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Territorial Competence of the Prosecutors of Cusco Until the Year 2020

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ABSTRACT

In Peru, department of Cusco, there have been incidents when determining the competence or responsibility of the prosecutor's offices in the deaths of people, since the territory of death is different from the territory of the hospital where the corpse is admitted. This situation causes the prosecutor's office where the death occurred to request that the prosecutor's office where the body was admitted to the hospital be the one to carry out all the preliminary investigations. This work presents legal expositions on the criteria of competence that must be considered to determine which prosecutor's office must assume with the investigation processes, such as: the scene of the crime, the consequences of the crime and a criterion not foreseen by law, but significant that is the place of conducting proceedings. Likewise, the loss of competence of the authority is discussed due to the place of verification of proceedings, the negative impact on investigations and processes, the lack of objectivity and immediacy: a prosecutor investigates and another prosecutor resolves, the figure of being competent to resolve, but incompetent to investigate, the non-observance of due process and the violation of the right to equality.

Keywords: territorial competence of attorney, assumption of jurisdiction, Competence to solve and investigate.

I. INTRODUCTION

(A) Statement of the problem

In the various orderly turn attorney, there have been incidents of deceased persons, the knowledge of which has generated a negative conflict in the assumption of jurisdiction within the same tax shift, and consequently in carrying out the necessary steps to clarify the death.

These cases have been occurring due to the geographical location of the hospitals and clinics in Cusco, which are mostly in the territorial jurisdiction of Wanchaq (Adolfo Guevara Velasco

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National Hospital, Pardo Clinic, Mac Salud Clinic, San José Clinic , among other).

However, the deaths that warrant the admission of these people to hospitals, not always -and almost never-, occur in the jurisdiction of Wanchaq, but rather in the jurisdiction that is the responsibility of other prosecutors, since it is a general protocol of action that when a death occurs -whether it occurred in the district of Cusco, Santiago or San Jerónimo-, in most cases, the bodies are evacuated to these hospitals -located in the jurisdiction of Wanchaq-, opportunity in which the doctors on duty certify at the time of admission that "a corpse arrived", "with no signs of life".

This inconsistency then, generates discrepancies, because although the body entered "corpse", "without signs of life", the Criminal Prosecutors of Cusco and Santiago, do not assume the competence of these deaths that occurred in their jurisdiction, and therefore they do not carry out the proper and urgent procedures that the case warrants⁴: the removal of the corpse, the provision of internment to the Morgue, the Criminal Inspection, the Verification of the place of the facts, etc.

To do this, they argue primarily that if the body of the person is found "corpse" in the jurisdiction of Wanchaq -and thus the death has occurred in their jurisdiction: Cusco, San Jerónimo, Santiago-, they could not carry out the removal of corpse or order its internment, because said place is not its territorial jurisdiction.

For this reason, the Criminal Prosecutors of Wanchaq, in practice, have been assuming the preliminary proceedings of the deceased admitted "corpses" to the clinics and hospitals of the jurisdiction of Wanchaq (removal of the corpse, admission to the Morgue, provision of Necropsy of Law, provision to Oficri for biological examinations, declaration of relatives, etc.), despite the fact that they died in a different jurisdiction.

However, when the other proceedings of the case have to be carried out, and which correspond to be carried out in the jurisdiction of Cusco and Santiago: verifications, physical expertise, Criminal Inspection, etc., in the place where the deceased fell, where he was riddled with bullets, shot, among others, the Criminal Prosecutors of Cusco and Santiago, do not assume

⁴ In the cases of "deceased" people admitted, "without signs of life", the "removal of the corpse" procedure is not properly carried out, since it is carried out at the crime scene, to verify the position of the deceased, the projection of how the event causing his death (firearm, knife, etc.) would have arisen, the traces and traces left by the agent that lead to his identification, or the way in which the criminal event unfolded, among others. Therefore, in these cases, as the criminal act arose elsewhere -the impact of a bullet, stabbing, etc.-, but the body was transferred "corpse" to the clinic or hospital, only internment in the Morgue is provided; however, exceptionally, due to the current pandemic of the Codid-19 virus, this procedure is carried out in the same clinics and hospitals, so that the body is not transferred to the Morgue of the Medical Legal Division of Cusco and more sources of infection are generated.

jurisdiction for the verification of investigative acts that have to be carried out in their territorial scope, indicating for this that the case be referred to them with "all" the investigative acts .

