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## THE ROLE OF THE HEAD OF THE CRIMINAL PROSECUTION BODY IN THE CRIMINAL PROSECUTION ACTIVITY ORGANIZING

***Annotation:** The respective scientific article is dedicated to the analysis of the importance and role of the leader of the criminal investigation body in organizing and directing the activity of the criminal investigation body in the process of examination of the criminal case.*

*The duties of the head of the criminal investigation body are carried out by the criminal investigation officer from the criminal investigation bodies of the MIA, the Customs Service, the NAC or the Fiscal Service who organize the activity of the criminal investigation officers within the subdivision, respecting the managerial principles in managing the activity while optimizing the functioning and productivity of the activity of the criminal investigation officers.*

*The system of criminal investigation bodies established within the General Police Inspectorate of the Ministry of Internal Affairs is composed of the following subdivisions: Criminal Investigation Department and the subdivisions established within it, Criminal Investigation Section of the Center for Combating Human Trafficking, Coordination Section of Criminal Investigation Activity (and its services) of the Municipal Police Department of Chisinau, the coordinating section of the criminal investigation activity of the Police Department of the Gagauz-Yeri TAU, the criminal investigation sections of the municipal, regional or district police inspectorates.*

*The direct purpose of the study is to examine the role and importance of the head of the criminal investigation body in the organization of the activity of the criminal investigation body in the process of examination of the criminal case, because the organization is the primary and inherent element of an activity leading to the achievement of an expected result.*

*The indirect aim of the study is the efficiency of the activity of the leader of the criminal investigation body in the process of organizing the activity of the criminal investigation body, through the prism of defining the types of managerial activities, determining its importance and role in the activity carried out by the criminal investigation bodies.*

*The objectives of this scientific paper consist in the description of the types of managerial activities; defining managerial attributions; establishing the role and importance of the head of the criminal investigation body in the organization of the criminal investigation activity.*

*As a result of the study, it constitutes the research of various scientific works of the authors, which will contribute to the knowledge and understanding of the importance of a well-organized leadership in the conduct of the criminal investigation activity.*

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## ROLUL CONDUCĂTORULUI ORGANULUI DE URMĂRIRE PENALĂ ÎN ORGANIZAREA ACTIVITĂȚII DE URMĂRIRE PENALĂ

**Adnotare:** Acest articol științific este dedicat analizei importanței și rolului conducătorului organului de urmărire penală în organizarea și dirijarea procesului de examinare a cauzei penale. Atribuțiile acestui conducător le execută ofițerul de urmărire penală din cadrul organelor de urmărire penală ale MAI, Serviciului Vamal, CNA sau Serviciului fiscal, respectând principiile manageriale de gestionare și optimizare a activității respective.

Sistemul organelor de urmărire penală constituit în cadrul Inspectoratului General de Poliție al Ministerului Afacerilor Interne este compus din următoarele subdiviziuni: Direcția urmărire penală și subdiviziunile constituite în cadrul acesteia, Secția urmărire penală a Centrului pentru combaterea traficului de persoane, Secția coordonare a activității de urmărire penală (și serviciile din cadrul acesteia) a Direcției de poliție a mun. Chișinău, Secția coordonare a activității de urmărire penală a Direcției de poliție a UTA Gagauz-Yeri, secțiile de urmărire penală ale inspectoratelor de poliție municipale, de sector sau raionale.

Scopul direct al studiului îl constituie examinarea rolului și importanței conducătorului organului de urmărire penală în organizarea activității organului de urmărire penală în procesul de examinare a cauzei penale, deoarece organizarea constituie elementul primordial și inerent al unei activități soldate cu atingerea unui rezultat scontat.

Scopul indirect al studiului este eficientizarea activității conducătorului organului de urmărire penală în procesul de organizare a activității organului de urmărire penală, prin prisma definirii tipurilor de activități manageriale, determinării importanței și rolului acestuia în activitatea desfășurată de către organele de urmărire penală.

Obiectivele prezentei lucrări constau în: descrierea tipurilor de activități manageriale; definirea atribuțiilor manageriale; stabilirea rolului și importanței conducătorului organului de urmărire penală în organizarea activității de urmărire penală. Drept rezultat al studiului, s-a efectuat cercetarea diferitelor lucrări științifice ale autorilor, care vor contribui la cunoașterea și înțelegerea importanței unei conduceri bine organizate în vederea desfășurării activității de urmărire penală.

