Explanations relating to the competence of the public prosecutor at the stage of criminal prosecution

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Abstract: *In accordance with paragraph 1 of article 131 of the Constitution of Romania, in judicial activity, the Public Ministry shall represent the general interests of the society and defend legal order, as well as the rights and freedoms of citizens. Details regarding the importance of the Prosecutor in the first phase of the criminal process - criminal prosecution - we can find in the new provisions of the Criminal Procedure Code (CPC). The legislator rethinks the magistrates' powers by freeing up large amount of specific activities, implicitly by restricting the category of crimes for which the Prosecutor is obliged to carry out its own prosecution and not least through the creation of the institution of judge of rights and freedoms. Starting from the premise that the mere proclamation of some procedure norms in the CPP is not sufficient to secure the reform of the judiciary system in our country and its quality increase [1], the jurisdiction of the Prosecutor should not be confined only to the activity carried out for the administration of evidence or for explaining and protecting the rights and obligations of the parties. It encompasses a much wider area, regulated by the legislator through special laws. According to the new regulations, the Prosecutor shall control, lead and supervise the work of criminal investigation bodies, so as any offense can be revealed and any person who has committed it can be held criminally liable. Supervision of the prosecution is materialized in several ways: checking the prosecution documents, participation in carrying out criminal acts, confirmation or denial of enactments of criminal investigation bodies, passing the dossier from a research body to another or resolution of complaints made against acts of criminal investigation which have brought an injury to the rights and legitimate interests of persons [2]. This paper aims to explain the role, attributions and importance of the Prosecutor in the first phase of the criminal process.*

Keywords: *competence; prosecutor; criminal investigation; control; surveillance; preventive measures.*

Introduction

Etymologically, the name "Public Ministry" has as its origin the phrase "manus publica", where "manus" indicates the executive force and "publica" indicates something official, of the state, so from the term "Public Ministry" we understand the State's executive force.

A part of the doctrine, argues that the institution of the Public Ministry comes from the roman law under the name of *defensores civitatum*, but most believe that this institution is of French origin, located in the 14th century, when through an ordinance of Philippe le Bel of 25 March 1303 the prosecutors' functions were regulated. They were called upon to take care of the interests of the King and subsequently they began to seek out the guilty and turn them over to the Justice system to be held accountable -"*les procureurs du roi*".

The organization of the Public Minister was hierarchical, where Supreme leader was the Minister of Justice, and all the members of the Public Ministry belonging to the same jurisdiction was called parquet.

The name parquet is explained by the fact that during the meetings, the representatives of the king lay on hall's parquet and not on the entertainer where the judges were conducting [3].

In Romanian law, the first regulations arise since the time of Organic Regulation from 1832, and in the Regulation on the duties of public prosecutors in courts and divans in civil and criminal issues in which the Prosecutor had the duty of supervision and follow-up.

Via the law on judicial organisation of 9 July 1865, prosecutors were organised in prosecutors' offices in addition to courts and had the mission to represent society and to supervise the compliance with the laws in the judicial activity and the enforcement of judgments [4].

Article 63, letters a) - k) of the Law 304/2004 on the organisation of the judicial powers establishes the Public Minister attributes, namely:

a) conducts the prosecution in the cases and under the conditions provided by law and participates, under the law to settle conflicts through alternative means;

b) leads and supervises the criminal investigation activity of the judicial police, leads and controls the work of other criminal investigation bodies;

c) refers the matter to the courts for the prosecution of criminal cases, according to the law;

d) exercises civil action in cases stipulated by law;

e) takes part, in accordance with the law, in the meetings of the Court;

f) exercises legal remedies against judgments, as provided by law;

g) defends the legitimate rights and interests of minors, persons under interdiction, of the missing persons and of other persons, in accordance with the law;

h) acts to prevent and combat crime, under the coordination of the Minister of Justice, in order to achieve the unitary application of State's criminal policy;

i) studies the causes that generate or favour crime, draws up and submits to the Minister of Justice proposals concerning their removal, as well as for the improvement of legislation in the field;

j) verifies compliance with the law at places of preventive detention;

k) carries out any other duties prescribed by law.

Also, under the coordination of the Minister of Justice, the Public Ministry also acts to prevent and combat crime, in order to achieve uniformity in the State's criminal policy.