And, just completed the investigative acts by the Criminal Prosecutors of Wanchaq, they admit the derivation to issue a pronouncement on the merits, that is, based on the proceedings carried out by another prosecutor's office, they assume competence of the case and issue their pronouncements background.

Given that these situations of disparity have been occurring repeatedly in the various fiscal shifts, and given the current pandemic due to the Covid-19 virus, deaths have been increasing exponentially, making it necessary, in this scenario, to determine which Criminal Prosecutor's Office must assume the proceedings in the cases of deceased.

Thus the current dynamic, in which the Criminal Prosecutors of Cusco and Santiago refuse to carry out proceedings in cases of deaths that occurred in their jurisdiction, because the body was transferred "corpse" to the jurisdiction of Wanchaq, and they are the Prosecutors Wanchaq Prisons, which have to carry out all the procedures, for recently -once all the investigative acts have been carried out-, refer the "territorially competent" Prosecutor, so that he can issue a pronouncement, generates several questions: contravention of the procedural norm, disparity in prosecutorial work, lack of immediacy of the prosecutor who investigates and the prosecutor who resolves, among others.

II. LEGAL EXPOSURES: COMPETITION CRITERIA

(A) First criterion: Crime scene

1. Article 21 of the Code of Criminal Procedure (Executive Branch, 2004), exhaustively establishes the criteria of priority or exclusive order to know a criminal act, specifying that: "The jurisdiction by reason of the territory is established in the following order: 1. For the place where the criminal act was committed or the last act was carried out in the event of an attempt, or the continuity or permanence of the crime ceased. 2. By the place where the effects of the crime occurred. 3. By the place where the material evidence of the crime was discovered. 4. By the place where the defendant was arrested. 5. By the place where the defendant resides".

2. In this sense, as the first filter for territorial jurisdiction, the rule establishes that "the place where the criminal act was committed" will be considered.

3. Given this criterion and in the exposed context, several cases can be presented, only by way of example: that a person is seriously stabbed in a night bar in the jurisdiction of Cusco, and is evacuated to the Hospital Es Salud in Cusco, from the jurisdiction of Wanchaq, where as

a result of the injury, the "corpse" arrives; that another person is wounded by a firearm on an avenue in the jurisdiction of Santiago, and is evacuated to the Mac Salud Clinic, in the jurisdiction of Wanchaq, where he enters "without vital signs"; that a person falls from the sixth level of his home located in Magisterio -unknown if it was a fortuitous fall or with the intervention of third parties-, and due to the great height and consequent impact, enter "without signs of life", to the Pardo Clinic of the jurisdiction of Wanchaq.

4. Although these scenarios are different, they all present a similarity, that the place of the criminal event or the "crime scene" is precisely where the event occurred: the bar where the stabbing took place, the avenue where the impact of bullet, and the fall of the sixth level of the house, all located "territorially" in the jurisdiction of Cusco and Santiago, so that even the verification of proceedings at the "crime scene" will be carried out in said places (verification, verification traces of blood, physical expertise, collection of samples and criminal assets: the weapon used, criminal inspection, etc.).

5. Based on this reason, the procedural norm has consistently established that the "first criterion" for determining jurisdiction is precisely the place where the criminal event occurred, because the urgent, urgent and necessary steps to clarify the facts, they will have to be carried out at the same "scene of the crime".

6. Consequently and applying the legal syllogism, if the norm establishes that the territorial competence corresponds to the place of commission of the criminal act (major or normative premise), and the death of the people, occurs in the districts of Santiago, San Jerónimo or Cusco (minor or factual premise), the logical conclusion of this is that the competence corresponds to the Criminal Prosecutors of Cusco and Santiago, whose scope of action and knowledge, covers precisely these areas, who therefore corresponds to assume the proceedings that the case requires.

(B) Second criterion: Consequences of the crime

1. It should be noted that the procedural norm establishes a preferential and priority order to know a criminal act, that is, if it is not possible to know where the act occurred, jurisdiction is only determined by the place where the effects occurred, in the same way, if it is not possible to know where such illicit effects were produced, jurisdiction will correspond to the place where the material evidence of the crime was discovered and so on, where the accused was arrested, and if he was not arrested, where the accused resides.

