# ACTUAL ISSUES REGARDING THE ENFORCEMENT OF LEGAL STANDARDS OF THE DEED OF INTIMATION LODGED WITH THE COURT OF LAW IN THE ROMANIAN COURT PROCEEDINGS

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**Abstract**

*The dynamic evolution of the new fundamental law in criminal matters triggered serious challenges in the adaptation process to the new legal realities of the Romanian legal system, as a whole.*
*Within the seeming conclusion of the transition period given by the profound change of the criminal substantial and procedural regulations, the new dimensions of the functional relation between the two classes of authorities who perform main judicial functions have been clarified: prosecutors and courts of law. The action that refers to the way functional competency is transferred from the investigating authorities to decisional authorities and through which the progressive route of the criminal trial passes from the preliminary stage, the investigation stage, to the trial stage and that of the actual dispute settlement is an essential element of this relation.*
*The study aims to identify and analyse some of the most important court trial matters or issues that might occur in the recent practice with regards to observing the legal standards of form and contents of the deed of intimation lodged with the court of law.*
*Equally, the theoretical analysis and the jurisprudence tackles to identify certain actual resources in order to render efficient mechanisms submitted to assessment.*

**Keywords:** *deed of intimation, form, effects, limits, legality*

## 1. Introduction

The exercise of any function with judicial nature is subject to a prior formal authorisation, materialized in a legal document whose form and content are confined to a strict regulatory regime.

Especially in the case of the jurisdiction on the merits, the principle of *ne procedat iudex ex officio* prevents the self-authorisation and forces the subject performing that function to manifest only within the limits of his investiture, even if the judicial context is of criminal nature. As jurisdiction implies both the authority to resolve and decide on the conflict submitted to settlement *(cognitio)* as well as the power to have the decision taken being executed *(imperium)*[1], the modality in which the apparent excess power may be tempered is to draw a predetermined frame for its manifestation.

In the criminal trial, the act that initiates the exercise of the judgment function and contributes mainly to set the procedural framework in which the scope of the judgment shall be accomplished is the indictment drafted by the prosecutor who conducted the prosecution. It has the nature of an act characterized not only through the provision it contains and in which the prosecution function is focused - the arraignment, but also in terms of its content, regulated in an imprecise manner through the provisions of article 327 of the Criminal Procedure Code.

## 2. General considerations concerning the form and functionality of the indictment

Regardless of the way how the current structure of the type of Romanian criminal trial[2] is perceived and addressed, it is undisputed that within the major subdivisions of the trial an essential place is occupied by the prosecution. Even abandoning the autonomous concept of procedural stage and rallying to the current trend developed in continental systems that were the main inspiration of the present Code, the importance of the investigative stage of the trail is obvious. Thus, in the French system, there are two main phases of the criminal trial. A preparatory phase that includes the monitoring, the investigation and the instruction, and a decisional phase, which includes the court's

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[1] *G.Theodoru*, Treaty of criminal procedure, 3rd edition, Hamangiu Publishing House, Bucharest, 2013, p. 195.

[2] In the specialized literature, once with the entry into force of the new Criminal Procedure Code, the majority opinion was expressed that the actual criminal trial is composed of 4 stages: the prosecution, the preliminary chamber, the judgment and the enforcement of criminal judgments (*B. Micu, A. Păun, R. Slăvoiu*, Criminal Proceedure, 2nd edition, Hamangiu Publishing House, 2015, p. 248; *M. Udroiu*, Criminal Procedure, special part, 2nd edition, CHBeck Publishing House, 2015 , p.120-121; *C. Voicu* in The New Code for Criminal Procedure, commented, group of authors, coordinator *N.Volonciu*, 2nd edition, Hamangiu Publishing House, 2015, p.945, etc.). In favour of this opinion the Constitutional Court ruled in the recitals of the Decision no. 641 / 2014 from November 11, 2014 (Official Gazette no. 887 of December 5, 2014). In a different opinion, appreciating that the proceedings in the preliminary chamber do not have the nature of a procedural stage, it is considered that the current Romanian criminal trial knows only three stages (*I.Neagu, M. Damaschin*, Treaty of Criminal Procedure, Special Part, Universul Juridic Publishing House, 2015, p.196-203.

proceedings[3]. In the Italian system, a distinct system amongst continental mixed systems due to the preponderance of adversarial elements, the jurisdictional phase (the actual trial) is preceded by an investigative phase (non-procedural - *indagini preliminari)* and the decisional power is characteristic only to the jurisdictional phase[4].

Having the role to mark the beginning of the criminal trial, in the opinion of the current Criminal Procedure Code, the prosecution represents the procedural phase suitable for the gathering of the evidence material required to solve the criminal cases. Moreover, considering the recent changes in the procedural manner through which the initiation of the prosecution is ordered[5], this phase is the only context allowed by the law in which evidence able to lead to the establishment of a person's guilt or innocence can be administered. Although it knows exceptions [the statements taken from the person that formulated the criminal complaint is considered evidence even if it was administered before the initiation of the prosecution, under article 111 paragraph (10) CPP, the objects collected by the extra-judicial bodies in case of new offenses ascertained under article 61 and 62 CPP may be used as evidence even if they were won for the case prior to the initiation of the prosecution, etc.] this rule is able to highlight the object of the prosecution. Expressly prefigured through the provisions of article 285 CPP in a form taken from the former regulation[6], the object of the prosecution captures the essence of the activity corresponding to the scope of this phase, which constitutes as well the main or qualified activity of the prosecution *"the prosecution has as object to gather necessary evidence of the existence of crime, to identify the persons who have committed a crime and to establish their criminal liability, in order to ascertain whether it is appropriate to order an indictment".* As pertinently shown in the relevant literature[7] the collection of evidence means in fact a series of activities without which it would not be possible to know whether an act that was committed is a crime – and that means first and forehand to conduct a research *in rem.* These activities involve operation of discovery, gathering and preserving evidence, involving specific tasks in the probation activity: identifying, managing and appreciating the evidence. To this respect, article 99 paragraph (1) CPP stipulates that the burden of administrating the evidence (proof) in criminal proceedings lies mainly with the prosecutor. The exclusivity of the judicial body in terms of evidence administration is tempered by the recognition of the right to propose evidence administration, right that belongs to distinct parties in the proceedings (suspect, injured party and parties) and cannot be refused unless the observance of the restrictive conditions of article 100 paragraph (4) CPP. The existence of crime means on one hand the material existence of an offense and, on the other hand, if the respective offence constitutes a punishable attempt or a *fait accompli*. "Identifying the persons who committed a crime" means that the administrated evidence must provide as well the needed data to know the perpetrators (the person who committed the crime, the instigators, the accomplices), both regarding their person (natural or legal) as regarding the identity, activity corresponding to a *in personam* research.

