

NULLITY OF INVESTIGATION PROCEDURES FOR COLLECTING AND PRESENTING EVIDENCE (1)

بُطْلانُ إجراءات التحقيق المتعلقة بجمع وتقديم أدلة الإثبات

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Abstract

The Code of Criminal Procedure addresses the provisions of nullity on collecting and presenting evidence that are relevant to our study within Articles 157 to 161, under the title: "On the nullity of investigation procedures. These procedures, as a general rule, do not extend to the preliminary investigations conducted by judicial police.

The nullity that pertains to judicial investigations is classified into two distinct categories: (1) nullity according to the disposition of article 157, and (2) nullity for violating the essential provisions stipulated within the scope of the judicial investigation, which are procedures whose violation harms the position of any party in the action.

The judicial orders issued by the investigating judge are subject to cancellation or amendment by the indictment chamber as the second stage of investigation (and when necessary, to cassation by the Supreme Court), and this is done through the use of appeal methods and is not subject to nullity provisions.

Keywords: Evidence- Nullity- Investigation Procedures- Essential Provisions- Indictment Chamber.

ملخص

تناول قانون الإجراءات الجزائية أحكام البطلان المتعلقة بجمع وتقديم أدلة الإثبات، التي تهم هذه الدراسة في المواد 157 إلى 161 منه تحت عنوان: «في بطلان إجراءات التحقيق». وهي إجراءات لا تعني، كقاعدة عامة، التحريات الأولية التي تقوم بها الضبطية القضائية.

والبطلان الذي يلحق إجراءات التحقيق القضائي نوعان؛ الأول بطلان بنص القانون حسب المادة 157، والثاني بطلان لمخالفة الأحكام الجوهرية المقررة في باب التحقيق القضائي. وهي تلك الإجراءات التي يترتب على مخالفتها إلحاق الضرر بمركز أي خصم في الدعوى.

علما أن الأوامر القضائية التي يُصدرها قاضي التحقيق تخضع للإلغاء أو التعديل من طرف غرفة الاتهام باعتبارها الدرجة الثانية للتحقيق (وعند الاقتضاء إلى النقض من طرف المحكمة العليا)، ويكون ذلك عن طريق استعمال طرق الطعن ولا تخضع لأحكام البطلان.

الكلمات المفتاحية: أدلة الإثبات - بطلان - إجراءات التحقيق - الأحكام الجوهرية - غرفة الاتهام.

¹ - Translation prepared by the Technical Secretariat of the Algerian Journal Law and Justice.

Introduction

If the accused and his defense believe that evidence contained in the prosecution's case file, submitted to the court to support a conviction, was not obtained lawfully or is otherwise invalid, and that it is in the accused's interest to have it declared void so it cannot be used to support a conviction, what means are available to achieve this end?

Given that we are within the scope of public prosecution, it is necessary to refer to the Code of Criminal Procedure to find the answer. Additionally, jurisprudence addresses issues that the legislator might avoid or overlook.

The Code of Criminal Procedure addresses the rules of nullity relevant to this study in Articles 157 to 161 (five

articles) under the title: "On the Nullity of Investigative Procedures" in the tenth section of the first chapter of the third part, which pertains to investigative authorities.

It is important to note that the legislator has confined these nullity rules exclusively to the third part concerning judicial investigations, as explicitly stated in Article 159: 'Nullity also results from the violation of the substantive provisions stipulated in this part, in contrast to the provisions stipulated in Articles 100 and 105, if their violation results in a breach of the rights of the defense or the rights of any party in the trial.' Therefore, according to the provisions of the Code of Criminal Procedure, the rules of nullity do not extend to the initial investigations conducted by the judicial police, which are included in the second part of the law¹. These encompass police