**Cuvinte-cheie:** organizare, conducere, dirijare, activități manageriale, atribuții procesuale, gestionare, coordonare, monitorizare, control, evaluare.

### 1. INTRODUCTION

The conduct of the criminal trial requires the presence of certain persons, with certain procedural qualities, summoned or who intervene on their own initiative within this procedural framework<sup>1</sup>. The head of the criminal investigation body is an independent participant in the criminal process, to whom the Criminal Procedure Code provides a wide range of procedural powers, with the nature of managing and monitoring the activity of the criminal investigation officers subordinated to him.

The institution of the head of the criminal investigation body has undergone multiple changes, especially in 2003, when the current Criminal Procedure Code came into force. The term similar to that of “Head of the Criminal Investigation Body” was also provided for in the 1961 Criminal Procedure Code<sup>2</sup>, therefore art. 36/1 entitled “Head of the Criminal Investigation Unit” which regulated the notion of the head of the criminal investigation

<sup>1</sup> Anastasiu C. Criminal Procedural Law. General Part. 2nd edition. Bucharest: National Printing House, 2007. p. 7.

<sup>2</sup> Criminal Procedure Code No. 42 of 24.03.1961. In: M.S.S.R. News. No. 10 of 24.04.1961.

and designated the official person who exercised these powers. The wording of Art. 36/1 of the Criminal Procedure Code 1961 provided that in criminal cases the duties of head of the criminal investigation unit were exercised by an official from the Prosecutor's Office, Police, Intelligence and Security Service of the Republic of Moldova or customs bodies.

In the further development of **hypothesis** of the obtained scientific results, the concept of managerial activity will be defined, the managerial activities of the head of the criminal investigation body will also be described, with the establishment of the importance and role of the head of the criminal investigation body in the organization of criminal investigation activity.

## 2. METHODOLOGY

In order to achieve the objectives proposed above, the following scientific methods were used in the article: logical method based on deductive analysis and inductive analysis which allows the analysis of the concept proposed for study; comparative method widely used in researching the types of managerial attributions of the head of the criminal investigation body and their impact on the development of the criminal investigation body's activity; systemic method that was applied to the systematization of the managerial duties of the head of the criminal investigation body.

During the development of this article, the scientific works of the authors C. Anastasiu, D. Ostavciuc, Tr. Pop, P. A. Lupinskaya were consulted, as well as the Order of the Ministry of Internal Affairs No. 201 of 30.06.2017 on the Approval of the Police Officer Career Guide, Order No. 138 of the GPI on the Approval of the Instructions Regarding the Organization of Criminal Prosecution Activity within the General Police Inspectorate of the Ministry of Internal Affairs, Order No. 254 of 18.07.2008 on the Special Record of Crimes, Criminal Cases and Persons Who Committed Crimes, etc.

### List of abbreviations:

RM – Republic of Moldova;  
TAU – Territorial Administrative Unit;  
MIA – Ministry of Internal Affairs;  
GPI – General Police Inspectorate;  
NAC – National Anticorruption Center;  
ECHR – European Court of Human Rights;  
CPC – Criminal Procedure Code;  
art. – article;  
par. – paragraph;  
let. – letter;  
pt. – point;  
No. – number;  
Vol. – volume;  
p. – page;  
ex. – for example.

## 3. DISCUSSIONS

The managerial role of the head of the criminal investigation body was also mentioned in the Order edited by the Ministry of Internal Affairs No. 201 of 30.06.2017 on the Approval of the Police Officer Career Guide, according to which the heads of the

third-level and specialized criminal investigation bodies are assigned the professional hierarchical level A03; therefore, the following managerial activities are specific to him:

- leads the activity of the subdivision;
- performs planning, organizing, coordinating, monitoring, controlling, evaluating;
- is directly responsible for the activity of the led subdivision, reports directly to the superior;
- possesses planning, organizing, coordinating, monitoring, controlling, evaluating skills;
- is responsible for tactical and operational decisions made regarding the activity of the subdivision and the managed area<sup>3</sup>.

Title III of the Criminal Procedure Code lists all participants in the criminal process, who are organized into four groups: prosecution, defense, representatives and successors in the criminal process and other persons participating in the criminal process. Regarding the grouping of the participants in the criminal trial on the side of the prosecution and that of the defense, in the domestic and foreign specialized literature there are different opinions regarding the criteria and principles that are the basis of the inclusion of some participants in the criminal trial in a certain category. According to the opinion of some authors, the inclusion of the head of the criminal investigation body and the criminal investigation officer in the prosecution is neither successful nor the most optimal, because the latter acts on behalf of the state and within the limits of his competence, having as its object the collection of evidence both in favor and against the suspect, necessary with regard to establishing the existence or non-existence of the crime, identifying the perpetrator, in order to determine whether or not it is appropriate to submit the case to court.

