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Legal expenses in the Code of Criminal Procedure

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Abstract. The expenses advanced by the state and those incurred by the parties in the conduct of criminal proceedings are called court expenses and are divided into the expenses incurred in criminal proceedings until they are completed – including those related to appeals, among which we mention ordinary and extraordinary ones. State authorities incur expenses for spaces where prosecutor's offices and courts operate, including remuneration of senior and judicial officials, which are within the competence of the state as judicial power. Also, the courts, when organizing criminal trials, getting to administer the evidence, ordering the evidentiary procedures and establishing to what extent the defendant committed the crime, determining the amounts owed by the Public Ministry or by the party responsible for conducting the criminal proceedings. As a result, all the expenses mentioned sometimes end up being very high for all parties involved in the criminal proceedings, as appropriate. According to Article 272, paragraph 1, the above-mentioned expenses will be covered by the responsible party, according to the law, or will be advanced by the State, while Articles 274-275 of the Code of Criminal Procedure clarify precisely which part of the criminal proceedings will cover certain expenses. At first glance, we notice that a large part of Romanian citizens find it difficult to understand the difference between legal costs and court costs. The novelty arises from the fact that this topic is approached from such a succinct perspective that there are situations in which phrases such as legal costs and court costs are often confused.

Keywords. Legal expenses, code, legal basis, classification, criminal proceedings

1. General considerations on court costs in the Code of Criminal Procedure 1.1. General

In Romanian legal doctrine, there is often confusion between court costs in a civil trial and judicial costs in a criminal trial. In the Civil Code, in order to bring an action, it is mandatory for the applicant to pay stamp duty, an amount that goes into the body of court costs, while in the Code of Criminal Procedure, court expenses are represented by procedural documents, "expenses necessary for carrying out procedural acts, taking evidence, preserving material evidence, lawyers' fees, as well as any other expenses occasioned by the conduct of criminal proceedings and shall be covered from sums advanced by the State or paid by the parties, as provided by law".1 As such, the difference between the above-mentioned terms is given by the applicable legal regime, by the payer and obviously by the amount, and it is not difficult to differentiate between the payment of the stamp and the numerous actions before and after the criminal proceedings.

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1 https://legeaz.net/New-Code-Criminal-Procedure-ncpp/art-274/
(a) **1.2. Definitions**

One of the theories underlying the building of democracy was the theory of separations of powers, a theory first publicly affirmed by Baron Charles Louis de Secondat, Baron de la Brede et de Montesquieu, in his work "On the Spirit of the Laws" of 1748\(^2\), from which emerges the importance of legislative, executive and judicial power to be in the hands of each other. The underlying considerations for this dogma were the removal of abuse, a natural trend that has existed since all times, and, of course, the ineffectiveness with which a person could make decisions in all aspects of a healthy built state that would keep pace with the rapidly evolving exogenous factors. In her book, "Prosecution Management", Dr. Anane Ivan, emphasized that "regardless of the size and purpose of the institution, the need for control lies in the multitude of unpredictable and variable factors that can disrupt the activity."\(^3\) In other words, for Romania to advance with these rapid changes, it must have a well-defined legislation that regulates all new situations, an administrative system that knows how to put into practice what the legislator legislates and a judicial power that ensures that the legality of the actions of political actors is respected. Therefore, the judiciary has come to control and restrict the actions of the legislative and executive powers, which obviously means an increase in "cases that appear before the courts"\(^4\) and, obviously, legal expenses, and in order to understand the topics around which the paper revolves, it is imperative to define certain terms such as criminal proceedings, court expenses, courts, participants in criminal proceedings, etc., because these elements have a part-to-whole connection and we cannot review only fragmented measures.

A criminal trial can be defined as "an activity regulated by law, carried out by judicial bodies, where the lawyer, respectively, lawyers, parties and other subjects of the criminal process participate in order to determine in due time the facts that represent, according to the law, a crime, so that all persons who commit crimes get to be punished, eliminating the situation in which innocent persons are punished."\(^5\) It should also be noted that in the Romanian legal literature, the "participant" in the criminal process is analyzed both in a broad and narrow sense, so that, lato sensu, "the notion of participant incorporates all persons who have a role in any procedural activity"\(^6\) and includes the general constituent elements of a criminal trial (here we are also talking about clerks, translators, assistant witnesses, who are present in some cases), while in the second sense, namely in the narrow sense, we can define participants as those parties whose presence is absolutely mandatory for a criminal trial to be considered valid and lawful: "courts, representatives of the Public Ministry (military prosecutors and prosecutors) and, obviously, criminal investigation bodies (individuals employed in the Ministry of Administration and Interior)\(^7\). At the same time, without deviating from the interface of this paper, we would like to mention that it is necessary to know that there is a difference in the understanding of participant in criminal law and criminal procedural law. In the first mentioned branch of law, participation refers to subjects who worked together to commit the action,

\(^3\) Ivan Anane, *Management of criminal prosecution bodies*, ProUniversitaria Publishing House, Bucharest, 2014
\(^4\) https://rm.coe.int/1680748177
\(^7\) Iliuțeanu Anamaria-Odette, *Participants in the Criminal Trial. Successors, Representatives and Legal Substitutes. Bachelor's thesis. Romanian-American University*, Faculty of Law, Bucharest, 2004
whereas criminal procedural law also includes parties who carry out the action in criminal proceedings.

