

Dispute Resolution in Criminal Cases in Romania When the Defendant Is a Legal Person

Mihai Giurgea

University/Organization:

1. *Dimitrie Cantemir Christian University, Faculty of Law Cluj Napoca, Romania*

2. *Giurgea, Ghidra and Associates Law Firm, Cluj Napoca, Romania*

Authors' Email ID(s): mihai giurgea@yahoo.com, giurgea@giurgeaghidra.ro

Abstract: This study analyzes the resolution of criminal disputes involving legal persons under Romanian criminal procedure, with a particular focus on plea agreements. Corporate criminal liability was formally introduced in Romania in 2006 and further developed in the 2014 Criminal Code, enabling prosecution for a wide range of offenses including economic crimes, corruption, environmental violations, and money laundering. Unlike natural persons, legal entities cannot be imprisoned, making fines, dissolution, suspension of activities, and exclusion from public procurement key tools for sanctioning. Using doctrinal and practice-based research, this paper examines the procedural framework, including the roles of case prosecutors and hierarchical superior prosecutors in negotiating and approving plea agreements. Key findings indicate that plea agreements offer predictability, reduced sanctions, and efficiency, while courts provide judicial oversight to ensure legality, proportionality, and fairness. Empirical evidence from 2023 corporate cases demonstrates the practical application of these mechanisms. The study concludes that, although Romania lacks formal deferred prosecution agreements, existing dispute resolution tools function effectively for corporate defendants, and future reforms may further align Romanian practice with international standards, enhancing flexibility, restorative justice, and corporate accountability.

Keywords: *corporate criminal liability, corporate dispute resolution, legal person, plea agreement*

I. Introduction

Criminal liability of legal persons is a relatively recent addition to Romanian criminal law. Although corporate criminal responsibility was acknowledged in some countries as early as the nineteenth century, Romania introduced explicit provisions on the matter only in 2006, via Law no. 278/2006, later incorporated into the 2014 Criminal Code. As a result, legal persons may today be prosecuted for a wide range of offenses, including economic crime, environmental crime, corruption, money laundering, workplace safety violations, and other acts committed “in the interest” or “on behalf” of the legal entity.

The emergence of corporate criminal liability fundamentally changed the landscape of Romanian criminal procedure. Traditional tools of criminal justice investigation, indictment, trial had to be adapted to the structural characteristics of organizations. At the same time, modern criminal policy increasingly emphasizes efficiency, cooperation with prosecutorial authorities, restorative mechanisms, and negotiated justice.

This paper explores how dispute resolution functions within this context. Unlike natural persons, legal persons lack physical liberty and therefore cannot be sentenced to imprisonment, though they can face dissolution, suspension of activities, fines, confiscation, or collateral consequences such as exclusion from public procurement. These unique features influence the strategies used to resolve criminal disputes.

The key objective of this paper is to provide a comprehensive analysis of the legal and procedural options available to resolve criminal cases involving legal persons in Romania, focusing on: plea agreements, procedural challenges related to representation, attribution, and corporate governance.

The paper argues that, although Romania lacks a fully developed system of “corporate settlements” similar to deferred prosecution agreements in the United States or France, existing mechanisms can operate effectively as forms of dispute resolution, provided they are used strategically and with adequate safeguards.

II. Corporate Criminal Liability in Romania: Conceptual Foundations

A. Historical Evolution

Prior to 2006, Romanian criminal law followed the classical principle *societas delinquere non potest* - a legal person cannot commit a crime. This principle became incompatible with the complexity of modern economic relations and with the growing involvement of corporate actors in harmful activities.

The shift toward recognizing corporate criminal liability was influenced by European Union directives (By around 2000–2003, EU instruments in the field of criminal law (framework decisions) began to include, either indirectly or partially, requirements to impose sanctions on legal persons for certain offences), Council of Europe conventions, global anti-corruption frameworks (OECD Convention), the rise of financial and economic crime. Romania’s system parallels other European systems such as

Italy's patteggiamento for legal persons, France's Convention judiciaire d'intérêt public (CJIP), UK's Deferred Prosecution Agreements (DPAs).

