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PRIVATE VS PUBLIC: LIMITATION OF THE VICTIM'S DISPOSITION ON THE CRIMINAL ACTION IN ROMANIAN CRIMINAL LAW

The article analyzes the limitations that the Romanian legislator brings to the right the victim to file or not a private action to the authorities, or to retract it. The central question is if the legislator extends or limitates the right to health and bodily integrity, either this is a private or a public right. More specifically, through multiple legislative initiatives, some of them of particularly recent date, which change the old rules, the legislator extends the force of public prosecutor, blocking the right of the victim to order or to cancel criminal investigations. Thus, traditionally, as is the case of many legal systems, in the case of the Romanian criminal law, in respect of crimes considered of lower social danger, public action is triggered only at the complaint of the injured person. Symmetrically, the withdrawal of the complaint leads to the termination of the investigation or criminal trial. These are usually delicts of violence that have not had serious consequences as well as other offences against individuals freedom (such as threat).

In 2025, by Law no. 116, the Romanian legislator took a decisive step in the protection of victims, on the other hand, essentially tapping their right to freely order the continuation or not of a criminal investigation. The provision says that "in the case of offences for which the initiation of criminal proceedings is conditional on the introduction of a private action, regardless of whether the criminal 'oceedings were initiated following this private action or ex officio, the withdrawal of the complaint takes effect only if it is accepted by the prosecutor".

Thus, the prosecutor will decide whether to accept the victim's disposition or the trial will continue, even against victim´s will. The special relevance, as we said, of this text is in the matter of acts of violence, affecting victim health and body integrity.

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We will look at the usefulness of this provision and the prospects for its practical application in the context of a criminal policy to protect vulnerable victims.

***Keywords**: violence, prioprivate action, public action, withdrawal of complaint, prosecutor, protection of victims of violence.*

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1. The role of the victim in criminal proceedings

We believe that this right of the victim to order, to a greater or lesser extent, on public action has its origins in the beginning of mankind and is linked to the right to revenge. Even long time after the statal organization, it was decided to consider most crimes as a private matter that did not interest society, so revenge was the basis of the right to punish. Only later, society by authorities, substituted the victim, taking over this right to revenge, which sometimes the victim abused. Revenge, from individual, became a social, a public attribution. (Tanoviceanu, 1922, vol. I:33).

It is a constant concern of nowdays national legislators and also international organisations, of which the European Union documents note, to increase the penal means in which victims, affected by their right to health and bodily integrity, can turn to state bodies to exploit these rights[1].

We mention that the right to bodily integrity appears rather related to injuries caused by criminal acts, and the right to health appears more related to aspects external to a criminal act, caused by natural or biological events. Here the question would be more about the role of the state in treating some people, through the medical system.

However, we are convinced that the two notions overlap almost entirely. Thus, the damage to health by criminal acts obviously causes injuries that will be treated medically. However, their relevance in criminal law is given here by the concrete possibilities that the victim has within the public mechanism to punish the one guilty of injuries.

The key issue we will be bending over is to see whether the new criminal policies to punish the offender are useful and effective in the case of health-related acts.

It was pointed that "the criminopolitical reasons for introducing special instruments of criminal protection of injured parties, as well as victims of criminal offences in the criminal law sense, are primarily based on the fundamental idea of criminal law

[1] For details, see Marina Matić Bošković, Right to bodily integrity and criminal justice, in Z. Pavlovic, I Stevanovic (eds.), The right to life and body integrity, Belgrade, 2024, p. 234.

grounded in its dominant protective function. It should be noted here that criminal procedure law can be defined in a functional sense, directly related to its purpose, with immediate reference to the goals of substantive criminal law" (Skulić, Miljuš, 2024: 14).

The beginning of the 21st century is marked by the activities of the European Union in the development of victims' rights, as well as the creation of standards for their protection. Adoption of Directives is the process by which EU member states and candidate countries undertake to include them in their legislation.

In the field of protection of victims' rights, the first document in the EU was the Council's Framework Decision 2001/220/PUP on the position of victims in criminal proceedings. A framework decision, although it was aimed at protecting victims of cross-border crimes, and then indirectly at the rights of victims within national frameworks. Although with good intentions, this Framework Decision did not have a major impact in the member countries, because its provisions are not directly applicable. This influenced the adoption of Directive 2012/29/EU in the European Union, which replaced the original Framework Decision. According to its content, the Directive marks the broadest legal document in the area of protection of victims' rights and has led to certain changes, which marked a good basis for improving the rights and protection of victims in general (Pavlovic, 2024: 213).

