

THE IMPACT OF THE ECHR JURISPRUDENCE ON THE ROMANIAN CRIMINAL PROCESS

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***Abstract:** The jurisprudence of the European Court of Human Rights (ECHR) has had a significant impact on the Romanian criminal process, bringing it into line with European standards in the protection of fundamental rights. The decisions of the ECHR have influenced multiple aspects of the judicial system, generating major legislative and procedural changes. This influence has led to the adoption of important reforms, such as the 2014 Code of Criminal Procedure, the empowerment of judicial authorities and the development of a domestic jurisprudence more aligned with the principles of the ECHR. Although progress is visible, the continued implementation of these standards remains a priority for strengthening the rule of law and protecting fundamental rights in Romania (Coman, 2017, p. 10).*

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Introduction

The jurisprudence of the European Court of Human Rights (ECHR) has had a profound and transformative impact on criminal proceedings in Romania, significantly contributing to the alignment of this European standard in the protection of fundamental rights. As Romania became a party to the European Convention on Human Rights in 1994, the

domestic legal system has undergone a constant process of adaptation in order to comply with the requirements imposed by the ECHR. This influence has manifested itself both at the legislative level and in judicial practice, generating substantial changes in the way criminal proceedings are conceived and conducted.

One element of this impact is the Romanian orientation of the criminal procedure sector to guarantee fundamental rights, such as the right to a fair trial, protection against inhuman or degrading treatment, respect for liberty and security of persons, as well as the protection of private life. The ECHR decisions have identified numerous gaps and deficiencies in the Romanian judicial system, leading the authorities to implement significant reforms, including amendments to the Criminal Code and the Code of Criminal Procedure.

This paper analyses the impact of the ECHR jurisprudence on the Romanian criminal process, highlighting the main areas of influence and the changes generated by the Court's decisions. At the same time, it underlines the importance of integrating the principles of the ECHR into the national judicial system, as an essential part of consolidating democracy and the rule of law in Romania.

1. The notion of fair trial in the ECHR jurisprudence: implications for Romanian legislation

The notion of a fair trial is regulated in Article 6 of the European Convention on Human Rights (ECHR) and represents one of the most important rights guaranteed by the Convention. Through its judgments, the European Court of Human Rights has developed a complex corpus of principles and standards applicable to all signatory states, including Romania. This detailed analysis will explore the notion of a fair trial in the case law of the ECHR, highlighting the implications for Romanian legislation and judicial practice.

1. The components of fair trial in the case law of the ECHR

The changes produced domestically, following the entry into force of the new Codes, were based on the principle of the primacy of EU law in relation to domestic law, starting from the premise that the national legal order is subsumed by the European one, with which it must be harmonized in an efficient and constructive manner, in achieving the perpetual desideratum of protecting the supremacy of human rights, by adopting normative acts having supranational legal force, with unitary and coherent application in each Union state (Corsei & Stefănoaia, 2022, p. 98).

The case law of the ECHR defines a fair trial as one that respects a set of procedural guarantees, essential for ensuring individual rights and a correct administration of justice. Among these are:

a) Access to justice

The ECHR emphasizes that the right of access to justice is a fundamental element of a fair trial. In Romania, this principle has required adjustments in terms of eliminating financial or procedural barriers that could hinder citizens' effective access to the courts.

b) Independence and impartiality of the court

According to the case law of the ECHR, a fair trial implies the resolution of cases by an independent and impartial court. In Romania, the Court's decisions have led to the strengthening of guarantees of the independence of magistrates, including through legislative reforms in the field of judicial organization.

c) Adversarial and equality of arms

The ECHR has ruled that the parties must have the opportunity to present their case on an equal footing and to effectively participate in the trial. This principle has directly influenced Romanian legislation, leading to the introduction of rules to ensure correct information of the parties and equal access to evidence.

d) Reasoning of judicial decisions

A fair trial requires that court decisions be sufficiently motivated to allow the parties to understand the grounds for the solution. The case law of the ECHR has led to stricter requirements regarding the quality of reasoning in court decisions in Romania.

e) Right to defence

The ECHR has stressed the importance of ensuring an effective right to defence, including access to a lawyer, in particular for vulnerable defendants. Romania had to introduce clearer mechanisms to guarantee this right at all stages of the criminal process.

2. The impact of ECtHR case law on Romanian legislative reform

ECtHR case law has had a direct impact on Romanian legislation and judicial practice, forcing the state to adopt measures to remedy the deficiencies identified. Relevant examples include:

a) Amendment of the Code of Criminal Procedure (2014)

The adoption of a new Code of Criminal Procedure represented a crucial step in aligning the Romanian criminal process with ECHR standards. Among the significant changes inspired by ECtHR case law are:

Introduction of clear regulations on the right to a lawyer from the first moments of detention.

