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Competence – The *Basic Institution* of the Criminal Trial, Or Simple Technical Rules of Its Organization

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Abstract
In this article, we approach the essence of jurisdiction as one of the most important institutions that ensure the legality and good organization of the criminal trial contrary to some opinions held in the doctrine according to which it only presents simple technical rules for the organization of the criminal trial without special legal value.

The legal nature of the jurisdiction was elucidated from the perspective of the load and content, signs, and forms of manifestation, as well as its importance for the validity of the criminal trial. We combat the existing position in the specialized literature according to which competence does not represent a basic institution of the criminal trial on which its legality depends, but only certain organizational and technical conditions that are to be excluded from the content of the Code of Criminal Procedure and included in the content procedural acts subordinated to the law.

Keywords: criminal investigation body, initiation of criminal investigation, criminal investigation, competence of the criminal investigation body, signs of competence, forms of competence

INTRODUCTION

In any democratic society, the protection of the person is one of the basic duties of the state. In the exercise of this attribution, the state instituted criminal procedural rules, concentrated in the Code of Criminal Procedure of the Republic of Moldova, which aim, on the one hand, to protect the person, society, and the state from crimes, so that the person who committed a crime to be punished according to his guilt, and, on the other hand, to protect the person and the society from the illegal acts of the persons in positions of responsibility, committed in the activity of investigating alleged or committed crimes, so that no innocent person is prosecuted and convicted [1].

In any established or developing state of law, such as the Republic of Moldova, jurisdiction is one of the basic criminal procedural institutions that guarantee the respect and fulfilment of the fundamental rights and freedoms of the participants in the criminal trial and ensure the effective application of material norms. So, it is a bridge between substantive and procedural law.

The institution of competence, not only ensures the effective guarantee of the fundamental rights and freedoms of the participants in the criminal trial but also increases the quality of the criminal prosecution, allows to ensure the objective, qualitative, and close-term investigation of the criminal case, to avoid duplicating the activities of the prosecution bodies criminal and unjustified delays.

Despite the important and in some places decisive role that this legal institution has in organizing, conducting, and carrying out the criminal trial, the legislation in force does not regulate all the relevant aspects, which creates difficulties in the practical activity related to the establishment of the competent criminal prosecution body to carry out the criminal investigation in a specific case and leads to the emergence of various consequences, able to

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affect most categorically the fundamental rights and freedoms of the participants in the criminal trial as well as the validity of the criminal trial.

The importance of the subject addressed is determined by the fact that, despite the high criminal procedural value of this institution, for the good conduct of the criminal trial in general and criminal prosecution in particular, there is no scientific research that would provide a detailed approach to this field which conditions numerous difficulties at a practical level. The findings obtained in this study can serve as a basis for future research, but also as solutions to modify and adjust the regulations in force to allow the criminal trial to become more efficient.

But most importantly, this paper can offer some practical solutions related to the procedure of assessment and ascertainment of competence that will allow the efficiency of the activity of the criminal investigation bodies.

METHODOLOGY

Study methodology includes traditional research methods: grammatical, systemic, logical, analysis and synthesis, deduction and induction, observation, and comparison.

RESULTS AND DISCUSSIONS

Despite the existing doctrinal approaches at the national and international level concerning *competence,* we must recognize that this legal category has more practical than theoretical importance as its role in the end boils down to the establishment of the criminal investigation body, which is going to investigate a concrete criminal case and this situation in perspective will condition the objective achievement of the tasks and purpose of the criminal trial.

In our opinion, *competence* is one of the basic conditions for ensuring the legality of the criminal trial in general and criminal prosecution in particular, which guarantees the normal and effective development of this procedural stage, ensuring the fundamental rights and freedoms of the subjects of the criminal trial and the adoption of decisions objectives per case, which would effectively correspond to the purpose of the criminal trial as it was declared by the provisions of art.1 of the Criminal Procedure Code (*hereinafter CPP*) [2].

However, there are not a few who dispute the high value of jurisdiction as one of the basic institutions of the criminal trial, considering that it has no place among criminal procedural institutions. Thus, Russian researcher SB Rosinski concludes that *the institution of competence* does not have a special procedural value that would have imposed the necessity of its regulation at the level of the CPP. The distribution of criminal cases according to the jurisdiction between different authorities does not influence the essence of the criminal trial, nor does it influence in any way the rights and freedoms of the participants in the criminal trial. In this way, the author concludes that the rules regarding competence fulfil only an organizational role, in other words, a technical role, which allows the rational distribution of criminal cases and materials between different criminal investigation bodies, the removal (*or at least the reduction*) of conflicts unfounded among them, allow to a greater or lesser extent the correct establishment of staffing, with the assignment of an appropriate workload to each criminal investigation officer, ensuring territorial accessibility to the criminal investigation body for the participants in the criminal trial [3, 76].

