

THE PROCEDURE FOR THE REFERRAL OF THE CRIMINAL INVESTIGATION BODIES

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Abstract

Vintil Dongoroz mentioned in one of his books that “the referral is the dynamic act that causes the prosecution to take place.” We can say that the criminal prosecution is born when the criminal prosecution bodies are informed of a crime of a criminal nature by one of the above mentioned ways of referral.

The common point of all means of referral is that it always takes the written form, either by direct recording of the injured party or by the oral hearing. In practice, the document of referral is the document which will always contain the registration number of the prosecutor’s office and the resolutions of the hierarchical chiefs on the registration procedure and the worker to whom the work was assigned for verification and settlement.

The referral is the effect of a manifestation of will for the purposes of conducting criminal proceedings that may be brought by the criminal investigation body, the finding body or the injured party whose interests or rights have been violated as a result of committing an offense.

Any criminal offense brought before the categories of civil servants mentioned in this Chapter shall lead to their obligation to immediately notify the competent prosecution body. Also, the criminal investigation body should refrain from carrying out any criminal investigation if it clearly finds that it is not competent and the investigation is not urgent.

Keywords: jurisdiction, obligation, Criminal investigation, competence, the procedure

1. Introduction Ways of Referring to Criminal Investigation Bodies

1.1. The Complaint

The most common way to refer criminal prosecution bodies is the complaint through which individuals can address the authorities by making them aware that they have been the victim of a crime.

Any complaint may be made in writing or by oral proceedings where the criminal investigation bodies record a report. This is done in his own name or by the trustee in a situation where a procurator is attached, by procedural substitutes or by legal representatives instead of persons without exercise capacity.

Practical aspect:

- On 15.05.2014, at 15.15, at the Police Headquarters of the Municipality of Târgu Mureş was presented named G.R. together with the minor G.F. who verbally reported the following: about one hour before, his child returned from school without having a Samsung mobile phone on it, and the child told him that his mobile phone would have been taken from the desk at the last hour when he had physical education.

• The police have recorded a report containing the data of the legal representative, the verbal ones, and the mention that they require identification of the perpetrators of the offense of theft. Following the notification, the criminal investigating authorities carried out criminal investigation activities which ultimately led to the identification of the authors.

The Code of Criminal Procedure states that the complaint may also be filed in electronic form, subject to the existence of an electronic signature. As regards the notion of electronic signature, it is defined in Article 4 (3) of the Law No. 455/2001 republished as data in electronic form that are attached or associated with other data also in electronic form, which will serve as an identification method. The electronic signature cannot take the form of the scanned signature.¹

In practice, there is a situation where the author of the offense is the legal representative and an ex officio referral is recorded in this respect.

Practical aspect:

- On 14.02.2015, at 18.00, T.R presented herself at the headquarters of Onesti City Police, who notified the police that his son T.I. left the park to play in the nearby park and did not return. Police officers carried out specific activities to find the minor, and around 21:00 it was legitimized by a police patrol and was led to the police headquarters to record a report and hand him over to parents. Considering that the minor showed marks on the surface of the body, the police asked him about the origin of these signs, and the child reported verbally that they were made after the beatings he receives almost daily from his mother. Taking into account the visible traces of the juvenile’s body and those reported by him, the police officers as observers have been notified of the offense of “ill-treatment of the minor” and the case was taken over by the criminal investigation bodies who developed specific activities, also helped by a psychologist.

With regard to the form of the complaint, the complaint must contain the name, surname of the

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¹ Legea nr.455/2001 r. Art.4, pct.3

person who is making it, accompanied by the personal numerical code, the quality and domicile of the complaint, and, in the case of legal persons, the name, headquarters, single registration or fiscal identification code and indication legal or conventional representative. After these data the complaint describes the description of the act that he wants to claim, and the author indicates if it is known and non-mandatory to indicate the means of evidence that he considers necessary to be administered in order to prove the deed. Also, the injured party is not obliged to record the legal framing of the act or if the criminal prosecution bodies do not have the obligation to fit the act exactly as indicated, but how it considers it necessary. If the complaint is missing at least one of the mandatory conditions of the form, the petitioner shall be remanded by administrative means and shall indicate the missing items, and in the case where one of the substantive or formal conditions, for example the lack of all the name of the petitioner or the description of the deed, it is classified.²

Due to the fact that not all persons have legal education, they are unaware of the legal framing of the act they wish to claim, nor of the competence of the criminal investigation bodies or the courts. Thus, the wrongly directed complaint is submitted by administrative means to the competent judicial body. If the criminal investigation body draws up the order to initiate the criminal proceedings in rem on the basis of the complaint, the prosecutor will send the complaint to the competent body without taking into account the form of the refusal, except in the case in which the prosecutor starts the prosecution.

