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The defendant and his rights

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Abstract. Antisocial acts are the natural product resulting from the relationship between individuals, existing and having the possibility that they are framed as inhuman, unethical, which do not depend on any kind of legal settlement. However, they cannot be considered as criminal offences only when the law considers them to be prohibited, punishing them with penalties. Citizens enjoy the rights and freedoms enshrined in the Constitution or other laws, as well as the obligations provided for therein, guaranteeing equality before the law, public authorities, without discrimination. Citizens must exercise their rights and freedoms in good faith so as not to violate the rights and freedoms of others. The conduct of criminal proceedings confers on the offender different qualities but each with different legal meanings, and depending on these procedural qualities, the active subject of the crime will have certain rights and obligations, which he will bear in the procedural activity. According to the current legislation, the criminal investigation body, in order to find out the truth, is obliged, even if the defendant admits the act, to collect evidence in his favor and against him. The defendant is considered by the entire legal literature to be the only main part of the criminal process, which cannot be disputed. At the same time, the central subject of the completion of the procedural activity, through sincere statements, the defendant contributes to the just settlement of the case, the judicial bodies having the possibility to establish the hypostasis in which the deed was committed.

Keywords. defendant, rights, code, hearing, obligations

1. General considerations concerning the defendant and his rights

"The defendant, as a passive subject of criminal proceedings, is the most important party to the proceedings, and all judicial action arises in connection with bringing him to criminal and civil liability. If the injured party, the civil party and the civilly liable party do not participate, there is no criminal trial and conviction without the defendant. Therefore, the defendant is the main and indispensable part of the criminal process."¹

The status of defendant arises with the initiation of criminal proceedings. According to Article 23 of the Old Criminal Procedure Code: "the person against whom criminal proceedings have been initiated is a party to the criminal proceedings and is called a defendant". According to the Code of Criminal Procedure, "The person against whom criminal proceedings have been initiated becomes a party to the criminal proceedings and is called a defendant."²

¹ Udriou Mihail, *Criminal procedure. General part. The New Code of Criminal Procedure*, C.H.Beck Publishing House, Bucharest, 2019

² Neagu Ion, Damaschin Mircea, *Treatise on criminal procedure. The special part. 2nd edition*, Legal Universe, Bucharest, 2018

A special place in the procedural distribution is held by the parties, who can be defined as natural or legal persons, who have rights and obligations and who arise from the exercise of criminal and civil proceedings in criminal proceedings to solve problems that interest them and, at the same time, the criminal process needs parties in order to be able to carry out.³

The defendant is considered by the entire legal literature to be the only main party in the criminal proceedings, which cannot be disputed. On the one hand, it should be specified that the natural person will present various procedural qualities in the process of criminal proceedings, each of them indicating both the stage in which the trial has reached and the rights and obligations of the person who violated the criminal law.

“The defendant can only be a natural person, criminal sanctions cannot be pronounced against legal persons. In criminal proceedings, the defendant is the central figure and the procedural activity revolves around the criminal act committed by this person, with a view to holding him accountable.”⁴

The moment when criminal proceedings are initiated is chosen by the prosecution bodies and coincides with the existence of grounds arising from all the evidence of guilt in question.⁵

The procedural acts by which this capacity is addressed to a person are: the order initiating the criminal proceedings, the indictment, the oral statement of the prosecutor and the conclusion of the court under the conditions provided by art. 386 para., final and when the preliminary complaint is addressed directly to the court, under the conditions of art. 339 the defendant is therefore a party to the proceedings, having various obligations and rights, which the suspect does not have; The defendant may be arrested for a longer period of time.

The status of defendant is converted to that of convicted if the criminal judgment is final. The convict is not a party to the trial, being a legal subject of execution law, being outside the scope of criminal proceedings.

“The recognition of the defendant's status as a party to proceedings is an expression of the humanism of contemporary criminal procedural law, since it enables the person against whom criminal proceedings are brought to make an active contribution to the determination and extent of criminal liability. Also, when, by mistake, an innocent person is indicted, it is natural that he should have maximum possibilities of making the truth about his innocence triumph. Once any person accused of committing a crime is considered innocent until proven guilty by legally administered evidence, it can only be admitted to place this person on an equal procedural position with the other parties, the accusing prosecutor, being given at least the same chances in the judicial duel that takes place before the court.”⁶

“The defendant is a party to the criminal proceedings both in the criminal investigation and in the trial of the preliminary chamber or trial, being a passive subject of both civil and criminal proceedings.”⁷

The following may have the status of defendant⁸: perpetrators, accomplices, quantators, instigators to commit the crime in the form of a consumed or exhausted attempt, who have the criminal capacity. 'Criminal proceedings aimed at bringing persons who have

³ Gheorghe Buzescu, *Police law - university course*, Sitech Publishing House, Craiova, 2019

⁴ Emilian Stancu, *Treatise on Forensics*, Legal Universe, Bucharest, 2010

⁵ Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

⁶ Catalina Miron, Ion Miron, *Criminal procedural law*, Exponto Publishing House, Constanta, 2006

⁷ Udroui M., *Criminal Procedure, General Part, Edition 2*, C.H.Beck Publishing House, Bucharest, 2015

⁸ Udroui M., *Criminal Procedure, General Part, Edition 2*, C.H.Beck Publishing House, Bucharest, 2015

committed criminal offences to criminal responsibility may be the passive subject of such proceedings only those who, within the meaning of criminal law, have committed an offence. However, a person who is not the active subject of the crime, is therefore not a criminal, but a person about whom there is data that he has committed the crime, without these data corresponding to reality, can also become a defendant. The solution of acquitting the defendant on the grounds that he did not commit the crime, provided for in art.10 letter c and 11 point 2 letter a, is proof of such a possibility, which we often encounter in the practice of courts.”⁹

Both a natural person and a legal person may have the status of defendant; Persons may acquire the status of defendant in the course of criminal prosecution.

