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SOME ASPECTS REGARDING THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL TRIAL IN ROMANIA

G. NEGRUȚ

Gina Negruț
Police Faculty, Police Academy Bucharest, Romania
E-mail: ginnanegrut69@gmail.com

Abstract: *The need to ensure procedural guarantees regarding the respect of individual rights and freedoms during a criminal trial brings together the will of the legislator to regulate through criminal procedural provisions the smooth conduct of the criminal trial with the practical possibility of solving criminal cases by the judicial bodies, respecting the attributions conferred by law according to their competence. This objective could only be fulfilled by regulating new principles that would ensure the conduct of the criminal process by separating judicial functions, by speeding up procedures and resolving criminal cases brought to trial within a reasonable time, respecting the right to freedom and safety, based on the evidence administered in good faith, excluding evidence obtained illegally.*

Keywords: *the principles of the criminal process, the defendant, the criminal investigation, the preliminary chamber, the trial, the appeal regarding the duration of the criminal process*

General considerations regarding the fundamental principles of the Romanian criminal process

The system notion of the fundamental principles of the criminal process involves two aspects, namely, on the one hand, the knowledge of its component elements and, on the other hand, the identification of the interdependence between these principles in the complex process of conducting the criminal process (Neagu, 2020:86). Moreover, the fundamental principles of the criminal process have a major importance both in the activity of creating substantive law, in its interpretation, and in its practical application, the functionality of the entire system of fundamental principles being ensured by their interaction and convergence, whose finality is concretized during the criminal process by fulfilling its purpose, namely, bringing those who have committed crimes to criminal responsibility (Theodoru, 2020:71).

In the provisions of Law no. 135/2010 on the Code of Criminal Procedure, along with the classic principles (of legality, finding the truth, the presumption of innocence, the right to defense, respect for human dignity, guaranteeing the freedom of the person), new principles were introduced, such as that of the right to a fair trial carried out within a reasonable time, of the separation of judicial functions in the criminal process, of the obligation of the criminal action closely related to the subsidiary of opportunity, ne bis in idem, and in the matter of probation, the principle of loyalty in obtaining evidence.

The principles are essential ideas, prior to the normative act that regulates them, having their source in the relationships between people, in the generalizations induced from

social experience or even from human nature, going beyond the legal, normative and jurisprudential origin, and in criminal procedural matters, the normative provisions of the legislative system presents itself as a systematized entity, with its own and unitary logic, correlated and explicable through each other, offering the image of a unitary whole, the result of a concern to place judicious and rational of the provisions that regulate the conduct of the criminal process (Neagu, 2020:88). Such a systematization demands the existence of guiding rules, without which the will of the legislative body could not be known, and the provisions would not have been adopted and applied coherently, in a non-contradictory way, in the form of the system of fundamental principles. What is actually worth noting in the system of the fundamental principles of the criminal process is the fact that each of them is in a close relationship with the other basic rules, as well as with the derived ones, as well as with all of them, they cannot be isolated from each other from the other due to the logical-legal connections that exist between them, being regulated in the Criminal Procedure Code at art. 2-12 (Gheorghe, 2021:45).

General considerations regarding the principle of fairness and the reasonable term of the criminal process

The provisions of art. 8 CPC establishes for the first time in the provisions of the Code of Criminal Procedure the principle of fairness and the reasonable term of the criminal process, adapting the internal legal framework to the requirements arising from the need for harmonization with the provisions of the European Convention on Human Rights.

In this sense, the judicial bodies have the obligation to carry out the criminal investigation and the trial respecting the procedural guarantees and the rights of the parties and the procedural subjects, so that the facts that constitute crimes are ascertained in time and completely, no innocent person is criminally liable, and any person who has committed a crime to be punished according to the law, within a reasonable time.

Art. 6 para. 1 of the European Convention on Human Rights recognizes to any person accused of committing a crime the right to obtain, within a reasonable time, a definitive decision regarding the validity and legality of the accusation brought against him. These provisions are currently found in the provisions of art. 8 CPP, the legislator thus regulating, distinctly in the current content of the Code of Criminal Procedure, the principle of operativeness.

This special procedure was implemented by Recommendation (2004) 6 of the Committee of Ministers to the member states regarding the improvement of internal appeals, which states that, according to art. 13 of the Convention, member states are committed to ensure that any person who has a credible complaint regarding the violation of his rights and freedoms guaranteed by the Convention has the right to an effective appeal before the national authorities.

