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Termination of Criminal Proceedings. Legislative Deficiencies

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Abstract: This article analyzes the institution of termination of criminal proceedings according to the legislation of the Republic of Moldova. The main purpose is to identify the gaps and practical problems generated by the current norms of the Code of Criminal Procedure (CCP). The grounds for termination, both absolute and relative, are examined, highlighting the discrepancies between theory and practice. Special attention is paid to the solutions for closing the criminal case and the role of the prosecutor at this stage. Legislative shortcomings that may affect the right to a fair trial and access to justice are highlighted. The article proposes *de lege ferenda* (for the future law) solutions aimed at optimizing legal regulation. The research is based on the analysis of national norms and relevant judicial practice.

Keywords: termination of criminal proceedings; grounds for termination; absolute grounds; relative grounds; termination of criminal prosecution

1. Introduction

The institution of termination of criminal proceedings is an essential component of criminal procedural law, marking the finality of the procedure in the absence of a conviction. It serves as a mechanism for guaranteeing the rights of the persons

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involved and for streamlining the activity of criminal investigation bodies and courts (Bejan, 2023a; Secrieru, 2023).

The legal regulation of this institution in the Code of Criminal Procedure of the Republic of Moldova (CCP RM) is complex, but not without imperfections. The chosen topic is of urgent relevance, given the impact of termination decisions on the reputation of individuals and respect for the fundamental principles of justice.

Judicial practice reveals a series of problems of interpretation and application of the norms regulating the grounds for termination. The purpose of the paper is to critically analyze the national legal provisions regarding the termination of criminal proceedings. The specific objectives include identifying legislative deficiencies, examining non-uniform solutions in jurisprudence and formulating concrete proposals of “de lege ferenda” (Dolea, 2024; Crețu, 2022).

The research methodology includes analytical, comparative and logical methods, based on the study of legislation, legal doctrine and judicial practice. The structure of the article includes annotation, introduction, main body of text, conclusions and bibliography.

The body of the work is divided into subchapters that address specific aspects of the topic. The first part focuses on the distinction between the termination of criminal proceedings and the removal of the person from criminal prosecution. The second part analyzes the absolute grounds for termination (e.g. death, amnesty). The third part examines the relative grounds and issues of discretion. The article aims to bring clarity to the understanding of the mechanisms of termination of criminal proceedings. The conclusions will summarize the main findings and emphasize the need for legislative interventions.

2. The Notion and Legal Foundation of the Termination of Criminal Proceedings

Definition of the concept of termination of criminal proceedings in the context of the CPP RM. In the procedural architecture of the Republic of Moldova, the termination of criminal proceedings is defined as a way of completing the procedural activity before a decision is rendered on the merits of the case, when circumstances arise that make it impossible or unnecessary to continue the investigation. (Bejan, 2023a) Conceptually, this institution should not be confused with removing the person from criminal prosecution or with the dismissal, although in practice these can be ordered

by the same procedural act. The termination of criminal proceedings occurs when there is evidence that the act was committed, but a legal barrier - such as prescription, amnesty or lack of prior complaint - prevents the state from continuing to exercise criminal action. (Secieru, 2023)

The local legal doctrine emphasizes that the termination of criminal proceedings represents an act of availability or legal constraint that puts an end to the legal relationship of criminal conflict without establishing guilt through a conviction. According to the recent jurisprudence of the Supreme Court of Justice from 2025 (Supreme Court of Justice of the Republic of Moldova, 2025), the termination of the trial in the preliminary hearing on grounds of prescription cannot take place without verifying the evidence, requiring the issuance of a conviction without the application of punishment, in order to protect the victim's right to truth and reparation. This approach reflects an evolution of the concept towards a balance between procedural economy and the guarantee of fundamental rights provided for by the Constitution of the Republic of Moldova. Thus, the definition of the termination of the criminal trial in the context of the CPP RM implies not only a simple abandonment of the accusation, but a final legal settlement that produces the effects of *res judicata* (*res judicata*), preventing the resumption of the prosecution for the same act, except in cases strictly provided for by law. (Constitutional Court of the Republic of Moldova, 2024b; Constitution of the Republic of Moldova, 1994)

