ABSOLUTE NULLITY, THE SANCTION FOR NON-OBSERVANCE OF THE COMPETENCE OF CRIMINAL INVESTIGATION BODIES

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Abstract:
Starting from the definition of nullity, Decision no. 8/2025 (RIL) of the High Court of Cassation and Justice falls in line with the doctrinal approach set by interwar criminal procedural law and constitutes a jurisprudential reversal in the matter.
This decision continues the trajectory set by the Constitutional Court of Romania (CCR) since 2017, beginning with Decision no. 674/2016, and is consistent with the constitutional standard established through Decisions no. 302/2017 and no. 26/2019.
In the practical implementation of this decision, divergent opinions have already emerged. However, judicial practice has consistently identified appropriate solutions that respect the constitutional and legal framework in the field, thereby ensuring the effectiveness of the fundamental principles of legality and loyalty in the administration of evidence, as an expression of the right to a fair trial.
Our scientific approach aims to identify solutions for the implementation of the cited decision from a practitioner's perspective, without neglecting doctrinal considerations that reinforce the arguments presented, particularly those concerning the institution of nullity as a criminal procedural sanction.
Keywords*: nullity, decision, appeal in the interest of the law, the fundamental principle of a fair trial, jurisprudence.*

I. BRIEF LEGISLATIVE HISTORY OF ABSOLUTE NULLITY

To better understand this issue, we will briefly review the evolution of the sanction for non-observance of the competence of the criminal investigation body in the three previous codes.

The Code of Criminal Procedure of 1864 did not expressly regulate the institution of nullity, but in Article 406 it provided that: ,,The same shall be followed in cases of lack of jurisdiction and in cases where a request or several requests of the accused, or a requisition or several requisitions of the public prosecutor, have been omitted or refused to be ruled upon, when that request or requisition was made to claim some faculty or

some right granted by law, even though the penalty of nullity is not pronounced by any legal text for the non-observance of the formality required by the accused or by the public prosecutor".

From this legal text it can be concluded that acts performed in breach of a formality not expressly sanctioned by nullity may also be annulled, provided that the non-observance concerned a right or faculty granted by law and the interested party had signalled this non-observance.

In the opinion of Professor Tanoviceanu, if the system of this law were summarised, the following would result: all procedural acts performed in violation of a formality expressly sanctioned by nullity are affected by nullity; likewise, all acts performed in breach of a fundamental principle—other than the principle of mandatory prosecution—are affected by nullity, even when the law does not provide for nullity.

As regards the activity of the investigation, prosecution and instruction bodies, no procedural sanction is regulated; however, the "Cuza Code" exhaustively regulated absolute nullities, among which we mention: Articles 100 and 101 on criminal warrants; Articles 151, 186, 485 on the publicity of criminal proceedings; Articles 161, 2026, 229 on the reasoning and signing of judgments; Article 248 on judicial incompatibility; Articles 322, 324, 337, 342, 371, 375, 395, all on the procedure before the Courts with jurors; and Article 475(3) concerning contumacy.

In the 1936 Code of Criminal Procedure, under Article 98: "The provisions relating to jurisdiction by subject matter or by the quality of the person, the composition of the court and the presence of the prosecutor, the presence of the defendant in the cases and forms established by law, the initiation of criminal proceedings and the seizing of the court are always prescribed under the sanction of nullity. This nullity cannot be removed in any way; it may be raised at any stage of the proceedings and must be declared even ex officio."

Regarding this procedural-criminal institution, Professor Traian Pop stated at the time that: ,,Nullity is the clearest, most ancient, and most realistic of the various sanctions, and it has its own well-structured logical and legal system," and that ,,procedural nullity is the sanction of procedural (or formal) law for failure to observe procedural rules." Illo

tempore, Professor Manzini stated that nullity sanctions are the legal sanctions for acts performed in non-observance of conditions of manner or time.

According to I. Ionescu-Dolj, nullities are sanctions that affect procedural acts carried out with the omission or violation of the forms prescribed by law.

In the opinion of Professor Dongoroz, procedural nullity is the sanction of formal law arising from the non-observance or improper application of procedural rules, when these defects have caused or are presumed to have caused harm to the parties; and the procedural remedy (to counteract the consequences of procedural defects) is the annulment of the defective acts. Another author stated that the lack of the conditions or elements necessary for the existence or effect of the act constitutes nullity.

