IS IT MANDATORY FOR THE CRIMINAL PROSECUTION BODY TO ISSUE A CRIMINAL INDICTMENT ORDER?

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Abstract

Pursuant to the legal provisions, in view of facilitating the criminal prosecution of persons who commit criminal offences, the filing of a Crime Information Report as a result of which the perpetrator is indicted triggers the remission by half of the sentence limits applicable to the criminal offence (or criminal offences) the Informant is charged with. The crucial element is that the Crime Information Report may only trigger the remission of the sentence if the person concerned by the Crime Information Report is indicted, time-wise, before the closing of the criminal proceedings in which the accused person who filed the Crime Information Report is tried. In this context, it is paramount for the Informant who has the status of an accused person that the filed Crime Information Report be materialised at least in the indictment of the person concerned by the Crime Information Report by the time the judgement in the trial of the accused has become final. This study was based on a practical situation which, in the summary, presented the following characteristics: a) the accused person, who was prosecuted for having committed drug offences, filed a Crime Information Report concerned with the commission of drug trafficking offences; b) after having been notified by means of a Crime Information Report, the criminal prosecution bodies collected clear evidence from which it followed that the person concerned by the Crime Information Report was indeed committing drug trafficking offences. Against this background and having analysed the framework of the criminal procedural law, we concluded that the indictment of the person concerned by the Crime Information Report (who, after further prosecution, was conferred the status of a suspect) was mandatory. Furthermore, as to when the criminal charges were brought against the person concerned by the Crime Information Report (so as to materialise the Crime Information Report into concrete action), the case-law pointed out to the existence of relatively short periods - a few days to maximum 1 year - from the time inculpatory evidence was collected and until criminal charges were brought.

Keywords: *criminal charge, further prosecution, criminal indictment, notification of the criminal prosecution bodies by means of a Crime Information Report, remission of sentence limits.*

1. Introduction

In the Romanian criminal proceedings, a person's criminal indictment takes place during the criminal prosecution phase, by means of a procedure that can be conducted both by the investigating bodies of the judiciary police, as well as by the prosecutor, mainly depending on the nature of the offence which is subject of the criminal case, but also on the status of the person in question, under certain assumptions. Slightly redundant, the criminal charge is brought on 2 occasions, both through the conduct of the further prosecution procedure (at which point the accused person acquires the status of a suspect), as well as through criminal indictment (as a result of which the person against whom charges are brought acquires the status of an accused person). Beyond the importance of informing the person of the criminal charge brought against him/her, the further prosecution causes significant criminal consequences also against third parties who are not involved in the case file in which the perpetrator acquired the status of a suspect.

We are working under the assumption that, pursuant to the provisions of art. 19 of Law no. 682/2002 on witness protection[1], the person who committed an offence may be granted a remission by half of the sentence limits provided for by the law if, before or during the criminal prosecution or proceedings, the person in question

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[1] Law no. 682 of 19 December 2002 on witness protection was republished in the Official Gazette of Romania no. 288/18.04.2014.

files a Crime Information Report and facilitates the identification and prosecution of other persons who committed offences[2].

2. Requirements for granting the remission by half of the sentence limits

As a consistent method of exercising the right of defence through a significant remission of the sentence prescribed by law, the filing of Crime Information Report triggering the prosecution of another person has been given various interpretations in the practice of the criminal judicial bodies. The most important issues in respect of which varying opinions may be encountered in the criminal judicial practice include, inter alia: a) whether the effects of granting the remission by half of the sentence, in the circumstances where the accused person facilitated the identification and prosecution of the person concerned by the filed Crime Information Report in a different case, apply to all criminal cases pending before the courts, without limitation; b) who are the beneficiaries of the remission by half of a sentence limits prescribed by law; c) whether the provisions of art. 19 of Law no. 682/2002 may be construed as grounds for sentence remission within the meaning of art. 598 para. (1) letter (d) CPP; d) whether the granting of remission by half of the sentence limits to the accused person who is an informant in a criminal case is conditional upon further prosecution *in personam* or upon criminal indictment or whether it is sufficient to initiate criminal prosecution *in rem* in the case in which the accused person is a witness who filed a Crime Information Report.

