The Scope of Reasonable Suspicion in the National Criminal Procedure

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Abstract: Currently, there is no scientific consensus where the place of reasonable suspicion is in the legal framework of criminal proceedings. Although there is a legal regulation of reasonable suspicion in the criminal procedure code provided at general terms and definitions, and despite repeated references to the concept, the debates on the topic continue. It is not possible to talk about the legal regulation and the quality of relationships related to the implementation of the studied concept, if so far the academia and professionals did not developed a unified or at least a majority approach to what is a reasonable suspicion and what is its scope.

Keywords: state; law; legislation; suspect; plausible; objective

1. Introduction

Every state implies for purposes of organization certain rules of conduct that make up the rule of law in that state and on the basis of which the whole of the social life takes place (Pântea, 2016). Basically, rule of law is accomplished in two ways: *compliance* and *constraint*.

The criminal procedure, as a legal category, has been defined in the legal literature as an activity regulated by the law, carried out by the competent bodies with the participation of the interested parties and other persons, with the purpose of in time and complete detection of the offenses, so that any person who has committed an offense to be punished according to his guilt and that no innocent person is subject to criminal liability (Pântea, 2019).

So, if compliance does not pose any particular problems; on the other hand, when it comes to constraint, it implies special attention on the part of the competent bodies of the state with regard to the correct application of the coercive rules through its

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specialized bodies (Neagu, 2010). In this context, the rule of law has become inconceivable without justice, the absence of this authority meaning arbitrariness, injustice, anarchy. These are the reasons why a state governed by the rule of law must have power or judicial authority, and whose fundamental task is to carry out justice (Volonciu, 1999).

Justice is the way in which state power is manifested in the judiciary. Within the many violations of the rules of conduct prescribed by the law, violations of the criminal law known as the crimes, have a special place. Violations of the criminal law, committing an offense with guilt, leads to the emergence of a concrete legal relationship of criminal law (conflict relationship), under which the state has the right to bring the perpetrator to criminal liability, and the last one is obliged to bear the consequences of its deeds. But in order that the punishment of the perpetrator to be materialized in the sanction stipulated by the law, specialized bodies of the state are required to carry out the activities to solve the conflict between the state and the offender. Switching legal relationship to specialized bodies of the state with the purpose of bringing criminal charges to perpetrator, in order to punish criminal offender through a court decision in criminal proceedings, gives rise to another legal relationship, namely the legal criminal procedure law relationship, which takes place between the subjects of the criminal trial, having both rights and obligations arising from their role. The performance of the act of justice and how the criminal procedural law relationship is solved also derives from fundamental principles of law: "Everyone has the right to effective satisfaction from the competent law courts against acts that violate his/her legitimate rights, freedoms and interests" (Constitution, 1994). From the point of view of free access to justice, it must reach the highest degree availability to those interested, and it is enshrined in the provisions of art. 20 of the Constitution, which states that "any person can address to justice in order to defend his legitimate rights, freedoms, and interests", and in addition to paragraph (1) article 20 of the Constitution, paragraph (2) is added, which establishes expressly that "no law may restrict access to justice".

The same meanings are found in regulation of the Law no. 514 of 06.07.1995 on the judicial organization; thus, according to art. 6: "Everyone has the right to effective remedy from competent courts against acts that violate his/her legitimate rights, freedoms and interests" (Law on judicial, 1995). Justice is carried out in the name of the law by judges who are independent and obey only to the law. The role and functions of justice are to interpret and enforce laws on concrete cases, to judge and enforce sanctions, in other words, to do justice (Damaschin, 2013).

The commentary to the Criminal Procedure Code of the Republic of Moldova states that the criminal trial is a specific activity regulated by the law, carried out by the criminal investigative bodies, prosecution bodies and the courts in the field of criminal justice with the participation of the parties to the trial and other subjects, for the purpose of finding and discovering offenses, taking responsibility and punishing persons guilty of committing them, providing conditions for compensation of the damages caused by the commission of the offense (Dolea & others, 2005).

In other doctrinal sources, the criminal process was defined as a system of actions of the competent state bodies and legal relations that are born between these authorities and the participants, thus mentioning two defining elements, to these two elements is added the third element - "procedural actions of the persons participating in criminal proceedings". Other definitions that was found do not have essential differences, being close to the one stated above, and that refers to the immediate and mediated purpose of the criminal trial. According to the German doctrine, the criminal process is defined as "a motion regulated by the law of the criminal case to the issuing of the sentence". The name "process" derives from the Latin term *processus*, which means "succession of states, stages in which, in their development, they change their phenomena, events, natural or social systems". Therefore, the process is a movement, advancement or progress, in this legal aspect, the notion signifies the movement, the action, the activity that must be carried out for the application of the criminal law, the discovery, capture, investigation, and trial of those who commit crimes. Under the criminal procedure law of the Republic of Moldova, along with the concept of "criminal proceeding or trial", the term "criminal procedure" is also used. The notion of "procedure" derives from the French word *procedure*, which means "all forms and acts performed by a court or other state body in the exercise of its function". Originally, in Romanian law (although there were the notions processus and procedere), the forms and acts through which the litigation was passed were called judging (judicium), starting from the fact that the trial of the case was the main and only activity of solving the law conflict and only later, approximately in the 12th century through the glossaries of the Middle Ages, the term process entered the traditional legal vocabulary (Cuciurca & others, 2013).