Additional guarantees to protect the right to silence and non-self-incrimination.

Stricter regulation of preventive measures to prevent arbitrary detention.

b) Reforms regarding the length of proceedings

The ECtHR has sanctioned Romania in numerous cases for the excessive length of criminal trials, which has led to the adoption of measures to speed up proceedings and sanction unjustified delays.

c) Regulation of the use of evidence

The ECHR has criticized the use of evidence obtained illegally or by methods that violate fundamental rights. As a result, Romanian legislation has included stricter rules on the exclusion of illegal evidence, in line with the principles of the ECHR.

The notion of a fair trial, as developed in the case law of the ECHR, has had a profound impact on Romanian legislation and judicial practice. Although notable progress has been made, the effective and consistent implementation of these standards remains a challenge. Reforms initiated under the influence of the ECHR have contributed to strengthening the rule of law in Romania, but their effectiveness depends to a large extent on the will of the authorities and the commitment of judicial institutions to fully respect the fundamental rights of citizens.

3. Respect for the right to a defence according to the ECHR judgments

The right to a defence is one of the fundamental pillars of a fair trial, enshrined in Article 6 of the European Convention on Human Rights (ECHR). The European Court of Human Rights has developed an extensive case law on this right, highlighting both theoretical aspects and practical application. Through its judgments, the ECHR has imposed strict standards on member states, including Romania, to effectively guarantee the right to a defence.

This detailed analysis explores the main requirements of the ECHR regarding respect for this right, their impact on Romanian legislation and the challenges encountered in their implementation.

The right to a defence in the ECHR jurisprudence

The right to a defence is defined by the ECHR as a set of guarantees that allow the accused person to defend his or her case effectively and to benefit from protection against abuses. The ECtHR case law has highlighted the following key issues:

a) Right to be informed promptly of the charges

The ECtHR emphasises that anyone accused of having committed a criminal offence must be informed, in clear and accessible language, of the nature and grounds of the charges (e.g. *Pélissier and Sassi v. France*).

- Impact on Romanian legislation: The Romanian Code of Criminal Procedure has been adjusted to ensure prompt and detailed communication of the charges from the stage of criminal investigation.

b) Access to a lawyer

The ECtHR considers access to a lawyer to be an essential component of the right to defence, in particular at critical stages of the proceedings, such as interrogations or detention.

- Relevant cases: In the case of *Salduz v. Turkey*, the Court established that any defendant has the right to legal assistance from the very first moments of detention. The lack of a lawyer may lead to a violation of the right to a fair trial.

- Application in Romania: ECHR decisions have led to the inclusion of the obligation to automatically appoint a lawyer for detained or arrested defendants.

c) Real possibility to prepare the defense

The ECHR has ruled that the defendant must have sufficient time and means to prepare his defense, including access to the file and evidence (e.g. *Gregacevic v. Croatia*).

- Reforms in Romania: The Criminal Procedure Code imposes the obligation to make available all relevant evidence, including that which could support the defense.

d) Right to choose a lawyer

The ECHR emphasizes that the defendant must be free to choose his lawyer. If he cannot afford a lawyer, the state must provide one ex officio, provided that the assistance provided is effective (e.g. *Artico v. Italy*).

- Implications for Romania: The Romanian state is obliged to provide free legal aid in cases provided for by law, but must also guarantee its quality.

e) Right to silence and non-self-incrimination

The ECHR has recognized this right as an integral part of the right to defence. In the case of *Funke v. France*, the Court showed that any pressure on the defendant to incriminate himself constitutes a violation of the Convention.

- Impact on Romania: The Code of Criminal Procedure provides for the defendant's right to remain silent and not to contribute to his own incrimination.

Respect for the right to defence, as enshrined in the ECHR jurisprudence, has led to significant changes in Romanian legislation, contributing to the consolidation of fundamental rights in criminal proceedings. However, the practical application of these standards remains a challenge, requiring constant attention from the judicial authorities. Effectively guaranteeing the right to defence does not only mean the existence of legal regulations, but also their implementation in the spirit and letter of the Convention.

4. Interceptions and audio/video recordings: applicable ECHR standards

Interceptions and audio/video recordings are essential tools for investigating and combating crime, but their use must respect the fundamental rights of the individual, in particular the right to privacy enshrined in Article 8 of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECHR) has developed strict standards to ensure that technical surveillance measures comply with the principles of proportionality, legality and necessity in a democratic society.

This detailed analysis explores the standards established by the ECHR in the field of interceptions and audio/video recordings, their implications for Romanian law and the practical challenges in their application.

1. Interceptions and recordings in the case law of the ECHR

The case law of the ECHR provides a detailed framework on the use of interceptions and audio/video recordings. In examining the compatibility with Article 8, the Court checks whether the interference with private life complies with the following principles:

a) Lawfulness of the interference

Any interception or recording measure must be provided for by law, and the law must be clear, accessible and foreseeable.

