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ANALYSIS OF THE NORMATIVE FRAMEWORK AND OF THE DOCTRINE REGARDING THE VERIFICATION OF THE NOTIFICATIONS CONCERNING THE COMMISSION OF THE CRIME AND OF THE PROCEDURE FOR INITIATING THE CRIMINAL INVESTIGATION

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ABSTRACT

The criminal process begins with the registration of the notification regarding the crime and after that procedural actions can be carried out. In the time interval between the registration of the notification regarding the crime and the beginning of the criminal investigation, the criminal investigation body is entitled to carry out procedural actions pursuant to art. 279 of the Code of Criminal Procedure. From the moment of notification or self-notification until the issuance of the ordinance to initiate criminal proceedings, within this period, the finding body and the criminal investigation body may carry out only the procedural actions by which the rights of the parties are not infringed. At the same time, the initiation of the criminal investigation, or the refusal to initiate the criminal investigation, based on the ordinance of the criminal investigation body, will be considered the final limit of the verification phase of the notification regarding the crime. In case of starting the criminal investigation, by issuing the ordinance of the criminal investigation body, the respective procedural stage will determine the final limit of the verification phase of the notification of the criminal investigation body, on the one hand, and the initial limit of the phase - criminal investigation, on the other. Thus, it is not rational for the name of the beginning stage of the process to coincide with the name of the procedural act that allows the initiation of the criminal investigation - the beginning of the criminal investigation.

KEYWORDS: notification, criminal investigation body, start of the trial, beginning of the criminal investigation.

INTRODUCTION

The unitary character of the criminal process is not incompatible with the division of the criminal process into groups of procedural acts and measures which, by their object and by the acting authorities, are distinguished from other groups of procedural acts and measures. The science of criminal procedural law has delimited these groups of procedural acts and measures that form an ensemble with distinct features and has recognized the existence of *phases, periods, procedural stages*[1].

(...) criminal process involves the development of an activity composed of a succession of actions regulated by the criminal procedural law, an activity that requires that

[1] Theodoru Grigore Gr., Tratat de drept procesual penal, Ediția a 3-a, Ed. Hamangiu, 2013, p. 447.

in the discipline of procedural acts to be taken into account their sequence over time[2].

We are in line with the opinion of the doctrinaire Grigore Gr. Theodoru[3], who mentions that the ***procedural phase*** includes all procedural acts and measures, performed in the order and in the forms provided by law, by judicial authorities and parties, fulfilling a limited objective in achieving criminal proceedings. The objective of a procedural phase is the preparation of the next procedural phase, until, through the last phase, the purpose of the criminal process is achieved.

In the literature we find several opinions regarding the phases of the criminal process and their initial limit. For example, Eugen V. Ionășeanu mentions that the criminal process comprises three phases: criminal prosecution, trial and execution of final criminal judgments[4].

The author Gheorghiță Mateuț distinguishes four phases: criminal investigation, preliminary chamber, trial and execution of the criminal decisions. At the same time, the last author mentions that there is also a preliminary phase of the criminal investigation which has as object the investigation or ascertainment of the crime and the discovery of the author[5].

In the view of several authors, the criminal investigation is the first phase of the criminal process, which begins with the notification of the criminal investigation body and ends with the preparation of the indictment and the sending of the criminal case to the court[6].

Another paradigm supported by the authors of this article upholds the existence of a pre-trial phase.

METHODS AND MATERIALS APPLIED

Theoretical, normative and empirical material was used in the elaboration of this publication. Also, the research of that subject was possible by applying several methods of scientific investigation specific to the theory and doctrine of criminal procedure: the logical method, the method of comparative analysis, systemic analysis, etc.

THE PURPOSE OF THE RESEARCH

Examination and analysis of the internal regulatory framework, of the doctrine as well as of the jurisprudence regarding the procedural activities between the notification of the criminal investigation body regarding the commission of the crime and the issuance of a decision regarding the opportunity to continue the process.

RESULTS OBTAINED AND DISCUSSIONS

Title I of the Special Part of the Code of Criminal Procedure of the Republic of Moldova (hereinafter CCP) is entitled "criminal investigation", which includes: notification

[2] DCC no. 9 of 27.01.2020 of inadmissibility of the notification no.197g/2019 regarding the exception of unconstitutionality of some provisions of article 347 paragraph (3) of the Code of Criminal Procedure (point 17).
[3] Theodoru Grigore Gr., *Op. cit.,* p. 447.
[4] Ionășeanu Eugen V., Procedura începerii urmăririi penale, București, Editura Militară, 1979, p. 19-20.
[5] Mateuț Gheorghiță, Procedură penală. Partea Generală, București, Editura Universul Juridic, 2019, p. 27.
[6] Neagu Ion, Mircea Damaschin, Bogdan Micu, Constantin Nedelcu, Drept procesual penal, ediția a II-a, revăzută și adăugită, București, Editura Universul Juridic, 2011, p. 217; Theodoru Grigore Gr., *Op.cit.,* p. 449; Ionășeanu Eugen V., *Op. cit.*, p. 21

of the criminal investigation body, competence of criminal investigation bodies, initiation of criminal investigation, conduct of criminal investigation, etc.

The opinion that the initiation of criminal prosecution is an independent and mandatory segment of the criminal process is quite well established in the legal literature of the Russian Federation and currently does not provoke discussion[7].

However, long before that, some doctrinaires did not recognize the beginning of the prosecution as an independent phase. Some of them considered it as a preliminary part to the criminal investigation phase[8]. There was also a view that the initiation of criminal proceedings consists in issuing a single document[9]. Criticism of the latter argument has led M.S. Strogovich, who was one of the first to propose the concept of the independence of the procedural stage of initiating criminal proceedings[10].

„The initiation of criminal proceedings as a legal institution consists of a set of legal rules governing criminal proceedings, thus covering both the external and internal forms of such relations"[11].

„The beginning of the criminal investigation - it is not only a procedural decision, not only a legal category, but it is first of all, a phase of the process that always exists when the criminal process is initiated"[12].

There may be several contradictory discussions and opinions on this statement, so we come up with the following arguments, which were deduced from the analysis we performed.