We note that the notion of "victim" is not defined by the Romanian Criminal Procedure Code. This omission is rational, scholars say, as long as the victim does not appear to be an actor in criminal proceedings, but only a subject of criminal justice. However, as we have seen, the procedural law indirectly recognises the victim as a participant, so an explanation is necessary (Ciopec, 2022:3). Law no. 211/2004 on measures to ensure the information, support and protection of victims of crime provides a definition of "victim". Thus, the victim of crime is the person who has suffered damage of any kind, including an injury to his or her physical, mental or emotional integrity or economic damage, caused directly by a crime, as well as family members to a person who has died as a result of a crime and who has suffered damage as a result of the death of that person.

2. The context of the so-called "private action" of the victim in contemporary Romanian criminal law

According to the provisions of the Romanian Criminal Procedure Code, the criminal action is public and it belongs to the prosecutor's office, the prosecutor exercising the function of accusation.

However, in the case of certain offences, it was considered that the criminal action will be initiated by the prosecutor only at the complaint of the victim.

This so-called "prior complaint" is considered by scholars both a criminal and procedural law institution. This represents, from the perspective of substantial criminal law, a condition of punishability, namely, if it is not filed or is withdrawn, the perpetrator will not be held criminally liable (Dongoroz, 1970, II:385). The origins of this action should be sought in Roman law, – *actiones privatae* (Molcuț, Oancea, 1993:77).

Certain antisocial acts are criminalized for the consideration of endangering or harming social values closely related to the person of the victim, the passive subject, both regarding subjective non-patrimonial rights (property) and non-patrimonial rights (honor, dignity, freedom, physical integrity). As regards these offences, the law, for reasons of criminal policy, has established the rule that the necessity and appropriateness of the exercise of criminal action is left to the discretion of the victim, who is best placed to decide whether or not to punish the offender (Stănilă, 2024:113).

From the procedural perspective, the absence of a private complaint is an impediment to the beginning or to the further exercise of the criminal action, therefore the prosecutor or the Court will have to issue a solution to close or terminate the criminal proceedings.

Thus, according to art. 157 Romanian Criminal code: "In the case of offenses for which the initiation of criminal action is conditioned by the introduction of a prior complaint by the injured person, the lack of this complaint removes the criminal liability".

The law also drafts that the act that has caused an injury or damage to several persons entails criminal liability, even if the prior complaint was made only by one of them.

Moreover, the complaint entails the criminal liability of all natural or legal persons who participated in its commission, even if the prior complaint was made only on one of them.

According to the legal text, if the injured person is a person without exercise capacity or with limited exercise capacity or a legal entity that is represented by the perpetrator, the criminal action may also be initiated ex officio.

If the injured person has died or in the case of the legal person has been liquidated, before the expiry of the term provided by law for the lodging of the complaint, the criminal action may be initiated *ex officio*.

According to art. 158 Romanian Criminal Code, "Withdrawal of the prior complaint may take place until a final decision is delivered by a Court, in the case of offenses for which the initiation of the criminal action is conditioned by the prior complaint".

Further, the law provides that withdrawal of the prior complaint removes the criminal liability of the person in respect of whom the complaint has been withdrawn. This is the personality of the institution.

For the persons without the civil capacity (the common case of minors), the withdrawal of the complaint shall be made only by their legal representatives. In the case of persons with limited exercise capacity, the withdrawal shall be made with the consent of the persons provided by law.

According to the central theme of this brief analyse, the law provides, since 2025, that in the case of offenses for which the commissioning of criminal action is conditioned by the introduction of a preliminary complaint, regardless of whether the criminal action was initiated following a prior complaint or *ex officio*, the withdrawal of the complaint takes effect only if it is accepted by the prosecutor. This innovative text will be presented further.

As we noted, the "private action" of the victim is also in Romanian system a procedural law institution. So, according to art. 295 Romanian Criminal Procedure Code, "The initiation of criminal action is made only upon prior complaint of the injured person, in the case of offenses for which the law provides that such complaint is necessary".

The law also states that the prior complaint is addressed to the criminal investigation body or to the prosecutor, according to the law and it must be filed within 3 months from the day on which the victim found about the commission of the act.

Law established that when the injured person is a minor or a major who receives special legal advice or guardianship, the term of 3 months runs from the date when the protector or his legal representative learned about the commission of the act.