At the same time, the Public Ministry has an active role regarding the protection of legitimate rights and interests of minors, persons under interdiction, of missing persons, incapables and others, and as an active participant of the justice process, the Public Ministry, studies the causes that generate or favour crime, draws up and submits to the Minister of Justice proposals concerning their disposal and the improvement of criminal legislation.

Both the law 304/2004 on the legal organization, and the CPC, establish the tasks incumbent on prosecutors in connection with the conduct of the criminal trial.

As regards the first phase of the criminal process, namely the prosecution, it is the responsibility of the Prosecutor to conduct criminal proceedings in the conditions imposed by law, to control, lead and supervise the activity of the criminal investigation bodies during criminal prosecution.

In this respect, it should be pointed out that according to article 299 paragraph (1) of the criminal procedure code, the Prosecutor supervises the activity of criminal investigation bodies, so that all offenses can be revealed and all person who have committed a crime can be held accountable. Also, according to the following paragraph the prosecutor exercises the oversight of activities of criminal investigation bodies so that all suspects or defendants can be detained only in the cases and under the conditions provided by law. In terms of distinguishing the term retention - as preventive measure, from other provisions from special laws which use the same terminology, the specialty literature has highlighted the fundamental differences [5].

Given the special responsibility of the Prosecutor in connection with criminal prosecution, the specialty literature pointed out that he is the "master" of the first phase of the criminal process [6]. The prosecution is considered the soul of the process, it being the first act of this procedural activity [7]. From the moment when the prosecution was seized with regard to the commotion of a crime [8], as provided for in article 288 CPP, respectively complaint or denunciation, through acts concluded by other fact finding bodies provided for by law or ex officio, put in motion "mechanism" of the criminal process.

Thus the criminal process is subdivided in four phases, namely:

- *criminal prosecution* - which according to the new criminal procedure code brings a novelty item consisting in the elimination of the stage concerning the preliminary acts and the implementation of all activities within the criminal prosecution phase which is divided into two distinct phases: phase of the investigation of the crime scene and the investigation phase of the person, so that the prosecution firstly analyses the deed, immediately after the referral of the competent judicial bodies, and then the person, when from the evidence it results the reasonable suspicion that that person has committed a crime.

- *preliminary chamber* - which has as object the verification, after submitting to court, of the competence and the legality of the Court referral and verification of the legality of evidence administration and performance of acts by the criminal prosecution bodies

- *the judgment* - that under the new criminal code has as a novelty item, among others, the demise of the ways to attack the appeal, so the sentences handed down by the first instance may be attacked only through the appeal of the decision;

- *executing* the final judgments.

These four phases are meant to ensure the proper solving of criminal cases, therefore, in every process phase various problems whose solution depends on the passage of the criminal dossier in the next phase are solved.

1. The competence of the prosecutor at the stage of criminal prosecution

In the opinion of Professor Ion Neagu, within the framework of the prosecution stage, bearing in mind the importance and complexity of the duties with which the legislature has empowered him, the prosecutor represents the central figure. In support of such an opinion we must see article 56 paragraph 1 CPC, which refers to the competence of the Prosecutor. As stated in this article the prosecutor leads and directly controls the criminal prosecution activity of the judicial police and the specific criminal investigation bodies and also ensures that the acts of the criminal investigation are carried out in compliance with the legal provisions.

In the light of paragraph 6 of the article previously mentioned, the prosecutor of the appropriate court who, under the law, judges in first instance the cause, except when the law provides otherwise is competent to carry out or depending on the case to lead and supervise the criminal prosecution. In accordance with the mentioned legal disposition the prosecutor of the prosecutor's Office belonging to a court is competent to conduct the criminal prosecution in the cases that are firstly judged in court; he is also competent to conduct the prosecution in cases that fall within the competence of the tribunal and the prosecutor of the general prosecutors' office mandatory carries out criminal prosecution in criminal cases that are judged in the first instance by the High Court of Cassation and justice.

Some authors define competence as being the aptitude recognized by law to a judicial body - whether it is a criminal prosecution body, a judge of rights and freedoms, judge of the preliminary chamber or court - to pursue and to judge a certain criminal cause, or other referrals regarding acts and measures restricting fundamental rights and freedoms of the individual or concerning the legality of the acts referring to court, of the evidence on which they are based or the acts concluded in the course of criminal prosecution, as well as on the legality of the solutions to not bring to judgment [9].