According to art. 1 paragraph (1) of the Code of Criminal Procedure, ... *The criminal trial is considered to have started from the moment of notification or self-notification of the competent body about the preparation or commission of a crime.*

The second thesis from paragraph (1) of the art.1 of the Code of Criminal Procedure marks the beginning of the process – the moment of notification or self-notification of the competent body about the preparation or commission of a crime[13].

According to art. 55 paragraph (4) of the Code of Criminal Procedure (…) the *criminal investigation body, simultaneously with the registration of the notification (...), guided by the provisions of the Code of Criminal Procedure carries out criminal prosecution actions.*

The collaborative analysis of art. 1 and art. 274, 279 of the Code of Criminal Procedure allows to distinguish between ***the beginning of the process and the beginning of the criminal investigation***, as acts of initiation of different stages of the process, carried out successively. We agree with Professor Dolea I. when he states that, "There is no separate procedural act that would trigger criminal proceedings. Notification or self-notification serve

[7] To see Строгович М.С., Курс советского уголовного процесса, в 2-х т., т.2, М., 1970. с. 9; Гуляев А.П., Следователь в уголовном процессе, М., 1981, с. 109; Бобров В.К., Стадия возбуждения уголовного дела. Учебное пособие, М., 1997, с. 6-7; Алексеев Н.С., Даев В.Г., Кокорев Л.Д., Очерк развития науки советского уголовного процесса, Воронеж, 1980, с.168.
[8] Артемова Валерия Валерьевна, Возбуждение уголовного дела как уголовно- процессуальный институт. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2006, с. 40.
[9] Чельцов М.А., Советский уголовный процесс, 4-е изд., М., 1962, с. 231.
[10] Строгович М.С., Уголовный процесс. учебник, М., 1941, с. 151-152.
[11] Артемова Валерия Валерьевна, Возбуждение уголовного дела как уголовно - процессуальный институт. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2006, с. 53.
[12] Кисеев Н.М., Уголовный процесс. Учебник, К., Изд. Monograf, 2006, p.634.
[13] To see art. 262 of the CPP – modalities of notifying the criminal investigation body and art.art.263-265 – notification procedure.

as a basis for carrying out certain procedural actions"[14].

In art. 273 and art. 279 paragraph (1) Thesis II of the Code of Criminal Procedure, it is indicated which procedural actions are agreed by the legislator to be carried out in the time interval between the beginning of the trial and the beginning of the criminal investigation. Art.279 paragraph (1) Thesis I - of the Code of Criminal Procedure, prohibits the performance of any actions provided by the Code of Criminal Procedure, until *the beginning of the process*[15].

The Constitutional Court notes that *all procedural actions that take place at the stage preceding the criminal investigation have a sui generis character, focused on the purpose of establishing and confirming the existence of reasonable suspicion of committing a crime and is limited to 30 days from the moment of notification or self-notification to the criminal investigation body or to the prosecutor*[16].

Thus, the criminal process begins with the registration of the notification regarding the crime and after that procedural actions can be carried out. In the time interval between the registration of the notification regarding the crime and the beginning of the criminal investigation, the criminal investigation body is entitled to carry out procedural actions pursuant to art. 279 of the Code of Criminal Procedure. At the same time, the initiation of the criminal investigation based on the order of the criminal investigation body will be considered the final limit of the verification phase of the notification regarding the crime.

If we consider that the „criminal investigation" would be the first phase of the criminal process, then how will we assess the situation in which the initiation of the criminal investigation will be refused? On the one hand, the criminal investigation body is obliged to carry out actions aimed at collecting the necessary evidence regarding the existence of the crime, in identifying the perpetrator, in order to ascertain whether or not it is necessary to send the criminal case to court under the law and to establish its liability. Or, definitely these actions form the object of the criminal investigation[17]. On the other hand, the Code of Criminal Procedure[18] prescribes situations in which criminal proceedings cannot be initiated[19]. In such circumstances we cannot speak of the phase of the criminal investigation when its beginning is refused.

So in our view, the refusal to start the criminal investigation will be the final limit of

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[14] Igor Dolea , Codul de procedură penală al Republicii Moldova (Comentariu aplicativ), Chișinău, Ed. Cartea Juridică, 2016, p.29.

[15] CC of the SCJ admitted the lawyer's appeal, with the partial annulment of the Sentence of the Buiucani Court, Chisinau municipality, from 05.09. 2007 and the Decision of the Chisinau Board of Directors of 14.11. 2007, with the acquittal of A.M. under the accusation of committing the crime provided by art. 361 paragraph (2) letter a) of the CP for the following reasons: *contrary to the provisions of art. 118 paragraph (1) of the CCP, at the time of the on-site investigation at the home of A.M. no concrete crime was registered and investigated, so the criminal investigation body had no basis or right to initiate procedural actions because they cannot be exercised before the existence of a concrete crime, without the purpose of investigating and combating it. ... arising from these circumstances, all evidence that was collected and administered during the on-site investigation at the home of A.M. by the criminal investigation body, these being with essential violations of the procedural-criminal legislation, expressed in violation of the constitutional rights and freedoms of the participants in the trial, are illegal and inadmissible, which cannot be based on the sentence according to art. 94 of the CCP* (DCPL SCJ from 01.04. 2008, file no. 1ra –350/08).

[16] DCC no.12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of the article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 26).

[17] To see art. 252 of the Code of Criminal Procedure.

[18] To see provisions of art. 274 paragraph (4) and (5) of the Code of Criminal Procedure

[19] To see provisions of art. 275, 276, 276[1] of the Code of Criminal Procedure.

the verification phase of the notification of the criminal investigation body. In case of starting the criminal investigation, by issuing the ordinance of the criminal investigation body, the respective procedural stage will determine the final limit of the verification phase of the notification of the criminal investigation body, on the one hand, and the initial limit of the phase - criminal investigation, on the other.

From the moment of notification or self-notification until the issuance of the ordinance to initiate criminal proceedings, within this period, the criminal investigation body may carry out only the procedural actions by which the rights of the parties are not infringed. *In fact, the actions that cannot be delayed will be carried out in order to ascertain the reasonable suspicion. In concrete terms, from the moment of the registration of the notification regarding the crime and until the solution of the initiation of the criminal investigation, can be performed the following: b) on-site research; g) technical-scientific and medico-legal observation*[20].