To sum up, as to limiting the effect of remitting the sentence limits prescribed by the law, in its ruling on a question of law, HCCJ held that the effects of the legal grounds for sentence remission shall exclusively occur in the specific criminal case having as subject one or several offences committed by the person who, before or during the criminal prosecution or proceedings in respect of the case in question, filed a Crime Information Report and facilitated the prosecution of participants to the commission of serious offences; the author of the Crime Information Report may not be granted a remission by half of the special sentence limits in different criminal cases, even if those cases are concerned with concurrent offences committed by the said author[3].

As to the potential beneficiaries of the provisions of art. 19 of Law no. 682/2002, CCR found that limiting such beneficiaries strictly to persons having the status of a witness who filed a Crime Information Report and who have committed a serious offence was unconstitutional; consequently, the persons who have not committed serious offences were also included in this category[4].

It was also held that the provisions of art. 19 of Law no. 682/2002 may not be construed as grounds for sentence remission within the meaning of art. 598 para. (1) letter (d) CPP, therefore leading to the conclusion that the materialisation of a Crime Information Report may no longer trigger the remission by half of the sentence once the decision has become final in the case in which the witness who filed a Crime Information Report has the status of an accused person[5].

Last, but not least, also ruling on a question of law, the supreme court determined that granting the remission by half of a sentence limits to the accused person who is an Informant in a criminal case is conditional upon further prosecution *in personam* in the case in which the accused is a witness who filed a Crime Information Report[6].

The two aspects of importance for this study are as follows: the Crime Information Report may trigger the remission by half of the sentence limits only if it is materialised before the decision concerning the accused having the status of a witness who filed a Crime Information Report has become final; the expression „facilitates the identification and prosecution of other persons who committed offences" means the criminal indictment of the person concerned by the Crime Information Report subsequent to issuing a further prosecution order.

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[2] The provisions of art. 19 of Law no. 682/2002 can also be partly found in art. 15 of Law no. 143/2000 on prevention and control of illicit drug trafficking and use, according to which „the person who committed one of the criminal offences provided for in art. 2-9 and, during his/her criminal prosecution, files a Crime Information Report and facilitates the identification and prosecution of other persons who committed drug-related offences, shall be granted a remission by half of the sentence limits prescribed by law".

[3] HCCJ, the Panel in charge for ruling on questions of law in criminal matters, dec. no. 3/28.02.2018, published in the Official Gazette of Romania no. 327/13.04.2018.

[4] CCR dec. no. 67/26.02.2015, published in the Official Gazette of Romania no. 185/18.03.2015.

[5] HCCJ, the Panel in charge for ruling on questions of law in criminal matters, dec. no. 4/13.02.2020, published in the Official Gazette of Romania no. 278/02.04.2020.

[6] HCCJ, the Panel in charge for ruling on questions of law in criminal matters, dec. no. 79/18.11.2021, published in the Official Gazette of Romania no. 96/31.01.2022.

Against this background, the following question arises: what happens under the assumption that the accused person files a Crime Information Report against another person and the prosecutor, despite having conducted important evidentiary activities capable of determining the identification of the perpetrator and of ascertaining the commission of the reported offence, fails to confer the status of a suspect to the person concerned by the Crime Information Report? In other words, is it mandatory to bring a charge in criminal matters against the person concerned by the Crime Information Report or, on the contrary, is this a procedural act that is exclusively left at the discretion of the criminal prosecution body?

In order to try and answer this question, which is the central focus of this study, we shall proceed by examining the existing legal framework on a person's criminal indictment (considering the two distinct procedures for bringing criminal charges, namely the further prosecution and the criminal indictment respectively). We will also present the findings of a case-law examination focused on the attempt to approximate the average period of time between the time the Crime Information Report is filed and the time the person concerned by the Crime Information Report is indicted (and, implicitly, the time when the Crime Information Report is materialised into concrete action by the criminal prosecution bodies).

The particular case underpinning this study can be summarised as follows: a) the accused person, who was sent to trial in September 2021 for committing drug trafficking offences, filed a Crime Information Report in November 2022, whereby the criminal prosecution bodies were informed about the commission of drug trafficking offences by certain specified persons; b) in February 2022, as a result the filed Crime Information Report, the criminal prosecution bodies conducted important evidentiary activities (authorised purchases of drugs, through collaborators, from the persons concerned by the Crime Information Report and, respectively physical and chemical findings of a technical and scientific nature); in December 2022, the prosecutor informed the court called to rule on the merits in the case of the accused person who is an informant of the fact that no criminal indictment was ordered in respect of any person in the case file formed as a result of the filed Crime Information Report.