¹- According to article 63 of the Code of Criminal Procedure, a preliminary investigation (*Enquête préliminaire*) refers to the initial inquiries, which are different from the investigations carried out in cases of *flagrante delicto* or judicial delegation. These initial enquiries and evidence-gathering activities are carried out by the judicial police as soon as they become aware of a crime, either on the instructions of the public prosecutor or on their own initiative. Their aim is to gather as much information as possible about the acts and persons involved in the crime. This is done without the use of coercive measures, unless authorised by the Public Prosecutor, be it the presence of persons, their statements or the search of premises. The aim is to provide the prosecution with sufficient information to enable it to take appropriate action, either by continuing with criminal proceedings or by dismissing the case. Therefore, the activities of the preliminary investigation are not intended for the trial judge to use as evidence, but for the prosecution judge to assess the appropriateness of prosecution. As a result, the judicial police report cannot, as a general rule, be considered as evidence or a presumption for the establishment of a verdict, unless otherwise provided by law (e.g. in the case of infringement reports). Instead, they allow for the initiation of discussion in order to arrive at evidence and presumptions.

Investigative procedures, as defined by Advocate Ehab Abdel Mottaleb, Vice President of the Egyptian Court of Cassation, in his book "Nullity in Investigative Procedures" (p. 13), are "a set of preliminary procedures that precede the initiation of criminal proceedings and aim to gather information about a crime committed so that the investigating authorities can decide whether it is appropriate or permissible to initiate criminal proceedings".

Therefore, it is permissible to conduct preliminary investigations regarding crimes that legally require authorization or a prior complaint for the validity of initiating public prosecution, even without such authorization or complaint. There can

be no objection or challenge to the validity of such reports if they are made without fulfilling that condition, as preliminary investigations do not imply that public prosecution has been initiated until the prosecution decides so. If the prosecution wishes to initiate the case, it must ensure at that point that the authorization or complaint is valid.

This aligns with Article 12, paragraph 3, of the Code of Criminal Procedure, which states that "judicial police are entrusted with the task of investigating and detecting crimes established by the Penal Code and gathering evidence and identifying perpetrators as long as a judicial investigation has not commenced." Article 13 further adds: "If an investigation is initiated, the judicial police must execute the mandates of the investigative authorities and comply with their requests," which is done through judicial delegation. The activities performed by the judicial police officer within this framework are considered part of judicial investigation and not of preliminary inquiries.

Before the enactment of the French Code of Criminal Procedure in 1958, preliminary inquiries were referred to as "informal inquiries" and had no legal basis until the Code provided for them in Article 75 and subsequent articles.

Preliminary investigations are characterized by the absence of coercion and compulsion as a general rule, whether in relation to the suspect, witnesses, or others, except with the authorization of the public prosecutor. They are also distinguished (at least currently) by the absence of legal counsel during their conduct, on the grounds that the procedures at this stage do not constitute evidence directed at the trial judge but merely gather information for the prosecution. However, practical reality suggests otherwise, as the majority of misdemeanor cases are referred to court through direct summons, meaning the file contains only the judicial police reports. Consequently, the trial judge is presented with these preliminary findings "only." Given that evidence in criminal matters is free and judicial precedents from Courts of

investigations in cases of flagrante delicto and ordinary preliminary investigations as stipulated in Articles 41 to 65 bis 18 of the Code of Criminal Procedure.

This means that the Code of Criminal Procedure does not specify the procedure to be followed if the judicial police's investigations violate legal requirements for collecting and presenting evidence, whether it involves the arrest of individuals, holding them in custody, taking statements, conducting searches, or carrying out expert evaluations. Consequently, if we were to adhere strictly to the letter of the Code of Criminal Procedure, it would not be possible to invoke the nullity of procedures carried out by the judicial police. A clear example of this is highlighted by Dr. Ahsan Bouskia, who pointed out the 'fate of search or seizure procedures carried out without observing the procedures required by Articles 45 and 47 of the Code of Criminal Procedure, for which Article 48 provides for nullity due to their violation.' Dr. Bouskia concluded that the provisions of Article 48 of the Code of Criminal Procedure remain ineffective or without impact due to the absence of mechanisms for their implementation.

