

## Observations on the Prior Complaint's Limitation Period of the Injured Party

Lecturer Angelica CHIRILĂ, PhD  
*"Danubius" University of Galati*  
*chirila\_angelica@univ-danubius.ro*

Lecturer Dragu CREȚU, PhD  
*"Danubius" University of Galati*  
*Judge at the High Court of Cassation and Justice*  
*dragu.cretu@univ-danubius.ro*

**Abstract:** In order for a prior complaint to be effectual and to produce specific judicial effects, this has to be lodged respecting a certain due date. In modern legislations, the lodging of a prior complaint is generally provided within a relatively short peremptory date (much shorter than the prescription term of the penal action), which disregard leads to the laps of plea. The reason of this limitation period is represented by on one hand, the social and particular interest of not letting the victim, through her will to keep her supposed or real transgressor longer under the menace of a prior complaint, which could lead to blackmail or other forms of psychic constraint and, on the other hand, the presumption that after a pretty long term for decision and action, she will no longer want or have a serious reason in order to make the plea. The prior complaint appears like a suspensive condition of the penal judicial report's efficiency; it is natural for the suspensive effect of this condition to be tight to a certain limitation period, it's overhaul making the penal law no longer be incident. It is not possible for the victim to have the freedom of making a prior complaint for the duration, the social juridical interest being the triggering of the juridical activity in a certain time interval. If the injured party did not make the prior plea respecting the term provided by the law, it is presupposed that she gave up the right by law to fulfil the condition on which depends the yield of the state right to call to account the law breaker.

**Keywords:** prior complaint; limitation period; injured party

In order for a prior complaint to be effectual and to produce specific judicial effects, this has to be lodged by respecting a certain due date. In modern legislations, the lodging of a prior complaint is generally provided within a relatively short unanswerable date (much shorter than the prescription term of the penal action), (Volonciu, 1996) which disregard leads to the laps of plea. The reason of this limitation period is represented by, on one hand, the social and

particular interest of not letting the victim, through her will to keep her supposed or real transgressor longer under the menace of a prior complaint, which could lead to blackmail or other forms of psychic constraint (Pop, 1948) and, on the other hand, the presumption that after a pretty long term for decision and action, she will no longer want or has a serious reason in order to make the plea.

The prior complaint appears like a suspensive condition of the penal judicial report's efficiency; it is natural for the suspensive effect of this condition to be tight to a certain due time, its overhaul making the penal law no longer be incident. It is not possible for the victim to have the freedom of making a prior complaint for the duration, the social juridical interest being the triggering of the judicial activity in a certain time interval. If the victim did not make the prior plea respecting the term provided by the law, it is presupposed that she gave up the right by law to fulfil the condition on which depends the yield of the state right to call to account the law breaker.

The time limitation of the victim's right to make a prior complaint answers also the common aims of procedure data of assuring the dispatch in the trial and solving of causes (Mrejeru & Mrejeru, 2008).

The legislator from 1968 provided a general term during which the victim could address with her prior complaint to the penal control unit and a second term, shorter, during which the victim addressed to the trial commission<sup>1</sup> in order to unfold the reconciliation procedures for the statutory infractions, could make a prior complaint to the law court.

The Law no. 104/1992 abated entirely the Law no. 59/1968, dissolving the trial commissions and eliminated the par. 3-5 of the art. 284 C.C.P. with respect to the date within which one can lodge the complaint to the law court, after the effectuation of the procedure by the trial court, condition which intervened in the reconciliation of the parts.

Nowadays, there is a unique term of two months for the lodging of the prior complaint for all types of infractions provided by the article 279 C.C.P. According to article 284 of C.C.P., in the case of infractions for which the law states that there is a necessary prior complaint, this must be lodged within 2 months from the day *the victim knew who transgressor was* (lined.1), and according to the second lined of the same article, in the case the victim is under-age or incapable, the 2 months interval starts from the *day the person entitled to press charges knew who was the transgressor*.

Unlike the current regulation, the previous one had its basis in the Penal Code, and the time for lodging a prior complaint was of 3 months (Theodoru, 2008) and it

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<sup>1</sup>Law no. 59/1968 concerning the trial commissions.

started since the day the victim or the Public Ministry got acquainted to the infraction and knew who was the tortuous (cumulative conditions, and not alternative) (Pop, 1948).

