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The Possibility of Analysing an Exception of Illegality of The Act of Initiating the Criminal Action and The Detention of One of the Cases provided for in art. 16 para. (1) of Criminal Procedure Code in The Preliminary Chamber Procedure Provided by art. 342 of CRPC

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Abstract

In the present study, the authors present a situation extracted from the Romanian criminal jurisprudence, with regard to an unprecedented situation, which generated controversies concerning the possibility of being the subject of the preliminary chamber or not. In order to analyse and express a documented point of view regarding the correct solution of a procedural law problem, such as the one in this study, the authors also present a request for resolution of a legal problem that was referred to the High Court of Cassation and Justice, which is in course of settlement, as well as how mutatis mutandis arguments from that legal situation could be applied in the case presented.

***Keywords**:* preliminary chamber; exception of illegality of the act of initiating the criminal action; indictment irregularity.

Introduction

The present criminal procedure code has introduced a new procedural phase into Romanian criminal procedural legislation, which targets the analysis of the aspects of jurisdiction and legality of the arraignment, as well as the

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verification of the legality of the administration of evidence and the execution of documents by the criminal investigation bodies. As expected, in jurisprudence a multitude of legal situations were encountered that the judge of the preliminary chamber faced, being invested with the analysis of their legality. The object of this study is a situation in which the incidence of one of the cases provided for in art. 16 para. (1) CrPC, namely the cases that prevent the initiation and exercise of the criminal action. We will present the applicable legislation in question, the case that generated controversies and the divergent opinions regarding the correct and just resolution of the preliminary chamber phase, as well as a similar situation, with which the High Court of Cassation and Justice was invested. for the issuance of a legal release.

Incidental legal texts in question

Law no. 135 of July 1, 2010 regarding the Criminal Procedure Code.

Art. 16 – The cases that prevent the initiation and exercise of the criminal action.

(1) The criminal action cannot be initiated, and once it has been initiated, it can no longer be exercised if:

a) the deed does not exist;

b) the act is not provided by the criminal law or was not committed with the guilt provided by the law;

c) there is no evidence that a person committed the crime;

d) there is a justifying reason or non-imputability;

e) there is no prior complaint, authorization or notification of the competent body or another condition provided by law, necessary for the initiation of the criminal action;

f) the amnesty or prescription intervened, the death of the suspect or the defendant natural person or the removal of the suspect or the defendant legal person was ordered;

g) the prior complaint has been withdrawn, in the case of crimes for which its withdrawal removes criminal liability, reconciliation has taken place or a mediation agreement has been concluded in accordance with the law;

h) there is a cause of non-punishment provided by law;

i) there is res judicata authority;

j) there has been a transfer of proceedings with another state, according to the law.

Art. 309 – Initiation of the criminal action.

(1) The criminal action is initiated by the prosecutor, by ordinance, during the criminal investigation, when he finds that there is evidence from which it follows that a person has committed a crime and there are no cases of obstruction provided for in art. 16 para. (1).

[...].

Art. 342 – The object of the procedure in the preliminary chamber.

The object of the procedure of the preliminary chamber is the verification, after the arraignment, of the competence and legality of initiating proceedings, as well as the verification of the legality of the administration of evidence and the execution of documents by the criminal investigation bodies.

Presentation of the matter

By conclusion no. 527/4.09.2020, Constanța County Court decided that under art. 4251 para. (7) point 2 letter a) CrPC rep. to art. 347 CrPC, to admit the appeal filed by the Prosecutor's Office attached to Constanța District Court against decision no. 543/15.06.2020 of Constanța District Court.

The Court annulled the contested conclusion and rejudging, pursuant to art. 346 para. (2) CrPC, rejected as unfounded the requests and exceptions invoked by the defendant S.O. regarding the irregularity of the notification to the court.

It also ascertained the competence and legality of the referral to Constanța District Court with indictment no. 763/P/2019 of the Prosecutor's Office attached to Constanța District Court, which ordered the prosecution of the defendant S.O. for committing the crime of qualified theft, provided for by art. 228 para. (1) – art. 229 para. (1) lit. a) Penal Code, with the application of art. 41 Penal Code, as well as the legality of the administration of evidence and the execution of criminal investigation documents.

In the end, the Court ordered the start of the trial looking at the defendant S.O. and sending the file to Constanța District Court.

