
THE COMPETENCY OF CHANGING THE DEED LEGAL FRAMING IN CASE OF CASE DECLINATION BY THE COMPETENT BODY. RESUMPTION AND REPETITION OF THE ON-SITE INVESTIGATION

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Abstract: The criminal cases solved lately by the Prosecutor's office by the court and by the local prosecutor's offices brought under discussion and caused various opinions on the competency of changing the legal framework of the deed by hitting or other violent acts to attempted murder provided the competency being declined by the prosecutor's offices by the district courts to the prosecutor's office by the county court. This issue has become particularly important in view of the recent finding by the Constitutional Court that the elimination from absolute nullities of non-compliance with the rules of substantive jurisdiction and according to the quality of the person of the criminal prosecution bodies is unconstitutional [1]. There are also different points of view regarding the resumption and repetition of the on-site investigation, the conditions in which they intervene, who continues to carry it out, but also the way in which their forensic fixation is fixed.

Keywords: investigation; on-site; repetition; resumption; competency; murder; attempted murder.

1. Introduction

Actually, resumption and repetition of the investigation on-site are tactical activities of completion of an initiated but unfinished activity, thus remaining in the respective perimeter unexplored areas, undiscovered traces.

In cases where the initial on-site investigation was either interrupted for some objective reason during its conduct or if it failed to achieve its purpose due to substantial errors on the part of the concerned staff, which leads to the failure of the

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entire site investigation, in fact, in the search and examination of traces, it is necessary to carry out these activities.

2. Resumption and repetition of the investigation on-site

2.1 The resumption of on-site investigation

The resumption of on-site investigation is a continuation of the previously started and discontinued investigation for several reasons. It continues with the phase or the area in which it was interrupted. As an interrupted tactical activity is resumed, the resumption of the on-site investigation needs to take place as soon as the causes of the interruption have ceased to exist.

Usually, the interruption of the on-site investigation occurs in very special situations. Such situations arise when: the crime scene is very vast, with many peculiarities and various kinds of traces that need to be studied, fixed and raised in the light of day, and leaving the night prevents the proper conduct of research, so it is necessary to postpone activities for the next day; one or more sources of danger are discovered in the research process, such as explosion, fire, landslides, etc. ; finding the need for a specialist in the field, without which the evidence at the crime scene cannot be used. Of course, special situations, which could lead to the interruption of the research on the spot, can arise many and of a different nature, but the need to interrupt the investigation and resume it after the cessation of the case is found by the research team in each case [2].

The head of the on-site investigation team, once the investigation is interrupted, determines the stage of the investigation and where it is to be resumed, and the necessary measures to protect the still undetermined traces and to guard the crime scene until the investigation is resumed. time.

The resumption of the investigation must be carried out by the people who started it. In this sense, both the continuity of the tactical activity and a unitary optics on the entire place of the deed and the traces discovered in its perimeter are ensured.

The entire activity carried out after the resumption of the investigation is further fixed, in the same report of the investigation of the crime scene. Of course, in such a situation, it is not uncommon to mention how the crime scene was guarded, if the traces were well preserved, how long the interruption lasted and when the resumption of the investigation began, with the mention of changes in the composition of the investigation team [3].

2.2. Repetition of the on-site investigation

Repetition of the on-site investigation is carried out in very rare situations when the first research has not fully achieved its purpose because it was carried out in

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defective, superficial, or unfavourable conditions for such an activity. As a result, either the whole place of the crime has not been established, leaving areas of it unexploited, or certain traces have not been discovered, perhaps partially destroyed by the concerned persons [4], thus remaining undervalued. This happened in March 2006 during the on-site investigation in the city of Ineu, Arad County about the victim C.S. She was found dead in her own apartment by her husband CT, who was in fact the perpetrator, informed both the police and the Prosecutor's Office by the Ineu Court that his mentally ill wife had committed suicide. As in suicide, the competency goes to the Ineu Court, a team formed at this level went to the scene but later found blood stains and the traces of six blows with a kitchen ax were identified in the cervical region.