3. Bringing the charge in criminal matters

Pursuant to art. 131 para. (1) of the Constitution of Romania, „within the judicial activity, the Public Ministry shall represent the general interests of the society and shall defend legal order, as well as the citizens' rights and freedoms". Applied to the criminal indictment of a person in respect of whom there is evidence of having committed criminal offences, the constitutional requirement enshrines the role of the Public Ministry (translator's note: the Public Prosecution Service) as representative of the interests of society and as guardian of the rule of law. Thus, under the assumption that conclusive inculpatory evidence is produced, out of which it follows (in our case) that serious drug offences were committed, the prosecutor's intervention in view of ascertaining the criminal offence and of indicting the perpetrator is a genuine method of guarding the rule of law and of defending citizens' rights and freedoms.

As to the moment, during the criminal prosecution phase, when criminal charges are brought for the first time against a person, art. 305 para. (3) CPP stipulates: „when there is evidence from which reasonable suspicion arises that a person has committed the offence that warranted the start of criminal prosecution and the case does not fall under any of the situations provided for in art. 16 para. (1), the criminal prosecution body shall order the further prosecution against the said person who shall acquire the status of a suspect". Consequently, the only requirements that need to be fulfilled in order for the perpetrator to acquire the status of a suspect entail the existence of inculpatory evidence and, respectively, the absence of legal obstacles to the prosecution proceedings. As to whether it is mandatory for the criminal prosecution body to issue an order for further prosecution in personam, the legal text under analysis does not clearly specify at what point in time the charge in criminal matters must be brought, while the appropriateness and time of the criminal indictment are determined by the criminal prosecution body.

However, in terms of bringing the charge by means of criminal indictment, art. 7 CPP stipulates: „the prosecutor is required to start and carry-out the indictment ex officio when evidence exists that shows the commission of an offence and there is no legal ground to prevent such prosecution (...)". This legal text - deemed as having a value of a principle when it comes to enforcing the procedural law in criminal matters - enshrines the mandatory nature of the criminal indictment (and, hence, the mandatory nature of bringing charges in criminal matters against the person in question), while the legislator sets out 2 conditions: a positive condition, requiring

the existence of inculpatory evidence; and one negative condition, requiring the absence of legal grounds preventing such prosecution. This ground rule is resumed, somehow differently, in art. 15 CPP („criminal prosecution shall be started and conducted when evidence exists giving rise to the reasonable assumption that a person committed an offence and there are no situations preventing the start or conduct of such prosecution"), as well as in art. 309 CPP. Given the chronology of the two orders (the further prosecution being at all times prior to indictment), the mandatory act of indicting the perpetrator necessarily determines the mandatory nature of issuing an order for further prosecution.

In our opinion, of relevance for the topic of this study are also the provisions of art. 306 para. (1) CPP, stating that: „in order to achieve the goal of criminal prosecution, the criminal investigation bodies are required, once notified, to seek and collect data or information concerning the existence of the criminal offences and the identity of perpetrators, to take steps for limiting the consequences thereof (...)". Clearly, these legal provisions apply not only to the criminal investigation body, but also to the prosecutor, requiring a broad interpretation of the legal text (in accordance with the marginal name of the mentioned article, „the obligations of criminal prosecution bodies"). The fact that the obligation to take steps for limiting the consequences of the reported criminal offences is to be borne by the criminal prosecution bodies determines, in our case, the recognition of the need for an active involvement of the criminal prosecution bodies. Thus, once notified of the commission of drug offences and having collected clear inculpatory evidence confirming the content of the Crime Information Report, the judicial bodies are required to intervene by stopping the criminal activity, especially since such criminal offences pose a health treat for the users of the trafficked psychoactive substances.

To be also noted that the specificity of criminal investigations conducted in respect of drug trafficking criminal offences implies, in specific cases, that the time of criminal indictment subsequent to ascertaining the criminal activity be deferred in view of completing the standard of evidence, so as to enable the identification of all persons who, under different forms of criminal participation, contributed to the commission of the criminal offences in question. In this case, it is vital that criminal prosecution (which is not conducted in personam) be carried-out in a sustained and credible pace and, in all cases, should not exceed a reasonable period for bringing criminal proceedings against the persons concerned by the Crime Information Report.