In the recitals, it was found that by the criminal report no. 543/15.06.2020, ruled by Constanța District Court, the return to the Prosecutor's Office attached to Constanța District Court of criminal case no. 763/P/2019 regarding the defendant S.O., sent to court for committing the crime of qualified theft, prev. of art. 228 para. (1) – art. 229 para. (1) lit. a) of Penal Code, with the application of art. 41 of Penal Code.

To order thus, the preliminary chamber judge of Constanța District Court held that by indictment no. 763/P/2019 dated November 1, 2019 of the Prosecutor's Office attached to Constanța District Court, the defendant S.O. was sent to court, for committing the crime of qualified theft, prev. of art. 228 para. (1) – art. 229 para. (1) lit. a) of Penal Code, with the application of art. 41 of Penal Code.

In the reporting document, it was noted, in fact, that on January 18, 2019, around 14:15, while the injured person was on bus 2-43, between Centrul de Scafandri – Republica stations, the defendant S.O. stole a Huawei Y6 2018 mobile phone from the right pocket of the coat, the value of the damage being approximately 699 lei.

It was shown that the factual situation presented above is supported by the following means of evidence: the statement of the injured person P.M., the statements of the witnesses R.S., I.M.C. and O.Ş.; minutes of presentation for recognition from the video recordings of the surveillance cameras of bus 2-43, by the witnesses R.S. and I.M.C. and the boards with the video captures; minutes of recognition after filming; the statements of S.O. as a suspect/accused; the record of finding the "rose" type tattoo of the defendant and the photo board.

It was also mentioned that by the order of the criminal investigation bodies of January 18, 2019, it was ordered to start the criminal investigation regarding the crime of qualified theft, prev. of art. 228 para. (1) – 229 par. (1) lit. a) of Penal Code.

By the ordinance of the criminal investigation bodies dated March 1, 2019, confirmed by the prosecutor's ordinance dated March 1, 2019, it was ordered to continue the criminal investigation against the defendant S.O., and by the prosecutor's ordinance dated March 1, 2019 it was set in motion the criminal action against the same defendant.

Finding that the legal provisions that guarantee the discovery of the truth have been respected, that the criminal investigation is complete and that there is the necessary and legally administered evidence, as well as that the investigated crime exists, it was committed by the defendant and that he is criminally liable, pursuant to art. 327 lit. a) of CrPC it was ordered to send the above-mentioned defendant to court.

The case was registered in Constanța District Court on November 26, 2019.

Through the request submitted to the preliminary chamber file no. 32291/212/2019/a1 located on tabs 7-8 of the file, the defendant invoked

requests and exceptions, showing that during the criminal investigation, the defendant was detained for a period of 24 hours on February 28, 2019 and then arrested preventive order for a period of 30 days, starting from March 1, 2019, the defendant appealing against this solution.

On March 4, 2019, the minor injured person, accompanied by both parents, proceeded to authenticate a notarial statement in which he showed that he understood to reconcile with the defendant, this statement being submitted on March 5, 2019 at Constanța County Court, in order to be taken into account when judging the appeal against the preventive measure, which is why the defendant was immediately released.

It was also shown by the defendant that, after his release, he appeared at the notary's office and gave a reconciliation statement, and on March 6, 2019, the defendant's defense attorney submitted both notarial statements to the Prosecutor's Office attached to Constanţa District Court, submitting attached to his requests also the proof of the submission of statements to the Prosecutor's Office (page 9 of the preliminary chamber file).

It was also shown that the statements are not found in the criminal investigation file, and the prosecutor of the case, instead of ordering the closure of the case, ordered the prosecution of the defendant.

For these reasons, the return of the case to the Prosecutor's Office attached to Constanța District Court was requested for a just resolution of the case.

The requests and exceptions were not valid in law

It was also found that by the conclusion of January 29, 2020, ruled by Constanța District Court, the judge of the preliminary chamber admitted the requests and exceptions formulated by the defendant S.O., through the defense counsel, found the irregularity of the indictment no. 763/P/2019 of November 1, 2019 drawn up by the Prosecutor's Office attached to Constanța District Court, regarding the defendant S.O., and ordered the remedy of the irregularity of the notification act within 5 days from the communication of this decision.

In the motivation, it was shown that the case prosecutor solved the case with non-compliance with the provisions of art. 16 para. (1) lit. g) of Penal Code, as well as of art. 327 CrPC, ordering the prosecution of the defendant on November 1, 2019, although there was a cause for termination of the criminal process since March 6, 2019, when the defendant submitted to the criminal investigation file authentic statements of reconciliation.