Romania does not yet have DPAs, but plea agreements fill a similar role. The main difference is that Romania requires court validation; there is no administrative settlement.

Law 278/2006 amended the Criminal Code and recognized, for the first time, the criminal liability of legal persons for offenses committed in their interest or on their behalf. The current Criminal Code (2014) refined these provisions, adopting a modern attribution model.

B. Legal Basis (Art. 135 Criminal Code)

Under art. 135 A legal person, except for the state and public authorities, is criminally liable for offenses committed in the course of its activities or in the interest or on behalf of the legal person. On the other hand, the same legal text specifies that public institutions are not criminally liable for offenses committed while performing an activity that cannot fall within the scope of private law. Finally, it is further provided that, the criminal liability of a legal person does not exclude the criminal liability of the natural person who contributed to committing the same act. This framework enables prosecutors to attribute criminal conduct to the entity based on organizational deficiencies, failures of control, and benefit received.

C. Types of Corporate Penalties

Pursuant to Articles 137–152 of the Criminal Code, sanctions are classified into two categories¹: principal - criminal fines (scaled by day-fines) and ancillary - dissolution of the entity, suspension of activity, closure of work units, bans on participating in public procurement, judicial supervision, publication of the conviction. The principal sanction of a criminal fine is determined in accordance with the penalty provided by the incriminating provision. As regards ancillary sanctions, these may be imposed only in specifically regulated circumstances, subject to the fulfilment of particular statutory conditions - for instance, the dissolution of a legal person may be ordered only where it is established that the entity was constituted for the purpose of committing criminal offences.

The gravity of these sanctions - especially dissolution or exclusion from public procurement - creates strong incentives for corporations to seek negotiated solutions to avoid catastrophic outcomes.

III. Dispute Resolution in Criminal Procedure: Conceptual Clarifications

Romanian criminal procedure has traditionally been based on adjudication, with trial serving as the primary method for resolving cases². Accordingly, criminal proceedings in Romania have historically been governed by the principle of adversariality, a principle that was fully recognized under the 1968 Code of Criminal Procedure. This principle is regarded as ensuring that judicial bodies play an active role, one that neither permits the “advantages” of a misinterpreted convenience nor succumbs to the “scruples” of passive impartiality³.

However, with the adoption of the 2014 Criminal Procedure Code (CPC), several mechanisms were introduced to promote negotiated justice, including: plea agreements (arts. 478–488 CPC), simplified procedures for admitted guilt, civil settlements (with or without mediation⁴), prosecutorial discretion to renounce or defer prosecution in special circumstances, restorative mechanisms in limited areas.

For legal persons, these mechanisms operate differently. A corporation cannot confess in the psychological sense, but it can admit liability through its representatives, comply with investigatory demands, conduct internal investigations, and negotiate sanctions with prosecutors.

IV. Plea Agreements (Acordul de recunoaștere a vinovăției)

A. Nature and Purpose

The plea agreement was introduced under the CPC based on a complex rationale⁵. Among the arguments underlying the adoption of this procedure, the following may be noted: to reduce the burden on courts, incentivize cooperation between defendants and prosecutors, shorten the duration of proceedings, improve efficiency in complex cases (financial crimes, corruption, corporate crime).

A legal person may enter into a plea agreement exactly as a natural person does, provided it is represented by its legal representative or a duly authorized attorney.

B. Procedure (Arts. 478–488 CPC)

¹ For further details, see Mihai Giurgea, Ioan Lazăr, *Criminal Procedural Sanctions*, C.H. Beck Publishing House, 2020.

² For further details, see Mihai Giurgea, *The Right to Defense of Persons Deprived of Liberty*, Pro Universitaria Publishing House, 2025.

³ V. Dongoroz, S. Kahane, G. Antoniu, C. Bulai, N. Iliescu, R. Stănoiu, *Theoretical Explanations of the Romanian Code of Criminal Procedure. Special Part, Vol. II*, Publishing House of the Academy of the Socialist Republic of Romania, 1976, p. 422.