He cannot become a defendant:

- minors who have not reached the age of 14 at the time of committing the offence
- public authorities (Government, Parliament, judicial authority)
- public institutions
- state

For a person to possess the status of defendant, the full capacity of rights is not necessary, given that a minor aged 14, having reason, can be considered a defendant and can be tried without the persons whom the law envisages to participate. I argue that in order for an individual to become a defendant, it is necessary to be decided, as the punishment can only be applied to a familiar person. When the offender is not identified, the elaboration of the criminal investigation activity is considered, in order to discover it.

The procedure of identifying the defendant takes into account the identification of the name, surname, as well as other information that differentiates him from other individuals¹⁰; In view of this, when a person who has committed the offence is identified but tries not to reveal his own identity by means of nicknames or pseudonyms, he may possess the status of defendant because his identity is decided.

The status of defendant has an individual and non-transferable character, so that at the moment of death of the natural person or at the suppression of the legal person, the heirs or descendants in rights do not acquire the status of defendant, the prosecutor ordering the measure of dismissal and the court the measure of termination of the criminal proceedings.

We find that it is impossible to confiscate the value concordance of an asset if it has not been found by the legal descendants of the defendant if the trial has been terminated as a result of the finding of death.

The rights and obligations of the defendant are not equal in the dispute of criminal proceedings, and their analysis is made separately in procedural phases. Establishing the identity of the defendant, proceeding to hear him to the accusation against him.

The hearing is conducted according to the rules laid down in the general part of the Code of Criminal Procedure and studied in the chapter on evidence, namely the statements of the accused. For the stage of trial at first instance, which takes place in public and contradictory, some peculiarities and the procedure for hearing defendants are provided.

Thus, hearing begins with a free communication by the defendant of the charge contained in the court's protocol. Such a provision seeks to hear the defendant as briefly as possible so as to maintain his statement given by the prosecuting body; on the one hand, hearing the defendant is a means of defence, which gives him the right to declare precisely what refutes

⁹ Emilian Stancu, *Treatise on Forensics*, Legal Universe, Bucharest, 2010

¹⁰ Ivan Anane, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

the act against him or those which explain it in his favour, explanations that will serve to settle the case correctly; On the other hand, the audience in the courtroom must also find out from the defendant himself the position he adopts regarding the charges against him.

The defendant can plead his innocence in court.

“Organization of how listening is conducted. The mode of interrogation is circumscribed to the general plan of criminal investigation elaborated in a particular criminal case and which contains the versions, the problems to be clarified, the tactical methods used, the order of carrying out various procedural activities, as mentioned above. Tactically, organizing obedience involves:”¹¹

a. Precise determination of issues, which must be clarified during the hearing and the data to be verified in this case.

b. Evidence to be used during the hearing (evidentiary material, photographs, various recordings).

c. Determining the order of obedience. If there are several defendants or defendants in the case, you will initially listen to those with more data or those with honest and complete statements. In order to obtain as much data as possible, witnesses should give priority to eyewitnesses. Data can also be obtained by extra-trial information, conducting forensic expertise.

d. Determining the manner of summons, the date, time and place where they are to be present for hearing.

The manner in which summons is summoned, as well as its order, are specifically designed to avoid contact, at least at the stage of the first hearing, contact with certain persons interested in the case¹², in particular the existence of witnesses, the civil party and the injured party. In such circumstances, if the hearing is carried out within short periods of time which allow a certain rapprochement between those heard, the first-mentioned persons shall discuss matters which are important to the judicial body, the statements related thereto.

Sometimes this can be inferred from the context of the questions, from the materials presented during the hearing, from the permissiveness or uncensored reactions of the magistrate. The completion of the preparation for hearing the defendant will materialize in a listening plan, drawn up for each defendant. It contains the questions to be clarified and the order of their solutions¹³, the substantive or detailed questions to be answered, the materials to be provided to him, etc.

At the stage of drawing up the plan, any circumstance that may arise during the hearing and prevention of unforeseen ones will be taken into account, so that the judicial body is not surprised by certain unexpected reactions. Hence the idea that the plan must be flexible. With its help, a better adaptation can be achieved to the changes that may occur or to the formulation of new questions concerning the investigated act and the person concerned. When cases are difficult, defendants refuse to admit or improperly state the truth in their statements, it is necessary to draw up a plan to expedite the resolution of the case.

On the civil side, the defendant is the one to whom the act causing damage is imputed, thus being the main passive subject and party to the civil side of the case. The defendant has certain procedural rights, these being::

¹¹ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

¹² Gheorghe Buzescu, *Rules of police theory and practice*, Pro Universitaria Publishing House, Bucharest, 2016

¹³ Ivan Anane, *Investigation of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

- the right to make statements, to make requests;
- the right to take evidence in opposition to civil proceedings;
- the right to know what is reported in the file;
- the right to appeal against court decisions on the civil side

The defendant is liable for the entire punishment of the civil party's case by crime, even if other persons participated in the commission of the act, who were not sent to trial. The defendant, with the permission of the civilly liable party, may admit, in whole or in part, the claims of the civil party, the prior consent of the civilly liable party is necessary to avoid situations in which defendants are deprived of financial means to fully acknowledge the civil claims, knowing from the outset that they are not fundamental, but knowing that payments are to be made by the civilly liable party who, Thus, it will be prejudiced. In the case of recognition of civil claims, the court is obliged to award damages with reference to unconfirmed civil claims regarding identification.

