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PRE-TRIAL CHAMBER. FINDING THE NULLITY OF THE INDICTMENT AND OF THE CRIMINAL PROSECUTION ACTS DUE TO THE BREACH OF THE DEFENDANT'S RIGHT OF DEFENCE

Mihaela Laura PAMFIL¹

Abstract

The purpose of this paper is to analyse the limits within which the judge of the pre-trial chamber may order the restitution of the case to the prosecutor, starting from a concrete deed that was the subject of case file no. 5609/245/2018 / a1 pending before the Iași District Court and the Iași County. In this case, the Pre-Trial Chamber judge considered that the suspect was not given the necessary time to prepare his defence as he was heard as defendant on the same day when he was also heard as a suspect, although when he was heard as a suspect he requested a break for the preparation of the defence, the report on the termination of the criminal prosecution was drawn up on the same day when he was heard, and his request for a forensic examination in question was rejected by the prosecutor, without the court waiting for the submission of the objectives of the expertise. For these reasons, the pre-trial chamber judge considered that it is necessary to find the nullity of all criminal proceedings subsequent to the date and time when the suspect was heard, as he was deprived of the possibility to enforce his defence during the criminal proceedings, a procedural stage that has been completed.

Keywords:

pre-trial chamber, restitution of the case to the prosecutor, breach of the right of defence, nullity of the indictment, nullity of criminal prosecution acts

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1. Circumstances of the case

By means of the indictment dated 27.02.2018, the Prosecutor's Office attached to the Iași District Court ordered the prosecution of the defendant for committing the crime of bodily/personal injury due to fault provided by S. 196 (2) and (3) of the Criminal Code. In fact, the defendant was charged that on December 8, 2016, at 08:40, while driving the car on Codrescu Street in Iași City, from Sărăriei Street to Carol I Blvd., the defendant did not adapt the speed to the road conditions (wet road), lost control of the direction of travel and entered the sidewalk, where he harmed the injured person who was moving regularly, causing injuries for which the injured person needed a number of 120-130 days of medical care for healing.

The case was registered under no. 5609/245/2018 / a1 on the dockets of the Iași District Court.

During the pre-trial chamber proceedings, the defendant requested that the court finds the nullity of the indictment and of the acts performed after the date on which he made the request for consultation of the criminal prosecution file, claiming the breach of his right to defence. The defendant claimed that on February 21, 2018, he was informed on the status of suspect. Prior to this moment, a request was made for the study of the file and for the issuance of some documents, as well as for the status of the defendant to be communicated, because the stage of the file was not known, a request that was approved. Being summoned to be informed of the accusation and to be heard as a suspect, the defendant, did not give a statement, but requested a term for the preparation of the defence, since, in the absence of the study of the criminal prosecution material, he could not defend himself and propose evidence in support of these defences. The defendant also stated that, in a short interval, respectively between 10:10-12:00, he was informed of the status of defendant, gave a statement and requested that a forensic examination be made, since, at the time he studied the file, the statements of the witnesses could not be found. Thus, the defendant again requested a maximum period of 2 days to send the objectives of the forensic expertise, and on February 23rd he forwarded them to the Prosecutor's Office attached to the Iași District Court, which were received by the Prosecutor's Office on February 26th (two weekend days being included in this interval). However, on February 23rd, prior to drawing up the objectives of the requested forensic expertise, the prosecutor ordered the rejection of the request regarding the drafting of the forensic expertise, considering that it would take a long time to perform such an expertise and mentioning that it would result in high costs for the County Police Inspectorate, the expertise rejection order being communicated to him on

March 5, 2018, after the indictment was drawn up. In conclusion, the defendant claimed that a breach of the right to an actual defence took place, especially since from December 2016 until February 21, 2018, he was not informed of the stage of the prosecution, as he was the one who took steps and requested information on the stage of the case.

By the authentication delivered on 10.05.2018, ruling on the claimed exceptions, the pre-trial chamber judge found based on S.345 (1) of the Code of Criminal Procedure in relation to S.280 and S.282 of the Code of Criminal Procedure, with reference to S.10 of the Code of Criminal Procedure and S.6 (3), (b) and (c) of the European Convention on Human Rights (Council of Europe, 1998), the breach of the defendant's right of defence. Consequently, he found the nullity of the acts performed by the criminal investigation bodies after 21.02.2018 at 10:34, including the nullity of the indictment issued on 27.02.2018 in the case file no. 16822/P/2016 of the Prosecutor's Office attached to the Iași District Court.

