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The investigative power of the Public Prosecutor's Office *The Power giving investigation of the Public Prosecutor's Office*

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SUMMARY
The purpose of this work is to analyze the possibility of the Public Prosecutor's Office presiding over criminal investigations or not, presenting the main arguments of both schools of thought, as well as outlining an interpretation of the current legal system, taking into account the decisions of the STF. Therefore, it is urgent to make considerations about the topic presented.
Key words: Public ministry. Power to Investigate. Police Inquiry. Judiciary Police. Federal Constitution.

ABSTRACT
Thiswork hastheobjective toanalyzethe possibility of the prosecution or not preside over criminalinvestigations, presenting the main arguments of both chains, as well asoutline aninterpretationof currentlegislation, takinginto account thedecisions ofthe Supreme Court. Thus, it is urgent considerationsmaymay weave the themepresented. **Keywords**: Criminal Prosecutor. Investigation power. Police Investigation. Judicial Police. Federal Constitution.

1. INTRODUCTION

The criminal investigation carried out by the Public Prosecutor's Office has been a widely discussed topic currently, due to PEC 37, which was just rejected in the National Congress. This proposed constitutional amendment would add § 10 to art. 144 of CF/88, providing that the investigation of the criminal offenses referred to in §§ 1 and 4 of this article is the exclusive responsibility of the Federal and Civil Police.

Hence, the choice of this theme, which was developed using constitutional regulations, especially with regard to the duties of the Judiciary Police and the institutional functions of the Public Ministry. Through research, doctrinal and jurisprudential positions were raised, systematically demonstrating the arguments against and those in favor of direct investigation by the Public Prosecutor's Office, in order to provide a panoramic view of the issue.

As it is an intriguing matter, the investigative power of the Public Prosecutor's Office isbecamesubject of constant debate mainly among legal practitioners, not only because it is a controversial matter, but also because it involves two segments that work in favor of criminal prosecution and compliance with the law, namely, the Public Prosecutor's Office and the Judiciary Police.

At one pole we have the Police, eager to carry out their activities, incessantly seeking legal means to investigate, relying on the right that is inherent to the position they were prepared for. At another pole is the Public Ministry, an autonomous institution, with constitutional powers to defend society, and which understands criminal investigation as an extension of this defense. Since he is the private holder of the public criminal action, and because the Federal Constitution does notassignexclusivity to the Judicial Police in investigating criminal offenses, it can investigate in its own procedure.

Faced with this scenario made up of antagonisms and disputes over the right to investigate, research was carried out involving the main nuances on the topic. However, it is known that the discussion does not end here and that the effort of law consists, precisely, in creating various instruments of social action that aim to satisfy certain needs, mainly those of public security.

2 OF THE INVESTIGATION CARRIED OUT BY THE PUBLIC PROSECUTION OFFICE ACCORDING TO THE DOCTRINE

Firstly, it is worth highlighting that the doctrine has the most diverse essays on the subject at hand. Therefore, it is necessary to present a brief summary of the main arguments of both schools of thought: those that deny and those that attribute criminal investigation powers to the Public Prosecutor's Office.

2.1 DOCTRINAL CURRENT FAVORABLE TO INVESTIGATION BY THE PUBLIC PROSECUTION OFFICE

Among the theses used to defend the carrying out of investigative acts by Public Prosecutor's Office bodies, the most commonly invoked is the application of the Theory of Implicit Powers.

In the criminal process, those who defend the possibility of direct investigation by the Public Prosecutor's Office maintain that from the moment the Federal Constitution granted the*Parquet*, exclusively, the function of promoting public criminal action, in the same way it would have conferred, implicitly, the function of directly carrying out any investigative steps necessary to file the complaint.

In this sense, Paulo Rangel argues:

> Would be a*contra sensu*let us say that the Public Prosecutor's Office is legitimated to promote public criminal action, but that it does not have the legitimacy to carry out, personally and directly, the investigations necessary for the exercise of said criminal action. Which in other words would mean saying: you can and should put the accused in the dock with the filing of the complaint, but you cannot (and much less should) carry out preparatory investigations to serve as a basis for this same complaint. Makes the accusation, however, cannot carry out steps that, perhaps, prevent even this accusation, as it may happen that there is no evidence or even evidence of authorship or participation of the person identified as possible author of the fact in the crime under investigation (RANGEL, 2003 , p. 177).

