

The Presumption of Innocence and the Right to be Present at Trial in Criminal Proceedings: The Romanian Case Study

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Abstract The present article aims at analyzing the national legislative framework to assess the level of transposition of the Directive (EU) 2016/343 of the European Parliament and of the Council of March 9, 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 in Romania. The article has been drafted following several methodological indications, contained in a methodological protocol specially elaborated for this research. The research included a desk review, as well as semi-structured interviews with relevant actors, addressing the following topics: (a) The general situation regarding the right to be present and presumption of innocence; (b) Transposition and implementation of the Directive; (c) Recommendations and proposals for improvement.

Keywords: • presumption of innocence • Directive 2016/343 • right to be present • Romania

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1 Introduction

Starting with April 2018, Romania among other member states of the European Union, had the obligation to fully transpose into its national legislation Directive (EU) 2016/343 of the European Parliament and of the Council of March 9, 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. One of the most important provisions of the Directive is set out in article 8 regarding the right to be present at trial. In regards specifically to the right to be present and accordance with the article, member states must ensure that suspects and accused persons have the right to be present at their trial and subsequently to provide that the suspect or accused person has been informed in due time of the trial and is represented by a mandated lawyer.

2 Methodology

For the elaboration of this particular article, a specified methodology pattern has been used by analyzing the current context of the Romanian legislation in correlation with Directive EU 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Whilst elaborating an in-depth evaluation of the national legislation, the certain emphasis has been put on gathering input from several experts, by using a previously developed questionnaire that had the objective of providing useful information about the national legislation before the Directive and even more interesting after the Directive entered into force. Furthermore, for the elaboration of the report, mixed research methods were used such as mentioned beforehand : (1) Qualitative method – Interviews with national experts that have experience in the field (judges, prosecutors, law experts) and in-depth evaluation of legislation; (2) Quantitative method – applying questionnaire. Several documents have been examined and used for the elaboration of the report, such as the following sources: Romanian Constitution, Criminal Procedure Code, and correlated laws/conventions/regulations.



3 Conceptual framework

The Romanian national legislation, through its NCPC (article 77), defines **a suspect** *the person in respect of whom the relevant data and evidence suggest reasonable suspicion that he has committed an offense under the Criminal Law*. According to the national legislation, the suspect has the same rights provided by the Law for the defendant, unless the law provides otherwise. Article 82 of the NCPC defines **the accused** as the person

against whom the criminal actions were initiated, and that becomes consequently part of the criminal trial. The defendant has several rights integrated within the national legislation (article 83 of NCPC), such as (1) ***The right to not make any statements during the criminal proceedings, drawing attention to the fact that if they refuse to give statements, they will not suffer any adverse consequences and if they make statements, those can be used as evidence against them;*** (2) *The right to be informed about the act for which it is investigated and its legal classification;* (3) *the right to consult the file, according to the Law;* (4) *the right to have a lawyer chosen and, if he does not appoint one, in cases of compulsory assistance, the right to appoint a lawyer ex officio;* (5) *the right to propose the taking of evidence under the conditions provided by the Law, to raise exceptions and to draw conclusions;* (6) *the right to make any other claims regarding the settlement of the criminal and civil aspects of the case;* (7) *the right to benefit free of charge from an interpreter when he/she does not understand, speaks well or can not communicate in Romanian;* (8) *the right to appeal to a mediator, in cases permitted by Law;*

The principle of the **right to a fair trial** was first established in article 6, paragraph 1 of the European Convention on Human Rights, and implemented at the national level through article 10 of the Law no. 34/2004 regarding the judicial organization (republished) according to which all persons have the right to a fair trial and to solve the cases within a reasonable time by an impartial and independent court, established according to the Law. In the Romanian constitutional system, the right to a fair trial was explicitly found in the Art. 21 par. (3) of the Romanian Constitution, as a result of its last review in 2003. The article entitled Free access to justice makes several references such as (1) *Any person may address justice to defend his rights, freedoms and legitimate interests;* (2) *No law may preclude the exercise of this right;* (3) *The parties shall have the right to a fair trial and to settle the cases within a reasonable time and* (4) *The particular administrative jurisdictions are optional and free of charge.*

As regards the need for a fair trial, since the Convention does not define the term "fair," it has been stated in the doctrine that this requirement must be interpreted in such a way as to ensure respect for fundamental principles such as the contradictorily principle (adversarial), the right to defense, equality, and compliance with the requirement that the cases should be settled within a reasonable time. Furthermore, respect for the right to defense is a fundamental principle of the criminal process, as well as one of the guarantees of the right to a fair trial.

