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Simplified Forms of Criminal Proceedings and the Presumption of Innocence: The Romanian Experience

Uproszczone formy postępowania karnego oraz domniemanie niewinności. Doświadczenia rumuńskie

ABSTRACT

This research examines the legal configuration of the presumption of innocence within Romanian criminal procedure, with particular emphasis on its procedural components in the context of simplified trial mechanisms. Its primary objective is to evaluate how safeguards, such as voluntary and informed defendant's consent, evidence admissibility standards, and judicial oversight, ensure the protection of fundamental rights in plea bargaining and abbreviated trial procedures. The study analyses the normative framework, including the legal conditions and procedural effects of these mechanisms. It underscores the importance of judicial review and legal guarantees in preventing violations of the presumption of innocence, ensuring procedural fairness, and balancing efficiency with fundamental rights. The originality of this research lies in the critical assessment of Romanian law compliance with European standards, offering recommendations for legal practice and policy modifications to enhance the protection of defendants' rights. The findings contribute both to the theoretical understanding of procedural safeguards and to their practical implementation in criminal justice systems, reinforcing the integrity of legal procedures and safeguarding human rights.

Keywords: presumption of innocence; burden of proof; abbreviated trial procedure; plea bargain agreement; fair trial

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INTRODUCTION

The principle of respect for the presumption of innocence constitutes a fundamental tenet within the corpus of legal regulations that govern simplified procedures in cases where the accused individual pleads guilty. Consequently, it is essential to ensure the expeditious progression of these criminal proceedings while, at the same time, ensuring that the guarantees associated with the right to a fair trial are duly respected.

The objective of this study is to ascertain the legal framework within which defendants may opt for an abbreviated procedure or a guilty plea agreement in the event of an admission of guilt. It further seeks to critically evaluate the compatibility of Romanian procedural rules with the requirements of the right to a fair trial in relation to the presumption of innocence.

In this particular context, the scientific contribution of the research lies in its in-depth examination of the limitations and potential shortcomings of the Romanian procedural system, as well as in the formulation of recommendations aimed at strengthening the guarantees and enhancing the functionality of the presumption of innocence.

RESEARCH AND RESULTS

1. Configuration of the presumption of innocence in the Romanian Criminal Procedure Code

It is a widely accepted premise that the presumption of innocence constitutes a fundamental legal principle. In Romanian criminal procedure, this principle is enshrined in Article 4 of the Romanian Criminal Procedure Code,[1] which stipulates that, until a final finding of guilt is made by the trial jurisdiction, the accused is presumed to be innocent with respect to the criminal offence with which they are charged.

The presumption of innocence is not an absolute presumption; rather, it is a rebuttable one.[2] This means that it can be overturned by compelling evidence that

[1] Law No. 135/2010 – Criminal Procedure Code (consolidated text, Official Gazette of Romania 2025, as amended), hereinafter: RCPC.

[2] In has been argued in the legal doctrine that the presumption of innocence constitutes a specific type of presumption, namely a practical presumption. Such a presumption involves a tentative commitment that the defendant is innocent ("presumably, the defendant is innocent") and an action policy of proceeding as if the defendant were innocent. This approach is justified by the need to avoid the greater harm of wrongful convictions (the other, lesser harm being false acquittals). Also, the

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justifies a guilty verdict. However, it is imperative that all such evidence is admissible and obtained lawfully, in accordance with all pertinent standards concerning legality and fairness. Thus, the presumption of innocence constitutes both a procedural safeguard,[3] linked in its classic sense to the notion of the burden of proof and the standard of proof beyond reasonable doubt,[4] and a substantive civil right.

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presumption of innocence is just a propositional imagining of the defendant's innocence, which has the potential to motivate the action policy of proceeding as if the defendant were innocent (unlike a supposition of the defendant's innocence). Accordingly, the presumption of innocence is a practical presumption, one that involves a propositional imagining of the defendant's innocence and an action policy of proceeding as if the defendant were innocent. See F. Yu, *Putting the 'Presumption' Back in the 'Presumption of Innocence'*, "International Journal of Evidence & Proof" 2022, vol. 26(4), p. 356.

[3] S. Guinchard, J. Buisson, *Procédure pénale*, Paris 2008, p. 7. In the case of *Allen v the United Kingdom* (no. 25424/09, 12 July 2013, paras 93–94), the European Court of Human Rights (ECtHR) held that Article 6 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms safeguards the right to be presumed innocent until proven guilty according to law. When considered as a procedural guarantee within the context of a criminal trial, the presumption of innocence imposes requirements with regard to the burden of proof, legal presumptions of fact and law, the privilege against self-incrimination, pre-trial publicity, and premature expressions of guilt by the trial court or other public officials. However, in accordance with the requirement to guarantee the practical and effective implementation of the right enshrined in Article 6 § 2 of the Convention, the presumption of innocence also encompasses an additional dimension. The overarching objective of this second aspect is to ensure that individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, are not subjected to treatment by public officials and authorities that would imply their guilt for the offence charged. In such cases, the presumption of innocence has already fulfilled its function of various requirements inherent in the procedural guarantee it affords, thus preventing an unfair criminal conviction from being imposed. Absent measures to guarantee the observance of the acquittal or discontinuance ruling in any subsequent proceedings, the guarantees of a fair trial as delineated in Article 6 § 2 of the Convention would risk becoming ineffective in practice. Following the conclusion of criminal proceedings, the individual's reputation and public perception become significant factors. "To a certain extent, the protection afforded under Article 6 § 2 in this respect may overlap with the protection afforded by Article 8".

