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METHODS OF TERMINATION OF CRIMINAL PROCEEDINGS DURING CRIMINAL INVESTIGATION

SUMMARY OF THE DOCTORAL THESIS IN LAW
Speciality: 554.03 – Criminal procedure law

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CONTENTS

SUMMARY OF THE DOCTORAL THESIS IN LAW

CONCEPTUAL GUIDELINES OF RESEARCH

The actuality and the importance of the subject. The criminal investigation activities play a major role in achieving the purpose of the penal process written art.1, para.2 of the Criminal Procedure Code. This goal is not always reached by sending the accused in a court of law. The criminal investigation body can reach other conclusions based on the evidence, and thus prove either the innocence of the person, or the existence of circumstances that hinder the drawing to criminal liability. In these cases, the termination of the criminal process happens during the criminal investigation.

The termination of the criminal proceedings during the investigations happens, usually, more often than during trial. This happens because the court, as a rule, terminates the process only in the cases when the organs of investigation, having identified reasons for termination, have failed to so in a timely manner. There are very few cases when the bases for terminating the criminal process are found after sending the case to trial (acts of amnesty and pardon, the expiration of prescription terms, the death of the accused, etc.). This fact has also been proven by the statistic data regarding the ratio of sentences of pardon and of termination of the proceedings compared to the sentences of conviction and the decisions of closing a case during investigation.

During the criminal investigation or at its end, there may be cases when the prosecutor, at the suggestion of the criminal investigation body, or ex officio, disposes the removal from under criminal investigation, the termination of the investigation or the closing of the case.

The institution of termination, during its legislative evolution, has suffered many changes. When adopting the Criminal Procedure Code, the legislator has given a new extent to the institution of termination: the bases for termination of the criminal proceedings and the procedure itself have been modified, a special clarification has been given to the partial termination of the proceedings, as well as the removal of the person from investigation.

The institution of termination must be seen as a complex judicial structure. At the same time, it must be mentioned that the termination of the proceedings is an independent institution from the resolution of the penal process.

In this context, it must be remarked that the majority of the bases of termination of the criminal process during investigation are regulated by the criminal law, but must be proven during the criminal process. Such an approach leads to a more profound analysis of the problems regarding the judicial classification of the circumstances that remove the criminal nature of the act or that liberate from criminal responsibility, which are essential for solving the criminal process.

Thus, the actuality of the researched topic is determined not only by the practical aspect, but also the theoretic one.

Describing the situation in the research domain and identifying research problems. While carrying out the study, as a reference point served the criminal procedural legislation and other relevant acts of the Republic of Moldova and other states (Romania, Ukraine, Russian Federation, etc.).

The theoretical basis of the investigation is the works of the most recognized authors in the field: Neagu I, Damaschin M, Udroiu M., Dongoroz V., Boroi A., Bulai C., Volonciu N., Păcuraru I., Poiană I., Jidovu N., Mateuț Gh., Tulbure A., Antoniu Gh., Tanoviceanu I., Theodoru Gr., Cuznețova N., Dobrovoliscaia T., Sluțchii I., Iacubovici N., Macari I., Himiceva G., Tihomirov L., Ivașenco V., Barabaș A., Dubinscaia A., Şargarodskii M., Grigoriev V., Pobedchin A., Șeifer S., Iliuhina S., Casatchina S., etc. Among the local authors, the works of whom were the basis of the thesis elaboration can be mentioned: Dolea Ig., Roman D., Osoianu T., Ostavciuc D., Odagiu Iu., Rusnac C., Orîndaș V., Borodac A., Gladchi Gh., Brânză S., Botnaru S., Botezatu R., Vîzdoagă T., Didîc V., Barbăneagră Al., Berliba V., Ulianovschi X.etc.

The empirical basis of investigation was formed by the results of studying the Prosecutor's Office Reports for 2018-2022, as well as the judicial practice on the field of reference.

The purpose and the objectives of the thesis. The purpose of the research is deduced from the topic and consists of both theoretical and practical analysis of the institution of termination of the criminal process at the stage of criminal investigation, and, identification of the problems of the applicability of the termination solutions and establishing the directions for improvement of the criminal procedural legislation in the field of regulation of the termination of the criminal investigation in fact and on the person.

In order to achieve the proposed goals, the following objectives have been set and achieved: - the analysis of scientific works from the national and international criminal procedural doctrine; - elucidating the essence and importance of the institution of the termination of the criminal process in the phase of the criminal prosecution; - highlighting specific peculiarities of occurrence and termination of criminal procedural legal relations; - identification of common and distinct elements of the institution of termination of criminal proceedings at the stage of criminal prosecution in comparative criminal procedural law; - determination of the stages of evolution of the legal regulations of the institution of the termination of the criminal trial at the stage of the criminal investigation; elucidating the role of the criminal investigation officer and the prosecutor in case of termination of the criminal trial in the phase of criminal investigation - the analysis of the observance of the rights (rehabilitation) of the person accused and removed from prosecution in the light of the national jurisprudence and the jurisprudence of the ECtHR, as well as the co-resolution of the national legal framework to the standards set out in the jurisprudence of the ECHR; - highlighting the procedural position of the prosecutor at the termination, the classification

of the criminal investigation, the removal of the person from prosecution, contesting the decision to terminate and resume the criminal investigation; - analysis of the circumstances that exclude the criminal investigation; - analysis of the solutions for the termination of the criminal trial at the stage of the criminal wish through the factual and legal grounds; - the analysis of the mechanism for repairing the damage in cases of extinguishing the criminal process at the stage of the criminal investigation; - the formulation of the proposals for amending and improving the national legal framework to the analyzed field.

The methodology of the scientific research. In the research of the proposed topic, a complex study of the institution of termination, the classification of criminal prosecution and the removal of the person from criminal investigation was carried out, with respect for the rights of the person in the criminal investigation connected to international standards. The results of the study can be used as scientific material to study the ways of terminating the criminal process at the stage of the criminal investigation. The originality of this study derives from the concomitant exposure on the ways of terminating the criminal trial at the stage of the criminal investigation as an institution of the criminal process and as a procedural action outlined in its procedural form. The need for the study was derived from the lack of a paper that would compile the specific elements of the targeted issue.

Taking into account the specificity and complex character of the investigated theme, in order to achieve the goals and objectives outlined, as research methods were used: historical-legal, logical, comparative, systemic method, literary, statistical, prospective interpretation.

Scientific novelty and originality. This study represents a complex research of theoretical and practical problems, current and forward-looking, regarding the institution of the termination of the criminal process at the stage of criminal prosecution. The innovative elements of the study are deducted from the fundamental theses of the work and take the following form: 1) several definitions have been identified for the notion of the termination of the criminal proceedings at the stage of the criminal investigation, such as: termination of the criminal proceedings at the stage of the criminal investigation can be defined as the act of solving the criminal case, in rem and in personam without ordering a conviction sentence. Another definition, but which we consider the most successful, defines *the legal institution of the termination of the criminal process at the stage of the criminal prosecution, as a set of legal rules governing the grounds and procedure for the termination of criminal procedural legal relations*; 2) it has been determined that the stage of the termination of the criminal investigation is the end point of the prejudicial phase and is conditioned primarily, by the need to protect the rights and freedoms of the parties to the trial and other participants, which certain decisions may affect their interests, and, and secondly, the need to take into account all the objective and subjective circumstances of the

criminal case, for resolution with the possibility of correction and re-education of a person without the application of the criminal sanction. 3) It was also established that the criminal procedural legislation of the Republic of Moldova regulates three ways of termination of the criminal trial at the prejudicial stage: removal of the person from prosecution, termination of the criminal investigation, and, classification of the criminal process. 4) it has been established that one of the mandatory conditions for the termination of the process without the right of rehabilitation is that the suspect, the accused, the defendant to agree to such a termination, which implies the acknowledgement of the indicted act and of the guilt. Although, a person considers himself guilty only when there is a definite criminal judgment about them; 5) There were highlighted the shortcomings of the legislation in the field of circumstances that exclude criminal prosecution, art.275, 284, 285, 512 CPC; 6) The lack of a clear regulation on the procedural reflection of the solution to cease prosecution, removal of the person from prosecution and classification of the criminal trial, etc.

Also, the scientific novelty of the study consists in the reasoned elaboration of a set of recommendations, in the form of ferenda law, namely:

1. Modification of pt.1) of art.275 CPP *„there is no fact of the crime"* with *„the deed does not exist"*.
2. Completion of pt 5) of art.275 CPC, with the following content: *„except in cases of rehabilitation or disagreement of the successors"*.
3. Supplementation with pt. 6^1 of art.275 CPC, with the following content: *„the term of conditional suspension of criminal prosecution has intervened"*.
4. Modification of the content of par.(3) of art. 284 CPC with the following content: *The prosecutor, if he finds the grounds provided in paragraph (2), being governed by the provisions of Article 286^1 CPC orders the removal of the person from criminal prosecution. The person may be removed from prosecution in full or only on an indictment.*
5. The repeal of paragraph (4) and (5) of art.284 CPC, because they are found in the provisions of art. 286^1 CPC.
6. Modifying the content of paragraph 2 of art. 285 CPP, namely the phrase *„provided in art.275 pt. 4)-9)"* to be replaced by *„provided in art.275 pt. 4), 5), 6), 9)"*.
7. Amending the content of paragraph (4) of art.285, the words *„by ex officio ordinance or at the proposal of the criminal investigation body"* to replace with the phrase *"in compliance with the provisions of art.286^1CPC"*.
8. Repeal of paragraph (5), (6) and (9) of art.285 CPC, because they are found in the provisions of art. 286^1 CPC.

