

CONSEQUENCES OF VIOLATING THE JURISDICTIONAL RULES OF THE CRIMINAL INVESTIGATION BODY

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Abstract

This original research paper examines the impact of non-compliance with jurisdictional rules during the criminal investigation phase in the Republic of Moldova. The study aims to highlight how such procedural violations affect the legality and efficiency of criminal investigations. By using doctrinal legal analysis and comparative perspectives on other European legal systems, the research identifies procedural risks, including the nullification of acts and the weakening of judicial integrity. The findings show that compliance with jurisdictional norms is indispensable for ensuring procedural justice and legal certainty. Recommendations are offered to improve legislative frameworks and institutional practices to reinforce adherence to legal competence.

Keywords: criminal jurisdiction, legal competence, procedural justice, investigation rules, Moldova

Introduction

The competence of criminal investigation bodies constitutes one of the fundamental prerequisites for the legality and fairness of criminal proceedings. In the Republic of Moldova, as in other democratic legal systems, the allocation of investigative authority among competent bodies is essential not only for ensuring an objective and comprehensive examination of criminal cases but also for safeguarding the right to a fair trial as guaranteed by international and constitutional norms. Despite this, the current legislative framework provides limited procedural safeguards against violations of investigative competence, placing most breaches under the category of relative nullity. This treatment risks compromising legal certainty and procedural equity, especially in complex or high-stakes criminal proceedings.

This paper critically analyzes the procedural consequences stemming from non-compliance with the rules governing the competence of criminal investigation bodies in Moldovan criminal procedure. It examines the extent to which such violations undermine the principle of legality, the integrity of the evidence, and the fairness of the process, highlighting

inconsistencies between national legislation and international human rights standards. Furthermore, the study argues for a reclassification of certain violations—particularly those related to material and personal competence—as grounds for absolute nullity and proposes legislative amendments to strengthen procedural guarantees and uphold the constitutional principle of access to justice.

Materials and methods

Materials

The present research was developed based on a detailed analysis of the Criminal Procedure Code of the Republic of Moldova, constitutional provisions, and international legal instruments such as the European Convention on Human Rights. Jurisprudential interpretations by national courts, especially the Supreme Court of Justice, and relevant doctrinal sources were also consulted. Additional legislative materials, official commentaries, and legal reviews were examined to identify systemic shortcomings and doctrinal debates surrounding the competence of the criminal investigation body.

Methods

The methodology employed includes normative analysis, doctrinal interpretation, comparative legal research, and case study review. The study uses a qualitative approach to assess the adequacy and implications of current legal norms governing jurisdiction in criminal procedure. By applying comparative insights from other European systems and interpreting legal provisions using doctrinal and jurisprudential tools, the paper identifies legislative inconsistencies and suggests targeted reforms to enhance procedural fairness.

Results and discussion

The entire activity of criminal investigation bodies is strictly subordinated to the purpose of the criminal trial (Criminal Procedure Code of the Republic of Moldova 2003, art. 1 paragraph (2)). It is to be organised in such a way as to ensure the complete, objective investigation into all aspects of the criminal cases received for examination. This objective can be achieved only if the criminal case is investigated by a competent criminal investigation body.

According to the provisions of art.7 paragraph (1) of the criminal procedure code, “The criminal trial shall be conducted in strict accordance with the unanimously recognized principles and norms of international law, with the international treaties to which the Republic of Moldova is a party, with the provisions of the Constitution of the Republic of Moldova and of this Code” (Criminal Procedure Code of the Republic of Moldova 2003). “All participants who contribute to the proper resolution of the criminal case throughout the criminal trial must act in accordance with the principle of legality.

Violation of the legal provisions regarding the conduct of the criminal trial may result in the application of sanctions, of an administrative, civil or criminal nature” (Boroi et al.2002, 227).