If the death of the defendant occurs during the criminal investigation, the prosecutor will order the closure, in which case the civil party may leave the criminal proceedings and apply to the civil court to recover the damage. If the death of the defendant occurs during the trial phase, the court will terminate the criminal proceedings and leave the civil action unresolved.

The injured party will be able to bring before the civil court an action in claims against the universal heirs or universal title of the defendant who accepted the succession, or of the State, in case of vacant succession, therefore, during the trial, in case of death of the defendant, the civil party will no longer be able to bring civil action in criminal proceedings against the successors of the defendant.

If several defendants have been sent to the case who contributed by their act to the damage, and the death of one of them occurs during the trial, the court will immediately decide on the civil proceedings and the other defendants will be jointly and severally liable for the damage caused. The civil action is left unresolved only if the only defendant sent to trial dies during the criminal proceedings.

In other words, the main obligations of the defendant are to appear before the judicial bodies when necessary, to bear the measures of procedural coercion against him, and to respect the order and seriousness of the court hearing.

Therefore, the defendant is the person who initiated the criminal proceedings against him, and the extinction of the criminal action leads to the loss of the status of defendant. If the criminal action is extinguished as a result of achieving the objective, namely bringing the guilty party to criminal responsibility, by the final conviction of the defendant, the procedural position of defendant is replaced by that of convicted.

2. Defendant

2.1 Hearing of the defendant

A hearing is the procedural act whereby certain persons (accused, defendants, other parties, witnesses) about whom there is certainty, or an assumption that they have information about the crime or its perpetrator, are called upon to give statements or explanations before criminal justice bodies.

Hearing the defendant is the most important activity to which the prosecuting body devotes a large part of its time and a large volume of work. At the same time, it is defined as the procedural and tactical activity carried out by the criminal investigation body in order to

establish valuable information, necessary to find out the truth in question that is the subject of criminal investigation.

Therefore, hearing is the means of evidence consisting of the defendant's statements regarding the act and the accusation against him, administered either by hearing or by confronting him with other persons, and judicial statements are evidence in criminal proceedings, not extrajudicial ones.

"The purpose of hearing the defendant is to acquire full and objective statements that will reflect the reality of the facts."¹⁴

First, the hearing must begin with a free expression of the defendant on the charges against him in the case in question. Such a provision attempts to maintain the statement given by the prosecuting body; on the one hand, hearing the defendant is a means of defence, which gives him the right to expose the accusations against him, the act against him or those explaining it in his favour, explanations that will serve to settle the case fairly; On the other hand, the audience in the courtroom must also know from the defendant himself the position he adopts with regard to the charges against him.

After the free account has been completed, questions may be put to the defendant by the bench and the other members of the panel, as well as by the prosecutor, the other parties, including co-defendants and his/her defence counsel.

"The hearing of the defendant is carried out, according to the provisions of Articles 70 to 74 C., in three main stages (identification, free hearing and questioning), followed by the recording of statements. At this point, previously prepared, we proceed to the direct application of forensic tactical rules of listening, depending on the particularities of each case, the personality of the person heard."¹⁵

a. Creating an atmosphere conducive to listening and psychological contact with the defendant is a general rule that must be applied from the very beginning, depending on it to a significant extent the results obtained, especially if we are in the situation of a first hearing. The listening must take place in the presence of the defender, in a sober setting, devoid of elements that can distract attention or unnecessarily cause the appearance of a feeling of fear.

b. The adoption by the magistrate or police officer of a dignified attitude, in relation to the authority he represents. The judicial body will impose on the hearing an atmosphere of seriousness and calmness, devoid of arrogance, harshness, uncivilized expressions in general, anything that could lead to the installation of psychic tension. Only such an atmosphere is conducive to obtaining honest and complete statements.

c. Creating an atmosphere conducive to confession, confessions even at the moment of first contact with the person under investigation. Arrogant, ironic, offensive behavior, etc. must be avoided, the whole attitude being at the level of magistrate office.

The hearing of the accused may take place at the premises of the prosecuting body, the police body, at the scene of the crime, at home and in the hospital. The Code of Criminal Procedure makes no express mention in this regard. Generally, however, the hearing of persons takes place at the headquarters of the criminal investigation body, in the investigation room.

During criminal proceedings, the defendant has various procedural qualities, each with different legal meanings. In particular, the quality of the subject in question in the process affirms his rights and obligations. Interrogation of the accused person is a procedural way of

¹⁴ Udroi Mihail, *Criminal procedure. General part. The New Code of Criminal Procedure, edition 2*, C.H.Beck Publishing House, Bucharest, 2015

¹⁵ Emilian Stancu, *Treatise on Forensics*, Legal Universe, Bucharest, 2010

obtaining information from the trial through oral explanations, which could be done through a free story or a method of answering questions. The purpose of questioning the defendant is to make a complete and objective statement of real events.

Case law proves that techniques for questioning the accused person at trial stage have particularities and are often more complicated than those used during the prosecution phase. During the hearing, with regard to the entire judicial process, certain rules and requirements must be observed. For questioning, these peculiarities are:

1. Publicity of interrogations;
2. Ephemeral / short / nature of interrogation in the trial phase;
3. The long period of time from the moment of commission of the crime to the moment of questioning.