9. Completion of the Criminal Procedure Code with art.286[1] *„Order for removal of the person from prosecution, termination of criminal prosecution and termination of criminal proceedings”.*

10. Amending Art.512 CPC, by completing paragraph.2) as follows, after the words *„dispose the release of the person of criminal liability”* with the phrase *„ and the termination of the criminal prosecution”.*

Theoretical significance of the work. The theoretical importance of the thesis is that it makes a certain contribution to the study and improvement of the institution of the termination of criminal prosecution and the relevant sources of criminal procedural law.

The conceptual ideas elaborated by the author enrich the general theory of the criminal process and in their totality create the theoretical and methodological premises for elucidating major scientific issues regarding the protection of the rights and legitimate interests of the subjects at application of solutions to cease prosecution in rem and in personam.

The applicative value of the work consists in providing a compilation of the doctrinal material, useful for understanding the criminal procedural norm investigated, as well as formulating practical recommendations for solving uncertain situations encountered in national jurisprudence. At the same time, an eloquent interpretation of the peculiarities of the termination of the criminal trial at the stage of the criminal investigation was presented, this will facilitate the activity of law enforcement bodies in the application of criminal and criminal procedural rules of reference. The conclusions, the solutions submitted and the proposals of this study can be used in the training process of the students, the audience of the initial and continuous training courses, as well as the practitioners directly involved in the process of solving criminal cases at the stage of criminal prosecution, etc.

The main scientific results submitted for support consist of: essentially, the study carried out is one of the first attempts of a comprehensive analysis of the institution of the termination (extinction) of the criminal trial at the stage of criminal prosecution, under the current Criminal Procedure Code, carried out at monographic level. The identification of the imperfections admitted to the application of the procedure for the termination of the criminal trial at the stage of criminal prosecution and offering of some proposals of ferenda law for their correction.

Implementation of scientific results. The compilation of the theoretical and practical material finds direct applicability to the professional activity of the competent bodies, responsible for solving criminal cases, especially with the solution of cessation of criminal prosecution, removal of the person from penal prosecution and classification of the criminal process. The scientific results can be used in the training of students, master students and doctoral students from higher education institutions with a legal profile, but can also serve to conduct new scientific

investigations. At the same time, the recommendations and proposals of law ferenda, formulated by the author, can be taken into account when improving the normative framework aimed at art. 275 CPC.

Approving results. The results of the investigation were discussed in multiple national and international scientific forums. Also, the basic ideas of the paper were published in various scientific journals: Scientific Annals of the Academy „Stefan cel Mare" of the M.A.I.; Magazine „Law and life"; Materials of conferences and others.

Publications on the thesis topic. On the topic of the doctoral thesis were published 15 scientific papers.

Keywords: criminal trial juridical report, termination of criminal prosecution, termination of criminal prosecution, removal of the person from prosecution, classification of the criminal trial, reconciliation of the parties, rehabilitation of the person removed from criminal prosecution.

THESIS CONTENTS

The thesis structure was consistent with the purpose and objectives outlined, being composed of: annotations; list of abbreviations; introduction; four chapters divided into seventeen paragraphs; general conclusions and recommendations; bibliography; annexes; declaration on the assumption of responsibility and the curriculum vitae of the author.

The introduction, representing the exordium of substantiation and justification of the chosen topic for the study, includes the compartments presented in the following order: 1) the actuality and importance of the problem addressed, 2) the empirical basis of the study, and, 3) The purpose and objectives of the thesis, 4) the methodology of scientific research, 5) the hypothesis of research, 6) the scientific novelty of the obtained results, 7) the solved scientific problem, 8) Theoretical importance and applicative value of the paper, 9) approval of the results and summary of the thesis compartments.

Chapter I, entitled **„The analysis of the situation in the field of termination of criminal proceedings at the stage of criminal prosecution"** is devoted to the research of the most relevant scientific materials (manuals, monographs, doctoral theses, scientific articles, guides, guides, studies, journals dedicated to the institution of the termination of the criminal trial at the stage of the criminal investigation) published on the topic of the doctoral thesis in the Republic of Moldova and abroad, making an incursion in the most sensitive areas: history, sociological, juridical-processual, juridical-penal, methodical and statistical.

Analyzing the issue of ending the criminal trial at the stage of criminal prosecution through the prism of publications, allows us to mention that in the local scientific environment, up to today, no in-depth research study of the legislative, theoretical and applied issues of the institution was conducted.

Authors Osoianu Tudor, Andronache Anatol and Orindas Victor in the publication „Criminal prosecution" define the termination of the criminal process at the stage of the criminal prosecution, as a conclusion of the criminal investigation body to extinguish the criminal process, focused on the evidence, which demonstrates either the lack of guilt of the person concerned, or the existence of circumstances likely to impede criminal liability [25, p.129].

The author Roman Dumitru defines the decisions to terminate the criminal process at the stage of the criminal investigation as negative solutions of the criminal case [14].

The termination of the criminal investigation is the act of releasing the person from criminal liability and finishing the procedural actions, if on the grounds of non-rehabilitation the law prevents its continuation.

An identical notion of the termination of the criminal investigation is supported by the authors Osoianu Tudor and Ostavciuc Dinu, who define the termination of the criminal

investigation as the *„act to release the person from criminal liability and to complete the procedural actions in relation to the previously imputed act or deeds, if on grounds of non-rehabilitation the law prevents its continuation"* [26, p.372-373].

Authors: Osoianu Tudor, Andronache Anatol and Orindas Victor in the publication „Criminal prosecution" mention: „the penal procedure code establishes three ways in which the criminal trial is extinguished in the criminal investigation phase: removal of the person from prosecution; termination of criminal prosecution; classification of the criminal case" [25, p. 129].

The termination of the criminal investigation is ordered, unlike the removal from criminal prosecution, if there are certain circumstances that prevent the continuation of the criminal investigation, which are dependent on the innocence of the person [10, p. 660]. In the given case „blame" being as a sign of the composition of the crime.

The removal of the person from criminal investigation is a solution to extinguish the criminal process regarding the person at the stage of criminal prosecution. This opinion is also supported by the authors, Dolea Igor, Roman Dumitru, Sedletchi Iurie, Vizdoaga Tatiana, Rotaru Vasile, Cerbu Andrean, Ursu Sergiu, who mention, that the solution of removal of the person from prosecution applies only in the criminal investigation phase, because in the trial phase of the case for such grounds, the person is ordered to be acquitted [11, p.563].

At the same time, the same collective of authors define the removal of the person from criminal investigation as the decision through which the suspect or accused is rehabilitated, if the solution refers to all the charges [11, p.563].

The same opinion is also supported by the authors Osoianu Tudor and Ostavciuc Dinu, which define „institution for the removal of the person from criminal prosecution" as that act of rehabilitation and completion in respect of the person of any criminal prosecution actions in relation to the previously imputed act or acts [26 p.370].

The author Tudor Osoianu[25, p.130], defines the termination of the criminal investigation regarding the person, as that procedural activity by which the criminal investigation is usually interrupted, definitively if the existence of one of the cases that exclude the criminal investigation is found.

Removing the person from prosecution may be total or partial. The termination of the criminal prosecution regarding the suspect or defendant, in full, also implies the termination of the procedural quality, while the partial removal implies the termination of the criminal investigation only in respect of certain charges, as well, by changing its procedural status. Authors: Dolea Iogor, Roman Dumitru, Sedletchi Iurie, Vizdoaga Tatiana, Rotaru Vasile, Cerbu Andrean, Ursu Sergiu, support the opinion, while stating that „removal of the person under partial criminal investigation, constitutes a change of accusation according to par. (2), art.283 CPC" [12, p.44]. The change of

the prosecution in the criminal trial is determined by the accumulation of new evidence, which can mitigate or aggravate the situation of the accused. In the context of attenuation, paragraph 2 of art. 283 The CPC governs *„if, during the prosecution, the filed accusation has not been confirmed in a certain part of it, the prosecutor orders the removal of the person from criminal prosecution in respect of this indictment"*.

Some practicians operate with the notion of „closure of criminal case" [24], but the authors Osoianu T. and Ostavciuc D, mention, that „closure of criminal case", is an accurate denomination, unsuccessful in terms of legislative technique, because the Criminal Procedure Code regulates the notion of „closure of criminal proceedings" (art.286 CPC) [26, p.375].