For comparison, we note that Article 170 of the French Code of Criminal Procedure allows the investigation chamber (indictment chamber) to annul

any procedure or document without distinguishing between the actions of the judicial police and those of the judicial investigation. The text states: "In all matters, during the course of the investigation, any procedure or document in the case file may be submitted to the investigation chamber for annulment by the investigating judge, the public prosecutor, the parties, or the assisted witness."

Art. 170 CPPF « En toute matière, la chambre de l'instruction peut, au cours de l'information, être saisie aux fins d'annulation d'un acte ou d'une pièce de la procédure par le juge d'instruction, par le procureur de la République, par les parties ou par le témoin assisté »¹.

Similarly, Article 333 of the Egyptian Code of Criminal Procedure states: "Except in cases referred to in the previous article (nullity related to public order), the right to invoke the nullity of procedures related to evidence collection, preliminary investigation, or trial investigation in misdemeanors and felonies is forfeited if the accused has a lawyer and the procedure was carried out in their presence without objection. In contravention matters, the procedure is considered valid if the accused does not object, even if they do not have a lawyer present at the session. Furthermore, the right to invoke nullity is also forfeited for the public prosecution if it is not asserted in due time."

Cassation (in Algeria, France, and Egypt) do not fundamentally object to establishing a conviction based on any presumption or evidence that convinces the judge, verdicts are often based on statements made before the judicial police even if they are not reiterated in court. Some judges, in practice, do not differentiate between police reports and investigation reports, and sometimes confront the accused or witness during the session with their statements in the police reports, confirming the latter with the former. While this falls within the discretionary power granted by the legislator to trial judges, the distinction between the two types narrows despite the significant legal differences between them. The general characteristic of investigative reports is the absence of guarantees that provide the highest degree of

credibility to the procedural work, especially:

- Failure to administer the legal oath to witnesses.
- Not allowing the lawyer to be present alongside the suspect or the accused.
- Drafting the report does not require the presence of a sworn clerk who signs alongside the judicial police officer and the parties.

¹ - Article 170 of the French Code of Criminal Procedure: "In any matter, the investigating chamber may, during the investigation, be seized for the purpose of annulling an act or a piece of evidence in the proceedings by the investigating judge, by the public prosecutor, by the parties, or by the assisted witness".

Therefore, under the provisions of the Code of Criminal Procedure, the concerned party has the option to highlight the defects that have marred the work of the judicial police before the investigation chamber or the trial court, with the aim of demonstrating their nullity due to legal violations, questioning their credibility, and requesting their exclusion. However, these jurisdictions cannot declare their nullity due to the lack of legal grounds. Instead, they can only highlight the defect and decide to exclude the evidence, except where the law explicitly states that a specific procedure is null if it violates the law, such as the nullity of a search warrant according to the penultimate paragraph of Article 44, which states: "The aforementioned warrant must include a description of the offense under investigation and the address of the places to be visited for search and seizure, under penalty of nullity."

Additionally, the nullity of search procedures is clearly stated in Article 48 if there is a violation of the provisions of Articles 45 (manner of search) and 47 (timing of search) of the Code of Criminal Procedure. Similarly, the second paragraph of Article 65 bis 12 regarding infiltration stipulates: "A judicial police officer or agent is permitted to use an assumed identity and, if necessary, to commit the acts mentioned in Article 65 bis 14 below. These acts shall not, under penalty of nullity, constitute incitement to commit crimes." Moreover, the requirement to justify the authorization for infiltration, as per Article 65 bis 15, states: "The authorization granted pursuant

to Article 65 bis 11 above must be written and reasoned, under penalty of nullity." These are the only instances where the legislator has stipulated the nullity of the actions of the judicial police.