The fact that any person who has committed a crime must be held criminally liable by applying a sanction within a reasonable time is part of the right to a fair trial, but the beneficiaries of this rule are not only the person accused of committing a crime, but also the injured person or the civil party, who are equally entitled to a trial with a reasonable duration or to the settlement of the civil action within a reasonable term (Volonciu, 2014:1397).

In assessing the "reasonable term" in criminal matters, the criteria regarding the nature and object of the case can be taken into account; the complexity of the case, including taking into account the number of participants and the difficulties of administering the evidence; the extraneous elements of the cause; the procedural phase in which the cause is located and the duration of the previous procedural phases; the behavior of the appellant in the analyzed judicial procedure, including from the perspective of exercising his procedural and procedural rights and from the perspective of fulfilling his obligations within the process; the behavior of the other participants in question, including the authorities involved; the intervention of legislative changes applicable to the case.

The main remedy established in the provisions of art. 488^1-488^6 CPP which regulates the appeal procedure regarding the duration of the criminal trial is represented by the acceleration of the resolution of the cases brought to trial, for the benefit of the parties and the subjects of criminal proceedings.

The appeal regarding the duration of the criminal trial

The appeal procedure seeks not only to establish the violation of the right to resolve the criminal case within a reasonable time, but also to speed up the procedure for resolving the case brought to trial. The provisions that regulate the institution of the appeal regarding the duration of the criminal process refer to the cases in which the criminal investigation or trial activity is not carried out within a reasonable time, which is why an appeal can be made.

Although the legislator did not provide it distinctly, from the interpretation of the provisions of art. 4881 CPP results that the object of the appeal is represented by the finding of the violation of the right to resolve the process within a reasonable time, a fact that constitutes a principle of criminal procedural law, as enshrined in the provisions of art. 8 CPP (Mateuț, 2024:975).

The acceleration of the procedure thus assumes, in the light of the provisions of the current Code of Criminal Procedure, that the judicial bodies carry out the procedural documents and the procedural documents within a certain period, established by the judge of rights and liberties or by the court, according to art. 488^6 CPP.

The holders of the appeal are distinctly provided, depending on the phase in which the criminal process is, namely, during the criminal investigation, the appeal can be introduced by the suspect, the defendant, the injured person, the civil party and the civilly responsible party. Any of these parties or procedural subjects can formulate the request, and during the trial, the appeal can be introduced by the defendant, the injured person, the civil party and the civilly responsible party, as well as by the prosecutor.

According to the provisions of art. 488^3 CPP, the appeal is formulated in writing and must include: the name, surname, domicile or residence of the natural person, respectively the name and seat of the legal person, as well as the capacity in question of the natural or legal person who prepares the request, the name and capacity of the person who represents the party in the process, and in the case of representation by a lawyer, his name and professional office, mailing address, the name of the prosecutor's office or the court and the file number, the factual and legal grounds on which grounds the appeal, date and signature.

The terms in which the appeal regarding the duration of the criminal process can be formulated were established by the legislator within the provisions of art. 488^1 para. (3) CPP, and thus an appeal can be made: after at least one year from the start of the criminal investigation, for the cases that are in the course of the criminal investigation; after at least one year after being sent to court, for the cases that are in the course of the trial in the first instance; after at least 6 months from the filing of an appeal with the court, for cases under ordinary or extraordinary appeals.

Analyzing the provisions that regulate the term for filing an appeal regarding the duration of the phases of the criminal trial, we can see that these regulations do not apply in the preliminary chamber phase, as the text of the law does not explicitly regulate the possibility of introducing the appeal route regarding the duration of the preliminary chamber procedure as such as provided for the criminal investigation phase and the trial phase in the first instance, in ordinary or extraordinary appeals (Negruț, 2024:682). Thus, the appeal can be introduced only after the start of the trial, although, from the judicial practice, there are situations in which the duration of the preliminary chamber procedure exceeds the term provided by the legislator in the content of art. 343 CPP, namely "the duration of the preliminary chamber procedure is no more than 60 days" counted from the date of registration of the case at the court competent to judge the case at first instance (Chiriță, 2015:1).

The Pre-Trial Chamber and the implications of exceeding the duration of proceedings within it

According to the Statement of Reasons for the draft of the new Code of Criminal Procedure, the preliminary chamber was intended to be a new, innovative institution in the landscape of criminal procedural law institutions, created in order to create a modern legislative framework, which would eliminate the excessive duration of the procedures in the phase of court and which has the competence to solve the issues related to the legality of the referral to court and the legality of the administration of the evidence, ensuring the prerequisites for the speedy resolution of the case on the merits, pursuing in this way the elimination of some deficiencies that led to the conviction of Romania by the European Court of Human Rights for the violation of the excessive duration of the criminal process.