With regard to court costs, the legal regulation of the Code of Criminal Procedure is represented by Article 272 in conjunction with Article 273, where they are defined as "expenses necessary for carrying out procedural acts, taking evidence, preserving material evidence, lawyers' fees, as well as any other expenses occasioned by the conduct of criminal proceedings shall be covered from sums advanced by the State or paid by the parties."[8]

(b) 1.3. Conceptual boundaries

From a combined reading of Articles 272 and 273 of the Code of Criminal Procedure, we infer that legal expenses refer to the sums of money used throughout the criminal proceedings, which include both the drafting of procedural documents, the administration and preservation of material evidence, up to the fees due to legal aid lawyers, and the coverage of all disturbances and necessities of both the witness, as well as the interpreter and expert. From these, we list the total reimbursement of expenses related to transport, maintenance, as well as the space where they lived throughout the period of necessity to present them before the courts. It is worth mentioning that there may be other expenses of the aforementioned persons, but obviously, related to the efficient conduct of the criminal proceedings. The determination of these amounts is made by reference to Article 273 of the Code of Criminal Procedure, which provides that the witness, expert and interpreter will benefit, if they are part of an individual employment contract, from the income provided by the employer, if the period during which they are present at the criminal proceedings as a result of the call by the criminal investigation bodies, or, as the case may be, by the court, coincides with the period during which they had to be present at work. Obviously, there is also the possibility that those mentioned above are not employed, which places the witness in a situation where he can receive compensation of income from work (unemployment), while the expert and interpreter are entitled to be remunerated according to the benefits performed, in accordance with the legal provisions.

Article 274 of the Code of Criminal Procedure, paragraph 1 provides that "in case of renunciation of criminal prosecution, conviction, postponement of the application of punishment or renunciation of the application of punishment, the defendant has the obligation to pay the legal expenses advanced by the state, except for the expenses of ex officio lawyers, because, as it appears from the forms, they are remunerated by the state. The same category includes interpreters appointed by judicial bodies."[9] Paragraph 2 of the same article provides that "where there is more than one defendant, the prosecutor or, as the case may be, the court shall decide the percentage of indebtedness of each, taking into account the degree of involvement that caused legal costs. On the same issue, it is accepted in legal literature that the civilly liable party, because he is jointly and severally obliged with the defendant to compensate for the damage, is obviously jointly and severally obliged with him to pay the legal costs advanced by the State."[10]

By advanced state expenditures we mean, as the Constitutional Court itself ruled in its decision no. 117/2020, the amounts of money necessary throughout the criminal proceedings, from "the state budget, respectively from the amounts allocated for this purpose, according to Article 272 paragraph 2 of the Code of Criminal Procedure, from the budget of the Ministry of Justice, of

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the Public Ministry or of other line ministries, in order to bear expenses occasioned by the proceedings carried out.\textsuperscript{11} This article was subject to constitutional review several times, reaching the exception of unconstitutionality to be rejected each time, by Decision nr. 639/17.10.2017, published in the Official Gazette of Romania, Part I, no. 110/05.02.2018 and CCR Decision no. 117/10.03.2020, about which we will talk as briefly as possible in the following lines.

Article 274 of the Code of Criminal Procedure was invoked with the exception of unconstitutionality, claiming that the physiognomy of these texts contravene constitutional provisions of "Article 1 paragraphs 3 and 5 referring to the rule of law and the qualities of laws and Article 20 referring to international treaties on the rights of individuals, adding also the provisions of Articles 6 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms with on the right to a fair trial and on the principle of legality of criminalisation and penalties,\textsuperscript{12}\textsuperscript; and that there is not even a specification of the modalities for determining the amount of expenses advanced by the State by the criminal investigation bodies or of the modalities and criteria for determining these amounts, or their distribution, which places the defendant in an ambiguous situation. Based on the same context, it was argued that each expense must be "real, necessary and reasonable, and that it must be recalculated by the trial court,\textsuperscript{13}\textsuperscript and that if lawyers' fees and money provided to experts can be limited by the courts, state legal expenses should also be subject to censorship. But because this did not happen, Article 274 of the Code of Criminal Procedure remains unclear, lacking precision, ending up violating a principle, that of legality, in which the European Commission of Human Rights and the Romanian applicant referred a complaint against Romania to the Court, invoking the violation of "the right guaranteed by the Convention\textsuperscript{14}\textsuperscript, respect for privacy by the Romanian Intelligence Service and the right to be the beneficiary of a remedy before a national court."\textsuperscript{15}