As a result, either the entire crime scene has not been established, leaving areas of it untapped, or certain traces have not been discovered, perhaps partially destroyed by interested parties.

Given that the crime of murder was within the competence of the Prosecutor's Office by Arad County Court, an investigation team was immediately set up and another investigation was carried out on-site.

At other times, the investigation of the crime scene is repeated to verify new versions, simulations, etc., not required during the first on-site investigation [5].

3. Practical case

Regarding the practical case that we will deal with, it refers to the case in which the defendant ACC was investigated in a state of pre-trial detention, under the aspect of committing the crime of attempted murder, stipulated, and punished by art. 32 par.1 Criminal law related to art.188 par.1, 2 Criminal Law by applying the provisions of art.75 par.1 letter a of the Criminal Law.

Defendant A.C.C., at the age of 29, has not committed any acts provided for and punished by the criminal law, he is unmarried young, has no dependent minor children and until his arrest, he was employed as a professional driver at SC P.T. SRL where, in general, he behaved well.

The injured person V.S., aged 42, in Arad County was known as a quiet person, who generally did not create problems for the local police, but who also often frequented the bar SC At. SRL, administered by the witness S.A. In fact, the S. family place is usually frequented by locals, especially at the end of each week.

3.1 Aspects regarding the chronology of the case:

By the ordinance of the Prosecutor's Office by Court of Arad County, based on provisions of art. 311 Criminal Procedure Code, art. 305 par.3 Criminal Procedure Code and art. 281 par.1, 2 and 3 Criminal Procedure Code, it was arranged:

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-change in the legal classification of the deed committed on the injured person V.S. from the offense provided by art. 193 par.1 of the Criminal Law to the crime of attempted murder, provided by art. 32 Criminal Law in relation to the art. 188 par.1 and 2 Criminal Law;

-continuing the criminal investigation against the suspect A.C.C. with the related data, for committing the crime of attempted murder stipulated by art. 32 Criminal Law in relation to the art. 188 par.1 and 2 Criminal Law;

- the suspect has been informed of the rights and obligations he has in this capacity and the change of the legal classification according to this ordinance, keeping in mind that:

By the ordinance of the Municipality of Arad Police – Station 1 Rural Police Arad it was ordered to initiate the prosecution for the crime of hitting or other violence stipulated and punished by the art. 193 par.1 [6] Criminal Law, on the following considerations:

On the night 28/29.09.2019 in the Arad County area, amid a conflict over alcohol consumption, the named A.C.C. physically assaulted the injured person V.S.

The report of the first forensic examination with the examination of the person prepared by IML Timișoara found that the injuries suffered by the injured person required 65 days of medical care and that they were likely to endanger his life.

Compared to the above, the prosecutor from the Prosecutor's Office by the Arad Court of Law correctly assessed that there are reasonable suspicions regarding the existence of a crime of attempted murder, within the meaning of the provisions of art. 32 par. 1 Criminal Law related to art.188 par.1 Criminal Law, including that in accordance with the provisions of art. 36 par.1 lett. a Criminal Procedure Code corroborated with the provisions of art. 56 par. 6 Criminal Procedure Court, the competence to carry out the criminal investigation belongs to the prosecutor from the Prosecutor's Office in the Court of Arad County. However, by the same ordinance of the Prosecutor's Office by the Arad Court, pursuant to art. 311 par.1 Criminal Procedure Law, it was also ordered to change the legal classification of the act of hitting or other violent deed provided and punished by art. 193 par.1 of the Criminal Law to attempted murder stipulated and punished by art. 32 par.1 Criminal Law related to art. 188 par.1 Criminal Law; At point 2 of the ordinance, it was ordered to decline the competence to settle the case in favor of the Prosecutor's Office by the Court of Arad County.

After the distribution of the case for carrying out its own criminal investigation, we found that regarding the first point of the ordinance of the Prosecutor's Office by the Arad court, it is under the sanction of absolute nullity of law provided by art. 281 par.1 lett. b, par. 2 and 3 Criminal Procedure Code, since this provision is within the

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exclusive competence of the prosecutor within the Prosecutor's Office by the County Court, according to the provisions of art.56 al.3 lett. b Criminal Procedure Code.