2. We are faced with exclusive criteria, in which if a competence criterion cannot be determined, it is only passed to the other criterion. For example, in the case of document

falsification, if it is not known where the document was created, but it is known that it was used before a public entity, then the jurisdiction would correspond to the place where the document was introduced into legal traffic.

3. In accordance with this, several cases arise in practice: the shooting of a firearm that ends the life of the deceased, occurs in a nightclub on Calle Tecte, jurisdiction of Cusco; the vehicular impact that causes the death of the victim, occurs on Av. El Sol, jurisdiction of Cusco; the fall of some stands without railings that causes brain injury and death of a person, occurs in an events venue on Av. Fortunato L. Herrera - Coripata, jurisdiction of Santiago.

4. In all these cases, the place of the criminal event is the same place where the event occurred: the firing of the weapon, the vehicular impact and the fall due to lack of security measures on the premises, all within the jurisdiction of Cusco and Santiago.

5. Therefore, the verification of this first criterion for determining competence, by itself excludes the other criteria, in this case, the place where the consequences of the fact would have been caused, the place where the material evidence of the crime was discovered, etc., because these other criteria are only applied if the preferred ones cannot be established.

6. In addition, the place where the consequences of the criminal act would have occurred, that is, the death of wounded and injured people in the jurisdiction of Cusco and Santiago, but who are transferred to the hospitals and clinics of Wanchaq, is uncertain, since In this regard, there are two possibilities: the first, that as a result of the criminal event -shot, vehicle crash, etc.-, immediate death is generated in the same place as the crime scene -under the jurisdiction of the Criminal Prosecutors of Cusco and Santiago- ; and the second assumption, that these people die on the way to being transferred from the scene of the crime to the hospitals and clinics -under the jurisdiction of the Wanchaq Criminal Prosecutors-.

7. So, the consequences of the crime "could" -eventually or uncertainly- have occurred both in the jurisdiction of Cusco, and in the jurisdiction of Wanchaq; However, what is not a possibility, but a concrete and objective fact, is the place of occurrence of the criminal act: the nightclub where the shot was fired, the street where the crash occurred, the business premises where the deceased fell -territorially located in the jurisdiction of Cusco and Santiago-.

8. Consequently and applying the same legal syllogism, if the procedural norm establishes as a second criterion of territorial competence, the place where the consequences of the criminal act occurred, only if the place where the criminal act was committed cannot be established (normative premise), and the people are admitted already "deceased" to the Wanchaq district hospitals, but the events causing the deaths occur in the territory of Cusco and Santiago (factual

premise), then, the logical consequence is that territorial jurisdiction corresponds in the first place, to the Prosecutor's Offices where the criminal act that caused the death occurred: Cusco and Santiago, and only if it is unknown where this illegal act occurred, it is applied secondly, to the place where the death occurred.

(C) Criterion not provided for by law: place of conducting proceedings

1. The criterion used by the Criminal Prosecutors of Cusco and Santiago for not taking cognizance of the case is the impossibility of verifying proceedings in an area that is territorially outside their jurisdiction, that is, carrying out the removal of the corpse or ordering the internment of it from the hospital or clinic, because it is located in the district of Wanchaq.

2. However, the procedural norm that determines the competence and the criteria for its determination, is exhaustive, and therefore, it does not admit other unregulated cases, since if so, legal chaos would be generated, since each procedural party would allege an individual criterion of competence in its favor, and there would be no normative guideline for its delimitation.

3. For this reason, legal rules have already been established to determine jurisdiction by reason of territory, and none of them regulates jurisdiction to be determined "by the place where the proceedings have to be carried out."

4. To this end, without the need to lose jurisdiction, the figures of "warrants" have been created precisely, when a prosecutor from another jurisdiction is entrusted with obtaining the statement of a party in another territorial area; the entrustment of proceedings "via reciprocity", when a prosecutor is required due to geographical distance, to carry out a certain procedure at the expense of reciprocally carrying out another procedure, if a similar circumstance to the contrary arises; and even the "service commission", in which the prosecutor requests authorization to travel outside his territorial jurisdiction to a different jurisdiction, in order to carry out an act of investigation.

5. Therefore, the verification of proceedings in a certain territorial area -such as the removal of the corpse, or the provision of internment to the morgue-, is not a legal criterion to determine the competence, and to carry out proceedings outside of In this area, there are procedural figures that delegate or entrust the verification of an act of investigation, but not of the entire case, much less of the resolution of the merits of the matter.

