



The Principle of Legality in Criminal Proceedings

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Abstract: The principle of legality is one of the fundamental pillars of criminal proceedings, with the role of guaranteeing respect for the fundamental rights and freedoms of persons involved in a judicial procedure. This principle requires that all acts and measures in the criminal process be based exclusively on the law, without deviations or discretionary interpretations (Dongoroz, Vintilă (coord.), 1976, p. 30). Enshrined in art. 1 para. (1) Criminal Procedure Code, the principle of legality ensures the conduct of the criminal process in accordance with legal norms, preventing abuses and providing the parties involved with a clear and predictable framework. This principle also derives from the provisions of the Romanian Constitution (2003), as well as from international standards, and is reaffirmed by the jurisprudence of the European Court of Human Rights (ECHR). Its applicability covers all stages of the criminal process – from criminal prosecution and trial, to the execution of final decisions. Legality concerns both substantive law norms (what is criminalized and sanctioned by law) and procedural law norms (the way in which the criminal trial is conducted).

Keywords: principle; legality; criminal trial; international; jurisprudence

1. Introduction

The principles of criminal procedure represent the foundation on which the entire edifice of criminal procedure norms is built. They are not mere theoretical ideas, without practical relevance, but make their presence felt even in the most

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insignificant acts of judicial bodies. Practically, there is no provision in the Code of Criminal Procedure that does not reflect one or more fundamental principles of criminal procedure. For this reason, each provision of the Code of Criminal Procedure must be interpreted and applied, concretely, in the light of these principles. When the judicial body has doubts regarding the interpretation of an obscure text or even regarding the concrete solution that should be adopted in a criminal case, it must consider all these fundamental principles, in order to be sure that it makes a correct application of the law. Otherwise, an interpretation of the criminal procedure law that would contradict one or more principles cannot constitute a fair application of it, regardless of the arguments in favour of that interpretation. The fundamental principles must constitute guidelines both for the persons called upon to elaborate norms in criminal procedure matters, and for those who must apply these norms. Therefore, good knowledge of them constitutes an essential condition for the elaboration of a coherent criminal procedure system and for the fair application of the criminal procedure law, in accordance with the great principle of law – fairness.

The new Code of Criminal Procedure, like the previous one, chose to list in the introductory title, entitled “Principles and limits of the application of the criminal procedure law”, a series of basic rules of criminal procedure. Although Professor Vintilă Dongoroz used in his works to designate the basic rules of criminal procedure, the notion of “fundamental principles”, to distinguish them from other principles of lower rank, it is noted that in the new Code of Criminal Procedure this emphasis is no longer made, using the simple name “principles” to designate the basic rules of criminal procedure. It should be emphasized, however, that the introductory title of the Code of Criminal Procedure does not list all the principles applicable to criminal proceedings, but only the fundamental ones, with repercussions on all its phases. It is noted that many of these coincide with those listed by the previous Code of Criminal Procedure in Title I, entitled “Basic rules and actions in criminal proceedings”. In addition to this change of name, from “basic rules” to “principles”, we also find in the new Code a series of new principles, which were found in the old Code, but have disappeared. This expresses a change in the legislator’s conception regarding the way in which he understood to regulate the rules of criminal proceedings, a fact that will be reflected in the amendment of many provisions of the Code of Criminal Procedure. At the same time, the amendment in question seems to resolve the controversy that has arisen in the doctrine regarding the system of criminal procedural principles. One opinion argues that the system of principles of the Romanian criminal procedure should be considered the one explicitly enshrined by the legislator in the provisions of the code, and another

opinion considers that the doctrine can also extract other principles from the content of the Code of Criminal Procedure, even if these were not mentioned in the introductory part. The modifications made to the texts enshrining the principles of the criminal procedure, some of which occurred even while the 1968 Code of Criminal Procedure was in force, as well as the major differences between the opinions expressed by the doctrine in the specialized treaties, regarding their number and content, seem to justify the opinion according to which the principles of the criminal procedure enshrined in the Code of Criminal Procedure are not limiting. Moreover, for this reason, there are not too many systems in which the fundamental principles of the criminal procedure are listed in an introductory title, as is done in our legislation (Volonciu, Nicolae, Barbu & Alexandru, 2020, p. 52).

