

Remand in Corruption Cases – a Possible Raft of the Medusa?

Ph. D. Valerian CIOCLEI*

University of Bucharest, Law Faculty

Abstract:

Lately, in Romania, ever more deeds which might be classified as “big corruption”, namely those involving important state officials, politicians or even judges, are committed under the constitution of organized criminal groups. Most case files regarding such matters are based on accusations made by persons in remand. The present essay aims to draw attention towards the need to interpret such denunciations with great prudence, given the particular situation in which the persons concerned find themselves.

Keywords: *denunciations, corruption cases, persons in remand.*

1. Introduction

In my visits at the Louvre, each and every time, there were two paintings which I could not miss. The first one is, obviously, Leonardo da Vinci's *The Mona Lisa*, and the second is *The Raft of the Medusa*, a creation which belongs to the French painter Théodore Géricault. Besides the painting itself, which is impressive, what fascinated me was the fact that whenever I found myself in front of it, inevitably, my mind was trying to recompose the real event which had led to the creation of the painting. It is the kind of painting which “pushes” oneself inside the story, without the slightest possibility of showing any resistance. I shall briefly recall the events which had inspired the French painter.

Following the Vienna Congress (1815) and the restoration of the French monarchy, England returned to France its former colony, Senegal. In 1816, a French ship “La Méduse” left the port of Rochefort towards the former African colony, to retrieve it. The ship, a pearl of the French fleet, found at the forefront of a convoy which included three other ships, carried about 400 people. Besides the sailors, on board there were officials, soldiers, settlers; the new governor himself, appointed by Louis XVIII, was also on board. Valuables and important documents were also being transported with the same vessel.

In total contrast to the symbolic nature of the journey and the important human values and materials transported, the command of the ship was committed, based on political criteria, to Count who had not sailed for decades. Because of the captain's incompetence and immeasurable pride, which made him disregard the advice of the experienced sailors on board, the ship senselessly ran aground on a sandbank off Mauritania. After trying in vain to restore the ship afloat, the captain, along with the senior officers and the important passengers left the vessel, occupying the lifeboats. Since these boats were insufficient for everyone on board, 150 passengers were crammed unto a makeshift raft, chopped from the timber ship (the Raft of the Medusa). With a view to their survival, those 150 people received a few boxes of bread crumbs and 15 barrels of wine. The raft was to be towed by the lifeboats but, one by one, the

* E-mail: valerian.cioiclei@drept.unibuc.ro.

moorings which tied the raft to the boats were broken, and it was abandoned at sea, without the possibility of being self-propelled. The drift lasted for 13 days. Throughout this time, the limited living space (part of the raft was underwater), the lack of food, water, and, at first, the surplus of wine, have all led to behaviours of unimaginable savagery: some passengers were simply thrown into the water, whilst others were killed, massacred and, eventually, eaten by the strongest.

The acts of cannibalism were the highlight of this sad story. Only 15 people were found alive by another French ship sent in their search. Of these, five died before being transported to shore. Basically, 10 out of 150 people survived. Some of them were charged with acts of cannibalism in a trial in which several were indicted, including the captain of the ship, together with the senior officers who, abandoning the ship and its passengers, had violated the Sailors' Code of Honour. Beyond the trial, the event created a huge scandal at the time since it brought to light issues dealing with human, political and social nature. Besides Géricault's painting, created between 1818 and 1819, and first exhibited at the 1819 Paris Salon, so quite shortly after the event, over time, Medusa's tragic story has inspired numerous books, films and even scientific studies.

2. Remand in Corruption Cases

Two criminological studies have questioned the state of emergency as a justifying act concerning the acts committed on the "Raft of the Medusa"¹. Beyond the questionable technical and legal component, especially from the perspective of the definition of the state of emergency, the studies explore the psychological, moral and criminological component of the situation. Basically, the idea is that in extreme situations, when people feel threatened by major hazards, their behaviour can become uncontrollable, even aberrant.

The Raft of the Medusa, the painting, the story of the shipwreck and the two criminological studies (read more than twenty years ago!), have all recently come to my mind in the overall context generated by all the cases of remand in custody which were ordered lately in cases of corruption, and by the controversial procedure of the denunciation, used ever so often in such cases. Although it might seem exaggerated, I believe that, in other ratios and for other reasons, obviously, for some people, the state of remand can become a "Raft of the Medusa".

