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SOME CONSIDERATIONS REGARDING PERPETRATORSHIP IN CRIMINAL PROCEEDINGS IN ROMANIA

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Abstract: *Starting from the consideration that the activity of preventing and combating anti-social acts actually represents an application of the legal norms that regulate the conduct of life in society, we note that it is appropriate that through the competent bodies of the state, those who have committing antisocial acts and subsequently applying some sanctions, because life in a society cannot take place without order and discipline, which are ensured by the will of the legislative bodies and with the support of judicial bodies with the assurance of all procedural guarantees in respect of individual rights and freedoms during a criminal trial.*

Keywords: *perpetrator, adult, suspect, defendant, criminal trial*

Introduction. Brief history regarding the evolution of the quality of the perpetrator in the criminal process

After the appearance of the first codes, and in particular the Code of Criminal Procedure (of Romania) from 1936, there is a shift to the consolidation of specific terminologies (accused or accused).

Thus, the accused was the person against whom a denunciation, complaint or direct action had been filed or the person against whom the first investigations were carried out ex officio. In this context, the content of the notions of accused and defendant was determined by the specific way of organizing the criminal process, which went through the following phases: the first investigations, the preparatory instruction, the trial and the execution of the sentence. Later, according to the provisions of the Code of Criminal Procedure from 1968 (of Romania), acquiring the quality of being accused also required the existence of a premise, consisting of a violation of the criminal rules that criminalize the commission of certain crimes.

Currently, the name of the accused has been changed to that of the suspect. Thus, according to the provisions of art. 77 CPP, the suspect is the person regarding whom, from the existing data and evidence in the case, there is a reasonable suspicion that he has committed an act provided for by the criminal law, being one of the important procedural participants in the conduct of the criminal investigation.

General considerations regarding the quality of the perpetrator in the criminal process

The notion of suspect designates a procedural position different from that of the perpetrator or the defendant. The suspect is not a party to the trial, but his status is closer to that of the accused than to that of the perpetrator. As a result of the elimination of the

criminal procedural provisions that regulated the institution of the preceding acts, as well as the institution of the accused from the previous Criminal Procedure Codes, we present the evolution of these provisions, in order to delimit them from those currently existing in the Criminal Procedure Code.

In the Code of Criminal Procedure from 1936, the notion of the accused was defined in the chapter dedicated to the parties, while in the Code of Criminal Procedure from 1968 the accused was the subject of the criminal process, but did not have the status of a party in the criminal process. Moreover, the Code of Criminal Procedure from 1936 did not use a unified terminology for the accused, calling him a guilty person, criminal, suspect, accused, without paying attention to the definition or differences in content. In the legislation of other countries, such as the Russian one, which greatly influenced the Romanian legislation, the suspect, in the phase of the first investigations, had a passive role, not being able to be heard and, consequently, not being able to formulate his defenses (Zolyneac, 1993:45).

In relation to this aspect, the Constitutional Court, by Decision of the Constitutional Court no. 210 of October 26, 2000, rejected the objection of unconstitutionality of the provisions of art. 6 para. (1), of art. 172 para. (1) and of art. 224 CPP 1968, reasoning that "the guarantee of the right of defense cannot be ensured outside the criminal process, before the start of the criminal investigation, when the perpetrator does not have the procedural capacity to be accused or accused".

In the previous Code of Criminal Procedure, the accused was defined as the person against whom the criminal investigation was carried out, as long as no criminal action had been initiated against him. Starting from this legal provision, in the specialized literature, the notion of the accused was defined as "the person against whom the criminal investigation is carried out, as long as the fundamental legal relationship, as well as the accessory relationships, have not been born, as a result of the initiation of the criminal action", or "the person against whom the criminal prosecution has begun, subject to procedural rights and obligations (Dongoroz, 1969:205).

According to the provisions of the previous Code of Criminal Procedure (of Romania), there was a phase of acts preceding the start of the criminal prosecution, which preceded the birth of the criminal procedural legal report. The person against whom the preliminary acts were carried out was called the perpetrator. The acts preceding the initiation of the criminal prosecution were not binding, but were related to the need to verify the conditions that were the basis for the initiation of the criminal prosecution.

