



## Research Article

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### **Problems on legal qualification of criminal offense during precautionary measures**

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#### **Abstract**

The court is the only constitutional body that delivers justice. One of the functional competences of the court is also giving justice through legal qualification of the criminal offense. The court has the right to make the legal qualification of the criminal offense and this is its exclusive competence. It is important for the court, when making the legal qualification of the criminal offense, gives the criminal fact, the qualification that results from the acts of the investigation file. The provision regarding the competence of the court to change the legal qualification of the criminal offense, has undergone constant changes, with the aim of guaranteeing the right to a fair legal process, the principles of this right such as effective protection, equality and contradiction in obtaining evidences.

Appropriate legal qualification of the criminal offense is a very effective tool in terms of delivering justice during the trial at first instance and beyond. The situation becomes problematic in the legal qualification of the criminal offense during the precautionary measures, where the court cannot at this procedural moment make the appropriate legal qualification of the criminal offense, different from the one brought by the prosecutor.

From the practice, we have seen the subjective attitudes of the prosecution body, in relation to the accusation raised during the request for the imposition of a precautionary measure. There are cases where the prosecution improperly facilitates the prosecution, in order to justify the search regarding the measure of security, but there are also cases when the prosecution has aggravated the prosecution, even though the criminal fact is not the one qualified by the prosecutor.

These subjective qualifications of the prosecutor during the phase of imposing precautionary measures have led to violations of the freedoms and rights of individual, due to the lack of competence of the court to make the appropriate legal qualification of the criminal offense. These problems in practice must be solved by

legal amendments or interpretations by the Supreme Court.

**Keywords:** charge, criminal fact, legal qualification of the criminal offense, prosecutor, court, precautionary measure.

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