

The New Romanian Code of Criminal Procedure: Cosmetics or Surgery?

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Abstract: *This study aims at presenting a syllabus of the Romanian criminal justice system, as displayed by the New Code of Criminal Procedure (NCPP). In Romania there have been great expectations about the adoption of the new code as being “the solution” to the long-lasting flaws of the former system. At the first sight, the NCPP is a more coherent and functional legal instrument, but, at the same time, it has proven to have much more vulnerable areas than expected. The authors’ intention has not been to come up with a romanced perspective upon the code, but to subject certain aspects of the former to lucid criticism. This was entailed by the ruling of various decisions of unconstitutionality which have operated on essential issues of the code, such as the victim’s access to justice, the lack of contradictory debates or the effective separation of judicial offices. All these legal inconsistencies lead to a rather bitter remark, that the new code is not what it seems to be. Therefore, it would be difficult to assess whether it is trivial cosmetics or high-standard surgery.*

SUMMARY: 1. Introductory remarks. – 1.2. Principles. – 1.3. The principle of separation of judicial offices. – 1.4. The compulsory exercise of public prosecution. – 2. Courts System and Criminal Jurisdiction. – 3. Stages of a criminal trial: the criminal investigation. – 3.1. Powers of the prosecutor. – 3.2. Powers of the judicial police. 3.3. Solutions adopted at the end of the criminal investigation. – 4. The trial: the preliminary chamber procedure. – 4.1. The summary procedure. – 4.2. The ordinary (classical) procedure. – 5. Ordinary remedies. – 6. Extraordinary remedies. – 7. Special procedures: law harmonizing instruments. – 7.1. Plea bargaining. – 7.2. Civil action. – 8. Closing remarks

1. Entering into force on 1st February 2014 the new Romanian Code of Criminal Procedure (hereinafter “the NCPP”) has marked a milestone farther from the ex-communist legal regime. As it has been considered, “more than the Penal Code, the Code of Criminal Procedure is the *test paper* of democracy”¹. In the area of the ex-communist states, Romania was the only one without a new Code of Criminal Procedure, able to undermine the foundation of his former authoritarian legislation.

¹ V. Pașca, *Romanian Criminal Trial between Authoritarianism and Liberalism*, in *Volume of the International Biennial Conferences 2008, Faculty of Law*, Bucharest 2010, 193.

From a diachronic perspective, the present code is the fourth in the legal order of the modern Romanian state. The first code goes back to 1864² and it was inspired by the French Criminal Instruction Code of 1808. It had the biggest longevity, being in force for over 70 years, till the adoption of the code in 1936³, a code with a French and Italian pedigree. This code started producing effects on 1st January 1937 and only had a short life cycle, due to the radical change of the political regime, subsequent to the end of the World War II and the shift of power to the communist ideology. Amongst the first measures taken by the new regime, the living proof of the quote mentioned above, were the dramatic amendment of the 1936 code; in February 1948 was published the Code of the Romanian Popular Republic, which reflected the new rationale of state political relationships. Thus, a different model of criminal process: the socialist model⁴, which gives up the French model in order to overtake the soviet one. On the same basis, in 1968 a new Code of Criminal Procedure⁵ was drawn up and entered into force on January 1st 1969 and it survived, irrespective of undergoing numerous “cosmetic” surgeries, for 45 years, until its formal abrogation on 1st of February 2014.

The draft of the Criminal Procedure Law became Act n. 135/2010⁶, a law which needed almost 4 years in order to become effective. The entry into force of the new regulation was postponed, since the implementing law was adopted only in 2013⁷. Even at that moment, there had been quite a number of voices⁸ claiming the necessity to postpone the new code, from various reasons. Eventually, a new Code of Criminal Procedure has been enforced. After two years from that event, the NCPP has stood out as a rather controversial legal work. An inquiry into the sources of the code-related disputes leads to an ever-persisting hamletian question, namely: *Is there method to this madness?*

What follows is an attempt to present the essential attributes of the Romanian criminal procedure in order to offer arguments to support the dilemma exposed in the title.

1.2. Some of the principles adopted by the NCPP were set out as absolute novelties for the Romanian criminal procedure, which was, to a considerable extent, the outcome of the influence of the European Court of Human Rights who urged our

² Published in the Official Journal of 2.12.1864 n. o.