Moreover, the author considers it necessary to exclude the rules on jurisdiction from the criminal procedural law and their transposition into acts subordinate to the law. In his opinion, a codified law must remain a normative act, with supreme legal force and which is characterized by a high level of stability, which must only regulate the conditions and the order

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of carrying out the most important social relations, specific to a namely branches of law. In particular, the CPP must enshrine only those rules of conduct of the criminal investigation body, the prosecutor, the courts, and other procedural subjects, which allow the consolidation of the criminal investigation, judicial investigation, and other procedural actions and the adoption of objective decisions (*not organizational-technical*). Given that the organizational-technical, administrative rules and bureaucratic instructions are aimed at ensuring high productivity of the application of the legislation, at optimizing the activity of the power bodies and persons with responsibility, as well as the rules of competence, must be found in the acts subordinated to the law [3, 81].

We do not agree with the position stated above, because *jurisdiction* is of particular importance in the administration of justice. For the trial of more serious and complicated criminal cases, they must be given to investigative bodies and courts that require better professional training and richer practical experience, which implies a higher hierarchical rank, also, certain qualities, such as that of minister, parliamentarian, magistrate, military, justify entrusting the competence of higher or military courts, which meet better conditions for judgment and resolution of cases. That is why, through the rules of competence, a qualitative determination is made towards those investigative bodies or courts that meet the best conditions to achieve the purpose of the criminal trial. Therefore, competence also determines a quantitative distribution of the burden of the investigation body and the courts with several criminal cases that they could solve in good conditions and promptly. As a result, each prosecuting body and each court must be assigned a reasonable number of criminal cases for prosecution and trial, cases related to the constituency in which it operates. This procedural aspect is thus also taken into account, to divide criminal cases between criminal prosecution bodies and between courts of the same degree depending on the constituency in which they operate [4, 151].

Under these conditions, we can affirm with certainty that conducting a judicious and efficient investigation and judging criminal cases thoroughly and legally cannot be done without an organization, it being necessary to divide criminal cases between prosecutors' offices and between courts, both vertically, with hierarchically, as well as horizontally, concerning the territorial circumstances in which they operate [5, 194].

The notion of competence thus acquires, in criminal procedural matters, a specific meaning, ascertaining the empowerment (*capacity, aptitude*) recognized by the law of a criminal investigation body or a court of law to pursue, respectively to judge and solve a certain criminal case, with the exclusion of other investigative bodies or courts from this judicial activity. The authorization granted by the law includes, first of all, the right, the power to pursue or judge a certain criminal case, which gives legal authority to the procedural acts that are carried out; the power of attorney includes, secondly, the obligation to pursue and judge the causes allocated by law, any refusal being considered as a violation of service obligations [4, 264].

Competence is not only an institution of procedural-criminal law, whose rules establish the number of criminal cases whose investigation is under the competence of one or another criminal investigation body. With the use of these rules, in practice, competence is established to investigate a specific case, a criminal trial, and even a criminal complaint [3, 51].

For a better understanding of *the institution of jurisdiction*, it is necessary to highlight and analyse the particularities of this legal category.

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Many papers address issues of competence, however, there is a lack of a common position on what constitutes the particularities/signs/characteristics of competence. Some authors believe that competence is established based on *the signs of the crime*. As stated by VN Grigoriev and AV Seliutin, the assignment of criminal cases and materials to the management of a specific preliminary investigation body is based on the signs of the concrete crime (*type of crime, place of commission, specifics of the subject of the crime*). Other authors talk about the dependence of jurisdiction on the signs/particularities of the criminal case [6, 74].

It should be noted that the procedural-criminal legislation in force operates with the notion of competence both in the context of criminal cases (*art.40, art.42, art.43 of the CPP* [2]) but also of crimes (*art.266-269³ of the CPP* [2]).

Considering these findings, it is not clear what determines the competence of the criminal investigation body: *the signs of the crimes* or *the signs of the criminal case* and whether between these two categories, the sign of equality should be put or interpreted differently.

