

# Complaints against Measures and Acts of Criminal Prosecution

Marian Alexandru  
"OVIDIUS" University of Constanța City  
Faculty of Law and Administrative Sciences  
[marian.alexandru1961@yahoo.ro](mailto:marian.alexandru1961@yahoo.ro)

## Abstract

*The ending of the criminal prosecution, according to the regulations of the New Code of Criminal Procedure, signifies the completion of prosecutorial phase of the trial.*

*This is a step in which, criminal investigating bodies, after analyzing the evidence, submit the matter to the prosecutor for it to rule by law.*

*This paper aims to highlight situations where some participants of the criminal proceedings may challenge the measures and acts of prosecution. The paper also aims to examine complaints against measures and decisions of the prosecution acts, as found in the new Code of Criminal Procedure.*

*The complaints against measures and acts of prosecution represent a judicial instrument and also the way an interested person starts a reviewing action concerning the legality and the grounds of some criminal prosecution acts and measures.*

**Key words:** complaint, criminal prosecution acts, injury

**J.E.L. Classification:** K4

## 1. Chapter 1 - Judicial functions covered by the new Code of Criminal Procedure

During the entire criminal procedure some essential procedure functions can be pointed out; all of them are useful to achieving the final goal of this social activity.

According to the legal provisions in force nowadays, there are some functions carried out during the procedure stages, made up of an entire assembly of papers and measures, fulfilling a limited objective compared to the general objective of the criminal trial. Each stage represents a solution for different matters with unclear, debatable aspects, which need clarifying mention and an immediate solution, on which depends the transfer to the next stage.

We have to say that the judicial functions exercised during the criminal proceeding are stipulated by art. 3 of the Criminal Procedure Code, being as follows:

- a) criminal prosecution;
- b) decision on the fundamental rights and liberties of the person during the stage of criminal procedure;
- c) review of the legality of the arraignment or non arraignment;
- d) act of judging.

Criminal prosecution is a complex stage of the criminal procedure, consisting of typical actions carried out by competent bodies, called criminal activities undertaken in order to gather the evidence necessary for the defendant indictment.

During three stage of the criminal procedure, several procedure incidents can appear.

## 2. Chapter 2 - The complaint against measures and acts of criminal prosecution.

The Romanian lawmaker foresaw the possibility so that any person unsatisfied with the acts and measures decided during the criminal prosecution make a complaint against them, so that the legality can be observed, in case legal interests were damaged.

The institution of the complaint against measures and acts of criminal prosecution was also

provided with by the old Criminal procedure Code, and the Law no 281/2003 established the legal frame necessary to challenge the solutions of non arraignment, a possibility also preserved in the current Criminal Procedure Code.

In order to avoid delaying the case solution and in order to maintain efficiency, the law stipulates the fulfillment of the challenged measure or act, and after solving the complaint, decide whether the act or measure can have the foreseen effects. According to art 336 paragraph 3 of the Criminal Procedure Code, the filing of such complaint doesn't eliminate the fulfillment of the measure or act object of the complaint.

The complaint against the measures and acts of criminal prosecution, take the shape of a complaint as a way to inform the criminal prosecuting bodies. So, when the suspect or the defendant files the complaint against the arrest measure and finds that this measure was ordered while breaching, at the same time, the legal provisions or over passed the period for which it was decided, authorities acknowledge the crime of unjustified repression, and the complaint can be informing document for the prosecutor regarding this crime.

This way, one can criticize measures and acts of criminal prosecution decided and applied by the criminal prosecution body, and also measures and acts of criminal prosecution ordered by the prosecutor and put into practice by him or by the criminal prosecution body. (Neagu and Damaschin, 2015, 110)

The exercise of the judge control is carried out through the Judge of the Preliminary Chamber, who analyses the complaints against the prosecutor's non arraignment and not to indict solutions, representing the complaint type which implies the control function.

We see that during the procedure stage of complaints against measures, acts and solutions for non arraignment, there are two distinctive types of judicial functions.