Among the many tasks that the Prosecutor has to accomplish the most important sphere of attributes circumscribes to carry out acts of criminal procedure [10]. On the other hand, as evidenced by article 63, paragraph a) and b) of law No. 304 of 2004 on the judicial organization, the Public Ministry through prosecutors, carries out criminal prosecution in the cases and under the conditions provided by law and participates, under the law, at settling conflicts through alternative means, directs and supervises the criminal investigation activities of the judicial police, leads and controls the work of other criminal prosecution bodies. According to article 286 of CPC, the Prosecutor has power over acts or procedural measures and resolves the cause through Ordinance, if the law does not stipulate otherwise, and criminal prosecution bodies dispose, through Ordinance, over acts and procedural measures and formulate proposals through report.

In the supervision exercised over the criminal prosecution bodies, the prosecutor is entitled by law to take over a case from the jurisdiction of the criminal prosecution body and personally execute the criminal prosecution, thus being given the status of main body of the criminal prosecution. In support of this affirmation we mention article 300, paragraph 3) of the CPC, according to which in the exercise of the attribute to lead the criminal prosecution activity, the Prosecutor shall take appropriate action or give dispositions to the criminal prosecution bodies that take measures or assist in the performance of any act of

criminal investigation or perform it personally. In practice, the exercise of this right shall apply as an exception and is left to the discretion of the Prosecutor, considering the high volume of cases in progress reported to the reduced diagram as well as the lack of personnel, the competence of the Prosecutor to conduct criminal prosecution activity is optional. Regarding the factors that can negatively influence the activity of prosecutors we recommend the specialized literature [11].

In criminal proceedings, as follows from the provisions of article 55, paragraph 3) of the CPC, the Prosecutor is competent to supervise or to conduct criminal proceedings; to refer the judge of rights and freedoms and the Court; to exercise criminal action as well as civil action in the cases provided for by law; to conclude, in accordance with the law, plea bargaining agreement; to formulate and pursue contestations and appeals against judgments, to fulfil any other duties prescribed by law.

During criminal prosecution, as it follows from the provisions of article 478 of the CPC, the Prosecutor may conclude an agreement with the defendant in recognition of the latter's guilt [12].

The Prosecutor may confirm the commencement of prosecution or the ranking, he can choose the disposal or proposal to take any preventive measures, to prosecute the persons suspected or against which there is indubitable evidence, or may carry out, pursuant to article 56 paragraph 2 of the CPC, any act of criminal prosecution in cases which he leads and supervises. As it was correctly appreciated in doctrine, it has an imperative role in terms of preventive measures taken/are to be taken during criminal prosecution [13]. Also in connection with criticism over the current legislation relating to preventive measures we recommend the specialized literature [14].

At the same time, the Prosecutor is competent to make the necessary arrangements regarding the authorization of some procedural measures or actions, such as searches, wiretaps of telephone calls, as well as to compile the indictment for sending the criminal case to court or to resolve the cause through Ordinance, deciding the closing of the case or the forgoing the prosecution. According to article 314 paragraph 1) letter a) and b) of CPC, the Prosecutor may order through ordinance, wavering of the prosecution when there is no public interest in the criminal prosecution of the accused or ranking when it does not pursue criminal proceedings or, as the case may be, extinguishing the exercised criminal proceedings, because there is one of the cases which prevents the initiation and pursuit of criminal proceedings.

In the light of article 16, paragraph 1, CPC criminal proceedings may not be put in motion or, if they were put into motion, they can no longer be exercised if:

- the deed does not exist;
- the deed is not provided by criminal law or it was not perpetrated with the culpability prescribed by law;
- there is no evidence that a person has committed the offence;
- prior complaint is missing, authorization or referral of the competent body or other condition prescribed by law, necessary for setting in motion the criminal action;
- certain conditions intervened: prescription or amnesty, the death of the suspect or the offender, natural person, or the cancellation of the suspect or accused - legal person - was ordered;
- prior complaint was withdrawn for offences which its removal removes criminal liability, it intervened or it was concluded a mediation agreement under the conditions of the law;
- there is a question of non-punishment prescribed by law;
- there is res judicata;
- or it intervened a procedure transfer with another State, according to the law.