[4] The principle of *in dubio pro reo* is not a rule for evaluating evidence that governs how the court forms its opinion, but rather a decision-making rule that governs the conduct to be followed in the event of a decision-making dilemma in which the court finds itself after assessing the evidence, when it is unable to form an opinion (U. Eisenberg, *Beweisrecht der StPO. Spezialkommentar*, München 2017, p. 65; a contrary view is advanced by Y. Jeanneret and A. Kuhn, who argue that the principle of *in dubio pro reo* also applies to the assessment of evidence; see Y. Jeanneret, A. Kuhn, *Précis de procédure pénale*, Berne 2018, p. 94). The interaction between the two institutions (beyond reasonable doubt vs *in dubio pro reo*) can manifest itself in cases of residual doubt. In such a case, the *in dubio pro reo* rule is the decision-making mechanism that substantiates and reinforces the doubt of reasoning that prevents the final inference necessary to establish guilt. Conversely, the application of the standard of proof beyond reasonable doubt is distinct from the rule of *in dubio pro reo* throughout the entire inferential process by which the prosecution's hypothesis is evaluated. The rule of *in dubio pro reo* intervenes at the conclusion of the evidence assessment process to resolve a decision-making dilemma.

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Regarding the procedural component, the following aspects must be considered:

1. The presumption of innocence is closely linked to the notion of impartiality of the court, as only before an independent and impartial court can evidence be adequately adduced, respecting the principles and guarantees of fair trial, so that the facts of the case are correctly established to avoid miscarriages of justice.[5]
2. The presumption of innocence is guaranteed by the regulation of the separation of judicial functions.
3. The presumption of innocence most often finds its application as a procedural guarantee closely linked with evidence and proof matters. The suspect or the accused is not obliged to prove their innocence and may exercise the right to silence. The burden of proof thus constitutes a mechanism for the asymmetrical risk allocation of judicial error,[6] for the benefit of the accused person and to the detriment of the general interests of society represented by the public prosecution authority, on whose application depends the legality of establishing guilt and, implicitly, the observance of the presumption of innocence. Alongside the standard of proof for the criminal charge, the burden of proof[7] constitutes an implicit constitutional guarantee of the presumption of innocence, having the role of conferring effective protection

[5] *Panteleyenko v Ukraine*, no. 11901/02, 29 June 2006, para. 67.

[6] The profoundly asymmetrical nature of the standard of proof beyond reasonable doubt means that the accused person does not have to prove his innocence, but only to establish reasonable doubt in the sense that he could be innocent, in order to secure an acquittal. See P. Roberts, A. Zuckerman, *Criminal Evidence*, Oxford 2010.

[7] Professor Jackson Allen has developed a framework which will address the presumption of innocence compatibility of reverse burdens specifically, based on the following three guiding principles: (1) where the law is ambiguous as to the allocation of the burden of proof, there is a rebuttable presumption against imposing a reverse persuasive burden; (2) in the absence of some independent justification, rationales based on the allocation of the burden of proof in civil law do not apply to reverse burdens in the criminal context; (3) imposing a reverse persuasive burden will not infringe the presumption of innocence if it attaches to a "secondary" responsibility which stems from the regulatory duty. See J. Allen, *Rethinking the Relationship Between Reverse Burdens and the Presumption of Innocence*, "International Journal of Evidence & Proof" 2021, vol. 25(2), pp. 122–128. Regarding the nature of the relationship between the presumption of innocence and reverse burdens Professor Jānis Rozenbergs has emphasized that this nature is a contentious subject among criminal lawyers. Some see the presumption of innocence as prohibiting reverse burdens only with respect to the constituent elements of an offence, with anything labelled as a defence being beyond the scope of the presumption's protection. Conversely, others interpret the presumption of innocence as prohibiting reverse burdens outright, on the grounds that they allow for an accused to be convicted in spite of reasonable doubt as to guilt. Between these two positions, a series of intermediate views also exists, each with different interpretations of how reverse burdens can be compatible with the presumption of innocence. See J. Rozenbergs, *Permissibility of the Reverse Burden of Proof and Its Limits in Criminal Proceedings in the Context of the Presumption of Innocence*, "Journal of the University of Latvia. Law" 2022, vol. 15, p. 270.

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on the accused person against the risk of judicial error that would severely impact their fundamental rights, operating as such from the moment the criminal action is brought forward, throughout the entire process, until the final judgment of the court.

In this context, it has been rightly pointed out in doctrine[8] that the presumption of innocence manifests itself, mainly, in two interrelated dimensions. The human rights dimension protects the innocent, and promotes the rule of law, whereas the evidential one places the burden of proof on the prosecution with a few narrowly defined exceptions, and requires that the guilt of a defendant be proved beyond reasonable doubt (in the common law tradition), or at the intime conviction *du juge* standard (in the civil law countries).

Concerning the presumption of innocence as a substantive civil right of the suspect or the accused, it must be respected by all persons (both the legislator and the judicial bodies or third parties) and must be protected. This legal nature of the presumption of innocence stems, on the one hand, from its universal character (being enshrined in all relevant international human rights documents) and, on the other hand, from the fact that judicial bodies or public authorities act in the name of society as a whole, so that the obligation to respect the presumption by the judicial bodies extends to the persons in whose name they act, establishing correlative obligations to the subjective right enforceable *erga omnes*.[9]

We will now analyse, in essence, the two simplified procedures[10] in the case of the recognition of guilt, so that we can subsequently underline the main safeguards for the presumption of innocence within these procedures.

