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BODEAN Valeriu

THEORETICAL AND PRACTICAL ASPECTS OF THE RESUMPTION OF CRIMINAL PROSECUTION

Specialty 554.03-Criminal Procedural Law

SUMMARY
of the PhD thesis in law

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Doctoral committee:
President Igor DOLEA, *PhD in law, University Professor, USM*
PhD supervisor Tatiana VIZDOAGĂ *PhD in law, associate professor, USM*
Reviewer 1 Alexei BARBĂNEAGRĂ *PhD in law, University Professor, ULIM*
Reviewer 2 Artur AIRAPETEAN *PhD in law, associate professor, USEM*
Reviewer 3 Dumitru ROMAN *PhD in law, associate professor, USM*

The thesis will be defended on May 31, time 10:00, in front of Doctoral committee of Doctoral School of Legal and Economic Sciences, State University of Moldova, address: State University of Moldova, bl. II, office no. 119, M. Kogalniceanu street, no.67, Chisinau municipality, Republic of Moldova, MD 2009.
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The summary was sent on April 26, 2024.

President of Doctoral committee
Igor DOLEA, *PhD in law, University Professor, USM*
_____

PhD supervisor
Tatiana VIZDOAGĂ *PhD in law, associate professor, USM*
_____

Author:
Valeriu BODEAN
_____

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CONCEPTUAL LANDMARKS OF RESEARCH

Timeliness and importance of the topic addressed. With the adoption of the Constitution, on July 29, 1994, the Republic of Moldova proclaimed itself to be a democratic rule of law, in which the dignity of man, his rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and are guaranteed (art. 1 Para. (3)of the Constitution)[1].

Starting from the desire to build a democratic state, in which the rule of law, civic peace, democracy, human dignity, his rights and freedoms, the free development of human personality, justice and political pluralism are supreme values, the authors of the Constitution stipulated, in art. 4 para. (1), that the constitutional provisions on human rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which the Republic of Moldova is a party.

These goals are a natural consequence of our country's adherence to the Universal Declaration of Human Rights, which was achieved by the Decision of the Supreme Soviet of the Moldovan SSR, No. 217/1990, adopted before the proclamation of the independence of the Republic of Moldova.

Subsequently, by the decision of the Parliament of the Republic of Moldova no. 522 of July 12, 1995, the Statute of the Council of Europe was ratified, which created the platform for the ratification of the European Convention for the protection of Human Rights and fundamental freedoms, as well as the additional protocols thereto, which was achieved by the adoption of the respective decision of the Parliament on July 24, 1997[2].

The accession of the Republic of Moldova to these international acts was a point of no return during the integration into the International Space and, in particular, the European one, in order to achieve the goal of obtaining a full member status of modern civilization.

Following the efforts made by the Republic of Moldova to comply with the requirements of the European Union, starting from the aspiration of our country to follow the european path and to become a component of that unique partnership, on June 27, 2014, between the Republic of Moldova, on the one hand, and the European Union and the member states, on the other, the association agreement was signed[3], our country obliging itself, in accordance with the provisions of art. 1 Para. (2) let. e) of the agreement,"...to support and enhance cooperation in the area of freedom, security and justice, with the aim of strengthening the rule of law, and respect for Human Rights and fundamental

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freedoms, as well as with regard to mobility and interpersonal contacts", and through the provisions of art. 2 para. (1), The Republic of Moldova has made the commitment, according to which it must "...to ensure respect for democratic principles, human rights and fundamental freedoms as proclaimed in the Universal Declaration of human rights and defined in the European Convention for the protection of human rights and fundamental freedoms". Last but not least, the provisions of art. 12 Para. (1) of the Agreement, which establish that "in the framework of cooperation in the area of freedom, security and justice, the parties attach particular importance to the promotion of the rule of law, including the independence of the judiciary, access to justice and the right to a fair trial". No less important, in the context of the indisputable obligations, the realization of which was assumed by the Republic of Moldova, are those contained in par. (3) of the same article of the agreement, namely: "...respect for Human Rights and fundamental freedoms will guide all cooperation activities in the field of freedom, security and Justice".

Protocol no. 7 to the Convention, signed in Strasbourg on November 22, 1984, establishes, in art. 4, prohibition for the contracting states to judge and punish the person twice for the same act, by guaranteeing the appropriate right.

From these reasoning, the aspects regarding the powers of the authorities in the field of promoting criminal policy, in relation to the rights enjoyed by subjects subjected to repressive and/or punitive procedures in connection with criminal charges, generate detailed discussions and research. However, national jurisprudence in the field cannot be ignored.

If we start from the problems that have arisen during the resumption of repressive proceedings that have already been completed, we must also take into account the opinions of established authors, formulated not only on the grounds, procedure, subjects, deadlines for the actual resumption of those activities, but also on the axiomatic basis of the institution of the resumption of criminal proceedings. And the object of scientific investigations, on this dimension, is found, directly or indirectly, in the works of researchers: I. Dolea, T. VIZDOAGA, T. Osoianu, V. Rusu, B. Lichii, D. Ostavciuc, A. Crisu, V. Dongoroz, S. Kahane, G. Antoniu, C. Bulai, N. Iliescu, R. Stanoiu, Gr. Theodoru, N. Volonciu, I. Neagu, M. Damaschin, I. Doltu, L. Lefterache, C. Stoica, M. Udroiu, N. Jidovu, Gh. Mateut, L. Criste, M. Toader, E. Martincic, P. Andrusco, M. Botocova, A. Davletov, V. Zolotah, V. Camisin, N. Chipnis, V. Cudreavtev, N. Cuznetov, A. Larin, E. Markina, Iu. Melnicov, I. Mihailovscaia, N. Sibileva, A. Stroicova, A. Urgalchin, R. Garraud, G. Levasseur, C. Mueller, Ch. Pelermam, P. Pichard, J. Pradel and so on

We note, however, that the studies carried out, although the topic is part of the series of topics of national and international concern, are not devoted exactly to the problem of resumption of criminal prosecution, as they are addressed in this paper, referring, in particular, to the characterization of the principle *non encore in idem*, when reopening the criminal process after

issuing irrevocable judgments or when analyzing the international practice formed following the examination of cases, in which violations of the right not to be prosecuted or tried several times for the same act were claimed. The studies in question, however, did not eliminate the existing problems in the process of interpreting and applying the respective provisions, but, on the contrary, highlighted their persistence, generating discussions and polemics, especially on the aspect of extending the procedural and territorial action of the principle *non encore in idem*. The current work is an attempt to present the author's opinion on the issues related to the institution of resumption of criminal prosecution, issues discussed by both theorists and litigants and litigants involved in jurisprudence.