"Establishing the liability of the perpetrators" means that the necessary evidence should concern not only the facts but also enough data to be able to know whether the perpetrators acted or not guilty, if they can be held criminally liable for acts committed and whether it is appropriate that they are prosecuted. This activity of collecting evidence, specific to the prosecution, is subordinated to a precise purpose - *to ascertain whether it is appropriate to order the indictment,* purpose which in turn comes under the general purpose of criminal trial, as foreseen by the article 8 CPP[8].

Therefore, the criminal prosecution may determine primarily a positive finding, when the indictment and thus the passing into a new stage of the trial are necessary. As a judicial disposition, the indictment is the result of a triple findings, namely that the crime exists, that it was committed by the defendant and that it is criminally held liable. Also, the result of the main activity of prosecution may result in a negative finding, in the sense that the indictment is not necessary, in which case the criminal trial is interrupted, either *temporarily* (if subsequently the prosecution is resumed) or *permanently* (if the solution of the non-indictment is confirmed by the judge). This finding occurs in a distinct stage of the prosecution, in the stage of the finishing the criminal prosecution and the case's solving by the prosecutor, that does not mean the exhaustion of the criminal prosecution phase but only the finishing of the investigation activities. Since the function and the purpose of the criminal prosecution have a significant impact, the result it incorporates is

[3] *J. Pradel*, Criminal proceedings, 16th edition, Cujas Publishing House, Paris 2011, p.298, p.339-723, p.739-839; *J.C. Soyer*, Criminal law and Criminal Procedure, 21st edition, Lextenso Publishing House, L.G.D.J., Paris 2012, p.282, p.359-427.

[4] *M. Mercone*, Criminal procedure, 11th edition, Edizioni giuidiche Simone, 2003, p.66-67, p.298-306, p.505-512; *F. Izzo*, Manuale de Diritto procesuale penale, XXI edizione, Edizioni giuidiche Simone, 2013, p.12, p.175-228, p.427-433.

[5] The Emergency Ordinance no. 18/2016 (Official Gazette no. 389 from May 23, 2016) simplified this mechanism, so that currently the only necessary condition required for the initiation of the criminal proceedings is a positive one – the existence of a deed of intimation complaint from the perspective of the conditions regarding the form and content, per article 305 paragraph (1) Code for Criminal Procedure.

[6] See for details *I.Neagu*, Treaty of criminal procedure, Special Part, Global Lex Publishing House, 2008, p. 32-33.

[7] *V. Dongoroz, and others*, Theoretical explanations of the Romanian Code for Criminal Procedure, Special Part, volume VI, Romanian Academy Publishing House and All Beck Publishing House, 2003, p. 25.

[8] Per article 8 CPP the judicial bodies are obliged to carry out the prosecution and the judgment with the respect of the procedural guarantees and rights of the parties, so as to ascertain, in due time and completely, the facts constituting the offense, not to prosecute an innocent person, and anyone who has committed an offense to be punishable by law in a reasonable time.

submitted to a preliminary verification, which is transposed by the establishment of preliminary filters: the presumptive end of the criminal prosecution, in which, according to article 321 CPC, the criminal investigation body shall prepare a report on the solution it considers appropriate, the actual termination of the prosecution, in which, according to art. 322 and 327 CPP, the prosecutor proceeds to a review of the works of the criminal prosecution and gives the case a solution through one of the means provided by the law, plus possibly the further verification of the indictment by the prosecutor hierarchically superior to the one who drafted it, according to article 328 paragraph (1) CPP.

In considering these preliminary explanations, the procedural positive act - the indictment - represents the document that focuses the entire judicial function of criminal prosecution, representing the solution through which the prosecutor decides to institute the proceedings and the passage, in a progressive manner, to another stage of the criminal trial. To dispel any arbitrary assessment, the law conditions the indictment to the prosecutor's belief, formed following the assessment of the evidence legally administrated and materially supported by them that the crime exists, it was committed by the accused and that it is criminally responsible. The only legal instrument by which the arraignment is made is the indictment drafted by the prosecutor. The indictment is the deed of intimation of the court, through which the prosecutor asks the court to apply the law whereas the defendant is concerned[9]. The indictment and its processual consequence, the court's referral, are acts placed under the exclusive competence of the prosecutor as the main organ to carry out the prosecution. Having the ability to determine the procedure in which the judgment will take place, the indictment is materially funded on the same elements that the court may use to found its verdict of guilt, being obvious a functional symmetry between the act ordering the indictment (act of essence of the criminal prosecution) and the procedural act through which a person is prosecuted (act of the essence of the judgment). In this sense, both acts of disposition are materially grounded on the same essential elements of the report of conflict: fact and person.

Through the act of disposition that it incorporates, the indictment, when expressed under the procedural form established by the law, simultaneously produce two types of legal consequences, with positive character (the court's referral) and with negative character (the end of the formal authorisation of the criminal investigative body regarding the case). Therefore, accomplishing further criminal prosecution activities about the fact and the person for whom the indictment who issued appears as an unlawful way to proceed whereas through the indictment, a transfer of functional competence occurred between organs exercising different judicial functions. After that moment, the prosecutor cannot take any action and, in the continuation of the trial, he no longer has the powers he had as investigating authority[10].

In consideration of its specific nature, the indictment is an act characterized, both by the particularity of the main procedural act it includes as by its shape. As an exception to the rule foreseen in article 286 paragraph (1) CPP, the procedural act (the content) – *the arraignment* is not materialized in an ordinance but in one type of written procedural act (the form) – the indictment. Being a complex act, the indictment may include several acts of disposition since it ensures a multiple functionality but the main and binding disposition that it contains and that customizes its nature, is the arraignment. By reference to this disposition, the indictment is the main court's deed if intimation, through which the matters to be judged upon are to be set. The court's referral can be achieved as well through other legal means but they do have the main character. Thus, in accordance with article 341 paragraph (7) point 2 letter c) CPP, the judge sitting in the preliminary chamber referred with a complaint against the solution of not to indict in a case in which the criminal proceedings were initiated, whilst granting the complaint, may order the initiation of the judgment when the evidences lawfully administrated during the criminal investigations are sufficient. In these circumstances, the conclusion (resolution) of the judge sitting in the preliminary chamber who ordered the initiation of the judgment[11] is the deed of intimation for the court. Also, within the special procedure of plea bargaining agreement (article 478-488 CPP) the court's referral is accomplished by the convention (agreement) concluded between the subjects of the criminal proceedings: the Public Ministry and the defendant.

