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The Right of a Person Subject to a Technical Surveillance Warrant to Contest the Legality of the Measure in case He/She Did Not Become a Defendant

Mircea Mugurel Şelea*

Abstract:
Until the amendment of the provisions of Article 145 Criminal Procedure Law in accordance with the decision no. 224 of April 6th 2017 of the Constitutional Court, one encounters in practice difficulties on how the person subject to a technical surveillance warrant may contest the legality of the measure, in case he/she did not become a defendant.

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* PhD candidate, University of Craiova, Faculty of Law, Phone: 0040743026474, Email: selea_mircea@yahoo.com

If a person that has been subject to one or more measures of technical surveillance did not become defendant after their ending, he/she must be informed in written by the prosecutor about those measures, especially since the Romanian Constitutional Court, in the recent jurisprudence – Decision no. 244/6th April 2017 ruled that such a person should have the right to contest the legality of the measure of technical surveillance.

As regards this decision, we are calling into question the difficulties that appear in practice regarding the way in which it may be enforced to the point where the lawmaker shall amend the provisions of art. 145 Criminal Procedure Law according to the decision of the constitutional court. In this sense, in doctrine it was shown that "the state under the rule of law essentially aims at ensuring a maximum degree of predictability. Everything must be achieved starting from general measures, which the subjects may predict and whose consequences do not surprize them as an arbitrary administrative measure." (Dănișor, 2006: 204).

In this respect, we take into consideration the consequences provided by art. 147 par. 1 of Constitution, after the lapse of 45 days after the publication of the decision, but also the effects of the decision on the unconstitutional provisions. Given that, in this case the Romanian Constitutional Court ascertained the unconstitutionality of art. 145 Criminal Procedure Law because of a regulatory omission, we cannot say that during the term of 45 days that article is being suspended because a legal provision which does not exist may not be suspended. By following the same line of reasoning, even if the lawmaker does not enforce the decision of the Romanian Constitutional Court, in the sense of regulating the person's right to contest the legality of the measure of technical surveillance whose subject he/she was, although he/she is not a defendant, art. 145 Criminal Procedure Law does not cease its legal effects. If we interpret it otherwise, it would come to the unacceptable situation in which, after the measures of technical surveillance are stopped, the subjects of the technical surveillance warrants would not be informed, in written, by the prosecutor about those measures due to the fact that no legal ground would exist any longer, given that art. 145 Criminal Procedure Law would cease its effects.

Apart from that, until the moment in which the lawmaker shall intervene in order to align the provisions of art. 145 Criminal Procedure Law with the Fundamental Law, in practice it is necessary that one finds solutions by which the legality of the surveillance measures may be contested also by the subjects of the surveillance warrants that are not defendants, because fair trial is certainly a fundamental right (Guinchard, 1998: 191) , since it is nothing but ‘’an ideal of true justice which respects the human rights’’ (Pradel, 1996: 506).

First of all, the issue in this case is the time limit in which the appeal may be brought and the moment when this time limit starts to run, but the judicial body competent to solve the appeal and the procedure that must be met are of great importance.

In our opinion, the time limit should be long enough in order to give an effective character to the right to contest the legality of the measure, so that it shall not be less than 20 days, and the moment from which it shall be calculated is the date when the appellant actually knows what aspects of his private life formed the object of surveillance, after exerting the right provided by art. 145 par. 2 Criminal Procedure Law, after he was served with the writ by which the prosecutor informs him about the surveillance measure. If in the same case one ordered the issuing of several warrants against different persons, each person, separately, shall be informed about the surveillance measure and if the same

person was surveilled several times for different acts, he/she shall be informed, upon expiry of each warrant, about the fact that he/she was subject to the technical measure of surveillance (Chiriță, 2015: 353).

There are also situations when, from different reasons, the subject of a technical surveillance warrant is not informed by the prosecutor about that measure, but, after the expiry of the time limits provided by art. 145 par. 1 and 5 Criminal Procedure Law he becomes aware of it in other circumstances. For instance, he/she is heard as witness in the course of judicial inquiry, when he/she is asked questions about a telephone conversation or a conversation carried out in the surroundings. In this case, it can be discussed about the moment from which the term limit in which the measure can be contested begins to run. A first hypothesis would be that the term limit is calculated from the day when the person acknowledged, in any manner, that he/she was subject to a measure of technical surveillance, but this option does not fully ensure conditions for an effective and efficient exercise of the right to appeal, as the appellant does not exactly know the duration and content of the measure. In this respect, it is significant the fact that in case the criminal proceedings have been registered at the court, only the defendant, the damaged party, the civil party, the party incurring civil liability and their defenders have the right to study the file and to request the issuing of copies of the writs of the file.