It should be noted that, when the respective authors approach competence through the lens of the signs of the criminal case, they also talk about *the seriousness of the act committed, the place where the crime was committed, the subject concerning which the crime was committed* and *the subject who committed the crime* [6, 114], that is, they are the same characteristic signs of the crime component.

In such conditions, could we say that the signs of the composition of the crime and the signs of the criminal case are the same?

Considering that, the signs of the criminal case are largely determined by the characteristic of the composition of the crime itself, the false impression is created that they correspond. However, we believe that criminal cases can also present some additional signs, other than those specific to the criminal composition, that allow them to be individualized. The category *of signs of the criminal case* refers to both the characteristics of the crime but also the circumstances of the discovery of the crime, etc., circumstances to which the criminal procedural law links the assignment of the criminal case to the competence of one or another criminal prosecution body [6, 96].

Moreover, based on the provisions of Art. 257 para (1) of the CPP, it can be deduced that the prosecutor has the discretionary power to decide on the competence of the criminal prosecution body at the place of residence of the suspect, the accused, or the place where the majority of the witnesses are found.

At the same time, in the specialized literature, there is no single position, so some authors speak about *the signs of competence* and others, about *the forms of competence,* without making a difference between these two categories [7, 127].

As I indicated above, *the signs of competence* are determined by the characteristics of the crimes themselves and they, in turn, determine the forms of competence. For example, if the quality of the subject is mandatory for a certain component of the crime, then this will determine the application of the rules of *personal jurisdiction*, and conversely, if it concerns the gravity characteristic of the act, it will determine the application of the rules regarding *material jurisdiction*.

As for *the forms of competence,* also in the specialized literature, there is no single position. Thus, some authors identify five forms of competence: *material, territorial, personal, alternative,* and *related*. Other authors indicate only four forms of competence: *material, personal, territorial, and alternative*. There are also positions according to which three forms of competence are identified: *material, personal,* and *territorial*. Another group of authors

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highlights only two forms of competence: *material* and *territorial*. Moreover, AA Ciuvilev speaks of *alternative jurisdiction* if one or two bodies are competent to prosecute a specific crime and of *universal jurisdiction* under the conditions in which each criminal investigation body is competent to carry out the criminal investigation. But no version includes all the forms of competence that result from the legal provisions [7, 124].

Based on these findings, we could state that *signs* are the primary characteristic elements of competence and in turn determine *the forms of competence*. Three distinct signs determine the competence of the criminal investigation body, the sign – *material*, *territorial*, and *personal*, which in turn determine three basic forms of composition: *material competence; territorial competence; and personal competence*. At the same time, we can consider that there can be other forms of competence compared to the basic forms: *functional competence; discretionary power; universal competence; related competence*, etc., considering them as varieties of the basic competencies indicated above and, in our opinion, do not require a distinct approach.

It should be noted that *the notion of competence* is examined especially from a *functional point of view*, each prosecutor's office or court, of a certain category and a certain hierarchical level, having established by law the sphere of attributions it has about the prosecution or judging a case. Competence can also be viewed from the procedural point of view, of the conduct of the criminal trial, it being necessary to determine the criminal investigation body and the court that can pursue or judge that case. The two aspects of the notion of competence are closely related to each other because a specific criminal case can attract the competence of a certain court, only if it has been entrusted by law with the competence to judge that case [4, 357].

As indicated above, *competence* as a legal category has practical rather than theoretical value. However, the criminal procedural legislation does not regulate the procedure for establishing the competence of criminal investigation bodies, which causes many misunderstandings and the lack of a unique practice of applying the rules of this legal institution.

It seems that, even in the specialized literature, this matter has not received an appropriate approach, researchers being satisfied with findings like "*competence is established based on and through the simultaneous application of the rules of signs of material, territorial and personal competence*" [8, 96], with all these, in practice, it was found that several signs of competence cannot be applied simultaneously, as they can be mutually exclusive.

MS Salahov distinguishes four criteria for establishing the competence of criminal investigation bodies by object [9, 165], as follows:

the object of the criminal attack – the crimes that threaten the life, health, and inviolability of the person, and his private property were assigned to the competence of the criminal investigation body of the Ministry of Internal Affairs (*hereafter MAI*), the crimes that threaten the fiscal security of the state were assigned in the competence of the criminal investigation body of the State Fiscal Service (*hereafter SFS*), crimes that threaten the customs security of the Republic of Moldova were assigned to the competence of the Customs Service (*hereafter SV*), etc.