According to ECHR case law, the need to prosecute a person suspected of committing a crime may serve as an initial justification for deprivation of liberty (for example, in case of flagrant detention). This means that the person can be detained until the start of the criminal investigation[21].

As a rule, detention as a procedural measure of coercion is liable to be carried out only after the initiation of criminal proceedings.[22] As an exception, the law allows the detention of the person who has reached the age of 18 and until the registration of the crime in the manner established by law. The registration of the crime is carried out immediately, but not later than 3 hours from the moment of bringing the detained person to the criminal investigation body, and if the deed for which the person was detained is not properly registered, the person is released immediately[23].

The legislator sanctions the practice of the criminal investigation bodies that administered most of the means of evidence before the beginning of the criminal investigation, including the hearing of the perpetrator, without informing the procedural rights, by removing the phase of preliminary acts.

The European Court showed in the case of Argintam v. Romania (ECtHR Decision of 08. 01. 2013, §. 27) that even at the time of carrying out the preliminary acts, according to the Code of Criminal Procedure of Romania of 1968, ECHR guarantees were applicable, even if they were not provided for in domestic law.

The Constitutional Court notes that, *starting from the nature of the purpose of the actions at the stage preceding the criminal investigation, they are limited to the finding of the criminal act (in rem), but not to the formulation of an accusation regarding the person (in personam)*[24].

Another important aspect that we want to mention is the activity of the ascertaining

[20] DCP of the SCJ from 24.12.2019, file no. 1ra-1890/2019, available: jurisprudenta.csj. md/search_col_penal.php?id=15021

[21] CD of the SCJ no. 1 from 15.04.2013 on the application by the courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest, available: http://jurisprudenta.csj.md/search_hot_expl.php?id=48. (pct. 3)

[22] To see provisions of art. 279 paragraph (1) of the Code of Criminal Procedure.

[23] To see provisions of art. 166 paragraph (4) of the Code of Criminal Procedure.

[24] DCC no.12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of the article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 27).

bodies, which according to art. 273 paragraph (2) of the Code of Criminal Procedure, have the right to detain the perpetrator, to pick up the criminal bodies, to request the information and documents necessary for the finding of the crime, to summon persons and to obtain statements from them, to order the technical-scientific and medico-legal findings to be made, to assess the damages and carry out any other actions that do not suffer postponement, with the preparation of the minutes, under the conditions provided by art. 260-261 of the Code of Criminal Procedure, recording the actions performed and the circumstances found. "The acts of ascertainment drawn up by these bodies constitute means of proof"[25].

At the same time, it should be noted that Chapter IV of Title I of the Special Part of the Code of Criminal Procedure called ***the initiation of criminal proceedings***, which includes: the initiation of criminal proceedings, the circumstances excluding criminal proceedings, the initiation of criminal proceedings on the basis of the prior complaint and in the case of certain categories of offenses, the obligation to explain rights and obligations, as well as the obligation to examine the requests and approaches, which regulate much wider actions than the initiation of the actual criminal investigation. We are of the opinion that the respective chapter is logical to be entitled ***the verification of the notification of the criminal investigation body***.

As regards the practical aspect, we mention that the criminal investigation body, once it has been notified, mandatory analyzes and verifies the content of the notification, as well as the evidence that is attached to this referral to establish at least a reasonable suspicion that an offense has been committed. In this sense, the criminal investigation body will verify and analyze the minutes drawn up by the finding bodies, the actions that were carried out by these bodies, the technical-scientific findings, the hearings of witnesses and other actions that are required.

At the same time, the criminal investigation body is obliged to verify the notification and the materials attached to it in order to ascertain not only *the reasonable suspicion* regarding the crime, but also the existence of the circumstances that exclude the criminal investigation.

The principle of operativeness of the criminal investigation body constitutes a special role in this phase. The obligation to receive and examine complaints or denunciations regarding crimes, by the criminal investigation bodies, directly characterizes the active role and operability of these bodies. Judicial practice has shown that late presentation at the crime scene often leads to the impossibility of establishing the factual elements (evidence) that serve to establish the existence or non-existence of the crime, to identify the perpetrators and to find their guilt, as well as to establish other important circumstances for the fair settlement of criminal cases.

According to art. 274 of the Code of Criminal Procedure, to order the initiation of criminal proceedings, the following conditions must be met cumulatively:

– Existence of a legal notification;
– Finding reasonable suspicion of committing an offense;

[25] See in this regard Ostavciuc Dinu, Sesizarea organului de urmărire penală. Monografie, Chișinău, Ed. Cartea Militară, 2020, p. 87-169.

– The absence of a case that excludes the initiation of criminal proceedings (indicated in art. 275 of the Code of Criminal Procedure)[26].

In the theory of criminal procedural law, the initiation of criminal prosecution is also understood as a procedural act, i.e. a formalized decision of the criminal prosecution body to initiate criminal prosecution in a concrete case. Consequently, in order for this decision to have legal force, it must be entered in a document, which according to art. 274 paragraph (1) of the Code of Criminal Procedure in conjunction with art. 255 of the Code of Criminal Procedure is the ordinance to initiate criminal proceedings.

The ordinance to initiate criminal proceedings has a legal and social significance, as it consists in the official announcement of the competent state authorities of a timely response and the initiation of proceedings to investigate the circumstances of the crime[27].

The prompt start of the criminal investigation contributes to the fair settlement of the criminal case, especially when it is being investigated on a fresh basis. On the contrary, the delayed reaction of law enforcement agencies to information on the commission of the crime may be followed by the loss of serious evidence during the investigation of the case. The beginning of the criminal investigation constitutes the legal basis for the application of the preventive measures and the performance of the criminal investigation acts.

ECtHR in the case *of Tomac vs. Moldova* (…), *considers that the delay of more than one year and five months before the prosecution initiated the criminal investigation is incompatible with the procedural obligations arising from Article 2 of the Convention*[28].

The importance of initiating criminal prosecution as a procedural act is obvious, as it is precisely this act that triggers the possibility of carrying out criminal prosecution actions that involve significant interference in the sphere of constitutional rights and freedoms of persons, but which have an increased cognitive potential.

