SANCTIONS WHICH OCCUR AS A CONSEQUENCE OF NON-COMPLIANCE WITH THE PRINCIPLE OF LEGALITY IN THE PENAL TRIAL

CĂTĂLIN IONUȚ ONCESCU *

Abstract
The legality principle represents a frame principle since its interaction with the other principles exceeds the simple connection with those. The legality represents the frame within and with the compliance with which all the other fundamental principles of the penal trial are realized. No other principle can be placed outside the legality, in same way in which any principle, no matter how important it may be, does not occur in any other way than according to the forms stipulated by law.Taking into consideration that the enforcement of the law is mandatory in criminal law procedures, as well as the obvious significance of the penal trial's principle of legality, it was absolutely necessary for the compliance with this principle to be doubled by numerous guarantees which, in the situations in which this fundamental rule has been violated, would become genuine sanctions referring not only to the procedural acts achieved with the law's violation, but also to the people who have not complied with the law as far as the procedural penal activities' unfolding is concerned.

Keywords: *the legality principle; procedural, disciplinary, penal and civil sanctions*

Introduction

In order to achieve its aims, the procedural activity may be regulated in such a way as to be in accordance with some leading ideas and rules. By principles (basic rules) of the penal trial we should understand those leading and fundamental ideas according to which the procedural system is organized and the entire criminal procedural activity unfolds.[1]

By means of the fundamental principles, which are at the basis of the penal trial in Romania, the same rules with general character on the grounds of which the entire unfolding of the penal trial is regulated are taken into consideration. The notion of fundamental principle can be understood only as a rule which lies at the basis of the entire procedural activities, therefore those rules which apply only to some phases of the penal trial cannot be considered as fundamental principles.[2]

Within the framework of the Romanian penal trial's system of fundamental principles, an important position is occupied by the legality principle (*nulla justitia sine lege*), exposed by the legislators in the provisions of article 2 line 1 of the Criminal Procedure Code: "The penal trial unfolds not only during the criminal prosecution, but also during the act of judging, according to the provisions stipulated by the law." Therefore, the penal trial's legality principle can be applied not only to the judicial authorities, but also to the parties, all the trial participants being obliged to respect the law during their activity.

Being a transposition on the private level of the general principle of legality acknowledged in article 1 line 5 of Romania's Constitution ("In Romania, the conformation to the Constitution, to its supremacy and to the laws is mandatory.") and having a true correspondent within the basic principles specific to the substantial criminal law (*nullum crimen sine lege, nulla poena sine lege*[3]), it is necessary to state that out of the basic rules of the Romanian penal trial its legality principle is the most significant. Even the placement chosen by the legislator – the legality of the penal trial being

* Definitive lawyer, Bucharest Bar; (e-mail: catalinoncescu@yahoo.com).
[1] N. Volonciu, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1972, p.44.
[2] I. Neagu, *Criminal Procedure Treaty– General Part,* the Judicial Universe, Bucharest – 2010, p.69.
[3] C. Beccaria, *Dei delitti e delle pene* – 1764.

the first principle stated among the provisions of the Criminal Procedure Code – assures us once again of the importance of this fundamental rule.

In reasoning the statement expressed in the previous line, at the same time we refer to the Decision no. 783/12.05.2009 of the Constitutional Court. This instance has understood the importance of the penal trial's legality principle, declaring unconstitutional the provisions of article I point 185 of Law no. 356/2006 for the modification and completion of the Criminal Procedure Code, by means of which point 17^1 of line 385^9 of the Criminal Procedure Code has been abolished ("The decisions are prone to invalidation … when the decision is contrary to the law or when by the decision a wrongful implementation of the law has been made."). In this way, the motivation of the pronounced decision, "The court establishes that the abolition of point 17^1 of article 385^9 line 1 of the Criminal Procedure Code, by eliminating the possibility to criticize by means of the decree's second appeal on the grounds that it is contrary to the law or that a wrongful application of the law has been made, prevents the interested party from effectively valorizing the violated right. Actually, whenever the criminal law has been infringed upon, it must grant the interested party the possibility of demanding and obtaining the legality's re-establishment by means of the illegal decision's invalidation."

In the same time, the European Convention on Human Rights states that nobody can be deprived of one's freedom, with the exception of some cases and according to the legal ways. At the same time, according to article 6 line 1, as far as the penal charges made against one are concerned, "every person has the right to a just public trial in a reasonable term for its cause, judged by an independent and impartial court established by law." Equally important are the provisions of article 8 – the right of respecting the private and family life – which proves that "A public authority's interference in this right's exercise is not accepted unless it is stipulated by law."

The doctrine has highlighted that the legality is much more than an explicit principle of the penal trial, its extent actually covering the entire judicial activity included in the procedure norms. In this manner, the compliance with this principle is systematically verified by the judicial authorities that participate at the resolution of a penal cause, there being the possibility of invalidating the issued documents with the infringement of the legal disposition or with the restoration of the cause to the competent authorities for the respective documents' re-establishment. (e.g.: article 220, article 232, article 265, article 268, article 300 or article 332 Criminal Procedure Code)

From a certain point of view, the legality implies the foundation by means of law of courts of law, prosecutor's offices and criminal investigation authorities, as well as their activities' unfolding as far as the structure and the limits of the competence conferred by law are concerned. The norms which regulate these authorities' structure and limits are compulsory and any infringement upon these norms is to be punished.[4]

In this context, not only the Criminal Procedure Code, but also the special laws which equally represent judicial sources of the Criminal Procedural Law, consist of a series of dispositions which call for the necessity and compulsoriness of the compliance with law in the activity of justice's achieving, being in consensus with the principle *nulla justitia sine lege*, stated in article 124 line 1 of Romania's Constitution ("Justice is to be achieved in the name of law").

Therefore, Law no. 304/2004 concerning the judicial organization, in the norms comprised in article 2 line 1 demonstrates that "Justice is to be achieved in the name of law, it is unique, impartial and equal for everyone", restating the enunciation existent in Romania's Constitution.

