

Comparative Law Aspects Concerning the Interpretation and Uniform Application of the Law in the Criminal Process

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Abstract

Starting from the hypothesis that a non-uniform judicial practice creates the risk of a lack of trust among members of society in the stability of legal relations, this paper brings to attention some aspects of comparative law regarding the interpretation and uniform application of the law in criminal proceedings at the European level. This study addresses the need to unify judicial practice, as a requirement of legal certainty, presenting the mechanisms for ensuring a unitary jurisprudence in the Romanian legal system, in the context of a comparative analysis of the legislations of several European states. The research methods used are: documentation, interpretation, observation and scientific analysis, including comparative, of legal provisions, with reference also to the case law of the European Court of Human Rights, the Court of Justice of the European Union and the Constitutional Court of Romania. Finally, it is noted that, in terms of regulation regarding ensuring a unitary judicial practice, compared to other European states, Romania has well-defined legislation. The legal framework established by the Romanian legislator in this matter is also complemented by the steps of the supreme court in disseminating jurisprudential guidelines which, with a recommendatory nature, may lead to the unification of judicial practice.

Keywords: *unification of judicial practice; criminal cases; appeal in the interest of the law; preliminary rulings of the supreme court.*

JEL Classification: K14

1. Introduction

Framed in the theme of comparative public law, this paper addresses the need to unify judicial practice, as a requirement of legal certainty, as this principle has been outlined in the case law of the European Court of Human Rights, bringing to attention some comparative aspects regarding the interpretation and uniform application of the law in criminal proceedings at the European level.

The novelty element consists in presenting the mechanisms for ensuring a unitary jurisprudence in the Romanian legal system, as part of the continental legal system, in the context of a comparative analysis of the legislations of several European states.

Starting from documentation and observation, and continuing with scientific analysis, including comparative, of both legal provisions and jurisprudential solutions (jurisprudence of the European Court of Human Rights, jurisprudence of the Court of Justice of the European Union, domestic constitutional jurisprudence), as research methods, the study aims to emphasize the importance of coherence and consistency of judicial practice in criminal matters.

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

The first section is devoted to some general considerations regarding the principle of legal certainty, which, among other requirements inherent to the functioning of a state governed by the rule of law, also implies the uniform application of the law to avoid arbitrariness in legal relations. It is emphasized that a non-uniform judicial practice creates the risk of legal insecurity at the level of society, of a lack of confidence of citizens in the stability of legal relations.

In the second section, a comparative analysis of the legislations of several European states that apply the Romano-Germanic (continental) law system is carried out, noting the existence of regulations regarding the uniform application of the law and ensuring a unitary judicial practice both in the Constitutions of some of these states, as well as in the laws of judicial organization or in the Codes of Criminal Procedure.

It also highlights the difference between national justice systems that apply the continental law model and those that apply the Anglo-Saxon model, in which the role of judicial precedent, recognized as a source of law, is essential in the standardization of practice.

The following section addresses the issue of the unified interpretation and application of criminal procedural law in Romania, starting from the constitutional provisions and up to the provisions of the current Criminal Procedure Code. At the same time, in addition to analyzing the formal mechanisms for ensuring a unitary judicial practice, regulated by the provisions of the Criminal Procedure Code, the ways in which, in an indirect, informal way, the unification of judicial practice at the national level is sought are also presented.

The conclusions of the paper state that, compared to other European states, in terms of regulation regarding ensuring a uniform interpretation and application of the law in criminal proceedings, Romania has well-defined legislation. In addition to the Romanian legislator's concern for establishing the legal framework that would allow for the standardization of judicial practice, the interest of the judiciary (represented by the High Court of Cassation and Justice) in disseminating jurisprudential guidelines which, as a recommendation, can lead to the uniform application of the law is also noteworthy.

2. Legal certainty – general principle of the rule of law

Considered to be one of the components of the principle of the rule of law², legal certainty implies, among other requirements inherent to the functioning of a state governed by the rule of law, the uniform application of the law to avoid arbitrariness in legal relations of both private and public law.

Although not expressly regulated at national level, legal certainty has been outlined, in the case law of the European Court of Human Rights (ECtHR), as an

² European Commission for Democracy through Law (Venice Commission), *Report on the Rule of Law*, CDL-AD(2011)003rev (Strasbourg, April 4, 2011), paras. 41 and 44–51, <https://www.coe.int/en/web/venice-commission/-/cdl-ad-2011-003rev-e> (accessed September 1, 2025). The report was adopted at the commission's 86th plenary session, March 25–26, 2011.

essential principle for the implementation of community law and for the protection of fundamental rights. Thus, more than four decades ago, in the *Marckx v. Belgium case*³, the European court in Strasbourg highlighted the need to respect the principle of legal certainty, considered to be inherent in both Convention law (in the matter of guaranteeing fundamental human freedoms) and Community law⁴.

At the same time, in the context of the issue of guaranteeing the right to a fair trial, through the perspective of respecting the res judicata authority of final decisions, the ECtHR also considered, in a case against the Romanian state (*Brumărescu v. Romania*⁵), that the principle of security of legal relations represents “one of the fundamental elements of the preeminence of law”.

In a more recent case (*Khlaifia and Others v. Italy*⁶), the ECtHR recalled the importance of respecting the general principle of legal certainty in the protection of human rights, in relation to the guarantee of the fundamental right to liberty, pointing out that one of the requirements of this principle is that domestic legislation must be clear and predictable in regulating the conditions of deprivation of liberty, in order to meet the criterion of legality imposed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

Also, at a general community level, the case law of the Court of Justice of the European Union (CJEU) has retained the principle of legal certainty as part of the European legal order, the European court in Luxembourg considering that this principle must be respected not only by the community institutions, but also by the Member States, when they implement community directives⁷.

