

Acta  
Universitatis  
Danubius



ADMINISTRATIO

## Procedural Aspects and Effects of Termination of Criminal Proceedings

Artur Airapetean<sup>1</sup>

**Abstract:** This analysis addresses the mechanism for completing criminal prosecution through the order to cease or remove from prosecution, a procedural act that must meet strict motivation conditions according to Art. 285 of the CPP RM. The procedure for issuing this act involves a rigorous verification of the legal grounds, ensuring the transition from the investigation phase to the extinguishing phase of the criminal action under hierarchical and judicial control. The main effect of the cessation of the process is the extinguishing one, which enshrines the principle of *ne bis in idem* and prevents a new prosecution for the same act, thus guaranteeing the security of legal relations. At the same time, the order produces immediate effects on the coercive measures, imposing the revocation of all preventive and precautionary restrictions previously applied. From a rehabilitative perspective, removal from criminal prosecution on grounds that exclude guilt offers the person the legitimate right to repair the damage caused by the judicial error. In conclusion, procedural rigor in issuing these solutions is essential to prevent arbitrariness and to ensure real access to justice through the right to appeal provided for in Art. 313 of the CPC RM (Birsan, 2010).

**Keywords:** termination of criminal proceedings; removal from criminal prosecution; termination order; appeal period; judicial review

<sup>1</sup> Associate professor, Ph.D., University of European Studies of Moldova, Chişinău, Republic of Moldova, Address: 2/1 Ghenadie Iablocikin St., MD-2069, Chişinău, Republic of Moldova, Corresponding author: a.airapetean@mail.ru.



Copyright: © 2025 by the authors.  
Open access publication under the terms and conditions of the  
Creative Commons Attribution-NonCommercial (CC BY NC) license  
(<https://creativecommons.org/licenses/by-nc/4.0/>)

## 1. Introduction

The institution of termination of criminal proceedings represents a fundamental pillar of modern justice, ensuring the necessary balance between the repressive function of the state and the protection of individual rights. This paper analyzes the legal nature of the termination order, a procedural act that materializes the completion of investigations in the presence of legal impediments or reasons of opportunity.

Particular attention is paid to the legislative deficiencies identified in the definition of “public interest”, a concept that offers the prosecutor a wide margin of appreciation, but also the risk of judicial arbitrariness.

By corroborating national norms with the standards established in the ECHR jurisprudence, the study highlights the need for a reform of Art. 275 and 284 of the CPC RM. Finally, the research aims to demonstrate that procedural rigor and effective judicial control are indispensable guarantees for transforming criminal opportunity into an authentic act of justice (Criminal Procedure Code of the Republic of Moldova, 2003).

## 2. Results and Discussions

### 2.1. Procedure for Issuing the Order to Terminate or Remove from Criminal Prosecution

The procedural act through which these solutions are materialized is the prosecutor’s order, a disposition act that must meet strict conditions of motivation and legality (Mateuț, 2019).

- Substantiation of the decision: The prosecutor, analyzing the materials of the file, must establish the presence of one of the grounds provided for by law (e.g. Art. 275 of the CPC of the Republic of Moldova) (Dolea, 2016). According to the doctrine, the ordinance cannot be a simple list of articles, but must contain a corroborated analysis of the evidence that leads to the exclusion of the criminal nature of the act or the guilt of the person. (Criminal Procedure Code of the Republic of Moldova, 2003).
- Differentiation of solutions: The procedure for removing the suspect or accused from prosecution is applied when it is found that the suspect or accused person did not commit the act or there is a cause of non-imputability. In contrast, the termination

of the process occurs when, although the act was committed, objective causes (prescription, amnesty, death of the perpetrator) or subjective causes (reconciliation of the parties) intervene that extinguish the criminal action.

- Communication and contestation: From a procedural point of view, the ordinance is communicated within 24 hours to the interested parties (victim, accused) (Bîrsan, 2010). This can be challenged before the hierarchically superior prosecutor, and subsequently, through the complaint procedure, before the investigating judge, according to the standards of access to justice.

## 2.2. Effects of the Termination of Criminal Proceedings

The effects of the termination order are of an extinctive and rehabilitative nature, aiming at restoring the rights of the person:

- Ne bis in idem effect: Once the order has become final (through non-contestation or judicial confirmation), it prevents a new criminal prosecution of the same person for the same act, ensuring the security of legal relations. (ECHR, Zolotukhin v. Russia, 2009).
- Revocation of procedural measures: An immediate effect is the legal termination of all preventive measures (arrest, judicial control) and, as a rule, of precautionary measures, if these are not necessary for the resolution of the civil side. (Volonciu, n.d.).
- Reinstatement: In cases of removal from prosecution on grounds that exclude guilt (the act does not exist), the person has the right to compensation for moral and material damage caused by judicial error or restriction of freedom.