In the reasoning of the authentication it was held as follows:

In the case that was subject to the case file no. 16822/P /2016 of the Prosecutor's Office attached to the Iași District Court, investigations were carried out regarding the commission by the defendant of the crime of bodily injury due to fault provided by S.196 (2) and (3) Criminal Code. The investigations were carried out as a result of a traffic accident that took place on Codrescu Street in Iași City on December 8, 2016, at 08:40, in which the car driven by the defendant was involved, the injured person being hit by the car and suffering injuries that required 120-130 days of medical care for healing. On the day of the accident, respectively December 8, 2016, the criminal investigation bodies ordered the start of criminal prosecution in rem for the crime of bodily injury due to fault provided by S. 196 (2) and (3) of the Criminal Code.

Although, even in the content of the order for the start the criminal prosecution in rem, it is mentioned that the defendant, while driving the car on Codrescu Street in Iași City, the defendant did not adapt the speed to the road conditions (wet road), lost control over the direction of travel and entered the sidewalk, where he seriously harmed the injured person (accusation identical to that from the indictment), and the forensic report drawn up on 04.03.2017 concluded that the injured person suffered injuries that required 120-130 days of medical care, the continuation of the criminal investigation against the defendant was ordered only on 08.02.2018, after the moment when on 17.01.2018, the defendant's solicitor (who did not have any procedural capacity in question at that time) made a request to be issued copies after the documents of the criminal investigation file and to be communicated the stage of the criminal investigation and after the moment

when, on the same date, the injured person filed a request to the court to expedite the settlement of the case.

On 09.02.2018, the prosecutor ordered the admission of the request made by the defendant's solicitor (suspect at that time, although he had not been informed of this capacity) to consult the file and to be issued photocopies.

On 14.02.2018, the criminal investigation body proceeded to contact by phone the defendant's solicitor, the latter confirming his presence and that of the defendant at the headquarters of the criminal investigation body for 23.02.2018. On 21.02.2018, two days earlier than the date initially communicated, the defendant accompanied by his chosen solicitor appeared at the headquarters of the criminal investigation body. At 10:10 the criminal investigation body informed the defendant of the status of suspect and the procedural rights resulting from this status, including the right to study the case. Immediately after being informed of the accusation and the status of suspect, the criminal investigation body proceeds to hear the defendant as a suspect, between 10:10-10:34, the defendant showing that he does not want to give a statement and that he requests a time for the study of the documents issued as copies, in order to enforce his right of defence.

Despite this request, at 10:40 the order for the start of the criminal proceedings against the defendant is issued, at 10:45 the status of defendant is notified to him, and between 11:00 and 12:00 the hearing of the defendant takes place in this latter capacity. In this statement, the defendant requested a forensic examination in order to determine the dynamics of the accident and requested a period of 2 days to submit the objectives of the expertise, a time required, as mentioned in the statement, for the drafting of the defence, as the copies of documents required were to be issued that day. However, on the same day, the criminal investigation body hears two witnesses and draws up the report on the termination of the criminal prosecution which it submits to the prosecutor.

On 23.02.2018 (Friday), the defendant's solicitor sends to the Prosecutor's Office attached to the Iași District Court a document by which, following the request by the statement dated 21.02.2018, indicates the objectives of the forensic expertise. By the same document, the defendant's solicitor requested that the persons who were present at the scene of the accident be identified in order to be heard as witnesses, and requested to be notified of the date and place of the hearing of these persons in order to attend their hearing, according to S.92 Code of Criminal Procedure. On the same day of 23.02.2018, before the objectives of the requested expertise were received, the prosecutor rejected by order the request for the performance of the forensic examination, among the reasons claimed being

the long duration necessary for the performance of the expertise and the fact that it would be necessary for the County Police Inspectorate to pay for the expert fee.

