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THE CONCEPTUAL APPROACHING CONCERNING THE ACCUSATION IN THE CRIMINAL PROCESS

Elena MORARU
ORCID [ID]: https://orcid.org/0009-0003-0009-4991
E-mail: lenamoraru@mail.ru , elena.moraru@idei.utm.md
Afiliation: TUM, Republic of Moldova

Abstract: *The realization of accusation in criminal process is, in more situations accompanied of difficulties of objective and subjective nature. The difficulties with objective nature complicate the realization of the accusation function assigning itself in this group, firstly the gaps and contradictories admitted by the legislator in the process of normative regulation of this activity. To the difficulties of subjective order is being attributed the insufficient preparation of the state accusatory that must be perfectly acquainted with the shades foreseen of criminal processual law as well as to be make evident so-called degree of permanent assimilation of the psychological and criminalistic methods of achievement and supporting of accusation.*

The complex research of the problems of accusing institution in the criminal process has a major theoretical and practical importance. To these basic problems one attributes the given research study in which the theoretical suggestion and practical recommendations in the process of processual criminal norms and modifying proposals of legislation criminal process are oriented towards the optimization of activities in this domain and the fortifications of processual guarantees for persons brought to responsibility within the limits of the criminal procedure

Keywords*: accusation; criminal process; accusatory; legislation.*

Introduction

The passage of certain criminal case from the processual phase to the next on (farther) depends of the success of conclusion of the circle of

problems and of clarified solutions per case in the legal frame. At the positioning on the processual functions practiced during the criminal process we ascertain that the function of criminal pursuit and the function of disposal on the rights and basic liberties of the person is being exerted in the phase of criminal pursuit while the verifying function of the legality of sending or not sending to the trial is achieved in the during the judgment phase. As a complex of criminal judicial institution in the criminal process the accusation has the goal to hold responsible that one who committed an offence. And here the majority of the authors interpret the function of accusing as a category that determines the entire going of the criminal process.

1. In the author opinion M.P. Bobiliov the accusation represents the statement directed towards the realization of criminal liability reflected in the procedural act of the criminal investigation body, the prosecutor or the victim regarding the commission of the crime by a specific person, submitted in the order established by the criminal procedural law (Bobiliov, 2004, p.13). I.A.Foinitchi was telling that by accusation, in the criminal process is implied an application of recognition in court the right of the state to punish. The author E.B. Mizulina has the opinion that the accusation is present as a modality of the action of harmed part (of the accusatory) (Mizulina, 1991, p.14).

Therefore, the accusation represents the right that certain specialized organs of the state have, with the participation, in some cases, of the injured party, to start the criminal investigation regarding some people who have violated the criminal law, to collect the evidence necessary to prove the accusation, to order the prosecution of the guilty, to participate in the trial to ensure the criminal liability of the guilty.

At the same time, other authors of criminal procedural law understand by accusation not only the procedural act, which contains the confirmation of the commission of the illegal act by the concrete person, but also the activity that creates the possibility of formulating the thesis of accusation. Thus, A.V. Goreanov states, for example, that the accusation, in the narrow sense, represents the sum of the procedural

actions of the accusing party regarding the formulation of the arguments of the accusation (Goreanov, 2004, p.17).

T. Vizdoaga presented two sides that the accusation involves. The first is being reported on the legal-material description of the offence and the second one supposes the corresponding juridical framing which during the unfolding of the activity of juridical organs at once with the discovery of some new facts may be changed. Also, this author includes in the wide sphere of accusing the following elements: the description of the offence committed by the accused and the processual activity of the juridical bodies by which is being pursuit to hold criminal responsible of the criminal actor (Vizdoaga, 2002, pp. 317-318).

A particular importance at the current stage is the attempt to determine and delimit the notion of „criminal prosecution" and „accusation". Even if we take into account the exposing of these notions in the law of penal procedure the discussions regarding them remain topical because the legislator utilizes these terms with absence of consecutively. As such, criminal prosecution and accusation are mentioned in several norms of the CPC of the Republic of Moldova (art. 51, 52, 53, art. 55), but the definition of the notion of „criminal prosecution" can only be identified in art. 252 of the CPC of the Republic of Moldova where it is mentioned that „criminal prosecution" has as its object the collection of the necessary evidence regarding the existence of the crime in identifying the perpetrator in order to ascertain whether or not it is a question of submitting the criminal case to court under the law and to establish his liability".

We also note that the criminal procedural law does not contain any definition regarding the notion of „accusation", and in Art. 24 paragraph 1 of the CPC of the Republic of Moldova the legislator generally omitted it, it being identified as criminal prosecution, which is targeted as a separate function of the criminal process, as well as the defense and trial of the case.