A similar example can be observed in the contents of article 62 (the Public Ministry's Competences) of the same law where, in the second line, the following formulation can be found: "The prosecutors unfold their activity according to the principles of legality, impartiality and hierarchic control, under the Ministry of Justice's authority, *according to the law*", in this way the regulation presented by Romania's fundamental law within the framework of the stipulations of

[4] M. Damaschin, *Criminal Procedure,* Wolters Kluwer Publishing House, Bucharest – 2010, p.50.

article 132 being entirely restated ("The prosecutors unfold their activity according to the principles of legality, impartiality and hierarchic control, under the Ministry of Justice's authority"). It can easily be observed that the legislator, by intending to highlight the importance of the prosecutors' compliance with the law with respect to the specific activities' unfolding, has operated a slight completion of the stipulation recaptured by the fundamental law, by means of adding at the end the collocation "*according to the law*".

Furthermore, Law no. 303/2004 concerning the judges' and prosecutors' statute in article 2 line 3 stipulates that "The judges are independent, are to submit only to the law and they must be impartial", taking over the stipulations of article 124 line 3 of Romania's Constitution according to which "The judges are independent and are to submit only to the law." To an equal extent, according to article 3 line 1 of the same law "The prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law.", this idea being reiterated also in the stipulations of art 64 line 2 of Law no. 304/2004: "In the solutions disposed, the prosecutor is independent, according to the conditions stipulated by law. The prosecutor can make an appeal at the Superior Council of Magistracy, within the framework of the verification procedure of the judges' and prosecutors' conduct, against the hierarchic superior prosecutor's intervention, in any form, as far as the penal pursuit's achievement or the solution's taking-up are concerned."

The principle of legality is also recaptured within the probation, a basic institution of the penal trial. Thus, the legislator has stipulated, in article 64 line 2 of the Criminal Procedure Code, that "The means of evidence illegally obtained cannot be used in the penal trial."

Not lastly, we also refer to the stipulations concerning the individual freedom established by Romania's Constitution where, in article 23 line 12, it is shown that "no punishment can be established or applied otherwise than under the law's conditions and on its grounds", and article 7 of the European Convention on Human Rights establishes that "nobody can be convicted for an action or an omission which, at the moment it had happened, had not been considered as a crime, according to the national or international right."

In this way, from a functional point of view, it is necessary that all the procedural documents, measures and activities to unfold according to the conditions stipulated by law, as guarantees of the accomplishment of the function for which they have been instituted. Their role and importance is overwhelming, because, by omitting to carry into effect some constitutive procedural acts or by carrying those into effect in other conditions than those stipulated by law, the just and through resolution of the cause can be negatively influenced.[5]

Taking into account the arguments exposed in the previous paragraphs, as well as the obvious importance of the penal trial's principle of legality, it was absolutely necessary for the compliance with this principle to be doubled by numerous guarantees which, in the situations in which this fundamental rule has been violated, would become genuine sanctions referring not only to the procedural acts achieved with the law's violation, but also to the people who have not complied with the law as far as the procedural penal activities' unfolding is concerned.

Procedural sanctions

Within the system of the special judicial guarantees, with the purpose of ensuring the penal trial's legality, the procedural sanctions are those which attract the invalidity of the procedural acts carried into effect with the law's violation and, sometimes, even the coercion of those who have violated the law to remake them according to the legality conditions. This type of sanctions really appear to be necessary during a just trial, within the conditions in which the application of the penal, civil or disciplinary sanctions does not produce direct and immediate consequences upon the validity

[5] B. tefănescu, *Judicial Gurantees of the Compliance with the Criminal Procedure Law as far as the Act of Judgment is Concerned,* Hamangiu Publishing House, 2007, p.112.

of the acts carried into effect with the law's violation in bad faith or by means of law abuse. The procedural sanctions represent actual procedural remedies which are meant to eliminate or to thwart the production of the judicial consequences if the law has been violated while the procedural activity has been fulfilled. [6]

By means of its multiple purpose, the procedural penal sanction constitutes an extremely important guarantee by means of which it ensures the functioning of the penal trial's legality in all its phases, due to the fact that it prevents the law's violation, sanctions it when it happens and continues to ensure the compliance with law throughout the penal trial's unfolding. Likewise, the procedural penal sanction also constitutes itself as an important guarantee as far as the purpose of finding the truth is concerned, due to the fact that the procedural acts carried into effect with the law's violation generate doubt on the truthfulness of the evidence administered abusively or arbitrarily and, as a consequence, on the correctness of the solution taken up in regard to the provisions of the penal or civil law.[7]

Contrary to the judicial sanctions of disciplinary, civil or penal nature, which are direct against the people who have violated the law with respect to the penal causes' resolution, the procedural sanctions refer to acts fulfilled with the law's violation. The means by which the procedural acts illegally fulfilled become invalid are: inexistence, incapacity, inadmissibility and invalidities.

*The **inexistence*** represents a category which is used to operate especially within the science of the criminal procedural law, the notion not being expressly regulated in the procedural penal norms. However, it is unanimously accepted that this law institution must get into action anytime the procedural acts have been elaborated by means of violating the essential conditions required by law for their existence or when they have been done by a subject who, legally, did not have the necessary competence. To that effect, it can be considered as being inexistent an ordinance of the penal action's setting in motion fulfilled by a judicial police authority or a court order fulfilled by a prosecutor.

As far as inexistence is concerned, due to the manner in which it had been formulated *ab initio*, the procedural act represents only a *de facto* reality and not a judicial one. The inexistent acts, presenting only the appearance of a judicial existence, will not be taken into account by any judicial authority and will not be able to produce judicial effects.

In this way, the inexistent procedural acts must not be rendered void nor must they become subject to any form of declaring them unavailable, the authority in front of which they produce setting them aside, as if they had never produced, considering them simply inexistent.[8]

*The **incapacity*** is a procedural sanction which interferes whenever a procedural act is not carried out within the peremptory term stipulated by law. The settlement of some imperative terms within the penal trial's unfolding ensuring the necessary actions' efficiency as far as the just resolution of the penal causes is concerned, foreshadowing in this way the achievement of the penal trial's aim.

In the Criminal Procedure Code, the incapacity is expressly regulated in article 185 where it is shown that, in the situation in which for the exercise of a procedural right the law stipulates a certain term, the non-compliance with it determines incapacity from the exercise of right and the invalidity of the act performed after its term.

The incapacity institution operates, as a procedural sanction, for example, when the complaint against the resolution of non-initiation of the penal prosecution or ordinance or, as the case may be, of the classification resolution, suspension or cease of the prosecution, has been stated after the expiration of the 20-day term after communicating to the interested people a copy of the ordinance or

[6] V. Dongoroz, *Criminal Procedure Course,* 2nd edition, 1942, p.167.