The first one is the criminal prosecution, carried out by the prosecutor in cases of complaints against adopted measures or actions undertaken by the criminal prosecuting bodies, and also against measures adopted or acts carried out by the hierarchically inferior prosecutor. (Neagu and Damaschin, 2015, 111)

The second judicial function is to verify the non arraignment solution, exerted by the Judge of Preliminary Chamber in cases of complaints filed against the solutions for finishing the criminal prosecution or not to indict.

For an efficient solving, the criminal investigation body, after receiving the complaint, within 48 hours, is bound to forward it to the prosecutor together with his notes, whenever they are considered necessary.

According to art 339 of the New Criminal Procedure Code there are two categories of measures and acts adopted by the prosecutor against whom the interested persons can file a complaint.

Thus, art 339 paragraph 1 stipulates that the complaint against adopted measures or acts carried out by the prosecutor or realized due to his decisions, are solved, as the case may be, by the Chief Prosecutor of the Prosecutor's Office, by the General Prosecutor of the Prosecutor's Office upon the Court of Appeal, by the Prosecutor Head of Department of the Prosecutor's Office upon the High Court of Cassation and Justice. Therefore, we can see one possibility to fight against the adopted measure, and on the other hand, the possibility to challenge the actions performed by the criminal prosecuting bodies based on the prosecutor's orders.

According to these regulations, this type of complaints are to be solved by the hierarchically superior prosecutor any time the measures or acts of criminal prosecution have been carried out based on their orders.

The lawmaker provided in art. 339 paragraph 4 Criminal Procedure Code, with a 20 day term for filing the complaints against dismissal solutions, starting with the date of order communication.

### **3. Chapter 3 - How to deal with complaints against measures and decisions prosecutor**

Settling procedure for this type of complaints is the same as the one used for complaints against acts of criminal research.

Thus, according to art 339 paragraph 5 Criminal Procedure Code, orders that contain the solution for complaints filed against solutions, acts or measures shall not be challenged by complaint filed upon the hierarchically superior prosecutor and are communicated to the person

who filed the complaint or other interested persons.

The law maker also decided that such type of complaint can be filed by the persons who take part as main procedure subjects or parties in the criminal trial, and also by any person whose legitimate interests were damaged by an act or a procedure measure.

Law no 281/2003 creates the legal frame necessary to insure the access to justice for people discontent with the result of the non arraignment. Also, the amendment of the criminal procedure code was made by using this law and the jurisprudence of the Constitutional Court, allowing those interested to complaint against the decisions of the criminal investigating bodies before the Courts by referring to art 21 of the Romanian Constitution, to other internal laws on judging procedure and to the European Convention of Fundamental Rights and Liberties, on free access to justice (Supreme Court of Justice, 2001, 280-282)

The object of the complaint, pursuant to art 340 of the Criminal Procedure Code, focuses on the prosecutor's orders for finishing the criminal prosecution and for non arraignment, and also on the not to indict decision if it is in the indictment.

The Governmental Emergency Decision no 18/18<sup>th</sup> May 2016 regulates what was set by art 340 paragraph 1 of the Criminal Procedure Code, that the person whose complaint against the dismissal solution, decided by order or by indictment, was rejected pursuant to art 339, can file complaint within 20 days since the communication, to the Judge of Preliminary Chamber of the competent Court of First Instance. In case the file was not solved within the legal term, the right to file a complaint can be exerted anytime, after the 20 day term but no later than 20 days since the communication of the solving manner.

The complaint must contain the name and surname, the personal number, the capacity and the address of the petitioner, whereas for a legal entity – the name, the head office address, the participation of its legal representative, date of the challenged order or indictment, file number, name of the Prosecutor's Office and the reason of the complaint.

The provisions of art 289 paragraph 3-5 Criminal Procedure Code, are applied accordingly, meaning that the complaint can be filed personally or by mandatory, where this shall have a special power of attorney annexed to the file. The complaint can be sent also by mail, complying with the shape term and the legal provisions on electronic signature if it bears one.

The challenging procedure for decisions on absence of criminal prosecution or non arraignment consists of two steps; the first one is the complaint filing upon the hierarchically superior prosecutor, while the second one is the beginning of the verifying procedure undertaken by the competent Judge of the Preliminary Chamber.

