Renunciation of Criminal Prosecution. Non-Constitutionality of the Provisions of article 318, par. (16) Thesis II of the Code of Criminal Procedure

Ion Rusu[1]

Abstract: In this study we have examined the provisions of art. 318 para. (16) Thesis II of the Code of Criminal Procedure, in the light of constitutional provisions. The examination highlights the unconstitutionality of these provisions, because by applying them, the legislator obliges the case prosecutor to adopt a solution that he does not consider legal. The study can be useful to the legislator from the perspective of operating some modifications of the analyzed text, as well as to the practitioners who can invoke it in criminal proceedings.

Keywords: Crime; classification; prosecution

1. Introduction

In the architecture of the Romanian criminal process the prosecutor has a central role, the complexity of his attributions resulting practically from the variety and the different effects that he produces at different moments of the Romanian criminal trial.

The main attributions of the Public Ministry and implicitly of the prosecutors who are part of the structure of this institution with a fundamental role in the rule of law are mentioned in the Romanian Constitution, these being: the representation of the general interests of the society, the defense of the law order and the rights and freedoms of citizens as well as for conducting and supervising the criminal investigation activity carried out by the judicial police.

[1] Professor, PhD, Danubius University of Galați and Lawyer - Vrancea Bar, Romania, Address: 3 Galati Blvd., Galati 800654, Romania, Tel.: +40372361102, Corresponding author: ionrusu@univ-danubius.ro.

These attributions are resumed and expressly provided in Law no. 304/2004 regarding the judicial organization[1], with the subsequent modifications and completions[2], as well as in the Code of criminal procedure.

Thus, in the provisions of art. 62 paragraph (2) of Law no. 304/2004 regarding the judicial organization it is mentioned that "*the prosecutors carry out their activity in accordance with the principles of legality, impartiality and hierarchical control, under the authority of the Minister of Justice, according to the law*".

Regarding the obligations of the prosecutor, it is stipulated that he "*must respect the fundamental rights and freedoms, the presumption of innocence, the right to a fair trial, the principle of equality of arms, the independence of the courts and the enforceability of the final court decisions. In public communication, prosecutors must respect the presumption of innocence, the non-public character of the criminal prosecution and the non-discriminatory right to information*"[3].

Starting from the need for the prosecutor to respect these fundamental principles of the criminal process, he has the following main attributions:

a) carries out the criminal prosecution in the cases and in the conditions provided by the law and participates, according to the law, in the resolution of conflicts by alternative means;

b) conducts and supervises the criminal investigation activity of the judicial police, conducts and controls the activity of other criminal investigation bodies;

c) notify the courts for judging the criminal cases, according to the law;

[1] Republished in the Official Monitor of Romania, Part I, no. 827 of September 13, 2005.

[2] The latest amendments are brought by Law no. 207/2018 for the amendment and completion of Law no. 304/2004 on judicial organization, published in the Official Monitor of Romania, Part I, no. 636 of July 20, 2018; E.G.O. no. 90/2018 on some measures for the operationalization of the Section for the investigation of criminal offenses, published in the Official Monitor of Romania, Part I, no. 862 of October 10, 2018; E.G.O. no. 92/2018 on amending and supplementing some normative acts in the field of justice, published in the Official Monitor of Romania, Part I, no. 874 of October 16, 2018; E.G.O. no. 7 of 19 February 2019 on some temporary measures regarding the admission competition to the National Institute of Magistrates, initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the internship and capacity exam of trainee judges and prosecutors, as well as for amending and supplementing Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 regarding the judicial organization and Law no. 317/2004 regarding the Superior Council of Magistracy, published in the Official Monitor of Romania, Part I, no. 137 of February 20, 2019, and E.G.O. no. 12 of March 5, 2019 for the amendment and completion of some normative acts in the field of justice, published in the Official Monitor of Romania, Part I, no. 185 of March 3, 2019. We specify the fact that by this ordinance the following normative acts have been modified and completed: Law no. 303/2004, Law no. 304/2004, Law no. 317/2004 and E.G.O. no. 7/2019.