On 27.02.2018, the indictment ordering the notification of the court was drawn up, the order rejecting the request for forensic examination being communicated to the defendant on 06.03.2018 (according to the evidence submitted in copy to the case file), following the notification of the court, the defendant being deprived of the possibility to file a complaint against this order, according to S. 339 (1) of the Criminal Procedure Code.

The pre-trial chamber judge held that from the above, regarding the manner in which the criminal prosecution in question took place, respectively the manner in which the acts were carried out by the criminal investigation bodies starting with 10:34 on 21.02.2018, when the defendant, after being informed of his status as a suspect, requested the necessary time to prepare the defence, the necessary time, as he claimed, for the study of the case file, for the study of the copies of the documents to be issued on the same day, for the drawing up of the requests for evidence and of other requests represents a clear breach of the aforementioned provisions and have resulted in the damage to the defendant's right of defence. The judge also held that, although the defendant's solicitor appeared at the headquarters of the criminal investigation body together with him, the possibility to ensure an effective defence was purely formal, as the defendant's solicitor did not have the practical possibility to practice his profession, and as the criminal investigation body, although they requested for a period necessary for the drawing up of the defence, they prepared the report for the termination of the criminal prosecution on the same day when the defendant was officially informed for the first time of the facts of which he is accused, the defendant being deprived of the time and facilities necessary to draft his defence.

It was also noted that, although in the minutes drawn up by the criminal investigation body it is recorded that the defendant's solicitor received the file for study, in their presence, between 10: 30-12:30, this mention does not may be in line with reality, since, during the above-mentioned interval, the same criminal investigation body and the same solicitor participated in the procedure of notification of the status of suspect and of the procedural rights resulting from this capacity, at 10:10, in the hearing of the defendant as a suspect in the time interval 10: 10-10:34, in the notification of the capacity of defendant and of the procedural rights deriving from this capacity made known at 10:45 and in the hearing of the defendant in this latter capacity between 11:00 and 12:00.

The pre-trial chamber judge concluded that the breach of the right to defence suffered by the defendant results in the nullity under the conditions of S.282 of the Code of Criminal Procedure, respectively under the conditions in which the non-observance of the legal requirement caused an injury that could only be repaired by the dissolution of the act, and this injury obviously occurred, the defendant being deprived of the real possibility to enforce his right to defence during the criminal prosecution, a procedural stage that was completed.

Subsequently, by the Authentication of the pre-trial chamber no. 346 /a1 of June 22, 2018, the return of the case to the prosecutor's office pursuant to S.346 (3) (a) of the Code of Criminal Procedure was ordered. The pre-trial chamber judge reasoned that if the indictment is completely annulled, the only solution that can be ordered is to return the case to the prosecutor's office, being obvious that an annulled indictment cannot offer legal authority to the court (although this solution is not provided *expressis verbis* by the provisions of S.346 (3) of the Criminal Procedure Code, just as a solution is not provided for the situation in which all the acts of criminal prosecution are null).

The Prosecutor's Office attached to the Iași District Court filed an appeal against this decision, claiming the fact that both the hearing of the defendant and the rejection of the request for evidence made by the defendant were carried out in compliance with legal provisions, and that the defendant did not suffer any procedural damage from the way in which the criminal investigation acts were carried out. The prosecutor argued that the pre-trial chamber judge did not have the legal power to impose on the prosecutor the obligation to administer any means of proof, as well as the fact that, by sanctioning with nullity all acts performed after the date of the suspect's hearing, the pre-trial chamber judge also excluded the statements of two witnesses although he did not find that these were obtained illegally.

By the Authentication of the pre-trial chamber no. 188 Code of Civil Procedure dated August 20, 2018, the Iași County Court admitted the prosecutor's appeal and, by re-judging the case, rejected as ungrounded the exceptions claimed by the defendant, found the lawfulness of the notification of the Iași District Court with the indictment no. 16822/P/2016 issued on 27.02.2018, the lawfulness of the administration of evidence and of the carrying out of the criminal investigation acts regarding the defendant who was took to court and ordered the start of the case trial.

The panel of the pre-trial chamber underlined the fact that the pre-trial chamber judge did not enforce a judicial function, which would allow him to analyse the aspects related to the validity of the accusations brought

against the defendant, but the function of checking the lawfulness of the taking or failure to take the defendant to court.

