The criminal proceedings.
Concept, object, subjects and features

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Abstract: Assessed as being one of the fundamental institutions of the Romanian criminal law, criminal proceedings are put in motion and are pursued throughout the whole trial, constituting the legal instrument through which the person blamed of committing an offence is brought before the Court to answer for the violations of the criminal law that he is guilty of. From this point of view it can be asserted, without fail, that the criminal proceedings determine the commencement, conduct and completion of the criminal trial.

Commencement of criminal proceedings lies under the immediacy exercise of the criminal action, which involves the identification of the guilty person and bringing him to justice, by putting in motion the criminal proceedings, motivated by the argument that such action may be exercised only against a specific person.

The conduct of criminal proceedings is boosted by exercising the criminal action and sending or calling of the accused before the Court, in order to probe the allegations and establish the punishment.

In the end, the condemnation and execution of a definitive judicial ruling are the consequence of the exercise of criminal action, through which the convicted person is held criminally accountable, in accordance to the degree of guilt and the committed deed.

The above outlines the legal-social importance of this institution and constitutes sufficient arguments to support the idea that you cannot conceive the existence of a process without this means through which the legal conflict born through the violation of legal criminal norms is brought to justice. In addition, the rules of substantial criminal law would not be applicable and, in connection with this, the existence of judicial organs would be purposeless and criminals could no longer be held accountable.

This paper analyses from a legal and doctrinal point of view the general elements specific to the criminal action, with the purpose of clarifying some contradictory aspects regarding the concept, object, subjects and its features, arguing and supporting the idea that the absence of the institution in question would be likely to create social chaos, with reference to the laws of other European States.

Keywords: criminal action; object; legal basis; prosecutor; accused; punishment.

INTRODUCTION

Committing an offence prejudices, firstly, the rule of law, and the latter can not be restored except by criminal punishment of the offender. The same offence can bring damages to a person. The legal instrument through which you can obtain the payment of these damages is a civil action. Also, committing a crime at work may affect the work discipline, in which case a disciplinary action may be brought forth, which will have as a purpose the application of sanctions under labor law. The above are arguments in favor of the idea that, depending on the nature of social values endangered by the committed action or inaction, the restoring the rule of law is carried out by means of an action.
By committing an offence a substantial criminal conflict is born between society, represented by the State, on one hand, and the offender, on the other hand. This conflict must be settled by the competent judicial bodies (organs of criminal investigation, public prosecutors and judges).

1. THE NOTION OF CRIMINAL ACTION

As it has been noted, the correct legal instrument (institution) by means of which the criminal conflict is brought to be solved by the judicial organs is known as criminal proceedings. [1]

The Romanian criminal procedure doctrine treated the concept of action, generally, under two aspects: material (substantial) law and formal (procedural) law.

From a material aspect, the criminal proceedings constitute the expression of the right to bring to justice the offender, equivalent to the right of the State to promote the criminal proceedings born from the violation of the legal norm of incrimination. In other words, the right possessed by one of the subjects of the legal conflict (the passive subject of the offence) to impose, through the competent judicial bodies, to the other subject (the active subject of the offence) to respect the breached right. Committing an offence makes the virtual right of the state to obtain, through its bodies the application of legal sanctions to offenders, gain a real efficiency.

From a procedural aspect, the criminal proceedings is the legal instrument made available to the lawful ones, by means of which the conflictual legal report is deducted before the judicial bodies in order to stimulate the criminal process and achieve its goal.

