A PRACTICAL EXAMINATION OF THE USE OF EVIDENCE BEFORE MAGISTRATES OF THE PRELIMINARY CHAMBER

Lucian CHIRIAC

ABSTRACT: The Romanian Constitutional Court ruled through two decisions, nr.641 of 11 November 2014 and nr.802 of 5 December 2017, accepting the hypothesis in which any means of evidence is acceptable during the phase of the preliminary chamber hearing, and, we would add, not only to verify the legality of administrating evidence during the criminal indictment. It is our opinion that the preliminary chamber must constitute a bastion of verifying the necessary evidence for establishing the truth in a trial.

KEYWORDS: preliminary chamber; preliminary judgment; preliminary hearing; evidence; proof; discovery; Constitutional Court; legality

JEL CODE: K 4

1. INTRODUCTION

Although the Romanian Constitutional Court ruled through two decisions, nr.641 of 11 November 2014 and nr.802 of 5 December 2017, that the "objective of this procedure (preliminary chamber) is to establish if the criminal complaint and the prosecution are able to lead to a criminal trial, or require redoing", the magistrates of the preliminary chamber behave quite timidly or even reluctantly, generally refusing to admit that this procedure should involve "any means of evidence", however this could lead to "clarifying the facts, which can have a consequence on the rule of law" (§19 from Decision nr.802/2017).

Generally speaking, the prosecutor and the judge have been inflexible in accepting that "any means of evidence" practically meant that the institution of the magistrates' independence consisted precisely of the freedom to act of dispensing justice, through an "examination of the legality of the discovery and the materials of the prosecution." By eliminating any judicial formality, one reaches the conclusion that the independence of the magistrates of the preliminary chamber will enable them to administer as evidence, outside "any written evidence", any means of evidence without any distinction, directly and against all the parties involved.

*Professor PhD, University of Medicine, Pharmacy, Sciences and Technology Tîrgu-Mureş, ROMANIA.

1 Published in the Official Gazette of Romania nr.887 of 5 December 2014
2 Published in the Official Gazette of Romania nr. 116 of 6 February 2018
3 See Decision of the Romanian Constitutional Court nr. 802/2018 §15