(D) Loss of competence: place of verification of proceedings

1. Given that the primary support for denying jurisdiction and carrying out proceedings in

the cases of deceased, of the Criminal Prosecutors of Cusco and Santiago, is that the disposition of internment of the corpse, or the removal of the corpse itself, must be carried out in In the Wanchaq district, it is worth asking, then, if the Prosecutor's Offices can dispose of and carry out necessary and relevant proceedings in cases they are aware of in another jurisdiction, without losing their jurisdiction for this reason?

2. To answer this, the procedural figures that allow delegating the performance of certain procedures without losing the competence of the case have already been indicated -warrant, entrustment via reciprocity, commission of services-; but, in addition, we will present some practical examples, which would denote how unreasonable it would be to admit a "loss of competence", due to the verification of proceedings in a certain territorial area.

3. As the first case, one person shoots another person point-blank in Cusco's Plaza de Armas, and then escapes and hides in his home in the Wanchaq district, so the fact that the arrest is going to take place in the district of Wanchaq, it distorts the initial competition for the place where the shot was fired, which is the responsibility of the Criminal Prosecutor of Cusco?. As a second case, there is a subject who shoots another person in a bar on Av. Sol, and hides the weapon used in his workplace in the Wanchaq district, but is later arrested in flagrante delicto when there are videos of the event, and he confesses that the object of the crime is in his place of work, in this case, does the Criminal Prosecutor of Cusco lose its jurisdiction, for the sole fact that it has to seize -as an act of investigation for subsequent expertise-, the weapon used in the criminal event, in the jurisdiction of Wanchaq?. As a third case, in a preliminary investigation for the use of a false public document, presented in the Palace of Justice of Cusco, it is necessary to carry out the procedure for the installation of experts in Sunarp, located in the district of Wanchaq -for comparisons of the signing of the false document, with public documents-, then, does the Criminal Prosecutor of Cusco, where the false document was used, lose jurisdiction, the sole circumstance that the investigation to corroborate the fact, will be carried out in the jurisdiction of the Wanchaq district-?. As a fourth case, in another investigation for the use of a false document, altered tickets were presented to justify operating expenses in the Quencoro Penal Establishment, and it is necessary to collect the originals from the companies located in the city of Lima to verify If they are reliable or not, in this case, does the fact of collecting the receipts, as an act of investigation, in a different place -Lima- from where the document was presented and used -Cusco-, changes the competence of the Criminal Prosecutor's Office of Cuzco?.

4. The answer in all these cases is negative, since carrying out procedures -such as the removal of the corpse, disposition of necropsy-, whether in the same place of territorial

competence or in a different one, does not change the original and original competence, based in the place of the criminal event, since the fact of verifying investigative acts, which is procedural in nature, will never modify the place where the criminal act was committed, which will always be immutable and which is rather related to the substantial aspect of the accusation - place of commission, date of commission, etc.-.

(E) Negative impact on investigations and processes

1. If the position of the Criminal Prosecutors of Cusco and Santiago is assumed to be true and correct, that they cannot intervene or carry out investigative acts in places that are not within their territorial jurisdiction, it would generate various problems both at the level of preliminary investigation and in the criminal process.

2. Well, I would give an open letter to the defense of the accused, to question the proceedings carried out due to lack of jurisdiction. For example, in a case of intervention in flagrante delicto in the Magisterio zone, jurisdiction of Cusco, for the crime of micro-commercialization of drugs, the Provincial Criminal Prosecutor's Office of Cusco -under the criteria that they use of not being able to carry out investigative acts in a place that is not its territorial jurisdiction-, could not carry out the domiciliary verification for the purpose of checking if the detainee has more toxic narcotic drugs in his home -and thus reinforce his incriminating thesis-, if he would domicile in the jurisdiction of Wanchaq, territorial scope in which "they could no longer carry out proceedings"; and if done, the defense could question this procedure for lack of "territorial jurisdiction."