According to these authors, since the Federal Constitution, in its article 129[1], provides that the institutional function of the Public Prosecutor's Office is the exclusive promotion of public criminal action, as well as the exercise of other functions that are conferred on it, as long as they are compatible with its purpose, the means and ends relationship remains clear.

In other words, according to this segment of the doctrine, the Theory of Implicit Powers would have full application with regard to the investigative power of the Public Prosecutor's Office, since the promotion of public criminal action was an aim foreseen by the Constitution, and is also authorized by the*Parquet*the exercise of other activities, as long as they are within their sphere of authority. Thus, since criminal investigation is a means of offering a complaint, and it is within the scope of action foreseen by the original constituent of the Ministerial Body, there would be no way to deny the Public Prosecutor's Office the possibility of carrying out its own investigations.

Rômulo de Andrade Moreira (2009, p. 384), in turn, analyzing the investigative power of the Public Ministry, also makes a detailed analysis of the sections of article 129 of the Federal Constitution, concluding that it is possible for the Ministerial Body to carry out its own criminal investigations.

In this step, these authors argue, in summary, that criminal investigation can be a necessary measure to guarantee the rights guaranteed in the Federal Constitution (section II); that the information and documents provided for in item IV of article 129 refer precisely to the criminal procedure, with the aim of forming the*crime opinion*; and that section IX authorizes the Public Prosecutor's Office to exercise other functions assigned to it by law, as long as they are compatible with its purposes. However, Federal Law 8,625/93 still grants the*Parquet*the possibility of initiating administrative investigative procedures. In this sense, Eugênio Pacelli de Oliveira (2009, p. 80-81) states:

> Although the Federal Constitution ensures that the judicial police are responsible for investigating criminal offenses (art. 144), it is clear that this task was not undertaken*exclusively*to the police authorities, with the constituent itself taking care to assign investigative functions, for example, to the Public Prosecutor's Office. The legitimization of *parquet*for the investigation of criminal offenses has, in fact, a constitutional basis, in accordance with the provisions of art. 129, VI and VIII, of the CF, regulated within the scope of the Federal Public Ministry, by Complementary Law No. 75/93, in accordance with the provisions of arts. 7th and 8th. Also art. 38 of the same Complementary Law No. 75/93 gives the*parquet*the assignment for*request inquiries and investigations.*In the same vein, with the same attributions, Law No. 8,625/93 reserves such powers to the State Public Prosecutor's Office. [emphasis added].

1Art. 129. The institutional functions of the Public Prosecutor's Office are: I - to privately promote public criminal action, in accordance with the law; VIII - request investigative measures and the initiation of a police investigation, indicating the legal basis for their procedural manifestations; IX - perform other functions that are conferred on him, as long as they are compatible with his purpose, being prohibited from judicial representation and legal consultancy for public entities.

Having overcome the constitutional issue, another legal argument commonly used to support the possibility of the Public Prosecutor's Office carrying out its own investigations is the wording of the Criminal Procedure Code.

This is because, in its 4th article[two], the Brazilian Procedural Statute expressly recognizes the concurrent competence of authorities in the investigation of criminal offenses and in its article 47[3], ensures the possibility for the Public Ministry to request, directly, from any authorities, "[...] further clarifications and complementary documents or new elements of conviction [...]" (BRASIL, 1941), if it so wishes.

The doctrine supports the reception of these articles by the Federal Constitution, since this, in its article 144, did not establish a monopoly on preliminary investigations by the judicial police, but rather listed the bodies that would have the role of judicial police. The purpose of § 4 of article 144[4]of the Federal Constitution would simply delimit the duties of the bodies responsible for public security. Its intention, therefore, would be to restrict the actions of other police forces in investigating criminal offenses, not to prohibit the Public Prosecutor's Office from carrying out investigative acts.

There are also other arguments used, such as the external control carried out by the Public Ministry over police activity.

One of the factors that justify the MP's actions and mainly defended by society is the growth of organized crime, which has the financial resources to modernize and, of course, combined with police inefficiency and corruption.

If these precepts were not enough, there is also one of them embodied in section IX of the CF, which allows the exercise of other functions that are attributed to the Public Ministry and that are compatible with its purposes: Federal Law no. 8,625/93 grants the Ministry Public the possibility of initiating administrative investigative procedures, as we will see below. III - The Organic Law of the Public Ministry.