Based on the above, we establish that the criminal investigation officer clarifies and establishes the circumstances of the case within the limits of his functional competence and accumulates evidence that demonstrates the guilt or innocence of the person. In the opinion of the author Gh. Mateuț, a participant in the criminal trial means the subject of the trial who performs various acts in order to achieve the purpose of the criminal trial as a whole, according to specific rules, depending on the procedural position he has, the content of the rights and obligations or the scope of the powers he exercises in relation to the criminal trial.

As participants in the criminal trial, in the opinion of the author Tr. Pop, there are subjects who are part of a criminal procedural report, having rights and obligations in the criminal trial or who perform criminal procedural acts in the exercise of an attribution or collaborate in clarifying and resolving the procedural conflict or formulate claims or oppose them, under the terms of the law<sup>4</sup>.

Another opinion regarding the classification of participants in the criminal trial was expressed by the author P.A. Lupinskaya, who claims that participants in the criminal trial are classified into: participants to whom the criminal procedural law gives powers in order to achieve the purpose of the criminal trial (criminal investigation body, prosecutor, head of the criminal investigation body, court, etc.); participants who represent personal rights and interests or those of other persons in the criminal process (for example: defense attorney, representative, suspect, injured party), and other persons who contribute

<sup>3</sup> Order of the MIA No. 201 of 30.06.2017 on the Approval of the Police Officer Career Guide.

<sup>4</sup> Pop Tr. Criminal Procedural Law. Vol. II, General Part. Cluj: National Printing House, 1948. p. 43.

to the positive running of the criminal process (for example: expert, translator, etc.)<sup>5</sup>.

Order 138 of the GPI on the Approval of Instructions Regarding the Organization of Criminal Investigation Activity within the General Police Inspectorate defines the notion of head of the criminal investigation body as a person with a position of responsibility of the police body, appointed by order of the head of the General Police Inspectorate of the Ministry of Internal Affairs, as the case may be, of the minister, to whom the representatives of the criminal investigation body are subordinated only organizationally, procedural subordination being excluded (as appropriate: head of department, head of inspectorate, etc.)<sup>6</sup>.

The Criminal Investigation Department, within the General Police Inspectorate, has the status of a first-level central criminal investigation body. The Criminal Investigation Coordination Unit of the Chisinau Municipality Police Department and the Criminal Investigation Coordination Unit of the Gagauz-Yeri TAU Police Department have the status of second-level criminal investigation bodies. Criminal investigation bodies within territorial subdivisions, such as municipal, regional or district police inspectorates, have the status of third-level criminal investigation bodies.

The managerial duties of the head of the criminal investigation body are carried out in relation to the subdivision (preparation of the work schedule, creation of working conditions: office, equipment, etc., training of criminal investigation officers) that he/she leads, as well as in relation to each criminal investigation officer individually (proposal for mention, promotion, etc.). Exercising his managerial duties, the head of the criminal investigation body is obliged to avoid affecting the procedural independence of the criminal investigation officer, regarding the decisions taken by him on criminal cases.

Analyzing the powers of the head of the criminal investigation body, expressly regulated by the Criminal Procedure Code as well as by the Interdepartmental Orders, we note that the legislator sought to avoid to make influence on the independence of the criminal investigation officer in the exercise of his powers. Information about crimes received by the competent bodies, depending on the form of receipt and the examination procedure, is classified into two categories:

- notifications (art. 262-264 of the Criminal Procedure Code) about crimes committed, prepared or in the process of being prepared, which contain a description of the act and in accordance with the provisions of the Criminal Procedure Code may serve as grounds for initiating criminal prosecution;

- other information regarding crimes and incidents, complaints or anonymous reports or other requests or communications about crimes which, in accordance with the provisions of the Criminal Procedure Code, cannot serve as grounds for initiating criminal proceedings, but are to be subject to additional control.

Notifications regarding crimes are registered in the Registry of Notifications Regarding Crimes (Register No. 1), and other information regarding crimes and incidents, respectively in the Registry of Additional Information Regarding Crimes and Incidents (Register No. 2), which are considered as unique documents of primary evidence<sup>7</sup>.