So, minors have a higher protection, and that is justified by their vulnerability. This is because, as scholars noted, "The protection of dignity and bodily integrity of the child, apart from being closely linked to the right to life and the right to family life, cannot be observed in isolation from the principle of equality of rights. Children, as human beings, also have the right to equal legal protection without discrimination, and this stage in the development of legal thought and legal practice has not been reached immediately and easily, at least when it comes to understanding childhood as a concept and position and rights of children within families. Traditional practices of allowing corporal punishment of a child in the family did not measure physical confrontations with an unknown adult with the same yardstick. The admissibility of corporal punishment of a child and the demand for the sanctioning of equal treatment of an adult have long and persistently been maintained at both the legislative and practical levels in a large number of democratically governed countries, although the consequences of violation of dignity are unquestionable in both cases" (Vujovic, 2020:79).

Further, the law says that if the perpetrator is the legal representative of the persons referred to in paragraph (2), the term of 3 months runs from the date of appointment of a new legal representative.

So, the remark ist hat Romanian law has instituted both criminal substantial and procedural dispositions regarding the "private action" of the victim.

3. The offences for which prior complaint is requiredin Romanian Criminal Code

The Romanian Criminal Code exhaustively indicates the offences for which the injured person may lodge a prior complaint, namely:

1. bodily assault (assault occasioning bodily harm) or other violence;
2. personal injury by fault;
3. threat;
4. harassment;
5. rape in simple form;
6. sexual assault in simple form;
7. sexual harassment;
8. residence violation;
9. violation of the professional office;
10. violation of private life;
11. disclosure of professional secrecy;
12. theft committed between family members or by a minor in damage to his or her tutor, or by one who lives with or is hosted by the victim;
13. abuse of trust;
14. abuse of trust by fraud of creditors;
15. simple bankruptcy;
16. fraudulent banking;
17. fraudulent management;
18. simple destruction;
19. disturbance of possession;
20. assistance and unfair representation;
21. violation of the secrecy of correspondence;
22. family abandonment;
23. failure to comply with the measures concerning the custody of the minor.

As we see, we are talking about offences against the person and the property.

By limiting the object of the analysis to those that cause health damages to the victim, we redress the norm that criminalize them in the Romanian criminal law.

According to Art. 193 Romanian Criminal Code:

"(1) Hitting or any acts of violence causing physical suffering shall be punished by imprisonment from 6 months to 3 years or by a fine.

(2) The act by which traumatic injuries occur or the health of a person is affected, the severity of which is assessed by days of medical care of no more than 90 days, shall be punished by imprisonment from 1 year to 5 years or by a fine.

(2^1) The special limits of the penalty provided for in paragraph (1) and (2) shall be increased by one third when:

a) the victim is in the care, protection, education, guarding or treatment of the perpetrator;

b) the victim is a minor;

c) the act is committed in public;

d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that may endanger the life, health or bodily integrity of persons.

(3) The criminal action shall be initiated upon the prior complaint of the injured person.

(4) In the case of acts committed under par. (2^1), the criminal action may be initiated *ex officio*".

Regarding non-intentional aggressions, according to art. 196 Criminal Code:

"(1) The act provided for in Article 193 (2) committed by fault of a person under the influence of alcoholic beverages or a psychoactive substance or in the conduct of an activity which constitutes by itself a crime shall be punished by imprisonment from 3 months to one year or by a fine.

(2) The act provided for in Article 194 (1) committed by negligence shall be punished by imprisonment from 6 months to 2 years or by a fine.

(3) When the act provided in paragraph (2) was committed as a result of non-compliance with the legal provisions or the provision measures for the exercise of a profession or profession or for the performance of a certain activity, the penalty is imprisonment from 6 months to 3 years or fine.

(4) If the consequences provided in paragraph (1)-(3) occurred against two or more persons, the special limits of the penalty shall be increased by one third.

(5) If the non-compliance with the legal provisions or the provision measures or the conduct of the activity that led to the committing of the acts referred to in para. (1) and para. (3) constitutes by itself a crime, the rules on the contest of offenses shall apply.

(6) The criminal action shall be initiated upon the prior complaint of the victim".

Scholars noted that „The sign of equality between the criminal complaint should not be placed as a means of referral to the criminal investigation body and the prior complaint which is, at the same time, a condition of punishability and processability. At the

same time, the two are also distinguished by the fact that while the complaint can be supplemented by a denunciation or a formal complaint, the prior complaint cannot be replaced by any other means of referral" (Păcurariu, 2023:3).

In the case of this referral mode, the officiality is replaced with aspects of availability, but this feature is not completely confused with that specific to the civil process. One of the most important differences is that, unlike the civil trial, in which the interested person has the right to determine the limits of the request for a summons, in the criminal trial, the injured person cannot determine the limits of the criminal action initiated.