4. Bringing the charge in criminal matters

The criminal case files subject to analysis present the following commonalities: a) the subject-matter of the selected criminal cases concerned criminal proceedings brought against persons who committed drug offences; b) the accused persons filed Crime Information Reports against other persons; c) subsequent to the filing of the Crime Information Report, acts of prosecution were carried-out (for the most part, evidentiary activities consisting of authorised purchases of drugs, via collaborators under true or protected identity, respectively via undercover investigators); d) the inculpatory evidence collected in this manner led to the criminal indictment of the persons concerned by the Crime Information Report (by issuing the orders for further prosecution and, respectively, for criminal indictment) [7].

Judgement no. 827/20.07.2022 rendered by Bucharest Trib.[8]. The notification by means of a Crime Information Report took place on 16.04.2021. On 05.05.2021, the accused person sold 1.27 grammes of heroin to a protected identity collaborator; on 06.05.2021, the accused person sold 0.73 grammes of heroin to a protected identity collaborator; on 04.08.2021, the accused person smuggled approximately 4 kg of heroin into the country. The accused person was indicted on 12.10.2021 (further prosecution, criminal indictment, detention). *It is noted that approximately 6 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 1209/07.11.2022 rendered by Bucharest Trib.[9]. The offence was notified by means of a Crime Information Report on 25.02.2022. Purchases under surveillance were organised between 04.03.2022 and 05.04.2022, with the help of a true identity collaborator (0.85 grammes of heroin, 0.35 grammes of heroin, 0.83 grammes of heroin). The criminal indictment took place on 23.05.2022 (further prosecution, criminal indictment,

[7] The examined case-law was consulted using the ReJust application, which was accessed between December 2022 and February 2023.

[8] According to *https://www.rejust.ro/juris/eeeed5d65*.

[9] According to *https://www.rejust.ro/juris/4ee78eg38*.

detention). *It is noted that approximately 3 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 1198/04.11.2022 rendered by Bucharest Trib.[10]*.* The offence was notified by means of a Crime Information Report on 14.06.2021. 2 purchases under surveillance were organised on 01.07.2021 and on 14.07.2021, with the help of a true identity collaborator (approximately 10 grammes of cocaine). The bill of indictment was issued on 15.10.2021. *It is noted that approximately 4 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was brought before the court. The analysed judgement does not indicate the time when the accused person was indicted, but it is certain that the indictment occurred prior to commitment for trial.*

Judgement no. 1139/26.10.2022 rendered by Bucharest Trib.[11]*.* The offence was notified by means of a Crime Information Report. 3 authorised purchases were organised on 12.11.2021, on 13.11.2021 and, respectively, on 02.12.2021 with the help of a collaborator who filed a Crime Information Report (risk and high-rick drugs). From the content of the judgement under analysis it follows that the accused person was placed under judicial supervision on 22.02.2022. *It is noted that 2 months and 20 days have passed between the date of the last authorised purchase and the time the accused person was indicted; the judgement under analysis does not specify the registration date of the Crime Information Report with the criminal prosecution body.*

Judgement no. 856/27.07.2022 rendered by Bucharest Trib.[12]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 31.01.2022. On 23.02.2021 and on 03.03.2022, the accused person sold 50 grammes of cannabis and, respectively, 30 grammes of cannabis to a true identity collaborator. The criminal indictment took place on 31.05.2022 (further prosecution, criminal indictment). *It is noted that 4 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 826/20.07.2022 rendered by Bucharest Trib.[13]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 02.12.2020. Between 22.01.2021 and 13.05.2021, the accused person sold ecstasy to a protected identity collaborator (4 material facts). The criminal indictment took place on 02.06.2021 (further prosecution, criminal indictment), when the commission of the crime was also ascertained further to a deceptive operation designed to catch the person attempting to commit the offence. *It is noted that approximately 6 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 805/13.07.2022 rendered by Bucharest Trib.[14]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 06.09.2021. On 02.10.2021, the accused person sold 1.17 grammes of cocaine to a witness collaborating with the prosecution; on 13.10.2021, the accused person sold 2.33 grammes of cocaine to a witness collaborating with the prosecution. The case was sent to court on 18.11.2021 (the judgement under analysis contains no data on when the accused person was indicted). *It is noted that 2 months and 12 days have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person's case was brought before a court; definitely, the criminal indictment of the accused person took place in a shorter period.*