The carrying out by the criminal investigation body of some criminal investigation documents, prior to the start of the criminal investigation, in order to collect the data necessary for the initiation of the criminal process, did not represent the moment of the start of the criminal process and was done precisely to determine whether or not there are grounds for starting it. The perpetrator acquired the quality of the accused once the criminal investigation began. This was the moment when, in the case, the procedural law relationship was born as a legal relationship that was established between the judicial body and the people who took part in the activity of bringing criminal responsibility.

Analyzing the old regulation, we find that the moment when it was possible to move to the phase of starting the criminal prosecution against the perpetrator was not precisely

determined, so that the initiation of the criminal prosecution could be ordered both with regard to the act and with regard to the perpetrator. Under this aspect, the Code of Criminal Procedure from 1936 was more precise, by regulating the institution of indictment, so that, by the provisions of art. 248^1, it was stipulated that, after the start of the criminal process, as soon as there were sufficient data regarding the deed and the person who committed it, the criminal investigation body had to proceed with the indictment.

The accused was the subject of the criminal process, but he did not have the capacity of a party in the criminal process, the capacity of the accused being maintained until the initiation of the criminal prosecution, when he acquired another procedural capacity, that of the defendant.

Currently, through the new provisions, following the commission of a crime, a criminal legal relationship of conflict arises between the state, as the owner of the legal order, and the criminal, as an active subject, consisting in the right of the state to apply the sanction provided by the criminal law violated (the right to be criminally liable) and in the offender's obligation to bear the sanction (to be criminally liable) as a result of disregarding the rule.

After bringing this legal report before the judicial bodies, during a criminal trial, the passive subject of the conflict legal report (the injured person) becomes the active subject of the criminal procedural law report, while the active subject of the criminal legal report (the offender) receives different procedural qualities, becoming a passive subject of the criminal procedural law report.

In other words, during the criminal process, the criminal will wear different "legal clothes", each of which shows the stage of the criminal process, as well as the rights and obligations that he has, in each individual case (Neagu, 2020:165).

Thus, before the start of the criminal process, the person who committed the crime has the capacity of perpetrator. From a terminological point of view, the notion of perpetrator seems to denote the very person who is guilty of committing the deed under investigation, although in reality it is about the person against whom a complaint has been made or who is suspected of violating the criminal law.

The notion of perpetrator was not defined, as it is not defined even now by the provisions of the Code of Criminal Procedure, but this quality exists, the legislator mentioning it in the provisions of art. 61 para. (2) CPC, which stipulates that, in the case of flagrant crimes, the investigative bodies have the right to search bodies or vehicles, to catch the perpetrator and immediately present him to the criminal investigation bodies. Also, according to art. 310 CPP, it is stipulated that, also in the case of flagrant crime, any person has the right to catch the perpetrator.

In relation to the violation of the rules of criminal law, the state must respond by restoring the legal order, which must materialize by bringing criminal responsibility and, subsequently, by applying a sanction to the person who committed the crime, the procedure for bringing criminal responsibility being necessary to be carried out during a criminal trial.

Regarding the initiation of the criminal investigation, the Code of Criminal Procedure approaches a different procedure compared to the previous regulation, in the sense that the initiation of this phase of the criminal process is no longer decisive for acquiring the quality of a suspect (Neagu, 2020:165). Thus, according to the provisions of art. 305 para. (1) CPP, when the reporting act meets the conditions provided by the law, the criminal investigation

body orders the initiation of the criminal investigation regarding the act committed or the commission of which is being prepared, even if the author is indicated or known.

Also, according to the provisions of art. 305 para. (3) CPC, when there is evidence from which the reasonable suspicion that a certain person has committed the act for which the criminal investigation has been started and there is not any of the cases provided for in art. 16 para. (1) CPC, the criminal investigation body orders that the criminal investigation continue to be carried out against it, which acquires the status of a suspect (Neagu, 2024:100).

Rights and obligations of the perpetrator during the criminal process

The existence of the notions of perpetrator, suspect or defendant is not intended to reflect different degrees of guilt, but the status of the passive subject of the criminal procedural law report corresponding to the different stages of the criminal process.