In order to meet the elements of these delicts against body integrity, it is essential that the aggression is proven. The law does not require a specific piece of evidence (witnesses can suffice), but when the issue of a certain number of spitalization or medical treatment days is raised, only the Institute of Forensic Medicine can rule in this respect. The document proving the injuries is issued either immediately, following the physical findings, or on the basis of medical documents issued by the hospital unit.

4. Content of Law no. 116/2025

By Law 116/2025,[2] amending Law no. 286/2009 on the Criminal Code and also amending Law no. 26/2024 on the protection order, the Romanian legislator understood to insert a series of punctual amendments to some criminal provisions.

According to the Law, „In the case of offences for which the initiation of criminal proceedings is conditional on the introduction of a prior complaint, regardless of whether the criminal proceedings were initiated following a prior complaint or *ex officio*, under the law, the withdrawal of the complaint takes effect only if it is accepted by the prosecutor."

Also, in Article 193, paragraphs (1) and (2) are amended and shall read as follows:

"(1) Hitting or any acts of violence causing physical suffering shall be punished by imprisonment from 6 months to 3 years or by a fine.

(2) The act by which traumatic injuries occur or the health of a person is affected, the severity of which is assessed by days of medical care of no more than 90 days, shall be punished by imprisonment from 1 year to 5 years or by a fine".

We note that the law increases the minimum penalty considerably, doubling it, for the act of violence. It is a correct criminal policy measure for the protection of victims,

[2] Published in the Official Gazette number 583 dated 23 June 2025

because, when consulting the judicial practice, it is noted that the punishments applied are oriented to the minimum one.

Moreover, in some cases the judges decide to postpone the application of the penalty with the establishment of minimum obligations for the duration of 2 years. This last way is still possible, along with the criminal fine. We believe, however, that it is justified to keep the monetary penalty, given that in some cases we are talking about minimal harm to the health of the victims. Falling into extremes is not beneficial.

Regarding the fact that the withdrawal of the complaint takes effect only if it is approved by the prosecutor, this is truly a provision that we consider revolutionary in the Romanian criminal law system.

As we have shown above and it will be noted in the comparative part of the law, the tradition is that the right of the victim is regulated in the mirror, namely if the victim can enter the complaint, he also has the right to withdraw it.

The new provision blocks the victim's disposition to punish the offender, given that the last word is the prosecutor's. The provision is close to legal systems which provide that the complaint is irrevocable.

No details are given as to the content of the act of acceptance or not of the withdrawal of the complaint, but the recent practice accepts that it can also be verbal, in the hearing. Sometimes, however, the judge requests a written point of view of the Prosecutor's Office in this regard.

It has to be noted that the Law transposes Article 55 of the Council of Europe Convention on preventing and combating violence against women and domestic violence[3] (2011) adopted in Istanbul[4], according to which "the Parties shall ensure that investigations or prosecution of offences established pursuant to Articles 35, 36, 37, 38 and 39 of this Convention shall not be entirely dependent on a report or complaint filed by the victim whether the offence was committed in whole or in part in its territory and that the proceedings may continue even if the victim withdraws his or her statement or complaint".

[3] According art. 1, the objectives of the Convention are to: protect women against all forms of violence and to prevent, prosecute and eliminate violence against women and domestic violence; b contribute to the elimination of all forms of discrimination against women and promote substantial equality between women and men, including through the empowerment of women; c design a comprehensive framework, including policies and measures for the protection and assistance of all victims of violence against women and domestic violence; d promote international cooperation to eliminate violence against women and domestic violence; e provide support and assistance to governmental law enforcement organizations and agencies to cooperate effectively in order to adopt an integrated approach to eliminating violence against women and domestic violence.

[4] Council of Europe, Convention on preventing and combating violence against women and domestic violence, (adopted 7 May 2011, entry into force 1 August 2014) CETS 210 (Istanbul Convention), available at https://rm.coe.int/168008482e.

We remark that the document covers physical violence, sexual violence of any nature, forced marriage[5], female genital mutilation, forced abortion[6], forced sterilization[7] and sexual harassment.

5. Some European legislations on "private action"

We consider useful to make a brief investigation into European comparative law, in order to observe how other criminal codes deal with the issue of the victim's prior complaint, in what cases it is possible, whether it is retractable or not, and whether the state can lead the criminal acusation even beyond the will of the victim.

Consulting the German Penal Code (Strafgesetzbuch – StGB)[8], we note that it also regulates, similar to the Romanian legislation, the institution of the private action of the victim.