⁴ For further details, see Ioan Lazăr, “Mediation. A Study on a Method of Conflict Resolution”, in *Commercial Law Review*, no. 3/2006, Lumina Lex Publishing House, ISSN 1220-8515

⁵ For further details, see Mihai Giurgea, Ioan Lazăr, *Controversial Aspects in the Field of Criminal Procedural Sanctions*, in “Dreptul” Journal, no. 11/2017, ISSN 1018-0435.

The plea agreement constitutes the act of referral of the court, concluded between the prosecutor and the defendant, whereby the defendant agrees to acknowledge the facts with which he is charged, as well as their legal classification, and accepts, within the discussions held with the prosecutor, a particular modality of individualizing the sanctioning regime⁶.

Although the law does not list the hierarchical superior prosecutor among the holders of the plea agreement, they play an important role in concluding the agreement, pursuant to Art. 478 (2) and (4) of the CPC. It follows from these legal provisions that, while the case prosecutor is the holder of the plea agreement, the hierarchical superior prosecutor is the one who sets the limits of the agreement and subsequently endorses its effects⁷.

Pursuant to Article 479 of the Criminal Procedure Code, the plea agreement concerns the acknowledgment of the commission of the offense and the acceptance of the legal classification under which criminal proceedings were initiated, and it relates to the nature and extent of the penalty, as well as the manner of its execution, including any applicable ancillary sanctions.

The agreement must include: the identity of the legal person, factual description, legal classification, sanction proposed (usually a fine or accessory penalty), civil obligations, if negotiated, acknowledgment of guilt, signature of the prosecutor and the representative.

The file is then submitted to the court for validation.

C. Judicial Oversight

The court must verify the legality of representation, the voluntariness of the agreement., the sufficiency of evidence supporting the admission, the proportionality of the sanction, compliance with procedural requirements.

Taking into account the elements enumerated above, the court may determine the following: accept the agreement and convict accordingly or reject the agreement and return the case for regular proceedings.

This judicial check prevents abuses and ensures that corporations cannot “buy their way out” of serious criminal liability through inadequate sanctions.

1) Advantages for Corporate Defendants

Among the advantages that a legal person may obtain through the conclusion of a plea agreement, the following may be noted: predictability of outcomes (important for business continuity), reduced financial sanctions (often significantly lower than trial outcomes), avoidance of dissolution or business-crippling sanctions, acceleration of proceedings, important in multi-jurisdictional investigations.

2) Practical Use

While many cases remain unpublished, official prosecutorial reports consistently show numerous plea agreements involving legal persons, particularly in: corruption cases (public procurement fraud by companies), tax and financial crimes, environmental offenses, money laundering.

These cases provide empirical confirmation that plea agreements serve as the principal method of dispute resolution in Romanian corporate criminal practice.

V. Key Procedural Challenges in Corporate Dispute Resolution

Defective representation (e.g., expired mandate, incomplete authorization) can invalidate plea agreements, cause procedural nullities, delay proceedings.

Different parts of a large company (board, shareholders, subsidiaries) may disagree on admitting guilt, paying fines, settling civil claims. Courts must ensure that the representative has valid authority.

To accept liability, a corporation must acknowledge the factual basis. This creates difficulties identifying responsible managers, dealing with parallel civil or regulatory exposure, facing potential shareholder claims.

Corporate convictions may trigger exclusion from public tenders, revocation of licenses, loss of banking access, reputational damage.

These risks significantly influence dispute resolution strategies.

VI. Specific examples of criminal dispute resolution involving legal persons (persoane juridice) in Romania

(including data from official practice reports and illustrative cases showing how these entities participate in negotiated or resolved criminal proceedings)

Increasingly, Romanian prosecutors and courts look at internal audits, risk assessments, whistleblower programs, anti-corruption training, structural reforms, voluntary disclosure of wrongdoing, restitution and compensation. These elements may influence sanction reduction, support plea agreement approval, reduce collateral sanctions.

Compliance programs effectively function as negotiated justice tools, similar to international practices.

A. DNA Activity Report - Plea Agreements Involving Legal Persons (2023)

According to a recent activity report from the Direcția Națională Anticorupție (DNA), over the course of 2023 prosecutors concluded a significant number of agreements on the recognition of guilt (acorduri de recunoaștere a vinovăției), and some involved legal persons.

