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Verification of preventive measures

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Abstract. Preventive or restrictive measures of liberty and rights may be taken in criminal cases where there is reasonable suspicion that a crime punishable by imprisonment has been committed. It is worth noting that these preventive measures at this time can only be ordered if there is evidence or evidence from which to result the reasonable suspicion that a person has committed a crime, being necessary to achieve the goal pursued by taking them. During criminal proceedings, the competent judicial bodies have the authority to order certain procedural measures to ensure and guarantee the normal conduct of proceedings, the execution of the sentence, compensation for damage caused by the crime and the prevention of anti-social acts. Preventive, precautionary, safety and immediate redress measures, defined by doctrine as the return of property and restoration of previous condition, are examples of procedural measures that might be required during criminal proceedings. A verification phase of preventive measures is foreseen for the preliminary chamber proceedings and for the trial phase. This happens in terms of legality but also in terms of merits, from obtaining the file to the end of each procedural stage. The stage may end by revocation, substitution, legal termination or modification of obligations in the content of the judicial review, or by maintaining the preventive measure for the suspect if the conditions provided by law are met. Criminal judicial bodies may choose the preventive measure according to the criteria of Art. 218 para. 2 Code of Criminal Procedure. Preventive measures have a procedural nature and can only be taken if certain conditions provided by law are met, respecting a certain procedure and deadlines.

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

1. General notions

This chapter will examine procedural measures involving interference with the right to personal liberty and the right to protection of property.

The importance of these measures cannot be understood without reference to constitutional and continuous provisions in fundamental regional instruments in the substantive nature of human law, taking into account their specificities.

Regarding the normative framework, these institutions, being part of preventive procedural measures, are provided in the General Part, Title V, Chapter I, art. 202-204 Code of Criminal Procedure (for individuals) and Special Part Title IV, Chapter I, Article 493 (for legal persons).

In the specialized literature, in the absence of a definition according to the law, different formulations have been used to characterize the concept of procedural measures, starting from a common idea, namely from the idea that in criminal proceedings it is necessary to take some measures to ensure a better conduct of procedural activities only to prevent

situations that do not allow a good condition of the criminal process to be achieved.¹

Therefore, it was concluded that these procedural measures are personal or real deprivations or constraints, stable in situations where criminal proceedings take place.

We can say that procedural measures are coercive legal means applied by criminal judicial bodies in criminal proceedings to ensure effective criminal proceedings.

1.1 The concept of preventive measures

Preventive measures are those measures which deprive or restrict freedoms or rights that may be taken in criminal cases where there is reasonable suspicion of an offence punishable by imprisonment.²

These measures help to conduct criminal proceedings promptly or prevent the suspect or accused person from evading prosecution, trial or even the execution of the sentence.

The most important procedural measures of a criminal nature are those aimed at the status of freedom. They may be applied whenever it is established that the suspect or accused person, left at large, may again commit crimes or prevent the truth from being found by covering up traces or falsifying evidence useful in criminal prosecution or trial.

From a legal point of view, preventive measures are procedural measures. They are characterised by a constraining degree of differentiation. The criminal judicial bodies may choose the preventive measure according to the criteria of Art. 218 para. 2 Code of Criminal Procedure.

1.2 Classification of preventive measures

Preventive measures are as follows:

- Detention;
- Judicial review;
- Judicial control on bail;
- House arrest;
- Pre-trial detention.

Taking these preventive measures is the competence of judicial bodies. As can be seen, restraint is one of the listed preventive measures. It can be taken away from the accused by the criminal investigation body, bring the policeman or prosecutor, as the case may be, only in case of criminal prosecution. It is the only measure that can be ordered to the suspect.

Judicial review and judicial control on bail may be ordered during criminal proceedings by the public prosecutor, in preliminary chamber proceedings by the preliminary chamber judge and during trial by the trial court.

House arrest and pre-trial detention during criminal proceedings may be ordered against the defendant by the judge of rights and freedoms. In preliminary chamber proceedings by the judge of the preliminary chamber and in the course of proceedings by the trial court.³

In presenting the preventive measures, taken individually, we followed, as a priority, the order of regulation indicated by the Code of Criminal Procedure, then the one followed in the specialized literature, relevant, we also presented, whenever the subject required it, solutions from the judicial practice, both the published one and the least known one of the

¹ Gheorghiu Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

² Anastasia Crișu, *Criminal procedural law. General part*, Ed. Hamangiu, Bucharest, 2021

³ <https://lege5.ro/Gratuit/geztkobvha/competent-judicial-body-and-act-ordering-preventive-measures-Code-of-Criminal-Procedure?dp=gqztimjqg43dm>

courts, on issues that are circumscribed to the topic and last but not least we expressed our own opinion on the aspects susceptible to controversy.⁴

Detention is the only measure involving deprivation of liberty which the prosecuting body may order in respect of the suspect or defendants if there is solid evidence or indication from which there is reasonable suspicion that he has committed a criminal offence and that the measure is necessary in order to ensure the proper conduct of the criminal proceedings, to prevent the suspect or accused person from absconding from prosecution or trial, or to prevent the commission of another crime.

Pre-trial detention is the preventive measure that may be ordered by the judge of rights and freedoms, by the judge of the preliminary chamber or by the court, consisting in the deprivation of liberty of the defendant, accused of committing a crime. House arrest is the preventive measure that may be ordered by the judge of rights and freedoms, the judge of the preliminary chamber or the court, consisting in the deprivation of liberty of the defendant accused of committing a crime, the execution of which is not carried out in a place of detention, but in the defendant's home.⁵

Judicial control, as a preventive measure, is regulated by the new law by the provisions of Articles 211, 212, 213, 214 and 215 relating to the general conditions; the taking of the measure of judicial review by the prosecutor, the appeal against the measure of judicial review ordered by the prosecutor, the taking of the measure of judicial review by the judge of the preliminary chamber or the trial court and the content of the judicial review.