From the analysis of article 76 of the law no. 304 of 2004, concerning the judiciary organization, it is clear that in the exercise of its powers, the general prosecutor of the prosecuting office of the High Court of Cassation and Justice may issue orders with an internal character, deciding that the prosecution to be mandatory conducted by the Prosecutor, in certain situations.

A novelty element in the CPC, with strict reference to the jurisdiction of the prosecutor at the stage of criminal offences, is restricting the crimes for which the obligation to carry out the criminal prosecution belongs to the Prosecutor. Thus, article 56 paragraph 3 CPC expressly provides for cases in which the prosecution is carried out mandatory by the Prosecutor:

- in the case of offences for which the competence of the Court of first instance belongs to the High Court of Cassation and justice or Court of appeal;

- in the case of offences referred to in the Criminal code, special part, from article 188 to article 191 (crimes against life), article 257 (outrage), article 276 (pressuring the judiciary), article 277 (compromising justice interests), 279 (judicial outrage), 280 (abusive investigation), article 281 (subjection to ill-treatment), article 282 (torture), article 283 (unjust repression) and from article 289 to article 294 (offences of corruption and of service);

- in the case of praeterintentionate offences which had as a result a person's death;

- in the case of offences for which the competence to carry out criminal investigation belongs to the Investigation division of Organized Crime and Terrorism or National Anti-corruption Directorate;

- other cases provided by law.

Regarding the prosecution, if the causes are exclusively given within the competence of the Prosecutor, taking into account that the law is imperative, the entire prosecution will have to be carried out personally by him, the criminal investigation body, having the right to perform certain criminal prosecution acts only if the Prosecutor has delegated him by ordinance or only if the criminal investigation body is obliged under article 60 of the CPC to carry out criminal prosecution acts which do not suffer delay (so-called urgent cases). Work performed in such situations shall be sent without delay to the competent prosecutor. According to article 324, paragraph 4 of the CPC, setting in motion the criminal action, deciding or proposing restrictive measures of rights and freedoms, the consent of the evidence or disposition of other acts of procedural measures cannot form the subject of delegation.

Another attribute belonging exclusively to the prosecutors is taking over cases from other offices. In this regard, article 325 of the CPC indicates that prosecutors in the framework of the hierarchically superior prosecutor can take over the prosecution, causes of the competence of prosecutors' offices hierarchically inferior, through the disposition of the leader of the prosecutors' offices hierarchically superior. These provisions also properly apply when the law provides another hierarchical subordination.

In addition to the above, the general prosecutor of the prosecutor's office of the High Court of Cassation and justice, in accordance with article 326 CPC, at the request of the parties, of a main procedural subject or ex officio, may send the case to a prosecutor's office with equal jurisdiction, if there is a reasonable suspicion that the criminal prosecution activity is affected because of the circumstances of the case or the parties' qualities or the main procedural subjects to the trial or there is the danger of disturbing public order.

2. The supervision exercised by the prosecutor at the stage of criminal prosecution

Supervision of the criminal prosecution is the activity done by the Prosecutor during criminal proceedings consisting in the management and control of the activity of criminal investigation bodies of the judicial police or other special research bodies, when the law does not expressly stipulate that the prosecution must be carried out even by the Prosecutor. It must be complete and permanent, meaning that it is exerted from the time of commencement of criminal proceedings and until its completion through the solution given by the prosecutor satisfying all the aspects of legality and solidity.

In exercising the attributes to control, lead and supervise the work of criminal prosecution bodies, the Prosecutor shall ensure that the acts of the criminal investigation are carried out in compliance with legal provisions, in accordance with the principle of legality.

On the other hand, the Prosecutor seeks to reconstruct the truth and explain the cause in all aspects. In this regard he takes the appropriate actions or instructs the criminal prosecution bodies that take this measures, can assist in carrying out any act of criminal investigation, he can also personally execute any act of criminal investigation or retain any cause for prosecution.

Thus, among other things, the Prosecutor is competent to request for examination any files in progress from the criminal prosecution body; he is obliged to send it immediately with all documents, information and materials placed on the record.

The Prosecutor must have knowledge of the causes which are under criminal investigation so that the criminal investigation bodies, as evidenced by article 300, paragraph 2 CPC, are obliged to notify, after the referral, the prosecutor about the activities carried out or that are to be carried out; the latter may fulfil their duties arising from monitoring the criminal prosecution activity. After taking cognizance of the initiation of the criminal research, he carries out the surveillance ex officio from his position of leader and controller of the criminal prosecution activities.