[3] Article 62 para. (2) of Law no. 304/2004 on judicial organization, with subsequent amendments and completions.

d) exercises the civil action, in the cases provided by law;

e) participate, in accordance with the law, in the court hearings;

f) exercises the remedies against the court decision, under the conditions provided by law;

g) defends the legitimate rights and interests of minors, persons under interdiction, missing persons and other persons, according to the law;

h) acts for the prevention and combating of crime, under the coordination of the Minister of Justice, for the unitary implementation of the criminal policy of the state;

i) studying the causes that generate or favor the crime, elaborates and presents to the minister of justice proposals with a view to eliminating them, as well as for the improvement of the legislation in the field;

j) verifies compliance with the law at places of preventive detention;

k) exercises the attributions provided by the Law of the administrative contentious no. 554/2004, as subsequently amended and supplemented;

l) exercises any other attributions provided by law"[1].

Finally, the prosecutor's duties are supplemented by the provisions of the Code of Criminal Procedure, attributions structured on the four phases of the criminal process, respectively: the criminal prosecution, the preliminary chamber, the trial and the execution of the sanctions of criminal law remained final. We do not insist on them, because they are not the object of the present study, only wishing to refer to their existence.

Without proceeding with the examination of these obligations and attributions of the prosecutor, we only want to emphasize the importance of his activity in the Romanian criminal process, an activity that specifically aims at direct involvement in all phases of the Romanian criminal process.

At the same time, we insist on the prosecutor's attributions regarding the observance of some fundamental principles of the Romanian criminal process, attributions mentioned expressly, both in the Constitution and in Law no. 304/2004 regarding the judicial organization, with the subsequent modifications and completions.

[1] Art. 63 of Law no. 304/2004 on the judicial organization, with subsequent amendments and completions.

As it is the object of our study, we will make express references, followed by a concrete analysis on how the principle of legality is respected, a principle mentioned expressly in both the Constitution and the Law no. 304/2004 regarding the judicial organization, with the subsequent modifications and completions and the Criminal Procedure Code, with direct reference to the provisions of art. 318 para. (16) thesis II of the Code of Criminal Procedure.

2. The Renunciation of Criminal Prosecution

The renunciation of the criminal prosecution represents an element of novelty in the Romanian law, being in its essence a reflection of the principle of opportunity established in the provisions of art. 7 paragraph (2) Code of Criminal Procedure according to which "*In the cases and under the conditions expressly provided by law, the prosecutor may renounce the exercise of the criminal action if, in relation to the concrete elements of the case, there is no public interest in achieving its object*".

The institution of renunciation of the criminal prosecution was initially regulated in the provisions of art. 318 Code of Criminal Procedure where the conditions of application were provided.

We note that this text has been the subject of a complaint of unconstitutionality.

By Decision no. 23 of January 20, 2016 regarding the exception of unconstitutionality of the provisions of art. 318 of the Code of Criminal Procedure, the Constitutional Court has ruled that they are unconstitutional[1].

[1] Decision no. 23 of January 20, 2016 regarding the exception of unconstitutionality of the provisions of art. 318 of the Code of Criminal Procedure, published in the Official Monitor of Romania, Part I, no. 240 of March 31, 2016.
At the time of notification, the text of art. 318 of the Code of Criminal Procedure was as follows:
"*1. In the case of offenses for which the law provides for a fine or imprisonment for a maximum of 7 years, the prosecutor may renounce at criminal prosecution when, in relation to the content of the deed, the manner and means of commission, the purpose pursued and the concrete circumstances the perpetrator, with the consequences produced or which could have occurred by committing the crime, finds that there is no public interest in pursuing it.*
(2) When the perpetrator is known, the person of the suspect or defendant, the conduct prior to the commission of the crime and the efforts made to remove or reduce the consequences of the crime shall also be considered in assessing the public interest.
(3) The prosecutor may order, after consultation with the suspect or defendant, that he may fulfill one or more of the following obligations:
a) to remove the consequences of the criminal act or to repair the damage caused or to agree with the civil party a way to repair it;
b) to publicly apologize to the injured person;

