GOOD OR BAD FAITH OF THE JUDICIAL BODIES. SANCTIONS. PRELIMINARY CHAMBER.

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Abstract:
In the activity of judicial criminal investigation bodies, errors or mistakes appear that are the object of contradictory analysis in the preliminary chamber phase. Their detailed research brings into discussion, in addition to the lack of professionalism of the criminal investigation/prosecution bodies, the thin line of demarcation between their good or bad faith, as well as the procedural sanctions to be ordered by the judge of the preliminary chamber.
Keywords: *judicial body, preliminary chamber, good/bad faith of judicial bodies, procedural sanctions*.

Preliminary considerations

From the very beginning, we make it clear that the institution of the preliminary chamber was and is the most controversial institution introduced in our criminal procedural landscape, starting from February 1, 2014. We affirm this, since together with Decision no. 641/2014 of the Constitutional Court of Romania [1], there was a change in the philosophy of this institution, and it generated other decisions of the constitutional court or the supreme court, but also liters of ink, causing indignation among some legal book authors, and over time, radical changes in the views of doctrinaires.

Not infrequently, lately, in the activity of the criminal investigation judicial bodies, there are errors/mistakes that are noticed by the procedural participants in the procedure carried out in the preliminary chamber phase. Their detailed analysis brings into discussion, in addition to the lack of professionalism, the thin line of demarcation between the good or bad faith of the judicial bodies, as well as the procedural sanctions that must be taken.

Carrying out a short foray into the practice of the Gorj courts, a case recently settled by the Gorj Court drew our attention [2].

The ruling of the first court.

By ruling no.272 from 23 October 2023 [3], the first instance judge of preliminary chamber, in case file nr.xx/xx/2023/a1, pursuant to art. 345 para. (1) and (2) Criminal procedure code, rejected, as unfounded, the requests and exceptions formulated by the defendant V. G. A., through the chosen defender.

Based on art. 342 and art. 346 para. (2) Criminal procedure code, the judge stated the material and territorial competence of the Târgu Jiu Court, the legality of the referral to the court and the regularity of the indictment no. xx/P/2020 dated 13.06.2023 of the Prosecutor's Office attached to the Târgu Jiu Court regarding the defendant V. G. A., as well as the legality of the administration of evidence and the execution of criminal prosecution documents. The start of the trial was ordered, looking at the defendant V. G. A., sent to court for committing the crime of robbery, provided for and punished by art. 233 Penal Code, against the injured person V. (V.) R. V.

In order to pronounce this conclusion, the judge of the preliminary chamber of the first instance held that by the indictment indicated above, it was ordered to send the defendant V. G. A. to court, for committing the crime of robbery, prev. and ped. of art. 233 Criminal code.

In the referral act, it was essentially noted that, on 03.03.2020, the injured person V. (V.) R.V. notified the Târgu Jiu Municipality Police, regarding the fact that during the day of 03.03.2020, around 17:15, while he was on the staircase at Kindergarten no. 8, from the municipality of Târgu Jiu, she met her ex-husband, the defendant V. G. A., who stripped her of her Samsung Galaxy S8 mobile phone, by snatching it from her hand.

Through the request made on 07.07.2023, the defendant V. G. A. requested, based on art. 346 Criminal procedure code, returning the case to the prosecutor's office because there are several reasons for illegality and irregularity regarding the conduct of the criminal investigation in this case, among which (only those that are of interest to our analysis will be indicated - n.n. A. I. -):

Thus, it is imperative to exclude the medico-legal expert report made by the Gorj Legal Medicine Service, whereas, the address of I.P.J. Gorj dates from 03.04.2020, the report could not be based on an examination from 03.03.2020, since obviously Legal Medicine Service had not been given the next day's address. Thus, it is obvious that the report is illegally drawn up, as long as the medico-legal finding submits to the judicial body's request to make it.

