THE CRIMINAL SCIENCES JOURNAL
TCSJ
"AL.I. CUZA" POLICE ACADEMY

SOME CONSIDERATIONS REGARDING THE PLAINTIFFS IN THE APPEAL AGAINST THE PROSECUTOR'S DECISIONS NOT TO PROSECUTE AND NOT TO REFER THE CASE TO COURT

GINA NEGRUȚ[1]

Abstract: *According to art. 339 par. (4) of the CPP, against the dismissal decisions ordered by the prosecutor by ordinance or indictment, a complaint may be filed within 20 days from the communication of the copy of the act by which the decision was ordered. If the complaint was rejected by the head of the prosecutor's office or the hierarchically superior prosecutor, a complaint may be filed with the preliminary chamber judge of the court that would have, according to the law, the competence to judge the case in first instance. In these situations, the holder of the complaint against the dismissal decision may be any person, if this has caused harm to his legitimate interests*

Keywords*: complaint against criminal prosecution acts; complaint against criminal prosecution measures; criminal investigation body; prosecutor; preliminary chamber judge*

1. History of the Institution of "Complaints Against Measures and Acts of Criminal Prosecution" within the Code of Criminal Procedure

The institution of "complaint against criminal prosecution measures and acts" is not a recent creation of the Romanian legislator, it was also regulated in the provisions of Law no. 15/1968 on the Code of Criminal Procedure, currently repealed. Nowadays it is provided for in the provisions of art. 336-341 of Law no. 135/2010 on the Code of Criminal Procedure, regarding the conditions for filing a complaint against the acts and measures of criminal prosecution bodies, as well as its resolution.

The provisions regulating the procedure for complaints against criminal prosecution solutions, measures and acts do not provide for the mentions that the complaint must contain, but we can refer to art. 289 paragraph (2) of the CPP, namely: the name, surname, personal identification number, capacity and domicile of the petitioner (if it is a legal entity, the name, headquarters, unique registration code, fiscal identification code, registration number in the

[1] Associate Professor, PhD, "Alexandru Ioan Cuza" Police Academy, Romania, Address: Aleea Privighetorilor 1A, 014031 Bucharest, Romania, Corresponding author: ginnanegrut69@gmail.com.

Copyright: ©2026 by the authors. Open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license
https://creativecommons.org/licenses/by/4.0/

TCSJ, Vol. 4, no. 1/2026, pp. 63-67

trade register or registration in the register of legal entities and bank account, indication of the legal or conventional representative), description of the injury, as well as the legitimate interest allegedly violated, indication of the measure, act, solution of the criminal prosecution body through which the alleged injury occurred, the means of evidence, if applicable, and the petitioner's signature.

According to art. 336 para. (1) of the CPP, any person may file a complaint against criminal prosecution measures and acts, if they have harmed his legitimate interests.

2. Complaint Against Criminal Prosecution Measures and Acts

Given the provisions governing this complaint, we distinguish between the complaint against the prosecutor's measures and acts and the complaint against the prosecutor's decisions not to prosecute or not to prosecute.

2.1. Complaint Against the Measures and Acts of the Prosecutor

According to art. 339 of the CPP, the complaint against the measures taken or the acts performed by the prosecutor or performed on the basis of the provisions given by him is resolved, as the case may be, by the chief prosecutor of the prosecutor's office, by the general prosecutor of the prosecutor's office attached to the court of appeal, by the chief prosecutor of the section of the Prosecutor's Office attached to the High Court of Cassation and Justice. If the measures and acts ordered are of the chief prosecutor, of the general prosecutor of the prosecutor's office attached to the court of appeal, of the chief prosecutor of the section of the Prosecutor's Office attached to the High Court of Cassation and Justice or were taken or performed on the basis of the provisions given by them, the complaint is resolved by the hierarchically superior prosecutor (Negruț, 2025, p. 91).

Ordinances resolving complaints against acts or measures can no longer be appealed with a complaint to the hierarchically superior prosecutor.

2.2. Complaint Against the Prosecutor's Decisions not to Prosecute or not to Refer the Case to Court

According to art. 339 paragraph (4) of the CPP, a complaint may be filed against the dismissal decisions ordered by the prosecutor by ordinance or indictment within 20 days from the communication of the copy of the act ordering the decision.

If the complaint was rejected by the head of the prosecutor's office or the hierarchically superior prosecutor, a complaint may be filed with the preliminary chamber judge of the court that would have, according to the law, the jurisdiction to judge the case in first instance (Theodoru, 2013, p. 480).

If the complaint is directed against the classification solution for several offenses, and for one of them the material jurisdiction to resolve lies with the hierarchically superior court,

corroborating with the provisions of art. 44 paragraph. (1) of the CPP, the jurisdiction to resolve the complaint formulated under art. 340 of the same code belongs to the preliminary chamber judge within this court (Uzlău, et al., 2017, p. 1212).

The deadline for filing a complaint according to art. 340 paragraph (1) of the CPP is 20 days and begins to run from the date of communication of the ordinance by which the hierarchically superior prosecutor rejected the complaint filed according to art. 339 of the same code against the dismissal decision.

If the hierarchically superior prosecutor has not resolved the complaint within the term provided for in art. 338 of the CPP, the right to file a complaint may be exercised at any time after the expiry of the 20-day term within which it should have been resolved, but no later than 20 days from the date of communication of the resolution method.

The complaint must include: the name and surname, personal identification number, capacity and domicile of the petitioner, a natural person; the name, headquarters, indication of the legal or conventional representative, for a legal person; the date of the contested ordinance or indictment; the file number; the name of the prosecutor's office; an indication of the reasons for the complaint.