In this context, the second hypothesis is more acceptable, according to which the person who, after the end of the criminal prosecution, found out, in any circumstance, that he/she was subject to a measure of technical surveillance, he/she has the right to ask the prosecutor that has performed the criminal prosecution to inform him/her, in written, if he/she was subject of a surveillance warrant. The prosecutor must transmit him/her an answer within 10 days after the registration of the request at the Prosecution Department he belongs to and if the answer is affirmative, that person has the right to ask to acknowledge the content of the protocols concluded after the surveillance and to hear the conversations or watch the images. The day when the author of the request acknowledges these aspects shall be the moment from which the term of appeal is being calculated. If the prosecutor does not transmit an answer to the initial request within 10 days, the term limit in which an appeal can be lodged shall be calculated from the day after the tenth day since the registration of the request at the Prosecution Department.

Significant is the fact that in case of limitation of human rights, the state must create clear rules by which the conditions that must be met are provided but also the procedure by which the persons concerned may contest the measures of the judicial bodies and claim compensation for the suffered damage. It is a part of the so-called ,,state self-obligation", Hans Kelsen ,,describing it as a reality that would consist of the fact that the existing, independent state under the rule of law, as social reality, firstly creates the law and then, so to speak, shall be willingly subjected to this law" (Kelsen, 2000: 367).

As regards the competence to solve the appeal, we consider that it must be established on a case-by-case basis depending on the moment when the subject of the surveillance is being informed about that measure.

Thus, if the prosecutor informs him/her during the criminal prosecution, according to art. 145 par. 1 Criminal Procedure Law, within 10 days after the cease of the measure, the judge of rights and liberties shall have the competence to render a decision about the appeal, having regard to art. 53 letter e Criminal Procedure Law. In our opinion, this article must be interpreted in the sense that the judge does not only have the competence to approve the use of the special methods and techniques of surveillance, but

also the competence to solve the appeal lodged in relation to the legality of the surveillance measures and of the way in which they have been enforced.

It might be said that, given that a judge approves a surveillance measure, he can no longer analyse in an objective manner the appeal concerning the legality of the measure. In this case, in order to avoid an eventual subjectivity of the judge who approved the measure, he might solve only the appeal concerning the way in which it was enforced. In return, the appeal that refers to the legality of the measure should be solved by the judge of rights and liberties of the court superior to that to which the judge that approved the measure belongs.

If the prosecutor informed the person subject to surveillance about this measure after the finalization of the criminal prosecution or after the closing of the proceedings, the competence to render a decision about the appeal would belong to the preliminary chamber judge from the court competent to try the main issue of the case. If the prosecutor notified the court by indictment, but the subject of the surveillance measure was not arraigned, but other persons, the question arises of the way in which the appeal is being solved.

A first version would presume that this appeal is analysed within the preliminary chamber procedure in the case formed at the court as a result of the notification through indictment, even if the appellant does not have any of the standing in the case provided by art. 344 par. 1 second thesis Criminal Procedure Law in order to formulate requests and exceptions.

This hypothesis shows several drawbacks starting from the fact that the person who wants to submit an appeal is not aware of the moment in which the preliminary chamber procedure starts. This problem can be solved through the establishment of the prosecutor's obligation that when a person is being informed that he/she was subject of a measure of technical surveillance he/she should be also informed about the solutions ordered against the persons investigated in the case and in case an indictment has been issued one should specify the the court seized.

Another drawback of this proposal is related to one of the aspects that make up the object of the preliminary chamber, respectively the legality of the way in which the criminal prosecution bodies have submitted the evidence and carried out the criminal prosecution acts. In this respect, the preliminary chamber judge checks these aspects from the point of view of the damaged party, of the defendant and of the other parties that take part in the criminal proceedings. Thus, by the conclusion with which the preliminary chamber procedure ends, the judge, if he considers that the requests or invoked exceptions are grounded either ex-officio or by the participants provided by art. 344 par. 1 second thesis Criminal Procedure Law, shall exclude the evidence that was illegally produced or shall apply the effects of relative or absolute nullity in case of acts of criminal prosecution. But these solutions are not a way of solving the appeal formulated by the subject of a surveillance measure, in the context where he/she, not having any standing in that case, does not follow or it does not help him/her that an evidence obtained by a technical method of surveillance will not be used anymore in the criminal proceedings, but he/she wants to obtain a fair compensation for the damage caused through the violation of the right to privacy or to the inviolability of the secrecy of correspondence through that measure.