³ Published in the Official Journal of 19.3.1936 n. 66.

⁴ D. Ionescu, *On the Procedural Conception and the New Criminal Procedure Law. A Few Simple Matters*, in *Criminal Law Writings* 2011 (1), 77-86.

⁵ Published in the Official Journal of 12.11.1968 n. 145.

⁶ Published in the Official Journal of 15.7.2010 n. 486.

⁷ Published in the Official Journal of 14.8.2013 n. 515.

⁸ APADOR-CH, 31.1.2014, *Reasons why the entering into force of the Penal Code and Code of Criminal Procedure should be deferred*, available on www.juridice.ro or M. Macovei, 29.1.2014, speech available on <http://www.revista22.ro/monica-macovei-victor-ponta-sa-amane-intrarea-n-vigoare-a-noilor-coduri-sa-nu-arunce-justitia-penala-n-aer-37242.html>.

movers and shakers to amend the former criminal legislation and make it correspond effectively to the standards imposed by the European Convention.

Among the most important principles currently governing Romanian criminal procedure, it is worth mentioning the principle of legality of a criminal trial (art. 2), the separation of judicial offices (art. 3), the presumption of innocence (art. 4), the establishment of truth (art. 5), the *ne bis in idem* (art. 6), the compulsory exercise of public prosecution (art. 7), the right to a fair trial within a reasonable time (art. 8), the right to liberty and security (art. 9), the right to defense (art. 10), the respect of human dignity and private life (art. 11) .

1.3. A kind of checks and balances at the level of criminal proceedings, was newly introduced in the NCPP and provided under art. 3, which proclaims and guarantees that four judicial offices are exercised in a criminal trial, namely: *a*) the investigation (carried out by the judiciary police and the prosecutor), *b*) the control ruling on the fundamental rights and liberties of an individual during the investigation stage (carried out by the liberty and custody judge), *c*) the judicial review of the legality of the prosecutor's decisions to initiate or waive indictment (performed by the judge of pre-trial chamber) and *d*) the trial (judgment performed by the courts of law). The principle forbids the simultaneous exercise of any of the four offices, with one notable exception. Thus, it was permitted to the preliminary chamber judge to also rule as a first instance judge. This smells too unconstitutional to be disregarded. Just recently, the Romanian Constitutional Court has stated⁹ that the preliminary chamber judge, who decides to refer the case to trial as a consequence of censuring the prosecutor's decisions to waive indictment, becomes incompatible to rule on the case himself.

1.4. It was newly introduced by the NCPP and provided under art. 7, which states that the prosecutor is compelled to initiate and exercise public prosecution of his own motion, when there is evidence which leads to the conclusion that an offence was committed and there is no legal deterrent to public prosecution. In the cases expressly provided by the law, the prosecutor initiates and exercises public prosecution after a preliminary complaint was filed by the victim or following authorization by or referral to the competent authority or after complying with another condition imposed by the law.

The force of this principle is weakened by a newly introduced prerogative of the prosecutor, namely the discretion to prosecute, set out in article 318 of the NCPP. According to this legal text, in the case of offenses for which the law requires the penalty of a fine or a penalty of imprisonment of no more than 7 years, the prosecutor may decide not to prosecute when he concludes that there is no public interest in prosecuting, after assessing the contents of the offense, the *modus operandi* and the means used by the offender, the motive of the offense and the consequences that occurred or could have occurred.

⁹ Decision of 16.7.2015 n. 552, in the Official Journal of 21.9.2015 n. 707.

2. Romanian courts function according to a well-established hierarchy, and their jurisdiction in criminal matters is determined according to four criteria: 1. the *functional* jurisdiction (establishes the roles and duties of each criminal court), 2. the *material* jurisdiction (a vertically established jurisdiction, according to the nature and seriousness of the offense), 3. the *personal* jurisdiction (determined according to the status/quality that the offender had when he committed the offense), and 4. the *territorial* jurisdiction (established horizontally, among courts of the same level, and, as a general rule, is determined by the place where the offense was committed).

In a broad sense, there are two main types of courts in Romania, *civilian* courts: municipal courts, tribunals (county courts), courts of appeal and the High Court of Cassation and Justice, and *military* courts: the military tribunals and military courts of appeal. The system of courts inspires itself from the territorial organization of Romania, i.e. cities, counties, regions.