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[8] S. Sayapin, *Presumption of Innocence*, [in:] *Max Planck Encyclopedia of International Procedural Law*, Oxford 2021, p. 4.

[9] Legal scholarship has demonstrated that the values underlying the presumption of innocence concern both the attitude that the state should adopt towards its citizens and the attitude that citizens should adopt towards one another. These values are reflected in the form of trust that ought to shape social relations, as well as in the conditions under which such trust may be strengthened, limited, or suspended. See R.A. Duff, *Presuming Innocence*, [in:] *Principles and Values in Criminal Law and Criminal Justice*, eds. L. Zender, J.V. Roberts, Oxford 2012, p. 52.

[10] A simplified procedure trial is defined as "a process not prohibited by law under which criminal defendants agree to accept guilt and/or cooperate with the investigative authority in exchange for some benefit from the state, most commonly in the form of reduced charges and/or lower sentences" (Fair Trials, *The Disappearing Trial*, 27.4.2017, https://www.fairtrials.org/articles/publications/the-disappearing-trial, access: 8.6.2026, p. 2). In Europe and beyond, the criminal trial has become "something of a luxury. (…) Reducing both cost and delay is one of the most pressing concerns for domestic policy makers" (J.S. Hodgson, *The Metamorphosis of Criminal Justice: A Comparative Account*, Oxford 2020, p. 13). Judicial authorities and prosecutors are under huge pressure to manage growing caseloads as efficiently as possible. Their obligation to manage cases effectively comes into conflict with their normative role (E. Luna, M. Wade (eds.), *The Prosecutor in Transnational Perspective*, Oxford 2012, p. 3). Essentially, three main reasons have led to the expansion of pre-trial procedures in cases of admission of guilt: speeding up the resolution of cases, limiting the number of cases in

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2. The abbreviated trial procedure in case of recognition of guilt

2.1. Notion – general rules

Pursuant to Article 375 RCPC, the trial upon admission of guilt represents an abbreviated procedure concerning the facts set forth under the criminal charge, that is conducted mainly on the basis of the evidence gathered during the criminal investigation, which has been previously considered by the pre-trial judge as having been lawfully obtained, not contested by the defendant regarding its credibility/reliability, and which is considered by the trial court as sufficient for the reconstruction of the truth and the just resolution of the case.

By opting for this abbreviated procedure, the defendant voluntarily and explicitly waives certain procedural rights stipulated by Article 6 (3) of the European Convention on Human Rights and Fundamental Freedoms (ECHR), including, inter alia, the right to obtain the attendance and examination of adverse witnesses before the court. By admitting the procedure, the applicability of the principle of immediacy is implicitly restricted in conditions where the testimonial evidence adduced during the criminal investigation is no longer challenged in an adversarial fashion during the trial so that the court to perceive it directly.

The defendant is not obliged to admit the legal qualification of the fact(s) as retained in the indictment, and may submit a motion to request a change of the legal qualification thereof.

The abbreviated trial generally takes place under conditions of publicity, orality, and adversarial during a single hearing (the one in which the procedure was allowed), the law permitting the granting of only one additional adjournment for the abduction of documentary evidence in the criminal or civil aspects of the case.

Both natural persons (minors or adults) and legal entities accused in the case may choose to follow the abbreviated procedure.

2.2. Conditions under which the abbreviated procedure can be allowed

According to Article 374 (4) RCPC the abbreviated procedure can be followed if the following conditions are met:

a) the defendant is not accused of committing an offence for which the law provides the penalty of life imprisonment;

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which the prosecutor orders solutions similar to discontinuing criminal proceedings, and reducing the workload of criminal courts (B. Niang, *Le 'plaider coupable' en France et aux États-Unis au regard des principes directeurs du procès pénal*, Paris 2014, p. 31). The level of judicial oversight around these processes varies from no control at all to some review of the process (J.M. Jehle, M. Wade, *Coping with Overloaded Criminal Justice Systems: The Rise of Prosecutorial Power Across Europe*, Berlin–Heidelberg 2006, p. 22).

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b) the defendant requests the trial according to the abbreviated procedure personally or through an authenticated written document;
c) the defendant requests that the trial be conducted based on the evidence gathered during the investigation phase that has been considered as lawfully – legally and fairly – obtained and the documents presented by the parties or the injured party;[11]
d) the defendant declares personally, explicitly, and unequivocally (oral statement or authenticated written document) before the commencement of the judicial inquiry (trial) that he/she fully admits the fact(s) described in the indictment;
e) the court assesses that the evidence gathered during the criminal investigation, as well as the documents, is compelling for ascertaining the truth and justly resolving the case.