Practical aspect:

- On 11.05.2015, at 09.00 at the Breaza City Police Headquarters, the so-called F.H. who filed a complaint in which it was recorded that on 10.05.2015, at 22.50 while listening to music in front of block No. 2, on Peace Street, together with a friend, two gendarmes presented, dressed in uniform that hit their bodies with sticks and sanctioned them for their contravention. He wanted to file a criminal complaint for the offense of hitting or other violence. Given that the Gendarmerie workers have the military status, the complaint was filed administratively with the Military Prosecutor's Office attached to the Bucharest Military Tribunal for the investigation of the offense of abusive behaviour.

1.2. Denunciation

Any natural or legal person, even if he is not the injured person, has the possibility to inform the criminal prosecution bodies about the existence of any offense by denunciation.

Denunciation is a voluntary referral method that can be made by a natural or legal person without any legal obligation to do so. Exceptions make certain situations where denunciation becomes mandatory if the person has become aware of the commission of any

crime. In this respect, the legislator incriminated at art. 266 para. (1) Criminal Code the offense of non-forfeiture which consists in a person's act of not announcing the authorities, even though he was aware of an offense provided by the criminal law against life or that resulted in the death of a person. It is also stipulated in art. 410 par. (1) of the Criminal Code, the offense of non-infringement of national security crimes thus criminalizes the person's deed to do so in the event that he has been informed of the preparation or committing of any offense that is likely to affect national security.³

There are situations in which the denouncer may be the person who committed the offense and thus benefit from the removal of criminal liability as a cause of non-punishment.

Practical aspect:

- On 14.09.2014 R.E. turned-out at the headquarters of the General Anticorruption Directorate - Argeș County Service, and filed a complaint about the fact that an employee of RAR Pitesti requested and received the amount of 500 lei to make his technical inspection of his BMW 3 Series without passing it through all the verification means. The DGA workers received the denunciation and under the direct coordination of a prosecutor within the Prosecutor's Office attached to the Argeș Tribunal, investigated the denounced person, investigating activities that led to the identification and probation of several RAR employees receiving regular bribes for various services who were circumventing the proper performance of their duties. Since R.E. filed the denunciation before the criminal investigative bodies had been notified, he benefited from the elimination of criminal liability.

Also, self-denouncement may also have the value of a mitigating circumstance.

Practical aspect:

- On 20.08.2014 the workers of the Giurgiu Organized Crime Prevention Service under the coordination of a prosecutor within the DIICOT - Giurgiu Territorial Office carried out a flagrant, resulting in the fact that the DV received for resale from the named RT a number of 22 sachets containing a white powder, possibly cocaine. Being faced with clear evidence and at the request of his lawyer, the defendant R.T. filed a complaint with the criminal investigating authorities about the persons who supplied him with high-risk drugs, as well as with other individuals on the same criminal level as he. Thus, the criminal investigating bodies initiated specific activities to investigate the facts, with 12 persons being prosecuted and the denouncer benefited according to art.15 of the Law no.143/2000 on the prevention and combating of illicit drug trafficking and consumption, to halve the penalty limits prescribed by law. Concerning the so-called D.V, it is worth mentioning that the flagrant was carried out following its denunciation and thus

² Mihail Udroiu. Procedură penală. Partea specială 2017, Ed. Universul juridic, pag. 26.

³ V. Rămureanu, Proceduri penale, Bucuresti, 2016, Ed. Universul Juridic, pag. 28.

benefited from the provisions of art. 14 of the Law no. 143/2000 his deed was not punished because it was brought to the attention of the authorities before the criminal prosecution had begun.

A denunciation is made only personally, and if he is a person with restricted exercise capacity through his legal representative. There is a situation where the person who has been denounced by a person is his legal representative or a person who agrees with his acts if he has limited exercise capacity. In this case, the prosecution is made ex officio.

The denunciation having a written form must fulfil the formal requirements in the sense that it contains the name, surname, personal numerical code, its quality and domicile, and for legal persons the name, the registered office, the unique registration code, the fiscal identification code, the registration number in the trade register. Once personal data have been recorded, the description of the reported criminal offense, as well as the indication of the perpetrators and evidence, if known by the denouncer, must be given. The lack of one or more of these form elements involves redressing the administrative complaint by indicating the missing elements, and in the absence of an essential condition as the author's identification data or the description of the act is incomplete or unclear, the organs of tracing criminal will dispose the classification.