In this context, we also call into question the possibility that the preliminary chamber judge analyses the appeal in a case different than the one created after the notification of the court through indictment, in which he should establish if, in relation with the appellant, the measure of technical surveillance has a legal character or the way

in which it was enforced has respected the inner and conventional rules as well as the requirements of the ECTHR's jurisprudence.

With respect to the procedure according to which the appeal will be solved, a possibility might be the one regulated by art. 341 Criminal Procedure Law, with the adjustment of the solutions that can be rendered, but, in our opinion, this procedure does not offer enough leverage both for appellant and for the judge for the legality of the surveillance to be analysed, given that evidence cannot be produced, but the decision is being rendered only on the basis of the acts in the criminal prosecution file and of the writs submitted by the appellant and no legal remedy can be exerted against it.

Another variant would be the procedure provided by art. 345 et seq. Criminal Procedure Law which presents more guarantees specific for a fair trial, given that, as a result of the decision of the Romanian Constitutional Court no. 802 of 05.12.2017 the participants in the criminal trial have the right to produce evidence that support the critics formulated with regard to the legality of an evidence. In this respect, in paragraph 32 of the decision, the Romanian Constitutional Court ascertained that ''the identity of the act of judicial inquiry realized under the Criminal Procedure Law of 1968 by the court and in the light of the new criminal procedural regulations by the preliminary chamber judge – in order to establish to what extent the criminal prosecution body ensured the legality of the procedure of obtaining and taking the evidence, requires the regulation in the phase of preliminary chamber of some identical procedural instruments, with the exclusion of any judicial formalism''.

An aspect that raises questions is connected to the magistrate that solves the appeal, in the sense that if it can be the same judge that was invested in the preliminary chamber procedure as a result of the notification of the court through indictment. In this respect, it may appear the risk of prejudgment regarding the legality of an evidence obtained through a technical method of surveillance whose legality was contested in both cases. In order to avoid this risk, in our opinion, the appeal formulated by a subject of the surveillance measure that was not arraigned, should be solved by another judge.

Regarding the solutions that can be rendered in the procedure of trying the appeal against a surveillance measure, in case the judge considers the appeal as grounded, he shall ascertain the illegal character of the surveillance measure or of the way in which it was enforced, ordering at the same time the destruction of the information obtained through that measure. In this respect, the conclusion of the Romanian Constitutional Court is significant. In paragraph 71 of the Decision no. 244 of April 6th 2017 it ascertained that ,,besides the positive obligation to regulate a form of *a postiori* control, that the person concerned can access in order to check the compliance with the conditions and, implicitly, of the legality of the measure of technical surveillance, the law-maker has the obligation to regulate also the procedure applicable to conservation and/or destruction of the intercepted data by enforcing the appealed measure."

Related to this solution, there is the matter of the effect concerning the evidence obtained through that surveillance measure if the evidence can be used in the case in which the arraignment of other persons was also ordered, given that one orders the destruction of the intercepted data.

When solving the appeal, the judge analyses the legality of the technical surveillance and of the way in which it was enforced from the point of view of the rights and interests of the person that submitted the appeal. In this respect, it is significant that at the time when the judge of rights and liberties ordered the technical surveillance analysed if the conditions provided by the law are met in relation with the person or

persons suspected to prepare or commit one of the offenses provided by art. 139 par. 2 Criminal Procedure Law.

Or, there can also be situations in which the appellant was not at first suspected of committing any offense and in the course of surveillance he/she became subject to it due to the friendship, family relations or of any other kind with the persons against whom investigations were conducted. In such cases, in our opinion, the legality of the surveillance is being analysed in terms of meeting or not meeting the conditions provided by art. 139 Criminal procedure Law at the time when the person who formulated the appeal started to be technically surveilled.