Article 24 of the Constitution provided that the right to defense is guaranteed and that throughout the criminal proceedings, the parties have the right to be assisted by a lawyer elected or appointed by an officer or represented by a defense counsel. In correlation with the NCPC, article 8 refers to fairness and a reasonable duration of the criminal proceedings. In doing so, the judicial bodies must carry out the criminal prosecution and the trial in compliance with the procedural guarantees and the rights of parties and the

procedural subjects, so that the facts that constitute offenses are entirely and promptly detected, that no innocent person should be held liable and consequently that any person who has committed an offense to be punished according to the Law within a reasonable time. Article 10 of the NCPP presents an analytical presentation of the rights which are part of the principle of guaranteeing the right to defense. Par. (3) of the same article mentions that the accused has the right to be informed immediately and before being heard about the deed for which the prosecution is carried out and its legal classification. According to par. (4), the suspect and the defendant must be aware that they have the right not to make any statement before being heard.

4 Evaluation of national legislation before Directive (EU) 2016/343

The presumption of innocence was first found within the Romanian Law through the decree no.212 of 1974 for the adoption of the International Covenant on Civil and Political Rights. Later on, it was reconfirmed by Law no. 53 of 1994 by which Romania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and the additional protocols to this Convention. Correlated with the definitions and rights mentioned beforehand, the current Romanian national legislation makes direct references to the notion of **presumption of innocence** under Article 4 of the NCPC, indicating that any person shall be considered innocent until the determination of his guilt by a final criminal judgment. More so, after the administration of the entire evidence, any doubt shall be interpreted in favor of the suspect or accused. Furthermore, under the Romanian Constitution (article 23 par. 11) a person is considered innocent until the final judgment of the conviction has passed, thus reiterating that every suspect or accused person will be presumed innocent until his guilt has been proven under the Law (**principle in dubio pro reo**).

In correlation with the presumption of innocence, the national legislation mentions through article 99 of the NCPC that the burden of proof belongs mainly to the prosecutor and in the cases of civil action, the burden belongs to the civil party or as the case may be, to the prosecutor who exercises the civil action if the injured person is deprived of his or her exercise capacity or has limited exercise capacity. Accordingly, the suspect or defendant benefit from the presumption of innocence, not having the responsibility to prove his innocence, having the right not to contribute to his indictment. During the criminal proceedings, the injured party, the suspect, and the parties have the right to propose to the judicial bodies the administration of evidence.

According to the national legislation, **the suspect and accused** have several rights throughout the criminal proceedings, as mentioned beforehand, rights that were present in the bill even before the existence of the Directive (EU) 2016/343 and the need for transposing different measures. Unlike the old criminal proceedings code, the NCPC specifically provides that the suspect or defendant may exercise his right to silence at any time during the hearing as to any of the facts or circumstances in question. Furthermore,

the suspect and accused have, according to article 82 of the NCPC, the right to be informed about the act for which they are investigated and also its legal classification. A lack of procedural safeguards regarding the activity of informing the suspect/accused of criminal charges can be found in the legislation.

According to article 311 para. 1 of the NCPC, in the case in which after the commencement of the criminal prosecution, the criminal investigative body finds new facts, data on the participation of other persons or circumstances that may lead to a change in the legal framing of the deed, the judicial body can order the extension of the criminal prosecution or the change of the legal classification. Also, according to par. 3 of the same article, the judicial body that ordered the extension of the criminal prosecution or the change of the legal classification is obliged to inform the suspect of the new facts about which the extension was ordered. From the systematic interpretation of the texts, it can be easily denied that in the course of criminal prosecution, in the event of changing of the accusation, the legislator understood to grant the right to be informed about it only in the case of the extension of the criminal prosecution, not the change of the legal classification, although this interpretation can be found in contradiction with the same article mentioned above refers to the fact that the accused must be informed both of the act for which the criminal prosecution is carried out and of its legal classification. The vagueness of the text can lead to several misinterpretations during criminal proceedings.

