Controversies Regarding the Application of Decision No. 8/2025 of the High Court of Cassation and Justice of Romania

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Abstract

The decision referenced in the title of this article constitutes a jurisprudential reversal in the field and represents a continuation of the trajectory established by the Romanian Constitutional Court (CCR), beginning in 2017, through Decision No. 674/2016. That ruling determined that officers of the General Anticorruption Directorate may carry out acts of criminal investigation only within the strictly defined scope of Article 1 paragraph (2) of Government Emergency Ordinance No. 120/2005, and solely in relation to a specific category of offences committed exclusively by personnel employed within the Ministry of Internal Affairs. 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 and the concept of delegation, by reference to the jurisprudence of the Constitutional Court and the High Court of Cassation and Justice over time.

Keywords: *decision, appeal in the interest of the law, fair trial, jurisprudence.*

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1. Preliminaries

Immediately after the publication of this decision[2], 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[3], 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[4], 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. 21/2021[5] — rendered by the panel responsible

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[2] Published in the Official Gazette of Romania no. 850 of 16 September 2025

[3] Published in the Official Gazette of Romania no. 809 of 6 September 2005.

[4] 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.

[5] Published in the Official Gazette of Romania no. 118 of 4 February 2021.

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.

2. Practical aspects

With regard to the issue under discussion, the Court of Appeal of Craiova[6] 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[7] — nothing prevented the defendant from invoking, during the preliminary chamber proceedings, Decision no. 302/2017[8] 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[9] 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.

The same opinion has also been expressed in the legal literature, emphasizing

[6] Court of Appeal of Craiova, Criminal Decision no. 1162 of 17 October 2025, available on www. rejust.ro
[7] Published in the Official Gazette of Romania no. 618 of 6 July 2023.
[8] Published in the Official Gazette of Romania no. 566 of 17 July 2017.
[9] Court of Appeal of Bucharest, Criminal Decision no. 1219/A of 30 September 2025, available on www.rejust.ro.

that insofar as, during the procedural phase of the preliminary chamber, the cases of absolute nullity concerning 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 established by Article 281(4) of the Code of Criminal Procedure[10].

3. The evolution of the jurisprudence of the Constitutional Court of Romania on the issue of nullities

We believe that, for a deeper understanding of the issue under discussion, it is useful to review the evolution of procedural nullities from the perspective of the jurisprudence of the Constitutional Court of Romania.

An analysis of this matter reveals a consistent development beginning in 2016, with the delivery of its decisions concerning the competence of criminal investigation bodies and the exclusion of unlawfully obtained evidence, the Court introduced a firm standard of constitutional protection — one that is, arguably, excessively stringent — thus making it more difficult to achieve the purpose of criminal proceedings.

At this point, it must be noted that although the expressis verbis legislative formulation of the purpose of criminal proceedings is no longer present in current law[11], the doctrine developed under the present regulation[12] continues to maintain that criminal proceedings constitute a complex activity, conducted in a legally determined sequence, in order to fulfil its essential aims: the immediate purpose — timely establishment of acts constituting offences, identification of the perpetrators, and initiation of proceedings to hold them criminally liable — as well as the broader purpose — the protection of the rule of law, of individuals, and of their rights and freedoms.

The issue under consideration was first subjected to constitutional review in Decision no. 674/2016[13], 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

[10] Irina Kuglay, in Mihail Udroiu (coord.), *Code of Criminal Procedure. Article-by-Article Commentary*, 4th Edition, C.H. Beck Publishing, Bucharest, 2023, p. 2047.

[11] As did the former regulation through the provisions of Article 1 of the Code of Criminal Procedure.

[12] Gheorghiță Mateuț, *Criminal Procedure. General Part,* Universul Juridic Publishing, Bucharest, 2019, p. 25.

[13] Published in the Official Gazette of Romania no. 194 of 20 March 2017.

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[14].

In the same year, the Constitutional Court rendered Decision no. 554/2017[15], 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[16], 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, 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. In essence, the High Court held that the delegation of the performance of criminal investigation acts per se generates a lex tertia, a new rule not provided for by law — something prohibited in criminal matters[17].