The CCR rejected as unfounded the above-mentioned exception of unconstitutionality, through "Decision nr. 639/17.10.2017 paragraphs 15-19\textsuperscript{16}\textsuperscript, claiming that the provisions of art. Art. 274 of the Code of Criminal Procedure regulates the payment of legal expenses advanced by the state in case of renunciation of criminal prosecution, conviction, postponement of the application of punishment or renunciation of punishment and that\textsuperscript{17}, in these situations, by the fact that the criminal action has been completed, it highlights that the act constitutes a crime and that being committed by the defendant, precisely his criminal fault is the basis that obliges him to reimburse to the state the legal expenses carried out by him. From the sums shown, as is clear from their very name, legal aid lawyers and interpreters appointed by judicial bodies are not placed on the defendant, but supported by the State. When it comes to the ambiguity of the wording of the criminal articles stated by the applicant in the present case, the CCR informed that Articles 272 to 274 clarify which parties are liable to pay legal costs if prosecution, conviction or postponement or waiver of punishment is waived, as well as an algorithm for calculating these amounts. Based on these arguments, it was concluded that

\begin{thebibliography}{9}
\bibitem{11}https://lex-avocatura.ro/What are constituted the legal expenses advanced by the State provided by art-274-cpp/
\bibitem{12}https://legestart.ro/99491/\textsuperscript{12}
\bibitem{13}https://legestart.ro/99491/\textsuperscript{13}
\bibitem{14}Gheorghita Mateut, \textit{Treatise on criminal procedure. General part, vol. II}, Ed. C.H. Beck, Bucharest, 2012\textsuperscript{14}
\bibitem{15}https://legislatie.just.ro/Public/DetaliiDocument/25965;\textsuperscript{15}
\bibitem{16}http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&emi=17&tip=17&rep=0&nrc=100\textsuperscript{16}
\bibitem{17}Art. 274 New Code of Criminal Procedure Payment of expenses advanced by the state in case of renunciation of criminal prosecution, conviction, postponement of punishment or renunciation of punishment Legal expenses | The new updated Criminal Procedure Code 2020 - Law nr. 135/2010 (legeaz.net)\textsuperscript{17}
\end{thebibliography}
the criminal procedural provisions presented do not violate any rights of the Constitution, namely Article 1, paragraph 5.

In order to determine the amount of legal expenses advanced by the state to be paid by the defendant, it remains the responsibility of the competent bodies, according to the law, or of the courts that settled the case and these expenses were reached, while the judicial bodies are obliged to rule ex officio when it comes to legal expenses advanced by the state.” Thus, according to art. 315 para. 2 lit. f, art. 318 para. 8 and Art. 328 para. 1 of the Code of Criminal Procedure, both by order closing the file and by order waiving prosecution and by indictment, the public prosecutor must decide on court costs.”18. Also, "according to art. Under Articles 398 and 422 of the Code of Criminal Procedure, the court, both at first instance and on appeal, decides by deciding on the criminal side of the case and on court costs. In the latter case, the rules applicable to the determination of legal costs shall be those laid down in Art. Articles 272-276 of the Code of Criminal Procedure, and in accordance with Article 404 paragraph 4 letter E of the same Code, the amounts due will be mentioned in the body of the law.”19

The court is free to assess the extent and manner in which the legal costs, when applying Articles 277 to 276 of the Code of Criminal Procedure, will be borne by the parties, the court having no connection with the amount of these costs and the manner in which they are distributed by the indictment, it being the prosecutor who takes these amounts into account when issuing the indictment, while the court rules on costs throughout the prosecution process. As a small conclusion, Article 274 of the Code of Criminal Procedure not only does not violate any rights of the defendant, but moreover, the legislation helps any party through the right to appeal when it considers itself to be dissatisfied with the amount of these legal expenses advanced by the state, ending up being recalculated by the control court.

The conduct of criminal proceedings unites a multitude of cost-generating activities and actions that can either be borne by the parties or covered by the amounts advanced by the State. These "expenses may be occasioned by: performing procedural acts, administration, preservation of material evidence, defenders' fees and any other expenses determined by the trial stages.”20

Finally, the sums advanced by the State or by one or both parties, depending on the case, will be covered by the expenses incurred for:

- Performing the test documents
- Taking of evidence
- Preservation of material evidence21
- Payment of legal aid lawyers
- Any other expenses incurred in the conduct of criminal proceedings

1.4. Legal basis for covering legal costs

In order to ensure that any crime is punishable and to emphasise justice in a democratic State, the advancement of legal costs by the State is based on the obligation to conduct the trial ex officio.

19 https://legestart.ro/99491/
21 Ivan Anane, Elements of theory and tactics of criminal prosecution bodies, Pro Universitaria Publishing House, Bucharest, 2014
Thus, regarding the obligation to bear costs, we distinguish:

- The defendant will bear the costs if it is proved that he is guilty of committing the crime, based on the fact that the crime committed produces legal changes in social reality, which entails expenses related to procedural acts, administration and, where appropriate, preservation of evidence, as well as any other expenses falling within the scope of committing the crime.\(^{22}\);
- There is also the possibility that the defendant proves to be innocent, which leads to a procedural fault of the judicial authority, in which case the state undertakes to pay the costs;
- When the defendant submits a form of appeal or a request that ends up being rejected, legal costs will occur, which obliges the suspect to pay the amounts caused by his action;
- During the trial, often there are unjustified interventions of a party to the process, such as the unfounded prior complaint made by the injured party, and obviously these expenses will be covered by the person because he is at fault in the proceedings\(^{23}\).