Judgement no. 826/20.07.2022 rendered by Bucharest Trib.[15]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 24.03.2021. On 28.04.2021, the accused person sold 0.53 grammes of cocaine to a witness collaborating with the prosecution; on 06.05.2021, the accused person sold 0.56 grammes of cocaine to a witness collaborating with the prosecution; on 24.08.2021, the accused held 2.07 grammes of cocaine in his home. The criminal indictment took place on 24.08.2021 (further prosecution, criminal indictment, detention, arrest pending trial). *It is noted that 5 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

[10] According to *https://www.rejust.ro/juris/dee8d5975*.
[11] According to *https://www.rejust.ro/juris/eee637336*.
[12] According to *https://www.rejust.ro/juris/722293442*.
[13] According to *https://www.rejust.ro/juris/59992326d*.
[14] According to *https://www.rejust.ro/juris/2335g92g7*.
[15] According to *https://www.rejust.ro/juris/59992326d*.

Judgement no. 761/07.07.2022 rendered by Bucharest Trib.[16]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 10.01.2022. On 27.01.2022, the accused person sold 0.44 grammes of heroin to an authorised collaborator; on 31.01.2022, the accused person sold 0.42 grammes of heroin to an authorised collaborator; on 14.02.2022, the accused person sold 0.32 grammes of heroin to an authorised collaborator; on 16.02.2022, the accused person sold 0.35 grammes of heroin to an authorised collaborator; on 14.03.2022, the accused person held 6.42 grammes of heroin and other risk and high-rick drugs with the intent to sell. The criminal indictment took place on 14.03.2022 (further prosecution, criminal indictment, detention, arrest pending trial). *It is noted that approximately 2 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 639/15.06.2022 rendered by Bucharest Trib.[17]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 16.09.2021. On 28.09.2021 and, respectively, on 06.10.2021, the accused persona sold 2.33 grammes of cannabis and 46 LSD doses to an authorised collaborator; on 03.11.2021, the accused person was in possession of 15.74 grammes of cannabis and 3.84 grammes of MDMA. The criminal indictment took place on 03.11.2021 (further prosecution, criminal indictment). *It is noted that 1 month and 17 days have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 641/15.06.2022 rendered by Bucharest Trib.[18]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 07.10.2021. On 11.11.2021, the accused person sold 6 MDMA tablets to an authorised collaborator; on 09.12.2021, the accused person sold 4 MDMA tablets to an authorised collaborator. The criminal indictment took place on 03.02.2022 (further prosecution, criminal indictment, detention). *It is noted that approximately 4 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 559/26.05.2022 rendered by Bucharest Trib.[19]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 06.07.2021. On 15.07.2021, the accused person sold 5 grammes of cocaine to an authorised collaborator; on 21.07.2021, the accused person sold 5.01 grammes of cocaine to an authorised collaborator; on 25.08.2021, the accused person held 789.23 grammes of cocaine with the intent to sell. The criminal indictment took place on 25.02.2022 (further prosecution, criminal indictment, detention). *It is noted that 7 months and 19 days have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 543/20.05.2022 rendered by Bucharest Trib.[20]*.* The criminal prosecution bodies were notified by means of a Crime Information Report on 04.10.2021. On 14.10.2021, the accused person sold 4 MDMA tablets and 3.37 grammes of cannabis to an authorised collaborator; on 25.10.2021, the accused person sold 6.95 grammes of cannabis to an authorised collaborator; on 24.11.2021, the accused person was in possession of 12.42 grammes of cannabis. The criminal indictment took place on 24.11.2021 (further prosecution, criminal indictment, detention). *It is noted that 1 month and 20 days have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time the accused person was indicted.*

Judgement no. 442/14.11.2022 rendered by Constanța Trib.[21]*.* The *ex officio* notice concerned with committing the offence of risk drug trafficking on an ongoing basis took place on 14.01.2022. Between 01.02.2022 and 12.04.2022, the accused person sold different quantities of cannabis (1.53 grammes, 1.52 grammes, 2.47 grammes, 1.64 grammes etc.) to the authorised protected identity collaborator. The criminal indictment took place on 12.04.2022 (further prosecution, criminal indictment, detention). *It is noted that approximately 3 months have passed between the time the criminal prosecution bodies took note of the offence and the time the accused person was indicted.*

[16] According to *https://www.rejust.ro/juris/59929949d*.
[17] According to *https://www.rejust.ro/juris/722d53439*.
[18] According to *https://www.rejust.ro/juris/4eeg23875*.
[19] According to *https://www.rejust.ro/juris/5994e7d7e*.
[20] According to *https://www.rejust.ro/juris/eee47ge57*.
[21] According to *https://www.rejust.ro/juris/dee653549*.

