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Preventive measures

Sandu Cristina Emanuela

Independent researcher

Abstract. The first fundamental human values, namely individual freedom of the person together with freedom of religion, were the main human rights. According to the Romanian Constitution, the fundamental law of the country, the right to liberty is considered to be the most important right of citizens and, at the same time, it is the subject of many conventions, treaties, as well as other acts to which Romania is a party. Individual liberty and security of person may not be violated and shall enjoy special protection in accordance with the principles and norms of international and domestic law. Being part of a social formation, man is obliged to respect the norms that the state institutes. The restriction of man's freedom must not lead to its annulment, nor must the power of coercion be taken to an extreme, and therefore, in order to remove all suspicion, the intervention of law arises, adapting social relations so as to ensure the balance between coercion and freedom. However, human rights and fundamental freedoms are linked in a well-defined circumstance, which leads to the strengthening of the rule of law. Deviation from the legal order established by the state by citizens leads to the application of a sanction provided for by the law in force. The purpose of this paper is to explore the notions of "procedural measures" and "preventive measures", the classification of procedural measures, as well as preventive ones, the competence of judicial bodies, the role and importance of preventive measures, the general conditions for applying preventive measures, the analysis of preventive measures, as well as their taking, replacement, revocation and legal termination, and last but not least, the remedies by which preventive measures were ordered.

Keywords. preventive measures, code, defendant, judge, warrant

1. Getting started

1.1. Definition and classification of procedural measures

Criminal procedural law measures consist of procedural measures and procedural measures, which may be taken by the court or judicial bodies, in order to ensure the normal conduct of criminal proceedings.

In the specialized literature we find a wide range of definitions regarding procedural measures. Procedural measures are those means provided by criminal law, of restriction or deprivation, which infringe fundamental human rights and freedoms¹ and may be ordered by courts or criminal investigation bodies, in order to ensure the proper conduct of criminal proceedings.²

¹Magdalena Iordache, *Criminal Procedural Law – Manual of individual study*, Pro Universitaria Publishing House, Bucharest, 2012

² Mihail Udrouiu, *Criminal Procedure*, C.H. Beck Publishing House, Bucharest, 2019

Procedural measures represent "coercive institutions that may be ordered by judicial bodies for the proper conduct of criminal proceedings and for ensuring the achievement of the object of actions exercised in criminal proceedings"³.

Procedural measures designate those measures of criminal procedural law that can be taken by criminal investigation bodies or courts, for the smooth conduct of procedural activities.

Such as: drafting the arrest warrant, as well as its execution; removal of documents or objects; conducting searches; carrying out research on the spot; measures which the judicial body may order in the event of a confrontation; measures taken to ensure solemnity; measures that the presiding judge may order to conduct the hearing, etc.

In the literature, procedural measures are divided on the basis of two criteria.

a) Depending on the social values on which the procedural measures will be ordered, they can be:

- personal measures – are those aimed at individuals (preventive measures, safety measures, protection measures, etc.)⁴

- real measures – are those that bend over people's assets (precautionary measures, restitution of things, etc.)

b) Depending on the purpose pursued, procedural measures are divided into:

- coercive measures (preventive measures, precautionary measures, etc)

- protection measures (security measures, restoration of the situation prior to committing the crime, restitution of things, etc.)

Another author proposes the following classification of procedural measures:⁵

a) Preventive measures that:

- concerns the natural person: detention, judicial control, judicial control on bail, house arrest and pre-trial detention;

- concerns the legal person: prohibition of initiating or suspending winding-up or winding-up proceedings against the legal person; suspension of the merger or prohibition of initiation, reduction or division of the share capital of legal entities; prohibition of carrying out patrimonial operations, likely to lead to the diminution of patrimonial assets or insolvency of the legal person; prohibition to conclude certain legal acts; prohibition to engage in certain activities similar to those in connection with which the offence was committed.

b) Medical safety measures: provisional medical admission and provisional obligation to medical treatment.

c) Precautionary measures: attachment of sums of money, seizure of tangible or intangible movable property and mortgage notation in the land register on movable or immovable property

d) Remedies: restoration of the previous situation and return of things.

e) Other procedural measures: protection measures, special measures ordered under Law nr. 448 of 2006 and placement of minors under Law nr. 272/2004.

In doctrine there are several classifications of procedural measures supported by several authors, namely: I. Matiuț, N. Volotnicu, G. Nistoreanu, I. Neagu.⁶

³ Ion Neagu, Mircea Damaschin, *Treatise on Criminal Procedure, General part*, Hamangiu Publishing House, Bucharest, 2014

⁴ Gheorghe Buzescu, *Police law - university course*, Sitech Publishing House, Craiova, 2019

⁵ Daniela Cristina Valea, *Criminal procedural law I – university course, General part*, University Press Publishing House, Târgu-Mureș, 2019

⁶ <https://administrare.info/drept/12496-clasificarea-m%C4%83surilor-procesuale-de-constr%C3%A2ng>

Depending on the phase of the criminal trial, we find:

- measures that can be ordered only at the criminal investigation stage;
- measures that can be ordered only during the trial phase of the offence committed;
- measures that may be ordered both during criminal prosecution and during the trial of the offence.

But the most important classification is according to the nature of procedural measures, and they are divided into:

- preventive measures, safety measures,
- protection measures,
- precautionary measures;

Foreign authors address another classification of procedural measures. One of them is a Russian author and made the following classification:⁷

- measures regarding the behavior and participation of the suspect/defendant, as well as other participants in the criminal process;
- measures ensuring the lawfulness of criminal proceedings;
- measures to suppress criminal activity;
- Measures to ensure punishment;

Then, depending on the nature of the restrictions, the procedural measures are divided into::

- measures of coercion of property,
- measures of physical restraint;

Depending on the subject to whom the procedural measure applies, they may be::

- measures applicable to the accused or suspect
- measures applied to the victim, witness, expert, specialist, translator, etc.