2. The Reasonable Suspicion

Suspicion is a term of general use but analyzed by the criminal procedure, the term acquires a narrow, special meaning. This word is a verbal noun made up of the verb "suspect", which means "to guess one's guilt, to anticipate his intentions, actions, and behavior." As mentioned, there is currently no scientific consensus on the place of reasonable suspicion in criminal proceedings.

Author N.A. Kozlovsky argues that: "criminal suspicion - is a special form of involvement of the person in the offense, expressed in the form of the conclusion issued by the body concerned by a specific procedural act with an allegedly criminal nature of his acts, as well as the necessity of them to transform the first into the suspect (Kozlovsky, 1989). We do not support the opinion of the above-mentioned author because we could ask whether it is reasonable to further complicate the notion of suspicion if it remains unclear anyway - is it a form of special involvement or only a conclusion of the criminal prosecution body, which also takes the form of a procedural act. We could ask whether the expression "a special form of involvement" of the person is correct, considering the fact that there is a syntax: "involvement in the commission of a crime". Involvement in a crime cannot be expressed as a conclusion of the criminal prosecution officer, because the criminal activity and the criminal investigation phase are two antagonistic phenomena, which cannot be merged either as a form or as content. In addition, if suspicion is "a special form of involvement" then what are the other ones?

Another author, I.A. Panteleev, while addressing the issue of suspicion argues that from a procedural point of view - the suspicion is of two types, namely (Panteleev, 2001):

1. The *de facto* suspicion;

2. The legal suspicion.

The *de facto* suspicion is, in fact, the attitude of the criminal prosecution officer towards the data subject, based on existing data, that he/she was involved in committing the offense.

Legal suspicion is a special legal act that expresses the suspicion, and most importantly, it is officially presented to the person, who at this moment gains the official status of the suspect.

We consider that as a whole, the suspicion cannot be divided into *de facto* and legal suspicion, because it represents a whole, and when it appears in the mind of the

criminal prosecution officer, he should take measures aimed at confirming or combating the hypothesis of guilt.

The de facto and legal suspicion is hard to conceive and, even more so, to analyze, since such isolated concepts do not even exist. Law enforcement is a procedural activity, while suspicion is, in fact, an element of supposition, sensory-logical perception of investigated criminal events. It is obvious, therefore, that studying these separate categories is illogical and impracticable. Therefore, there is no need to divide, but, on the contrary, it is required to analyze the suspicion as a system consisting of several components, in this sense it is more correct to identify the real part and the formal part of it. Suspicion appears in the investigator's mind as an assumption of the offense committed by a particular person, the legal part of the suspicion provides for the legal classification of the investigator's assumption in order to introduce a suspect citizen in the area of criminal-law relations. These two forms are intrinsic to the suspicion, since the investigator's assumption cannot exist outside of a reflection act, and vice versa, the act of reflection becomes illegal if there is no reasonable suspicion at its base (Petrov, 2011)

In our attempt to identify the concept of "reasonable suspicion" in the criminal proceedings, we have come to the following conclusions:

1. Reasonable suspicion is a probabilistic assumption or reasoning, a preliminary conclusion on a person's involvement in committing an illegal act. It follows that guilt is not definitive and requires further investigations and substantiation by the investigator.

2. The suspicion is subjective, as it represents an incipient opinion about the one who committed the crime. The investigator is basing its thoughts on his own beliefs, he creates his own ideal model of deed that may not correspond to reality and does not coincide with the mental image of another subject. This is one of the differences between suspicion and accusation. The latter is the result of the investigator's work and has a universal character, aiming to convince all participants in the criminal trial that the guilt of the person is based on reliable (pertinent) conclusions. Suspicion is not intended to convince anyone (prosecutor, judge) that the suspect is guilty. It serves as the basis for attracting the suspected person into relations regulated by the procedural law. With sufficient reasonableness, the suspect may be accused.

3. The guilt must always be justified. This means that the occurrence of hypotheses must be preceded by the collection and analysis of the evidence about the person involved in committing the criminal act. The so-called "domestic suspicion" must

be verified and confirmed by procedural means and only then brought to the attention of the suspect.

4. The reasonable suspicion belongs only to the investigator; the assumptions of other persons have an advisory nature for the investigator.

5. The complaint must have a procedural form as a result of the issuance of a specific procedural act that turns the subject of law into a suspect. The adoption of such a procedural decision can be called the legalization or formal implementation of reasonable suspicion.

6. The soaring of reasonable suspicion on a person must necessarily be verified in order to confirm or invalidate the suspicion since the suspicion is only a probabilistic conclusion, the investigator should not only limit his actions to accusatory actions but should examine all the circumstances of the case objectively.