Analyzing the requests and exceptions invoked by the defendant, within the limits of the preliminary chamber procedure, the preliminary chamber judge noted, among others, the following:

From the criminal investigation material, it appears that on 03.03.2020 the criminal investigation body issued the Ordinance (file 19 criminal prosecutoon file) by which it ordered the performance of a medico-legal examination in the case, setting the objectives in this regard. The injured person was examined on the same day, 03.03.2020, according to the mentions in the preamble of the expert report (file 21 criminal prosecution file). At the same time, the forensic doctor formulated preliminary findings, fixing the relevant aspects in the existing document on page 20.

The judge of the preliminary chamber assessed that the cited aspects are not in a position to call into question the regularity of the indictment and its legality. Moreover, contrary to what was claimed in general terms by the defendant, in the contents of the indictment, on tab 4, point II, the means of evidence considered by the criminal investigation body are detailed, these being assessed as sufficiently explicit for an observer reasonable.

The criticism brought to the reporting document is unfounded in the sense that it was issued on the basis of unfairly administered evidence, respectively in violation of the provisions of art. 101 Criminal procedure code In the same sense, the judge of the preliminary chamber found that the procedure of the preliminary chamber covers exclusively the aspects regulated by art. 342 Criminal procedure code. As a consequence, in this procedure it is not possible to proceed with the assessment of the evidentiary material.

The judge of the preliminary chamber does not examine the aptitude of the evidence to lead to the pronouncement of convictions or the lack of clarity of the evidence

or the fact that the indictment does not mention evidence administered during the criminal investigation, but which is in the file sent to the court. The judge of the preliminary chamber does not evaluate the relevance, usefulness or conclusiveness of the evidence, as is the case in the judicial investigation, but limits himself to ascertaining whether or not the evidence has a legal character, whether it was administered in accordance with the law, and when he finds a violation of the provisions related to the administration of evidence, evaluates its impact on the evidence, considering the provisions of art. 101, art. 102 and art. 280, 282 of the Criminal Procedure Code.

Thus, regarding the verification of the legality of the administration of evidence and the execution of criminal prosecution documents, the judge of the preliminary chamber held, from the analysis of the documents in the file, that in the case the administration of evidence respects the principle of legality and loyalty according to art. 100, art. 101 and art. 102 Criminal procedure code.

It was also noted that the indictment was drawn up in compliance with art. 328 Criminal procedure code, including the data related to the state of facts, the legal framework, the moral and personality profile of the defendant, the evidence administered and the criminal prosecution documents carried out, the referral to court and the judicial expenses, being verified under the aspect legality and soundness.

The decision of the court of judicial review.

The defendant V. G. A. filed an appeal against this criminal decision, in which he criticized the final decision of the preliminary chamber no. 272 of 23.10.2023 pronounced by the Târgu Jiu Court in file xx/318/2023/a1, mainly requesting its abolition and sending the case for retrial, or, alternatively, the retrial of the case and the admission on the merits of the requests and exceptions formulated before the first courts.

In support of the appeal, it is stated that through address no. xx/P/2020 of 12.12.2023 the Prosecutor's Office attached to the Târgu Jiu First Instance Court has submitted a response to the request of the higher court panel through which it communicated that the criminal investigation has been started in the criminal file no. xx/P/2020 on 03.03.2020,

and the further prosecution was ordered by the criminal investigation bodies on 23.28.2023 and confirmed by the prosecutor on 29.03.2023.

It was also shown that the witnesses T. D. and Z. L. were heard on 29.03.2023.

On 13.12.2023, the appellant-defendant submitted written conclusions to the file in which he emphasized that:

1. The order to start the criminal prosecution in rem dates back to one day before the event and the reporting to the prosecutor's office through the prior complaint, respectively the order to start the criminal prosecution dates from 02.03.2020 as it appears from the criminal prosecution file tab 9, to a prior complaint registered with the Târgu Jiu Municipality Police with no. xxx from 03.03.2020 and at the local Prosecutor's Office with no. xx/P/2020 (f. 10) for an incident dated 03.03.2023 so that he requested the finding of the absolute nullity of the Ordinance to initiate criminal prosecution.

2. In the content of the decision of the first court, no reference is made to the requests and exceptions invoked by the defendant regarding the order denying the initiation of the criminal action against the defendant (f. 7 criminal investigation file), order by which the same case prosecutor states that: "the named V. G. A., did not dispossess the injured person V. R.V. of the mobile phone with the aim of wrongfully taking it for himself", thus not fulfilling the constituent elements and all the conditions regarding the content of the crime of theft, a component of the complex crime of robbery.

