OMISSION TO NOTIFY THE CRIMINAL INVESTIGATION BODIES IN THE EXERCISE OF THE PUBLIC FUNCTION

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Abstract

This present study treats some aspects regarding the exercise of public office, from the perspective of criminal law and criminal procedural law. The violation of criminal legal norms, including by civil servants, leads to the appearance of one right conflict, the solution of which presupposes to draw the criminal liability of the perpetrator, following the deployment of a whole of activities that are part of the criminal proceeding. Applying the sanction corresponding to the criminal norm violated presupposes so therefore a criminal trial, which is why is useful one analysis, from the perspective criminal procedural law, of some aspects which visa the criminal liability of the civil servants. So that starting with a little theoretical considerations regarding of the intimation ways of the criminal prosecution bodies, stipulated by law to be possible to begin a criminal trial, then this study continues with the approach, including by reference to aspects of judicial practice, of the conditions in which may be engaged the civil servant's criminal liability to committing the offense of omission of the referral.

Keywords: *referral, criminal trial, public servant, Criminal Code, Criminal Procedure Code.*

JEL Classification: K14, K23

1. Introductory considerations on the referral of the criminal investigation bodies

The violation of the criminal legal norms, including by civil servants, leads to the creation of a conflict of law, the conflict of which involves the criminal prosecution of the person who committed the offense, following the carrying out, by the judicial authorities, of a set of activities which are part of the criminal process. In other words, the application of the sanction corresponding to the violated criminal legal norm involves a criminal proceeding, which is why it is useful one approach from the perspective of the criminal procedural law of some aspects which visa the criminal liability of civil servants.

At the begin of criminal proceeding[3], by starting criminal prosecution, judicial bodies must be notified of the offense by one of the means of referral provided by law.

The doctrine defined[4] the intimation ways of the criminal bodies, being that ways by which the criminal investigating body knows, according to law, the commission of an offense, giving birth to its obligation to rule on the commencement of the criminal prosecution of that offense.

Also in the legal literature[5] were made several classifications of the ways of referral of the criminal investigative body, of which:

a) depending on the source of information, a distinction can be made between external referrals and internal referral modes;

External referral modes (complaint, denunciation) come from persons who are not part of the structure of the criminal investigation body.

Means of internal referral (*ex officio* notification, acts concluded by some of the finding bodies) come from the investigative activity of the criminal investigation bodies or other operative workers from the Ministry of Internal Affairs.

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[3] The criminal procedure, as regulated by the provisions of the current Criminal Procedure Code (Law no.135/2010, published in the Official Gazette no.486/15 July 2010, with subsequent amendments and completions), is structured in four phases: criminal court, preliminary chamber, trial and enforcement of the final criminal judgment.

[4] Grigore Theodoru, *Criminal Procedural Law, Special Part*, Cugetarea Publishing House, Iaşi, 1998, p.82.

[5] Ion Neagu, *Criminal Procedure Treaty*, PRO Publishing House, Bucharest, 1997, p. 417-418; Grigore Theodoru, Lucia Moldovan, *Criminal Procedural Law*, Didactic and Pedagogical Publishing House, Bucharest, 1979, p. 204.

b) in relation to the criminal investigating body notified, the referral modes can be divided into primary and complementary;

Primary intimation ways are those that presupposes that the crime notification from the beginning to be reached by the competent prosecution body (for example, complaint or denunciation).

Complementary referral modes are those legal means of knowing about committing an offense through another criminal investigative body that has declined jurisdiction in favor of the competent body. The law provides (in art. 288 para. 1 of the Criminal Code) as ways of referring the criminal investigation body necessary to order the commencement of the criminal prosecution: the complaint, the denunciation, the acts concluded by other observing bodies provided by law and referral *ex officio*. On the other hand, when, according to the law, the criminal proceedings can be initiated only upon prior complaint of the injured person, at the request made by the person prescribed by the law or with the authorization of the body provided by the law, the criminal action cannot be put into motion in their absence (art.288 paragraph 2 of the Criminal Code); in other words, there are certain acts necessary for the commencement of criminal proceedings but which do not condition the commencement of criminal prosecution[6].