1.3 General conditions for the application of preventive measures

According to art. (202) of the New Code of Criminal Procedure no preventive measure may be ordered, confirmed, prolonged or maintained if there is a cause preventing the initiation or exercise of criminal proceedings. Any preventive measure must be proportionate to the seriousness of the accusation against the person against whom it is taken and necessary to achieve the aim pursued by ordering it.

Such measures may only be ordered if there is firm evidence of guilt or suspicion of a person who has committed a criminal offence.

Now these preventive measures are subject to support the conduct of criminal proceedings on three distinct branches:

- ensuring the proper conduct of criminal proceedings;
- preventing the accused or accused person from evading prosecution and/or trial;
- preventing the accused or accused person from evading the execution of the sentence;.

As regards the hierarchy of ordering preventive measures, I insisted in the paper on the exceptional character and at the same time the subsidiary character in relation to the other non-custodial preventive measures of preventive detention, in the sense of ordering it only if taking another measure is not sufficient to achieve the legitimate aim pursued.⁶

When these measures are put into practice, the following conditions must be met: there must be evidence from which to result the lucid suspicion that an individual has committed a crime (Article 202 paragraph (1), there must be no cause for criminal proceedings (Article 2

⁴ Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

⁵ <https://graduo.ro/referate/drept/procedura-penala-480149>

⁶ https://www.univnt.ro/wp-content/uploads/PhD/rezumate_doctorat/Bucurenciu_Gabriela_Alina.pdf

paragraph (2), that preventive measure must be equal to the intensity of the accusation brought against the individual against whom it is taken (Article 202 paragraph (3) and the preventive measure must be necessary to fulfill the purpose pursued by ordering it (Article 202 paragraph (1)).⁷

To these conditions, where the vast majority of European legislation meets, are added the requirements of Article 5 para. 1 lit. c) of the European Convention on Human Rights and of Additional Protocol no. 4, but also those of the case-law on the European Court of Human Rights.⁸

We develop the following idea: that there should be solid evidence or indications from which a reasonable suspicion arises that a person has committed an act prescribed by criminal law. We can understand that evidence must be an element of fact concerning the law that is obtained by various means of legal evidence.

This evidence must be on file when the preventive measure is ordered and it must appear that the suspect has committed an act covered by criminal law.

As far as French doctrine is concerned, this evidence on the basis of which preventive measures can be taken must not carry the weight of those who show the indictment, much less those who substantiate a conviction.

By solid indications we mean elements resulting from the case file which confirm the convenient assumption that a particular person against whom acts of prosecution or trial are carried out committed the act.

Solid evidence may be seized before criminal prosecution is initiated and after receiving the status of suspect or accused. They must not be confused with displaced data or information from the content of the referral document necessary to initiate criminal prosecutions.

From a legal point of view, procedural measures can be approached by judicial bodies according to criteria such as the degree of danger of the crime, the purpose of the measure, health, age.⁹

So solid clues are not evidence, but mere assumptions or suspicions, which are based on logical deductions, having as premises the existing data in question. Following the new European model, these indices must be as close as possible to the certainties resulting from the evidence.

Solid indications can be ascertained both before the initiation of criminal prosecution in personam and after acquiring the status of suspect. This is not mere information relating to the commission of an act provided for by criminal law, but must be regarded as a serious bridge between the act committed and the person suspected of having committed it.

Moving on to the next idea, we note that there should not be a cause that prevents the initiation or exercise of criminal proceedings. It cannot be conceived that a preventive measure can be taken, confirmed and prolonged if there is a legal case preventing the initiation or exercise of criminal proceedings.¹⁰

The preventive measure must be proportionate to the seriousness of the accusation against the person against whom it is taken.

⁷ Gheorghiu Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

⁸ Gheorghiu Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

⁹ Ivan Anane, *Investigation of criminal investigation bodies*, Pro Universitaria Publishing House, Bucharest, 2014

¹⁰ Gheorghiu Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

The proportionality of a preventive measure is determined in relation to the seriousness of the accusation. According to some statistics, the minimum limit of imprisonment is not capable of ensuring that preventive detention is exceptional.

Some legislations have chosen an essential criterion of seriousness when drawing up a list of substantial serious offences.

The interpretation is allowed due to the general formula used by the legislator, i.e. the abstract gravity but also the concrete gravity of the factual support of an act of pursuit against the haunted person have been taken into account, with regard to the criteria of generic danger, no limitation is provided.

Judicial control, bail and house arrest are autonomous from arrest and may be applied as measures to replace pre-trial detention. With regard to these measures, the choice is made by the judicial body, but it may also be necessary from the outset to take a more serious measure in order to better conduct the criminal proceedings or not to let the suspect evade prosecution.¹¹

The purpose of the preventive measure is to understand the objective pursued, the danger to be foreseen and removed, even by taking it. In the specialized literature it is said that the degree of danger of the crime is the seriousness of the act charged in relation to the legal classification but also to the concrete circumstances in which it was committed.

Referring also to the person, we must also consider his health, age, family situation, but also other circumstances regarding the person against whom he takes the measure.

The measure of judicial control, judicial control on bail or house arrest should be taken against a sick offender, elderly or without criminal precedents, and preventive detention and arrest should be taken with priority over a healthy offender, young with or without a criminal record and who is dangerous to society.

We can say that the state of health must be taken into account especially when it is a problem in deciding on pre-trial detention.¹²

The measure of preventive arrest is deprived of release on medical grounds.

It is not acceptable under European law to take such preventive measures unless it is liable to be punishable by deprivation of liberty. The judicial body renounces to constitute a guarantee of the person's right to liberty when it is given precedence.

A necessity of a procedural measure cannot be certified simply by a statement by a judicial body, it must be based on objective elements. These elements must be certified in the act ordering the measure.

1.4 Preventive measures restricting liberty

We can say that restrictive measures of freedom are everywhere. These are in line with traditional and current custodial measures, such as detention and arrest.