With respect to the 1968 Code of Criminal Procedure, we note that the matter of nullities was regulated in Title V, Chapter VI, Article 197. Under paragraph 2 of Article 197: ,,The provisions concerning jurisdiction by subject matter or by the quality of the person, the seizing of the court, its composition, and the publicity of the hearing are provided under the sanction of nullity ...” Likewise, paragraph 3 of the same article provided that: ,,The nullity provided for in paragraph 2 cannot be removed in any way. It may be invoked at any stage of the proceedings and shall be taken into account even ex officio”.

Regarding this regulation, the author of the code, Professor Dongoroz, stated that: ,,Procedural law provides, for omissions and violations of the law, that is, for procedural defects affecting procedural acts, certain procedural sanctions. The procedural sanction of a general nature, in cases of violation of the rules provided by the Romanian Code of Criminal Procedure, is the nullity of the act”.

Professor Mateuţ maintains that, when it is found that there is a direct, indissoluble connection between the annulled act and the subsequent act(s), one may also discuss, from a causal perspective, acts concluded simultaneously or even prior to it, which will naturally be devoid of effect, and not only the subsequent acts-an opinion also embraced by Professor Vintilă Dongoroz.

Procedural sanctions affect existing procedural acts that came into being in breach of legal provisions, through omission or violation of the forms prescribed by law, or sanctions arising from the failure to carry out procedural acts in accordance with the law, and their effect is the inefficiency of those acts.

The sanction of nullity, through its application, has the function of removing from the content of the criminal process those acts or violations of the law that are presumed or proven to be prejudicial to the administration of criminal justice. Absolute nullity cannot be removed in any way and is examined in doctrine alongside the inexistence of the act. Regarding this aspect, the Italian jurist Eugenio Florian captured this assertion very well, considering that the expression “nullity” has been adopted in common usage in a twofold manner, signifying on the one hand the reason that renders the act imperfect, and on the other hand the expression of the consequences derived from that imperfection, namely its legal invalidation.

With regard to the legal issue settled by the supreme court, in a comparative analysis of the last two regulations, we observe that the lawmakers of the 1936 Code of Criminal Procedure and of the 1968 Code of Criminal Procedure had in view both the material jurisdiction and the personal jurisdiction of the court, as well as that of the criminal investigation body. Thus, from the perspective of the material and personal jurisdiction of the criminal investigation body, the non-observance of procedural provisions in this field always attracted the sanction of absolute nullity, which could be raised, including ex officio, at any stage of the proceedings.

As for the Code of Criminal Procedure that entered into force on 1 February 2014, we note that absolute nullities are regulated in Article 281, the provisions of Article 281(1)(b) CPP stating that: ,,The following always result in the application of nullity: (...) (b) the breach of provisions relating to the material jurisdiction and personal jurisdiction of the courts, when the trial was carried out by a court inferior to the legally competent one”; and those of Article 281(3) stating that: “The breach of the legal provisions provided for in paragraph (1)(a)–(d) may be invoked at any stage of the proceedings”.

We note that also in the conception of the new regulation, absolute nullity is established ex officio or upon request, the breach of the legal provisions in Article 281(1)(b) CPP being able to be invoked at any stage of the proceedings.

From the overall provisions of Article 281 CPP, we observe that the new criminal procedural legislator introduced a new philosophy, reforming the matter of nullities, bringing changes to the content of the provisions regulating their regime; one of these changes concerns the removal from the category of absolute nullities of the non-

observance of provisions relating to the material and personal jurisdiction of the criminal investigation body. Thus, in the conception of the new Code of Criminal Procedure, the breach of procedural provisions relating to the material and personal jurisdiction of the criminal investigation body attracts the sanction of relative nullity, and not of absolute nullity.

However, this philosophy was "shaken" by the Constitutional Court through Decisions no. 302/2017 and 802/2017, by which the constitutional review court repositioned the entire doctrine of nullities. Consequently, albeit belatedly, the legislator intervened by Law no. 201/2023, introducing among the cases of absolute nullity the breach of legal provisions regarding the material and personal jurisdiction of the criminal investigation bodies, which led to the completion of Article 281 CPP with letter b¹.