4. The tactical methods and procedures used for court hearings are less different from those applied during the investigation phase.

5. The impossibility of creating a favorable atmosphere for testimony, based on the individual characteristics of the accused.

6. Court hearings are intended to certify, verify previous statements, but only if the defendant refuses to give statements or refuses statements made by them at the criminal trial stage and to present other versions of the case, questioning should be done in the manner used during the prosecution phase. The choice and application of a particular tactical procedure in each case is conditioned by the peculiarities and complexity of the case, the individual characteristics of the defendant, the participants and their position in the trial, and many other factors.

“ The defendant is informed of the rights provided by law, as well as of the following obligations:

-the obligation to appear at the summons of judicial bodies¹⁶, drawing his attention to the fact that, in case of failure to comply with this obligation, warrants may be issued against him.

-the obligation to communicate in writing, within 3 days, any change, telling him that, in case of non-fulfillment of this obligation, any other documents communicated at the first address remain valid and are considered to have become aware of them.”¹⁷

During the criminal investigation phase, the judicial body informs the defendant of his rights and obligations. All these are presented in written form, under the signature of the defendant in question, and if the latter refuses to sign, a report is concluded. During the criminal investigation, the judicial body informs the defendant of the possibility of concluding an agreement by which the latter admits his guilt, and at the trial stage, the possibility of a substantial reduction of the sentence, following the declaration of guilt in relation to the act under investigation. The defendant is free to declare whatever he wishes, with regard to the act which the criminal law provides for and which has been transmitted to him, and questions will be put to him.

The defendant has the right to receive advice from the lawyer, both before and during the hearing, and the judicial body that considers it mandatory allows him to use notes. During the hearing, the defendant may use his right to remain silent about the acts committed.

The statement of the defendant is recorded in writing and should indicate the questions raised at the hearing and clearly indicate who raised the questions, and each time the beginning

¹⁶ Gheorghe Buzescu, *Particularities of contravention law*, Sitech Publishing House, Craiova, 2017

¹⁷ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

and end of the hearing must be mentioned. If the defendant agrees with the content of the written statement, he will have to sign it. At the same time, if the defendant has to make additions or clarifications, they are indicated at the end of the statement, followed by the defendant's signature. The remaining spaces shall be crossed through to exclude any suspicion on subsequent completion.

The written statement is signed by the prosecution body, the registrar, the judge of rights and freedoms or the presiding judge, as well as by the lawyers of both parties, after hearing the defendant. In the process of prosecution, the hearing of the defendant is recorded audio and video.

Where registration is not possible, it was stated in the defendant's statement, with a specific indication of why registration was not possible.

Before being heard, the defendant is asked about the name, surname, nickname, date of birth, place, name and surname of parents, education, place of work, citizenship, occupation, address where he lives, whether he has a history for the accuracy of his personal situation. The act committed, the legal classification, the right to have a lawyer, but also the right not to make any statement are made.

Listening to free stories is regulated by the Criminal Procedure Act, which prohibits the use of violence, threats or other coercive measures, as well as promises or exhortations to obtain recognition of charges. The defendant must not display or read previous written statements.

Once he has begun to present a version of the crime committed, the defendant will be allowed to declare everything he knew without interruption by the investigator. In the case of several defendants, they will be heard separately. The investigator must remain calm and patient, even if the ambiguity of the audience is obvious regarding the evidence he has, from the defendant. Once in the investigation room, the accused will be followed, giving the impression that the investigator is completely attracted by his statement and not by his expressiveness. In addition to the involuntary gestures of the defendant, the investigator must also pay attention to his gaze, in order to notice the state of anxiety, confusion.

During the listening process, gestures of dissatisfaction, worry or fatigue will be avoided. The accused must be followed carefully, and the investigator is very interested in listening to his statement. He should not be disturbed, but should allow him to contact everything, and even encourage him to do so. In a sense, this encouragement is an effective trap, and the defendant has the impression that he is believed.

Depending on the sincerity or dissatisfaction of the defendant, free statements have several advantages:

- The defendant may expose facts and circumstances in a natural way according to certain ideas;
- The possibility of knowing or definitively verifying the crime;
- Obtaining facts and circumstances about the case, new information from participants and unknown data for the judicial system;
- The criminal investigation body can check the audience to figure out what position it has chosen to defend and whether it has said that it is sincere in what it has presented;

The Law on Criminal Procedure provides for the hearing of the defendant at the trial stage, but does not specify the method or tactics used. The question raised will depend mainly on the position taken by the defendant against his allegations. Based on the purpose of the criminal investigation conducting the hearing and the questions it wishes to clarify, these questions are classified as follows:

- General questions about the topic;
- Detailed questions;
- Problem questions;

After raising the questions, another important question arises: the tactical approach to solving these questions.

The decisive role in choosing tactical procedures is the position of the defendant regarding the statements made, his psychological structure. Under the assumption that the criminal acts were investigated, the investigator did not encounter any difficulties, and the necessary questions are the question of clarification and completion. When the defendant tries to refute the facts in order to distort the facts, the investigator must demonstrate the ability to determine his truthful statements and be able to use the problems of completion, clarification and control. Difficulties arise in case of false, incomplete, contradictory statements, refusal to accuse or refusal to add new content to previous statements¹⁸.