Starting from these imperative legal provisions, they find that:

- the act of notification of the court includes concrete elements that allow the court to know what would be in the factual, objective content of the concrete deed imputed to the defendant, so that, during the judicial investigation, evidence can be administered based on which, in the deliberation process the court may determine whether the act for which the defendant was took to court exists or not, whether or not it was committed by him and whether or not it was committed with the form of guilt provided by law,

- the indictment contains a statement of the evidence on which the allegations are based;

- the analysis of the order to reject some evidence suggested by the defendant exceeds the competence of the pre-trial chamber judge, as this aspect can be claimed and capitalized exclusively during the judicial investigation where the judge will assess the usefulness and opportunity of the evidence requested in the context of all evidence admitted to be administered in the second stage of the criminal trial;

- the criticism regarding the breach of the defendant's right to defence by the criminal investigation bodies cannot be held as well-grounded in the context in which throughout the criminal investigation the defendant was assisted by the chosen solicitor and the defendant became aware of the need to be heard ever since 15.02.2018, a date which was extended at their request until 21.02.2018 when the defendant appeared in person, accompanied by the chosen solicitor, at the headquarters of the criminal investigation body for hearings. In addition, in the suspect statement given by the defendant on 21.02.2018, from 10:10 to 10:34, he requests to be granted "a time for the study of the documents issued in copies", which certifies that the request of the chosen solicitor, previously drawn up on 29.01.2018, was resolved on the same day, any breach of the right of defence being excluded from this perspective. Moreover, in the statement given on the same day as defendant, respectively between 11.00-12.00, the appellant stated, after detailing the dynamics of the road accident that happened on 08.12.2016, that "he no longer requests other evidence for defence but it requires a forensic examination to establish the dynamics of the accident". The rejection by the prosecutor on 23.02.2018 of the administration of this means of evidence cannot automatically result in the conclusion of the breach of the defendant's right to defence in the conditions in which the provisions of S.100 (4) Code of Criminal Procedure allows the adoption of such a solution and the prosecutor's assessment of the need to administer

evidence cannot be subject to the assessment made by the judge of preliminary chamber judge, as the defendant's request can be capitalized in the judicial investigation stage;

- the order of the pre-trial chamber judge from the court of first instance of automatic and unmotivated application of the sanction of nullity on all criminal prosecution acts performed after the hearing of the defendant, including the statements of witnesses, from the perspective of not being granted the time necessary for the drafting of the defence and the subsequence thereof, cannot be held as justified, given that the only request of the defendant ordered after his hearing referred only to the forensic examination in order to determine the dynamics of the accident, other requests/criticisms/the granting of a time limit for studying the case not being claimed until the time of the court being vested with the authority over the indictment, as the criminal investigation documents that preceded the drafting of the indictment were carried out in accordance with the norms that regulate the criminal investigation stage.

2. Comments on the interpretation and application of the law

The manner of interpretation and application of the law by the two aforementioned courts gives us the opportunity to analyse the place and role that the pre-trial chamber has in criminal proceedings, as well as the limits within which the pre-trial chamber judge can sanction the acts and evidence administered in the criminal investigation stage.

According to S. 342 of the Code of Criminal Procedure, the object of the pre-trial chamber procedure is the verification, after the taking to court, of the jurisdiction and lawfulness of notifying the court, as well as the verification of the lawfulness of the administration of evidence and of performance of the acts by criminal investigation bodies.

The pre-trial chamber therefore has the role of filtering the cases of which the criminal court was notified so as only those cases that are within the jurisdiction of the court that was notified and in case of which the notification of the court, the administration of evidence and criminal prosecution were made in compliance with the law reach the trial phase. Any aspects of illegality produced in the criminal investigation stage must be claimed by the parties and by the injured party in this stage and must be examined by the pre-trial chamber judge who will decide whether or not the legal provisions regulating the conduct of the investigation and the way of administering the evidence in criminal cases have been breached. The Code of Criminal Procedure provides the possibility of remedying the irregularities in the act of notifying the court, but not in the criminal prosecution acts that

were carried out in breach of the law, as these will be sanctioned with nullity, under the conditions of S. 280 -282. There is also no possibility of remediation for illegally administered evidence, as these will be excluded from the evidence.