In the Code of Criminal Procedure, Article 2 specifies that of the preventive measures, two are restrictive of liberty, judicial control and judicial control on bail.

The first thing that links to these measures is their legal nature. Unlike other legislations, where measures are of an alternative nature, their conditions for sentencing are the same as those for detention. The judge has the possibility to choose between these measures, but in our country, there is no such equalization that would impose unambiguously the alternative to these custodial measures. Preference is given to detention measures, despite the extension of the judge's jurisdiction to the two restrictive measures of liberty.

¹¹ Ivan Anane, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

¹² Gheorghită Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

We will note that there are no big differences between preventive, custodial and restrictive measures. When it comes to substantive conditions, however, there are procedural differences which may lead to different competences. Such as that the measure of detention can only be taken by a criminal investigation body and the prosecutor. The measures of house arrest and preventive arrest can only be taken by the judge, while the measures of judicial control and judicial control on bail can be taken by the prosecutor, but exceptionally also by the judge.

Based on the new regulation, the necessary premises are created so that these restrictive measures of liberty can be applied as alternatives to detention. Article 202 of the Code of Criminal Procedure forms a voluminous basis for such application within the meaning of the provisions in force.

The legislator does not deny the judge the right to order any restrictive measure of liberty provided for by law, as an alternative to the measure of preventive detention. For this to be possible, an exceptional character of arrest should be evoked, linked to the primacy of restrictive measures of liberty. The restrictive measures of liberty must be considered sufficient for a judge to decide whether to place the defendant in pre-trial detention.

Restrictive measures of liberty pose the same problems in all legislation. Bail consists of the granting of a sum of money, as a guarantee of the appearance of the suspect at the procedural documents. It is the first to make detention subject to the principles of proportionality. It originated in English law, then spread to all common law countries.¹³

The judge prevents a problem when fixing bail in practical evidence. Release on recognizance, or more precisely release in the form of a solemn promise to be present in court, is a common principle in America.

1.5. Preventive measures involving deprivation of liberty

There are three categories of preventive measures involving deprivation of liberty, detention, house arrest and pre-trial detention. Preventive measures restricting liberty are different from those listed above because coercion means loss of individual freedom of movement, physical freedom.

They are limited to the classification of an innocent person until his conviction, in the cases provided for by law.

Detention is based in the interests of prosecution and pre-trial detention when ordered, usually in continuation of detention.

A prisoner convicted in the first instance who is awaiting appeal or who is in the process of hearing an appeal is always in pre-trial detention.

1.6. Legal termination of preventive measures

If any of the cases expressly provided by law are present, which entail the termination of the effects of the measures, the preventive measures shall cease to exist. These cases are listed in Section 241 of the Code of Criminal Procedure. In addition to these cases, there may be others different from these, but only that they are provided for by law.

The automatic termination of preventive measures is not ordered, but only ascertained by the competent judicial body.

We have two cases in which the legal termination of preventive measures can be established: general cases and special cases.¹⁴

¹³ Gheorghită Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

¹⁴ Gheorghită Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

Referring to the general cases of legal termination of preventive measures, we can list the following:

a) when time limits laid down by law or established by judicial bodies expire or during criminal prosecution or trial at first instance.

This case may be justified by the provisional nature of preventive measures. Such measures shall be temporary and subject to the establishment of time limits. The legislature set a reasonable maximum time for the criminal investigation phase and for the trial phase for preventive measures.

b) when the prosecutor orders a solution of non-prosecution or court and issues a decision to acquit the criminal proceedings, to waive the application of the sentence or even to postpone the application or a penalty with a fine.¹⁵

The existence of this case follows the hypothesis in which the criminal proceedings are stopped during the criminal investigation phase by the order of the prosecutor to close or drop the criminal prosecution. The criminal court issues a decision not to convict the suspect, with one exception, where the conviction concerns a fine.

c) on the date when the criminal judgment ordering the conviction of the defendant became final.

The criminal proceedings end when a court decision becomes final settles the case, and consequently preventive measures, because they cannot subsist after the criminal proceedings are completed. In the case of a conviction to imprisonment with imprisonment under detention does not equal the removal of the deprivation.

d) other cases provided by law.

The judicial body has the possibility to cover cases other than those listed above. They are not left to chance, but must be provided for by law. It can even be particular situations.

We go back and detail the special cases of legal termination of preventive measures. They concern only pre-trial detention and house arrest. We can say that these two measures cease de jure in the cases we have listed above, but also in the following:

a) When a suspended sentence of execution of the sentence under supervision is handed down in court or to a term of imprisonment not exceeding the duration of detention, house arrest and preventive arrest.

Based on the new regulation, the necessary premises are created so that these restrictive measures of liberty can be applied as alternatives to detention. Article 202 of the Code of Criminal Procedure forms a voluminous basis for such application within the meaning of the provisions in force.

The legislator does not deny the judge the right to order any restrictive measure of liberty provided for by law, as an alternative to the measure of preventive detention. For this to be possible, an exceptional character of arrest should be evoked, linked to the primacy of restrictive measures of liberty. The restrictive measures of liberty must be considered sufficient for a judge to decide whether to place the defendant in pre-trial detention.

Restrictive measures of liberty pose the same problems in all legislation. Here the cessation of the effects of these preventive measures involving deprivation of liberty is justified by the need to maintain them. If a custodial sanction is no longer predictable, it is no longer possible to maintain these measures.

¹⁵ Gheorghe Buzescu, *Particularities of contravention law*, Sitech Publishing House, Craiova, 2017

b) If the duration of the measure has reached the duration of the sentence handed down in the judgment of conviction, on appeal.

The first instance ordered that he be sentenced to a sentence equal to the duration of that measure of pre-trial detention. The cumulative duration of preventive arrest measures and preventive detention measures will be taken into account, if the defendant has been successively subjected to both.