The essential difference from the acquittal (termination takes place before the issuance of a final judgment on the merits). The essential difference between the institution of acquittal and that of the termination of the criminal trial lies in the nature of the judgment and the moment when it intervenes within the procedural circuit. While acquittal is a settlement on the merits of the case, whereby the court finds the non-existence of the act, the absence of the elements of the crime or the innocence of the defendant, the termination of the criminal trial constitutes a solution to finalize the procedure that usually occurs before the court can rule on guilt or innocence through a final decision on the merits. Thus, the termination of the criminal trial is determined by the occurrence of procedural impediments or legal circumstances that make it impossible to continue the examination, blocking the path to a sentence of conviction or acquittal. (Criminal Procedure Code of the Republic of Moldova, 2003)

From the perspective of the Criminal Procedure Code of the Republic of Moldova, acquittal is ordered exclusively by sentence at the end of the judicial investigation, while the termination of the trial can be ordered both during the criminal

investigation phase by the prosecutor and during the trial phase by the court, often in a preliminary hearing. A legislative deficiency often invoked in 2025 concerns situations in which the termination of the trial on grounds that do not exclude guilt (such as amnesty or prescription) deprives the defendant of the opportunity to demonstrate his full innocence through acquittal, which led the Constitutional Court to emphasize that termination should not be an easy substitute for a justified acquittal. Consequently, if in the case of acquittal, the state recognizes the absence of the basis for criminal liability, in the case of termination of the trial, the state renounces the exercise of criminal action for reasons of legal policy or procedural economy, without definitively resolving the issue of guilt in terms of material truth. This delimitation is crucial for the right to rehabilitation, because only acquittal offers the person full legal protection against any unfavorable consequences derived from the criminal charge. (Dolea, 2024; Brînză & Stati, 2025)

Discussion of the principles governing this institution (legality, expediency, etc.). The institution of termination of criminal proceedings in the Republic of Moldova is governed by a set of principles that ensure the balance between the public interest in holding the suspect, accused or defendant accountable and the rights of the suspect, accused or defendant. The main pillar is the principle of legality, enshrined in art. 1 of the CPC RM, which requires that the termination of the trial take place exclusively in the cases and conditions expressly provided for by law. In this regard, the criminal investigation body or the court do not have absolute freedom, being obliged to establish the existence of the objective grounds provided for in art. 275 of the CPC RM, such as the absence of the fact of the crime or the intervention of the statute of limitations, the proceeding being conditioned by the rigorous observance of the imperative norm. (Constitutional Court of the Republic of Moldova, 2024a)

In complementary opposition is the principle of opportunity, which in the criminal procedural legislation of the Republic of Moldova has experienced a significant expansion in recent years. Although the criminal process is dominated by officialdom, the principle of opportunity allows the prosecutor to order the termination of the criminal process even if there is evidence of guilt, in cases where the public interest in continuing the prosecution is reduced or when the objectives of justice can be achieved in other ways (for example, in the case of a plea bargain or reconciliation of the parties). However, the application of opportunity is limited by the principle of finding the truth, which prohibits the arbitrary termination of cases if all the means of evidence necessary to establish the circumstances of the act have not been exhausted. The recent doctrine of 2025 emphasizes that excessive use of

opportunity to the detriment of legality can lead to a negotiated justice that undermines the preventive nature of criminal punishment.

Another cardinal principle is the principle of respect for the right to defence, which guarantees the suspect the right to oppose the termination of the criminal trial on grounds that do not exclude guilt (amnesty, prescription), requesting the continuation of the trial in order to obtain an acquittal. In the view of the Constitutional Court, this principle transforms the termination of the criminal trial from a unilateral act of the state into a procedure that must respect the dignity of the person and the right to full rehabilitation. Thus, the system of principles creates a framework of protection against legislative deficiencies that could allow unjustified closure of criminal cases.