Thus, the legal action – in a substantial sense – is a right (the right to legally punish the one who committed the unlawful act) and in a procedural sense it is a legal tool provided by law for implementing that right. As a result of the foregoing, the action, in a procedural sense, must be put in motion and is only exercised on the right to action in a material sense. [2]

In the criminal law that governs the acts regarded as crimes, the idea of bringing the conflict, born through breach of the criminal law, in front of the judicial organs in order to bring criminal liability to those who are guilty of committing such acts, is implicitly institutionalized. Therefore, the possibility of bringing the conflict before the judicial bodies, through a legal tender, is provided in the incriminating rule. Therefore, it is rightly emphasized that the criminal proceedings as the legal instrument for bringing the conflict in front of the judicial organs, virtually exist in the legal rule of criminal law, but it became an actual instrument to be used only when the criminal legal norm has been violated by committing an offence. [3]

The formulation shared by some authors, according to whom criminal proceedings automatically and invariably arise from the fact the criminal committed, without any exception, was criticized on the grounds that it does not properly convey the relationship between the legal norms of substantial law, which underpin the right to legal action, and the procedural legal norms, which regulate the exercise of action. It was rightly claimed and it still is that what is born out of crime it is not the action, but the right to action that can, then, be used in front of the judicial bodies. [4]

Action is not born from committing the infringement, but from the legal norm that proclaims the illicit. What appears from committing the infringement is the use (exercise) of action. Until the moment when the unlawful act has been committed, the action granted by the legal norm exists only virtually, as created legal power; since then the action becomes exercisable, meaning a real efficient power (potestas agendi).
The right to action exists in a virtual mode, as a legal institution, from the moment legal norms were prescribed. Their use is determined, however, only by committing a crime, whereas the violation of the penal norm gives rise to a legal report that must be brought before the judicial organs – by exercising criminal action.

Given the autonomy of the criminal action, and its particular functionality in criminal proceedings, it can be said that this is a procedural institution of particular importance, constituting the legal means through which the purpose of the criminal proceedings shall be carried out. This explains the fact that some laws have entered criminal proceedings at the top of the table in relation to other procedural institutions, significant in this respect being the regulation of the French Code of criminal procedure, which, in article 1, specifies how criminal proceedings are put in motion and how are they exercised. [5].

In the Western doctrine it was often emphasized that the action should not be confused with the pursuit. The action means the power or the ability to submit a request to the judge, i.e. the subjective right, in a proceeding, to obtain a substance decision against a claim made. Because action is distinguished from legal request, it was concluded that in criminal proceedings the public action must be distinguished from its setting in motion and its practice, i.e. the so-called criminal prosecution, as that specific institution is known as in the French legal terminology. Penal action is important in terms of determining the procedural position of the perpetrator. By starting criminal proceedings against a person, that person becomes the culprit. This fact turns the offender from the subject of procedural rights into part in the process, constituting the basis under which the offender shall exercise the rights incumbent to any party.

Although the many definitions given by specialty literature to criminal action are different between them, they all have a common feature key, envisioning the object of criminal action in the same way.

2. THE OBJECT OF CRIMINAL ACTION

As stated in art. 9, par. 1 of the Criminal Procedure Code, criminal proceedings aim at punishing criminal liability of the persons who have committed offences, which means the settlement of the legal conflict, emerged from an offense, through justice.

The offender is brought before the criminal investigation bodies and the Public Prosecutor, as accused for committing a crime, after which, if the legal conditions are met, he is held liable as the culprit, and when the Court applies the penalty prescribed by the criminal law he becomes a convict; as such criminal liability – as object of criminal action – is achieved.

By confusing the subject of a criminal action with its purpose, many theorists believed that criminal action has to ensure the application of a criminal law sanction. [6] This confusion was very common in the legal concept from the past and had as a support the inadvertent expression of its own legal regulations. Thus, in the Romanian Criminal Procedure Code of 1936 it was regulated the fact that: "public action aims at implementing sentences and security measures" (article 2), and in article 2 of the Criminal Procedure Code of the year 1864 shows that: "public action aims at punishing acts which harm social order." In both codes, and sometimes in the criminal procedural law works, the object of the criminal action - criminal accountability - is confused with its purpose - application of criminal law sanctions.
According to the regulations of the Criminal Code in force, committing a criminal law offence can attract not only the application of a criminal sanction (punishment), but also measures with an educational or safety character. The current regulation of criminal action contains an appropriate formulation, because through this criminal action the prosecution seeks criminal liability; the action may be exercised throughout the criminal process.