Since July 2016, the Parliament made amendments to the criminal procedure code, adding a definition for the reasonable suspicion. According to article 6 point 4^{3}) reasonable suspicion is the suspicion resulting from the existence of facts and / or information that would convince an *objective observer* that a crime has been committed or is being prepared for a certain person and that there are no other facts and/or information that remove the character criminal record of the deed or prove the non-involvement of the person.

Although such amendments were adopted, little was made to explain and the things went even more complicated, introducing a new unregulated term that is the objective observer, without making appropriate changes to other legal provision.

So, as we have stated on other occasions, the phrase "objective observer" is not clear or fully regulated at the moment, because it is not mentioned who performs this task, the criminal investigation officer, the prosecutor, the judge or other persons (Pântea, 2019). The adjective "objective" raises questions, of matters who determines the degree of objectivity, what this degree of objectivity depends on and of course who assigns it to the "observer". Thus, from the mentioned rationales it is necessary to clarify who is the objective observer and if he must be an ordinary one, or have a special quality.

From the beginning we have to point out that the de-personification of the reasonable suspicion in the meaning that the concept would have the existence and autonomous significance from the objective observer, as regulated in the definition mentioned previously, is in our opinion an unsatisfactory approach. On the contrary, the figure

of the objective observer is a central one within this concept, around it gravitates other elements, including the suspicion, the circumstances, the facts or the information [...] and in turn, the emphasis will be on the person who suspects someone or something. This hypothesis will allow avoiding the quantification of objective circumstantial elements as much as possible and reach the proximity that could allow an ordinary observer to be decisively objective.

In these hypotheses, considering the particular circumstances of the case that make up the generic pattern, any ordinary individual will act with high probability in the expected way, i.e. the one generally accepted as reasonable, and therefore legal (Pântea & Pântea, 2020).

Such conclusion may be inferred for example, from the provisions of art. 168 Code of Criminal Procedure, which regulates the right of citizens to apprehend the person suspected of committing the crime. The text of the law stipulates that anyone is entitled to arrest and forcibly bring to the police or another public authority the person caught in the act of committing a crime or who tried to hide or flee immediately after committing the crime (Pântea & Pântea, 2020).

However, we consider that this approach is not a complete and is only partially correct, compared to the second, which could assign the reasonableness to a higher level, above the average. This is the case of the observer which owes precision due to its training, authority and that in particular circumstances can consider or disregard for insignificant circumstances, at the same time be guided by law and the relevant circumstances to the assessment of the particular case and act accordingly. This would be the subject that has a level beyond the ordinary experience (Pântea & Pântea, 2020).

Further, article 5 (1) (c) of the ECHR states that the grounds for the suspicion are objectively justified. That is why it is not enough for the police or the criminal prosecution authorities to suspect a person. The fact that a subjective suspicion is not sufficient, according to the requirements of art. 5 (1) (c) of the ECHR, implies the existence of factual circumstances that can be objectively analyzed by an independent person unrelated to the cause. For example, in the case of Stepuleac v. Moldova, the Court reiterates that the existence of a "reasonable suspicion" implies the existence of facts or information that would convince an objective observer that the person concerned could have committed the offense. The Court noted in this case that none of the courts, examining the actions of the prosecutor and the steps taken in the arrest proceedings, did not address the issue of reasonable suspicion, the only

reason was the victim's statements that he was the alleged offender, although in the complaint it was not indicated directly the name of the complainant (of the offender, a.n.). The court had doubts that the victim did not know the director of the company for which he was working, the complainant (the offender, a.n.) being the company's chief. Several circumstances of the case make it consistent to support the complainant that the law enforcement authorities have earlier pursued his detention for alleged private interests. The European Court criticized the national courts for their formal attitude in assessing reasonable suspicion regarding the arrest. In another case, Musuc v. Moldova, the Court reiterated that it is not sufficient for the suspicion to be of good faith. The words "reasonable suspicion" mean the existence of facts or information that would lead an objective observer to believe that the person concerned could have committed the offense. In the Court's view, it appears that the facts described did not contain any evidence in support of the theory that an offense had been committed and that the applicant was guilty of it.

The explanatory dictionary of the Romanian language gives us an etymological appreciation of reasonable terms and suspicion. Through the term reasonably, we understand a rational, appropriate behavior, and by suspicion, we understand an assumption or suspicion (Dictionary, 1996). From the point of view of law and procedural-criminal doctrines, "reasonable suspicion" is a legal standard of appreciation of the facts that allow the subject of law to be classified as suspect, while the suspicion must be based on specific and articulated facts, taken together with conclusions of legally obtained evidence in the proceeding.

3. Conclusion

Every state implies for purposes of organization certain rules of conduct on the basis of which the whole of the social life takes place, one of those elements is the criminal procedure law. Criminal procedure law has means and instruments to impose coercion, including criminal prosecution activity. In the criminal prosecution activity, the reasonable suspicion plays an important role. That is why it is important to understand the scope of the reasonable suspicion. We believe that, accurate and adequate approach can lead to less violations of rights of persons during the proceedings, and the rise in accountability for the law enforcement agencies. Lastly, it is important to note that, reasonable suspicion is a complex concept, that could stay at the basis of several important criminal procedure institutions according to national legal framework.

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