TERMINATION OF RIGHT TO PREVENTIVE MEASURES

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Abstract

Preventive measures were binding, without, however, being procedural criminal sanctions or penalties and not run counter to the freedom of the individual and does not attack the principle of presumption of innocence.They ensure the good running of the criminal process, which has led to the inclusion of modern legislation in all imprisonment by way of judicial review, as a procesuala of the most severe.Termination of right to preventive measures shall designate by virtue of which the legal situation, whether in judicial activities involved some \"incident\" which recognizes ope legis effect subject to extinctive interpretation towards preventive measures, judicial bodies are required to cease such action.

The judicial authority is obliged, therefore, to release the detained or arrested when there is one of the situations referred to in article 140 from the code of penal procedure.This study has proceeded from the need to standardise and judicial practice and the consistent application of the law in the matter of the termination of the preventive measures — as a guarantee of the respect for rights indispensable accused\/defendant in criminal proceedings.

Even if at first glance the law is clear and concise, however, judicial practice has passed different solutions, often giving the misinterpretation, and precisely why during the study I will present some of the most relevant solutions jurisprudențiale, both published and unpublished, as well as the jurisprudence of the European Court of human rights, also commenting on his own option likely controversy.In view of these considerations in the present research wish to realize a complete documentation and jurisprudențiala and doctrinara, trying to force through the comments made on the text of regulations and solutions given by courts to make a judgment necessary and useful to practitioners of law cases of cessation of the right to preventive measures.

Keywords: *Preventative measures, preventive arrest, prosecution, custody, reasonable time*

Introduction

The procedural measures are procedural penal law institutions used for the functioning of the judicial bodies in the normal and effective prosecution and judgment, their functionality is to prevent or eliminate the circumstances which hinder the realization of condițiuni in criminal proceedings[1].

Of procedural measures, including preventive measures are considered by the legislator as being the most important, having as purpose, as provided for in article 136 of the code of penal procedure, to ensure the proper conduct of the criminal proceedings and\/or prevention of theft indicted or defendant in criminal proceedings, trial or enforcement of penalty.

Preventive measures are provided for in legislation of the Romanian detention pre-trial arrest, the obligation not to leave the city and the obligation not to leave the country.With regard to these preventive measures, the code of criminal procedure reglemeteaza procedure to take roman, revoking, replacement or termination thereof.

The study that I'll develop will treat the main issues raised by the termination of the preventive measures.

The need for this study stemmed from the existence of a national uniform judicial practice, in particular as regards the provisions of article 140 paragraph 2 of the code of penal procedure, in relation to the provisions of article 159, paragraph 8 and paragraph 13 of the code of penal procedure

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[1] Nicolae Volonciu, Dealt with in criminal proceedings. The general part, vol. I, Publisher Paideea, Bucharest, 1996, p. 399.

and decision no. 25\/2008 the High Court of Cassation and Justice United Stations, rendered in an appeal in the interest of the law.

The issue was subject to analysis of the subject and other doctrinal terms, are both as a subheading in the various treaties or specialized courses of the great teachers of the criminal procedural law (Ion Neagu, Nicolae Volonciu, etc.), as well as study alone or as part of the studies published (either by theorists or practitioners) in specialised magazines relating to preventive measures.

Having regard to the numerous and erroneous solutions given in the judicial practice in cases of termination of the pre-trial detention measure, perhaps in a not very distant future, we will have a practice of the European Court of human rights which will see different criminal violation of a fundamental human right, namely the right to liberty, and which likely will condemn the Romanian State to pay damages.

The conclusions at which I got from întocmiri this study were based on both the solutions given by our courts, on the various opinions of scholars and its own analysis of the texts, regulations and cases related to the case with whom I had contact in the practice.

Perhaps, in so far as that will prove correct findings of this study will form a useful support in developing the future Code of criminal procedure.

Prevention measures are procedural penal institutions of law with binding to bind the accused or convicted person is prevented from carrying out certain activities that would adversely affect the attention upon the criminal process or on the aim of this[2].

In view of the fact that by taking measures of prevention, notwithstanding the fundamental right of inviolability of the person, the legislator has established reasonable procedural guarantees, which require strict laws that allow making the replacement, revocation or termination of these measures of procedural law[3].

Termination of right of preventive measures is a legal institution through which in the cases and under the conditions provided for by law judicial (Court or Prosecutor) have, by an order of the Ordinance, immediately putting freedom of the detained or arrested, or termination of the culprit for the accused or the obligation not to leave the place or country, and of all other obligations laid down by the judicial authority when he ordered the taking of such measures.

While revoking measures preventing is a procedural opportunity act which one judges judicial law, cessation of measures for prevention is a legal obstacle against maintaining them[4].