**Payment of state expenses when criminal proceedings are paid or terminated:**

a) Payment of advanced expenses in case of payment. "According to art.192 para. (1) point 1, in case of acquittal, the legal expenses advanced by the State shall be borne, as the case may be, by the civil party or the defendant:

- the injured party bears the costs advanced by the State to the extent that they have been determined by that party;
- the civil party bears the costs advanced by the State if his/her civil action has been dismissed, in whole or in part, and only to the extent that the costs have been incurred by that party;
- The defendant, although acquitted, bears the legal costs advanced by the State when he was, however, ordered to compensate for the damage.\(^{24}\)

b) Payment of expenses advanced by the state in case of termination of criminal proceedings. According to art.192 para. (1) item 2, in case of pronouncing the decision to terminate the criminal proceedings, the legal expenses advanced by the State shall be borne, as the case may be, by the defendant, by the defendant together with the injured party or only by the injured party, or by the State.

- The defendant bears the legal expenses when the replacement of criminal liability was ordered pursuant to Article 10 letter i), the defendant's obligation to bear the legal expenses being generated by his criminal fault. Also, the defendant bears the legal costs when there is a cause for non-punishment.
- In case of reconciliation of the parties, the legal costs advanced by the State are borne by the defendant and the injured party. In this case, according to art.192 para. Subject to paragraph 4, the court shall decide on the share of legal costs due by each.
- The injured party bears the costs advanced by the State in case of withdrawal of the prior complaint, the basis of the obligation to bear the legal costs being the procedural fault of the injured party.


c) Special cases concerning legal expenses advanced by the state. According to art.13 para. (1), in case of amnesty, prescription or withdrawal of the prior complaint, as well as in case of existence of a cause of non-punishment, the accused or accused may request the continuation of the criminal proceedings. In such a case, the legal costs advanced by the State will be borne by the civil party or by the defendant. Thus, according to art.192 para. (1) item 3 letter a), the injured party shall bear the legal expenses if, following the continuation of the criminal proceedings, the court pronounces acquittal on the basis of one of the cases provided for in Article 10 letters a) - e).

➢ The defendant bears the legal costs according to art.192 para. (1) item 3 letter b) if, following the continuation of the criminal proceedings, the court finds the existence of one of the cases provided for in Article 10 letters a) - c) and, consequently, pronounces the solution of termination of the criminal proceedings.

➢ According to art.192 para. (2) Where an appeal or appeal is lodged or any other application is lodged, the legal costs advanced by the State shall remain at the expense of the State. The sums owed to the interpreters, being appointed by the competent body, in accordance with the law, to assist the parties remain, in all cases, at the expense of the State.

➢ The provisions on the bearing of legal expenses advanced by the State shall also apply accordingly in the event of dismissal, removal from criminal prosecution or termination of criminal prosecution (Article 192 paragraph 5).”

**Article II. 2. Classification of court costs in the Code of Criminal Procedure**

Legal expenses are, according to the law, expenses incurred for the proper conduct of criminal proceedings regarding the performance of procedural acts, the administration of evidence, the preservation of material evidence, the remuneration of defence counsel and other expenses. These costs are classified into procedural costs, which are advanced by the State, and court costs, which are advanced by the parties. In specialized doctrine, as well as in judicial practice, there have been numerous suppositions regarding the payment of judicial expenses in case of renunciation of criminal prosecution, postponement of punishment or renunciation of it, as well as conviction of the defendant / suspect, the mentioned one is obliged to pay the expenses advanced by the state, except for persons who remain "under the wing of the state", such as lawyers appointed ex officio, as well as interpreters appointed by judicial bodies. Another situation that caught the attention of specialists among penalists were certain aggravating situations that do not produce legal effects regarding legal costs, but civil damages, a circumstance such as provocation. In the same circumstance is the defendant who is a minor and has undergone an educational measure. When several suspects are involved in the trial, the prosecutor or, as the case may be, the court decides for each suspect what part of the legal costs he owes, taking into account the extent to which he produced them, and joint and several obligations to pay the sums due can never be possible, whereas certain procedural costs may be paid by the "civilly liable party, to the extent that it is jointly and severally liable with the defendant to bear the damage"²⁷, or by the injured party in the event of acquittal, the civil party.

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insofar as the costs were determined by him, or by the defendant, who was ordered to compensate for the damage.

Legal expenses are also covered, if the criminal proceedings have been terminated, by the defendant, the injured party if he withdraws his prior complaint or was lodged late, or if the defendant and the injured party have reconciled, on both sides. Where the accused wishes to continue the criminal proceedings, he shall be acquitted by the injured party or the accused, where dismissal is required only as provided for in Article 16(1)(a), (c). If the case has been returned to the Public Prosecutor’s Office during the preliminary chamber, these expenses will be covered by the State.

When an appeal, cassation appeal, appeal or other complaint has been filed, these amounts will be paid by the person who encountered the rejection of the application or decided to withdraw his appeal, cassation appeal, application or appeal. As an example note, an appeal court admits the appeal of the suspect, reducing his sentence decided by the first instance, the legal costs will be borne by the state on appeal. According to Law nr. 254/2013 on the execution of custodial sentences and measures decided by judicial bodies, with subsequent amendments and completions, when the penitentiary administration files an appeal, the expenses will be borne by the state. In all other cases, the State shall bear procedural costs.