Regarding the **right to be present at the trial**, the national legislation makes several references to the citation mode and communication of procedural documents and also assignment mandate. The summoning of a person before the criminal prosecution body or the court is made by written citation, but the Law mentions that the citation can also be made by telephone or telegraphic note, a report being concluded in this respect. The summons and all the procedural documents shall be communicated ex officio through the procedural agents of the judicial bodies or any other employee, through the local police or by postal or courier service. In this regard, the persons in charge of communicating the citations and procedural documents are obliged to perform the citation procedure and to deliver the evidence of its fulfillment before the citation deadline previously established by the judicial body. The citation may also be sent through electronic mail or by any other electronic messaging system, but with the consent of the person quoted. The judicial body may also communicate to the present person the following term, informing her/him of the consequences of the failure to appear. In the course of criminal prosecution, the acknowledgment of the term shall be mentioned in a report to be signed by the person quoted.

The suspect/accused will be therefore informed through the citation that the party cited has the right to a lawyer with whom to present himself/herself within the fixed term, and if applicable, the party will be informed that according to art.90 and 93 par. 4 of the NCPC, the defense is mandatory, and if the party does not choose a lawyer at the fixed term of the court, a lawyer will be appointed ex officio. The party is also informed about

the fact that it may consult the case file to exercise his/her right to defense and even the consequences of not being present before the judiciary. According to the Law, the suspect and the defendant receive the citation at the address where they live and in the case in which the address is not known, at their place of work through the staff department of the unit in which they work. Furthermore, the suspect or the defendant may be summoned at the headquarters of the chosen lawyer, if the party had not appeared after the first legal summons. Even furthermore, the legislation provides even more measures for the citation in which all the above measures do not apply, case in which the notice shall be posted at the headquarters of the judicial body.

In the case in which the suspect or defendant is living abroad, the summoning is made for the first term according to the rules of international criminal Law applicable in the relationship with the requested state, according to the Law. In the absence of such a provision or where the applicable international legal instrument so permits, the citation shall be by registered letter.

In this case, the acknowledgment of receipt of the registered letter, signed by the addressee, or the refusal to accept it, shall serve as evidence of the completion of the citation procedure. For the first term of the trial, the suspect or defendant will be notified by stating that he has an obligation to indicate an address on the territory of Romania, an e-mail address, or e-mail, where all the communications about the trial will be made. If it fails to comply, notifications will be made by a registered letter, the receipt of the letter to the Romanian post office, in which the documents to be dispatched will be mentioned, taking the place of proof of the procedure. It should be said as well that with the exception when the presence of the defendant is mandatory, the irregularity regarding the party's summoning procedure may be invoked by the prosecutor (according to article 265 NCPC), the other parties or ex officio only at the time at which it occurred.

The current national legislation does a reference to the defendant's participation in the trial and his rights through article 364 of the NCPC. According to the article, the trial takes place in the presence of the defendant, bringing the defendant in court being obligatory. Some exceptions occur when the defendant is missing, had evaded from the court, or changed his/her address without informing the judicial bodies (and all of the requirements for citation mentioned above have been fulfilled). The trial can also take place in the absence of the defendant if, although legally cited, the defendant is unjustifiably missing from the trial. It should be mentioned that throughout the trial, the defendant may request in writing to be judged in absentia, is therefore represented by his chosen lawyer or ex officio. If the court considers imperative the presence of the defendant, a mandate can be issued in this regard.

In the cases in which it is established based on forensic expertise that the defendant suffers from a severe illness that prevents him/her from participating in the trial, the court shall

order the suspension of the trial until the state of the defendant's health will allow him to participate in the trial.

An important mention regarding the case of suspension of a trial due to the absence of a defendant, even in the situation where there are more defendants, but the grounds of suspension concerns only one of them (and the Division is not possible) the whole case shall be suspended. The criminal proceedings are resumed *ex officio* as soon as the defendant can participate in the trial, according to the Law. It can be concluded that certain instances can lead to a trial to be held in the absence of the suspect or accused, but only when several measures have been taken to avoid this. The trial can only occur if the accused and the parties are legally summoned, and the procedure is considered fulfilled. It should be mentioned that no specific procedural safeguards for vulnerable persons suspected or accused in criminal proceedings are in place at the moment at the national level.