Internally, referring to the judicial practice (jurisprudence) of the Constitutional Court of Romania, we note that, on several occasions⁸, it has referred to the principle of legal certainty, from the perspective of fulfilling certain qualitative requirements of normative acts, namely predictability and clarity that allow access to all recipients to the established rules and ensure the uniform application of these rules.

In close connection with the general principle of legality, legal literature⁹ has

³ European Court of Human Rights, *Marckx v. Belgium*, no. 6833/74, judgment of June 13, 1979, <https://hudoc.echr.coe.int/eng?i=001-57534> (accessed September 2, 2025).

⁴ Corneliu Bîrsan, *Convenția europeană a drepturilor omului: Comentariu pe articole*, vol. 1, *Drepturi și libertăți* [European Convention on Human Rights: Commentary on the Articles, vol. 1, Rights and Freedoms] (Bucharest: All Beck, 2005), 472.

⁵ European Court of Human Rights, *Brumărescu v. Romania* [GC], no. 28342/95, judgment of October 28, 1999, <https://hudoc.echr.coe.int/eng?i=001-58337> (also published in *Official Gazette of Romania*, no. 414, August 31, 2000).

⁶ European Court of Human Rights, *Khlaifia and Others v. Italy* [GC], no. 16483/12, judgment of December 15, 2016, <https://hudoc.echr.coe.int/eng?i=001-170054> (accessed September 2, 2025).

⁷ Court of Justice of the European Union, *Belgocodex SA v. Belgian State*, Case C-381/97, ECLI:EU:C:1998:589, judgment of December 3, 1998, para. 26, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61997CJ0381> (accessed September 2, 2025).

⁸ Constitutional Court of Romania, Decision no. 447 of October 29, 2013, *Official Gazette of Romania*, no. 674, November 1, 2013; Decision no. 1 of January 10, 2014, *Official Gazette of Romania*, no. 123, February 19, 2014; Decision no. 717 of October 29, 2015, *Official Gazette of Romania*, no. 216, March 23, 2016; and Decision no. 359 of May 26, 2022, *Official Gazette of Romania*, no. 964, October 4, 2022.

⁹ Emilian Ciongaru, “Principiul securității juridice în jurisprudența Curții Constituționale” [The Principle of Legal Certainty in the Jurisprudence of the Constitutional Court], *Universul Juridic Premium*, no. 8 (2021), <https://www.universuljuridic.ro/principiul-securitatii-juridice-in-jurisprudenta-curtii-constitutionale/>.

identified the principle of legal certainty with ensuring the confidence of litigants in the fact that the application of the law in concrete cases submitted to judgment is predictable, so that the recipients of legal norms are convinced that the judicial authorities apply the regulations appropriate to the case in question.

An instability in the judicial interpretation of the law, in the sense of inconsistency of judicial practice, constitutes a risk to legal certainty¹⁰.

Therefore, as shown in the doctrine¹¹ and in the Romanian constitutional jurisprudence¹², in essence, the principle of legal certainty expresses the need to protect citizens against a potential danger generated by the law itself, in the sense of the entirety of legal regulations. In other words, the realization of the law (in the sense of law enforcement activity), through a non-uniform interpretation and application of the law, creates the risk of legal insecurity at the level of society¹³, of a lack of trust among citizens in the stability of legal relations.

3. Ensuring a uniform judicial practice in the legislation of European states – aspects of comparative law

Through a comparative analysis¹⁴ of the legislations of several European states, where the continental (Roman-Germanic) law system is applied, we can note the existence of regulations regarding the uniform application of the law and ensuring of a unitary judicial practice either in the Constitutions of these states, or in the laws organizing the judicial system, or in the Codes of Criminal Procedure.

Thus, the *Austrian* Code of Criminal Procedure¹⁵ regulates the institution of an appeal for annulment for compliance with the law (“Nichtigkeitsbeschwerde zur Wahrung des Gesetzes”), which may be filed by the Public Prosecutor’s Office, ex officio or on behalf of the Federal Minister of Justice, against decisions of criminal courts based on the violation or incorrect application of the law, as well as against any

¹⁰ On the relative stability of judicial practice as a foundation of legal certainty, see Naeem Maher Lafta Al-Faraji, “The Principle of Legal Security and the Role of Administrative Judiciary in Its Consolidation: An Analytical Study,” *International Journal of Civil Law and Legal Research* 5, no. 2 (2025): 34, <https://doi.org/10.22271/civillaw.2025.v5.i2a.141>. On legal security as the presumed stability and predictability of legal solutions, see Jean-Sylvestre Bergé, “Introductory Remarks on Legal Security: The Approach of French and European Law,” in *Legal Certainty in Real Estate Transactions: A Comparison of England and France*, ed. Bertrand du Marais and David Marrani (Cambridge: Intersentia, 2016), 105, <https://doi.org/10.1017/9781780687285.010>.

¹¹ Ion Ristea, “Considerații de doctrină și jurisprudență privind asigurarea unei practici judiciare unitare în materie penală” [Doctrinal and Jurisprudential Considerations Regarding Ensuring a Unitary Judicial Practice in Criminal Matters], in *Rolul jurisprudenței în dezvoltarea noului drept român* (Bucharest: Universul Juridic, 2019), 348–51, <https://www.cceol.com/search/chapter-detail?id=786151>.

¹² Constitutional Court of Romania, Decision no. 82 of February 14, 2024, *Official Gazette of Romania*, no. 626, July 2, 2024, para. 11.

¹³ Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, “Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law,” *Juridical Tribune* 13, no. 1 (March 2023): 29, <https://doi.org/10.24818/TBJ/2023/13/1.02>.