If the prosecution or punishment has been dropped, or it has been decided to convict or postpone the application of the sentence, the defendant is obliged to pay the legal costs to the injured party and the civil party admitted to the civil action and, if this action is admitted in part, the defendant is obliged by the court to pay all or part of the sums made by the civil party. There is also the possibility that there may be several defendants where the court will decide how much each owes.

In legal doctrine, a final situation is described in which the question of bearing legal costs arises, namely, in case of acquittal, the injured party or civil party must pay the defendant or the civilly liable party the expenses to which they were subjected to their fault. If the parties have reconciled and the trial has ceased, if the defendant has not agreed to the legal costs due to the injured party, he is not obliged to return them.

2.1. Expenses related to the performance of criminal procedural acts.

The wording of the old Code of Criminal Procedure did not really define the meanings of procedural and procedural acts, an enigma also present in the consolidation of the New Code, these terms being used in the content of Article 200, which is attributed to the legal regime of letters rogatory, where procedural documents are delimited by way of example: when the witness is heard, when the investigation is carried out on the spot, when objects, documents or procedural documents / measures are taken, including preventive measures, the approval of evidentiary elements. As such, in order to acrimoniously illustrate the meaning of procedural documents, we distinguish as a difference from procedural documents the legal regime of letters rogatory, as well as the delegation and service of documents. In criminal proceedings, procedural acts are used which represent the modalities and forms of carrying out all the activities of criminal proceedings and may take the form of procedural acts, legal acts by means of which judicial bodies and parties to proceedings may exercise their rights and obligations, and finally, constituent acts, procedural acts, acts by means of which other procedural acts deriving from the first category are performed. "Procedural acts are acts by which the prerogatives of judicial bodies and procedural subjects are exercised, prerogatives that ensure the conduct of criminal proceedings", "have an independent existence and a dominant position in relation to procedural acts, determining the existence of the latter and, in order to be valid,
must be carried out in the specific forms provided by law, for example, Orders of the criminal investigation body.”

Procedural acts are legal means by which tasks arising from procedural acts are carried out. By procedural acts we understand manifestations of will of the judicial bodies and of the parties through which the criminal proceedings are carried out until the moment of "execution of the final criminal decision".

Procedural acts include conducting a search, serving a summons, hearing a witness, executing a warrant for bringing or arresting or investigating the scene. For these actions to produce legal effects, they must be drawn up in accordance with the legislation, taking into account the substantive and formal conditions. It should be noted that they are not autonomous in nature, but depend on a previous procedural act. The specialized literature emphasizes that procedural acts produce legal effects only to the extent that substantive and formal conditions are observed, among which, from the first category, we mention: the fulfillment of the judicial body and of the parties mentioned in the incidence of legal provisions and only as provided by law. As formal conditions, legal doctrine refers to the execution in the form and term specified in the law, drafting in written form and in the language specific to the country where the crime was committed and the file was drawn up and their fulfillment within the premises of the judicial or extrajudicial body. It should be mentioned that in case of seizure of objects, investigation on the spot or search, procedural documents are drawn up at the place in question, not inside the judicial body. If the legal provisions on procedural acts are not complied with, a criminal sanction is imposed for committing the crime of obstruction of justice (Article 271) or judicial misconduct (Article 283) punishable by a fine, or, on acts drawn up without complying with the substantive and formal conditions, absolute or relative nullity is applied (Articles 281 to 282).

Both procedural acts and procedural measures are dispositional documents, while procedural acts are implementing acts intended to fulfill the provisions found in procedural acts. In other words, the existence of procedural acts is determined by procedural acts.

(a) 2.2. Administrarea probelor

In legal language, the same terminology is used both to define the facts of the facts, i.e. the evidence itself, and the ways of obtaining such evidence, of course, subject to legality, although they have a connection from the whole part, or from the proximate gender to the

31 Gheorghe Buzescu, Police Law - university course, Sitech Publishing House, Craiova, 2019
specific difference, because evidence is a means of finding the truth, only to the extent that it was obtained by legal methods, which are known as evidentiary procedures. Fortunately, the Code of Criminal Procedure comes to the aid of social reality by offering the chance for judicial bodies to administer evidence in ways other than those listed, underlining, from a legal point of view, an evolution, even a binding and necessary instrument for judicial bodies to draw the line of truth.

From the Code of Criminal Procedure, General Part, starting with Articles 97 and 201, essential concepts belonging to our theme are defined, namely evidentiary procedures in criminal proceedings, means of evidence and evidence, which represent legal expenses. According to art. 97 para. (1) CPP "Any factual element which serves to establish the existence or non-existence of an offence, to identify the person who committed it and to know the circumstances necessary for the just settlement of the case and which contributes to finding out the truth in criminal proceedings shall constitute evidence,"\(^{34}\) definition that represents the essence of a trial, because in the absence of evidence, the guilt of the defendant cannot be proved, it can sentence an innocent person to an unfair punishment, which would determine the non-observance of procedural guarantees, as well as of the rights of parties and subjects.

In other words, the trial, in the absence of evidence, will take place inconsistent with the legal provisions. Unfortunately, the Romanian legislation does not define in a strict and clear manner the evidence from the criminal process, but this cannot entitle the judicial bodies to go beyond certain legal limits to find out the truth at any cost. "Essentially, five systems of evidence have been identified in the doctrine\(^{35}\).