According to article 303 paragraph 2 of the CPC, the provisions given by the Prosecutor in relation to carrying out acts of criminal investigation are mandatory and priority for the research body, as well as for other bodies that have attributes provided by law in the finding of infringements. Hierarchically superior bodies of the judicial police or of special criminal investigation bodies cannot give guidance or provisions relating to the criminal investigation.

The relationship between prosecutors and judicial police workers is found into the provisions of law no. 364 of 2004 on the organisation and operation of the judicial police. According to this legislation, hierarchically superior bodies belonging to the judicial police, cannot give guidance or provisions with regard to the criminal prosecution, the only one competent in this regard being the Prosecutor. At the same time according to article 8 of law no. 364 of 2004 on the organisation and operation of the judicial police, the research bodies of the judicial police operate under the guidance, supervision or control of the Prosecutor, being obliged to carry out his provisions, hierarchical chiefs being able to give to the policemen who are part of the judicial police dispositions and guidance in carrying out the activities of crime ascertainment and gathering of data in order to identify the perpetrators of offences and initiation of criminal prosecution.

The services and bodies specialising in collecting, processing and providing information, such as Romanian information service, Foreign intelligence service, the Department of information and internal protection of the Interior Ministry, the Intelligence Directorate of the army within the MND, Guard and Protection Service, have the obligation to immediately put at the disposal of the competent prosecutor's office, at its headquarters, all data and all information, unprocessed held in conjunction with committing offences, as it is stipulated in article 66, paragraph 2) of law no. 304 of 2004 on the juridical organization.

The prosecutor may also supervise the activities carried out by undercover investigators, who can perform specific tasks without the authorization of the prosecutor issued expressly for it.

If the research body poorly meets or does not carry out the provisions given by the prosecutor under article 303, paragraph 3), CPC he may refer the matter to the leader of the criminal prosecution body, which is required within 3 days from the referral to notify to the prosecutor the measures provided, or he may apply the sanction of judicial fine for the judicial irregularities or may require withdrawal of approval.

Another form of leadership and supervision regulated by article 301, paragraph 1) CPC is the situation when the Prosecutor notes that criminal prosecution is not conducted by the criminal prosecution body provided for by law and takes measures to send the case to the competent body. In this situation, the legal acts or procedural steps remain valid. When the prosecutor determines that there are any of the circumstances specified in article 43 CPC, he may order to join causes and subsequently send the cause to the competent body.

By carrying out the verification of criminal prosecution activities, as well as through participation in the conduct of research or resolve complaints against acts of criminal investigation, the Prosecutor may confirm that the research has been conducted lawfully, that the procedural measure was taken under the conditions provided by law, thus giving validity to these acts and measures or by personally performing the acts necessary for the further prosecution.

According to article 304 CPC, when the Prosecutor finds that an act or procedural measure of the criminal prosecution body is not in compliance with the provisions laid down by law or is not founded, he refuses it motivated, ex officio or upon the complaint of the person concerned. This provision applies in the case of the verification carried out by the hierarchically superior prosecutor concerning the acts of the hierarchically lower prosecutor.

According to article 339, paragraph 1 of the CPC, the complaint against measures taken or acts done by the Prosecutor or performed on the basis of the provisions given by him are resolved by the prime

prosecutor of the prosecutors' office or where appropriate by the general prosecutor, general prosecutor's Office of the Court of appeals Chief Prosecutor times section of the flooring. If the measures and provisions are prime, Prosecutor of the prosecutor general's Office of the Court of appeal, the Prosecutor's Office of the Chief of section, or have been or will be carried out on the basis of these provisions, the complaint provided for in paragraph 2 will be resolved by the hierarchically superior prosecutor.

Complaints against acts, measures or solutions are resolved through Ordinance, which is communicated to be the person who formulated it, as well as other interested persons, and can no longer be appealed to the hierarchically superior prosecutor. According to paragraph 4 of the same article, in the case of cessation or ranking of the prosecution, the complaint shall be made within 20 days of the communication of the document's copy which disposes the solution. In the event that the complaint made against ranking or wavering solutions of prosecution, disposed by order or indictment, was rejected, the person concerned has the opportunity to make the complaint within 20 days following the communication, at the judge of the preliminary chamber of the court which has the competence to judge in the first trial.