To accomplish its function as deed of intimation, the indictment must conform to a predetermined format, with mandatory content elements, that must be limited to the fact and the person for which the criminal investigation was conducted and must meet national and conventional standards aimed at ensuring both the effective exercise of the judicial functions as the effective protection of the defendant. Thus, by the formal removal of the active role, the court is required to deploy the activity specific to its judicial function within mandatory specific limitations, drawn following its legal investiture. The possibility of extending those

[9] *I. Neagu, M. Damaschin*, op. cit., special part, p. 101, the authors explain the etymology of the term starting from the Latin principle *requisitus* (investigated, required, solicited).

[10] *N. Volonciu*, Treaty of criminal procedure, Special Part, 2nd volume, 3rd edition, Paiedeia Publishing House, 1997, p. 99; *V. Dongoroz, and others*, op. cit., 2nd volume, p. 62.

[11] In disagreement with the opinions expressed in the specialized literature *(M. Udroiu*, Criminal procedure. Special Part, 3rd edition, CHBeck Publishing House, 2016, p.131, etc.) I consider that, although the law does no longer expressly qualifies it as deed of intimation, the complaint submitted to the judge against the not-to-indict solutions remains the main factor in accomplishing the atypical deed of intimation, as per article 341 CPP. This complaint, as an unofficial act, together with the resolution of the judge sitting in the preliminary chamber for the initiation of the judgment will determine the factual elements of the investiture.

investiture's limitations by appropriate means, known to the old legislation (the extension of the criminal proceedings, the extension of the criminal trial) as well as the possibility of refusing the benefits of the investiture (the return of the case to the prosecutor's office during the judicial investigation) are no longer currently allowed. Therefore, per article 349 paragraph (1) CPP, the court *is obliged to resolve the case submitted to trial*, within the mandatory limits of its investiture.

The responsibility for the accurate and complete setting of these limits (boundaries) lies therefore with the judge sitting in the preliminary chamber, to whom has been transferred the functional competence to verify the legality of the prosecution and to ensure the remedy of the irregularities in the deed of intimation. The judge sitting in the preliminary chamber contributes actively to the court investiture as this is achieved by the combined action of two distinct acts: the indictment for the arraignment, establishing the *object of judgment* (by indication of the fact and person to be judged) – the deed of intimation, and the conclusion of the judge sitting in the preliminary chamber who finalizes *the limits of the judgment* (through the remediation of the material required to solve the case) - the investiture act.

But even in the context of this joint action, the deed of intimation lodged with the court of law remains the exclusive prerogative of the prosecuting authorities. In this regard are as well the provisions of article 329 paragraph (1) CPP, which provides that the indictment is the deed of intimation lodged with the court of law. Therefore, the legal and the complete referral of the court must be reported to the mandatory content of the deed of intimation, as foreshadowed by the provisions of article 328, with reference to article 286 paragraph (2) CPP, in which the requirement to indicate the offense incriminating the accused is specifically mentioned. The fact must be indicated in its materiality as the court is not vested with a legal qualification (determination) but with a fact. *The fact* is the material premise of the criminal proceedings, which terminates when its object has been accomplished – the criminal liability. Consequently, the fact, in its material dimension, is the first element to be set for a proper solution of the criminal proceedings. A symmetry is relevant, in this respect, between the procedural act ordering the prosecution (article 327 letter a) of the CPP and the act through which the criminal proceedings is solved in first instance, in the sense of the conviction [article 396 paragraph (2) CPC], acts that are materially based on the same three elements: *offense (fact), person* and *guilt.*

The requirement to indicate the actual offense incriminating the defendant, by mentioning the time and place elements, by describing how the offence was committed (especially with alternative incriminations), by specifying the number of material actions, by identifying the separate elements and the type of connection existing in case of plurality of crimes has an essential character, serving not only to meet the requirements related to the establishing of the object of judgment but also the requirements related to the exercise of procedural rights, guaranteed as fundamental principle. Moreover, beyond the explicit and implicit guarantees of the right to a fair trial and the right to defence, the solving itself of a criminal case is accomplished by the court, under the article 349 paragraph (1) CPP, with the guarantee of the compliance with the procedural rights. This is the reason why the material description of the offense incriminating the defendant requires both a complete individualization of the facts which compose the content allegedly criminal as an indication of the correspondence between each factual element and evidence on which it is based.

Regarding the obligation to describe in full the facts that form the content of the criminal charge brought against the defendant, beyond the national regulation, the deed of intimation lodged with a court of law must also comply with a conventional standard designed to ensure the fairness of the proceedings and the effective exercise of the right to defence. In this regard, the European Court of Human Rights[12] held that article 6 paragraph 3 of the Convention recognizes the right of the accused to be informed in detail not only regarding the cause of the accusation, meaning the material facts of which he is charged with and on which the accusation is grounded, but also regarding the nature of the accusation, meaning a legal qualification of the facts.

Also, the European Court of Human Rights[13] held that the right to a fair trial was violated because the information contained in the accusation regarding the essential details on place and time of the offense was vague and contradictory so that the defendant has not been able to prepare a practical and effective defence.

The Court held that an accurate and full information on the facts incriminating the accused and a legal qualification represent an essential condition for the fairness of the judicial proceedings, and this must be done including throughout the indictment that must not be characterized by vagueness about the essential details. In its jurisprudence[14] the European Court of Human Rights explained what it means by the cause and nature of the accusation against a person throughout the indictment, showing that they relate to the material facts on which the accusation is grounded, to the legal qualification of the accusation as well as to the existing aggravating circumstances, and that the detailed information on the facts being charged and on their legal qualification should not be, in any

[12] The Judgment from March 23, 1999, *Case of Pelissier and Sassi v France*, recital 51, as well as in the Decision from January 23, 2001, *Case of Dallos v. Hungary*.

[13] The Judgment from July 25, 2000, *Case of Mattoccia v. Italy*, recitals 59 and 61.

