

Common Law Influences on the Continental Legal System in Criminal Matters

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Abstract

Starting from the hypothesis that the great family of Romano-Germanic law currently prevails in Europe, established on the foundations of the inquisitorial conception, but also with a series of influences of the adversarial orientation, this paper brings to attention some aspects of comparative law regarding the consequences of the takeover of certain legal institutions specific to the common law system into the continental law system. Based on documentation, observation and scientific analysis, as research methods, the present study aims to reveal how Romano-Germanic law has taken over some elements of an accusatory nature, as well as to underline the importance of ensuring the coherence of the local legislative fund under the conditions of such translations. At the end of the paper, it is emphasized that currently there are no typical accusatory or inquisitorial procedural systems, contemporary European legislation adopting a mixed conception, with more or less pronounced influences of one of the two original orientations. This still implies harmonization and maintaining the balance between the elements taken from the typical systems and the particularities of domestic law.

Keywords: criminal procedural system; Romano-Germanic law; Anglo-Saxon law; legislative harmonization.

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1. Introduction

The legal geography of the contemporary world is configured by a grouping of national systems into several large systems or families of law²:

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² Mihai Bădescu, *Teoria generală a dreptului* [General Theory of Law], 7th rev. and expanded ed. (Bucharest: Hamangiu, 2022), 53–66.

- the Roman-Germanic family of law (French law, German-Swiss law, Nordic law and other related systems, namely Spanish, Italian, Portuguese, Belgian law);
- Anglo-Saxon family law (English law, United States law);
- traditional and religious families and types of law (Islamic or Muslim law, Indian law, rabbinic and Israeli law, traditional Japanese law, African customary law).

At European level, there are currently two major systems (families) of law: Romano-Germanic law (continental) and Anglo-Saxon law (*common law*), the differences between them being determined by the procedural orientation (concept) adopted (either inquisitorial or adversarial/accusatory)³.

Thus, over time, three types of procedural guidelines (regulations) have emerged, which sometimes functioned exclusively, sometimes cumulatively, in the same periods⁴: accusatory (adversarial), inquisitorial and mixed (eclectic).

From a chronological perspective, the adversarial orientation first appeared in archaic societies where there was no centralized state power yet⁵, the characteristics of this procedural conception being publicity, orality and adversarial nature of the trial, as well as the freedom to produce evidence⁶ before a judge with the role of impartial arbitrator, as a representative of the community.

According to the adversarial conception, the trial was initiated on the basis of an accusation (hence the name “accusatory”), the withdrawal of which led to the impossibility of continuing the trial⁷.

Later, amid the centralization of state power, the inquisitorial orientation also appeared, with features opposite to the adversarial one⁸, in the sense of the secret, written and non-contradictory nature of the procedure, as well as the limitation of the means of evidence and the pre-establishment by law of their probative force. The inquisitorial legal tradition considered law to be a creation of the

³ Anca-Lelia Lorincz, “Instituții procesuale penale de sorginte adversarială preluate în dreptul românesc contemporan” [Criminal Procedural Institutions of Adversarial Origin Adopted in Contemporary Romanian Law], in *Evoluții și perspective în dreptul contemporan* [Developments and Perspectives in Contemporary Law], ed. Adriana Iuliana Stancu and Anca-Lelia Lorincz (Bucharest: Pro Universitaria, 2024), 8, <https://doi.org/10.52744/978-606-26-1958-9.01>.

⁴ George Antoniu, Nicolae Volonciu, and Nicolae Zaharia, *Dicționar de procedură penală* [Dictionary of Criminal Procedure] (Bucharest: Editura Științifică și Enciclopedică, 1988), 253.

⁵ Cristinel Ghigheci, commentary in Nicolae Volonciu, Andreea Simona Uzlău, et al., *Noul Cod de procedură penală comentat* [The New Code of Criminal Procedure: Commentary], ed. Nicolae Volonciu and Andreea Simona Uzlău (Bucharest: Hamangiu, 2014), 2.

⁶ Vintilă Dongoroz, commentary in Vintilă Dongoroz et al., *Explicațiile teoretice ale Codului de procedură penală român: Partea generală* [Theoretical Explanations of the Romanian Code of Criminal Procedure: General Part], vol. 1 (Bucharest: Editura Academiei R.S.R., 1975), 20.

⁷ Cristinel Ghigheci, *Principiile procesului penal în noul Cod de procedură penală* [Principles of Criminal Procedure in the New Code of Criminal Procedure] (Bucharest: Universul Juridic, 2014), 22.

⁸ Dongoroz, *Explicațiile teoretice*, 21.

state, of governmental elites, imposed on people by the central power (government) in order to improve society⁹.

In the inquisitorial conception, the judge, as a representative of the state authority, had to be a professional¹⁰ (i.e., a person with a certain specialized training) with an active role in the administration of evidence, an activity that could not be left to the discretion of the parties, the judicial bodies being obliged to proceed *ex officio* upon the initiation of the trial (the principle of officiality and obligation).

Taking the aspects considered useful from the other two orientations, the mixed (eclectic) conception is characterized by the regulation of a preliminary phase of the criminal trial, in which elements of the inquisitorial conception are applied (*ex officio*, written and secret procedure), and of a trial phase, which is carried out according to the rules specific to the accusatory conception (orality, publicity, adversarial nature)¹¹.

Most modern criminal procedural legislation has adopted a mixed orientation, but with its own particularities, with numerous deviations from the strict application of the rules typical of the two conceptions¹².

In Europe, the great family of Romano-Germanic law currently prevails, established on the foundations of the inquisitorial conception, but also with a series of influences of the adversarial orientation.

Moreover, the effects of globalization have also manifested themselves in the legal field, including through the translation into continental (Roman-Germanic) legal systems of certain elements specific to *common law* systems.

In this context, the present study, framed in the theme of “Law and Complexity” (“Mutations of legal systems”), addresses some aspects regarding the influences of the Anglo-Saxon legal system (*common law*) on the Romano-Germanic (continental) one.

As a novelty, several legal institutions introduced into the continental legal system following the application of adversarial origin principles are presented in a comparative manner (by reference to the legislation of several European states).

Based on documentation, observation and scientific analysis, as research methods, the paper aims to reveal how Romano-Germanic law has taken over some elements of an accusatory nature, as well as to underline the importance of ensuring the coherence of the local legislative fund in the conditions of such translations.