To ensure free access to justice, the Criminal Procedure Code of the Republic of Moldova establishes strict deadlines for challenging orders to discontinue or remove criminal prosecution. This procedure is governed by the principle of precedence, with the complaint having to be resolved first within the prosecution system before being sent to court.

**Table 1. Table of time limits for appeals (Pre-trial stage)**

Appeal Stage	Procedural (Subjects)	Quality	Submission Deadline	Legal Basis (Source)
<b>To the hierarchically</b>	Suspect, accused, victim, civil party or any other injured person		15 days from the date of receipt of the	Art. 298, 299 of the CPC of RM

<b>superior prosecutor</b>		document or acknowledgment	
<b>To the investigating judge</b>	The persons mentioned above (after receiving the response from the prosecutor)	10 days from the date of notification of the new act (or refusal)	Art. 313 of the CPC of RM
<b>Appeal to the Court of Appeal</b>	Interested parties (only for certain decisions of the investigating judge)	3 days from the ruling (if applicable)	Art. 313, 449 of the CPC of RM

Important procedural notes:

- Starting point: The term begins to run from the moment the person became aware of the ordinance through official communication.
- Admissibility: If the complaint is filed directly with the court without having been previously examined by the hierarchically superior prosecutor, the judge will declare it inadmissible.
- Role of the hierarchical prosecutor: He is obliged to examine the complaint within 15 days of receipt.
- Effect of the appeal: Only the decisions of the investigating judge that affect fundamental rights can be appealed, not intermediate procedural decisions.

The institution of termination of criminal proceedings is vital for the efficient functioning of criminal justice in the Republic of Moldova, representing not only a mechanism for completing criminal prosecution, but also an indispensable instrument for balancing public interest and respect for fundamental rights. In a state governed by the rule of law, the exercise of criminal proceedings cannot be an infinite or automatic process; it must be governed by the principles of celerity and procedural economy, which require the cessation of investigations when legal impediments of substance or form persist.

From a procedural perspective, this institution allows the judicial system to be relieved of trivial cases or those in which criminal prosecution is prevented by objective factors, such as the intervention of the statute of limitations, amnesty or the lack of constitutive elements of the offense, according to Art. 275 of the Criminal Procedure Code of the Republic of Moldova. Moreover, through relative grounds - such as reconciliation of the parties or renunciation of the accusation - the termination of criminal proceedings becomes a vector of restorative justice. It emphasizes reparation of harm and social reintegration, thus reducing the purely repressive function of criminal law in favor of a pragmatic solution of social peace.

\*\*\*

However, the vitality of this institution critically depends on legislative rigor and the limitation of judicial arbitrariness. The shortcomings identified in the definition of “public interest” or the wide margin of discretion of the prosecutor can transform this “valve” of justice into a source of impunity, a fact constantly sanctioned in the case law of the ECHR (ECHR, *Okkali v. Turkey*, Application no. 52067/99, 2006). Thus, a precise regulation of the procedure for issuing ordinances and ensuring effective judicial control according to Art. 313 of the CPC RM remain indispensable guarantees for the termination of criminal proceedings to serve the true purpose of justice: the protection of social values without sacrificing procedural guarantees (Criminal Procedure Code of the Republic of Moldova, 2003).

Although the existing regulatory framework provides the necessary foundations, the analysis revealed multiple legislative deficiencies and application problems that affect the predictability and fairness of the institution of termination of criminal proceedings. A first major deficiency lies in the terminological imprecision of the concept of “public interest”, used as a decision-making filter in opportunistic solutions, such as waiving criminal prosecution. In the absence of rigorous quantification criteria, this phrase risks becoming a screen for judicial arbitrariness, leaving the determination of the seriousness of the act or the degree of social resonance to the exclusive discretion of the prosecutor. Another systemic vulnerability is represented by the lack of uniformity in the application of relative grounds. Judicial practice indicates that similar factual situations receive divergent solutions, which contradicts the principle of security of legal relations established by the ECHR jurisprudence in cases concerning the predictability of the law (ECHR, *Beian v. Romania*, no. 1). Moreover, the hierarchical control procedure over cessation orders is often perceived as formal, not ensuring a genuine censorship of opportunistic decisions before they reach the desk of the investigating judge according to Art. 313 of the CPC RM.

In the context of restorative justice, the shortcomings are also manifested by the insufficiency of procedural guarantees for vulnerable victims in moments of “reconciliation of the parties”. The doctrine emphasizes that, without a rigorous mechanism for verifying the untainted nature of consent, reconciliation may be the result of a disguised psychological coercion, transforming a justifiable cause into an instrument of impunity, which risks condemning the state at the international level.