The defendant or suspect has the right to speak to his lawyer of his choice, or to receive ex officio, or to ask the judicial body to inform him of his situation. This happens on the basis of a report, the suspect cannot be denied the right to notify the lawyer himself except for well-chosen reasons that must be mentioned in the report¹⁶. The defence counsel is obliged to appear at the centre of the judicial body within two hours of notification. If he does not appear, the investigating body may appoint another defence counsel for the defendant.

In order to be able to formalize the defense, the defendant's or haunted's defense has the right to speak to them directly, provided that they keep their personal and confidential data¹⁷. If the defendant refuses to give evidence, the judge has the obligation to draw up a report highlighting his refusal, and if his lawyer also refuses to sign, the judge will note this fact in the minutes.

2. Research into preventive measures

Regarding the preliminary chamber procedure and the trial phase, a verification of preventive measures is established, in terms of legality but also in terms of merits, at the time when the file is received until the moment of completion of each produral phase.

The solution may be revocation, replacement, legal termination or modification of obligations in the content of the judicial review.

2.1. Research of preventive measures in the preliminary chamber procedure

In the Code of Criminal Procedure, Article 207, it is provided for the verification of preventive measures, resuming the role of prolonging preventive arrest. We can specify two essential moments:

- a) on receipt of the file in the preliminary chamber;
- b) during preliminary chamber proceedings.

We analyse the two situations in turn.

According to art. 201 para. (1), when the prosecutor orders the prosecution of the accused, to whom a preventive measure has been applied, the case file together with the indictment shall be forwarded to the judge by the preliminary chamber of the court. This must happen at least five days before it expires.

Thus, once the case is registered in court, within three days, if any of the preventive measures have been applied to the accused, it is the duty of the preliminary chamber judge to verify ex officio the legality and merits of that preventive measure in the council chamber before its duration expires.¹⁸

The High Court of Cassation and Justice established that the 5-day deadline is a certain, categorical and uncontested term, and if it is violated, the prosecutor falls from the right to submit requests for preventive measures and the nullity of the act done in this regard beyond

¹⁶ Anastasia Crișu, *Criminal Procedural Law. General part*, Ed. Hamangiu, Bucharest, 2021

¹⁷ Gheorghe Buzescu, *Police Law - university course*, Sitech Publishing House, Craiova, 2019

¹⁸ Gheorghită Mateuț, *Criminal procedure. General part*, Universul Juridic, Bucharest, 2019

the deadline. Another consequence would be that it would be impossible for the preliminary chamber judge to verify the legality and merits of the preventive measure before it expires of its own motion.

The accused who is in custody will be brought before the judge by the preliminary chamber and may be assisted by defence counsel. If he is hospitalized and cannot be brought before the judge or if, due to force majeure, it is not possible to bring him, in his absence the legality and grounds of preventive arrest can be examined. Instead, the presence of counsel who takes the floor to deliver conclusions and a prosecutor is mandatory.

The judge of the preliminary chamber may order by conclusion the revocation of the measure and the release of the accused if it is found that the grounds for the measure and others do not justify it, unless he is arrested in another case¹⁹. If the judge of the preliminary chamber finds that these grounds for this measure continue and require further privatisation of liberty, he or she may order the reasoned termination, maintenance or ordering of the preventive measure against the accused.

During the trial by the preliminary chamber, the maintenance of preventive measures may occur as a result of checks on preventive measures during the preventive chamber procedure.

For all preventive measures it is the same procedure, differing the duration within which the check is made.

Article 207 of the Code of Criminal Procedure specifies that during the proceedings, the preliminary chamber judge checks periodically, not exceeding thirty days, ex officio, whether there are grounds for taking the measure of preventive detention. The above rules are applied in terms of procedure.

The defence counsel is obliged to appear at the centre of the judicial body within two hours of notification. If he or she fails to appear, the investigating body may appoint another defence counsel for the defendant.

If judicial review or judicial review on bail is taken, the ex officio check is carried out by the judge, but no later than sixty days. The above procedure also applies to the two categories above.

2.2. Investigation of preventive measures in the course of judgment

According to Article 208 of the Code of Criminal Procedure, the applicable rules are the same as for the verification of measures in preliminary chamber proceedings.²⁰

The case is submitted by the judge at least five days before the preventive measure expires. If the preliminary chamber proceedings have ended with a conclusion of the commencement of the trial, it is possible. The judge sends his file to himself, because the trial will be carried out by the same judge who gave the solution for the preliminary chamber procedure.

When the file is received by the court, it checks ex officio whether the grounds that provoked the taking, extension or maintenance of that preventive measure remain, of course before its expiry.

It takes place at the first hearing and account must be taken of the date on which it expresses the measure.

¹⁹ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

²⁰ Code of Criminal Procedure, Art. 208

In public hearings, it is always possible for the court to review preventive measures. At the trial stage, the verification of these preventive measures starts in the council chamber at the same time as the trial begins. Also during the trial, by conclusion, the court periodically checks, but no later than sixty days, the new grounds, if they have arisen, to justify the maintenance of that measure.

All preventive measures are checked, without any difference.

At this stage, the subsequent verification must be carried out within the time limits set for hearing the case.

Here, in this sense, things are interpreted differently regarding intermediate deadlines that are set in the course of proceedings only to verify these measures. In the practice of the courts, several impediments have arisen regarding the verification of the legality and merits of preventive measures, especially when it is an incident that may justify the legal termination of a preventive measure.²¹

Such situations can happen in current case-law, even when the accused person is sent to trial under the control of a preventive procedural measure without a custodial nature, as in the case of judicial review or judicial control on bail.

The person sent to trial does not have an objective possibility of telling the measures of judicial review whether he has been ordered a preventive measure involving deprivation of liberty or whether the execution of the sentence received has begun.

Regarding the Code of Criminal Procedure, while under judicial control, the suspect has the following obligations: to be present at the criminal investigation body, at the preliminary chamber judge or at the court every time he is called, to notify the law enforcement body if he changes his home, to be present before the law enforcement body during the surveillance program specified by him.²²

The judge of rights and freedoms may give a verdict that the measure of judicial control ceases during the defendants' detention.