II. PRACTICAL ASPECTS

With regard to the issue under discussion, the Court of Appeal of Craiova [1] recently held, in the case before it on appeal, that the interpretation given by Decision no. 8/2025 of the High Court of Cassation and Justice is binding from the moment of its publication in the Official Gazette, as clearly results from the provisions of Article 474(4) of the Code of Criminal Procedure.

The appellate court found that, since the legality of a criminal investigation act is to be assessed in relation to the legal provisions in force and the interpretation applicable at the time the act was performed, the aforementioned decision does not affect the legality of the evidence gathered earlier by the judicial police authorities. The court noted that, given the temporal limitations set out in Article 281(4)(a) of the Code of Criminal Procedure, the defendant was not entitled, at this stage of the proceedings, to invoke the case of absolute nullity provided by Article 281(1)(b¹) of the same Code, this possibility existing only until the conclusion of the preliminary chamber procedure where the violation occurred during the criminal investigation.

The court further held that, although this case of absolute nullity was not included in the procedural criminal regulation in force at the time when the preliminary chamber procedure was completed - having been introduced by Law no. 201/2023 [2] — nothing prevented the defendant from invoking, during the preliminary chamber proceedings,

Decision no. 302/2017 [3] of the Constitutional Court. By that decision, the breach of the legal provisions concerning the ratione materiae and ratione personae competence of the criminal investigation bodies had, in practice, been recognized as a case of absolute nullity, which led to the insertion of letter b¹) into Article 281 of the Code of Criminal Procedure.

Only if the decision of the Constitutional Court had intervened during the trial phase, after the completion of the preliminary chamber stage, would the case of absolute nullity have had to be examined at any stage of the proceedings, up to the final resolution of the case — a situation that does not arise in the present case.

In the same manner, the Court of Appeal of Bucharest [4] recently ruled that since the legality of a criminal investigation act must be assessed in relation to the legal provisions in force and the interpretation applicable at the time the act was performed, Decision no. 8/2025 does not affect the legality of the evidence obtained earlier by the judicial police bodies.

Other courts have considered, by reference to Decision 64/2023 of the High Court of Cassation and Justice, that the mere provision of the audio-video surveillance infrastructure by the General Anticorruption Directorate (DGA) for the purpose of carrying out the technical surveillance provided for in Article 138(1)(c) of the Code of Criminal Procedure, in circumstances where the surveillance is carried out solely by the police bodies in accordance with the provisions of Article 142(2) of the same code.

Given the diversity of hypotheses encountered in practice after the publication of Decision no. 8/2025 of the High Court of Cassation and Justice, some courts have held that the invocation of an alleged nullity of the acts of criminal investigation, based on the material or personal competence of the criminal investigation body, relates to the provisions of Article 281(1)(b¹) of the Code of Criminal Procedure and not to any vitiation of the preliminary chamber procedure itself. Moreover, pursuant to Article 281(4)(a) of the Code of Criminal Procedure, such nullities may be invoked only until the conclusion of the preliminary chamber procedure.

The court further held that accepting the contrary would amount to an impermissible extension of the application of Article 386¹ of the Code of Criminal Procedure, transforming this special provision-intended to correct essential procedural

defects in the preliminary chamber-into an instrument for reopening matters already settled in the preliminary chamber stage.

III. THE EVOLUTION OF THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA ON THE ISSUE OF NULLITIES AND OF THE COMPETENCE OF THE CRIMINAL INVESTIGATION BODIES

The constitutional review court, through Decision no. 113/2005, found that “nullity represents an extreme procedural sanction, which intervenes only when other remedies are not possible. Since not every breach of a procedural norm causes harm that can be remedied solely by annulment of the act, the legislator established the rule according to which the nullity of an act performed in breach of the legal provisions governing the conduct of the criminal process intervenes only when harm has been caused that cannot be remedied in any other way”.

At the same time, the Court held that absolute nullity is characterised by the fact that it cannot be removed in any way, may be invoked at any stage of the criminal proceedings—except for the cases provided in Article 281(1)(e) and (f) of the Code of Criminal Procedure, which may be invoked under the conditions provided in Article 281(4) of the same code—and may be taken into consideration ex officio. It always results in the annulment of procedural acts performed in breach of the provisions laid down by law (Decision no. 840/2015).