Purpose of the work it consists in carrying out an in-depth and multi-factual study of the institution of resumption of criminal prosecution, in accordance with the right of the person not to be prosecuted and tried twice for the same criminal act, and, in connection with these, in revealing the problems arising on the occasion of reopening of criminal proceedings completed by adopting solutions of non-referral to trial of criminal cases, as well as in formulating proposals for solving the revealed problems.

Research objectives target:

- studying the essence and applicability of the principle *non encore in idem* through the prism of its reflection in the National Law, in the international acts to which the Republic of Moldova is a party, but also on the basis of national and international jurisprudence in the field;
- investigation of the institution of resumption of criminal prosecution after removal of the person from prosecution, after termination of criminal prosecution and / or closure of the criminal trial;
- to reveal the reasons and grounds for reopening criminal proceedings completed at the prosecution stage;
- establishing the circle of subjects, empowered with the right to resume criminal prosecution, delimiting their attributions, depending on the moment of intervention in assessing the legality and thoroughness of the procedural acts under control;
- addressing the incidence of the principle *non encore in idem* situations in which the criminal process was temporarily suspended, without issuing decisive solutions;
- establishing the factual situation in the case of resumption of criminal prosecution, highlighting the solutions given after the resumption of criminal prosecution;
- analysis of doctrinal opinions on the institution of resumption of criminal prosecution;
- identification of situations in which the resumption of criminal prosecution cannot be ordered, starting from the prohibition imposed by the principle *non encore in idem*;

- research of the phrases "new facts" and "newly discovered facts", of the manner in which they can be ascertained, in order to be accepted by the subjects vested with the procedural levers of resuming the criminal prosecution;
- appreciation of the sufficiency and efficiency of the current National Criminal Procedure regulations, in the segment of resuming criminal prosecution, in balance with the enforcement of fundamental human rights, but also with the positive obligation of state agents to achieve the purpose of the criminal process;
- formulating conclusions and recommendations for improving and streamlining the mechanism of resumption of criminal prosecution after issuing decisions to stop – final or temporary – the criminal investigation activity.

Important scientific problem solved in the field of research it consists in adjusting the procedural tools used when the criminal prosecution is resumed after its termination on various grounds, which prompted some clarifications-for doctrinaires and practitioners - actors of the criminal process-of the concepts and concepts applied in situations where interference takes place in the right of persons not to be subjected to repeated prosecutions, in an attempt to improve theoretical approaches and to argue *the lege ferenda (law ferenda)* formulated in the work.

Research hypothesis. The starting point of the research is, undoubtedly, the principle *non encore in idem*, as it is viewed in national and international theory and practice, in a permanent process of evolution, with the inclusion of justification among the fundamental rules of contemporary law. The Criminal Procedure Law, although it expressly indicates the grounds for the resumption of criminal prosecution, after the removal of the person from prosecution, after the termination of criminal prosecution and / or the classification of the criminal process, also establishing the circle of subjects empowered to intervene in a solution of not sending the case to court, leaves without regulations the notions *new facts*, *newly discovered facts*, but also the procedural form of acquiring, fixing and administering information that could be catalogued as such. Also, there are some legislative gaps regarding the situations of resumption of criminal prosecution, after this procedural activity had been put on pause, without a definitive resolution of the criminal case.

Synthesis of the research methodology and justification of the chosen research methods. In order to identify the theoretical landmarks of the study, the general dialectical scientific method was used, as well as some particular methods of scientific research, namely: statistical, historical, comparative and logical, being designed on the legal field. In the chain of specific research methods, which were used in the study, the methods include: analytical, synthesizing, inductive and deductive.

In turn, the results of research (speculative and empirical) are found in *General conclusions*, followed by some recommendations, formulated on the basis of those findings, with the role of concluding the string of judgments made.

The speculative (theoretical) foundation of the thesis is formed, for the most part, by the formulations of the normative and recommendation texts of a constitutional nature and of Criminal Procedure, contained in the Constitution, in the laws of the Republic of Moldova, in the decisions and judgments of the Constitutional Court, in the explanatory decisions of the plenum of the Supreme Court of Justice of the Republic of Moldova, if we refer to the national field. Beyond the internal institutional framework, the paper comes to highlight once again the legal standards – unanimously recognized internationally – regarding the protection of fundamental human rights. This includes, as a matter of priority, the ECHR regulations and the case law of the ECtHR, which was developed following the examination of cases involving both the Republic of Moldova and other Council of Europe member states.

In the process of drawing up the work was subjected to an analysis, especially comparative, how the principle is regulated *non encore in idem* and, respectively, the institution of resumption (reopening) of criminal prosecution in the countries of the immediate vicinity (Romania, Ukraine), but also in other countries, such as the Russian Federation, the Federal Republic of Germany, etc. Namely the comparison provided the opportunity to identify differences in the treatment of the person at risk of being repeatedly charged for one and the same offense.

The empirical coordinates, in which the conducted study falls, are represented by the case law of the ECtHR and of the national courts. Therefore, 167 cases examined by investigating judges were studied, as a result of the submission of complaints related to the resumption of criminal prosecution, as well as statistical data reported by the prosecutor general's office. Last but not least, in the elaboration of the paper, the personal professional experience of the author, accumulated in the 23 years of activity in the field of criminal law and criminal process (Prosecutor, Superior hierarchical prosecutor, lawyer), was also capitalized.

Publications on the topic of the thesis. On the topic of the doctoral thesis 9 scientific papers were published.

Volume and structure of the thesis: 191 pages basic text that includes: introduction, three chapters, general conclusions and recommendations, bibliography of 408 titles; statement of responsibility; CV of the author.

Keywords*:* principle *non encore in idem*, resumption of criminal prosecution, new and newly discovered facts, prosecutor, higher hierarchical prosecutor, investigating judge.