2. Classification of the general and special referral mods, to the provisions of the current Code of Criminal Procedure

Reported to the provisions of the previous Code of Criminal Procedure, doctrine[7] also has made a classification in general and special mods of referral, depending on the effects they produced on the prosecution of the criminal action. Thus, complaints, denunciations and *ex officio* referral were considered general referrals, having the role of informing the criminal prosecution body about committing an offense without being forecast by law as indispensable for the commencement of criminal prosecution and criminal proceedings. In other words, a general referral could be replaced by another referral.

On the other hand, the preliminary complaint, the notification, respectively the authorization of the body provided by the law and the expression of the foreign government's wish, were considered special ways of referral and could not be replaced by another way of referral, because, besides the role of acknowledging the criminal prosecution body about committing a crime, were conditioned, by law, both the initiation of criminal proceedings and the commencement of criminal prosecution.

Thus, according to art. 221 para. 2 and para. 3 of the Criminal Procedure Code of 1968, when the criminal action was initiated only upon the preliminary complaint of the injured person or at the request or authorization of the body provided by the law, the criminal law prosecution could not start in the absence thereof; also the criminal law prosecution could not begin without expressing the foreign government's wish in the cases of the offenses provided by art.171 of 1969 Criminal Code (offenses against the representative of a foreign state[8]).

This classification (in general and special ways of referral) has been taken up by some authors[9], and in the present, in interpreting the provisions of the new Code of Criminal Procedure. It is true that, in the form initially adopted in the present Code of Criminal Procedure (Law no.135/2010), Article 288 (2) provided similar provisions to the 1968 Code of Criminal Procedure, that "when, according to the law, the criminal proceedings can be initiated only upon the preliminary complaint of the injured person, at the request made by the person prescribed by the

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[6]Anca Lelia Lorincz, *Criminal Procedural Law (according to the new Code of Criminal Procedure)*, vol. II, Universul Juridic Publishing House, Bucharest, 2016, p.17.

[7] Ion Neagu, *op.cit.*, p. 418; Grigore Theodoru, Lucia Moldovan, *op.cit.*, p. 204

[8]In the current Criminal Code, Article 408 provides for offenses against persons enjoying international protection, but according to the current legal provisions, in the case of such offenses the commencement of the criminal action is no longer conditioned by the desire of the foreign government.

[9]Victor Văduva, in Nicolae Volonciu, Andreea Simona Uzlau and collectively, *The New Code of Criminal Procedure commented*, Hamangiu Publishing House, Bucharest, 2014, p.720-722.

law, at the request of criminal investigation of the competent authority or with the authorization of the body stipulated by law, the prosecution cannot start in their lack. The criminal action cannot start in the absence thereof. "The content of paragraph 2 of art. 288 of the present Code of Criminal Procedure was, however, modified by Law no. 255/2013 for the implementation of the code[10] (made substantial amendments to the Criminal Procedure Code adopted in 2010, even before its entry into force[11]), as follows: "When, according to the law, the criminal proceedings are initiated only upon the preliminary complaint of the injured party, at the request made by the person under the law or with the authorization of the body provided for by the law, criminal proceedings cannot be initiated in their absence". Therefore, the legislature's intention, through the legislative modification that was made when adopting the law for the implementation of the code, was to eliminates that conditioning of the initiation of criminal prosecution (and, implicitly, of criminal proceedings) by the existence of a certain way of referral, that we consider that at present no distinction can be made between general and special ways of referral from the point of view of the initiation of criminal prosecution.

The only situation in which the prior complaint of the injured party makes the commencement of the criminal prosecution more difficult is the case of the flagrant offense, if the offense is among the ones for which the criminal action is initiated on the prior complaint, the situation in which the prior complaint becomes a "special way of referral" meaning that, in the absence of this complaint, the criminal investigative body cannot order the commencement of criminal prosecution. Thus, according to art. 298 para. 1 of the Criminal Code, the criminal investigation body has the obligation to find out the committing of the flagrant offense, even in the absence of the prior complaint. The criminal investigative body has the obligation to ask the injured person and to start the prosecution if the injured person declares that he is making a prior complaint; otherwise, classing is ordered (art. 298 para. 2 of the Criminal Code). So, the amendment made in 2013 to paragraph 2 of Article 288 of the Criminal Code is justified by the fact that, in the current regulation, criminal prosecution begins on the deed (in rem), even if the author is indicated or known. At the same time, if in the regulation of the previous Criminal Procedure Code, the special referral ways of bringing the criminal prosecution to represent the exceptions to the officially principle of prosecution (principle provided for in Article 2 (2) of the 1968 Criminal Code) we note that in the current Code of Criminal Procedure the legislator has not explicitly enshrined a principle of officiallism, thus approaching the adversarial procedural systems. As stated in the recent doctrine[12] "the legislator of the new Code of Criminal Procedure has taken on the principle of official authority only the prosecutor's obligation to initiate and prosecute *ex officio* when there is evidence that a crime is committed and there is no a legal cause to prevent it."