¹⁴ Blerton Sinani and Sami Mehmeti, “The Importance of Comparative Law for the Development of Contemporary Law,” *Juridical Tribune—Review of Comparative and International Law* 15, no. 1 (March 2025): 21, <https://doi.org/10.62768/TBJ/2025/15/1/01>.

¹⁵ Austria, *Code of Criminal Procedure* (1975), as amended, §§ 23 and 292, https://legislationline.org/sites/default/files/documents/32/Austria_CPC_1975_am122019_de.pdf.

illegal decision or procedure of a criminal court, even after the decision has become final and even if the entitled persons have not made use of an appeal within the legal period.

The competence to resolve appeals for annulment to maintain the law lies with the Supreme Court of Justice of Austria, and according to the resolution procedure, if the supreme court considers that the complaint filed for compliance with the law is well-founded, it must declare that the law was violated in the respective criminal case by the contested decision or action. As a rule, the decision of the Supreme Court has no effect on the defendant; however, if the defendant was sentenced to a penalty by a court decision declared null and void in order to comply with the law, the supreme court has the possibility either to acquit the defendant, to impose a lesser penalty or, depending on the circumstances, to order the resumption of the proceedings against him.

In *Belgium*, the unity of jurisprudence is ensured by the Supreme Court, a court at the head of the judicial system¹⁶. Thus, the Court of Cassation¹⁷, being responsible for monitoring and coordinating the application of the law, verifies the final decisions brought before it for violation of the law and rules on the correct interpretation and application of the legal norms when making these decisions.

The special procedure provided for in Belgian law, which allows the Court of Cassation to examine whether a judgment delivered in the last instance (after the ordinary remedies consisting of appeal and objection have been exhausted) violates the law or ignores a rule of law, is the appeal in cassation; in applying this procedure, the Court of Cassation cannot rule on the facts, but only on the legality of the contested decision.

The *Bulgarian Constitution*¹⁸ stipulates that the supreme court (Supreme Court of Cassation) exercises supreme judicial control over the precise and uniform application of the law by all courts; in exercising this power, the Supreme Court of Bulgaria issues interpretative judgments¹⁹.

In the *Czech Republic*, under the Act on Courts and Judges²⁰, the responsibility for ensuring the consistency and legality of decisions, both in civil and criminal proceedings, lies with the Supreme Court, which monitors and evaluates final decisions; in exercising its powers to ensure consistent case law, the Supreme Court issues opinions on the case law of other courts (territorial courts, regional courts and higher courts) regarding certain specific types of cases.

¹⁶ Ioan Muraru, "Constituția Regatului Belgiei. Prezentare generală" [Constitution of the Kingdom of Belgium: Overview], *Codex constitutional*, Ministry of Justice, <https://codex.just.ro/Tari/BE> (accessed September 11, 2025).

¹⁷ Court of Cassation of Belgium, "About the Court," discussing Judicial Code arts. 608 and 612 and Code of Criminal Procedure arts. 407 et seq., <https://hofvancassatie.be/nl/A-propos-Over-het-Hof.html#sec-5815> (accessed September 11, 2025).

¹⁸ Constitution of the Republic of Bulgaria (1991), art. 124, <https://codex.just.ro/Tari/Download/BG> (accessed September 12, 2025).

¹⁹ Supreme Court of Cassation of Bulgaria, "Interpretative Cases," <https://www.vks.bg/talkuvatelni-dela-osnk.html> (accessed September 12, 2025).

²⁰ Czech Republic, Act no. 6/2002 on Courts and Judges; European e-Justice Portal, "National Justice Systems: Czech Republic," https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-justice-systems/cz_en (accessed September 12, 2025).

Also, in the Code of Criminal Procedure of the Czech Republic²¹ there is a chapter, subsequent to the one regulating extraordinary remedies, within Part III (intended for court proceedings), a chapter entitled “Complaints for violation of the law and related procedures”; the competence to resolve these complaints lies with the Supreme Court.

And in *Croatia*, according to the Law on Courts²², the Supreme Court ensures the uniform application of the law and deals with current jurisprudence issues.

In *Estonia*, there are express regulations regarding the uniformity of case law in the Code of Criminal Procedure²³ itself. In this regard, the provisions on cassation appeal (cassation procedure)²⁴ provide for the powers of the Supreme Court to ensure the uniform application of the law, including in criminal matters. At the same time, it is expressly provided that all courts must respect the decision of the Supreme Court²⁵ regarding the interpretation and application of a legal provision, the issues established by such a decision being binding on the court that examines the same matter again.

French procedural-criminal legislation regulates, also within the provisions regarding the appeal in cassation as an extraordinary means of appeal²⁶, the possibility of annulling, under certain conditions and only in the interest of the law, decisions that violate legal provisions²⁷.

More specifically, in *France* there is the institution of appeal in the interest of the law²⁸, through which the Prosecutor General attached to the Court of Cassation can refer to the supreme court, requesting the annulment of first instance or appeal decisions that violate the law. If the application is admitted by the Court of Cassation, the cassation is pronounced, but only in the interest of the law, without affecting the situation of the parties to the case; the parties cannot avail themselves of the cassation nor can they challenge the execution of the quashed decision.

In *Germany*, the Federal Court of Justice is responsible for ensuring the uniform application of the law, including in criminal proceedings. Thus, under the Law on the “Restoration of Legal Unity”²⁹ at the Federal Level, the main task of the Federal Court of Justice, as the supreme court, is to ensure legal unity, clarify fundamental legal issues and develop case law.

The Federal Court of Justice examines the decisions of lower courts (district courts, regional courts and higher regional courts in Germany) for the purpose of identifying possible legal errors (errors in the interpretation and application of the law).