3. Likewise, this position could also have implications at the level of the criminal process and would generate unnecessary delay in the development and sequel thereof. Well, in the event that the Criminal Prosecutors of Wanchaq, in addition to verifying all the investigative acts, exercise criminal action, the parties, and even the criminal court ex officio, would question the competence, since if the event arose in the jurisdiction of Cusco and Santiago, it would be irrelevant for the procedural effects of competition, that it was assisted in the jurisdiction of Wanchaq, because this assumption of verifying proceedings in a certain place, is not provided by law as a criterion for determining jurisdiction.

4. These assumptions are obviously not reasonable or coherent, and therefore highlight the fact that jurisdiction is not measured by where a certain diligence has to be verified to clarify the criminal act -such as ordering the autopsy, to establish the causes of death-, but where this wrongful act arose, whose clarification and the acts that it deserves, can be verified not only in the same jurisdiction, but also in other jurisdictions.

(F) Lack of objectivity and immediacy: one prosecutor investigates and another prosecutor resolves

1. Another negative consequence of this criterion is that if the Criminal Prosecutors of Cusco and Santiago are the ones that finally resolve the cases of deceased in their jurisdiction, but “corpses” are admitted to hospitals and clinics in the jurisdiction of Wanchaq, it corresponds that they must have immediacy with the acts of investigation and the elements of conviction, which will finally merit their pronouncement on the merits.

2. Since, if the norm establishes as a general rule that the competition is for the "place of the criminal event", then, the direct consequence of this mandate, is that the Prosecutors of the jurisdiction where this fact arose, carry out all the acts of investigation, in order to have greater objectivity in the case on which they will finally decide.

3. However, there are cases in which, due to the distance, it is not physically possible for the territorially competent prosecutors to carry out the proceedings, this circumstance being the exception to the rule.

4. Well, when criminal events occur in the jurisdictions of the Cusco province prosecutors: Espinar, Urubamba, etc., the victims of these cases, due to their seriousness, are referred to the Es Salud Hospital in Cusco, due to its greater resolution capacity. , medical response and technological equipment, and if death occurs, and given the distance between the headquarters of these prosecutors and the place where the legal necropsy must be carried out, via "reciprocity", the Wanchaq Criminal Prosecutors, carry out the internment of the corpse and order the necropsy of the law, and refer it to the respective Criminal Prosecutors.

5. However, the Provincial Criminal Prosecutors, as is logical, carry out the other investigative steps in your case, for example, if you died from a firearm, they make the verification at the place of occurrence - in Espinar, Anta, etc. .-, or if he died due to a traffic accident, these Prosecutor's Offices also carry out the inspection to determine traces of drag, among other things, since it would not be coherent for the Criminal Prosecutors of Wanchaq to travel to other provinces and districts to "complete" the other investigative acts.

6. In the case of the Criminal Prosecutors of Cusco and Santiago, however, this "exception" to the rule does not occur, since given the close geographical distribution between the districts of Cusco, Santiago and Wanchaq -only minutes-, these prosecutors do They are in the certain and objective possibility of constituting themselves and carrying out their proceedings -disposal of corpse internment or removal of the corpse-, and in this way fully and fully assume knowledge of a case that they will finally resolve, given that the fact was generated in your

jurisdiction.

7. Situation that would also reinforce the issuance of an objective pronouncement, since the adoption of one or the other decision will no longer be based on the documentation that is collected - the investigative acts carried out by the Wanchaq Criminal Prosecutors, embodied in a tax folder derived-, but to the direct knowledge that he had of the fact and the procedures that he carried out.

(G)Competent to solve, but incompetent to investigate

1. As has been indicated, the Criminal Prosecutors of Cusco and Santiago do not accept taking on the case of those who died during the prosecutor's turn, that is, when the illegal act has just occurred, alleging lack of competence to carry out the investigative acts - because the body is in a clinic or hospital in Wanchaq-, however, they do admit the case to issue a pronouncement on the merits, once the Wanchaq Criminal Prosecutors have carried out "all" the urgent, immediate and necessary investigative acts .

2. This then generates an inconsistency, because if one is competent to resolve the merits of the matter, one is also competent to carry out the procedures that will finally lead to that decision, well, either one is competent or one is not competent, but one does not it can be competent in part, "half".

3. Which also supposes a situation of inequity, since in practice the Criminal Prosecutors of Wanchaq carry out the work of the Criminal Prosecutors of Cusco and Santiago, based on what they will issue their pronouncement on the merits.