Through the document submitted to the file, the Prosecutor's Office attached to Constanța District Court showed that in the preliminary chamber procedure, the incidence of any of the cases provided for by art. 16 of CrPC, on which only the judge at first instance will rule, requesting, consequently, the initiation of the judicial investigation against the defendant.

Analysing the documents and works within the file, the preliminary chamber judge held that, according to art. 346 para. (3) CrPC, the preliminary chamber judge can return the case to the prosecutor's office if:

a) the indictment is drawn up irregularly, and the irregularity was not remedied by the prosecutor within the term provided for in art. 345 para. (3) CrPC, if the irregularity leads to the impossibility of establishing the object or limits of the judgment;

b) excluded all evidence administered during the criminal investigation;

c) the prosecutor requests the restitution of the case, under the conditions of art. 345 para. (3) CrPC, or does not respond within the term stipulated by the same provisions.

Checking the file of the case, the judge of the preliminary chamber found that the irregularity established by the conclusion of January 29, 2020, respectively the illegal arraignment of the defendant, regarding which there was a cause for the termination of the criminal process since March 6, 2019, when the defendant submitted the authentic statements of reconciliation to the criminal investigation file, it was not remedied by the Prosecutor's Office attached to Constanța District Court.

Contrary to what was shown by the document submitted to the file for the court term of June 12, 2020, the Prosecutor's Office attached to Constanța District Court, showing that in the preliminary chamber procedure, the incidence of any of the cases provided for by art. 16 CrPC, with only the judge at first instance ruling on them, the judge of the preliminary chamber showed that the verification of the legality of the referral to court, is not equivalent to a ruling on the incidence of any of the cases provided for by art. 16 CrPC, since in the case no solution was ordered to terminate the criminal process in this procedure.

Only if the reconciliation of the parties had occurred after the court was notified of the indictment, the judge of the preliminary chamber should have ordered the start of the trial, and at the deadline fixed on the main issue of the matter of trial, the court should have taken note of this reconciliation.

The case is about the non-compliance with the provisions of art. 327 CrPC by the editor of the indictment, which is equivalent to the illegality of the arraignment, in the context where it was obvious that the solution that the case prosecutor had to give was completely different, considering the reconciliation statement submitted to the file by the defendant.

Thus, the indictment was drawn up without observing the circumstance that the defendant is not criminally liable, a verification that is imperatively required by art. 327 lit. a) the last thesis of CrPC.

Therefore, considering that the Prosecutor's Office attached to Constanţa District Court did not understand to remedy its own errors, insisting on sending the defendant to court, the only solution that was deemed necessary to be adopted in the case is the return of the case to the prosecutor's office, not being admissible for the case prosecutor's errors to be covered by the judge at first instance.

Consequently, seeing the provisions of art. 346 para. (3) CrPC, according to which the judge of the preliminary chamber returns the case to the prosecutor's office in case the detected irregularity was not remedied within the term provided by the law, based on the text of the law shown above, the return to the Prosecutor's Office was ordered in addition to Constanța District Court of criminal case no. 763/P/2019 regarding the defendant S.O.

The Public Prosecutor's Office attached to Constanța District Court filed an appeal against this conclusion, criticising it for illegality and groundlessness.

It was stated that in the justification of the appeal, the prosecutor from the Prosecutor's Office attached to Constanța District Court showed that, according to art. 342 CrPC, the object of the preliminary chamber procedure is the verification of the competence of the court referred to by the indictment and the competence of the criminal investigation bodies, the legality of the arraignment, the legality of the administration of the evidence, the legality of the execution of the criminal investigation documents.

In the preliminary chamber procedure, the validity of the accusation formulated by the referral act is not verified, nor the legality or validity of the retained legal classification or the existence of any impediment provided by art. 16 CrPC.

Thus, the prosecutor's omission not to attach to the criminal investigation file the documents submitted by the injured person attesting to the intervention of reconciliation cannot constitute an element of irregularity of the referral act

because, analysing the content of the indictment no. 763/P/2019 it can be stated that the preliminary chamber judge is not unable to establish the object and limits of the judgment.

The prosecutor considered that the legal solution that is required is not to return the case to the prosecutor's office in order to pronounce a solution to the classification, but to start the judicial investigation and pronounce a solution by the court to terminate the criminal process.

Examining the disputed conclusion in the light of the criticisms formulated, as well as ex officio, the judges of the preliminary chamber, in the exercise of the control of legality and grounds, found the appeal to be founded, admitting it.

