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## **Criminal proceedings**

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**Abstract.** Offences that break the rules in the area of criminal law will lead to conflicts in criminal law, and to this end, the judiciary must resolve criminal proceedings. Criminal conduct can be reviewed and analysed from the perspective of substantive, substantive law, procedural law and formal law. With the adoption and promulgation of criminal law, a criminal legal relationship was formed. Defending social values and imposing certain behaviors, on the other hand are individuals. Laws or laws covered by the provisions of the Criminal Code. The state has the right to prosecute without observing the rules of criminal law, which is an important part of criminal proceedings. When committing a crime, the judicial department exercises its right to defend social values by promoting criminal behavior, so virtual laws have been substantially transformed and are becoming active, and criminal proceedings have begun to restore law and order. Criminal procedure is a right, from a procedural perspective, it is an abstraction and it is a lever to exercise this right. In criminal law governing criminal acts, the prosecution of conflicts caused by violations of criminal law is implicitly institutionalized to prosecute those who commit such acts. Criminal disputes, as a legal means of transmitting conflict reports to court, already exist in the legal norms of criminal law, but have become a specific means and can be used. The consequence of committing an unlawful act is the use (exercise) of the act. Until the moment when the illegal act is committed, the act conferred by the legal norms practically exists as a legal power of creation. From that moment on, the act can be exercised, that is, a power with real effect.

**Keywords.** action, code, exercise, subjects, traits

### **1. General considerations on criminal proceedings**

Through the crime, a criminal law conflict occurred between the company represented by the state on the one hand and the perpetrator on the other. Legal documents by which the criminal law conflict is transferred to the criminal justice body through this legal document are called criminal procedure. Many definitions of criminal behavior in the literature are different from each other because they still share a common characteristic, that is, they provide for criminal behavior in the same way.

Criminal proceedings have as a legal instrument to bring the conflict report before judicial bodies, it exists virtually in the legal norm of criminal law, but it becomes a concrete instrument, capable of being effectively used only when the criminal legal norm has been violated by committing a crime.

From the above, it follows that criminal action does not arise from the commission of the crime, as many people claim, but it arises from a legal norm by which a certain act is

considered as a crime, what arises from the commission of the crime being only the use of the action, its exercise.

Through criminal proceedings, criminal proceedings apply criminal rules concerning crimes and punishments<sup>1</sup>. They capitalize on the state's right to hold the offender criminally responsible, ascertain the crime committed, establish how dangerous and what is the degree of guilt of the perpetrator, in order to apply an appropriate punishment.

Committing a crime makes the virtual right of the state to obtain, through its bodies, the application of criminal law sanctions to criminals to gain real effectiveness.

From a procedural point of view, criminal action is a legal instrument made available to those in law, through which the criminal legal relationship can be deduced before the legal bodies, in order to achieve the purpose of the criminal law.

Criminal proceedings are directed against those who are guilty of committing an act provided for by criminal law.

Like any judicial process, the criminal process takes place in two phases: the initial one that is given from the receipt of the notification to the final one given by its resolution by one of the ways provided by law. The road traveled between the two phases is strict and is not done by itself, what makes it possible to go from receiving the notification to solving it is the criminal action.

"Criminal proceedings constitute common support of all procedural and procedural acts that certain procedural subjects perform and draw up in order to dynamize and promote procedural activity so that within this procedural activity the criminal law conflict with which the judicial body has been notified is resolved."<sup>2</sup>

Article 14 para 1 Code of Criminal Procedure says: "The purpose of criminal proceedings is to bring to criminal responsibility persons who have committed crimes"<sup>3</sup>. Interpreting this provision, it can be said that the object of criminal proceedings is to attract criminal liability as a whole on those persons who have committed crimes and not only to impose a criminal law sanction or other ancillary or complementary measures regulated by criminal rules. The application of criminal sanctions takes place only during the trial phase, and criminal proceedings are exercised throughout the criminal proceedings, i.e. also in its first phase, which is criminal prosecution. Criminal proceedings are a whole that also includes the application of sanctions, so between the exercise of criminal proceedings and the application of criminal penalties there is a relationship that from whole to part.

Also from this article it can be clearly seen that from the moment of adoption and promulgation of a rule that seems to have certain rights, but which is in a passive, latent state and changes this state to become active, there is criminal behavior before the crime. When there is a violation of social values protected by criminal law. Therefore, the time and space for filing a criminal lawsuit depends on whether a natural or legal person has acts or omissions that trigger a criminal law conflict.

If the criminal action was resolved due to a previous complaint by an injured person, the other injured person can no longer initiate criminal proceedings against the same conduct, And opposed the authority of the judgment. Decision of the criminal court Clearly, with respect to the criminal liability of the defendant, on grounds of existence or non-existence Criminal responsibility, elimination of criminal proceedings by solving its purpose. According to Article

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<sup>1</sup> Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

<sup>2</sup> Stefan Cristian-Valentin, *Considerations relating to criminal proceedings*

<sup>3</sup> Code of Criminal Procedure, Art. 14, para. 1

131 of the criminal law, even if the previous complaint mentioned only one or more of the participants, the act constituted criminal responsibility for all participants. For several perpetrators, although the criminal trial against the previous complaint against one or some of the charges had a virtual effect on all of them, from a procedural point of view, if the perpetrator is not known, it is impossible to use this action.<sup>4</sup>

At the same time, the principle is still valid when the initial complaint is withdrawn, sufficient to allow one of the injured to retain functional capabilities. Reconciliation between certain parties with personality does not exclude this functional impact. As a result, criminal proceedings continued in both cases. To conclude procedural activities, all injured parties must withdraw their previous complaints or resolve with victims. Criminal responsibility is personal, as only those involved in the crime, such as perpetrators, instigators or accomplices, can be prosecuted and criminal proceedings can only be directed against them.