²¹ Czech Republic, *Code of Criminal Procedure* (1961), as amended, §§ 266–276, https://legislationline.org/sites/default/files/documents/5f/Czech%20Republic_CPC_1961_am2012_en.pdf (accessed September 12, 2025).

²² European e-Justice Portal, “National Justice Systems: Croatia,” https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-justice-systems/hr_en (accessed September 12, 2025).

²³ Estonia, *Code of Criminal Procedure* (2003), as amended, <https://www.riigiteataja.ee/en/eli/505092023002/consolide> (accessed September 12, 2025).

²⁴ Estonia, *Code of Criminal Procedure*, §§ 355–356.

²⁵ Estonia, *Code of Criminal Procedure*, § 364.

²⁶ France, *Code de procédure pénale*, book 3, title 1, “Du pourvoi en cassation,” https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071154/ (accessed September 13, 2025).

²⁷ France, *Code de procédure pénale*, art. 572.

²⁸ France, *Code de procédure pénale*, arts. 620–621.

²⁹ Germany, Law on the Restoration of Legal Unity in the Areas of Judicial Organization, Civil Justice, Criminal Procedure, and Cost Law, September 12, 1950, *Federal Law Gazette* 1950, 455 et seq.

Although the decisions of this supreme court are binding only in the specific cases examined, as a rule, the judicial practice of the lower courts respects the interpretation that the Federal Court of Justice has given to the legal issues addressed³⁰.

In contrast, in *Greece*, provisions regarding an appeal in the interest of the law, within the jurisdiction of the Supreme Court, are found in the Code of Criminal Procedure³¹ itself.

In *Lithuania* too, the Law on Courts³² contains express provisions regarding the standardization of judicial practice, with the Supreme Court having the responsibility for this. The law provides³³ that the supreme court is the one that must ensure a uniform practice of the courts of general jurisdiction in the interpretation and application of legal provisions. The interpretation given to the law by the Supreme Court in its decisions must be taken into account by all recipients of that law (state, other institutions, any other persons). To ensure the uniform interpretation and application of the law by all courts of general jurisdiction, the Supreme Court analyses the case law of these national courts, as well as that of the European Union and international courts, and draws up summaries of judicial practice.

Similar to the French regulation, the *Luxembourg* Code of Criminal Procedure³⁴ contains provisions relating to the appeal in the interest of the law, which may be declared by the Prosecutor General against a judgment delivered at last instance; if such an appeal is admitted, the cassation is pronounced without the parties to the case being able to invoke it to oppose the execution of the annulled decision.

In the *Low Countries (Netherlands)*, the Supreme Court is responsible for ensuring the uniformity of judicial practice, which verifies whether lower courts apply the law properly in the cases they decide. Also, although it does not have powers to administer justice, the Council of the Magistrates, having tasks regarding improving the quality of the judicial system, promotes the uniform application of the law³⁵.

In criminal matters, the Code of Criminal Procedure of the Low Countries (Netherlands)³⁶ regulates, as an extraordinary means of appeal, the appeal in cassation in the interest of the law, an institution through which the Supreme Court, if it admits the appeal, quashes the decision and rules on the question of law “as the court whose decision is annulled should have done”.

In *Poland*, the Supreme Court, the highest judicial authority vested with the administration of justice, is the one that ensures consistency in the interpretation and

³⁰ Federal Court of Justice of Germany, “Tasks and Organisation,” <https://www.bundesgerichtshof.de/EN/TheCourt/TaskOrganisation/taskOrganisation.html> (accessed September 13, 2025).

³¹ Greece, *Code of Criminal Procedure* (Law 4620/2019), arts. 10(2)(a) and 505(2), <https://www.lawspot.gr/nomikes-plirofories/nomothesia/nomos-4620-2019> (accessed September 13, 2025).

³² Lithuania, Law on Courts (1994), as amended, <https://www.teismai.lt/en/courts/legal-acts/655> (accessed September 13, 2025).

³³ Lithuania, Law on Courts, art. 23(2)–(4).

³⁴ Luxembourg, *Code de procédure pénale*, art. 422, https://legilux.public.lu/eli/etat/leg/code/procedure_penale/20250715 (accessed September 13, 2025).

³⁵ European e-Justice Portal, “National Justice Systems: Netherlands,” https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-justice-systems/nl_en (accessed September 13, 2025).

³⁶ Netherlands, *Code of Criminal Procedure*, art. 456, https://legislationline.org/sites/default/files/documents/d2/Netherlands_CPC_am2012_en.pdf (accessed September 13, 2025).

application of laws³⁷. As follows from the provisions of its law on organization and functioning³⁸, the role of the Supreme Court of Poland is to ensure the legality and uniformity of decisions of lower courts by adjudicating appeals and adopting decisions resolving questions of law.

According to the legislation on the judicial organization³⁹ of *Slovakia*, the supervision of the uniform interpretation and consistent application of laws and other acts of general application is the responsibility of the Supreme Court, both through its own decision-making activity and by issuing opinions for the unification of the interpretation of normative acts and by publishing final court decisions of major relevance.

In *Hungary* too, express provisions on ensuring the uniformity of judicial practice are found, first of all, in the Constitution. Thus, according to the Fundamental Law of the Hungarian State⁴⁰, the Kúria (Supreme Court) “ensures the uniformity of the application of the law by the courts and makes decisions accordingly, which are binding on the courts”; in exercising these powers, the Kúria (Supreme Court) issues legislative harmonization decisions, which all courts are obliged to comply with, analyses the case-law consisting of final decisions, thus assessing the general judicial practice of all courts, and adopts decisions establishing legal principles⁴¹.