Currently, by reference to art. 3 paragraph (1) lit. c) CPP, we note that, in terms of exercising the judicial function of verifying the legality of sending or not sending to court, the preliminary chamber fulfills a well-defined function through the powers exercised by the judge of the preliminary chamber according to the provisions of art. 54 CPP.

In addition, the object of the preliminary chamber procedure is the verification, after the referral to court, of the competence and legality of the referral to the court, as well as the verification of the legality of the administration of evidence and the execution of documents by the criminal investigation bodies, in order to establish the formal suitability of this procedure to trigger the third phase of the criminal process, namely the trial of the merits of the criminal case (Micu, 2021:13). The preliminary measures are expressly stipulated in the content of art. 344 CPP, so that, after the court is notified by indictment, the file is randomly distributed to the judge of the preliminary chamber.

If requests or exceptions were made or if exceptions were raised ex officio, according to art. 344 para. (4) CPP, upon expiry of the terms provided for in para. (2) and (3), i. e. of the minimum 20-day terms, the judge of the preliminary chamber sets the term for their resolution, with the summons of the parties and the injured person and with the participation of the prosecutor.

According to the provisions of art. 345 para. (1) CPP, the judge of the preliminary chamber solves the requests and the exceptions formulated or the exceptions raised ex officio, in the council chamber, listening to the conclusions of the parties and of the injured person, if they are present, as well as of the prosecutor, to be pronounced in the council chamber, based on the papers, the material from the criminal investigation file and any other means of evidence.

It should also be mentioned that in a criminal case it is possible for the prosecutor's indictment to be based on evidence that constitutes classified information, in which case the preliminary chamber judge from the competent court to judge the case at first instance must urgently request the competent authority declassifying such information or moving it to a lower level of classification, granting defense counsel for the parties and the injured party access to the classified information, based on their possession of the authorization of access provided by law, and in the event that they do not hold such authorization, and the parties or, as the case may be, the injured person does not appoint another defense attorney who holds the authorization provided by law, it is necessary for the judge of the preliminary chamber to take measures for the appointment of ex officio lawyers who hold such authorization.

The conclusion by which the preliminary chamber judge pronounces is immediately communicated to the prosecutor, the parties and the injured person. Analyzing the case file, as well as the referral document, the preliminary chamber judge can: find irregularities in the referral document; to sanction according to art. 280-282 CPP criminal prosecution acts carried out in violation of the law; to exclude one or more tests administered.

In such cases, within 5 days from the communication of the conclusion, the prosecutor must remedy the irregularities of the referral act and communicate to the judge of the preliminary chamber if he maintains the order of referral to court or if he requests the return of the case to the prosecutor's office.

In the event that no requests and no exceptions were made and no exceptions were raised ex officio, and the judge of the preliminary chamber ascertains the legality of the referral to the court, the administration of the evidence and the execution of the criminal investigation documents, he orders the start of the trial.

If he rejects the requests and exceptions invoked or raised ex officio, by the same conclusion the judge of the preliminary chamber ascertains the legality of the referral to the court, the administration of the evidence and the execution of the criminal investigation documents and orders the trial to begin.

In all other cases in which he found irregularities in the reporting act, which, although not remedied, as would have been necessary, according to art. 345 para. (3) CPC, does not prevent the establishment of the object or the limits of the trial, excluded one or more administered evidence or sanctioned according to art. 280-282 CPP criminal investigation documents carried out in violation of the law, the preliminary chamber judge orders the start

of the trial. The preliminary chamber judge who ordered the start of the trial exercises the judicial function in the case, and pronounces in the preliminary chamber procedure on preventive measures. Against the solutions ordered by the preliminary chamber judge according to art. 346 para. (1)-(4^2) CPP can appeal to the prosecutor, the parties or the injured person. It is true that the preliminary chamber procedure is an integral part of the criminal process, being also considered a distinct phase of it, i.e. one of the phases of the criminal process, just like the criminal investigation phase and the trial phase.

In this procedure, the way of carrying out the entire criminal investigation is verified, and after its completion the trial can begin and as long as the criminal investigation and the trial are subject to a reasonable term, it follows that the intermediate phase of the preliminary chamber should also be resolved in - a reasonable term, being able to use the same procedural remedy in case of exceeding this term, although, unlike the other two phases of the criminal process, the preliminary chamber is limited in time to a duration of 60 days and we believe that this is the reason why the possibility of filing an appeal in the preliminary chamber was not expressly provided for.

