suffered considerable harm are presumed to be vulnerable. The same situation applies to the injured person or the civil party if they are in any of the situations shown above, protective measures may be taken.

II.4. Strict regulation of preventive measures

Preventive measures may be ordered within the framework of criminal proceedings when there is evidence or solid evidence that leads to reasonable suspicion that a person has committed a crime, the measure is necessary to ensure the proper conduct of the criminal proceedings and when there are no other less intrusive alternatives. According to Art. 202 of the Code of Criminal Procedure, preventive measures include: detention, judicial control, judicial control on bail, house arrest, preventive arrest.

If preventive measures regarding detention and judicial control can be taken by the prosecutor during the criminal investigation and judicial control by the judge of rights and freedoms, the preliminary chamber judge or another judge during the trial, the measure of house arrest and preventive arrest is taken only by a judge depending on the procedural phase in which the respective case is. The criminal procedural provisions provide for appeals against decisions ordering preventive measures during the criminal investigation, in the preliminary chamber procedure and against decisions ordering preventive measures during the trial.

During the criminal prosecution or trial, there are legal provisions regarding the verification of preventive measures during the preliminary chamber procedure or trial.

The provisions of Articles 209 – 242 of the Code of Criminal Procedure provide for the conditions and observance of other rights of the suspect or defendant regarding detention, judicial control, judicial control on bail, house arrest and preventive arrest.

For minors, there are special provisions regarding preventive measures applicable to them in the provisions of Articles 243 – 244I of the Criminal Procedure Code and the measure of detention or preventive arrest is of an exceptional nature and can only be ordered if the effects that deprivation of liberty would have on the personality and development of minors are not disproportionate to the intended purpose. For this reason, when establishing the duration for which the preventive arrest measure is taken, the age of the defendant

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is taken into account as of the date on which the decision is made to take, extend or maintain this measure.

Although Law No. 304/2022 on judicial organization provides in its provisions that when the general interest of society and the volume of activity regarding specialized cases justify it, specialized tribunals may be established for civil cases, criminal cases, minor and family cases, administrative and fiscal litigation cases, cases regarding labor conflicts and social insurance, civil cases arising from the operation of an enterprise, insolvency, unfair competition or for other matters, as well as specialized panels for maritime and fluvial cases.

For minors, the specialized panels and sections for minors and families, as well as the specialized courts for minors and families, try both crimes committed by minors and crimes committed against minors (*art. 44 of Law no. 304/2022*). Currently, there is the Braşov Court for Minors and Families in the country.

CONCLUSION

The protection of the human personality in criminal proceedings is the foundation of a fair justice system. This is achieved through a series of principles and procedural means aimed at preventing abuses and protecting the dignity and integrity of the person. Respect for these principles is essential for maintaining trust in the judicial system and ensuring fair and impartial justice.

BIBLIOGRAFIE

1. Law no. 304/2022 on judicial organization, published in the Official Gazette, Part I no. 1104 of November 16, 2022;
2. Law no. 303/2022 on the status of judges and prosecutors, published in the Official Gazette, Part I no. 1102 of November 16, 2022;
3. Law no. 682/2002 on witness protection, republished in the Official Gazette, Part I no. 288 of April 18, 2014;
4. Bogdan Buneci, Criminal procedural law. General part. Second revised and added edition, Ed. Universul Juridic, Bucharest, 2022.



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