Thus, the prosecutor through the Ordinance dated 09.01.2023 states that: "The Ordinance for the initiation of the criminal investigation drawn up by the Bureau of Criminal Investigations within the Municipal Police is illegal because the circumstance on which it is based does not exist, the constitutive elements of the crime of robbery under the aspect of the objective side" right for which it invalidates the Ordinance to initiate the criminal investigation. These aspects must be weighed all the more since, at the time of the annulment order, all the means of evidence that were considered in issuing the indictment had already been administered, the witness G. A. had been heard on 05.03.2020.

3. On 03.03.2020, the defendant V. G. A. states that he was informed that he is being questioned as a suspect for committing the crime of aggravated robbery, as can be seen from his statement given as a suspect (f. 44 verso criminal investigation file), and throughout the criminal investigation, there is no ordinance to establish the change in the

legal classification of the prosecuted crime, considering the fact that, initially, he was informed that the criminal investigation was started against him for the crime of aggravated robbery, and later, it is continued unexpectedly for the distinct crime of simple robbery.

4. In addition to the mentioned aspects, there are a number of inconsistencies in the criminal investigation file, as shown in the grounds of appeal, supplementing in the sense that in the Ordinances of March 28, 2023 and March 29, 2023, as well as the Ordinance for initiating the criminal action from 20.04.2023 (f. 5, 3 and 1 criminal investigation file) it is mentioned that: "By ordinance no. xx/P/2020 of 03.03.2020 the criminal investigation bodies of the judicial police, (...) ordered the start of the criminal investigation in rem, under the aspect of the crime of robbery, provided for and punished by art. 223 of the Criminal Code", art. 223 of the Criminal Code criminalizing the crime of sexual harassment.

5. Through the address issued by the court on 05.12.2023, the Prosecutor's Office attached to the Târgu Jiu Court was requested to communicate whether regarding the ordinances on tabs 8-9 of the criminal investigation file (Ordinance of 28.03.2023 - file xx/ P/2020) and the date of the statements of the witnesses T. D. from page 22 and Z. L. from page 24 of the criminal investigation file, a material error has crept in regarding the dating of these documents carried out during the criminal investigation and to communicate the date of issuance of the order of initiation of the criminal prosecution in rem. As it follows from the address dated 12.12.2023 of the Prosecutor's Office attached to the Târgu Jiu First Instance Court sent by e-mail to the court on 12.12.2023 at 08:49, it is communicated in the case file that: "The criminal investigation has been started in the criminal file no. xx/P/2020 on 03.03.2020". Without specifying, as requested by the court, the date of issuance of the order to start the criminal prosecution, since, in reality, as he showed, the date of its issuance is 02.03.2020 as written on it and as it appears from the copy of the criminal prosecution file (f. 9) which was carried out and handed to him from the file by the police officer F. E. after his request to study the criminal file and to hand over the copies of the documents it contains was accepted by the order issued by the prosecutor.

It is stated by the defendant that the criminal investigation bodies issued the Ordinance of March 28, 2023 based on the statements of the previously mentioned

witnesses, who, as confirmed by the prosecutor's office through the answer of 12.12.2023 and as written in their contents, were heard on March 29 2023 one day after the issuance of the ordinance of 28.03.2023, which is based on their statements (f. 6 criminal investigation file).

In conclusion, the defendant-appellant shows that this whole file is a staging against him with the aim of being denigrated and losing his public office, which he has exercised with honor and faith for over 17 years, and that the criminal investigation bodies have remained passive for over 3 years to keep him in suspense from 2020, and on March 28 and 29, 2023, they suddenly managed to do almost everything in just two days in this file, to incriminate him.

Analyzing the appeal filed by the defendant V. G. A., in accordance with the provisions of art. 347 related to art. 345 and 346 of the Code of Criminal Procedure, in relation to the existing criminal investigation material in the case, the incident legal provisions and the criticisms formulated, based on art. 425^1 para. (7) point 1 letter b) from the Code of Criminal Procedure, the preliminary chamber panel of the court of judicial review found it unfounded.