[14] Through the Judgment from October 24, 1996, *Case Salvador Torres v. Spain*, recital 28.

circumstance, follow the indictment. Such findings determined the doctrine[15] to appreciate in a pertinent manner that the requirements under which the ability of the indictment to apprehend and validly invest the court is assessed should start from the same criteria under which the European Court has ruled on the quality of the law to be predictable. To this regard, taking into consideration the need to ensure real and effective protection for the defendant in relation to the acts he is being charged, the description of the fact in the indictment must be sufficiently precise to enable the defendant (who can call for specialized consultancy/advice of a lawyer, either chosen or appointed ex officio) to understand the fact of which he is accused, its legal qualification and the punitive treatment[16]. Moreover, even in a case rendered against Romania[17] the European Court recalled that fairness is determined in relation to the procedure as a whole. The provisions of article 6 paragraph 3 express the need to pay special attention to the notification of the "charge" brought to the concerned person. The deed of intimation plays a decisive role in the prosecution: after the notification, the person prosecuted is officially notified in writing on the legal and factual basis of the charges against him. Article 6 paragraph 3 letter a) recognizes for the accused the right to be informed not only about the cause of the accusation, meaning the material facts of which he is charged with and on which the accusation is grounded, but also regarding the legal qualification of the facts, and this in a detailed manner. In criminal matters, an accurate and precise information about the charges against a person therefore on the legal qualification the court may hold against him is a prerequisite condition of the fairness of the proceedings. Finally, there is a connection between letters a) and b) of article 6 paragraph 3 and the right to be informed of the nature and the cause of the accusation must be considered from the perspective of the accused's right to prepare his defence *(Pelissier* and *Sassi* v. France recitals 52-54). The clarity in describing the facts as acknowledged in the deed of intimation lodged with the court falls within broader requirements, regarding the right to information in criminal proceedings, the standard accepted at the national level transposing provisions imposed at the European level[18].

In this context, the constant case-law[19] the High Court of Cassation and Justice (both before and after the entry into force of the new Code of Criminal Procedure) held that the fact described in the deed of intimation lodged with the court of law must not represent only the mere reference to a given action mentioned in the sequence of the defendant's activities, but a detailed description of that action in a manner likely to produce legal consequences, namely to invest the court.

Finally, in terms of the finality of the indictment it should be noted that the in the new regulation this act has lost its ability to cause the indictment of the accused, its issuance being subjected to the preliminary initiation of the criminal proceedings. Even if it is not expressly provided for, in terms of the drafting technique, the indictment retained the tripartite structure consisting of an introductive, expositive and operative part. It is no doubt that the expositive part of the indictment is prefigurating its operative part and, naturally, the prosecutor, whilst drafting the indictment, will indicate, in the expositive part, the evidence of the prosecution, and the operative part will materialize the will's manifesto of the representative of the Public Ministry to order the arraignment[20]. The indictment has a subpoena part, in which the persons that must be subpoenaed are indicated, mentioning their quality in the trial and the place where they are subpoenaed. Any irregularities identified in this segment cannot determine the impossibility to establish the object and the limitations of the judgment. In subsidiary, depending on the possible acts of disposition that it may include, the indictment may also contain provisions as to not to indict, in complex cases involving a plurality of facts and perpetrators. In this context, the provision not to indict may be accompanied by complementary measures determining the initiation of different procedures. Thus, if the same indictment is ordering the arraignment, the waiver of prosecution as well as the apprehension of the judge sitting in the preliminary chamber regarding the confiscation or the closure of a document in case of dismissal, considering that the judicial procedures being initiated involve different rules [on the procedure of preliminary chamber under the articles 344-346 CPP, on the confirmation of the waiver of prosecution under the article 318 paragraph (12) - (16) and on the issuance of an order by the judge sitting in the preliminary chamber, under the article $549^1$ CPP], these provisions, although embedded in the same act must be handled administratively as three different complaints and assigned to different judges sitting in the preliminary chamber. Also, the indictment may incorporate proposals for preventive measures, precautionary or safety, in which case, per articles 330 - 331 CPP it is no longer required to draw up separate documents. In all these situations, considering its main purpose – the apprehension of the court, the indictment remains a *unique act* being always drafted in a single

[15] *M. Udroiu,* Special Part, op.cit., p.152-153.

[16] Judgment from July 13, 1995, *Tolstoy Miloslavsky v Great Britain,* recital 37, cited in *M. Udroiu,* op cit., P.153

[17] *Adrian Constantin v. Romania,* judgment from April 12, 2011, www.echr.coe.int.

[18] Per article 3 from the 2012/13 / EU Directive on the right to information in criminal proceedings, "...Member States shall ensure that no later than at the presentation of the merits of the prosecution in court, *detailed* information is provided on the accusation, including the nature and the legal qualification of the offense and the form of participation of the accused."

[19] Supreme Court of Justice - panel of nine judges, Criminal judgement no.74/2001, High Court of Cassation and Justice – Criminal judgment no. 389/May 22, 2004, High Court of Cassation and Justice – Criminal judgment no. 892/2014, www.scj.ro.

[20] *I. Neagu, M. Damaschin,* op.cit., p.102.

copy, even if the prosecution's activities concern several facts or more persons and even if they get different solutions. However certified copies are made of the indictment, which are communicated to the defendants regardless of their status (free or in custody). To satisfy the requirements of an efficient information, the indictment must be translated if the accused does not speak Romanian or it must be communicated as well in a mother-tongue translation if the accused, Romanian citizen belonging to a different nationality, requests it. The provision, provided by article 329 paragraph (3) CPP, transposes into national law the provisions of the Directive 2010/64/EU of the European Parliament and of the Council, on the right to interpretation and translation in criminal proceedings, as pertinently noted in the literature[21].