Authors Dolea Igor, Roman Dumitru, Sedletchi Iurie, Vizdoaga Tatiana, Rotaru Vasile, Cerbu Andrean, Ursu Sergiu claim that *„closure is a way to stop criminal prosecution exclusively in rem, that is, as regards the act, no person being established as suspect or accused"* [11, p.571].

The author, Dolea Igor, in the paper „Criminal procedure code (applicative comment)", claims that *„the peculiarities of the classification are manifested in the fact that it does not target the person, the, but actions of the criminal investigation body, and after the issuance of the order to close the criminal trial, it is not allowed to perform procedural actions"* [10, p.662].

Analyzing the issue of the termination of the criminal trial at the stage of the criminal investigation, we cannot fail to take into account the scientific studies carried out by some authors from abroad on the subject under analysis.

Several romanian authors [35, p.296, 21, p.190, 40, p.9, 37, p.355] have catalogued the termination of the criminal investigation as a moment of exhaustion of the criminal investigation phase, which takes place not necessarily by submitting the case to trial, but also by adopting a solution of extinguishment by removal from prosecution or termination of the prosecution in question.

When the case of extinguishment is found during the criminal investigation phase, the criminal trial may end by extinguishing the criminal case [13, p.48].

The termination of the criminal trial is a decision of absolution, that is, the imputable deed does not fall under the scope of criminal acts [33, op.cit., p. 343,351,375].

Solutions to extinguish the criminal proceedings are ordered in cases where the setting in motion or exercise of the criminal action is prevented or cases of unfitness of the criminal action or are impediments to the exercise of the action criminal [22, p.240-260].

In Udoriu's opinion, the termination of the criminal trial at the stage of the criminal investigation is the termination of the criminal investigation without the initiation of the criminal action, in which the prosecutor, based on the report of the investigation body, has, only has a solution of failure to sue (ranking or waiving prosecution) [37, p.355].

The novelty of the regulation [op.cit. 18], in Article 318 of the Criminal Procedure Code, of the renunciation of criminal prosecution, tempers [38, p.109] a fundamental criminal procedural principle, namely the obligation to set in motion and to exercise criminal action, with the aim of efficiently managing the resources available to combat crime, assuming that the limited nature of these resources does not allow all persons who committed crimes to be held criminally liable [36, p.1355].

According to the authors Silviu Gabriel Barbu and Vasile Coman, „the institution to waive prosecution was introduced into Romanian criminal law with the entry into force of the new Criminal Procedure Code[5], and represents an application of the principle of opportunity for prosecution – regulated in Article 7 (2), adopted as the main limitation of the obligation of criminal action and, at the same time, as a manifestation of the criminal policy option for the purpose of better use of human and material resources" [2].

The renunciation of the criminal investigation has the role of transposing the principle of opportunity and it starts from the premise that the interest of the society does not justify the commitment of limited resources for the criminal liability of persons who have committed crimes, there is also no legal impediment to the investigation of the crime [36, p.1355, 19].

Following the same line of thought, Ana Maria Boldisor claims that renouncing the criminal investigation is an instrument of criminal procedural law, which the legislator has made available to the prosecutor, when it considers that there is no public interest in the prosecution and judgment of a crime" [19].

In the literature of the Russian Federation the notion of termination of the criminal case (classification of the criminal trial) is specific to the following doctrinal interpretations:

- termination of criminal prosecution and resolution without sentence of conviction [43, p.360];
- termination of criminal prosecution proceedings in criminal proceedings [42, p.360];
- the decision to terminate criminal proceedings in criminal proceedings [50, p.846];
- the decision of the investigation body, the investigator, the prosecutor or the judge on the termination of the criminal investigation and the termination of the criminal case (not the conviction sentence) [49, p.690].

Ivasenco V. defines the notion of the termination of the criminal case as a method of termination of procedural actions in a criminal case or in respect of a person in the case of establishing the circumstances that impede the continuation of the criminal investigation, which is a decision of the empowered person [47].

Authors Jogin N.V. and Fatculin F.N. state that the termination of the criminal case is that procedural, decisional act, by which the competent body, under the lack of conditions for conducting the criminal trial, is, cease procedural continuity in the criminal case [46, p.304].

An identical opinion is also supported by the author Glushcov A.I., who mentions that the termination of the criminal trial at the stage of the criminal investigation, represents that way of termination of the criminal investigation, by ordinance, applied by the criminal investigation body or the prosecutor, following the assessment of the accumulated evidence and the identification of circumstances, provided by law, which prevents the continuation of the criminal trial [45, p.159].

Casatchina S. defines, the termination of the criminal trial at the stage of the criminal investigation, is that institution, part of the criminal trial which re-regulates the procedural order for the termination of criminal prosecution in respect of a criminal offence and persons, without the delivery of the sentence and without the continuation of the administration of evidence in the reference criminal case [48].

The author Volinscaia O.V., in the autoreferat of the doctoral thesis, defines *the termination of the criminal investigation (removal of the person under criminal investigation) as the stage of completion of the procedural activities undertaken by the research body in respect of a person under the law* [44].

A Code of Criminal Procedure that would regulate the institution of termination of criminal proceedings in the English law does not exist, law enforcement bodies are governed by common jurisprudence (common law, case law), laws, laws, instructions and guides of the Prosecutor's Office (Crown Prosecution Service), the institution responsible for conducting the criminal investigation in the UK.

The main normative acts, in addition to the common case-law, which regulate the procedure and the grounds for the termination of the criminal proceedings are [op.cit. 34, 29]:

- Prosecutors Code (The Code for Crown Prosecutors) is a normative act of prosecutors that regulates the decisions of prosecutors in a criminal process;
- The law on criminal prosecution of 1985 (Procution of Offenses Act 1985) is the normative act, which regulates the rights and obligations of the prosecutor in a criminal trial.

According to the legal framework mentioned in the English system of law there are two ways to terminate the criminal trial: the classification and renunciation of the prosecutor to the accusation.In conclusion, analyzing the interpretations of the institution of the termination of the criminal trial at the stage of the criminal prosecution by domestic proceduralists, we can define that the termination of the criminal trial at the stage of criminal prosecution, is the act of

termination of the criminal prosecution and resolution of the criminal case without ordering a conviction sentence.

In general, the grounds for terminating the criminal proceedings at the stage of the criminal investigation are the same in both domestic and foreign legislation, with few exceptions.

Chapter II, called **„The institution of the termination of the criminal proceedings at the stage of the criminal investigation"**, is dedicated to the study of the occurrence and termination of the criminal process legal relationship, regulation of the institution of termination of criminal proceedings at the stage of criminal prosecution. Also, a thorough analysis of the legal grounds for the termination of the criminal trial and various criteria for classifying the circumstances that exclude the criminal investigation were exposed.

Legal relations are social relations governed by legal norms. By complying with legal norms or violating them, citizens, their recipients, adopt certain behaviors that determine the birth of legal rights and obligations. These rights and obligations are born because of the existence of a legal norm that describes them and that gives them legal force, that is, they link to their non-compliance the intervention of the corrective force of the state. The legal relationship is thus the way, the form in which the right is transposed, is realized in the social life [41].

Criminal procedural legal relations are those legal relationships that occur during the course of criminal proceedings [39, p.17].

Like any legal relationship, the criminal procedural legal relationship consists of the following elements:

- the subjects of the criminal trial legal report are the participants in the criminal trial, namely: the judicial bodies (the criminal investigation body, the prosecutor, the judge of the court), the lawyers, the parties (the accused, the guilty one, the injured party, the civil party, the party with civil liability), as well as other procedural subjects (witness, expert, interpreter);

- the content of the criminal procedural legal report is composed of the sum of the rights and obligations conferred by law to the subjects of the criminal procedural legal relationship. Depending on the particularity of the case and the procedural stage, the subjects of the criminal procedural legal relations acquire specific rights and obligations, which give a special nuance to each criminal procedural legal relationship;

- the object of the criminal procedural legal report is to establish the existence (or non-existence) of the criminal legal relationship and to determine the content of this legal relationship. Thus, as the criminal proceedings are conducted, the evidence necessary to clarify the case in all aspects being administered, the criminal report is finalized, and the solution pronounced at the end of the criminal trial establishes the existence or non-existence of the report of material criminal law [28, p.10].

Criminal procedural juridical reports are created only in a criminal process, which in turn is triggered by the referral of the criminal investigation body about the commission or preparation for committing a crime. Each participant in a criminal trial may initiate one or more judicial reports.

Once born, *the criminal procedural legal report* is carried out over time by imposing the requirement of compliance with the rule of conduct it establishes and the execution by the recipients of the criminal procedural norm of the obligation to obey law provisions.

Each criminal procedural legal report corresponds to a certain period of time, stipulated by the legislation or established by the judicial bodies, according to the law, one is certain, that any criminal procedural legal report ceases with the final resolution of the criminal trial.

A criminal legal report, at the stage of criminal prosecutions, ceases in connection with the existence of circumstances that impede the continuation of criminal prosecution or the existence of grounds for the release of a person from criminal liability.

Arriving at the stage of completion of the criminal investigation, the criminal investigation officer appreciates not only the evidence administered in the criminal case, but we can say that he self-assesses his activity.