Effectively, Law No. 8,625/93 (Organic Law of the Institution), in its art. 26, it is up to the Public Prosecutor's Office (my emphasis)[5]:

> "I - initiate civil investigations and other pertinent administrative measures and procedures and, to instruct them: (omissis);"
> "II - request information and documents from private entities, to instruct procedures or processes in which they are involved;"
> "V - carry out executive administrative acts of a preparatory nature;"

Still in the same sense, Complementary Law 75, the Statute of the Federal MP. According to articles 7 and 8[6], the Public Ministry would have the power to investigate

Therefore, we cannot conceive, despite the authority of those who think otherwise, that it is said that the Public Prosecutor's Office is prohibited from investigating and collecting evidence for criminal proceedings (including, as is evident, notification to appear), as this attribution is perfectly permitted, especially taking into account the widely known doctrinal lesson, according to which the police investigation is aessentialto the initiation of criminal action, a conclusion taken from the CPP itself, articles 27, 39 §5, among others.

2.2 DOCTRINAL CURRENT CONTRARY TO INVESTIGATION BY THE PUBLIC PROSECUTION OFFICE

The authors who maintain that it is unfeasible to conduct a criminal investigation by a Public Prosecutor's Office allege, in summary, that the Federal Constitution did not grant the Ministerial Body the investigative function, on the contrary, it expressly assigned the task of carrying out investigative acts to the Judicial Police; that the competence to the offering of the complaint does not include the competence for the prior criminal investigation, and, in this case,

twoArt. 4 The judicial police will be exercised by the police authorities in the territory of their respective districts and will aim to investigate criminal offenses and their authorship. (As amended by Law No. 9,043, dated 5/9/1995) [...] Sole paragraph. The competence defined in this article will not exclude that of administrative authorities, who are assigned the same function by law." (BRAZIL, 2012b).

3Art. 47. If the Public Prosecutor's Office deems further clarifications and additional documents or new elements of conviction necessary, it must request them directly from any authorities or employees who should or can provide them." (BRAZIL, 2012b)

4Article 144, § 4 - the civil police, led by career police officers, are responsible, subject to the competence of the Union, for the functions of judicial police and the investigation of criminal offenses, except military ones.

5Organic Law of the Federal Public Ministry

6Complementary Law no. 75/93 (Deals with the organization, duties and statutes of the Federal Public Ministry).

whoever can do the "more", could not do the "less", as they are different skills; and that it is not up to *Parquet* accumulate the investigative and accusatory function, which could compromise its impartiality, as well as giving the institution excessive power.

According to the authors who support this current, the Federal Constitution is clear in establishing the competitions ences, and it is not up to the interpreter to use hermeneutical resources to conclude what is not written in the Constitutional Diploma.

Along these lines, argues Luís Roberto Barroso (2013, p. 1):

> It seems beyond doubt that the model established by the 1988 Constitution did not reserve the role of protagonist in criminal investigations for the Public Prosecutor's Office. In fact, such competence does not arise from any express norm, it being certain that the function of judicial police was attributed to the Federal and Civil Police, with explicit reference, regarding the latter, to the responsibility of investigating criminal infractions, except military ones (art. 144, IV and § 4). In this context, it does not seem appropriate to recognize as natural the performance of this specific attribution by the Public Prosecutor's Office, based on constitutional norms that do not deal with it (as is the case with art. 129, I, VI, VII and VIII), especially when the constituent addressed the issue expressly in another provision (art. 144). For the same reason, it does not seem appropriate to draw such a conclusion from general clauses, such as those that impose on the *Parquet* the defense of the legal order and unavailable social and individual interests (art. 127, *caput*) or even those that deal with public security as a duty of the State (art. 144, *caput*) and human dignity (art. 1, III). An argument is added in favor of this point of view. In the light of democratic theory, and considering that there has never been a constituent or legislative deliberation in favor of the performance of criminal investigative powers by the Public Prosecutor's Office, it does not seem legitimate to innovate in this matter through an extensive interpretation. In this way, the decision on the topic would be removed from the ongoing political discussion and, consequently, from the majority process.