1.2. Preventive measures. Definition, purpose, classification

Preventive measures are those means of coercion targeted by the criminal legislation in force, which may be ordered by the policeman, prosecutor, preliminary chamber judge, judge of rights and freedoms or court⁸, in order to ensure the proper conduct of criminal proceedings or to remove the evasion of the defendant or suspect from the criminal investigation activity, from the trial phase or from the execution of the sentence.

Preventive measures designate those "institutions of criminal procedural law with a coercive character, whereby the suspect or accused person is prevented from undertaking certain activities that would affect the conduct of criminal proceedings or the achievement of its purpose"⁹.

Also, the authors, I. Neagu and M. Damaschin, defined procedural measures as: "measures involving deprivation or restriction of liberty or rights that can be taken in criminal cases where there is a reasonable suspicion that a crime punishable by imprisonment has been committed, in order to ensure the proper conduct of the criminal proceedings or to prevent the suspect or defendant from absconding from criminal prosecution, from trial or execution of sentence".

Retrieved 15 November 2021

⁷ Корнуков В. М, *Меры процессуального принуждения в уголовном судопроизводстве*, Издательство Изд-во Саратов. ун-та, Саратов, 1978

⁸ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

⁹ Ion Neagu, Mircea Damaschin, *Treatise on Criminal Procedure, General part*, Hamangiu Publishing House, Bucharest, 2014

Given that these measures affect certain human rights and freedoms, preventive measures enjoy clear and severe regulation.

Article 23 of the Romanian Constitution states in paragraphs (1) and (2) that: "Individual freedom and security of person are inviolable¹⁰. The search, detention or arrest of a person is The purpose of preventive measures is provided by Art. 202, para. (1) of the Code of Criminal Procedure: ensures the conduct of criminal proceedings in good and normal conditions; prevents the person who committed the act (suspect/defendant) from absconding from criminal prosecution, trial or execution of the sentence; prevents the commission of another crime.

Preventive measures fall into two broad categories:

- Preventive measures involving deprivation of liberty, namely: detention and pre-trial detention;
- Preventive measures restricting liberty, such as: judicial control, judicial control on bail and house arrest.

1.3. The role and importance of preventive measures

In order to ensure a smooth conduct of the activity of the judicial process, which leads to the fulfillment of the primary object of the facts and actions exercised in the criminal activity, object referred to in Article 1 of the Code of Criminal Procedure, the need to use, in addition to common and usual actions and procedures for investigating a judicial basis, the use of special procedural measures may be presented, of coercion or force, characteristically directed at the defendant or suspect by which, before issuing a proposal for an irrevocable sentence to a custodial sanction, in which the blocking of criminal bodies in carrying out the criminal investigation and/or trial activity is removed or in order to prevent the accused from evading the exercise of punishment and/or other punishments, as well as from the remediation of damages and damages caused. Committing an illegal action results in a disturbance of the legal order defended and normatively constituted, and in order for the community to function in good conditions, institutionalized action is required to balance the legal order in that state.

In order to satisfy the rule of law, the individual obeys, without being constrained, the rules established by the legislature, and if he does not comply voluntarily, the state must use institutional instruments to bring about respect for the rule of law of the state.

2. Preventive measures

2.1. Analysis of preventive measures

1. Detention

Compared to other preventive measures, detention is considered to be the lightest preventive measure and can only be ordered by the public prosecutor or the investigating body during the criminal investigation, for a maximum duration of 24 hours¹¹. This duration does not include the time necessary to drive the defendant or suspect to the premises of the institution to which the judicial body belongs, as well as the time necessary to hear him, on the basis of a warrant issued in accordance with the law.

The detained person shall be informed at short notice, in a language he understands, of the crime of which he is suspected and the reason for his detention.¹²

¹⁰ Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

¹¹ Sorina Siserman, *Criminal procedural law – Course notes*, Blue Publishing House, Cluj-Napoca, 2009

¹² Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

Detention may be ordered only after the defendant or suspect has been heard. The hearing is conducted in the presence of a lawyer appointed *ex officio* or elected.

Also, before the start of the hearing, the public prosecutor or the criminal investigation body that ordered the measure is obliged to inform the suspect or accused person that he has the right to a lawyer, as well as the right not to make any statement about the act he has committed.

At the same time, the measure of detention shall be ordered by the criminal investigation body or prosecutor by ordinance. It will include the reasons for the measure, the day and time when it will start, and the day and time when it ends.

2. Judicial review

Judicial review refers to all measures restricting the fundamental freedoms and rights of the person who committed the offence.

The person on whom the measure of judicial control was ordered shall tolerate certain prohibitions related to freedom of movement, professional occupation or social life, and shall also be controlled on compliance with the obligations ordered by the judicial body.¹³

Judicial review may be ordered against the defendant in three situations: during the prosecution by the prosecutor, in the preliminary chamber proceedings by the preliminary chamber judge, and during the trial of the case in court by the judge of rights and freedoms.

The acts ordering the measure of judicial review are: the order, if the measure was taken by the prosecutor, and the reasoned conclusion, if the measure was ordered by the judge of the preliminary chamber or the judge of rights and freedoms.

In the content of the act by which the judicial body orders the measure to be taken, the obligations observed by the defendant are laid down.

The defendant is obliged to comply with certain conditions while under judicial control¹⁴, namely:

- a. appear whenever called upon by the prosecuting body, preliminary chamber judge or court;
- b. inform the judicial body which ordered the change of residence;
- c. to report each time he is called to the body responsible for his supervision, in accordance with the monitoring schedule drawn up by that body.