⁹ Nadia Elizabeth Nedzel, “Fuller, Dworkin, Scientism, and Liberty: The Dichotomy between Continental and Common Law Traditions and Their Consequences,” *Laws* 12, no. 3 (2023): 3, <https://doi.org/10.3390/laws12030037>.

¹⁰ Ghigheci, *Principiile procesului penal*, 23.

¹¹ Antoniu, Volonciu, and Zaharia, *Dicționar de procedură penală*, 253.

¹² Dongoroz, *Explicațiile teoretice*, 21.

Except for the introductory part and the conclusions, this study is structured in three sections.

The first section analyzes some institutions (such as the waiver of criminal prosecution) introduced, based on the principle of opportunity, in the legislation of some states that fall within the area of continental law.

The second section is devoted to the effects that the application of the principle of loyalty in the administration of evidence has had on legal systems belonging to the Romano-Germanic family of law.

The last section deals with the issue of transposing into continental law some elements of negotiated justice, a concept specific to the accusatory orientation.

The conclusions of the paper emphasize the fact that currently there are no typical accusatory or inquisitorial procedural systems, contemporary European legislation adopting a mixed conception, with more or less pronounced influences of one of the two original orientations. This, however, still requires harmonization and maintaining the balance between the elements considered useful, mutually taken from typical systems, and the national particularities of domestic legislation.

2. The Opportunity to Pursue Criminal Action and Hold Criminally Liable

The concept of opportunity in terms of exercising criminal action represents one of the specific features of the Anglo-Saxon legal system. Thus, in the United States of America¹³, as a manifestation of the principle of opportunity, the prosecutor is allowed to assess, based on certain relevant aspects¹⁴, whether the initiation and conduct of criminal prosecution would serve a substantial federal interest (i.e. a general public interest).

Also, in the United Kingdom (England and Wales), prosecutors assess whether criminal prosecution is required¹⁵ or whether extrajudicial measures can be taken as alternatives to criminal prosecution; To make such a decision on the appropriateness of continuing a file by investigating the cause, prosecutors must assess whether criminal prosecution is in the public interest in the respective

¹³ U.S. Department of Justice, “9-27.230—Initiating and Declining Charges—Substantial Federal Interest,” in *Justice Manual*, updated June 2023, accessed March 13, 2026, <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution>.

¹⁴ Examples include federal law-enforcement priorities, the nature and seriousness of the crime, the deterrent effect of prosecution, and the person’s willingness to cooperate in the investigation or prosecution of others.

¹⁵ Crown Prosecution Service, *The Code for Crown Prosecutors* (October 26, 2018), sec. 3.1, “The Decision Whether to Prosecute,” accessed March 13, 2026, <https://www.cps.gov.uk/publication/code-crown-prosecutors#section3>.

case¹⁶.

Unlike *common law*, the continental law system, of inquisitorial origin, is characterized by officiality (or obligation), as a principle of exercising criminal action. Officiality represents the requirement that the acts necessary for the commencement or continuation of criminal proceedings be carried out by the judicial bodies even in the absence of the initiative of the parties involved¹⁷.

A series of European legislations that fall within the area of continental law have, however, also taken over some elements of opportunity, which mitigate the official nature of the criminal action. More specifically, countries such as France, Germany, Spain, Belgium, Italy, Slovenia, Serbia, Bulgaria or Romania have introduced, as an expression of the principle of opportunity, some legal institutions that assume the possibility of judicial bodies (the prosecutor, in some of these countries or the judge, in others) to waive the exercise of criminal action under certain conditions.

Thus, the French Code of Criminal Procedure¹⁸ provides that it is the prosecutor who decides whether it is appropriate either to initiate criminal proceedings, to implement an alternative measure to criminal prosecution, or to dismiss the case by closing the procedure without continuing with other activities (“classer sans suite”) if the circumstances justify this solution.

The German criminal procedure legislation, although it expressly enshrines the principle of mandatory criminal prosecution¹⁹, also regulates the possibility of the Public Ministry (prosecutors' offices) to order:

- non-prosecution of crimes considered minor²⁰
- non-prosecution subject to imposition of conditions and directions²¹
- non-prosecution if the application of the penalty can be waived²² or
- partial cessation of the prosecution when committing several crimes²³.

¹⁶ Crown Prosecution Service, *Code for Crown Prosecutors*, sec. 4.4, “The Full Code Test,” <https://www.cps.gov.uk/publication/code-crown-prosecutors#section4>.

¹⁷ Matei-Ciprian Gaur, *Acțiunea penală—între oficialitate și oportunitate* [Criminal Action—Between Legality and Opportunity] (Bucharest: Hamangiu, 2019), 246.

¹⁸ France, *Code de procédure pénale*, art. 40-1, accessed March 15, 2026, https://www.legi-france.gouv.fr/codes/article_lc/LEGIARTI000033611483.

¹⁹ Germany, *Code of Criminal Procedure* (Strafprozessordnung), sec. 152, accessed March 15, 2026, https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html.

²⁰ A waiver of prosecution with the court’s consent, when there is no public interest in continuing the criminal proceedings: Germany, *Code of Criminal Procedure*, sec. 153.

²¹ For less serious offenses, the public prosecution office may, with the consent of the accused and the court, waive prosecution while imposing obligations such as compensation, participation in social-skills training, or psychiatric, psychotherapeutic, or sociotherapeutic treatment: Germany, *Code of Criminal Procedure*, sec. 153a.

²² The public prosecution office may, with the court’s consent, waive the filing of public charges if the conditions for the court to dispense with punishment are met: Germany, *Code of Criminal Procedure*, sec. 153b.

²³ The public prosecution office may waive prosecution of an offense if the accused has already

The Spanish Code of Criminal Procedure regulates a procedure for the trial of minor offenses²⁴, according to which the judge may order, at the request of the prosecutor's office, the closure of the procedure and the archiving of the file, if the offense reported is of minor gravity and there is no relevant public interest in the criminal prosecution of the act.

Moreover, it has also been stated in Spanish doctrine²⁵ that exempting the prosecutor's office from the monopoly of exercising the right to criminal action in certain cases, for reasons of criminal policy, is a clear manifestation of the principle of opportunity.

Belgian legislation²⁶ uses the concept of “opportunity of prosecution” (“*opportunité des poursuites*”), regulating the possibility for the prosecutor, in accordance with the criminal policy directives established by the minister of justice, after consulting the College of general prosecutors (including on the investigation and prosecution policy), to dismiss a case on grounds of opportunity.