For this part of the doctrine, the police investigation would not be a means of offering a complaint, nor a *minus* in relation to criminal action, which is why the Theory of Implicit Powers would not be applied. The criminal investigation would only be an instrument through which the authorship of a crime is determined.

However, they also state that if the Public Prosecutor's Office had the power to investigate, the institution would be vested with excessive powers, and its impartiality would also be compromised, as it would only gather evidence intended to support the conviction.

This is the position of Guilherme de Souza Nucci (2007, p. 68,69):

> The Federal Constitution was clear in establishing the functions of the police - federal and civil - to investigate and serve as an auxiliary body of the Judiciary - hence the name *judiciary Police* - in the task of investigating the occurrence and authorship of criminal crimes and misdemeanors (art. 144). Ownership of the criminal action was reserved to the Public Prosecutor's Office, that is, the exclusivity in its filing, except in the exceptional case reserved for the victim, when the criminal action is not initiated within the legal deadline (art. 5, LIX, CF). It should also be noted that art. 129, III, of the Federal Constitution, provides for the possibility of the prosecutor carrying out a civil investigation, but never a police investigation. However, in order to properly equip the State's official accusatory body, the Public Prosecutor's Office is given the power to issue notifications in administrative procedures within its competence, requesting information and documents (which occurs in civil investigations or in any administrative process that determines a functional infraction). member or employee of the institution, for example), the possibility of exercising control *external* of police activity (which does not mean the replacement of the presidency of the investigation, conferred on the career delegate), the power to request investigative measures and the initiation of a police investigation (which demonstrates that there is no power to initiate the investigation but, rather, to request their training from the competent body). Finally, it is up to the Public Prosecutor's Office, upon becoming aware of the commission of a crime, to request the initiation of the investigation by the judicial police, to control the entire development of the investigative pursuit, to request due diligence and, in the end, to form its opinion, choosing whether or not to report an eventual person named as author. What is not constitutionally guaranteed is to produce, *alone*, the investigation, then denouncing anyone who is considered to have committed a criminal offense, completely excluding the judicial police and, consequently, the healthy supervision of the judge. The criminal procedural system was designed to be balanced and harmonious, and there should not be any super-powerful institution.

Now, the MP is a party, therefore he is not impartial, he cannot be an inspector of the law and an accuser at the same time. That would be nonsense, granting the MP the right to investigate and accuse the accused, having the possibility of filtering the evidence raised, tarnishing the process.

SecondLuísRoberto Barroso, in his opinion approved on February 18, 2004 by the Human Rights Council, the opposing position is basically composed of a set of arguments, including the interpretation of constitutional and infra-constitutional norms, as well as the hypertrophy of the MP, as all the power to investigate and accuse would remain concentrated, without counting, of course, the historical element, as the competence to carry out preparatory investigations for criminal action has always belonged to the police. To facilitate the presentation, we will divide into two groups. What would they be:

1st GROUP: INTERPRETATION OF CONSTITUTIONAL AND INFRACONSTITUTIONAL NORMS

1.1.1 Art. 144, § 1, I and IV[7], and § 4[8], the Constitution expressly attributes to the Police Federal and Civil investigation of criminal offenses. The Police, therefore, are the competent authority to carry out criminal investigations as required by the constitutional guarantee of due legal process (CF, art. 5, LIII[9]).

1.1.2 The Constitution assigns the Public Ministry the function of exercising external control of the police activity (CF, art. 129, VII) and not to replace it. The 1988 Constitution does not allowfigure of investigating prosecutor.

1.1.3 The scope of section VI of art. 129 of CF/88 (which gives the Public Ministry powers to issue notifications in the procedures*administrative*within its competence, requesting information and documents to instruct them) is restricted to public civil inquiries and other*also of an administrative nature*, such as preparations for unconstitutionality action or representation through intervention. The criminal investigation is regulated in a different section (VIII) and in this regard the action of the*Parquet*is limited to the request to initiate the investigation itself and investigative measures.

1.1.4 The competence to promote criminal action (CF, art. 129, I[10]) does not encompass the investigation criminal – this competence is not a*minus*in relation to that. It is, in fact, a competence *diverse*and which was expressly attributed by the constituent to another body. Therefore, the logic of*implied powers*, by which the body responsible for the*more*, it is also up to the*any less.*

1.1.5 As a result of the arguments set out above, the attribution of investi-Access to the Public Ministry depends on a prior constitutional amendment. In any case, the infraconstitutional legislation currently in force (especially Complementary Law nº 75/93 and Law nº 8,625/93) at no time attributed to the*Parquet*this competence and it simply cannot be extracted directly from the constitutional text.