I- Types of Nullity

Regarding the nullity of judicial investigation procedures, it is customary to classify the nullity affecting such actions into two types:

1. Nullity by Law

This is stipulated in Article 157 of the Code of Criminal Procedure:

"The provisions prescribed in Article 100 concerning the interrogation of the accused and Article 105 concerning the hearing of the civil plaintiff shall be observed; otherwise, the procedure itself and the subsequent procedures shall be nullified.

"The party whose rights under these articles have not been observed may waive the nullity and thereby validate the procedure. The waiver must be explicit and can only be made in the presence of the lawyer or after the lawyer has been lawfully summoned."

Article 100 pertains to the first appearance of the accused before the investigating judge. The judge must inform the accused of every charge against him, warn him that he is free not to make any statement, inform him of his right to choose a lawyer or have one appointed by the

judge, and inform him of the obligation to notify the judge of any change in address. Article 105 relates to the requirement of hearing the accused or the civil plaintiff in the presence of their lawyers, unless they waive this right. It specifies the manner of summoning the lawyer and allowing him to examine the lawsuit file.

2. Nullity for Violating Fundamental Rules of Judicial Investigation:

This type of nullity arises if a violation breaches the defence's rights or to any other party in the case, the "substantive procedures" referred to in Article 159 of the Code of Criminal Procedure are those procedures whose violation causes harm to the position of any party in the case. This includes procedures related to site visits and inspections (Article 79 of the Code of Criminal Procedure), hearing witnesses (Article 88 of the Code of Criminal Procedure), and interrogation and confrontation (Article 100 of the Code of Criminal Procedure). In contrast, "non-substantive procedures" are those whose violation does not harm to the parties, such as:

- Failure to number and inventory the case file documents by the investigating clerk in chronological order, or in accordance with the date of its submission to the judge (Article 68).
- Choosing two witnesses who are not relatives of the accused when searching their residence (Article 83).

- Failure to mention the occupation of the witness.
- Not imposing a fine on a defaulting witness who provided testimony later.
- Summoning the accused by a letter sent less than two days before the interrogation, provided the accused appeared on time and did not raise any objection.
- Not including in the interrogation report a question submitted by the defence that was rejected by the investigating judge.
- Failure to conduct a review hearing in criminal matters (as the Arabic text makes it optional, unlike the French text (Article 108).
- Returning the letter rogatory to the investigating judge after more than eight days have passed since its execution.

Therefore, nullity may affect all actions taken by the investigating judge aimed at gathering evidence, starting from the initial interrogation, followed by site visits and inspections, hearing witnesses, interrogation and confrontation, letters rogatory, and expert reports. However, judicial orders issued by the investigating judge are naturally subject to annulment or amendment by the Indictment Chamber as the second level of investigation (and, if necessary, to cassation by the Supreme

Court). This is achieved through the implementation of appeal methods and is not subject to the nullity provisions we are discussing, which relate to other procedures conducted by the investigating judge. Similarly, this does not concern petitions and memoranda submitted by the parties, as they are not actions taken by the investigating judge.

In other words, nullity applies to all procedures carried out by the investigating judge except those subject to appeal. Complaints about these cannot be raised through nullity requests but must follow the appeal methods prescribed by law. Thus, the rejection of civil claims, orders concerning preventive detention, and orders for disposition after the completion of the investigation (such as dismissal orders, referral orders, or orders to transmit documents) are subject to appeal before the Indictment Chamber according to the procedures specified in Articles 170 and following of the Code of Criminal Procedure and cannot be requested to be nullified or raised as a plea.

II- Who Can Request Nullity, and Which Authority is Competent to Rule

According to Article 158 of the Code of Criminal Procedure, the request for nullity during the judicial investigation process can only be made by the investigating judge or the public prosecutor. The article states:

“If the investigating judge deems that a procedural act of the investigation is null,

he must refer the matter to the Indictment Chamber of the Court, requesting the annulment of this procedure after consulting the public prosecutor and notifying the accused and the civil plaintiff.