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[18], with the specification that the activity subject to delegation

[14] Published in the Official Gazette of Romania no. 618 of 6 July 2023.
[15] Published in the Official Gazette of Romania no. 1013 of 21 December 2017.
[16] Published in the Official Gazette of Romania no. 193 of 12 March 2019.
[17] Florin Streteanu, Daniel Nițu, *Criminal Law. General Part,* vol. I, Universul Juridic Publishing, Bucharest, 2014, p. 137.
[18] George Antoniu, Nicolae Volonciu, Nicolae Zaharia, *Dictionary of Criminal Procedure*, Scientific and Encyclopedic Publishing House, Bucharest, 1988, p. 85.

must be performed in accordance with the law[19].

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[20].

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[21].

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[22].

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[23], a univocal meaning to the existing one — fully consistent with the law[24].

4. The effects of the decision

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

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[19] Ion Neagu, *Criminal Procedural Law. General Part,* Global Lex Publishing, Bucharest, 2007, p. 457.
[20] Victor Constantinescu, in Mihail Udroiu (coord.), *op. cit.,* 2023, p. 1337.
[21] Mihail Udroiu, *Syntheses of Criminal Procedure. General Part*, 3rd edition, vol. I, C.H. Beck Publishing, Bucharest, 2023, p. 961.
[22] Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, *Theoretical Explanations of the Romanian Code of Criminal Procedure*, vol. VI, 2nd edition, Romanian Academy Publishing, All Beck Publishing, Bucharest, 2003, p. 304.
[23] Tudorel Toader, Marieta Safta, „The Role of Interpretative Decisions in the Constitutionalisation of Law", *Dreptul* no. 9/2014, pp. 65–88.
[24] Tudorel Toader, Marieta Safta, *Dialogue of Constitutional Judges*, Universul Juridic Publishing, Bucharest, 2015, p. 226.

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.

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[25].

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[26].

We align ourselves with this latter view, for the reasons set out below. Although

[25] Irina Kuglay, *op. cit.,* p. 2047. Conversely, see Mihaela Senia Costinescu, in Daniel Morar (coord.), *The Code of Criminal Procedure in the Jurisprudence of the Constitutional Court. Article-by-Article Commentary*, Hamangiu Publishing, Bucharest, 2021, p. 747.
[26] Gheorghiță Mateuț, *op. cit.,* 2019, p. 125.

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.

How can this be explained?

In our view, judges who applied Decision no. 21/2020 in preference to Constitutional Court[27] decisions did so out of a legitimate (and not blameworthy) intention to safeguard the purpose of criminal proceedings[28]. Nevertheless, the binding force of an HP decision cannot prevail over that of the Constitutional Court or over international human rights instruments and European case-law[29].

It should be recalled that the disciplinary offence of failing to comply with Constitutional Court decisions or RIL judgments, previously provided by Article 99(s) of Law no. 303/2004, was removed following the CJEU judgment of 21 December 2021 in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 (Criminal

[27] Regarding this attitude, we recall the words of Professor Ioan Tanoviceanu of that period: "No matter how good a code may be, it cannot produce good results if those entrusted with its application consider it bad and, instead of applying it, seek to violate it in every possible way", in Ioan Tanoviceanu, *Course of Criminal Law,* vol. I, Cultural Legal Collection, Universul Juridic Publishing, anastatic edition, Bucharest, 2018, §205, p. 141.

[28] On the effects of High Court interpretative decisions, see Horia Diaconescu, „Discussions on the Unconstitutionality of Imposing the Binding Nature upon Courts of Legal Interpretations Given by the High Court of Cassation and Justice", *Dreptul* no. 12/2006, p. 90 et seq.

[29] Nicolae Volonciu, Andreea Simona Uzlău, *New Code of Criminal Procedure – Commentary*, Hamangiu Publishing, Bucharest, 2014, p. 1180.

proceedings against QN and others)[30], and was not reintroduced in the current legislation (Article 271 of Law no. 303/2022 on the Statute of Judges and Prosecutors)[31].