In addition to these 3 main obligations, the judicial body that ordered the measure may also stipulate compliance with the following obligations:¹⁵

- a) not exceed the territorial limit, fixed by the body which ordered the measure, only with its consent.
- b) not to travel to premises determined by the judicial body or to travel only to premises determined by it;
- c) continuously carry an electronic system to monitor it; not be around the injured person, his/her family members, witnesses, experts or other persons determined by the judicial body, or approach or communicate with other participants who contributed to the crime;
- d) stop performing the profession or pressure the activity on which the act was committed;

¹³ Mihail Udroi, *Criminal Procedure*, C.H. Beck Publishing House, Bucharest, 2019

¹⁴ Code of Criminal Procedure, art. 215, alin. (1)

¹⁵ Ivan Anane, *Investigation of criminal investigation bodies*, Pro Universitaria Publishing House, Bucharest, 2014

- e) transmit periodically information on its means of survival;
- f) comply with rules on care, medical treatment or control, with regard to detoxification;
- g) not to take part in sporting or cultural events or other public events;
- h) not drive vehicles indicated by the body which ordered the measure;
- i) not to possess, use or bear arms;
- j) not to issue cheques

3. Judicial review on bail

Judicial review on bail may be ordered on the defendant during the following phases of the criminal proceedings:

- when criminal proceedings have begun, the measure is ordered by the public prosecutor;
- in preliminary chamber proceedings, judicial review on bail is ordered by the judge of the preliminary chamber;
- During the trial, this is ordered by the court.

The acts ordering the measure of judicial control on bail are:

- the order, if the measure was taken by the public prosecutor reasoned conclusion,
- if the measure was ordered by the judge of the preliminary chamber or the judge of rights and freedoms.

Taking the measure of judicial control on bail is sufficient to fulfil its role (ensuring good and normal conditions for criminal proceedings), and at the same time, the defendant pays a bail, the amount of which is decided by the body that ordered the measure.

By depositing this amount of money, the judicial body ensures that the defendant will participate in the criminal proceedings and fulfill the previously assigned obligations.¹⁶

The bail is registered in the name of the offender by handing over a sum of money at the request of the body that ordered the measure, or by determining a real bail, immovable or movable, according to the amount established, for the benefit of the judicial body.¹⁷

As in the case of judicial review, the defendant on whom the measure of judicial review on bail has been ordered must fulfil the following commitments:

- a. appear whenever summoned by the prosecuting body, preliminary chamber judge or court;
- b. inform the judicial body which ordered the measure to change residence¹⁸;
- c. to report each time he is called to the body responsible for his supervision, in accordance with the monitoring schedule drawn up by that body;

At the same time, in addition to these obligations, the judicial body which ordered the measure of judicial control on bail may require the defendant to comply with one or more obligations from the following list:¹⁹

- a) not deviate from the territorial limit fixed by the body which ordered the measure only with its consent;

¹⁶ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

¹⁷ Code of Criminal Procedure, art. 217, para. (1)

¹⁸ Ivan Anane, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

¹⁹ Code of Criminal Procedure, Art. 216

- b) not to travel to premises determined by the judicial body or to travel only to premises determined by it;
- c) continuously carry an electronic system to monitor it;
- d) not to be around the injured person, his/her family members, witnesses, experts or other persons determined by the judicial body or not to approach or communicate with other participants who contributed to the crime;;
- e) stop performing the profession or pressure the activity on which the act was committed;
- f) transmit periodically information on its means of survival;
- g) comply with rules on care, medical treatment or control, with regard to detoxification;
- h) not to take part in sports or cultural events or other public events;
- i) not drive vehicles indicated by the body which ordered the measure;
- j) not to possess, use or bear arms;
- k) not to issue cheques;

Cases in which bail is forfeited or forfeited:

- a. the prosecutor decides that the defendant should not be prosecuted;
- b. the court hearing the act decides by decision on the confiscation of bail, if the measure of judicial control on bail has been substituted by the measure of house arrest or preventive detention, if the defendant does not comply with the obligations ordered by the judicial body or it is proved that he intentionally committed another offence for which it was decided to initiate criminal proceedings;
- c. other cases provided for by criminal law, in which the court decides by decision on the return of bail;
- d. The cases referred to in points (b) and (c) shall be used where the security has not been paid.

4. House arrest

The measure of house arrest is a preventive measure restricting liberty and consists in the obligation of the defendant, for a period fixed by the judicial body that ordered the measure, not to leave home, without the permission of the judicial body, and to comply with the rules established by the judicial body.²⁰

Pre-trial detention may be ordered in the following three cases::

- in the course of criminal prosecution may be taken by the judge of rights and freedoms;
- in preliminary chamber proceedings, it is ordered by the judge of the preliminary chamber;
- During the trial of the case, the measure may be taken by the court.

The measure of preventive detention is ordered only if there is reasonable suspicion that the accused has committed an offence in the following cases (Art. 223 para. (1) CPP):

- a. the person who committed the offence went into hiding or fleeing with the intention of diverting from prosecution or trial;
- b. the defendant strives to instill other participants in the commission of the act or to degrade, abolish, misappropriate or conceal evidence;

²⁰ Code of Criminal Procedure, Art. 221

- c. the defendant puts pressure on the injured person or tries to propose a fraudulent settlement;
- d. there is reasonable suspicion that, after criminal proceedings have been initiated, the defendant is intentionally committing another offence again or preparing to commit another offence.

While the defendant is under house arrest, he is obliged to observe the following rules:

- a. appear before the bodies which ordered the measure each time he is summoned;
- b. not to contact or speak to the injured person, his/her members, experts, witnesses or other persons who do not constantly stay with him in his/her home.

Also, throughout the duration of the measure, the bodies that ordered the measure may force the defendant to wear an electronic surveillance system.

According to Art. 222 para. (1): 'In the course of criminal proceedings, house arrest may be taken for a maximum period of 30 days.'. It may also be extended during criminal investigation, only if necessary, by another 30 days, and the maximum duration of house arrest is 180 days.

5. Pre-trial detention

The measure of preventive arrest is the second preventive measure of deprivation of liberty, along with the measure of detention, and it is also the most drastic measure provided by the Code of Criminal Procedure.

Pre-trial detention is defined as "the most intrusive preventive procedural measure of liberty in the exercise of the person's right to liberty, by which the judge or court ordered the detention of the defendant for the duration and under the conditions specified by law, in special places intended for this purpose, in the interests of criminal prosecution, preliminary chamber proceedings or trial"²¹.