Unlike national justice systems that apply the Romano-Germanic (continental) law model, in the Anglo-Saxon (*common-law*) system the role of judicial precedent (*case-law*, i.e. the interpretation given in court decisions issued by other courts in similar cases), recognized as a source of law, is essential in the uniform application of the law.

Thus, in the *United Kingdom of Great Britain and Northern Ireland*, which currently applies three different legal systems (Scottish, English and Northern Irish)⁴², the administration of justice is based on four types of legal sources⁴³: common law (which consists of the set of legal norms arising from custom and interpreted by judges in the decision-making act), judicial precedent (which brings together the common aspects of judicial decisions pronounced by courts in similar cases), written law (normative acts adopted by state authorities) and jurisprudence (meaning opinions, doctrinal writings of prestigious authors, who have become notorious as a result of frequent citations/mentions, especially in judicial decisions).

Also, in the modern Irish legal system, of traditional British origin (*common*

³⁷ European e-Justice Portal, “National Justice Systems: Poland,” https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-justice-systems/pl_en (accessed September 13, 2025).

³⁸ Poland, Act of December 8, 2017 on the Supreme Court, https://www.sn.pl/osadzienajwyzszym/Site/Pages/Status_prawny.aspx (accessed September 13, 2025).

³⁹ Slovakia, Act no. 757/2004 on Courts and on Amendments to Certain Acts, as amended, <https://www.justice.gov.sk/pravne-predpisy/> (accessed September 14, 2025).

⁴⁰ Hungary, *The Fundamental Law of Hungary*, art. 25(3), <https://codex.just.ro/Tari/HU> (accessed September 14, 2025).

⁴¹ European e-Justice Portal, “National Justice Systems: Hungary,” https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-justice-systems/hu_en (accessed September 14, 2025).

⁴² Elena Simina Tănăsescu, “Constituția Regatului Unit al Marii Britanii și Irlandei de Nord. Prezentare generală” [Constitution of the United Kingdom of Great Britain and Northern Ireland: Overview], *Codex constituțional*, Ministry of Justice, <https://codex.just.ro/Tari/UK> (accessed September 14, 2025).

⁴³ Tănăsescu, “Constituția Regatului Unit.”

law), the courts have an essential role in ensuring the unification of judicial practice, but we also encounter continental influences, in the sense that the supreme court (High Court) has general jurisdiction in guiding and standardizing the interpretation and application of the law. Thus, according to the Constitution of Ireland⁴⁴, “the courts of first instance shall include a High Court vested with general jurisdiction and the prerogative to determine disputes on all matters and questions of law or fact, whether civil or criminal”.

4. Uniform interpretation and application of criminal procedural law in Romania

Applying, in principle, the continental legal system, Romania enshrines, first of all through the Constitution, the requirement of the unitary interpretation and application of the law by standardizing jurisprudence (in the sense of judicial practice). Thus, according to art. 126 para. (3) of the Constitution⁴⁵, similar to most legislations in European states, the supreme court in the judicial hierarchy (i.e. the High Court of Cassation and Justice) is the one that “ensures the uniform interpretation and application of the law by the other courts, according to its competence”; at the level of regulation of the judicial organization, the same provisions are also found in Law no. 304/2022⁴⁶.

In criminal procedural matters, the uniform application of the law is ensured by the provisions of the current Romanian Code of Criminal Procedure⁴⁷ (hereinafter referred to as the CCP), more precisely through two legal institutions: appeal in the interest of the law⁴⁸ and referral to the High Court of Cassation and Justice for a preliminary ruling to resolve legal issues⁴⁹.

Regarding the institution of *appeal in the interest of the law*, we note that this does not represent a new element in our criminal procedural legislation, it being first regulated in the Code of Criminal Procedure of 1936⁵⁰, as an instrument for guiding jurisprudence. The evolution of the regulation of this institution was not continuous, however, with a syncope occurring between 1968 and 1993: although this institution was not initially maintained in the Code of Criminal Procedure adopted in 1968⁵¹, it was later reintroduced⁵², on the occasion of substantial amendments made to the code

⁴⁴ Constitution of Ireland, art. 34(3)(1), <https://codex.just.ro/Tari/IE> (accessed September 14, 2025).

⁴⁵ Constitution of Romania, November 21, 1991, republished in *Official Gazette of Romania*, no. 767, October 31, 2003.

⁴⁶ Romania, Law no. 304/2022 on Judicial Organization, art. 20(2), *Official Gazette of Romania*, no. 1104, November 16, 2022.

⁴⁷ Romania, Law no. 135/2010 on the Code of Criminal Procedure, *Official Gazette of Romania*, no. 486, July 15, 2010, as amended (effective February 1, 2014).

⁴⁸ Romania, *Code of Criminal Procedure*, arts. 471–474¹.

⁴⁹ Romania, *Code of Criminal Procedure*, arts. 475–477¹.

⁵⁰ Romania, *Code of Criminal Procedure* (1936), arts. 496–497, *Official Gazette of Romania*, no. 66, March 19, 1936.

⁵¹ Romania, *Code of Criminal Procedure* (1968), republished in *Official Gazette of Romania*, no. 78, April 30, 1997, as amended.

⁵² Romania, Law no. 45/1993 Amending and Supplementing the Code of Criminal Procedure, *Official Gazette of Romania*, no. 147, July 1, 1993.

in 1993. Later, in 2010⁵³, important amendments were made to the regulation of appeal in the interest of the law, in order to streamline and accelerate its resolution procedure, foreshadowing the entry into force of the provisions of a new Code of Criminal Procedure⁵⁴.

Therefore, as is evident from the current regulation⁵⁵, the purpose of the legal institution of appeal in the interest of the law is precisely to ensure the uniform interpretation and application of the law by all courts.