The legislator established through the provisions of art. 78 CPC that the suspect has the rights provided by law for the accused, except when the law does not provide otherwise, precisely as a result of the common nature of the regime established for them, which we exemplify through the provisions of art. 83 CPC regulating the suspect's rights: the right not to make any statement during the criminal trial, drawing his attention to the fact that if he refuses to make a statement, he will not suffer any adverse consequences, and if he makes statements, they may be used as evidence against him; the right to be informed about the act for which he is being investigated and its legal framework; the right to consult the file, under the law; the right to have a lawyer chosen, and if he does not appoint one, in cases of mandatory assistance, the right to have a lawyer appointed ex officio; the right to propose the administration of evidence under the conditions provided by law, to raise exceptions and make conclusions; the right to make any other requests related to the resolution of the criminal and civil side of the case; the right to benefit from an interpreter free of charge when he does not understand, does not express himself well or cannot communicate in Romanian; the right to appeal to a mediator, in cases permitted by law; the right to be informed about his rights; other rights provided by law.

In the category of other rights provided by law for the suspect, we can include the right to the presumption of innocence, provided by art. 4 CPP, the right to be represented, the right to request the continuation of the criminal process (art. 18 CPP).

The normal conduct of the criminal process requires that each participant comply with the obligations expressly provided by the law, as well as those arising from the way the criminal process is organized, which is why we highlight the obligations of the suspect in the criminal investigation phase, as follows: the bearing of some procedural measures that they decided against him (detention, medical hospitalization in order to carry out a medico-legal psychiatric examination); the obligation to appear at the summons of judicial bodies; the obligation to notify the judicial body within 3 days of the change of address where he lives; the obligation to keep and preserve the objects left in custody following the search carried out.

Failure by the suspect to comply with his obligations is sanctioned by means specific to criminal procedural law, according to the provisions of art. 283 para. (4) CPP, with a judicial fine from 500 lei to 5,000 lei. We thus find, as we stated previously, that the suspect

has rights and obligations, being neither the perpetrator nor the defendant in the case, because, as the provisions of art. 305 para. (3) CPC, the suspect is the person against whom, from the evidence, there is a reasonable suspicion that he has committed a crime (Mateuț, 2024:82). Also, until the perpetrator becomes a suspect, will the criminal investigation bodies hear him, and following his hearing, will the statements be recorded in a perpetrator's statement?

No, because the provisions of the Code of Criminal Procedure do not regulate this institution, and then recourse is made in the practice of criminal investigation bodies to the recording in a witness statement of the data provided by the perpetrator, and then, depending on the evidence administered in the case file, to be able, if necessary, to continue the criminal investigation started in rem, regarding the act against him, who acquires the name of the suspect in question, being obviously about the reported witness to which there is in fact an accusation and which, according to the provisions of art. 118 para. (4) CPP the right to appear at hearings accompanied by a lawyer (Stan, 2016:2). Moreover, corroborating the provisions of art. 118 with those of art. 120 CPP, we note that the witness has the right to remain silent, he has the right not to declare facts and factual circumstances that, if known by the judicial body, would determine his incrimination regarding the commission of the crime.

Thus, the judicial body has the obligation to inform the witness, before each hearing, of the fact that he can refrain from declaring some factual facts or circumstances related to the crime, and in the case of a violation of these provisions by the judicial body, then the evidence obtained in violation of these provisions will not be able to be used against the witness in the criminal trial. Also, the witness has the right not to incriminate himself, and the witness statement given by a person who, in the same case, before or after this statement, had or acquired the status of suspect or defendant cannot be used against him, meaning in which the interpretation of the text must be done in the sense in which the witness has the right to remain silent, to the extent that through his statement, given before the judicial bodies, he could incriminate himself. In this situation, the witness's statement is not excluded from the case file and can be used to establish the circumstances of the case, which are not related to it, mentioning when the statement is recorded and the procedural status previously held (Neagu, 2020: 513).

As obligations of the witness in the criminal process, we mention the obligation to present himself whenever he is summoned to appear before judicial organs, the obligation to communicate in writing within 5 days any change of address to which he will be summoned, as well as the obligation to tell the truth, taking an oath or solemn declaration, which corresponds to the obligation to give statements in accordance with reality, otherwise it is pointed out that he can answer from a criminal point of view by committing the crime of perjury, the judicial body being obliged to inform the witness of its obligations, and about bringing them to the knowledge must make a mention in the declaration.