Any proposed and subsequently disposed solution must be factually and legally substantiated. The factual argumentation is the totality of the accumulated evidence, and the legal argument is the totality of the legal rules governing the taken decision.

Termination of criminal prosecution is the act of releasing the person from criminal liability and finishing procedural actions, if on the grounds provided for in Article 275 CPC, the law prevents its continuation.

The prosecution cannot be initiated, and if it has been initiated, it cannot be carried out, and it will be terminated if [6]:

1) There is no fact of the offence;

2) The act is not stipulated by the criminal law as a crime;

3) The act does not meet the elements of the offence, except for cases when the offence was committed by a legal person;

4) the limitation period or amnesty intervened;

5) the death of the perpetrator has occurred;

6) the complaint of the victim is missing in cases where the criminal investigation commences, according to Article 276, only on the basis of his complaint or the prior complaint has been withdrawn;

7) In relation to a person there is a final judicial decision regarding the same accusation or by which the impossibility of prosecution on the same grounds was established;

8) In relation to a person there is an unannounced decision not to prosecute or to cease prosecution on the same charges;

9) There are other circumstances provided by law that condition the exclusion or, as the case may be, exclude the prosecution.

The listed grounds are governed by both the Criminal Procedure Code and other normative acts and legal recommendations. Among them we note:

1.The Penal Code, we note that practically all circumstances that exclude criminal prosecution are in one way or another regulated by the criminal law and are related to it (retroactivity, crime, criminal liability, criminal liability, etc, individualization of punishment, guilt, circumstances that exclude the criminal character of the act, release from criminal liability, amnesty, limitation period, etc.);

2.The Constitution of the Republic of Moldova, we cannot help but notice that the termination of the criminal investigation in respect of the person is governed by certain principles or guarantees that are regulated by the supreme law of the state (non-retroactivity of the law, the law, presumption of innocence, right of the person injured to a public authority, etc.);

3. Amnesty in turn applies by organic law. Since the proclamation of the independence of the Republic of Moldova, the legislator has adopted 11 laws on amnesty;

4. The legal interpretation of the institution of the reconciliation of the parties and the withdrawal of the prior complaint is found in Recommendation No 56 of the Supreme Court of Justice *on the application of art. 109 CP and 276 CPC in cases of reconciliation of parties* [32] and in the judgment of the Constitutional Court no. 27 of 21.09.2017 [15], *on the exception of unconstitutionality of certain provisions of Article 109 para. (1) CP (limitation of reconciliation in criminal cases);*

5. The procedure and mechanism for triggering, conducting and solving the mediation report is regulated by Law no. 137 of 03.07.2015 on mediation.

There are a number of rules adopted by the international community detailing the daily ways of working in criminal justice, namely:

1.*„The right not to be prosecuted, tried or punished several times”*, regulated by Article 4 of Protocol no.Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [30] and Article 50 of the Charter of Fundamental Rights of the European Union [4], is the point of origin for the grounds for termination of criminal prosecution provided for in item 7)-8) paragraph 1 art.275 of the CPC;

2. Recommendation 19(99) of the Committee of Ministers of the Council of Europe to the Member States on mediation in criminal cases, adopted at the 69th meeting of representatives of ministers [31], it is the international act, source of Law no. 137/2015 of 03.07.2015 on mediation;

3. Dezincriminarea sau principiul neretroactivității legii, potrivit căruia nimeni nu va fi condamnat pentru acţiuni sau omisiuni care, în momentul comiterii, nu constituiau un act delictuos este oglindit în mai multe acte internaționale, cum ar fi: Declarația Universală a Drepturilor Omului (art.11) [9], Pactul internaţional cu privire la drepturile civile şi politice (art. 15) [27], Convenţia Europene pentru Apărarea Drepturilor Omului (art. 7) [8].

During the course of the criminal investigation or its termination, it can be ascertained the existence of situations in which the prosecutor at the proposal of the criminal investigation body, or ex officio, disposes as appropriate, termination of criminal prosecution of the person, that is, removal from prosecution, termination of prosecution when charged or indicted or termination of criminal prosecution when not charged or indicted, or, that is, the closing of the criminal case.

When identifying the grounds mentioned, the public prosecutor ex officio or at the proposal of the criminal investigation officer shall order the termination of the criminal investigation by ordinance.

Appreciating that the criminal investigation was fully carried out, all the submitted versions were checked and all the circumstances and circumstances of the offense were ascertained, the criminal investigation officer decided to terminate the criminal investigation and forward the criminal case to the prosecutor accompanied by the report with one of the proposals provided in Article 291 CPP. The criminal investigation officer finding that the evidence administered in a criminal case forms one of the grounds that exclude the criminal investigation, submits to the prosecutor a report with the proposal to terminate the criminal investigation [op.cit. 16].

The prosecutor, who conducts the criminal investigation, receiving the report of the criminal investigation body and the criminal case, checks the materials and, following the assessment of the evidence, may order one of the following solutions, provided by item 2) Art.291 CPC [6]:

- termination of criminal prosecution;

- the termination of the criminal investigation in respect of the person or the removal of the person from prosecution and the return of the criminal case to the criminal investigation body for the continuation of the criminal investigation;

- classification of the criminal prosecution, if the accused is missing;

- refusal of termination of the criminal investigation with restitution of the criminal case, with the respective indications, to the criminal investigation body for the continuation of the criminal investigation [6].

Upon termination of the criminal investigation, the prosecutor, if necessary, shall also take the necessary measures to:

1. revoke the preventive measure and other procedural measures in the manner provided by law;

2. restitute the bail in the cases and in the manner provided by law;

3. apply safety measures;

4. collect judicial expenses or other actions provided by law.

At the same time, the prosecutor is obliged to explain to the parties the procedure and the time limit for challenging the decision taken, if necessary to explain to the suspect, to the accused the right and the rehabilitation procedure and the injured party (civil party) the right and procedure to repair the caused damage.

All those described as necessary and indispensable elements of the order to remove the person from prosecution, cease prosecution or termination are conclusions drawn from the provisions of the normative framework (art.art.255, 284, 285, 286 CPP, etc.) and judicial practice. At the same time, we mention that the legislator did not provide for a clear regulation of the content and constituent elements of the ordinance, a procedural act for solving the criminal prosecution. This creates confusion and misunderstandings regarding what is correct to include in the ordinance, what is mandatory to include and what is not necessary.

In the context of the above mentioned and for the purpose of elucidating the confused aspects, it is proposed to include in the Criminal Procedure Code ***art.286[1] „Order for the removal of the person from prosecution, the, termination of criminal prosecution or termination of criminal proceedings."***

The article will have the following content:

Article 286[1]. *„Order of removal of the person from prosecution, termination of criminal prosecution or classification of criminal proceedings."*

(1) The order to remove the person from prosecution, cease prosecution or closure of criminal proceedings is ordered by the public prosecutor ex officio or at the proposal of the criminal investigation officer.

(2) The Ordinance must include:

1) the date and place of drawing up,

2) the function, name, surname of the person who draws it up;

3) the circumstances which served as grounds for the commencement of criminal prosecution;

4) the legal classification of the act which served the basis for the commencement of the criminal investigation;

5) results of the prosecution and circumstances relating to the accused person;

6) procedural constraint measures applied;

7) the circumstance that serves the basis for the removal of the person from prosecution, termination of criminal prosecution or termination of criminal proceedings;

8) revocation of the preventive measure and other procedural measures in the manner provided by law;

9) safety measures;

10) the refund of the bail in the cases and in the manner provided by law;

11) judgment on criminal offences;

12) judicial expenses and the order of collection;

13) The procedural order of appeal.

(3) In cases of grounds for non-rehabilitation provided by this Code, the termination of criminal prosecution shall be ordered only with the consent of the accused or the injured party, mentioned in the ordinance on termination of criminal prosecution.

(4) The prosecutor informs and transmits the copy of the order to remove the person from prosecution, cease prosecution or closure of the criminal trial of the accused, the injured party, the civil party and the civilly responsible party. At the same time, the injured party and the civil party are explained the right to file civil action in civil proceedings.

(5) Simultaneously with the removal of the person from criminal prosecution in the cases provided in paragraph (2) item 2) and 3) art.284 of this code, if the criminal act is not imputed to another person and it is not necessary to continue the criminal trial, the same ordinance also orders the classification of the criminal trial.

In **Chapter III**, with the title **„The termination of criminal proceedings without the right of rehabilitation"**, an analysis is presented on the procedural and criminal peculiarities of termination of criminal proceedings under the reconciliation of the parties or mediation, the intervention of the limitation period or amnesty, as well as the release from criminal liability under art.53 PC.

As it was mentioned above, one of the priority purposes of the criminal trial is that any person who has committed an offense is punished according to his guilt. At the same time, the legislator also provided for situations, when, from certain circumstances, the criminal cases are finalized not with sentencing sentences, but with solutions to extinguish the criminal trial.