When it comes to their organization, there can be identified a pyramidal structure: (1) the *courts called of first instance* (or of first degree) – namely municipal and county courts - form the basis of this organization; (2) *the appellate courts* (or of second degree) are the courts that hear appeals against decisions delivered by the courts of first instance; (3) at the top of this judicial order, *the High Court of Cassation and Justice* (the Supreme Court) is charged of reviewing the lawfulness of the lower courts decisions and harmonizing the enforcement of law as it is implemented by these courts.

Municipal courts, tribunals, courts of appeals and even the High Court of Cassation and Justice, in extraordinary circumstances, hear cases of first instance. The High Court of Cassation and Justice can also act as an appellate court, only in a limited number of occasions, to hear appeals against decisions pronounced by appellate courts acting as courts of first instance.

In all cases, the re-examination of the case is possible by a higher court. This is justified by the principle of the “double degree of jurisdiction”.

1. **Municipal courts** (art. 35), as first instance courts, hear all the cases, except for those which fall under the jurisdiction of other courts, as provided by the law.

2. **Tribunals** (art. 36), as first instance courts, hear serious offenses, such as murder, manslaughter, offenses involving the trafficking and exploitation of vulnerable persons, corruption offenses, the offenses in case of which the criminal investigation was carried out by the National Department for the Investigation of Organized Crime and Terrorism (hereinafter the DIICOT), or by the National Anti-Corruption Department (hereinafter the DNA), specialized structures of criminal investigation, functioning within the Prosecutor’s Office attached to the High Court of Cassation and Justice. Tribunals also hear cases which imply money laundering and tax evasion offenses.

3. **Military Tribunals** (art. 37) hear only first instance cases which involve offenses committed by members of the military, limited to the rank of colonel.

4. **Courts of Appeal** (art. 38) – (a) as first instance courts, they hear cases involving offenses related to the national security, the offenses committed by judges and prosecutors acting within ordinary courts and the corresponding prosecutor’s offices, offenses committed by lawyers, notaries public, members of the high clergy,

the cases involving crimes against humanity and others; (b) as appellate courts, they hear appeals against decisions ruled by municipal and county courts as first instance courts.

5. **Military Courts of Appeal** (art. 39) – (a) as first instance courts, they hear cases involving offenses committed by members of the military who acquired the rank of generals, marshals and admirals; offences committed de judges of military Tribunals and by military prosecutors of military prosecutors' offices attached to such courts; (b) as appellate courts, they hear appeals against decisions delivered by military tribunals.

6. **The High Court of Cassation and Justice** (art. 40)– (a) as court of first instance, it hears cases involving offenses of high treason, the offenses committed by members of the Parliament (including the European Parliament), members of the Government, the judges of the Constitutional Court, the judges of the High Court of Cassation and Justice and the prosecutors, as well as other offences committed by high executives of the state; (b) as appellate court, it hears appeals against judgments ruled by the courts of appeal, military courts of appeal and the criminal chamber of the High Court, acting as courts of first instance. It also hears the appeals on law (*ricorso per cassazione*) and delivers decisions on the coherent interpretation and development of the law.

Briefly, it is to be noticed that municipal courts have general jurisdiction over all criminal cases, but as an exception, they share first instance jurisdiction with county courts depending of the seriousness of the offence. Courts of appeal reign supreme over a region which includes municipal and county courts, where they have general appellate jurisdiction and rule definitive decisions. There are 15 courts of appeal in Romania with a potential of generating divergent case-law, which could be solved by the intervention of the Supreme Court, by means of the appeal on law. Since the cases in which the appeal on law is admissible have become very restricted, the only effective remedy meant to harmonize divergent solutions needs to be another legal instrument, i.e. the appeal in the interest of the law. Military courts are obsolete institutions due to the fact that in Romania the military service has become voluntary since 2007, which has led to a significant decrease in the number of offences committed by the military.

3.1. The criminal investigation is carried out by the prosecutor, the judicial police and the special investigation agencies (art. 55). In addition to that, certain types of serious offenses need investigation by specialized structures, namely the DNA and the DIICOT departments (see above section 2). The DNA specializes in investigating corruption offenses, while the DIICOT investigates organized crime and terrorism offences. Their powers and organization are accordingly set out by special laws.