“The sanction in criminal proceedings represents the legal means that deprives of legal effects the procedural and procedural acts, as well as the procedural measures ordered or carried out illegally, or which are applied in the case of committing a judicial misconduct”

(Crigan and Beșelea 2017, 27) and "...are determined by the existence of procedural defects that may consist of violations of the law and procedural omissions" (Boroi et al.2002, 227).

Since the provisions of the aforementioned art. were not respected, nullity intervenes in the criminal proceedings, as a procedural sanction, thus constituting a legal means that deprives of legal effects the procedural and procedural acts. Therefore, nullities affect existing procedural acts, which were drawn up by failing to comply with legal provisions, by omitting or violating the forms prescribed by law, thus the respective act is removed from the file materials. At the same time, the nullity of a procedural act may also entail the nullity of subsequent procedural acts carried out in compliance with the law, but which are based on the null act or depend on its validity, thus we are in the presence of an extensive effect of nullity, in this sense we reiterate the rule "the fruit of the poisoned tree". Therefore, if evidence in a criminal trial was obtained in violation of criminal procedural legislation, it will not be administered in the trial" (Crețu and Popa, 292-296).

"Nullity is a procedural sanction that generally occurs when a procedural act was performed in violation of the substantive and formal conditions provided for by law" (Dolea 2005, 478). "As procedural sanctions, nullities, in the opinion of some authors, affect existing procedural acts, which, however, came into being through non-compliance with legal provisions, through omission or violation of the forms prescribed by law" (Boroi et al. 2002, 228).

"Nullity has the effect of rendering acts performed in violation of legal provisions ineffective. The null act does not produce the effects of the valid act, being devoid of legal force according to the rule "quard nullum est, nullum producit effectum" (Dolea 2005, 478).

„For these reasons, criminal procedural sanctions are appreciated in legal literature as true procedural remedies, which aim to eliminate the production of legal consequences in the event that the criminal procedural law has been violated" (Crigan and Beșelea 2017, 26-30).

„Procedural nullity performs various functions in the process of achieving repressive justice. Thus, first of all, it ensures compliance with the basic rule of procedural legislation; without the provision in law of the sanction of nullity, procedural rules would be simple recommendations. By this, the sanction of nullity exercises a preventive function in the violation of the legal provisions, which regulate the conduct of the criminal trial, thus also having the character of a procedural guarantee" (Dolea 2005, 478) and which pursues the following purposes: „...the preventive purpose, since it has the role of preventing the violation of the law; the destructive purpose, having as its effect the abolition of the acts performed with disregard for the law; the reparative purpose making it possible to restore the abolished procedural acts, in the cases and conditions provided by the law" (Crigan and Beșelea 2017, 26-30).

Consequently, compliance with the norms of the conduct of the criminal trial, including the norms of the institution of competence, is ensured under the rule of the sanction of nullity.

According to the provisions of art.251 paragraph (1) of the criminal procedure code (Criminal Procedure Code of the Republic of Moldova 2003), "Violation of the legal provisions regulating the conduct of the criminal trial shall entail the nullity of the procedural act only if a violation of the criminal procedural norms has been committed that cannot be removed except by annulling that act, or the fairness of the criminal trial or the rights of the

parties have been affected". The provisions of this norm being developed and specified within two distinct norms art.251¹-251² of the criminal procedure code.

"Not every violation of the legal provisions leads to the nullity of the act, but only essential violations (for example, failure to hand over the ordinance or decision to apply a preventive measure, according to paragraph (3) of art. 177 of the criminal procedure code, does not lead to the nullity of these procedural acts, given that the suspect or accused may request revocation, replacement or may challenge the application of this measure; in the same sense, in the case where the accused did not take cognizance of the materials of the file according to art. 293 of the criminal procedure code or was not handed a copy of the indictment according to art. 297 of the criminal procedure code, we cannot consider the indictment null, the accused having the opportunity to take cognizance of the materials of the file and receive a copy of the indictment during the preliminary hearing when the case is scheduled for trial according to paragraph (6) of art. 351 of the criminal procedure code)" (Dolea 2005, 479).