[7] N. Giurgiu, *Nullity Causes During the Penal Trial*, the Scientific and Encyclopaedic Publishing House, Bucharest – 1974, p.78.

[8] N. Volonciu, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1972, p.224.

of the resolution (according to article 228 line 6, article 246 line 1 and article 249 line 2 of the Criminal Procedure Code). Moreover, according to article 278^1 line 8 letter a) of the Criminal Procedure Code, the court of law will reject as being tardy the complaint against the resolution of non-initiation of the penal prosecution or ordinance or, as the case may be, of the classification resolution, suspension or cease of the prosecution, given by the prosecutor, if the interested person has addressed to the competent court of law after the expiration of the 20-day term since the communication date of the rebutment solution ruled by the prosecutor, as a consequence of the previously made complaint's resolution, according to articles 275-278 of the Criminal Procedure Code.

In what concerns the crimes for which the law stipulates that a previous complaint is necessary, according to article 284 of the Criminal Procedure Code, the injured person or the person entitled to claim must introduce the complaint in term of 2 months since the day he/she has known who the perpetrator is. Non-compliance with the previously shown term will determine the application of the provisions of article 10, line 1, letter f) of the Criminal Procedure Code, the previously formulated complaint after the expiration of the 2-month term being tardily introduced.

Similar situations are also to be found in the case of the overdue appeal or recourse. In this way, according to article 363 line 1 and article 385^3 line 1 of the Criminal Procedure Code, the appeal's pronouncement term, respectively that of the recourse is of 10 days, if the law does not rule otherwise. In consequence, whenever the court will observe that these means of attack have been exercised after the expiration of the term established by law, the solution of the appeal's rebutment, respectively that of the recourse, as being tardy will be pronounced.

Nevertheless, in order to defend the procedural subjects' rights, by means of the term's reinstatement, the law has foreseen the possibility of suspending the passing of the term of exercising the appeal or recourse right when the interested party proves that the attack means' non-exercising has been caused by the existence of a solid impeding cause, and that the request has been made in at most 10 days since the beginning of the punishment's execution or of the civil reimbursements.

The overdue appeal and recourse institutions function with the same purpose. Thus, the party which was absent for all the trial terms, as well as for the pronouncement, can declare appeal, respectively recourse, even after the expiration of the term, but not latter than 10 days since the beginning of the punishment's execution – for the defendant – or since the beginning of the civil reimbursements – for the civil part and for the responsible party in the civil lawsuit.

Taking into consideration the conditions imposed by the legislator in such a way as the term's reinstatement and the overdue appeal, respectively recourse, to be able to be exercised by the interested parties, we can draw the conclusion that these institutions of criminal procedural law do not represent exceptions as regards the procedural sanction of the incapacity, but are real guarantees that those penal trial's participants, who found themselves in special situations of impeding or who could not defend themselves due to the fact that they had not participated to the cause's trial, will be able to take advantage of their procedural rights either in appeal or in recourse.

The incapacity distinguishes itself from invalidity for the simple reason that the invalidity refers to procedural acts, whereas the incapacity refers to procedural rights; the invalidity refers to a fulfilled act, whereas the incapacity regards an act that can no longer come into being because the term stipulated by law had expired.[9] Furthermore, the incapacity operates on the basis of law, whereas the invalidity must always be declared by a judge.

The ***inadmissibility*** is another procedural sanction which sometimes has an autonomous manifestation, however, in most cases being a consequence of the incapacity or of the invalidity.[10]

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[9] D. Pavel, The Aknowledgement of the Invalidity of the Actions Carried into Effect with the Legal Provisions' Violation during the Penal Trial, Romanian Magazine of Law no.9/1971, p.28.

[10] N. Volonciu, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1972, p.225.

As well as in the situation of the inexistence, the inadmissibility institution is not specifically regulated in the Criminal Procedure Code, there being, however, numerous legal texts which use the notion and which refer to this sanction. In this way, with the title of example, we will mention he following cases: article 52 line 5^1 shows that it is inadmissible to challenge the judge who was to decide upon the challenge; article 278 line 2^1 stipulates that the complaint formulated against the rebutment solution ruled by the hierarchic superior prosecutor is inadmissible; as a consequence of the complaint's settlement against the prosecutor's resolutions or ordinances of non-arraignment, the court, according to the provisions article 278^1 line 8 letter b), will dismiss the complaint as inadmissible, maintaining the resolution or the ordinance; article 379 line 1 letter a) stipulates that the court dismisses the appeal if it is tardy or inadmissible, the same solution existing also for the recourse, according to article 385^{15} line 1 letter a); article 403 line 3^1 shows that the subsequent reviewing requests are inadmissible if there exist identity of person, legal grounds, motives and defenses.

As procedural sanction, the inadmissibility interferes whenever acts which are not stipulated by law or which are excluded by it are fulfilled, as well as in situations when procedural rights which had been exhausted by other procedural or non-procedural ways are being fulfilled.

Therefore, the appeal declared by the injured party with regards to the civil side of the cause is affected by inadmissibility, article 362 line 1 letter c) of the Criminal Procedure Code not stipulating this means of attack. Moreover, according to article 60 line 6 of the Criminal Procedure Code, any means of attack exercised against the decision according to which the Supreme Court of Justice rules referring to the change of venue will be inadmissible, and the dispositions of article 61 of the Criminal Procedure Code shows that a cause's new request for the change of venue is inadmissible, if it is grounded on the same circumstances which were set forth at the resolution of the previous request. To the same effect, article 42 line 4 of the Criminal Procedure Code stipulates that the court of law's decision of declining the competence is subjected neither to appeal nor to recourse.

In the light of the new modifications concerning the Criminal Procedure Code, regulated by Law 202/2010, the court will dismiss as inadmissible the appeal declared against the decisions pronounced by the county courts or military courts of law, in this way this means of attack starting to be able to be exercised only against the decisions pronounced by the territorial county courts and military county courts (article 361 of the Criminal Procedure Code).