At the trial stage, the statement of the defendant is required. In order to use the law at any time during criminal proceedings, the law imposes an obligation to record this statement in writing. The statement made by the defendant is dated and approved by the criminal investigation agency before the crime is committed. Another important method is registration. The recording of the defendant's statements on magnetic tape is done according to the legal provisions, informing the listened person that his statements will be recorded. Through these recordings, the judicial system can observe the nuances of the respondent's statements and responses, and through video recordings it can study the defendant's performance, the defendant's condition and the moment of apparent mental discomfort. His statements have been recorded, so he will not return to his previous statement.

In addition, the time when the hearing will end will be mentioned and the tape will be stamped and signed by both the judiciary and the defendant.

2.2 Juvenile and adult defendants

The criminal regulations on the institution of minorities also correspond to a regulation at the level of criminal procedure, by establishing a special procedure for prosecuting and judging juvenile offenders. These special provisions are justified by the fact that the minor does not have the mental maturity, intellectual development and experience necessary for the effective use of procedural rights granted by law.

By establishing these procedures, the aim is to provide minors with additional procedural guarantees proving their effectiveness in combining the repressive and educational aspects of the criminal process.

As a result of committing crimes, persons under 14 years of age, or those between 14 and 16 years old, cannot be held liable, unless the act is proved to have been committed with discernment. Instead, minors who are 16 years old will be criminally liable for committing illegalities.

"Following the repeal of Decree No. 218/1977 by Law nr. 104/1992, the rules of the Criminal Code were restored, according to which an educational measure can be taken or a punishment can be applied to juvenile offenders."¹⁹

¹⁸ Gheorghe Buzescu, *Place and role of the civil servant in the state apparatus*, Sitech Publishing House, Craiova, 2017

¹⁹ Dolea Igor, *Code of Criminal Procedure*, Legal District, Chisinau, 2005

“The prosecution and trial of crimes committed by minors, as well as the enforcement of decisions concerning them, shall be carried out according to the usual procedure, with the additions and derogations provided for in Articles 481-493 According to the Code of Criminal Procedure.”²⁰

“Prosecution in cases involving juvenile offenders is carried out according to the usual procedure supplemented by two special provisions, provided for in Articles 481 and 482 of the Code of Criminal Procedure, relating to:”²¹

- a. calling persons to listen to minors;
- b. Mandatory social survey

According to the Code of Criminal Procedure, the defendant is a minor under 16 years old. In any hearing or confrontation of a minor, if the criminal investigation considers it necessary, the guardianship representative and the parents are sometimes called when the guardian, trustee or individual is under the guardianship of the minor.

Persons may be summoned only if the judicial body responsible for criminal prosecution considers that this measure is absolutely necessary, as it does not belong to the class of mandatory measures ordered during criminal investigations. In the specialized literature it has been highlighted that the presence of companions in the phase of hearing the minor aims to exclude problems that may arise due to immaturity and unbridled emotions specific to the age category in which he falls.

However, summoning the persons listed above is mandatory, when presenting the criminal investigation material, Article 481 para. 2 of the Code of Criminal Procedure.

When presenting the criminal investigation material, the minor has the right to formulate new requests and make additional statements, he can be helped by the summoned persons to assert these procedural rights.

At the same time, in circumstances where there are juvenile defendants, the criminal investigation or the court is obliged to proceed to the social investigation.

The social survey is the collection of information about the minor's daily behaviour, physical and mental conditions, way of upbringing, his/her living environment and the care of the parent or carer of the minor. It aims to establish the causes and conditions that favored the minor's antisocial behavior, knowledge of the environment in which he lives, in order to apply the most appropriate measure or sanction.²²

In cases where the accused is a minor, the decision is based on the general rules of jurisdiction, with derogations provided for in the special procedure. The derogations existing in the case of the trial of minors by the court concern: the composition of the court, the persons called to try minors, the conduct of the trial and the defence exercised in the case of the minor defendant.

A first derogation from the trial procedure for juvenile offenders involves the composition of the team of judges. Cases in which the defendant is a minor are tried by judges, prescribed by ordinary law, in accordance with the rules of ordinary jurisdiction. The court thus composed will remain competent to try and apply the special procedure for cases involving juvenile offenders, the defendant came of age even during the trial.

²⁰ Petre Buneci, *Criminal Procedural Law*, Special Part, University Publishing House, Bucharest, 2008

²¹ Emilian Stancu, *Treatise on Forensics*, Legal Universe, Bucharest, 2010

²² Ivan Anane, *Elements of theory and tactics of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

If at the time of committing the deed the defendant is a minor, and at the time when the court was notified instantly, the minor had reached the age of 18, the trial will be made so that he is classified as crimes committed by a minor and will be made in his presence taking into account the fact that he did not abscond. Thus, the minor can be tried in absentia only if he has absconded from the trial, which must be proven by the steps taken for him to be present before the court. In practice, it has been established that the mere absence of the minor does not constitute an absconding from judgment.

“In addition to the parties, the guardianship authority and the parents, if any, also summoned the guardian, curator or person in whose care or supervision the minor is located, and the service for the social reintegration of offenders and supervision of the execution of non-custodial sentences attached to that court, as well as other persons whose presence is deemed necessary by the court.”²³

It follows from these provisions that summoning the parties, the guardianship authority of the parents and the social reintegration service is mandatory, and if necessary and their presence is considered necessary by the court, other persons may be summoned. The defendant has the right and duty to clarify, make requests and make recommendations on measures to be taken against minors.