In this respect, the ECTHR's jurisprudence – Association for European Integration and Human Rights and Ekimdzhiev versus Bulgaria, request no. 62540/00, (ECTHR, 28th June 2007), par. 84 – highlighted the importance of the steps that must be undertaken in case of a surveillance measure, making a distinction between the initial stage – the authorization of the surveillance and the further stages specific for the enforcement, but during the entire procedure, even after the surveillance was concluded, it must give strong guarantees that should prevent an arbitrary and discriminatory surveillance, even if the measure is justified by considerations that are a matter of national security. In this sense, in doctrine it was shown that ,,one might say that, to the international community or to the jurisdictional body that is being summoned to check the fulfilment by a state of the commitments assumed in the matter, the result of the state activity is of interest in the first place; the obligation assumed is of result. But, domestically, he must act *prudently and with the necessary diligence* in order to achieve that result; the obligation is of prudence and diligence." (Bîrsan, 2005: 18).

Returning to the effect of the solution that might be rendered upon the appeal, regarding the case that has as object the investigation of the defendants arraigned through the indictment in which the facts of the case is also based on the evidence obtained by technical surveillance, in our opinion a distinction must be made, on one hand, between the stages in which the illegality intervened and, on the other hand, between the sanctions that may be imposed depending on the violated legal provisions.

Thus, if it is found that already at the time when the surveillance measure was approved, there was one or more reasons that would incur the illegality of the measure – for instance the measure was authorized by a judge from a court that did not have material competence to try the case in first instance or the offense investigated does not belong to the offenses provided by art. 139 par. 2 Criminal Procedure Law – the other stages of the surveillance procedure would also be affected. If the aspects of illegality appear during the enforcement of the measure then both the consequences on the surveilled persons and the weight of that stage in the entire procedure of obtaining the evidence 20 of the Decision no. 383 of 27.05.2015 that ,,the criminal law conceptually delimitates the three concepts: *evidence, piece of evidence and the procedure of taking evidence.* Although in the current legal language the concept of evidence often in a broad sense includes both *the actual evidence* and *the piece of evidence,* from the technical procedural point of view both concepts have *distinct contents and meanings.* Thus, the evidence is factual elements while the pieces of evidence are legal ways used in order to prove the factual elements." At the same time, the Romanian Constitutional Court highlighted both the differences and the connection between the *pieces of evidence and the procedures of taking evidence,* ''concepts that are in a causative relation''. In this respect, the protocols in which the prosecutor, or, where appropriate, the criminal investigation body replay the

communications, calls or recorded conversations, are pieces of evidence obtained through the procedure of taking evidence consisting in the measure of technical surveillance.

The nature of the violated rules has a particular importance having regard to the fact that the judge must establish if any harm was brought to the rights of the person that formulated the appeal, if it is necessary to impose any penalty to the procedure of taking evidence used for obtaining the piece of evidence and especially which is the manner in which the consequences produced by the interference in the private life are being repaired as efficiently as possible. In this sense, in doctrine it was shown that ,,the penalty of nullity, by its application, has the function to remove from the content of the criminal trial those acts that contain violations of the law and that are alleged or proven as harmful for finding the criminal justice." (Iliescu, in Dongoroz (coordinator), 2003: 406).

The Romanian Constitutional Court, in the relatively recently jurisprudence – Romanian Constitutional Court's Decision no. 51 of 16.02.2016, paragraph 32, underlined that ,,the illegality of the ordering, authorization, record or administration of the act incurs the penalty of relative or absolute nullity, according to the distinctions provided at art. 281 and 282 Criminal Procedure Law", so that, if the conditions provided by the provisions of art. 138-146 of the criminal law were not met, the evidence obtained through the measure of technical surveillance becomes null and void and cannot be used in the criminal trial according to art. 102 par. 3 of the same law.

Taking into account that the person who formulated the appeal was not arraigned in the case in which the technical surveillance was carried out, one can raise a question related to the appellant's interest to request to be ascertained that the evidence is null and cannot be used in the case in which the court was notified through the indictment. In other words, can the judge who solves the appeal order such a solution and, if the answer is affirmative, is that solution sufficient in order to remove the consequences of the violation of the appellant's rights? In our opinion, the judged appointed for solving, separately, the appeal formulated by the person who was not arraigned, cannot order the exclusion of the evidence as a consequence of its nullity, this solution being able to be rendered by the preliminary chamber judge invested with the indictment which is supported also by that evidence.

In return, when solving the appeal that was separately formulated, the judge can, he is even obliged to ascertain if there is any reason of relative or absolute nullity or not, because in the light of these reasons one can establish the legality or illegality of the surveillance measure in relation with the appellant.