Considering that the criminal proceedings aim at applying criminal sanction means to reduce the possibility of the action exercise only to the judgment phase, because only in this stage criminal penalties are applied. Such a conclusion would be entirely inaccurate, since, according to article 9, paragraph 3, of the Criminal Procedure Code, criminal proceedings may be exercised throughout the criminal process. [7]

Criminal liability has a wider content than punishment application, the latter being limited only to the conduct of the trial in the Court. Under the terms of the actual formulation of its objects, the action becomes the legal support of the entire criminal trial, not only of the judgment. In order to achieve, in a procedural sense, the object of the criminal action, the criminal liability of persons who have committed offences, it is necessary to carry out some procedural acts involving the intervention of certain organs and persons in certain forms and under well-established rules.

3. THE SUBJECTS OF CRIMINAL PROCEEDINGS

Criminal action, as any legal action, has many factors, without which you can not get to achieve your goal – application of criminal law penalties. The subjects of criminal action are among these.

The subjects of the legal conflict are naturally subjects of a criminal action. In other words, the subjects of the legal relationship of substantially criminal law appear as subjects in the context of the criminal procedural law report, and are also the subjects of criminal action. In the application field of criminal law the specialty literature refers respectively to the passive subjects and active subjects of an offence but also to the passive and active subjects of criminal law report.

The active subject of the crime is the offender, a person who has committed a criminal offence and is held accountable for it, while the passive subject of the offence is the company (State) whose law order has been violated and the natural or legal person physically, morally, or materially injured because the offence has been committed.

In the report of the criminal law that is born because an offence has been committed, the passive subject of the offence, the company, becomes the active subject of the criminal procedural law report, and the active subject of the offence, the offender, becomes the passive subject of the criminal procedural law report. [8]

According to the regulations in force, the Prosecutor is the main active subject of criminal action, as the qualified representative of the State, which has the functional responsibility to trigger and pursue criminal proceedings. In addition to the provisions with special character from the criminal prosecution, in conjunction with those contained in Law No. 304/2004; the assertion is also supported by article 2, paragraph 2, of the Criminal Procedure Code which established the fundamental rule according to which criminal liability is to be carry out ex officio.

Putting in motion a criminal action and its exercise consist in making accusations against a person, the author of a crime, its indictment through the act provided by law, calling or sending him to Court, support and proof the offence before the Court, including the exercise of rights to appeal and supporting them in front of the competent courts. [9] These are the dynamic elements which help the
criminal process flow, from the beginning of criminal pursuit until the pronouncement of a definitive sentence.

In exceptional circumstances, when there is data about perpetrating other material acts by a defendant, in connection with the offence he has been accused of, the Court, expands the criminal proceedings for the new acts, which is tantamount with putting in motion a criminal action (in accordance with article 335 of the Criminal Procedure Code). Previous regulations are vital for the court, thus becoming the holder of the criminal action. In addition, the Criminal Procedure Code also contains, in articles 336-337, similar provisions relating to the possibility conferred to the Court to extend the criminal process against other facts and/or persons, when the prosecutor does not participate to the proceedings, provided that the alternate character is maintained, in order to regulate the capacity of the Court to extend the criminal process and proceed to judging the cause as a whole or to seize the criminal prosecution body responsible for carrying out research, as appropriate. Because it does not provide a full separation of the accusation function from judgment and resolution of the criminal cause, this single provision was subjected to criticism, which resulted in significant restrictions, from a legal point of view, in cases where the Prosecutor does not participate at the judgment in the first instance (see regarding that effect article 315 Criminal Procedure Code).

Another aspect that deserves to be addressed refers to the ability of the injured party to be the active subject of criminal proceedings in regard to the offences which are analyzed or judged at a prior complaint. The majority of opinions expressed in the specialty literature state that the injured party can never be the active subject of criminal action, bringing in support of this claim the arguments listed above. Also prior to the complaint offences constitute derogation from the formality rule of the criminal process, as a whole, including the formality of the criminal action. In such situations, the legislature has left to the special passive subject (the injured party) only the right to decide on the motion of the criminal action, its withdrawal or reconciliation with the offender, the criminal proceedings, however, is executed by the State.

