

Aspects Regarding the Case Transfer of Criminal Cases in Romania

Cristian Dan

*“Dimitrie Cantemir” Christian University of Bucharest, Faculty of Juridical and Administrative Sciences – Law,
Bucharest, Romania, danrcristian@gmail.com*

ABSTRACT: There are often situations in which criminal cases are being tried, in which, for some objective reason, the judges of those cases cannot continue their investigations in order to resolve the legal conflict. Some of the most common such situations are those in which judges in a particular constituency draw suspicion of impartiality as to the fair, impartial and impartial trial of the criminal case before which they are to rule. Because the Romanian legislator also provided for such events that may seriously affect the performance of justice on a fair basis as provided by the Romanian Constitution, he created the institutional mechanism for transferring criminal cases from one court to another that can apply the law as provided. The article aims to briefly analyze the cases that may lead to the conclusion that a court on the territory of Romania is in a position to no longer be able to carry out, in good conditions, the act of administering justice, the legal aspects by which a criminal proceeding may be transferred from one court to another and the rules under which a subject of criminal proceedings may have recourse to such criminal proceedings. Some conclusions at the end of the paper will aim at a concise understanding of the notions presented throughout the paper.

KEYWORDS: case transfer, criminal law, criminal case, impartiality, subjects of criminal proceedings, criminal courts, procedural issues, justice

The notion of case transfer and decisive issues

A case transfer is the way of passing a case from a court that was competent materially, functionally, territorially or even according to the quality of the person to another court of the same kind or degree, to ensure the conditions of a fair trial, when there is a reasonable suspicion that the impartiality of the judges of the court is affected due to the circumstances of the case, the quality of the parties or when there is a danger of disturbing public order (Buneci 2020, 109).

A case transfer is the procedural method by which one of the subjects of the criminal proceedings, if there are reasonable suspicions regarding the impairment of the impartiality of the court, in certain situations, by evidence, may request the transfer of the case to another court of the same degree and in the same constituency (Crișu 2021, 308).

With regard to reasonable suspicions, they may arise from various causes related, on the one hand, to the quality of the criminal subject matter when he is part of the political circle or is a person with a clearly disproportionate social influence in the district where the case is being tried. and on the other hand, by the social status of the judges of the court in whose jurisdiction the trial of the case fell (Udroiu 2021, 179).

In any event, it is necessary for that suspicion to be substantiated, by giving a specific indication of the case which could lead to the impartiality of all the judges of the court in whose jurisdiction the trial is. Thus, the transfer of criminal cases from one court to another is a constitutional measure designed to ensure that all citizens have access to a fair and equitable administration of justice, on an impartial, fair and just basis. However, there are situations in which the request for case transfer cannot be admissible, when the respective case is pending before the High Court of Cassation and Justice, the panel of 5 judges of the Supreme Court or the Military Court of Appeal (Neagu and Damaschin 2020, 444).

Thus, if the subject of criminal proceedings credibly proves the existence of a risk of affecting the impartiality of the judges of a court, the Court of Appeal or, as the case may be, the High Court of Cassation and Justice may, by way of derogation from the rules of territorial jurisdiction, the full judgment of a case, regardless of the stage at which it is, in the first instance

or on appeal, or even in extraordinary remedies, from the territorially competent court to another court (Udroiu 2019, 170).

Therefore, the responsibility for proving the existence of cases of misappropriation of criminal proceedings lies with the procedural subject who invokes it and who formulates a request in this regard based on the existence of the fear of circumstances that could create such an overall situation, collectively, regarding to the objectivity and impartiality or only its appearance on the judges to achieve the correct administration of justice (Poiană and Păcurariu 2014, 97).

In this way, in order for a case transfer to be admitted as a proper means of justice, it is necessary first of all, the presence of the case transfer request made by the party, in the criminal proceedings, interested, of pertinent arguments, based on evidence from which to result one of the two cases of case transfer and the existence of a higher court to admit the petitioner's request (Gheorghîță 2019, 405).

Cases in which the case transfer from one court to another may be allowed

There is the possibility of admitting a request for the case transfer from one court to another, provided that the second instance is equal in rank and territorially competent, regardless of the stage at which it is located: trial at first instance, appeal or extraordinary appeal, if there is a reasonable suspicion that the criminal proceedings may be affected by one of the two cases, i.e., the impartiality of the judges or the endangerment of public safety (Coca 2014, 51).