The issue under consideration was first subjected to constitutional review in Decision no. 674/2016 [5], where the Court held that the General Anticorruption Directorate is a structure specialized in the prevention and combating of corruption among the personnel of the Ministry of Internal Affairs and Administrative Reform, and therefore competent to conduct criminal investigation acts only with respect to a specific category of acts committed exclusively by persons employed within that ministry. The Court further stated that, pursuant to Article 280(1) of the Code of Criminal Procedure, the violation of legal provisions governing the conduct of criminal proceedings entails the nullity of the act, under the conditions expressly provided by law.

The first major turning point in the area of nullities arising from the lack of competence of investigative bodies was Decision no. 302/2017, whereby the

Constitutional Court declared unconstitutional the provisions that excluded from the sphere of absolute nullities the breach of competence rules applicable to criminal investigation bodies. The Court's central argument was that the legality of competence is not a mere formality, but a constitutional requirement for the validity of criminal proceedings, derived from Article 1(5) on the supremacy of the law and Article 21 on the right to a fair trial of the Romanian Constitution. The Court held that an accused person cannot be required to prove prejudice resulting from an act performed by an incompetent authority, since prejudice is presumed from the very fact of the breach of competence.

Undoubtedly, Decision no. 302/2017 repositioned the entire doctrine on nullities. Whereas, under the logic of the 2014 Code of Criminal Procedure, absolute nullity had been reserved for a limited set of situations, from 2017 onward, the violation of the competence of the criminal investigation body once again became a ground for absolute nullity, with far-reaching consequences for the validity of procedural acts. This change was later codified through the amendment of Article 281(1) of the Code of Criminal Procedure by Law no. 201/2023 [6].

In the same year, the Constitutional Court rendered Decision no. 554/2017 [7], which strengthened the active role of the courts, emphasizing that judges are required to declare nullity ex officio when procedural acts are seriously flawed. In practice, this obliged courts to verify ex officio the observance of competence and to exclude evidence obtained in breach thereof.

The culmination of this evolution occurred in 2019, when the Constitutional Court, through Decision no. 26/2019 [8], examined the effects of the cooperation protocols concluded between the Public Prosecutor's Office and the Romanian Intelligence Service. The Court held that evidence obtained by bodies not provided for by law was not merely unlawful, but had to be excluded from the case file. Beyond formal exclusion - in the sense of being disregarded during deliberation — the Court went further, holding that such evidence must be physically removed from the file, to prevent contamination of the judge's deliberations and to ensure transparency in evidentiary assessment. This ruling enshrined, in Romanian law, the fruit of the poisonous tree doctrine, extending the sanction to derivative evidence as well.

Taken as a whole, this evolution reflects a major paradigm shift: from a restrictive approach that prioritized investigative efficiency [9], the Constitutional Court has moved toward a substantive conception, in which respect for the competence of judicial bodies has been elevated to the level of a constitutional guarantee.

This development created the framework within which the High Court of Cassation and Justice, by Decision RIL no. 8/2025, affirmed that delegation cannot create competence where the law does not grant it - that is, *extra legem*.

With regard to the institution of delegation, it has been defined as a procedural mechanism used when a criminal investigation body or a court of law is unable to carry out a procedural act itself [10], with the specification that the activity subject to delegation must be performed in accordance with the law [11].

Other authors define delegation as a procedural activity through which a criminal investigation body or a court of law entrusts the right to perform directly a procedural act to a hierarchically inferior body, territorially competent, or to another judicial body that does not fulfil the legal requirements for functional competence [12].

Mihail Udroiu observes in his course that the mechanism of delegation cannot be interpreted extensively, as this would mean transforming an exception into a rule and violating the principle of legality [13].

Thus, delegation is a purely executive mechanism: the delegated body acts in the name and under the authority of the prosecutor but does not thereby acquire its own competence, and any misuse of delegation entails procedural sanctions [14].

Regardless of the doctrinal perspective adopted, the limited nature of delegation emerges clearly. The prosecutor’s delegation cannot concern acts that, by law, are reserved exclusively to the prosecutor, such as the initiation of criminal proceedings or the referral of the case to court.