Depending on the grounds for extinguishing the criminal trial, we have identified two categories of circumstances that exclude prosecution, namely:

- with right of rehabilitation;
- without the right of rehabilitation.

From the provision of Article 275 CPP, we reiterated the following circumstances that exclude criminal prosecution without the right of rehabilitation:

- the prior complaint was withdrawn by the injured party, a transaction was concluded within the mediation process or the parties reconciled – in cases where the criminal investigation can be initiated only on the basis of the prior complaint or the criminal law allows reconciliation (item 6, paragraph 1 art.275, art.276 C.pen.pr., art.109 CP);

- intervention of the limitation period or amnesty (item no.4, paragraph 1 art.275 CPC, art.107 PC);

- the death of the perpetrator (item 5, paragraph 1 art.275 CPC)

- the existence of the cases referred to in Article 53 of the Criminal Code (item 9, paragraph 1 art.275 C.pen.pr, art. 53 PC).

Following the study, the author found:

The prior complaint is the procedural act by which the victim of the crime manifests their will that the person who committed it be held criminally liable, without which the criminal liability cannot intervene, and as a result, the criminal trial cannot begin or continue.

The prior complaint has a double connotation, on one hand it is the act of referral to the criminal investigation body regarding the crime, and on the other hand, it frames the will of the victim that the crime be prosecuted or tried, thus removing the impediment that would oppose the criminal procedural activity.

We can assign to the institution of the prior complaint actions such as failure to file, withdrawal or the concluding of a reconciliation transaction, which subsequently leads to the termination of the criminal process in the phase of the criminal investigation, by the order to not initiate the criminal investigation, terminate, or close the criminal case.

The failure to submit, the withdrawal, or the reconciliation must be benevolent, personal, and unimposed, or influenced by someone, and it can be filed throughout the criminal process until the withdrawal of the court panel in the deliberation chamber.

The lodging of the prior complaint has a universal and unconditional effect on all perpetrators. In this sense, the withdrawal of the complaint to one perpetrator produces the same effect on others. If the victim wants only some perpetrators to be held criminally liable, they will use the right to reconciliation. Thus, reconciliation with a suspect (guilty party) does not extend to the other perpetrators, according to paragraph (5) of Article 276 of the CPC, which states that reconciliation is personal [11, p.428].

In this context, we reiterate that if the legal subject of the prior complaint does not want the absolution of criminal liability for all defendants, but only one of them, they do not withdraw the complaint regarding the person concerned, but the procedure of reconciliation will be applied, as regulated by art.109 PC.

In addition to reconciliation as a method of settling a criminal conflict, the legislator has provided mediation. Mediation is achievable in criminal conflicts, in which the criminal liability of the suspect, defendant, or culprit can be removed by not submitting the prior complaint, by withdrawing it, or by reconciling the parties. The criminal conflict brought before the mediator must have the juridical framing for which the law provides either the procedure for withdrawing the prior complaint, or the reconciliation of the parties or both.

Mediation is an alternative way of settling disputes amicably, in a structured, flexible and confidential process, with the assistance of one or more mediators[20].

The parties are entitled to determine by common agreement all aspects related to the initiation, implementation and completion of the mediation process.

The result of the mediation procedure is the agreement of reconciliation whereby both parties accept the terms of reconciliation and includes the commitments made by the parties, the modalities and the deadline for their realization.

The criminal investigation body or the court will check, in the presence of the parties, whether the reconciliation transaction was signed consciously, voluntarily and in compliance with the rights.

The criminal investigation body or the court, under the terms of the Criminal procedure code (article 285 and art. 332), will decide either to stop the criminal investigation (if the process is in the stage of the criminal investigation) or to stop the criminal process (if the criminal case is in the stage of trial).

Prescription is a case that removes both criminal liability and the execution of punishment, because the passage of time, under certain conditions, makes either the criminal law no longer applicable or the sanction imposed be no longer enforced.

The limitation period of criminal prosecution is closely related to the category of offence committed, the more serious the legal classification, the longer the limitation period.

The prescription can be regarded as a sanction applied to the judicial bodies for the admitted inactivity in the criminal liability of the person guilty of committing the crime.

The effect of the prescription of criminal liability is similar to that of an amnesty before conviction [1].

According to paragraph (1) of art. 107 PC, amnesty is the act that has the effect of either removing criminal liability or punishment, or reducing the applied penalty or switching it.

Amnesty is, above all, a real right of the individual to be forgiven on the grounds that the offence was committed in extenuating circumstances and, secondly, on the grounds that a favorable situation was created at the time of issuing the amnesty act.

Amnesty is a basis for the termination of criminal proceedings that may be applicable throughout the criminal proceedings.

The amnesty has effects only on the criminal side of the act and not on the civil side, so the injured party has the possibility to use the right to be materially compensated in a civil trial.

Amnesty has no effect on disciplinary liability. If the committed offense represents, at the same time, a disciplinary offense, one of the sanctions provided by the Labor Code of the Republic of Moldova may be applied, the amnesty leaving the disciplinary liability intact.

The death of the perpetrator is a circumstance that excludes the criminal prosecution regulated by item 5) Article 275 CPC. The death of the perpetrator makes the criminal action not possible to be set in motion, as, in criminal matters, the responsibility is personal.

The death of the perpetrator cannot attract the classification of the criminal trial, if there are several perpetrators in the criminal case, and the death occurred only in regard to one of them. In this case, the prosecution will be stopped only for the deceased, and for the others it will continue. At the same time, we mention that the death of one of two perpetrators does not change the legal classification of the act, remaining as aggravating two or more persons.

The termination of the criminal investigation in connection with the death of the perpetrator shall not apply if rehabilitation is requested. So, the criminal investigation body must inform the right successor of the deceased suspect/guilty person about the decision to cease the criminal investigation on the basis of the intervention of the death of the perpetrator. In the case of reasoned disagreement of the successor, the termination solution cannot be ordered on the basis provided for in item 5 Article 275 CPC. At the same time, the legislator did not expressly provide for this regulation, which denotes a violation of human rights. In this context, it is proposed to modify item 5 art.275 CPC, by filling in with the phrase *„except for cases of rehabilitation or disagreement of successors”*.

Both criminal and procedural-criminal legislation regulate the legal person as the subject of the crime and the procedure for examining the cases committed by the legal person. At the same time, we mention that until recently, the criminal procedure code did not regulate other alternative procedures for the legal entity. With the new amendments, the **Procedure for the judicial agreement of public interest** was introduced.

The release of legal liability is a right and not an obligation of the competent body in taking this decision.

Delimiting the release of legal liability from the release of punishment, we highlight two stages of the freedom of liability: prejudicial and judicial. We mention that during the first stage it is possible to release from liability, and within the second stage it is possible to release from punishment.

In the context of the legal applicability of the solution for the termination of criminal investigation in respect of natural and legal persons, who have honored their obligations imposed by the conditional suspension of the criminal investigation, with the subsequent release of criminal liability, it is proposed to modify the legal framework, namely:

- art.275 CPC, by filling in item 61: *„the term of conditional suspension of criminal prosecution has occurred"*

- art.512 CPC, by filling in paragraph.2) as follows, after the words *„dispose the release of the person of criminal liability"* with the phrase *„ and the termination of the criminal prosecution".*

Following the study, it was reiterated that one of the mandatory conditions for the termination of the process without the right of rehabilitation is that the suspect, the accused, the defendant to agree to such a cessation. This would imply the assumption of the committed deeds and the guilt, although only through a final criminal decision can the guilt of a person be established.

The termination of the criminal process without the right of rehabilitation, under the conditions and grounds shown, entails the following disadvantages for the perpetrator:

- repair of civil action or damage caused to the victim;
- payment of the costs of the trial;
- release from the held position;
- transfer to another position with a lower degree of responsibility, if the offence was committed in connection with the performance of the duties of the service;
- the impossibility to benefit from the termination of the criminal investigation on the same grounds repeatedly in case of termination of the criminal proceedings on amnesty.

Chapter IV, entitled **„The termination of the criminal proceedings with the right of rehabilitation"**, includes a complex investigation of the peculiarities of termination of the criminal proceedings on the basis of the grounds of item 1-3 Art.275 CPC (there is no fact of the crime; the act is not provided by the criminal law; the act does not meet the elements of the crime, except when the offense was committed by a legal person), pct.7,8 Art.275 CPC (there is a final court decision regarding the same accusation or finding the impossibility of criminal prosecution on the same grounds; in respect of a person there is an unannounced decision not to initiate the criminal investigation or to cease the criminal investigation on the same charges), as well as the grounds which exclude the criminal nature of the act (legitimate defense; apprehension of the offender; state of extreme necessity; physical or mental constraint; reasonable risk; execution of the order of the superior or the disposition of the superior). And if the chapter is intended for grounds of termination with the right of rehabilitation, of course, the issues of importance and applicability of

the right to rehabilitation in case of termination of criminal prosecution in respect of the person have also been studied.

In accordance with the provisions of art.51 PC and the grammatical interpretation of the word „deed", we propose to the legislator to modify the phrase „there is no crime" with „there is no deed" (art. 275, para.1, item 1 CPC have the following content: *„there is no deed"*).