After the complaint registration upon the competent Court, it is sent the same day to the Judge of the Preliminary Chamber for review of the competency, this way, in case of a mistake, the complaint is sent to competent authority.

Pursuant to art 341 paragraph 2 Criminal Procedure Code, the Judge of the Preliminary Chamber decides upon the solving term and upon the summons of the respondent/s and at the same time, informs the prosecutor, noting that written mentions about the admissibility or solidity of the complaint can be filed.

If the criminal action has already begun, the respondent/s can lodge requests and invoke exceptions concerning the legality the evidence usage or the criminal prosecution process.

After the communication of the Judge of the Preliminary Chamber, the prosecutor sends him back the case file within 3 day time.

If the complaint has been filed upon the prosecutor, he shall send it together with the case file, to the competent Court.

The complaint is solved in the Council Chamber in the presence of the prosecutor, by reasoned conclusions, ruled in the Council Chamber.

The complaint shall be given a solution even if the summoned persons or the prosecutor are not present.

When solving a complaint, the Judge of Preliminary Chamber reviews the challenged solution taking into account the papers of the criminal prosecution file and any other new ones.

In cases where the beginning of the criminal action has not been ordered yet, the Judge of the Preliminary Chamber can rule the rejection of the complaint, for reasons related to delay, inadmissibility or lack of reasons. Also, he can accept the complaint and eliminate the challenged

solution by sending the case to the prosecutor to start or complete the criminal prosecution or to start the criminal action and complete the criminal prosecution.

The law also stipulates the case where the Judge of Preliminary Chamber accepts the complaint and changes the ground of the challenged dismissal solution, if by doing this the complaining person doesn't confront with a harder situation.

In cases where the criminal action has begun, the Judge of Preliminary Chamber can find solution to the complaint by adopting an unfavorable solution, rejecting it as late or inadmissible or can review the lawfulness of the evidence and of the criminal prosecution, eliminating the illegal evidence, or can penalize by declaring the acts null and void.

This analyze of the criminal prosecution lawfulness is necessary for the case where the solution rejects the complaint as groundless but also for the admission of the complaint.

According to the new regulations, after the Judge of Preliminary Chamber sends the informing note, the hierarchically superior prosecutor admits the complaint and orders the elimination of the challenged solution, the complaint shall be rejected for lacking the object.

In terms of the judicial costs, the State shall be responsible for them.

The decision drawn up by the Judge of Preliminary Chamber on the admissibility or rejection of the complaint, remain final.

If the complaint is accepted, the Judge of Preliminary Chamber eliminates the challenged solution and orders the judgment of the facts of persons for which the criminal action has been started during the criminal prosecution. When there is enough evidence, the file is forwarded.

Within 3 day time after the conclusions communication, the prosecutor and the respondents can file a reasoned appeal on the solving way of exceptions concerning the lawfulness of evidence and of the criminal prosecution; otherwise the appeal is not admitted.

The appeal is filed by the judge who solved the complaint and it is sent to the hierarchically superior Judge of Preliminary Chamber for a competent solution. If the Court receiving the complaint is the High Court of Cassation and Justice, the judging panel shall find a result in the Council Chamber in the presence of the summoned respondent and the prosecutor. The reasoned conclusions ruled in this Chamber can order the rejection of the appeal as late, inadmissible or groundless and can maintain the decision for beginning of the trial.

The Judge of the hierarchically superior preliminary Chamber can accept the appeal, eliminate the conclusions and analyze once more the complaint if the exceptions on the lawfulness of evidence or criminal prosecution are wrongly solved by the hierarchically inferior Judge of the Preliminary Chamber.

#### **4. Conclusions**

The complaint about acts of criminal investigation takes the form of a complaint as a way to notify the prosecuting authorities and involves solving it by the superior prosecutor.

Through the meaning of complaint against not to indict and non arraignment solutions, we conclude that they are measures of control by the superior prosecutor, but also of control by the judge of preliminary chamber, which has the role to verify the reasons given by the complainant to rights and interests of the parties to a fair trial and the public interest.

#### **5. Bibliography**

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