It should be noted from the beginning that the pre-trial chamber judge is vested only with the authority to analyse the lawfulness aspects of the criminal prosecution, as he is not allowed to assess the merits of the accusation, the latter being the exclusive responsibility of the court (Micu et al., 2017, p. 367). Also, the pre-trial chamber judge can analyse the means of evidence only by stating whether they were legally or illegally administered, and not if they were sufficient or convincing, or if the means of evidence are complete or not.

In the previously presented case, the pre-trial chamber judge of the Iași District Court considered that, by the way in which the criminal investigation acts in question were carried out, the defendant's right of defence was breached because he did not have time to prepare his defence and was not given the opportunity to defend himself as he wished, as he was heard on the same day as both suspect and defendant, although at the time of the hearing as a suspect he requested a time interval for the drafting of his defence, and his request for a forensic examination in question was rejected by the prosecutor, without the court waiting for the objectives of the expertise to be submitted. In this respect, the judge claimed the provisions of S.10 (2) Romanian Code of Criminal Procedure (Romanian Parliament, 2010) according to which the parties, the main procedural subjects and the solicitor have the right to benefit from the time and facilities necessary for the drafting of the defence. The criminal investigation body was also reprimanded for drawing up the report on the termination of the criminal investigation on the day of the defendant's hearing, and the prosecutor for rejecting the defendant's request for an expertise without waiting for its objectives to be specified, and for issuing the indictment immediately. For these reasons, the pre-trial chamber judge considered that it was necessary to establish the nullity of all criminal proceedings subsequent to the date and time at which the suspect was heard, emphasizing that the defendant suffered an actual procedural prejudice, since he could not draft his defence without showing exactly which component of the right of defence was affected or what means of defence the defendant could have used, if the acts of criminal prosecution had not been performed on a short notice one after the other.

Analysing the acts and facts of the case, we appreciate in accordance with the solution of the pre-trial chamber panel within the Iași County

Court, that the performance of the criminal investigation acts was not affected by any legal vice.

With regard to the hearing of the defendant, it must be pointed out that the defendant knew from a date prior to that on which he was heard that he had in the case the status of suspect as he had been summoned by phone in order to be notified on this capacity on January 14, 2018. On this date, the defendant's chosen solicitor announced that he could not appear until February 23, 2018, as he had other hearings scheduled, and his client had college exams scheduled. Subsequently, on February 21, 2018, the defendant and the chosen solicitor appeared at the headquarters of the Road Department for hearing, and the criminal investigation body proceeded to inform him about the status of suspect and to the hearing in this capacity of suspect. On this occasion, the aforementioned stated the following: "I do not want to give statements for this stage. We request a time interval for the study of the documents issued in copies, for the enforcement of the right of defence". As it can be seen from the statement given as a suspect, signed by both the suspect and his chosen solicitor, he did not condition at any time the giving of the statement to the study of the case, as the pre-trial chamber judge held, stating that he did not want to give statements for this stage of the proceedings. The criminal investigation bodies made available to the chosen solicitor the case file to be studied, the request for consultation being admitted ever since February 9, 2018 by the prosecutor, and after the hearing as a suspect was completed, the criminal action was opened by the prosecutor in this case. The chosen solicitor confirmed in writing that the case file had been made available to him in order to be studied, without claiming before the criminal investigation body that he did not have time to study the file or that he was allowed access to it in another time interval than the one recorded in the minutes concluded by the police. Therefore, it cannot be held that the criminal investigation bodies did not grant to the defendant the "respite" requested for the study of the case.

After consulting the file, the defendant was informed of the status of defendant, and he agreed, in the presence of the chosen solicitor, to give statements as a defendant, without requesting us to allow him some time and without claiming that he could prepare the defence. On the same day, photocopies of the requested documents were issued to the defendant, a fact confirmed in writing by the chosen solicitor.

During the hearing as a defendant, the defendant requested the carrying out of a forensic examination in order to establish the dynamics of the accident, showing that he will subsequently submit the objectives in two days. The objectives were sent to the Prosecutor's Office on February 23, 2018, but were registered with the Prosecutor's Office on February 26, 2018.

