



## Do we Need in Procedural Institutions of the “Appeal after the Deadline” in Criminal Proceedings?

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**Abstract:** In this paper the legal norms were examined and judicial practice was studied with regard to institutions in criminal proceedings, such as declaring the appeal out of time and resuming the examination of a criminal case in the case of trying a person convicted in absentia. With the introduction of the new extraordinary remedy, i.e. the resumption of the examination of a criminal case according to Section 3 of Chapter V, Title II, Chapter V of the Criminal Procedure Code of the Republic of Moldova<sup>3</sup> [1], in the case of the sentenced person's trial in absentia, a situation of inapplicability of the procedural institution - the appeal out of time is created. Thus, the scientific substantiation of the manner of practical application of the legal norms on the above mentioned procedural institutions and, respectively, the need to continue to preserve in the criminal procedural law the provisions on the appeal beyond the deadline, is the important scientific problem contained in the paper. Through the given study we wish to provoke further analysis and discussion on the topic.

**Keywords:** criminal proceedings; amendments; re-examination of the case; appeal out of time

### Introduction

The appeal after the deadline, one of the criminal procedural institutions, it is a procedural remedy as the reinstatement. Its means by which a litigant, who having no knowledge of either the judgment or the judgment rendered, who lost the right to appeal, has the possibility to submit to the control of the hierarchically superior court, the court of appeal, the decision of the first court which he does not agree. At

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<sup>3</sup> The Code of Criminal Procedure of the Republic of Moldova. No. 122-XV of March 14, 2003. Republished in: Monitorul Oficial al Republicii Moldova, 05.11.2013, no.248-251 (699).



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the basis of regulation of the appeal after the deadline there is the concern to give to the parties judged in absentia and subject to the execution of the judgment in the criminal or civil side, an additional possibility to appeal this decision, even if after the expiration of the appeal period which corresponds both to the particular interest of the party and the general interest that the truth should prevail and that the law should be respected (Iuga, 2000, pp. 35; 16-17, 83; 88-89)

A new extraordinary appeal was introduced in the Code of Criminal Procedure of the Republic Moldova (further in the text – CCP RM), in Section 3 of Chapter V of Title II, art.465<sup>5</sup>-art.465<sup>8</sup>, by Law no. 189 of July 14, 2022 [12, art.I §.18].

Resumption of the examination of the criminal case in the case of the trial in the absence of the convicted person stipulates that, the person tried and convicted in his absence can submit a request to resume the examination of the criminal case within 30 days from the date on which he was informed of the court's decision, against his signature. The examination of the criminal case can be resumed if: a) the convicted person don't was informed about the criminal trial and was justifiably absent from the trial of the case; b) the convicted person did not have a chosen defender who participated in the trial of the case in the first instance; c) the convicted person, being informed about the conviction, filed an appeal and did not withdraw it; d) the convicted person did not request that the case be tried in his absence. The request to resume the examination of the criminal case is submitted in person or through a lawyer to the court that last ruled on the merits of the case.

This extraordinary remedy was instituted as a compensatory guarantee to the person tried and convicted in absentia with respect for the right to a fair trial, the right to defense, to an adversarial trial by presenting the dates and information to the judicial institutions that may reveal new aspects regarding the state of facts about the subject of the case<sup>1</sup>.

## **Applied Methods and Materials**

When writing the article, the following methods were used: analysis, synthesis, the comparative method. In the present article were used the relevant normative acts and scientific publications.

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<sup>1</sup> Informative note to the draft law for the amendment of some normative acts (criminal prosecution and trial of the case in the absence of the person. No. 213 of June 2, 2022, available on <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6040/language/ro-RO/Default.aspx>, accessed on November 21, 2023, pp. 20-22.

## Results Obtained and Discussions

The law obliges the appellate court in each case to ascertain the reasons for filing the appeal after the deadline and to examine the issue of resubmitting the appeal within the time limit<sup>1</sup>.

The participant in the trial who was absent both at the trial and at the sentencing and don't was informed about the adoption of the sentence may declare an appeal even after the deadline, but not later than 15 days from the date of the start of the execution of the sentence or the collection of material compensation [1, art. 404]. If the court of appeal found that the deadline for declaring the appeal was exceeded for good reasons and the appeal was submitted in during 15 days after the start of the execution of the sentence or the receipt of the material damage, then the declared appeal will be considered as filed within the deadline<sup>2,3</sup>.