Italian law enshrines the formality of criminal prosecution²⁷, but, as a manifestation of expediency, it also regulates the possibility of removing criminal liability²⁸ when the judge considers, in relation to the perpetrator's conduct and the importance of the damage or danger, that the crime is of a particularly minor nature.

We note that the Italian legislator only grants judges the power to assess, based on the investigations carried out by the Public Ministry (composed of prosecutors) during the preliminary investigation, whether it is necessary to continue the process or to finalize it once it is established that there is no public interest in investigating the relevant act²⁹.

Elements of opportunity regarding the exercise of criminal proceedings are also found in the Criminal Procedure Act of Slovenia³⁰, according to which

been sentenced for another offense and that sentence appears sufficient in its effect on the perpetrator: Germany, *Code of Criminal Procedure*, sec. 154.

²⁴ Spain, *Ley de Enjuiciamiento Criminal*, art. 963, accessed March 15, 2026, <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036>.

²⁵ Javier Vecina Cifuentes and Tomás Vicente Ballester, “Las manifestaciones del principio de oportunidad en el proceso penal español” [Manifestations of the Principle of Opportunity in Spanish Criminal Proceedings], *Derecho & Sociedad*, no. 50 (2018): 314, <https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/20395>.

²⁶ Belgium, *Code d'instruction criminelle*, art. 28quater, accessed March 15, 2026, <https://www.e-justice.just.fgov.be/eli/loi/1808/11/17/1808111701/justel>; Belgium, *Code judiciaire*, art. 143quater, accessed March 15, 2026, <https://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101052/justel>.

²⁷ Italy, *Codice di procedura penale*, art. 50, accessed March 15, 2026, <https://www.normattiva.it/uri-res/N2Ls?urn%3Anir%3Apresidente.repubblica%3Acodice.procedura.penale%3A1988-09-22%3B447~art50>.

²⁸ Italy, *Codice penale*, art. 131-bis, accessed March 15, 2026, <https://www.normattiva.it/uri-res/N2Ls?urn%3Anir%3Astat%3Acodice.penale%3A1930-10-19%3B1398~art131bis>.

²⁹ See also Graur, *Acțiunea penală*, 258.

³⁰ Slovenia, *Criminal Procedure Act*, art. 51, accessed March 15, 2026, <https://pisrs.si/pregled>

the state prosecutor may decide not to continue the prosecution in cases provided for by law, including in the situation where there is a disproportionality between the minor importance of the crime and the consequences that the criminal prosecution in question may have³¹.

The Serbian Criminal Procedure Code also enshrines, as a rule, the official nature of criminal prosecution³², but also regulates the prosecutor's ability to drop charges³³.

The criminal and criminal procedural legislation in Bulgaria has also taken over aspects of the principle of opportunity, providing for the possibility for the prosecutor to propose the removal of the criminal liability of the defendant along with the application of an administrative sanction³⁴, when he finds that the legal conditions for the court to exonerate him from criminal liability are met³⁵.

In the current Romanian Code of Criminal Procedure³⁶, the inquisitorial principle of the obligation to pursue criminal action is enshrined, but this is mitigated by introducing the subsidiary principle of opportunity, which implies the possibility for the prosecutor to waive, under certain conditions provided by law, the pursuit of criminal action. Moreover, the purpose of transposing the principle of opportunity into the current Code was to avoid conducting criminal trials in minor cases, as well as to reduce the volume of criminal cases pending before judicial bodies³⁷.

Thus, as a new element in Romanian legislation, by way of exception to the principle of the obligation to initiate and exercise criminal action³⁸, it is stipulated that “in the cases and under the conditions expressly provided by law, the prosecutor may waive the exercise of criminal action if, in relation to the concrete elements of the case, there is no public interest in achieving its object”³⁹.

Npb?idPredpisa=ZAKO362&idPredpisaChng=ODLU1998.

³¹ Slovenia, *Criminal Procedure Act*, art. 161 (cases in which the state prosecutor dismisses a criminal complaint).

³² Serbia, *Criminal Procedure Code*, arts. 5–6, accessed March 15, 2026, https://legislationline.org/sites/default/files/documents/86/Serbia_2011%20CPC%20English_.pdf.

³³ Serbia, *Criminal Procedure Code*, art. 52.

³⁴ Bulgaria, *Criminal Procedure Code*, art. 375, accessed March 15, 2026, https://legislationline.org/sites/default/files/documents/67/PENAL_PROCEDURE_CODE_am2011_en.pdf.

³⁵ Bulgaria, *Criminal Code*, art. 78a, accessed March 15, 2026, <https://rm.coe.int/penal-code-bulgaria-appendix-1-to-eu-survey/1680ad2b38>.

³⁶ Romania, Law no. 135/2010, *Code of Criminal Procedure*, Official Gazette of Romania, no. 486, July 15, 2010, as amended, accessed March 17, 2026, <https://legislatie.just.ro/Public/DetaliuDocumentAfis/185907>.

³⁷ Romanian Ministry of Justice, *Expunere de motive la proiectul noului Cod de procedură penală* [Explanatory Memorandum to the Draft New Code of Criminal Procedure], accessed March 17, 2026, <https://www.juridice.ro/wp-content/uploads/2015/07/Expunere-de-motive-Proiectul-Legii-privindCodul-de-procedura-penala-forma-transmisiaParlamentului.doc>.

³⁸ Romania, *Code of Criminal Procedure*, art. 7(1).

³⁹ Romania, *Code of Criminal Procedure*, art. 7(2).

As noted in the doctrine⁴⁰ developed around the provisions of the current Romanian Criminal Procedure Code, in the Romanian criminal procedural system, unlike the adversarial systems of origin, the prosecutor's possibility to waive the exercise of criminal action is restricted only to the criminal prosecution phase, not being regulated in the trial phase.

In addition to the provisions of principle in the General Part of the Romanian Criminal Procedure Code, the waiver of criminal prosecution, as a solution for not pursuing and not bringing to trial, is regulated in the Special Part of the code⁴¹. Moreover, the initial form of regulation of this institution was substantially modified in 2016⁴², in order to implement a decision of the Constitutional Court⁴³ which ruled that “the renunciation of criminal prosecution by the prosecutor, without it being subject to the control and approval of the court, is equivalent to the exercise by the prosecutor of powers that belong to the sphere of competence of the courts”.