If the public prosecutor finds that nullity has occurred, he shall request the investigating judge to send him the case file to forward it to the Indictment Chamber and submit a request for nullity. In both cases, the Indictment Chamber shall proceed in accordance with Article 191.”

This means that other parties do not have the right to initiate such a request.

The concerned parties must then request the investigating judge or the public prosecutor to submit a nullity request to the Indictment Chamber. If the request is refused, the parties cannot directly submit it to the chamber. However, the parties still have the opportunity to invoke nullity when the case file is presented to the Indictment Chamber in connection with the appeal of an order related to the nullified procedure, or when the case is submitted to the chamber following a settlement order. This was confirmed by the decision of the Criminal Chamber of the Supreme Court issued on 02/02/2005, ruling on appeal number 362769, which states as follows (we provide the full text due to its importance):

The Supreme Court, “After hearing Mr. Sidhem Mokhtar, the Reporting Judge, in the reading of his written report, and Mr.

Belhouchet Ahmed, the Advocate General, in his written requests.

After reviewing the cassation appeal filed by (M. – M.) against the decision of the Indictment Chamber of the Algiers Court issued on 16/05/2004, confirming the appealed order issued by the investigating judge of the fifth chamber of the Sidi M'hamed Tribunal, dated 04/04/2004 rejecting the nullity of procedures related to the recording of a video tape by the judicial police and the resulting detention of the appellant based on new evidence.

Whereas the appeal regarding the request for annulment has met its legal formalities and is acceptable in form, it is nonetheless not permissible with respect to provisional detention.

Whereas the Advocate General at the Supreme Court submitted written motions aimed at rejecting the appeal.

Whereas the appellant lodged a supporting memorandum through his lawyer, Mr. Kasmi El-Hajj, raising dual grounds for appeal.”

In the first aspect, whereas from the violation of a fundamental procedural rule, the order of the second detention dated 08/02/2004 and the supporting decision were based on procedurally and substantively invalid procedures, namely a video tape with sound and image, because the interrogation that came in the video tape was recorded outside working hours

for the judicial police and after the report was closed and signed by the accused and the investigating officers, without a judicial permission.

Whereas it appears from the lawsuit documents that the appellant submitted the request for nullity to the same investigating judge, while Algerian legislation does not allow the accused or the civil party to the request for nullity of the procedures except before the indictment Chamber on the occasion of appealing against an annulled procedure or on the occasion of presenting the case to that Chamber after the settlement order to the investigating judge, such as the order to send documents to the public prosecutor, which was not done in the current lawsuit. As during the investigation, the nullity request can only be made by the investigating judge or the prosecutor.

In the course of the investigation, a plea for nullity can only be made by the investigating judge or the public prosecutor.

Whereas, on the other hand, the nullity only concerns the investigations that the judge himself executes, and what the judicial police officers carry out in collecting information, whether by records or others, does not include this, considering that the court does not accept it except for reference, and it is not possible to request its nullity. Instead, the concerned party may, if it deems it necessary, request not to take it before the competent court, which alone has the right to determine its importance.

The second aspect relates to the violation of Article 131 of the Code of Criminal Procedure, on the grounds that the investigating judge has issued a second detention order based on what was stated in the video, despite the fact that this video was part of the evidence submitted to the prosecution at the time of the opening of the investigation, and that the Article 175 of the Code of Criminal Procedure which defines the conditions of new evidence, states that any evidence, whether witness statements, papers, or records, that have not been submitted to the investigating judge for examination.

Whereas, what has been raised by the appellant in this regard relates to provisional detention, which is not permissible to appeal according to paragraph (a) of Article 495 of the Code of Criminal Procedure.

For the above reasons, the Supreme Court - Criminal Division - First Section, rules as follows:

Rejecting the appeal regarding provisional detention for its legal inadmissibility, and accepting it formally concerning its procedural nullity while rejecting it substantively. Costs are to be borne by the appellant.”