The first factor concerns the status of judges - all judges of a court must obviously be in a situation of incompatibility or there must be a reasonable suspicion as to the possibility of a risk of bias hovering over the whole court or section of a court, so that the prosecutor, the party or the main subject of the proceedings considers that the proper execution of the act of justice is affected (Neagu 2022, 194).

In addition to the status of judges, this case also refers to the existence of circumstances that could jeopardize the proper administration of justice, namely the quality of the parties.

An example could be a procedural subject whose quality is of influential politician in the community in which the case is being tried.

However, the determining factor in the admissibility of the request for case transfer in this case is the need for the applicant to prove that all judges of the court, or as the case may be, of the criminal section of the institution are incompatible to judge the case (Ciopec 2021, 217).

If in the first case, all the attention was on the conduct, the state and the impartial judgment of judges, in case of disturbing public order, the attention falls on the way the criminal process is conducted, on the external factors that could influence the way the judge judges the issues in that case (Szabo 2018, 78).

The possibility of the existence of this case of case transfer finds its reasons in the nature of the crime of which the defendant is accused, of the consequences that it produced, of the large number of injured persons and others. The possibility of defence by moving the criminal case from one court to another of the same degree and territorial jurisdiction must be seen, as a whole, as a procedural method of ameliorating the various conflicts that could arise and that would affect public opinion (Olariu and Marin 2017, 213).

Judgments are endowed with a certain public authority because there is the trust of litigants in the correct, fair and just way in which all cases that are brought before a court are judged. If this trust offered by the citizens were to suffer instability, the whole vision of the citizens on how the state intends to defend their rights, freedoms and protect their lives would be shaken from its foundations, which would lead to a complete social disorder.

The case transfer is therefore the procedural way of ensuring the proper functioning of the state protection apparatus and, at the same time, the instrument by which it can continue to ensure public credibility on court decisions, operating on all official subjects of the criminal process either viewed individually or viewed in their collective integrity (Griga 2016, 128).

Institutions that may be involved in case transfer procedures

The first of the institutions on which the procedure for case transfer can be applied is the court. A special case of transfer from one court to another is represented by the appointment of another court, a procedure that is only within the competence of the prosecutor, and the request for case transfer can only be introduced by him.

If the court rejects the prosecutor's request, and later new evidence emerges to strengthen the basis of the suspicion of bias, the prosecutor may file a new request for dismissal of another court to try the case (Olariu 2013, 121). If the court rejects the prosecutor's request and later new evidence emerges to strengthen the suspicion of bias, the prosecutor may make a new request for the dismissal of another court to try the case (Damaschin 2013, 234).

Another case of case transfer is when a criminal case moves from one prosecutor's office to another of the same rank and in the same constituency. This case can be assimilated with the transfer of the criminal case from one court to another, but in the case of the prosecutor's office it is necessary to have a reasonable suspicion that the criminal investigation activity is affected due to the circumstances of the case or the quality of the parties or main procedural subjects regarding the disturbance of public order (Radu 2012, 162).

In any case, the referral of the case to another prosecutor's office implies a prerogative of competence established by a hierarchically superior prosecutor's office than the one from which the case is moved and must aim at streamlining the ongoing criminal investigation activity at the lower hierarchical prosecutor's office (Radu 2020, 73).

The competence to prerogative the competence from one prosecutor's office to another, both being in the same rank, belongs to the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. The transfer of the case from one prosecutor's office to another is done in compliance with all the provisions regarding the transfer of the case from one court to another, namely, with the knowledge of the parties, the stage of the criminal investigation and others (Barbu 2016, 160).

The last way to transfer criminal cases is made from the Romanian state institutions to the European Prosecutor's Office by exercising by one of the subjects of criminal proceedings the right to evoke the EPPO (Udroiu 2019, 170). However, there are limitations to this right of evocation of the EPPO, namely that it can be invoked only on condition that no act of initiating criminal proceedings has been submitted to a Romanian Court, or there is no solution of riding or not suing at the moment when the right is evoked (Barbu 2016, 165).