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[32].

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.

Beyond this level of analysis, another argument supporting this position concerns the legal regime of nullity.

The principle of procedural legality requires strict observance of the legal framework governing criminal proceedings. This means that every procedural act must be carried out in accordance with procedural norms — both in substance and in form. Procedural acts and measures contain procedural provisions and are implemented through procedural instruments. The procedural act represents the legal means by which

[30] In the same sense, see the CJEU Judgment of 22 February 2022 in Case C-430/21, proceedings initiated by R.S.

[31] Published in the Official Gazette of Romania no. 1102 of 16 November 2022.

[32] Court of Appeal of Alba Iulia, Order no. 53 of 9 September 2024, available on www.rejust.ro.

a procedural measure is ordered, the latter being absorbed into the act's content[33].

The general procedural sanction for breaches of the rules prescribed by the Code of Criminal Procedure is nullity. Frequently discussed in doctrine, nullity is rightly considered the most powerful procedural sanction, the understanding of which requires both identifying the cases in which it arises and appreciating its effects on the criminal process.

The Italian jurist Eugenio Florian aptly captured this idea, noting that the term "nullity" is used in a dual sense: it denotes both the cause that renders an act defective and the consequences deriving from that defect — namely, the act's juridical invalidation[34].

In older Romanian legal doctrine, it was held that acts performed in violation of a fundamental principle — other than the principle of mandatory prosecution — are affected by nullity even when the law does not expressly provide for it[35]. Likewise,[36] it was argued that when a direct and indissoluble connection exists between the nullified act and its subsequent or related acts, the causal link extends also to acts concluded concurrently or even earlier[37], which will naturally be deprived of legal effect, and not only to subsequent acts — a view embraced by Professor Vintilă Dongoroz[38].

Procedural sanctions thus affect existing procedural acts that have come into being through non-compliance with legal requirements[39], by omission or violation of prescribed forms, rendering them ineffective[40].

The application of the sanction of nullity serves to remove from the criminal process any acts or violations of the law deemed or proven detrimental to the administration of justice[41]. Absolute nullity cannot be remedied in any manner[42] and is examined alongside the notion of the act's inexistence.

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[43].

It should be noted that the Constitutional Court has repeatedly ruled on the effects of nullity. Thus, we recall Decision No. 854/2020[44], by which the Court

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[33] Alexandru Vasiliu, *General Theory of Procedural Acts*, All Beck Publishing, Bucharest, 2003, pp. 49–50.

[34] Eugenio Florian, *Criminal Procedural Law,* Utet Publishing, Turin, 1939, p. 117.

[35] Ioan Tanoviceanu, *Treatise on Criminal Law and Criminal Procedure*, vol. IV, "Curierul Judiciar" Printing House, Bucharest, 1927, p. 479, §304.

[36] See also Traian Pop, *Criminal Procedural Law*, vol. III, National Printing House, Cluj, 1946, p. 88.

[37] Gheorghiță Mateuț, *op. cit.,* 2019, p. 1020.

[38] Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, *op. cit.,* p. 752.

[39] Ion Neagu, *Treatise on Criminal Procedure,* Pro Publishing, Bucharest, 1997, p. 383.

[40] Nicolae Volonciu, *Treatise on Criminal Procedure. General Part,* Paideia Publishing, Bucharest, 2002, p. 329.

[41] Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, *op. cit.,* p. 47

[42] Grigore Teodoru, *Treatise on Criminal Procedural Law*, 2nd edition, Hamangiu Publishing, Bucharest, 2008, p. 523.

[43] 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.

[44] Decision of the Constitutional Court no. 854 of 26 November 2020, published in the Official Gazette no.

dismissed, as unfounded, the exception of unconstitutionality raised in relation to Article 367 paragraph (9), Article 425[1] 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."

5. Conclusions

Decision no. 8/2025 (RIL) of the High Court of Cassation and Justice of Romania aligns with the doctrinal tradition of interwar criminal procedural law. As Professor Traian Pop cautioned, acts performed by an authority lacking competence are not merely null but non-existent, since "jurisdiction cannot be acquired by will, but only by law"[45].