The complaint may be made in person or through a representative. The mandate must be specific, and the power of attorney remains attached to the complaint. If it is made in writing, the complaint must be signed by the injured party or the representative. The complaint in electronic form meets the formal requirements only if it is certified by electronic signature, in accordance with the legal provisions (Negruț, 2025, p. 93).

If the complaint does not include the date of the contested ordinance or indictment, the file number and the name of the prosecutor's office, it is returned administratively, in which case its completion can be carried out no later than 20 days from the date of return.

3. Holders of the Complaint Against the Solutions of not Pursuing or not Bringing to Justice

Any person may file a complaint against a decision to close the case, provided that such decision has infringed upon their legitimate interests. A complaint filed by the prosecutor who drafted the indictment—challenging the order that overturned the decision to send the case to trial and instead ordered the case closed—is inadmissible; this is because a prosecutor cannot hold the status of a person whose legitimate interests have been harmed in a criminal case, given their capacity as a judicial official (Anghel-Tudor, Barbu, & Șinc, 2021, p. 697).

Thus, in one case, by indictment no. X/P/2016 of October 31, 2018 of the Prosecutor's Office attached to the High Court of Cassation and Justice, National Anticorruption Directorate, the defendants A, B, C, D, E, F, G, H and I were ordered to be brought to trial, and in the case of suspect J, the solution of waiving the criminal prosecution was ordered. By the ordinance of

November 9, 2018 of the chief prosecutor of the Anti-Corruption Section within the National Anticorruption Directorate, the order to bring to trial of the defendants A, B, C, D, E, F, G, H and I was ordered to be overturned. and the dismissal of the case against them based on art. 327 letter b) and art. 315 paragraph (1) letter b) of the CPP reported to art. 16 paragraph (1) letters a) and b) and art. 304 paragraph (2) of the CPP and art. 64 paragraph (3) of Law no. 304/2022 on judicial organization.

Also, the order to dismiss the criminal prosecution against suspect J and to close the case against him was annulled, solutions also maintained by the Deputy Chief Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, National Anticorruption Directorate, by the order of December 28, 2018.

Q, who is the very prosecutor who drafted the indictment to send the defendants A, B, C, D, E, F, G, H and I to court and to drop the criminal prosecution in the case of suspect J, filed a complaint against this order to dismiss the indictment, requesting, based on art. 341 para. (7) pt. 2 let. c) CPP, admitting the complaint, annulling the contested decision and ordering the commencement of the trial, on the grounds that the ordinance is illegal and unfounded, and as regards its procedural capacity, it showed the preliminary chamber judge that it has a legitimate interest determined by the fact that the refutation of the indictment, as an act of notification of the court, is attributable to the prosecutor who drew up that act of notification, this circumstance being decisive in its professional assessment as a magistrate.

Thus, the question arose of the solution that the preliminary chamber judge would order regarding the complaint of the petitioner Q, in his capacity as the prosecutor of the case. Thus, the Constitutional Court, by Decision no. 345/2006, ruled that, "by challenging in court the measure of invalidation by the hierarchically superior prosecutor of the solution adopted in a case, the prosecutor author of the invalidated solution does not defend his own subjective right, because he is not a party to the case, but the competent authority to instrument and resolve the criminal case".

Moreover, "the manner in which the legislator regulated the procedure for complaints against criminal prosecution measures and acts concerns exclusively the right of the litigant subject to judicial proceedings to challenge a measure or act of criminal prosecution that would have caused harm to his legitimate rights and interests". The grade received by the prosecutor during the professional evaluation may be contested by the magistrate separately, through the procedure provided for in the Regulation on the evaluation of the professional activity of judges and prosecutors. In this case, according to art. 341 para. (6) letter a) of the CPP, the preliminary chamber judge of the supreme court will reject, as inadmissible, the complaint of the petitioner Q (Lorincz, Marin, & Popa, 2021, pp. 156-157).

4. Conclusion

The need to meet the requirements for the prompt resolution of criminal cases also includes the institution of a complaint against the decision not to prosecute or to bring a case to trial, an institution regulated by the legislator and in the provisions of the 1968 CPP, in order to better resolve criminal cases, in situations expressly regulated by law in which the decisions not to prosecute or to bring a case to trial harm certain interests and rights of the participants in the criminal process, and the issue brought to the discussion is related to a particular, exceptional situation, when a magistrate files such a complaint, only because he could be affected professionally during his professional evaluation, a fact that was regulated by the interpretation of the Constitutional Court by Decision no. 345/2006 , valid and applicable also in criminal cases in which the provisions of Law no. 135/2010 on the Code of Criminal Procedure apply.

5. Bibliography

Anghel-Tudor, G., Barbu, A. & Șinc, A.M. 2021. *The Code of Criminal Procedure annotated with national and European jurisprudence*. 2nd ed. Bucharest: Hamangiu

Lorincz, A. L., Marin, C., Popa, M.P., 2021. *Cases in Criminal Procedure. Criminal Procedure Law*. Bucharest: Universul Juridic

Negruț, G. 2025. *Criminal Prosecution.* Bucharest: Hamangiu

Theodoru, Gr., 2013. *Treatise on Criminal Procedure Law*, 3rd ed. Bucharest: Hamangiu

Uzlău A.S. et al., 2017. *Commented Criminal Procedure Code*, 3rd ed. Bucharest: Hamangiu

Constitutional Court by Decision no. 345/2006, published in the Official Gazette No. 415 of May 15, 2006

Law no. 15/1968 on the Code of Criminal Procedure, published in the Official Gazette No. 79-79 bis of June 21, 1969, currently repealed

Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette No. 486 of July 15, 2010, as subsequently amended and supplemented