In another situation between the two measures, namely the measure of judicial control and the measure of preventive detention, the detention of the defendants was mediated, as a result of which when the measure of preventive arrest is taken, they are arrested.

3. Detailed verification of preventive measures

3.1. Investigation of the validity and seriousness of house arrest at the preliminary chamber stage and during trial

The Supreme Court stated that the time limit set for submitting the document and file of the case in the present case is to respect the fundamental rights of defence of the defendant and to abolish the arbitrary when ordering the maintenance of the preventive measure.²³

The term of five days before the expiry of the duration of the preventive measure may be considered a categorical, certain term, and if it is violated, the prosecutor loses the rights to formulate complaints regarding preventive measures and nullity of the act performed. Also, the judge concerned no longer has the possibility to verify ex officio the legality and merits of the preventive measure before its expiry.

²¹ <https://www.juridice.ro/706254/periodic-verification-of-preventive-measures-by-the-court-guarantee-of-compliance-with-the-principle-of-legality-during-criminal-proceedings.html>

²² Gheorghe Buzescu, *Internal and international police cooperation*, Sitech Publishing House, Craiova, 2020

²³ Mihai Udroi, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

This measure ceases de jure when the term set by the law body that previously extended it expires, and it is the responsibility of the judge to ascertain this situation.

The procedural time limit must be calculated on days off, minimum regression and, according to the Code of Criminal Procedure, the calculation of this period does not take into account the day on which the time limit begins nor the day on which it ends. If the last day of that period falls on a non-working day, the period shall expire at the end of the first following working day.

The last day of the time limit is the first day on which the defendant may exercise his right to defend himself by studying his file and preparing oral submissions for the time limit to be determined.

The judge of the preliminary chamber must seize before the last day of the hearing in favour of the defendant.

Verification of the legality and merits of the preventive measure may be impossible if the five-day period provided for in the Code of Criminal Procedure, Art. 7 is not counted.²⁴ The measure of preventive detention will remain valid until the expiry of the period for which it was ordered during the criminal investigation. If this deadline is not respected by the prosecutor, it will not be possible to find a solution to revoke it, because it is no longer possible to analyse the merits of the preventive measure during the verification.

The judicial body of the preliminary chamber may state the necessity of taking the measure of judicial review from the date of expiry of the preventive measure.

The prosecutor's speech in which he/she sets out, before the courts, the reasons on which the accusation is based may also include the proposal to maintain the measure of house arrest. When the prosecutor orders the defendant to be brought to trial, the prosecutor's word in which he sets out, before the courts, the reasons on which the accusation is based, with the case file goes to the preliminary chamber judge of the court with at least five days, which is a recommendation period. This must happen in order to be able to verify the legality and merits of house arrest.

If the indictment is carried out by agreement of admission of guilt, the verification of the legality and merits of house arrest is carried out by the court, not through the preliminary chamber phase.

The preliminary chamber judge must consider whether the maximum duration of the preventive measure during the criminal investigation, 180 days, is exceeded before verifying the legality and merits of house arrest.

The preliminary chamber judge submits the defendant's floor to the public prosecutor and lawyer to discuss the need to maintain the defendant's state of custody.

After consideration, the judge of the preliminary chamber may decide one of the situations:

- a) maintaining the state of house arrest;
- b) Revocation of house arrest;
- c) replacement of house arrest by judicial control or judicial control on bail;
- d) Legal termination of house arrest;
- e) finding the impossibility of verifying the legality and grounds of the house

arrest measure.

²⁴ Code of Criminal Procedure, Art. 7

Regardless of the outcome, it is mandatory to make the minute in duplicate, and the conclusion of the preliminary chamber judge must be forwarded to the defendant and to the prosecutor if they were absent from the ruling.

An appeal may be lodged after the conclusion of the situation, within 48 hours of the ruling, if the public prosecutor and the defendant were at the sentencing. If there is an appeal, it will be submitted to the judge who notified the conclusion and go with the case file to the preliminary chamber judge of the superior court within 48 hours from the moment of registration.

The judicial body of the preliminary chamber may state the necessity of taking the measure of judicial review from the date of expiry of the preventive measure.

The appeal against the conclusion ordering the maintenance of the preventive measure, house arrest, is not suspensive of execution. Only the appeal filed against the conclusion of the preliminary chamber judge ordering the revocation of the house arrest measure or its replacement by another preventive measure is suspensive of execution.

That objection filed by the defendant shall be resolved within five days from the date of registration.

The defendant is summoned to see the outcome of the appeal, having the obligation to appear before the judge whenever he is called, also his absence does not prevent the resolution of the appeal.

It is mandatory to provide legal aid for the defendant as well as the presence of the prosecutor. The preliminary chamber judge resolves the situation by reasoned conclusion. It may provide one of the following solutions::

a) The measure of house arrest was revoked, through the appeal filed by the prosecutor, which was replaced by the measure of simple judicial control or bail. It must be resolved before the expiry of the duration of house arrest or extension.

b) The defendant has the obligation to summon and appear before the court in the preliminary chamber each time he is called, being absent, does not hinder the finding of the solution for the appeal.

c) Legal aid is compulsory for the defendant by a court-appointed or chosen lawyer and the public prosecutor is obliged to participate.

d) The trial body solves the appeal by reasoned conclusion, appearing in the Council Chamber and proposing the following solutions:

1. revocation of that preventive measure and acceptance of the appeal or its replacement by judicial review or judicial review on bail.

2. If the judge of the preliminary chamber has ordered the annulment of the measure of house arrest or even its change to the measure of judicial control or judicial control on bail, in the first instance, the objection and the maintenance of house arrest may be allowed.

3. The case may be sent back for retrial and the appeal may be allowed, if during the criminal investigation, the trial body allowed the extension of house arrest, having the capacity of judge of rights and freedoms or allowed a method of proof as a judicial body.