In adopting the solutions for extinguishing the criminal process at the stage of the criminal investigation on the grounds provided for in item 1,2,3 art.275 CPC, it is indicated to possess a thorough knowledge in the process of legal qualification of the offenses, not only of signs resulting from the content of the offence, but also of general and special rules for the qualification of the facts within the limits of one or another normative content, within the limits of one or another legal liability, with reference to one or another form of guilt by which the criminal act manifests itself.

According to the criminal procedural law (art.285 paragraph.2 CPC), circumstances that say that if *there is a final judgment on a person in relation to the same accusation or that the impossibility of criminal prosecution on the same grounds has been found and in respect of a person there is an unannounced decision not to initiate the criminal investigation or to cease the criminal investigation on the same charges* are grounds for termination of the criminal investigation without right of rehabilitation. We do not agree with this provision, because according to the principle „non bis in idem", no one can be prosecuted, tried or punished multiple times for the same act. The resumption or initiation of a new criminal trial in respect of the same person on the same act, when there is already a final judgment, is an illegality of the competent bodies. **That is why we propose to modify the content of paragraph 2 of art. 285 CPC, namely the phrase „provided in art.275 item 4)-9)" to be replaced by „provided in art.275 item 4)-6), 9)".**

In order to remove the insinuated divergences and interpretations, we propose the amendment, by completing item 8) of art.275 CPC, namely, after the words „ or to" to be added *„release of criminal liability, removal of the person from investigation or"* and further according to the text. Finally, item 8) of Article 275 CPC to have the following content: *„there is an unannounced decision on whether to prosecute or to release criminal liability, with regard to an individual, removal of the person from prosecution or termination of criminal prosecution on the same charges"*.

The legislator has provided the following cases that exclude the criminal character of the act: *legitimate defense (art.36 PC), detaining the offender (art.37 PC), state of extreme necessity (art.38 PC), physical or mental constraint (art.39 PC), reasonable risk (art.40 PC), execution of the order of the superior or the disposition of the superior (art.40[1] PC).*

For the listed causes, a number of common features are characteristic, formally these facts fall under the incidence of signs of one of the offenses stipulated in the articles of the special part of the Criminal Code, but in the presence of certain conditions they are not recognized as illegal, because they do not contain the material element of the offense – the prejudicial character of the act, but it is carried out in the presence of conditions which transform them from dangerous to useful or neutral to public interests.

Correspondingly, the causes that remove the criminal character of the act are considered the facts aimed at removing the arising danger for social relations.

According to Law no. 1545 of 25.02.1998 on how to repair the damage caused by the illicit actions of the criminal investigation bodies, the prosecution and the courts, as well as the person who has been removed from criminal proceedings or in respect of which the criminal investigation was terminated on grounds of rehabilitation, has the right to:

- salary and other income from work, which is their main source of existence, and of which they were deprived during the criminal investigation;
- pension or indemnity whose payment has been terminated as a result of unlawful arrest and detention;
- property (including deposits and related interests, obligations of state loans and related gains) confiscated or passed into the state income by the court or lifted by the criminal investigation body, as well as the seized wealth;
- the amounts paid by the person for legal aid;
- expenses for its treatment, treatment determined by the application to it of illicit actions (of ill-treatment);
- expenses incurred in connection with calls to the criminal investigation body, the prosecution body or the court.

The citizen possesses the rights and obligations provided by the legislation, occupies a certain legal status within the company, is liable to the state, but is also under its protection.

Therefore, in case of violation of a right, the citizen can and must benefit from the repair of the violated right, by the methods and means provided by the legislation.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

At the end of the paper are presented a set of **general conclusions and recommendations** that are useful to improve the theoretical and applicative bases of criminal procedural law, which can contribute effectively and directly to the linking of the legislative provisions to the daily needs in the field of solving the criminal process at the stage of criminal prosecution.

Of the most relevant general **conclusions** we mention the following:

1. Taking into account the importance and functions of the termination of the criminal process at the stage of the criminal investigation, in a law society, it has its own history and its own stages of evolution. The termination of the criminal process at the stage of criminal prosecution is the act of termination of criminal prosecution and resolution of the criminal case without ordering a conviction sentence.

2. From the carried-out study it was concluded that the most successful definition of „Termination of criminal proceedings at the stage of criminal prosecution" would be the following „A set of legal rules governing the grounds and the procedure for terminating the criminal procedural legal relations".

3. The criminal-procedural legislation operates with three ways to terminate the criminal trial at the stage of the criminal investigation: the termination of the criminal investigation, the classification of the criminal process, the removal of the person from criminal prosecution.

At the same time, the Romanian legislation regulates only two ways of extinguishing the criminal trial at the stage of the criminal investigation: the classification and renunciation of the criminal investigation, and the Criminal Procedure Code of the Russian Federation operates with two notions, termination of criminal proceedings and termination of criminal prosecution (removal of the person from prosecution), solutions applicable only in the criminal investigation phase.

4. Removing the person from prosecution is the solution applicable only to the person concerned, which involves the termination of the criminal investigation actions regarding the suspect or defendant, which also implies the cessation of the procedural quality.

Removing the person from prosecution can only be integral. Removing the person from partial prosecution is nothing more than a change of accusation.

5. The termination of the criminal investigation is the act of releasing the person from the criminal liability and of completing the procedural actions, if on the grounds of non-rehabilitation the law prevents its continuation.

6. The grounds for removing the suspect, the accused from under investigation, aside from „the deed was not committed by the suspect or accused", also attract the solution of ending the prosecution in fact. A tangential provision is regulated by the legislator in paragraph.5, art.284

CPC „Concomitant with the removal of the person from criminal prosecution in the cases provided for in paragraph. (2) item 2) and 3), if the criminal act is not imputed to another person and it is not necessary to continue the criminal trial, the same ordinance also orders the classification of the criminal case".

A similar situation can be found in paragraph.9 art.285 CPC „Concomitant with the complete termination of the criminal investigation, if the criminal act is not imputed to another person and it is not necessary to continue the criminal process, the classification of the criminal case is ordered by the same ordinance".

7. The classification of the criminal process is the act of finalizing any procedural actions in a criminal case or on a complaint about the crime. Classification is an institution proper to criminal prosecution, not having a correspondent in court.

8. The prosecutor, after identifying one of the circumstances that excludes the criminal investigation, ex officio or at the proposal of the criminal investigation officer by ordinance, orders the termination of the criminal trial in fact or in personam. The ordinance, like the Officer's report, must be reasoned.

At the same time, we mention that the legislator did not foresee a clear regulation of the issuance procedure, of the constitutive elements and of the procedure for challenging the order for removal of the person from criminal prosecution, as well, termination of criminal prosecution or termination of criminal proceedings.

In this context, it is proposed to supplement the Criminal Procedure Code with art.286[1] „Order of removal of the person from prosecution, termination of criminal prosecution or classification of the criminal trial."

9. Circumstances that exclude criminal prosecution without right of rehabilitation are:

- the prior complaint was withdrawn by the injured party, a transaction was concluded within the mediation process or the parties reconciled – in cases where the criminal investigation can be initiated only on the basis of the prior complaint or the criminal law allows reconciliation (item 6, paragraph 1 art.275, art.276 CPC, art.109 PC);
- intervention of the limitation period or amnesty (item no.4, paragraph 1 art.275 CPC, art.107 PC);
- the death of the perpetrator (item 5, paragraph 1 art.275 CPC)
- existence of cases regarding the release of criminal liability (item 9, paragraph 1 art.275 CPC, art. 53 PC).

The termination of the criminal investigation on the listed grounds does not apply if the suspect/guilty person does not agree. In this case, the prosecution continues in the usual procedure.

10. The termination of the prosecution in connection with the death of the perpetrator shall not apply if rehabilitation is sought or if the rightful successors of the deceased do not agree with the grounds for termination.

11. The release of legal liability is a right and not an obligation of the competent body to take this decision. All the grounds for the release of legal liability can be divided into 2 groups: the first group refers to the circumstances that may attract the release of liability following the objective examination of all legal circumstances by the competent body, including: the small degree of social danger of the act, the low degree of social danger of the perpetrator, the socially favorable behavior of the perpetrator following the commission of the unlawful act. The second group refers to the circumstances regulated by law that oblige the competent body to release from individual liability those who committed the illicit act, including amnesty and the expiration of the limitation period.

12. The termination of the criminal process without the right of rehabilitation, under the conditions and grounds shown, entails the following disadvantages for the perpetrator: - the repair of the civil action or the damage caused to the victim; the payment of the costs of the trial; - release from the held position; - transfer to another position with a lower degree of responsibility, if the offence was committed in connection with the performance of the duties of the service; - the impossibility to benefit from the termination of the criminal investigation on the same grounds repeatedly in case of termination of the criminal proceedings on amnesty.