Regarding the declination of competence to the Prosecutor's Office by the Court of Arad County, the solution is correct, because according to the forensic criteria, the victim's life was endangered, and the activity carried out by the aggressor, the nature of the suffered injuries, their multitude denotes that he acted with the intention of suppressing the life of the injured person.

In these circumstances, we considered that the crime committed against the injured person V.S. is attempted murder, stipulated by art. 32 Criminal Law related to art. 188 par.1 and 2 Criminal Law, thus according to the provisions of art. 311 Criminal Procedure Law, the legal ranking of the deed which triggered the procedure was changed and the prosecution against the identified author, respectively A.C.C, was followed up.

Following the examination of the acts carried out in the file with no. above, regarding the notification of the Prosecutor's Office attached to the Arad Court, it was found that after the ex officio notification of the Police Station in the commune, the police bodies within the Arad Rural Police did not draw up any report of conducting an on-site investigation, this criminal procedural activity was carried out outside the legal framework conferred by the provision of art. 192 Criminal Procedure Code, art. 195 Criminal Procedure Code, as it was not ordered by the ordinance.

Moreover, the on-site investigation had to be extended to include a larger space, since the place of the deed implies any place that bears trace, according to art. 41 par.2 Criminal Procedure Code, by the place of committing the crime, is meant, the place where the criminal activity is carried out in whole or in part, or the place where its result occurred.

In relation to the above, by the ordinance of the same date of the Prosecutor's Office by the Court of Arad County, another investigation team was delegated, set up at the level of the Arad Police Inspectorate – The Criminal Investigation Service and the Forensic Service to go to the commune of S., Arad County, so that in the area delimited by the judicial bodies as the crime scene, they repeat the on-site investigation. It was aimed at identifying all traces and material means of evidence, which aimed to completely clarify the case and turn them into evidence, according to the criminal procedural norms. These activities were carried out under the terms of repeating the on-site investigation.

Also, the judicial police bodies were delegated to carry out acts of criminal prosecution, and they will immediately proceed to the hearing of the injured person, who was hospitalized in serious condition at the Timisoara County Clinical Hospital. They have also been given the obligation to present to the injured person the rights and obligations he had.

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At the same time, another team of judicial police workers from the County Police Inspectorate of Arad (IPJ Arad) – Arad Rural Police Service, also immediately, was to identify and interview the witness who found the injured person fallen into the ditch and who notified the local police and notified the SNUAU 112 service. Also in this regard, it was to be done with the medical staff who transported the injured person to the hospital, who were to be asked about the possible reports of the injured person.

The police officers of the S. Police Station were asked for a thorough report on all the events that occurred after the notification through the 112 service at the time of the deed.

To establish a real situation, it was necessary to identify and seize, as material means of evidence, all the objects found in the activity carried out by the police bodies and that is why we ordered the delegation of the judicial police bodies within I.P.J. Arad – Service for criminal investigation.

De facto, it was retained that:

On the evening of 28.09.2019, around 22.00, after having previously consumed alcoholic beverages, defendant A.C.C. together with a friend M.R. entered the premises - of bar SC At. M SRL din com. S., and he parked his car near the gate at the entrance of the common courtyard of the bar and the market owned by the S family.

By around 23.00, A.C.C. had consumed several doses of beer of 0.33 ml, but in any case, ended up being manifestly intoxicated. He became more and more naughty, and at one point he tried to put a plastic straw in the bartender's right eye – witness A.S.

Using physical force, he grabbed him by the chest and pulled him out of the bar on the terrace, at which point P.F. intervened in support of the defendant, who was also intoxicated, which is why the bartender pushed him, only in an area where we have a flower bush, after which he asked him to leave the premises.

It was not the first time that A.C.C. had consumed excess alcoholic beverages inside the bar and another time he was refused when he asked to be served alcohol, although he was manifestly intoxicated, on the other occasions, he was convinced without the use of force to leave the bar, in civilized conditions, even more so since he is not known to be a violent person.