It was shown that art. 342 CrPC establishes the object of the preliminary chamber procedure as the verification of the competence of the referred court and the criminal investigation body, the regularity of the referral act, the legality of the administration of evidence and the execution of criminal investigation documents.

The verification of the regularity of the indictment concerns two components, namely the form conditions extrinsic to the notification act, such as the verification in terms of legality and the basis by the superior hierarchical prosecutor and the verification from the perspective of compliance with the provisions of art. 328 CrPC and the substantive conditions, intrinsic to the indictment.

The second mentioned component concerns the suitability of the indictment to invest the court, respectively if the description of the facts that constitute the object of the accusation is sufficiently clear and complete, so that the limits and the object of the judgment are established. Given the procedural function of the preliminary chamber, the appearance of the validity of the indictment, which involves the evaluation of the evidence administered during the criminal investigation, the fairness of the legal framework, other material errors in the indictment or omissions that do not concern the object, are excluded from the scope of verifying the regularity of the referral act and the limits of the judgment, or the existence of any impediment provided for in art. 16 CrPC.

In this sense, contrary to the claims of the representative of the Prosecutor's Office attached to Constanța County Court, who argued that in the case of conciliation, the criminal action is devoid of object and not groundless, thus making it the subject of verification in the preliminary chamber and by the

judge of the preliminary chamber within the court, which assessed that the court cannot cover the errors of the prosecutor during the criminal investigation, the judges of the preliminary chamber of the court held that the acquittal or termination of the criminal process, following the finding of the incidence of any of the cases listed in art. 16 CrPC represent substantive solutions, which exceed the preliminary chamber procedure, as provided by art. 396 para. (5) and (6) CrPC. So, once the court is notified by an indictment that formally meets the conditions provided by the law, it cannot be verified in terms of the validity of the decision to send to court.

The mentioned article does not distinguish according to whether the case of termination occurred before or after the submission of the referral to the competent court, nor between cases of acquittal or termination of the criminal process, so that the only competent judicial body finds a cause for the termination of the criminal action, after arraignment, he is the judge at first instance.

The conclusions presented by the prosecutor of the Prosecutor's Office attached to Constanța County Court and the judge of the preliminary chamber of Constanța District Court are not supported by any criminal procedural norm and do not derive from the interpretation of any legal provision, so they cannot be retained. According to the theoretical considerations set out above, the irregularity of the notification act does not require the verification of the legality of the solution ordered by the prosecutor, that is arraignment, but only formal conditions related to the suitability of the act to invest the court.

It was found that non-compliance with art. 327 CrPC, the prosecutor having the authority to assess whether the prosecution of the defendant or another solution is required, the checks regarding the legality or validity of this solution being carried out on the main issue of the matter on trial.

Even if, in the judgment of the preliminary chamber judge from the court, the reason for termination is obvious, it should be noted that after the start of the trial, situations may arise that would not require a solution to terminate the criminal process: the document through which the reconciliation of the parties was achieved is not suitable to produce legal effects, the legal classification of the deed is erroneous, and the new classification does not allow the reconciliation of the parties or the withdrawal of the previous complaint, etc.

However, all these aspects require checks during the judicial investigation, and not in the preliminary chamber procedure, the object of which is limited to formal checks of the referral act.

Authors' opinion

As we mentioned at the beginning of this study, the appearance in Romanian procedural law of a new procedural phase, along with the current criminal procedure code, caused, as was probably expected, a multitude of eclectic, heterogeneous solutions in different procedural situations manifested during the criminal investigation which are analysed in the procedural phase of the preliminary chamber.

If initially both specialised literature and jurisprudence were unanimous in the assessment that the preliminary chamber is not the object of the analysis of the existence of an impediment among those provided for in art. 16 CrPC, the jurisprudence of the courts seems to be in the process of modification regarding certain issues regulated by art. 16 CrPC, which could still be analysed by the preliminary chamber judge (Udroiu, 2022; Manea *et al.*, 2017; Ghigheci, 2017).

Thus, recently, the courts referred the High Court of Cassation and Justice with the resolution of some legal issues, regarding the manner of application of the provisions of art. 16 para. (1) letter f) of Penal Code, art. 309 para. (1) CrPC. and para. 315 (1) letter b) CrPC, within the preliminary chamber procedures regulated by art. 342 et seq. CrPC.