[11] In Decision No. 565/2016, the Romanian Constitutional Court held that "the fact that the court, by not re-examining the evidence, will take it into account when judging the case cannot be considered as affecting the defendant's right to defence or to a fair trial, since, according to Article 103 (1) of the Code of Criminal Procedure, evidence does not have a value predetermined by law, but is assessed by the judicial authorities after evaluating all the evidence administered in the case. At the same time, the case law of the ECtHR has established the idea that the use of evidence obtained during the criminal investigation does not contravene Article 6 (3) (d) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as long as the right to defence has been respected (*Saidi v France*, or *Bracci v Italy*). Therefore, the use of evidence as administered during the criminal investigation cannot be taken into account if the defendant did not have the opportunity, at any stage of the previous proceedings, to challenge it. Consequently, it cannot be argued that the legal provisions criticized violate the right to a fair trial, since the defendant, although he had the opportunity to do so, did not challenge the validity of this evidence. Starting from the premise of biased administration of evidence, compounded by the indifference of the accused, does not render a text unconstitutional, since the purpose of criminal proceedings is to hold persons who have committed crimes criminally liable in a trial governed by the principle of finding the truth. Moreover, the resolution of a criminal case on the basis of evidence not re-examined by the court in the presence of the defendant is not in itself incompatible with the provisions of Article 6 ECHR on the right to a fair trial, since, in criminal proceedings, the requirement that evidence must always be produced before the accused is not absolute, as there may be exceptional circumstances in which the accused's right to have adequate and sufficient opportunity to challenge the evidence and request its re-examination or to participate in its examination is respected. At the same time, the Court found that, since legality and validity are fundamental characteristics of any evidence which, through the facts it contains, serves to establish the existence or non-existence of an offence, to identify the person who committed it and to ascertain the circumstances necessary for the fair resolution of the case, thereby contributing to the discovery of the truth in criminal proceedings, the right to defence or the right to a fair trial could be called into question if, despite the fact that the parties or the injured party did not have the opportunity to challenge them before a judge prior to the judicial investigation, the evidence is not re-examined".

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2.3. Allowing the procedure

At the first hearing where the summons has been legally served, the court, after reading the indictment, after informing the defendant of the charge and their procedural rights, warns the defendant that he/she may request that the trial take place only on the basis of the evidence gathered during the criminal investigation and the documents presented by the parties or the injured party, if he/she fully admit the facts which he/she is charged with, while informing about the procedural provisions regarding the effects of the abbreviated procedure.

The defendant may request, by oral statement or by authenticated written document, the trial according to the abbreviated procedure of recognition of guilt or according to the ordinary procedure. It is also possible for the defendants to request at the first hearing an adjournment to engage a lawyer of their choice and prepare their defence, and at the adjourned hearing to indicate that they wish the trial to take place according to the abbreviated procedure.

If the defendant requests that the trial be conducted according to the abbreviated procedure, the court proceeds to hear them if they are present.

After hearing the defendant, the court submits the defendant's request for the trial to be conducted according to the abbreviated procedure to the prosecutor, the injured party, and the parties for discussion.

Following the debates, the court issues one of the following decisions:

1. Admits the request for trial according to the abbreviated procedure when the conditions mentioned above are met.
2. Rejects the request for trial according to the abbreviated procedure when the conditions mentioned above are not met. In this case, the court continues the trial of the case according to the ordinary procedure.

Therefore, the simple expression of the defendant's will to have the trial procedure in the case of recognition of guilt applied to them does not automatically lead to the initiation of the abbreviated procedure, the court being able to reject such a request and proceed to try the case according to the ordinary procedure, with evidence being obtained during the judicial inquiry.

After admitting the request for trial according to the abbreviated procedure, the defendant may no longer retract their option to be tried according to the abbreviated procedure during the criminal proceedings, as their expression of will is irrevocable (in cases where the legislator would have wanted to provide for such a possibility of withdrawal, they would have expressly provided for it, e.g. the waiver of appeal).

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2.4. Trial according to the abbreviated procedure

Within this procedure, the judicial inquiry is abbreviated, essentially limited only to documentary evidence. The court can grant only one adjournment for the presentation of such documents.

Legal assistance is not mandatory, save for the conditions of the ordinary procedure.

After completing the abbreviated judicial inquiry, the court will give the floor for closing arguments to the prosecutor, the injured party, and the parties, according to the general rules of conducting submissions, as well as the last word to the defendant.

2.5. Effects of trying the case according to the abbreviated procedure

The admission of the abbreviated procedure cumulatively produces two main effects. First, a procedural effect, consisting of resolving the case without proceeding to adduce the entire body of evidence during the judicial inquiry; therefore, the case is resolved expeditiously, usually at a single hearing. Second, a substantive law effect, as the defendant benefits from a one-third reduction of the statutory limits of the penalty (both the special minimum and the special maximum), in the case of imprisonment, and a one-quarter reduction of the statutory limits of the penalty, in the case of a fine (both the special minimum and the special maximum of the day-fine provided by law).

2.6. Solutions and elements of individualisation of the sanctioning regime

In the process of evaluating the evidence, the court must consider the standard of proof beyond reasonable doubt.

Following deliberation, the court may also issue an acquittal, e.g., under Article 16 (1) (b) RCPC, in the situation where the act for which the defendant was sent for trial and which they admitted is not a criminal offence but a contravention, or when it has been decriminalised after their committal for trial.

Regarding the lawsuit of the civil action under the criminal proceedings, the trial court shall rule on this action together with the criminal action when the evidence gathered during the criminal investigation and the new documents filed with the case file are sufficient for its resolution. When further evidence, other than documents, is necessary to prove the civil claims, or when the documentary evidence would require more than one adjournment to be granted, the court, by interlocutory order, shall, in principle, order its severance. When severance is not possible (e.g., in the case of the offence of abuse of office that resulted in particularly serious consequences, when establishing the extent of the damage is essential

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for the resolution of the criminal action as well), the court shall proceed to adduce evidence expeditiously only with respect to the civil action.