It may therefore be concluded that Decision RIL no. 8/2025 represents a continuation of the trend set by the Constitutional Court since 2017, beginning with Decision no. 674/2016, which established that the officers of the General Anticorruption Directorate may perform acts of criminal investigation only within the strictly delimited scope of Article 1(2) of Government Emergency Ordinance no. 120/2005 - that is, only with regard to a specific category of acts committed exclusively by personnel of the

Ministry of Internal Affairs - and only on the basis of a delegation issued by a competent prosecutor. Consequently, any act performed outside this scope is affected by absolute nullity.

This solution aligns with the constitutional standard established by the Constitutional Court in Decisions no. 302/2017 and no. 26/2019. By grounding its jurisprudential reversal on these rulings, the High Court of Cassation and Justice has naturally integrated these orientations and incorporated them within the mechanism of the appeal in the interest of the law, without creating a new norm but rather conferring, through interpretation [15], a univocal meaning to the existing one - fully consistent with the law [16].

IV. THE EFFECTS OF THE DECISION

In order to identify the correct approach to implementing Decision no. 8/2025, a few clarifications are required.

First, the judgments of the High Court of Cassation and Justice rendered in appeals in the interest of the law or in preliminary rulings on questions of law cannot be regarded as normative acts having the force of law within the meaning of Article 173, final sentence, of the Criminal Code. This is because they do not regulate social defence relations, do not establish conduct rules or norms of incrimination, and do not concern criminal liability or its grounds and limits. Rather, such decisions merely provide an interpretation of provisions already contained in normative acts lawfully adopted according to legislative drafting procedures.

The binding effect of rulings on questions of law - as provided by Articles 474(4) and 477(3) of the Code of Criminal Procedure - does not confer upon these interpretative judgments the character of legal norms. Instead, this binding effect represents a transposition of Article 126(3) of the Constitution of Romania, which establishes the High Court’s position within the judicial hierarchy and its role in ensuring the uniform interpretation and application of the law by all other courts. If such rulings were truly endowed with the force of law, their binding effect would occur automatically, as is the case with organic laws, emergency ordinances, and other normative acts with legislative power - binding not only on the courts, but also on the legislature.

From this conceptual clarification, one line of reasoning follows that the analyzed decision should not apply to pending cases. This view rests on the constitutional principle that the decisions of the Constitutional Court are of immediate and general application, becoming erga omnes from the date of publication in the Official Gazette of Romania, Part I. Accordingly, they apply not only to legal relationships arising thereafter but also to ongoing proceedings that have not yet been finally adjudicated.

Thus, insofar as during the procedural phase of the preliminary chamber the cases of absolute nullity relating to the criminal investigation were expressly provided by law or had already been identified in binding decisions of the Constitutional Court, their invocation follows the rule laid down in Article 281(4) of the Code of Criminal Procedure. This approach has the merit of safeguarding the fulfilment of the purpose of the criminal process.

In doctrinal writings, this interpretation has been supported, emphasizing that absolute nullities related to the criminal investigation must be invoked in accordance with Article 281(4)(a), first sentence, of the Code of Criminal Procedure - that is, during the preliminary chamber stage [17].

An exception to this rule should be recognized in situations where Constitutional Court decisions are delivered during the trial phase, after the preliminary chamber procedure has concluded - in such transitional cases, and in the absence of a specific legislative framework, absolute nullities must be examined at any stage of the process until final judgment.

Thus, insofar as the absolute nullities concerning the criminal investigation were expressly provided by law or already identified in binding Constitutional Court decisions during the preliminary chamber stage, their invocation must follow the rule in Article 281(4) of the Code of Criminal Procedure.

A second, more utilitarian perspective holds that the recent decision of the High Court of Cassation and Justice does apply to pending cases, depending on the procedural stage. Certain authors maintain that in matters of nullity, any act performed by an incompetent body is radically flawed and cannot remain within the legal order [18].

We also believe that this opinion is closer to current realities, as we have attempted to outline them.

We align ourselves with this latter view, for the reasons set out below. Although the decision of the High Court, under Article 477(3) of the Code of Criminal Procedure, is binding only on courts and does not produce *erga omnes* effects, this does not mean that absolute nullity should not be examined in ongoing preliminary chamber or trial proceedings. Courts are indeed bound to verify whether the acts performed by DGA officers fall within the strict scope of Article 1(2) of Government Emergency Ordinance no. 120/2005.