Given that the rules of jurisdiction represent some of the conditions general rules of conduct of criminal proceedings, therefore, their violation, in any case, will lead to the disruption of this activity. Therefore, the violation of the rules of competence, including with reference to the criminal prosecution bodies, represents an essential violation of the legal provisions for the conduct of criminal proceedings that can only be removed by annulling the procedural act/acts.

We do not agree with the fact that the legislator decided to extend the protection of absolute nullity only to procedural aspects that characterize the judicial stage and not the stage of criminal prosecution or the one prior to the initiation of criminal prosecution. Thus placing the rules of competence of the criminal prosecution body only under the protection of relative nullity, which in our opinion is insufficient to ensure and guarantee compliance with these rules.

If in the case of absolute nullity, it expressly indicates the violation of which legal provisions attracts the sanction of nullity (article 251¹ of the criminal procedure code) , then in the case of relative nullity, the legislator indicates that the violation of those legal provisions that affect the fair nature of the criminal trial or the rights of the parties (article 251² of the criminal procedure code) and suggests that among these provisions would also be the provisions regarding the competence of the criminal prosecution body.

„The basis for a clear understanding of the concept of a fair trial is a series of notions that must be assimilated as correctly as possible" (Sabiescu 2013, 26-28).

„To begin with, we consider it necessary to reiterate that the right to a fair trial has its origin in Community law, being regulated in Article 6 of the European Convention on Human Rights" (Carp 2018, 14-17).

, F.Quillere-Majzoub argues that a fair trial implies the idea of a state governed by the rule of law, which has as its characteristics the elimination of arbitrariness and the rule of law. These two objectives are equivalent to offering guarantees in procedural matters, both from the point of view of extending the notion of trial to areas related to administrative or disciplinary courts, and by delimiting the line of balance between the protection of fundamental rights and other interests of states" (Sabiescu 2013, 26-28).

"The right to a fair trial, even though it has been established relatively recently, compared to the vast majority of fundamental human rights and freedoms, can certainly be

included in this category. Thus, by guaranteeing the fair conduct of a judicial procedure, conditions are created for the exercise of fundamental human rights and freedoms" (Damaschin 2009, 15).

"The right to a fair trial is the most comprehensive right provided for by the Convention, incorporating in its content numerous other rights of the utmost importance, the violation of which is most often mentioned by the claimants before the European Court of Human Rights" (Șandru 2018, 22-25).

We could state that the right to a fair trial represents an ideal towards which any true justice must strive.

"While agreeing with the quality of the ideal of true justice, we nevertheless consider that in our legal system, the right to a fair trial is regulated very dispersedly in normative acts, which diminishes the value of this fundamental right, which in practice makes it difficult to invoke it in the judicial defense of human rights" (Carp 2019, 13-16).

The right to a fair trial was expressly enshrined in Article 6 of the ECHR (European Convention on Human Rights 1950), according to which "In the determination of any civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The judgment must be pronounced publicly, but access to the courtroom may be denied to the press and the public during the entire trial or part of it in the interests of morality, public order or national security in a democratic society, when the interests of minors or the protection of the private life of the parties to the trial so require, or to the extent considered absolutely necessary by the court when, in special circumstances, publicity would be likely to prejudice the interests of justice".

„And if the European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 6 stipulates, among other things: "Everyone has the right to a fair trial...of his case...", then the Constitution of the Republic of Moldova does not provide for such a regulation" (Olteanu 2013, 36-40).

„The Constitution does not regulate as such the "right to a fair trial". However, there is no doubt that such a right "results" from the systemic interpretation of the constitutional provisions. Art. 21 paragraph (1) of the Constitution which proclaims, therefore, that any person may address the courts for the defense of his rights and freedoms and legitimate interests". Justice, according to Art. 125, paragraph (1) of the Constitution - is carried out through the Supreme Court of Justice and through "the other courts established by law", and the judges are independent and subject only to the law" they are irremovable according to the law. Court hearings are in principle public, and the right to defense is guaranteed. Against court decisions, interested parties may exercise appeals, under the conditions of the law. The minimum conditions of a fair justice are thus constitutionally specified, conditions that must be supplemented by those of the organic law on the organization and functioning of the courts" (Olteanu 2013, 36-40).