### 3. Practical issues regarding the types of types of irregularities of the indictment

Overall, to achieve its function act deed of intimation, the indictment must be verified in terms of legality and validity by a prosecutor of higher-level to the one who drafted it. This requirement is a form of transposition of the principle of the hierarchical control governing the activity of the Public Ministry and involving a functional subordination and not an administrative one. The generation of the legal effects of the indictment shall be subject to the submission of this procedural act to a form of *enablement*[22] from a higher-level prosecutor. This verification concerns equally the observance of the legal provisions in the work of drafting the deed of intimation as the validity of the solutions it incorporates in relation to all prosecuting acts performed in the case and the evidence being administrated. In accordance with the article 328 paragraph (1) CPP, the verification is performed by the head of the office (first prosecutor or general prosecutor) where the prosecutor who drafted it belongs, and when the indictment was drafted by the latter the verification of the indictment is performed by a higher-level prosecutor. When it was prepared by a prosecutor within the prosecutor's office attached to the High Court of Cassation and Justice, the indictment is verified by the prosecutor chief of the section, and when the indictment was drafted by the latter, the verification is accomplished by the general prosecutor of this office. The law does not establish a term for the indictment to be verified by the higher-level prosecutor, pointing out only that in cases with arrested persons, the verification is accomplished urgently and before the expiry of remand in custody. From the material point of view, the legal operation of the verification is realized by applying on a mark *checked in terms of legality and validity* on the indictment, accompanied by the signature of the prosecutor who conducted the verification[23]. The lack of mention attracts the irregularity of the deed of intimation that can be invoked and remedied within the preliminary chamber procedure, without determining the impossibility to establish the object and the limitations of the judgement[24].

The verification of the indictments prepared by the prosecutors within the National Anticorruption Directorate is made under the terms of article $22^2$ of Government Emergency Ordinance no. 43/2002 – *the indictments prepared by the prosecutors within the territorial services of the National Anticorruption Directorate are verified by the chief prosecutors of these services, those drafted by the chief-prosecutors of the territorial services as those drafted by the prosecutors within the central structure of the National Directorate Anticorruption are verified by the chief-prosecutors of the sections and when the indictments are drafted by the chief prosecutors of the sections within the National Anticorruption Directorate, their verification is made by the chief prosecutor of this directorate.* The application of this provision in the causes in which the indictment was drafted by a chief prosecutor of a territorial service (but in which, amongst prosecution acts, there are also orders issued by the Chief Deputy Prosecutor of the directorate which infirm some dismissal solutions) involves the establishment of an exclusive competency for the chief prosecutor of the directorate in accomplishing the verification of the legality and validity of the deed of intimation.

In practice and in the specialized literature as well a question was raised on how to accomplish the verification of the indictment when the prosecutor hierarchically superior to the one who drafted the indictment was the one who conducted criminal proceedings in the cause. In doctrine[25] it was validly considered that in these circumstances the hierarchically superior prosecutor is obliged to submit statement of abstention based on article 65 paragraph (1) reported to article 64 paragraph (1) letter f) CPP as

[21] *I. Neagu M. Damaschin,* op cit., P.103.According to the provisions of Article 3 of the Directive, "Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.".

[22] *N. Volonciu,* op.cit., 2nd volume, p.101-102.

[23] The absence of an express provision indicating the nature of the act in which the result of the verification is materialized determined the doctrine to appreciate, still under the rule of the previous regulation, that the act confirming the indictment translates into a written resolution on the indictment - V. Dongoroz, and others, op. cit., 6th volume, p.71.

[24] In this regard, there are still applicable the judgements issued by the High Court of Cassation and Justice in resolving appeal in the interest of the law under the old regulation – High Court of Cassation and Justice, the Joint Chambers, Judgement no. 9 / February 02, 2008 (OJ no. 831 of December 10, 2008).

[25] *M. Udroiu,* op.cit., Special Part, 2nd edition, p.74.

there is a reasonable suspicion that his impartiality in evaluating the legality and validity of the deed of intimation might be affected. But since in practice[26] this solution was not always shared a few additional clarifications are required.

Per article 62 paragraph (2) of the Law no. 304 / 2004, the prosecutors are deploying their activity within the Public Ministry, in accordance with the principles of legality, *impartiality* and hierarchical control. This general provision is implemented as well on the particular plan and on the work carried out by the prosecutors of the National Anticorruption Directorate which, in accordance with the article 2 of the Emergency Government' Ordinance no. 43 / 2002 exercise their powers only under the law and for its enforcement. The legality of the acts being accomplished in carrying out the judicial functions of prosecution supposes as well, inter alia, the absence of any prejudice or any preconceived ideas on the solution ordered by the prosecutor during at the termination of the criminal prosecution, issue that doesn't concern the independence but the impartiality of prosecutor. In terms of justice, the existence of a reasonable suspicion that the impartiality of the prosecutor is affected determines the occurrence of the incompatibility as provided by article 64, letter f), applicable to the prosecutor under the article 65 paragraph (1) CPP. If the incompatibility was not remedied by internal tools (restrain) or external (disqualification) provided to that end, *the act* accomplished by an incompatible prosecutor it is affected by a legality vice (flaw).

Thus, in the said cause, the judge sitting in a preliminary chamber circumscribed the reasons invoked for the support of the criticism regarding the incompatibility of the prosecutor who verified the indictments to the case of incompatibility as foreseen by article 64 paragraph (1) CPP, *"in the current cause he conducted the criminal prosecution or he participated as a prosecutor in all proceedings before a judge or a court"* case that obviously is not applicable to the prosecutor in accordance with the article 65 paragraph (1) CPP. According to the opinion of the judge sitting in a preliminary chamber these arguments cannot be extended to the broader incompatibility case, as foreseen by article 64 paragraph (1) letter f) CPP, which had been raised expressly, given that article 6 paragraph 1 ECHR covers only an *independent and unbiased court.* In disagreement with this assertion, we consider that the incompatibility status of the chief prosecutor of the territorial service, proven by the direct involvement in accomplishing the criminal prosecution and in making accusations against the defendant sued, based in part on the same material elements cannot be circumscribed to another incompatibility case than the one foresee in article 64 paragraph (1) letter f) CPP, having the nature to allow to retain a reasonable suspicion that the impartiality of its extremely important work of control of legality and validity of the deed of intimation was affected.

The regulation under the form of a distinct case of incompatibility, applicable to the prosecutor, as established in article 5 paragraph (1) CPP, *of the suspicion of lack of impartiality* implements in the matter of incompatibility the constitutional principle of impartiality of the activity of the Public Ministry, provided for in article 132 paragraph (1) of the Constitution. In the case-law of the Constitutional Court[27] the *impartiality* was analysed as a corollary to the principle of legality, and which generates the requirement for any prosecutor to perform his duties in an objective, without any other predetermined general purpose and without bias. In the current regulation, the incompatibility case based on the reasonable suspicion of lack of impartiality was designed as a *general case,* in which, depending on the particularities of each case, multiple circumstances can be assimilated, some of which have been covered in previous Code as distinct cases (article 48 of the CPP from 1968 - circumstances out of which result the interest, in any form, enmity result) while others must be justified.