Furthermore, the Constitutional Court found that, through the initial form of regulation of the institution of waiving criminal prosecution⁴⁴, the legislator did not ensure “an adequate balance between the application of the principle of legality, specific to the continental law system, existing in Romania, and the application of the principle of opportunity, specific to the Anglo-Saxon law system, giving precedence to the latter, to the detriment of the former”. Therefore, the legislative amendment of 2016 consisted in establishing the competence of a judge (the preliminary chamber judge) to decide on the solution of waiving criminal prosecution ordered by the prosecutor, as well as in the detailed enumeration, by law, of all the criteria that must be taken into account when assessing the public interest in investigating the act.

Therefore, according to the current regulation, in the case of crimes for which the law provides for a fine or a prison sentence of no more than 7 years, the prosecutor may abandon criminal prosecution when he finds that there is no public interest in prosecuting the act.

As has been appreciated in Romanian legal literature⁴⁵, the essential condition for pronouncing the decision to waive criminal prosecution (a condition that gives concrete content to the principle of opportunity) is the absence of public interest in prosecuting the crime.

⁴⁰ Ghigheci, *Principiile procesului penal*, 302.

⁴¹ Romania, *Code of Criminal Procedure*, arts. 314(1)(b) and 318.

⁴² Romania, Government Emergency Ordinance no. 18/2016, Official Gazette of Romania, no. 389, May 23, 2016, as amended.

⁴³ Constitutional Court of Romania, Decision no. 23/2016 concerning the exception of unconstitutionality of article 318 of the Code of Criminal Procedure, Official Gazette of Romania, no. 240, March 31, 2016.

⁴⁴ This was the form adopted in 2010 and brought into force in 2014.

⁴⁵ Radu Slăvoiu, *Renunțarea la urmărirea penală* [Waiver of Criminal Prosecution] (Bucharest: Hamangiu, 2023), 20.

The legal criteria against which the public interest is analyzed are:

- the content of the act and the concrete circumstances of its commission;
- the manner and means of committing the act;
- the purpose pursued;
- the consequences produced or that could have been produced by the commission of the crime;
- the efforts of the criminal investigation bodies necessary for the conduct of the criminal trial in relation to the gravity of the act and the time elapsed since its commission;
- the procedural attitude of the injured person;
- the existence of a clear disproportion between the expenses that the conduct of the criminal trial would imply and the gravity of the consequences produced or that could have been produced by the commission of the crime.

If the perpetrator is known, in addition to the previously mentioned criteria, his/her person, his/her conduct prior to the commission of the crime, his/her attitude after the commission of the crime and the efforts made to eliminate or mitigate the consequences of the crime are also taken into account.

The ordinance by which the prosecutor orders the abandonment of criminal prosecution is transmitted, for confirmation, to the preliminary chamber judge of the court which would have, according to the law, the jurisdiction to judge the case in first instance.

If the preliminary chamber judge confirms the order, the decision to discontinue criminal prosecution becomes final; on the other hand, if the preliminary chamber judge rejects the request for confirmation of the decision to discontinue criminal prosecution, a new decision to discontinue criminal prosecution cannot be ordered, regardless of the reason invoked.

The reconfiguration, since 2016, of the procedure for waiving criminal prosecution also led to the modification of the provisions of the Special Part of the Romanian Criminal Procedure Code⁴⁶ regarding the continuation of criminal prosecution at the request of the suspect or defendant, so that, currently, the suspect or defendant can no longer request the continuation of criminal prosecution in case of waiving criminal prosecution, according to the same procedure that applies in case the continuation of prosecution is requested in case of dismissal⁴⁷.

On the other hand, according to the provisions of the General Part of the Code⁴⁸, provisions that have not undergone any changes, “in case of amnesty, prescription, withdrawal of the prior complaint, existence of a cause of impunity

⁴⁶ Romania, *Code of Criminal Procedure*, art. 319, “Continuation of Criminal Prosecution at the Request of the Suspect or Accused.”

⁴⁷ The Romanian Code of Criminal Procedure provides for two decisions not to prosecute or commit a case for trial: dismissal (arts. 315–17) and waiver of criminal prosecution (art. 318).

⁴⁸ Romania, *Code of Criminal Procedure*, art. 18, “Continuation of Criminal Proceedings at the Request of the Suspect or Accused.”

or non-imputability or in case of waiving criminal prosecution, the suspect or defendant may request the continuation of the criminal trial". Consequently, under the provisions of the General Part of the Code, the suspect or defendant may request the continuation of the criminal trial, and therefore implicitly of the criminal prosecution, but the applicable procedure for exercising this right is no longer regulated. Thus, a legislative inconsistency arose, a lack of correlation between the content of the amended provisions of the Special Part of the Criminal Procedure Code with the unamended provisions of the General Part of the Code. Therefore, in order to regulate the procedural mechanism that would ensure the suspect or defendant the possibility of requesting the continuation of the trial (based on general provisions), including in the event that the criminal prosecution has been abandoned, it is necessary to amend and supplement the provisions of the Special Part of the Code⁴⁹.

In a broader sense of the concept of opportunity, if we refer to the assessment of the possibility of incurring criminal liability, it can be stated that, in the current criminal and criminal procedure legislation in Romania, as a result of the takeover of some adversarial legal institutions, this concept is also manifested in the trial phase through the institution of waiving the application of the penalty, and even the institution of postponing the application of the penalty (solutions that can only be pronounced by the "seat" judge, i.e. the court of law)⁵⁰.

3. Fairness of Evidence Administration. Exclusion of Unfairly Administered Evidence and All Evidence Obtained Illegally

Another influence of *common law* on continental law is the recognition and application of the principle of fairness in the administration of evidence.

In French legal literature⁵¹, the principle of loyalty in relation to the activity of administering evidence has been defined, in a broad sense, as the rule according to which it is prohibited to use any means, strategies or maneuvers whose purpose is the administration in bad faith of a means of evidence or which have the effect of provoking the commission of a crime, in order to obtain a means of evidence, if these means harm the dignity of the person or their right to a fair trial or to private life.

⁴⁹ See the concrete *lex ferenda* proposal in Anca-Lelia Lorincz and Marius Popa, "Despre posibilitatea continuării urmăririi penale la cererea suspectului sau a inculpatului" [On the Possibility of Continuing the Criminal Investigation at the Request of the Suspect or Accused], *Pro Patria Lex* 16, no. 2 (29) (2016): 16–17.