"If fundamental rights and freedoms are a basis of any democracy, then they must therefore be "consecrated and legally guaranteed, including through the possibility granted to the holder, in the event of disregard or violation of his rights and freedoms, to request the assistance of the courts to respect them. The right of the person to address his justice. This is one of the reasons why the Constitution of the Republic of Moldova, proclaiming free access to justice (article 21), not only qualified it as a fundamental right – although, undoubtedly, absolutely, since no law can restrict the exercise of this right, as specified in

article 21 paragraph (2), but also as a principle governing the matter of fundamental rights and freedoms” (Olteanu 2013, 36-40).

“In order to achieve effective protection of human rights, it is indeed not enough to enshrine material rights; it is also necessary to establish procedural guarantees that strengthen the mechanisms for safeguarding these rights” (Olteanu 2013, 36-40).

“Based on these regulations, the doctrine states that the right to a fair trial can be defined as “the set of procedural guarantees that allow the valorization of most of the rights protected by international instruments”, or, “the set of procedural guarantees that allow the valorization of other fundamental rights and freedoms”. Respectively, it is the law, which, through its affirmation, ensures the connection between human rights and the rule of law, characterized by the elimination of arbitrariness and the rule of law. In our opinion, this is a general assessment of the analyzed right, which does not reflect its essence and content” (Carp 2019, 13-16).

According to S. Carp, the right to a fair trial at the stage of criminal prosecution implies: the right to liberty and security; the presumption of innocence; the right to legal assistance; the right to participate in court hearings at the stage of criminal prosecution (Carp 2018, 14-17).

„In another opinion, the right to a fair trial includes in itself: the initial right not to be detained and detained without sufficient grounds; the right not to be subjected to torture; to be informed of the charges; to be notified of the evidence to be used; to have access to a fair, independent and impartial court; to benefit from the legal assistance of a lawyer; not to incriminate oneself; to be presumed innocent; not to be restricted in the ability to ensure one’s own defense; to be present to all important procedures; to have a public trial and reasoned decisions; to have a trial within a reasonable time; as well as the right to appeal/recourse” (Sabiescu 2013, 26–28).

Based on the findings made above, we are going to determine how the violation of the rules of jurisdiction affects the guarantees imposed by the right to a fair trial?

In our opinion, every time the rules of jurisdiction are violated, free access to justice is directly violated and, consequently, the fair administration of evidence.

As we indicated above, free access to justice was directly enshrined in the provisions of article 20 para.(1) of the Constitution of the Republic of Moldova, which establishes that “Everyone has the right to effective satisfaction from the competent courts against acts that violate his rights, freedoms and legitimate interests” (Constitution of the Republic of Moldova 1994).

Article 20 represents the founding block of the democratic system, in which every person has the right to effective satisfaction in case of violation of his rights. The text of this article directly indicates the existence of an active obligation of the state to ensure the right to effective satisfaction in justice. The term “effective” is the key to developing the framework of state obligations. First of all, the phrase “competent courts” implies the positive obligation of the state to create a system of courts, in sufficient number, and to regulate their functioning in such a way that the minimum requirements are met (Negru 2012, p.101).

“There is an obvious connection between the notion of “effective satisfaction” and “competent courts”, that is, the place where the protection of rights must be exercised. We will highlight the similarity between the constitutional text and the Universal Declaration of

Human Rights, which, in article 8, refers to "competent courts". The Universal Declaration imposes, in art. 10, the condition that the person be heard by an "independent and impartial tribunal", and article 14. 1 of the Covenant on Civil and Political Rights operates with the notion of a "competent, independent and impartial tribunal established by law". The European Convention for the Protection of Human Rights and Fundamental Freedoms refers, in article 6.1, to an "independent and impartial tribunal established by law" and sets the temporal aspect of effectiveness by "judging [...] the case within a reasonable time" (Negru, 101).