The prison environment is extremely hostile, in general, to anyone. It is known that for those people who come into contact with custody for the first time, the period of "accommodation" is long and extremely difficult. The more the remanded person had a comfortable situation in their daily life, the more unbearable would be the detention. The psychological shock caused by incarceration may be felt more or less strongly, depending on each and every personality, but there is such a shock for everyone. To the shock of the detention itself, in the case of the remand one should add the normal pressure of the ongoing investigation or investigations and, obviously, the spectre of a possible sentence. All these "ingredients" make up a "cocktail" which is extremely dangerous from the point of view of the judicial truth.

¹ See in this respect: H. Schadewaldt *L'odyssée du "Radeau de la Méduse"*. Un exemple classique de "l'état de nécessité", *Revue internationale de criminologie et de police technique*, vol. XXIII, 1969, n° 2, pp. 119-134, and J. Graven, *L'état de nécessité justificatif des naufragés. A propos du "Radeau de la Méduse"*, *Revue internationale de criminologie et de police technique*, vol. XXIII, 1969, n° 2, pp. 135-146.

Let us take as a working hypothesis the situation of a person who has committed several corruption offences, who knows s/he is guilty, and their acts have been proven without any doubt. By hypothesis, such person does not have extremely high moral scruples (since s/he committed crimes of corruption). The question is: can such a person, remanded in custody, and taking into account all the “ingredients” described above, provide the judicial authorities with false information, more concretely can s/he bring false accusations against other people for the sake of improving their own situation? The answer is: definitely yes, it is possible.

The answer to the previous question gives rise to another question: what effect could such a denunciation have (“slandorous” denunciation, as called by the old Penal Code)? One possible answer would be: no effect whatsoever; in a criminal case, the evidence cannot be reduced to a simple (single) denunciation. Although it is a denunciation, not a testimony, what works here, or at least it should work, is the old Latin adage: *testis unus, testis nullus*.

Another possible answer would be: it depends from case to case. The formulated principle does not have a legislative consecration in our procedural system and therefore it needs to be put into perspective. There is, at least theoretically, the possibility that such a denunciation, a slanderous one, be read in conjunction with indirect pieces of evidence which do not point at the guilt of the falsely accused, but which throw some doubt on them. Let us assume, however, that the judge, alert and in good faith, will not accept such corroboration and, in the absence of a direct and conclusive piece of evidence, they will consider that the act has not been proved.

But what if we multiplied the assumption from which we departed? Let us suppose that there is, in the same case (or another), a second person in exactly the same situation as the first informer. Could such a person, faced with the first denunciation, confirm its “reality”? The answer is, this time too, definitely yes, it is possible. In such a situation, a false denunciation, doubled by another false denunciation, could produce effects in that it could provide enough material evidence for retaining someone’s guilt. In the case of complex files, with dozens of people investigated, the probability of having two or more false denunciations is, obviously, considerably increased. Although, apparently, the conjugation of the proposed hypotheses seems highly unlikely, it is however possible. Therefore, the idea that a false denunciation cannot take effect is, in principle, wrong.

I do not discuss here the instance of forcing someone, in one way or another, to make such denunciations, which is, in itself, a criminal activity. Surely in such a situation the risks that the false denunciations might lead to an unjust conviction would be much higher. Perhaps such a situation also deserves careful consideration, especially in light of the guarantees offered by law in order to prevent such abuses, but this is not the place to analyze it.

3. Conclusion

In the working hypothesis, we started from the premise of an investigation conducted by a professional, acting in good faith, and I want to point out that even in such situations the denunciations made by persons remanded in custody imply major hazards and should be analyzed with great care by the judges, irrespective of the step in the criminal proceedings.

The thought that people tangled in their own crimes, found in the anguish of the cell and under the spectrum of punishment might crush other people’s destinies should scare us. And if anyone imagines that such despicable things cannot happen, they should consider that even more atrocious “horrors” happened; they should think of “The Raft of the Medusa”...