Pre-trial detention may be ordered in the following cases:

- in the course of criminal investigation, it is ordered by the judge of rights and freedoms;
- during preliminary chamber proceedings, may be taken by the judge of the preliminary chamber;
- and at the trial stage, it is ordered by the court.

According to Article 223 of the Code of Criminal Procedure, the conditions specific to preventive arrest are:

- a. the person who committed the offence went into hiding or fleeing with the intention of diverting from prosecution or trial;
- b. the defendant strives to instill other participants in the commission of the act or to degrade, abolish, misappropriate or conceal evidence;
- c. the defendant puts pressure on the injured person or tries to propose a fraudulent settlement; there is reasonable suspicion that, after criminal proceedings have been initiated,
- d. the defendant is intentionally committing another offence again or preparing to commit another offence.

Pre-trial detention may also be ordered if evidence shows reasonable suspicion that he has committed an intentional crime against life, an offence causing bodily injury or death to the victim, a crime against national security, a crime of drug trafficking, illegal activities, an offence of non-compliance with the arms regime, ammunition, nuclear material, explosives, trafficking

²¹ Gheorghită Mateuț, *Criminal Procedure*, General part, Universul Juridic, Bucharest, 2019

and exploitation of vulnerable persons, acts of terrorism, money laundering, stamps or other valuables, counterfeiting of coins, rape, blackmail, outrage, tax evasion, judicial outrage, trafficking and exploitation of persons with precarious situations, a crime of corruption, as well as others like those mentioned above, for which the law provides for imprisonment of 5 years or more.²²

Pre-trial detention of the accused may be taken for a maximum of 30 days. The extension of this measure may be ordered for a maximum period of 30 days (art. 233 CPP), and the total duration of preventive arrest may not exceed 180 days.²³

2.2. General conditions for the application of a preventive measure

The general conditions laid down by criminal law for taking preventive measures against the accused or accused person are:²⁴

- 1) The offence for which preventive measures are ordered shall be punishable by criminal law with imprisonment or when the punishment for the act committed is alternative, i.e. imprisonment or fine.
- 2) There are strong indications or evidence, such as that the accused or accused person has committed an act contained in the criminal law.
- 3) In addition to the two conditions mentioned above, the existence of one of the following cases is also required (Article 202 of the CPP):
 - The domicile or identity of the person who committed the act cannot be established due to lack of data (lit. a), and the defendant has also fled or gone into hiding in order to evade prosecution or trial, or has prepared to commit such acts, and if there are data in the course of the trial, that the offender wishes to evade serving his sentence;
 - the offence is flagrant and punishable by imprisonment of more than one year;
 - the accused or accused person tries to influence the finding out of the truth, witnesses or experts, to degrade the material means of evidence;
 - is a repeat offender or has committed or is prepared to commit another new offence;
 - the defendant has committed an offence punishable by life imprisonment alternating with imprisonment or imprisonment for more than 4 years;
 - there are necessary indications or data justifying the fear that the defendant will put pressure on the injured person or attempt to make a fraudulent deal with him.

2.3. Taking, replacing, revoking and terminating preventive measures

❖ Taking preventive measures

The taking of preventive measures shall be ordered by judicial bodies in the case of crimes punishable by imprisonment or life imprisonment.²⁵

It is taken into account that taking preventive measures, whether restrictive or deprived, infringes an important right of the person, namely, freedom.

Such measures may also be ordered if all of the general conditions referred to in the previous Chapter (Chapter II.2) are fulfilled.

²² Daniela Cristina Valea, *Criminal procedural law I – university course, General part*, University Press Publishing House, Târgu-Mureş, 2019

²³ Code of Criminal Procedure, Art. 233

²⁴ Ion Miron, Ivan Anane, Cătălina Miron, *Criminal procedural law, General part*, Ex Ponto Publishing House, Constanta, 2006

²⁵ Daniela Cristina Valea, *Criminal procedural law I – university course, General part*, University Press Publishing House, Târgu-Mureş, 2019

The judicial bodies (prosecutor, judge of rights and freedoms, preliminary chamber judge and court) have the power to take one of the preventive measures involving deprivation or restriction of liberty, the selection of these measures is established depending on the purpose pursued, the level of social danger, age, health, criminal record or other situations regarding the person against whom the preventive measure is ordered.²⁶

Also, the taking of preventive measures is optional, determined on a case-by-case basis, by the concrete circumstances of the case, by the person of the perpetrator, it is left to the discretion of the prosecutor or the court first the preference to take or not to take a preventive measure and then, if indispensable, the power to choose the measure that best corresponds to the aim pursued. Preventive measures are taken by the prosecutor or criminal investigation bodies by reasoned order, and by the court by decision (decision, sentence, conclusion). The procedural act by which it was decided to take the preventive measure must contain the act for which the measure was ordered, the legal text containing the act committed, the punishment provided by the criminal law for the crime committed and the precise and clear causes that caused the measure to be taken. If preventive arrest is ordered, a preventive arrest warrant shall also be drawn up.²⁷

❖ **Replacement and revocation of preventive measures**

These are two other situations provided for by the Code of Criminal Procedure, and constitute an act of disposition usually allowed to judicial bodies. As an exception, the revocation of a preventive measure requires the obligation of judicial bodies to choose to revoke the measure involving deprivation or restriction of liberty, when it is observed that the measure was taken illegally.²⁸

In accordance with Art. 242 para. (1) of the Code of Criminal Procedure, the preventive measure ordered by the judicial body may be revoked, upon request or ex officio, when "the grounds for taking the measure have ceased or new circumstances have arisen from which the measure is illegal".

The revocation of preventive measures, either deprivation or restriction of liberty, represents their abolition, and consequently, it will be decided, in case of detention, house arrest and preventive arrest, to release the suspect or defendant, provided that he is not arrested or detained for other reasons.

The revocation of these preventive measures shall be made when there is no longer any basis for maintaining it valid.