As can be deduced from the economy of this norm, free access to justice automatically implies the obligation to examine the criminal case by a competent court. However, the fundamental law does not extend this principle to the activity of criminal prosecution bodies.

As regards the criminal process, the access principle was developed by the provisions of the norm in article 19 of the Code of Criminal Procedure, a norm that insists, in particular, on the independence, impartiality and legality of the court called to judge a particular criminal case and on the active role of the prosecution body. criminal prosecution. Criteria that in our opinion do not take into account the competence of the criminal prosecution body as such.

In our perception, free access to justice implies not only the right of the person to have his case examined and resolved by a competent, independent, impartial, legally constituted court, but also that this case be investigated, at the stage of the criminal prosecution, by a competent, independent, impartial and legally constituted criminal prosecution body.

In this context, we consider it necessary to reformulate the norm in art.19, para.(3) of the Code of Criminal Procedure and to present it in a new wording with the following content: "Any person has the right to have his case investigated by a competent criminal prosecution body, in all aspects, completely, objectively and in limited terms".

As for the second ground of relative nullity – the rights of the parties were affected, it should be understood and interpreted in strict accordance with the provisions of the legislation in force, as follows: according to article 6, point 29) of the Code of Criminal Procedure, the notion of party to the trial means "persons who in the criminal trial exercise functions of prosecution or defense based on equality of rights and the principle of adversarial proceedings" (Criminal Procedure Code of the Republic of Moldova 2003).

Subsequently, according to article 6, point 30) of the Code of Criminal Procedure, "the defense party – persons authorized by law to carry out defense activity (the suspect, the accused, the defendant, the civilly liable party and their representatives) and according to article 6, point 31) of the Code of Criminal Procedure, "the prosecution party – persons authorized by law to carry out or request the criminal investigation (the prosecutor, the criminal investigation body, as well as the injured party, the civil party and their representatives)" (Criminal Procedure Code of the Republic of Moldova 2003).

Therefore, this ground will be activated in the situation where both the representatives of the defense and the prosecution have been affected in their procedural rights. All those rights and freedoms regulated and established by the provisions of the criminal procedural law (Criminal Procedure Code of the Republic of Moldova 2003) are taken into account.

It is not clear to what extent non-compliance with the rules of competence can affect the rights and freedoms of the parties in the trial. However, the list of their rights and freedoms does not provide for the right of the parties to have the criminal case regarding them investigated by a competent criminal investigation body.

Given these findings, we can state that the violation of the rules of jurisdiction affects the fairness of the criminal trial and its legality rather than the rights and freedoms of the parties, by conducting a precarious and defective criminal investigation by a criminal investigation body, whose exponents do not have sufficient professional training in the field, the technical means necessary to investigate a particular crime, tactical procedures, and the efficient investigation of such a crime.

In another context, we do not agree with the fact that the legislator considered it necessary to ensure compliance with the rules of jurisdiction of criminal investigation bodies only under the guarantee of relative nullity and not absolute nullity, for the following reasons:

„Relative nullities are judicial in nature. In order to be examined, they must be invoked, identified from the point of view of the norm that is claimed to have been violated, but proof must also be provided of the existence of a procedural injury that cannot be removed except by annulling the act. What is characteristic of these nullities is that they can be covered by the will of the parties, can be invoked in a certain state of the criminal process and only if a procedural interest is justified” (Zampieri 2021, 100).

Which means that, in the event of violations of the competence of the criminal investigation body, these deviations will not be sanctioned by nullity as long as they have not been found and notified by procedural subjects empowered with this right and consequently the procedural acts and evidence will remain valid. Which, in our opinion, is inadmissible, or at least the violation of the norms regarding the material and personal competence of the criminal investigation body represents in itself essential violations of the provisions of the criminal procedure law (including article 270 para. (9) of the Code of Criminal Procedure), which will entail the nullity of the evidence administered during the criminal investigation by the criminal investigation body or by the direct prosecutor (Supreme Court of Justice of the Republic of Moldova 2013).