According to article140 of the code of penal procedure, preventive measures shall:

a. law upon expiry of the deadlines laid down by law or established by judicial bodies or at the expiry of the stipulated in article 160^{b} paragraph 1 of the code of penal procedure, if the Court has not made the verification of the legality of pre-trial and continuing in that period.

By decision No. VII\/2006, the High Court of Cassation and Justice – United Stations was considered an appeal in the interest of the law declared by the General Prosecutor of the Prosecutor attached to the High Court of Cassation and justice, on the application of the provisions of article 140 paragraf 1 of the code of penal procedure and decided that: "neverificarea by the Court during the trial, and the continuing legality of pre-trial detention of the accused staff before the meeting period of 60 days referred to in art. $160^{\mathbf{b}}$ paragraf 1 of the code of penal procedure, of the accused minor aged between 14 and 16 years old inaite the expiry of 30 days referred to in art. 160^{h}, paragraf 2 of the code of penal procedure, and of the accused minor more than 16 years before the expiry of the

[2] Grigore Theodoru, Procedural law criminal. Special part, vol. II, Alexandru Ioan Cuza University, Iaşi, Faculty of law, 1974, p. 194.

[3] Ion Neagu, Handled by the criminal proceedings.The general part, Publisher Legal Universe, Bucharest, 2008, p. 536.

[4] Ion Neagu Handled by the criminal proceedings.The general part, Publisher Legal Universe, Bucharest, 2008, p. 536.

period of 40 days provided for in, art. 160 [h], paragraf 3 of the code of penal procedure, cessation of the pre-trial detention measure taken to inculptati and putting them immediately in freedom \".[5]

Circumstance that in the judgment the measure of pre-trial detention ceased law cannot constitute a legal basis for a new arrest in the same question, where no cause during the settlement appeared new elements which would justify this measure[6].

In respect of time limits for 60 days, 30 days or 40 days, they, on the restriction of rights of the person, rights conferred outside criminal proceedings may not be substantial than some that will be calculated in accordance with article 188 of the code of penal procedure, time and date of the beginning and ending with its duration.

Imperative nature of the term result of legal text content \"check periodically, but the Court not later than 60 days ...\"; What is missing is the sanction non-compliance with current rules limit that must be terminated as the measure of arrest, other procedural penalties and forfeiture – nullity – mandatory time limits applicable in the case of having no effect in this case[7].

In practice, the Court has ordered the arrest of the accused for a period of 3 days, providing for both the end and the term of arrest, the measure begins on 18 February 2004 and expired on 21 February 2004[8].

We consider the solution given by the Court as one flawed, having regard to the provisions of article 188 of the code of penal procedure, which provide that the calculation of time limits on preventive measures, the hour or the day that begins and ends at that time in its duration.

Thus, taking into account the text of the regulations mentioned above, we find that in this matter the measure of pre-trial detention ceased as on 20 February 2004.

In accordance with article 3001 combined with article 160[b] of the code of penal procedure, where the accused is detained, the Court second seised is obliged to periodically, but not less than 60 days, the legality and appropriateness of pre-trial detention; to collate with these laws, article 140 paragraph 1 of the code of penal procedure, which stipulates that preventive measure shall cease as from the expiry of 60 days if the Court has not made the verification of lawfulness and continuing in this period, the figure in the trial so far as pre-trial detention is limited to a period of 60 days, calculated from the date of conclusion of the Court of the measure; It is theoretically possible that within 60 days of the Court to verify the appropriateness of the measure several times.

Speaking about procedural sanction in case of exceeding the deadline of 60 days in the older doctrine explained that in any event the omission will not have the consequence of termination of the measure of pre-trial detention, the penalty in this case is relative nullity according to article 197 paragraf 1 and paragraph 4 of the code of penal procedure [9].

In another opinion if it considers that the limit is exceeded the term of 60 days of detention occurs termination of verification as a preventive measure with regard to the constitutional and imperative provisions of the code of criminal procedure resulting from the topical nature of this legislation[10].

In judicial practice has raised the question of whether the measure is terminated or not arrest law where the Court of appeal or the appeal does not verify the legality and appropriateness of pre-

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[5] Official Gazette nr. 475 from 01.06.2006.

[6] The Bucharest Court of appeal, Criminal Division II, criminal decision No. 12\/2005 in Dan Lupascu, Antoneta Nedelcu, Ionut Matei, Collection of practice in criminal matters through Court -2005, Publishing House universe binding , Bucharest, 2006, p.77.

[7] Julius Caesar Dumitrescu, Arrest the accused at the stage of proceedings, in the RDP. 2\/2006, p. 91.