Thus, according to art. 77 StGB, „If the criminal conduct can be investigated only on the basis of a prior complaint, the injured person may file the prior complaint, unless otherwise provided by law. If the injured person dies, the right to file a prior complaint shall rest in the cases provided by law to the husband/wife, partner/partner in a civil partnership and children. If the injured person has neither a spouse or partner, nor children or if they have died before the expiry of the deadline for lodging the prior complaint, the right rests with their brothers and sisters and grandchildren. If a family member has participated in the act or if his or her kinship has ceased, he or she does not qualify for the right to lodge a prior complaint. The right to a prior complaint shall not be transmitted if the prosecution contravenes the expressed wish of the injured person".

The German law also states that if the person entitled to draft the prior complaint lacks the capacity to exercise or has limited exercise capacity, the complaint may be filed by the legal representative of this person or by the caregiver of the person entitled to make the complaint. If there are more than one entitled person, each of them can formulate the complaint independently". According to Article 77b StGB, „The act that can be pursued only upon prior complaint of the injured person will not be prosecuted if the person entitled to make the prior complaint fails to make the complaint until the expiry of a period

[5] For details, Vujović, R., Permission for underage marriage: denying the child's right to protection, in Z. Pavlovic, I Stevanovic (eds.), The right to life and body integrity, Belgrade, 2024, p. 461.

[6] Janković, S., Threatening the rights, health, and lives of women while protecting their reproductive health, in Z. Pavlovic, I Stevanovic (eds.), The right to life and body integrity, Belgrade, 2024, p. 573.

[7] For details, see. Guererro, L. V., Sterilization and disability: from atypicality to criminalization in Right to bodily integrity and criminal justice, in Z. Pavlovic, I Stevanovic (eds.), The right to life and body integrity, Belgrade, 2024, p. 234.

[8] https://codexpenal.just.ro/laws/Cod-Penal-Germania-RO.html.

of 3 months. If the end of the term falls on a Sunday, a legal holiday or Saturday, the term expires at the end of the next working day. The term begins to run with the expiration of the day when the person having the right to file the prior complaint learned about the deed and the person of the perpetrator. Regarding the complaint made by the legal representative and the person to whom the minor was entrusted, the term begins to run from the date on which they learn about the above".

Observing art. 77d StGB, it states that „Complaint may be withdrawn. Withdrawal can be made until the criminal trial is completed by a final judgment. A withdrawn prior complaint cannot be filed again. If the injured party dies or the person entitled to make the prior complaint in the event of the death of the injured person dies after the prior complaint has been made, the spouse, partner/partner in a civil partnership, the children, parents, sisters and brothers and grandchildren of the injured, in the order established in §77 paragraph 2, may withdraw the prior complaint already made. Several family members of the same rank may exercise their right only together. The person who participated in the act cannot withdraw the prior complaint".

In German law, "private action" is provided for home violation, certain less serious cases of sexual abuse, insult, easy theft, theft of use of a vehicle, theft of energy, impeding forced execution, acts of corruption committed in the private environment, certain cases of aggression, intentional or culpable, In case of child abduction, harassment, aggravated theft, embezzlement (follow-up) acts committed through computer systems, sexual abuse in aggravated forms, the criminal action shall be brought, in situations aggravated in motion only to the prior complaint, unless the criminal investigation bodies consider it appropriate to notify ex officio motivated by the special public interest in the criminal investigation. The law does not detail the way and criteria by which the prosecutor evaluates the public interest, similar to the Romanian law. However, we observe the foundation of the same principle, of the prevalence of the public interest towards the will of the victim.

According to Article 120 of the Italian Criminal Code[9], we note that any person injured by a delict for which he cannot be prosecuted *ex officio*, but only after his request or petition, has the right to lodge a private action. For minors aged under 14 and those affected by mental illness, the right to complain is exercised by the parent or guardian. Minors who have reached the age of 14 and those who are incapable may exercise their right to complain, which may also be exercised in their place by the parent, guardian or

[9] https://codexpenal.just.ro/laws/Cod-Penal-Italia-RO.html

curator, despite any contrary declaration of will, express or tacit, of the minor or incapacitated. Art. 152 drafts that in the offences which are intended to be committed to the prior complaint of the victim, the withdrawal removes the criminal liability.

Regarding the "threat" offence (art. 612), the Italian law shows that the one who threatens others with an unjust damage is punished, following the complaint of the injured person, with a fine of up to 1,032 euros. If the threat is serious or is made in one of the ways indicated in Article 339, the punishment shall be imprisonment up to 1 year and shall be carried out ex officio. Repeated act of threat (art. 612 bis) shall be punished following the complaint of the injured person. The deadline for lodging the complaint is six months. Withdrawal of the complaint can only be legal. The complaint is irrevocable, however, if the act was committed by repeated threats in the manner indicated in Article 612 para. 2. The investigation should be *ex officio* if the act is committed against a minor or a disabled person, and when the act is related to another offence for which it must be done *ex officio*.