Therefore, situations in which a certain manifestation of will is required for the commencement and the prosecution (in the form of the preliminary complaint of the injured party or the notification or authorization of the competent body provided by the law) are currently only exceptions from the principle of compulsory criminal action[13].

We also notice that, following the amendment of Article 288 paragraph 2 of the Criminal Code. by Law no. 255/2013, were amended accordingly, and Articles 305 and 315 of the Criminal Code. Thus, in the original form of Law no. 135/2010, paragraph 1 of art.305 of the Criminal Procedure Code was formulated as follows: "When act of the intimation fulfills the conditions stipulated by the law and it is established that there is not one of the cases preventing the criminal action provided for in Article 16 paragraph 1, the criminal investigative body shall order the commencement of criminal prosecution". Thus, if there is a case of preventing the criminal proceedings from occurring (as it emerged from the act of referral), no criminal prosecution could be ordered. Subsequently, through the Government Emergency Ordinance (O.U.G.) no. 18/2016, art. 305, par. was amended as follows: "When the notice of appeal fulfills the conditions provided

[10] Law no. 255/2013, published in the Official Gazette no. 515/14 August 2013.
[11]The current Code of Criminal Procedure entered into force on 1 February 2014.
[12] Cristinel Ghigheci, in Nicolae Volonciu, Andreea Simona Uzlau and Collective, *op.cit.*, p. 21.
[13]Anca Lelia Lorincz, *Criminal Procedural Law (according to the new Criminal Procedure Code)*, vol. I, Universul Juridic Publishing House, Bucharest, 2015, p. 39.

by law, the criminal investigative body shall order the commencement of criminal prosecution of the committed or committed offense, even if the author is identified or known". Moreover, also through Law no. 255/2013, in the content art. 305 of the Criminal Procedure Code a new paragraph (paragraph 4) has been added, according to which: "In relation to persons for whom prosecution is subject to prior authorization or other preconditions, criminal prosecution may be ordered only after obtaining the authorization or after". The legislator therefore wished to reconfirm that the lack of authorization or the fulfillment of another precondition does not prevent the commencement of criminal prosecution, but only the pursuit of further criminal law prosecution *vis-à-vis* the persons for whom the criminal law prosecution is conditioned by the fulfillment of a prerequisites. For example, the prosecution of members of the government for acts committed in the exercise of office is only at the request of the Chamber of Deputies, the Senate or the President of Romania; this means that, in such cases, the prosecution begins in rem, but it cannot be ordered to carry out further prosecution *in personam* unless the precondition is met.

Also art. 315 of the Criminal Procedure Code has undergone a legislative change that denotes the intention of the legislator to condition only the commencement of criminal proceedings, not the commencement of criminal prosecution, of the fulfillment of a certain requirement. Thus, as can be seen from the interpretation of paragraph 1 of art. 315 of the Criminal Code, in the original form adopted by Law no. 135/2010, the classification was available in two situations:

"a) the prosecution cannot be commenced because the substantive and essential conditions of the notification are not met or there is one of the cases provided by art.16 paragraph 1;

b) the criminal action cannot be initiated or it cannot be exercised because there is one of the cases provided by art.16 paragraph1". By the Law on the Implementation of the Code (Law no. 255/2013), paragraph 1 of art.315 of the Criminal Procedure Code has been modified, with the following content: "Classification is ordered when:

a) the prosecution cannot be initiated, as the substantive and essential conditions of the referral are not met;

b) there is one of the cases provided for in Article 16 paragraph 1."

3. The acts concluded by other law enforcement bodies, as a referral way of indicating the bodies of criminal prosecution

Unlike the previous Code of Criminal Procedure (Code of 1968), the current Code of Criminal Procedure lists as separate way of reporting to the criminal investigating bodies the acts concluded by other law enforcement bodies provided by the law[14] (other finding bodies than the criminal prosecution bodies, respectively the bodies with referral attributions, who are not part of the system of judicial bodies).