⁶ M. Udrioiu, *Syntheses of Criminal Procedure. Special Part*, C.H. Beck Publishing House, 2020, p. 729

⁷ N. Volonciu, A.S. Uzlaşu, *Commentary on the New Code of Criminal Procedure*, Hamangiu Publishing House, 2014, p. 1194.

In the territorial services of Iași and Suceava, statistics show at least one corporate defendant included in an agreement on guilt alongside natural persons.

At the Timișoara service, three legal persons were reported as part of plea agreements in the total of cases handled in the year. Nationally, among 219 plea agreements concluded by various territorial offices, 23 involved a legal person as a defendant.

B. Corporate Plea Agreements - Legal Conditions and Practice

Although full public case names are not always released (Romanian courts often anonymize corporate defendants), commentary by Romanian legal press and analysts confirms that companies can negotiate plea agreements in criminal cases as long as the offense permits a penalty of fine (since legal persons cannot be sentenced to imprisonment). The plea agreement must recognize both the fact and the legal classification, and major elements such as fines and ancillary sanctions (e.g., corporate dissolution, suspension of activities, bans from public procurement) can be negotiated. These negotiated sanctions are crucial in corporate cases because they can include non-custodial corporate penalties tailored to the structure and exposure of the business.

1) Illustrative Corporate Offense with Legal-Entity Implications

While the following is not a finalized Serbian-Romanian plea, it is a high-profile criminal investigation involving corporate actors that illustrates the typical legal person and individual dynamic in corporate criminal probes:

2) Court Example of Conviction of a Legal Person (Non-Negotiated Case)

Among the decisions of the courts, the following may be cited by way of example: one Romanian appellate decision involved a legal person convicted at first instance for offenses such as reckless bodily injury and destruction. The company was initially fined 375,000 lei, but on appeal the conviction was overturned for the legal person due to insufficient proof of the statutory form of guilt, even while associated individuals were still convicted. This illustrates how courts scrutinize corporate culpability and representation when imputing offenses to companies — a prerequisite that affects the potential for dispute resolution. On the other hand, this case demonstrates how judicial review of corporate intent and organizational conduct plays a key role in corporate criminal prosecutions and therefore in the viability of negotiated dispositions.

VII. Conclusions

Dispute resolution in Romanian corporate criminal cases increasingly relies on plea agreements and civil settlements, while mediation remains limited to civil issues. The combination of complex corporate structures, severe potential sanctions, reputational considerations, and efficiency needs, drives legal persons to seek negotiated outcomes.

As Romania continues to integrate EU standards and global compliance norms, dispute resolution mechanisms for corporate defendants will likely expand, potentially moving toward formal settlement systems similar to DPAs—creating a more flexible, efficient, and restorative corporate criminal justice framework.

References

- [1] Mihai Giurgea, Ioan Lazăr, *Criminal Procedural Sanctions*, C.H. Beck Publishing House, 2020
- [2] Mihai Giurgea, *The Right to Defense of Persons Deprived of Liberty*, Pro Universitaria Publishing House, 2025.
- [3] V. Dongoroz, S. Kahane, G. Antoniu, C. Bulai, N. Iliescu, R. Stănoiu, *Theoretical Explanations of the Romanian Code of Criminal Procedure. Special Part*, Vol. II, Publishing House of the Academy of the Socialist Republic of Romania, 1976, p. 422.
- [4] Ioan Lazăr, *Mediation. A Study on a Method of Conflict Resolution*, in Commercial Law Review, no. 3/2006, Lumina Lex Publishing House, ISSN 1220-8515
- [5] M. Udroi, *Syntheses of Criminal Procedure. Special Part*, C.H. Beck Publishing House, 2020, p. 729
- [6] N. Volonciu, A.S. Uzlău, *Commentary on the New Code of Criminal Procedure*, Hamangiu Publishing House, 2014, p. 1194.
- [7] Mihai Giurgea, Ioan Lazăr, *Controversial Aspects in the Field of Criminal Procedural Sanctions*, in “Dreptul” Journal, no. 11/2017, ISSN 1018-0435.