Judgement no. 426/25.10.2022 rendered by Constanța Trib.[22]. The *ex officio* notice concerned with committing the offence of high-risk drug trafficking took place on 16.11.2021. Between 10.12.2021 and 28.03.2022, the first accused person sold different quantities of risk and high-risk drugs to the relevant authorised collaborator; between 26.11.2021 and 28.03.2022, the first accused person, as well, sold different quantities of risk and high-risk drugs to the protected identity collaborator; between 01.02.2022 and 28.03.2022, the second accused person sold different quantities of risk and high-risk drugs to the relevant authorised collaborator. The criminal indictment took place on 29.03.2022. *It is noted that approximately 4 months have passed between the time the criminal prosecution bodies took note of the offence and the time the accused person was indicted.*

Judgement no. 421/20.10.2022 rendered by Constanța Trib.[23]. The offence of risk and high-risk drug trafficking was notified by means of a Crime Information Report on 07.01.2022. Between 11.02.2022 and 06.05.2022, the accused person repeatedly sold amphetamine, respectively cannabis (2.5 grammes) to the undercover collaborator. The criminal indictment took place on 17.05.2022. *It is noted that approximately 4 months have passed between the time the criminal prosecution bodies took note of the offence and the time the accused person was indicted.*

Judgement no. 228/10.06.2022 rendered by Constanța Trib.[24]. The offence was notified by means of a Crime Information Report on 21.10.2021. On 20.10.2021, the accused person put drugs into circulation, respectively offered 60.15 grammes of cannabis to the witness; on 21.10.2021, the accused person held the quantity of 69.52 grammes of cannabis with the intent to sell and was caught in the act further to a deceptive operation organised on the same date by the police authorities; on 21.10.2021, the accused person held with the intent to circulate a total quantity of 249.44 grammes of cannabis and 3 cigarette remains on which Tetrahydrocannabinol (THC) was identified, which were discovered while conducting a home search. The criminal indictment took place on 22.10.2021. *It is noted that 1 day has passed between the notification of the criminal prosecution bodies and the time the accused person was indicted.*

Judgement no. 150/29.04.2022 rendered by Constanța Trib.[25]. The offence was notified by means of a Crime Information Report on 16.03.2021. On 22.04.2021, the accused person sold a quantity of 3.4 grammes of MDMA to the undercover investigator. The criminal indictment took place on 05.07.2021. *It is noted that approximately 4 months have passed between the time the criminal prosecution bodies took note of the offence and the time the accused person was indicted.*

Judgement no. 546/09.11.2022 rendered by Timiș Trib.[26]. The offence was notified by means of a Crime Information Report on 27.07.2021. On 25.10.2021, via a WhatsApp videocall, the accused person showed the collaborator that he held at his home 4 jars containing approximately 800 grammes of vegetal mass alleged to be cannabis and a bag containing light-green tablets claimed to be ecstasy tablets (MDMA). The criminal indictment took place on 10.11.2021 when the accused was caught in the act during a home search. *It is noted that approximately 4 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time of indictment.*

Judgement no. 679/17.11.2021 rendered by Timiș Trib.[27]. The offence was notified by means of a Crime Information Report on 06.03.2021. On 06.03.2021, the accused person sold 3 aluminium foil packages containing 2.3 grammes of cocaine to the undercover investigator. The criminal indictment took place on 28.09.2021. *It is noted that approximately 6 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time of indictment.*

Judgement no. 246/20.10.2022 rendered by Cluj Trib.[28]. The offence was notified by means of a Crime Information Report on 01.02.2022. The criminal indictment took place on 03.02.2022 when the accused was caught in the act intending to sell the quantity of 1,464.6 grammes of cannabis and the quantity of 1.2 grammes of white crystallin substance to the undercover investigator. *It is noted that approximately 2 days have passed*

[22] According to *https://www.rejust.ro/juris/6228ee87e*.
[23] According to *https://www.rejust.ro/juris/g88234948*.
[24] According to *https://www.rejust.ro/juris/72e8e8d73*.
[25] According to *https://www.rejust.ro/juris/235d47d72*.
[26] According to *https://www.rejust.ro/juris/866gg8d75*.
[27] According to *https://www.rejust.ro/juris/525d22494*.
[28] According to *https://www.rejust.ro/juris/eee6dd875*.

between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time of indictment.