(H)Non-observance of due process

1. It should be noted that article 139, subparagraph 3) of the Political Constitution of Peru establishes that "The following are principles and rights of the judicial function: (...) 3. The observance of due process and judicial protection. No person may be diverted from the jurisdiction predetermined by law."

2. Being that the most common dimension of the right to due process is procedural, which implies the right of any person to go to a previous competent authority, to resolve their conflict of interest or clarify a situation of uncertainty with relevance legal.

3. In this regard, the Constitutional Court has established in STC 0290-2002-HC, foundation 8, that "(...) the right [to the predetermined judge] requires that the jurisdiction and competency of the judge be predetermined by law. This, on the one hand, entails the predetermination (and not only the determination) of the judicial body and also that of its

jurisdiction. From this last perspective, the allocation of judicial jurisdiction must necessarily have been established prior to the start of the process, thus guaranteeing that no one can be tried by an ex post facto judge or by an ad hoc judge. And on the other, that such competition rules, objectively and functionally, be provided for in an organic law, as is clear from the systematic interpretation of articles 139, paragraph 3), and 106 of the Constitution”.

4. Accordingly, if the rule establishes that territorial jurisdiction corresponds primarily to the "place where the criminal act was committed", then, other criteria not legally stipulated cannot be argued to divert this original jurisdiction.

5. Therefore, if the facts that warrant the deaths arise within the jurisdiction of the Criminal Prosecutors of Cusco and Santiago -the shot, the fall, etc.-, then, it cannot be argued that by having to carry out a procedure outside its territorial scope, the release or order of internment for necropsy -criterion not provided for in the regulations-, the jurisdiction corresponds to another prosecutor's office -in this case, the Wanchaq Criminal Prosecutors-.

6. Denying this natural and original competence to take on the case, based on assumptions not provided for in the regulations for the determination of competence -verifying proceedings in a territorial area-, therefore implies a failure to observe the due process, and an affectation to the guarantee of the jurisdictional function, since it would be diverting the predetermined jurisdiction by law, in this case, it would be diverting the competition for the place of commission of the criminal act -regulatory criterion-, for the place where an act of investigation must be verified, consisting of the disposition of internment of the corpse or its removal -criterion not foreseen by law-.

(I) Violation of the right to equality - discrimination

1. Plenary Agreement No. 4-2016, established on a legal basis 12 that “Equality is a principle-right recognized in article 2, paragraph 2, of the Constitution. It is both a fundamental right of direct invocation without the need for prior legislative development, and a constitutional value that informs the entire infra-constitutional legal system. Equality, as a subjective public right, entails the allegation of discrimination, which implies an inequality that may have its origin in a fact, in the differentiation of legal treatment not constitutionally justified or, finally, in the application of a law that produces a unconstitutional result. It is, like any subjective right guaranteed by the Constitution, a right guaranteed erga omnes, before all, which implies, as a result, that all judges have the power –and the duty– to directly apply the constitutional norms in the controversies submitted in his judgment.”

2. Likewise, this same Plenary Agreement indicated that “The constitutionalist doctrine

has exposed that there is an inequality before the law when the latter, in the face of two identical factual assumptions, treats different subjects differently, without any justification. The requirements of the prohibition of discrimination, first, it is not about a closed list of budgets, but about all those situations that can produce a differentiated treatment, which results in harm to individuals or groups; second, this differentiation is not justified or serves legitimate purposes; and, third, it does not pass the test of rationality”.

3. In this sense, and as has been explained, the Criminal Prosecutors of Cusco and Santiago, do not admit to carrying out proceedings in the cases within their competence, alleging that the transfer of the corpse, for its internment in the Morgue and subsequent Necropsy of Law, will be to carry out in an area that territorially does not correspond to them: district of Wanchaq.

4. However, this criterion used to reject the case of its competence, they do not apply it to the contrary and with the same reasoning: "for equal reason, equal right."

5. Well, it is evident that in the cases of deceased, the pertinent and urgent procedures must be verified at the "scene of the crime", where the traces and indications left by the commission of the crime are. Just by way of example: physical examinations at the place where the deceased fell (Teaching, jurisdiction of Cusco), to determine the height, projection and point of fall, verification of security elements in the area that facilitated the fall, etc. .; verifications where he was riddled with bullets (Av. Sol, jurisdiction of Cusco), to collect traces of blood, the weapon used, determine the projection of the shot, based on the traces left in place by the impact of the bullet, and others.