Therefore, the principle of criminal liability has the necessary procedures for personalising criminal behaviour. Criminal proceedings may only be directed against the accused, excluding all persons involved in criminal cases or claiming to be involved in cases. For example, no criminal proceedings may be brought against the party of civil liability or the heir of the defendant. No one may become a passive subject<sup>5</sup> of criminal proceedings with or on behalf of the accused. Unlawful acts constituting the legal and factual basis of a criminal act may only be carried out by a natural person with all the age, discrimination and responsibility attributes required by criminal law, and the person bears criminal liability for his illegal act, except for crimes committed by the legal person. The characteristics of criminal proceedings are irrevocable, continuous and unavailable, since the Public Prosecutor's Office, as its executor, cannot, in principle, abandon the proceedings after having exercised and find a solution based on the court's decision.

From the date of use until the case is resolved, criminal proceedings immediately proceed as normal. The process of criminal proceedings can be stopped only under certain circumstances provided by law, irrevocability and unavailability are not absolute principles. In some legal cases, the state may order it by dropping its criminal proceedings. This situation is eliminated or functional capacity for criminal proceedings eliminated. There may be a pre-existing criminal process or they may occur after the criminal proceedings have begun. The Criminal Procedure Act provides that during criminal proceedings, the Public Prosecutor may order, on the basis of a proposal from a criminal investigation agency or ex officio, for example, to stop the investigation or withdraw from prosecution. The criminal act will no longer be initiated or, if initiated, will no longer be exercised, thus reducing its functional capacity. Inevitably, their findings will have the effect of eliminating criminal trials, since they have no objections.

The aggrieved party did not file any criminal proceedings against the previous complaint, because even though he withdrew the complaint, when he filed the lawsuit, the state still conditioned to drop the lawsuit. Criminal proceedings that cannot be undertaken are closely linked to the basic principles of procedural criminal procedure, which gives the State the right to prosecute after certain crimes have been committed. At the same time, the law states that the purpose of criminal proceedings is the prompt and complete determination of the facts that constitute a crime. Therefore, consequently, the judiciary is obliged to carry out procedural activities when committing a crime.

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<sup>4</sup> Gheorghe Buzescu, *Rules of police theory and practice*, Pro Universitaria Publishing House, Bucharest, 2016

<sup>5</sup> Gheorghe Buzescu, *Particularities of contravention law*, Sitech Publishing House, Craiova 2017

The existence of the principle of formality or obligation of criminal proceedings is based on this basis. The application and observance of formalities make it possible to extinguish criminal proceedings only in the following ways: Final settlement of the case or intervention by circumstances which may impede the subsequent execution of criminal proceedings. The formality of criminal proceedings means that the possibility for the parties to stay the criminal proceedings is excluded and the extinguishment of the case is attributed solely to the judicial system.

In addition to these functions, some authors mentioned that no action is recognized. Legally qualified offenders have the right to sue regardless of criminal behavior. All features of criminal proceedings give it legal autonomy is different from other types of legal proceedings in concept and function<sup>6</sup>. In the course of the crime, these characteristics naturally exist and are reflected throughout the regulation on the institution.

## **2. Modalities of prosecution**

### **2. 1. Subject matter and exercise of criminal proceedings**

The object of criminal proceedings is synthetically regulated in the Code of Criminal Procedure, art. 14 para. 1 as follows: "The purpose of criminal proceedings is to hold persons who have committed crimes criminally accountable"<sup>7</sup>.

It is very important not to confuse the subject matter of the criminal proceedings with its purpose. While the purpose of criminal proceedings is to apply sanctions, the object of criminal proceedings is to hold criminally liable persons who have disregarded the legal provisions in the field, thus entering into conflict with the one who appears and is the guarantor of social rights and values, namely the state, represented by the Public Ministry. The subject matter of criminal proceedings encompasses all steps prior to and necessary for the application of coercive measures of criminal law. In the past, this confusion was very common because the legal regulations themselves were not as clear as the current ones. The Code of Criminal Procedure of 1936 defined the subject matter of criminal proceedings as follows: "Public action has as its object the application of punishments and security measures"<sup>8</sup> and the one of 1964 "public action has as its object the punishment of acts that harm social order"<sup>9</sup>. Both codes confused the subject matter of the criminal proceedings with its purpose. Currently, the relevant legislation is very clear, explicitly defining the subject matter of criminal proceedings, leaving no room for interpretation and confusion, so criminal proceedings cannot be restricted only to the trial phase (where punishments and other measures are applied), and can be promoted throughout the criminal proceedings from the criminal investigation phase. "In order to achieve the object of criminal action, bringing to criminal responsibility persons who have committed crimes, it is necessary to carry out procedural acts involving the intervention of certain bodies and persons, in certain forms and according to well-established rules"

As soon as criminal proceedings have been initiated, they are exercised. The exercise of criminal proceedings is expressed through all activities regarding the collection of evidence during the criminal investigation, their exploitation during the trial phase, the taking of certain

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<sup>6</sup> Ivan Anane, *Elements of theory and tactics of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

<sup>7</sup> Code of Criminal Procedure art. 14 para. 1

<sup>8</sup> Old Code of Criminal Procedure, 1936, Art.2

<sup>9</sup> Old Code of Criminal Procedure, 1936, Art.2

procedural measures, the raising of exceptions, continuing with its support in order to bring the defendant to criminal responsibility.