2nd GROUP: OTHER ELEMENTS

1.1.6 Concentrate on investigative duties in the Public Prosecutor's Office, in addition to the competence to promote criminal action, is completely undesirable. It would be granting excessive power to a single institution, which is practically not controlled by any other instance, thus favoring abusive conduct.

1.1.7 The concentration of responsibilities undermines the impersonality and critical distance that the member of the Public Prosecutor's Office must maintain this when deciding whether or not to file a complaint. It is only natural that whoever conducts the investigation ends up being committed to its outcome.

1.1.8 The absence of any legal framework for this type of action by the Ministry Public, in addition to preventing action itself, subjects those involved to the empire of voluntarism

7CF/88: "Art. 144, § 1. The federal police, established by law as a permanent body, organized and maintained by the Union and structured on a career basis, is intended to: I – investigate criminal offenses against the political and social order or to the detriment of goods, services and interests of the Union or its autonomous entities and public companies, as well as other infractions whose practice has interstate or international repercussions and requires uniform repression, as provided by law; IV – exercise, exclusively, the functions of the Union's judicial police".
8CF/88: "Art. 144, § 4. The civil police, led by career police officers, are responsible, subject to Union competence, for the functions of judicial police and the investigation of criminal offenses, except military ones".
9CF/88: "Art. 5th, LIII. No one will be prosecuted or sentenced except by the competent authority."
10Federal Constitution of 1988.

and personal whims.

1.1.9 The Public Ministry already has sufficient instruments to address deficiencies and curb deviations in police action.

There is also the Hollywood aspect, as the MP would select cases, only those that would bring media and glory and would not dirty their hands in crimes of little importance to the institution.

3 THE POSITION OF THE FEDERAL SUPREME COURT AND HIGH COURT OF JUSTICE ON DIRECT INVESTIGATION BY THE PUBLIC PROSECUTION OFFICE

The STF, over time, has been reforming its decisions regarding the possibility of a member of the Public Ministry investigating in the criminal sphere. In the past, the Supreme Courtpositionedwith arguments contrary to this ministerial function, as can be seen from the understandings of the 2nd Panel in 1999. This year, this fractional body took a stand for the impossibility of this type of investigation, stating that the Public Prosecutor's Office should be limited to police investigations and, if if necessary,requestthe complementation of these steps to the police body itself.

In 2003, another decision, with the same reasoning as above, was handed down. Minister Nelson Jobim, rapporteur of the RHC case no. 81.326/DF, stated that the Public Prosecutor's Office was not granted criminal investigative powers and should, if it so wished, request themthe authoritypolice officer.

Despite these decisions, the STF has been issuing decisions that affirm the possibility of a minis-material. This is because the most controversial case in the discussion about the investigation by the Public Ministry was the case involving deputy Remi Trinta, in 2007.

Inquiry no. 1,968/03 in which Deputy Remi Trinta (PL-MA), accused of embezzlement and alleged fraud against the Unified Health System (SUS), asked for the invalidity of the complaint offered by the Public Ministry as it was based on the investigation carried out by the Public Ministry itself. institution. Until September 2004, when the trial was still on the agenda, minister Marco Aurélio, rapporteur, and minister Nelson Jobim voted against the investigative power of the Public Ministry, while ministers Joaquim Barbosa, Eros Grau and Carlos Ayres Britto voted in favor. However, with the deputy's non-reelection in the 2006 elections, the case was sent to the Federal Court of Maranhão, with the final judgment by the STF being hampered.

The Federal Supreme Court, in judgment of HC 91,661 –PE, the RapporteurMinister Ellen Gracie, March 10, 2009, understood that a criminal investigation carried out directly by the Public Ministry is possible.

And in this aspect the STF did well, because if bodies not linked to criminal prosecution have the power to investigate, as is the case with Parliamentary Commissions of Inquiry, tax offices, facts that may constitute criminal offenses, there is no reason, no reasonable argument, for remove from*Parquet*such assignment.