3. Plea bargain agreement

3.1. Notion

The plea bargain agreement constitutes the referral of the case to the court concluded between the prosecutor and the defendant within a specific special procedure[12] when the defendant intends to admit the facts of which he/she is accused and their legal qualification, and agrees during discussions with the prosecutor on a manner of individualising the sanctioning treatment.[13]

[12] Legal scholarship has shown that the procedure regarding the agreement on the admission of guilt is a special procedure that presents itself as an alternative to the conduct of criminal proceedings, more precisely to the exercise of criminal action after the initiation of criminal proceedings. Referral to the court with the plea agreement does not trigger a trial in the traditional sense, but triggers a special procedure for the approval or validation of the agreement by the competent court. Therefore, it cannot be said that the plea agreement simplifies or shortens a procedural phase initiated under the ordinary procedure, but rather has the effect of eliminating the two procedural phases specific to the ordinary procedure: the preliminary chamber and the trial. See L. Criste, *Acordul de recunoaștere a vinovăției*, PhD thesis, Cluj-Napoca 2019.

[13] In *Natsvlishvili and Togonidze v Georgia* (no. 9043/05, 29 April 2014, paras 62-75) European Court of Human Rights referred to the conclusions of a comparative law study on the procedure for recognizing guilt in the Member States of the Council of Europe; from the grounds of the Courts's decision, we note the following: (a) a small number of countries (Austria, Denmark, and Portugal) do not have a law recognizing guilt as a legal concept within their national legal systems, but in practice they are familiar with guilt recognition or similar processes; (b) Austria, Belgium, France, and Liechtenstein have procedures that include elements of recognition of guilt leading to the termination of criminal proceedings; (c) Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Malta, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and the United Kingdom have domestic law governing negotiation procedures that may lead to a conviction; (d) negotiation of the sentence is found in Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Malta, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and the United Kingdom; (e) negotiation regarding the nature of the criminal charge is stipulated in Hungary, Serbia, Slovenia, Spain, Switzerland, and the United Kingdom; (f) the courts are required to verify whether the plea agreement has been drawn up in accordance with procedural and substantive law and in appropriate terms, whether the defendant has voluntarily and in full knowledge of the facts accepted the negotiation procedure, and whether there is evidence to support the charges admitted; (g) in principle, the court is required to examine the case file before ruling on the subject matter of the agreement; as an exception, in Italy and Russia, the law does not require the court to examine the evidence in the case file, but this may follow from the obligation to verify that the conditions for concluding the agreement have been met; (h) plea agreements are concluded between the prosecution and the defence, with the court having the power to validate or reject the agreement, but not to modify it; (i) in almost all the countries studied, with the apparent exception of Romania, the defendant's admission of guilt can only be used for the purpose of concluding the agreement;

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The plea bargain agreement can be initiated either by the prosecutor supervising or conducting the criminal investigation, or by the defendant, whether a natural person (adult or minor) or a legal person.[14]

Regardless of who initiates the conclusion of the agreement, the case prosecutor is the sole party able to decide whether a plea bargain agreement will be concluded, even if the superior hierarchical prosecutor has given their prior approval for the conclusion of the agreement. The defendant only has the right to initiate the conclusion of the agreement, not to obtain its conclusion.[15]

3.2. Conditions

According to Article 478 RCPC, for a plea bargain agreement to be concluded, several conditions must be met, which can be procedural or substantive.

First, criminal proceedings must have been instituted.

Second, the defendant must have been heard. The statement given by the defendant is mandatory and aims at concluding the plea bargain agreement to benefit from the legal effects of this special procedure. To go through the procedure and conclude the agreement, the defendant cannot exercise the right to silence nor relate any factual circumstances he/she wishes in exercising their right to defence. On the other hand, the prosecutor must ensure that the admission is not fictitious.

The statement given by the defendant for the purpose of concluding the plea bargain agreement cannot be used against the defendant's will as evidence in the

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if the agreement cannot be concluded or is rejected by the court, the admission of guilt cannot be used against the defendant; (j) the conclusion of a plea agreement results in a limitation of the right of appeal in Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Italy, Malta, Moldova, Montenegro, Russia, Slovakia, Serbia, Spain, Switzerland, and Ukraine; the right to appeal remains unaffected in France, Austria, Liechtenstein, Germany, Poland, and the United Kingdom.

[14] See lso F. Desportes, L. Lazerges-Cousquer, *Traité de procédure pénale*, Paris 2013, p. 835; S.-M. Cabon, *La négociation en matière pénale*, Paris 2016, p. 91; P.C. Henry, *Individual Accountability for Corporate Crimes After the Yates Memo: Deferred Prosecution Agreements & Criminal Justice Reform*, "American University Business Law Review" 2017, vol. 6(1), pp. 153–172.

[15] Legal scholarship has emphasized that currently defendants are seeking negotiated justice that they accept and prefer to imposed justice, which they consider unsatisfactory, out of a desire to participate fully in the resolution of the case in which they are involved (A.-L. Lebreton, *La déjudiciarisation de la société est-elle un danger?*, "Gazette du Palais" 2014, no. 186, p. 17). Criminal bargaining is nothing more than a "natural loan from the sphere of business law", where discussions about mutual advantages and reciprocal concessions are constantly taking place (J. Minkowski, *La part de la négociation dans le procès pénal*, "Gazette du Palais" 2018, no. 2, p. 19). In this regard, Professor Massimo Vogliotti stated that over the last three decades we have witnessed, throughout Europe, the emergence of "horizontal forms" of criminal justice administration, with the result that the traditional image of criminal law imposed through rigid formulas has been eclipsed (M. Vogliotti, *Mutations dans le champ pénal contemporain. Vers un droit pénal en réseau?*, "Revue de science criminelle et de droit pénal comparé" 2002, no. 4, p. 735).