In this context, the provisions of art. 61, par. 1, letters a) and b), therefore, when there is a reasonable suspicion of committing an offense, they are required to draw up a report on the circumstances found:

"a) organs of state inspections, other state organs, as well as public authorities, public institutions or other legal entities governed by public law, for offenses which constitute violations of the provisions and obligations the observance of which they control, according to the law"[15].

For example, according to Government Emergency Ordinance no.74/2013 regarding some measures for the improvement and reorganization of the activity of the National Agency for Fiscal Administration, as well as for the modification and completion of some normative acts[16] (art. 8, par. 3 and 4), the antifraud inspectors who, during the control actions, circumstances regarding the execution of acts in the financial-tax or customs field, draw up acts (minutes and control documents) on the basis of which the criminal prosecution bodies are notified.

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[14] The criminal enforcement bodies referred to in Articles 61 and 62 of the Criminal Code.

[15] For example, the Sanitary and Preventive Medicine Inspectorate, the Labor Protection Inspectorate, the National Authority for Consumer Protection etc.

[16] Government Emergency Ordinance no.74 / 2013, published in the Official Gazette no. 389/29 June 2013.

Also, according to Article 12 of the Customs Code[17], customs officers have the obligation, in the case of flagrant offenses, to make their finding and to immediately forward the perpetrator to the prosecutor, together with the work done and the evidence.

In case of violation of the provisions of the Forestry Code[18] the forestry personnel from the central public authority responsible for forestry and forestry territorial structures or from the National Forestry Directorate - Romsilva and its territorial structures, as well as forestry staff within the forestry regimes authorized persons shall draw up a statement of the circumstances of the offense (art.111 of the Forestry Code).

"b) the supervisory control and leading bodies of the public authorities, other public authorities, public institutions or other legal persons governed by public law, for offenses committed in connection with the service by those under their control or control."

For example, according to the Regulation on the Organization and Functioning of the National Administration of Penitentiaries[19] (art.34 letter e), the Directorate for Crime Prevention in the Penitentiary Environment must immediately inform the competent bodies when clues are discovered or suspected of committing by prison staff or detained persons.

Also, in the case of committing offenses in connection with the service, in breach of the provisions of the Air Code[20], the finding documents are drawn up by the specialized bodies of the central public administration with attributions in the field.

These enforcement bodies have the obligation to carry out the following activities:

- drawing up a report on the circumstances found;
- taking measures to preserve the place where the offense was committed and to lift or preserve the material means of evidence;
- the recording in the minutes of the objections or explanations or explanations that have to be made or given by the perpetrator or the persons present at the place of the finding regarding the ones recorded in that report;
- the immediate transmission of the documents, together with the material means of proof, to the criminal prosecution bodies.

In the case of flagrant offenses, these finding bodies have the right to make body searches body or vehicles, catch the perpetrator and immediately submit it to the criminal prosecution authorities.

It is noteworthy that, at present, the minutes is only an act of finding and notifying the criminal prosecution bodies, and not a means of proof (as provided for in the 1968 Code of Criminal Procedure). Moreover, according to the current Code of Criminal Procedure (art.198), only the minutes containing the personal findings of the criminal investigation body or the court are the means of proof.

On the other hand, in the current Code of Criminal Procedure (final paragraph of Article 61), the legislator states that the minutes of these findings bodies cannot be controlled by administrative litigation[21].

We also note that, under the current regulation, except for express legal provisions (for the purpose of providing for special powers to make statements from the perpetrator or witnesses[22]), the observing prosecution bodies have the obligation to record in the minute process, only the possible objections, explanations and explanations made by the perpetrator or the persons present at the place of the finding.

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[17] Law no. 86/2006 on the Customs Code of Romania, published in the the Official Gazette no. 350/19 April 2006.
[18] Law no.46 / 2008, republished in the Official Gazette no. 611/12 August 2015.
[19] Regulation approved by the Order of the Minister of Justice no. 2003/C/2008, published in the Official Gazette. no. 603/13 August 2008.
[20] Government Ordinance no. 29/1997, republished in in the Official Gazette no. 45/26 January 2001.
[21] Inadmisibile a provision whose purpose is to ensure the speed of the criminal proceedings by avoiding the application of an inadmissible remedy.
[22] The Code of Criminal Procedure of 1968 (art. 214) provided that these finding bodies were required to make statements from the perpetrator and the witnesses who were present at the crime.