13. The termination of the criminal trial in the phase of criminal prosecution takes place if the existence of the fact of the crime is not ascertained, in case of failure to observe the act by the criminal law as a crime, in case of failure of the act to bring together the constituent elements of the offense. Also, the termination of the criminal trial in the criminal investigation phase may be carried out in accordance with the grounds provided for in Article 35 „Causes that remove the criminal character of the act" from the Criminal Code: *legitimate defense (art.36 PC), detaining the offender (art.37 PC), state of extreme necessity (art.38 PC), physical or mental constraint (art.39 PC), risk well-founded (art.40 PC), execution of the order of the superior the disposition of the superior (art.40[1] PC).* All these grounds for termination of criminal prosecution are rehabilitative grounds, because they confirm the innocence of the accused person.

Also, as grounds for termination of criminal prosecution with the right of rehabilitation, we have included the following circumstances:

- in respect of a person there is a final court decision in connection with the same accusation or finding the impossibility of criminal prosecution on the same grounds (art.275, item 7 CPC);

- in respect of a person there is an unannounced decision not to initiate the criminal investigation or to cease the criminal investigation on the same charges (article 275, item 8 CPC).

14. There is no fact of the crime - it presupposes the existence of the event, but which is not the result of human action or inaction, but of natural factors or actions of the injured person. This basis includes the situations: when the fact of committing an offense is wrongly reported; when the consequences occurred not as a result of human action or inaction, but of situations of *major fors*; the consequences of the victim's actions. At the same time, in the given case, it would be correct to terminate the criminal investigation based on item 3 paragraph 1 art.275 CPC *the act does not meet the elements of the composition of the offense*, because the actual act took place, but not all the signs of the composition of the offense are met.

15. In adopting the solutions for extinguishing the criminal process at the stage of the criminal investigation on the grounds provided for in item 1,2,3 art.275 CPC, it is indicated to possess a thorough knowledge in the process of legal qualification of the offenses, not only of signs resulting from the content of the offence, but also of general and special rules for the qualification of the facts within the limits of one or another normative content, within the limits of one or another legal liability, with reference to one or another form of guilt by which the criminal act manifests itself.

16. Recently, the legislator introduced as a circumstance that excludes criminal prosecution, „the act constitutes a contravention". We consider this addition to be unfounded, as such situations fall under the basis provided for in item 2 or 3 of Article 275 CPC.

17. According to the criminal procedural law (art.285 paragraph.2 CPC), circumstances that say that if *there is a final judgment on a person in relation to the same accusation or that the impossibility of criminal prosecution on the same grounds has been found and in respect of a person there is an unannounced decision not to initiate the criminal investigation or to cease the criminal investigation on the same charges* are grounds for termination of the criminal investigation without right of rehabilitation. We do not agree with this provision, because according to the principle „non bis in idem", no one can be prosecuted, tried or punished multiple times for the same act. The resumption or initiation of a new criminal trial in respect of the same person on the same act, when there is already a final judgment, is an illegality of the competent bodies.

The current scientific problem of major importance that has been resolved consists of the following: essentially, the study carried out is one of the first attempts of a comprehensive analysis of the institution of the termination (extinction) of the criminal trial at the stage of criminal prosecution, under the current Criminal Procedure Code, carried out at monographic level. The identification of the imperfections admitted to the application of the procedure for the termination of the criminal trial at the stage of criminal prosecution and offering of some proposals of ferenda law for their correction.

Based on the above-mentioned conclusions and findings, the following proposals for ferenda law can be outlined:

1.Modification pt.1) of art.275 CPC **„there is no fact of the crime"** with **„there is no deed"**.

2.Completion of item 5) of art.275 CPC, with the following content: **„except in cases of rehabilitation or disagreement of the successors".**

3. Repeal of item 41 of art.275 CPC „the deed constitutes a contravention".

4.Supplementation with item 6^1 of art.275 CPC, with the following content: **„ the term of conditional suspension of criminal prosecution has intervened".**

5.Modification of the content of par.(3) of art. 284 CPC with the following content: **The prosecutor, if he finds the grounds provided in paragraph (2), being governed by the provisions of Article 2861 CPC orders the removal of the person from criminal prosecution. The person may be removed from prosecution in full or only on an indictment.**

6.The repeal of paragraph.alin. (4) and (5) of art.284 CPC, because they are found in the provisions of art. 2861 CPC.

7. To modify the content of paragraph 2 of art. 285 CPC, namely the phrase **„provided in art.275 item 4)-9)"** to be replaced by **„provided in art.275 item 4), 5), 6), 9)".**

8.Amending the content of paragraph (4) of art.285, the words **„by ex officio ordinance or at the proposal of the criminal investigation body"** to replace with the phrase „**in compliance with the provisions of art.286^1 CPC".**

9. The repeal of paragraph (5),(6) and (9) of art.285 CPC, because they are found in the provisions of art. 286^1 CPC.

10. Completion of the Criminal Procedure Code with art.286^1 **„Order for removal of the person from criminal prosecution, termination of criminal prosecution and termination of criminal proceedings".**

11. Amending Art.512 CPC, by completing paragraph 2) as follows, after the words **„dispose the release of the person of criminal liability**" with the phrase **„ and the termination of the criminal prosecution".**

Suggestions regarding potential future research directions related to the topic:

1) the investigation of the institution of the settlement of the criminal proceedings at the international level in view of undertaking good practices; 2) the study and identification of problems, impediments to the applicability of mediation in criminal matters; 3) the practical study of the applicability of the right to rehabilitation after the end of the criminal investigation.

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- **„Solution of the criminal process, at the stage of the prosecution, with right of rehabilitation"** - Materials of the international scientific-practical conference entitled **„PROFESSIONAL TRAINING OF THE STAFF FOR SUBDIVISIONS OF THE MINISTRY OF INTERNAL AFFAIRS AND OTHER LAW ENFORCEMENT BODIES"**, December 4, 2020, **p. 538-544;**

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- **Exemption from criminal liability on probation - grounds for terminating the criminal process, -** co-authored with **dr., prof.univ. – Iurie ODAGIU,** International conference materials **„Interdisciplinaritate și cooperare în cercetarea transfrontalieră"**, organized by the Transfrontier Faculty of the "Lower Danube" University in Galati, between November 23-25, 2023, in Chisinau, Republic of Moldova, ISSN 2602-1463, Vol. 8 (4) 2024 Law and Litigation in the EU and the Candidate States, pag.48-54.

ADNOTARE

Olesea Crețu

Modalităţi de încetare a procesului penal la faza de urmărire penală.

Teză de doctor în drept. Chişinău, 2024

Structura tezei: introducere, patru capitole, concluzii generale şi recomandări, bibliografie din 216 titluri, 155 pagini de text de bază, 14 anexe. Rezultatele obţinute sunt publicate în 15 lucrări ştiinţifice.

Cuvinte-cheie: proces penal, urmărire penală, încetarea urmăririi penale, clasarea procesului penal, scoaterea de sub urmărire, circumstanțe ce exclud urmărirea penală, reabilitare.

Scopul lucrării constă studierea teoretico-practică a fenomenului de încetare a procesului penal la faza de urmărire penală, identificarea problemelor aplicabilității soluțiilor de încetare cât și stabilirea direcțiilor de îmbunătățire a legislației procesual penale în domeniul de reglementare a încetării a procesului penal la faza de urmărire penală.

Obiectivele cercetării: analiza lucrărilor științifice din doctrina procesual penală națională și internațională; elucidarea esenței și importanței instituției încetării procesului penal în faza urmăririi penale; evidențierea particularităților de apariție și stingere a raporturilor juridice procesual penale; evidențierea poziției procesuale a procurorului la înceterea, clasarea urmăririi penale, scoaterea persoanei de sub urmărire, determinarea și analiza circumstanțelor care exclud urmărirea penală; analiza soluțiilor de încetare a procesului penal la faza urmăririi penale prin prisma temeiurilor faptice și juridice; analiza mecanismului de reparare a acțiunii civile; formularea propunerilor de modificare și perfecționare a cadrului legal național sub aspectul analizat.

Noutatea şi originalitatea ştiinţifică. Studiul reprezintă o cercetare complexă a problemelor teoretico-practice privind modalitățile de încetare a procesului penal la faza urmăririi penale. Cercetarea evolutivă, comparativă şi juridico-penală permite înaintarea unor recomandări de ameliorare a cadrului normativ naţional, i.e.: modificarea și completarea circumstanțelor care exclude urmărirea penală (pct.pct.1, 4^1, 5, 6^1 al art.275 CPP); modificarea prin completare a Codului de procedură penală cu art.286^1 *„Ordonanța de scoatere a persoanei de sub urmărire penală, de încetare a urmăririi penale şi de clasare a procesului penal”,* cu ulterioara modificare a conținutului art.284 și art.285. Modificarea conținutului alin.(3) al art. 284 CPP cu următorul conținut: *Procurorul, în cazul în care constată temeiurile prevăzute la alin. (2), conducându-se de prevederile art.286^1 CPP dispune scoaterea persoanei de sub urmărirea penală. Persoana poate fi scoasă de sub urmărirea penală integral sau numai cu privire la un capăt de acuzare.* Abrogarea alin.alin. (4) și (5) al art.284 CPP, deoarece se regăsesc în prevederile art. 286^1 CPP.