The complaint thus directed is solved by the judge from the preliminary chamber. As stated in article 341 of the CPC, he determines the term of settlement and shall communicate, together with a copy of the complaint, to the prosecutor and the parties. The Prosecutor is obliged that within 3 days from receipt of notification to submit the dossier of the case to the preliminary chamber judge, and in the event that the complaint was filled with the Prosecutor, he will need to submit it along with the dossier of the case to the competent court.

3. Competence of the prosecutors of the National Anti-corruption Directorate

According to article 1 paragraph 2 of O.U.G. 43/2002, National Anti-corruption Directorate exercises attributes throughout the Romanian territory through prosecutors specialised in combating corruption.

In accordance with article 13 of the same legislation, they fall in the competence of the National Anti-corruption Directorate the offences provided for in law no. 78/2000 for the prevention, discovery and sanctioning of corruption with the subsequent amendments and completions, committed in one of the following conditions:

a) If, irrespective of the quality of the persons that have committed them, they have caused material damage higher than the equivalent in lei of 200,000 euro, if the amount or property forming the object of the criminal corruption offence is higher than the equivalent in lei of 10,000 euro;

b) If, irrespective of the value of material damage or value of the amount or property forming the object of the corruption crime, are committed by: deputies; senators; members of the European Parliament from Romania; member appointed by Romania in the European Commission; members of Government; Secretaries of State, sub-secretaries; Ministerial advisors; judges of the High Court of Cassation and justice and the Constitutional Court; other judges and prosecutors; members of the Superior Council of Magistracy; the President of the Legislative Council and his Deputy; The Ombudsman and his deputies; presidential advisers and counsellors of State in the presidential administration; Councillors of State of the Prime Minister; members and public external auditors within the Court of accounts of Romania and of County boards of Auditors; the Governor, the first Vice-Governor and the Vice Governors of the National Bank of Romania; Chairman and Vice-Chairman of the competition Council; officers, admirals, generals and marshals; Police officers; Presidents and Vice-Presidents of County Councils; Mayor and deputy mayors of Bucharest; mayors and deputy mayors of Bucharest Municipality sectors; mayors and deputy mayors of municipalities; District Councillors; prefects and sub-prefects; Heads of authorities and central and local public institutions and the people with control functions within it, with the exception of Heads of public authorities and public institutions at the level of cities and municipalities and persons with control functions within it; lawyers; Financial Guard Commissioners; Customs' staff; individuals who hold leadership positions, including the director, within the autonomous administration of national interest the national autonomous public corporations, companies and corporations, companies and national societies, banks and

companies in which the State is a major shareholder, public institutions which have attributes in the process of privatization and the central financial and banking establishments; the persons referred to in article 293 and 294 of the Criminal Procedure Code (CPC).

c) if offenses against the financial interests of the European Union;

d) if the offenses referred to in Article 246, 297 and 300 of the Criminal Code, which has caused damage greater than the equivalent in RON of EUR 1,000,000;

If during prosecution disjunction is ordered, the prosecutor within the National Anti-corruption Directorate can continue the prosecution even in a disjoined case.

Criminal proceedings in cases relating to corruption committed by militaries in activity, is carried out by the military prosecutors within the National Anti-corruption Directorate, regardless of the military rank the people researched have.

4. Competence of prosecutors from the Directorate for investigating organized crime and terrorism

Direction of investigation of offences committed by organized crime and terrorism represents a structure with legal personality that specializes in fighting organized crime and terrorism, within the Prosecutor's Office attached to the High Court of Cassation and justice.

According to article 5, paragraph (1) of law no. 508/2004 on the establishment, organization and functioning within the Public Prosecutor, of the Direction investigating organized crime and terrorism, with subsequent amendments and additions, the direction for the investigation of organized crime and terrorism fall with prosecutors, experts in the field of processing and capitalization of information, economic, financial, banking, customs, and in other areas, specialized auxiliary personnel, economic and administrative staff, within the limit of the posts appended.