In order to do so, the Constitutional Court held in its considerations that "*the criticized text does not meet the standards of clarity, precision and predictability of the criminal law, in violation of the principle of the legality of the criminal process, regulated by art. 2 of the Code of criminal procedure and, therefore, the provisions of art. 1 paragraph (5) of the Constitution, which provide for the compulsory observance in Romania of the Constitution, its supremacy and laws. In this regard, the Court finds that the legislator must regulate from a normative point of view both the framework of the criminal trial, as well as the competence of the judicial bodies and the concrete way of realizing each subdivision of each stage of the criminal process. In other words, the Court finds that, in the continental system, jurisprudence does not constitute a source of law so that the meaning of the term criticized can be clarified in this way, because, in such a case, the judge would become a legislator"*[1].

Regarding the jurisdiction of the court in the case of individualizing the sanctions of criminal law, the Court notes that "*all the courts, based on the same prerogatives of* ***jurisdictio*** *and* ***imperium****, have the right to, if the conditions provided in art. 74-106 of the Criminal Code are fulfilled, proceed to the individualization of the punishments by renouncing the application of the punishment, according to art. 80-82 of the Criminal Code, the postponement of the application of the punishment, according to art. 83-90 of the Criminal Code, or the suspension of the execution of the sentence under supervision, according to art. 91-98 of the Criminal Code. These powers of the court are exercised, but, after completing the stage of the criminal prosecution, the stage of the preliminary chamber and the judgment in substance. Thus, the renounciation of the application*

c) to perform unlisted work for the benefit of the community, for a period between 30 and 60 days, unless, due to the state of health, the person is unable to perform this work;
d) to attend a counseling program.
(4) If the prosecutor orders that the suspect or defendant fulfills the obligations provided in par. (3), establishes by ordinance the term by which they are to be fulfilled, which may not exceed 6 months or 9 months for obligations assumed by mediation agreement concluded with the civil party and which runs from the communication of the ordinance.
(5) The order to renounce the pursuit includes, as the case may be, the mentions provided in art. 286 para. (2), as well as provisions regarding the measures ordered according to par. (3) of this article and art. 315 para. (2) - (4), the term by which the obligations provided in par. (3) of this article and the sanction of failure to submit evidence to the prosecutor, as well as legal costs.
(6) In case of non-fulfillment in bad faith of the obligations within the term provided in par. (4), the prosecutor revokes the ordinance. The task of proving the fulfillment of the obligations or presenting the reasons for their non-fulfillment falls to the suspect or the defendant. A new renunciation to prosecution in the same case is no longer possible.
(7) The ordinance ordering the renunciation of the criminal investigation shall be communicated in copy to the person who made the notification, to the suspect, to the defendant or, as the case may be, to other interested persons".

[1] Decision of the Constitutional Court no. 23/2016, para. 16

of the sentence can be ordered when, from the evidence administered in the case, it results with certainty the reduced seriousness of the crime and the fact that the application of a sentence would be inappropriate due to the consequences it would have on the person…"[1].

Also, the Court finds that "*by the competence of the prosecutor to renounce criminal prosecution, according to art. 318 of the Code of Criminal Procedure, prior to the beginning of this procedural stage or during it, with the consequence of not suing the suspect or the defendant and of renouncing* ***ab abnitio*** *to the application of a sentence, places him in the situation of "telling" the right and of to give a judgment capable of being enforced, conferring the prerogatives of* ***jurisdictio*** *and* ***imperium*** *specific to the courts. In this way, the Court finds that, by applying the provisions of art. 318 of the Code of Criminal Procedure, the prosecutor directly carries out an act of justice, evading the courts of law to judge the cases ...*"[2].