The term of 60 days is a recommendation term as no penalty has been provided for not falling within this time frame, but, on the other hand, it represents a purely theoretical term, because in practice it has been proven that the 60 days are exceeded in most of the causes, even in criminal cases considered to be "simple", with a small number of crimes or defendants, the 60-day deadline being difficult to meet, and in the case of causes with a high degree of complexity, the preliminary chamber procedure lasts at least several months, which also represents an exceeding of this term.

Consequently, as it can be considered a term of recommendation for the preliminary chamber judge, the provisions of art. 4881-4886 of the CPP that regulates the institution of the appeal regarding the duration of the criminal trial, and for the reasons stated above, moreover, the High Court of Cassation and Justice ruling moreover, by the Criminal Conclusion of 28.10.2015 that, in the procedure of the preliminary chamber, the appeal regarding the duration of the criminal trial meets the conditions of admissibility, (solution based on the provisions contained in art. 6 and 13 of the European Convention on Human Rights), and fixed a deadline for the completion of the judicial procedure regarding the commencement of the trial in question (Chiriță, 2015:2).

Conclusions

Through the criminal procedural system, society organizes its defense strategy against criminal acts, with the aim of protecting the main social values, both passively, by imposing the prospect of applying a criminal law sanction, and actively, by holding criminally liable those who committed crimes.

We therefore consider it appropriate as a proposal for a ferenda law in the matter of the institution of the appeal regarding the duration of the criminal trial, or the inclusion in the provisions of art. 488^1 para. (3) lit. b) CPP of the procedure of the preliminary chamber, so that the mentioned text has the following expression "after at least one year from the referral to court, both in the procedure of the preliminary chamber and in the trial phase, for the cases that are in the course of the trial in the first instance court", or by a decision of the Î.C.C.J. which will contribute to the uniform interpretation and application of the current provisions

of art. Art. 488[1] para. (3) lit. b) CPP, in the sense of giving the possibility to file an appeal regarding the duration of the criminal trial and regarding the duration of the preliminary chamber procedure, with the amendment of the provisions of art. 343 CPP which stipulates that "the duration of the procedure in the preliminary chamber is no more than 60 days from the date of registration of the case at court", since the interpretation of this term of 60 days is considered to be a "recommendation term".

REFERENCES

1. Chiriță Radu, *The statement regarding the duration of the criminal trial in the preliminary chamber. Admissibility*, Commercial Company A. Chiriță & Associations, https://www.chirita-law.com/constestatia-privind-durata-procesului-penal-in-camera-preliminara-admisibilitate/.
2. Gheorghe Teodor Viorel, *Finding the truth, fundamental principle of the criminal process*, Ed. Hamangiu, București, 2021.
3. Mateuț Gheorghiță, *Criminal procedure. The special part*, Ed. Universul Juridic, București, 2024.
4. Micu Bogdan, *The preliminary chamber*, Ed. Hamangiu, Bucureşti, 2021.
5. Neagu Ion, Damaschin Mircea, *Treaty of criminal procedure. The general part*, ed. a IV-a, revizuită și adăugită, Ed. Universul Juridic, București, 2020.
6. Negruț Gina, Boroi Alexandru, *Criminal procedural law*, ed. a IV-a revised and updated, Ed. Hamangiu, București, 2024.
7. Theodoru Gr. Grigore, Chiș Ioan Paul, *Criminal Procedural Law Treaty*, ed. a IV-a, Ed. Hamangiu, Bucureşti, 2020.
8. Volonciu Nicolae, Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor Viorel, Chiriță Cătălin Mihai, *The new Criminal Procedure Code commented*, Ed. Hamangiu, București, 2014.
9. *Explanation of reasons for the draft of the new Criminal Procedure Code*, https://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10394.
10. Law No. 135 of 2010 regarding the Criminal Procedure Code published in the Official Gazette No 486 of 15 July 2010.
11. The European Convention on Human Rights - https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=LEGISSUM%3Aeu_human_rights_convention.
12. Recommendation (2004) 6 of the Committee of Ministers to the member states regarding the improvement of internal appeals - https://www.juridice.ro/wp-content/uploads/2013/12/CM_2004_6.pdf.
13. Statute of the International Criminal Court - https://www.legal-tools.org/doc/759f54/pdf/.