4. Your appeal may be rejected as false or delayed.

5. The time for the preliminary chamber procedure is a maximum of sixty days from the moment the case was registered in court, so the act of withdrawal of the appeal is reasonable the same as in the case where, at the first verification of the preventive procedural measure, the preliminary chamber court body allowed house arrest to be kept throughout the preliminary chamber procedure.

The trial body is obliged *ex officio* to verify frequently and cyclically, but without exceeding the maximum of thirty days, the legality and grounds of house arrest if the grounds that provoked the obtaining of the house arrest measure exist. The indications described above regarding the verification of the legality and grounds of house arrest will be administered accordingly, so the procedural measure will cease from the power of attorney.²⁵

During the preliminary chamber, the judge is obliged to check the legality and merits of the arrest out of duty, before the maximum of thirty days have elapsed since the first instance. This must happen even if the procedure takes place before him or in the appeal of a possible challenge. Such a solution notified by the resolution of the Supreme Court, for which the preliminary chamber trial body, from the justice observed by the indictment, started the trial was challenged with a certain challenge, has the endowment to formulate for preventive measures, according to the legal orders substantiating preventive measures until finding the solution for the challenge arising and provided for in art. 347 of the Code of Criminal Procedure.²⁶

The review of the legality and merits of the arrest measure is conceived in the process of the council chamber, not in a public meeting.

Particular attention must be paid to the trial body of the court seized with the indictment, in order to decide the stage at which the procedural phase was completed. That case passes to the trial stage, because from that moment on, the review of the legality of the preventive measure must be carried out only in terms, by a court and not by a specific judge of the preliminary chamber.

The interval of the measure of arrest in the preliminary chamber procedure does not have a maximum term of sixty days, so exceeding it in order to formalize the completion of the preliminary chamber phase does not lead to stopping the respective preventive procedural measures, the body having to respect the rigor of the judicious term of deprivation of liberty by reference to the conditions in the jurisdiction of the European Court.²⁷

3.2. Investigation of the validity and seriousness of the preventive detention measure at the preliminary chamber stage and during the trial

According to Art. 207 para. (1) The Code of Criminal Procedure, when the prosecutor orders the prosecution of the defendant who commits the measure of preventive detention, the speech of the prosecutor in which he/she sets out, before the courts, the reasons on which the accusation is based together with the case file shall go to the preliminary chamber judge of the court advised, at least five days before the time for the preventive measure has elapsed in order to verify its legality and merits.

The able court observed that the analysis of the provisions of Art. 207 para. (1)²⁸ The Code of Criminal Procedure shall be made in accordance with the rationale of the duration established for submitting the speech of the prosecutor in which he/she shall set out, before the courts, the reasons on which the accusation is based and the case file is to ensure respect for the fundamental rights of defence of the defendant and to exclude abusiveness in ordering the maintenance of that preventive measure, Thus, the duration of at least five days before the expiry of its duration is a certain and indisputable deadline, and its violation entails corruption of the prosecutor from the right to issue requests regarding preventive measures and the nullity

²⁵ Mihai UdROIU, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

²⁶ Code of Criminal Procedure, Art. 207

²⁷ Anastasia Crișu, *Criminal Procedural Law. General part*, Ed. Hamangiu, Bucharest, 2021

²⁸ Code of Criminal Procedure, art. 207

of the act done in this regard beyond the deadline, as well as the impossibility of the preliminary chamber judge to verify the legality and merits of the preventive measure before the expiry of its duration.²⁹

This measure ceases de jure when the term set by the law body that previously extended it expires, and it is the responsibility of the judge to ascertain this situation.

The procedural time limit must be calculated on days off, minimum regression and according to the Code of Criminal Procedure in calculating this time limit, neither the day on which the time limit begins nor the day on which it expires is taken into account.

These being the conditions, the preventive measure will be suspended at the end of the term set by the judicial body that previously extended or ordered it, the preliminary chamber judge will observe the situation.³⁰

The trial body may bring to the subject of discussion, at the request of the Prosecutor's Office, the possibility of considering the preventive measure of judicial control since the time of that measure expires.

The judge should declare special diligence when verifying the legality of the measure in order to avoid legal indictment of the measure, for example if the period of prolonged pre-trial detention during the prosecution expires within the following five days and the trial body sets a deadline for observing the legality of the arrest situation on the third day from the moment it receives the file and accepts the cancellation of pre-trial detention, The deadline for filing an appeal is 48 hours from submission, there may be a risk that the measure will be completed before the conclusion by which the appeal was completed and resolved remains revocable.

The Supreme Court stated that the time limit set for submitting the document and file of the case in the present case is to respect the fundamental rights of defence of the defendant and to abolish the arbitrary when ordering the maintenance of the preventive measure.

The five-day period before the expiry of the duration of the preventive measure can be considered a categorical, certain term, and if it is violated, the prosecutor loses the rights to submit requests for preventive measures and nullity of the act done. Also, the judge concerned no longer has the possibility to verify ex officio the legality and merits of the preventive measure before its expiry.³¹

The prosecutor's speech in which he sets out, before the courts, the reasons on which the accusation is based may also include the recommendation to keep the preventive detention measure.

If the indictment is made by plea bargain, the verification of the legality and merits of the state of arrest is carried out by the court, bypassing the preliminary chamber. Before this happens, the judicial body considers not exceeding the maximum term of deprivation of liberty in case of preventive arrest measure and in case of house arrest, of 180 days. If it expires, the arrest ceases and the defendant must be released immediately.

Verification of the legality and merits of the preventive measure may be impossible if the five-day period provided for in the Code of Criminal Procedure, Art. 7, is not counted. The measure of preventive detention will remain valid until the expiry of the period for which it was ordered during the criminal investigation. If this deadline is not respected by the prosecutor, it will not be possible to find a revocation solution, because it is no longer possible to analyse the merits of the preventive measure during the verification.