When it is found that there is no longer any basis to maintain the preventive measure, it is up to the judicial body to assess whether it has actually been removed. If the basis for taking the preventive measure has changed, the measure ordered by the judicial body can be replaced by another, either milder or harsher, but also vice versa.

If it is decided to replace the preventive measure, the defendant or accused person is obedient to the constraints expected by the second preventive measure.

Legal termination of preventive measures (Article 241 of the Code of Criminal Procedure).

²⁶ Gheorghe Nistoreanu (coord.), Mihai Apetrei, Laurențiu Nae, Carmen Silvia Paraschiv, Anca Lelia Dumitru, *Criminal Procedural Law, General Part*, Europa Nova Publishing House, Bucharest, 1996

²⁷ Ion Miron, Ivan Anane, Cătălina Miron, *Criminal procedural law, General part*, Ex Ponto Publishing House, Constanta, 2006

²⁸ Daniela Cristina Valea, *Criminal procedural law I – university course, General part*, University Press Publishing House, Târgu-Mureș, 2019

Compared to taking, revoking and replacing preventive measures that are valued and ordered by judicial bodies, the legal termination of such preventive measures is achieved only in certain situations provided for by criminal law.

Preventive measures cease de jure in the following situations provided for in Article 241 of the Code of Criminal Procedure:

- a. when the time limits provided by the criminal law in force have expired (examples: in the case of preventive arrest up to 30 days, maximum 60 days in the case of judicial control) or decided by judicial bodies (such as: the judge of rights and freedoms orders preventive detention by reasoned conclusion) or, during the trial at first instance or during the criminal investigation, upon reaching the maximum duration specified by the criminal law in force. The CPP also states that pre-trial detention, house arrest, judicial control and judicial control on bail cease de jure:
 - during criminal investigation, when the maximum duration provided for by criminal law was completed (180 days – house arrest and preventive arrest; one year if the penalty expected by law is a fine or imprisonment of not more than 5 years; 2 years if the penalty specified by criminal law is life imprisonment or imprisonment for more than 5 years, in the event of judicial review and bail control);
 - during the trial at first instance, if the maximum duration undertaken by law has been exhausted (a reasonable period, but not more than half of the special maximum for the offences subject to referral and not more than 5 years in the case of preventive arrest or house arrest; a reasonable period – not more than 5 years in the case of judicial control and judicial control on bail);
 - a) in cases where the prosecutor decides not to prosecute or the court orders a decision of acquittal, termination of criminal proceedings, renunciation of the application of punishment or postponement of the use of punishment or a penalty for a fine, but which does not provide for imprisonment, even temporary;
 - b) when the judgment convicting the defendant became final;
 - c) as well as in other cases provided for by criminal law, such as:
 - when the court chose to convict the defendant (imprisonment at most equal to the duration of detention, house arrest or preventive arrest;
 - imprisonment, with suspension of execution under supervision;
 - a non-custodial educational measure); on appeal, whether the interval of the preventive measure has reached the duration of the sentence provided for in the conviction decision;
 - if the judge or court fails to review the legality and merits of the preventive measures ordered at intervals ordered.

In all these situations mentioned above, the prosecutor, during the criminal investigation, or the court, during the trial phase, have the obligation to immediately release the arrested person.

2.4. Appeals against acts ordering preventive measures

The taking of preventive measures, deprivation or restriction of liberty, may be challenged either by complaint addressed to the court against the preventive measures ordered by the prosecutor, or by appeal against the conclusion of the court by which it was decided to take preventive measures.²⁹

²⁹ Gheorghe Nistoreanu (coord.), Mihai Apetrei, Laurențiu Nae, Carmen Silvia Paraschiv, Anca Lelia Dumitru, *Criminal Procedural Law, General Part*, Europa Nova Publishing House, Bucharest, 1996

A complaint may be lodged against the order of the criminal investigation body or the prosecutor (criminal investigation bodies) deciding to take preventive measures (detention). This can be done to the prosecuting prosecutor, the first prosecutor of the public prosecutor's office or the hierarchically superior prosecutor before the expiry of the period prescribed by criminal law for the measure of detention, i.e. 24 hours. When it is found that the measure was not ordered in compliance with the conditions laid down by the legislation in force for taking it, it is decided to revoke the preventive measure. (Art. 209 para. (14) and (15) of the CPP)

A complaint may be lodged with the judge of rights and freedoms against the order of the public prosecutor ordering judicial control or judicial control on bail. The latter decides on the complaint by way of conclusion. The conclusion by which the judge of rights and freedoms ruled is final. At the same time, if it is found that the preventive measure was ordered in violation of the conditions provided by the criminal legislation, it may be revoked. (Article 213(1) and (6) of the CPP). Also, the complaint may not be accepted by the judge of rights and freedoms, who finds that it is unfounded, inadmissible or late, thus maintaining the preventive measure ordered by the prosecutor.

The judge of rights and freedoms may admit the complaint and, in conclusion, decide to revoke the preventive measure, if the conditions laid down by law have not been observed; to admit in part the complaint by changing the content of the preventive measure, as well as the obligations imposed; reject the complaint.

According to Articles 204-206 of the Code of Criminal Procedure, an appeal may be lodged against the conclusions ordering preventive measures.

In legal literature, the law regulates the appeal procedure against acts ordering preventive measures differently, depending on which judicial body ordered it.

During the criminal investigation, the conclusions made by the judge of rights and freedoms may be appealed. It can be formulated by both the defendant and the prosecutor and is submitted to the judge of rights and freedoms who constituted the conclusion.

In preliminary chamber proceedings, the public prosecutor or the defendant may lodge an objection to the rulings ordering preventive measures to be taken by the preliminary chamber judge. It is submitted to the preliminary chamber judge who ordered the measure and forwarded to the preliminary chamber judge of the hierarchically superior court.

During the trial, the prosecutor or the defendant may appeal against the conclusions by which the preventive measure was ordered by the court. It is submitted to the court that ordered the measure and submitted to the hierarchically superior court.