Similarly, the right of summons must be exercised within a maximum of five days from the disclosure of the relevant information which requires its exercise, and if deemed necessary, only the Chief Prosecutor of the European Public Prosecutor's Office may request the extension of the term of maximum five days (Udroiu 2019, 171).

It is very important to note that the European Public Prosecutor's Office may be notified of the right to evoke even by the chief prosecutor of a prosecutor's office in the territory of a Member State, who wishes to exercise this right under the international conventions to which the State is a party member (Radu 2012, 168). Once the referral has been admitted, any other procedural acts performed by the national authorities, even in cases where such acts are urgently required, shall be struck down with absolute nullity under penalty of their annulment (Udroiu 2019, 172).

Conclusions

The procedure for case transfer from one court to another is a procedure designed to ensure the proper functioning and execution of the act of justice and to ensure public confidence in the realization of such an approach, in the absence of which the whole social organization could be shaken to its foundations.

In order to admit a request for the case transfer, two major aspects are taken into account, namely: the presence of reasonable suspicions regarding the bias of the judges of the court whose role is the case - a specific cause.

The suspicion of bias of judges may come from personal reasons related to them or from the quality of the parties in criminal proceedings.

The suspicion of disturbing public order may arise as a result of the mandatory transparency of the judge's decision-making regarding public opinion.

The procedures to be followed for the fulfilment and settlement of requests for case transfer actions require the analysis to be carried out on all levels of interest and the presentation of all the evidence necessary to prove the existence of the ground for which case transfer is requested.

The jurisdiction to resolve the case transfer request rests with the court hierarchically superior to the courts involved in the case transfer, but not below the Court of Appeal.

If the request for case transfer is accepted, all the procedural acts performed up to that stage will be transferred to the court competent to continue the trial.

There are similar procedures in case the criminal investigation is pending before the courts in the analysis phase of the preliminary chamber judge.

Similar procedures can be followed if the criminal case has not yet been brought before a court, but is in the phase of criminal prosecution. In this case, there is a special procedure for case transfer, extension of jurisdiction, from one prosecutor's office to another, this respecting the same obligations as the transfer of the case from the courts, with certain special features.

A special case of case transfer is the right to evoke the EPPO which involves the loss of the power to resolve criminal cases, for which this right is invoked by the Romanian authorities in favor of the European Prosecutor's Office, but only with respect to certain strict conditions such as would be the five day period within which this right can be exercised, the postponement by a maximum of five days before the deadline provided for at the request of the Chief Prosecutor of the European Public Prosecutor's Office and the absence of any prosecution or any solutions Right.

References

- Barbu, D. 2016. *Criminal Procedural Law. General Part*. Bucharest: Lumen Publishing House.
- Buneci, B. 2020. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Ciopec, F. 2021. *Criminal Procedural Law. General Part*. Bucharest: C. H. Beck Publishing House.
- Coca, G. 2014. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Crișu, A. 2021. *Criminal Procedural Law. General Part*. Bucharest: Hamangiu Publishing House.
- Damaschin, M. 2013. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Gheorghită, M. 2019. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Griga, I. 2016. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Neagu, I. 2022. *Seminar Courses. Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Neagu, I., and Damaschin M. 2020. *Criminal Procedure Treaty. General Part*. Bucharest: Universul Juridic Publishing House.
- Olariu, M. 2013. *Criminal Procedural Law. General Part*. Bucharest: PRO Universitaria Publishing House.
- Olariu, M., and Marin C. 2017. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Poiană, I., and Păcurariu I. 2014. *Criminal Procedural Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Radu, G. 2012. *Criminal Procedural Law. General Part*. Bucharest: C. H. Beck Publishing House.
- Radu, M. 2020. *Courts and Prosecutor's offices Organization. The status of magistrates*. Bucharest: PRO Universitaria Publishing House.
- Szabo, I. 2018. *Criminal Procedural Law. General Part*. Bucharest: PRO Universitaria Publishing House.
- Udoriu, M. 2021. *Criminal Procedure Sheets. General Part*. Bucharest: C. H. Beck Publishing House.
- Udoriu, M. 2019. *Criminal Procedure Sheets. General Part*. Bucharest: C. H. Beck Publishing House.