²⁹ Mihai Udriou, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

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

³¹ Mihai Udriou, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

The hypothesis of the presence of the defendant who is under preventive arrest will be carried out during the verification of the legality and merits of the measure, since the provisions of the Criminal Code of Criminal Procedure allow the defendant to give his consent so that the proceedings can be conducted remotely. In this situation, there must be an audio-visual link between the defendants and the courtroom that gives him the opportunity to see and hear the people who are present in the council chamber and to have a private discussion with his lawyer, whether he is chosen or ex officio, in order to be able to prepare a reliable and stable defense regarding the legality and merits of the preventive detention measure.

The judicial body, i.e. the judge, gives the floor to the prosecutor and the defendant's defence counsel in order to debate the need to continue to maintain the defendant's arrest, with the latter having the final say.

3.3 Investigation of the validity and seriousness of judicial review at the preliminary chamber stage and during the trial

When the prosecutor orders the prosecution of a defendant who is under judicial control, the prosecutor's speech setting out, before the courts, the reasons on which the prosecution is based with the case file goes to the preliminary chamber judge of the endowed court, five days before the expiry of the time for the preventive procedural measure to proceed with the verification of its legality and merits.

The endowed court stated that the interpretation of the provisions of Art. 207 para. (1) The Code of Criminal Procedure must be to the effect that the reason for the time limit set for submitting the indictment and the case file is to ensure respect for the fundamental rights of defence of the defendant and to eliminate arbitrariness in ordering the maintenance of the preventive measure.

Thus, the deadline at least five days before the expiry of the procedural measure is a certain deadline, and its violation entails the prosecutor's fall from the right to issue requests for preventive measures.

Under the related conditions, the preventive measure will stop when the duration established by the judicial body that extended or ordered it expires, the judge will decide this circumstance, the method of calculating procedural deadlines requires the minimum procedural term of subinvolvement to be calculated on days off.

When calculating the time limit, no account shall be taken of the day on which the period begins nor the day on which it expires. If the last day of this period falls on a non-working day, the period shall expire with the expiry of the first preceding working day.

The last day of the procedural deadline is the first day on which the defendant can obtain the right to defend himself by analysing the file and preparing his words for the deadline to be set.

The preliminary chamber judge's assessment must be made before the last day of the expected period for the benefit of the defendant. Allowing the court to be informed on the last day of the time limit would be equal to the possibility of bringing the matter before it on another day on which the time limit runs, since there are no considerable differences between the last day of the time limit and another day.

Disregarding the deadline regarding the legal procedure, in accordance with the rules of this mandatory 5-day procedure, may tempt the impossibility of verifying the legality and

substantiation of the preventive procedural measure. As a result of violating the 5-day deadline for submitting the case file.³²

This does not equal the cessation of the preventive measure, not even one of the limiting grounds for termination provided for in Article 241 being exempted.

The preventive measure remains until the duration for which it was ordered during the investigation expires, in case the prosecutor fails to meet the duration, it will be unacceptable to find a solution, a request for annulment, because the analysis of the merits conditions of the preventive measure during the verification procedure can no longer be investigated. The indictment of the defendant who is still under judicial review must proceed to the preliminary chamber stage.

The judge should declare special diligence when verifying the legality of the measure in order to avoid legal indictment of the measure, for example if the period of prolonged pre-trial detention during the prosecution expires within the following five days and the trial body sets a deadline for observing the legality of the arrest situation on the third day from the moment it receives the file and accepts the cancellation of pre-trial detention, The deadline for filing an appeal is 48 hours from submission, there may be a risk that the measure will be completed before the conclusion by which the appeal was completed and resolved remains revocable.

If, when verifying the legality of the preventive measure of judicial control, the deadline of maximum 60 days is not observed, this measure may cease by right. The court may verify the legality of the judicial review if the indictment is carried out through the plea bargain.

The case does not go through the preliminary chamber if the defendant is under preventive arrest or even at home makes a request to replace that preventive deprivation measure with the measure of judicial control during the criminal investigation. It is randomly assigned to find the solution to the judge who has rights and freedoms. Before processing the application, the prosecutor's office performs the act thoroughly and allows the defendant to be sent to trial.

The person who first received the application will refer it to the preliminary chamber judge for a solution, as he or she is prepared to deal with applications concerning preventive measures to which the defendants are subjugated while the case is in the preliminary chamber.

The summons of the defendant plays an important role when drawing up a detailed and periodic analysis of the merits and legality of the judicial review.

If the indictment is carried out by agreement of admission of guilt, the verification of the legality and merits of house arrest is carried out by the court, not going through the preliminary chamber phase.³³

The defendant is obliged by the measure of judicial review to appear at the call of the judge of the preliminary chamber. Also in this case, it is not mandatory to hear the defendant when verifying the legality of the judicial review, with one exception when one of the cases provided for in art. 90 of the Code of Criminal Procedure. For example, a five-year sentence is provided for the offence covered by the law. If the defendant is of age, legal aid is not mandatory, but the defendant may choose a lawyer.

After the hearing, the trial body during the preliminary chamber may state, concluding with one of the following situations:

1. Preservation of the measure of judicial control, if the law body establishes that the grounds that provoked the taking of that measure are clear, necessary and obvious, and it is

³² Mihai Udroi, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

³³ Mihai Udroi, *Summaries of criminal procedure. General part*, C.H. Beck Publishing House, Bucharest, 2022

necessary to impose the preventive measure further. This can also happen if there are new grounds for maintaining judicial review, which is necessary in order for the normal and safe conduct of criminal proceedings.

2. The judge has the obligation to make a new check of the merits of the judicial control within a maximum of 60 days. He is not obliged to announce the period of time for which the measure of judicial review is retained.

3. If the measure of judicial review is maintained, the obligations contained in that measure may be modified. It is also possible to modify the contents of some obligations, pursuing the purposes through judicial control in the preliminary chamber. The judge may resort to the misconduct of several obligations or even to replace them with others. It may also alter what constitutes all the obligations laid down by judicial review.