3. Absolute Grounds for Termination of Criminal Proceedings: Critical Analysis

The core of the analyzed institution is found in Article 275 of the Code of Criminal Procedure, (Criminal Procedure Code of the Republic of Moldova, 2003) which lists the circumstances that exclude the initiation of criminal proceedings or that require their termination if the process has already been initiated. These grounds are of an objective nature (e.g. lack of the fact of the crime, lack of constitutive elements, the intervention of death or prescription) and oblige the criminal investigation body to stop any coercive action. However, a persistent legislative deficiency in 2025 is the restrictive formulation of some points in this article, which do not cover hybrid situations in which the act exists, but does not present the degree of social danger necessary for a criminal sanction, leaving room for subjective interpretations between a contravention and a crime.

Article 284 of the CPC RM completes this framework, regulating “Removing the person from criminal prosecution and termination of criminal prosecution”. Although Article 275 establishes the cause (why the trial can no longer continue), Article 284 establishes the effect on the subject of the proceedings. The difference is crucial: while the termination of criminal proceedings based on Art. 275, point 1) (absence of the act) inevitably leads to the removal of the person from prosecution, termination on other grounds, such as amnesty, requires the consent of the person according to the procedure described in Art. 284. (Dolea, 2016; Secieru, 2023)

In the judicial practice of the Republic of Moldova, the confusion between these two articles often generates procedural defects. In particular, in 2025 it was observed that

prosecutors issue termination orders citing Art. 275 in general, without correctly individualizing the procedure for removal from criminal prosecution under Art. 284, which affects the right to rehabilitation and the removal of information from the criminal record. The Constitutional Court emphasized that Article 284 must be interpreted in the sense that any doubt regarding guilt, which cannot be removed by evidence, must lead to the person being removed from prosecution, thus protecting the presumption of innocence enshrined in Article 21 of the Constitution. Thus, optimizing the relationship between these two norms is essential to avoid unjustified maintenance of persons under the pressure of criminal charges when

Lack of constitutive elements of the offense. This ground, provided for in Art. 275, point 2) of the CPP RM, intervenes when the act exists in objective reality, but does not meet all the signs provided for by the incrimination norm (object, subject, objective or subjective side). In the practice of 2025, a major deficiency is observed in cases of “disguised decriminalization”, where frequent legislative changes to the prejudicial thresholds (especially for economic crimes) oblige prosecutors to order the termination of the process, although the act remains illicit under the aspect of a contravention. Problems arise in the requalification of these acts, because the legislation does not clearly regulate the mechanism for transferring evidence from the criminal to the contravention process after termination.

The intervention of amnesty or pardon. Amnesty, as an act of collective clemency, constitutes a basis for the termination of the criminal process according to art. 275 point 7) of the CPP RM. (Criminal Procedure Code of the Republic of Moldova, 2003) A pressing legal issue in 2025 concerns the moment of application: amnesty can be applied only if the person admits guilt or if he does not oppose the termination. If the defendant insists on his innocence, the trial must continue until a possible acquittal or conviction, with amnesty intervening only at the stage of execution of the sentence, which overloads the role of the courts. (Bejan, 2023a)

Expiration of the statute of limitations. Article 60 of the Criminal Code establishes the statute of limitations, the expiration of which requires the termination of the criminal trial according to art. 275 point 3) of the CPP RM. Practical problems in 2025 revolve around the calculation of the terms in the case of continued or prolonged crimes. Recent jurisprudence of the Supreme Court of Justice has clarified that the statute of limitations is not suspended by the simple evasion of the person, if the law enforcement agencies have not undertaken all active search measures, a legislative deficiency being the lack of a rigorous definition of “evasion actions” that

would prevent the intentional delay of high-level corruption cases. (Constitutional Court of the Republic of Moldova, 2021; 2025)

Death of the suspect/defendant. Although art. 275 point 5) of the CPC RM requires the termination of the process in case of death, the 2025 legislation allows the continuation of the procedure if the relatives of the deceased request his rehabilitation. The identified deficiency consists in the absence of a clear procedure regarding the procedural status of the heirs who take over the defense, as they are often deprived of equal access to legal assistance guaranteed by the state on behalf of the deceased. (Supreme Court of Justice of the Republic of Moldova, 2025).