For domicile violation (art. 614), the offense is investigated following the complaint of the injured person. The punishment is from 1 to 5 years and is intended *ex officio* if the act is committed by violence against things or persons, or if the culprit is visibly armed.

According to Art. 615 bis, offences of illegal interference in private life are punishable by complaint of the victim; however, it is pursued *ex officio* and the penalty is imprisonment from 1 to 5 years if the act is committed by a public official or by a public official, through abuse of power or violation of duties related to office or service, or the one who practices even abusively the profession of private detective.

The same is the case of illegal access to a computer system (art 615-ter), if the offender to commit the act uses violence against things or persons, or if he is obviously armed, or if the act results in the destruction or damage to the system or total or partial interruption of its operation, or the destruction and spoilage of the data, information or programs contained therein. Illegal interception under Article 617 shall be punishable by the denunciation of the injured person; however, it shall be carried out ex officio and the penalty shall be imprisonment from 1 to 5 years if the act is committed at the expense of a public official or a person charged with a public office in his or her office or service or by a public official or a public official who is responsible for office by abuse of power or by breach of duties relating to office or service or to the person who practices the profession of private detective or in an abusive manner.

Without fully analyzing Italian law, we observe the legislative technique of making it possible to investigate ex officio without the victim's complaint, in the case of aggravated forms (Marinucci, Dolcini, Gatta, 2018:465).

According to section 31 of the Hungarian Criminal Code[10], entitled "the non-existence of the complaint of the victim", in the specific cases provided for in the Code, the offender may be punished only on the basis of the private complaint. The victim is entitled to file a request. If the injured party has limited legal capacity, the prior complaint may also be submitted by its legal representative, and in the absence of its legal capacity, may be submitted exclusively by its legal representative. In these cases, the guardianship authority also has the right to file a prior complaint. If the injured party who has the right to file a prior complaint dies, his relatives have the right to file the complaint. The prior complaint filed against any of the perpetrators applies to all perpetrators. The prior complaint of the injured party cannot be withdrawn. We note that the offences referred to in paragraph (1) of section 196, paragraph (1), letter a) of section 197 and paragraph (3) of section 205 may be prosecuted only following the prior complaint of the injured party, unless any offence which is punishable on its own motion is also committed in connection therewith.

In case of domestic violence by which the offender a) seriously violates human dignity or engages in degrading and violent behavior, or b) hijacks or conceals any property from conjugal or joint property, thereby causing serious gaps to the parent of the child or a family member, former spouse or civil partner who lived in the same household or dwelling at the time of the act or previously, to his or her custodian the person under custody, the guardian or the person under guardianship, the act can be prosecuted only after the request of the victim.

In the Criminal Code of Republic of Serbia, according to art. 122, „Whoever causes light injury or minor health damages, shall be punished with fine or imprisonment up to one year. If the injury is caused by a weapon, dangerous implement or other means suitable to inflict serious injury or serious health damage, the offender shall be punished with imprisonment up to three years. A court may pronounce judicial caution to the perpetrator referred to in paragraph 2 of this Article, if he was provoked by rude or violent conduct of the victim. Prosecution for the offence referred to in paragraph 1 of this Article shall be instituted by private action".

According to art. 177, prosecution for offences specified against honor and reputation is undertaken also by private action. Moreover, according to art. 210, prosecution for Petty Theft, Embezzlement and Fraud, if committed against private property is instituted by private action, and same for damage on private property.

[10] https://codexpenal.just.ro/laws/Cod-Penal-Ungaria-RO.html.

6. The non-retroactivity of the severe law. Recent judicial practice regarding Romanian law

Taken into consideration the many legislative changes, the Romanian courts are faced with a real challenge. It is mainly about the application of a well-known and traditional *dictum* of criminal law, that of the non-retroactivity of the more severe law.