The means by which evidence can be obtained are as follows: "statements of the suspect or defendant; statements of the injured person; statements by the civil party or civilly liable party; witness statements; documents, expert reports, minutes, photographs, means of evidence; any other means of proof not prohibited by law\(^{36}\).

Article 100(1) and (2) of the Code of Criminal Procedure provides that during criminal investigations, the prosecuting body shall collect and administer evidence both for and against the suspect or defendant, ex officio or upon request. (2) During the trial, the court takes evidence at the request of the public prosecutor, the injured party or the parties and, alternatively, of its own motion, when it considers it necessary to form its conviction.\(^{37}\)

In other words, the moment when conclusive and necessary evidence is presented to judicial bodies in order to find out the truth is called the taking of evidence. Paragraph 3 continues to clarify that the prosecutor together with the criminal investigation bodies are responsible for gathering evidence and validating it as conclusive for prosecution.

The denunciation, the complaint, the acts concluded by the investigating bodies or even by self-notification are methods of notifying the criminal prosecution bodies, being an obligation in rem of starting the criminal investigation, which determines the phase of evidence administration and when it is concluded that the evidence represents the motive of the crime, the criminal investigation and the continuation of the administration of evidence are continued.

\(^{34}\) https://www.juridice.ro/535174/evidence, evidence and evidentiary procedures in criminal proceedings.html


\(^{36}\) https://www.juridice.ro/535174/evidence, evidence and evidentiary procedures in criminal proceedings.html

\(^{37}\) https://www.juridice.ro/535174/evidence, evidence and evidentiary procedures in criminal proceedings.html#_ftn6
If there is no string provided by Article 16\textsuperscript{38} of the Code of Criminal Procedure and at the same time the evidence ends up strengthening the rational suspicion that the person concerned committed the crime, the next stage is passed, but respecting the procedural guarantees, where he is assigned the name of defendant, which determines the prosecutor to initiate criminal proceedings against the guilty. In reality, there were also situations in which it was decided to initiate proceedings against a person against whom the suspicion of guilt was not proved, constituting the offence provided by "Article 283 of the Criminal Code\textsuperscript{39}”, that of unjust repression. "The assessment of each piece of evidence is made by the criminal investigation body and by the court, according to their conviction, formed after examining all the evidence administered and guided by their conscience. Appraisal of evidence is the final operation of probation activity by which judicial bodies determine the extent to which they form the conviction that the facts and factual circumstances to which they refer took place or did not actually occur.”\textsuperscript{40}

2.3. Preservation of material evidence
Article 97 of the Code of Criminal Procedure, general part provides: "Any factual element that serves to establish the existence or non-existence of a crime, to identify the person who committed it and to know the circumstances necessary for the just settlement of the case and which contributes to finding out the truth in criminal proceedings constitutes evidence. Evidence is obtained in criminal proceedings by the following means:
a) statements by the suspect or defendant;
b) statements of the injured party;
c) statements by the civil party or civilly liable party;
d) Witness statements;
e) documents, expert reports or findings, minutes, photographs, means of evidence;
f) any other form of proof not prohibited by law.

The evidentiary procedure is the legal means of obtaining evidence.”\textsuperscript{41}

Also known as mute witnesses, evidence is found in the Code of Criminal Procedure, General Part, Section VII of Chapter II of Title III and represents objects on the surface of which traces have been left, fingerprints that help the judicial body to find out the truth or even themselves represent objects with which the defendant committed the crime or helped him carry out the act. This category is called corpses delicto.

2.3.1. Preservation of corpses of crime.
The government has a duty to preserve certain types of evidence it collects during investigations and prosecutions in order to protect the rights of the defendant with a fair trial, and the state is obliged to disclose evidence during the trial, as well as other evidence that is favorable to the defendant. This retention of evidence begins when the judicial body has come into possession of such evidence.

The purpose of evidence and evidence is to bring criminal cases to a just conclusion. In order for criminal proceedings to be initiated, evidence must be administered by methods

\textsuperscript{38}Theodoru Gheorghe, Tratat de drept procesual penal, ed. a 2-a, Ed. Hamangiu, București, 2008
\textsuperscript{39}Art. 283 para. 1 CP – Unjust repression – “The act ... to prosecute a person, knowing that he is innocent, is punishable by imprisonment from 3 months to 3 years and the prohibition of the right to hold a public office.”
\textsuperscript{40}Gheorghe Buzescu, Internal and international police cooperation – university course, Sitech Publishing House, Craiova, 2020
\textsuperscript{41}https://ro.wolterskluwer.ro/art-97- Evidence-and-means-of-proof /
acceptable to the law. These methods are very important because they lead the investigation to a direction that moves towards the truth, and especially since the entire criminal process is based on evidence, whether we are talking about criminal bodies as mentioned above, or we are talking about animated statements, documents or the like in order to classify the act as a criminal one, to determine the perpetrators, motive and circumstances in which the offence was committed. Please note that the listed evidence is not used in the trial if it was obtained in an illegal manner. For example, you cannot coerce a person to report the facts if it would mean harming him, he must do it voluntarily.