THESIS CONTENT

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In the process of drawing up the work was subjected to an analysis, especially comparative, how the principle is regulated *non encore in idem* and, respectively, the institution of resumption (reopening) of criminal prosecution in the countries of the immediate vicinity (Romania, Ukraine), but also in other countries, such as the Russian Federation, the Federal Republic of Germany, etc. Namely the comparison provided the opportunity to identify differences in the treatment of the person at risk of being repeatedly charged for one and the same offense.

The empirical coordinates, in which the conducted study falls, are represented by the case law of the ECtHR and of the national courts. Therefore, 167 cases examined by investigating judges were studied, as a result of the submission of complaints related to the resumption of criminal prosecution, as well as statistical data reported by the prosecutor general's office. Last but not least, in the elaboration of the paper, the personal professional experience of the author, accumulated in the 23 years of activity in the field of criminal law and criminal process (Prosecutor, Superior hierarchical prosecutor, lawyer), was also capitalized.

Chapter 1, called ***Analysis of the situation in the field of research***, comprises a review and analysis of scientific material on the approach to the principle *non encore in idem*, at the institution of the resumption of the criminal investigation itself, pointing out some general aspects regarding the subjects, grounds and manner of resumption of criminal proceedings. The examination of the polemics on the object of research is carried out successively, logically, starting from the Prohibition of repeated prosecution of the person, with highlighting the attitude of the established authors towards the place and role of the institution of resumption of criminal prosecution in the system of procedural-Criminal Law, which gave us the opportunity to *non encore in idem* it is seen as a fundamental principle of law, and secondly, that the resumption of criminal prosecution is nothing more than a procedural institution with all the inherent characteristics. The above findings are derived from the content of a series of papers, elaborated by authors from the Republic of Moldova and other states, such as: I. Dolea, T. VIZDOAGA, T. Osoianu, V. Rusu, B. Lichii, D. Ostavciuc, A. Crisu, V.

Dongoroz, S. Kahane, G. Antoniu, C. Bulai, N. Iliescu, R. Stanoiu, Gr. Theodoru, N. Volonciu, I. Neagu, M. Damaschin, I. Doltu, L. Lefterache, C. Stoica, M. Udroiu, N. Jidovu, Gh. Mateut, L. Criste, M. Toader, E. Martincic, P. Andrusco, M. Botocova, A. Davletov, V. Zolotah, V. Camisin, N. Chipnis, V. Cudreavtev, N. Cuznetov, A. Larin, E. Markina, Iu. Melnicov, I. Mihailovscaia, N. Sibileva, A. Stroicova, A. Urgalchin, R. Garraud, G. Levasseur, C. Mueller, Ch. Pelermam, P. Pichard, J. Pradel and so on

As a natural consequence, the level of investigation of the subject of the thesis was identified, as well as the scientific contribution of the existing studies, with the formulation of the scientific problem to be solved and the ways to solve it.

We found that the formulation and interpretation of the principle *non encore in idem* by different authors, however, it has specific nuances, as well as opinions about the place and functions of the institution of resumption of criminal prosecution and the criminal process as a whole, about the grounds and reasons for the application of this procedural instrument, in the conditions of ensuring a fair balance between the public interest, on the one hand, and the rights of persons subjected to repressive procedures, on the other.

We note that the absolute majority of authors do not dispute the importance of the rule *non encore in idem*, having different views on the scope of extension of this principle – both in procedural aspect and in terms of sovereignty of states.

Subsequently, the authors operate with notions determined by the National specificity of criminal proceedings, when they find the need to remedy a defective activity by starting it repeatedly.

Most of the authors support the opinion that the reopening (resumption) of a prosecution can take place only after the discovery of new or newly discovered circumstances, starting from the need to accept and recognize a previous judgment, which ensures the realization of the pre-eminence of law. At the same time, the content of those circumstances that may lead to the resumption of criminal proceedings, as well as the manner in which such circumstances may be established and administered, is questionable.

Chapter 2, entitled ***Characteristic of the grounds for resumption of criminal prosecution,*** includes considerations on the essence and content of the rule *non encore in idem* the origin and evolution of this principle, the way it is reflected in the National Law of the Republic of Moldova, in the law systems of other states, but also at the international level. The limits of the action of the prohibition to prosecute and, respectively, to repeatedly judge a person for one and the same offense are analyzed, being ascertained both the temporal boundaries of reopening of repeated procedures and the subtleties of the protection of the person, depending on the nature of the violation of the law – be it criminal, contravention (administrative), financial or disciplinary. On this dimension, an important role is played by the practice of international courts and, first of all, the practice of the

ECtHR, but also by national jurisprudence, which tends to conform to the standards imposed by protocol 7 to the Convention. It reveals the already constant practice of the European Court when examining complaints about the violation of the person's right not to be prosecuted several times for one and the same act, but also the internal attempts of the national jurisdictions to limit the said right under the slogan of the need to ensure the rule of law and achieve the purpose of the criminal process.

With regard to the grounds for the resumption of criminal proceedings, as laid down in national criminal procedural law and in the ECHR, they have a different connotation. Apparently, it is clear that when new circumstances or newly discovered circumstances are found, it is necessary to reopen a criminal procedure, taking into account the principle of equity, which is the cornerstone for a Democratic justice. And, in this context, it is not necessary to take into account the favourable or unfavourable nature of the consequences of relaunching the procedure for the data subject previously subject to prosecution. On the other hand, the notion of *fundamental vice,* which affected the previous ruling, although it is clearly defined in art. 6 pp. 44) C. pr. pen, – *essential violation of the rights and freedoms guaranteed by the convention for the protection of Human Rights and fundamental freedoms, other international treaties, the Constitution of the Republic of Moldova and other national laws*[7] - it's a debatable one, though. The strict interpretation of the quoted text of the law induces the idea that fundamental Vice would have generated unfavorable consequences for the person previously accused of a crime, and the reopening of the procedure is meant to remove those consequences. But we try to look more broadly at the sphere *vice,* putting among potentially unjust persons and victims of crime, but also the state, which is meant to ensure the respect of the rights and freedoms of its citizens, by adopting laws, instituting the necessary guarantees and intervening promptly and effectively, through its competent institutions, in order to restore the rights of injured persons, regardless of the procedural platform on which they are (defense or prosecution).