3.2. According to art. 56, the prosecutor coordinates and directly supervises the criminal investigation carried out by the judicial police as well as by the special investigation agencies (military and marine police). In the cases when the criminal investigation needs to be undertaken by the DNA or DIICOT departments, the

prosecutor is compelled to conduct the investigation himself, due to the seriousness and complexity of those offenses. Besides his powers related strictly to the criminal investigation, the prosecutor takes an active part to most of criminal proceedings, that is he refers the case to the liberty and custody judge and the court, he exercises the criminal action, he concludes plea bargaining agreements, under the law or he files ordinary and extraordinary remedies against court decisions.

The NCPP has missed the opportunity to settle down the status of the prosecutor in a criminal trial, namely whether he is the accusing party (which involves equal treatment before the court) or a magistrate who acts on behalf of the general interest of society. Art. 32 defines the parties as legal subjects who exercise or against whom a judicial action is exercised. The prosecutor, although he exercises the public action, is not a party to a trial, being more similar with a judge, a situation that affects not only the real separation of judicial offices, but the fairness of a trial as a whole since the parties perceive his status as being privileged.

3.3. Art. 55 para. (4) states that the duties of the judicial police are carried out by specialized officers (agents) within the Ministry of Home Affairs, especially appointed under a special law, upon prior assent of the Prosecutor General of Romania.

The judicial police have general powers to investigate all the offenses, except for those that the law ascribes to the prosecutor himself. Acting as detective agents, judicial policemen have the power to start investigation *in rem* (art. 305 para. 1), search for and supply evidence, build the case against the accused and prepare the investigation file. The NCPP does not limit the period of time for concluding the investigation from the moment it was started *in rem* by decision of the judicial police. However, it is possible to control the reasonable duration of investigation, by filing a contestation before the liberty and custody judge, 1 year after the beginning of the investigation (art. 488¹).

Since the judicial police only act as detective agents, they do not undertake decision-making within the investigation stage, which belongs only to the prosecutor, i.e. the designation of a person as suspect (art. 305 para. 3), the initiation/waive of public prosecution (art. 309 and art. 318), dismissal of the case (art. 315) and the drawing up of the indictment (art. 327).

3.4. Upon conclusion of the criminal investigation by the judicial police, the prosecutor may issue a decision *not to refer the case before the court*, consisting in the *dismissal of the case* (art. 314 para. 1a) and a decision *not to prosecute* (art. 314 para. 1b). A criminal case may be dismissed if there occurs one of the incidents set out at art. 16 (e.g. the act committed is not provided under criminal law, the offender benefits from justification or excuse from criminal liability, criminal liability for the offense is subject to the statute of limitations, the *ne bis in idem* is applicable, and so on). A decision not to initiate prosecution is taken mainly when it is considered that the prosecution is not in the public interest (see above, section I.2).

All these decisions adopted by the prosecutor can be challenged by the victim first before the senior prosecutor (art. 339) and, if the former dismisses the complaint

of the victim, before the judge of preliminary chamber (art. 340-341), who is in charge to hear the complaints lodged by the victims against the solutions of the prosecutors and to review them.

The second solution consists in the referral of the case before the court, when the prosecutor infers, on the basis of criminal investigation evidence, that the conditions of criminal liability are fulfilled. In such a case, an indictment shall be filed against the accused and shall be subject to the control of the preliminary chamber judge. This control is automatically imposed by the law, unlike the control of the non-referral solutions, where the control is provoked and depends on the will of the interested party.

4.1. This procedure is an absolute novelty for the Romanian criminal procedure. According to art. 342, after the indictment was filed to the preliminary chamber judge, the procedure consist in the control over the jurisdiction and the lawful referral of the case to the court, as well as in the judicial review over the lawfulness of the evidence supplied and the acts performed during the investigation stage. Thus, the preliminary chamber procedure represents a sort of filter procedure between the two important stages of the criminal trial, namely the criminal investigation and the judgment.