The panel of judges of the preliminary chamber of the court of judicial review adopted the theoretical and factual arguments retained by the first-degree judge, and, contrary to the defendant's opinion, held that the judge analyzed and gave a reasoned answer to all the points in the request to be accused through the conventional defenders.

The appeal panel's analysis focused mainly on the reasons developed before the court, either in writing or orally.

Reception and commentary on the issue addressed

We also adopt the opinion of the court, with the note that we will add other aspects necessary for the complete clarification of the issue under discussion.

Thus, it was held by the panel of the superior court, that the limits and specifics of the object of the present procedure are explicitly defined within the provisions of art. 342 Criminal procedure code, norm ruling on the prerogatives of the judge to verify, after the referral to court, specific issues, listed exhaustively, respectively: the competence of the

court referred to by the indictment, the legality of the referral to the court, the legality of the administration of evidence and the execution of documents by criminal prosecution bodies.

The legality of the notification involves the verification, real and effective, of the fulfillment of the conditions of form and content of the indictment, the judge analyzing whether the act of notification complies with the requirements of art. 328 para. (1) Criminal procedure code relating, inter alia, to its prior verification by the superior hierarchical prosecutor, to the indication of the persons sent to court, the facts held against them, the legal classification or the evidence/means of evidence that substantiated the prosecutor's option to give the case the solution provided by Art. 327 para. (1) lit. a) Criminal procedure code.

At this stage, the focus falls on verifying the clarity of the accusation, respectively the description of the criminal acts - as manifestations in the sphere of objective reality - in a detailed, explicit, unambiguous manner, which allows the defendant to fully understand the factual content of the criminal charges, and the judge - the individualization, beyond any equivocation, of the object and limits of the judgment.

The legality of the administration of evidence requires verification, from the perspective of the provisions of art. 101-102 Criminal procedure code, of the legality of the evidentiary procedures and the means of evidence administered in the initial phase of the process.

Equally, such an examination involves an evaluation of the evidence from the same sole perspective of legality (or, as the case may be, of loyalty), the judge analyzing only the legality and not the appropriateness of the act by which the administration of an evidence was ordered/rejected by the prosecution.

In the matter of probation, the examination of the judge of the preliminary chamber has a single purpose - the exclusion of the evidence that was the basis of the order of referral to court, but which was administered illegally. The manner of assessment of the informative content of the evidence by the prosecutor and the censoring of the value attributed to some of the administered evidence at the expense of others are matters essentially circumscribed by the concept of "assessment of the evidence", within the

meaning of art. 103 Criminal procedure code, which does not submit to the legal object of the preliminary chamber.

The legality of carrying out criminal investigation documents requires the verification, under the law, of all criminal investigation documents, an examination which, similar to the verification of competence, in order to have an effective character, must also fulfill the previously mentioned requirements.

It was found that, by verifying the content of the reporting document, it is found that it satisfies the requirements of the provisions of art. 328 para. (1) Criminal procedure code, it containing sufficient mentions regarding the evidence on which the criminal charge was based, these being indicated in the content of the indictment, the defense having the real possibility to identify them based on the mentions of the indictment, to know their content, as revealed by the file documents and to test their reliability during the judicial investigation.

As a result, in the case it was found that the provisions regarding the defendant were respected, the factual circumstances being reasonably described in the indictment, with references to the means of proof, the factual situation being retained in essence and the legal framework being indicated, so that the object and the limits of judgment are determined.

With regard to the criticisms regarding the sufficiency or insufficiency of the evidence formulated by the defendant, it was held that, in principle, the prosecutor's option to use, in support of the charges, only some of the administered evidence does not raise issues of the legality of the referral, but of the merits of the charges, which they cannot be censored in the preliminary chamber phase. Thus, a possible contradiction between the information provided by the evidence administered in the present case, their relevance for clarifying the circumstances of the case or the allegedly erroneous legal significance given to them by the prosecutor are matters circumscribed to the actual court act and cannot be censured in this procedural phase.