⁵⁰ For a detailed analysis, including the lack of correlation, from the perspective of the principle of opportunity, between the criminal-law provisions on waiving punishment and the criminal-procedure provisions on waiving criminal prosecution, see Lorincz, "Instituții procesuale penale," 16–22.

⁵¹ Jean Pradel, *Procédure pénale*, 10th ed. (Paris: Cujas, 2000), 390–91.

In other words, as stated also in Romanian doctrine⁵², in probation activity it is necessary to establish a deontology regarding the methodology of evidence administration. Therefore, in the Romanian criminal procedural system, subsumed under the sphere of continental law, the principle of loyalty in the administration of evidence is expressly enshrined⁵³, a principle that involves three aspects regulated in the form of the following prohibitions:

- to use violence, threats or other means of coercion, as well as promises or exhortations in order to obtain evidence⁵⁴;

- to use listening methods or techniques that affect the person's ability to remember and report consciously and voluntarily the facts that constitute the object of the evidence. The prohibition applies even if the person being listened to gives consent to the use of such listening method or technique⁵⁵.

- to provoke a person to commit or continue to commit a criminal act, in order to obtain evidence; this prohibition applies both to criminal judicial bodies and to other persons acting for them (undercover investigators or collaborators).

In relation to the provocation, in the jurisprudence of the European Court of Human Rights (E.Ct.H.R.)⁵⁶ reference was made to the doctrine of the "passive nature" of the activity that state agents must carry out in the criminal investigation, a concept established in the Anglo-Saxon tradition⁵⁷. Thus, according to this adversarial origin conception, undercover investigators (state agents or persons acting on their orders) must act in a primarily passive manner, offering only a "common temptation"⁵⁸ to break the law; if the person suspected of committing or preparing to commit a crime acts on the "temptation"/ "opportunity" offered by the undercover investigator to the same extent as he would have acted if the "opportunity" had been created by any other person, the provocation cannot be withheld⁵⁹.

Therefore, only that behavior through which state agents or their collaborators exercise a decisive influence, causing the perpetrator to commit a crime

⁵² Eugen Anton, "Probe. Interzicerea mijloacelor de constrângere" [Evidence: Prohibition of Means of Coercion], *Revista de Drept Penal*, no. 4 (2000): 86.

⁵³ Romania, *Code of Criminal Procedure*, art. 101 (which also incorporates some provisions of the former code).

⁵⁴ Romania, Law no. 286/2009, *Criminal Code*, Official Gazette of Romania, no. 510, July 24, 2009, as amended, art. 280(1). The provision criminalizes, as abusive investigation, the use by an investigator, prosecutor, or judge of promises, threats, or violence against a person investigated or tried in a criminal case in order to induce that person to make or withhold statements, make false statements, or withdraw statements.

⁵⁵ For example, narcoanalysis or hypnosis cannot be used to obtain a statement.

⁵⁶ European Court of Human Rights, *Ali v. Romania*, application no. 20307/02, judgment of November 9, 2010, <https://hudoc.echr.coe.int/eng?i=001-101657>.

⁵⁷ Mihail Udriou, Radu Slăvoiu, and Ovidiu Predescu, *Tehnici speciale de investigare în justiția penală* [Special Investigation Techniques in Criminal Justice] (Bucharest: C. H. Beck, 2009), 166.

⁵⁸ Ian Dennis, *The Law of Evidence*, 3rd ed. (London: Sweet & Maxwell, 2007), 330.

⁵⁹ Dennis, *Law of Evidence*, 330.

that he would not have committed otherwise, can be considered provocation. In the same sense, it has also been established in Romanian judicial practice⁶⁰ that the defendant's request to be acquitted, as he was allegedly provoked by the undercover investigator, is not well-founded if the agent exercised his duties in accordance with the authorization and the perpetrator made the decision to commit and repeatedly committed actions specific to drug trafficking before meeting with the undercover investigator; therefore, in such a case, it was not the undercover investigator who caused the defendant to commit or continue committing the act.

Another concept that has its origins in the Anglo-Saxon legal system, and which can be considered a manifestation of the principle of loyalty in the administration of evidence, is the privilege against self-incrimination, in the legal sense of any person accused of committing a crime not to be “forced to testify against himself or to admit guilt”⁶¹.

At the European level, the privilege against self-incrimination (or the right not to self-incrimination) has been enshrined in the jurisprudence of the E.Ct.H.R.⁶² which ruled that the right not to self-incrimination, even if not expressly provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms, derives from the content of Art. 6 of the Convention (the right to a fair trial)⁶³.

It is worth emphasizing that, at European level⁶⁴, the right not to self-incrimination is equally recognized for both *de jure* suspects (i.e. persons suspected or accused of committing acts provided for by criminal law) and *de facto* suspects (i.e. persons who appear in the trial as witnesses, but are suspected of committing acts provided for by criminal law prior to an official notification in this regard)⁶⁵.

⁶⁰ High Court of Cassation and Justice of Romania, Criminal Section, Decision no. 4333/2003, accessed March 26, 2026, <https://legeaz.net/spete-penal-csj-2003/decizia-4333-2003>.

⁶¹ International Covenant on Civil and Political Rights, December 16, 1966, art. 14(3)(g), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶² European Court of Human Rights, *Saunders v. the United Kingdom*, Grand Chamber, application no. 19187/91, judgment of December 17, 1996, <https://hudoc.echr.coe.int/eng/?i=001-58009>.

⁶³ In *Saunders v. the United Kingdom*, the European Court of Human Rights held that the privilege against self-incrimination protects an accused person against improper compulsion by the authorities, thereby helping to avoid miscarriages of justice and to secure the aims of article 6; see para. 68.

⁶⁴ For an analysis of the right against self-incrimination, including its application to witnesses, in several European states with continental systems of inquisitorial origin, see Anca-Lelia Lorincz, “The Right to Non-self-Incrimination and the False Testimony—Comparative Law Aspects,” in *Tempore Mutationis in International and Comparative Law*, ed. Federica Cristani and Cristina Elena Popa Tache (Bucharest: ADJURIS—International Academic Publisher, 2023), 182–88, <https://www.adjuris.ro/books/tmic/Tempore%20Mutationis%20in%20International%20and%20Comparative%20Law.pdf>.

⁶⁵ Constitutional Court of Romania, Decision no. 236/2020, Official Gazette of Romania, no. 597, July 8, 2020, para. 49.