The passive subject, the defendant, is provided by law the right to fight charges with the purpose of refutation or reducing them, or invoke the regulations of Article 320 Criminal Procedure Code on judging a person when he admits guilt. Regarding criminal action, having a personal character, the passive subject can only be the person accused of committing an offence, any other person being surely excluded.

Passive subjects of criminal action may be the only individuals and businesses participating as active subjects of the substantial criminal law report. The ones that withhold and promote crimes are the passive subjects of criminal action, but do not have the quality of attendees to the crime for which they have favored or withhold but are the individualized authors of a separate offence; the criminal proceedings against them is separate from the one directed against the perpetrators, instigators or associates. The withholder is the passive subject of the criminal action in the case of the crime of withholds and promoter is the passive subject of the criminal action in the case of the crime of favoring.

In the case of educational and safety measures, the passive subjects of criminal action are the minors who are criminally responsible (14 to 16 years if they acted with discernment and those between 16-18 years), as well as persons who have committed offences under criminal law if it encounters any danger states provided by the same law. Both the educational measures as well as the safety measures are taken through legal proceedings, because they are the consequences of criminal liability.

All the parties participating in the criminal proceedings, active and passive subjects, must be placed on an equal footing, having the right to use the same procedural means both in supporting its
action and in its defense against its exercise. The equality of the parties seeks to remove any preponderance of some at the expense of others and encourages in the best way, a complete, objective and lawful resolution of the cause. During the trial, when there must be equality between accusation and defense, the procedural equality is also applied to the Public Prosecutor, although he is a legal public authority.

4. FEATURES OF CRIMINAL ACTION

Due to its specific object as well as the legal framework in which it takes place, criminal action requires certain characteristics that set it apart from any other legal action. These traits relate to criminal proceedings in its procedural and substantial meaning, action factors, and its use.

First, the criminal action is a social action, belonging to society and is exercised through certain State bodies namely invested. From this point of view we can say that it belongs to the State, as opposed to civil action which is private. [10]

The circumstance that the criminal action belongs to the State arises from the fact that it lays down through law the concrete terms and conditions of exercising the action. Also, the State is the one that, as the exponent of the people’s power, may provide by law for the criminal proceedings, either directly, or as a condition in advance. Thus, the criminal proceedings belong to the State also when the putting in motion is subjected to conditions of punishability and procedibility, because such requirements are not likely to change the essential features of criminal action and especially, to belong to the State [11].

In a situation where putting in motion the criminal action is left available to the injured person, the State is the one who remains responsible for punishing criminal liability or arranges the action through Amnesty.

Thus, the right to punish the criminal belongs to the state and the exercise of this right through criminal action, has the character of public policy and is therefore unavoidable [12]. However, you can specify that the State uses criminal action sporadically through the granting of amnesty or repealing the incriminating rules and also it conditionally gives up the criminal proceedings in case of prescription, non-inclusion of the prior complaint or when the two warring parties reconcile.

As the controller of the power to prosecute, through the rules of criminal law, the acts endangering certain social relations, the State appears as the general passive subject of any offence, because through their commission the right that requires compliance with the law is breached. On the other hand, as the controller of the action through which the specifically sanctioning of those who have committed offences is carried out, the State becomes the passive subject of the crime, the active subject of the criminal action, therefore one of the main features of criminal action is that the active subject of this action is the State.

This aspect is recognized both in our older legal literature as well as in the foreign, contemporary specialty doctrine. The formulation of this feature is often given in line with the views that consider that criminal action is “public order”, or simply names it "public action". For this purpose the older rules of Romanian legislation were drawn up; Art. 1 of the Criminal Procedure Code of the year 1864 stipulates that "any offence gives rise to a public action and can also produce a private action". In the German system, as in the Italian one, the criminal action is called public action.

Procedural, as the active subject of the criminal action, the state entrusts the exercise of the criminal action to a specialized, public authority, namely the Public Ministry, which has the task to pursue criminal proceedings ex officio.
The criminal action is also required. By committing an offence, the criminal action becomes exercisable, and its exercise becomes mandatory. The compulsoriness of the criminal action arises from the provisions of article 9 of the Criminal Procedure Code, which determines its object.