The duty to file an appeal in the interest of the law, to clarify legal issues that have been resolved differently by the courts, lies with: the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice (ex officio or at the request of the Minister of Justice), the governing board of the High Court of Cassation and Justice, the governing boards of the courts of appeal, as well as the People's Advocate.

The jurisdiction to resolve the application is exclusive, namely only of the High Court of Cassation and Justice.

The content of the appeal in the interest of the law must include: the different solutions given to the legal issue under analysis and their motivation, the case law of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights or, as the case may be, the Court of Justice of the European Union on the matter, the relevant opinions expressed in the doctrine in the respective field, as well as the solution proposed for ruling on this application.

Under penalty of rejection as inadmissible, the application must be accompanied by copies of final court decisions from which it follows that the legal issues forming the subject of the judgment were resolved differently by the courts. Therefore, with regard to the conditions of admissibility⁵⁶, it is necessary to prove that those legal issues that form the subject of the judgment have received different solutions through final court decisions, effectively annexed to the application.

The jurisdiction to adjudicate the appeal in the interest of the law belongs to a panel whose composition is not provided for in the legislation on judicial organization, but in the Code of Criminal Procedure⁵⁷, namely: the president of the High Court of Cassation and Justice or, in his absence, the vice-president of the High Court, the presidents of sections within the supreme court, a number of 14 judges from the section to whose jurisdiction the legal issue that was resolved differently by the courts belongs, as well as 2 judges from the other sections of the High Court. The president of the panel is the president of the High Court of Cassation and Justice or, in his absence, the vice-president of this court.

If the legal issue under analysis is of interest to two or more sections, the president of the supreme court determines the sections from which the judges who will form part of the panel of judges come. The judges within the sections of the High

⁵³ Romania, Law no. 202/2010 on Measures to Accelerate the Resolution of Lawsuits, *Official Gazette of Romania*, no. 714, October 26, 2010.

⁵⁴ Anca-Lelia Lorincz, "Ensuring a Uniform Judicial Practice by the Provisions of the Current Criminal Procedure Code," *Journal of Law and Administrative Sciences*, special issue (2015): 284, https://jolas.ro/wp-content/uploads/2015/07/jolas_si.pdf.

⁵⁵ Romania, *Code of Criminal Procedure*, art. 471.

⁵⁶ Romania, *Code of Criminal Procedure*, art. 472.

⁵⁷ Romania, *Code of Criminal Procedure*, art. 473.

Court of Cassation and Justice who are to form the panel are randomly designated.

Following receipt of the request, the president of the panel must designate, as judge rapporteur, a judge from the section within whose jurisdiction the question of law that was resolved differently by the courts falls; if the relevant legal issue is of interest to two or more sections, the president of the panel will appoint 3 rapporteur judges from these sections.

The law expressly provides that these rapporteurs “are not incompatible”, in the sense that they do not become incompatible to judge the appeal request in the interest of the law. We ask ourselves whether these express provisions⁵⁸ (beyond their ambiguity) are not also unnecessary, leading to an excess of regulation, which is critical in terms of legislative technical requirements. Why would there be an issue of incompatibility? There can be no question of functional incompatibility, because the reporting judge does not exercise a judicial function separate from that of adjudicator, therefore the principle of separation of judicial functions is not violated. A risk of lack of impartiality in the trial could be invoked, given that the reporting judge prepared the draft solution to the appeal in the interest of the law, but the procedure for resolving the appeal in the interest of the law does not involve a judicial investigation (no evidence is administered) so as to raise suspicions that the reporting judge, who previously expressed his opinion on the solution, would be interested in maintaining this opinion by ignoring the evidence administered.

At the same time, in order for the reporting judges to draw up the report on the appeal in the interest of the law, the president of the panel may request a written opinion from prestigious, recognized specialists on legal issues that have received different solutions from the courts.

The content of the respective report must mention the different solutions given to the legal issue in question and the arguments on which they are based, the relevant case law of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights, the Court of Justice of the European Union and, if applicable, the opinion of the consulted specialists, as well as the doctrine on the matter.

At the same time, the judge or, as the case may be, the reporting judges must prepare and justify the draft solution proposed to be given to the appeal in the interest of the law.

For the hearing to be held in which the appeal is heard in the interest of the law, the convocation is made by the president of the panel, at least 20 days before the set date; each judge must receive, together with the convocation, a copy of the report and the proposed solution. All judges of the panel are obliged to participate in the hearing in which the appeal is heard in the interest of the law; judges who are unable to participate in the hearing may be replaced, only if there are objective reasons, in compliance with the rules on random assignment.

The request for appeal in the interest of the law is supported in the hearing, as the case may be, by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or by the prosecutor designated by him, by the judge designated by the board of directors of the High Court of Cassation and Justice, respectively of the court of appeal, or by the People's Advocate or by a representative

⁵⁸ Romania, *Code of Criminal Procedure*, art. 473(4), third sentence.

thereof.

The term for hearing the appeal in the interest of the law is no more than 3 months from the date of notification to the court, and the solution must be adopted by at least two-thirds of the number of judges of the panel, without abstentions from voting being allowed.

The decision by which the panel of the High Court of Cassation and Justice rules on the appeal in the interest of the law takes the form of a decision⁵⁹. The legislator expressly provides that this decision is issued only in the interest of the law, having no concrete effects on the judicial decisions examined nor on the situation of the parties in those criminal cases.

To streamline the procedure, certain legal deadlines are also provided: a deadline for providing reasons of no more than 30 days from the ruling and a deadline for publication in the Official Gazette of Romania of no more than 15 days from the motivation.

The solution pronounced, that is, the resolution given to the legal issues adjudicated, becomes binding for all courts from the date of publication of the decision in the Official Gazette of Romania; the effects of such a decision cease⁶⁰ only in the event of abrogation, finding of unconstitutionality or amendment of the legal provision that determined the unresolved legal issue, except in the case where this issue subsists in the new regulation.