Unlike the prosecution phase in which the summoning of certain persons is conditioned by the age of the minor (under 16 years of age), in the trial phase the provisions regarding the summoning of certain persons are the same, regardless of the age of the minor.

However, in cases involving juvenile offenders, the non-public nature of the hearing is a prerequisite with regard to the legal aid of the legal invoked.

If the defendant is a minor under the age of 16, after the court has heard him, if he considers that the investigation and judicial debate may harm him, he may order his expulsion from the hearing.

In some cases, several defendants were prosecuted in the same case, some of them minors and others adults. In the case of inseparability, the court will issue decisions in accordance with criminal procedure and according to normal procedures, but for juvenile defendants, special procedures will apply.

The defendant being a minor, legal aid is mandatory in the criminal investigation, but also in the process. The same special procedure is administered in the appeal of cases involving juvenile offenders.

At the same time, description is the only characteristic of most minors that describes the crime committed, the regret of the crime committed and the acts committed. First, when questioning the accused person, the court states that it trusts him and hopes to receive full and adequate testimony.

When establishing procedures for investigating evidence in criminal cases of minors, all alternative resources should be sought to resolve the problem and the need for continuous review of the case should be taken into account.

The cases to be investigated in these cases can be divided into several categories:

1. The facts of the crime, the role of the minor in the conduct of the deed, the appearance of common adult participants, constitute a subjective moment of the crime
2. Reduction or aggravation of the situation of inner feeling.
3. Characterization of the defendant

²³Pintea Alexandru, *Criminal Procedural Law*, Legal Universe, Bucharest, 2002

4. Living conditions and education of the child, causes and conditions of crime and degree of intelligence.

Judicial practice leans towards the fact that it is much more effective to start the judicial investigation on cases of minors, namely with the interrogation of the defendant. In particular, such a solution is justified in cases when the minor feels disoriented, is not self-confident, is influenced by some persons, as well as in cases when his/her testimony is contrary to the evidence in the file. Such an order provides an opportunity to acquaint oneself with the position occupied by the defendant and to clarify in detail the moments contested by him.

Before questioning the accused minor, the court must resolve issues related to the participation of educators in this procedural action. According to the legal provisions, during the judicial debate, minors under 18 years of age are obliged to participate.

Before starting such an interrogation, the judge is obliged to explain to the educator what his rights are and what he must do throughout the trial.

After cross-examination in the judicial investigation and investigations, the court obtained information about the defendant and the crime. When questioning minors, children's age and psychological characteristics must be taken into account, insufficient knowledge about the facts, etc.

The hearing of the juvenile defendant provides for the detailed establishment of data about himself and the moments related to the crime. The testimony given by the child may initially be in the form of a story, about the charges and circumstances of the case, and then answers to specific questions that the judge may request at any time during the judicial investigation. Sometimes minors mistakenly transmit important and expected information to check documents due to fear and anxiety.

In criminal cases involving juvenile offenders, for tactical reasons, it is necessary to initially clarify the role of the child in committing the crime and only then to take measures to establish the circumstances that contributed to the aberrant behavior. In cases with minors, as a rule, the method of immediate unmasking does not offer any desired results because they place themselves behind various barriers of self-protection. When asked directly whether they have committed the crime, they often resort to denials, to fabricated stories, to unsubstantiated contestations, to give false depositions, so that conclusions and demarcations cannot be very precise. Therefore, it is important that during questioning, the court explains to the minor defendant the need to tell the truth. As an aid to interrogation, it can be effectively to demonstrate the level of information of the judgment on moments proving the guilt of the defendant in committing the crime.

During the questioning of the accused minor, it is necessary to correctly clarify the relationship existing between him and the witness, and between him and other criminal colleagues, and it is necessary to find the organizer, active associates and second-class associations.

The minority system has its own provisions of criminal law because the prosecution of minors takes into account their psychological capacity, the purpose of their re-education and the prevention of antisocial behavior, which is more important than other types of crimes.

3. Rights and obligations of the defendant

3.1 Rights and obligations of the defendant during the criminal investigation phase

Criminal prosecution is the first phase of the criminal process and consists of all the activities carried out by the criminal investigation bodies in order to gather the necessary

evidence on crimes, identify the defendants and decide on their criminal or civil liability, in order to find out whether or not the prosecution is appropriate.

The conduct of criminal prosecution outlines the commencement of activities that make up the purpose of criminal prosecution as well as criminal procedure itself. After this first phase, the legal framework for exercising the procedural rights and obligations recognized to the participants in the criminal prosecution is born. From these, the criminal investigation body specifies, according to the law, that the resolution subject to reasoned confirmation by the prosecutor should exercise supervision for the act to be valid and produce legal effects.

The prosecution has three procedural stages::

- stage of investigation of the act

-stage of investigation of the person (after continuing the execution of the criminal investigation)

-settlement of the case by the prosecutor

During the criminal investigation, the defendant has procedural rights and obligations, these being:²⁴

a. The right to notify the accusations against him, as well as his legal classification.

b. The right to silence and the privilege against self-incrimination are a guarantee of the fairness of the procedure enjoyed by the defendant both in the proceedings before the police or the prosecutor, as well as in the proceedings before the court.

The guarantee of the right to remain silent is accompanied by the warning procedure, which implies the obligation of the bodies to draw the defendant's attention to draw attention to his statements.