During criminal investigations, criminal proceedings are brought by the public prosecutor and, insofar as the law recognises their competence to prosecute, also by the investigating bodies. Under Article 311 of the Code of Criminal Procedure, "the prosecutor or the criminal investigation body may order the extension of the criminal investigation in respect of new facts or persons, which may subsequently lead to a separate initiation of criminal proceedings by the prosecutor". The prosecutor is the only one who can initiate criminal proceedings, but its effective exercise – by carrying out procedural activities leading to the gathering of evidence – rests with both the prosecutor and the criminal investigation bodies.

After sufficient evidence has been gathered during the criminal investigation, the prosecutor has two alternatives: to go to trial, if the act can be proved and all the conditions for attracting criminal liability are met, or to close the case if one of the cases provided by the Code of Criminal Procedure requiring this solution is incidental and thus the criminal action ends. During the trial, the prosecutor was the person who conducted the criminal proceedings. This time, criminal investigation agencies will lose this power, as they have no role in the trial phase. Importantly, even if the victim's rights are compromised, it is more hoped that the defendant will be punished so that the victim does not take criminal action or even target a criminal act that can be identified in the original complaint. This happens because criminal procedure is a public procedure, and the passive subject of any crime is the state, and it becomes the active subject through the Ministry of Public Affairs in the criminal procedure report. The injured party, not only the victim, can support the execution of criminal proceedings by presenting the evidence to be provided, sentencing conclusions and using appeals. Therefore, the prosecutor exercised criminal procedural powers, ordered the indictment of the accused, argued the charges in court, presented evidence in the charges, condemned the conclusion and exercised the means of appeal.

According to Art. 7 of the Law on Criminal Procedure, whenever there is evidence that constitutes an offence and there are no legal obstacles in the provisions of Art. 16 para. (1). However, the exception to this assumption is that, although the act constitutes a criminal offence and criminal proceedings may be instituted, the public interest in achieving the objectives of the criminal proceedings is absent depending on the specific content of the case, drop the criminal investigation if possible.

"Hindering in any way the exercise, in connection with the trial and failure by the suspect or defendants to notify in writing, within 3 days, the judicial bodies about any change of residence during the criminal proceedings is sanctioned with a judicial fine from 500 lei to 5,000 lei".<sup>10</sup>

"No one may ever invoke a certain procedure outside the legal provisions, under the pretext of the need to implement a legal norm, except for the situations expressly provided by law. As long as the law, as a binding norm, is defended and applied exactly the principle of respect for the law, all police activity must be carried out according to the law and for its application."<sup>11</sup>

The offender was taken to the investigating officer and to the Public Prosecutor's Office was charged with a crime, after that, if the legal conditions were met, he is sent to trial as a

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<sup>10</sup> Ivan Anane, *Investigation of criminal investigation bodies*, Pro Universitaria Publishing House, Bucharest 2014

<sup>11</sup> Gheorghe Buzescu, *Police Law – University Course*, Sitech Publishing House, Craiova, 2019

defendant, and when the court applies the sanctions provided for by criminal law he was convicted and therefore sentenced to criminal liability - as the object of criminal proceedings.

According to the provisions of current criminal law, the acts provided for by law criminal law may not only require criminal sanctions (penalties), but may also take educational or security measures. The current regulations on criminal procedure include the following forms: Due to the fact that the prosecution was initiated through criminal proceedings, the proceedings can be exercised throughout the duration of the crime.

You think that the purpose of criminal proceedings is to impose criminal sanctions, which means less possibility to perform this action only in the trial phase, since the request is made only in this phase Criminal sanctions. Such a conclusion will be completely inaccurate, since, according to Art. 9, in para. 3 of the Criminal Procedure Act, criminal proceedings may be conducted throughout the criminal proceedings.

The content of the prosecution is broader than the application of punishment, the latter only for trial at the trial stage. In the current conditions, the goal is for litigation to become the legal support of the entire criminal litigation process, not just the legal support of the process. In order to achieve the objective of criminal procedure for the purposes of the procedure, i.e. the prosecution of the offender commits a crime, it is necessary to carry out procedural acts involving the intervention of certain organs and people, in certain forms and in accordance with accepted rules.

### **2.1.1. Subjects of criminal proceedings**

Subjects of criminal behavior are divided into active subjects and passive subjects. Usually, the active subject of crime is transformed into a passive subject. The general passive subject of any crime is the country that has the power to enforce the law. The State will become the holder of criminal proceedings through the Ministry of Public Affairs. "By way of exception, active subjects may be the Chamber of Deputies and the Senate, which in the joint session had decided to impeach the President of Romania for high treason."<sup>12</sup>

As a passive subject, it must always be the person who committed the crime and the one who, throughout the entire criminal process, has several attributes:

- a) Perpetrator
- b) Suspect
- c) Defendant
- d) Convicted

The perpetrator is the person for whom no prosecution has been initiated or the person in respect of whom criminal proceedings have been initiated but the prosecutor has not placed further prosecution against the suspect. The perpetrator changes his status to suspect when there is sufficient evidence to give rise to a reasonable suspicion that he has committed a crime. When the criminal action has been initiated, the perpetrator acquires the status of defendant. The pronouncement of a decision by the court imposing a criminal penalty, even non-final, assigns to the defendant the status of convict.

Criminal proceedings have both a primary and a secondary active subject. The main active subject identifies with its holder and is represented by the state, and the secondary active subject is the person injured by the crime. The passive subject of criminal action is the very active subject of the crime, i.e. the person who committed the criminal act and who is held

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<sup>12</sup> Udriou Mihail, *Criminal procedure, General part, The New Code of Criminal Procedure*, C.H. Beck Publishing House, Bucharest 2015

criminally liable, for just as criminal action is personal and criminal liability is always personal<sup>13</sup>.