In the same time, we believe that the procedural acts fulfilled by people who do not have a procedural tile in regards to the respective penal cause will be considered as being inadmissible. In this way, as far as the appeal's or recourse's institution is concerned, the court will have to dismiss as inadmissible the means of attack exercised by the people who do not find themselves in the situations expressly stipulated by law, according to the provisions of article 362 of the Criminal Procedure Code. A similar solution will also be ruled in the case regulated by article 278^1 of the Criminal Procedure Code, whenever the complaint addressed to the court of law had not been formulated by an injured person or by a person whose lawful interests had been prejudiced by the solution ruled by the prosecutor. In addition, the Supreme Court of Justice will dismiss a inadmissible the recourse in the law's interest which had not been promoted by the general prosecutor of the Prosecutor's Office of the Supreme Court of Justice, the conduct colleges of the supreme courts of law and of the courts of appeal, or by the People's Lawyer. Not lastly, as far as the challenge's institution is concerned (article 51 of the Criminal Procedure Code), the Court in front of which the challenge had been formulated will dismiss as inadmissible the challenge request which had not been formulated by any of the parties, as well as the challenge request which refers to other judges than those who are part of the law court. The challenge request directed against the same person for the same incompatibility case and for actual grounds presented to the court of law with respect to a previous request's formulation will also be inadmissible.

It can be said that the inadmissibility is similar to the incapacity, because both of them are sanctions stipulated by the law for the same situations when the fulfilled act is without right, the

difference being made by their happening times. Thus, in the case of the inadmissibility, the lack of right is *ab initio*, whereas in the incapacity case, the lack of right is a consequence of the non-compliance with the term. In the same time, inadmissibility, in contrast to the incapacity, will always determine the invalidity of the fulfilled act with the law's violation which, if it is declared inadmissible, cannot be remade.

The invalidities, considered as being the most important procedural sanctions, interfere whenever a procedural act, or a procedural activity has been realized without the strict compliance with law. As procedural sanctions, the invalidities affect the existent procedural acts, which had come into being by means of non-compliance with the legal provisions, by omitting or violating the forms stipulated by law.[11]

The invalidity, as a procedural guarantee, prevents the infringement of the provisions which regulate the penal trial's unfolding. Hence, it fulfills the role of ensuring the penal trial's legality because, without the recording of the invalidity sanction, the procedural norms would have an optional character.

As a procedural sanction, the invalidity can be directed against the procedural acts of any kind. In this way, the grounds for instituting such a procedural sanction is that which states that the fulfillment of a procedural penal act with the violation of the provisions which regulate the penal trial's unfolding can not come into effect, due to the fact that by overruling the content and form stipulated by law it could lead to wrongful settlement of the cause, one that would not encapsulate the truth.

Therefore, the invalidity operates in the case of the violation of the provisions which regulate the procedural acts' fulfillment, as well as in that of the violation of the provisions according to which the procedural acts' fulfillment is conducted. Generally, the invalidity of an in-court procedural act also determines the invalidity of a procedural act; for example, the judging of a cause by a court of law whose structure is contrary to the law, also determines the pronounced decision's invalidity.[12]

By comparing it with the other procedural sanctions, it can be observed that, while the inexistence, the inadmissibility and the incapacity determine the act's invalidity with the effect of impeding its subsequent resume in the penal trial, their action being especially destructive, the invalidity by constituting not only a sanction, but also a procedural remedy, normally implies, the possibility of repairing – sometimes even the remaking compulsoriness – of the corrupted act.[13]

The fact that, in the Romanian Criminal Procedure, the invalidities' existence as procedural sanctions is closely related to the existence of a procedural damage, damage which must have been produced by fulfilling an act in illegal conditions, must be highlighted.[14] Moreover, the damage notion does not refer only to injury of the parties' legitimate rights and interest, but it also extends to the just settlement of the penal cause.

For that purpose, in article 197 line 1 of the Criminal Procedure Law, it is shown that the violations of the legal provisions which regulate the penal trial's unfolding determine the act's invalidity only when a damage had been produced, a damage which cannot be eliminated in any other way other than by that act's annulment.

Therefore, besides the existence of a procedural damage, it must be observed that it had been caused by a violation of the legal norms which regulate the penal trial's unfolding; the damage which can concern the parties' rights in the procedural trial, as well as the manner in which the penal trial's unfolding is actually realized. Equally, an act's invalidity will be called for only when it would be

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[11] I. Ionescu-Dolj, *Romanian Criminal Procedure Course*, Bucharest – 1937, p.190.
[12] M. Damaschin, *Criminal Procedure,* Wolters Kluwer Publishing House, Bucharest – 2010, p.312.
[13] N. Giurgiu, *Nullity Causes During the Penal Trial,* the Scientific Publishing House, Bucharest – 1974, p.31.
[14] I. Neagu, *Criminal Procedure Treaty – General Part,* the Judicial Universe, Bucharest – 2010, p.669.

impossible to eliminate the produced damage in any other way other than by eliminating the act fulfilled with the law's violation.

According to the procedural penal norms which are in effect and taking into consideration the manner of expression in the judicial norm, the invalidities can be deliberate and virtual. Moreover, depending on the application mode and the effects that they can produce, a classification of relative invalidities and absolute ones can be established.

The absolute invalidities interfere in the cases expressly stipulated by law and can be called for at any time during the penal trial's course and by any trial participant, being possible to be taken into consideration *ex officio*.

In the present regulation of the Criminal Procedure Code, the absolute invalidities are considered, in the same time, express invalidities, stipulated in article 197 line 2 of the Criminal Procedure Code, and interfere when some legal provisions that are particularly important in the penal trial's unfolding are violated.

Thus, according to article 197 line 2 of the Criminal Procedure Code the provisions which concern the competence according to the subject matter and according to the person's quality (referring to the law courts' competence as well as to the competence of the penal prosecution's authorities), at the court's notification, at its structure and at the judgment session's publicity, are stipulated under the absolute invalidity sanction. Moreover, the absolute invalidity sanction also stipulates the provisions which refer to the prosecutor's participation, the presence of the accused or of the defendant and their assistance by the defender, when they are compulsory, according to law, as well as the execution of the evaluation proceeding in the causes with underaged law breakers.

We observe that the legislator had chosen a limitative enumeration of the legal provisions whose non-compliance with determines absolute invalidity. However, we believe that there are numerous other procedural penal provisions whose overlooking would undoubtedly determine the interference of the absolute invalidity sanction, without the need to prove the existence of a damage that cannot be eliminated in any other way than by annulling the respective acts. Therefore, we can mention that it is compulsory to hear the accused or the defendant when taking a preventing or safety measure (article 143 line 1, article 150 line 1, article 162 line 1^1 of the Criminal Procedure Code), the arraignment without the penal pursuit authorities' implication in the penal pursuit file's presentation (article 250 – article 262 of the Criminal Procedure Code), the penal trial's unfolding without ensuring the presence of an interpreter when necessary, according to article 8 and article 128 of the Criminal Procedure Code, or whenever there is a flagrant violation of the penal trial's fundamental principles, such as the granting of a person's freedom, the compliance with the human dignity or the granting of the defense right.