It was deemed necessary that the High Court of Cassation and Justice to issue a binding opinion for the judiciary regarding the possibility that, within this procedure, aimed at verifying the legality of the arraignment, the administration of evidence and the execution of documents by the criminal prosecution bodies, in the context of analysing, mainly, some exceptions of illegality of the act of initiating the criminal action and of the act of arraignment, for the reason of their issuance after the expiry of the term of limitation of criminal liability, the judge of the preliminary chamber can retain the fulfilment of this term, incidentally, as a concrete basis of some illegalities of the contested acts, respectively of an illegality regarding the administration of evidence after the expiration of the criminal liability limitation period, subsequently to the finding of the nullity of the act of initiating the criminal action.

The court that notified the High Court of Cassation and Justice found that for the issuance by the prosecutor of the ordinance ordering the initiation of the criminal action, the provisions of art. 309 para. (1) CprPC., in accordance with the provisions of art. 305 para. (3) CrPC, impose the condition of the non-existence of one of the cases of obstruction provided for in art. 16 para. (1) CrPC, among

which in art. 16 para. (1) letter f) CrPC, the intervention of prescription is provided.

According to art. 305 para. (3) CrPC when there is evidence from which there is a reasonable suspicion that a certain person has committed the act for which the criminal investigation has been started and there is none of the cases provided for in art. 16 para. (1), the criminal investigation body orders that the criminal investigation be carried out further against it, which acquires the status of suspect. The measure ordered by the criminal investigation body is subject, within 3 days, to the confirmation of the prosecutor supervising the criminal investigation, the criminal investigation body being obliged to present the case file to him.

From the examination of the provisions of art. 18 of Penal Code, correlated with the provisions of art. 315 para. (1) letter b) CrPC and art. 396 para. (7) and (8) CrPC, in the case of the intervention of the prescription, the continuation of the criminal process can only take place at the request of the suspect or the defendant.

The criminal action, both from a material point of view, the right to hold the offender accountable, and from a formal, procedural point of view, representing the legal instrument through which the conflict of criminal law is deduced before the judicial bodies, in order to dynamize the criminal process and achieve the goal this one, is unanimously appreciated in doctrine as one of the fundamental institutions of the Romanian criminal process.

Its exercise must be carried out in accordance with the principle of legality provided by art. 2 CrPC.

The provisions of art. 3 CrPC stipulate that, in the course of the same criminal trial, the exercise of a judicial function is incompatible with the exercise of another judicial function, except for the one provided for in para. (1) letter c), the function of verifying the legality of sending or not sending to court which is not incompatible with the function of court.

According to the provisions of art. 3 para. (6) CrPC, the judge of the preliminary chamber pronounces on the legality of the act of referral to court and the evidence on which it is based, and according to art. 342 CrPC, within the object of the procedure of the preliminary chamber is also the verification of the legality of the administration of evidence and the execution of documents by the criminal investigation bodies.

From this perspective, the preliminary chamber judge could retain the existence of one of the cases provided for by art. 16 para. (1) CrPC, as a reason for the illegality of carrying out an act, under the provisions of art. 309 para. (1) CrPC, as the non-existence of one of the cases provided for by art. 16 para. (1) CrPC, as a reason for the illegality of the performance of an act by the prosecutor, under the provisions of art. 315 para. (1) letter b) CrPC, in the procedure provided by art. 336-341 CrPC.

The divergent interpretation on the way of applying the provisions relating to the conditions for issuing the order to initiate the criminal action and the subsequent effects of its illegality is essentially due to the conferring of a substantial character on the institution of the prescription of criminal liability, circumscribed to a method of extinguishment of the criminal action contained predominantly in the object of activity of the judge at first instance, leading to the opposite conclusion to that expressed in the previous paragraph, respectively in the sense of the impossibility of procedurally dissociating the retention of the fulfilment of the limitation period from the ruling on the criminal action, specifically, without ordering the classification at the same time, respectively without having the functional competence to pronounce the termination of the criminal process.

This opinion could have an appearance of rationality, to the extent that it is not mandatory to be evaluated in a wider perspective, respectively by comparison with the hypothesis of the checks carried out in the procedure provided for by art. 336-341 Penal Code, respectively by correlation with the principle of carrying out the criminal process within a reasonable time, provided by art. 8 CrPC.

We therefore note that in practice the possibility of analysing the legality of the acts carried out by the criminal investigation bodies is current, namely whether or not it exists at the time of issuing the warrant of suspect or defendant in one of the cases provided for in art. 16 para. (1) CrPC with the consequence of the annulment of the act and by way of consequence and the subsequent ones and the finding of irregularity of the indictment issued in the case, by the judge of the preliminary chamber.