As for the judicial authority, it is worth to begin with the Criminal Court, which does not entertain any plea related to the nullity of investigation procedures, whether conducted by the investigating judge or the indictment chamber. This is because the validity of the Court’s decisions and all preceding investigation procedures are

subject solely to the supervision of the Supreme Court, in accordance with Article 201 of the Criminal Procedure Code, which states:

‘The provisions of Articles 157, 159, and 160 concerning the nullity of investigation procedures apply to this chapter. The validity of the decisions of the indictment chamber and the preceding investigation procedures are subject to the sole oversight of the Supreme Court if the indictment chamber has ruled on their validity.’

Thus, when a referral decision becomes final, it purges all preceding investigation procedures of procedural defects entirely, with the Criminal Court only considering subsequent procedures (court formation, preparatory procedures for the session, and trial).

As for other criminal courts, particularly the Misdemeanor Court, they are not permitted to rule on the nullity of investigation procedures if the case has been referred to them by the Court of Appeals, as the referral decision fully rectifies any prior defects, similar to the situation with the Criminal Court. However, if the referral is based on an order from the investigating judge, the court can rule on the nullity of investigation procedures, provided the concerned party raises this issue before any substantive defense; otherwise, it is deemed inadmissible. If the court rejects the request, the concerned party must reassert it before the Judicial Council prior to engaging with the substantive matter. If the Council also rejects the request, the

concerned party may then pursue it before the Supreme Court on appeal. Failure to reassert it before the Council is considered abandonment, and it cannot be raised before the Court of Cassation unless the nullity pertains to public policy. In such a case, the issue can be raised and upheld at any stage of the proceedings, even if it is for the first time before the Supreme Court.

Naturally, if the referral before the court is pursuant to direct summons, apprehension, or a request to appear, initiated by the plaintiff, the lawsuit file does not include any proceedings of the judicial investigation. Thus, under the current provisions of the Criminal Procedure Code, the parties are only entitled to reveal defects related to evidence gathering procedures and request that the judgment judge not rely on them to establish conviction, except in specific cases where the Criminal Procedure Code stipulates nullity (search and seizure)."

III- Effects of Nullity

If the Court of Appeals decides on the nullity of a certain procedure, it states that such nullity is limited to the challenged procedure alone, or extends partially or completely to subsequent procedures (Article 159/1 of the Criminal Procedure Code). The documents related to the nullified procedures are removed from the investigation file and deposited with the Registry of the Judicial Council, as per Article 160 of the Criminal Procedure Code. These documents cannot be referenced to establish any element or accusation against adversaries during pleadings, under the

threat of disciplinary penalties applicable to both judges and lawyers (Article 160-02 of the Criminal Procedure Code).

If the nullity does not pertain to public policy but rather to a specific party's interest, that party may explicitly waive reliance on the nullity, resulting in an automatic correction of the procedure.

After ruling on the nullity, the Indictment chamber takes charge of the procedure or refers the file back to the same investigating judge or another judge to continue the investigation procedures (Article 191 of the Criminal Procedure Code).

IV- Nullity of Evidence During Trial

In the preceding sections, we discussed the plea of nullity of procedures for gathering and presenting evidence during the preliminary investigation and judicial inquiry stages. As for procedures related to evidence during trial, whether before the first instance or appellate courts, the general concept of the plea of nullity remains unchanged, but the manner in which the issue is addressed can vary.

The nullity that becomes apparent at this stage is fundamentally due to a violation of substantive procedural rules, a breach of law, or errors in its application. Various scenarios can be cited to illustrate this:

- Accepting evidence outside the scope of pleadings, without being openly discussed, such as presenting evidence to the judge during deliberations and relying on it to substantiate the verdict. Such actions are

void for contravening Article 212 of the Criminal Procedure Code, which requires evidence to be presented during pleadings and openly discussed.