A legislative intervention is imperative to simplify and clarify the provisions of Art. 275 and 284 of the Criminal Procedure Code of the Republic of Moldova, in order to eliminate legal parallelisms and divergent interpretations that affect the speed of

proceedings. The current structure of Art. 275, which regulates the circumstances that exclude criminal prosecution, suffers from excessive fragmentation, which forces criminal prosecution bodies to make additional efforts to classify between factual causes (non-existence of the act) and legal causes (lack of constitutive elements) (Dolea, 2016).

The doctrine emphasizes that a merger of these grounds in a synthetic formulation would reduce the risk of judicial error in the phase of issuing termination orders. Equally, Art. 284, regarding the removal of a person from criminal prosecution, requires a more rigorous correlation with the principle of security of legal relations. The current shortcomings lie in the ambiguity of the terms for resuming the trial after such a decision, which may keep the suspect in a state of prolonged uncertainty, contrary to the standards established in the ECHR case law on the reasonable length of proceedings (ECHR, *Guja v. Moldova*).

A legislative clarification should impose strict criteria for reopening the trial, limiting this possibility only to the emergence of new facts or evidence, unknown at the time of issuing the ordinance. The simplification of these articles is not only a technical necessity, but a guarantee of effective access to justice. A clear and predictable norm reduces the prosecutor's margin of arbitrariness and facilitates judicial review exercised under Art. 313 of the CPP RM, thus ensuring that the termination of the criminal trial remains an act of justice, not one of non-transparent opportunity.

### **3. Conclusions**

The analysis of the procedural aspects and effects of the termination of criminal proceedings highlights the crucial role of this institution in ensuring a balance between the efficiency of the act of justice and the protection of fundamental rights. As a result of the research, the following essential conclusions were formulated:

The rigor of the disposition act: The procedure for issuing the order to terminate or remove from criminal prosecution is not a simple administrative act, but a substantive judicial decision. According to Art. 285 of the CPP RM, the validity of this solution critically depends on an exhaustive motivation of the factual and legal grounds, ensuring the transparency of the prosecutor's decision in the face of hierarchical and judicial control.

The extinguishing effect and legal certainty: The main effect of the termination of the trial is the extinguishing of the criminal action, which activates the principle of *ne bis in idem*. This effect guarantees the suspect or accused the certainty that he will not be prosecuted for the same act again, thus protecting the security of legal relations and the stability of the legal order.

Restoration of freedom and patrimonial rights: The termination of the criminal trial produces immediate and binding effects on the coercive measures. The revocation of all preventive and precautionary measures (seizures, prohibitions) constitutes a guarantee of the right to property and freedom, any extension of which after the issuance of the ordinance constitutes an unjustified interference.

The rehabilitative function: In cases where the termination occurs on grounds of unfoundedness (the act does not exist or was not committed by the person), the institution of removal from criminal prosecution performs a rehabilitative function. The person acquires the legitimate right to compensation for moral and material damage, according to the legislation on state liability for judicial errors.

The importance of judicial review: The efficiency of the procedure is conditioned by real access to justice through the mechanism provided for in Art. 313 of the CPP RM. The control exercised by the investigating judge remains the last barrier against arbitrariness, ensuring that the prosecutor's opportunistic decisions do not transform the termination of the trial into an instrument of impunity. In essence, improving the procedures for terminating criminal proceedings is a continuing necessity for a judicial system that strives towards European standards of fairness and speed.

## References

Bîrsan, C. (2010). *Convenția europeană a drepturilor omului. Comentariu pe articole* [European Convention on Human Rights. Commentary on Articles]. C.H. Beck.

Constitutional Court of the Republic of Moldova. (2021). *Decision No. 11 of 25 March 2021 for the review of the constitutionality of some provisions of Art. 313 of the Criminal Procedure Code of the Republic of Moldova.*

Criminal Procedure Code of the Republic of Moldova. (2003). Law No. 122-XV of 14 March 2003. *Official Gazette of the Republic of Moldova*, No. 104–110/447, 4–208.

Dolea, I. (2016). *Drept procesual penal* [Criminal Procedural Law]. Cartier.

European Court of Human Rights. (2006). *Okkali v. Turkey* (Application no. 52067/99, Judgment of 17 October 2006).

---

European Court of Human Rights. (2007). *Beian v. Romania (No. 1)* (Application no. 30658/05).

European Court of Human Rights. (2008). *Guja v. Moldova* (Application no. 14277/04).

European Court of Human Rights. (2009). *Zolotukhin v. Russia* (Application no. 14939/03).

Mateuș, G. (2019). *Procedură penală. Partea generală* [Criminal Procedure. General Part]. Universul Juridic.

Volonciu, N. (n.d.). *Tratat de procedură penală* [Treaty on Criminal Procedure]. Paideia.