In the case of the absolute invalidities, the procedural damage is presumed *juris et de jure*, in such a way as the person who calls for the invalidity does not need to prove the existence of the damage, the proof of the judicial norm's violation stipulated under the sanction of the absolute invalidity being enough. In the same time, the provisions of article 197 line 3 of the Criminal Procedure Code shows that the absolute invalidities cannot be eliminated in any way.

In what concerns *the relative invalidities*, their features result from the principle provisions stipulated by article 2 and article 197 line 1 and 4 of the Criminal Procedure Code, according to which the violation of any legal provision which regulates the penal trial's unfolding, other than those stipulated under the absolute invalidity sanction, determine the act's invalidity only when a damage, which cannot be eliminated in any other way than by annulling that act and only if they had been called for during its fulfillment, when the party is present, or at the first court term with complete procedure, when the party has not been present at the act's fulfillment, has been produced.

In this way, we can conclude that the relative invalidities are taken into consideration only if they had been called for by the person who had suffered a damage of his/her procedural rights, due to the fact that they do not operate *ex officio* but in exceptional situations. The person who calls for the invalidity caused by the law's infringement as a result of the procedural act's fulfillment is obliged to

prove the existence of the produced damage, which can consists in the injury caused to a procedural right or interest or which can be a material damage.[15]

In the same time, when, by some provisions' violation which refers to a penal trial's unfolding, the truth's finding and the cause's just resolution is affected, general order interests being involved, the relative invalidity can be taken into consideration *ex officio*, in any trial phase.[16]

In contrast with the absolute invalidities which cannot be eliminated in any way, in what concerns the relative invalidities the damage produced by means of the law's infringement can be paid for by the parties' will, having as consequence the validity of the procedural acts which had been fulfilled with the law's infringement. Furthermore, the relative invalidity must be called for only at a certain time, stipulated according to the presence or absence of the interested party at the act's fulfillment. Failing to do so determines the invalidity exception's delay and the act's execution.

Moreover, in what concerns the relative invalidities, when the voidable act's remaking can be done in front of the court of law which, by means of the closure, had observed the legal provisions' violation, the court will assign a short term for the act's immediate remaking.

Not only the relative, but also the absolute invalidity, are appealed to by means of the invalidity's exception or by the attack means, and the authority in front of which the act's annulment is requested must detect the invalidity and if the provisions stipulated by law are fulfilled, it must rule the annulment of the act fulfilled with the law's violation. The act's remaking is usually realized by the same judicial authority which had fulfilled it with the law's violation and it is rarely remade by another authority.

After the invalidity has been detected and proclaimed according to the provisions of law, its direct effect is the act's inefficiency, its lack of judicial value representing the lack of the effects it should have determined if it had been valid. Therefore, the act is considered as being void of judicial effects, from the moments of its fulfillment (*ex tunc*), and not from the moment the invalidity is detected (*ex nunc*).

The specialized literature addresses the invalidity's indirect or extensive effect, considering that the invalidity produces effects in relation to the validity of the previous, simultaneous and subsequent acts, which are related to the annulled act. We consider that it cannot be the case of an automatic spread of the invalidity, the judicial authorities having the obligation to evaluate, for each actual case, if the provisions stipulated in article 197 of the Criminal Procedure Code are applicable.

In the same time, due to the fact that in the Criminal Procedure Code there are no express stipulations as far as the invalidity's extensive effect is concerned, we believe in the applicability of the judicial norms stipulated in article 106 line 1 of the Code of Civil Procedure where it is shown that a procedural act's annulment determines only the subsequent acts' invalidity, to the extent that they cannot have an independent existence.

Disciplinary sanctions

These sanctions have a special character, because by means of their organization the legislator had established as being in the judicial authorities' competence the imperative obligation of exercising the function they had been invested with, in good-faith and without abusing of it. Thus, we can reach the conclusion that the judicial authorities' subjective rights have value of obligation for these authorities.[17]

The disciplinary sanctions interfere whenever the judicial authorities, when exercising the functions and attributions conferred to them, commit, whether by bad-faith, or by negligence or

[15] I. Neagu, *Criminal procedure Treaty – General part,* the Judicial Universe, Bucharest – 2010, p.673.

[16] Gr. Theodoru, L. Moldovan, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1979, p.184.

[17] S. Kahane, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1963, p.16.

ignorance, abuses or omissions referring to the basic rules which ensure the compliance with the legality principle during the penal trial.

Therefore, in Law no. 303/2004 concerning the judges' and prosecutors' statute it is shown that the judges and prosecutors are disciplinary responsible for the breach of their jobs' duties, as well as for the actions which affect the justice's reputation. Additionally, the provisions of article 99 of the same law shows that disciplinary deviations, as a consequence of the penal trial's overlooking of the legality principle, will be formed: the violation of the legal provisions which refer to the incompatibilities and interdictions concerning the judges and prosecutors (according to article 50 of the Criminal Procedure Code, the incompatible person is obliged to declare that he/she refrains from participating in the penal trial as soon as he/she is aware of the incompatibility case's existence); the interferences for some causes' settlement, the claim and the acceptance to settle personal interests or the family members' or any other people's interests, in a different way than within the limit regulated by law for all the citizens, as well as the interference in another judge's or prosecutor's activity; the non-compliance with the secret of the deliberation or with the confidentiality of the works that should be confidential (according to article 307 of the Criminal Procedure Code only the members of the Court in front of which the debate happened are allowed to take part in the recess, they being obliged to secretly deliberate); the delayed fulfillment of the works, as well as the repeated non-compliance and for imputable reasons of the legal provisions which concern the causes' settlement with celerity; the unjustified refusal of receiving to the file the requests, conclusions, memoirs or documents handed in by the trial's parties; the function's exercising, including the non-compliance with the procedural norms, by bad-faith or by severe negligence, if the action does not represent a crime; the unworthy attitude towards the colleagues, attorneys, experts, witnesses or litigants while exercising the job's responsibilities; the non-compliance with the provisions concerning the randomized distribution of the causes, as it had been regulated by article 313 line 1 and line 2 of the Criminal Procedure Law.