As a result, it is easily to observe that the position of the legislator in the matter of exposing of the concept of „penal pursuit" and „accusing" is not unitary. Moreover, the legislator certainly has not a

well determined position regarding this subject, does not expose ideas surely and clear expressions concerning the delimitation of the notions „accusing" and „criminal pursuit". This stare of things can be accepted if we take action of the fact that the task of the legislator does not directly consist of formulation of some surely theoretical concept. This objective is exclusively pursuit by the doctrine.

Thus, we are unable to shed more clarity on the relationship between the notion of „accusation" and „criminal prosecution" through the prism of the regulations of the Criminal Procedure Code of the Republic of Moldova, we are forced to present the opinions of several scholars in the field, who have researched this subject.

The doctrine has elaborated several concepts regarding the notions of „criminal prosecution" and „accusation" being in some places controversial. Thus, some scientists perceive the accusation only as a processual activity. The author A.A. Tusev, for example, defines the accusation as "the totality of procedural activity oriented to the identification of the person submitted to penal responsibility for committing of the infraction with a view to applied an adequate punishment". This author also was naming the activity oriented to the identification and to accusing of a concrete person being only a function of criminal pursuit. Researchers A.M. Larin, V.M. Savitschi were defining the accusing as being the formulation, argumentation and supporting by the criminal investigator and the prosecutor of the conclusions referring to the committing of the infraction by a certain person (Larin, 1997, p.156).

Another group of authors understand by accusation the procedural activity aimed at identifying the person who committed the crime and justifying their criminal liability. In the opinion of the author E.Z. Mizulina, accusation represents the activity achieved out by persons specified by law in order to argue in court the guilt of the defendant. By accusation in the procedural sense, E.Z. Mizulina understood "the procedural activity based on the law, exercised by the competent bodies and persons regarding the identification of the person in the commission of the incriminated offense and the justification of his criminal liability in

order to obtain his public conviction, and by accusation in the legal-material sense is understood the totality of illegal and socially dangerous acts that form the composition of a crime, established and incriminated to a specific person (Mizulina, 1991, p.4)

In another opinion is being considered that in the criminal process the accusation must be examined in a wide and narrow sense. In a narrow sense the accusation represents the activity of formation of conviction concerning the guiltiness of concrete person in the commission of the offence and the justification of this thesis in the court. The accusation in a wide sense, includes every activity, oriented to the identification of the person that committed the offence, including the starting of the penal pursuit concerning to concrete person, its detention and the application of preventive measures regarding it, the administration of evidence that proves the person's guilt, its indictment, the drawing up of the indictment, the presentation and support of the accusation in court (Zinatullin, 1997, p.16).

The accusation in the legal-material sense was expanded by N.M. Petrova as „the totality of illegal and socially dangerous acts established in the criminal case and incriminated to the accused, which constitute the essence of a concrete component of the crime, for which he is to be held criminally liable and convicted". The author F.M. Iagofarov does not do reference to the sense juridico-material of the accusing but he speaks about the object of accusing and of the content of accusing or in o ther way said about the concept, the thesis of accusing as an assertion on the guiltness of accusing in perpetrating of the offence. In this sense, in the criminal process, expressions such as „putting under accusation", „sustaining the accusation" and „giving up the accusation" are applied (Iagofarov, 2003, pp.35-36).

The author F.M. Iagofarov believes that, if in accordance with art.5 p.22 of the Criminal Procedure Code of the Russian Federation, the accusation represents the statement regarding the commission by a certain person of an act prohibited by criminal law, then it can be concluded that the accusation is perceived by the legislator of the Russian Federation only in a legal-material sense. The stipulations p.45 art.5

Criminal Procedure Code of the Russian Federation on which basis the parties can exerciced the accusing function (penal pursuit) represents more an exception, than a rule. These provisions cannot be accepted because the prosecution, as a procedural function, includes only the activity of accusing (Iagofarov, 2003, p.36).

In this way, probably the legislator of Russian Federation tried to solve the long scientifical dispute determining the accusation as an affirmation of the person guiltiness, the criminal pursuit – as a processual activity oriented to the identification of the person that committed the criminal act (Iagofarov, 2003, pp.36-37).

To this subject they are exposed other point of view too. Some authors were examining as being identical. The others in their turn considering that the notion „criminal pursuit" is more widely that the notion „accusation". It is shown that in addition to the accusation there is another activity, from which it is possible and necessary to defend yourself.