From the succession of decisions and legislative acts analyzed earlier, it becomes evident that the sanction of nullity for breaches of competence - both ratione materiae and ratione personae - was firmly established by the Constitutional Court in Decision no. 674/2017. The Court stated that the DGA's competence cannot be extended to investigating acts committed by persons outside the Ministry of Internal Affairs; it may conduct criminal investigation acts only regarding certain offences committed exclusively by MAI personnel (§31).

This interpretation was subsequently reinforced by Decisions no. 302/2017 and no. 88/2019 of the same court, which laid the groundwork for Law no. 201/2023. Under that law, Article 281 of the Code of Criminal Procedure provides that violations of the provisions listed in paragraph (1)(a)–(d) may be invoked at any stage of the proceedings, while violations of paragraph (1)(b^1), (e), and (f) may be invoked either until the conclusion of the preliminary chamber procedure (if the violation occurred during the criminal investigation) or at any stage of the process (if it occurred during the preliminary chamber or trial).

However, Decision no. 21/2020 (HP) of the High Court, which dismissed as inadmissible a referral on this issue, interpreted the law contrary to the Constitutional Court's findings in Decision no. 674/2016. In effect, the High Court disregarded the binding interpretation of the Constitutional Court - an inadmissible outcome. While Decision no. 21/2020 was formally binding on courts, this explains why some panels adhered to it, even against the later law and the Constitutional Court's rulings.

Nevertheless, not all courts adhered to the restrictive view. Some, giving full effect to the Constitutional Court's decisions, held that where the offences under investigation were not corruption offences committed by police officers, the prosecutor's delegation to

DGA officers — whose competence is strictly specialized within the MAI — was unlawful. Consequently, the acts performed were subject to absolute nullity, and the evidence gathered by those officers had to be excluded [19].

We believe that, based on constitutional and statutory imperatives, nothing prevents courts in pending cases from verifying whether acts performed by DGA officers fall within the strict scope of Article 1(2) of OUG no. 120/2005, as interpreted by Decision no. 8/2025 of the High Court. Otherwise, Decision no. 21/2020 (HP) would continue to produce effects despite the High Court's own jurisprudential reversal as affirmed by an RIL panel.

As recalled by the Constitutional Court in Decision no. 802/2017, "accepting the possibility that evidence obtained unlawfully during the criminal investigation and not effectively reviewed in the preliminary chamber procedure may form the basis of a conviction would circumvent the Convention standard previously established; such a legislative solution is not proportionate to the objective stated in the Explanatory Memorandum to the Draft Code of Criminal Procedure — namely, to eliminate excessive duration in trial proceedings and ensure prompt adjudication on the merits." Likewise, the Strasbourg Court held, in its judgment of 11 February 2014 in Cēsnieks v. Latvia, that "the use in criminal proceedings of evidence obtained in breach of one of the fundamental rights guaranteed by the Convention always raises issues concerning the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction. ,,In the same decision (§29, §45), the Constitutional Court further emphasized that the loyalty and legality of evidence gathering may be verified even during the trial, thus applying the general rule that absolute nullity may be invoked throughout the criminal process. The categorical legal prohibition of obtaining evidence through unfair or unlawful means justifies the trial judge's competence to examine such aspects at any stage.

By following this approach, courts will remedy the inequities caused by certain judicial bodies that gave precedence to Decision no. 21/2020 over Constitutional Court rulings - an outcome that cannot be imputed to the defendant, and would not restrict free access to justice, as enshrined in Article 21 of the Constitution.

If the first opinion were accepted, the notion or concept of absolute nullity would be emptied of content, and in this way procedural rules would become mere

recommendations, without coercive force to ensure their application or to remedy the consequences of their non-observance or non-application. In other words, the remedial character of nullity would be circumvented.