The circumstance that the prosecutor did not refer to the files of the file, or that he understood to give a certain form/composition to the expository part of the indictment, does not in any way violate the precepts listed previously, moreover, the panel from the court retained in this context the concise form and clear of the reporting act.

It is noted that the defendant requested the exclusion of all evidentiary material, its restoration and the entire criminal prosecution because, throughout the criminal prosecution, the defendant was not ensured effective respect of the rights conferred by the Code of Criminal Procedure, the European Convention on Human Rights and of the Charter of Fundamental Rights of the European Union.

The panel of the preliminary chamber from the higher court held that the challenged conclusion answered this criticism, however, in addition to what was held, we add the following.

We find that, although the violation of some rights provided for at the legal or conventional level is ritely invoked, the defendant did not indicate any right that was violated and that would lead to the retention of nullity and the exclusion of evidence, with the mention that in the case the cause of automatic exclusion of evidence, according to art. 102 para. (1) of the Criminal Procedure Code.

Therefore, we note that the verification of the legality of the evidence, carried out by the preliminary chamber judge, concerns the compliance of the probation activity previously carried out by the criminal investigation bodies (of the evidence administered during the criminal prosecution, of the evidentiary procedures used) with the principles of the legality of the evidence, respectively of the loyalty of the evidence administration, under the conditions in which the assumptions regulated in art. 101 of the Code of Criminal Procedure constitute aspects of the illegality of obtaining evidence. The finding - in the preliminary chamber - of the violation of the procedural prescriptions for the administration of evidence, respectively the finding of obtaining evidence through the use of illegal methods - at the request of the parties and the injured person, respectively ex officio - attracts the application, by the judge of the preliminary chamber, of the sanction of their exclusion , under the conditions in which the sanctioning of these procedural illegalities protects the legality of the criminal process, enshrined, as a principle, in art. 2 of the Criminal Procedure Code. Contextually, we remind you that as the Constitutional Court of Romania ruled in decisions no. 383 of May 27, 2015 [4] and no. 787 of November 17, 2015, [5] in the matter of probation, the nullity regime is always applied, the exclusion of evidence by the judge of the preliminary chamber being conditioned by the finding of nullity of the act by which the administration of the evidence was ordered or authorized

or by which it was administered during the criminal investigation, in in the case of relative nullities - which constitutes the rule in this matter - it is also necessary to prove the existence of an injury to the rights of the parties that cannot be removed otherwise than by abolishing the act. Therefore, not every violation of the rules regarding the administration of evidence will cause them to be excluded.

In the case, the defendant did not invoke, nor did the pre-trial panel from the court identify any case of absolute nullity, as they are normatively configured by the provisions of art. 281 Criminal procedure code.

This being so, we are going to analyze whether in the case there is any case of relative nullity whose regime is regulated by the provisions of art. 282 Criminal procedure code. Analyzing the parts of the file, we note that neither the defendant nor the preliminary chamber teams have identified any injury that would lead to the finding of relative nullity and, therefore, to the exclusion of evidence.

Next, we will analyze to what extent the aspects invoked by the defendant during the debates and through the written conclusions, as well as those identified ex officio, constitute a violation of the legal provisions that regulate the institution of the preliminary chamber.

To begin with, one criterion of the analysis will relate to the manner in which the judicial bodies acted, more precisely if they acted deliberately in bad faith. When the judicial bodies acted in good faith, it must be analyzed to what extent the accused was prejudiced by the respective violation and the effects that the violation of the legal provisions had on his legal situation.

Analyzing the inadvertences of the documents indicated by the defendant, a first aspect that must be remembered is that all of them exist (as the panel of the higher court also remembered), as they are presented by him.