4. Relative Grounds and Expedient Solutions

In the architecture of the criminal process, the application of expedient solutions and relative grounds for termination must comply with the standards of fairness imposed by the European Convention on Human Rights. A major legislative deficiency lies in the imprecise definition of “public interest”, which can lead to an arbitrary application of the waiver of prosecution. (Gurev, 2023) From the perspective of the ECHR case law, no solution for terminating criminal proceedings on grounds of expediency must be devoid of substance the right of the victim to an effective investigation, especially in the case of crimes that affect physical integrity. (Rusu, 2025)

The Strasbourg court has repeatedly ruled that, although states enjoy a margin of appreciation in the management of judicial resources, the decision not to punish a perpetrator by applying relative grounds (such as reconciliation in cases of domestic violence or corruption) must not create a climate of impunity. Domestic legislative deficiencies that allow the termination of proceedings without rigorous judicial review of the grounds of opportunity may conflict with the positive obligations of the state to protect the fundamental rights of its citizens. (Annual Report of the Prosecutor General’s Office, 2025). The prosecutor holds a dual role as guardian of legality and holder of criminal action (Bejan, 2023b). Discretion is necessary but must be reasoned exhaustively (Dolea, 2024).

The absence of codified public interest indicators creates uneven practice (Secieru, 2023). Judicial control by the investigating judge remains essential (Dolea, 2016)

Furthermore, the termination of criminal proceedings on grounds relating to the subsequent conduct of the perpetrator must be accompanied by procedural

guarantees that ensure that the victim has received fair reparation. (Brînză & Stati, 2025) In the absence of clear legislative criteria, the prosecutor's margin of appreciation risks becoming a barrier to access to justice, transforming opportunity into a denial of the right to a fair trial. (Constitutional Court of the Republic of Moldova, 2024a)

National legislation tends toward European standards but lacks precision in defining public interest (Brînză & Stati, 2025). The Constitutional Court has progressively aligned its jurisprudence with European principles (Constitutional Court of the Republic of Moldova, 2021; 2024a).

Implementation of structured opportunity tests, similar to comparative prosecutorial models, could enhance predictability (Gurev, 2023).

5. Conclusions

We will propose a summarized analysis that addresses the essence of the margin of appreciation in the case of relative grounds for termination of criminal proceedings:

1. Grounds that allow for a margin of appreciation, such as reconciliation of the parties or the renunciation of accusation, mark the transition from the rigid principle of legality to that of criminal opportunity.
2. In the case of reconciliation, the margin of appreciation of the judicial body is manifested by verifying the free and untainted nature of the consent, thus preventing the instrumentalization of justice through external pressures.
3. Although the will of the parties is sovereign in crimes with prior complaint, the state reserves the right to analyze whether the termination of the trial does not harm public order or the sense of social security.
4. The renunciation of accusation represents the maximum expression of the prosecutor's discretion, the latter having the task of assessing whether the "public interest" still justifies the continuation of the criminal action.
5. This assessment must not be arbitrary, but based on objective criteria such as the gravity of the act, the person of the perpetrator and the possibility of his rehabilitation without the application of a penalty.