"Regarding the preservation of samples, we note that the Code of Criminal Procedure does not contain express rules that would establish situations when samples can be preserved for use in other criminal cases. The European Court in Van der Velden v. Netherlands, 51 noted that, with regard to the preservation of the cellular material in question and the DNA profile that has been extracted, it considers that, given how the cellular material could theoretically be used in the future, the systematic preservation of that material goes beyond the neutral framework of identifying particular characteristics, such as fingerprints, and is sufficiently intrusive to constitute an interference with the right to respect for private life enshrined in Article 8(1) of the Convention."

2.3.2. Statements by parties and witnesses

In order to ensure a hearing that complies with the legal provisions, the legislator recorded in the Code of Criminal Procedure some general aspects regarding the way in which the hearing of the suspect, defendant, injured person, civil party, civilly liable party, witnesses, interpreters can be conducted. There are also provisions concerning the hearing through an interpreter and special provisions for hearing if the person has obvious signs of chronic fatigue or an illness affecting his physical or mental health rendering him unable to participate in the hearing and that a person in detention may be subject to hearing by modern means of video conference if the judicial bodies so decide.

Statements of the suspect or defendant: "at the beginning of the first hearing, the judicial body asks questions to the suspect or defendant regarding the name, surname, nickname, date and place of birth, personal identification number, name and surname of parents, citizenship, marital status, military situation, education, profession or occupation, place of work, domicile and address where he actually lives and address where he wishes procedural documents to be served, criminal history or if other criminal proceedings are being conducted against him, as well as any other data to establish his personal situation."

Unlike the old regulation, the new Criminal procedural Code expressly mentions the obligation to request data relating to the address of the place where procedural documents are intended to be served (as was the case in practice) and to the conduct of other criminal proceedings against the person heard. Also the new Criminal procedural Code expressly

stipulates the obligation of judicial bodies to inform the suspect or defendant, from the first
hearing, that he has the right to an interpreter.”

(b) **Defence counsel's fees.**

"Since the defendant is usually a person without legal or sometimes no higher school
education, in order to place him in a procedural position equal to that of the representative
of the Public Prosecutor's Office, who is a magistrate, he was provided with legal assistance from
a legal professional. Initially, the defence function exercised by defence counsel was closely
linked to the defendant but, including by the 1968 Code of Criminal Procedure, this right was
also granted to the injured party, the civil party and the civilly liable party, thus recognising
legal aid for all parties to the proceedings”.

First, "the accused must prove that he does not have sufficient financial means. However, it is not necessary to do so 'beyond reasonable doubt'; It is sufficient to have "some indications" to this effect, or, in other words, to establish "the absence of clear indications to
the contrary”.

Secondly, "Contracting States are obliged to provide legal aid only 'where the interests
of justice so require'; They must be assessed in the light of the facts of the case as a whole: not
only the situation at the time when the decision on the application for legal aid was taken, but
also the situation at the time when the national court ruled on the substance".

If legal aid for convicts, suspects, defendants is mandatory to provide ex officio or when
the prosecution body or courts decide that suspects, defendants, injured parties, civilly liable
parties or civil parties are unable to cover the amount of legal aid themselves, lawyers receiving
certain sums from the State are appointed, as follows:

- 260 RON for each suspect or defendant during the assistance phase during the
  investigation, 260 RON in the preliminary chamber and 260 RON during the trial
  period, differentiating themselves in each phase of the trial
- 360 RON for each suspect or defendant, during the assistance phase during the criminal
  investigation, 330 RON in the preliminary chamber phase, and during the trial they
  receive 360 RON if more than two people end up being suspects or defendants
- 470 RON for each suspect or defendant, during the assistance phase during the criminal
  investigation, 230 RON in the preliminary chamber phase and the amount of 520 RON
  in the trial phase when more than four persons are suspects or defendants
- RON 195 to provide legal aid or to be represented during the criminal investigation
  phase or when the injured party, civil party or civilly liable party is tried. This amount
  is offered on the basis of an aggregation for each injured individual, civil party or civilly
  liable party if more than one person has the status of an injured party, a civil party or a
civilly liable party. In situations where there are more than five persons who have the
procedural qualities listed above, at the same time it is mandatory to grant it on the