Thus, this defending activity of the suspected person is accomplished not regarding the accusation, because it does not exist else. But such a concept of the defense is to correspond to something broader than the accusation. Such a notion, proportional to the defense, appears to be criminal pursuit. In the given manner, the penal pursuit includes in itself also the accusing and the processual activity of the state body previously putting under accusation. So, the accusation represents one of the forms of the criminal pursuit (Larin, 1997, p.158).

In the definition Gr. Teodoru maintains that in the object of the penal pursuit are there included also are being included the papers of disposal of the prosecutor, by which the accused or the defendant are hold responsible, and send to the trial acts of pursuit determining, the denomination of preliminary entire activity to the judgment. In natural manner if is ascertained the absence of the offense or a cause that would remove the penal responsibility, is being included in this processual phase and the corresponding documents of drawing out of pursuit or of criminal pursuit (Teodoru, 2013, p.452).

Concerning to the activities achieving in the penal pursuit, these ones have a complex content determined by the specific of problems that are being imposed to be solved in every penal cause. In this sense, for achieving of the object of the penal pursuit, the bodies of the penal researching and the prosecutor concentrates his activity in the papers of criminal pursuit, that may be processual acts or disposals ones and procedural acts through which are brought to the fulfilling the disposals included in the processual acts (Neagu, I., Damaschin M., 2015, pp.16-18).

In the doctrine they were given more definitions to penal pursuit. The author Iu. Sedletschi rightly believes that criminal pursuit is a mandatory activity of preliminary preparation of the materials of the criminal case, its purpose is to send the case to trial for the criminal liability of the perpetrator or, as the case may be, for the application of medical coercive measures (Dolea & Roman, 2005, p.510).

On the other hand P.A.Lupinskaia defines the penal pursuit as an processual activity achieved by the accusing part for the identification of the suspect person, in committing of the infraction (Lupinskaia, 2003,p. 78)

The fact is that, in M. Udroiu view, „criminal prosecution has three procedural stages: the stage of investigating the act, which occurs with the start of the criminal prosecution in rem until the continuation of the criminal prosecution against the suspect and the initiation of the criminal action, the stage of investigating the person, after the continuation of the criminal prosecution against the suspect and the resolution of the case by the prosecutor" (Udroiu, 2014, p.10).

For the authors Z.Z. Zinatullin and T.Z. Zinatullin, the penal pursuit is presented to be the penal processual activity with official character of the state bodies and of the persons with responsible function oriented to the establishing and identification of the suspect and accused persons.

The interpretation of the criminal pursuit by these ones does not break out difficulties. The confused appear only at determination by them of the moment of finishing of the penal pursuit, where is being affirmed:

„The criminal pursuit begins from the moment the criminal case is filed and is carried out throughout the criminal process, in all phases of the criminal process, that is, until there are grounds to consider a certain person guilty of committing a crime and to apply a custodial sentence or another measure of criminal punishment to him". Some authors include in this notion the actual execution of the sentence imposed by the court, as well as other coercive measures of a medical and educational nature (Zinatullin, 1997, pp. 7-8).

Conclusions

Consequently, the accusation represents the statement, the thesis submitted in the order provided by the law, by the state bodies (persons with responsible functions), which carry out the criminal investigation regarding the crime committed by a certain person and, respectively, about the presence of the grounds for holding him/her to criminal responsibility. Once filed, the accusing established more exact boundaries of the penal pursuit. The change of these boundaries can take place only with taking into account the modifying of the accusing in the limits and in the established order by the processual – penal law. Consequently, the accusing is called upon to ensure the legality and soundness of the criminal investigation, determining the bodies and persons carrying out the criminal investigation and its measures to substantiate and justify it. Eventually regarding to the terminological dispute referring to the subject of the research we mention:

1. More authors assign to the notions „accusing", „charging", „the function of accusing", „the function charging", „penal pursuit" a different sense, which is not justified from the point of view legislative.

2. The majority generally agree with the position that public criminal prosecution (the state's prosecutorial function) is carried out at different phases of the criminal process, and have not developed uniquely applicable delimiting terms.

The most frequently, for the defining the accusing activity in the stage of penal accusing is utilized the term criminal pursuit but for the

activity of accusing exercised in the trial is utilized the expression „accusing of state".

These varieties, in fact, represent the distinct stages of the general realization of the function of blaming the state, divided depending on the criteria of the subjects who carry it out, as well as the specifics of the blaming activity.

If we are to pronounce on the distinct properties and particularities of the notions of „accusation" and „criminal prosecution" in the criminal process of the Republic of Moldova, we conclude that the same state of affairs that we described above is present, this fact being generated by the inspiration of the criminal procedure law of the Republic of Moldova, largely from Eastern sources, and to a lesser extent, from Western ones.

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