Also, in all cases presented above, appeals are submitted to the judge of rights and freedoms/preliminary chamber judge/court that pronounced the contested conclusion and forwarded together with the case file to the superior judge or hierarchically superior court within 48 hours of registration. If the contested conclusion is that of the judge of rights and freedoms, the judge of the preliminary chamber or the court of the High Court of Cassation and Justice, the appeal shall be heard by a panel composed of all the judges of rights and freedoms of the High Court of Cassation and Justice, as well as by another panel of the same court or by the panel of the High Court of Cassation and Justice.

At the same time, the appeal is not suspensive of enforcement.

An appeal lodged against the conclusion ordering preventive measures to be taken during the criminal investigation and during the preliminary chamber proceedings shall be heard by summoning the witness, in his presence and with the participation of the public prosecutor.

Legal aid for the defendant, through a lawyer of his choice or ex officio, is mandatory.

During the trial, the appeal against the conclusion is heard in open court, in the presence of the public prosecutor and with the summons of the witness.

The appeal filed by the defendant is settled within 5 days of registration, and the appeal filed by the prosecutor is settled before the expiry of the preventive measure that was ordered.

2.5. Procedural phase and competent judicial bodies

Judicial bodies constantly act to prevent antisocial events and acts, which harm public property, peace and order, in order to know in advance the circumstances and conditions that facilitate or determine the commission of such antisocial acts.³⁰

The judicial bodies are: the courts, the Public Ministry, which exercises its powers through prosecutors constituted in prosecutor's offices, and the criminal investigation bodies.

a. Courts

According to Article 126 of the Romanian Constitution, the activities of delivering justice, in order to achieve and defend the fundamental freedoms and rights of citizens, as well as all legitimate interests deducted from judgment, are carried out through a unitary system of judicial bodies.

According to art. 126, para. (1): "Justice shall be carried out by the High Court of Cassation and Justice and by other courts established by law."

The courts designate the links of the unitary system of judicial bodies, being constituted according to a pyramid, starting from the top, where the High Court of Cassation and Justice is located, to the basic units.³¹

Currently, the system of judicial bodies in Romania is formed, according to art. 2 para. (2) of Law nr. 304/2004 on judicial organisation, from the following courts:

- High Court of Cassation and Justice
- Courts of Appeal;
- Courts;
- Specialised courts;
- Judges.

b. Public Ministry

In its legal activity, the Public Ministry portrays the fundamental interests of the community and defends the rights and freedoms of citizens, as well as the rule of law. The Public Ministry carries out its duties with the help of prosecutors who are constituted in prosecutor's offices attached to each court, according to the law in force.

The prosecutor's offices are set up and operate at the courts, tribunals, specialised courts (for family and minors) and courts of appeal, governed by first prosecutors, and at the level of the Prosecutor's Office attached to the courts of appeal, there is a general prosecutor.

c. Criminal investigation bodies

In the first phase of the criminal proceedings, in order to discover and gather the necessary evidence in relation to the existence of crimes, to ascertain the perpetrators and to establish their responsibility, determining whether or not it is necessary to decide whether or not to prosecute, the criminal investigation bodies also contribute together with the prosecutor. At the same time,

³⁰ Gheorghe Buzescu, *Comparative Systems of Public Order-university course I*, Sitech Publishing House, Craiova, 2020

³¹ Ioan Griga, *Criminal procedural law, General part, Theory, jurisprudence and practical applications*, Oscar Print Publishing House, Bucharest, 2004

it appears that the criminal investigation bodies are the investigation bodies of the criminal police and the special investigation bodies.

- The criminal investigation bodies of the criminal police are composed of specialised workers of the Ministry of the Interior elected by the Minister of the Interior, with the favourable opinion of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, and also work under the authority of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or are appointed and work in a different manner, according to special laws in force.
- Together with the criminal investigation bodies of the criminal police, special criminal investigation bodies also carry out their activity, namely: officers specially appointed by the heads of garrison commands, as well as by the heads of these commands; special officers appointed by the commanders of separate corps and similar military units, as well as the commanders of such units; border police officers; masters of ports; officers specifically designated by the commanders of military centres, as well as commanders of such centres.³²

The criminal investigation bodies of the criminal police have a general competence, having the possibility to carry out criminal investigations for any type of crime that does not necessarily fall within the competence of other investigating bodies.

The tasks of the criminal investigation bodies are limited only to the conduct of criminal investigation, under the observation of the prosecutor, and they do not have any direct coordination with the courts.

The criminal investigation bodies are obliged to carry out the necessary activities to clarify the criminal case, having the right to initiate criminal proceedings and gather the necessary evidence.

The measure of detention may be ordered by the criminal investigation body or by the prosecutor against the defendant or suspect during the criminal investigation.

In the case of judicial review and judicial review on bail, measures may be ordered against the defendant during criminal prosecution by the public prosecutor, in preliminary chamber proceedings they may be taken by the preliminary chamber judge and during the trial of the case they may be taken by the court hearing the act.

The measure of house arrest and the measure of preventive arrest may be ordered against the defendant, during the criminal investigation by the judge of rights and freedoms, in the preliminary chamber procedure they may be ordered by the preliminary chamber judge, and during the trial of the case, the measures may be taken by the court.

2.6. Application of preventive measures in the case of juvenile suspects and defendants

When it is decided to take a preventive measure against a minor, the provisions on preventive measures outlined above must be observed, but also special provisions providing for certain special additions and derogations.

The Procedural Law (Articles 243 and 244 of the Code of Criminal Procedure) requires that preventive detention and detention of a minor is done only exceptionally, only if the results that deprivation of liberty could have against the development and personality of the suspect/defendant are not disproportionate to the purpose pursued by taking the preventive measure.

³² Gheorghe Buzescu, *Internal and international police cooperation*, Sitech Publishing House, Craiova, 2020

Also, when determining the duration for which the preventive measure is ordered, the age of the defendant from the date of ordering the maintenance, taking or extension of preventive measures will be taken into account.