Precisely by virtue of the principle of loyalty in the administration of evidence, judicial bodies have the obligation to inform the witness, before each hearing, of the fact that he has the right to remain silent and not to incriminate himself⁶⁶.

Failure to comply with the principle of loyalty in the administration of evidence is sanctioned by the exclusion of the evidence obtained, an institution also specific to the adversarial procedural system. The takeover of this institution in continental law, however, encountered some difficulties in adapting to the procedural conception of an inquisitorial nature based on the principles of legality and truth-finding.

For example, in the Romanian criminal procedural system, by taking over from the *common law* tradition⁶⁷, the procedural sanction of excluding illegally obtained evidence was introduced as a novelty in the current Criminal Procedure Code⁶⁸. We consider that the phrase “illegally obtained evidence” also includes the meaning of “unfairly administered evidence”, since, given that the principle of loyalty in the administration of evidence is enshrined at the legislative level, the administration of evidence in violation of this principle implicitly leads to its illegal obtaining.

The initial regulatory form of the institution of exclusion of illegally obtained evidence (as adopted in 2010) was amended in 2013, by the Law for the Implementation of the Code of Criminal Procedure⁶⁹, in order to avoid some criticisms of unconstitutionality⁷⁰ caused by the transposition into domestic law of a legal institution of adversarial origin without proper integration and adaptation to the procedural conception of a system with inquisitorial origins that belongs to continental law. Thus, through the 2013 amendment, a conditioning relationship was legislated between the procedural sanction of nullity and the sanction of exclusion of evidence⁷¹, regulating the way in which the sanction of exclusion of illegally obtained evidence can effectively intervene⁷².

⁶⁶ Romania, Law no. 201/2023, Official Gazette of Romania, no. 618, July 6, 2023, amending article 118 of the Code of Criminal Procedure to expressly recognize a witness’s rights to silence and against self-incrimination, require judicial bodies to give notice of those rights, and prohibit the use against the witness of evidence obtained in violation of that obligation.

⁶⁷ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, and Victor Văduva, *Noul Cod de procedură penală: Ghid de aplicare pentru practicieni* [The New Code of Criminal Procedure: Application Guide for Practitioners] (Bucharest: Hamangiu, 2014), 87.

⁶⁸ “Evidence obtained through torture, as well as evidence derived from it, cannot be used in criminal proceedings,” Romania, *Code of Criminal Procedure*, art. 102(1); “Evidence obtained illegally cannot be used in criminal proceedings,” art. 102(2).

⁶⁹ Romania, Law no. 255/2013, Official Gazette of Romania, no. 515, August 14, 2013.

⁷⁰ See Constitutional Court of Romania, Decision no. 54/2009, Official Gazette of Romania, no. 42, January 23, 2009.

⁷¹ Voicu et al., *Noul Cod de procedură penală*, 88.

⁷² Romania, *Code of Criminal Procedure*, art. 102(3): “the nullity of the act by which the taking of evidence was ordered or authorized or by which evidence was taken determines the exclusion of

Moreover, in order to ensure compliance with the principle of loyalty in the administration of evidence, in 2023, the Romanian legislator also made a change to the provisions of the Criminal Procedure Code that regulate the sanction of excluding illegally obtained evidence⁷³, establishing the need to physically remove the corresponding evidence from the file. Moreover, this legislative amendment was a consequence of the constitutionality review carried out by the Constitutional Court of Romania⁷⁴, which found that in other European states (such as Austria, Croatia and Slovenia) “the institution of nullity of evidence implies the physical removal of evidence from case files”⁷⁵.

The sanction of excluding illegally obtained evidence also extends to derivative evidence⁷⁶, implying the removal of evidence legally administered, but which originates from evidence obtained in violation of the law. In Romanian criminal procedural law, a distinction is made between evidence derived from evidence obtained through torture (whose prohibition from being used in criminal proceedings is absolute)⁷⁷ and evidence derived from evidence obtained illegally by violating other legal provisions (other than those criminalizing torture), the exclusion of which is conditioned by the existence of a direct causal link and the impossibility of obtaining it in any other way⁷⁸.

4. Negotiated Justice. Plea Agreement

Another institution characteristic of the great family of Anglo-Saxon law, taken over by the continental law system, is the plea agreement.

Currently, in adversarial law systems, for pragmatic reasons, the most common way to conclude a criminal trial is not that which involves a confrontation between the state and the defendant, but that of admitting guilt, as a result of a negotiation process between the prosecution and the defense⁷⁹.

Thus, in Commonwealth countries (such as Canada, Australia and New

the evidence...”

⁷³ Law no. 201/2023 amended article 102(3) of the Romanian Code of Criminal Procedure by adding the phrase “as well as the removal from the case file of the evidence corresponding to the excluded evidence.”

⁷⁴ See Constitutional Court of Romania, Decision no. 22/2018, Official Gazette of Romania, no. 177, February 26, 2018.

⁷⁵ Constitutional Court of Romania, Decision no. 22/2018, para. 28.

⁷⁶ On the doctrines of “remote effect” and the “fruit of the poisonous tree,” see Romanian Ministry of Justice, *Expunere de motive*.

⁷⁷ Romania, *Code of Criminal Procedure*, art. 102(1).

⁷⁸ Romania, *Code of Criminal Procedure*, art. 102(4): “Derivative evidence is excluded if it was obtained directly from illegally obtained evidence and could not have been obtained in any other way.”

⁷⁹ Asher Flynn and Arie Freiberg, *Plea Negotiations: Pragmatic Justice in an Imperfect World* (Cham: Palgrave Macmillan, 2018), 1, <https://doi.org/10.1007/978-3-319-92630-8>.

Zealand), the resolution of cases through negotiated justice has become predominant, and it has even been reported⁸⁰ that the widespread use of plea bargain procedures has led to an increase in the number of convictions and, implicitly, to an overcrowding of prisons (as in the United States and England).

Transposed into the continental legal system from the Anglo-Saxon adversarial law, the institution of the plea agreement constitutes an exception to one of the fundamental principles of the criminal process in inquisitorial legislation, namely the principle of finding the real, objective truth. Thus, the introduction into the legislation of most European countries of the concept of “plea bargaining” from American law, as a “paradigm of negotiated justice”⁸¹, may lead to the establishment by the court of a judicial truth, as a result of negotiation between the prosecution and the defense⁸², which does not always correspond to the real, objective truth, which, according to continental European law, judicial bodies are obliged to seek⁸³.