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[46].

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.

With respect to competence[47], it should be underlined that in cases where the preliminary chamber procedure has already been completed[48], the criminal process cannot revert to that stage. However, this does not mean that illegally obtained evidence may be considered in the assessment of the evidentiary record.

The jurisprudential shift grounded in the Constitutional Court's decisions will most likely give rise to contradictory solutions, considering the existence of two distinct

196 of 26 February 2021.

[45] Traian Pop, *Criminal Procedural Law*, vol. II, National Printing House, Cluj, 1946, p. 214.

[46] Published in the Official Gazette of Romania no. 372 of 20 May 2014.

[47] Concerning the jurisdiction of judicial bodies, see Remus Ionescu, „A View Regarding the Subject-Matter Jurisdiction of the Judge for Rights and Liberties to Hear and Resolve the Proposal for Preventive Detention", *Dreptul* no. 3/2019, p. 151; Ioana Ruxandra Mălăescu, „Considerations Regarding the Possibility for the Judge to Verify Territorial Jurisdiction During the Trial", *International Conference Education and Creativity for a Knowledge-Based Society – Law*, year XIV/2020, no. XIV, pp. 107-112, p. 107, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID375 4955_code2014003.pdf?abstractid=3754955, accessed on 20 November 2025.

[48] Remus Ionescu, „Controversies Concerning the Legal Nature of the Institution Provided by Article 386[1] of the Code of Criminal Procedure", *Dreptul* no. 10/2025, pp. 77–88; Luminiţa Criştiu-Ninu, Radu Slăvoiu, „Resumption of Preliminary Chamber Proceedings – Observations Regarding the Provisions of Article 386[1] of the Code of Criminal Procedure", *A.U.B. – Law Series, Legal Forum* no. 1/2025, pp. 72-94, p. 87; Florin Creţu, *The Resumption of Preliminary Chamber Proceedings*, 16 July 2024, https://www.juridice.ro/743525/reluarea-procedurii-de-camera-preli minara.html, ac-cessed on 20 November 2025.

"schools of thought," and will once again require the intervention of the Constitutional Court, following the model of Decision No. 265/2014, concerning the exception of unconstitutionality of the provisions of Article 5 of the Criminal Code[49].

Until then, it falls upon judges to wisely implement this decision. Avoiding errors in the judicial activity requires, from those entrusted with dispensing justice, a vast professional culture[50] and a legal technique so solid that they may resolve even the most difficult and diverse cases with skill and efficiency, based on thorough prior preparation.

The present lines have sought to outline several possible solutions and, above all, to awaken interest in this topic — as fascinating as it is controversial. If, toward this end, these pages will serve as a source of legal and legislative information and guidance, then their purpose and the passion from which they have sprung will have found both fulfillment and justification.

Bibliography

1. Antoniu, George, Nicolae Volonciu & Nicolae Zaharia, *Dictionary of Criminal Procedure*, Scientific and Encyclopedic Publishing House, Bucharest, 1988.
2. Creţu, Florin*, The Resumption of Preliminary Chamber Proceedings*, 16 July 2024, https://www.juridice.ro/743525/reluarea-procedurii-de-camera-prelimina ra.html, accessed on 20 November 2025.
3. Crişţiu-Ninu, Luminiţa & Radu Slăvoiu, „Resumption of Preliminary Chamber Proceedings – Observations Regarding the Provisions of Article 386¹ of the Code of Criminal Procedure", *A.U.B. – Law Series, Legal Forum* no. 1/2025, p. 72-94.
4. Diaconescu, Horia, „Discussions on the Unconstitutionality of Imposing the Binding Nature upon Courts of Legal Interpretations Given by the High Court of Cassation and Justice", *Dreptul* no. 12/2006.
5. Dongoroz, Vintilă, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai & Rodica Stănoiu, *Theoretical Explanations of the Romanian Code of Criminal Procedure*, vol. VI, 2nd edition, Romanian Academy Publishing, All Beck Publishing, Bucharest, 2003.
6. Duţu, Mircea, „The Time Has Come for a Romanian Science of Law and Legal Culture", *Dreptul* no. 4/2019.
7. Florian, Eugenio*, Criminal Procedural Law,* Utet Publishing, Turin, 1939.
8. Ionescu, Remus, „A View Regarding the Subject-Matter Jurisdiction of the Judge for Rights and Liberties to Hear and Resolve the Proposal for Preventive Detention", *Dreptul* no. 3/2019.
9. Ionescu, Remus, „Controversies Concerning the Legal Nature of the Institution Provided by Article 386¹ of the Code of Criminal Procedure", *Dreptul* no. 10/2025, pp. 77–88.
10. Mateuţ, Gheorghiţă*, Criminal Procedure. General Part,* Universul Juridic Publishing, Bucharest, 2019.
11. Mălăescu, Ioana Ruxandra, „Considerations Regarding the Possibility for the Judge to Verify Territorial Jurisdiction During the Trial", *International Conference Education*