The fact that the rules regarding the competence of the criminal prosecution body were removed from the protection of absolute nullity determined not only the reduction of the degree of protection but also its limitation in time and space. Thus, relative nullity, in case of violations of the rules of competence of the criminal investigation body, may be invoked "...during the criminal investigation - during or immediately after the act is carried out or, at the latest, at the end of the criminal investigation, when the party becomes aware of the materials of the file" (Criminal Procedure Code of the Republic of Moldova 2003). Which means that, in the event that the parties, for certain reasons, did not claim the violation of the rules of competence during the criminal investigation, until the end of the criminal investigation, regardless of the reason (whether they did not notice the violation, did not understand to invoke it within the deadline, etc.), except in the case where they did not have the possibility to become aware of these violations, they will be deprived of the right to invoke relative nullity and, consequently, the procedural acts carried out in violation of the rules of the institution of competence remain valid.

In practice, we could witness the unprecedented situation, in which, the violation of the rules regarding material competence and personal of the criminal investigation body

should not determine "only" the annulment of the procedural acts thus drawn up for the simple reason that they were not invoked within the time limit by the interested persons. And then the natural question arises: whether a possible decision adopted in violation of these rules can be considered a legal decision?

Considering that the violation of the rules of competence remains an essential violation of the rules of the legislation in force, which can only be remedied by the annulment of the procedural acts thus drawn up. Therefore, the violation of the rules of competence, with the exception of territorial competence, in each specific case is to be sanctioned with absolute nullity.

At the same time, we consider that the prosecutor should be excluded from the list of subjects with the right to invoke relative nullity, on the grounds that he may be interested in "overlooking" the respective violations. This right should be granted only to the defense party or the other participants and only under the conditions in which their fundamental rights and freedoms have been violated.

We consider that the violation of fundamental rights and freedoms should be the only basis for invoking relative nullity. This fact results from the essence of relative nullity, which can be accessed only at the initiative of the parties and these parties must invoke a self-interest, which cannot take any form other than that of repairing a right that was violated by failing to comply with the provisions and procedural order established by the power of the Code of Criminal Procedure.

Despite the insufficient level of protection established by the mechanism of relative nullity for the competence of the criminal investigation body, which can be activated only at the initiative of the parties, whose rights and freedoms have been prejudiced and only within the limits of the criminal investigation phase. We believe that, in all cases, regardless of whether this mechanism has been activated or not, the violation of the rules of competence of the criminal investigation body will affect the admissibility of the evidence administered on the case, because as indicated above, the violation of the rules of competence are essential violations of the legislation in force. Or, according to the provisions of article 94 paragraph (1), point 8 of the Code of Criminal Procedure, "In the criminal trial, the data that were obtained: ... with essential violations by the criminal investigation body or the investigation officer of the provisions of this code cannot be admitted as evidence and, therefore, are excluded from the file, cannot be presented in court and cannot be used as the basis for the sentence or other court decisions" (Criminal Procedure Code of the Republic of Moldova 2003).

The violation of the rules of competence of the criminal investigation body, both in the old wording and in the current wording, does not condition the nullity of all procedural acts, but only of some of them.

"Thus, the acts: of notifying the criminal investigation body (article 262-264 of the Code of Criminal Procedure); of initiating criminal investigation and those carried out under art. 254, 257 paragraph (2) of the Code of Criminal Procedure will be considered legal" (Supreme Court of Justice of the Republic of Moldova 2013).

Despite the amendments made to art. 271 paragraph (21) CPP, any of the notified criminal investigation bodies and even the prosecutor may order the initiation of criminal investigation even if he is not competent to conduct criminal investigation on the case, and within 3 days he will decline his competence in favor of the competent criminal investigation body (Criminal Procedure Code of the Republic of Moldova 2003).