It results, therefore, that the Court notes on the one hand the lack of clarity, accuracy and predictability of the text criticized, and on the other, that the accomplishment of the act of justice is carried out by the prosecutor (exclusive attribution of the court), without attributing to the court any attribution in this regard.

Taking into consideration both of the decision as a whole and of its considerations, the legislator, through the E.G.O. no. 18/2016 for amending and supplementing Law no. 286/2009 regarding the Criminal Code, Law no. 135/2010 regarding the Code of criminal procedure, as well as for the completion of art. 31 paragraph (1) of Law no. 304/2004 regarding the judicial organization[3], completely modified the text of art. 318 of the Code of criminal procedure through art. Section 82.

From the analysis of the text, we note that the main changes aim at submitting the confirmation of the order of renunciation to criminal prosecution of the preliminary chamber judge from the competent court to judge that case in the first instance and the express mention of the criteria in relation to which the existence of the public interest is analyzed.

At the same time, the text also introduced the procedure for admitting or rejecting the request to confirm the order of renunciation of the criminal prosecution ordered by the prosecutor.

[1] *Ibidem*, para. 24.
[2] *Ibidem*, para. 26.
[3] Published in the Official Monitor of Romania, Part I, no. 389 of May 23, 2016.

Not unimportant, with debatable effects in our opinion, is also the imperative provision according to which in case the preliminary chamber judge rejects the request to confirm the renunciation to criminal prosecution, a new renunciation "*cannot be disposed, regardless of the reason invoked*".

According to the new regulations contained in the provisions of art. 318 para. (1) Code of Criminal Procedure in order to dispose of this measure it is necessary to fulfill two conditions, respectively, the punishment provided by the law must be imprisonment for a maximum of 7 years or the fine and there should be no public interest in pursuing the deed.

If, regarding the first condition that refers to the punishment provided by law, there are no other interpretations other than those clearly expressed by the legislator, regarding the phrase of public interest, this requires some explanations.

Following the satisfaction of the demands formulated by the Court, the legislator mentioned in the text the main criteria in relation to which the public interest is analyzed.

These objective and subjective criteria concern:

"a) the content of the deed and the concrete circumstances of the deed;

b) the manner and means of committing the deed;

c) the purpose pursued;

d) the consequences that could have occurred or occurred by committing the crime;

e) the efforts of the criminal investigation bodies necessary to carry out the criminal process by reference to the seriousness of the crime and the time elapsed from the date of its commission;

f) the procedural attitude of the injured person;

g) the existence of a manifest disproportion between the expenses that would involve the conduct of the criminal trial and the gravity of the consequences produced or that could have been produced by committing the crime"[1].

In the event that the perpetrator is known, in addition to the criteria listed above, when assessing the public interest, the "*the suspect or the defendant's features, the conduct prior to the crime, the attitude of the suspect or the defendant after the*

[1] Article 318 para. (2) of Code of Criminal Procedure.

crime and the efforts made to remove or to mitigate the consequences of the crime will be taken into account"[1].

If the perpetrator is not known, "*the renunciation of the criminal prosecution can be ordered by reference only to the criteria provided in par. (2) letters a), b), e) and g)"*[2].

We do not insist upon analyzing the criteria from the point of view of which the public interest is analyzed, nor on the procedure to be followed in front of the preliminary chamber judge, considering that it is not necessary, referring strictly to the object of the study.

Regarding the solutions that can be adopted by the preliminary chamber judge (or possibly by the court, in the event that the legislator will renounce at the institution of the preliminary chamber judge), they may be admitting or rejecting the request for confirmation of the criminal prosecution.

In case of admitting the request to confirm the renunciation to the criminal prosecution, there are no particular problems of interpretation of the text.

However, we appreciate that the text para. (9) thesis I of the same article, according to which "*In case of non-fulfillment of bad faith obligations within the term provided in par. (7), the prosecutor revokes the order".*

We believe that this text cannot be implemented, being at least debatable, if not unconstitutional, because the prosecutor cannot revoke a court ruling, even if it is adopted by a preliminary chamber judge.