6. Therefore, having to verify these other procedures in an area that territorially does not correspond to the Criminal Prosecutors of Wanchaq: districts of Cusco, San Jerónimo and Santiago, and according to the logic of the Criminal Prosecutors of Cusco and Santiago -de not being able to carry out investigative acts outside its territory-, the Wanchaq Criminal Prosecutors' Offices would not be competent to carry out the “other” procedures either, because they must be verified outside the jurisdictionally assigned territory.

7. However, in view of this situation, the Criminal Prosecutors of Cusco and Santiago do not assume the carrying out of these investigative acts that have to be carried out in their jurisdiction, and on the contrary, demand that the other proceedings be "completed" and that they be send only with all the investigation acts, and only after verification of the urgent and urgent investigation acts by the Wanchaq Criminal Prosecutors, do they admit the referral and assume competence - only in this instance - to resolve the merits of the matter .

8. This clearly denotes a situation of inequality, since in the face of a factual assumption: that the proceedings have to be carried out outside the territorial scope of the jurisdiction, different treatment is given to the Criminal Prosecutors of Wanchaq, compared to the Criminal Prosecutors of Cusco and Santiago, since the Criminal Prosecutors of Cusco and Santiago, refuse and do NOT carry out the proceedings in the district of Wanchaq, consisting of the disposition of the internment of the corpse, or eventually the removal of the same, because it is outside their territorial scope, while the Criminal Prosecutors of Wanchaq DO feel obliged and have to carry out the other investigative procedures outside their territorial scope: findings, expertise, etc.

9. Therefore, there is unreasonable discrimination against the Wanchaq Criminal Prosecutors, since, in the first place: the differentiation of this treatment is not legally justified; second, this unequal treatment does not pass the reasonableness test; and thirdly: the differentiated treatment causes damage to the Criminal Prosecutors of Wanchaq.

10. So much so that, regarding the first point: it is admitted that the Criminal Prosecutors of Cusco and Santiago do not assume the cases of their competence in the prosecutor's turn, because the disposition of the corpse would have to be carried out from a clinic or hospital of the Wanchaq district, or eventually the lifting of it from the Wanchaq clinic or hospital; However, this is not legally justified, since the criminal procedure norm establishes in a closed way the rules for determining jurisdiction, and in no way indicates that the verification of investigative acts is a jurisdiction criterion, much less that it leads to the territorial incompetence.

11. Regarding the second point, it refers to the fact that "the rule is not absurd, unjustified, arbitrary or lacking in realism." Being that in the case of the refusal to assume jurisdiction by the Criminal Prosecutors of Cusco and Santiago, there is not even a rule that covers it, but an erroneous practice, which in effect is unjustified -without any legal protection-, since the norm establishes that the competition is for the place "of commission of the criminal act", and not where they have to practice proceedings; Likewise, it is arbitrary, because since it does not have legal support, it is an unmotivated measure, and even illegal; and likewise, it suffers from a lack of realism, since it is evident that in the various investigations, proceedings will always be carried out in the same jurisdiction as in other different ones -seizure of criminal assets in the home of the accused, who does not necessarily have to live in the locality of competence of the Prosecutor's Office that is processing the case-, therefore it is not reasonable that only in the cases of deceased in prosecutor's office, this circumstance of "not being able to carry out investigative acts outside the territorial scope" is alleged that, however, It appears in most of

the ordinary investigations, and it does not for that reason generate incompetence or the lack of carrying out such procedures.

12. The third point: this differentiation of treatment causes damage to the Criminal Prosecutors of Wanchaq, since in practice they have to carry out all the procedures and investigative acts in their jurisdiction -disposition of the internment of the corpse for necropsy, or the same survey in clinics and hospitals-, and in the jurisdiction of Cusco and Santiago - verification of findings, physical expertise, Criminal Inspections, etc.-, so that finally the Criminal Prosecutors of Cusco and Santiago resolve the merits of the matter, thus acting the Criminal Prosecutors of Wanchaq, as "errand boys" for the Criminal Prosecutors of Cusco and Santiago.

III. CONCLUSIONS

1. The criminal procedure norm is clear when establishing that the criteria of territorial competence are preferential, priority and exclusive, in such a way that if the first criterion is not verified, it goes to the second criterion, and so on.