On the night of 28/29.09.2019, A.C.C. returned on numerous occasions and asked to be served beer although he shook his feet and stared blankly. In fact, all the customers who were on the terrace began to be disturbed by his attitude and his

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behavior, respectively the witnesses O.C., I.M.S., but especially the injured person S.V.

At around 02.30-03.00, after defendant A.C.C. insisted again to be served beer, and again was refused, the injured person S.V. intervened between the two, asking the defendant to renounce his insistence, as he was intoxicated.

When A.C.C. badly offended S.V. and brought him insulting words, the context in which the injured person applied a powerful blow to him with his fist that unbalanced him and caused the defendant to fall to the floor in the area to the left of the bar.

At around 03.00, after the injured person came out of the bar on the terrace, and the bartender asked the defendant to leave the premises because immediately after he surprisingly got up from the ground he asked again to be served a beer.

Immediately the defendant left the bar premises, but at around 03.00 he returned to recover the phone left on the premises for charging and then waited in the car until around 04.00 when the injured person S.V. and he under the influence of alcohol got out of the courtyard of the premises, trying to head home.

Initially, after observing the defendant in the car and having an exchange of insults, the injured person wanted to head home on a devious but dark route, but later changed his mind and, walking by the bicycle, returned to the central area near the police.

During this time, the defendant chased the injured person from the car he was driving, and near a house on the route, taking a key of metal studs and taking advantage of the inattention of the injured person, he applied several blows to him in the head region, which fell to the ground, unconscious until around 07.00 when he was found by witness M.

The local police authorities were notified, and the injured person in serious condition was transported and operated on the head to the Timisoara County Clinical Hospital.

3.2 Analysis of the administered evidence

After the delegation of the judicial police, a repeat of the investigation was carried out at the scene, the object as the criminal body was identified tubular key for car wheels, of grey color, L shape, with the series inscribed GERMANY HYC DO 012219 A 50" and it was established that, in fact, the suspect asked the witness Z.L. to lend him another key to replace the one abandoned at the scene.

Also, the injured person V.S. admitted to the Timisoara County Emergency Clinical Hospital was heard, indicating as the perpetrator of the deed the suspect A.C.C. In the statement given, the injured person states that, while he was traveling towards his home, near the Police Station in the commune, he was chased by the suspect and hit in the head region. From what the injured person claims, he did not get on his bike, to cross the road, and while he was walking on the sidewalk, from the right side

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came A.C.C. with an object in the shape of a short bar in his hand, with which he hit several times in the head, falling to the ground and becoming unconscious.

transported, as a matter of urgency, initially to the Arad County Emergency Clinical Hospital, and later to the Timisoara County Emergency Clinical Hospital, where he was operated on urgently.

Also, with the four cameras from the bar owner's company being picked up, relevant sequences have been identified in terms of establishing a real situation. They certainly attest to the altercation between the suspect and the injured person inside the bar, the first being hit by the suspect, but also the fact that he, being intoxicated, waited for about half an hour in or near the car, the exit of the injured person from the premises, to assault him.

In the statement recorded as a suspect, at the first hearing, A.C.C. admitted to committing the crime, but he constantly denied that he had any intention to suppress the life of the injured person or that he at least accepted the idea of his death in the sense of indirect intent. In fact, he claims that the injured person was the one who hit first, on the night of 28/29.09.2019, on the premises, around 02:55, but also when, after leaving the premises, he pursued him and they had the conflict in front of the police headquarters building in the commune, around 04:00.

As a defendant, he admitted to committing the crime, in the sense that he applied a multitude of blows to the head area of the injured person, but he mentions that the attitude of the injured person, who initially hit him, competed in committing the deed.