To the same effect, the Internal Regulations of the Judicial Courts (approved by the Decision no. 387/2005 of the Superior Council of Magistracy) shows – at article 10 – that "the lack of taking the necessary measures for the application of the norms concerning the randomized criterion of causes' distribution or the violation of these norms determine the guilty people's disciplinary responsibilities, under the law's conditions".

According to the provisions of article 97 line 1 of Law no. 303/2004 any person can notify the Superior Council of Magistracy, directly or by means of the leaders of the courts of law or prosecutors' offices, about the judges' or the prosecutors' inadequate activity or behavior, the violation of the professional obligations within the relations with the litigators or some disciplinary deviations' fulfillment by them.

To this extent, Law no. 317/2004 concerning the Superior Council of Magistracy regulates the procedure that must be followed as well as the council's competences as far as the domain of the magistrates' disciplinary responsibility is concerned. Thus, the Superior Council of Magistracy fulfills, by means of its departments, the role of court of law in the judges' and prosecutors' disciplinary responsibility domain, for the actions stipulated by Law 303/2004, republished. The disciplinary action is exercised by the Superior Council of Magistracy's disciplinary commissions, composed by a member from the Department of Judges and 2 inspectors from the Service of the Judges' Judicial Inspection and, respectively, a member from the Department Prosecutors and 2 inspectors from the Service of the Prosecutors' Judicial Inspection.

As a consequence of the disciplinary deviation's acknowledgement, the departments of the Superior Council of Magistracy can apply to the judges and to the prosecutors, according to the deviations' severity, the following sanctions: notification; the reduction of their monthly gross pay with up to 15% for a period starting from a month and up to 3 months; the disciplinary move for a period starting from a month and up to 3 months to a court of law or to a prosecutor's office, which is

under the jurisdiction of the same Court of Appeal or under the jurisdiction of the same Prosecutor's Office of this court; the dismissal from the function and the exclusion from the magistracy.

Furthermore, according to the provisions of article 51 line 2 of Law no. 303/2004 concerning the judges' and prosecutors' statute, the Superior Council of Magistracy, *ex officio* or at the general assembly's proposal or at the proposal of the court of law's president, can rule in favor of the dismissal of the judges from the leadership function, in the case of one of the disciplinary sanction's application.

Representing a genuine source of law with regards to the norms of the criminal procedure law and having direct implications in the penal trial's unfolding, Law no. 304/2004 concerning the judicial organization acknowledges the existence of the disciplinary sanctions' institution by means of the interfering consequences' expression.

Therefore, it is shown that the prosecutors appointed within the Terrorism and Organized Crime Investigation Department can be dismissed by means of the order given by the General Prosecutor of the Prosecutor's Office of the Supreme Court of Justice, with the Superior Council of Magistracy's notice, in the case of a disciplinary sanction's application.

Moreover, the law previously mentioned prescribes that the prosecutors appointed within the National Anti-Corruption Directorate can be dismissed by means of the order given by the Chief Prosecutor of the National Anti-Corruption Directorate, with the Superior Council of Magistracy's notice, in the case of the inadequate exercise of the function's specific responsibilities or in the case of a disciplinary sanction's application.

We can also encounter disciplinary sanctions in the case of the activities unfolded by the officers and specialized agents of the judicial police. In this way, in article 7 line 1 of Law no. 364/2004 concerning the organization and functioning of the judicial police, it is shown that the actions of indiscipline performed by the penal inquiry authorities of the judicial police, the General Prosecutor of the Prosecutor's Office of the Supreme Court of Justice can request the Administration and Interns minister to begin the preliminary inquiry for the deployment of the disciplinary responsibility.

We also consider that the disciplinary responsibility of the judicial police's penal inquiry authorities can be drawn in by the situation regulated by article 219 line 3 of the Criminal Procedure Code. In this way, in the case of the nonfulfillment or the deficient fulfillment, by the authority of penal inquiry, of the provisions given by the prosecutor, the prosecutor will inform the leader of the authority of penal inquiry, which has the obligation to communicate, in term of 3 days since the notification date, to the prosecutor the ruled measures. In this situation, we should bear in mind that, as a consequence of the corroboration of the norms comprised by article 219 line 2 of the Criminal Procedure Code with those comprised by article 66 line 1 of Law no.304/2004, it means that the authorities of the judicial police unfold the penal inquiry activity, directly, under the prosecutor's leadership and supervision, being obliged to fulfill his/her directives.

The specialized literature even discusses about the existence of a type of trial which directly concerns the disciplinary sanctions. Therefore, professor Grigore Theodoru mentions that the disciplinary trial comes into being in the case when, as a consequence of a disciplinary deviation, the activity of the disciplinary jurisdiction authorities unfolds, for the application of a disciplinary sanction to the person guilty for the deviation. The disciplinary sanction's application takes the form of a trial when, by law, disciplinary commissions are instituted, whose judgment activity unfolds after a specific procedure, as in the case of the disciplinary commissions of the magistrates, attorneys, teaching staff, etc. To that effect, we mention the provisions of article 24 of Law no. 304/2004; article 87 and article 101 of Law no. 303/2004; articles 44 – 49 of Law no. 317/2004 (republished) concerning the Superior Council of Magistracy; article 50, article 53, article 58 and articles 70 – 74 of Law no. 51/1995 for the organization and exercise of the profession of attorney. The disciplinary trial is similar to the penal trial due to the application of the principle of the disciplinary authorities'

ex officio interference and to the unfolding of an inquiry prior to the judgment, but the judgment usually follows the civil trial's norms.

In direct connection with the disciplinary sanctions, the legislator had also established the institution of the ***judiciary fine***. Therefore, within the framework of the penal trial, certain deviations which can be performed by the people chosen to cooperate at the judicial activity's unfolding are sanctioned with judicial fine.

Frequently, these deviations consist of: the nonfulfillment or wrongful fulfillment of the citation or procedural acts' communication works; the unjustified lack of the defender, witness, expert or interpreter; the expert's delay of fulfilling the given duties; the non-compliance with the measures taken by the court of justice's president regarding the order and solemnity of the judgment session by the parties, their defenders, witnesses, experts, interpreters or any other person, as well as their irreverent manifestations towards the judge or the prosecutor.

