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Communication

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of substitution exercised by the General Prosecutor and it differs from that of which to the paragraph 1 of the same article, in that in this last case the General Prosecutor is obliged to assume the investigations. Both the hypotheses are founded upon the common presupposition of the non-exercise of the penal action.

The General Prosecutor can order the substitution following the communications of which to the article 409, paragraph 3 C.P.P. Code of Criminal Procedure, on the ground to which the G.I.P., the Judge of the Preliminary Investigations, fastens the sitting in the council chamber, in case he decides to not consent easily (" de piano") the application of the file, advanced by the Prosecutor or in the case in which the offended person by the crime, opposes to the aforesaid application. In both case the Judge of the Preliminary Investigations is obliged to the communications in terms of the article 409, paragraph 3, Code of Penal Procedure.

Purpose of the disposition is that allows the General Prosecutor to exercisc, in case he believes it right, the power of substitution, also in situations that, also not could be brought back expressly to the hypotheses of inactivity considered in the article 412 Code of Penal Procedure, lets glimpse however any negligence in order to the development of the carried out investigations, or on the other hand, fears possible inactivities related to the achievement of the eventual activity, or think it right the accomplishment of an intervention of control on the reasons .set on the ground of the file application.

The General Prosecutor, received the communication of which to the article 409, paragraph 3 Code of Penal Procedure, after having finished 4hc due verifications concerning the diligence of the prosecutor in the carrying out of the preliminary investigations, will be able to order the substitution of the sanies, also to the only purpose to accomplish the retained essential actions for a conscious formulation of his applications. Once you undertake the investigations, the General Prosecutor assumes all the due powers to the substituted office, in order to the exercise of the penal action, included that of delegation of the functions (consisting in the requests) to some of the subjects prescribed in the article 72 of the Legal System. It follows that is in the power of the General Prosecutor substituting to revoke the file application and in case to exercise the penal action. In case the investigations has been substituted, the General Prosecutor will not bound to the prescriptions given by the same Judge of the Preliminary Investigations. He will be able simply to repel the file application, and in this case the Judge of the Preliminary Investigations will not be able to do nothing else other than deliver the file application or order to the General Prosecutor substituting to formulate the charge.

We deduce from what has been told that the substituting intervention of the General Prosecutor, allows a return in his entirety, of the power of formulate the own demand to the Judge and this involves the non-bind the substituting organ to the previous formulated applications when he is able to revoke the same, also implicitly, by means of a contrary action.

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The power of the substitution in the Italian judicial system.

The criminal trial system, in force in Italy, foresees a straight institute in the view to assure the surveillance on the timeliness, and on the completeness of the preliminary investigations carried out by the the Prosecutors of the Republic of the varied districts, as well to effect, in some events, provided by the law, a coordinate action between the varied offices, that are regular holders of connected investigations:it's of the the institute of the substitution (Avocazione in Italian).

The rules of operation to the base of the power of the substitution are, so to say, the litmus paper through which it deduces the quality of the relationships in the parquet of the public indictment.

The power of the General Prosecutor of take the place of the magistrates of the subordinate prosecutor's offices, by means of the substitution of the procedure, in the carrying out of the preliminary investigations and in the consequential activities is limited rigidly to fixed by the law situations (articles 412 and 413 C.P.P. Code of Criminal Procedure).

The first case of obligatory substitution (article 372 paragraph 1, letter a) has given by the impossibility to supply opportunely to the substitution of the magistrate, appointed to the fulfilment of the preliminary investigations, if the said magistrate have abstained or is in a condition of incompatibility. The hypothesis can rarely verify, presupposing that the unique or all the magistrate in service, in the office of the Prosecutor, obliged to investigate, abstain or are incompatibles and, also in such situation, when it cannot provide in real times with a temporary post or a nomination of a magistrate of an other office of the district, while in the ambit of the same office the substitution is always possible with other magistrate attached to the same, immune from causes of abstention and of incompatibility.

The second case of substitution (article 372, paragraph 1, letter b) happens when, in presence of some provided situations, like cause of abstention of the designated magistrate, this has not been opportunely substituted by the head of the office, also being possible the substitution.

The third case of substitution is established with regard to the need of a real coordination of the connected investigations, related to some crimes (articles 279 bis, 280,285,286,289 bis, 305,306,416,422 C.P. Penal Code) that for their associative nature or subversive purpose can involve detective activities, within and outside the district, by means of varied offices of the prosecutor, when these act without coordination (without exchanging deeds and informations also on instructions given to the Judicial Police and omitting to act jointly to the fulfilment of specifics actions) and it has been revealed "unprofitable the meetings encouraged or disposed by the General Prosecutor or by the General Prosecutors interested to carry out the unity of the detective address and the other aims of coordination, pointed out in the article 371, but, also -it is to believe - in the way to prevent negative or positive competence conflicts.

Fourth case of substitution is that provided by articles 412 paragraph 1 and 413 C.P.P. Code of Criminal Procedure on the supposed non-exercise of the penal action or non-demand of file by the Prosecutor, within the term legal or postponed by the Judge, established for the duration of the preliminary investigations (article 405 and following C.P.P. Code of Criminal procedure).

The article 412,paragraph 2 C.P.P. Code of Criminal Procedure, regulates a facultative hypothesis