The High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law, ruled on this aspect, by Decision no. 1/2019, considering that "The fact of a person heard as a witness making false statements or not telling everything he knows about the essential facts or circumstances about which he was asked meets only the typical elements of the crime of perjury , provided by art. 273 para. (1) of the Criminal Code".

In order to have legal effectiveness, the fundamental and procedural rights of the perpetrator heard as a witness in the criminal investigation phase, until the collection of evidence from which it is reasonable to suspect that he has committed a crime, the continuation of the criminal investigation and the acquisition of the quality of the suspect, must to be guaranteed by appropriate legal institutions, in relation to the principles contained in Title I of the General Part of the Code of Criminal Procedure. Their violation by judicial bodies may attract procedural, criminal or disciplinary sanctions (Negruț, 2024:243). Among the guarantees necessary to ensure the rights of the suspect, we mention:

- guaranteeing the right to defense (art. 10 CPP). This right is guaranteed, throughout the entire criminal process, to all parties and main procedural subjects. According to the provisions of art. 281 para. (1) lit. f) CPP, failure to provide legal assistance - when it is mandatory - entails the absolute nullity of the acts performed. Violation of these provisions must be invoked: until the conclusion of the procedure in the preliminary chamber, if the violation occurred during the criminal prosecution or in the procedure of the preliminary chamber; in any state of the process, if the violation occurred during the trial; in any state of the process, regardless of when the violation occurred, when the court was notified with a plea agreement;

- guaranteeing the right to freedom and security (art. 9 CPP). The law expressly provides for the conditions under which measures can be taken to restrict a person's freedom, the term and the grounds that can be the basis for taking such measures. If the person against whom a measure of restriction of freedom was taken considers that it is illegal, he has the right to file an appeal against the disposition of the measure, according to art. 9 para. (5) CPP.

Remedies were also provided for the violation of the freedom of individuals. Thus, paragraph (5) of art. 9 CPC stipulates that any person against whom a custodial measure was ordered illegally, during the criminal process, has the right to compensation for the damage suffered;

- guaranteeing respect for human dignity and private life. According to art. 11 CPC, any person under criminal investigation or trial must be treated with respect for human dignity. It is also necessary to respect privacy, the inviolability of the domicile and the secrecy of correspondence. Violation of these norms attracts criminal liability, the facts may meet the constitutive elements of the crimes of: abusive research (art. 280 of the Criminal Code); subjecting to ill-treatment (art. 281 of the Criminal Code) or torture (art. 282 of the Criminal Code).

Conclusions

The provisions contained in Law no. 135/2010 on the Code of Criminal Procedure (of Romania) do not define the quality of the perpetrator and at the same time do not provide for him the rights and obligations that he would have, but only refer to this quality in the criminal prosecution phase until the moment of the continuation of the criminal prosecution through the disposition of the criminal investigation body materialized by the order to continue the criminal investigation according to the provisions of art. 305 para. (3) CPP. After notifying the judicial bodies through one of the notification methods provided by the legislator, they must collect the evidence necessary to clarify all the aspects related to the commission of a

crime, which is why either knowing the person who committed the act or not knowing him, they have the obligation to start the criminal investigation in rem, regarding the deed, and then start hearing the perpetrator. This is where the controversies start, as a result of the fact that the perpetrator does not have any capacity in the criminal process, according to the provisions of art. 29 CPP, being considered neither party nor main procedural subject in the criminal process.

It is thus the obligation of the judicial bodies to hear him, because they have to use this evidentiary procedure, but as a witness, which is why the perpetrator will acquire a quality, namely that of a witness of his own deed, which contravenes the a kind of legal logic for which he acquires such a quality, but in the judicial practice of criminal investigation bodies this fact is preferable since the legislator did not provide provisions that to give him a quality and, subsequently, no rights in the criminal process. It thus becomes understandable the reason why judicial bodies resort to such a way to obtain evidence in the criminal process, following that the legislator can rethink these provisions in a way that confers a procedural position on the perpetrator.

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