The complexity of the investigated case – criminal cases of particular complexity, the investigation of which involves a specific level of training and professional skills, have been assigned to the competence of prosecutors and including specialized prosecutors' offices;

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The specifics of the activity of the authorities that have criminal prosecution bodies - naturally, crimes related to the fiscal security of the state are investigated specifically by the criminal investigation body of the SFS, or, in particular, this authority is entrusted with the duties of administering taxes and fees in the interest of the state and those that threaten safety and public order to be investigated by the criminal investigation body of the MAI.

The maximum combination of criminal prosecution actions and special investigative measures – assumes that, in the case of the investigation, for example, of crimes against property (*theft, robbery, robbery*, etc.), the perpetrator of which is not known at the origin, they were assigned in the competence of the criminal investigation body of the MAI, which has both a criminal investigation body and special investigation subdivisions, which allow the effective investigation of these categories of crimes.

Given that *the material sign* determines the distribution of criminal cases between judicial bodies of different degrees, depending on the nature and seriousness of the crimes investigated, i.e. a vertical delimitation of jurisdiction is achieved, as it distributes the criminal case between bodies of different degrees [10, 86] and *the sign territorial* determines the distribution of criminal cases between bodies of the same degree [11, 247], initially depending on the qualification of the prejudicial act, it will be established, the criminal prosecution body that will receive the criminal case for examination, and only later with the application of the *territorial sign* will it be decided which territorial subdivisions of the body of criminal prosecution, respectively, the criminal case will be sent for criminal prosecution.

The consistency of the application of these two signs is exactly as it was presented above and not the other way around. Or, it is impossible to proceed with the establishment of the territorial subdivision of the criminal investigation body in the conditions in which it has not been determined which specific criminal investigation body will carry out the criminal investigation in this specific case. At least theoretically, it is possible that a certain criminal investigation body does not have territorial subdivisions and then the application of *the territorial element* falls away by itself.

In most cases, the consecutive application of these two elements is sufficient to establish the jurisdiction of the criminal investigation body.

However, the criminal procedural legislation in force presents situations in which special value is given to the special qualities of the subject of the crime or the subject affected by the crime (*age, state of health, positions held, powers exercised, etc.*). Thus, a new element to establish competence, the element - *personal*, which, as a rule, does not corroborate with the other two elements – *material* and *territorial*, intervening in order of exception and of course in a priority way.

Most of the time, *the personal element* excludes (*substitutes*) *the material element*, when establishing competence and even the *territorial one*, as the competent body may not have territorial subdivisions. For example, according to Art. 270 paragraph (1) of the CPP [2], the prosecutor carries out the criminal investigation, in cases of crimes committed by such subjects with special status as *the President of the Republic of Moldova; deputies; members of the Government; judges; prosecutors; the deputy director of the Intelligence and Security Service and intelligence and security officers*, etc., regardless of the crime committed by them.

It is important to note that the legislator can condition the application *of the personal sign* on the circumstances of the commission of the prejudicial act, so to speak – the prejudicial act was committed in connection with the exercise of special powers or because of the exercise of these special powers.

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For more relevance, according to Art. 269 paragraph (1) of the CPP [2], the criminal investigation body of the National Anticorruption Center (*hereinafter CNA*), carries out the criminal investigation, in the case of the offences provided for in Art. 190 and 191 of the Civil Code, committed using the service situation.

It should be noted that *the personal sign* will not always be replaced by the *material* one, many times it is called to complete it and coexist in a unique formula that we have called the *mixed material-personal sign*. This means that the personal quality of the subject is relevant only when and to the extent that it overlaps with a specific prejudicial fact, in other conditions the application of *the personal sign* lapses.

For more relevance, we will bring to the fore the provisions of Art. 270 paragraph (4) of the CPP [2], according to which the PA carries out the criminal prosecution regarding the crimes provided for in Art.190, Art. 191 of the CP, if they were committed by: *persons whose method of appointment or election is regulated by the Constitution of the Republic of Moldova; mayors, vice mayors, local councilors of Chisinau, Balti, Cahul, Comrat and Bender municipalities; persons who are vested in office, by appointment or by election, by the Parliament, the President of the Republic of Moldova or the Government; senior management civil servants; inspectors-judges from the Judicial Inspection or inspectors from the Prosecutors' Inspection; the secretary of the Supreme Security Council, the head of the General Staff of the National Army, other persons with positions of responsibility within the General Staff of the Armed Forces, as well as persons holding the military rank of general or a special rank corresponding thereto; the deputy director of the State Fiscal Service; the deputy director of the Customs Service; the director and deputy director of the Public Procurement Agency; the deputy head of the General Inspectorate of the Police, the deputy head of the General Inspectorate of the Border Police and the deputy head of the General Inspectorate of the Carabinieri; the deputy general manager of the National Medical Insurance Company; the collaborators of the National Anticorruption Center in relation to the exercise of service duties*.