Returning to the new and newly discovered circumstances, I noticed that the normative definition of these circumstances is completely missing, the disclosure of the contents of the notions being discussed being made by the Supreme Court of Justice and the Constitutional Court, but the definitions with which it operates here do not make a clear distinction between the two phrases, and this is because the effects of their occurrence are similar.

Certainly, however, the manner of finding, checking, appreciation and administration of the circumstances we are discussing must be carried out in a procedural framework, through the evidentiary means provided in art. 93 of the code of criminal procedure

In Chapter 3, with the generic ***Procedure for resuming and challenging the resumption of criminal prosecution,*** it contains an analysis of the functional competences of the subjects vested

[7] Code of Criminal Procedure of the Republic of Moldova, no. 122 of March 14, 2003. In: *The Official Gazette of the Republic of Moldova* no. 248-251, art. 699, as amended and supplemented.

with the right to resume a discontinued procedure, as well as to subject a rigorous control to the thoroughness of the intervention made by these procedural actors in final decisions already ordered.

We established that the prosecutor who had ordered a solution to remove the person from criminal investigation, to terminate the criminal investigation or to close the criminal case is not entitled to review his decision, even if he himself subsequently established the existence of grounds for resuming the criminal investigation. It is obvious the essential difference from the cases in which the prosecutor can cancel his own decision, when he ordered the closing of the criminal process, with the refusal to start the criminal investigation, according to the provisions of art. 274 of the code of criminal procedure

We consider that the reasoning for which the so-called prosecutor of the case is deprived of the possibility of reopening a procedure carried out after overcoming the stage of starting and carrying out the criminal investigation, consists in the need to establish an additional guarantee for the person previously charged, without judicial finality. The interference of the superior prosecutor implies a prior control of the procedural work carried out in the criminal case, with the use of the levers provided for in art. [531] of the Criminal Procedure Code, the chief prosecutor having the role of an observer of the prosecutor's activity, who must act independently and only in accordance with the provisions of art. 101 Criminal Procedure Code, when solving a criminal case.

At the same time, the current legislative regulation of the institution of resumption of criminal prosecution after removal of the person from prosecution, termination of criminal prosecution or classification of the criminal case gives greater possibilities to the superior prosecutor, compared to the investigating judge, in terms of his intervention in cases already solved by non-referral to court[8].

In turn, the investigating judge, acting as evaluator of the procedures carried out, pursuant to the provisions of art. 313 Code of criminal procedure, is not related to the procedural opinions of the prosecutor and of the superior hierarchical prosecutor, the magistrate having full powers to cancel the procedural acts by which the procedural activities were stopped and to order the resumption of criminal prosecution, when the legal grounds are found.

At the same time, the investigating judge is meant to cancel an order to resume the criminal investigation, having the possibility and obligation to check the actions of the hierarchically superior prosecutor, in relation to the materials of the criminal investigation, and to end a repeated prosecution of the person, in terms of compliance with the rule *non encore in idem.*

But also the appointed magistrate (or, more recently, specialized) with the attributions of investigating judge is not regarded by the legislator as a last resort to give a final verdict on a decision

[8] BODEAN, V., *Delimitation of the powers of the subjects vested with the right to resume criminal prosecution.* In: National Magazine of Law, no. 7-9 (225-227), Chisinau, 2019, p. 116

not to send a case to the court, his acts being also, possibly, subject to a check by the Court of Appeal, under the conditions established in art. 313 para. (6) Code of criminal procedure, with appropriate application of the procedural provisions governing the examination of Appeals.

People who can challenge a decision not to send the person and/or the case to court or, conversely, a decision to annul such a decision, given its procedural quality, have not been left without attention. If, with regard to the victim/injured party, to her lawyer, when challenging an order to remove from criminal investigation, to terminate criminal prosecution or to close the criminal case, things are sufficiently clear, a major interest is the situation when an order to cancel a decision to close the criminal case is challenged by a person who, in essence, would be the one who should have been charged, but who, when prosecuting, was not notified of a criminal charge and who, accordingly, was not heard on the case.

In such a situation, the person, in respect of whom certain criminal charges have been filed by the person who notified the criminal investigation body, is placed in the category of "interested persons", being summoned at the court hearing, with the possibility to state his position. In substance, it is nothing more than a hearing, although it is not clearly identified the procedural quality of the respective person, who, when prosecuting, should be heard from the position of suspect, after the recognition of such quality and with the prior explanation of the rights and obligations, provided for in art. 64 Code of criminal procedure.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a consequence of the scientific approach carried out, the existing scientific problem regarding the creation of clear and certain guarantees to avoid unjustified resumption of criminal prosecution was solved, concluded by the final non-submission of the criminal case to the court, that is, by the adoption of decisive decisions of prosecutors, which put an end to a criminal investigation. The Criminal Procedure Law proposes, on the one hand, too much discretion to the superior hierarchical prosecutor for interference in the solutions given by the lower prosecutors, the control of the legality of the actions of the chief prosecutor being made dependent on challenging them. And such a situation raises the risk of repeated abusive prosecutions.

The study determined the settlement ***important scientific problem in the field of research,*** which includes the elaboration of the package of processual tools, necessary for strengthening the perception and realization of the principle *non encore in idem* in national jurisprudence, *what led* to eliminate some uncertainties – theoretical and practical-regarding the grounds and procedure for the resumption of criminal prosecution, as well as the verification of the legality and thoroughness of the application of this instrument, *for the purpose of optimization* the criminal procedural doctrine on the

institution of resumption of criminal prosecution by formulating and argumenting proposals *the lege ferenda*.

The important scientific issue addressed in the paper was revealed through ***conclusions*** made on the basis of *research hypothesis* this being, in particular:

1. Principle *non encore in idem,* although it is not formulated exactly, it is the one that governs the way in which criminal repressive activities can be carried out after the final resolution of a case of criminal prosecution of the person (Chapter 2, subchapter 2.1.).

2. The grounds for the resumption of criminal prosecution, as they are currently formulated in the text of the code of criminal procedure, can create confusion, detailing the facts *we,* by the existence of the current phrase *newly discovered* being unnecessary, this constitutes part of the primary generic notion. (Chapter 2, Subchapter 2.2.).