2. The first criterion for determining territorial jurisdiction is "by the place where the criminal act was committed", and in the case of the deceased admitted "corpse", "without signs of life" to the hospitals and clinics of the jurisdiction of Wanchaq, but whose event that caused the death occurred in the jurisdiction of Cusco and Santiago -stabbing, vehicle accident, etc.-, the place of the criminal act is precisely where the illegal event occurred, and priority jurisdiction then corresponds to the Prosecutors "of the place of the criminal event".

3. The second criterion determining territorial jurisdiction, referring to the place where "the effects of the crime" arose, is only verified if the first criterion cannot be established, therefore, in the case of people admitted "dead" to the hospitals and clinics in the Wanchaq district, but whose death occurred in the territorial scope of Cusco and Santiago, this single finding excludes the second jurisdiction criterion.

4. The procedural norm does not establish as a criterion for determining jurisdiction, the verification of investigative acts in a certain territorial area, so it cannot be argued, much less give reason, to a criterion that has no legal protection.

5. The verification of investigative acts in places other than the territorial scope does not generate loss of jurisdiction, and precisely for these situations the procedural figures of the warrant, entrustment of proceedings via reciprocity and the commission of services have been created, without this implying the incompetence of the office that delegates the diligence.

6. Admitting that carrying out proceedings outside the territorial jurisdiction, generates a loss of jurisdiction, would limit the investigative capacity of the prosecutor's offices and consequently the full clarification of the facts investigated, as they are territorially restricted to verify necessary proceedings outside their scope. territorial: seizure of the firearm in the Wanchaq district, search to capture the defendant in the Wanchaq district, home verification to find more drugs in the home of the intervened in the Wanchaq district, etc.

7. It is incongruous that the Criminal Prosecutors of Cusco and Santiago do not assume competence to investigate the criminal act that occurred in their jurisdiction, but they do assume it later, when all the investigative acts have been carried out, and only the merits of the case remain to be resolved. Well, either you are competent or you are not competent.

8. The denial of jurisdiction by the Criminal Prosecutors of Cusco and Santiago, and the consequent failure to carry out urgent procedures for people admitted "without signs of life" to the Wanchaq hospitals and clinics, generates a violation of due process in its procedural aspect, since the competence pre-established by law is being varied, based on criteria without normative support.

9. It is incongruous that the Criminal Prosecutors of Cusco and Santiago do not assume jurisdiction over events arising in their jurisdiction, for allegedly not having territorial jurisdiction in the place from where the body will be transferred for placement in the morgue and subsequent legal necropsy, but then, demand that the Criminal Prosecutors of Wanchaq verify and complete all the proceedings of the case, even if they have to be carried out in the jurisdiction of Cusco and Santiago.

10. There is unjustified and unreasonable discriminatory treatment between the Criminal Prosecutors of Wanchaq and the Criminal Prosecutors of Cusco and Santiago, in the face of the same fact -that the proceedings have to be carried out outside the territorial scope of the jurisdiction-, which generates inequality not allowed by law. Well, the Criminal Prosecutors of Cusco and Santiago refuse and do not carry out the proceedings in a different territorial area in the case of deceased persons -internment of the corpse or removal of the corpse-, but the Wanchaq Criminal Prosecutors are forced and do carry out, the other proceedings that the case warrants, even if these are outside its territorial scope.

11. Unequal treatment in the face of the same assumption of fact, has no justification, since there is no legal protection that regulates competition based on the place of "carrying out proceedings"; likewise, the bad practice that supports this position is arbitrary, unreasonable and lacks a lack of realism, since it denies the competence that the norm establishes, based on

criteria without legal support; and finally, damage is generated to the Criminal Prosecutors of Wanchaq, who are forced to carry out acts of investigation of cases that are not within their competence and that therefore they will not resolve.

12. The current dynamic generates an evident inequity in the work of the prosecutors on duty, since in practice, the Criminal Prosecutors of Wanchaq carry out all the investigation procedures of deceased admitted to hospitals and clinics under their jurisdiction, but whose criminal act occurred in the jurisdiction of the Criminal Prosecutors of Cusco and Santiago; while the Criminal Prosecutors of Cusco and Santiago only issue their pronouncement on the merits, as it is a case within their jurisdiction, based on the work carried out by another prosecutor's office.