Therefore, it was an option assumed by the legislator to extend the concept of impartiality from the conventional area corresponding to the notion of *court* as well to the judicial bodies exercising the other main function, the function of prosecution, due to the nature and consequences of acts in which this exercise is materializing.

Secondly, in a wrong manner, the judge sitting in the preliminary chamber considered that the direct accomplishment of criminal prosecution in the pending case or in another case (but to a degree of connection that allowed the judicial body to take measures and evidences) by the prosecutor who is required to verify the legality and validity of the deed of intimation issued in the case shall not have the nature as to create a reasonable suspicion that his impartiality could be affected. In our opinion, the incompatibility status of the chief prosecutor of the territorial service is of an obvious nature, the materials prerequisites that generated it being in fact recognized even by the prosecutor who drafted the indictment. It is undeniable the risk of bias of the prosecutor who not only conducted criminal prosecution that led to obtaining important evidence but also expressed *in a judicial context* his opinion on the factual circumstances envisaged in this case as well as to the possible guilt of the defendant being prosecuted.

Thus, examining the prosecution performed in another case (in which he is the prosecutor of the case), the chief prosecutor of the territorial service expressed his opinion on the *"the extensive criminal activity of the defendant, which is actual and presents a particularly high social danger".* To this respect, by the ordinance through which the criminal proceedings against the

[26] The resolution of the judge sitting in the preliminary chamber within the High Court of Cassation and Justice through which the commencement of the judgement was ordered in the case no. 292 / 1 / 2015, not published.

[27] *The Decision of the Constitutional Court* no.311 / 2005, Official Gazette 749 of August 17, 2005.

same defendant were extended, the prosecutor who subsequently verified the indictment expressed clearly his opinion also with regard the activity that constitutes the object of the current case, pre-constituting his opinion on circumstances and statements which represents as well the foundation of the charge for which the defendant was indicted. Therefore, the concrete modality in which the chief prosecutor of the territorial service involved himself in performing the criminal prosecution and in ordering procedural measures against the defendant justifies the retention of the reasonable suspicion that, at the verification of the indictment for the same defendant, his impartiality was affected. To this respect, the doubt or suspicion about the lack of impartiality, as element of subjective nature, covered a reasonable form since it was objectified in materially verifiable elements, having the nature to confirm the state of inadequacy in which the head of the prosecutor's office finds himself.

Thus, the conviction of the chief prosecutor of the territorial service about the criminal activity of the accused who guided and controlled in fact companies that he no longer had any stake and which, moreover, are estimated to be the instruments through which in this case the defendant committed the offense of bribery, materialized in acts and measures ordered in the case in which he acted as prosecutor of the case. Or, all these measures were based on the pre-constituted opinion of the chief prosecutor of the territorial service that the defendant carried out during 2000-2015 a comprehensive criminal and extremely dangerous activity, which include the facts for which he was indicted in this case.

In essence, the reasonable suspicion that the impartiality of the chief prosecutor of the territorial service was affected is supported both by the direct involvement and coordination in conducting the proceedings that deliberately targeted the defendant being indicted, as through the fact that, in reality, the prosecutor called to verify the legality and validity of the deed of intimation filed *criminal charges* against the defendant (in the opinion of article 6 paragraph 1 ECHR) due to the expansion of the prosecution and the criminal proceedings in the case in which he acted as prosecutor of the case, circumstance which is likely to infringe the procedural rights of the defendant and the fairness of the proceedings. Third, the judge sitting in the preliminary chamber wrongly considered that no procedural harm was produced, due to the verification of the indictment under the mentioned condition and that, anyway, if such harm would exist, it might be remedied directly before the judge or the court.

In our opinion, in the absence of the verification with impartially, the indictment drafted by the prosecutor's office of the National Anticorruption Directorate is in fact an indictment unconfirmed, that was not subject to an effective control of legality and validity, being unable to perform, in accordance with the article 328 paragraph (1) CPP the function of deed of intimation to be lodged with the court of law. The processual damage caused by the non-observance of the provisions governing the impartiality of the prosecutor [article 132 paragraph (1) of the Constitution, article 62 paragraph (2) of the Law no. 304 / 2004, article 65 paragraph (1) reported to article 64 paragraph (1) letter f) CPP] consists in depriving the defendant of internal, effectively control performance on the legality and validity of the deed of intimation. By the will of the law, the functionality of the deed of intimation to be lodged with the court of law (to determine the investiture and to set the limitations for the judgment) is subject to *implicit confirmation* (after verification) issued by a prosecutor hierarchically superior to the one who drafted and that thus materializes *in conditions of impartiality,* the principle of the hierarchic subordination governing the activity of the Public Ministry.

This internal control of the deed of intimation, even if it does not exclude the judicial review performed in the procedure of preliminary chamber cannot be exercised *omisso medio,* directly by the judge or the court as this is contrary to the requirements of the principle of separation of the judicial functions, provided for by article 3 CPP, and affects the independency in the functioning of the Public Ministry. The verification of the deed of intimation to be lodged with a court of law does not represent a formal requirement but it is a guarantee for ensuring the legality and validity of the prosecuting proceedings, being instituted as an essential prerequisite for the operation of the functional transfer of competence between different categories of judicial bodies. In fact, in the special procedures of the plea agreement as well, the compulsoriness of the internal control is materialized in the requirement for the endorsement - by the prosecutor hierarchically superior - of the agreement concluded by the prosecutor of the case, in accordance with the article 478 paragraph (2) CPP. Consequently, given the situation of incompatibility described above, we consider that for the proper application of article $22^1$ paragraph (1) of the Emergency Government Ordinance no. 43 / 2002 in relation to article 328 paragraph (1) CPP, the verification of the indictment drafted in the current case should have been accomplished by the prosecutor hierarchically superior to the head of the prosecutor's office where the prosecutor who drafted the indictments was functioning, namely the prosecutor chief of section within the National Anticorruption Directorate - the central structure.

Perhaps the most common form taken in practice by the irregularity of the indictment is the one related to the incomplete or unclear description of facts, which prevents delimitation of the contribution of each defendant or the identification of all material acts, the impossibility to establish, in cases of offenses with alternative content, the modality incriminating the

defendant[28]. In this regard we consider to be appropriate to present a solution in which, without justification, the commencement of the criminal trial was ordered in the conditions in which the indictment unequivocally presented such an irregularity[29].