The personal sign can refer not only to the special quality of the committing subject but, in certain cases, also to the quality of the subject affected by committing the crime. Thus, according to the provisions of Art. 270 paragraph (2) of the CPC [2], the prosecutor carries out the criminal investigation in cases of attempts on the lives of policemen, criminal investigation officers, intelligence and security officers, prosecutors, and judges, if the attack is related to the exercise of the powers of service, as well as to the lives of their family members.

Next, we will see that the elements listed above are decisive in establishing the competence of the criminal investigation body, but not exclusive. In practice, there are many situations in which the legislator decides to suspend the effect of these elements and to establish the competence arising from the circumstances of the establishment of the prejudicial act and the need to optimize criminal prosecution.

There are situations in which the legislation in force links the transmission of a particular criminal case to the jurisdiction of the criminal investigation body that discovered it directly. And this time, *the material* and *territorial signs* have no importance as the criminal investigation can be carried out by any criminal investigation body in any constituency, which discovered the crime in question.

Thus, in the case of the crimes provided for in Art.311 Criminal Code – *false denunciation or false complaint*; Art.312 Criminal Code – *false statement, false conclusion or incorrect translation* [2]; Art. 313 Criminal Code – *the refusal or avoidance of the witness or the injured party to make statements* [2]*;* Art.314 Criminal Code – *determination to submit*

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false statements, formulate false conclusions, or make incorrect translations [2]*;* Art.315 Criminal Code – *disclosure of criminal investigation data* [2]*;* Art.316 Criminal Code – *disclosure of data regarding the security measures applied to the judge, the bailiff, the participant in the criminal trial, or the employee of the body authorized to protect witnesses* [2] and Art.323 Criminal Code – *facilitating the crime* [2], the legislator granted the competence to carry out the criminal investigation to the criminal investigation body in whose jurisdiction the crime in connection with which the criminal investigation was started [2]. This element determines the connection between the crime committed with another crime or criminal cases and was named in doctrinal approaches as an *alternative element* [6, 96].

In our opinion, such a solution is fully justified, or, as a rule, the respective components of the crime are discovered by the criminal investigation body, which carries out the criminal investigation in the basic case and by way of consequence not only that it knows the most well, the circumstances of the act, but also most of the evidence is within his reach, as most of them have been recorded and are to be removed from the basic file (the *minutes of the hearing of the witness containing the false statements, the intentional translation wrong, etc*.), which absolutely will lead to the objective resolution and in narrow terms of the criminal case.

At the same time, we do not agree with the way of exposition of the legislator, or it operates with the notion of a body... *in whose competence is the crime in connection with which the criminal investigation was started* [2]. What does not always correspond to the truth, or there may be situations in which the criminal investigation is carried out by a criminal investigation body that is not competent, but due to objective circumstances, the competence was assigned to it by the order of the superior hierarchical prosecutor. Under these conditions, based on the wording, the false impression could be created that the crime against justice is to be investigated not by the criminal investigation body that is conducting the criminal investigation at the moment, but by the competent criminal investigation body according to the rules in force.

In another vein, we draw attention to the fact that, in the case of the crimes against justice listed above, given their specificity (*they are always committed within and in connection with the investigation of another criminal case*), therefore they are detected and reported only by the criminal prosecution body investigating *the basic case*. We believe that there can be no situation in which another criminal investigation body, other than the one conducting the criminal investigation, self-reported and started the criminal investigation.

Considering these findings, we consider it appropriate to modify the rule from Art. 269^1 of the CPP, which will have the following content, *In the cases regarding the crimes provided for in Art. 311-316 and 323 of the Criminal Code, the criminal investigation is carried out by the body that directly carries out the criminal investigation in the criminal case from which it was self-reported*.

In another context, the competence of the criminal investigation body can be determined by the element of subsidiarity between the criminal case under investigation (the *basic case*) and the criminal case started considering the circumstances established in *the basic case*. This time, the weight of *the material* and *territorial sign* is reduced to zero, having no importance for determining the competence of the criminal investigation body.