In addition to the rights provided for adult prisoners, minors detained or arrested must be provided with certain rights of their own, legal aid, and a special preventive detention regime. If detention or preventive arrest is ordered against a minor, the legal representative or other person appointed by him or her or, depending on the case, the person in whose care or supervision the minor is present must be notified.³³

According to Article 160 of the Old Code of Criminal Procedure, in relation to "A minor between 14-16 years of age who was criminally liable, the measure of detention could be ordered only exceptionally, and only if it was certain that he had committed a crime for which the law provided for the punishment of life imprisonment or imprisonment of 10 years or more, for a duration not exceeding 10 hours. The initial period of detention may be extended by a maximum of 10 hours and only if necessary, by reasoned order of the prosecutor."

According to Article 160 of the Old Code of Criminal Procedure, in relation to "A minor between 14-16 years of age who was criminally liable, the measure of preventive arrest could be ordered only if the punishment provided by law for the act for which he was investigated was life imprisonment or imprisonment of 10 years or more and another preventive measure is not sufficient, for a maximum period of 15 days (during the criminal investigation), which may be extended during the criminal investigation and maintained during the trial, only exceptionally, and in total could not exceed a reasonable period and not more than 60 days. If the crime committed was punishable by law with life imprisonment or imprisonment of 20 years or more, preventive detention of the minor during criminal investigation could be taken for a maximum period of 180 days. A juvenile defendant older than 16 years of age could be remanded in custody during the criminal investigation for a maximum period of 20 days, which could be extended, each time by 20 days, but not exceeding in total a reasonable period and not exceeding 90 days. In exceptional circumstances, if the crime committed was punishable by life imprisonment or imprisonment of 10 years or more, preventive detention could be taken for a maximum of 180 days."

Compared to the Old Code of Criminal Procedure, the current Code of Criminal Procedure refers to the limits and duration of preventive measures applied to minors, no longer providing for certain reduced or special limits of preventive measures taken against a defendant or suspect minor.

Therefore, preventive measures ordered on minors have the same maximum duration equal to those specified for defendants or adult suspects.

At the same time, provisions apply on the maintenance, prolongation, termination and revocation of preventive measures, with some deviations and exceptions.

Article I. 3. Other procedural measures

3.1. Protection measures

In criminal proceedings, together with procedural measures, which are binding, protective measures may also be taken. They are ordered to protect persons who might suffer as a result of the imposition on the accused or accused person of custodial measures or security measures involving the restriction of the liberty of persons.

³³ Daniela Cristina Valea, *Criminal procedural law I – university course, General part*, University Press Publishing House, Târgu-Mureș, 2019

From the study of this definition, it appears that protection measures can be taken in relation to persons other than the accused or accused, persons who will not take part in criminal proceedings.

The disposition of these protection measures requires the cumulative presence of the following conditions: the defendant or accused person must have under supervision or attention, persons who need protection, and in the absence of the defendant or accused person to be deprived of liberty, these persons remain without any protection.³⁴

At the same time, protection measures may also be ordered if medical admission is ordered. The law does not expressly stipulate the period for which protection measures are ordered, but undoubtedly, they are ordered for as long as the preventive measures that caused it are maintained.

With regard to taking protection measures, the court or prosecutor who ordered preventive arrest or detention are required to inform the authority that is competent to designate protection measures, namely: admission to a hospital or hostel, appointment or appointment of a trustee or guardian, ordering a special protection measure for the minor child, as well as entrusting the person under the attention of a family member.³⁵

3.2. Precautionary measures

Procedural measures are those procedural measures that are ordered temporarily (provisionally), during criminal proceedings, against the accused or accused, in order to eliminate the risky situation caused by the variety of the case or the person of the perpetrator and to prevent the commission of other new acts mentioned in the criminal law.

The criminal law mentions, among the security measures that can be ordered on persons who have committed illegal acts, the obligation to medical treatment and hospitalization in a specialized medical institution.³⁶

During the trial of the case, the appropriate security measure is temporarily ordered by the court. Conditions to be fulfilled for ordering safety measures:³⁷

- be chronically intoxicated with alcohol/narcotics or have a disease;
- because of this disease, the defendant or accused person poses threats to society;
- criminal proceedings should be initiated.

Security measures may be ordered in the event of termination of criminal proceedings or removal from criminal prosecution, except in certain cases provided for by the criminal law in force.

In the specialized literature it has been demonstrated that the minor perpetrator, who, due to his mental and physical condition, requires a special regime of education and medical treatment in a medical-educational institution, but not the safety measure of medical admission.

These security measures are ordered by the judge of rights and freedoms, by the preliminary chamber judge and by the trial court.

The measure of temporary internment persists until the validation of the court, the preliminary chamber judge or the judge of rights and freedoms.

³⁴ Ioan Griga, *Criminal procedural law, General part, Theory, jurisprudence and practical applications*, Oscar Print Publishing House, Bucharest, 2004

³⁵ Elisabeta Boțian, *Criminal procedural law, Course notes*, Burg Publishing House, Sibiu, 2016

³⁶ Magdalena Iordache, *Criminal Procedural Law – Manual of individual study*, Pro Universitaria Publishing House, Bucharest, 2012

³⁷ Gheorghe Buzescu, *Particularities of contravention law*, Sitech Publishing House, Craiova, 2017

The validation is based on the opinion of the medical commission. The decision of the judicial bodies validating the measure of internment may be appealed separately, which also does not interrupt the execution.

3.3. Precautionary measures

Precautionary measures represent those measures of real coercion and consist in the freezing, until the permanent (final) resolution of the case, income and property belonging to the defendant, accused or civilly liable party, in order to ensure compensation for the damages caused by the crime, as well as to ensure the execution of the penalty of fine³⁸.

During criminal proceedings, property against which precautionary measures are ordered is placed under inactivity (freezing), which means that the person who owns the property loses the right to use it (when the property is seized and must be seized indispensably), the right to dispose of it or encumbrance.

If seized property is disposed of, the legislature punishes this act as an offence of evading the seizure of legally seized property. Thus, the removal of legal seals affixed to goods is also criminalized.