Practical aspect:

- The workers of the Criminal Investigation Bureau of the Barlad City Police received by e-mail a denunciation from Popescu Robert stating that on 25.08.2016 he passed the Urological Department of the Emergency County Hospital at the 3rd floor where a person was screaming from pain, which is why the denouncer wishes to be held accountable the medical personnel for negligence in the service. Police officers proceeded to identify the denouncer and found that his identity could not be accurately determined, the sending address did not exist, and the databases contained a large number of people with that name. Regarding the description of the deed, the criminal investigating bodies have determined that the injured person cannot be identified because the name or even the ward in which he was present was not indicated and the concrete way of committing the negligence offense was not described in the notification. Taking into account the findings of the investigation bodies, they solved the denunciation in the form of a petition and did not find any real aspects of criminal nature, for which reason they ordered its classification.

If the denunciation is anonymous, it can not be considered as an act of indicating the criminal prosecution bodies, but the judicial bodies have the obligation to verify the veracity of the issues raised and if they find that they confirm, they will initiate the prosecution.

Practical aspect:

- On May 14, 2014 at the Police Headquarters of

Constanța Municipality an e-mail was received regarding a denunciation from several detainees of Poarta Albă Penitentiary. The denunciation was anonymous, no name or surname being indicated, but it was brought to the knowledge of the criminal investigation authorities that the prisoner of F.L. of Cell No. 12, Body B boasts that he cheated more elderly people by "the accident method", earning big sums of money. In his criminal activity he uses a cell phone and several phone cards illegally obtained from other detainees and is helped by his former concubine N.E. who presented at the home of injured people to take money or jewellery from them. Considering that several facts of this kind were reported in the district of Constanța County, being left with an unknown author, the criminal investigating authorities heard of themselves and under the supervision of a prosecutor they were able to prove the criminal activity of the detainee F.L. and the so-called N.E., investigations that were uncovered by a flagrant on 18.08.2014.

As in the case of the complaint, the denunciation may also have electronic form, subject to the existence of an electronic signature, and in the oral case, the criminal investigative body will record it in a minutes and then hear it in witness quality.

1.3. The referrals made by leadership persons or other people

On the same level with the complaint and the denunciation as a way of indicating the criminal prosecution bodies, there is the referral made by the persons with leading positions or by other people, being regulated in art. 291 para. (1) of the New Criminal Procedure Code. They are obliged to immediately notify the criminal investigating bodies the persons who hold leading positions within the public administration authorities or other public authorities, public institutions or other legal persons of public law who, in the exercise of their duties, have learned of the existence of any offenses. It is also the duty of the persons who have control duties when, in the exercise of their duties, they have been aware of the commission of any offense. These people can be part of public institutions, but also of private entities with their own control mechanisms. Also in the provisions of Article 291 are included those persons exercising a public interest service which have been invested by the public authorities or are subject to their control or supervision and in the exercise of their official duties have been aware of the existence of any crime, bailiffs, lawyers in the performance of certain tasks, notaries public.⁴

These referrals apply only to offenses for which the criminal action is initiated ex-officio and must have the content of a denunciation. We note, therefore, that this way of referral essentially takes the form of a mandatory denunciation.

Also included in this category are the minutes drawn up by the finding bodies listed in Articles 61 and

⁴ Phd Judge Voicu Pușcașu, Phd Judge Cristinel Ghigheci, Proceduri Penale, Vol. 1, pg. 41- 42.

62 of the New Code of Criminal Procedure. They no longer resume the description and their examples, since both the theoretical and the practical part are entirely applied by the section of the finding bodies.

The public order and national security bodies shall draw up a report in the event of a finding of a criminal offense. This act has a dual function both as a means of referring the criminal prosecution body being provided in art. 288 para. (1) referring to art. 292 of the new Code of Criminal Procedure and as a means of proof provided in art. 198 par. (2) New Code of Criminal Procedure.

In this category is also included the conclusion of a hearing made by the court in the case of the offense of audience.

Practical aspect:

- On 9 May 2014, 10 a.m., at the Iasi Tribunal, several defendants accused of criminal grouping, trafficking and money laundering have been tried. The public hearing was attended by defendants, including D.L. what managed to bring a gun with ammunition into the courtroom. When M.S. had to speak, D.L. pulled out a gun and directed it to the witness, but the trigger was not perturbed because the hitch was not drawn and a representative of the guard intervened. In this case, the referral was constituted by the closing of the sitting, and the prosecutor present in the court took over the case by immediately ordering the continuation of the criminal prosecution and taking the measure of apprehension of the accused person that he intended to kill the witness M.S.