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criminal proceedings to resolve the case according to the ordinary criminal procedure if a plea bargain agreement is not concluded or if, although concluded, it is not validated by the court. Put it differently, such a statement may not be deemed a waiver of the privilege against self-incrimination.[16]

Fourth, the defendant with whom the agreement is concluded must be legally assisted by a lawyer chosen by them or appointed *ex officio*. Legal assistance is mandatory within this procedure.

Fifth, the law provides for the offence for which criminal proceedings have been instituted only the penalty of a fine or imprisonment of up to 15 years, alternatively or not with a fine.

Sixth, there is sufficient evidence adduced during the criminal investigation from which the existence of the act for which criminal proceedings were instituted and the defendant's guilt result.

Even if the defendant unconditionally admits the commission of the crime[17] for which the investigation proceedings were instituted, the prosecutor must take all evidentiary steps to ensure that there is sufficient legally and fairly obtained evidence which, evaluated by the court in the trial phase, leads it, by reference to the standard "beyond reasonable doubt", to pronounce a decision from which it results that the defendants committed the offence of which they were accused.

Therefore, the standard of proof to be considered by the prosecutor is that of sufficient evidence from which it results that the defendant committed the offence of which he/she is accused, and not that of proof beyond reasonable doubt, the evaluation of which falls under the competence of the trial court.

This standard of proof to be considered by the prosecutor is higher than that to justify a reasonable suspicion regarding the commission of an offence, which is considered in the continuation of the criminal investigation against the suspect/institution of criminal proceedings, or that used for ordering a preventive measure (reasonable suspicion).

The insufficiency of evidence to establish the existence of the act and guilt will lead to the court's rejection of the plea bargain agreement.

Seventh, there is the prior and written approval of the superior hierarchical prosecutor, by which they agree with the terms of the agreement.

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[16] See B.L. Garrett, *Why Plea Bargains Are Not Confessions*, "William & Mary Law Review" 2016, vol. 57(4), pp. 1415–1444.

[17] Specialised studies in psychology have shown that humans have a "natural propensity to confess, even in the absence of a request", particularly when confronted with the prospect of punishment. Accordingly, it is necessary to ensure that probation not be limited to the defendant's confession. See T. Reik, *Le besoin d'avouer. Psychanalyse du crime et du châtiment*, Paris 1997, p. 54.

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Eighth, the case prosecutor and the defendant agree on the object of the agreement (the prosecutor's agreement with the defendant[18]).

3.3. Object of the plea bargain agreement

Pursuant to Article 479 RCPC, the plea bargain agreement has as its object: (i) the unconditional admission of committing the act(s) for which criminal proceedings were instituted/extended; (ii) the acceptance of the legal qualification of the act(s) for which criminal proceedings were instituted; and (iii) the type and quantum of the penalty (principal, complementary, and accessory).[19]

3.4. Trial procedure

According to Article 484 RCPC, after the conclusion of the plea bargain agreement, the prosecutor refers the matter to the court that would have jurisdiction to try the case on its merits and sends the court the agreement, accompanied by the criminal investigation file.[20]

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[18] Fairness in the criminal procedural system requires that defendants possess the knowledge and freedom required to make intelligent choices amongst the alternatives. See S. Bibas, *Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops*, https://scholarship.law.upenn.edu/faculty_scholarship/1644 (access: 1.8.2025).

[19] Legal scholarship has observed that "the Court of Justice provided some important insights regarding the mechanism of plea bargaining in joined cases C-187/01 and C-385/01 (2003). Analysis of the ruling in this case proved that there are no doubts that plea bargaining is perceived as a very complicated mechanism in the criminal justice system. Regardless, both the European Court of Human Rights (…) and the Court of Justice have considered it unnecessary to give a thorough ruling on the matter. Although this may be true, it is obvious that both courts acknowledge the European derivatives of plea bargaining. Judges comprehend the issues that arise from this mechanism and try to provide at least basic insights on the operation of plea bargaining in Europe. Despite academic scholars often disparaging plea bargaining per se, the same grounds cannot be found in the EU criminal law field. Hence, the spread of adversarialism and adoption of plea bargaining in European national criminal procedures seems to be viewed quite supportively" (S. Garbatavičiūtė, *Reshaping Plea Bargaining in European Criminal Justice*, 2021, https://www.journals.vu.lt/open-series/article/download/24048/23356/47130, access: 1.8.2025, p. 57).

[20] In a critical opinion on the institution of plea bargaining has been argued that "the separation of powers in criminal proceedings is thus abolished. Investigative and judicial functions are no longer separated. The prosecutor, influenced by his investigative hypothesis, issues the verdict. This violates the principle that 'a judge ought never prosecute'. A sober look at the reality of proceedings (not only in Switzerland) shows, however, that the 'no judgment without a charge' principle only applies on paper. Out-of-court settlements of criminal proceedings are ubiquitous" (M. Thommen, *Penal Orders and Abbreviated Proceedings*, [in:] *Elgar Encyclopaedia of Criminal Law and Criminal Justice*, eds. P. Caeiro, S. Gless, V. Mitsilegas, M.J. Costa, J. de Snaijer, G. Theodorakakou, Cheltenham 2024, p. 4).

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After the random allocation of the case file, the panel that is to rule on the case will carry out a preliminary check on the regularity of the referral. The verification of the regularity of the plea bargain agreement is, in essence, limited to the analysis of the prosecutor's compliance with the formal elements (extrinsic conditions of the referral), as well as the manner of describing the act concerned by the criminal charge.