In the worst-case scenario, the prosecutor may notify the court, which may order the revocation of the renunciation to criminal prosecution, an order initially confirmed by the preliminary chamber judge.

In case of rejection of the request for confirmation of the criminal prosecution, the preliminary chamber judge "*dismisses the solution of renouncing the criminal prosecution and sends the case to the prosecutor to start or complete the criminal prosecution or, as the case may be, to start the criminal action and complete prosecution*[3]".

This solution is at least debatable, because in the event that the preliminary court judge rescinds the solution of renouncing the criminal prosecution and sends the case to the prosecutor to start the criminal prosecution, the legislator lets it be

[1] Article 318 para. (3) of Code of Criminal Procedure.
[2] Article 318 para. (4) of Code of Criminal Procedure.
[3] Art. 318 para. (15) letter a) of Code of Criminal Procedure.

understood that the solution of renouncing the criminal prosecution can be arranged and in the conditions in which the criminal investigation body did not order the beginning or continuation of the criminal prosecution, according to the provisions of art. 305 para. (1) and para. (3) Code of Criminal Procedure[1].

In these circumstances the text from art. 318 para. (15) letter a) thesis I, contradicts with the text of the same article, paragraphs 12 and 14, where it is written about parties and suspect, so in this case it was decided at least the beginning and the continuation of the prosecution or even it was put into motion the criminal action (if we refer to the parties).

The second solution that the preliminary chamber judge can adopt, if he rejects the request for confirmation of the order for renouncing the criminal prosecution, is to order the case to be classified, a text that also does not raise any problems of interpretation or constitutionality.

In a brief conclusion it can be appreciated that the new provisions regulating the institution of renouncing the criminal prosecution are superior to the previous ones, proving their usefulness in the current judicial practice of the criminal prosecution bodies.

3. The Unconstitutionality of the Provisions of Art. 318, para. (16) Thesis II Code of Criminal Procedure.

As mentioned above, the provisions of art. 318 para. (16) the second sentence of the Code of Criminal Procedure, does not allow the case prosecutor to order a new renunciation to criminal prosecution in the same case, *regardless of the reason invoked*, if the request for confirmation made by the prosecutor was rejected by the judge of preliminary chamber.

In judicial practice, if the preliminary chamber judge (or the court, in the case of the legislator's resignation at the institution of the preliminary chamber judge), rejects the request for confirmation of the order for renouncing the criminal prosecution formulated by the case prosecutor, he will also have to state the reason, respectively, to start or complete the prosecution, or, as the case may be, to start the criminal action and complete the prosecution.

[1] Article 305 para. (3) of Code of Criminal Procedure, provides: "When there is evidence from which to result the reasonable suspicion that a certain person committed the deed for which the criminal investigation was initiated and it is not included in any of the cases provided in art. 16 para. (1), the criminal investigation body shall order for the criminal investigation to be continued, which acquires the quality of suspect…".

Therefore, the text in question allows the preliminary chamber judge, that in case of rejection of the request for confirmation, this (conclusion of rejection) be motivated by two distinct situations, respectively:

a) to start the criminal prosecution and to complete the criminal prosecution;

b) for the initiation of the criminal action and for completing the criminal prosecution.

In the first case, speaking of the commencement of the criminal prosecution, the legislator lets it be understood that, the solution of renouncing the criminal prosecution can be ordered by the prosecutor and in the case in which the commencement of the criminal prosecution was not disposed, that is at least a questionable aspect.

The legal phrase "*to complete prosecution*" supposes that in that case the commencement of the criminal investigation was ordered, and the preliminary chamber judge considers that it must be completed with new criminal prosecution documents.

In the second case, we consider that the criminal prosecution has begun, but the criminal action is not in motion, and it is necessary to complete the criminal prosecution.

We observe that the text of the law obliges the judge, that with the abolition of the solution of renouncing the criminal prosecution, to order the referral of the case to the prosecutor, either to start or complete the criminal prosecution, or to start the criminal action and complete the criminal prosecution.