The criminal suspect refers to a reasonable suspicion about the person based on available data and evidence and that he is guilty of acts provided for by criminal law. Since the start of the criminal investigation, the perpetrator has obtained the qualification of criminal suspect. It is the decree that initiates criminal investigations to give procedural behavior to criminals with quality suspects. Before the first trial, those who obtained the qualification of criminal suspects were informed about this quality, the facts involved and their legal classification. Unless otherwise provided by law, the suspect has all the rights that the law provides for the defendant. The only preventive measure that can be taken against the suspect is the preventive measure of detention for 24 hours. The criminal suspect has the right to make a statement, not to make any statement, to prove his innocence, to submit evidence, to make requests, exceptions, conclusions and other opinions and to be assisted by a lawyer, but he is also obliged to bear the preventive measures provided by law to appear in the summons of the criminal investigation agency. An injured person is a person who has suffered physical, material or mental harm due to a crime. Legal categories of injured persons should not be confused with legal categories of victims of crime caused by injury. The offender can be any natural or legal person who is the passive subject of the crime, while the victim of crime can only be a natural person. Victims exercised their personal rights related to perpetrators during the crime and contributed to the resolution of criminal proceedings together with the justice system. It has the right to be informed of its rights, to produce evidence, to make requests, to make exceptions and draw conclusions, to be informed of the progress of criminal investigations and to inspect files. According to the law, listen to opinions and ask questions about defendants, witnesses and experts. If you do not understand, do not know how to express yourself or cannot communicate in Romanian language, you can obtain free benefits from an interpreter and receive the assistance of a lawyer or other representative to request mediation of employees and other rights provided by law. Sometimes, in certain circumstances provided for by law, criminal proceedings may be prevented by withdrawing previous criminal proceedings or settlements.

If the injured party is incapacitated or limited, legal aid must be granted. When the judicial system considers that the victim cannot defend himself or herself for some personal reason, it will arrange for the appointment of ex officio lawyers. If the victim dies during the criminal proceedings, his/her contentious rights will be removed together with the victim and cannot be replaced. However, judicial authorities responsible for dealing with criminal cases continue to prosecute. Only if the law clearly states this point can the death of the injured person eliminate the criminal process. Aggrieved persons who do not wish to participate in criminal proceedings in this capacity must notify the judicial system, when the judicial system considers it necessary, it will hear its testimony as a witness. If the injured party wishes to take civil action in the criminal proceedings, he/she will become a civil party. A person's marital status<sup>14</sup> does not exclude the possibility of participating in the trial as a victim. Whenever there are many aggrieved persons in the criminal case who do not have opposing interests, they may appoint a person to represent their interests in this process. If these persons do not appoint a representative, the public prosecutor or the court may appoint a lawyer motivated to represent their interests in order to properly conduct the criminal proceedings.

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<sup>13</sup> Gheorghe Buzescu, *Elements of Public Order*, Pro Universitaria Publishing House, Bucharest, 2016

<sup>14</sup> Anane Ivan, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

Other subjects of procedure mentioned in the law are: witnesses, experts, interpreters, procedural agents, special evaluation agencies and any other person or agency that has certain rights, obligations or actions in criminal proceedings. A witness is anyone who knows the facts or factual circumstances that constitute evidence in a criminal case. In addition to the parties and the main body of the proceedings, anyone can act as a witness. If the injured party does not wish to participate in criminal proceedings in this capacity, he or she will be heard as a witness. Under the law, witnesses have the right to protection and the right to profit from the subpoena they invoke in court. The witness is obliged to make a statement based on the actual situation, to participate in the summons of justice and to notify in writing within 5 days any change of the summoned address. Experts are experts authorized by law to establish, clarify or evaluate the discovery of facts or circumstances critical to uncovering the truth of criminal cases. Experts have the right to read the materials necessary for professional knowledge, may request clarifications from the judicial body or the main parties and procedural subjects who commissioned the professional knowledge, and are entitled to bear the costs of the work done and the costs incurred or followed. He may also benefit from legal protection measures. Experts are obliged to participate in judicial summons and draw up expert reports in accordance with the deadline set by the judiciary. An interpreter is a person authorised by law to provide translation from a foreign language into Romanian, as long as the person hearing it does not understand, express poorly or cannot communicate in Romanian. Sworn translators are also included in the category of sworn interpreters. In an emergency, if immediate procedural measures are taken or a sworn interpreter cannot be provided, the judiciary can use anyone who can communicate with the person heard as an interpreter and is responsible for restoring judicial responsibilities. The hearing will be conducted by a sworn interpreter as soon as possible. Like experts, interpreters are also eligible to pay for their work and are required to participate in subpoenas by the judiciary. In criminal cases, the interpreter may be appointed by the judicial system, or the party or victim may choose from legally authorised interpreters.

Parties are procedural subjects who exercise or take action against them civilly or criminally. The Code provides that only the defendant is a party to criminal proceedings, the civil party and the civil liability party. Therefore, the person targeted by the prosecution movement has become part of the criminal proceedings and has been called a defendant the victim who exercises civil proceedings in criminal proceedings are parties to criminal proceedings, this is called a civil party.

Like any judicial procedure, criminal proceedings also have many factors that cannot be carried out without these factors. To achieve its goal - to impose criminal sanctions. This includes the subject of the criminal act. The subject matter of legal conflict reports is naturally the subject of criminal proceedings. In other words, the subject of the criminal law legal relationship is presented as a subject in the procedural legal relationship, they are at the same time the subject of criminal behavior. In the field of criminal law enforcement major refers to passive subjects, who are active subjects of crime, as well as subjects and passive subjects criminal law reported property.