If the court finds the referral to be irregular, it institutes a remedial procedure within which the court orders the remedying of omissions regarding the extrinsic conditions of the referral or the description of the act within a maximum of 5 days from the date of communication, notifying in this regard the head of the prosecutor's office that issued the agreement.

The court hearing is public and takes place with the summons of the defendant, the civil party or the party liable civilly, and the injured party, who will have the right to lodge requests, pleas, and make submissions regarding the object of the plea-bargaining agreement. Likewise, there will be an adversarial debate regarding the incidence of other institutions related to the just resolution of the case.[21]

The defendant cannot retract the admission made during the criminal investigation, save for the existence of constraints, violence, or pressure from the criminal investigation bodies or the use by them of other unfair practices (e.g., misleading information regarding the object of the agreement) can be proved. Thus, once the option to follow the special procedure has been expressed by signing the plea bargain agreement, followed by the referral to the court, the defendant has irrevocably decided the nature of the procedure to be followed.

According to Article 479 RCPC, the court, analysing the agreement, may pronounce one of the following decisions by judgment regarding the criminal aspect of the case:

1. Admits the plea bargain agreement and pronounces the decision on which an agreement was reached.[22] The court cannot order the admission of the agreement and the acquittal of the defendant. In these cases, it will order the rejection of the agreement. Likewise, a lesser penalty than the one negotiated cannot be applied, even if the court considers that the application of mitigating circumstances that have the effect of reducing the statutory limits of

[21] The requirement of adversarial proceedings, although time-consuming, should not be viewed solely as an obstacle to the speed of proceedings. See D. Dechenaud, *Le contradictoire et les procédures pénales accélérées*, [in:] *Le contradictoire dans le procès pénal*, ed. C. Ribeyre, Paris 2012, p. 112.

[22] Italian legal scholarship has rightly pointed out that "with his/her request of – consent to – a bargained sentence, the defendant does not overcome the presumption of innocence, but simply allows for a lower degree of assessment of his/her responsibility" (P. Tonini, *I riti di impronta angloamericana: patteggiamento e giudizio abbreviato, Associazione tra gli studiosi del processo penale. Il rito accusatorio a vent'anni dalla grande riforma. Continuità, fratture, nuovi orizzonti*, Milano 2012, p. 293).

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the penalty is justified. When the court admits the plea bargain agreement and no transaction or mediation agreement has been concluded between the parties regarding the civil action, the court leaves the civil action unresolved.

2. Rejects the plea bargain agreement and sends the case file to the prosecutor for the continuation of the criminal investigation if:

a) irregularity of the referral is found when:
   - the conditions provided by law for its valid conclusion regarding all the facts held against the defendant that were the object of the agreement are not met (Articles 480–482 RCPC);
   - the court considers that the solution agreed upon between the prosecutor and the defendant is unlawful.

b) although the referral is legally drawn up, the court considers that the solution agreed upon between the prosecutor and the defendant is unjustifiably lenient in relation to the seriousness of the offence or the dangerousness of the offender.

DISCUSSION AND CONCLUSIONS

Although the defendant waiver – to be tried in a procedure ensuring all the requirements arising from Article 6 ECHR[23] – is irrevocable, the legal rules applicable still stipulate guarantees of a nature to ensure effective protection of the presumption of innocence, considering the following:

1. The optional nature of both simplified procedures for the recognition of guilt. During the criminal proceedings, the defendant has the right to choose to be tried either according to the ordinary procedure or in abbreviated procedures, this right of option being essential for ensuring the protection of the presumption of innocence until a possible final conviction.
2. Detailed information of the defendant regarding the factual and legal grounds of the accusation.

[23] With regard to respect for the right to a fair trial in simplified criminal proceedings, Romanian legal scholarship has pointed out that "since the defendant as a main character/subject of the criminal trial admits the conviction for the purpose of saving time, costs and benefitting from the minimum public exposure, no one is left to challenge the verdict. If the procedural safeguards are fulfilled, such a verdict mimetically approaches the real truth. Fair trial is not a guarantee for finding the said truth, but only that the final solution is not reached by mistake. From this point of view, better a methodically obtained error, than the sad victory, which is the truth found by chance" (F. Ciopec, *Simplified, Yet Not Simplistic: Decision-Making in Criminal Courts in Romania*, [in:] *Legal Science: Functions, Significance and Future in Legal Systems II*, Riga 2019, p. 256).

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3. Ensuring an effective disclosure of the evidence gathered in the case file.[24]
4. The necessity of an unequivocal and voluntary expression of will by the accused to admit the accusation and to follow the abbreviated procedures. The accused must understand the consequences of admitting guilt, be fully aware of the implications of waiving the right to a trial according to the ordinary procedure, and must not be subjected to any form of constraint.[25]
5. Establishment of limits of access to abbreviated procedures in the case of offences with a high degree of social dangerousness (offences for which the law provides the penalty of life imprisonment, respectively offences for which the law provides a prison sentence of 15 years or more).
6. The obligation of the prosecution to conduct an effective investigation that supports the accusation – the standard of sufficiency of evidence, under the conditions in which it is still necessary to respect another fundamental principle, that of ascertaining the truth.
7. The establishment of the mandatory nature of legal assistance in the case of the plea bargain agreement. In the case of the abbreviated procedure of recognition of guilt, the law does not provide for the mandatory nature of legal assistance, with the rules of ordinary law being applicable (e.g., legal assistance is mandatory if the defendant is deprived of liberty or accused of committing an offence for which the law provides a prison sentence of more than 5 years). In the case of the plea bargain agreement, the lawyer has the role of informing the accused about their rights, evaluating the evidence, negotiating with the prosecutor, and ensuring that the decision to accept the conclusion of the agreement is taken with full knowledge of the facts. The presence of the lawyer counteracts the risk that the defendants, possibly in a vulnerable situation, may be coerced into admitting facts they did not commit or accepting a disproportionate penalty. The lawyer must ensure that the client's decision is in their best interest and that they understand the implications of waiving the right to a full trial, to challenge the evidence, and to fully benefit from the presumption of innocence until a final judgment.