The judiciary fine is applicable for the deviations expressly stipulated by article 198 of the Criminal Procedure Code, which imply the non-fulfillment of the procedural obligations or their fulfillment with the non-compliance of the legal requirement. The judiciary fine's application can be cumulated with a disciplinary sanction; in the same way, according to the provisions of article 198 of the Criminal Procedure Code, the judiciary fine's application does not eliminate the penal responsibility, in case the action represents a crime.

The specialized literature shows that the judiciary fine is a procedural sanction which can be considered a typical, imperfect fine.[18]

According to article 199 of the Criminal Procedure Code, the competence of applying judicial fine belongs to the judicial authorities in front of which the cause is presented, and the establishment of its quantum is made according to the deviance's nature and severity, the commission conditions and the perpetrator's procedural position. In this way, the fine is applied by the penal inquiry authority, by means of ordinance, and by the court of law, by means of closure.

The person who received the fine can ask for a relaxation or the fine's reduction, in term of 10 days since the date of communication of the ordinance or of the resolution of the fine, justifying in his/her request the reason for which he/she could not have fulfilled his/her legal obligation. The request will be analyzed by the same judicial authority which had given the fine.

Penal sanctions

The compliance with the legality principle during the penal trial is also granted by the existence of some penal sanctions which can be applied to the people who do not fulfill or who violate the legal obligation concerning the penal trial's unfolding.

The people who unfold a judicial activity do it in compliance with the law, in the same time being obliged to fulfill their responsibilities by means of the pronouncement of legal and through settlements in relation to the legally administered evidence. To that effect, we should bear in mind the provisions stipulated by article 64 and article 68 of the Criminal Procedure Code, where it is shown that the means of evidence obtained illegally cannot be used during the penal trial, the utilization of violent threats or any other means of constraint, promises or incentives, with the purpose of obtaining evidence, also being outside the law. Moreover, article 68 line 2 of the Criminal Procedure Code shows that persuading a person to commit or to continue to commit a penal action, with the purpose of obtaining evidence, is not allowed.

Taking into account the previously mentioned points, as well as the imperative condition which implies the compliance with law throughout the penal trial, we can declare that whenever,

[18] V.Dongoroz et alii, *Theoretical Explanations of the Romanian Criminal Procedural Code,* general part*, vol.I,* the Academic Publishing House, Bucharest – 1975, p.414

during the specific activities of the penal trial's unfolding, the law's violation takes serious forms, the guilty people will be held penally responsible for their actions.

To that effect, we should remember that in the Penal Code, the Special Part, Title VI, Chapter II, the legislator had established the crimes which impede the fulfillment of justice, and some of them can be committed only during the penal trial's unfolding. Therefore, we should consider: illegal arrest and abusive inquiry (art 266 of the Criminal Procedure Code), subjugation to ill treatments (article 267 of the Criminal Procedure Code), torture (article 267^1 of the Criminal Procedure Code), unjust repression (268 of the Criminal Procedure Code). The special judicial object of these crimes is constituted by the social relations concerning the achievement of the penal justice which implies the compliance with all the legal stipulations and which also exclude any violent actions, pressures and sufferings.

We observe that the crimes previously mentioned are typical for the penal trial's unfolding, being possible to be committed only by the actively qualified subjects. Thus, as far as the crime of the illegal arrest and abusive inquiry is concerned, the active subject cannot be anything else than a functionary (magistrate, penal inquiry authority, etc.) who has responsibilities as far as the application of the detention or preventive arrest, or referring to the punishment's execution or who unfolds judicial activities. The active subject of the crime of subjugation to ill treatments cannot be anything else than a functionary who has among his/her responsibilities the surveillance of a detained or arrested person, or a person against who safety or educative measures have been taken. Moreover, although the law does not expressly refers to it, as far as torture is concerned, the doctrine[19] stipulates that the active subject of the crime, cannot be anything else than a functionary – authorities' agent or any other person who operates under an official title or when provoked by or with the express and implicit consent of these kind of people, regardless of the fact that the judicial procedure had been started or not. In the case of the unjust repression crime, the active subject will be the judicial authority that has the ability of setting into motion the penal action (prosecutor or, in exceptional cases, judge), of ruling in favor of the arrest (judge), of sending to trial (prosecutor) or of convicting a person (judge), knowing that that person is not guilty.

Besides the previously mentioned crimes, the Romanian Penal Code also refers to a series of crimes which are not typical for the penal trial, but which are frequently encountered during the activity of unfolding of the justice's administration. To that effect, we observe that without dealing with a classification of the active subjects, the violation of the penal trial's principle of legality can be sanctioned with the following crimes: abuse while on duty against the private interests (article 246 of the Criminal Procedure Code), abuse while on duty by means of limiting some rights (article 247 of the Criminal Procedure Code), aggravated abuse while on duty (article 248^1 of the Criminal Procedure Code), negligence while on duty (article 249 of the Criminal Procedure Code), abusive behavior (article 250 of the Criminal Procedure Code), conflict of interests (article 253^1 of the Criminal Procedure Code), bribery (article 254 of the Criminal Procedure Code), reception of illegal benefits (article 256 of the Criminal Procedure Code), etc.

Furthermore, we should observe the circumstance according to which the fundamental principle of the penal trial's legality can be overlooked by the judicial authorities appointed in conformity with their competences to participate in the settlement of a penal cause, as well as by the other penal trial's participants or even by the people who are not directly involved in the trial's unfolding. Therefore, within the Penal Code's special provisions the legislator had established a series of crimes among which, with the title of example, we care to mention the following: corrupt payment (article 255 of the Criminal Procedure Code), influence peddling (article 257 of the Criminal Procedure Code), defamatory denunciation (article 259 of the Criminal Procedure Code), perjury (article 260 of the Criminal Procedure Code), abetment in crime (article 264 of the Criminal

[19] M. Hotca, *Penal Code, Comments and Explanations,* C.H. Beck Publishing House, Bucharest – 2007, p.1301.

Procedure Code), the omission to inform the judicial authorities (article 265 of the Criminal Procedure Code), the judicial authorities' contempt (article 272^1 of the Criminal Procedure Code), etc.

Civil sanctions

Under certain conditions, the official subjects that had violated the law during the penal trial's unfolding can be held civilly responsible. According to the provisions of article 94 of Law no. 303/2004 the judges and the prosecutors are civilly responsible, under the law's conditions.

Therefore, we mention that the provisions of article 52 line 3 of Romania's Constitution stipulate that the State is held responsible from a patrimonial point of view for the prejudices caused by means of judicial errors. Moreover, the state's responsibility is established under the law's conditions and does no eliminate the responsibility of the magistrates who had exercised the function in bad-faith or severe negligence.