## **2.2. Features of criminal action**

Given its specific objectives and the legal framework for conducting criminal proceedings, it has the following characteristics:

a) Criminal proceedings belong to the state. Only when the State adopts the legal norms of crimes can it determine which antisocial acts constitute criminal offences and impose penalties for those acts which constitute criminal offences. Therefore, only the state has the

right to be the sole holder of criminal acts and not to charge guilt. The right to prosecute belongs to the State and the State delegates criminal proceedings for the exercise of this right to the prosecutor and is limited to the victim;

The fact that the criminal act belongs to the State does not result only from the fact that it determines the specific conditions and methods of carrying out the act by law. In addition, it should be emphasized that the state may sometimes conduct criminal proceedings from time to time under previously established conditions. Therefore, actions for forgiveness belonging to the power of the State<sup>15</sup> and the abolition of rules of criminal law is the case when the State, as sole holder, decides on criminal proceedings.

The right of the State to dispose of criminal proceedings shall be envisaged even when the action is brought by the injured party. Therefore, the state retains the right to amnesty or decriminalize the acts that are the subject of the injured party's prior complaint.

b) Criminal proceedings are mandatory. Since crime is a socially dangerous act against the rule of law, the state must defend it by criminal law, enforce criminal actions. The initiation of criminal proceedings is the responsibility of the agency competent to carry out this activity, and this feature of criminal proceedings is a direct result of the formal rules guiding the entire criminal process. In case of annulment or suppression of the formal principle of criminal procedure, this feature of criminal procedure is pale and weak.

c) Criminal proceedings are irrevocable and unavailable. Once the action has been taken, the criminal proceedings can no longer be stopped or restricted by the person who initiated them, they no longer depend on the will of the institution exercising them and will be exhausted, so that the case where the case is filed can be resolved. Only in cases provided for by law can the action initiated be eliminated. Criminal proceedings that cannot be undertaken are closely linked to the basic principles of criminal procedure. The applicability of the procedure is an exception to the above basic rules. In this case, in the event of a prior complaint, the initiation, implementation or termination of criminal proceedings depends on the will of the injured party. Even so, it is still possible to obtain criminal proceedings belonging to the State only to the victim.

d) Criminal behavior is indivisible. It applies to everyone involved in crime. Actions derived from the crime unit are inseparable in nature and have nothing to do with determining that more than one person is involved in crimes. Since crime is an inseparable legal fact, which determines the indivisibility of criminal proceedings in case of criminal participation, our criminal process will not be as criminal and there is only one trial against all participants. Criminal proceedings retain their inseparable nature even if proceedings are initiated after the victim has previously complained. According to the provisions of the Criminal Law (Art. 131 of the Criminal Code), the contract caused criminal liability for all participants, even if the complaint is filed in advance or against only one of them. In order to avoid the indivisible influence of disputes when withdrawing the initial complaint affecting property rights, the law also institutionalized the settlement of the parties, since the settlement is personal, so it affects only those involved.

e) Criminal proceedings are personal. As a procedural consequence, the principle of criminal liability has the necessary individualization of criminal proceedings. Criminal proceedings may only be directed against the accused and do not include all those who

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<sup>15</sup> Gheorghe Buzescu, *Place and role of the civil servant in the state apparatus*, Sitech Publishing House, Craiova, 2017

participated in the criminal case or requested to intervene. No one may claim to be a passive subject of criminal proceedings with or on behalf of the defendant.

Personal characteristics of criminal proceedings have many consequences:

- The heir of the defendant cannot be a passive subject of the criminal proceedings of the deceased;

- If the defendant is weak, in the case of criminal proceedings, his legal representative is not required to participate with him;

- No one may require the intervention of the defendant to better secure his defense or be asked to replace him or be tried with him.

Due to its specific purpose and the legal framework that occurs, the criminal process involves certain characteristics, which distinguishes it from any other judicial procedure. These functions show in terms of procedural and substantive significance, criminal proceedings, procedural factors and their use. First of all, criminal behavior is a social behavior, it belongs to society and through Special Investments through national institutions. From this perspective, it can be said that it belongs to the state, not private civil litigation. The fact that the crime belongs to the state is due to the fact that specific conditions and ways of taking measures are established by law. The entire state is an index of power, people can deal with criminal proceedings directly or in one expected situation. Therefore, even if a trial is brought, the criminal proceedings belong to the State conditions of punishment and admissibility, since such requirements do not meet, change the essential characteristics of criminal proceedings, in particular the characteristics belonging to the State.

In these circumstances a criminal trial has been filed to be resolved by the injured, this is amnesty is still responsible for prosecuting or managing the act. Therefore, the right to sue belongs to the state and Criminal behavior has the characteristics of public order, so it is inevitable. However, they can specify the status sporadically treats crimes through amnesty or repeal rules In case of prescription without introducing other drugs, the criminal process will be prosecuted and conditionally waived prior complaint or settlement between two conflicting parties.

As the holder of the power to bring dangerous acts to justice through criminal law norms in some social relations, the state seems to be the general passive subject of any crime, since the implementation of these acts violates the right to comply with the law. On the other hand, as the holder of the trial subject to specific sanctions from the offender, the state has moved from a passive subject to criminal behavior, the active subject of criminal behavior, which is one of the characteristics of criminal behavior criminal act is that the object of the act is the state.

### **2. 3. Conditions governing the bringing or bringing of criminal proceedings**

Criminal proceedings shall be initiated by the public prosecutor by order, at the proposal of the criminal investigation body, or ex officio if the following conditions are met::

1. “Positive condition: from the evidence administered, the prosecutor notices that there is a person who has committed a crime.”<sup>16</sup>

The condition of proof is laid down in the Code of Criminal Procedure and in the matter of preventive measures that can be taken against defendants. The prosecutor assesses the evidence in the case and must be convinced that a particular person has committed a crime.

