

THE ROLE OF THE POLICE IN THE CRIMINAL PROSECUTION PHASE

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ABSTRACT: *The general framework of criminal prosecution is regulated in the new criminal procedure in art. 285-341 Cod Proc. Pen. of course, with the mention that many procedural institutions used in this phase of the criminal process are provided in other chapters of the criminal procedure. The task of the judicial police bodies is to gather and administer evidence and means of evidence that outline the constituent elements in order to establish the existence of criminal acts, to determine the identity of the perpetrators and to hold them accountable. The administration of evidence is the basis for the decision to sue or not the perpetrator, but it is very important that these activities are carried out in compliance with the fundamental rights and freedoms of the parties to the criminal proceedings.*

KEYWORDS: *police, criminal, prosecution, phase.*

INTRODUCTION

The investigative bodies of the judicial police have general material competence. Even if the criminal procedure provides for criminal acts that are obligatorily within the competence of prosecuting the prosecutor, almost exclusively the criminal investigation is carried out by the police. At the Balance Sheet of the Romanian Police for 2012, the General Prosecutor of Romania estimated that over 95% of the criminal investigation activity is carried out by the police. The art. 57 Cod Proc. Pen. the provision is inserted that "the criminal investigation bodies of the judicial police carry out the criminal investigation for any crime that is not given, by law, in the competence of the special criminal investigation bodies or the prosecutor, as well as other cases provided by law".

It should be mentioned that during the criminal investigation, in order to achieve the main purpose of the criminal investigation to find out the truth, the criminal investigation bodies of the judicial police carry out criminal investigation acts but also acts that do not fall into the category of criminal investigation acts. We are talking here about investigations, informative activity, the perception of certain facts or facts on the spot, the execution of photographs or video recordings, the verification of some claims of the parties, controls or inventories, etc. An important role in carrying out such activities can also be played by the local police workers in carrying out the joint activity that they carry out together with the police officers from the national police. Regarding the activities that fall into the category of criminal prosecution acts performed by police officers and that become evidence in the criminal process, can be highlighted as follows: on-site investigation, collection of objects or documents, technical-scientific or forensic findings, hearing the perpetrator or the injured person, reconstitutions, group reconnaissance or body searches. An exception that gives the possibility to the investigative bodies of the judicial police to carry out acts in cases that are within the competence of the prosecutor are provided in art. 60 Cod proc. pen. "The prosecutor or the criminal investigation body, as the case may be, is obliged to carry out the criminal investigation acts that do not suffer postponement, even if they concern a case that is not within its competence. The work performed in such cases shall be sent immediately to the competent prosecutor. "

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The criminal investigation activities are carried out only by police officers designated under the conditions provided by Law no. 364/2004. As an appreciation of this law, I must mention that it is a superficial law that is outdated by the reality of the criminal investigation, by the conditions of organizing the police, by the dynamics and the modes of operation regarding the commission of crimes. It is a law that includes the spectrum of prosecutor's domination through surveillance, the allegation of an opinion of the prosecutor general for entry into the judiciary or promotion and the presumption of indiscipline in the judicial police doubled by sanctions from the prosecutor or police chiefs. Not a word about the rights of the criminal investigation body of the judicial police, nor about the obligations of the prosecutor. Depending on certain criteria, the Code of Criminal Procedure or special laws have delimited certain rights and obligations of criminal prosecution bodies, thus establishing their criminal jurisdiction. The criteria underlying the establishment of criminal jurisdiction are crucial in allowing certain institutions to carry out certain legal, criminal and criminal procedure activities, while respecting the fundamental rights and freedoms of the parties. Relating to the place of the crime, to the quality of the person who committed the crime or on whom it was committed, to the nature of the crimes or depending on the specialization of the judicial bodies, we find the following forms of competence.

1. The material competence defines the vertical competences and establishes which of the judicial bodies are entitled to carry out the criminal investigation legally and thoroughly or to solve the criminal case depending on the complexity of the criminal facts, the nature and gravity of the criminal offense.