According to article 12, paragraph 1 of law no. 508/2004, it falls within the competence of the Directorate for investigating organized crime and terrorism, irrespective of the status of the person, the following offences, if they were committed for the purpose of a criminal organized group in the sense referred to in art. 367 paragraph (6) of the Criminal code:

- the crimes referred to in article 188, article 189, article 205, article 207, article 209, article 212-215, article 217 (crimes against the person), article 249-252 (offences against patrimony), article 263-264 (crimes concerning authority and State border), article 310, article 311, article 313, if the counterfeit values are among those referred to in article 310 and article 311, article 314-316, if extraneous counterfeit values are among those contained in article 310 and article 311, article 325 (offences of forgery), 342-347, article 351, article 359, article 360-366 (offences against public safety) of the Criminal code;

- the crimes referred to in article 228, article 229, article 232 with reference to article 228-229, article 233-237, article 239-242, article 244, article 245-248, article 295, article 308-309 in reference to article 295 of the Criminal code, article 307, article 309 with reference to article 307 of the Criminal code, if, irrespective of the number of concurrent offences, it has produced a material damage higher than the equivalent in lei of the sum of 500,000 euro;

- the offence provided for in article 5 of law no. 11/1991 on combating unfair competition, as amended and supplemented;

- the crimes provided for in Act no. 297/2004 on the capital market, as amended and supplemented;

- the crimes provided for in Act no. 241/2005 for preventing and combating tax evasion, with subsequent amendments, if concerned, irrespective of the number of concurrent offences, it has produced a material damage higher than the equivalent in lei of the sum of 500,000 euro;

- the crimes provided for in Act no. 86/2006 concerning Customs Code, as amended and supplemented;

- the crime provided by article 155 of the Act no. 95/2006 on healthcare reform, as amended and supplemented;

- the following offences, regardless of whether they were committed or not under the conditions provided for by the criminal organized group provide by article 367 paragraph (6) of the criminal code:

- the crimes referred to in article 210 – 211, article 217, with reference to article 210-211, article 303, article 309 with reference to article 303, article 325, article 328, if the act concerns the offence provided for in art. 325, art. 360-366, art. 374, art. 394-412 of the criminal code;

- the crimes provided for in Act no. 51/1991 on Romanian national safety, as amended and supplemented;

- the crimes provided for in Act No. 111/1996 concerning the safety, regulation, licensing and control of nuclear activities, republished, with subsequent amendments and additions;

- the crimes provided for in Act no. 143/2000 on preventing and combating trafficking in and illicit consumption of drugs, with subsequent modifications and completions;

- the crimes provided for in Act no. 535/2004 on the prevention and combating of terrorism, as amended and supplemented;

- the crimes provided in emergency Government Ordinance no. 121/2006 concerning the legal regime of drug precursors, as amended by law no. 186/2007, with subsequent amendments;

- the crimes provided for in Act no. 194/2011 on the control of products likely to have psychoactive effects, other than those provided for by the regulations in force, as amended;

- offence referred to in article 367 of the criminal code, if in the purpose of the criminal group enters any of the offences referred to in subparagraph a) or b);

- the offence of money laundering provided by law no. 656/2002 for the prevention and punishment of money laundering, as well as for instituting some measures to prevent and combat the financing of terrorism, republished, with subsequent amendments, if the money, property, and values which have been the subject of money laundering come from committing crimes found within the competence of the Directorate of investigating organized crime and terrorism;

- offences which relate, according to article 43 of the code of criminal procedure, with those referred to in subparagraphs a) - d).

Conclusions

As it was correctly valued, because the effects of the institutions regulated by the new Code of criminal procedure to have a strong positive impact on the conduct of the criminal trial, it must be ensured the balance between the normative content and the possibilities of the judicial bodies to apply it under the conditions and with respect for the deadlines enacted [15]. In this respect, we express our opinion that the existing provisions relating to the competence of the public prosecutor at the stage of criminal prosecution are clear, accurate and sufficient to achieve all the necessary guarantees to ensure a fair trial.

Last but not least, the attributes of the Prosecutor in this first phase of the criminal process [16], must be carried out, but also the rights that the suspect/defendant can exercise with or without the benefit of specific counsel must be respected.

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[15] Ibid [1], p. 342;
[16] For additional explanation regarding the regulation of the right to defence in the New Code of Criminal Procedure we recommend Bogea Marius Ciprian, "*The right to defence in the new code of criminal procedure*", Archipelago XXI Press, Targu Mures, 2015, p. 728-733.