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<sup>16</sup> Udriou Mihail, *Criminal Procedure – General Part*, C.H.Beck Publishing House, Bucharest, 2018

The exception is that the public prosecutor may order, by the same order, both the continuation of the criminal proceedings and their initiation, when he considers that the evidence is sufficient to apprehend a person who has committed a crime;

2. “Negative condition: not to be one of the cases of impeding the initiation of criminal proceedings provided for in art. 16 para. 1 Code of Criminal Procedure.”<sup>17</sup>

During the criminal investigation, once it is established that there is evidence showing good reason that a person has committed a crime and there is no case preventing this.

The commencement of criminal proceedings will notify the staff involved in the criminal investigation agency and ask them to listen. These regulations should be applied accordingly and the report should be summarised according to what happened. If the defendant wishes, a copy of the order to take action will be sent to him. Criminal proceedings are initiated by indictments provided for by law.

The initiation of criminal proceedings has an effect on the procedural status that the person who committed the act can acquire, i.e. the moment of initiating the criminal action marks the difference between the suspect, the person regarding whom from the data and evidence that exists, there is a reasonable suspicion that he has committed an act provided for by criminal law and the defendants, a person against whom criminal proceedings have been initiated, therefore the act initiating criminal proceedings is called an indictment.

The moment when criminal proceedings are initiated is not the same as when criminal proceedings are initiated. However, the initiation of criminal proceedings is done in personam, which means knowing the person to be held criminally responsible and the existence of evidence from which it would appear that the person actually committed a crime.

Criminal proceedings are initiated by an investigative body, the police, another state body with the power to do so, or by the Public Prosecutor's Office. Criminal proceedings are initiated when the police or the Public Prosecutor's Office have received the necessary information about the alleged crime.

In connection with the initiation and exercise of criminal action, in the modern legal conception, two systems have crystallized, based on the principle of legality or expediency.

The principle of legality of the exercise of action is older and has been established since the beginning of the nineteenth century. The prevailing idea was that the principle of legality obliges the Public Ministry to initiate and exercise criminal proceedings whenever a crime has been committed. The Public Ministry cannot substitute itself for justice, only the judge having the right to assess whether, in relation to the concrete conditions of the committed act, the perpetrator is to be held criminally liable. Due to the rigidity of this concept and the cases encountered in judicial practice that sometimes determined positions not only from specialists but even from public opinion, they have led to the emergence of the opposite system that enshrines the principle of expediency of criminal action.

The principle of expediency is newer than the principle of legitimacy and seeks to eliminate the shortcomings of the principle of legitimacy in general, abstract and general positions. In this case, it is impossible for a specific assessment of behavior to intervene in one sense, whenever the Law of Behavior is violated. In the opportunity system, members of the prosecution service are the first batch of magistrates in the case and must be entitled to assess the consequences of their attitudes towards the criminal process.

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<sup>17</sup> Udroi Mihail, *Criminal Procedure – General Part*, C.H.Beck Publishing House, Bucharest, 2018

After the criminal action has been initiated, the criminal action must be supported by carrying out a set of activities and procedural acts that dynamize the criminal process and bring to the achievement of the object of criminal action.

If the investigating officer considers that there is a reason to initiate criminal proceedings, he or she should draw up a report containing the recommendations and submit it to the prosecutor. According to Decree Art. 235 of the Law on Criminal Procedure, the indictment filed a criminal action, which will contain the reference to Art. 203 of the Law on Criminal Procedure. Informing the criminal investigation officer about the recommendation in accordance with the decree; In this case, if the public prosecutor considers it necessary to continue the investigation or remove it from office, expel it from prosecution, terminate the investigation or suspend the investigation, he or she may order the file to be returned.

The commencement of criminal proceedings and their actions consist of offenders, proceeding criminally in accordance with the acts prescribed by law, summoning or prosecuting the court, supporting and proving the crime This includes implementing appeals and supporting them in the competent courts. These are the dynamic factors that make criminal proceedings unfold from the beginning of the criminal investigation. Until the final criminal sentence is handed down.

Usually, criminal proceedings are initiated and divided on known participants when criminal proceedings begin. If it is established that there are other participants, then criminal proceedings, criminal proceedings will also apply to them, in this case, we are not talking fundamentally different criminal procedures, but involving the extension of criminal proceedings, that is, the purpose of criminal proceedings is trying. The extension can be carried out both in the criminal investigation phase and in the criminal trial phase.

If some participants are found after further attempts, they will be prosecuted. Another criminal proceeding will be initiated, but based on the essentials of the same initial criminal process, this is a case of substantial unity in the proceedings. When the same person commits a new crime, the accused or others will be instructed to extend the criminal process. Therefore, in this case, there is a lot of uniformity of the program.

#### **2. 4. Cases impeding the initiation and prosecution of criminal proceedings**

The purpose of criminal proceedings is to bring perpetrators to justice. Through the indictment they provided, criminal proceedings were initiated. As mentioned in previous chapters, criminal proceedings are conducted throughout the criminal process while complying with legal requirements.

The act of filing a criminal trial is called a decree and was issued by the prosecutor during the criminal investigation. When there are good reasons from the evidence in the file to believe that someone has committed a crime and these incidents are not accidental. Examples of obstacles provided for in Article 16 paragraph 1 of the Code of Criminal Procedure.

Criminal proceedings may not be instituted, and when they have been brought, they may no longer be brought if:

a) the deed does not exist, does not exist in its materiality, was not committed; the existence of suspect or suspect is not required; If this condition occurs, the prosecutor will order the closure during the criminal investigation, and in the case of trial, acquittal will be pronounced;

b) the act is not provided for by criminal law or was not committed with guilt. In this hypothesis there are two possibilities: 1. Although the act exists, the conditions of the objective side of the crime are not met and it is not necessary to have a suspect or defendants.