In another context, given that the rules of competence only affect the activities of criminal investigation bodies and not the activities of the prosecutor leading the criminal investigation, therefore, their violation cannot condition the nullity of the procedural acts carried out by the lead prosecutor, which will be considered valid in any case.

Furthermore, given the right granted to the lead prosecutor of the criminal investigation to assist in the performance of any criminal investigation action or to carry it out directly (Criminal Procedure Code of the Republic of Moldova 2003), we consider that the criminal investigation actions carried out by him, outside the competence of the criminal investigation body, will not be sanctioned with nullity and will remain valid.

Therefore, even in the event of the criminal prosecution being carried out by an incompetent criminal prosecution body and the invocation of relative nullity by the parties to the proceedings who consider themselves affected thereby in their rights and freedoms or consider that the fairness of the criminal trial has been affected, the following procedural acts will not be struck by nullity and will continue to remain valid: the order to initiate the criminal prosecution; criminal prosecution actions that cannot be postponed (Criminal Procedure Code of the Republic of Moldova 2003); procedural acts drawn up by the prosecutor in charge of the criminal prosecution (the order to charge, the minutes of the hearing of the accused, the procedural acts for the application of the preventive measure, the indictment); criminal prosecution actions carried out directly by the prosecutor in charge of the criminal prosecution.

Given the regulations in force, in the event of a violation of the rules of competence of the criminal investigation body, at the request of the parties or ex officio, the prosecutor leading the criminal investigation, if the fairness of the criminal trial has been affected or the rights and freedoms of the parties in the trial have been violated, will order the annulment of the procedural acts drawn up by the incompetent criminal investigation body, with the exceptions indicated above, issuing a reasoned ordinance in this regard, in the order of the provisions of art. 251, art. 255² and art. 255 of the Code of Criminal Procedure, by which he will not only find the violation of the competence of the criminal investigation body with the specification of the neglected sign of competence but also to what extent these violations have affected the fairness of the criminal trial or, as the case may be, the rights and freedoms of the parties. Based on these findings, the prosecutor is to also state on the procedural acts to be annulled and those whose validity will be preserved.

It should be noted that the nullity of procedural acts, drawn up in violation of the rules of competence, does not represent the final stage of the process of assessing the competence of the criminal investigation body, but rather a basis for engaging the performance of the competent criminal investigation body and starting the process of restoring, as the case may be, the procedural acts affected by nullity.

We consider that, within 3 days (Criminal Procedure Code of the Republic of Moldova 2003) from the moment of adoption of the ordinance to apply the sanction of nullity, in case of finding a violation of the competence of the criminal investigation body, the prosecutor who adopted this decision will forward the criminal case to the competent criminal investigation body, which will carry out the criminal investigation further.

The competent criminal investigation body that received the criminal case affected by the sanction of relative nullity, as the case may be, may proceed to the resumption of the criminal investigation actions and the procedural acts declared null, provided that this is possible and the time has not been exceeded. (Nastas A. Cernomoret S. 2024, p. 291).

We do not consider it a problem to additionally hear witnesses and injured parties who were previously heard by the non-competent criminal investigation body and who were considered null. However, it may be difficult to repeat other criminal investigation actions such as the on-site investigation with the finding and collection of the same material evidence, as in the case of the initial criminal investigation action declared null. Or, the material evidence is no longer at the scene being collected and kept at the headquarters of the criminal investigation body or sent for expertise.

Under these conditions, we believe that the new criminal investigation body may proceed to carry out another spectrum of criminal investigation actions that will ultimately provide the same result. Thus, representatives of the criminal investigation body may proceed to the removal of those goods already from the place of their storage, with their subsequent examination. Reconstruction of the act specifying the place where the material objects and traces of the crime were discovered and removed, etc.