Thus, according to the provisions of Art. 269^3 of the CPP [2], in the case of the crimes provided for in Art. 243 of the Criminal Code – *money laundering* and Art. 279 of the Criminal Code – *terrorist financing*, the criminal investigation is carried out by the criminal investigation

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body whose competence is the crime in connection with which the criminal investigation was initiated.

Based on the provisions of this rule, the impression is created that, in theory, any of the existing criminal investigation bodies that, during the investigation of a particular criminal case, discover a crime of *money laundering* or *terrorist financing*, are competent to investigate it, which is not this is true. Or, according to the provisions of Art.270^1 para.(5) of the CPP [2], the PA carries out the criminal investigation in the case of the crimes provided for in Art.243 of the CP, if the assets come from corruption crimes or related acts of corruption and the crime was committed by certain subjects: *persons whose method of appointment or election is regulated by the Constitution of the Republic of Moldova; mayors, vice mayors, local councillors of Chisinau, Balti, Cahul, Comrat and Bender municipalities; persons who are vested in office, by appointment or by election, by the Parliament, the President of the Republic of Moldova or the Government; senior management civil servants; inspectors-judges from the Judicial Inspection or inspectors from the Prosecutors' Inspection; the secretary of the Supreme Security Council, the head of the General Staff of the National Army, other persons with positions of responsibility within the General Staff of the Armed Forces, as well as persons holding the military rank of general or a special rank corresponding thereto; the deputy director of the State Fiscal Service; the deputy director of the Customs Service; the director and deputy director of the Public Procurement Agency; the deputy head of the General Inspectorate of the Police, the deputy head of the General Inspectorate of the Border Police and the deputy head of the General Inspectorate of the Carabinieri; the deputy general manager of the National Medical Insurance Company; the collaborators of the National Anticorruption Centre in connection with the exercise of their duties; intelligence and security officers* and according to art.270^2 of the CPP, paragraph (1), point 2) and point 3) of the CPP, the Prosecutor's Office for Combating Organized Crime and Special Cases (*hereafter PCCOCS*), carries out the criminal investigation in in the case of crimes provided for by Art.279 of the Criminal Code and in the case of crimes provided for in Art.243 of the Criminal Code, if the goods come from the crimes under its jurisdiction.

Given that Art. 279 of the Criminal Code is assigned to the exclusive jurisdiction of the PCCOCS, there is a need to operate the amendments to Art. 269^3 of the CPP is imposed so that Art. 279 Criminal Code is excluded from the category of crimes with *alternative jurisdiction*, which assumes that two or more criminal investigation bodies are competent to carry out the criminal investigation concerning certain components of the crime [7, 84].

It is important to note that, not in all cases, the legislation provides the criteria for assessing competence and in certain situations, it gives the hierarchical prosecutor the discretion to decide if the criminal investigation falls within the competence of several criminal investigation bodies [2]. The situation in which *the place of the commission of the crime, the place of the occurrence of the consequences, the place of finding the evidence and the majority of the witnesses, and the place of residence of the suspect or the accused* are different is taken into account. In these situations, the prosecutor hierarchically superior to the prosecutor in charge of the criminal investigation will decide which criminal investigation body to forward the criminal case to him, to carry out the complete, objective, and timely criminal investigation.

In the specialized literature, this right of the prosecutor to submit the criminal case to the competence of a criminal investigation body has received the name of *discretionary competence* [6, 59].

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We believe that the establishment of this form of competence was determined on the one hand by the fact that the procedural-criminal legislation did not develop a predictable algorithm regarding the use of *signs of competence* and on the other hand certain practical situations may require the adoption of other solutions that would allow, much more efficiently, the achievement of those goals and objectives specific to the criminal trial, established by the power of the provisions of art.1 of the CPP.

Moreover, the legislator decided to grant the Prosecutor General and his Deputies an *absolute right* to decide the assignment of any criminal case to any criminal prosecution body [2].

In these situations, we are talking about a *discretionary right* of the General Prosecutor and his Deputies to decide the competence of the criminal investigation body, which allows us to establish the existence of a subsidiary form of competence – *discretionary competence*.

In our opinion, despite the findings set out above, the intervention of the Prosecutor General and his Deputies cannot be arbitrary, this fact results from the very wording of the rule from Art. 271 para (7) of the Criminal Code, which requires the adoption of a reasoned decision.

Understandably, the rationale for the discretionary decision of the General Prosecutor will be made within the limits to ensure the purpose and tasks of the criminal trial. Therefore, not every reason can be considered sufficient to withdraw a criminal case from the jurisdiction of a criminal investigation body and transfer it to another criminal investigation body.