Regarding this issue, the judge sitting in the preliminary chamber found that the indictment in the mentioned case has 387 pages, out of which 234 are dedicated to describing the actual state of affairs, with reference to the evidences from which the prosecutor considers that this state of affairs results, and appreciated that there is, in the indictment, a detailed description of the facts charged to the defendant, containing all circumstantial elements necessary for the identification of the accusations brought against the defendant. The judge sitting in the preliminary chamber took into consideration as well the fact that the defendant did not invoked the problem throughout the entire prosecution, although at the time of the initiation of the criminal proceedings the accusations were brought to his knowledge and the defendant, during the prosecution, gave the statement regarding the accusations.

In matters related to the insufficient description of the offense of traffic of influence in a repeated form, the judge sitting in the preliminary chamber invoked the case-law in accordance to which, in case of the objective impossibility to describe all the material acts of a continued offense, it is sufficient to indicate a period of time during which the material acts composing the offense were committed, if in this way it is possible to determine the object (scope) and limits of the judgment. It was also shown that the issues regarding the compliance of the elements of a continued offense, of a natural unity of crime or of a plurality of offenses are a matter of legal qualification of the fact, which cannot be questioned during the procedure of preliminary chamber. Similarly, the existence or the inexistence of the actions which the prosecution claim to constitute the material acts of the continued crime or if there are evidences proving their existence are matters regarding the merits of the case and not the regularity of the deed of intimation.

In our demurral, made against the resolution of the judge sitting in the preliminary chamber within the Court of Appeal Brasov, we show – *in advance* – that by invoking some problems related to the incomplete description of the material facts incriminating the defendant it was not aimed to provoke an anticipated evaluation of the evidences nor to attempt to discuss questions as to whether the allegations made against the defendant are valid. This is the reason why the issues related to the legal qualification given to the facts through the deed of intimation were not discussed, aspect that exceeds the processual framework of the preliminary chamber[30]. We invoke the fact that the deed of intimation is imprecise in terms of correspondence between legal qualification, as held by the prosecutor, and the facts described, which takes the form of an *irregularity* of the deed of intimation. This irregularity must be remedied in the preliminary chamber procedure - and not through a possible change of the legal qualification, submitted for the parties' discussion during the judicial inquiry, under the article 386CPP 386 - since it determines the *impossibility to establish the object (scope) and the limitations (boundaries) of the judgment*, affecting as well requirements related to the exercise of procedural rights guaranteed as fundamental principle. The description of the fact must not be confounded with the reproduction only of the constitutive content of the offense, as described in the criminality norm. The description of the offense within the indictment must consider all circumstances of place, time, means, mode, aim to which the offense was committed, with consequences on the constitutive elements of an offense and on its qualification in a specific criminality text. To meet the legal requirements for the establishment of the object of judgment it is necessary that the fact is presented in the indictment with all elements of criminal relevance, thus creating the possibility for the court to rule on that fact and for the defendant to defend himself efficiently[31].

Per article 371 CPP, *the judgment is limited* to the facts *and persons shown in the deed of intimation.* The deed of intimation is the indictment. Per article 328 paragraph (1) CPP, the indictment is limited to *the fact* and the person for whom the criminal investigation was conducted and contains *factual data* adduced against the accused and its legal qualification. Therefore, the indictment must contain a description in a reasonable manner of the facts incriminating the defendant. The judgment on the merits cannot take place unless the indictment describes in a clear, understandable and concise manner the facts which the defendant presumably has committed, so the court may understand from the beginning what are the charges being brought, may provide clarifications and explanations to the defendant in the early phase of trial under the article 374 paragraph (2) CPP and, at the same time, to be able to assess in terms of the article 100 paragraph (4) letters a) and b) CPP whether the claims made by the defendant to administer new evidence are justified (assessment that requires a full understanding of the subject of the evidences in relation to the facts indented to be proven).

Beyond the need for the court to precisely determine the procedural framework, a clear description of the facts is important for the defendant as

[28] *I.Kuglay* Code of Criminal Procedure. Comment on articles, coordinated by *M.Udroiu*, CHBeck Publishing House, 2015, p.918.

[29] The resolution of the judge sitting in the preliminary chamber of Brasov Court of Appeal ordering the commencement of the judgment in the case registered under the no. 345/64/2016, unpublished.

[30] For the same interpretation, *C. Voicu* in The Code for criminal procedure commented, coordinator N.Volonciu, 2nd edition, Hamangiu Publishing House, 2015, p.927.

[31] Court of First Instance Constance, the resolution no. 156 from April 30, 2014 cited in *C. Voicu*, the New Code for Criminal Procedure commended, op cit., P.927.

well. He can effectively exercise his right to defence only if, as a priority, he understands the charges being brought, at least at the level of factual situation. Through the indictment no. 259 / P / 2015 from May 17, 2016, the defendant was indicted for the offense of trading in influence, *"foreseen in article 291 paragraph (1) Criminal Code, with the application of article 35 paragraph (1) Criminal Code and article 5 Criminal Code".* This offense was placed in the charge of the defendant as being committed in a continued form, during September 2006 - spring of 2013. As it can be seen, there is no indication whatsoever of the number of material actions that are part of this continued crime. The judge sitting in the preliminary chamber appreciated that the situation was determined by an objective impossibility to describe all the material actions, invoking practice to this respect.

In our opinion, this appreciation is wrong, because the deed of intimation lacks not the *description* of the material actions, but their very individualization in space and time. The indictment contains a state of facts covering a long period, subsequently qualified as traffic of influence in a repeated form. The reproach brought to the indictment consists in the circumstance that, while retaining the repeated form of the offense, it does not individualize the material actions falling within the content of the continued offense in relation to the facts described. Therefore, what we understand to submit to the analysis is not the status quo, but the circumstance that, although it refers to the continued form of the offense, this status quo was not shared by the prosecutor in any way, so that the defendant can understand primarily how many material actions (in terms of numbers) he is being accused from, what are they, when were they committed, each of them (at least the approximate time). In these conditions the defendant cannot build an effective defence because he cannot determine whether a factual circumstance that the Public Ministry encompasses within the described status quo is being charged to him as a distinct material action in relation to another circumstantiated fact. Moreover, this type of irregularity of the indictment is expressly indicated by the legal doctrine as likely to affect the establishment of the object of the judgment[32]. The jurisprudence invoked by the judge sitting in the preliminary chamber in the resolution being challenged is undoubtedly justified. It is difficult to ask the prosecutor, from obvious reasons related to the extent of the indictment, to describe each individual material action, especially if their number is high and the similarities between them are major. However, we consider that these cited judgments *have no relation with the issue being addressed* in the cause because, as noted above, it is not the description of the facts that is missing, but its individualization based on the different material actions. The description of these material actions was not possible because, in fact, they were not separately identified by the prosecutor (which is why their number was not listed), and they were appreciated as an overall factual situation.