Also, it was proceeded to identify and hear as witnesses the appointees A.S., Z.A.A., G.C., I.C., M.S., I.S.M., and R.I., which confirms that between the injured person and the defendant there was an initial conflict in the premises – when the one who hit the first was the injured person, but also that around 04.00 the defendant waited for him in the car and that the object of the offending body (the key with studs of arms of wheels) belongs to the defendant A.C.C. Moreover, to hide the lack of the key, he replaced it with another key purchased from the witness Z.A., and when the police asked him to hand over the key kit and asked him if the tubular key had been replaced, he denied it.

Since the date of preventive arrest, the following acts of criminal prosecution have been carried out:

- it was ordered to carry out a reconstitution by an ordinance dated 23.10.2019;
- the reconstitution was carried out on 24.10.2019 and the reconstitution report was drawn up;
- the photo drawing board for the three variants of reconstitution was drawn up;

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- the CD with the video of the activities indicated by the defendant, the injured person, and the witness S. were also submitted, and the assistant witnesses present at the re-enactment were heard, as they had no objections regarding the legality and manner of carrying out this criminal procedural activity.

By the ordinance dated 23.10.2019, it was ordered the reconstitution of the deed committed by the defendant, establishing the following objectives both on the premises and after leaving the premises, on the main street of the commune:

1. Positioning in the places where each of the participants (defendant and witness) were found, reported at the initial moment of the conflict, respectively when the altercation became imminent.

2. Positioning of each participant, at the time of triggering acts of violence with the fixation of the place where they were, as well as the position and objects they were confronted with.

3. The rhythmic unfolding of the blows applied on the sequences, and the positioning with the fixing of the objects used, as well as the indication of the route through which the witness S. removed the defendant using force from the premises, including from the courtyard of the premises where the bar was located.

4. Indication of the route through which the two left the place where the incident took place and the place where they each stayed after 03.00 and 04.00.

Also, during the reconstitution activity, the position of the eyewitnesses – A.S., M.S. was established and G.C. domiciled and present on the spot, presenting their variants, depending on those perceived and recorded in the statements previously given. They also indicated the position and condition in which they found the injured person on the morning of 30.09.2019, between 07.30-08.00.

The defendant, the injured person, and witnesses A.S. and M.S. presented the unfolding of the events, depending on the points pursued, and the re-enactment was carried out and was fixed by filming and photographing each variant.

At the scene, assistant witnesses were used for each variant.

Also, it was ordered that the Arad County Service of Forensic Medicine and the forensic specialist from I.P.J. Arad – Forensic Service respond to the objectives established by the ordinance dated 30.10.2019 to make a technical and scientific and forensic finding regarding the conditions of dispersion and the way of formation of the bloodstains found on the injured person's bicycle.

Without any doubt, the specialists concluded that the traces of blood on the injured person's bicycle were of drip and scattering while the bicycle was on the right side of it and not as the defendant erroneously presented the situation during the re-enactment.

Of particular importance is the statement of the defendant recorded with the prosecutor at the *"I acknowledge and regret the committed deed, in the sense that I*

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committed it in a state of challenge. Both I and the injured person were under the influence of alcohol. Me being a driver I do not regularly drink alcohol, so it is enough to drink a little to end up intoxicated.

I would like to rectify the clarifications made during the re-enactment, where I falsely stated that the injured person was holding the bicycle on the left side. I remembered that the injured person at the time of the crime had his bicycle on the right side.

I had no intention of suppressing his life and being under the influence of alcohol, after the altercation I went home and went to bed because the next day I was going to go to work. That's why I didn't think about what happened to the injured person.

In front of the court, I also wish to follow the simplified procedure”.

De iure, the incidental legal texts in question are art.188 par.1 [7] and 2 [8] Criminal Law, art.32 par.1 [9] Criminal Law and art.75 par.1 lett. a [10] Criminal Law

Regarding the detention of the state of provocation provided for by art. 75 par.1 lett. a Criminal Law, we considered it justified, in the sense that, from the evidence administered, it appears that the injured person was the one who hit the first, on the premises, around 02:55, meaning that the images from the surveillance cameras fixed inside the premises were captured. Even at the exit of the premises, the injured person observing the defendant in the car brought him insults again.