There are cases in which the person concerned can not present himself or herself to the trial for various reasons. Legislation under Art. 466 of NCPC provides that a person that has been convicted and judged in *absentia* may request the reopening of the criminal proceedings within one month of the day on which he/she has become aware, through any official notification, that a criminal case has been brought against him. The convicted person who has not been summoned to trial and has not been formally notified in any other way, namely, although he has known the prosecution, has been judged in *absentia*, has been deprived of his trial and has not he could notify the court. It is not considered as a faulty trial the convicted person who has appointed an elected defense counsel or a trustee, if they have appeared at any time during the trial, nor the person who, after communicating, according to the Law, the sentencing sentence has not declared appeal, gave up his or her appeal or withdrew its appeal. The criminal proceedings can't be reopened if the convicted person has requested to be tried in *absentia*.

Practical case

By the application filed before the Court of Appeal, Criminal Section I, the convicted person A. demanded the reopening of the criminal trial held by the Court of Appeal, the abolition of the decision no. 825 of June 10, 2015, and re-examining the case at the stage of the trial in the hearing on March 4, 2015. In the reasoning of the request, it was claimed that the applicant was in the situation stipulated by the Law, respectively, the lack of trial and also did not have a chosen defense counsel and refused to be assisted by an *ex officio* lawyer. The petitioner pointed out that on March 4, 2015, he was removed from the courtroom during the hearing and was not recalled until the end of the hearing, in the absence of two hearings of the defendants, where his presence would have been imperative. In one of the written notes, a similar situation was invoked, which would have existed at the trial date of May 15, 2015, when his presence was formal, having no right to speak, intervene and clarify.

It has been argued that this genuine lack of process has undermined the rights of the defense, the institution of reopening the criminal proceeding having precisely the purpose that any defendant should have the right to a fair trial, conducted in contradictory and oral proceedings, respecting the principle of equality and presumption of innocence.

The Bucharest Court of Appeal found that the petitioner does not fall into one of the two cases when he considers himself absent. Thus, about the first sentence, it was noted that it is clear that the applicant, who was indicted in the criminal case, was summoned to trial, being aware of his existence and presenting himself at the time-limits set in the case. The second sentence also did not contain the incidence of the sentence, and it was not possible to assume that the petitioner lacked the merits of the case, since, on the contrary, he was present at the time.

In conclusion, the reopening of the criminal trial is a procedural remedy for those persons who have been tried in absentia, in the sense that they were not present at the trial either because they did not know of the existence of the case or because they were in an objective impossibility to appear before the court and to announce the matter. However, the lack of a time-limit does not mean that the person concerned can't enjoy these rights, the presence at the other terms or even the fact that he is aware of the existence of the criminal proceedings (even if he would exercise his right under the Law to be sued in absentia) by giving him the real opportunity to exercise the right to defense in the desired form.

5 Evaluation of the national legislation after transposition measures of Directive (EU) 2016/343 to the national Law

The presumption of innocence and the right to a fair trial are currently established in the Charter of Fundamental Rights of the European Union (articles 47 and 48), in the European Convention for the Protection of Human Rights and Fundamental Freedoms (through article 6) and also through the Directive EU 2016/343 of the European Parliament and of the Council of March 9, 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. The Directive aims to facilitate mutual recognition of decisions in criminal matters and as well as to strengthen the trust of Member States in each other's criminal justice systems.

As of April 2018, Romania, as well as the other Member States, had the obligation to fully transpose the Directive EU 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Starting with the same date, Member States were required to communicate to the Commission the legislative progress regarding the obligation to fully transpose the Directive. As a result of not sending the communication on the progress made by Romania, the EC opened an infringement procedure, as it did in the case of other Member

States. The procedure only referred to the lack of the necessary communication on behalf of the country, so it did not mean a lack of actions and measures taken to transpose the Directive into national legislation fully. Currently, the Romanian Parliament has made several amendments to the current legislation (Criminal Procedure Code) to comply with the Directive. The amendments have not been approved yet.