With regard to the person who can formulate an appeal it is necessary to establish some criteria that the one who wants to use this procedure must follow, such as the period of time during which he was subject to surveillance, the number of data obtained through this measure, their nature. Thus, there are situations in which one hears only a short-term call of a person or he/she appears isolated in the images recorded in the surroundings, cases in which one raises the question of the interest to formulate an appeal by which one calls into question the legality of the surveillance measure and the destruction of the information resulted after the enforcement of this measure. In this respect, in the doctrine it was shown that ,, the right to be informed and to examine the results of the surveillance targets only the person concerned directly by the warrant, not the persons that communicated or had meetings or financial transactions with him/her and were incidentally recorded" (Bulancea, 2015: 445).

In relation with the provisions of art. 29 Criminal Procedure Law which regulates the participants in the criminal trial, we might say that the person that has the right to

formulate an appeal may be included in the category ,,other procedural subjects", as it is defined in art. 34 Criminal Procedure Law, respectively ,, any other persons (...) provided by the law having certain rights (...) in the criminal judicial procedures". In this sense, in doctrine it was shown that ,,it is obvious that, taking into account the principle itself of the generality of laws, their formulation cannot be of absolute precision and a certain imprecision is inevitable, even if this would be due to the wish to avoid an excessive rigidity that would impede the adaptation to the changes of situation. Therefore, a balance point between what is desired and what is possible must be sought" (Renucci, 2009 : 310).

Returning to the penalty of nullity, we notice that from the grounds of absolute nullity provided by art. 281 par. 1 letters a-f Criminal procedure Law, considering the procedure that must be followed in case of authorization and enforcement of surveillance, the appellant could invoke only the violation of the provisions regarding the ''formation of the court panel'' and ''the material competence and the personal competence of the courts when the judgement was performed by a court inferior to the one which was legally competent''.

If in case of absolute nullity appear no problems regarding the participants in the criminal trial that can invoke this nullity, being able to be also invoked ex-officio, the situation changes in case of relative nullity, given that art. 282 par. 2 Criminal Procedure Law expressly and restrictively regulates the participants to whom the law gives the right to invoke relative nullity, the appellant not being included in this category.

In this context, in our opinion, the amendment of these legal provisions would be necessary in the sense of including in the category of the participants in the criminal trial that can invoke the relative nullity of an act also of the persons who, although they were not arraigned, have the right to contest the measure of technical surveillance and to request the removal of the caused consequences. In this respect, the ECTHR jurisprudence is significant - Lambert versus France, request no. 88/1997/872/1084, (ECTHR, 24th August 1998), par. 34 – 41 – that considered that the provisions of art. 8 of ECTHR are violated, in case a national court appreciated that a person, whose calls have been tapped based on the surveillance of a third party's phone line, does not the standing in the case to formulate a complaint against the way in which the extension of the measure was ordered, the European court ascertaining that that person did not benefit from an actual control of the measure, which must be respected in a state under the rule of law. In this sense, in doctrine it was shown that the direct effect presents the essential consequence to confer the litigant a right to action and, accordingly, to give the national judge a right to rule. The national judge is a judge of common law of International Convention with direct effect: first of all, he has the task to ensure the penalty of the right guaranteed by this Convention, especially in case of the European Convention on Human Rights" (Sudre, 2006: 159).

The time limit within which the relative nullity can be invoked by the appellant bears certain discussions in relation with the provisions of art. 282 par. 3 and 4 Criminal Procedure Law. Thus, if in the course of criminal prosecution the prosecutor informs the subject of the warrant of technical surveillance, within 10 days after the cease of the measure, about its existence, according to the provisions of art. 145 par. 1 Criminal Procedure Law the person surveilled has the right to immediately address the appeal to the judge of rights and liberties or to the one who approved the measure or to the one from the superior court, depending on what stage of the measure he/she understands to contest, when he/she will invoke the grounds of relative nullity. After this judge rules, one can raise the question whether the person that formulated the appeal can, after the finalization of the criminal prosecution, turn to the preliminary chamber judge in order to invoke the