Without the indication of the *number* of the material actions, of the elements relating to the *time of occurrence* of each of them (for which temporal coordinates are not indicated, but only the whole period of the continued offense, as legal unity), of the *specific ways of committing the offenses* (act committed or omitted, alternative or successive committed personally or through intercessor etc.), we appreciate that the object of the judgment cannot be legally established, as the acts of judicial inquiry can be made only regarding the issues completely defined. This incomplete way to describe the offense of traffic of influence affects as well the right of defence of the defendant guaranteed not only in the form but also in its exercise because he is being rendered unable to prove the unreal appearance of an argument if it is not individualized. Only in relation to a precise fact a real defence can be made, and one of the core tasks in the work of the prosecutor is to formulate clear, rigorous accusations *"and not to create a puzzle that would eventually be settled by the defendants"*[33].

We underline as well that the need for such additional indications is justified by the fact that, from the material point of view, the offence of traffic of influence involves *demanding, receiving or accepting the promise of money or other benefits,* and on the other hand, in accordance with article 35 paragraph (1) Criminal Cod, one of the conditions of the continued offence is that *each action or inaction taken as material action has to present the content of the same abstract pattern of criminality.* Or, if the material acts - to which the prosecutor refers implicitly when holding the continued form of the offense - are not individualized separately, the defence also cannot analyse the accomplishment in relation to each part of the condition foreseen in article 35 paragraph (1) Criminal Code. The continued offense represents a form of the legal unity of offense, through which criminal actions capable by themselves to achieve the content of the offense are joined by the will of the legislator in a single offense (because they are committed under the same criminal intention). The material actions entering the content of the continued offense, being themselves criminal actions, must be presented in the indictment with all the elements having criminal relevance under the content of the offense, whilst being necessary that the will of the prosecutor to manifest in the sense of the arraignment. If the material actions are not individualized it cannot be verified if each of them meets the standard of the norm of criminality, and the defendant cannot thus defend against the charge being brought to him. Finally, we show that the exercise of the two antagonistic procedural functions (accusation -defence) before the court of law is inextricably linked to the object of the judgment which is however unilaterally established by the accusation. Or,

[32] *I. Kuglay* in M. Udroiu (coordinator), *The Code for criminal procedure. Comments on articles,* CH Beck Publishing House, 2015, p.906.
[33] Suceava Court of Appeal, Criminal Division and for cases involving minors, resolution of the judge sitting in the preliminary chamber no. 36/2014, cited in *C. Voicu* The New Code for Criminal procedure commented, op.cit., p. 926.

in this case, the object of the judgment cannot be established, the charge brought against the defendant being a formal one, unspecified from the material point of view, which sets the defendant unable to formulate an effective defence.

For the support of the denial of the requests for irregularity of the resolution, the judge sitting in the preliminary chamber argued using the fact that the defendant did not invoked, throughout the prosecution, the problem of the insufficient description of the facts he was held with, although at the time of the initiation of the criminal proceedings he was informed about the accusations and he gave a statement regarding the accusations during the criminal proceedings. In our opinion, this argument adds to the law. To invoke problems regarding the unlawful referral of the court is not subject to the procedural attitude of the defendant during the criminal investigation, since the law does not contain any indication to that effect. On the other hand, the initiation of the criminal proceedings by the prosecutor is not the procedural act setting the object and the limitations of the judgment. Therefore, it is irrelevant to determine whether the allegations are understood upon indictment. The object of the judgment is fixed through the indictment, which is the deed of intimation. So, based on this act, it is essential to determine if the action has been fully described.

In relation to the issues presented, the description in a reasonable manner of the facts being apprehended represents a prerequisite for the regularity of the deed of intimation, since the establishment of the object of judgment depends, in a determinate manner, on the clarity of presentation of the accusation, the court losing in the current processual system the capability to reconfigure the object of the judgment and thus complement the initial shortcomings of indictment. The importance of ensuring a regular notification of the court was still observed under the old regulation when, anyway, the court, under its active role expressly recognized[34], had at its disposal the appropriate procedural remedies to help during the proceedings to the extension or the abbreviation of the object of the judgment. In this sense, in the specialized literature it has been appreciated that the verification of the regularity of the deed of intimation has priority over the verification of the courts' competence, being possible to accomplish or provoke the remedy of the irregularities by a court of law that did not have jurisdiction to resolve the merits of the case in question[35].

## 4. Conclusions

The national regulation is undoubtedly deficient in terms of implementing the conventional standards established in the field of requirements that must be met by the main act in which the accusation formulated against a person in criminal proceedings is materialized. The absence of provisions that would develop the minimum requirements in relation to which the function of verification of the legality of the indictment is exercised was most of the time compensated by the courts.

Taking into consideration the functional relation between the subjects applying the procedural norms and the authorities establishing them, this circumstance do not remove the need to improve the regulatory framework in the domain.

A legislative intervention aimed at ensuring not only the guarantee of the rights of the participants in the trial and a fair trial as well as the effective exercise of the powers of the judicial bodies will help to strengthen the safeguards of a modern process system.

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[34] In accordance with article 287 paragraph (1) CPP from 1968, the Court shall exercise its powers actively to find the truth and to achieve the educational role of the judgment. The provision was confirming one of the primary principles of the criminal procedure, *the obligation*, that had as important consequence the procedural rule to promote *ex officio* – "the task for the judicial bodies to work on own initiative by performing all acts and formalities prescribed by the law of criminal procedure" *(Tanoviceanu I.,* Treaty of Criminal Law and Criminal Procedure, 4th volume, 2nd edition of the Course of criminal law and criminal procedure, reviewed and completed, doctrine by *V. Dongoroz*, Curierul Judiciar Publishing House, 1926, p.38-39).

[35] see to that sense *V. Dongoroz, and others*, op.cit., 6th volume p.149.