By the way, there is an important precedent in the judgment of HC 84.965/MG, Rapporteur Minister Gilmar Mendes, judgment of December 13, 2011, published in the DJe of April 10, 2012, where it says:

> ËABEAS CORPUS. CRIMES AGAINST THE TAX ORDER AND CANG FORMATION. LOCKDOWN OF CRIMINAL ACTION. ALLEGED LACK OF JUST CAUSE FOR CRIMINAL PROSECUTION, THE ARGUMENT OF ILLEGALITY OF THE ADMINISTRATIVE INVESTIGATORY PROCEDURE PROCEDURED BY THE PUBLIC PROSECUTION AND NON-DEFINITIVE CONSTITUTION OF THE TAX CREDIT. LACK OF JUST CAUSE NOT CHARACTERIZED. ORDER DENIED. 1. POSSIBILITY OF INVESTIGATION BY THE PUBLIC PROSECUTION OFFICE. EXCEPTIONALITY OF THE CASE. There is no controversy in doctrine or jurisprudence in the sense that the power of investigation is inherent to the exercise of the functions of the judicial police – Civil and Federal –, under the terms of art. 144, § 1, IV, and § 4, of the CF. The uproar over the exclusivity of the judicial police's investigative power permeates the dispensability of the police investigation for filing criminal proceedings and the power to produce evidence conferred on the parties. Furthermore, any steps taken by the Public Prosecutor's Office in a procedure initiated by it should not be confused with the police investigation. And this preparatory activity, consistent with the responsibility of the accusatory power, does not interfere with the balanced relationship between accusation and defense, as it is not immune to judicial control – simultaneous or subsequent. The Criminal Procedure Code itself, in its art. 4th, sole paragraph, provides that the investigation of criminal offenses and their authorship will not exclude the competence of administrative authorities, which by law are assigned the same function. By way of example, the actions of the parliamentary commissions of inquiry (CF, art. 58, § 3), the investigations carried out by the Financial Activities Control Council – COAF (Law 9,613/98), the Federal Revenue, at

Bacen, the CVM, the TCU, the INSS and, why not remember, mutatis mutandis, the investigations and administrative processes within the scope of the State's powers. It should be noted that the Public Prosecutor's Office's power to investigate cannot be exercised in a broad and unrestricted manner, without any control, under penalty of inevitably violating fundamental rights. Investigative activity, whether carried out by the Police or the Public Prosecutor's Office, deserves, by its very nature, surveillance and control. Full knowledge of investigative acts, as well stated in Binding Precedent 14 of this Court, requires not only that the principle of broad knowledge of evidence and investigations be applied to these investigations, but also that the investigative act be formalized. It is not reasonable to give less formality to the Public Prosecutor's investigation than that required for police investigations. It is even less reasonable to mitigate the principle of broad defense when it is the case of an investigation conducted by the holder of the criminal action. It follows from all this that the issue involves and demands legal discipline, so that the State's action is not harmed and does not harm the defense of fundamental rights. This field has been subject to abuse. All of this is the result of a context of lack of law to regulate the actions of the Public Ministry. In the current model, I do not understand that it is possible to accept that the Public Prosecutor's Office replaces police activity unconditionally, and action must take place in a subsidiary manner and in specific hypotheses, as was already emphasized by Min. Celso de Mello during the judgment of HC 89.837 /DF: "situations of damage to public property, [...] excesses committed by police officers and bodies themselves, such as torture, abuse of power, arbitrary violence, concussion or corruption, or, even, in cases where there is a intentional omission of the Police in the investigation of certain crimes or if it constitutes the deliberate intention of the police corporation itself to frustrate, depending on the quality of the victim or the condition of the suspect, the adequate investigation of certain criminal offenses". In the specific case, there is a very exceptional situation, which justifies the action of the Public Prosecutor's Office in collecting the evidence that supports the criminal action, in view of the investigation launched into the alleged practice of crimes against the tax system and the formation of a gang, committed by 16 (sixteen) people, 11 (eleven) of them State Revenue inspectors, another 2 (two) military police officers, 2 (two) lawyers and 1 (one) businessman. 2. ILLEGALITY OF CRIMINAL INVESTIGATION DUE TO THE LACK OF DEFINITIVE CONSTITUTION OF TAX CREDIT. NOT OCCURRING IN THE SPECIES. In fact, based on the precedent established in HC 81.611/DF, this Court formed a resounding jurisprudence to the effect that the crime of tax evasion (art. 1, items I to IV, of Law 8.137/1990) only if consume with the definitive release. However,This case is not exactly about tax evasion, but rather about crimes allegedly committed by public servants to the detriment of tax administration. I note that the investigative procedure was initiated by Parquet with the aim of investigating the involvement of public servants of the State Revenue Service in the practice of criminal acts, sometimes requesting or receiving undue advantage to stop paying taxes, sometimes altering or falsifying invoices, in order to simulate tax credit. Hence, it is entirely reasonable to conclude that the initiation of criminal prosecution is reasonable. It is important to remember that one of the arguments that motivated the change of orientation in the jurisprudence of this Court was the possibility of the taxpayer extinguishing the punishment for payment, a situation that does not even come close to the hypothesis in the case. 3. ORDER DENIED.¨