Precautionary measures shall be ordered if the following conditions are met::

- the existence of criminal proceedings in connection with a criminal offence;
- the existence of the civil party;
- the existence of material damage;
- the damage is caused by criminal offence.

These conditions are useful only if precautionary measures are ordered to compensate for the damage caused by the crime. In the case of enforcement of the penalty of the fine, only the condition referring to the existence of criminal proceedings is satisfactory.

The application and use of precautionary measures does not designate masking the damage, the judicial body must oblige the defendant or the civilly liable party, by court decision, to cover the damage caused by the crime.

In order to compensate for the damage, precautionary measures may be ordered against the property of the defendant or accused person, as well as of the civilly liable person, up to the probable amount of the damage caused.

At the same time, in order to guarantee the execution of the fine penalty, precautionary measures will be taken only against the assets of the defendant or accused, because criminal liability is personal.

The ordering of precautionary measures in connection with compensation for damage is usually optional, these being requested by the civil party or taken, ex officio, by the court or the prosecutor.

Also, precautionary measures are taken compulsorily when the injured party is deprived of legal capacity or has limited legal capacity.

The competent bodies for taking these precautionary measures are: the court in the trial phase (by conclusion) and the prosecutor in the criminal investigation phase (by order).

Precautionary measures may be carried out by the following bodies:

- the bailiff, if the measure was ordered by the court;
- the criminal investigation body or prosecutor who ordered the precautionary measure;

³⁸ Ioan Griga, *Criminal procedural law, General part, Theory, jurisprudence and practical applications*, Oscar Print Publishing House, Bucharest, 2004

- the secretary of the Public Prosecutor's Office, if the prosecution is carried out by the prosecutor;
- own enforcement bodies of the injured unit, in some cases provided for by criminal law.

Precautionary measures shall be carried out by criminal seizure of property deemed to have been seized, which may take the following forms:

- criminal attachment itself which is appropriate to movable property;
- mortgage inscription that is appropriate to real estate;
- garnishment, appropriate to the sums of money.

a) Criminal seizure itself

Criminal seizure represents the precautionary measure with the highest level of application and constitutes the freezing of assets belonging to the defendant or accused person or the civilly liable party, in order to repair the damage caused by the crime, as well as ensuring the execution of the fine penalty.³⁹

The body acting for seizure is obliged to recognise and estimate the value of the property to be seized, with the possibility of having recourse to certain experts if necessary.

The criminal law specified the categories of goods that are compulsorily seized, if seized: perishable goods, precious metals or stones or objects made from them, domestic securities, foreign means of payment, as well as amounts of money subject to seizure and those derived from the capitalization of perishable goods or foreign means of payment.

b) Mortgage inscription

The mortgage inscription designates a special variant of attachment applicable to immovable property and includes disclosure and authentication formalities and procedures.

Therefore, the mortgage inscription results in the seizure of immovable property in connection with ensuring reparation for the damage caused by the crime or serving the sentence.

The body designating the attachment shall also request the competent body to order the mortgage entry against the seized assets, attaching copies of the document ordering the seizure and a copy of the attachment report.

c) Attachment

Attachment designates a special variant of attachment, which applies to sums of money owed to the seized person.⁴⁰

Sums of money due in any title to the defendant, accused person or civilly liable party by a third person or by the injured party shall be seized in their hands and within the circumscription specified by criminal law, from the date of registration of the act imposing the attachment. The sums of money will be recorded by the debtors, depending on the case, at the disposal of the judicial body that decided to order the attachment or of the enforcement body, within 5 days from the due date, the receipts will be handed over to the preliminary chamber judge, the prosecutor or the judicial court within 24 hours of recording.

3.4. Restitution of things

The restitution of things refers to a procedural measure that can be taken during criminal proceedings, in order to ensure that compensation in kind is guaranteed for the damage caused by evading them.

³⁹ Ioan Griga, *Criminal procedural law, General part, Theory, jurisprudence and practical applications*, Oscar Print Publishing House, Bucharest, 2004

⁴⁰ Grigore Theodoru, *Criminal procedural law, General part*, Cugetarea Publishing House, Iasi, 1996

The restitution of things is an interim measure. The measure will have irremediable and complete consequences if the civil action in criminal proceedings has been finally resolved. The person for whose benefit the measure of restitution of the things has been taken has the obligation to maintain them until the final decision.

If the judicial bodies find, ex officio or upon request, that the things seized from the defendant or suspect or from any person who accepted them for detention are the property of the injured person or of another person or have been wrongfully taken from their possession or possession, they shall decide to order the restitution of such things. The restitution of the seized things is made only if this does not hinder the establishment of the factual situation and the correct settlement of the case and with the obligation for the person to whom the things are returned, to keep them until a final solution is pronounced in the criminal proceedings.

The restitution of things can be taken by the court through a conclusion or by the prosecutor through a resolution.⁴¹

In order to be able to order the measure of restitution of things, the following conditions must be fulfilled:⁴²

- the things are the property of the injured person or have been wrongfully withheld from his possession or possession;
- restitution of things does not hinder finding out the truth and the correct settlement of the case;
- the things were taken from the defendant or accused, or from the one who received them from them, in order to preserve them.

3.5. Restoration of the previous situation

Like the measure of restitution of things, the restoration of the previous situation is a form of reparation in kind for the damage caused by the crime.

Thus, the court or prosecutor may order the measure to restore the previous situation, when the change in that situation manifestly resulted from the commission of the crime and restoration is possible.⁴³

It is possible to order this measure to restore the previous situation only in the case of criminal offences which, by the nature of their effects, require or make it possible to restore the situation prior to their commission.

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⁴¹ Ioan Griga, *Criminal procedural law, General part, Theory, jurisprudence and practical applications*, Oscar Print Publishing House, Bucharest, 2004

⁴² Ion Neagu, *Treatise on Criminal Procedure*, Pro Publishing House, Bucharest, 1997

⁴³ Elisabeta Boțian, *Criminal procedural law, Course notes*, Burg Publishing House, Sibiu, 2016

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