[49] Published in the Official Gazette of Romania no. 372 of 20 May 2014.

[50] The need for legal culture today arises not only from humanity's natural curiosity or its thirst for encyclopedic knowledge but increasingly from the complex condition of the postmodern individual — simultaneously rooted in communities of belonging and engaged with the global world through the internet and personal aspirations.See, for further details: Mircea Duţu, „The Time Has Come for a Romanian Science of Law and Legal Culture", *Dreptul* no. 4/2019, p. 10.

and Creativity for a Knowledge-Based Society – Law, year XIV/2020, pp. 107-112, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN _ID375 4955_code2014003.pdf?abstractid=3754955, accessed on 20 November 2025.
12. Morar, Daniel (coord.), *The Code of Criminal Procedure in the Jurisprudence of the Constitutional Court. Article-by-Article Commentary*, Hamangiu Publishing, Bucharest, 2021.
13. Neagu, Ion, *Criminal Procedural Law. General Part,* Global Lex Publishing, Bucharest, 2007.
14. Neagu, Ion, *Treatise on Criminal Procedure,* Pro Publishing, Bucharest, 1997.
15. Nicolae, Volonciu & Andreea Simona Uzlău, *New Code of Criminal Procedure – Commentary*, Hamangiu Publishing, Bucharest, 2014.
16. Pop, Traian, *Criminal Procedural Law*, vol. II and III, National Printing House, Cluj, 1946.
17. Streteanu, Florin & Daniel Nițu, *Criminal Law. General Part,* vol. I, Universul Juridic Publishing, Bucharest, 2014.
18. Tanoviceanu, Ioan, *Course of Criminal Law,* vol. I, Cultural Legal Collection, Universul Juridic Publishing, anastatic edition, Bucharest, 2018.
19. Tanoviceanu, Ioan*, Treatise on Criminal Law and Criminal Procedure*, vol. IV, "Curierul Judiciar" Printing House, Bucharest, 1927.
20. Teodoru, Grigore*, Treatise on Criminal Procedural Law*, 2nd edition, Hamangiu Publishing, Bucharest, 2008.
21. Toader, Tudorel & Marieta Safta, „The Role of Interpretative Decisions in the Constitutionalisation of Law", *Dreptul* no. 9/2014.
22. Toader, Tudorel & Marieta Safta, *Dialogue of Constitutional Judges*, Universul Juridic Publishing, Bucharest, 2015.
23. Udroiu, Mihail (coord.), *Code of Criminal Procedure. Article-by-Article Commentary*, 4th Edition, C.H. Beck Publishing, Bucharest, 2023.
24. Udroiu, Mihail, *Syntheses of Criminal Procedure. General Part*, 3rd edition, vol. I, C.H. Beck Publishing, Bucharest, 2023.
25. Vasiliu, Alexandru*, General Theory of Procedural Acts*, All Beck Publishing, Bucharest, 2003.
26. Volonciu, Nicolae, *Treatise on Criminal Procedure. General Part,* Paideia Publishing, Bucharest, 2002.