In addition, the extremely varied jurisprudence of the European Court of Human Rights, as well as the legislation of the European Union, oblige procedural systems to be constantly open to new rules, some of which even have the value of principles. However, there is also a flip side to this, as this can generate some uncertainty in judicial practice, as changes in the rules of criminal procedure are generally difficult to assimilate, especially if they are foreign to the general conception of the system.

2. The Concept and Importance of the Principle of Legality

The principle of legality is one of the foundations of criminal procedural law and assumes that the entire criminal trial must be conducted strictly in accordance with the legal norms established by law. It ensures predictability, fairness and legal certainty for the participants in the trial.

This principle is enshrined in art. 1 of the Romanian Criminal Procedure Code, which provides that the criminal trial shall be conducted in accordance with legal provisions, and the judicial bodies are obliged to respect the law at all procedural stages.

The principle of legality is also guaranteed by art. 23 of the Romanian Constitution, which enshrines individual freedom and the legality of measures depriving of liberty, and by art. 7 of the European Convention on Human Rights (ECHR), which establishes that “no one shall be held guilty of any criminal offence for any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed”.

3. Manifestations of the Principle of Legality in Criminal Proceedings

The principle of legality governs all phases of the criminal process and is reflected in several aspects:

a) Legality of incrimination and punishment

No person may be prosecuted or convicted except for acts that are provided for by criminal law as crimes. This aspect is enshrined in the principle “*nullum crimen, nulla poena sine lege*”, which means that there can be no crime and punishment outside the law.

b) Legality of the conduct of the criminal process

All procedural acts and measures must comply with the rules of criminal procedure. Any deviation may result in the nullity of the procedural acts.

c) Legality of the administration of evidence

The acquisition and administration of evidence must comply with legal rules, and evidence obtained illegally is subject to exclusion. For example, illegal wiretapping or obtaining confessions by coercion are prohibited.

d) Legality of preventive measures

Preventive measures, such as detention, preventive arrest or judicial control, may only be ordered under the conditions and for the reasons expressly provided for by law.

e) Legality of solutions ordered in criminal proceedings

Judicial bodies (prosecutor, court) must pronounce solutions in accordance with the law, and decisions must be thoroughly motivated.

4. The Principle of Legality in Relation to Other Procedural Principles

- Relationship with the principle of impartiality – Legality implies that no person may be favored or disadvantaged in the process.
- Relationship with the principle of officiality – Judicial bodies are obliged to intervene *ex officio* in certain situations, but only within the limits provided by law.
- Relationship with the principle of the right to defense – Respect for legality requires guaranteeing all procedural rights of the defendant.

5. Sanctions for Violating the Principle of Legality

Breach of the principle of legality may lead to:

- Nullity of procedural acts (absolute or relative nullity);
- Exclusion of evidence obtained illegally;
- Disciplinary or criminal liability of judicial bodies.

The principle of legality is essential for a fair criminal trial, ensuring respect for the rights of all parties involved. Its observance contributes to maintaining trust in the justice system and preventing abuses by the authorities.

6. Conclusion

The principle of legality is an essential foundation of the criminal process, ensuring respect for the fundamental rights and freedoms of the persons involved. By imposing strict compliance with legal norms at all stages of the criminal procedure, this principle contributes to guaranteeing a fair trial and preventing abuses by the authorities.

Its applicability is manifested both in terms of the legality of incrimination and punishments, and in the conduct of judicial proceedings, establishing clear rules on evidence, procedural measures and the competence of judicial bodies. Its violation may attract sanctions, such as the exclusion of illegally obtained evidence or the nullity of procedural acts.

The principle of legality is also reinforced by the case law of the European Court of Human Rights (ECHR), which sanctions abuses by the judicial system and imposes strict standards in the field of criminal law and criminal procedure.

In conclusion, compliance with the principle of legality is not just a technical requirement, but a guarantee of the rule of law, designed to balance the relationship between state authority and individual rights. Any deviation from this principle can undermine trust in the justice system and affect the fairness of the criminal trial. Thus, the consolidation and rigorous application of this principle remains an essential objective for the proper functioning of criminal justice.

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