The text in question does not oblige the preliminary chamber judge to expressly mention and which criminal prosecution documents should be executed, which may lead to the conclusion that the judge can cancel the solution of renouncing the criminal prosecution, using a "dry" type phrase in order "to start the prosecution" or "to complete the prosecution" or "to set in motion the criminal action" or "to complete the criminal prosecution" without expressly indicating which are the acts of prosecution to be executed by the prosecutor.

We consider that such an interpretation is wrong and that the preliminary chamber judge is obliged to indicate concretely what are the criminal prosecution documents to be executed by the prosecutor in completing the criminal prosecution.

Therefore, in the case where the preliminary chamber judge rejects the request for confirmation, the prosecutor has only two solutions, respectively, the classification or the trial.

In the event that after the execution of the provisions given by the preliminary chamber judge the case prosecutor reaches the conclusion that the defendant should be sent to trial, there is no problem of unconstitutionality, the prosecutor proceeding accordingly.

The same situation also occurs when, following the administration of the evidence ordered by the judge, the prosecutor concludes that he must order the classification of the case.

A special situation arises when after the execution of the criminal prosecution documents ordered by the preliminary chamber judge, the prosecutor reaches the conclusion that the solution that is required is the renunciation of the criminal prosecution.

In this situation, the prosecutor can no longer order the renunciation of the criminal prosecution, being bound by the provisions of art. 318 para. (16) the second thesis to order, either the dismissal of the accused, or the dismissal of the case, both solutions being, in our opinion, illegal.

In the judicial practice, the prosecutor is practically forced by the provisions of the law, to have an illegal solution, a solution that violates numerous texts of the Romanian Constitution.

Among the violated texts we note: art. 1 paragraph (5), art. 1 paragraph (3), art. 20 paragraph (1), art. 131 paragraph (1) and art. 132 par. (1) of the Constitution of Romania.

Without insisting on examining these texts with direct reference to the criticized provisions, we only want to refer to the provisions of art. 131 paragraph (1) and art. 132 par. (1) of the Constitution of Romania, texts that confer the main constitutional attributions to the Public Ministry and the prosecutors of this institution.

Thus, according to the provisions of art. 131 paragraph (1) of the Constitution, "*In the judicial activity, the Public Ministry represents the general interests of the society and defends the order of law, as well as the rights and freedoms of the citizens*".

From the interpretation of the constitutional text it follows that both the Public Ministry regarded as an institution, as well as each prosecutor employed in this institution, has as main constitutional attributions the representation of the general interests of the company and the defense of the law order, as well as of the rights and freedoms of the citizens.

In the exercise of these constitutional powers, prosecutors are obliged to respect the rights and freedoms of the citizens they are investigating.

In the context of the exercise of these powers, in the phase of criminal prosecution, if the prosecutor finds that the provisions of art. 318 Code of Criminal Procedure is obliged to have a solution of renouncing the criminal prosecution.

In the criticized text, although the prosecutor has the certainty of applying the institution of renouncing the criminal prosecution, he cannot dispose of this solution, being obliged by the text of the law, to have another solution, even illegal.

According to the provisions of art. 132 par. (1) of the Romanian Constitution, "*The prosecutors carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice*".

The interpretation of the text to which we refer leads to the conclusion that in his activity, the prosecutor must respect the principle of legality, impartiality and hierarchical control.

If we refer to the criticized text, we observe that the case prosecutor, by sending to court or classifying the case, forced by the provisions of art. 318 para. (16) Code of Criminal Procedure according to which, it could no longer order the renunciation of the criminal prosecution, after the initial refusal of this solution by the preliminary Chamber judge, violated the provisions of the law.

In these circumstances, we find that the principle of legality was devoid of content, being fragrantly violated, because the prosecutor of the case, although he is convinced that in the case it is necessary to take the measure of renouncing the criminal prosecution, is obliged by the text of the law to send him to trial. defendant or order the classification.