4. Intimations made by persons with leading positions and by other persons provided by law

Among the envisaged modes of referral of a general nature in Article 288 para. 1 of the Criminal Code, the denunciation is the one that can be done in principle by any person other than the person who has suffered an injury crime.

According to art. 290 para. 1 of the Criminal Code, the denunciation is the notification made by a natural or legal person about the commission of a crime.

As a rule, the denunciation is optional; there are situations when, in the interest of initiating criminal prosecution, the denunciation is mandatory for certain persons who knew about the committing of a crime Thus, according to Article 291 of the Criminal Code, any person having a leading position within a public administration authority or within other public authorities, public institutions or other legal entities governed by public law, as well as any person with duties which, in the exercise of their duties, have become aware of an offense for which the criminal action is initiated ex officio, are obliged to immediately notify the criminal investigation body and to take measures to ensure that the traces of the offense, the offenses and any other evidence not to disappear; any person who performs a public-interest service for which he has been entrusted by the public authorities or who is subject to their control or oversight of the performance of that service of public interest which, in the exercise of his duties, has been aware of an offense for which the act criminal proceedings are initiated ex officio, it is obliged to immediately notify the criminal investigation body.

For example, in the recent judicial practice[23] the court notified the prosecutor's office, under Article 299 of the Criminal Code, that there was reasonable suspicion of committing a crime of favoring the perpetrator by the lawyer who, after witnessing a defendant with the occasion of the hearing in front of the criminal investigation authorities, contacted another defendant in the same case, to communicate the issues discussed at the hearing.

There are, therefore, three categories of persons obliged to pursuant to Article 291 of the Criminal Code:

- persons with a leading position within a public administration authority or other public authorities, public institutions or other legal entities governed by public law
- persons with control duties[24]
- persons exercising a service of public interest for which they have been entrusted by the public authorities or which are subject to their control or supervision regarding the fulfillment of the public service of interest (and who are considered civil servants, within the meaning of the criminal law, according to art. 175, paragraph 2 of the Criminal Code).

We state that, for the purposes of criminal law, according to Article 175 of the Criminal Code, a civil servant is "a person who, on a permanent or temporary basis, with or without remuneration:

a) exercises attributions and responsibilities, established by law, in order to achieve the prerogatives of the legislative, executive or judicial power;

b) exercises a public dignity or a public office of any kind;

c) exercises, alone or together with other persons, in an autonomous state, another economic operator or a legal person with full or majority state capital, attributions related to the accomplishment of its object of activity.

Also, a civil servant, within the meaning of criminal law, is a person who performs a service of public interest for which he has been entrusted by the public authorities or which is subject to their control or oversight of the performance of the service of public interest".

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[23] Criminal Sentence no. 2076/2015, District Court 5 Bucharest, Criminal Section I, http://portal.just.ro/302/SitePages/Rezultate_dosare.aspx?k=8160%2F302%2F2015&a=%20scope:vDosar3%20MJmpIdInstitutie=302, consulted on 13.04.2018.

[24] At the same time, according to Article 23 of the Law no. 78/2000 on the prevention, detection and sanctioning of corruption acts (published in the Official Gazette no. 219/18 May 2000, with the subsequent modifications and completions), the persons with control duties are obliged to notify the criminal prosecution bodies or, as the case may be, the law enforcement bodies, about committing corruption offenses.

It should be emphasized that all these categories of persons referred to in art. 291 of the Criminal Code have the obligation to notify the criminal investigating body regarding the commission of the crimes they were acquainted with in the exercise of their job duties, and the fact that this obligation of referral refers only to offenses for which the criminal action is initiated *ex-officio*.

We note that the first two categories of persons, among those mentioned (namely, the persons with a leading position and those with control duties) have, besides the obligation to intimation, the obligation to take measures for the preservation of the offenses, and any other means of proof.