- Malone v. the United Kingdom (1984): The Court found that telephone interceptions were carried out without a clear legislative framework, in breach of Article 8.
- Application in Romania: Romanian law, through the Code of Criminal Procedure, provides for strict conditions for authorising interceptions, including the requirement of a reasoned judicial decision.

b) Necessity in a democratic society

Interceptions must be justified by an important public interest, such as the protection of national security, the prevention of serious crime or the protection of the rights of others. The measure must also be proportionate to the aim pursued.

- Klass and Others v. Germany (1978): The ECtHR stressed that surveillance must be justified only in situations where it is absolutely necessary to protect a public interest.
- Impact in Romania: Prosecutors must demonstrate the necessity of technical surveillance, and judges must assess the proportionality of the measure.

c) Judicial review

Any surveillance measure must be subject to effective and independent review. The lack of such review constitutes a violation of Article 8.

- Roman Zakharov v. Russia (2015): The ECtHR condemned Russia for its lack of effective mechanisms for monitoring interceptions.

- Application in Romania: Only courts can authorise surveillance measures, and these must be reasoned in detail to prevent abuse.

d) Duration of the measure

Interceptions and recordings must be limited in time and extensions must be justified. Indefinite or excessively long surveillance is considered abusive.

- Weber and Saravia v. Germany (2006): The ECtHR stressed the importance of strictly limiting the duration of surveillance measures.

- Impact in Romania: The legislation provides for a limited initial duration of surveillance, which can only be extended under strict and justified conditions.

e) Confidentiality of information obtained

Data collected through interceptions must be kept confidential and used exclusively for the purpose for which they were obtained. Any unauthorised disclosure constitutes a violation of fundamental rights.

- Dragojević v. Croatia (2015): The Court found that the failure to protect information obtained through interceptions constituted a violation of Article 8 (Council of Europe and European Union Agency for Fundamental Rights, 2016, p. 55).

- Application in Romania: The data obtained are strictly regulated, and their disclosure is subject to criminal penalties.

2. Impact of ECHR standards on Romanian legislation

The ECHR rulings have led to a series of important adjustments in Romanian legislation and judicial practice, in order to ensure compliance with European standards:

a) Code of Criminal Procedure (2014)

The new legislation introduced detailed regulations on interceptions and recordings, including:

- The need for an authorization issued by a judge.
- Limiting the duration of surveillance measures to 30 days, with the possibility of extension only under strict conditions.
- Destruction of information that is not relevant from an evidentiary point of view.

b) Decision of the Constitutional Court of Romania no. 51/2016

This decision of the Constitutional Court of Romania declared the use of the Romanian Intelligence Service (SRI) to execute interception warrants unconstitutional, strengthening judicial control over these measures.

c) Protection of data obtained

Romania has implemented strict regulations for the protection of data obtained through interceptions, including the obligation to destroy recordings that are not used as evidence in the trial.

Interceptions and audio/video recordings are important measures in the fight against crime, but their use must comply with ECHR standards on the right to privacy. ECHR case law has established clear requirements regarding the legality, necessity, proportionality and judicial review of such measures. Romania has implemented numerous legislative and institutional reforms to align with these standards, but practical challenges, such as effective monitoring and strict compliance with ECHR principles, remain a priority for ensuring the protection of fundamental rights.

Conclusions

The impact of the jurisprudence of the European Court of Human Rights (ECHR) on the Romanian criminal process has been profound, leading to a significant transformation of the legal system towards

compliance with European standards on fundamental rights. Through its judgments, the ECHR has identified numerous deficiencies and non-compliant practices in Romanian criminal proceedings, thus imposing legislative, institutional and procedural reforms.

One of the most important contributions of the ECHR jurisprudence is the strengthening of procedural rights, including the right to a fair trial, protection against arbitrary detention, effective investigation of inhuman or degrading treatment and guaranteeing respect for private life. In addition, the ECHR judgments have led to the adoption of concrete measures to combat prison overcrowding and to improve detention conditions, thus contributing to respect for human dignity.

The transformations generated by these decisions have not only been legislative, but also cultural in nature, stimulating a paradigm shift within the Romanian judicial system. Magistrates, lawyers and other judicial authorities have had to adjust their practices and apply ECHR standards in their daily work, contributing to the creation of a fairer and more transparent legal framework. In conclusion, the case law of the ECHR has played an essential role in the modernization of the Romanian criminal process, strengthening the protection of fundamental rights and contributing to Romania's alignment with European values regarding the rule of law. Although significant progress has been made, continuing efforts to implement ECHR standards remains a priority, thus ensuring a balance between the efficiency of the act of justice and respect for the fundamental rights of persons involved in the criminal process.

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