The procedure for establishing competence involves a series of consecutive actions, as follows:

– *establishing the opportunity to start the criminal investigation;*

– *establishing the circumstances of committing the prejudicial act;*

– *qualification of the prejudicial act;*

– *establishing the competent criminal investigation body to investigate this act;*

– *determining the criminal investigation officer/prosecutor who will carry out the criminal investigation*.

In our opinion, the biggest problem is related to the stage at which competence is to be assessed and established, the subjects empowered with this right, and how this fact affects the good conduct of the criminal investigation.

The rules of the Institute of Competence regulate those legal relationships that appear between the subjects of the criminal trial during the conduct of criminal procedural activities. The distinct particularity of the reports regulated by the rules of this institute is determined by the fact that the quality of the subjects can only be certain persons with a position of responsibility or state bodies. Therefore, the norms of the institute of competence are achieved through the activity of these persons with responsibility function and state bodies [12, 117].

The assessment of competence will be carried out both at the stage of registering the notification regarding the crime, at the stage of starting the criminal investigation and formulating the accusation, and also during the criminal trial when certain determined circumstances have arisen.

Given that the criminal procedural legislation largely regulates aspects related to the conduct of criminal prosecution and judicial investigation, it is not clear whether any criminal prosecution body can receive and register a notification about the commission of a crime that does not fall under its jurisdiction and whether can start the criminal investigation, to later refer it to the competent body.

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Most authors answer this question positively. Thus, SV Borodin considers that, even though the rules of jurisdiction establish the concrete right of criminal prosecution officers to initiate criminal prosecution in certain criminal cases within their jurisdiction, it should not be believed that a criminal prosecution officer within a criminal prosecution body cannot initiate criminal prosecution in the case of criminal acts under the jurisdiction of other criminal prosecution bodies. The author believes that under certain conditions the competence of the prosecuting officer to initiate the criminal investigation may exceed his competence to carry out the criminal investigation. In situations where the criminal investigation officer cannot transmit the materials according to the competence, the criminal investigation officer can order the initiation of the criminal investigation. Such situations can occur when there is a risk of destruction of evidence or consummation of the crime. This opinion is also supported by A. Donțov, who points out the fact that the criminal investigation officer, if he must take measures to prevent or solve the crime, or to fix the traces of the crime, is entitled to start a case of criminal offence that is not within his competence, moreover, in such conditions this right becomes an obligation. After carrying out the criminal prosecution actions necessary to fix the traces of the crime, these criminal cases are to be dismissed according to the jurisdiction [12, 124].

At the same time, since the procedural-criminal legislation does not establish concretely who can assess the competence in a specific case, we consider that this obligation rests with the criminal investigation body first notified of the commission of a crime, the criminal investigation body that ordered starting the criminal investigation, the criminal investigation body that carries out the actual criminal investigation.

In this context, considering the prosecutor's authority to lead the criminal investigation, we consider that, together with the criminal investigation body, both the leading prosecutor of the criminal investigation and the hierarchical-superior prosecutor can evaluate and appreciate the competence of the body of criminal prosecution as according to the provisions of art.52 of the CPC [2], the prosecutor initiates the criminal prosecution, conducts and controls the legality of the procedural actions carried out by the criminal prosecution body, and controls the procedures for receiving and recording notifications regarding the crime, which denotes that he verifies the competence of the prosecuting body.

Therefore, it could be stated that the rules of this procedural institution establish the powers of criminal investigation bodies to investigate certain criminal cases, the conditions and order of transmission of criminal cases from one criminal investigation body to another, the order of resolving conflicts that may arise between the competent criminal prosecution bodies, the procedural consequences that may arise as a result of the violation of the rules of competence [12, 171].

CONCLUSIONS

Jurisdiction remains one of the basic procedural-criminal institutions of the criminal trial in general and criminal prosecution in particular, which not only ensures the fair distribution of criminal cases between different judicial bodies and between their territorial subdivisions but also ensures the objective examination and in close terms of them. But most importantly, it is the guarantor of the legality of the criminal trial itself, which, in our opinion, is the most important.

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Competence is determined by the circumstances of the criminal case, which also involve the characteristics of the prejudicial act and other objective circumstances left to the prosecutor's discretion.