Besides, as by a metaphorical expression it was appreciated in doctrine⁸⁴, the concept of “plea bargaining”⁸⁵ from the American judicial system “crossed the ocean”, being transposed, in different ways, in most European countries (from “patteggiamento” - in Italy, “plaider coupable” - in France, as well as other simplified forms of procedures, which presuppose a transaction and a consensus on the recognition of guilt - in Switzerland and Germany, to a more attenuated form of negotiation, namely “criminal transaction” / “transaction pénale” - in Belgium).

The Romanian legislator also introduced, as a novelty, in the current Romanian Criminal Procedure Code, the institution of the plea agreement. As is evident from the Explanatory Memorandum to the draft of the current Criminal Procedure Code⁸⁶, the purpose of introducing the provisions on the plea agreement was to eliminate one of the major deficiencies of the Romanian judicial system at that time (2009), namely the long duration of judicial proceedings, ensuring

⁸⁰ Mary Vogel, “Plea Bargaining under the Common Law,” in *The Oxford Handbook of Criminal Process*, ed. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser (New York: Oxford University Press, 2019), 729–60, <https://doi.org/10.1093/oxfordhb/9780190659837.013.38>.

⁸¹ Ann Jacobs, “Le droit belge dans le concert européen de la justice négociée,” *Revue internationale de droit pénal* 83, nos. 1–2 (2012): 43, <https://doi.org/10.3917/ridp.831.0043>.

⁸² Ghigheci, *Principiile procesului penal*, 93.

⁸³ On the risk of miscarriages of justice from conviction of innocent persons following plea agreements, if reasonable suspicion rather than proof beyond a reasonable doubt is accepted as the standard, see Cristinel Ghigheci and Maria Magdalena Bârsan, “The Standard of Evidence in Case of the Admission of Guilt Agreement,” *Juridical Tribune—Review of Comparative and International Law* 15, no. 3 (2025): 605, <https://doi.org/10.62768/TBJ/2025/15/3/10>.

⁸⁴ Jacobs, “Le droit belge,” 46–57, 72–83, 87.

⁸⁵ Some authors prefer “plea negotiations” to “plea bargaining” because “bargaining,” in the sense of a deal, is considered to have obscure or negative connotations; see Flynn and Freiberg, *Plea Negotiations*, 37, 40.

⁸⁶ Romanian Ministry of Justice, *Expunere de motive*.

the possibility of resolving criminal cases within an optimal and predictable timeframe, by simplifying the activity within the criminal prosecution and by reducing the duration of the trial, in the case of less serious crimes.

In accordance with the current regulations of Romanian criminal procedural law⁸⁷, the object of the plea agreement consists in the recognition of the commission of the act and the acceptance of the legal classification for which the criminal action was initiated; this agreement concerns the type and amount of the punishment, as well as the form of its execution, respectively the type of educational measure or, as the case may be, the solution of waiving the application of the punishment or postponing the application of the punishment.

It is noted that, in the Romanian criminal procedural system, the legal classification of the act cannot be the subject of negotiation⁸⁸ as in the adversarial legal systems from which the institution of the plea agreement is taken over; only if the defendant accepts the legal classification established by the act initiating the criminal action, the procedure will continue through a negotiation on the type and amount of the punishment.

The conditions that must be met in order to conclude a plea agreement, according to the Romanian Code of Criminal Procedure⁸⁹ are the following:

- the penalty provided by law for the crime whose commission is the subject of the plea agreement, and in respect of which criminal proceedings have been initiated, is a fine or imprisonment of no more than 15 years;
- the evidence administered during the criminal investigation provides sufficient data regarding the existence of the act and the guilt of the defendant;
- the defendant is assisted by a lawyer, legal assistance being mandatory upon conclusion of the agreement.

Regarding the condition of the type and amount of the punishment provided by law for the crime committed, the tendency of the Romanian legislator to expand the scope of crimes for which a plea agreement can be concluded is observed: if the current draft of the Criminal Procedure Code⁹⁰ proposed the introduction of this new institution “limited” to crimes for which the law provided for a fine or imprisonment of no more than 5 years, in the initial form of the code (in 2010) a quantum of 7 years was adopted as the maximum limit of the prison sentence provided for by law, and, as a result of the legislative amendments made in 2016⁹¹, this limit was raised to 15 years.

⁸⁷ Romania, *Code of Criminal Procedure*, art. 479.

⁸⁸ Ghigheci, commentary in Volonciu, Uzlaşu, et al., *Noul Cod de procedură penală comentat*, 1197.

⁸⁹ See Romania, *Code of Criminal Procedure*, art. 480.

⁹⁰ Romanian Ministry of Justice, *Expunere de motive*.

⁹¹ For an analysis of these changes, see Anca-Lelia Lorincz, “The Agreement of Guilt Recognition as a Special Procedure—Legislative Changes,” in *Convergent Discourses: Exploring the Contexts of Communication—Social Sciences*, ed. Iulian Boldea and Dumitru-Mircea Buda (Tîrgu Mureş: Arhipelag XXI Press, 2016), 157–64, <https://asociatia-alpha.ro/cci/04-2016/CCI-04-Socs.pdf>.

Regarding the content of the agreement, Romanian law⁹² provides in detail the elements that it must include:

- a) date and place of conclusion;
- b) surname, first name and capacity of those between whom it is concluded;
- c) data regarding the person of the defendant;
- d) description of the act that forms the subject of the agreement;
- e) legal classification of the act and the punishment provided by law;
- f) evidence and means of proof;
- g) express statement of the defendant by which he acknowledges the commission of the act and accepts the legal classification for which the criminal action was initiated;
- h) type and amount of the punishment or educational measure, as well as the form of execution of the punishment or the solution of waiving the application of the punishment or postponing the application of the punishment, on which an agreement was reached between the prosecutor and the defendant;
- i) the signatures of the prosecutor, the defendant, the lawyer and, where applicable, the legal representative.

The difficulty of adapting an adversarial institution to the continental law system was, however, also evident for the Romanian legislator, leading to the raising of several exceptions of unconstitutionality regarding some of the newly introduced provisions in the matter of the plea agreement; the conclusions of the most recent constitutional review concluded with the admission of such an exception were expressed in a decision of the Constitutional Court of Romania in 2022⁹³.