<sup>5</sup> Criminal Procedure Law of the Russian Federation: Textbook / Responsible editor P.A. Lupinskaya. Moscow: Norma Publishing House. 2009. p. 96-99.

<sup>6</sup> Order No. 138 of the GPI on the Approval of the Instructions Regarding the Organization of Criminal Investigation Activity within the General Police Inspectorate of the Ministry of Internal Affairs.

<sup>7</sup> Order No. 254 of 18.07.2008 on the Special Record of Crimes, Criminal Cases and Persons Who Have Committed Crimes.

The managerial role of the head of the criminal investigation body is materialized through a set of his/her duties, regulated by the provisions of the Criminal Procedure Code. In order to ensure the proper running of the criminal trial and to respect the reasonable term of the criminal investigation, the notifications, materials relating to the commission of crimes and criminal cases will be distributed within the criminal investigation unit by the head of the criminal investigation body.

Upon receipt of notifications, materials relating to the commission of crimes as well as criminal cases, the head of the investigative body will indicate on the received document the person who will be responsible for its examining, as well as the date of appointment of the criminal investigation officer.

The term for examining reports of a crime is reasonable, but cannot exceed 45 days from the moment of its registration. If the content of the notification document indicates a reasonable suspicion that a crime has been committed and there are no circumstances that exclude criminal prosecution, the criminal prosecution body is obliged to initiate criminal prosecution.

The term of up to 45 days for complaints examining, specified in Art. 274 of the Criminal Procedure Code of the Republic of Moldova, is applicable in the situation where the circumstances of the case, which indicate a reasonable suspicion that a crime has been committed, are not clear from the content of the complaint or the documents of ascertainment. If the content of the notification documents or the acts of ascertainment does not result in a reasonable suspicion that a criminal act has been committed, or circumstances have been established that exclude criminal prosecution, the criminal investigation body shall propose to the prosecutor to avoid initiation of criminal prosecution and closing the criminal case under the conditions of Art. 286 of the Criminal Procedure Code of the Republic of Moldova.

The head of the criminal investigation body, depending on the circumstances of the case resulting from the content of the notification or the act of ascertainment, may set the term for examining the notification or the act of ascertainment shorter than that specified in Art. 274 of the Criminal Procedure Code of the Republic of Moldova, but in order to ensure the qualitative and complete examination of the notifications or acts of ascertainment, the term for examination based on a reasoned report may be extended. The fixed and extended deadline is mandatory reflected in the respective column of Register No. 1 by the employee of the Guard Unit<sup>8</sup>.

The decision of the head to extend the deadline for examining the notification, which overall cannot exceed 45 days, directly influences the activity of the criminal investigation officer and other persons whose duties include verifying the information reflected in the notification act or the act of ascertainment. In addition to setting the deadline for examining the reports, the head of the criminal investigation body, as a manager, verifies whether the committed act falls within the competence of the criminal investigation body he heads. If the content of the notification document shows that the crime is not within the competence of the notified investigative body, the criminal investigation officer is entitled to carry out the criminal investigation actions that cannot be postponed, subsequently transmitting the document to the prosecutor to submit it to the competent criminal investigation body. In such a situation, the actions of the criminal investigation

<sup>8</sup> Ostavciuc D. Notification to the Criminal Investigation Body. Chisinau: "Military Book" Publishing House, 2020, p. 182.

body do not fall under the provisions of art. 251 paragraph (2) of the Criminal Procedure Code of the Republic of Moldova.

The resolution of the head of the criminal investigation body applied to the notification act gives the criminal investigation officer the authority to take the necessary actions regarding the notification or the criminal case transmitted. However, the legality of the actions of the criminal investigation officer involved in the operational group that carries out certain criminal investigation actions in the absence of a resolution from the head of the criminal investigation body raises certain questions. In this regard, in order to optimize and create a legal framework for the activity of criminal investigation officers involved in the criminal investigation group, we propose the following solution:

Monthly, the head of the criminal investigation body draws up the duty schedule of the criminal investigation officers, who on the indicated date will be part of the criminal investigation task force, therefore the nominated person will represent the criminal investigation body in the served area and will carry out, outside of duty hours, the necessary activities to fully and objectively investigate the circumstances of the case. To the criminal investigation materials, the criminal investigation officer will also attach confirmation that he is part of the criminal investigation task force and will carry out the necessary actions.