The Constitutional Court says that there is no maximum duration of a measure during the preliminary chamber procedure. The maximum duration of the judicial review during the trial is carried out from the moment it is sent to trial, taking into account also the time when the case was in the preliminary chamber.³⁴

If guilt is admitted and agreed to be sent to trial, this verification of the merits of the judicial review is carried out by the court, not going through the preliminary chamber phase.

The preventive measure remains until the duration for which it was ordered during the investigation expires, in case the prosecutor fails to meet the duration, it will be unacceptable to find a solution, a request for annulment, because the analysis of the merits conditions of the preventive measure during the procedure for verifying it can no longer be investigated.

3.4. Investigation of the validity and seriousness of judicial review on bail at the preliminary chamber stage and during the trial

The prosecutor orders the prosecution of the defendant who is under judicial control, the prosecutor's speech in which he sets out, before the courts, the reasons on which the accusation is based with the case file goes to the preliminary chamber judge of the endowed court, five days before the expiry of the preventive procedural measure may proceed to verify its legality and merits.³⁵

The endowed court stated that the interpretation of the provisions of Art. 207 para. (1) The Code of Criminal Procedure must be to the effect that the reason for the time limit set for submitting the indictment and the case file is to ensure respect for the fundamental rights of defence of the defendant and to eliminate arbitrariness in ordering the maintenance of the preventive measure.

Thus, the deadline at least five days before the expiry of the procedural measure is a certain deadline, and its violation entails the prosecutor's fall from the right to issue requests for preventive measures.

The preventive measure will stop when the period proposed by the judicial body that extended or ordered it expires. Disregarding the deadline regarding the legal procedure, in accordance with the rules of this 5-day imperative procedure, may tempt the impossibility of verifying the legality and substantiation of the preventive procedural measure.

The consequence being the violation of the five-day deadline for the departure of the deed file.

³⁴ Anastasia Crișu, *Criminal Procedural Law. General part*, Ed. Hamangiu, Bucharest, 2021

³⁵ Code of Criminal Procedure, Art. 343

It cannot be allowed to find a solution, a revocation request because it is not possible to carry out a thorough analysis of the conditions for investigating the seriousness of the preventive measure, during the procedure when it is verified. After being sent to trial by the prosecutor's speech in which he sets out, before the courts, the grounds on which the accusation is based, of the defendant who is under judicial supervision on bail, the act necessarily and forcefully passes to the preliminary chamber stage during the proceedings. The evidence and clues related to the case will also be investigated by the judicial bodies. The judge must investigate within three days the seriousness and thoroughness of the judicial control, if there is evidence.

The three-day deadline is an advisory term, not a broad and complex term. The difference between the two terms is that the latter does not retain or stop the preventive measure. The trial body must and is obliged to investigate within 60 days whether there are justifications that led to taking that measure. If they exist, then the court proposes to maintain the measure of control on bail or to order it.

The summons of the defendant plays an important role when drawing up a detailed and periodic analysis of the merits and legality of the judicial review.

If the indictment is carried out by agreement of admission of guilt, the verification of the legality and merits of house arrest is carried out by the court, not through the preliminary chamber phase.

If the trial body orders the case to be returned to the Public Prosecutor's Office, it is necessary to investigate whether the measure is necessary to maintain and extend the measure.

In public hearing, the court is obliged to investigate the seriousness of the judicial control on bail, here the participation of the prosecution body is mandatory, but hearing the defendant is not mandatory.

After the hearing has taken place, the court may issue one of the following solutions:

1. Retention of judicial control on bail;
2. Cancellation of the bail check;
3. changing the measure of judicial control on bail with the measure of preventive arrest or even house arrest.

An important aspect in this context is that an appeal can be made within 48 hours of delivery. This objection may be made against the public prosecutor or defendant who was present there or from its communication, if the two were absent from communication.

If the appellate court argues against judicial review on bail, the completion is final and irrevocable, regardless of the outcome found.

The conditions applied to resolve this appeal are those found in Article 206 of the Code of Criminal Procedure and are directly applicable, as they are of important significance.

We go back and take turns analyzing the solutions offered by the judge when he concludes the case. The first solution is to keep the measure of bail control. When justice establishes that the foundations that led to the taking of this measure continue to exist, are important, absolutely necessary, it undertakes to maintain judicial control on bail, a preventive procedural measure. This is taken into account for a smooth and safe conduct of the criminal proceedings.

The judge is not obliged to disclose the duration for which the judicial control on bail is kept, but he is obliged to investigate again whether the rules and the seriousness of the judicial control on bail are observed, within a maximum of 60 days.

If the measure of judicial review on bail is maintained, the defendant's obligations or even the content of some of them may change. The purpose of these amendments is to stabilize the defendant's obligations.³⁶

The second solution, the annulment of the preventive measure of judicial review on bail, is carried out when justice observes that the grounds that forced that measure to be taken and there are no new ones to motivate it. Here the refund of the bail can be ordered.

Bail is a sum of money that the defendant grants to the court to match the act committed by him. The amount is considerable, depending on the severity of the situation.

Changing the measure of judicial control on bail to preventive arrest or even house arrest is another solution to end the case. Regardless of the resolution of the case, it is mandatory to make the minute in two copies, both original.

It cannot be allowed to find a solution, a revocation request because it is not possible to carry out a thorough analysis of the conditions for investigating the seriousness of the preventive measure, during the procedure when it is checked. After being sent to trial by means of a speech by the prosecutor in which he sets out, before the courts, the grounds on which the prosecution is based, of the defendant who is under judicial supervision on bail, the act necessarily and forcefully passes to the preliminary chamber stage during the proceedings. The evidence and clues related to the case will also be investigated by the judicial bodies. The judge must investigate within three days the seriousness and thoroughness of the judicial control, if there is evidence.³⁷

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