3. *Fundamental vice* as a basis for the resumption of criminal prosecution, it must be recognized and applied also when the actual victim of the crime is not identified, the object of the criminal attack being the formal values, the protection of which is the responsibility of the state as a political-legal entity that undertakes the commitment to protect the rights and freedoms of its citizens and other persons living within its territorial limits (Chapter 2, Subchapter 2.2.).

4. The current regulations of the Code of Criminal Procedure leave room for violation of the rule *non encore in idem*, creating some prerequisites for interference – intentional or involuntary, individual or systemic (Chapter 2, Subchapter 2.2).

5. The prosecutor's orders to terminate the criminal investigation, to remove the person from criminal investigation and/or to classify the criminal process must necessarily be checked, ex officio, by the superior hierarchical prosecutor, being thus subject to an implicit internal control, which will allow to accelerate the involvement of the investigating judge, in the event of challenging these procedural acts. (Chapter 2, Subchapter 2.2.).

6. The resumption of criminal prosecution by the prosecutor leaves an unduly wide discretion for the superior prosecutor to adopt such a solution, the control of this activity being dependent on the conduct (contesting or refraining from challenging the order) of the persons participating in the criminal process, whose rights may be affected by reopening the procedure. (Chapter 3, Subchapter 3.1.).

7. The examination of complaints against ordinances concerning the refusal to resume criminal prosecution or, on the contrary, those by which the criminal investigation was reopened, is not fully regulated by the Criminal Procedure Law, representing, rather, a system of legal customs, through the selective application of the provisions of the Code, which establishes the procedure for examining criminal cases in substance. (Chapter 3, Subchapter 3.2.).

8. It is necessary the obligatory involvement of the investigating judge, in order to carry out the prejudicial control, in any case of resuming the criminal investigation, permanently terminated without referral to the court, without waiting for the reaction of the parties or interested persons. (Chapter 3, Subchapter 3.1.).

9. The existing procedure for considering appeals against the conclusions of investigating judges for the cases provided for in art. 313 para. (6) the Code of Criminal Procedure is a formal and ineffective one, the presence in the courtroom of the prosecutor, the petitioner, the defender and other interested persons being an unnecessary one, and thus the written procedure for examining Appeals will be instituted. (Chapter 3, Subchapter 3.3.).

10. Some normative adjustments are needed to accurately determine the time of termination of the criminal investigation, but also the time of its resumption in other cases of provisional termination of the criminal investigation. (Chapter 3, Subchapter 3.3.).

Description of personal contributions with emphasis on its theoretical significance and practical value. *Personal contributions* they consist in the detailed and unitary investigation of the resumption of criminal prosecution, as a distinct institution of the criminal process, viewed in the context of the person's right not to be prosecuted and punished several times for the same act, through the lens of the criminal process, which implies the Prohibition of criminal liability of an innocent person, on the one hand, and the need to ensure the law order and the inevitability of criminal liability of the guilty person, on the other hand. A complex examination was subjected to the grounds and reasons for which the superior prosecutor or the investigating judge may order the reopening of certain procedures completed at the stage of criminal investigation, the emphasis being placed on limiting the possibility of unjustified procedural interventions and establishing a real and implicit control of such acts, which may affect the fundamental rights of the persons concerned. The thesis contains proposals – of a clearly new approach-regarding the modification and completion of the existing legal framework of Criminal Procedure, through which to ensure an increased protection of the person against the persecutions, often endless, of persons, once accused of committing the crime. In the paper the proposals were motivated *the lege ferenda*, formulated with the support of investigations and personal reasoning, as well as recommendations to improve criminal procedural activities. In order to reach conclusions about the necessity of legislative operations, arguments were brought, resulting from the opinions of scientific researchers in the field, some of which were supported, and others – called into question.

Scientific novelty and originality the work consists in examining some theoretical and applicative aspects, considered definitively resolved so far, but which had been insufficiently studied, regarding the institution of resumption of criminal prosecution. The analysis of these aspects allowed the formulation of general and particular conclusions, some of them being of essential novelty for the

National Criminal Procedure, presenting interest and theoretical importance, but also of design in the daily activity of the criminal investigation bodies and institutions within the judicial authority. Therefore, the research carried out and completed with the elaboration of the doctoral thesis is in accordance with the requirements of novelty and scientific originality.

Legal and empirical basis the structure of the study consists of: a) the rules provided for in art. art. 1, 6, 22, 52, 53^1, 287, 313, 437-451 and so on from the Code of Criminal Procedure. of the RM; b) The relevant norms of the Law of the Republic of Moldova on the Prosecutor's Office; c) The prosecution and judicial practice in the field of resumption of criminal proceedings; d) The relevant regulatory framework of other countries in the field of resolution and reopening of criminal proceedings; e) International case law, in particular of the European Court of Human Rights.

Scientific basis the study consists of works published by authors from the Republic of Moldova, but also by researchers from other countries. In the elaboration of the doctoral thesis, empirical information was used, held and provided by the prosecutor general's office, PCCOCS, Chisinau Court, Chisinau Court of Appeal.

Theoretical significance of the thesis it is represented by the relevance and usefulness of the results reached during the investigation, in the theoretical aspect, regarding: identifying the manner of ensuring the balance between the need to ensure the criminal liability of the perpetrator for committing the crime and the protection of the person from continuous criminal pressure; establishing the means from which the mechanism of guarantees of the right not to be prosecuted multiple times under the same charge is established; specifying the exceptions, the way in which they are determined, for which, however, a repeated prosecution may be admitted, preceded by the resumption of criminal prosecution. The researched topics are revealed in the aggregate, with the exposition of their content from a theoretical, methodological and organizational-institutional perspective; the doctoral thesis comes to extend the limits of knowledge in the scientific branch dedicated to the criminal process, in relation to the institution of the resumption of criminal prosecution, and the conclusions formulated can be a benchmark for future use and approach in subsequent theoretical discussions by other researchers.

Practical value of the thesis it consists in directing the conclusions to optimize the relevant legislation and, accordingly, to improve the activity of the procedural subjects involved in the criminal investigation activity. The presented reasoning can also be useful for didactic-scientific activity. Thus, the applicability of the paper is based on the following considerations: 1) proposals *the lege ferenda* 2) practical proposals, the argumentation of which was made in the paper, could be of interest for the day-to-day activity of criminal prosecution bodies, prosecutors, lawyers and magistrates, in order to ensure standards for the application of Criminal Procedural Law and the formation of a unitary jury; 3) the content of the paper can be used by future lawyers, students of

specialized educational institutions, as well as by teachers, in the process of study, at the *Prosecution,* within several disciplines.