In the activity of the criminal investigation bodies, there are cases when a repeated notification is filed for the same act, and the decision not to initiate criminal investigation is adopted. In such a situation, the interaction of the criminal investigation officer with the head of the criminal investigation body as a manager plays a fundamental role. Therefore, the criminal investigation officer will submit a reasoned report and, by resolution of his/her superior, will attach it to the refusal material, obligatorily informing the person who filed the notification.

If, following repeated examination, the content of the notification document reveals new or recently discovered facts, or a fundamental flaw that may affect the previous decision (refusal to initiate criminal prosecution or dismissal of the criminal trial), the person resolving the case will notify the prosecutor to proceed in the order provided for in paragraph (7) of Article 274 of the Criminal Procedure Code of the Republic of Moldova, with the proposal to cancel the respective ordinance and reopen the criminal trial<sup>9</sup>.

In order to ensure compliance with the reasonable term and free access to justice, the head of the criminal investigation body will daily control the discipline of reports recording and registration and of other information relating to the crime, applying measures to subordinates who have committed misconduct.

At the same time, in addition to examining of reports and other information regarding the crime made by criminal investigation officers, some information regarding crimes registered in Register No. 2 will also be examined by other subdivisions within the institution. The head of the criminal investigation body will draw attention to this information and the time for its examining, in order to respect the deadline for examining the complaint in order to prevent the failure to register crimes.

The information reflected in Register No. 2 may serve as a basis for arriving to the scene, interviewing witnesses and performing other actions that may be carried out before the commencement of criminal prosecution. After the criminal investigation officer

<sup>9</sup> Ostavciuc D. Notification to the Criminal Investigation Body. Chișinău: "Military Book" Publishing House, 2020, p. 183.

is assigned to examine the complaint or other materials relating to the commission of crimes, he will receive the objects relating to the committed act. The criminal procedural legislation does not establish the criteria by which the head of the criminal investigation body is guided when distributing criminal cases, notifications or materials to criminal investigation officers within the department.

When assigning criminal cases, reports or materials, the head of the criminal investigation body will take into account the following factors:

- number of criminal cases, notifications or materials relating to the commission of the crime under the competence of each criminal investigation officer;
- complexity of the criminal cases under the operation of each criminal investigation officer and the complexity of the case to be assigned;
- professional experience of each criminal investigation officer;
- level of professional training of each employee within the criminal investigation unit;
- results of the professional activity of employees within the criminal investigation body;
- other circumstances that may influence the activity of the criminal investigation officer (transfer to another position, state of health, incompatibility of the criminal investigation officer, etc.).

The head of the criminal investigation body will also take into account other circumstances when assigning criminal cases, thus creating optimal conditions for criminal investigation officers for the positive running of the criminal trial. The deadline for examining reports of crimes is up to 45 days. The head of the criminal investigation body ensures compliance with the reasonable term in their examination, establishing, depending on the complexity of the case, by resolution, fixed terms that may be extended only for real reason.

The head of the criminal investigation body is obliged to constantly play an active role in ensuring the normal activity of the criminal investigation officer, including his interaction with the investigative bodies, in resolving problems that arise during the criminal investigation, with the identification and immediate elimination of causes that may negatively influence this activity or, as the case may be, to propose effective measures in this regard. The managerial role of the head of the criminal investigation body in examining the reports refers primarily to establishing the term of examination and the criminal investigation officer or group of officers in the reports' examining.

Furthermore, in complicated and/or large-scale criminal cases, the head of the criminal investigation body, guided by the provisions of art. 256, orders the criminal investigation to be carried out by several criminal investigation officers, with the prosecutor being informed. The fundamental basis for creating the group of officers represent complicated or large-scale causes, and it is not clear what criteria the head of the criminal investigation body will use to determine which case is complicated or large-scale. In my opinion, the group of officers will be created for criminal cases in which it is necessary to carry out a large number of criminal prosecution actions, for example in the case of crimes committed by organized criminal groups, in the case of joint criminal offenses, a large number of participants in the trial (suspects, witnesses, injured parties, etc.), the commission of several crimes in remote regions, etc.

The creation of a group of criminal investigation officers for the purpose of investigating complicated or complex criminal cases will allow for the simultaneous performance of several criminal investigation actions and will prevent the violation of the competence

of criminal investigation officers. The provision regarding the conduct of criminal investigation by several criminal investigation officers is made by ordinance, which indicates the officer who will lead the actions of the other officers. This ordinance shall be brought to the attention of the suspect, the accused, the injured party, the civil party, the civilly liable party and their representatives, explaining to them the right to challenge any of the officers.

