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**Conflict of Competence on
The Investigation of Crimes against the Shipping Regime**

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Abstract: In this paper, the authors investigate cases from the shipping practice that gave rise to controversy over a potential conflict of jurisdiction over the investigation of crimes against the shipping regime. The investigation of crime against shipping regime requires specialized naval training necessary for their understanding, as there are numerous situations in which criminal investigation bodies do not have the technical capacity to analyze and investigate those crimes, a circumstance which may lead to erroneous conclusions, with particular consequences on the quality and accuracy of the investigation act.

Keywords: shipping practice; potential conflict of jurisdiction; shipping regime

In recent years, at the level of the Romanian Naval Authority, there have been numerous cases in which the investigation bodies of the Shipping Police carried out the criminal investigation for the crimes established by the special law, Law no. 191/2003 crimes against the shipping regime, invoking the quality of criminal investigation bodies of the judicial police³, replacing the special criminal investigation bodies within the Harbor Masters.

The quality of the special criminal investigation bodies of the Harbor Masters, which obtained the assent of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice⁴ allows it to carry out criminal investigations for the offenses established by the special law in the case of the Romanian Naval Authority, Law no. 191/2003 crimes against the shipping regime.

The legislator expressly states that “the criminal investigation bodies of the judicial police carry out criminal prosecution for any offense not given, by law, within the competence of the special criminal investigation bodies or the prosecutor, as well as in other cases stipulated by the law”⁵.

Thus, the competence of the criminal investigation bodies of the judicial police is clearly delineated, referring to the crimes provided by special laws, to which their investigation belongs to the special criminal investigation bodies.⁶

In practice, there were two situations:

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³ According to Criminal Procedure Code, art. 55, para (1), letter b).

⁴ Ibidem, art. 55, para (5).

⁵ Ibidem, art. 57, para (1).

⁶ Ibidem, art. 57, para (2).

- the first, in which the special criminal investigation bodies within the Harbor Masters are notified of criminal aspects, as provided by the Law no.191 / 2003 or for the crimes of corruption and malfeasance provided by the Criminal Code, committed by the civil navy staff, if the deeds have put or could endanger the safety of the ship or of the navigation or cabin crew staff.¹
- the second, in which the police bodies within the Shipping Police are notified or refer to the same issues listed above.

In connection with these situations, each of the two bodies should check their competence in criminal investigation, and if it finds that they have no competence to decline the competence of the other body.

At the same time, the criminal investigation files initiated both by the special criminal investigation bodies within the Harbor Masters and those initiated by the Shipping Police bodies sent to the Prosecutor's Office for the assignment of the unique number and the notification to the Prosecutor must be checked from the point of view of the competence of the investigation body into the continuation of criminal investigation.²

However, there have been several situations where investigation files opened by the special criminal investigation bodies within the Harbor Masters after being registered with the Prosecutor's Office, have been redirected to the Shipping Police investigation bodies for criminal investigation of criminal offenses established by the special law, as stated above.

In this context, case prosecutors who coordinate the criminal prosecution of both the judicial police and the specialized criminal investigation bodies³ against the crimes against the shipping regime should have verified the competence of each body and consequently directed the files for the continuation of the investigations to the special criminal investigation bodies within the Harbor Masters.

Crime investigation into the shipping regime requires specialized naval training necessary for their understanding, against which the criminal investigation bodies within the judicial police, in many cases, do not have the technical capacity to analyze and investigate the offenses in question which could generate erroneous investigation, with particular consequences on the quality and accuracy of the investigation act.

That is why special criminal investigation bodies have attributions and competences in the investigation of offenses established in special laws and any other interpretation or approach of the criminal investigation bodies within the judicial police, could lead to the nullity of the criminal investigation, in the absence of their competence, of otherwise not specified in the special law.

Causes that Generated Conflict of Interest in Investigating Crimes against the Shipping Regime

Prior to the entry into force of the Government Ordinance no. 42/1997 on the maritime and inland waterway shipping, the crimes stipulated in the Decree no. 443/1972 on civil navigation - Chapter VI were correlated with the provisions of the Criminal Procedure Code applicable at that time.