The author of the exception pointed out that, for the issuance of the indictment by which he was ordered to be sent to trial, according to the common procedure, the statement by which he admitted committing the act was used in order to conclude the plea agreement, given that, in the case, no such agreement was concluded, thus violating the principle of loyalty in the administration of evidence.

As a result of this decision, the regulation of the content of the plea agreement was amended⁹⁴, in 2023, in order to introduce a provision⁹⁵ that obliges the judicial body to remove the statement given by the defendant in order to conclude the plea agreement from the case file, in the event that the defendant does not express his/her consent to the use of this statement for the resolution of the case (in the event of failure to conclude the agreement or its rejection by a final court

⁹² Romania, *Code of Criminal Procedure*, art. 482.

⁹³ Constitutional Court of Romania, Decision no. 490/2022, Official Gazette of Romania, no. 1240, December 22, 2022.

⁹⁴ Romania, Law no. 214/2023, Official Gazette of Romania, no. 634, July 11, 2023.

⁹⁵ Romania, *Code of Criminal Procedure*, art. 482(2).

decision)⁹⁶.

Making a comparison⁹⁷ between the provisions of the Romanian Code of Criminal Procedure and the regulations of the French Code of Criminal Procedure on the matter, we note that in French legislation there are no detailed provisions regarding the content of a plea agreement.

Thus, in the French criminal procedural legislation, two forms of negotiated or consensual justice are regulated: “appearance upon prior recognition of guilt”/“la comparution sur reconnaissance préalable de culpabilité”⁹⁸ and “criminal composition”/“la composition pénale”⁹⁹.

In the case of the “appearance upon prior admission of guilt” procedure, which can be initiated at the initiative of the prosecutor, both in the criminal investigation phase and in the situation where the trial judge has already been notified, a report is drawn up recording all the activities carried out¹⁰⁰ and a request for approval is submitted to the judicial tribunal if the person concerned has admitted his guilt and accepted the proposed punishment¹⁰¹. The law provides that the ordinance by which the president of the judicial tribunal or the judge delegated by him approves the proposed punishment must be motivated¹⁰², but, as in the case of the report or the request for approval mentioned above, it does not expressly establish the content elements of this act.

On the other hand, the “criminal composition” procedure implies¹⁰³ the possibility for the prosecutor, before initiating criminal proceedings, to propose to the perpetrator that, in the event of his admission of guilt, a measure be applied that does not represent a punishment, but which leads to the termination of the criminal proceedings (for example, paying a “composition fine” or performing community service). The “criminal composition” is subject to validation by a judge who, without going through an actual trial, can only admit or reject the measures proposed by the prosecutor.

Unlike the “appearance upon prior admission of guilt” procedure, in the case of “criminal composition” a report is drawn up, describing the measures proposed by the prosecutor, and the content of which is expressly provided for in the

⁹⁶ Romanian Parliament, Chamber of Deputies, *Expunere de motive la proiectul Legii nr. 214/2023* [Explanatory Memorandum to the Draft of Law no. 214/2023], accessed March 30, 2026, <https://www.cdep.ro/proiecte/2023/400/50/7/em518.pdf>.

⁹⁷ See Anca-Lelia Lorincz, “Consimțământul exprimat de inculpat în cursul urmăririi penale, privind recunoașterea vinovăției” [The Consent Expressed by the Accused during the Criminal Investigation regarding the Admission of Guilt], *Dreptul*, no. 9 (2023): 101–2.

⁹⁸ France, *Code de procédure pénale*, arts. 495–7–495–16.

⁹⁹ France, *Code de procédure pénale*, arts. R15–33–38–R15–33–60.

¹⁰⁰ France, *Code de procédure pénale*, art. 495–14.

¹⁰¹ France, *Code de procédure pénale*, art. 495–9.

¹⁰² France, *Code de procédure pénale*, art. 495–11.

¹⁰³ See France, *Code de procédure pénale*, art. 41–2.

code¹⁰⁴; this report is attached to the request for validation of the “criminal composition” which is submitted to the judge.

Also, analyzing the provisions of the German Code of Criminal Procedure¹⁰⁵ in relation to the institution of the negotiated agreement, we note that even in German legislation there is no detailed, express regulation of the content elements of such an agreement¹⁰⁶.

Specific to the German system is the fact that the court establishes the content of the agreement, the initiative for negotiation belonging to the trial judge, after the file reaches the court in the trial phase; the agreement becomes applicable, considered concluded, if the defendant and the prosecutor's office accept the court's proposal. The only element of content that the German Code expressly provides for, to be included in the negotiated agreement¹⁰⁷, is the confession (recognition) of the defendant.

5. Conclusions

As we previously showed, currently, in a globalized world, a strict delimitation can no longer be made between procedural systems with an exclusively inquisitorial character and procedural systems with an adversarial character, applying a mixed system constituted by the reciprocal taking over¹⁰⁸ of elements that have demonstrated their usefulness.

This universalism does not, however, exclude some incompatibilities between certain legal institutions or regulations¹⁰⁹.

The difficulty of integrating elements of adversarial origin into a continental-type system can lead to legislative inconsistencies, with negative consequences in judicial practice. That is why, the transposition of legal institutions specific to the *common law* tradition into the continental law system does not require a simple translation, but an appropriate adaptation and integration, in order to correlate with domestic provisions, even with the risk of repeated legislative interventions.

¹⁰⁴ France, *Code de procédure pénale*, art. R15-33-40.

¹⁰⁵ Germany, *Code of Criminal Procedure*, sec. 257c.

¹⁰⁶ Lorincz, “Consimțământul exprimat de inculpat,” 102.

¹⁰⁷ Germany, *Code of Criminal Procedure*, sec. 257c(2).

¹⁰⁸ On the role of law — legality being a principle specific to continental systems of inquisitorial origin — in imposing moral education in contemporary American society “as an objective basis for civic engagement and social justice,” see Benjamin P. Haines, “Natural Law, Common Law, and the Problem of Historicism in American Public Life and Education,” *Laws* 13, no. 4 (2024): 1, <https://doi.org/10.3390/laws13040056>.

¹⁰⁹ Irina Moroianu Zlătescu and Gabriela Varia, “Comparative Law in Romania: Traditions, Transitions, Transformations,” *Juridical Tribune — Review of Comparative and International Law* 15, no. 4 (2025): 789, <https://doi.org/10.62768/TBJ/2025/15/4/10>.

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