Informing the parties about the name, surname, position, and rank of the persons who will be part of the group of officers is mandatory, and from a procedural point of view, these persons are given the authority to carry out various criminal prosecution actions regarding the case under examination. The managerial responsibilities of the head of the body are not limited to the appointment of the criminal investigation officer or the creation of the group of officers; at the same time, the head of the criminal investigation body withdraws the materials and criminal cases assigned to a criminal investigation officer and transmits them to another criminal investigation officer, informing the prosecutor leading the criminal investigation, in the case of:

- transfer, delegation, redistribution, suspension or dismissal of the criminal investigation officer, according to the law;
- absence of the criminal investigation officer, if there are objective reasons that justify the urgency and prevent his appearance.

The withdrawal of criminal reports and cases from a criminal investigation officer in order to assign them to another criminal investigation officer, in cases other than those established, is made by the head of the criminal investigation body only on the basis of the reasoned ordinance of the prosecutor. The head of the criminal investigation body, in order to ensure the proper conduct of the criminal investigation and the activity of the subdivision, upon the departure of direct subordinates on annual leave, medical leave or in other circumstances in which they cannot exercise their duties, is obliged to immediately withdraw from their procedure the notifications regarding crimes and criminal cases in order to be transmitted, in the established order, to other criminal investigation officers.

In the case of the distribution of notifications regarding the commission of crimes, the head of the criminal investigation body shall familiarize himself with them, but in the case of the transmission of the criminal case from one criminal investigation officer to another, in order to exercise his managerial duties and identify the appropriate person for the exercise of the criminal investigation, the head of the criminal investigation body shall familiarize himself with the case materials. The Criminal Procedure Code does not expressly address this situation, but I believe that before assigning the case, in order to create optimal conditions for subordinated officers, the subdivision manager will ascertain the complexity of the case and assign it to the criminal investigation officer, who will fully and objectively investigate all the circumstances of the case.

Moreover, in some cases, the head of the criminal investigation body is assigned the status of criminal investigation officer. The head of the criminal investigation body, in order to reduce the number of criminal cases under the running of criminal investigation officers within the department, is entitled to retain the notifications and criminal cases for personal criminal investigation, adopting a reasoned ordinance to this effect. Thus, the head of the criminal investigation body assumes the duties of the criminal investigation officer, but at the same time he loses his status as head of the criminal investigation body for the criminal case he takes over.

The head of the criminal investigation body, depending on the number of subordi-

nates, may, by written order, delegate part of his duties to his deputies. The respective provision, as a rule, is issued at the beginning of the year (or upon appointment) by the head of the territorial or specialized criminal investigation body and is to be coordinated with the leadership of the Criminal Investigation Division and Control Department of the Criminal Investigation Department. These provisions also apply to the deputy head of the Criminal Investigation Department, the heads of implicit departments and other central criminal investigation bodies, except for the coordination of the respective provision with the leadership of the Criminal Investigation Division and Control Department of the Criminal Investigation Department. The provision will expressly contain which specific powers are delegated, either in relation to certain criminal cases, or with regard to certain criminal investigation officers. In the absence of such a provision, the head of the criminal investigation body will exercise his/her duties alone and will be personally responsible for organizing the criminal investigation activity.

The direct head of the criminal investigation body permanently exercises control over compliance with the criminal investigation deadlines in criminal cases, being obliged to intervene if the competent criminal investigation officer has not submitted the extension request five days before the expiration of the set deadline or has not sent the case to the prosecutor with the proposal to adopt the final solution. Through such control carried out by the head of the criminal investigation body, the activity of criminal investigation officers is coordinated and methodical assistance is provided in carrying out the criminal investigation, contributing to obtaining the necessary data and materials. Also, measures are being taken to ensure the timely execution of the missions of criminal investigation officers regarding the performance of special investigative measures.

Is the methodological assistance provided by the head of the criminal investigation body mandatory or of a recommendatory nature? I believe that methodological assistance should be provided only at the personal request of a criminal investigation officer, but in order to make the assistance more efficient, it is necessary for the head of the criminal investigation body to become familiar with the criminal case, to the extent necessary to provide this support to subordinated officers.