If the court finds that the violation of the competence of the criminal investigation body has been established, it will order the application of the sanction - relative nullity with the cancellation of the procedural acts drawn up by the incompetent criminal investigation body and, already, arising from this situation, the adoption of any decision on the merits, with the exception of the solution from art.391 point 6) of the Code of Criminal Procedure - termination of the criminal trial, on the grounds that there are other circumstances that exclude or condition the initiation of criminal investigation or criminal liability. (Cernomoreț S., Nastas A. 2023, p.56).

In this regard, the findings made by the Plenum of the Supreme Court of Justice in its decision of 07.05.2013 (Supreme Court of Justice of the Republic of Moldova 2013).are relevant, according to which, "the adoption by the trial and appeal courts of solutions to terminate the criminal trial in cases where the prosecutor did not comply with the norms regarding the competence of the criminal investigation body, based on the provisions of article 391 paragraph (1) point 6) of the Code of Criminal Procedure, as a circumstance that excludes or conditions the initiation of criminal investigation and criminal liability, is a misinterpretation of the law...point 9) of article 275 repeats the content of point 6) of article 391 paragraph (1) of the Code of Criminal Procedure, but with an important specification, namely that other circumstances that exclude or condition the conduct of criminal investigation must be provided for by law. For example: such a circumstance, which excludes the initiation and holding of criminal liability of the person, will exist when the court session establishes that this person, according to article 165 paragraph (4) of the Criminal Code, article 206 paragraph (4) of the Criminal Code, is a victim of human trafficking, or the crime is committed by representatives of the diplomatic corps of foreign states or by other persons who, according to article 11 paragraph (4) of the Criminal Code, are not subject to the criminal jurisdiction of the Republic of Moldova. The existence of other circumstances, which exclude or condition the initiation of criminal prosecution and holding of criminal liability, will also take into account the cases provided for in article 57-58, art. 217 paragraph (5), article 325 paragraph (4) of the Criminal Code, which expressly provide for the release of the person from criminal liability in the event of the presence of certain circumstances. From the economy of the provisions of article 391, 275 of the Code of Criminal Procedure, we conclude that the case of violation of the competence to conduct criminal prosecution by a body other than those provided for in article 266-270 of the Code of Criminal Procedure, does not constitute grounds for termination of the criminal process. All the more so since neither the norms referred to in their content, nor article 271 of the

Code of Criminal Procedure, regarding the obligation of the respective bodies to verify their competence, contain the indication that a possible conduct of criminal prosecution, by a body other than that provided for by law, must result in the adoption of a solution to terminate the criminal process. Thus, the court's decisions to terminate the criminal trial pursuant to article 391 paragraph (1) point 6) of the Code of Criminal Procedure, as a result of failure to comply with the rules of competence in conducting the criminal investigation, are unjustified” (Dolea 2020, 792).

Therefore, in the event of a finding of nullity relating to the investigation of the merits of the criminal case, on the grounds that the criminal investigation was conducted by an incompetent criminal investigation body, the court will adopt one of its final decisions based exclusively on the evidence remaining valid, after applying the sanction of nullity.

Conclusions

The observance of competence rules in criminal proceedings is not a mere formality but a structural guarantee of procedural legality and fairness. As demonstrated, violations of material and personal competence by investigative authorities in Moldova can lead to significant procedural deficiencies, including the invalidation of evidence and the infringement of fundamental rights. However, under current law, such violations are often treated as relative nullities, conditional upon timely and motivated invocation by the parties—a mechanism that insufficiently protects the accused and other participants in the criminal process.

This study concludes that a normative reassessment is required: violations of competence rules—except those of a purely territorial nature—should uniformly trigger absolute nullity due to their inherent impact on the fairness of proceedings. The exclusion of prosecutors from the category of subjects entitled to invoke relative nullity, and the attribution of this right solely to parties whose fundamental rights have been infringed, would further reinforce procedural integrity. In addition, a clearer legislative framework is needed to ensure that competent investigation bodies possess the technical, institutional, and legal capacity required for effective case handling. Only through such reforms can Moldova align its criminal procedure with the standards of democratic legality and the European Convention on Human Rights.

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