Data on approval of results. The scientific results and the basic conclusions of this doctoral thesis were discussed at the meetings of the Procedural Law Department of the State University of Moldova. The scientific investigations found their reflection in 9 (nine) publications of the author in specialized journals in the country and in summaries of the Communications presented at national and international scientific conferences, and the research results were presented and discussed in various scientific and scientific-practical events, being exposed in the national scientific conferences with international participation "integration through research and innovation" (State University of Moldova, Chisinau, in 2018, 2020, 2022) and at the international scientific conference "Perspectives and problems of integration in space (Cahul, USC,2022).

Indication of the limits of the results obtained, with the establishment of the remaining unresolved issues. The results obtained in the research process carried out in this paper are limited to: research on the applicability of the rule *non encore in idem* in comparative criminal procedural law; analysis of the emergence and historical evolution of the respective rule, with its becoming as a general and absolute principle in the Romanian space; multi-factual analysis of the institution of resumption of criminal prosecution and of the options for implementing the immediate judicial control over the reopening of a completed procedure.

Recommendations:

1. Filling in addition of a new paragraph $^{(11)}$ to Article 1 of the Criminal Procedure Code, to read as follows:

„*The complaint about the crime is registered, on a mandatory basis, in the single register of complaints about crimes, kept by the Ministry of Internal Affairs and its subdivisions. The form, content and ways of filling in the Register are developed by the Government, jointly with the Prosecutor general's office. The manner of recording and examination of complaints about crimes is subject to verification by the prosecutor*".

2. Filling in art. 6 of the Code of Criminal Procedure by introducing point 12^{6}), with the following content:

„*New facts constitute data on the circumstances of which the criminal investigation body or the court did not have and/or could not have known at the time of adoption of the decision*".

3. Filling in art. 53^{1} par. (2) with pct. c^{2}) Code of Criminal Procedure , which will have the following content:

„*confirms the ordinances of hierarchically lower prosecutors, adopted in accordance with the provisions of art. art. 284-286 of this code*;".

4. Filling in art. 299[1] Code of Criminal Procedure with paragraph 5, which shall be as follows:

„*Complaints against the orders to terminate the criminal investigation, to remove the person from prosecution and / or to close the criminal case, confirmed by the senior hierarchical prosecutor , are addressed to the investigating judge*".

5. Amendment of the text of art. 287 Code of Criminal Procedure , which will be exhibited in the next editorial office:

„***Article 287.*** *Resumption of prosecution*

(1) Once the order to terminate the criminal investigation, to remove the person from prosecution and/or to close the case is invalidated, the resumption of the criminal investigation shall be ordered by order by the superior hierarchical prosecutor, if it is found that:

1) the decision is affected by a fundamental vice, with the exceptions provided for in art. 291[1];

2) new facts appear, which existed at the date of adoption of the order to terminate the criminal investigation, to remove the person from prosecution and/or to close the case, but of which the criminal investigation body was not aware and which are likely to affect the judgment rendered.

(2) The resumption of criminal prosecution by the superior prosecutor is subject to the confirmation of the investigating judge, within 5 days at the latest, under the sanction of nullity. The request of the superior prosecutor to confirm the order to resume the criminal investigation is examined by the investigating judge, citing the suspect, the accused and other interested persons. Failure to present the legally cited persons does not prevent the resolution of the confirmation request.

(3) The investigating judge, solving the request for confirmation, verifies the legality and thoroughness of the order of the superior hierarchical prosecutor based on the materials of the criminal investigation and any new documents submitted. The conclusion of the investigating judge can be appealed to the court of Appeal.

(4) Criminal prosecution may be resumed by the investigating judge, in case of admission, according to art. 313, of the complaint against the order to terminate the criminal investigation, to remove the person from prosecution and/or to classify the case, which was confirmed by the superior hierarchical prosecutor.

(5)In the cases referred to in para. (1) and (2), if, on the basis of the data in the file, the prosecutor considers it necessary to take a preventive measure or a precautionary measure, he shall proceed in the manner prescribed by this code.

(6) The resumption of criminal prosecution may take place only within the limitation period for drawing criminal responsibility for the act in question, except when this is necessary for the rehabilitation of the person".

6. Filling in art. 467 Code of Criminal Procedure , which shall have the following content:

„*Article 467.* *Mandatory character of final court decisions and prosecutor's orders regarding the termination of the criminal investigation, removal of the person from criminal investigation and / or the closing of the criminal case*

(1) The final court decisions and the prosecutor's orders regarding the termination of the criminal investigation, the removal of the person from prosecution and/or the classification of the criminal case are binding on all natural and legal persons in the country and have enforceable power on the entire territory of the Republic of Moldova.

(2) The collaboration requested in the execution of the final court decisions and the prosecutor's orders regarding the termination of the criminal investigation, the removal of the person from prosecution and/or the classification of the criminal case is mandatory for all natural and legal persons.

(3) The prosecutor's orders regarding the termination of the criminal investigation, the removal of the person from prosecution and/or the classification of the criminal case are enforceable documents".

7. Exposition of the text of art. 291 PP. 1) Code of Criminal Procedure , in the following editorial office:

„*a) blames the perpetrator according to the provisions of art.281 and 282, if he was not charged during the criminal investigation, then order the termination of the criminal investigation, draw up the indictment ordering the case to be brought to trial;*

b) if the perpetrator was charged during the Criminal Investigation, Order the termination of the criminal investigation, draw up the indictment ordering the case to be brought to trial;"

8. Respectively, completing the content of art. 295 para. (2) Code of Criminal Procedure :

"(2) If the prosecutor orders the admission of applications, he also orders, in the necessary cases, the resumption and completion of the criminal investigation, indicating the additional actions to be carried out, and, where appropriate, transmits the file to the criminal investigation body for execution, with the determination of the term of execution."

9. Filling in art. 287^3 par. (1) Code of Criminal Procedure , by replacing the phrase *it can be resumed* with the *is resumed*.