Article 7 of ECHR unconditionally prohibits the retrospective application of the criminal law where it is to an accused's disadvantage (Del Río Prada v. Spain [GC], 2013, § 116; Kokkinakis v. Greece, 1993, § 52). The principle of non-retroactivity of criminal law applies both to the provisions defining the offence (Vasiliauskas v. Lithuania [GC], 2015, §§ 165-166) and to those setting the penalties incurred (Jamil v. France, 1995, §§ 34-36; M. v. Germany, 2009, §§ 123 and 135-137; Gurguchiani v. Spain, 2009, §§ 32-44). Even after the final sentence has been imposed or while the sentence is being served, the prohibition of retroactivity of penalties prevents the legislature, the administrative authorities and the courts from redefining or modifying the scope of the penalty imposed to the sentenced person's disadvantage (Del Río Prada v. Spain [GC], 2013, § 89, concerning a thirty-year prison sentence to which, under a case-law reversal, no remissions of sentence for work done in detention could effectively be applied, whereas at the time the applicant had committed the offences the maximum legal term of imprisonment was treated as a new, independent sentence to which remission of sentence for work done in detention should be applied). 49. The principle of non-retroactivity is infringed in cases of retroactive application of legislative provisions to offences committed before those provisions came into force. It is prohibited to extend the scope of existing offences to acts which previously were not criminal offences (see Kotlyar v. Russia, 2022, §§ 28-34, concerning the reclassification of charges).

However, there is no violation of Article 7 where the acts in question were already punishable under the Criminal Code applicable at the material time – even if they were only punishable as an aggravating circumstance rather than an independent offence – (Ould Dah v. France (dec.), 2009, provided that the penalty imposed does not exceed the maximum laid down in that Criminal Code) or where the applicant's conviction was based on the international law applicable at the material time (Vasiliauskas v. Lithuania [GC], 2015, §§ 165166, where the Court dealt with the applicant's conviction in the light of the international law in force in 1953, having noted that the provisions of the 2003 Lithuanian law on genocide had been applied retroactively; Šimšić v. Bosnia and Herzegovina (dec.), 2012, concerning crimes against humanity committed in 1992; Milanković v. Croatia, 2022, § 53, where the Court dealt with the applicant's conviction for war crimes, perpetrated in 1991/92, on the basis of his command responsibility). In the latter

case, although the domestic authorities can always adopt a broader definition of an offence than that set out in international law (§ 40 above), they cannot impose retroactive sentences on the basis of that new definition in respect of acts committed previously (Vasiliauskas v. Lithuania [GC], 2015, § 181, concerning a conviction for genocide based on a 2003 Criminal Code, relating to acts committed against members of political group in 1953).

In order to establish to whether, for the purposes of Article 7, a law passed after an offence has allegedly been committed is more or less favourable to the accused than the law that was in force at the time of the alleged commission of the offence, regard must be had to the specific circumstances of the case (the principle of concretisation, as opposed to comparing the definitions of the offence in abstracto). If the subsequent law is more severe than the law that was in force at the time of the alleged commission of the offence, it may not be applied. (Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law, [GC], 2020, §§ 88 and 92).

As regards the severity of the penalty, the Court confines itself to satisfying itself that no heavier penalty is imposed than that which was applicable at the time of commission of the offence. Issues relating to the appropriateness of a penalty do not fall within the scope of Article 7 of the Convention. It is not the Court's role to decide the length of the prison sentence or the type of penalty which is suited to any given offence (Hummatov v. Azerbaijan (dec.), 2006; Hakkar v. France (dec.), 2009[11].

In a recent case file[12], the defendant was charged with the fact that on 23.08.2021, at 13:30, while in the courtyard of the victim, he hit him with his hand in the face area, causing him traumatic injuries whose severity was assessed at a number of 30-35 days of medical care. To prove the state of fact exposed in the indictment were indicated the following means of proof, administered during the criminal investigation: the declaration of the injured person, the statements, the statements given as suspect and defendant, the Medico-legal certificate, documents and photos At the trial stage, on 21.05.2025, the defendant filed in the file, in original, the duplicate of the Declaration of withdrawal of the private action given by the injured person under no. 607 Of 31.03.2025 by public notary.

[11] ECHR, Guide on Article 7 of the European Convention on Human Rights No punishment without law: the principle that only the law can define a crime and prescribe a penalty (www.echr.coe.int/documents/d/echr-ks/guide_art_7_eng).

[12] Decision no. 304/2025 from 27.08.2025, Judecătoria Huedin, cod RJ 73d244567 (https://www.rejust.ro/juris/73d244567).

The judge notes that, according to art.193 par. 3 Criminal code, in respect of the offense of violence, the criminal action is set in motion at the prior complaint of the victim. In accordance with the provisions of Articles 158 1 and 2 Criminal code, the withdrawal of the prior complaint may take place until a final judgment is given, in the case of offences for which the initiation of criminal proceedings is conditional on the introduction of a private action, leading to the removal of the criminal liability of the person in respect of whom the complaint has been withdrawn. According to Article 16 paragraph 1 letter g Criminal procedure code, the criminal action cannot be continued, and when it has been set in motion it can no longer be exercised if the prior complaint has been withdrawn.