By the order from February 23, 2018, the prosecutor ordered the rejection of the defendant's request. As it follows from the content of the order, the request was rejected not on the grounds that the administration of this means of evidence would take a long time and would involve the payment of the expertise fee by the Police County Inspectorate, as held by the pre-trial chamber judge of Iași District Court, but because the evidence was not required in that case, the dynamics of the accident can be established on the basis of the evidence administered in the case, without the need for the opinion of an expert.

According to S. 172 (1) of the Code of Criminal Procedure, the carrying out of an expertise is ordered when the opinion of an expert is also necessary for the ascertainment, clarification or evaluation of certain facts or circumstances that are important for finding out the truth in the case. Neither in the Code of Criminal Procedure, nor in GEO no. 195/2002 there is any legal text that requires a forensic examination on the dynamics of a road accident in the case of crimes involving infringements of traffic rules, the administration of this means of evidence being left to the discretion of the legal bodies in relation to the concrete facts of the case. In addition, S. 100 (4) Code of Civil Procedure allows the legal bodies to reject a request for the administration of certain means of evidence, as the simple request made by a party or a procedural subject is not such as to cause the judicial body the obligation to administer the respective means of evidence. The order rejecting the defendant's request for evidence, issued on February 23, 2018, is based as shown in its contents, on the provisions of S. 100 (4) (b) Code of Criminal Procedure, a text that allows the rejection of an application when it is considered that sufficient means of evidence have been administered to prove the factual element that represents the object of the evidence. As stated in the statement of reasons for the rejection of the request for the administration of forensic expertise, of all the evidence administered in the case (the minutes of the on-site investigation, the statements of witnesses, the statement of the defendant), the impact between the defendant's car and the injured person's body took place on the sidewalk, and the defendant's car entered the sidewalk as a result of the defendant's manoeuvres, so it does not appear necessary to have the opinion of an expert to establish or clarify the facts of the case, the dynamics of the accident resulting from the corroboration of the previously indicated means of evidence.

Moreover, the dynamics of the accident, as it results from the evidence that was administered in the case, was detailed in the order, respectively: "Thus, the defendant, behind the wheel of the car traveling on Sărărie Street, initiated the turning manoeuvre on the left, towards Codrescu

street, at which point, due to the non-adaptation of the speed to the wet road, he lost control over the direction of travel and entered the sidewalk on the left side of Codrescu street, hitting the injured person who was moving on the sidewalk. The intersection where the defendant lost control of the vehicle controls is a T-shaped intersection, the turn made by the defendant involving a change of direction at 90°, and in the area a road sign "Speed limit 30 km/h" was located. The prosecutor also said that the precise establishment of the travel speed is not relevant, considering the manner in which the accident took place, because according to S. 48 of GEO no. 195/2002 on traffic on public roads, republished - "The driver must comply with the legal speed regime and adapt it to road conditions, so that he can perform any manoeuvre safely".

It should be noted, therefore, that although it resolved the defendant's request regarding the forensic examination on the dynamics of the accident before the objectives submitted by the defendant for the requested forensic expertise reached the case file, the prosecutor answered on these objectives. The objectives pursued in the case of ordering a forensic expertise on the dynamics of road accidents are, moreover, notorious among the criminal investigation bodies that solve cases involving the occurrence of road accidents.

It should be emphasized in this regard that the pre-trial chamber judge does not have the legal competence to impose on the prosecutor, once the case is returned under S. 346 (3) (a) Code of Criminal Procedure, the obligation to administer any means of evidence. In this respect and correctly, the pre-trial panel ruled on this issue as well, which showed that the prosecutor's assessment of the need to administer evidence cannot be the subject of the pre-trial chamber judge's assessment, as the defendant's request can be capitalized during the judicial investigation.