In the literature of specialty (Titian, 2002), the solution of the court was criticized, which without a verification if at the time of the lodging of the victim's prior complaint, there was a contract which entitled her lawyer to lodge the prior complaint in her name and for her, illicitly it was discovered the lateness of the prior complaint, without being elucidated carefully the relevant circumstances for both parts, meaning if whether the prior complaint was or not lodged during the legal time interval by the victim through special warrant.

In comparison to the previous regulation, the literature of specialty (G.Antoniou, V.Papadopol, M.Popovici, & B.Stefănescu, 197, and the judicial practice<sup>1</sup> considered in majority<sup>2</sup> (N.Buzea, 1944) that the 3 months interval as a substantial term of prescription and statutory in the Penal Code, it was calculated according to the dispositions of this code; as a substantial term it was subjected to caveat and adjournment as any term of prescription.

Differences of opinions existed also in the actual regulation, within which the legal basis of the 2 months term is represented by the Code of Penal Procedure. Therefore, it was stated that the term for lodging the prius complaint was a substantial term, which can be suspended and adjourned like any prescription of penal responsibility, being calculated according to the norms for substantial terms (art.154 Pen. Code)

Other authors (Dongoroz, Kahane, Antoniu, Bulai, Iliescu, & Stănoiu, 1976) stated that the 2 months term is a procedural limitation period, as prescribed by the Code of Criminal Procedure, its overhaul leading to the extinguishment of the prior complaint and prosecution conducting.

The most recent criminal doctrine gave up the opinion from the past according to which the limitation period for prior complaint is a prescription period. Generally, it is considered that the double legal nature of the prior complaint's institution (both substantive criminal law and criminal procedure), hall-marks on the nature of that period. Although the term of two months provided by the art. 284 par.1 and 2 Code of Criminal Procedure, it is *predominantly procedural*, one cannot disregard neither *its substantial content*, consisting in limiting one of the victim's extra-procedural right (pre-existing to the penal process) and in the appropriate creation of the rightfulness in order that the offender be held criminally liable only in this time interval (Ionășeanu, 1979). According to article of Penal Code 131, the lack of a prior complaint which exists even in the case of its not being lodged within the

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<sup>1</sup> T.S., dec. no. 20/1963, in C.D. 1963, p. 73.

<sup>2</sup> It was also agreed that it was a procedural term.

time interval prescribed by the law, is a question of criminal liability removing; therefore, the period of two months *has a substantial period character*, referring to the right to punish the offender, right which disappears when the prior complaint is not lodged in due time, the limitation period's overhaul of the prior complaint entails *leading solution* - the cease of the criminal prosecution and trial, and not of the referral's cancellation towards the judicial body, thus expressing the *extinguishment of the right to prosecute* (Theodoru, 2008).

It is asserted that, in this sense, the provision from the art. 285 Code of Criminal Procedure, which provides that prior complaint lodged in due time to an incompetent body is still considered valid, even if it comes to the competent body after the deadline; if there was a procedural term of lapse, late arrival of the prior complaint to the competent body would be penalized with referral's extinguishment; or, in this case, it *is suspended*, by law, the prior complaint's limitation period corresponding to the prescription period. On the other hand, being governed by the Code of Criminal Procedure, it is calculated according to the rules of this Code, in the article 186, article 187, thus considering that the injured party is provided with a better protection.

The law gives the possibility to lodge a prior complaint *after the deadline*, being used through analogy the provisions which also relate to this kind of obstacles (e.g. re-lodging within the call or appeal - art. 364, art. 385 Code of Criminal Procedure 2.)<sup>1</sup>

The provisions regarding the limitation period for the prior complaint to the competent judicial body, according to the situations provided by the legislator, remained effectual.

There had been repealed provisions from the article 284, Code of Criminal Procedure with respect to "*unjustified absence of the injured party to two consecutive terms, before the court*" when it was seized upon direct complaint in terms of art. 279 par. 2 letter a) of C.C.P., as a result of linking the procedural requirements, the trial, having to be held the same, in the circumstances given and for cases which were seized by the indictment.

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<sup>1</sup> Thus, the injured party may lodge the prior complaint after the two months period only in two exceptional situations. The first situation is that when the injured party was deterred (by major force, accidental circumstance) from lodging the prior complaint in time. The second situation provided by the Code of Criminal Procedure concerning the possibility of lodging the prior complaint after the limitation period, is that of the judicial specification's change when, either during the prosecution after the probing documents, or during trial, if the judicial body considers that the legal specification of the deed must be changed and, according to new specifications, the prior complaint is required, the judicial body calls the injured party and asks her if she lodges the prior complaint, even after there have passed two months.