[24] The "disappearance of the contested trial and the reduced opportunities for the defence to test the prosecution case shift the focus of fair trial rights such as equality of arms toward the pre-trial phase. (…) The logic of a shift away from trial and toward earlier case disposition based on some agreed outcome is to have earlier and fuller discovery, rather than less" (J.S. Hodgson, *op. cit.*, pp. 145–146).

[25] In the dissenting opinion in *Natsvlishvili and Togonidze v Georgia* (no. 9043/05, 29 April 2014, para. 4) Judge Gyulumyan has emphasized the following: "As regards the question whether the first applicant had agreed to the plea bargain in a truly voluntary manner, I note that the conviction rate in Georgia amounted to some 99% at the material time, in 2004. With such a sky-high rate, it is difficult to imagine that the applicant could have believed, during the relevant plea bargaining negotiations, that his chances of obtaining an acquittal were real. (…) Thus, the applicant had no real option other than to accept the 'take it or leave it' terms dictated by the prosecutor".

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8. Substantial judicial review of the procedure, of a nature to allow verification of whether the procedural rights of the accused have been respected, the publicity of the procedure, ensuring proportionality between the admitted act and the benefit obtained (e.g., the plea bargain agreement can be rejected if the negotiated penalty is unjustifiably lenient; this penalty may create the risk of creating unacceptable pressure on the accused to admit facts they did not commit), or the legality of the penalty (the agreed penalty falls within the legal limits and respects the principles of individualisation of the penalty). Thus, the active role of the judge is essential in guaranteeing the presumption of innocence.
9. The prohibition of using the defendant's statement of admission of guilt if the procedure of recognition of guilt is rejected or the plea bargain agreement is not validated.
10. The possibility of ordering an acquittal when the admitted act is not provided for by criminal law or there is a justification or a cause of non-imputability within the procedure of recognition of guilt, or of rejecting the plea bargain agreement if it is illegal, or if it does not have a sufficient factual basis or if there is a doubt regarding their guilt. This protects the accused from the consequences of an admission made in a specific context if it does not lead to a final resolution of the case.

Ensuring a balance between the desire to streamline the criminal process through simplified procedures of recognition of guilt must be correlated with the need to protect the fundamental rights of the accused, including the presumption of innocence.

The principle of the presumption of innocence acts as a fundamental limit for simplified procedures. These must not lead to unfair convictions that entail a violation of the principle of ascertaining the truth, or to direct or indirect unacceptable pressures on the accused that could influence their decision regarding the procedure to be followed.

In this context, it is essential that the courts be extremely vigilant to avoid the consecration by a final decision of unfair procedures resulting from vitiated consent generated by various forms of coercion or unjustified pressure or significant violations of the rights of the accused, of a nature to affect the presumption of innocence.

Only in this way can the minimum standards for the protection of the presumption of innocence at all stages of the criminal process enshrined in Directive 2016/343 be ensured.[26]

[26] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65/1, 11.3.2016).

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ABSTRAKT

W opracowaniu analizie poddano normatywny kształt domniemania niewinności w rumuńskim postępowaniu karnym, ze szczególnym uwzględnieniem jego komponentów proceduralnych w kontekście uproszczonych form rozpoznawania spraw. Zasadniczy cel artykułu to ocena, w jaki sposób gwarancje procesowe, takie jak dobrowolna i świadoma zgoda oskarżonego, standardy dopuszczalności dowodów oraz nadzór sądowy, zapewniają ochronę praw podstawowych w ramach uproszczonych form postępowania, obejmujących postępowanie konsensualne oraz tryb skrócony. Badaniem objęto analizę ram normatywnych, w tym przesłanek prawnych i skutków procesowych wskazanych mechanizmów. Podkreślono znaczenie kontroli sądowej i gwarancji prawnych dla zapobiegania naruszeniom domniemania niewinności, zapewnienia rzetelności postępowania oraz zachowania równowagi między jego efektywnością a ochroną praw podstawowych. Oryginalność badania polega na krytycznej ocenie zgodności prawa rumuńskiego ze standardami europejskimi, wraz z rekomendacjami dla praktyki prawniczej i kierunkami zmian legislacyjnych służących wzmocnieniu

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ochrony praw oskarżonego w ramach uproszczonych form postępowania karnego. Wyniki wnoszą wkład zarówno w teoretyczne rozumienie gwarancji procesowych, jak i w ich praktyczne stosowanie w systemach wymiaru sprawiedliwości w sprawach karnych, wzmacniając integralność procedur prawnych i ochronę praw człowieka.

Słowa kluczowe: domniemanie niewinności; ciężar dowodu; uproszczone formy postępowania karnego; porozumienie w przedmiocie dobrowolnego poddania się karze; rzetelny proces

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