At this intermediary stage, the preliminary chamber judge may rule in two main ways: either he refers the case for trial (1) or he refers the case back to the prosecutor to remedy some procedural faults. Therefore, the solutions are as follows:

- if the parties do not raise motions *in limine* as to the lawfulness of the indictment or the evidence gathered or the acts carried out during the investigation, he states that the case can be referred to court for trial;

- if he observes that there are irregularities as to the indictment, and such irregularities entail an impossibility to establish the object of the case or the procedural framework, he refers the case back to the prosecutor so that the former may remedy such inconveniencies. The irregularities derive from the control of the formal lawfulness of the indictment, and not from the exam of the factual consistency of the indictment. That is why the preliminary chamber procedure is not in fact a probable cause hearing¹⁰, as in its source legal systems (common-law systems);

- if he excludes all the evidence that was supplied during the investigation, he refers the case back to the prosecutor for further inquiries. If he excludes only few a few pieces of evidence, the case is not referred back to the prosecutor, but the excluded evidence shall not be taken into account upon judgment on the merits.

The ruling of the preliminary chamber judge is not final, meaning that in a three-day term, calculated from the moment when the decision was served upon

¹⁰ I. Kuglay, *Criminal Procedure Code. Comments on Articles*, coord. M. Udriou, Bucharest 2015, 904.

them, the prosecutor and the defendant may file a contestation against the decision ruled by the preliminary chamber judge.

This procedure has been the star topic in the case-law of the Constitutional Court which passed, in almost two years, 6 decisions of unconstitutionality related to the preliminary chamber procedure¹¹, mainly against the legislative solution which envisaged said procedure as un-contradictory, discriminating and un-public. This was due to the fact that the NCPP provided that the procedure of the preliminary chamber took place in the absence of the prosecutor and the defendant, who were allowed only to file written submissions. The victim was not even allowed to do that, being totally left out.

4.2. The NCPP, concerned about the shortening of criminal proceedings, has introduced the possibility of the defendant to choose a summary procedure, meaning that the case shall be solved only based on the evidence supplied during the investigation stage, which the defendant must agree with. Additionally, the defendant must admit to, therefore abstain from challenging all the counts of offenses he was charged with in the indictment. The judge takes a decision based on the confession of the defendant, if this is sustained by evidence collected during the investigation stage. As such, the judge is bound to inform the defendant that he may apply for the judgment of the case in a summary procedure (art. 374 para. 4). If the case is tried in a summary procedure, the parties are allowed to adduce no other evidence, except for documents (art. 375 para. 2).

The conciliatory position of the defendant is rewarded by the decrease of 1/3 in the legal limits of the penalty provided for the offense committed. The confession is not allowed in case of the penalty of life imprisonment.

4.3. If the conditions provided in the case of a summary procedure are not met, or if the defendant does not apply for them, the court shall try the case by the classical procedure. This means that the supplying of evidence shall take place before the judge in an oral, contradictory and public hearing. However, there are two main types of categories of evidence that are not presented before the judge:

- those which were excluded in the preliminary chamber procedure;
- those which are not contested by the parties *in limine litis*.

If in the first case, the solution is justified, since the exclusion of evidence is imposed as a sanction, in the second case, the legal approach is more questionable

¹¹ Decision of 08.10.2015 n. 631, published in the Official Journal of 6.11.2015 n. 831; Decision of 23.06.2015 n. 496, published in the Official Journal of 22.9.2015 n. 708; Decision of 17.3.2015 n. 166, published in the Official Journal of 21.4.2015 n. 264; Decision of 11.11.2014 n. 663, published in the Official Journal of 22.1.2015 n. 52; Decision of 11.11.2014 n. 641, published in the Official Journal of 5.12.2014 n. 887; Decision of 20.10.2014 n. 599, published in the Official Journal of 5.12.2014 n. 886; Decision of 16.7.2015 n. 552, published in the Official Journal of 21.9.2015 n. 707.

because of the infringements on the right to defense. Pursuant to art. 6 para. 2 letter *d* ECHR, an accused shall have the right to cross-examine the witnesses against him. This procedural guarantee of the right to defense cannot apply when the defendant does not challenge the testimony of the witness given during the investigation stage, but aims at the finding out of new aspects that were not revealed by the witness.

The NCPP provides a certain order within the stage of evidence supplying before the judge, placing the hearing of the defendant as first step of this procedure. Thus, it has been perpetuated from former legislation the hearing of the defendant as a first means for the establishment of truth. This seems to contradict the defendant's right to remain silent, since the hearing of the former cannot, as a principle, serve the establishment of truth when he does not choose the summary procedure. The defendant's statement cannot be relevant at the beginning of the trial, if he does not agree with the charges, due to the fact that it might be considered as a duty to contribute to his self-incrimination.