Furthermore, criminal proceedings are not mandatory. Now, in this line of thinking, the Superior Court of Justice takes the position, recognizing that the *Parquet* may request steps, clarifications, directly, with a view to instructing its administrative procedures, as stated in RHC 8.106-DF, Rapporteur Minister Gilson Dipp, DJ of June 4, 2001.

This same court issued summary 234 saying that the participation of a member of the Public Prosecutor's Office in the criminal investigation phase does not lead to impediment or suspicion in offering the complaint.

Added to this, the argument that the Fifth Panel of the Superior Court of Justice consolidated the understanding that by express constitutional provision it has the *Parquet* the prerogative to initiate administrative proceedings and conduct investigative measures.

But the matter has not yet been resolved in the STF, even though decisions have been changing and are in favor of the possibility of a criminal investigation carried out by the Public Prosecutor's Office.

4 BRIEF NOTES ABOUT THE REPEAL OF PEC 37

Authored by deputy Lourival Mendes (PTdoB-MA), PEC 37 adds a paragraph to article 144 of the Federal Constitution, to establish that the investigation of criminal offenses will be the exclusive responsibility of the federal and civil police. Currently, by constitutional determination, the Public Ministry and other institutions also carry out, in specific cases, criminal investigation activities.

The Proposal seeks to resolve the controversial interpretation of the system of competences introduced by the Constitution, mainly in view of the theory of "implicit powers", which has recently been accepted by the Federal Supreme Court and the Superior Court of Justice, and add to the text the explicit provision that Direct criminal investigation is the exclusive responsibility of the judicial police and cannot be conducted and carried out directly by the Public Prosecutor's Office.

However, on June 25, 2013, PEC 37 was rejected. And now you wonder what changed? Absolutely nothing, as the Public Prosecutor's Office already exercised its pseudo power to investigate according to the opposite trend.

FINAL CONSIDERATIONS

The objective of this work was to analyze the investigative power of the Public Prosecutor's Office. For this to happen, it was necessary to go through the currents that defend or reject theideaof*Parquet*investigate.

Given the positive and negative criticisms regarding the presence of the MP in criminal investigations, it is concluded that, in fact, there is a gap between the judicial police and the institution of the MP, which needs to be eliminated for the benefit of society. Once the distance is suppressed, society will benefit from the effectiveness and speed of procedural procedures, receiving a quick response to its needs, thus guaranteeing the security of public order. Therefore, having presented both sides and forced to deepen the study, it is clear that competence beyond police judiciaryalso belongs to the MinistryPublic.

The MP having this power will benefit the legal system, and may even give a more qualitative form to the act of investigating, making it faster to conclude investigations, thus forming its*crime opinion*quickly.

It should also be noted that the vast majority of doctrine and jurisprudence understand that the presence of the MP in Criminal investigations would be essential for the permanence of the Democratic Rule of Law.

On the other hand, this power sought and almost conquered by the MP is not used only in those crimes that would give media to the institution.

Finally, what is missing is within the scope of the Supreme Court, as the arguments brought up until then do notresistfurther examination, but dissenting understandings remain, albeit in the minority. Furthermore, even though the Court's current tendency is toto validatesuch investigations, this is not binding and may even be completely modified.

To date, there is no final position from the Full Court on the matter, which, at least within the scope of the Power Judiciary, would be the only measure capable of putting an end to the jurisprudential uproar.

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