10. Completing the provisions of art. 447 Code of Criminal Procedure with paragraph 6, which shall have the following content:

„*Appeals against the conclusions of the investigating judge shall be heard in written procedure, without the participation of the parties*".

11. Exposition of the text of art. 512 Code of Criminal Procedure in the following editorial office:

(1) After the expiration of the term of conditional suspension of the criminal prosecution, the prosecutor orders its resumption, fixing the term of criminal prosecution and verifies the compliance of the accused with the obligations established under Art. 511 para. (1) of this Code.

(2) If, within the period of conditional suspension of the criminal investigation, the accused complied with the conditions established by the prosecutor, the prosecutor, through his order, orders the person to be released from criminal responsibility.

(3) *If the accused did not comply with the conditions established by the prosecutor, he meets the requirements of art. art. 293-294 and send the case to trial, with indictment, in the general order*".

12. Drafting of the text of art. 396^{1}Code of Criminal Procedure , as follows:

„*If the court handed down a sentence of acquittal, on the grounds that the act was not committed by the defendant, the prosecutor is obliged to ask for The Restitution of the criminal case and he resumes the criminal prosecution, in order to identify the perpetrator of the crime*".

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ADNOTARE

BODEAN Valeriu. „Aspecte teoretice și practice ale reluării urmăririi penale”. Teză de doctor în drept la specialitatea științifică 554.03 - Drept procesual penal. Chișinău, 2024.

Structura tezei: Introducere, trei capitole, concluzii generale și recomandări, bibliografia din 408 titluri, 191 de pagini de text de bază. La tema tezei au fost publicate 9 (nouă) lucrări științifice.

***Cuvinte-cheie*:** principiul *non bis in idem,* reluarea urmăririi penale, fapte noi și recent descoperite, procuror, procuror ierarhic superior, judecător de instrucție.

Scopul lucrării constă în realizarea unui studiu aprofundat și multiaspectual al instituției reluării urmăririi penale, în acord cu dreptul persoanei de a nu fi urmărită și judecată de două ori pentru aceeași faptă penală, și, în conexiune cu aceasta, în relevarea problemelor ivite cu prilejul redeschiderii unor proceduri penale finalizate prin adoptarea unor soluții de netrimitere în judecată a cauzelor penale, precum și în formularea unor propuneri de soluționare a problemelor relevate.

Obiectivele studiului vizează: studierea esenței și aplicabilității principiului *non bis in idem* prin prisma reflectării acestuia în legea națională, în actele internaționale la care Republica Moldova este parte, dar și în baza jurisprudenței naționale și internaționale în domeniu; cercetarea instituției reluării urmăririi penale după scoaterea persoanei de sub urmărire penală, încetarea urmăririi penale și/sau clasarea procesului penal; relevarea motivelor și temeiurilor pentru redeschiderea unor proceduri penale definitivate la etapa urmăririi penale; identificarea situațiilor în care reluarea urmăririi penale nu poate fi dispusă; cercetarea sintagmelor „fapte noi” și „fapte recent descoperite”; aprecierea suficienței și eficienței actualelor reglementări de procedură penală națională pe segmentul reluării urmăririi penale.

Noutatea și originalitatea științifică constă în examinarea unor aspecte teoretice și aplicative – considerate până acum ca fiind soluționate definitiv, dar care fuseseră insuficient studiate – privitoare la instituția reluării urmăririi penale.

Problema științifică importantă soluționată în domeniul de cercetare rezidă în ajustarea instrumentelor procesuale utilizabile la reluarea urmăririi penale după sistarea acesteia pe varii temeiuri, fapt care a determinat unele clarificări – pentru doctrinari și practicieni – actori ai procesului penal – ale noțiunilor și conceptelor aplicate în situațiile în care au loc ingerințe în dreptul persoanelor de a nu fi supuse unor urmăriri repetate, în tentativa de a îmbunătăți abordările teoretice și de a argumenta propunerile *de lege ferenda,* formulate de către autor.

Semnificația teoretică este reprezentată de pertinența și utilitatea rezultatelor obținute, sub aspect teoretic, privitor la identificarea manierei de realizare a echilibrului între necesitatea asigurării răspunderii penale a făptuitorului pentru comiterea infracțiunii și protecția persoanei de presiuni penale continue; precum și de stabilirea excepțiilor, a modului în care acestea sunt determinate, pentru care totuși poate fi admisă o urmărire repetată, precedată de reluarea urmăririi penale.

Valoarea aplicativă constă în orientarea concluziilor pe calea optimizării legislației pertinente și, corespunzător, în perfecționarea activității subiecților procesuali implicați în realizarea urmăririi penale. Raționamentele expuse în lucrare pot fi utile și în activitatea didactico-științifică. Astfel, caracterul aplicativ al lucrării se întemeiază pe următoarele considerațiuni: 1) propunerile *de lege ferenda* pot face obiectul activității legislative de optimizare a cadrului normativ procesual-penal; 2) propunerile practice, a căror argumentare este efectuată în lucrare, ar putea prezenta interes pentru activitatea cotidiană a subiecților din sfera justiției penale, pentru asigurarea unor standarde de aplicare a legii procesuale penale și de formare a unei jurisprudențe unitare; 3) conținutul lucrării poate fi folosit de către viitorii juriști, studenți ai instituțiilor de învățământ de profil, precum și de cadrele didactice, în procesul de studiu la compartimentul *Urmărirea penală*, în cadrul mai multor discipline.

Implementarea rezultatelor științifice. Rezultatele științifice ale tezei de doctorat au fost implementate în procesul științifico-didactic din cadrul Facultății de Drept a Universității de Stat din Moldova.

АННОТАЦИЯ

БОДЯН Валериу. «Теоретические и практические аспекты возобновления уголовного преследования». Докторская диссертация по научной специальности: 554.03 - Уголовно-процессуальное право. Кишинэу, 2024 г.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография из 408 наименований, 198 страниц основного текста. По теме диссертации опубликовано 9 (девять) научных работ.

Ключевые слова: принцип *non encore in idem,* возобновление уголовного преследования, новые и вновь открывшиеся обстоятельства, прокурор, вышестоящий прокурор, судья по уголовному преследованию.

Цель работы: исследование института возобновления уголовного преследования, в соответствии с правом лица не быть подвергнутым повторному преследованию и осуждению за одно и то же деяние, а также выявление проблем, возникающих при возобновлении процедуры, оконченной принятием решения о ненаправлении в суд уголовных дел, а также формулировка предложений по решению выявленной проблемы.