5. The appeal is the ordinary remedy that can be filed against decisions ruled by the courts of first instance. An appeal must be lodged within 10 days from the date the decision was served upon the parties (art. 410).

The notification of the appeal has two immediate effects. The first is to suspend the relevant decision, both as concerns its criminal dispositions, as well as its civil aspects (suspending effect). (art. 416). The second is to transfer the case in its entirety to be judged by the appellate jurisdiction (devolutive effect). An appeal may be limited to a specific part of the judgment (for example, the civil award/damages or the criminal penalty) and the appellate court is then restricted to the issue raised.

According to the rule against *reformation in pejus*, an appeal by the defendant alone cannot result in an increased sentence or a civil award higher than that originally imposed (art. 418). However, in almost all cases where there is an appeal by the prosecutor, the appellate court may substitute any penalty it feels appropriate and it may also review the case under all aspects as demanded by the prosecutor.

Since the appeal represents the second level of jurisdiction, it amounts to a complete re-hearing of the case, and, additionally, new evidence may be supplied (art. 420 para. 5). The appellate court may proceed to a new interpretation of the facts of the case (art. 420 para. 9). The solutions that the appellate court may rule on appeal are as follows (art. 421):

- it may dismiss the appeal and uphold the decision of the inferior court;
- it may allow the appeal and quash the decision of the first instance court, and therefore rules a new decision;
- it may quash the decision of the first instance court and order re-trial of the case by the court whose judgment was quashed (usually due to procedural irregularities) or by the competent court, when the court who delivered the judgment in the first instance had no jurisdiction to try the case.

The appellate court's decision is definitive from the date when it was delivered.

6. In special circumstances, definitive judgments may be re-examined by means of four extraordinary remedies: the extraordinary annulment (art. 426), the appeal on law (art. 438), the extraordinary review (art. 453) and the re-trial of the case due to *in absentia* proceedings (art. 466).

The first remedy is aimed at reviewing procedural faults that occurred during the trial, concluded by a definitive judgment, such as: illegal service of *subpoenas* upon the parties, a case of incompatibility of the judges occurred, the case was tried in the absence of the defendant or the defense lawyer, when attendance of the former is compulsory under the law (e.g. defendant subject to detention), the hearing was not public, etc. Any party, as well as the prosecutor, may file an extraordinary annulment against a decision, which shall be re-examined by the same court which ruled the challenged decision. The term for filing such remedy is 10 days.

The appeal on law is tried exclusively by the High Court of Cassation and Justice. It aims at controlling the correct application of the law by appellate courts. Any party, as well as the prosecutor may file an appeal on law within a term of 30 days, on a limited range of grounds, such as: the infringement of the jurisdiction regime, the conviction of the defendant was ruled for an act not provided by criminal law, the application of penalties was imposed by disregarding the latitude (penalty limits) provided by the law.

The extraordinary review attempts at re-examining errors on the factual situation of the case, arising from circumstances that the courts were unaware of, such as: new facts and circumstances relevant for the merits of the case emerged; perjury committed by a witness or expert; forged document used in the case; a judicial officer (including judges) committed an offense related to the case; the decision was based on a legal provision that was declared unconstitutional. Any party may file an extraordinary review, at any time. In the case of the unconstitutionality above-mentioned, the term for filing the extraordinary review shall be one year.

A special provision of the NCPP (art. 465) allows for the review of the definitive judgments where the ECHR stated a violation of a fundamental right in a criminal trial judged by national courts. This review aims at reforming the judgment which continues to generate effects even after the decision of the Strasbourg court was ruled. In this specific case, the term for filing the extraordinary review shall be three months.

All the three extraordinary remedies are subject to a preliminary procedure aimed at checking whether the case is admissible. The procedure of admissibility has been declared unconstitutional¹², due to the fact that the law ignored the attendance of the parties to this preliminary stage (lack of contradictory debates). Furthermore, in the specific case of appeal on law, the Constitutional Court stated that in such a

¹² Decision of 30.6.2015 n. 506, published in the Official Journal of 20.7.2015 n. 539; Decision of 14.7.2015 n. 542, published in the Official Journal of 21.9.2015 n. 707.

preliminary proceeding it is not possible to rule on the merits of the case and dismiss the appeal on law as “completely ill-founded”¹³.