Since the term is registered in the Criminal Procedure Law and the Code does not make derogations or any other assignments, we consider it was reasonably specified in the doctrine that this term must be calculated according to the common rules registered in the article 186 paragraph 3 and 4 CCP. (Dongoroz et al. 1976). According to the laws mentioned: *“Terms counted in months or years expire, as appropriate, at the end of the last month’s day or at the end of the corresponding day and month of the last year. If this date falls on a month that has no corresponding day, the period shall expire on the last day of that specific month. When the last day of a deadline falls on a non-working day, the deadline would be at the end of the first following working day“*.

The period of two months starts from the day the injured party knew who was the transgressor (article 284 paragraph 1, C.C.P.). When the injured party is under-age or unable, 2 months term the date starts since the day the person entitled to press charges knew who the transgressor was.

This date may coincide with the moment of the crime if the injured party knew who the perpetrator was or it may be a subsequent date to its committing, when the offender initially unknown will be identified and known by the injured party or the person entitled to press charges. The date can also be determined by the minutes prepared by the police who was asked to identify the perpetrator or by any other means of identification; the date when the injured party knew who the offender was, if it falls after the crime, than this must be proved by the offender.

If the injured person is an under-age with limited exercise capacity, because the prior complaint falls on him, with the legal declaration of his custodian, the term begins from the date when the infant knew who the offender was.

With respect to the deadline for the lodging of the prior complaint, the judicial practice cleared up many problems. Thus, it was stated that it is irrelevant if the injured person, minor, and one of his parents were hospitalized during the limitation period of the complaint’s lodging, since the referral could have been made during this time by the other parent (Volonciu, 1996)<sup>1</sup>.

In the case of the office referral (article 131, paragraph 5 of C.C.P.), this is not limited by the period of two months, but it may not exceed the limitation of criminal liability. According to the article 186 C.C.P., the term expires at the end of the day corresponding to the second Monday. If this day falls on a month that has no corresponding day period it shall expire on the last day of that month. When the closing date falls on a non-working day, the deadline would be at the end of the first following working day.

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<sup>1</sup>The Court of Suceava County, dec. pen. no. 106-1982, in R.R.D. no. 9-1982, p. 75.

The prior complaint is considered to be made in due time, if it is lodged within the limitation period, at the administration of the prison or at the military unit or at the post office through a registered letter. In this case, the formulation of the prior complaint through a registered letter, the procedure prescribed for the certification of the limitation period's compliance is reported when the receipt is made out by the post office, and not when the complaint is registered to the judicial body. When the prior complaint is mailed, the letter not being recommended, the date to be calculated is that of given by the post office (post office stamp).

The Former Supreme Court practice is the meaning of art 186 and 187 C.C.P. regarding the calculation of the period of two months provided by the art. 284 par. 1, 2 of C.C.P.<sup>1</sup>

The effectual Law of Criminal Procedure provides that in the case of crimes for which the law provides that a prior complaint is needed, this must be lodged within two months from the day the injured party knew who the offender was." (article 284 par. C.C.P). Of course he knowing the perpetrator implies knowing the crime he had committed, but it is possible for the the injured person to suffer from a physical, moral or material injury through a crime without knowing who the real perpetrator is. Knowing the perpetrator is an essential element in formulating the prosecution, this marking the time for the lodging of prior complaint.

*The perpetrator's knowing date* by the injured party cannot be assumed, she cannot be criticized as well for the lack of promptitude which she could have manifested in this respect. Therefore, the lack of experience of the injured person concerning certain facts, her physical and mental state in connection with the crime and the prosecution or its implications, may be arguments supporting the injured party, who presents other date of the acknowledge of the offender than that of the committing of crime.<sup>2</sup>

In the case of *crimes of audience* (art. 299. C.C.P) if for the crime committed, the law requires a prior complaint, according to the art. C.C.P 284 the date from which the period starts is different, as the injured party may be present or not at the hearing. In the first hypothesis, the period of two months starts from the moment the president of the court identifies the offender. In the second situation – the term starts from the date on which the Prosecutor tells the name of the person who committed the crime, because the president sends the minutes to the prosecutor in order for him to proceed according to his jurisdiction.