2. Territorial jurisdiction is related to the place where the results of the criminal activity took place in whole or in part or the place where the criminal activity took place. According to art. 41 paragraph 1 "The jurisdiction by territory is determined, in order, by:

- a) the place of the crime
- b) the place where the suspect or defendant was caught
- c) the residence of the suspect or defendant natural person or the headquarters of the defendant legal person, at the moment when he committed the deed
- d) the dwelling or, as the case may be, the headquarters of the injured person".

3. Personal jurisdiction is mainly related to the quality of the perpetrator or, in some cases, the injured person at the time of the criminal act. The fulfilment of the criminal investigation acts with the non-observance of the norms of personal competence entails the sanction of absolute nullity. Thus, all procedural acts performed by a criminal investigation body of the judicial police that are not materially competent or of the quality of the perpetrator or defendant will be struck by absolute nullity and will be subject to annulment. The involvement of judicial police investigation workers in the administration of evidence in the criminal prosecution phase is an active one, adapted to the realities of today and which goes far beyond the covers in which the evidence and means of evidence underlying the sending or non-sending of a package are "packaged". defendant before the judge. I will refer to some of the evidence obtained by the criminal investigation bodies of the judicial police in the criminal investigation:

Listening to the suspect or defendant. The suspect or defendant does not need to prove his innocence and as such he is not obliged to give a statement before the criminal investigation bodies of the judicial police during the criminal investigation. This does not have any repercussions on the accused or defendant, but if he chooses to testify, it can be used even in his accusation. The recognition of the facts of the suspect or defendant must be doubled by an active attitude of the police officer in the sense that he must administer evidence leading to the confirmation of the statement of the suspect or defendant.

Listening to witnesses is the most commonly used means of proof in criminal proceedings but also one of the most important evidence administered in criminal proceedings. The practice of criminal prosecution bodies of the judicial police has established,

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however, that in some cases the statements of witnesses do not reflect reality, influenced by multiple and complex conditions related to the personality of the witness but also by the conditions under which certain crimes were committed. Throughout the forensic examination, it has been shown that the mechanism of perception, memorization or rendering of certain facts differs from person to person, to which can be added the bad faith of the witness or the subjectivism of those who listen to the witness, manifested mainly in how to interpret his words. Therefore, it is extremely important the experience, behavior but also the wisdom or exigency of the police officer, knowledge of verbal or nonverbal language, the worker's attention in taking and recording the witness statement, the success or failure of listening to the witness being largely achieved only if the investigating body of the judicial police knows and manages to apply in practical activity these theoretical qualities. At the same time, the stage of preparing for the hearing of the witness is extremely important, which is done by knowing the witness heard in advance, knowing in detail the case file, setting questions to support the hearing of the witness or ensuring the conditions under which the witness is heard. Adherence to these parameters to the highest possible standards will bring objective results from the hearing of the witness and will effectively contribute to finding out the truth in the criminal investigation.

Listening to the injured party. When finding out the truth, it is important to achieve a concordance between the committed deeds, as they happened in their materiality and the perception, which is realized by the criminal investigation body of the judicial police, through the evidence it administers in the criminal case. An important evidence can be the statement of the injured party but in the conditions in which the judicial police officer manages to eliminate his emotional and volitional factors considering the fact that the injured person may have a subjective reaction to the facts produced and assessments that bring him certain favors. from this activity or even a personal revenge on the suspect or defendant. Beyond the experience of the police officer manifested during the hearing of the injured person, it is extremely important that this statement is part of the circumstances of the other evidence in the sense that it must be corroborated with the other evidence administered in the criminal case.

Confrontation. For objective or subjective reasons, inconsistencies or contradictions may arise between the statements of the parties to the criminal investigation. Finding out the truth in such cases is flawed, therefore, by virtue of the active role, the judicial police officer must remove these inaccuracies between the evidence in the case by confronting the parties. In order to carry out this means of proof in good conditions, it is important that the police officer knows well the criminal investigation file, the nature of the contradictions and, if possible, their cause, must prepare well the confrontation of the parties, establish the workers participating in these hearings. establish a hearing plan in this procedure.