The issuance of the ordinance to initiate criminal proceedings marks the initial limit of the criminal investigation phase, it is an important moment for the whole criminal process, because this decision is not a formal one, but one based on the verification of materials obtained in the verification phase of the criminal investigation body.

In other words, the initiation of criminal proceedings grants rights and obligations not only to the criminal investigation body, but also to the parties to the proceedings. However, without the beginning of the criminal investigation, no procedural actions can be carried out that would allow finding out the truth in question, no special measures of investigation and other activities can be taken, and in the end the purpose of the criminal investigation would not be achieved[29].

The provisions of art. 279 paragraph (1) of the Code of Criminal Procedure support this position: (...) *The criminal investigation actions for the performance of which it is necessary to authorize the investigating judge, as well as the procedural coercive measures* ***are liable to be carried out only after the start of the criminal investigation***[30], *unless*

[26] The first two conditions can be called *positive,* and the last – *negative.*
[27] Лазарев В.А., Возбуждение уголовного дела как акт правового реагирования на преступные посягательства. Автореф. Дис.канд. юрид. наук, Саратов, 2001, с. 13.
[28] ECtHR Decision Tomac v. Moldova of 16. 03. 2021, §. 66, available: http://hudoc.echr.coe.int/eng?i=001-208953.
[29] According to art. 252 of the CCP, the purpose of the criminal investigation is to collect the necessary evidence regarding the existence of the crime, to identify the perpetrator, in order to ascertain whether or not it is necessary to send the criminal case to trial under the law and to establish his responsibility.
[30] Art. 274 of the CCP operates with the expression *the beginning of the criminal investigation.*

otherwise provided by law.

At the same time, art. 132/1 paragraph (1) of the Code of Criminal Procedure provides that *the special investigation activity represents the totality of public and / or secret criminal investigation actions carried out by the investigation officers* ***within the criminal investigation*** *only under the conditions and in the manner provided by the* Code of Criminal Procedure.

The beginning of the criminal investigation, based on the aspects invoked *above*, constitutes on the one hand the final limit of the verification phase of the notification of the criminal investigation body, and on the other hand, the initial limit of the criminal investigation phase.

According to the regulations of art. 274 paragraph (1) of the Code of Criminal Procedure, *the criminal investigation body or the prosecutor notified in the manner provided in art. 262 and 273 of the Code of Criminal Procedure orders within 30 days, by ordinance, the initiation of criminal proceedings if, from the content of the act of notification or the acts of finding, results at least a reasonable suspicion that an offense has been committed and there are no circumstances that preclude criminal prosecution, informing the person who filed the complaint or the body concerned*.

Considering the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure, the beginning of the criminal investigation shall be ordered only after the criminal investigation body or the prosecutor has been notified in the manner provided by art. 262 and 273 of the Code of Criminal Procedure. The criminal investigation bodies and the prosecutor in order to exercise their duties regarding the discovery of crimes must be informed of their commission. However, those bodies cannot know in all cases when an offense is committed no matter how well they act in order to ascertain the indices of an offense. This is a natural fact, because crimes are committed in all areas of social life, and criminal prosecution bodies, those of finding, the prosecutor can not a priori know about their existence. On the other hand, it is logical that citizens, once they are part of a society, should not be indifferent and at least contribute to informing the competent bodies so that the latter can react promptly in order to uncover the criminal facts which have been brought to their attention. Therefore, the criminal procedural law provided for several ways of reporting, so as to cover the entire social sphere or to cover the foreseeable possibilities of knowing the crime.

As we know, the criminal investigation body, according to art. 262 paragraph (1) of the Code of Criminal Procedure may be notified by complaint; denunciation; self-denunciation; minutes regarding the finding of the crime, drawn up by the ascertaining bodies provided in art. 273 paragraph (1) of the Code of Criminal Procedure; the direct detection by the criminal investigation body or the prosecutor of the reasonable suspicion regarding the commission of a crime. In accordance with art. 273 of the Code of Criminal Procedure, the ascertaining documents drawn up by the ascertaining bodies, together with the material means of evidence, shall be handed over to the corresponding criminal investigation bodies, as the case may be, to the prosecutor, for the initiation of the criminal investigation.

Therefore, the criminal investigation body or the prosecutor, being notified, orders the initiation of the criminal investigation if, *from the content of the notification act or of the*

ascertainment acts, results at least a reasonable suspicion that an offense has been committed. By the content of the notification act we mean the description of the deed that forms the object of the notification, indicating the place of the alleged crime, the identity data of the perpetrator, the means of proof, the circumstances of the alleged crime, the time when the deed took place, the data of the complainant. By the contents of the ascertaining documents we understand the elaboration by the ascertaining bodies of the minutes in which the actions performed and the ascertained circumstances will be recorded.

By *reasonable suspicion* we mean an assumption or probabilistic reasoning, a preliminary conclusion on the commission of an illegal act. However, the suspicion must always be justified, i.e. the appearance of hypotheses must be preceded by the collection and analysis of evidentiary information about the commission of the crime[31]. In this order of ideas, we find that in the case of the decision to initiate criminal proceedings, the criminal investigation body must emerge from the content of the notification, the acts of finding, the means of evidence attached to the notification, other information that may serve as a basis to justify that a crime has been committed[32].

Article 274 paragraph (1) of the Code of Criminal Procedure indicates that *the initiation of the criminal investigation will be ordered within 30 days*. That period shall be calculated from the time when the offense is notified. Thus, the criminal procedural law grants the right of the criminal investigation body to decide to start the criminal investigation within the respective term. There are situations when there is a risk of losing or destroying evidence, so he must decide to start criminal proceedings immediately.

In another order of ideas, we mention the fact that the legislator provided for an exception at the beginning of the criminal investigation and the verification of the notification regarding the crime. Thus, according to art. 274 paragraph (3/1) of the Code of Criminal Procedure, when from the content of the act of notification or ascertainment results the suspicion of committing an offense provided in art. 166/1 of the Criminal Code, the prosecutor is to decide on it according to art. 274 paragraph (1) of the Code of Criminal Procedure, within a term not exceeding 15 days.