The other new institution introduced by the provisions of the current Criminal Procedure Code, which aimed to “create a predictable jurisprudence that would lead to shortening the duration of the criminal trial”⁶¹, is the notification of the High Court of Cassation and Justice in order to issue a preliminary ruling to resolve legal issues.

Thus, in the event that⁶², during the trial, a panel of the High Court of Cassation and Justice, the court of appeal or the tribunal, entrusted with resolving the case in the last instance, finds that there is a question of law, the clarification of which depends on the resolution of the merits of the respective case, it (the panel) may request the High Court of Cassation and Justice to issue a decision by which that question of law is resolved in principle. In addition to the requirement that the legal issue that is the subject of the notification must condition the resolution of the case on the merits, another condition for the admissibility of the notification is that the respective legal issue must not have already been ruled on by a prior decision or by an appeal in the interest of the law and that that issue must not be the subject of an appeal in the interest of the law that is currently being resolved.

Unlike the request for appeal in the interest of the law, which has a wider range

⁵⁹ Romania, *Code of Criminal Procedure*, art. 474. Although its marginal title is “Content of the Decision and Its Effects,” the article contains provisions concerning only the decision’s effects, reasoning, and publication.

⁶⁰ Romania, *Code of Criminal Procedure*, art. 474¹, introduced by Law no. 255/2013, *Official Gazette of Romania*, no. 515, August 14, 2013, and amended by Government Emergency Ordinance no. 3/2014, *Official Gazette of Romania*, no. 98, February 7, 2014.

⁶¹ Romania, Ministry of Justice, *Explanatory Memorandum to the Draft of the New Criminal Procedure Code*, <https://www.juridice.ro/wp-content/uploads/2015/07/Expunere-de-motive-Proiectul-Legii-privind-Codul-de-procedura-penala-forma-transmisaParlamentului.doc> (accessed September 16, 2025).

⁶² Romania, *Code of Criminal Procedure*, art. 475. In our view, even this article, whose marginal title is “Object of the Referral,” does not satisfy the requirements of concision and clarity applicable to legal texts.

of holders, the holder of the referral to the High Court of Cassation and Justice is a panel of judges which, after contradictory debates⁶³, may order the referral of the case to the supreme court by means of a ruling which is not subject to any appeal and which must contain both the point of view of the panel and that of the parties.

The law provides for the possibility that, by concluding the referral, the case may be suspended until the preliminary decision is rendered to resolve the legal issue; in the event that the panel that filed the complaint did not order the suspension of the case, and the judicial investigation is completed before the High Court of Cassation and Justice rules on the complaint, it becomes mandatory to suspend the debates in the respective case until the preliminary ruling is issued.

The publicity of the referral decision is ensured by displaying it on the website of the supreme court, so that similar cases pending in the courts can be suspended until the referral is resolved by issuing a preliminary ruling.

The panel of judges competent to resolve the complaint is composed of the president of the corresponding section of the High Court of Cassation and Justice (the section that has powers in relation to the relevant legal issue) or a judge designated by him and 8 judges from that section. With the exception of the president of the panel, the judges who are part of this panel are randomly assigned.

Similar to the procedure for judging the appeal in the interest of the law, the president of the panel appoints a rapporteur judge, regarding whom the law expressly provides that it does not become incompatible.

If the legal issue subject to resolution concerns the activity of several sections of the High Court of Cassation and Justice, the composition of the panel is more complex: the president or, in his absence, the vice-president of the High Court of Cassation and Justice, who will preside over the panel, the presidents of the sections interested in resolving the legal issue, as well as 5 judges from each of the respective sections, randomly designated by the president of the panel. For the purpose of drawing up the report on the legal issue under trial, the president of the panel appoints one judge from each section; and with regard to these rapporteurs, the legislator has expressly provided that they are not incompatible.

In order to enable the parties to the case to submit, in writing, their views on the legal issue under consideration, the report drawn up by the judge/judges reporting shall also be communicated to these parties.

The preparation of the court hearing is carried out according to the same rules that apply to the procedure for judging the appeal in the interest of the law.

The hearing of the complaint takes place without summoning the parties, within a maximum period of 3 months from the date of the High Court's inauguration, and the solution is adopted by at least two-thirds of the number of judges of the panel, without abstentions being admitted.

In order to resolve the complaint, the panel for resolving legal issues shall rule by decision (which constitutes a preliminary ruling), only on the legal issue subject to resolution⁶⁴.

The deadlines provided by law for the motivation and publication of the decision are the same as in the appeal procedure in the interest of the law: a motivation

⁶³ Romania, *Code of Criminal Procedure*, art. 476.

⁶⁴ Romania, *Code of Criminal Procedure*, art. 477.

deadline of no more than 30 days from the pronouncement and a publication deadline in the Official Gazette of Romania of no more than 15 days from the motivation.

The resolution given to the question of law by the prior decision of the High Court of Cassation and Justice is binding on all courts, not only on the court that requested that resolution, from the date of publication of the decision in the Official Gazette of Romania.

The effects of the prior decision cease in the event of abrogation, finding of unconstitutionality or amendment of the legal provision that led to the emergence of the unresolved legal issue, except in the situation where the respective issue subsists in the new regulation⁶⁵.

Unlike the appeal in the interest of the law, the declaration of which presupposes the existence of final decisions containing different solutions on legal issues, the institution of referring the case to the High Court of Cassation and Justice for a preliminary ruling has a “preventive role”⁶⁶, in the sense that the court entrusted with resolving the case, avoiding giving a solution that would contradict the different solutions given or that could be given by other courts on a legal issue, requests the High Court to rule on that issue through an interpretation that becomes binding for all courts.