In case the appellant submitted the application after the deadline then the appellate court must examine this matter with the adoption of the decision on the rejection of the appeal as filed out of time. The appeal and the criminal case are not examined in the order of appeal, because the referral to the appeal court did not take place in accordance with the law<sup>4</sup>.

Through a decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova it was found that the court of appeal correctly dismissed the appeal stated by N.C. as submitted after the deadline, just found that the convict, who was sentenced on 26.12.2008, and later, on 15.01.2009, he received a copy of the sentence. The condemned person and his defendant attorney didn't appeal the sentence, proving that they agree with it, with the qualification of the act and with

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<sup>1</sup> The Decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova from 13.10.2004. File no. 1ra-734/2004. In: Buletinul Curții Supreme de Justiție al Republicii Moldova, 2005, №1, p. 26

<sup>2</sup> The Decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova from 26.10.2004. File no. 1ra-695/2004, available on [http://jurisprudenta.csj.md/archive\\_courts/cauta/index2.php](http://jurisprudenta.csj.md/archive_courts/cauta/index2.php), accessed on November 21, 2023.

<sup>3</sup> The Decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova from 26.05.2004. File no. 1ra-427/2004. In: Arhiva Curții Supreme de Justiție al Republicii Moldova, available on [http://jurisprudenta.csj.md/archive\\_courts/cauta/index2.php](http://jurisprudenta.csj.md/archive_courts/cauta/index2.php), accessed on November 21, 2023.

<sup>4</sup> The Cahul Court of Appeal decision of 30.11.2016. File no.05-1a-440-22042016, available on [https://cach.instante.justice.md/apps/pdf\\_generator/base64/create\\_pdf.php](https://cach.instante.justice.md/apps/pdf_generator/base64/create_pdf.php), accessed on November 21, 2023

the punishment applied. The appeal was declared on 16.03.2009, long after the deadline for its declaration provided for by art. 402 CCP of RM had expired<sup>1</sup>.

The court of appeal judging the case in order of appeal, rejects the appeal, if it was submitted after the deadline according to the provisions of art. 415, para. (1), pnt.1), let.a) CCP RM. the court of appeal do not examine the legality and merits of the appeal in these situations, and not examining the facts and law of the contested decision. There is no verification of the merits of the case when the appeal is rejected as filed beyond the deadline, and the sentence remains final when the appeal deadline expires<sup>2</sup> (Osoianu & Calendari, 2023, pp. 53-54)

In one case, C.G. was convicted for committing the incriminated crime by the sentence of the Rîșcani Court of 30.06.2009. The defendant appealed only on 01.03.2010, disagreeing with the sentence, requesting its annulment, a retrial of the case and a new judgment of acquittal. The appeal declared by the defendant C.G. it was rejected as submitted out of time by the decision of the Bălți Court of Appeal of 21.04.2010. The convicted C.G. challenged the court decisions with the ordinary appeal, based on art. 427, para. (1), pnt. 5) CCP RM... The Court of appeal noted that the defendant filed the appeal more than half a year after the entry into force of the sentence ... The convicted person missed the legal deadline and did not request the reinstatement of the deadline citing the reasons for the omission<sup>3</sup>.

If the appellant makes a request for reinstatement within the deadline, the court cannot reject the appeal as late before ruling on the request for reinstatement within the deadline. The omission to express an express opinion on the settlement of the request cannot be supplemented in the reasoning of the decision, being grounds for annulment (Pamfil, Movileanu, & Munteanu, 2008, pp. 99-100).

In the correct application of procedural rules Another matter that can create problems and confusion, is related to the introduction on July 26, 2022 of a new extraordinary appeal - the procedure regarding the resumption of the examination

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<sup>1</sup> The Decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova from 08.07.2009. File no. 1ra-859/2009. In: Arhiva Curții Supreme de Justiție a Republicii Moldova, available on [http://jurisprudenta.csj.md/archive\\_courts/cauta/index2.php](http://jurisprudenta.csj.md/archive_courts/cauta/index2.php), accessed on November 21, 2023, para. 6.