In the case of complaint, denunciation or report regarding the finding of the crime, drawn up by the finding bodies provided in art. 273 paragraph (1) of the Code of Criminal Procedure, the criminal investigation body, analyzing and verifying the content of the notification and the means of evidence attached to these notifications may not find the reasonable suspicion, performing in this respect, pursuant to art. 279 paragraph (1) of the Code of Criminal Procedure, additional procedural (verification) actions for the purpose of

[31]Art. 5 point 1 letter c) ECHR states that the grounds for *reasonable suspicion* must be objectively justified. That is why it is not enough for the criminal investigation bodies to suspect a person. The fact that a subjective suspicion is not enough, according to the requirements of art. 5 pt. 1 letter c) ECHR, implies the need for the existence of factual circumstances that can be objectively analyzed by an independent person, who is not related to the case. For example, in the case of Stepuleac v. Moldova, (Judgment of 06. 11. 2007) the ECtHR reiterates that the existence of a "reasonable suspicion" presupposes the existence of facts or information that would convince an objective observer that the person concerned could have committed the crime (in the case of the decision to initiate criminal proceedings - an objective observer would be persuaded that an offense could have been committed). Available: http://hudoc.echr.coe.int/eng?i=001-112790

[32] For example: the criminal investigation body was notified by the finding body regarding the commission of the crime of medium bodily injury. Analyzing the content of the complaint, the criminal investigation body concludes that there is a *reasonable suspicion* that this crime was committed, because there is a forensic finding on the degree of bodily injury, there are statements of the victim and witnesses. Respectively, following this assessment, the criminal investigation body will start the criminal investigation according to the provisions of art. 152 of the Criminal Code.

finding reasonable suspicion of the commission of the offense. Only after its establishment, the criminal investigation body, within 30 days, will start the criminal investigation. We therefore consider that the initiation of criminal proceedings must be ordered immediately after the finding *of reasonable suspicion* of committing a crime.

In the case of D. v. Moldova (ECtHR judgment 08.12.2020, § 60)[33], it was found that after the applicant *had lodged a formal complaint on 4 May 2009, a criminal investigation into her allegations had not been initiated until after almost two months, id est on July 22, 2009.*

In the event that the criminal investigation body self-reports, it is immediately obliged, at the same time (on the same day or time) to order the initiation of criminal proceedings, because it has found *reasonable suspicion* of the crime and it is not necessary to wait for the 30-day deadline. Thus, according to art. 274 paragraph (2) of the Code of Criminal Procedure, *in case the criminal investigation body or the prosecutor notifies himself regarding the beginning of the criminal investigation, he draws up a report in which he records the findings regarding the detected crime, then, by ordinance, orders the initiation of the criminal investigation*. In these circumstances, the immediate initiation, without delay, of the criminal investigation, without waiting for the expiration of the 30-day period, is envisaged. Respecting these provisions, the criminal investigation body will exactly fulfill the requirements of the principle of operability and that of free access to justice.

By the phrase used in art. 274 paragraph (1) of the Code of Criminal Procedure *does not exist any of the circumstances that exclude criminal prosecution,* we understand the cases that prevent the initiation of criminal prosecution. These circumstances are regulated in art. 275 of the Code of Criminal Procedure, to which we will refer in the context of the exposition of the refusal procedure at the beginning of the criminal investigation. However, we will touch on some issues that are important in our vision.

We consider that not all the circumstances described in art. 275 of the Code of Criminal Procedure can serve as a ground for preventing the decision to initiate criminal proceedings, as there are situations where certain circumstances are required to be demonstrated by evidence that can only be obtained in criminal proceedings, for example, in the absence of the fact of the crime or the lack of elements of the crime. In arguing this position, we also bring the provisions of art. 93 paragraph (1) of the Code of Criminal Procedure, which stipulates that *the evidence is acquired factual elements (...), which serves to establish the existence or non-existence of the offense (...).* Respectively, we note that the finding of non-existence of the crime must be proven, especially when the confrontation must be carried out (of course, people must have a procedural status, some of them obtain that status only in criminal proceedings), when it is necessary to dispose of the expertise, to hear the suspect, when the procedural documents are required in which the results of the special investigative measures and their annexes are recorded, including the transcript, photographs, records and others. Of course, there are such circumstances that may result from the content of the act of notification, of the acts of finding or procedural actions drawn up in the order of art. 279 paragraph (1) of the Code of Criminal Procedure, until the beginning of the criminal

[33] Available: http://agent.gov.md/wp-content/uploads/2021/03/d.-v.-mda-rom.pdf

investigation, for example, if the perpetrator is not old enough to be held criminally liable and this fact is proved by the identity documents.

Another situation is if the statute of limitations or amnesty has intervened; the perpetrator's death occurred; the victim's complaint is missing in cases when the criminal investigation begins, according to art. 276 of the Code of Criminal Procedure, only on the basis of his complaint or the previous complaint was withdrawn; in respect of a person there is a final judgment in connection with the same charge or by which it has been established that it is impossible to prosecute on the same grounds; in respect of a person there is an unannounced decision not to initiate criminal proceedings or to terminate criminal proceedings on the same charges. In case of the existence of such circumstances, having evidence to prove them, the criminal investigation body will not initiate the criminal investigation and will propose to the prosecutor not to initiate the criminal investigation and to close the criminal process.

Therefore, we mention that there are cases when the circumstances that exclude the criminal investigation are obvious and result from the act of notification or the acts of finding, or are found by the acts of finding or the procedural actions performed until the beginning of the criminal investigation. In such situations, the criminal investigation body will not start the criminal investigation and will propose to the prosecutor to refuse to start the criminal investigation. Sometimes, there are cases when evidence could not have been obtained without initiating criminal proceedings in order to establish such circumstances (for example, the lack of an objective side of the offense).

When the criminal prosecution body directly detects or is notified on the commission or preparation for the commission of intellectual property offenses, the criminal procedural law, together with the law on the protection of geographical indications, designations of origin and guaranteed traditional specialties, grants protection to intellectual property, because the right holder or the competent authority may not know about these violations, on the one hand, and the state, through the criminal investigation body, has a positive obligation to investigate these crimes, on the other hand. Thus, the criminal investigation body, although it is notified of committing such crimes, starting the criminal process, is obliged to ask the rights holder and the State Agency for Intellectual Property (SAIP) for the opinion on the initiation of criminal proceedings. In this case, the criminal investigation body grants a period of 15 working days to these units, so that the latter can decide on the fact of filing or not filing a prior complaint. It is natural that, in case of filing this complaint, the criminal investigation body will continue the investigations, starting the prosecution in this respect, and otherwise it will propose to the prosecutor to close the criminal case due to the lack of prior complaint.