2. the elements of the subjective side are not met and there must be at least one person considered, without having the status of suspect;

c) There is no evidence of a causal link between the act and the suspect. In this situation, the act exists, but it cannot be proven that it was committed by the suspect or defendant. there is no complaint or notification to the competent body or another condition provided by law necessary for initiating criminal proceedings.

d) The absence of a prior complaint removes criminal liability, the lack of prior authorization of the competent body shall be assessed according to the personality of the criminal law, the reality of the criminal law, and when prior authorization is required if the perpetrator fulfils the prerogatives of a function. The lack of authorization of the competent body is applicable to some of the crimes committed by the military, such as: unjustified absence, desertion, violation of conscription, leaving the post or command and insubordination;

e) there is a cause of non-punishment provided for by law, they are provided for in the Criminal Code or special laws;

f) there is a justifiable or non-attributable cause, justifying causes remove the criminal character of the committed act such as: legitimate defense, state of necessity, exercise of a right or fulfillment of an obligation, consent of injured persons under the conditions provided by law and causes of non-imputability that remove one of the basic conditions of the crime, imputability, for example: physical restraint, moral coercion, non-attributable excess, minority of the perpetrator, irresponsibility, intoxication, error or fortuitous circumstances;

g) amnesty or prescription, death of suspect or defendant natural person or deregistration of suspect or defendant legal person has been ordered; The Code of Criminal Procedure takes into account the pre-conviction amnesty and the prescription of criminal liability, and the death of the suspect or defendant natural person or the deletion of the suspect or defendant legal person operates as the principle of personality of criminal liability;

h) a mediation agreement is concluded or the complaint is withdrawn in the case of offences for which the withdrawal removes criminal liability; the complaint may be withdrawn or reconciliation may occur until a final decision is issued, only if the initiation of criminal proceedings was made ex officio and the law provides that this is expressly possible; The conclusion of a mediation agreement takes effect in the case of an offence for which withdrawal of the complaint or reconciliation removes criminal liability;

i) there is a transfer of proceedings to another State in accordance with the law,

j) there is authority of res judicata. This follows from the provisions of Article 6 of the Code of Criminal Procedure which says: "No person may be prosecuted or tried for committing an act if a final criminal judgment has previously been delivered against that person in respect of the same act, even under another legal classification"<sup>18</sup>

Order of detention of cases preventing the initiation or exercise of criminal proceedings:

a) If in a case there is incident both a case that prevents the initiation or exercise of criminal proceedings on the grounds of lack of legal basis and the one that deprives criminal proceedings of purpose, priority will be given to the former because it is presumed that there is no crime;

b) If in a case there are several causes that prevent this, the solution of dismissal or acquittal will be ordered only on one basis, which will be the first in chronological order;

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<sup>18</sup> Code of Criminal Procedure, Art.6

c) In a case, there are several causes that prevent the initiation or exercise of criminal proceedings, the closure and termination of criminal proceedings shall be ordered on only one basis;

d) If in a case there are incidents both several causes that prevent the initiation and exercise of criminal proceedings provided for in art. 16 para. 2 letters e)-j) of the Code of Criminal Procedure shall be ordered only and only the dismissal or acquittal only on one basis, the first provided by art. 6 para. 1 lit. a)-d) Code of Criminal Procedure.

“During criminal investigation, criminal proceedings shall be extinguished by closure or by dropping criminal prosecution, as specified by law. During the trial, the criminal proceedings are extinguished by the final decision of the court of conviction, renunciation of the application of the sentence, postponement of the application of the penalty, acquittal or termination of the criminal proceedings.”<sup>19</sup>

The existence or non-existence of any of the cases mentioned above is crucial for the conduct of criminal proceedings and the secret conduct of judicial proceedings. First, if all these cases are incidental, then even if all the evidence shows this fact, criminal proceedings can no longer be directed against someone, and criminal proceedings against someone cannot continue. Obtaining the status of the accused depends entirely on the start of the criminal trial, since this quality was not obtained from the moment the file was submitted (the person at that time was only the "criminal"), even if some evidence indicates the identity of the perpetrator. When the perpetrator "transforms" into a suspect, but only when criminal proceedings are initiated against that person.

## **2.5. Dismissal of criminal proceedings**

In the process of criminal investigation, under the conditions provided by law, criminal proceedings are concluded by filing a trial or dropping the criminal investigation.

During the trial, the criminal trial disappeared due to the conclusion of the court decision. The old law did not normally specify this institution of extinguishing the action. It provided only for procedural solutions, including solutions of criminal proceedings, without including the notion of its 'extinguishment'.

It can be extinguished totally or partially. In connection with the total extinguishment of the criminal action, we can note that the entire punishment is *sinsa* and there is no longer criminal liability. Criminal liability is fully extinguished when the offender dies, only when there are personal sanctions, monetary obligations are extinguished only when the death of the offender occurs before the final decision.

When an offender dies, his criminal liability ceases and civil liability continues, unless his death occurs before the final judgment. The final judgment in a criminal case becomes final only after the appeal period has passed or when the sentence is served in whole or in part. The death of the injured party is not a reason for extinguishing the criminal proceedings.

During the criminal investigation, the criminal proceedings may be extinguished by the decision to close or drop the prosecution, all of which are given by the prosecutor.

The extinguishment of criminal proceedings is made when there is a cause for hindrance, the criminal action cannot be exercised and will be extinguished, and when the solution is pronounced it will be different depending on the time of its adoption. "Thus, during the criminal

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<sup>19</sup> Anane Ivan, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

investigation, if any case of impeding the exercise of criminal proceedings arises, the prosecutor will order the closure of the case”.<sup>20</sup>

When the law provides that the functional capacity of the criminal proceedings disappears and is no longer allowed to be exhausted, the criminal proceedings are extinguished. As long as there is one of the grounds provided by art, the criminal process can be eliminated before it begins. Article 10 of the Law on Criminal Procedure provides that the competent authority has initiated criminal proceedings. However, the extinction of criminal proceedings is carried out preventively after its commencement.