Besides, the obligation of this notification is not an element of novelty of the current Code of Criminal Procedure. Also, in the 1968 Code of Criminal Procedure, it was stipulated (in Article 227) that "any person with a leading position in an establishment referred to in Article 145 of the Criminal Code[25] or with control duties who became aware of the commission of an offense in that unit is obliged to immediately notify the prosecutor or the criminal investigation body and to ensure that the traces of the offense, the offenses and any other means of evidence are not disappeared"; the same obligations were imposed "and to any official who has become aware of the commission of a crime in connection with the service in which he performs his duties".

If, in the original form of the current Code of Criminal Procedure, Article 291 had a more concise content (similar to the previous Code of Criminal Procedure), the Law on the Implementation of the Code (Law no. 255/1313) the article has been amended in the sense of completions and correlations with other provisions of the Code (in particular, art. 61 which regulates the acts concluded by some of the observing bodies). Thus, at the time of the adoption of the present Code of Criminal Procedure (in 2010), Article 291 reads as follows: "Any person with a leading position in a public unit or with control duties, who has become acquainted with the commission in that unit a criminal offense for which the criminal action moves ex officio is obliged to immediately notify the criminal investigating authority and to ensure that the traces of the offense, the offenses and any other means of evidence are not disappeared."

As stated in the Explanatory Memorandum to the draft Law no. 255/2013 for the implementation of the Criminal Procedure Code[26], by this law "has made a uniform regulation of the competences of the control bodies that finds offenses in the course of their activity by the compatibility the texts of the normative acts regulating their activity with those of art. 61 of the new Criminal Procedure Code".

The question can be asked: what penalty does it impose in case of non-observance of the obligations stipulated in art. 291 of the Criminal Code?

We consider that the failure to comply with the obligation to refer provided for in Article 291 of the Criminal Code. does not always attract the application of the provisions of Article 267 of the Criminal Code, which criminalizes the act of omission of the referral.

As is apparent from the content of Article 267 of the Criminal Code, he commits the offense of omission of intimation a "civil servant who, knowing the act of criminal law in connection with the service in which he performs his duties, prosecution bodies".

We note that the legislator of the current Criminal Code has taken over the text of the 1969 Criminal Code (Article 263) as regards the legal content of the omission of the referral, except that it no longer refers to the "offense related to the service", but to "an act of criminal law in connection with the service". The current Criminal Code does not use the phrase "offenses related to the service", but only the phrase "offenses of service".

In the 1969 Criminal Code, they were considered "service or in service offenses": abuse of service against the interests of persons, abuse of service by restricting certain rights, abuse of office against public interests, abusive service in a qualified form, negligence in service, abusive behavior, negligence in keeping state secrets, conflict of interest, bribery, bribery, receipt of undue benefits and trafficking of influence.

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[25] That is, of public interest.

[26] https://www.senat.ro/legis/PDF/2013/13L010EM.pdf, accessed at 24.03.2018.

In the current, they are considered to be "offenses of service" (contained in Title V of the General Part of the Criminal Code, entitled "Corruption and Service Offenses"): embezzlement, abusive behavior, abuse of service, negligence in service, abusive use function, usurpation of the job, conflict of interest, violation of correspondence secrecy, disclosure of state secret information, disclosure of secret or non-public secret information, negligence in keeping information, illegal obtaining of funds and misappropriation of funds.

Consequently, the breach of the obligation established by the provisions of art. 291 of the Criminal Code (criminal-law provisions aiming only at regulating criminal prosecution for all offenses for which the criminal action starts ex officio) finds a correspondent in the Criminal Code by attracting a civil servant's criminal liability when that official does not referred the criminal investigating authority of corruption offence or service offense or any other act provided for by the Criminal Code or special criminal laws committed in connection with the service in which it performs its duties. For example, in the judicial practice[27], the offense of omission of the referral by the defendant chief of the forest detour, which, as a result of a substantive control, was aware of the illegal cutting of 109 trees, although he had a legal and service obligation to noticing the criminal prosecution bodies regarding the commission of the forestry crime[28], did not do so. The Court motivated the conviction and by invoking the provisions of the Law no. 46/2008 (Forest Code), according to which, in the event of damages caused by facts that can be classified as crimes, the person who has the capacity to declare it submits the act of finding to the unit or to the institution in which it operates, and the head of the unit or institution concerned is under the obligation to transmit the finding document to the Prosecutor's Office attached to the competent court from a material and territorial point of view[29].