- Convicting the defendant because they failed to prove their innocence. This argument is invalid for violating the general principles of burden of proof, which require that the defendant is presumed innocent until the prosecution presents sufficient evidence to prove guilt.

- Relying on evidence obtained through illegal methods, such as coerced confessions or evidence seized during an unlawful search of premises, or unauthorized recordings through illicit surveillance. Similarly, evidence obtained through unfair actions by law enforcement, including inducement to commit a crime followed by apprehension, is inadmissible.

- Using the defendant's absence from a trial session as evidence against them and convicting them on that basis, under the pretext that they failed to provide evidence to counter the charges. This reasoning violates the presumption of innocence and the defendant's right to silence, without being compelled to incriminate themselves.

- Administering an oath to the defendant to obtain "truthful" statements. This breaches fundamental procedural rules because oaths are intended for witnesses, not defendants, as they impose moral coercion that affects the defendant's will and freedom to express themselves.

- Considering the defendant's confession

as conclusive evidence without discussion or fragmentation, akin to civil law provisions on confessions. This contravenes Article 213 of the Criminal Procedure Code, which states that confessions, like all forms of evidence, are subject to the judge's discretion.

If a reason for nullity arises at the court level, the concerned party must plead it using appeal methods. In cases of absentia judgments, opposition reinstates the situation as if Article 409 of the Criminal Procedure Code had not been enacted, and the trial is entirely retried. In cases of appeal, if the appellate court confirms the identified nullity, it annuls the judgment and reviews the matter anew, in accordance with Article 438 of the Criminal Procedure Code, which stipulates actions in case of void judgments due to violations or omissions irreparable under statutory conditions.

If the Court of Appeal judges do not respond to the plea, or if there is a violation of evidentiary rules at the appellate level, there is no alternative but to bring the matter before the Supreme Court, which is responsible for overseeing the application of the law. The issue is addressed through grounds for appeal derived either from the violation of procedural rules, violation of the law, or error in its application. Naturally, if the issue pertains to public policy (such as directing witnesses to take an oath or exempting them from it), the Supreme Court will address and decide on it. However, if it concerns the private interest of the appellant (such as challenging a search warrant), the appellant is required to demonstrate that he

has suffered damage and to maintain his plea before the appellate judges.

Conclusion:

In examining the subject of the nullity of procedures for collecting and presenting evidence in criminal matters, it is evident that nullity can take two forms: nullity by law and nullity for violating essential rules within judicial investigation proceedings. If a procedural defect affects an investigative step, a request for nullification can be made during the judicial investigation phase, but only by the investigating judge or the public prosecutor. The defendant or the civil party, however, may not request the nullification of procedures except before the Indictment Chamber, either during an appeal of an order linked to the nullified procedure or when the entire case is brought before the chamber after the investigating judge's settlement order.

It is established that once the referral order becomes final, it cleanses all previous investigative steps of any procedural defects, meaning that the Criminal Court will only examine procedures occurring after the referral. The same principle applies to the Misdemeanor Court.

If the referral is made to the Misdemeanor Court under an order from the investigating judge, the trial court has the authority to declare investigative steps null, provided that the concerned party requests it before raising any defense on the merits. Otherwise, the request will be inadmissible, unless the nullity is related to public order, in which case it can be raised and argued at any stage of the proceedings, even for the first time before the Supreme Court.

When the Indictment Chamber declares a certain procedure null, it will state whether the nullity is limited to the contested procedure or if it extends, partially or entirely, to ancillary proceedings. Any invalidated documents are then removed from the investigation file and deposited with the court clerk's office, and it is prohibited to refer to them to derive any element or accusation against the parties during the trial. Violation of this rule may result in disciplinary sanctions for both judges and attorneys. However, if the nullity does not pertain to public order and concerns the interest of a specific party, that party may expressly waive the right to invoke the nullity, in which case the procedure will be automatically corrected.