Regarding the order to start the criminal prosecution in rem from 03.03.2020, in the photocopy submitted in the appeal it would appear that its date would be March 2, but not March 3. Moreover, it is noted that the photocopy issued to the defendant, as a result of the request for study and photocopying made by him on 04.07.2023 (f. 73 criminal investigation file) does not indicate the file number, which may lead to the idea that when the photocopies were made, even the original did not have the file number inserted at the

top right. Regarding the criticisms regarding the prosecutor's order of 09.01.2023, these are aspects related to the merits of the case, more precisely the sufficiency or insufficiency of the evidentiary material. However, something not even identified by the defendant is that the cited order (the date of which is changed with the pen) invalidates the order to continue the criminal investigation from 03.03.2020, which is not signed by the criminal investigation body (f. 11 criminal investigation file), a fact that attracts its relative nullity [art. 286 para. (2) lit. g) Criminal procedure code]. Moreover, the ordinance states in the prosecutor's visa that it is about the suspect V.G.D. and, by no means, V.G.A.

We also find the defendant's claim to be true, according to which in the statement of 03.03.2020, given as a suspect in the presence of the defense attorney (f. criminal investigation file), the crime of qualified robbery provided for by art. 234 Penal Code is considered as a crime at a given time.

In relation to what interests us, we find that the remark regarding the medico-legal expert report drawn up in the case on 03.03.2020 is also true, although the address of the criminal investigation body was formulated, issued and registered on 03/04/2023.

In the same register of objective reality, there is also the criticism regarding the ordinance of 28.03.2023 in which the statements of witnesses T. D. (f. 22) and Z. L. (f. 24 criminal investigation file are invoked, from which it follows that they were heard in date of 29.03.2023, therefore, after the issuance of the respective procedural act.

We note that the full court of the preliminary chamber tried to clarify these aspects, and through the address issued by the court on 05.12.2023 to the Prosecutor's Office attached to the Târgu Jiu District Court, it requested to be informed whether with regard to the ordinances on tabs 8 -9 of the criminal investigation file (Ordinance of 28.03.2023 - file xx/P/2020) and the date of the witness statements, a material error has crept in regarding the dating of these documents carried out during the criminal investigation and to communicate the date of issuance of the ordinance of starting the criminal prosecution in rem. As it follows from the address dated 12.12.2023 of the Prosecutor's Office attached to the Târgu Jiu Court sent by e-mail to the court on 12.12.2023 at 08:49, it is communicated in the case file that: "The criminal prosecution was started in criminal file no. xx/P/2020 on 03.03.2020 and confirmed by the prosecutor on 03.20.2023 and the witnesses T. D. and Z. L. were heard on 03.29.2023.

It is also true the assertion that in the contents of the ordinance of 28.03.2023 reference is made at a given time, to the crime of robbery indicating, however, as the basis of art. 223 Criminal code which regulates bears the marginal name "sexual harassment" (f. 8 Criminal investigation file)

In agreement with the panel from the tribunal, we also believe that, although apparently a contrary conclusion would emerge, all these aspects do not represent, however, genuine causes of nullity, even relative, in the consideration of the theoretical matrix exposed previously, but rather a lack of professionalism of the investigation and prosecution bodies, an aspect that cannot be censured by the preliminary chamber judge, without affecting the fairness of the procedure regarding the defendant. That this is how things are, is also proven by the fact that the file has been idle for over 3 years, from here, probably, all the aforementioned inaccuracies in the dating of the mentioned documents.

In the same register, the activity of the criminal investigation body must also be considered, which on April 1 proceeded to the technical editing of the statements of the injured person and the witnesses T. D. and Z. L., the minutes being signed only by the criminal investigation body. In addition to the fact that these minutes, rendered more than 3 years after the holographic statements were taken, are not signed by the mentioned persons, they represent a procedure not foreseen by the Code of Criminal Procedure, and therefore without evidentiary value (art. 104-109 -111 and art. 114-124 Criminal procedure code).

In the light of what has been noted, we conclude that all these inadvertences give rise to the idea of ignorance of the relevant legal provisions regarding the administration of these means of evidence.

Augmenting our scientific approach, we also note that criminal prosecution is governed by the principle of loyalty of judicial bodies in a broad sense.

Apparently, ordering the solution to exclude evidence in such situations would also be required from the need to comply with the principle of evidentiary admissibility, which imposes the requirement that the authorization, disposition, obtaining, administration, assessment and/or use of evidence in any form of evidence in the criminal process must be in accordance with the law.