There is a delicate line between the coordination of the work of criminal investigation officers and the independence of the criminal investigation officer which constitutes an inherent part of the fair trial. Until 01.07.2016, paragraph 2<sup>2</sup> of art. 56 had the following content: The instructions of the head of the criminal investigation body in criminal cases are given in writing to the criminal investigation officer or, as the case may be, to the head of the hierarchically lower criminal investigation body, are binding and enforceable, except in cases where they were immediately contested and annulled by the prosecutor leading the criminal investigation or, respectively, by the hierarchically higher prosecutor. However, by Law 152 of 01.07.2016, paragraph 2<sup>2</sup> of Article 56 was repealed, so the criminal investigation officer obtained procedural independence in relation to the head of the criminal investigation body, being only under administrative subordination.

In addition to providing methodological assistance and coordinating the activities of criminal investigation officers, the head of the criminal investigation body will actively cooperate with other subdivisions in order to ensure the improvement of the employees within the subdivision. Organizing the interaction of the head of the criminal investigation body with other subdivisions or services will contribute to making the criminal investigation subdivision's activity more efficient. The cooperation of the head of the criminal

investigation body with counterparts from other subdivisions is regulated by interdepartmental or internal acts of various subdivisions, which are developed jointly by the heads of subdivisions and are aimed at improving and organizing the activity of specialized subdivisions within the criminal process.

The organizational aspects of the interaction of the head of the criminal investigation body with heads of other subdivisions or institutions are classified according to the purpose pursued, namely:

- Interaction of the head of the criminal investigation body with the heads of other subdivisions on the specific criminal case.

- Interaction of the head of the criminal investigation body with the heads of other subdivisions in order to develop cooperation policies between subdivisions or other institutions.

Therefore, the interaction between the heads of subdivisions directly influences the activity of the subordinate personnel both from a procedural and tactical perspective. Heads of subdivisions may submit proposals for the development of regulations or their amendment, making methodical recommendations in certain situations faced by criminal prosecution bodies or other institutions in the process of criminal prosecution carrying out.

The interaction between the heads of criminal investigation bodies ensures the promotion of various policies to streamline criminal investigation activity and the identification of problems faced by criminal investigation officers. Such interaction from an organizational perspective contributes to solving problems within the department, both procedural and organizational, which will directly influence the conduct of the criminal investigation.

For the proper organization of the activity of the criminal investigation department, the head of the criminal investigation body will cooperate both with other institutions and subdivisions, as well as directly with the head of the institution within which the respective criminal investigation body is established. The head of the criminal investigation body also possesses some managerial attributions from a procedural aspect in relation to the criminal investigation officers within the subdivision, the possibility of getting acquainted with the materials of the criminal cases being excluded. The head of the criminal investigation body does not have the right to give instructions on the performance of procedural actions regarding decisions on the case or to be involved in any other way in the conduct of the criminal investigation.

Since the possibility of giving instructions on the criminal case or the notification of becoming acquainted with the criminal case is excluded, the head of the criminal investigation body has the following obligations:

- exercises control over the timely performance of actions to detect and prevent crimes; art. 56 paragraph (5) of the Criminal Procedure Code expressly prohibits the head of the criminal investigation body from giving instructions regarding the performance of procedural actions, obviously, in such a case, two questions arise in connection with this attribution: 1) How will the head of the criminal investigation body exercise control over the timely performance of actions to detect and prevent crimes if he is not entitled to become familiar with the criminal case? For example, the head of the criminal investigation body, through certain methods, unclear to us, finds that the criminal investigation officer did not carry out certain actions in a timely manner that were necessary, in his opinion, for the discovery and prevention of crimes; and in this case a question arises:

What procedural levers does the head of the criminal investigation body, as a manager, have at his disposal to force the criminal investigation officer to take the necessary actions? The head of the criminal investigation body is not entitled to familiarize himself with the materials of the criminal case and to give instructions regarding the performance of procedural actions, but he is obliged to exercise control over the timely performance of actions to discover and prevent crimes; I believe that the leader, in order to carry out this task, lacks the opportunity to familiarize himself with the case materials and to give instructions regarding the timely performance of the necessary actions. In this regard, I believe that the head of the criminal investigation body, as manager of the subdivision, lacks the necessary powers to exercise real control over the timely performance of actions to prevent and detect crimes.