same grounds of relative nullity. In this respect, the Romanian Constitutional Court in the paragraph 23 of the Decision no. 126 of 09.03.2017 retained that ,,in case of examination, in the preliminary chamber procedure, of the legality of the resolutions of the judge of rights and liberties – the preliminary chamber judge shall ascertain the eventual cases of nullity and shall exclude the evidence produced with the illegal authorization/confirmation of the judge of rights and liberties just by analysing the aspects of legality and without transforming the preliminary chamber in a legal remedy." In our opinion, the considerations of the Romanian Constitutional Court's Decision are applicable in the preliminary chamber procedure whose object is being regulated by the provisions of art. 342 Criminal Procedure Law, not in the cases in which the person was subject to a surveillance measure, but he/she was not arraigned, but in the course of criminal prosecution contested the legality of this measure or the way in which it was enforced in front of the judge of rights and liberties and the appeal was rejected. If one would accept the idea according to which the same grounds of relative nullity could be invoked two times, in different procedural stages, by the person who was not arraigned, a more favourable situation would be created to him/her comparatively to the persons who were arraigned, given that they can invoke the grounds of relative nullity only in front of the preliminary chamber judge in the case in which they are defendants.

In return, if the person who was not arraigned invokes new grounds of relative nullity after the end of the criminal prosecution might formulate another appeal in the stage of preliminary chamber.

Another question connected to the right of the person to whom the prosecutor, in the course of the criminal prosecution, communicated him/her, according to the provisions of art. 145 par. 1 Criminal Procedure Law, that he/she was subject to a surveillance measure, is that if he/she can wait for the criminal prosecution to be over or is he/she obliged to formulate it within a certain time limit after the receipt of the information in order to be solved by the judge of rights and liberties?

In a first thesis, it might be said that it would be necessary to establish a certain time limit, from the date of the notification, with a sufficiently long duration, within which the subject of the warrant of surveillance may formulate the appeal, in order not to prolong in time the negative consequences of the surveillance on that person. The situation would get complicated if, after the notification carried out by the prosecutor, according to art. 145 par. 1 Criminal Procedure Law, the subject of the surveillance measure becomes suspect or even defendant and he/she is being arraigned, so that in the preliminary chamber procedure he/she has the right to invoke requests and exceptions regarding the legality of producing the evidence and of the acts carried out the criminal prosecution bodies. In practice, such situations do not occur, because the prosecutor postpones the notification until the end of the criminal prosecution, respectively the close of the case. But, theoretically, the occurrence of such cases would be possible, a context where one would raise the question of the effects of the resolution by which the judge of rights and liberties solved the appeal in the course of the criminal prosecution, on the way in which the preliminary chamber judge shall solve the requests and exceptions invoked by the same person, as defendant, regarding the evidence obtained through the surveillance measure. In our opinion, the preliminary chamber judge cannot analyse any longer aspects related to the legality of the measure of technical surveillance of the same person, which the judge of rights and liberties checked when solving the appeal, because, otherwise, the resolution rendered by the judge would have no effect, would be purely formal and, on the other

hand, would give a subject of the surveillance measure the possibility to repeatedly invoke critics of illegality, although these were solved by a final court judgment.

In this context, in our opinion, the second thesis is more appropriate, in the sense that the person that was informed by the prosecutor, in the course of the criminal prosecution, according to art. 145 par. 1 Criminal Procedure Law, that he/she was subject of a surveillance measure, can wait for the moment of finalization of the criminal prosecution, in order to see what solution the judge shall give, after that, even if he/she was not arraigned, to benefit from the right to contest the legality of the measure in front of the preliminary chamber judge. This thesis is being supported also by the provisions of art. 282 par. 4 Criminal Procedure Law, according to which the relative nullity, if it occurred in the course of criminal prosecution, may be invoked until the finalization of the preliminary chamber procedure.

In the case in which the notification of the surveilled person about the existence of the measure has been postponed until the end of the criminal prosecution or, where appropriate, until the close of the case, according to art. 145 par. 5 Criminal Prosecution Law, the grounds of relative nullity may be invoked by the person who was not arraigned, after the time of the notification they are about to be analysed by the preliminary chamber judge.

There are also situations in which a person that was subject to a warrant of surveillance was not informed by the prosecutor about this measure and he/she finds out accidentally, after the finalization of the criminal prosecution and the close of the preliminary chamber procedure, about this measure, so that one can raise the question of the time limit in which the relative nullity can be invoked. In our opinion, the subject of the surveillance cannot be affected by a circumstance that cannot be attributed to him/her, a context where this can invoke the grounds of relative nullity regarding that measure, after he actually acknowledged its content and the information obtained by the enforcement of the measure, because only after this moment he/she can appreciate, if any right has been violated and if he/she has suffered any damage.

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Abbreviations
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