Without going into details, we note that the distinction between legality and legality means the distinction between the general theory of evidence and the special law of evidence. Thus, legality represents a component of lawfulness in the sphere of named evidence - reference brevitatis causa, the "named-unnamed" dichotomy referring to the means of evidence, and not the evidence itself - these being thus subject to a double examination of lawfulness, carried out both from the perspective of compliance with the principles that underpins the general theory of evidence, as well as of compliance with the rules that define their legal regime [6].

In other words, in both situations, the procedural morality of the criminal investigation bodies in the activity of collecting evidence capable of ensuring the credibility of the judicial act can be questioned. However, by proceeding in the manner shown, it was the latter who suffered, and not the defendant.

As a result, until the evidence to the contrary, despite the answer given by the prosecutor's office, the documents of the investigative and criminal prosecution bodies enjoy the presumption of legality (until their falsity is established) and cannot be the subject of the preliminary chamber judge's analysis, not being able to it is considered that they acted deliberately in bad faith.

In this context, we note that the criminal investigation documents and the criminal investigation documents are the documents through which the object of the criminal investigation is carried out. The criminal procedure code uses the notion of "acts of the criminal investigation bodies" in two senses. The first is that of acts carried out by the criminal investigation bodies in order to resolve the cases. These documents are divided into two categories: documents for the administration of evidence in order to clarify the factual situation, also called criminal investigation documents, and documents by which procedural measures are proposed or ordered, also called criminal investigation documents. In the second sense, by "documents of the criminal investigation bodies" are designated the documents in which their proposals or dispositions are recorded.

The acts of criminal investigation have a limited scope, being those by which, after the evaluation of the collected evidence, the continuation of the criminal investigation is ordered, the initiation of the criminal action, respectively those by which it is ordered regarding the taking, revocation, replacement or termination of law of preventive

measures or other procedural measures. Thus, criminal investigation documents are only procedural documents, not procedural documents.

As is well known, most of the acts carried out by the criminal prosecution bodies are criminal investigation acts, they mainly refer to the acts by which evidence is gathered regarding the existence of crimes, the identification of the perpetrators and the establishment of criminal liability or their civil servants.

It must be said that, in principle, a complaint can be filed against both the criminal investigation documents and the criminal investigation documents under the conditions of art. 339 Criminal procedure code, which will be resolved by the prosecutor who supervises the criminal investigation of the criminal investigation bodies that issued the act, respectively by the prosecutor hierarchically superior to the one who issued the act. At the same time, it should be borne in mind that the documents of criminal investigation or criminal investigation can be refuted under the conditions of art. 304 Criminal procedure code, however, as an exception, the law stipulates a judicial control of some of the criminal prosecution documents, the complaint against them to be resolved by the judge of rights and liberties. As can be seen, as the panel of the court also observed, the defendant did not make any complaint in this regard.

Regarding the documents issued by the criminal investigation bodies, we note that the prosecutor decides on the procedural documents or measures and resolves the case by means of a reasoned ordinance, unless the law provides otherwise.

In accordance with the provisions of art. 286 Criminal procedure code, the ordinance is the act by which the criminal investigation body disposes during the criminal investigation on procedural documents or measures and must be motivated in fact and in law, and will always include the elements provided by the cited text.

Non-compliance with the legal provisions regarding the content of the ordinance, as well as its lack of motivation, or the equivocal character of the device of the procedural act may attract the incidence of the sanction of relative nullity under the conditions of art. 282 Criminal procedure code.

Or, until the evidence to the contrary, the procedural documents (with the exception of the order to continue the criminal investigation from 03.03.2020), are limited to the legal requirements noted above.

Conclusions

In the lines above, we tried to legalize a series of problems faced by the judge of the preliminary chamber, whether of first or last degree.

Regardless of our approach, it is becoming increasingly clear that the institution of the preliminary chamber is consuming money, human resources and time-consuming (this procedure leads on average to at least 5 months delay in the resolution of a criminal case, in which the court is notified with indictment.

But, as reconfigured by the Constitutional Court of Romania, it represents, today, only a tribune of the masters of the legal bar, and of the doctrinaires, famous or less famous, than one that responds to the purpose of the criminal process as it is normatively configured, by the provisions of art. 5 of the code.

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