Transposing stage of the Directive EU 2016/343

Directive	Existing national legislation NCPC	Amendments
<p>Article 3 Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to Law In correlation with article ECHR - Right to a fair trial</p>	<p>Article 64 "(1) The judge is incompatible if:"</p>	<p>In Article 64, a new paragraph is inserted after paragraph 1, paragraph 11, with the following proposal: "(11) The Preliminary Chamber judge can not adjudicate on the merits of an ordinary or extraordinary remedy in the same case, and the person who participated in the trial of the case or in a regular way the attack can not participate in the trial of an extraordinary attack. "</p>
<p>Article 4 The Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to Law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer 109n dis109 person as being guilty. This shall be without prejudice to acts of the prosecution, which aim to prove the guilt of the suspect or accused person and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.</p>	<p>Article 4: Presumption of Innocence (1) Any person shall be considered innocent until the determination of his guilt by a final criminal judgment. (2) After the administration of the entire evidence, any doubt in the formation of the conviction of the judicial bodies shall be interpreted in favor of the suspect or defendant.</p>	<p>In Article 4, two new paragraphs are inserted after paragraph (2), par. (3) and (4) with the following contents: "(3) During the prosecution and trial of the case in the proceedings of the preliminary chamber are prohibited public communications, public statements as well as the provision of other information, directly or indirectly, from public authorities or any other natural or legal person relating to the facts and persons subject to these procedures. Breach of this obligation is an offense 109n this punishable, according to the criminal Law. (4) During the criminal prosecution, the public presentation of persons suspected of committing crimes with handcuffs or other means of</p>

		immobilization or of other ways of inducing in the public perception that they are guilty of committing offenses
Articles 3 and 6 (2) of the Directive - the presumption of innocence, the burden of proof. Right to defense	Article 106 - Special Rules regarding Hearing: (1) If, during a hearing of a person, it shows visible signs of excessive fatigue or symptoms of a disease that affects his / her physical or mental capacity to participate in the hearing, the judicial body discontinues listening and, if necessary, takes action that the person to be consulted by a medical expert	In Art. 106, after par. (1) a new paragraph is inserted, (11), with the following wording: "(11) Hearing of a person may not take more than 6 hours from 24 hours."
Article 7 Right to remain silent and right not to incriminate oneself	Article 116 - Subject and limits of the witness statement (1) The witness is heard on facts or factual circumstances which are the subject of the probation in the case in which they were cited. 2. The hearing of the witness may be extended to all the circumstances necessary to verify his credibility. (3) The facts of the case or circumstances whose secrecy or confidentiality may be opposed by Law to the judicial bodies may not be the subject of the witness statement.	In Art. 116, after par. (2) two new paragraphs are inserted, (2.1) and (2.2), with the following wording: "(2.1) The witness may refuse to testify to those facts or circumstances that may entail his responsibility for committing a criminal offense. (2.2) The witness may be accompanied by a lawyer before the judicial authorities and may consult with him during the hearing. "
Article 8 (1) the Member States shall ensure that suspects and accused persons have the right to be present at their trial.	Art. 364: Participation of the defendant in the trial and his rights (6) The defendant may file requests, raise exceptions and conclude, including in the situation stipulated in paragraph (1) the final thesis.	In Article 364, after paragraph 6, two new paragraphs, para. (7) and (8), with the following wording: "(7) The person can be convicted in absentia only if he has been legally summoned for each phase of the trial or has entered by other official means in possession of information on the

		<p>place and date was informed of the possibility of a default judgment and whether he was represented by a lawyer elected or appointed ex officio and enjoyed adequate defense in the proceedings (8) Procedure for enforcement of a final judgment rendered in absentia</p> <p>the defendant may only be initiated if the decision has been communicated to him and only after he has been expressly informed of the right to a new court proceedings or appeals to which it has the right to appear and which allows a new determination of the merits of the case, including the examination of new evidence that may lead to a change of the original decision, namely whether the person expressly declares that does not contest the decision or request a new court proceeding or introduce an extraordinary remedy within 30 days of receiving the decision information. "</p>
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Whilst all of the proposed amendments have not yet been approved, several key judicial institutions in Romania have declared that these amendments are not necessary and beneficial to the current legislation system. The National Anti-Corruption Division has made a public statement reiterating that these changes will have a devastating impact on criminal investigations, as it eliminates the indispensable legal instruments by which investigative bodies can investigate offenses. The Division mentioned that all the guarantees under Directive (EU) 2016/343 are already provided within the national Law, therefore the Directive is used only as a pretext to remove the ability of criminal prosecution bodies to discover and prove crimes, and the purpose of these changes has nothing to do with the presumption of innocence. An example would be the modification of Art. 83 of the NCPC which gives the suspect and the defendant the right to witness at the hearings of the witnesses will make it more challenging to carry out the criminal prosecution, since in many situations the witnesses will be intimidated by the presence of the offender, especially in situations in which they are in a relationship of subordination as it happens in the case of abuse of service and corruption. Currently, the Law gives the

lawyer the right to attend these hearings, a guarantee that is sufficient for the right of defense of the investigated person;