"The new Code of Criminal Procedure provides that the defendant is informed, before being heard, of the capacity in which he is heard, the act provided for by criminal law for which he is suspected or for which criminal proceedings have been initiated and the legal classification, as well as the right not to make any statement during the criminal investigation, drawing his attention to the fact that if he refuses to make statements he will suffer no consequences, and if he makes statements they may be used as evidence against him."²⁵

In the matter of preventive measures, before the hearing, the criminal investigation body, the prosecutor or the judge of rights and freedoms is obliged to inform the defendant that he has the right to be assisted by a lawyer of his choice or one ex officio and the right not to make any statement, except for the supply of information regarding his identity.

"The right to remain silent is closely linked to the presumption of innocence and is a guarantee thereof. In order to guarantee these rights, courts cannot, in principle, reach conclusions unfavourable to the accused by interpreting his silence."²⁶

However, such conclusions could only be reached if the following conditions are met:

1. The accused would have had the opportunity to prepare his defence before the hearings;

2. The condition is not the only or main factual elements that would support the accusation;

²⁴ Olariu Mihai, *Criminal procedural law. General part*, Legal Universe, Bucharest, 2015

²⁵ Neagu Ion, *Treatise on Criminal Procedure Law, Part. Special*, Legal Universe, Bucharest, 2015

²⁶ Griga Ioan, *Criminal procedural law. General part*, Legal Universe, Bucharest, 2016

3. The factual circumstances arising from the evidence adduced in the case require the accused to make a statement on the basis of which the prosecutor supports the prosecution, taking into consideration also the solidarity of the evidence.

There are also certain situations when some objects or traces belonging to the defendant are identified, thus giving a special veracity to the suspicion that he is the author of the deed. The prosecutor may also provide evidence showing his participation in the criminal activity for which he is being investigated.

c. The right not to contribute to one's own incrimination

"In doctrine²⁷, it has been noted that the right to remain silent and the privilege against self-incrimination must be regarded as two concepts that only partially overlap: the right to remain silent is more restricted because it concerns only oral communication, and the right not to incriminate oneself is clearly, more comprehensive and not limited to verbal expression."

On the one hand, the application of the right to remain silent is broader than the right not to incriminate oneself, it does not protect individuals only against being forced to make statements to their detriment.

d. The right to defence materialized by the possibility to submit requests regarding the recusal of criminal investigation bodies, administration of evidence, revocation or replacement of preventive measures, etc.

e. The right to make any other request related to the resolution of criminal and civil aspects of cases.

f. The right to free interpretation by an interpreter when they do not understand or are not good at expressing themselves or cannot communicate in Romanian language.

g. The right to assist personally or through a lawyer in carrying out acts of criminal prosecution.

h. Right to make statements regarding the accusation against him.

i. The right to lodge a complaint against acts of prosecution.

j. The right to consult the criminal investigation file under Art. 94 New Code of Criminal Procedure.

k. The right to be informed of his/her rights.

l. The right to a tutor, where permitted by law. At the request of the competent authority, there is an obligation to expose himself. If this obligation is not fulfilled, an arrest warrant may be issued; If theft is committed, the judge may decide to detain before trial.

m. The obligation to communicate the address changes in writing within three days. If this obligation is not met, the summons and other documents sent to the first address are still valid and will be considered read.

n. Obligation to comply with measures provided for by the prosecution bodies or by the judge of rights and freedoms (preventive, precautionary measures, body search, domiciliary).

"The continuation of criminal proceedings at the request of the defendant is a right of the defendant in respect of which it is ordered, after the commencement of criminal investigation, to waive or close the prosecution as a result of intervention: amnesty, limitation of criminal liability, withdrawal of the prior complaint."²⁸

²⁷ Udriou Mihail, *Criminal procedure. General part, 2nd edition*, C.H.Beck Publishing House, Bucharest, 2015

²⁸ Udriou Mihail, *Criminal procedure. The special part. The New Code of Criminal Procedure*, C.H.Beck Publishing House, Bucharest, 2014

In the above cases, the defendant may request, within 20 days of receiving the copy of the order waiving criminal prosecution, or continuing the criminal prosecution.

3.2 Rights and obligations of the defendant at the trial stage

Judgment is the phase of the process in which the court carries out its activities in order to try the criminal case before it, i.e. conducts the investigation, discusses the injured parties and the prosecutor any question of fact and law on which the trial of the case depends.

The purpose of the trial stage is to find out the truth about the act and the person notified immediately, in order to propose a legal and solid solution. According to the New Code of Criminal Procedure, the object of judgment cannot be extended, the new codification not providing for the institution of extending criminal proceedings or extending criminal proceedings with regard to other facts or other persons.

During the trial, criminal proceedings are conducted against the defendant, who used the sanctions provided for by criminal law for the purposes of the evidence charged by the defendant and the guilty support of the defendant. As a result, the defendant, as a passive subject in the exercise of criminal proceedings, must have a procedural status so that he has sufficient rights to refute unfounded accusations or mitigate more serious false claims. However, since the offender must be convicted in accordance with criminal law, it is necessary to impose procedural responsibilities on him, which will allow the court to conduct trials in good conditions and deliver decisions based on law and truth.

To achieve this, the judgment is based on the principles of openness, contradictory and oral, which means that plaintiff and defence counsel are equal by procedural means. On the one hand, there is an equal dispute between the Ministry of Public Service and the aggrieved party, on the other hand, the dispute between the defendants creates the best conditions for the court to understand the facts, evidence and arguments made by supporting and offending the charges. The decision seems legal and reasonable. Therefore, like the Ministry of the Public, during the trial, the accused submitted to the proceedings only to the court, and the court ruled on all requests and conclusions made by the prosecution, the Ministry of Public - and defence - to the defendant.