Therefore, whenever a crime has been committed and the other conditions provided for by law are fulfilled, the use of criminal action is mandatory, necessary and inevitable. Setting in motion and exercising of the criminal action is the service obligation of the competent authorities to carry out such work.

The criminal action is brought into motion ex officio, except for the situations in which prior complaint, authorization or referral of the competent organs is required. In particular cases in which the exercise of criminal action may be entrusted to other holders - in this case the injured person by committing the illicit act - criminal action exercise becomes optional.

Through *in rem* activity of the initiation of criminal pursuit the judicial activity is triggered, in order to defend the individuals' rights and freedoms. This corresponds to the principle of legality and it procedurally harmonizes with the formality principle according to which the achievement of justice appears necessary and inevitable. Both the legality and the formality of the criminal process are the natural consequences of its purpose.

Because it is mandatory its exercise against all the participants to the infringement, provided the existence of criminal liability, criminal action is indivisible; its restriction to only some participants is not possible. The indivisibility of criminal action arising from the offence’s unity as a legal fact, so from the indivisibility of incrimination norms which virtually includes the right to one single action.

Indivisibility exists even if more than one person took place at the committing of an offence. Accordingly, in this case only one criminal action shall be opened and the effects of the unique and indivisible action will extend over to all offenders, when they are all known. Thus, the uniqueness of criminal action, in a substantial aspect, may correspond to a plurality of actions, in a procedural aspect, when the participants are tracked down and separately held accountable.

What determines the unity and therefore the indivisibility of the criminal action, from a substantial point of view, is the crime as an indivisible legal fact and not the number of participants that helped to commit it. From committing an offence one single criminal action held against the accused is born; if it was definitively settled by the Court, it would extinguish and could no longer be exercisable. In other words, there will not be, in the case of participation, as many rights at criminal proceedings as the number of people who committed the unlawful act, but one right of action, directed against all participants. The possibility of procedural unity is regulates in articles 32 and 35 of the Criminal Procedure Code which provide the reunification of causes and determination of competences in case of indivisibility.

Normally, the criminal proceedings are set in motion and are exercised for the known participants at the moment the criminal process starts. If the existence of other participants is established during the criminal proceedings, the process will be extended to them, in which case we can not talk about putting in motion a different criminal action, but about extending the criminal process, meaning the procedural criminal action object. The extension can occur both in the investigation phase, and the phase of the criminal trial process.

If some of the participants are found after the others were definitively judged, procedural, another criminal action will be started, but on the basis of the initial criminal actions; in the substantial sense, this is a case of substantial unity with procedural plurality. When it is found that new crimes have been committed by the same accused or culprit or other persons, the criminal proceedings will be extended
(article 336 of the Criminal Procedure Code). In this case we talk about substantial plurality and procedural unity.

The criminal proceedings retain its indivisible character if it is put in motion due to the injured person's prior complaint. In this sense, if by committing the offence the interests of two or more persons are harmed, it is sufficient for the criminal proceedings to be put into motion with the complaint of one of them, and if there are more offenders it is enough for the complaint to be made only in respect to one of them for the criminal proceedings to be brought against all the participants. If the initiation would have been made separately at the complaint of each injured person, either before the same court, or before different instances, the dossiers must be grouped together at a single instance (articles 32 and 35 Criminal Procedure Code).

Furthermore, it would give rise to a situation of lispendency, whereby the accused would be tried at the same time, and for the same facts, by different instances.

If the criminal proceedings have been resolved as a result of the prior complaint of the single injured person, it can no longer be put in motion by the other injured persons for the same actions, because it opposes the authority of the judged trial. The decision through which the Court definitively establishes the criminal responsibility of the accused, in the sense if there are or not grounds for criminal liability settles the criminal proceedings by resolving its object. In accordance with article 131 of the Criminal Code, the offence entails the criminal liability of all participants, even if the prior complaint only mentions one or some of them.