In another case[30], it was considered as constituting the constitutive elements of the offense of omission of the offense of a civil servant within the General Directorate for Social Welfare and Child Protection, who, knowing the acts of violence by a nursing assistant on the juvenile in his care, given that the activity of the nursing assistant was evaluated and monitored by that direction, he omitted the immediate referral of the criminal prosecution bodies.

Also, both in the case-law developed under the provisions of the Code of Criminal Procedure[31], and the recent jurisprudence[32], it was stated that "for the existence of the offense of omission of the referral, it is necessary for an official who is accused of not immediately reporting to the criminal investigating authorities about the acts of a criminal nature in connection with the service in which he or she performs his or her duties have a clear knowledge of the commission of that act; in the absence of such representation, the constitutive elements of the offense of omission of the referral are not met". Thus, the court considered that, given that "the only evidence of the alleged corruption offenses was the information of the petitioner addressed to the delegated judge without at the latter's disposal there are other data or clues... it cannot be argued that the civil servant (the delegate judge) had clear knowledge of the commission of criminal offenses (bribery and bribery) allegedly committed by a penitentiary agent at the date mentioned by the petitioner in the criminal complaint"[33].

On the other hand, both in doctrine[34], and in judicial practice[35], it was appreciated that for the existence of the offense of omission of the case, it is necessary for the perpetrator to have a

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[27] Criminal decision no.1403/2015, the Craiova Court of Appeal, the Criminal and Juvenile Court, www.avocatura.com/speta/599188/omisiunea-sesizarii-art267-ncp-curtea-de-apel-craiova.html#ixzz58xoVfWAC, accesed on 10.04.2018.

[28] currently provided in Art. 107 of Law no. 46/2008, as amended and republished in the Official Gazette no. 611/12 August 2015.

[29] currently Article 113 of Law no. 46/2008, as amended and republished in the Official Gazette no. 611/12 August 2015.

[30] Criminal Decision no. 1998/2014, High Court of Cassation and Justice, Criminal Section, https://legeaz.net/spete-penal-iccj-2014/decizia-1998-2014, accesed on 13.04.2018.

[31] *Ibidem*.

[32] Criminal conclusion no. 47/PI/CP/2017, Timişoara Court of Appeal, www.legal-land.ro/conditiile-pentru-existenta-infractiunii-de-omisiune-sesizarii/, accesed on 13.04.2017.

[33] *Ibidem*.

[34] George Antoniu, Tudorel Toader and Collective, *Explanations of the New Criminal Code*, vol. IV, art. 257-366, Universul Juridic Publishing House, Bucharest, 2016, p. 84-85.

[35] Criminal decision no. 3071/1974, Supreme Court, Criminal Section, *apud* George Antoniu, Tudorel Toader and Collective, *op.cit*., p. 84-85.

certain knowledge of the deed stipulated by the criminal law committed in connection with the service in which performs his tasks, not the identity of the perpetrator. As the rule of criminality (art. 267 of the Criminal Code) refers to the notification of the criminal prosecution bodies regarding the deed provided by the criminal law committed, the civil servant is not required to know the identity of the perpetrator.

5. Conclusions

In conclusion, we consider that, in interpreting the current provisions of the criminal law and the criminal process, non-observance of the civil servant to observe the provisions of art. 291 of the Criminal Code regarding the obligation to notify the criminal prosecution bodies does not always attract sanction according to the norm of incrimination contained in art. 267 of the Criminal Code on the omission of the referral.

While the provisions of the Criminal Procedure Code (art. 291) oblige a civil servant who, in the exercise of his duties, has become aware of the commission of any criminal offense for which the criminal proceedings are initiated ex officio, to bring the prosecuting authorities to the attention of the prosecuting authorities the provisions of the Criminal Code (art. 267) require the application of the criminal sanction for the offense of omission of the complaint only to the civil servant who has not notified the facts provided for by the criminal law committed in connection with the service in which he performs his duties.

Starting from some considerations regarding the notification of the criminal investigation bodies and continuing with some assessments regarding the classification of the general and special referral methods, according to the provisions of the current Code of Criminal Procedure, with the presentation of the acts concluded by other observing, the way in which the criminal investigation bodies are notified and the analysis of the complaints made by persons with leading positions and by other persons prescribed by law as a form of denunciation, the present study aims to highlight the importance of approaching, from a perspective, criminal matters, of the issue of the exercise of public office.

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