Задачи исследования: изучение сущности и применимости принципа *non encore in idem* с точки зрения его отражения в национальном законодательстве и в международных актах, стороной которых является Республик Молдова, а также на основании национальной и международной юриспруденции; изучение института возобновления уголовного преследования после выведения лица из-под уголовного преследования, прекращения уголовного преследования и прекращения уголовного судопроизводства; выявление поводов и оснований возобновления производства, оконченного на стадии уголовного преследования; установления ситуаций, при которых уголовное преследование не может быть возобновлено; изучение понятий «новых» и «вновь открывшихся» обстоятельств; оценка достаточности и эффективности действующих процессуальных положений о возобновлении уголовного преследования.

Научная новизна и оригинальность состоит в рассмотрении некоторых теоретических и практических аспектов, признанных до сих пор решёнными, но которые не были достаточно исследованы, в плоскости возобновления уголовного преследования.

Полученные результаты, способствующие решению научной проблемы заключаются в корректировке процессуальных инструментов, относящихся к институту возобновления уголовного преследования после его окончания по различным основаниям, что служило предпосылкой для введения определённых корректировок для теоретиков и практиков некоторых понятий и концептов, применимых при вмешательстве в право лиц не быть преследуемыми повторно, целью оптимизации теоретических основ и аргументации предложений *by lege ferenda*.

Теоретическая значимость представлена относящимися к теме и полезными результатами исследования с теоретической стороны вопроса касательно способа обеспечения равновесия между уголовной ответственностью лица, совершившего уголовно-наказуемое деяние, и защитой лица против продолжающегося и нескончаемого уголовного преследования; установление исключительных обстоятельств, способов их выявления, при которых возможно повторное уголовное преследование, которому предшествовало его возобновление.

Практическая значимость состоит в полезности предложений автора для оптимизации действующего законодательства и, соответственно, для деятельности процессуальных субъектов – практиков, вовлечённых в деятельность по уголовному преследованию. Выводы автора также могут быть полезны и для использования в учебном и научном процессе, а именно: предложения *by lege ferenda* могут быть применимы при разработке изменений и дополнений уголовно-процессуального закона, предложения автора могут найти применение в ежедневной деятельности процессуальных субъектов, вовлечённых в уголовное преследование, содержание работы может быть полезным для будущих юристов, студентов профильных ВУЗ-ов, а также преподавателями.

Внедрение научных результатов. Научные результаты докторской диссертации были внедрены в научно-дидактический процесс на юридическом факультете Государственного Университета Молдовы.

ANNOTATION

Valeriu BODEAN . "Theoretical and practical aspects of the resumption of criminal prosecution". PhD thesis in law at scientific specialty 554.03-Criminal Procedural Law. Chisinau, 2024.

Thesis structure: Introduction, three chapters, general conclusions and recommendations, bibliography of 408 titles, 191 pages of basic text. On the topic of the thesis were published 9 (nine) scientific papers.

***Keywords*:** principle *non encore in idem*, resumption of criminal prosecution, new and newly discovered facts, prosecutor, higher hierarchical prosecutor, investigating judge.

Purpose of the work it consists in carrying out a thorough and multi-factual study of the institution of resumption of criminal prosecution, in accordance with the right of the person not to be prosecuted and tried twice for the same criminal act, and, in connection with this, in revealing the problems arising on the occasion of the reopening of criminal proceedings completed by adopting solutions of formulating proposals for solving the revealed problems.

Objectives of the study aims at: studying the essence and applicability of the principle *non encore in idem* in the light of its reflection in the National Law, in the international acts to which the Republic Of Moldova is a party, but also on the basis of the national and international jurisprudence in the field; research of the institution of resumption of criminal prosecution after removal of the person from criminal prosecution, termination of criminal prosecution and/or classification of the criminal process; revealing the reasons and grounds for reopening at the criminal prosecution stage; identifying the situations in which the resumption of criminal segment of the resumption of criminal prosecution,cannot be arranged; researching the phrases "new facts" and "recently discovered facts"; assessment of the sufficiency and efficiency of the current National Criminal Procedure regulations in the segment of the resumption of criminal prosecution.

Scientific novelty and originality it consists in examining some theoretical and applied aspects – so far considered to have been definitively resolved, but which had been insufficiently studied-regarding the institution of resumption of criminal prosecution.

Important scientific problem solved in the field of research it lies in the adjustment of the procedural tools used when the criminal prosecution is recovered after its termination on various grounds, which has prompted some clarifications-for doctrinaires and practitioners - actors of the criminal process-of the notions and concepts applied in situations where interference occurs in the right of persons not to be subjected to repeated prosecutions, in an attempt to improve theoretical approaches and *ferenda law*, formulated by the author.

Theoretical significance it is represented by the relevance and usefulness of the results obtained, in the theoretical aspect, considering the identification of the way of achieving the balance between the need to ensure the criminal liability of the perpetrator for committing the crime and the protection of the person from continuous criminal pressure; as well as by the establishment of exceptions, of the way in which they are determined, for which, however, prosecution may be admitted, preceded by the resumption of criminal prosecution.

Applicative value it consists in directing the conclusions on the way of optimizing the relevant legislation and, accordingly, in improving the activity of the procedural subjects involved in carrying out the criminal prosecution. The reasoning presented in the paper can also be useful in the didactic-scientific activity. Thus, the applicability of the paper is based on the following considerations: 1) proposals *of ferenda law* can be the subject of legislative work to optimize the procedural-criminal normative framework; 2) practical proposals, the argumentation of which is carried out in the paper, could be of interest for the daily activity of subjects in the field of criminal justice, for ensuring standards for the application of Criminal Procedural Law and for the formation of unitary jurisprudence; 3) the content of the paper can be used by future lawyers, students institutions, as well as teachers, in the process of studying *Prosecution*, within several disciples.

Implementation of scientific results. The scientific results of the doctoral thesis were implemented in the scientific-didactic process of the Faculty of law of the State University of Moldova.

BODEAN Valeriu

THEORETICAL AND PRACTICAL ASPECTS OF THE RESUMPTION OF CRIMINAL PROSECUTION

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