In the case of offender plurality, even if the criminal proceedings put in motion by the prior complaint made against only one or some of them virtually produces effects to all of them, however, procedurally, this action may not be used in personam without knowing the offenders.

At the same time, the principle remains valid even if the prior complaint is withdrawn it is enough for one of the persons harmed to maintain its functional ability. The reconciliation between parts, having a personal character, does not cause the exclusion of these functional skills. As a result, in both cases the criminal process continues. For the closure of the process all injured parties should withdraw their prior complaint or reconciliation should occur between them and the culprit.

Criminal liability is personal because only the persons who participated in committing an offence as perpetrators, instigators or accomplices may be held liable, the criminal proceedings may only be exercised against them. The principle of criminal liability has as a consequence the procedure required for the individualization of criminal action. Criminal action can be exercised only against the defendant, with the exclusion of all persons involved in the criminal case or claim to intervene in the matter. For example, the criminal action can be exerted against the party responsible civilly or successors of the defendant. No one can ask to be the passive subject of criminal proceedings, next to the defendant or in its place.

The illicit act, which constitutes the legal basis of the criminal action, can not be committed only by a physical person who possesses all the attributes required by the criminal law with regard to age, discernment and responsibility; only this person will answer for his illicit criminal acts, except for crimes related to legal persons.

Criminal action can be characterized as irrevocable, retractable, continue and unavailable, meaning that the Public Minister, as holder of the exercise can no longer, in principle, after having exercised it, stop the action, which is going to be easily solved by courts. [13]

From the moment of its use and pending resolution of the criminal case, the criminal action follows its normal course. The criminal process can only be stopped only in cases specifically provided for by law; the irrevocability and absolute unavailability are not absolute principles, and there are legal
cases in which a State may dispose of the criminal proceedings by giving up its realization. Such cases exclude or remove the functional ability of criminal action. They can pre-exist the criminal process or can occur after it has started.

The Criminal Procedure Code provides the cases in which, during the criminal pursuit, the Prosecutor, upon the proposal of the criminal investigation body or ex officio may order for example, cessation of criminal prosecution or dropping criminal charges. The establishment of such causes makes the criminal proceedings not to be brought into motion or, if they have been made, they can no longer be exercised, so their functional ability is ceased. Inevitably, their determination will result in the termination of the criminal proceedings because they lack purpose.

Neither the injured party can have the criminal proceedings put in motion with a prior complaint, because, even if it withdraws the complaint, the State conditionally gave up the action the moment the deed has been incriminated.

The unavailability of criminal action has a close connection with the fundamental principle of the formality of criminal process, which entitles the State to hold criminal liability on the offender, after the time of the crime. At the same time, the law stipulates that the purpose of criminal proceedings is to find at the right moment and in full the facts which constitute the offence. So, it appears that judicial bodies are required to carry out legal proceedings whenever a crime has been committed. The existence of the principle of formality or obligation of criminal proceedings is based on this theme.

The application and compliance of formality makes the extinguishment of criminal proceedings take place only through the definitive resolution of the case or through the intervention of circumstances which hinder the exercise of criminal action.

The formality of criminal proceedings requires the exclusion of the possibility for the parties to stop the continuation of criminal proceedings; only the judicial organs have the power to terminate a case. In addition to these features, some authors mention the failure to identify the criminal action with a legal qualification; the entitlement to action exists regardless of the nature of the offence. [14]

All the characteristic features of criminal action give it a legal autonomy which distinguishes it, conceptually and functionally, from the other categories of legal action. In the development of criminal process these traits are naturally present; they fall on the entire rules related to this institution.

CONCLUSION

In modern society, the state is the only distributor of justice and the legal action is the means through which seeks to do justice.

The legal action is a sine qua non significance, generally valid, in the process of any kind, for not bringing proceedings in the trial can not reach the prosecution of a person and to the penalty provided by law.

Without legal action, can not be exercised the judgment of the court and then, on appeals, so justice. Therefore, the performance of action is the dynamic element that drives the process until a final judgment by the court.

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