"The situation is different when the criminal investigation body directly detects or is notified about the commission or preparation for the commission of the crime provided in art.185/2 paragraph (2^3) and art. 185^3 of the Criminal Code. In this case, no prior complaint is required; the criminal investigation body is not obliged to ask the rights holder and the State Agency for Intellectual Property (SAIP) for an opinion on the initiation of criminal proceedings. The legislator regulated this exception, because in the situation of the mentioned crimes the interests of the state are violated, as well as the principles of the international legal

norms are affected"[34].

From the above we mention that once the criminal prosecution bodies are notified about the commission of a crime, they are obliged to verify the content of the notification, which consists in: establishing the commission of a criminal act, the identity of the perpetrator, the data resulting from the accuracy of the notification (for example, documents proving the commission of the act are attached to the notification: a forged document). Reaching the conclusion, from the notification, that a criminal act has been committed, the act or the perpetrator is confronted with provisions that could have removed or prevented criminal liability (amnesty, prescription, etc.). When it is established that there is no such impediment, the criminal investigation body initiates the criminal investigation.

If the content of the notification does not provide sufficient data for the initiation of the criminal investigation, the procedural actions that may be carried out until the initiation of the criminal investigation shall be carried out (art. 279 paragraph (1) of the Code of Criminal Procedure), for the same purpose, establishing whether: committed in reality and by whom; constitutes a crime; there are none of the cases that prevent the prosecution.

"If these actions are confirmed, the referral is confirmed and there is no reason to prevent it, the criminal investigation body shall proceed with the initiation of the criminal investigation"[35].

From the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure results that when there is at least a *reasonable suspicion* of the commission of the crime and there are no impediments to the initiation of criminal proceedings, the criminal investigation body issues an ordinance to initiate criminal proceedings.

The respective ordinance is a procedural act of disposition and must include the requirements indicated in art. 255 paragraph (2) of the Code of Criminal Procedure, and namely: date and place of drawing up, name, surname and capacity of the person drawing it up, cause to which it relates, object of the action or procedural measure, its legal basis and signature of the person who drew it up. Those conditions are general for making of an ordinance. According to us, the order to initiate criminal proceedings must include not only the date of preparation, but also the time, the minutes, because these aspects are very important, especially when the person is detained until the registration of the offense, and its detention must not exceed 3 hours until the detention report has been drawn up, i.e., the criminal investigation must already have begun. This fact is not expressly regulated in the special norms, therefore we consider that it is necessary to modify and complete the provisions of art. 255 paragraph (2) of the Code of Criminal Procedure in this regard.

According to the provisions of art. 255 paragraph (2) of the Code of Criminal Procedure, the ordinances of the criminal investigation body must be motivated. We are of the opinion that the ordinance initiating the criminal investigation is an exception to that requirement in the part related to the content of the descriptive part.

We consider that the ordinance for initiating the criminal investigation, in addition to the elements mentioned in art. 255 paragraph (2) of the Code of Criminal Procedure must

[34] Ostavciuc Dinu, Sesizarea organului de urmărire penală, Chișinău, Ed. Cartea Militară, 2020, p. 40-42.
[35] Ionășeanu Eugen V., Procedura începerii urmăririi penale, București, Editura Militară, 1979, p. 207.

also contain specific conditions, and namely: the fable of the deed and its circumstances, the identity of the victim and the perpetrator (if known), the place and time of the alleged illegal act, references to some evidence (if applicable, for example, the results of the technical-scientific or medico-legal finding), the juridical-criminal classification of the deed, the legal basis for its preparation and disposal, as well as the actual disposition of the decision to initiate criminal proceedings.

The ordinance initiating the criminal investigation must be motivated only in the aspect of *reasonable suspicion* resulting from the content of the notification documents, to which the finding documents are attached, as well as from the procedural actions carried out by the criminal investigation body in order to establish the *reasonable suspicion* of an act punishable by criminal punishment.

As mentioned above, the ordinance to initiate criminal proceedings must include the legal classification of the deed. This aspect is a very important one, because due to the legal classification of the deed, the criminal investigation body may decline its competence, may apply coercive procedural measures (depending on the seriousness of the crimes), may order the implementation of special investigative measures, etc. Of course, during the criminal investigation the deed can be reclassified.

In this respect, the Court notes that the legal classification of the deed established by the ordinance initiating criminal proceedings is a preliminary version of the criminal investigation body, which may evolve over time, depending on the evidence administered[36].

"The first legal classification of the fact or facts that are the subject of investigations into a criminal case is made in the operative part of the ordinance to initiate criminal proceedings, and this is absolutely necessary, because on this initial qualification depends the spectrum of procedural coercive measures that can be applied to the suspect, as well as the possibility of carrying out special investigative measures"[37] .

"Thus, in most cases, in order to ensure a certain comfort in the criminal investigation process, the criminal investigation officer and the prosecutor are tempted to adapt the reasonable suspicion to a more serious act, even if the evidence accumulated before the criminal investigation indicates the existence of a reasonable suspicion of committing an offense with a lower degree of harm"[38]. „Consequently, in the situation where the suspected person was subsequently removed from criminal prosecution, the term in which the criminal investigation in respect of him may be resumed is determined by that preliminary, discretionary qualification of the criminal investigation body or prosecutor, made at the stage of the beginning of the criminal investigation"[39] .