<sup>2</sup> The Code of Criminal Procedure of the Republic of Moldova. No. 122-XV of March 14, 2003. Republished in: Monitorul Oficial al Republicii Moldova, 05.11.2013, no.248-251 (69).

<sup>3</sup> The Decision of the Criminal Board of the Supreme Court of Justice of the Republic of Moldova from 06.10.2010. File no. 1ra-944/2010. In: Arhiva Curții Supreme de Justiție a Republicii Moldova, available on [http://jurisprudenta.csj.md/archive\\_courts/cauta/index2.php](http://jurisprudenta.csj.md/archive_courts/cauta/index2.php), accessed on November 21, 2023, pnt.1, 3, 4, 6.1.

of the criminal case in the case of the trial in the absence of the convicted person, in accordance with Section 3 of Chapter V of Title II of the CCP RM.

Thus, *the appeal after the deadline* involves the situation when the participant in the process who was absent both at the trial and at the pronouncement of the sentence and was not informed about the adoption of the sentence. The trial participant can file an appeal after the deadline, but no later than 15 days from the date of the start of the execution of the sentence or the collection of material compensation<sup>1</sup>.

In the situation of submitting *the request regarding the resumption of the examination of the criminal case*, the person tried and convicted in his absence can submit a request for the resumption of the examination of the criminal case within 30 days from the date on which he was informed of the court decision of judgment, against signature. Certain conditions must be met: a) if he was not informed about the criminal process and was justifiably absent from the trial of the case; b) if he did not have a chosen lawyer who participated in the trial of the case in the first instance; c) if he did not appeal or withdrew his appeal after being informed of the conviction; d) if he did not request to be tried in his absence<sup>2</sup>.

Same situations may arise when the person tried and convicted in his absence does not file an appeal within 15 days from the start of the execution of the sentence, but uses his right to re-examine the criminal case for which the application period of 30 days from the date of notification of the court decision is provided. In addition, the person also has the right to request the resumption of the examination of the case within a period of up to 3 months from the date of notification of the court decision, with valid reasons for the delay in submitting the respective request. Of these two procedures, the second one is more favourable to the defendant, which provides for longer terms.

In this case, the provisions referring to the *appeal after the deadline* are to be excluded from the law as was done in Romania.

The party that was absent both at all court deadlines and at the pronouncement had the possibility to file an appeal even after the deadline according to art. 365, para. (1) of the CCP of Romania from 1968, but not later than 10 days from the date of the start of the execution of the sentence or the start of the execution of the provisions on civil compensation<sup>3</sup>.

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<sup>1</sup> The Code of Criminal Procedure of the Republic of Moldova. No. 122-XV of March 14, 2003. Republished in: Monitorul Oficial al Republicii Moldova, 05.11.2013, art. 404, para. (1).

<sup>2</sup> The Code of Criminal Procedure of the Republic of Moldova. No. 122-XV of March 14, 2003. Republished in: Monitorul Oficial al Republicii Moldova, 05.11.2013, art. 465<sup>5</sup>

<sup>3</sup> The Code of Criminal Procedure of Romania of November 12, 1968. In: The Official Bulletin of Romania, 12.11.1968, no. 145-146. Republished in: The Official Monitor of Romania, Part I,

In the current regulation of the Code of Criminal Procedure in Romania, the institution of the *appeal after the deadline* has been abandoned, considering the introduction of a new extraordinary appeal which consists in *the reopening of the criminal process in the case of the judgment in absentia of the convicted person*<sup>1</sup>.

## Conclusions

The criminal procedural law of the Republic of Moldova stipulates two procedural institutions - *the appeal after the deadline* and *the resumption of the examination of the criminal case in the case of the trial in the absence of the convicted person*, which stipulate different application deadlines, but according to their meaning, they are similar.

From the analysis carried out, the procedure for resuming the examination of the criminal case is more favourable for the convicted person, because the examination of the case on the merits is resumed with the possibility of a new decision, susceptible to appeal, as well as the application deadline is doubled.

We believe that the provisions referring to *the appeal after the deadline* should be excluded from the law.

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