On the other hand, although, in the Romanian legal system, case law (or “judicial precedent”, with the overall meaning of the solutions contained in court decisions) does not represent a source of law, having no role in creating legal norms, courts frequently judge identical or similar cases according to previously pronounced solutions⁶⁷. A certain way of interpreting the law, leading to the harmonization and even the “informal” uniformity of practice, can be imposed through the force of the arguments contained in the motivation of court decisions⁶⁸.

Precisely in order to disseminate jurisprudential guidelines, more recently, at the level of the High Court of Cassation and Justice⁶⁹, the National Network for the Unification of Jurisprudence was established, conceived as an indirect mechanism to ensure coherence and a unitary evolution of judicial practice. Thus, based on its constitutional duty to ensure the uniform interpretation and application of the law by the other courts, the supreme court created the National Network for the Unification of Jurisprudence, which was intended to be a platform with a dual functionality:

- facilitating access for judges from all national courts to a database on how non-uniform practice issues have been formally resolved (through decisions handed down following the adjudication of appeals in the interest of the law and through prior decisions of the High Court of Cassation and Justice);

⁶⁵ Romania, *Code of Criminal Procedure*, art. 477¹, introduced by Law no. 255/2013 and amended by Government Emergency Ordinance no. 3/2014.

⁶⁶ Lorincz, “Ensuring a Uniform Judicial Practice,” 290.

⁶⁷ Irina Moroianu Zlătescu and Monna-Lisa Belu Magdo, “Rolul jurisprudenței în aplicarea unitară a legii” [The Role of Jurisprudence in the Unitary Application of the Law], *Drepturile omului*, no. 3 (2012): 34, <https://www.ceeol.com/search/article-detail?id=916575>.

⁶⁸ Cristinel Ghigheci, “Legality and Equity in Judicial Activity,” *Juridical Tribune — Review of Comparative and International Law* 14, no. 2 (June 2024): 288, <https://doi.org/10.62768/TBJ/2024/14/2/07>.

⁶⁹ High Court of Cassation and Justice of Romania, Order no. 253, August 18, 2023; “Rețeaua națională pentru unificarea jurisprudenței,” <https://www.iccj.ro/biblioteca-digitala/reteaua-nationala-pentru-unifica-rea-jurisprudentei/> (accessed September 16, 2025).

- ensuring the possibility for courts of appeal to signal “in real time” problems of non-uniform practice identified in their constituencies.

Last but not least, an important role in indirectly, informally ensuring a unitary practice at the national level, including in criminal procedural matters, is played by the debates organized by the National Institute of Magistracy⁷⁰ at professional meetings of magistrates (meetings of the presidents of sections of the High Court of Cassation and Justice and of the courts of appeal, respectively the meetings of the chief prosecutors of sections within the Prosecutor's Office attached to the High Court of Cassation and Justice, within the specialized structures of the National Anticorruption Directorate and the Directorate for the Investigation of Organized Crime and Terrorism Offences, as well as of the prosecutors' offices attached to the courts of appeal).

5. Conclusions

Compared to other European states, in terms of regulation regarding ensuring a uniform interpretation and application of the law in criminal proceedings, Romania has a well-defined legislation, perfectible from the perspective of legislative technical requirements, the current Criminal Procedure Code dedicating a separate chapter (entitled “Provisions regarding ensuring a uniform judicial practice”) in Title III (“Judgment”) of the Special Part.

The Romanian legislator's concern for establishing the legal framework that would lead to the uniformity of jurisprudence was evident from the moment of drafting the new Code of Criminal Procedure, in whose explanatory memorandum reference was also made to the role of the cassation appeal, stating that it “aims to ensure a unitary practice throughout the country”⁷¹. It seems that this statement was determined by the inspiration of the French Code of Criminal Procedure, which, as we showed previously, regulates the appeal in cassation in the interest of the law as an extraordinary means of appeal. It is true that, indirectly, and through the appeal in cassation, the High Court of Cassation and Justice, by examining the conformity of the final judgment appealed with the applicable rules of law, contributes to the uniformity of judicial practice, but unlike the French Code of Criminal Procedure, our code makes a clear distinction between the appeal in cassation and the appeal in the interest of the law.

Moreover, one of the substantial changes brought by the current Romanian Code of Criminal Procedure in the matter of extraordinary appeals was the delimitation of the appeal in the interest of the law and its placement (along with the new mechanism of notifying the High Court of Cassation and Justice in order to issue a preliminary ruling to resolve legal issues) in a chapter distinct from that of extraordinary appeals. As a legal nature, the appeal in the interest of the law is not a proper remedy, since the solution pronounced following its judgment has no effect on the decisions examined or on the situation of the parties in the respective cases, the interpretation given to the legal issues analyzed being binding only for the future and

⁷⁰ National Institute of Magistracy, “Repertoriu probleme de practică neunitară,” <https://inm-lex.ro/repertoriu-probleme-de-practica-neunitara/> (accessed September 16, 2025).

⁷¹ Romania, Ministry of Justice, *Explanatory Memorandum to the Draft of the New Criminal Procedure Code*.

opposable to all courts; this *erga omnes* opposability ensures, in fact, formally, the unification of jurisprudence on the matters of law analyzed and resolved by the supreme court.

In addition to the two formal mechanisms regulated in the Code of Criminal Procedure (appeal in the interest of the law and referral to the High Court of Cassation and Justice for a preliminary ruling to resolve legal issues), the aim of the uniform interpretation and application of the law in Romania is also pursued informally, by guiding (directing) practice, as a recommendation based solely on the “force” of legal argumentation of jurisprudential solutions.

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