On a preliminary basis, since until the final judgment of the case a new criminal law, the content of Article 158 para. 4 Criminal code and art. 193 para. 2 Criminal code suffering changes, it is necessary to analyze the more favorable criminal law. Thus, following the amendments brought to Article 158 para. 4 Criminal code by Law no. 116/2025, it is noted that starting with 26.06.2025, in the case of crimes for which the initiation of criminal action is conditional on the introduction of a prior complaint, regardless of whether the criminal action was initiated following a private action or *ex officio*, the withdrawal of the complaint takes effect only if it is accepted by the prosecutor. In the regulation prior to this date, the condition that the withdrawal of the prior complaint to be accepted by the prosecutor to produce effects existed only in the event that the criminal action was initiated *ex officio*, under the law. At the same time, the same law was amended and Article 193 para. 2 Criminal code, increasing the minimum prison sentence applicable to the offense of striking or other violence, from 6 months to 1 year.

Therefore, Court notes, applying the provisions of art. 5 Criminal code in relation to the legislative changes occurred by Law no. 116/2025, which aggravates the sanctioning treatment and imposes additional requirements for the withdrawal of private action to take effect, the court finds that the most favorable criminal law in question is the one from the date of committing the act (23.08.2021), taking into account both the limits of the prison sentence, but in particular the situation in the present case the fact that it is not necessary for the prosecutor to accept the withdrawal of the prior complaint in order for it to have effect.

In another very recent case[13], by the document of acusation, the defendant was sent to court for committing the offense of violence, provided by art. 193 par.(1) and (2)[1] lit.b) and c) Criminal code. In the act of referral, in essence, it was noted that the defendant, on 11.06.2024, around 09:35, while he was in the premises of the Gymnasium School,

[13] Decision no. 1670/2025 din 19.08.2025, Judecătoria Pitești, cod RJ d94ee543e (https://www.rejust.ro/juris/d94ee543e).

hit a minor with his hand in the face area, two times, causing him physical suffering. To prove the factual situation in the indictment were mentioned the following means of proof administered during the criminal investigation: statements of the victim, statement of the defendant, suspect statement, witness statement, Minutes of video capture from 11.06.2024; documents prepared during other interventions at events in which the defendant was involved, as well as other documents.

On the court meeting of 20.05.2025, the injured person declared before the court, by legal representant, that he withdraws his accusation and that he does not request his criminal liability and that he has no civil claim resulting from the offense that forms the subject of this file.

As regards the more favorable criminal law, the court finds that from 11.06.2024 until now Law no.116 of 23.06.2025, published in the Official Gazette of Romania no. 583 of 23.06.2025, the provisions of Article 158 para. (4) C.pen have been amended, with the following content: „(4) In the case of offences for which the initiation of criminal proceedings is conditional on the introduction of a prior complaint, regardless of whether the criminal action was initiated following a prior complaint or ex officio, under the law, the withdrawal of the complaint takes effect only if it is accepted by the prosecutor." Considering that according to art. 5 Criminal code 'If one or more criminal laws intervened from the commission of the offense until the final trial of the case, the law more favorable is applied", the court finds that the law in force at the time of the offense, namely 11.06.2024, is more favorable this not foreseeing the obligation of accepting of the withdrawal of the private action by the prosecutor regardless of the way in which the criminal action was initiated. Thus, according to the old law, the court states that, although according to the provisions of Article 193 para.(4)C.pen.in the case of offences committed under the conditions of Article 193 para. 2 1 the criminal action may be initiated and ex officio, in the present case at the time of the initiation of the criminal action there was already a prior complaint legally formulated, so that the criminal action can no longer be considered to be exercised ex officio in order to be required the confirmation by the prosecutor of the manifestation of the will of the injured person in the sense of termination of the criminal trial.

So, concluding, the law that provides the autorisation of the prosecutor to cancel the criminal case, at victim request, is a more severe law, and it can not be aplied retroactively.

7. Conclusions

We consider, in conclusion, that we managed to briefly present the situation of the institution of the "privat action" in Romanian legislation, with an emphasis on the recent changes regarding the necessity of the approval of the prosecutor to the withdrawal from the victim, in all situations.

As we anticipated, the intervention of the public force is necessary in some cases where, in relation to the seriousness of the act, it can be concluded that the offender does not deserve forgiveness by the victim, and the right of the state to punish is a priority.

Thus, we note that the amendment, drafted in a broader context of the last years, is the result of the increased concern of the Romanian legislative for the rule of law, even contrary to the will of the victims of violent offences.

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