Fully reconsidering the regulation comprised in Romania's fundamental law, presented in the previous section, Law no. 303/2004 concerning the judges' and prosecutors' statute shows, in article 96 line 1-3, that "The state is held responsible from a patrimonial point of view for the prejudices caused by means of judicial errors. The state's responsibility is established under the law's conditions and, does not eliminate the responsibility of the judges and prosecutors who had exercised the function in bad-faith or severe negligence. The cases in which the injured person has the right to fix the prejudices caused by means of judicial errors which were fulfilled during the penal trials are established by the Criminal Procedure Code".

To that effect, according to article 504 of the Criminal Procedure Code, the person which was convicted definitively has the right to fix the suffered damage, if as a consequence of the cause's rejudging a definitive decision of acquittal had been ruled. Moreover, the person who, during the penal trial, had been illegally deprived of freedom or whose freedom had been limited has the right to demand the prejudices repair. Not lastly, according to line 4 of the same article, the person who had been deprived of freedom after the occurrence of the action's prescription, amnesty or non-incrimination, has the right to repair the suffered damage. By means of this enumeration of cases in which the prejudiced person has the right to repair the damage, the legislator has also managed to offer a definition to the notion of "judicial error during the penal trial".

We should also mention the provisions stipulated in the Additional Protocol no. 7 at the European Convention on Human Rights which, in article 3, states the following: "When a definitive penal conviction is subsequently cancelled or when a judicial pardon is offered, due to the fact that a newly or recently discovered action proves that a judicial error had occurred, the person who had been affected because of this conviction is reimbursed according to the law or practice in effect in the respective state, except for the case when by not discovering in time the unknown act is entirely or partly imputable to that person."

For obtaining the damage's repair, according to the provisions comprised in the internal legislation, specifically article 506 corroborated with article 504 of the Criminal Procedure Code, the person entitled may address to the court in whose circumscription he/she resides, by suing the state by means of a civil trial, which is cited by the Ministry of Public Finances. According to article 96 line 6 of Law no. 303/2004 the injured person can take action *only* against the state, represented by the Ministry of Public Finances. The grounds of the state's patrimonial responsibility are based on the fact that the State is the one that organizes the justice's activity and is the magistrates' trainer, reason for which the deficiencies of any other nature are imputable to it.

The magistrates' civil responsibility has a *subsidiary* character and is determined only when the state had paid the prejudice which had been generated by the judicial error. In this way, after the damage's repair according to article 506 of the Criminal Procedure Code, as well as in the situation in which the Romanian state had been convicted by an international court, the legal remedy against

the person who, by bad-faith or by severe negligence, had produced a damage generating situation is mandatory. Moreover, in article 96 line 7 of Law no. 303/2004 the following is mentioned: "After the prejudice had been paid by the state on the basis of the irrevocable decision ruled according to the provisions of line (6), the state can reclaim the prejudices from the judge or the prosecutor who, by bad-faith or severe negligence, had performed the judicial error which had caused prejudices."

e can observe that the legal remedy is mandatory not only for the situations which generate prejudices mentioned in article 504 – 506 of the Criminal Procedure Code, but also as far as the circumstances of the Romanian state's conviction by international courts are concerned.

To that effect, we mention the provisions of article 12 of the Government Emergency Ordinance no. 94/1999 concerning Romania's participation at the procedures presented to the European Court of Human Rights according to which the State has legal remedy against the people who, by means of their activity, guilty as charged, had determined its obligation to pay the sums established by means of the Court's decision. Moreover, it is shown that the magistrates' civil responsibility is established according to the conditions that will be regulated by means of the judicial organization law.

Additionally, considering this institution, we insist on mentioning the legislator's constant concern with the purpose of creating a coherent and efficient judicial framework as far as the application of the judges' and prosecutors' material responsibility is concerned. Thus, by means of the law project concerning the modification and completion of Law no. 303/2004 and of the Criminal Procedure Code, the legislator considers implementing an obligation in the judges' and prosecutors' duty of signing civil liability insurance for the judicial errors fulfilled due to severe negligence. Furthermore, the law project previously mentioned defines the notions of bad-faith ("there is bad-faith when the judge or the prosecutor violates, with knowledge, the material or procedural law's norms, desiring or accepting some people's injury") and severe negligence ("there is severe negligence when the judge or the prosecutor guiltily overlooks, and in a severe and unpardonable manner, the material or procedural law's norms").

In order to reinforce the penal trial's legality principle, besides the procedural sanctions, the civil or penal disciplinary sanctions, which find their applicability according to the severity of the law's violation, numerous possibilities of systematic and efficient control by means of which the illegal procedural and in-court procedural acts can be discovered and eliminated are regulated.[20] On these lines, the Criminal Procedure Code has organized the surveillance of the activity of the penal inquiry authorities by the prosecutor (articles 216 – 220), the judicial control of the penal inquiry activity (article 278^1, article 300, article 332, article 380 and article 385^{16} line 2) or the control of the court of law by declaring and judging the attack means. In this way, not only the prevention of law's violation is ensured but also the discovery and elimination of the already fulfilled ones.[21]

The legality principle represents a frame principle since its interaction with the other principles exceeds the simple connection with those. The legality represents the frame within and with the compliance with which all the other fundamental principles of the penal trial are realized. No other principle can be placed outside the legality, in same way in which any principle, no matter how important it may be, does not occur in any other way than according to the forms stipulated by law.[22]

Therefore, considering at the same time the aspects exposed in the present paper, we conclude by saying that the compliance with the fundamental principle of legality in the penal trial is guaranteed by numerous sanctions which, by means of their importance and severity, undoubtedly express the fact that the activity of justice's fulfillment must unfold within the law's supremacy

[20] I. Neagu, *Criminal procedure Treaty – General part,* the Judicial Universe, Bucharest – 2010, p.76.

[21] Gr. Theodoru, L. Moldovan, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1979, p.35.

[22] N. Volonciu, *Criminal Procedure,* the Didactic and Pedagogical Publishing House, Bucharest – 1972, p.73.

spirit, ensuring in the same time the right to a just trial. Regardless of the level at which they operate – constitutional, organic law or special law, these sanctions have a single purpose, which is the guarantee of the provisions which regulate the penal trial's unfolding according to the law.

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