In our opinion, the criticized text also violates the provisions of art. 6 para. 1 (the right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms[1], as well as the provisions of art. 47 (The right to an effective remedy and a fair trial) of the Charter of Fundamental Rights of the European Union[2].

[1] Art. 6. The right to a fair trial *1. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. or on the merits of any criminal charge against him. The decision must be given in public, but access to the courtroom.* (…).

[2] Art. 47. The right to an efficient remedy and to a fair trial (...)

Based on the presented arguments, we consider that the provisions of art. 318 para. (16) The second sentence of the Code of Criminal Procedure is unconstitutional

4. Conclusions

The new criminal legislation recently entered into force (01.02.2014), has provoked numerous debates and positions regarding the constitutionality of some texts. Not infrequently, the Constitutional Court being most often referred by lawyers, through its decisions, found the unconstitutionality of texts, which were subsequently amended or supplemented or even completely eliminated by the legislator. However, the process of adapting the legislation in accordance with the decisions of the Constitutional Court proved to be cumbersome, some decisions, adopted even about 4 years ago, were not taken into consideration by the legislator until this date[1].

This lack of reaction of the legislator has caused numerous malfunctions in the practical activity of the judicial bodies. This study highlights some aspects of unconstitutionality of the provisions of art. 318 para. (16) Thesis II of the Code of Criminal Procedure, a case which involves the intervention of the legislator to amend and supplement the text in question.

5. Bibliography

Republished in the Official Monitor of Romania, Part I, no. 827 of September 13, 2005.

The latest amendments are brought by Law no. 207/2018 for the amendment and completion of Law no. 304/2004 on judicial organization, published in the Official Monitor of Romania, Part I, no. 636 of July 20, 2018; E.G.O. no. 90/2018 on some measures for the operationalization of the Section for the investigation of criminal offenses, published in the Official Monitor of Romania, Part I, no. 862 of October 10, 2018; E.G.O. no. 92/2018 on amending and supplementing some normative acts in the field of justice, published in the Official Monitor of Romania, Part I, no. 874 of October 16, 2018; E.G.O. no. 7 of 19 February 2019 on some temporary measures regarding the admission competition to the National Institute of Magistrates, initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the internship and capacity exam of trainee judges and prosecutors, as well as for amending and supplementing Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 regarding the judicial organization and Law no. 317/2004 regarding the Superior Council of Magistracy, published in the Official Monitor of Romania, Part I,

Everyone has the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law. Everyone has the opportunity to be advised, defended and represented.

[1] We take into consideration the Decision of the Constitutional Court no. 732/2014, published in the Official Monitor of Romania, Part I, no. 69 of January 27, 2015.

no. 137 of February 20, 2019, and E.G.O. no. 12 of March 5, 2019 for the amendment and completion of some normative acts in the field of justice, published in the Official Monitor of Romania, Part I, no. 185 of March 3, 2019. We specify the fact that by this ordinance the following normative acts have been modified and completed: Law no. 303/2004, Law no. 304/2004, Law no. 317/2004 and E.G.O. no. 7/2019.

Art. 62 para. (2) of Law no. 304/2004 regarding the judicial organization, with the subsequent modifications and completions.

Art. 63 of Law no. 304/2004 regarding the judicial organization, with the subsequent modifications and completions.

Decision no. 23 of January 20, 2016 regarding the exception of unconstitutionality of the provisions of art. 318 of the Code of Criminal Procedure, published in the Official Monitor of Romania, Part I, no. 240 of March 31, 2016.

The decision of the Constitutional Court no. 23/2016, para. 16.

Published in the Official Monitor of Romania, Part I, no. 389 of May 23, 2016.

Code of Criminal Procedure.

The decision of the Constitutional Court no. 732/2014, published in the Official Monitor of Romania, Part I, no. 69 of January 27, 2015.

Convention for the Protection of Human Rights and Fundamental Freedoms.

Charter of Fundamental Rights of the European Union.