Regarding the content of the ordinance to initiate criminal proceedings, we mention that there are other essential aspects. The criminal investigation can be initiated ***regarding the person*** (*in personam*), when there are well-founded assumptions, and ***regarding the deed*** (*in rem*), when the identity of the perpetrator is not known at that time by the criminal

[36] DCC no. 50 of 31.05.2018 of inadmissibility of the notification no. 59g/2018 on the exception of unconstitutionality of Article 326 paragraph (11) of the Criminal Code and of some provisions of article 283 paragraph (1) of the Code of Criminal Procedure (point 30).
[37] Valeriu Bodean, Termenul reluării urmăririi penale. In: Culegerea comunicărilor. Conferința științifică națională cu participare internațională: Realități și perspective ale învățământului juridic național, 01-02 octombrie 2019. Vol. II., p. 508, 509.
[38] Valeriu Bodean, *Op. cit.*, p. 508-509.
[39] Valeriu Bodean, *Op. cit.*, p. 509.

investigation body.

Thus, analyzing the provisions of art. 274 of the Code of Criminal Procedure, we can conclude that for the beginning of the criminal investigation no information about the perpetrator or another condition regarding the person is required.

According to art. 252 of the Code of Criminal Procedure, the object of the criminal investigation is to collect the necessary evidence regarding the existence of the crime, *to identify the perpetrator*, in order to ascertain whether or not it is necessary to send the criminal case to court under the law and to establish *his liability*. Thus, once the purpose of the criminal investigation is to collect the evidence to identify the perpetrator, then it is natural that its commencement should be carried out in respect of the person.

It should be noted that the criminal investigation cannot start *in personam* if the identity of the perpetrator does not result from the act of notification or the acts of finding. Therefore, we conclude that the criminal investigation can be initiated *in rem* whenever there is at least a *reasonable suspicion* regarding the commission of a crime, while *in personam* it can be started only if the identity of the perpetrator results from the notification and the documents of finding.

"The practice often demonstrates the express nomination in the ordinance to initiate criminal prosecution in person, of the identity data of the perpetrator. Sometimes, even in the case of initiating criminal prosecution *in rem*, the data of the person in respect of whom the criminal investigation was initiated can be deduced. For example, the initiation of criminal prosecution according to the provisions of art. 324,327,328 of the Criminal Code, when the special subject can be deduced by a simple logical deduction, this being the person empowered exclusively to decide in the situation, the concrete criminal act indicated in the criminal prosecution ordinance, and the criminal investigation body, in order to avoid the expiration of the term of 3 months of maintenance as a suspect of the person, the criminal investigation *in rem* starts in a veiled manner. This situation seriously affects the right to liberty and security of the person enshrined in Article 5 of the ECHR, leaving space for arbitrary and double standards"[40].

The Constitutional Court reiterates that, (...) *in the ordinance for initiating the criminal investigation, only the deed that conditioned its issuance is mentioned (in rem), or, in the event of a reasonable suspicion that a person has committed an offense, the prosecuting authority must provide all the safeguards characteristic of a criminal charge*[41].

In the ECHR Decision of 27.09. 2007 in the case of Reiner and others v. Romania (§. 46), the Court observes that, in criminal matters, the „reasonable term" of art. 6 §. 1 of the Convention begins from the moment a person is „accused"; it may be a date prior to the

[40] "Thus, it is proposed to amend and supplement paragraph (1), the introduction of point 4 paragraph (1) art. 63 of the Code of Criminal Procedure, as follows: art. 63. suspect (1) the suspect is the natural person against whom there is certain evidence leading to the existence of a reasonable suspicion that he has committed an offense until he is charged. The person can be recognized as a suspect by the following procedural acts: ...4) the ordinance to initiate criminal proceedings, when it has been initiated in respect of the specific person or the ordinance contains solid indications regarding the identification of the specific person by the commission of the criminal act." To see: Pântea Andrei, Bănuiala rezonabilă: The national criminal procedural framework and the jurisprudence of the European Court of Human Rights. Doctoral thesis in law, Chisinău, 2018, p. 105-106.

[41] DCC no. 12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of Article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 27).

notification of the court, in particular that of arrest, indictment and initiation of criminal proceedings.

Given that the criminal investigation body may unjustifiably hesitate for a significant period of time to formally notify the suspect, for reasons not attributable to him, of the criminal charges, the ECtHR ruled that a person acquires the status of suspect, which attracts the application of the guarantees provided by art. 6 of the Convention, not from the moment when that quality is brought to his notice, but from the moment when the national authorities had plausible grounds for suspecting him of having committed an offense (Brusco v. France [42], ECHR Decision of 14. 11. 2010, §. 47; ECHR Decision Sobko v. Ukraine[43], of 17.12.2015; §. 53; Bandaletov v. Ukraine[44], ECHR Decision of 31.10.2013, §. 56).

The Court therefore notes that Article 63 paragraph (1) of the Code of Criminal Procedure provides an exhaustive list of procedural documents by which the person can be recognized as a suspect, but, by the exception established by paragraph (1[1]) of the same article, the legislator establishes certain guarantees for the situations in which the criminal prosecution bodies carry out procedural actions that have important consequences for the person, a fact that corresponds to the rigors of the right to a fair trial established by article 20 of the Constitution[45].

(...) the procedural-criminal law strictly determines that the term for maintaining the quality of suspect is calculated starting with the date of issuing the procedural documents, provided in art. 63 paragraph (1) points 1-3 of the Code of Criminal Procedure, and if it is established that there are certain reasonable suspicions about a person, regarding the commission of a crime and in relation to it, certain procedural actions are carried out, which create important repercussions on the person's situation, according to paragraph (11) art. 63 of the Code of Criminal Procedure, the criminal investigation bodies have the obligation to recognize this person as a suspect and to inform about the rights provided in art. 64 of the Code of Criminal Procedure[46].

Some examples from the case law of the Criminal College of the Supreme Court of Justice confirm such approaches. The Supreme Court finds that the initiation of the criminal investigation *in personam* constitutes the procedural act of awarding the quality of suspect and for this reason maintains the Decision of the Court of Appeal on terminating the criminal proceedings, given that the term for maintaining the quality of suspect has expired. (To see, DCC of the SCJ of 06. 06.2017, file no. 1ra-735/2017[47]; DCC of the SCJ of 28. 06.2017, file no. 1ra-880/2017[48]; DCC of the SCJ of 12. 09. 2017, file no. 1ra-886/2017 [49]; DCC of the SCJ of 25. 04. 2008, file no. 1ra-357/08).