1.4. The ex officio referral

Article 292 of the New Code of Criminal Procedure stipulates the way of the ex officio notification, so the criminal investigation bodies, if they have become aware of the committing of a crime in a different way than the complaint, denunciation or notifications made by persons with leading positions are bound to record an ex officio referral.

Starting from the ex officio notification of the criminal prosecution body, either personally proceeds with the prosecution, or hand it over to the competent prosecution body by administrative means.

As we have previously stated in the case that the complaint or denunciation does not meet the substantive or lawful conditions, the criminal investigation bodies can check the issues raised and, if it finds that they may be relevant, draws up a minutes from which they refer from office. A practical example was opened at the denouncing session.

One of the usual sources of information from which the criminal prosecution authorities complain ex officio is the media.

Practical aspect:

- On April 22, 2014, in the local press, in Neamt County a press article entitled "Find out who poisons the water in Bicaz Dam" appeared. It was mentioned in

the article that a slaughterhouse in Bicaz-Chei drove dead animal remains in the Bicaz River, which later collapsed in the Bicaz Dam and became an outbreak of infection. Taking into account the ones mentioned in the press article, the criminal prosecution bodies heard of the offense of water infestation, and in the course of the criminal investigation it was ascertained that the reported issues are true.

In a rule of law, there are also specialized bodies with the objective of maintaining national security. These structures carry out specific investigative activities and the information obtained is confidential. Criminal Investigation Bodies have access to classified information up to various levels of classification according to the specifics of work, so they can be notified of offenses, but they can not use the documents they receive because they are not intended to be advertised. In order to capitalize the information it is necessary to initiate the criminal prosecution which starts from the official act of the ex officio notification.

Practical aspect:

- A specialized structure on the maintenance of national security carried out the specific investigation activity towards the foreign citizen I.H. As a result of the investigations, it has been shown that he travels regularly to Turkey by airplane and has more Romanian citizens known to be part of the so-called "underworld", suspected of dealing with drug trafficking. Given that I.H. has a very high standard of living, with no visible source of revenue, and several people said they were buying high-risk drugs from Turkey that they made available to the interlopes, the structure informed D.I.I.C.O.T. prosecutors have heard of their case and initiated the prosecution.

In the case of offenses found in the flagrant, the minutes to be drawn up on this occasion constitute an act of indicating the criminal prosecution bodies, and the injured persons of the offense found may file a complaint.

If the information is accurate, no matter how they get to the criminal prosecution body, this is obliged to complain of its own motion.⁵

1.5. Preliminary complaint

Another way of indicating criminal prosecution bodies is the prior complaint in the form of a regular complaint, the difference being that the existence of this complaint makes the criminal action in the case of criminal offenses conditional. The existence of the prior complaint does not give rise to the obligation of the criminal prosecution bodies to order the commencement of criminal prosecution, the continuation of the criminal prosecution of the suspect or the commencement of the criminal action.

The prior complaint must meet the formal and substantive conditions, just as for a regular complaint, and in the absence of one or more of such elements, it

⁵ PhD Judge Voicu Pușcașu, PhD Judge Cristinel Ghigheci, Proceduri Penale, Vol. 1, pag. 44.

is returned administratively by indicating the shortcomings.

The preliminary complaint is made in written or oral form, in which case the criminal investigative body records a report in this respect. This can be done both personally and for another person by procuration, and the New Code of Criminal Procedure stipulates that the prior complaint may be advanced electronically, subject to the existence of an electronic signature, just as with the other means of notification.

The injured person may be deprived of his/her capacity to exercise and the prior complaint may be made by his/her legal representative, and if he/she has limited exercise capacity, he may be personally made with the consent of the persons provided by the civil law. If the perpetrator is even his/her representative, the criminal prosecution bodies may order the commencement of criminal prosecution, the continuation of criminal prosecution of the suspect and the bringing of criminal proceedings, by virtue of the fact that, exceptionally, the existence of the preliminary complaint on certain offenses. Another exception to this rule is where the author is even the representative of the legal person whose interests should be protected.⁶

If we are in the situation of the provisions of art.199 of the Penal Code on domestic violence, where the commencement of the criminal action is conditioned by the existence of the preliminary complaint and the withdrawal of the preliminary complaint takes place, the prosecutor shall decide whether or not the will of the injured person, having the possibility to continue the prosecution as it deems necessary.