Problema ştiinţifică soluționată constă în următoarele: în esență, studiul realizat, este unul dintre primele încercări de analiză cuprinzătoare a instituției încetării procesului penal la faza de urmărire penală, în condițiile actualului Cod de procedură penală, efectuată la nivel monographic. Identificarea imperfecțiunilor admise la aplicarea procedurii de încetare a procesului penal la faza de urmărire penală și oferirea unor propuneri de *lege ferenda* de remaniere ale acestora.

Semnificația teoretică. constă în faptul, că aduce o anumită contribuție la studiul și perfecționarea instituției încetării urmăririi penale și a izvoarelor relevante ale dreptului procesual penal. Ideile conceptuale elaborate îmbogăţesc teoria generală a procesului penal și în totalitatea lor creează premisele teoretico-metodologice pentru elucidarea unor probleme științifice majore privind asigurarea protecţiei drepturilor şi intereselor legitime ale subiecților la aplicarea soluțiilor de încetare a urmăririi penale *in rem* și *in personam*.

Valoarea aplicativă constă în oferirea unei compilații a materialului doctrinar, formularea recomandărilor practice de soluționare a unor situații incerte, prezentarea interpretării elocvente a modalităților de încetare a procesului penal.

Implementarea rezultatelor ştiinţifice. Constatările şi concluziile studiului pot fi utilizate în procesul de instruire a studenților instituțiilor de învățământ și în activitatea practicienilor implicați nemijlocit în procesul de soluționare a cauzelor penale la faza de urmărire penală. Propunerile și recomandările vor fi utile perfecționării de perspectivă a cadrului normativ național.

АННОТАЦИЯ

Крецу Олеся. Способы прекращения уголовного процесса на стадии уголовного преследования. Докторская диссертация. Кишинев, 2024 г.

Структура диссертации: введение, 4 главы, выводы и рекомендации, библиография из 217 источников, основной текст 157 страниц, 14 приложений. Результаты опубликованы в 16 научных статьях.

Ключевые слова: уголовный процесс, уголовное преследование, прекращение уголовного преследования, прекращение уголовного процесса, основание исключающие уголовное преследование, реабилитация.

Цель работы состоит из теоретико-практического исследования феномена прекращения уголовного процесса на стадии уголовного преследования, выявления проблем применимости решения о прекращении, а также установления направлений совершенствования уголовно-процессуального законодательства в сфера регулирования прекращения уголовного процесса на стадии уголовного преследования.

Задачи работы: изучение отечественной и зарубежной доктрины о прекращения уголовного процесса на стадии уголовного преследования; разъяснение сущности и значения института прекращения уголовного процесса на стадии уголовного расследования; выделение особенностей возникновения и исчезновения уголовно-процессуальных правоотношений; выделение процессуальной позиции прокурора при прекращении уголовного преследования и уголовного процесса; установлении и анализ обстоятельств, исключающих возбуждение уголовного преследования; анализ решений о прекращении уголовного процесса на стадии уголовного преследования через призму фактических и правовых оснований; анализ механизма возмещения гражданских исков; формулирование предложений по изменению и совершенствованию национальной нормативно-правовой базы по анализируемому аспекту.

Научное новшество и оригинальность. Исследование представляет собой комплексное исследование теоретико-практических способов прекращения уголовного процесса на стадии уголовного расследования. Эволюционное, сравнительное и уголовно-правовое исследование позволяет дать некоторые рекомендации по совершенствованию национальной нормативной базы, а именно: изменению и дополнению обстоятельств, исключающих уголовное преследование (пкт.пкт.1, 4^1, 5, 6^1 ст. 275 УПК); внесение дополнения в УПК статьей 286^1 «Постоновление об прекращении уголовного преследования и уголовного процесса» с последующим изменением содержания ст.284 и ст. 285. Изменение содержания пункта (3) ст. 284 УПК следующего содержания: Прокурор, при выявление основания, предусмотренные ч. (2), руководствуясь статьи 286^1 УПК, выносит мотивированное постановление о прекращении уголовного преследования. Отмена ч. (4) и (5) статьи 284 УПК, поскольку они содержатся в положениях ст. 286^1 УПК.

Решённая научная задача: Исследование представляет собой первый проведенный на национальном уровне комплексный анализ института прекращения уголовного процесса на стадии уголовного расследования. Выявлены недостатки, допущенные в применении процедуры прекращения уголовного процесса на стадии уголовного расследования, и предложены некоторые предложения по их реорганизациию.

Теоретическая значимость. Состоит в том, что вносит определенный вклад в изучение и совершенствование института прекращения уголовного преследования и соответствующих источников уголовно-процессуального права. Разработанные концептуальные идеи обогащают общую теорию уголовного процесса и в своей совокупности создают теоретико-методологические предпосылки для выяснения некоторых крупных научных проблем, касающихся защиты прав и законных интересов субъектов при применении решений о прекращении уголовного преследования.

Практическое значение исследования заключается в предложении обобщения доктринального материала, формулировании практических рекомендаций по разрешению неясных ситуаций, изложении красноречивой трактовки способов прекращения уголовного процесса.

Внедрение научных результатов. Результаты, полученные в ходе исследования, могут быть использованы как для обучения студентов юридических вузов, так и для начальной подготовки и переподготовки кадров юридических учреждений.

ADNOTATION

Olesea Crețu, Methods of termination of criminal proceedings during criminal investigation, Law doctorate thesis, Chisinau 2024

Thesis structure: introduction, four chapters, general conclusions and recommendations, bibliography of 216 titles, 155 pages of basic text, 14 annexes. The obtained results are published in 15 scientific papers.

Keywords: criminal trial, prosecution, termination of criminal prosecution, classification of criminal proceedings, removal from prosecution, circumstances excluding criminal prosecution, rehabilitation.

The purpose of the paper is the theoretical and practical study of the phenomenon of termination of the criminal process at the stage of criminal prosecution, and the identification of the evidence of the applicability of the termination solutions and establishing the directions for improvement of the criminal procedural legislation in the field of regulation of the termination of the criminal process at the stage of criminal prosecution.

Objectives of the research: analysis of scientific works from national and international criminal procedural doctrine; elucidation of the essence and importance of the institution of termination of criminal proceedings in the phase of criminal prosecution; highlighting the peculiarities of occurrence and termination of criminal procedural legal relations; highlighting the procedural position of the prosecutor at termination, classification of criminal prosecution, removal of the person from prosecution, removal of the person from prosecution, determination and analysis of the circumstances that exclude the criminal investigation; analysis of the solutions for the termination of the criminal proceedings at the stage of the criminal investigation in the light of the factual and legal grounds; analysis of the mechanism of repair of the civil action; formulating proposals for amending and improving the national legal framework under the analysed aspect.

Scientific novelty and originality. The study represents complex research of theoretical and practical problems regarding the ways of stopping the criminal process at the stage of the criminal investigation. Evolutionary, comparative and legal-penal research allows the submission of recommendations for improving the national regulatory framework, i.e.: amending and supplementing the circumstances that exclude criminal prosecution (item 1, 4^1, 5^1, etc, 6^1 of art.275 CPC); amendment by supplementing the Criminal Procedure Code with art.286^1 „Order for removal of the person from prosecution, terminating the criminal investigation and terminating the criminal proceedings", with subsequent amendment of the content of Articles 284 and 285. Modification of the content of par.(3) of art. 284 CPC with the following content: The prosecutor, if he finds the grounds provided in paragraph (2), being governed by the provisions of Article 286^1 CPC orders the removal of the person from criminal prosecution. The person may be removed from prosecution in full or only on an indictment. The repeal of paragraph (4) and (5) of art.284 CPC, because they are found in the provisions of art. 286^1 CPC.

The solved scientific problem consists in the following: essentially, the study carried out, is one of the first attempts of comprehensive analysis of the institution of the termination of the criminal trial at the stage of criminal prosecution, the, under the current Code of Criminal Procedure, carried out at monographic level. Identification of the imperfections admitted to the application of the procedure for the termination of the criminal trial at the stage of criminal prosecution and offering of some proposals for reshuffle of law.

Theoretical significance.is that it makes a certain contribution to the study and improvement of the institution of the termination of criminal prosecution and the relevant sources of criminal procedural law. The conceptual ideas elaborated enrich the general theory of the criminal process and in their totality create the theoretical and methodological premises for the elucidation of major scientific problems regarding the protection of the legitimate rights and interests of the subjects when applying the solutions cease prosecution in rem and in personam.

The applicative value consists in providing a compilation of the doctrinal material, formulating practical recommendations for solving uncertain situations, presenting the eloquent interpretation of the ways of ending the criminal process.

Implementation of scientific results. The findings and conclusions of the study can be used in the process of training students of educational institutions and in the activity of practitioners directly involved in the process of solving criminal cases at the stage of criminal prosecution. The proposals and recommendations will be useful for the future improvement of the national regulatory framework.

CREȚU OLESEA

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