Judgement no. 176/01.08.2022 rendered by Cluj Trib.[29]*.* The offence was notified by means of a Crime Information Report on 05.03.2021. On 28.04.2021, the accused person sold 1.9 grammes of cannabis and 1.4 grammes of substance containing 3-CMC to the undercover investigator; on 29.09.2021, the accused person sold 9.7 grammes of cannabis to the undercover investigator; on 13.11.2021, the accused person sold 1.5 grammes of substance containing 3-MMC to the undercover investigator. The criminal indictment took place on 15.12.2021. *It is noted that approximately 9 months have passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time of indictment.*

Judgement no. 96/21.04.2022 rendered by Cluj Trib.[30]*.* The offence was notified by means of a Crime Information Report on 29.10.2020. On 28.04.2021, the accused person sold 2 grammes of cannabis to the undercover investigator; on 27.09.2021, the accused person sold 0.8 grammes of substance containing 3-MMC to the undercover investigator. The criminal indictment took place on 22.10.2021. *It is noted that approximately 1 year has passed between the notification of the criminal prosecution bodies by means of a Crime Information Report and the time of indictment.*

The case-law analysis reveals that the longest period of time between the notification by means of a Crime Information Report and the time the person concerned by the Crime Information Report was indicted was of approximately 1 year. Of course, the list referred to above has merely of an illustrative nature and we have no claim as to the certain, universally valid character of our conclusions. In the particular case that constituted the starting point of this study, it is noted that approximately 1 year and 1 month has passed between the notification of the prosecutor by means of a Crime Information Report and the time the court was informed that no criminal charges were brought.

5. Conclusions

The practice of criminal case files reveals the fact that the remission by half of the sentence limits prescribed by law, as a result of a Crime Information Report having been filed that led to criminal proceedings brought against the perpetrator constitutes the most important defence, specifically under the assumptions where the commission of the criminal offence is proven beyond any reasonable doubt.

However, the granting of a sentence remission is conditional upon the criminal indictment a person concerned by the Crime Information Report by latest the closing of the criminal proceedings in which the accused - a witness who filed a Crime Information Report - is tried. In such circumstances, one can witness a genuine race against the clock to materialise the Crime Information Report into concrete action, as the bringing of criminal charges, if any, against the person concerned by the Crime Information Report once the decision has become final in the trial of the informant is no longer beneficial to the latter.

Of course, many crime information reports are not materialised by the criminal prosecution bodies, as they are unsuitable for bringing criminal proceedings against the person concerned by the Crime Information Report. Through this study, we sought to analyse the assumption in which, subsequent to the filing of the Crime Information Report, the criminal prosecution bodies carry-out evidentiary activities capable of leading, unquestionably, to ascertaining the commission of the reported offence. For such situations, where there is evidence showing that the person concerned by the Crime Information Report committed an offence, the criminal indictment (by order for further prosecution) is mandatory.

As to when the criminal prosecution body decides to issue the order for criminal indictment, it must be outlined that at times, for reasons concerned with unveiling the complete truth, the bringing of criminal charges (implicitly meaning the materialisation of the filed Crime Information Report) is deferred until the determination of all circumstances in which the reported offences are committed (participants in the commission of criminal offences, form of guilt, etc.). For such assumptions, in the particular case under analysis which is concerned with the commission of drug offences, the case-law analysis demonstrated that once the clear inculpatory evidence was produced, the indictment took place after a period of maximum 1 year (while a large number of cases was identified in which this period was much shorter).

[29] According to *https://www.rejust.ro/juris/23336g8d9*.
[30] According to *https://www.rejust.ro/juris/2357g4e73*.

It therefore follows that the right to defence may be exercised by the accused person by notifying the criminal prosecution bodies by means of a Crime Information Report (a notification method which, at the same time, is an important tool made available to the criminal authorities in their activity concerned with ascertaining the commission of criminal offences and with the criminal proceedings brought against the persons who have committed such offences), while the collection of concrete inculpatory evidence leads to the mandatory issuing of the order for criminal indictment of the person concerned by the Crime Information Report, within a time interval that observes the reasonable period requirement.

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