Practical aspect:

- On May 15, 2015, R.E. has filed a preliminary complaint, for the offense of hitting or other violence, against her husband, R.L., by making available to the criminal investigation authorities and a medical certificate, certifying that after the blows received it required 11 days of medical care. Subsequently, on 18 August 2015, she appeared before the criminal prosecution authorities saying she wanted to withdraw his previous complaint. Since the evidence-based economy shows that for R.L. this is not the first offense of this kind, and two more criminal cases have been filed in the last year by withdrawing the preliminary complaint and the perpetrator is known as a very violent person, it is concluded that he presses the injured person in order to withdraw the preliminary complaint, which is why the prosecutor considered it necessary to continue prosecution with regard to the suspicion and the initiation of the criminal action as finally to forward the file to the competent court.

When referring to the existence of the prior complaint we also consider the active or passive indivisibility of criminal liability in the sense that if the preliminary complaint was formulated only by one of the injured persons although there are several persons

who have been injured the author will answer the criminal as well if the prior complaint concerns only one person, the prosecution will extend to all the perpetrators of the crime regardless of whether they are authors, co-authors, instigators or accomplices.

As regards the procedural period of revocation, the New Code of Criminal Procedure establishes it at 3 months from the day when the injured party learned of the act and does not take into account whether at the time when he learned of the criminal offense he knew the author or not. If the injured party is a minor or an incapacitated person, the term of revocation shall run from the time when his legal representative has learned of the existence of the deed. It has been concluded in the case-law that in the case of an abuse of trust which is committed by the refusal to return a good, the period of decline begins to run from the moment the author has given his first refusal, a solution given by the Bucharest Tribunal. Also regarding the introduction of the preliminary complaint, we encounter a situation in which the mediation between parties is interrupted, and the mediation period is not taken into account when establishing the term of introduction, being considered suspended.⁷

In the case of flagrant finding of the offenses of which the criminal proceedings are triggered, is conditioned by the existence of the preliminary complaint, the criminal prosecution or finding body shall be obliged to state the perpetrator, to record the minutes, then the criminal prosecution body to ask the injured person if he/she wants to file a preliminary complaint.

Practical aspect:

- On May 14, 2015, a patrol of public order and safety, moving in the area of the block parking, in the city of Sinaia, surprised the named E.F. while hitting the door of a car. The author of the deed stated verbally that he had made this gesture because the car is parked on the place he usually parked. The police have drawn up a verbal record of the flagrant crime for destruction, and the criminal investigation authorities have identified the owner of the car that said he did not want to file a criminal complaint for the crime of destruction. A criminal case file was drawn up on the basis of the minutes and was submitted to the prosecutor's office for classification, as the preliminary complaint was missing.

If the criminal prosecution for an offense has started and the legal classification of a criminal offense has subsequently changed depends on the existence of the prior complaint, the criminal prosecution bodies will ask the injured person if he wishes to make a preliminary complaint and the term for the forfeiture flows from that time.

1.6. Conclusions

The common point of all the means of referral is that it always takes the written form, either by direct

⁶ Mihail Udroiu. Procedură penală. Partea specială, 2017, pag. 23.

⁷ Mihail Udroiu. Procedură penală. Partea specială, 2017, pag.24-25.

recording of the injured person or by the oral hearing. In practice, the document of referral is the document which will always contain the registration number of the prosecutor's office or, as the case may be, of the criminal prosecution body and resolutions of the hierarchical chiefs on the registration procedure and the worker to whom the work was assigned for verification and settlement.

The referral is the effect of a manifestation of will for the purpose of conducting criminal proceedings that may come from the criminal investigative body, the finding body or the injured person whose interests or rights have been violated as a result of committing an offense.

The referral is the procedural act by which a natural or legal person addresses the criminal prosecution body in order to achieve the object of criminal prosecution. The referral may refer to a partial or complete description of the offense, and the criminal

investigative body is required to discover and collect material evidence to lead to the truth, even if some aspects are not to the liking of the person who made the referral.

According to the Code of Criminal Procedure the act of referral is not a material means of evidence, except for the rule, it makes the report of the flagrant offense.

The lack of the referral makes it impossible to draw up a procedural act of subsequent criminal prosecution such as the commencement of criminal prosecution, the continuation of criminal prosecution of the suspect or actuating criminal prosecution. The prosecutor or the criminal investigating body refers to the manner in which they are referred in most of the procedural or procedural acts that they draw up. Thus, the prosecutor reminds the act of referral in all the ordinances he makes when conducting the criminal prosecution.

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