The defendant has all the procedural rights granted by law during the trial to exercise his rights of defence. The main defence includes the participation of the defendant in court hearings with the Ministry of Public Affairs and other parties, in which case he can formulate, prove and defend all defences related to the charges against him. The participation of the defendant in the trial is crucial for the correct resolution of the case, which is why several effective safeguards are established. Therefore, the defendant was summoned to court by summons, and the failure to execute the assignment procedure hindered the trial. If he is detained, he must be tried even in another case. If the defendant or minor is detained, the court cannot continue the trial on the basis of absolutely invalid sanctions, unless it is proved that the minor escaped trial. If the defendant is prevented from appearing in court due to convincing obstacles, the court is obliged to postpone the trial until he appears in court.

“ During the trial, the defendant has procedural rights and obligations, among which we list:”²⁹

a. The right to attend the hearing and to be notified of it by summons, the trial may also be held in absentia if the defendant notified of the trial fails to appear before the court.

²⁹ Neagu Ion, Damaschin Mircea, *Treatise on criminal procedure. General part*, Legal Universe, Bucharest, 2015

- b. The right to have the time and facilities necessary for the preparation of an effective defence.
- c. The right not to make any statement during criminal proceedings, noting that if he refuses to make a statement, he will not suffer adverse consequences, but if he does make a statement, it will be used as evidence against him.
- d. The right to make statements and recommendations on the taking of evidence as specified by law, the right to make requests, to make exceptions or to draw conclusions.
- e. The right to select a particular lawyer, and if none is elected, he has the right to be appointed lawyer according to his authority, in the case of indispensable assistance.
- f. The right to make any other requests related to the resolution of the criminal and civil side of the case.
- g. The right to free benefits when interpreters do not fully understand and express themselves or cannot communicate in Romanian language.
- h. The right to participate in the hearing of parties or witnesses and to ask questions.
- i. The right to take cognizance of the documents in the file. The right to appeal against court decisions.
- j. The right to be informed of their rights.
- k. The right to summon mediators under the conditions provided by law.
- l. Obligation to maintain order and solemnity of the court hearing.
- m. The obligation to appear at the summons of the judicial bodies, and having been noted that, in case of failure to fulfill this duty, arrest warrants may be issued, in case of theft the judge may order his preventive detention.
- n. The obligation to communicate in writing, change of address within three days and indications that the summons and any other documents transmitted to the first address are still valid if this obligation is not fulfilled and is deemed to have registered it.
- o. Obligation to exercise in good faith procedural rights conferred by law.

In practice, it was found that in many cases the defendant failed to appear in court due to a reason for obstruction, but failed to postpone his appearance in time. As a remedy for this situation, given the importance of the defendant's participation in the trial, it was proposed to establish the defendant's mandatory attendance in court first, except in cases where there is evidence that the defendant escaped the trial. He cannot be extradited to trial or abroad.³⁰

“ Throughout the trial, the defendant may be assisted by a lawyer, and in certain cases, more numerous than during the criminal investigation, the defendant's legal assistance is mandatory. Failure to comply with some of the procedural rights of the defendant is sanctioned with absolute nullity of the judgment rendered (judgment in absentia when his/her presence is mandatory, absence of a lawyer in cases where the law stipulates the obligation of legal aid), For the violation of other procedural rights, only a relative nullity operates, this occurring when an injury has occurred that cannot be removed otherwise. The defendant also has procedural duties during the trial: to appear personally at all court deadlines, to comply with the order and solemnity of the court hearing, to bear the procedural measures, as well as the measures of forced execution, body and domiciliary search, removal from the courtroom in case of turbulent

³⁰ Gheorghe Buzescu, *Internal and international police cooperation – university course*, Sitech Publishing House, Craiova, 2020

attitude, also procedural rights must be exercised in good faith and according to legal provisions, otherwise the fulfilled acts will be annulled or will not be taken into account.”³¹

3.3 Rights and obligations of the defendant during the execution phase

The enforcement of final criminal judgments is the procedural activity, carried out *ex officio*, by which the provisions of the final criminal judgment are enforced. There is no need for the Public Prosecutor's Office, as an active subject of criminal proceedings, to ask the executing court or the judge in charge of setting in motion the criminal decision.

The criminal decision ordering the acquittal or termination of criminal proceedings without the defendant having been subjected to a security measure or ordered to pay damages or legal expenses is not enforceable.

At the execution stage, the defendant has the following rights and obligations:

a. The defendant has the right to personally notify or request the management of the place where he is serving detention to inform his family members or relatives about the place where he is arrested in case of serving the sentence depriving that person of liberty.

b. If the convicted person does not have Romanian citizenship, he/she has the right to request notification from the consular post of the state where he/she lives or from an international humanitarian organization, if he/she does not want to receive assistance from the authorities of his/her country of origin, if he/she is a refugee or there is another basic reason for his/her protection of such an organization

c. If a person at liberty is issued with a warrant for the execution of a sentence, he is informed that he is not allowed to leave the territory of Romania.

d. The person sentenced to the penalty of fine has the obligation to pay the fine in full within 3 months from the final decision of conviction and to communicate to the judge the proof of payment, within 15 days from its execution, by submitting the receipt for payment in full, the penalty of the fine being thus executed.

e. If the convicted person cannot pay within 3 months of the final decision, he has the right to ask the judge who served the death sentence to pay the fine in installments for no more than 2 years.

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