In fact, even the forensic certificate, presented by the suspect, there are revealed certain injuries suffered on his face.

As regards, however, the injuries in his hands, on the contrary, we point out the fact that he hit the victim hard repeatedly and justifies, in a way, some of the injuries to the face that he presents to the face, as described in the Expert Report.

In the same sense, the presence of injuries suffered by the defendant to the toes of her right foot, they confiscated and strengthened the injured person's claim that she was hit hard, with her foot repeatedly, even when she fell to the ground.

Particularly important in establishing the subjective position of the aggressor towards the result of the aggression are the conditions of place and time during which he committed the acts of violence, without neglecting the harsh object used. From the statements of the witness A.S. it follows that the injured person was waited in a protected area with a blunt hard object and even repeatedly struck in vital areas. In practice, it has been stated that there is an intention to kill if it is found that the multitude of blows applied are in vital areas of the body if there is perseverance in applying blows with a hard blunt object in the head region.

Also in practice, it was noted that the intention to kill is established according to the materiality of the act, which in most cases highlights the psychic position of the perpetrator [11]. Thus, the number of blows, their intensity, the area where they are

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applied, the perseverance in applying the blows, and the object used by the aggressor can be considered.

The defendant was detained and sent to trial under preventive arrest.

Before the court, the defendant fully admitted the commission of the deed for which he was sent to trial and requested to be judged based on the evidence that was administered during the criminal investigation, relying on the provisions of art. 374 par. 4 Criminal Procedure Code, and art. 375 of the Criminal Procedure Code.

By the Criminal Sentence no. 63/2020 of the Arad County Court, which became final, the defendant was sentenced to a sentence of 3 years imprisonment with execution, reducing one-third of the punishment applied and benefiting from the effects of the extenuating circumstance of the challenge.

4. Conclusions

The resumption of the forensic on-site investigation is carried out by the same research team and the same report is concluded, recording only the reason and the period of interruption.

The repetition of the forensic investigation at the fault of the place is carried out by another research team and another report is concluded.

Changing the legal framing in the situation of declining jurisdiction from the prosecutor's offices attached to the trial to the prosecutor's offices attached to the courts, in attempted murder from beatings or other violence, is the competence of the prosecutor from the prosecutor's office by the county court. The declination - in these situations - is to be made to pronounce on the opportunity to change the legal framing and to continue the criminal prosecution against the identified suspect.

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Notes:

- [1] In its session of 04.05.2017, the Constitutional Court admitted with a majority of votes the exception of unconstitutionality and found that the provisions of art.281 par.1 letter b of the Criminal Procedure Code regarding the elimination from absolute nullities of non-compliance with the rules of substantive jurisdiction and according to the quality of the person of the criminal prosecution bodies is unconstitutional.
- [2] Ion Mircea, *Criminalistică (Criminology)*, Publishing House Lumina Lex, Bucharest, 2001, pp. 241.
- [3] Lucian Coman, *Aspecte privind cercetarea la fața locului a infracțiunilor de omor (Aspects on on-site infections of the homicide)*, Bucharest, 1975, pp. 18.
- [4] For example, traces of blood partially destroyed by washing.
- [5] Case P/1996 of the Prosecutor's Office by the Court of Arad County.
- [6] "Hitting or any acts of violence causing of physical suffering are punished with prison from 3 months to 2 years or with fine."
- [7] "Killing a person is punishable by imprisonment from 10 to 20 years and a ban on exercising certain rights."
- [8] "Attempt is punishable."
- [9] "The attempt consists in the execution of the intention to commit the crime, execution which, however, was interrupted or did not produce its effect."
- [10] "Committing the crime under the control of a strong disorder or emotion, determined by a provocation from the injured person, produced by violence, by a serious violation of the person's dignity or by another serious illicit action."
- [11] See in this regard the Supreme Court of Justice, criminal decision, decision no. 259/1993, in A. Boroi et al, Bucharest 2002, page 162 and Court of Appeal Timișoara, criminal section no. 26/1998 in A. Boroi, page 163.