At the moment, the procedural-criminal legislation does not regulate the procedure for assigning competence, the subjects responsible for establishing competence as well as the stage at which this procedural-criminal exercise is carried out, these aspects are to be determined from the systemic interpretation of the legal norms. Which, often, causes difficulties to arise in practice related to the assessment and establishment of competence.

The establishment of competence is carried out by the *procedural actors* responsible for ensuring the conduct of the criminal trial: the head of the criminal investigation body, the criminal investigation officer, the case prosecutor, and the superior hierarchical prosecutor, based on the signs of competence which in turn determine the forms of competence.

The forms of competence should not be understood and interpreted as distinct legal categories, they are different manifestations of the same basic category – *competence*, which do not have a separate existence and only help to understand this criminal procedural institution itself.

There are three basic forms which in turn determine two ordinary forms of competence: *material*, *territorial*, and an exceptional one: *personal*, which excludes the other two or completes them. The other forms of competence: *alternative*, *discretionary*, etc., are only varieties of the basic forms.

REFERENCES

[1] Decizia Plenului Colegiului penal al Curții Supreme de Justiție a Republicii Moldova din 07.05.2013, în dosarul nr.4-1ril-1/2013. [online]. [11.12.2022]. http://jurisprudenta.csj.md/search_interes_lege.php?id=1

[2] Codul de procedură penală al Republicii Moldova nr.122-XV din 14.03.2003. In: Monitorul Oficial al Republicii Moldova, 07.06.2003, nr.248-251.

[3] ROSSINSKY, S. B. Investigative jurisdiction of a criminal case: a general condition for a preliminary investigation or a set of organizational and managerial rules? In: State and Law, no. 10, 2023, p.71-78. ISSN: 1026-9452. (РОССИНСКИЙ, С. Б. Подследственность уголовного дела: общее условие предварительного расследования или совокупность организационно-управленческих правил?. В: Государство и право, №. 10, 2023, p.71-78. ISSN: 1026-9452.)

[4] THEODORU, Grigore Gr., CHIȘ, Ioan-Paul. Tratat de drept procesual penal. Ediția 4-a. București: Editura Hamangiu, 2020, 1171 p. ISBN 978-606-27-1671-4.

[5] TULBURE, Adrian, Ștefan, TATU, Angela, Maria. Tratat de drept procesual penal. București: ALLBECK, 2001. 582 p. ISBN: 973-655-113-X.

[6] DIKAREV, I. S. Jurisdiction in criminal proceedings: issues of theory and legislative regulation. In: Journal of Russian Law, Vol. 8 No. 4, 2021, p.125. ISSN: 1605-6590 (print) 2500-4298 (online). (ДИКАРЕВ, И. С. Подследственность в уголовном процессе: вопросы теории и законодательной регламентации. В: Журнал российского права, Том 8 № 4 , 2021, с.125. ISSN: 1605-6590 (print) 2500-4298 (online).

[7] OKTAKHIN, Alexander. Institute of Investigative Jurisdiction in the Criminal Trial of the Russian Federation: dis. Doctor of Law Sci. Moscow, 1998. 133p. (ОСТАНИН, Александр. Институт подследственности в уголовном процессе Российской Федерации: дис. д-ра юр. наук. Москва, 1998. 133p.)

[8] MIFTAHOV, Renat Lenarovich. Jurisdiction of criminal cases under the legislation of modern Russia. Izhevsk: Detective-inform, 2006, 124p. ВВК 67.99(2)8. (МИФТАХОВ, Ренат Ленарович. Подследственность уголовных дел по законодательству современной России. Ижевск: Детектив-информ, 2006, 124p. ББК 67.99(2)8.)

[9] Nastas A. Specifics of Human Trafficking Crime Investigation, Monografie, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary 2024, p.86, ISBN 978-606-95862-4-2

ISSN 2602-1463
Vol. 8 (4) 2024 Law and Litigation in the EU and the Candidate States

[10] OSTAVCIUC, Dinu. Sesizarea organelor de urmărire penală: monografie. Chișinău: „Tipografia Centrală", 2020. 206 p. ISBN 978-9975-3366-5-9.
[11] OSOIANU, Tudor, OSTAVCIUC, Dinu. Urmărirea penală. Chișinău: Cartea Militară, 2021(F.E.P.„Tipografia Centrală"). 494 p. ISBN 978-9975-157-58-2.
[12] Nastas A., Răspunderea pentru declarațiile cu rea voință în dreptul penal. București, 2022 (Tipografia Pro-Universitaria). p. 128, ISBN 978-606-26-1561-1