6 The interrelation between the right to be present at trial and other fundamental human rights in national legislation

The presumption of innocence is a fundamental right of citizens and an essential component of the right to a fair trial. However, in Romania, there is no legislation or jurisprudence to explain how the presumption of innocence works to ensure its effectiveness and to impose sanctions in the event of its violation, namely measures to remove the acts or facts that violate it. The current public perception regarding the presumption of innocence relates only to the courts during the criminal trial. However, the purpose for which the principle was built goes far beyond the strict limits of the process, be it the criminal prosecution phase, or the trial phase before the judge. Moreover, the presumption persists even after the finalization of the criminal trial, when it does not end with a conviction decision.

The current Romanian legislation provides several fundamental human rights that can be correlated with the right to be present at trial. Article 20 paragraph 1 of the Romanian Constitution states, "*Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied following the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party.*" The principle of equality of rights and equal opportunities can also be found in the Romanian Constitution through article 16 that specifically mentions that citizens are equal before the Law and public authorities, without privileges and discrimination. The Constitution goes even further by establishing that no one is above the Law. The right to defense and the principle of non-discriminatory access to the act of justice is ensured through the Romanian Constitution article 24 Right to defense which establishes that the right of defense is guaranteed and that throughout the proceedings, the parties have the right to be assisted by a lawyer elected or appointed ex officio and correlated with article 21 entitled Free access to justice mentions that establishes that any person may address justice to defend his rights, liberties, and legitimate interests. The same fundamental right is provided through Law no. 215/2003, for the accession of Romania to the Convention for the facilitation of international access to justice, concluded at Hague on October 25 1980.

The most important conclusion to be drawn after evaluating the national legislation is the urgent need to adopt specific legislation that protects the fundamental values of the criminal process, to regulate the desirable behavior of public authorities explicitly, officials, political people towards suspects, and ongoing criminal trials.

7 Conclusion and recommendations

During the process of collecting information and gathering relevant data regarding the obligation to transpose into the national legislation Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, **several** recommendations and conclusions can be put forward such as:

- (1) Although Romania had an obligation to fully transpose the Directive by April 2018, an infringement procedure has been opened by the EC. The procedure was opened due to a lack of necessary communication on behalf of the country, and it did not mean a lack of actions and measures to be taken to transpose the Directive fully. That being said, after evaluating the national context and measures that have been taken in this regard, it can be concluded that there is no national consensus regarding the measures that should be taken to comply with the Directive fully. Whilst, several judicial institutions have raised attention to the fact that Romania already complies with the Directive, the Romanian Parliament has proposed several amendments to the national legislation (mainly the NCPC) that also have other implications to the legislation;
- (2) The presumption of innocence can be found within the national legislation and has been correlated with several fundamental rights;
- (3) The national legislation ensures that a person that has been convicted and judged in absentia, may request the reopening of the criminal proceedings, thus benefiting of a new trial;
- (4) The right to a fair trial and the right to silence are currently guaranteed through the Romanian Constitution and correlated national legislation;
- (5) Whilst, the Romanian legislation ensures the right of the suspect or accused to be present at trial, no specific procedural safeguards for vulnerable persons has been set out;
- (6) Regarding the right to be present at the trial, the national legislation makes several references to the citation mode and communication of procedural documents and also assignment mandate. The citation may also be sent through electronic mail or by any other electronic messaging system, but with the consent of the person quoted. Although several steps have been set out for ensuring that the suspect or accused receive their summons, often the system proves itself as ineffective and can lead to misinterpretation of the Law;

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Romanian Constitution (republished 2003)

Directive 2012/13/EU of the European Parliament and of the Council of May 22, 2012, on the right to information in criminal proceedings

Directive 2013/48/EU of the European Parliament and of the Council of October 22, 2013, on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

Charter of Fundamental Rights of the European Union

European Convention for the Protection of Human Rights and Fundamental Freedoms

International Covenant on Civil and Political Rights

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