Thus, the Criminal Procedure Code provided clearly that criminal investigations could be carried out by the Special Investigation Bodies of the Harbor Masters for crimes against waterway shipping safety

¹ Ibidem, Title V, Corruption crimes and malfeasance.

² According to Criminal Procedure Code, art.58, para (3).

³ Ibidem, art.56, para (1).

and on-board discipline and order, as well as for malfeasance or related to work provided by the Criminal Code, committed by civilian naval sailors, if the deed has or could have endangered the safety of the ship or of the navigation.”¹

Subsequently, following the entry into force of Law no. 191/2003 regarding the crimes against the shipping regime, the crimes provided by the Decree no. 443/1972 on Civil Shipping under Chapter VI have been grouped into crimes against **civilian shipping safety, crimes against order and discipline on board ships**, to which new crimes have been added.²

Against these new crimes, through Law no. 191/2003 have been given clear powers to Harbor Masters to carry out criminal investigations, considering that a special article is no longer needed to establish criminal investigation powers for crimes previously established.

After the amendment of the Criminal Procedure Code, it was established that criminal investigations can be carried out by special criminal investigation bodies, under the conditions of art.55 par. (5) and (6) of the Criminal Procedure Code.³

As a consequence, the Romanian Naval Authority requested the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice⁴, for certain officers within the Port Captains, to obtain the necessary opinion necessary for the criminal investigation for the offenses established by the special law, Law no. 191/2003 offenses to the shipping regime, Criminal Procedure Code, Criminal Code - offenses related to the service of the cabin crew staff.

Conclusion

In the matter of the competence of the criminal investigation against the old crimes transposed by Law no. 191/2003 on crimes against civilian shipping safety, crimes against order and discipline on board ships, have created serious confusion.

Thus, there are many opinions according to which it can no longer be investigated by the officers of the Harbor Masters which have obtained the appropriate assent, because within Law no. 191/2003 are established powers for criminal investigation only for new offenses⁵.

The new Criminal Procedure Code amended art. 208 letter e)⁶ without expressly specifying the crimes against the shipping regime, as the old Code specified, to which the criminal investigation competence was assigned to the special criminal investigation bodies within the Harbor Masters.

In this context, a totally erroneous interpretation of the Criminal Procedure Code and Law no. 191/2003 was generated, as amended, in the sense that for the crimes against the safety of navigation on water and against discipline and order on board ships the competence of the criminal investigation bodies is currently of the Shipping Police.

¹ According to Old Criminal Procedure Code, art. 208, letter e).

² Law nr. 191/2003 on crimes against shipping regime, within Chapter IV.

³ New Criminal Procedure Code.

⁴ According to provisions of the Criminal Procedure Code, art. 55, para (5).

⁵ Law no 191/2003 on crimes against shipping regime, Chapter V, art.33, para (1).

⁶ Criminal investigation is also carried out by the following special bodies: Harbor Masters, for crimes concerning the safety of navigation on water and against discipline and order on board, as well as for malfeasance or related to work crimes, as provided for in the Criminal Code, committed by cabin crew staff of the civilian navy, if the deed has or could endanger the safety of the ship or navigation.

This erroneous interpretation was also generated by the fact that Law no. 191/2003, as amended and supplemented, introduced in particular an article¹ only to establish the competences of the criminal investigation against the new crimes, “other crimes”, without specifying that for the crimes against which the old Criminal Procedure Code expressly reference², jurisdiction over criminal investigation remains with the special criminal investigative bodies within the Harbor Masters.

Thus, currently, there are many cases where the criminal investigation of crimes against shipping safety and against order and discipline on board ships is carried out by police bodies within the Shipping Police, although it have been established by a special law, and the Criminal Procedure Code provides in this case that criminal investigation is carried out by officers who have received the assent of the Prosecutor General of the Prosecutor's Office attached to the Court of Cassation and Justice.

Bibliography

Criminal Procedure Code.

Old Criminal Procedure Code.

Law no. 191/2003 on crimes against shipping regime.

¹ Law nr. 191/2003 as amended in 01.02.2014 by Law nr. 255/2013, art. 33, para 1)

² In the Old Criminal Procedure Code, art. 208, lit. e).