6. A major legislative deficiency lies in the lack of precise indicators for quantifying the public interest, which can generate an uneven and unpredictable judicial practice.
7. From the perspective of the ECHR case law, the margin of appreciation is limited by the state's obligation to ensure an effective investigation, prohibiting impunity in cases of serious violence.
8. In such situations, the European court has emphasized that excessive leniency, under the guise of expediency, can empty the victim's fundamental rights of content.
9. Judicial control over these expediency decisions is essential to guarantee that the margin of appreciation does not turn into an excess of power for the prosecutor.
10. In conclusion, the regulation of these grounds requires a fine balance between the economy of judicial resources and the imperative of holding accountable those who violate protected social values.

Next, we will make a summarized analysis, which addresses the central role of the prosecutor and the challenges raised by his discretionary power:

1. The prosecutor exercises a dual role in the criminal process, being at the same time the magistrate who watches over the observance of the law and the holder of the criminal action who decides the appropriateness of the accusation.
2. The prosecutor's discretionary power is manifested by the faculty to choose between continuing the criminal prosecution and applying solutions of non-prosecution, such as dropping the accusation.
3. This discretion is necessary to relieve the judicial system of trivial cases, allowing the concentration of resources on serious criminality.
4. However, the margin of appreciation raises ethical and legal issues when the criteria of “public interest” are not clearly defined in the procedural rules.
5. The absence of precise indicators can lead to a subjective application of the law, where cases with similar elements receive diametrically opposed solutions depending on the personal vision of the prosecutor.
6. The problem of discretion is accentuated in situations of systemic corruption, where the termination of the criminal trial can be perceived as an instrument to protect certain interest groups.

7. From the perspective of the ECHR jurisprudence, the prosecutor's margin of maneuver must be limited by the victim's right to an effective remedy, avoiding the transformation of opportunity into impunity.
8. Internal hierarchical control often remains insufficient to censor the abuse of discretion, requiring rigorous judicial supervision by the investigating judge.
9. A major legislative deficiency lies in the prosecutor's ability to use relative grounds without an exhaustive justification of the social impact of the decision taken.
10. In conclusion, balancing the role of the prosecutor requires a legislative reform that codifies transparent criteria of opportunity, thus ensuring the predictability of the act of justice.

Structured comparative analysis, highlighting the convergences and discrepancies between national legislation and international standards in the matter of termination of criminal proceedings:

1. Harmonization of national legislation with European standards implies a constant transition from a rigid repressive system to one based on reparation and judicial opportunity.
2. International standards, such as those established by Recommendation R(2000)19 of the Council of Europe, emphasize that the role of the prosecutor must go beyond simple accusation, becoming a guarantor of the public interest and human rights.
3. While European norms encourage the use of alternative conflict resolution measures, national legislation often presents shortcomings in terms of the effective implementation of criminal mediation.
4. A major discrepancy is observed in the definition of "public interest", a concept that at European level benefits from much more predictable interpretation criteria than in national practice.
5. ECHR jurisprudence, in cases such as *M.C. v. Bulgaria*, imposes on states the obligation not to use the grounds for discontinuance of proceedings to create a climate of impunity in the face of violence.
6. In comparison, national regulations are sometimes criticized for allowing reconciliation in cases of serious violence, which is contrary to the spirit of the Istanbul Convention.

7. UN international standards on restorative justice emphasize the rehabilitation of the victim, while the national system remains focused on the procedural aspects of discontinuance of proceedings.
8. Another notable difference lies in the degree of transparency of decisions on expediency, with European standards requiring exhaustive reasoning for the abandonment of criminal prosecution in order to prevent arbitrariness.
9. Judicial review of prosecutorial decisions, although regulated at national level, is often more limited in practice than the guarantees offered by Anglo-Saxon or Western European legal systems.
10. The implementation of the “public interest test” from the British model (Crown Prosecution Service) could represent a solution to remedy local legislative deficiencies.
11. Convergence with European standards also requires increased protection of the rights of vulnerable victims when deciding to discontinue the process on relative grounds.
12. In conclusion, although the national regulatory framework tends towards international standards, a refinement of the criteria of discretion is necessary to ensure fair and predictable justice.

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