The cause of nullity can only be relative, according to art. 282 para. (1) CrPC, can be obviously invoked only by the person sent to court, the procedural injury and the procedural interest being obvious in the conditions in which it was sent to court, although there is a cause that prevents the initiation and exercise

of criminal proceedings that would have led to the classification during the criminal investigation or to the acquittal or termination of the criminal process during the trial.

We note that according to the jurisprudence of the constitutional court, the judge of the preliminary chamber ex officio has the possibility to invoke a cause of relative nullity.

By Decision no. 554 of September 19, 2017, published in the Official Gazette no. 1013 of December 21, 2017, C.C.R. found that the legislative solution contained in the provisions of art. 282 para. (2) CrPC, which does not allow ex officio invocation of relative nullity, is unconstitutional.

We believe that this possibility given to the judge of the preliminary chamber to evaluate the legality of the suspect or defendant order from the perspective of the existence of one of the cases provided for in art. 16 para. (1) CrPC it is auspicious, given that it would be the only way in which the prosecution of some people could be censured, even if the presented solution is obvious.

Even though in the legal dissolution with which the High Court of Cassation and Justice was invested, the central legal issue concerns the prescription of criminal liability, we consider that mutatis mutandis solution can also be applied to other situations such as when the defendant had already died when the criminal action was initiated or if we are dealing with the withdrawal of the prior complaint or a reconciliation, as happened in the case I presented.

It remains to be seen if the situation is the same if the basis generating one of the causes preventing the initiation and exercise of the criminal action provided by art. 16 para. (1) CrPC appears after the initiation of the criminal action, but before the indictment is filed with the court and the preliminary chamber procedure starts.

According to art. 327 letter a) CrPC the prosecutor, when he finds that the legal provisions guaranteeing the discovery of the truth have been complied with, that the criminal investigation is complete and that there is the necessary and legally administered evidence, issues an indictment ordering the arraignment, if it follows from the criminal investigation material that the act exists, was committed by the defendant and that he is criminally liable.

It is therefore noted that among the imperative conditions mentioned in order to be able to order the issuance of the indictment, the necessity of the non-existence of one of the aforementioned cases provided by art. 16 para. (1)

CrPC is not mentioned, but only the finding that the person in question is criminally liable.

However, we consider that the phrase "he is criminally liable" must be interpreted from a systematic and teleological point of view with the rest of the procedural provisions, being in our opinion a gross error of legal logic to consider that it is necessary only when the suspect order is issued or for the defendant to not have any of the cases provided for by art. 16 para. (1) CrPC, and at the time of issuing the indictment not, a procedural act of greater importance than the other two previously mentioned.

If, however, it is found that the cause is not obvious, thus the document through which the reconciliation of the parties was achieved would not be able to produce legal effects, the legal classification of the fact is erroneous or the classification does not allow the reconciliation of the parties or the withdrawal of the prior complaint, these aspects may be invoked by the criminal investigation bodies, so that the judge of the preliminary chamber finds that a careful analysis of the substance of the problem is necessary, during the trial.

Or, in the presented case study, the criminal investigation bodies did not invoke such reasons, summing up only to invoke the inadmissibility of the finding of irregularity of the indictment.

Conclusions

We find that the jurisprudence is in a moment of changing the perception regarding the object of the preliminary chamber and the way of analysing a blatant reason that prevents the initiation and exercise of the criminal action.

We welcome this change in jurisprudence, which we hope will be consolidated by the High Court of Cassation and Justice through the decision he will provide in the file with which he was referred.

We believe that such an approach is necessary, in order to materialise a procedural discipline of the criminal prosecution bodies that should show particular diligence when analysing the appropriateness and legality of the referral to court, considering the inherently negative consequences on the person caused by this procedural option demonstrated by the prosecutor.

Moreover, absolutely embarrassing situations are avoided, such as those in which the trial is ordered against obviously deceased persons, which creates a negative image of the litigants regarding the judicial bodies.

Finally, we mention that in order to avoid contradictory jurisprudence, we appreciate that de lege ferenda should be expressly regulated under art. 327 letter a) CrPC the necessity of the non-existence of one of the previous cases. to art. 16 CrPC as well as the explicit conferring in the competence of the judge of the preliminary chamber of the possibility to ascertain the irregularity of the indictment in such obvious cases, manifested in the objective reality prior to the arraignment.

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