Picking-up objects or documents. This procedure is often used during criminal proceedings, can be carried out voluntarily or by force and is intended to provide goods or documents that constitute evidence and means of proof in criminal proceedings to prove the commission of criminal acts but also on guilt and prosecution. criminal offenses. For the seizure of these goods, the proof of seizure is drawn up in which the data provided in the criminal procedure are mentioned and a detailed description of the seized objects or documents is made. When the situation requires it, these lifting of objects or documents can be done in secret with the prior authorization of the judge of rights and freedoms, the activity being recorded in a report that is a means of proof in the criminal case.

The search. This procedural activity is used in criminal cases, in the criminal investigation phase and is intended for the search and identification of objects, goods, documents or values held by the parties but whose possession is denied by them or the criminal investigation bodies consider that it requires this activity. procedural in order to discover evidence or means of proof. This criminal procedure is carried out only with the

prior authorization of the judge of rights and freedoms and is recorded in a report that will be constituted as evidence in the case under investigation.

Technical-scientific finding and expertise. Starting from a principle, so well known in the daily life of our lives, namely that there is no perfect crime, forensic research is carried out starting from the idea that every deed is committed in time and space and leaves traces. These procedural activities are aimed at identifying and removing the traces from the place of committing the crimes, processing these traces but also the expertise of the evidence and means of proof. These procedural activities are carried out on the basis of the ordinance by which the criminal investigation body of the judicial police orders the performance but also the objectives that it pursues by performing this finding or expertise. The development of forensic technology and the diligent training of police officers or experts in the structure of forensic police, known as the forensic police, have in recent years brought better and better results in identifying perpetrators, proving criminal activity and prosecuting them with the help of evidence or means of proof required could not be denied in the trial phase of the criminal trial.

Reconstitution. The new criminal legislation was also regulated in order to broaden the horizon of procedural activities leading to the finding out of the truth by the criminal investigation bodies of the judicial police. This procedure aims at artificially reproducing the conditions and circumstances in which the criminal act took place in order to verify, first of all, whether the act could have been committed under the given conditions, to verify the evidence or means administered in question were developed during the investigation of the criminal case and even for the identification of new evidence. Reconstitution, as a procedural activity, is recorded in a report that is a means of proof in the criminal proceedings.

Special surveillance or research techniques. The art. 138 paragraph 1 of C. Proc. Pen are provided "Special surveillance or research techniques:

- a) interception of conversations and communications
- b) Access to a computer system
- c) Audio, video or photography surveillance
- d) Location or tracking by technical means
- e) Obtaining the list of telephone calls
- f) Detention, delivery or search of postal items
- g) Requesting and obtaining, according to the law, the data related to financial transactions, as well as the financial data of a person.
- h) Use of undercover investigators
- i) The finding of a crime of corruption or the conclusion of a convention
- j) Supervised delivery
- k) Identification of the subscriber, owner or user of a telecommunications system or of a computer access point ”.

According to the special procedure, these special means are used only when there is certainty of committing a deed of a criminal nature, but there is no other means or means of proof for proving the deed and the perpetrator. These techniques are used only with the permission of the judge of rights and freedoms for a period of 30 days which can be extended for limited periods in criminal proceedings. For the special activities and techniques carried out, the judicial police officer draws up minutes that are confirmed for legality by the prosecutor supervising the case and who will represent means of proof in the criminal case.

CONCLUSIONS

Without claiming to be a comprehensive analysis of the activity of the criminal investigation bodies of the judicial police, it is obvious the extremely active presence of the police in the criminal investigation phase of the criminal process, based primarily on professionalism and versatile training, on permanent adaptation to world reality. in which we also live on everything that means state-of-the-art technology in proving criminal acts and

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holding accountable those who commit them all, while respecting fundamental rights and freedoms and human dignity.

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