The extinction of criminal proceedings may be carried out even during the criminal investigation, but before the procedural activity has been exhausted. As solutions by which criminal proceedings are extinguished without being exhausted, there are the following::

1. Removal from prosecution;
2. Termination of prosecution;
3. Termination of criminal proceedings;
4. Closure of the criminal case.

Announcing a solution for acquittal, suspension of criminal proceedings and removal from lower levels Only when one of the cases clearly provided for by law can be found can criminal prosecution be prosecuted and criminal cases dismissed. These cases also prevent criminal proceedings from being initiated.

The criminal investigation officer will immediately forward the case file to the prosecutor and attach the same report as the report prepared at the end of the criminal investigation, without the need to initiate criminal proceedings. The moment when the prosecution is completed occurs after the requirements of the statement on the prosecution material are met.

In addition to preventing the opening and exercise of criminal proceedings, as shown in this case. Art. 16 Code of Criminal Procedure provides for another situation that makes the object invalid Criminal Procedure. As for the hypothesis, in the hypothesis, it is related to the specific elements of the case Even if the crime has been committed and it is possible to initiate criminal proceedings, it does not seem to be appropriate in society. However, if there are grounds for obstruction, then the criminal trial will not be executed and will be extinguished, and the solution to be announced will vary depending on the time of adoption. Therefore, during the criminal investigation, the prosecutor will order the closure of any case that hinders the criminal proceedings.

### **3. Orders given by the public prosecutor**

The public prosecutor may order the criminal investigation agency of the criminal investigation officer or a specialised criminal investigation agency to conduct any criminal investigation, as appropriate. The handling by prosecutors of the conduct of criminal investigations is mandatory and a priority for investigative agencies and other agencies that have legally prescribed attributes when investigating crimes. The higher body of the criminal police or specialised criminal investigation body should not provide guidance or regulations on criminal investigations<sup>21</sup>.

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<sup>20</sup> Botian Elisabeta, *Criminal procedural law - Course notes*, Burg Publishing House, Sibiu, 2016

<sup>21</sup> Gheorghe Buzescu, *Internal and international police cooperation – university course*, Sitech Publishing House, Craiova, 2020

If the criminal investigation agency fails or does not comply with the prosecutor's requirements, he may notify the person responsible for the criminal investigation agency, who is obliged to notify the prosecutor of the measures taken within three days of receipt of the notification, or the prescribed judicial misconduct is subject to judicial fines.

Removal must be done in writing and must be reasoned, which is necessary for criminal investigation agencies and other persons who have legally prescribed attributes when investigating a crime. Institutions that are larger than the criminal investigation agency of the criminal police cannot give them instructions or removal of the prosecutor. If the criminal investigation agency fails or erroneously carries out the prosecutor's order, he may be fined from 500 to 5,000 lei. The sanctions of criminal investigation agencies vis-à-vis prosecutors are relatively independent of litigation.

The role of the prosecutor, part of the judicial authority, is established in the institutional architecture of the Romanian state, firstly, through Articles 131 and 132 of the Romanian Constitution, and, alternatively, through organic laws, Law no. 303/2004 and Law no. 304/2004 respectively.

Public prosecutors and criminal investigation agencies perform investigative functions, and these agencies collect the evidence necessary to establish whether there is a reason for prosecution. In the explanatory memorandum on the adoption of the new law on criminal procedure, it was argued that the position of the prosecutor was reconsidered in criminal investigation agencies and in terms of power. The role of prosecutors in criminal proceedings must be understood from legislation on judicial organisations, provisions of the Constitution, decisions of the Constitutional Court, decisions of the Supreme Court of Appeal and the Supreme Court and decisions of the European Court of Human Rights.

In criminal investigations carried out by the police, prosecutors are also the main characters and have the qualities of a criminal investigation agency within the criminal police. The authority to conduct criminal investigations and supervise criminal investigations lies with the prosecutor's office corresponding to the court of first instance.

„ The prosecutor of the prosecutor's office attached to the district court is competent to prosecute cases at first instance at the district court, and the prosecutor of the prosecutor's office attached to the tribunal is competent to prosecute cases falling within the jurisdiction of the tribunal. Thus, the law specifies that the criminal investigation is necessarily carried out by the prosecutor and it should not be understood that the criminal investigation must be carried out entirely by the prosecutor, because there is a possibility that, in such cases, the judicial police bodies carry out certain acts ordered by order by the prosecutor.”<sup>22</sup>

Public prosecutors take appropriate measures, provide appropriate guidance and regulation, control the activities of criminal investigation agencies to resolve criminal cases within a certain period of time, and take into account the nature, purpose and complexity of each case. When carrying out surveillance activities, the necessary measures shall be taken to take action for the criminal investigation agency or the criminal investigation agency of the criminal police.

The public prosecutor may give written or oral instructions on the conduct of any criminal investigation; The management by prosecutors of the conduct of criminal investigations is the duty and priority of the investigating agency and other agencies with legal affiliation when the crime is identified or a specialised criminal investigation officer cannot provide guidance or testimony on the criminal investigation.

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<sup>22</sup> Anane Ivan, *Investigation of criminal prosecution bodies*, ProUniversitaria Publishing House, Bucharest, 2014

The public prosecutor has the right to participate in the conduct of any investigative act or may even carry out it personally. Whenever necessary, he/she may resume the continuation of the criminal investigation from the criminal investigation bodies, carrying out the necessary acts in the case himself.

The public prosecutor and the investigating bodies are responsible for prosecuting them throughout the criminal investigation.

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