The head of the criminal investigation body submits to the prosecutor requests for the annulment of illegitimate legal acts of the criminal investigation officer; the situation is similar in the case of the provisions of art. 56 paragraph (21) letter h); it is unclear what the legal basis is for the head of the criminal investigation body to verify the criminal case materials. A similar provision is included in the prosecutor's powers, provided for in art. 52 paragraph (1) point 8): annuls illegal ordinances, amends or supplements unfounded ordinances of the criminal investigation body. In turn, the prosecutor is entitled to verify the case materials and give instructions to the criminal investigation officer. The illegality of the act can be established only by examining the criminal case as a whole, but not by examining a single act drawn up.

Annually, the Department of Continuing Education and Management Training of the Professional Development Division of the "Stefan cel Mare" Academy of the Ministry of Interior conducts courses in various fields, including criminal prosecution. The heads of criminal investigation subdivisions will redirect criminal investigation officers from the department in order to improve their knowledge and obtain new knowledge in the field of criminal investigation. However, I believe that in order to make the training courses more efficient, it is necessary to establish a plan, based on the requests of employees in the field of criminal prosecution, depending on the problems met in practical activity.

#### 4. RESULTS

Based on the Order of the Ministry of Internal Affairs No. 301 of 13.07.2021, during the year 2021-2022, the Department of Continuing Education and Management Training of the Professional Development Division of the "Stefan cel Mare" Academy of the Ministry of Internal Affairs planned to conduct two courses on Criminal Investigation Activity, each of 40 hours, and two retraining courses in the field of criminal investigation, each of 80 hours. Based on the topics that will be addressed in these courses, the heads of criminal investigation bodies will designate subordinates to improve their specialized knowledge.

The head of the criminal investigation body, following the preparation of the thematic plan, will assign each representative of the criminal investigation unit a topic that he will present to his colleagues. Each criminal investigation officer, for an argumentative presentation, will analyze the national judicial practice, as well as the practice of the ECtHR and of the national courts. Also, in addition to the legal aspect, he will analyze the specialized literature to present the tactical aspects.

In addition to the theoretical preparation of the topic, depending on the problem addressed, each criminal investigation officer will present the practical aspect of criminal

investigation actions. And in addition to specialized training, the head of the criminal investigation body, in accordance with the provisions of GPI Order No. 138, will take actions to prevent the phenomenon of corruption within the unit.

In order to exclude cases of corruption and protectionism within the work of subordinates, the direct leaders of criminal investigation bodies will take the following actions:

- will allow subordinates to travel outside the headquarters during working hours only with prior permission, strictly according to imperative needs, with verification of the activities undertaken during the period of permission;

- will supervise that the meetings of the criminal investigation officers with the parties in the process take place only at the service offices, except in cases where the criminal investigation actions are to be carried out outside the premises of the criminal investigation body;

- will permanently warn criminal investigation officers about the exclusion of private meetings with the parties or other participants in the criminal process, with other interested persons, permanently verifying compliance with this prohibition;

- will immediately propose to the prosecutor to withdraw the criminal case from the criminal investigation officer's procedure, if there are grounds for recusal or complaints regarding his impartiality, or if certain non-objective tendencies, manifestations of bias, flagrant violations of legal provisions and procedural guarantees of the parties are identified;

- will exclude any personal interests or conflicts of interest in the conduct of criminal prosecution, ensuring strict compliance by subordinates with the limits of procedural competence;

- will develop and maintain, permanently, among criminal investigation officers the spirit of respect for legality, devotion to duty and impartiality in the criminal process;

- will permanently identify the predispositions and vulnerable parts of subordinates, as well as the possible risks that may generate corruptible situations;

- will study under personal responsibility candidates for employment, advancement or promotion for leadership positions of criminal investigation bodies, taking into account moral qualities, especially drawing attention to their predisposition to acts of corruption or protectionism;

- will immediately order the performance of service investigations into each case of involvement of criminal investigation officers in activities that may generate or turn into acts of corruption or protectionism.

## 5. CONCLUSIONS

Thorough planning of the subject matter of specialized training will contribute significantly to the improvement of the staff in the criminal investigation department, both theoretically and practically in carrying out criminal investigation activities aimed at achieving the goal of the criminal trial. For the organization of the activity of the criminal investigation department, we give the central place to the leader of this subdivision, namely the head of the criminal investigation body.

In turn, the head of the criminal investigation body, having direct influence on the thorough organization of the activity within the criminal investigation body, and depending on his managerial abilities, will manage the activity of the criminal investigation unit, with the exception of his involvement in the procedural activity of the criminal investigation officers under his/her command.

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