Thus, the SCJ of the Republic of Moldova confirmed the viability of finding that the initiation of criminal proceedings „in personam" ***has the validity of an accusation in***

[42] Available: http://hudoc.echr.coe.int/eng?i=001-100969
[43] Available: http://hudoc.echr.coe.int/eng?i=001-159212
[44] Available: http://hudoc.echr.coe.int/eng?i=002-8942
[45] DCC no.25 of 29.03.2018, of inadmissibility of the notification no.20g/2018 on the exception of unconstitutionality of the article 63 paragraph (1) point 1-3 and paragraph (2) point 3) of the Code of Criminal Procedure (recognition of the person's quality of suspicion) (point 36).
[46]Decision of the Plenum of the CC of the SCJ pronounced on 22. 02. 2019 on the appeal in the interest of the law filed by the President of the Union of Lawyers of the Republic of Moldova, Emanoil Ploşniţa, regarding the non-unitary application of the provisions of art. 63 of the Code of Criminal Procedure, file no. 4-1ril-2/2019.
[47] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9005
[48] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9150
[49] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9483

criminal matters [50].

In cases when the criminal investigation has been initiated against a certain person, from that moment it will be considered that this particular person has the quality of suspect, regardless of whether or not the ordinance of recognition as a suspect has been issued.

It is necessary to note that after the issuance of the ordinance to start the criminal investigation, the criminal investigation officer has the obligation, within 24 hours from the date of the start of the criminal investigation, to inform in writing the prosecutor conducting the criminal investigation, at the same time presenting the respective file. When he became aware of the ordinance to initiate criminal proceedings, the prosecutor sets the time limit for the investigation in the case. This obligation derives from the content of art. 274 paragraph (3) of the Code of Criminal Procedure.

After issuing the ordinance to initiate the criminal investigation, the criminal investigation officer will present to the chief prosecutor (for example, the Criuleni district prosecutor or his deputy) the criminal case (all materials based on which the criminal investigation body adopted the decision to initiate the criminal investigation). The Chief Prosecutor will appoint a subordinated prosecutor to conduct the criminal investigation of the case.[51] In his turn, the appointed prosecutor will verify the legality of starting the criminal investigation and will set the term of criminal investigation, taking into account the provisions of art. 20, 259 of the Code of Criminal Procedure. The setting of the criminal investigation term is achieved by issuing an ordinance in this regard.

Regarding the term of notification of the prosecutor about the beginning of the criminal investigation, we mention the fact that it is necessary to modify and complete art. 274 paragraph (3) of the Code of Criminal Procedure, so that, the term of *up to 24 hours* should be indicated. Otherwise, it would be presumed in fact 24 hours from the issuance of the ordinance to start the criminal investigation, which is sometimes impossible to achieve, especially when the criminal investigation is started outside the working hours.

CONCLUSIONS AND RECOMMENDATIONS

We can conclude that the beginning phase of the criminal process starts from the moment when the competent state body is notified (for example: registration in the guard unit of the Police Inspectorate of the complaint regarding the commission of the crime) and ends with the drafting of the ordinance to initiate or refuse the initiation of criminal proceedings.

The tasks of this phase of the criminal process are:

a) verification of the information from the notification act;
b) prevention of crimes in preparation, counteracting those triggered and not consumed;

[50] Sometimes confirmed by the practice of judicial control of the prejudicial procedure - by the Conclusion of the Centru Court, Chisinau municipality of August 12, 2016 (file no. 10-345 / 16) and the Conclusion of the Cahul Court, the headquarters of October 2, 2017 (file no. 10-85/2017; no. 10-87/2017), the investigating judges annulled the indictment ordinances, because the term for the quality of suspect was exceeded, the term of 3 months being calculated from the date of issuing the ordinance to start the criminal investigation. In the latter case, the court retained, as a precedent, the case of T.A. (DCC of the SCJ, file no. 1ra-903/13 of 26.11.2013) and the case of L. and others (DCC of the SCJ, file no. 1ra-357/08 of 25.04.2008).

[51] According to art. 53/1 paragraph (2) letter g) of the Code of Criminal Procedure, *the hierarchically superior prosecutor, in addition to the attributions provided in art. 52 paragaraph (1)* of the Code of Criminal Procedure, *within the criminal investigation, he performs the following attributions for the exercise of the hierarchical control: ...g) ensures the distribution to the prosecutors of the notifications for examination or of the criminal cases for the exercise or, as the case may be, for the conduct of the criminal investigation*.

c) detecting and documenting (fixing) the traces of the crime;
d) establishing the existence or lack of grounds and legal reasons for starting the criminal investigation.

On the one hand, the beginning of the criminal investigation as a separate procedural act marks the final limit of the verification phase of the notification of the criminal investigation body, and on the other hand, it marks the initial limit of the criminal investigation phase.

Thus, it is not rational for the name of this stage to coincide with the name of the procedural act that allows the initiation of the criminal investigation - the beginning of the criminal investigation.

In our view, it would be more correct for the first phase of the criminal process to be called ***the verification of the notification by the criminal investigation body*** and not ***the beginning of the criminal investigation***. First, this phase would comprise the set of acts and procedural measures, carried out in the order provided by the Code of Criminal Procedure, by the criminal investigation body with the involvement of the parties in the process, fulfilling a limited objective in conducting the criminal process and preparing for the next phase, namely of ***the actual criminal investigation***, which is the second phase of the trial.

We are of the opinion that the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure must imperatively provide for the immediate initiation of criminal proceedings in the event of a *reasonable suspicion* of a crime and the absence of circumstances which preclude criminal proceedings. The phrase "*within 30 days*" is not appropriate, as it gives the prosecuting authority the right to initiate criminal proceedings on the last day of the expiry of this period, even if the contents of the notification and the findings show reasonable suspicion of the crime. This provision would undermine the victim's right of free access to justice. At the same time, there is a risk of destruction or loss of essential evidence (for example, urgent collection of biological traces, disposition of expertise, etc.). For this reason, we propose that the phrase in question be replaced by the phrase "*in term of 30 days*". In case of completion and modification of art. 274 paragraph (1) of the Code of Criminal Procedure in that regard, the provision in question would oblige the prosecuting authority to decide to initiate criminal proceedings within a reasonable time, so that it would react promptly to that referral.

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