The last extraordinary remedy can be resorted to by a person who was convicted *in absentia*, i.e. the defendant was not summoned to the trial and did not know, under any circumstances, about the occurrence of the trial. If the lawyer of the defendant attended the trial on behalf of his client, the rules of the judgment by default are not applicable. The request for re-trial of the case shall be filed within a term of one month from the date the defendant officially found out about his conviction. This procedure is also applicable in the case of extradition of a person convicted by default or the execution of an EAW (European Arrest Warrant).

7. The Romanian Supreme Court is not the only the top of the judicial hierarchy, where it acts as a cassation court, but it involves in harmonizing the divergent case-law of inferior court in order to address the ideal of a unitary justice.

There are two legal instruments able to deal with this objective. One instrument operates *a priori*, namely the possibility of the Supreme Court to rule a decision on a legal issue that is relevant for the solving on the merits of a pending criminal trial (art. 475). Until this moment, the Supreme Court has had the occasion to rule only on six cases, given that it has constantly declared as inadmissible the requests which demanded a preliminary ruling on strictly procedural issues. The other instrument operates *a posteriori*, not as a preliminary ruling but as a mechanism of levelling definitive judgments. The Supreme Court has the role of providing a judicially-binding interpretation of the law in future cases (art. 471). In both situations, the harmonizing decision is published in the Official Journal and shall be binding upon all courts, starting on the date of its publication.

7.1. The NCPP has provided for the possibility of an agreement (bargain) between the prosecutor and the defendant, whereby the defendant agrees to plead guilty to all the offenses imposed against him, to admit the nature and amount of the penalty, as well as the mode of penalty execution, without going to trial. The agreement is concluded in a written form and applies only for a penalty consisting of fine or a maximum of 7 year-imprisonment.

At the time when the agreement is concluded, the defendant shall no longer be tried on indictment. However, the court must validate the agreement upon request of the prosecutor, in order to generate effects. The court rules in an uncontradictory procedure, a sensitive issue which was censured by the Constitutional Court¹⁴ which stated that leaving out the victim from this procedure is contrary to the principles of equality before the law and access to justice. The court may allow or dismiss the plea bargain, the latter solution being adopted when the bargain is deemed too lenient as to the seriousness of the offense and the danger represented by the offender. As an assessment, the defendant does not actually gain

¹³ Decision of 01.10.2015 n. 591, unpublished yet in the Official Journal.

¹⁴ Decision of 7.4.2015 n. 235, published in the Official Journal of 26.5.2015 n. 364.

anything certain out of the agreement, unless the court gives its assent to it, which amounts to a three-party agreement instead of a bilateral one.

7.2. The NCPP continues the traditional approach in our criminal procedure system, where the claims made by the victim can be settled within the same trial. This is the outcome of the principle of the unity of criminal and civil justice, which allows the victim to become a party to the trial with full procedural rights. Such procedure contradicts the mainstream trend of a strictly specialized judge, who is thus compelled to rule on legal issues that are not similar by nature. Said procedure is effort and time-saving for the victim, who is not coerced to wait until the resolution of the criminal case in order to get civil awards.

8. Presenting the criminal system architecture is not an easy task, due to the space constraints and the difficulty of assessing complex institutions in a simple and precise manner. However this task must be undertaken in order to test the coherence of the system in the light of a comparative approach. The NCPP is not a singular legal work, but shares common values, principles and solutions with most of the European criminal systems. The question is whether this affiliation is directly assumed or just imitated, under the cover of respecting tradition. In Romania, tradition means, in most of the cases, the practice deriving from the 1968 Code of Criminal Procedure, i.e. the communist one. The separation from the past has not occurred yet, because Romania still experiences great inertia in accomplishing that. The consequence of such circumstance might be that in just two years the Constitutional Court has ruled 19 times over the inconformity of the code with the Constitution. The concern of our Constitutional Court is not a mere example of the system's ability to cure itself, but the expression of a tradition pretty reluctant to reformation. This means that the reform addressed by the NCPP often amounts to cosmetics rather than real surgery.