The way in which the pre-trial chamber judge motivated the return of the case to the prosecutor due to the breach of the legal provisions regarding the defendant's right of defence also requires bringing into question the conditions of application of nullity in the criminal proceedings. According to S. 280 (1) Code of Criminal Procedure, the breach of the legal provisions governing the conduct of criminal proceedings results in the nullity of the act under the conditions expressly provided by this code, respectively by S. 281 which regulates the absolute nullity and S. 282 which provides the conditions under which relative nullity may occur. As the breach of the right of defence in the manner it had held in the case was not limited to the cases of absolute nullity expressly provided for by the code, the pre-trial chamber judge referred to the application of relative nullity. According to S. 282 (2), the breach of any legal provisions results in the

nullity of the deed when the non-observance of the legal requirement has caused an injury to the rights of the parties or of the main procedural subjects, which cannot be removed otherwise than by the annulment of the act. In order to establish the relative nullity of an act, it is not sufficient to have an infringement of a legal provision, but it is imperative that the non-compliance with the law has caused a procedural injury and, at the same time, that there are no other ways to remove that procedural injury.

Holding the breach of the provisions of S. 10 (2) Code of Criminal Procedure, according to which the defendant is entitled to benefit from the time and facilities necessary for the preparation of the defence, the pre-trial chamber judge held that the procedural injury suffered by the defendant consists in that the defendant was deprived of the real possibility to enforce his right of defence during the criminal investigation, a procedural stage that was completed. It should be mentioned, in this respect, that the procedural stage of the criminal investigation is completed by the issue of the indictment and not by the drawing up of the report on the termination of the criminal prosecution by the investigating bodies, so that the issuance thereof on the same day the defendant was heard, has no meaning.

As for the actual damage suffered by him (because the damage must be concrete and effective, not abstract), the concrete way in which the defendant understood to enforce his right of defence, respectively refused to give statements as a suspect, must be taken into account, studied the file, agreed to give and gave statements as a defendant, requested the carrying out of a forensic examination, and through a document that reached the prosecutor's office before the issue of the indictment specified the objectives of the expertise and requested the identification of persons who were present at the scene of the accident for hearing, while also requesting that his solicitor be present at the hearing of these persons.

As it results from the examination of the criminal investigation file, none of the administered evidence reveals the presence on the spot of any person at the time of the road accident, respectively of the collision between the car driven by the defendant and the body of the injured person, but that only after the accident, due to the noise, the son, daughter and son-in-law of the injured person came to the scene. The injured person's son and son-in-law were heard as witnesses, both showing that they arrived at the scene after the impact, seeing that the injured person had fallen on the road, with half of her body under the car and that a young man (the defendant) was trying to remove her from under the car, pulling her hands. The injured person's daughter was not heard as she verbally communicated that she arrived at the scene of the accident at the same time as her husband and brother and saw what they also saw, a statement which showed that her

hearing in the case was not useful. There are no data that other persons could be identified in the case who could give statements regarding the road accident resulting in the bodily injury of the injured person. The defendant also did not refer in the statement given or in the request made to any person who was at the time of the accident on the spot, as a pedestrian or driver of another car. The witnesses present at the scene were therefore heard by the criminal investigation bodies, the subsequent request of the defendant for the witnesses to be identified and heard remaining practically objectless. It is also noteworthy that, applying the sanction of nullity of the acts performed after February 21, 2018, at 10:34, the pre-trial chamber judge of the court of first instance also excluded the statements given by the two witnesses, although he did not find that the statements were obtained illegally, or that there was any breach of any legal provision during the hearing of the respective witnesses, and their hearing was also requested by the defendant.

As the pre-trial chamber judges of the court of judicial control have correctly ruled, it cannot be held that the defendant suffered a procedural prejudice in that he was unable to enforce his right of defence during the criminal investigation, as long as the only request of the defendant ordered after his hearing was only the performance a forensic examination in order to establish the dynamics of the accident, other requests/ criticisms /the granting of a time limit for studying the case not being claimed until the time of vesting the court with the authority of the indictment.

Based on all the above considerations, I consider that the pre-trial chamber judges from the Iași County Court correctly admitted the prosecutor's appeal and held that the criminal investigation acts that preceded the drawing up of the indictment were carried out in accordance with the rules governing the criminal investigation stage. Although the dynamics of criminal prosecution in the last part of the criminal investigation phase is questionable, the breach of any legal provision cannot be held, the return of the case to the prosecutor by the pre-trial chamber judge of the Iasi District Court being excessive.

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