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44 Petre Buneci, Adrian Pichler, Alexandru Vasilache, Dana Titian, Gheorghe Șerban, Ion Vasilache, Ionut
46 https://hudoc.echr.coe.int/eng/?i=001-73415
47 https://hudoc.echr.coe.int/eng/?i=001-57624
48 Ivan Anane, Elements of computerized evidence of the person, Pro Universitaria Publishing House, Bucharest, 2015
basis of an aggregation in order to be reasonable taking into account how complex the
case is, and cannot exceed the value of 10000 RON, even if there are many people who
need legal assistance or representation. Example: five people* 195 RON per person
results in 975 RON; when there are more than six people, 975 RON plus ten RON per
person is calculated: if there are 1000 people* 195 RON plus 995 people *ten RON
results in 10,925 RON.
➢ 260 RON when there are extraordinary situations of attack such as appeals for
annulment, cassation appeals, revisions or non-opening of criminal proceedings under
Title III of Chapter V of the New Code of Criminal Procedure
➢ If there are requests for revocation for suspension of an execution of a sentence that is
under supervision or when an appeal is suspended for requests for interruption or to
postpone an execution of a sentence of imprisonment or life imprisonment, lawyers are
offered the sum of RON 130
➢ According to Articles 480 to 484 of the New Code of Criminal Procedure, legal aid is
provided for the amount of 230 in the procedural phase when an agreement on admission
of fault is concluded
➢ 130 RON when legal aid is provided at the stage of solving an appeal regarding the
duration of the trial
➢ 230 RON for granting legal aid if the sanction method changes from warning to
imprisonment according to Article 586 of the New Code of Criminal Procedure.
➢ 130 RON for granting legal aid when the defendant is arrested and is in rogatory
procedure according to Article 200 of the New Code of Criminal Procedure
➢ 130 RON for the granting of legal aid other than those mentioned above, namely those
who are in extraordinary situations under the criminal law49 when the judicial bodies or
courts have requested it
Sums due to defence counsel in criminal proceedings for providing legal assistance or
representation are awarded only once:
➢ Based on the order issued by the prosecutor throughout the criminal investigation
process
➢ On the basis of a judgment at trial issued separately for each degree of legal aid
➢ The fees that lawyers receive according to the situations mentioned above when
providing legal aid are increased by 100% on days when there is no work or there are
legal days off and is made between 20.00-08.00
➢ In legal doctrine it also happens that the same lawyer receives more than agreed, because
during the trial it is necessary to study several files, he receives money for each case,
because connections need to be made to trace the direction to the truth
➢ According to Article 91 of the Code of Criminal Procedure, the ex officio lawyer
provides legal aid for a certain period of time, the delegation will cease and another
defence counsel will be chosen, in which case the prosecutor will issue an order or the
court by conclusion, the amounts due to the ex officio lawyer will be calculated taking
into account the time it took him to study the files, for how complex the case was and
how many acts of prosecution the defendant was subjected to or how many times he
appeared in court. In the end, the amount may not be less than 25% of the total amount
that the lawyer would have received if the lawyer’s support had come to an end.

49 Gheorghe Buzescu, Place and role of the civil servant in the state apparatus, Sitech Publishing House, Craiova,
2017
2.5. Other costs arising from procedural phases

In some criminal proceedings, the hypothesis of procedural fault supports certain hypotheses for the payment of legal costs.

In procedural practice, there are also situations in which one of the parties makes an unjustified intervention in the process, formulating a complaint or an unfounded request, this party ends up being at fault in the proceedings, which determines its obligation to bear the legal costs; The hypothesis on which procedural fault is formulated is dictated by a rejection solution, and not by bad faith.

However, reimbursement of court costs during criminal proceedings, at whatever stage, is the obligation of the parties as a result of the legal provisions of the Code of Criminal Procedure.

If the defendant appeals against the decision or makes another application following the dismissal of the appeal, other ways of ordering costs are available.

According to the old Code of Criminal Procedure, Article 191 paragraph 2 provides that the person who filed an appeal or appeal or filed another application, the legal expenses are covered by the person whose action was rejected or decided to withdraw his appeal, or the appeal, or the application, as the case may be.

From the perspective of the situation in which the request to replace the measures of medical admission with the request to order the hospitalized person to undergo treatment was rejected, the question arises as to who bears the legal costs.

As I said before, during criminal proceedings, the parties are obliged to pay the legal costs taking into account the criminal fault or procedural fault. The security measure for medical admission according to Article 434 of the old Code of Criminal Procedure can also be carried out by the hospitalized person, after the court requires the forensic report of the hospital's health status, and the person concerned, i.e. the hospitalized one, may request to have his/her health examined by a specialist doctor. If the person who has been admitted cannot afford a lawyer, he will be defended by one ex officio.

According to Article 434 paragraph 3 of the Code of Criminal Procedure, if the hospitalized person does not have a lawyer, he is provided with an ex officio lawyer.

When criminal proceedings are conducted to resolve the application concerning the measure of replacement of medical admission with that of ordering treatment, the costs of carrying out the procedural acts, as well as those related to the payment of ex officio defenders, the forensic expert or, if a specialist doctor has been used, and its payment are occasioned. There are therefore questions concerning the payment of court costs, which means that Article 193 of the old Code of Criminal Procedure must also be examined.

In view of the above, Article 192 of the Code of Criminal Procedure, any subject who brings an application to criminal proceedings and ends up being rejected, is obliged to pay the legal costs.

It follows, therefore, that situations in which the obligation to cover the legal expenses advanced by the State arise, is not directed to a party to the criminal proceedings as in cases where the suspect or defendant is convicted, acquitted, or the criminal proceedings are terminated, the parties have been reconciled, or the complaint is prescribed or withdrawn, or, if the trial is continued and innocence is proved, The amounts will be provided by the state, complementing the expenses related to the administration of justice.
Consequently, the State's obligation to bear the legal costs it has advanced is subsidiary because it occurs only in cases where it is not incumbent on a procedural subject to pay them, the legal costs being borne in a differentiated manner taking into account the solution.

References


[12] Criminal Code;


[14] Gherasim Andrei Gheorghe, *What are the legal expenses advanced by the State provided by art. 274 CPP*;


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