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<sup>1</sup> Dec. pen. no. 4853/1971 of the Supreme Court, penal section, in R.R.D. nr. 2/1972, p. 176.

<sup>2</sup> Prior to the amendments of the Law no. 356 / 2006, if the injured person for the committing of a crime, according to the art. 279 paragraph 2 letter a. C.C.P., asks the criminal prosecution body to identify the unknown perpetrator, the two months period starts from the date on which the injured party became aware of the notification made by that specific body.

When during the trial, there are revealed data, when the defendant committed against the injured person another crime related to that for which he is charged (article 336 paragraph 1 C.C.P.) crime for which a prior complaint is required, the date on which the court makes this finding and notifies it to the injured person present at the public hearing, will mark the initial time period for two months according to the art. 284 C.C.P. If the injured person is not present at the hearing, the date on which she gets acquainted with those findings at the hearing, no matter the means, in connection with the commission by the defendant of other deeds against her, will mark the initial time period for introduction prior complaint.

If during the trial, in the first instance, it is found out that there were other participants in the crime (article 337 paragraph 1, if C.C.P.), there are provisions incident to art. 131 par. 4 Penal Code, therefore the new data related to another participating person do not lead to a new term for lodging a complaint against them.

In the second hypothesis provided by the article 337 paragraph 1, C.C.P. – there are data found with respect to a committed infraction provided by the criminal law by another person, but concerning the defendant's deed - if for this crime, a necessary prior complaint is needed, the two months term starts on the date the injured party has found out about this situation. This date is either the date of the trial (when the injured person participates to the hearing), or another date when she got acquainted with the findings of the court.

For those with limited exercise capacity, the two months term is counted from the date when the prior complaint's owner knew who the perpetrator was and not from the day on which the person who is going to be given the complaint had found out about the perpetrator's identity. If the injured party is a person lacking in capacity of exercise, the prior complaint is made by his legal representative within two months from the date on which that representative knew who the perpetrator was.

The injured party can lodge a prior complaint within two months since the date when she found out who the perpetrator was, without the limitation period of criminal liability being fulfilled, term which has as initial moment the date of the committed crime.(art. 121 par. Ultimate Penal Code). In these circumstances, even if the prior complaint is made within two months since the perpetrator's identification, after the extinguishment of the limitation period for criminal liability, legal provisions with general character must be applied these being related to criminal liability and not to the lack of prior complaint which has a special application.

In the judicial literature of specialty, there are controversies with respect to the time when the limitation period of the prius complaint is being calculated in the case of the *continuing offenses* (Acsinte, 1998) (Păvăleanu, 1997) (Neacșu, 2000, pp. 49-50) (Butiuc, 1996) (Ionaș, 1998) (Coltan, 1999) (Toader, 1998),

appreciating that in order to be taken into consideration the entire criminal activity of the injured party, it should be acknowledged the right to lodge the prius complaint since the day she knew who the perpetrator was, even if the crime was not depleted and, at the latest within two months from the extinguishment moment.

According to the major opinion, it is claimed that in the case of this crime the term starts since its being committed, which coincides with the date when the offender ceased the illegal action. According to another opinion, it is considered that the term of two months can start: from the moment of the crime's commission, only if the perpetrator's identity is now known, and from the knowing moment of the perpetrator which is between the time consumption and the depletion moment or after the deed's extinguishment after the act, once the offender being known, without overhauling the limitation period of criminal liability. We consider, along with other authors, that if illicit action is prolonged in time, the injured party is able to make a prior complaint at any time till the defendant's criminal activity cease (Păvăleanu, 2004).

In the case of breach of trust offenses committed by refusing to return a personal property the date since the period is calculated according to the art. 284 C.C.P. is the moment of the unjustified refusal of redeeming. The offense is worn off since the moment of the refusal and it marks the simultaneous knowing of the offense and of the offender (1961) (Antoniou, Papadopol, Popovici & Stefanescu, 1971).

Similarly, it was stressed that prior complaint is not tardy if it was lodged in due time and it was returned by the judicial body to the fulfilment of the injured party, even if the tardy lodging is made after the statutory period. When the complaint's delay determines the trial's termination, the court does not solve the adjacent civil action. In such cases, the injured party can obtain compensations only through a separate action brought to the civil court.

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