It should be noted that an argument in favor of this opinion is provided by the recent jurisprudential orientation regarding the effects of Decision no. 64/2023 – the Panel for the Resolution of Legal Issues in Criminal Matters. We recall that, through this decision, our supreme court ruled as binding for the courts that: ,,In the procedure provided for in Article 148(3) of the Code of Criminal Procedure, as well as in Article 150(5) of the Code of Criminal Procedure, referring the matter to the judge for rights and freedoms for the issuance of the technical surveillance warrant is mandatory if the prosecutor considers it necessary for the investigator to be able to use technical recording devices, even if a technical surveillance warrant of the same nature has been previously issued; these legal provisions establish a special procedure, derogating from the provisions of Article 139 of the Code of Criminal Procedure".

Thus, the preliminary chamber judges, referring to Decision no. 64/2023, definitively found the partial absolute nullity of the ordinances issued by the prosecutor with regard to the provisions by which the undercover collaborator and the investigator with real identity were authorized to use technical devices to obtain photographs or audio and audio-video recordings. We specify that these procedural acts were drawn up in 2017 and 2018, therefore long before the supreme court issued its ruling.

On this subject, the High Court of Cassation and Justice, in the context of an appeal in the interest of the law (even though the referral was dismissed), noted that a finding of absolute nullity affecting a procedural act produces an irradiating effect that extends to acts directly connected to the nullified act [20].

It should be noted that the Constitutional Court has repeatedly ruled on the effects of nullity. Thus, we recall Decision No. 854/2020 [21], by which the Court dismissed, as unfounded, the exception of unconstitutionality raised in relation to Article 367 paragraph (9), Article 425¹ paragraph (4), and Article 475 of the Criminal Procedure Code, holding that nullity produces an extensive effect, since "it extends to subsequent acts performed in accordance with legal provisions, but which are directly connected to the annulled procedural act".

V. CONCLUSIONS

Immediately after the publication of this decision [22], by which the High Court - the panel competent to rule on appeals in the interest of the law - established that the judicial police officers under the General Anticorruption Directorate have jurisdiction to carry out, by delegation and under the conditions provided by law, criminal investigation acts ordered by the competent prosecutor exclusively in cases concerning the offences provided for in Article 1(2) of Government Emergency Ordinance no. 120/2005 [23], a veritable effervescence arose in judicial practice, comparable to that generated by the publication of Decision no. 358/2022 of the Constitutional Court of Romania [24], with consequences difficult to foresee.

The decision on which this study is based constitutes a jurisprudential reversal in the matter, if one refers to Decision no. 21 [25] - rendered by the panel responsible for resolving questions of law in criminal matters - which, when faced with an identical issue, had dismissed it as inadmissible. In its reasoning, that panel stated that the judicial police officers under the General Anticorruption Directorate could carry out criminal investigation acts by delegation from the competent prosecutor in respect of any person, and not solely in relation to personnel of the Ministry of Internal Affairs.

This decision continues the trajectory set by the Constitutional Court of Romania (CCR) since 2017, beginning with Decision no. 674/2016, and is consistent with the constitutional standard established through Decisions no. 302/2017 and no. 26/2019.
The jurisprudential reversal founded upon the Constitutional Court's rulings will most likely generate divergent judicial solutions, given the coexistence of two "schools of thought," and will again necessitate the Constitutional Court's intervention - akin to Decision no. 265/2014 concerning the unconstitutionality of Article 5 of the Criminal Code [26].

Given the diversity of practical situations arising from the application of this decision, judges must exercise prudence in applying the entire legal and jurisprudential framework, ensuring the effectiveness of the fundamental principles of legality and loyalty in the administration of evidence, as expressions of the right to a fair trial.

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[20] Decision no. 9 of 19 March 2018 of the High Court of Cassation and Justice, published in the Official Gazette no. 429 of 21 May 2018.
[21] Decision of the Constitutional Court no. 854 of 26 November 2020, published in the Official Gazette no. 196 of 26 February 2021.
[22] Published in the Official Gazette of Romania no. 850 of 16 September 2025.
[23] Published in the Official Gazette of Romania no. 809 of 6 September 2005.
[24] Published in the Official Gazette of Romania no. 565 of 9 June 2022. This decision held that the provisions of Article 155(1) of the Criminal Code are unconstitutional.
[25] Published in the Official Gazette of Romania no. 118 of 4 February 2021.
[26] Published in the Official Gazette of Romania no. 372 of 20 May 2014.