[8] The Superior Council of Magistracy, the 2004-2005 National Jurisprudence, ed. Brilliance, Piatra Neamț, 2006, p. 704.

[9] Mircea I Cretu, The preventive arrest.Recent legislation in the RDP. 3\/2004, p. 129.

[10] Leontin Coras, Foetus, the preventive arrest.Termination of the measure of pre-trial detention of the accused, the No. 6\/2005, p. 181.

trial detention within 60 days from the date on which the Superior Court pronounced a judgment of conviction, by maintaining the State of arrest.

Some courts have considered, wrongly, that the economy of the texts of regulations (article 23 of the Constitution and article 160^b of the code of penal procedure).

It follows that overcoming the cessation of the measure of pre-trial detention, whereas this case not provided for in article 140 and article 350 of the code of penal procedure; violation of this obligation may result not only disciplinary judge guilty of exceeding the deadline of 60 days[11], overcoming time; in the case of 60 days are incidental provisions article 185 paragraf 3 and not those of art. 185 paragraph 2 thereof, which is why the sanction of invalidity relating to article 197 paragraf 1 and 4 the convicted may be an injury caused by overdue check; injury might be interfering, before verification of grounds which would have caused the revocation of the measure[12].

Maintenance of pre-trial detention, failing to indicate a term which shall not be more than 60 days are available only up to the next term of court, to arrest verification failure next trial would lead to termination of the preventive measure for the deadline of the judicial body (article 140, paragraf 1 (a) of the code of penal procedure).[13]

Another preventative measure which may terminate by expiry of the period laid down by law or by the judiciary is retention.

The arrest can be taken as both Prosecutor and criminal investigation body or clues are reasonable for committing an offence by the accused or defendant.

The measure of detention may last for more than 24 hours, but the judicial organ and may be less than the measure of detention.

Where the judicial authority does not consider that it is necessary to take the measure of pre-trial detention, as well as in cases where the Court referred to the proposal of preventive arrest until the Fund does not decide upon the expiration of the duration of detention, then this measure, once safely on time shall cease.

Following the arrest, Prosecutor incetariii is obliged to immediately provide entry into the freedom of the detained, a conduct contrary to the provisions of articles involving the incidence of article 266 of the code of penal procedure, which funds the crime of illegal arrest and abuse research.[14]

Very short term, for which you may order forfeiture, can create, in some cases, the Prosecutor does not have the disadvantage that the material time to draft and submit a proposal for the preventive arrest of Prosecutor in a timeframe that will ensure the possibility of solving the proposed arrest warrant within 24 hours of arrest, what is the consequence of the release of the detained[15].

It is therefore necessary to formulate a rethink of the duration of the measure of detention for the purpose of increasing its length is 48 hours or 72 hours, and this is justified by practical aspects, where due to the short interval of time of detention, very often the accused or convicted person who has ceased to be capable of holding up to rule on the merits of the opportunity to take the measure of pre-trial detention, departing from the courtroom and evade prosecution and judgment although it is arrested in missing.

Crossing borders and the measures to leave the village, crossing not to leave the country-law ceases during prosecution through to arrive at a period where they are extended under the conditions

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[11] Braşov, Court of appeal, the conclusion of 12.01.2004, file No. 155\/ap\/2004 in Braşov court of appeal, Judicial practice gathering in criminal matters, 2003-2004. Criminal law.The criminal procedural law, Publisher Merona, Bucharest, 2005.

[12] Ioan Cristian Uța, Checks on the arrest of the accused during the judgment against arbitrary-warranty maintenance of preventive measure, the No. 2\/2006, p. 219.

[13] Ioan Cristian Uța, Checks on the arrest of the accused during the judgment against arbitrary-warranty maintenance of preventive measure, the No. 2\/2006, p. 221.

[14] Grigore Theodoru, Criminal procedural law. Treatise, Publisher. Hamangiu, Bucharest 2007, p. 491

[15] L.N. Pirvu, arresting during criminal prosecution against No. 3\/2004, p. 28-44.

laid down by law or by reaching the maximum period laid down by law to an accused or defendant may be forced to leave the city or country.

According to the law, the maximum duration of these procedural measures during criminal prosecution is one year, except where the penalty prescribed by law for the offence is imprisonment for life, or detențiunea for 10 years or more, in which case the maximum duration of the preventive measure is 2 years.

Whereas the rules of criminal procedure do not provide for the duration and the need to verify the legality of the measure and the determination not to leave the crossing place of the Court, concluded that emerges is that the measure of the time of judgment shall be for an indefinite period and lasts until delivery of the solution in the process; in support of this opinion, the provisions of articles we invoke article 350 of the code of penal procedure, which paragraph 1 stipulates that in its decision the Court must first rule on taking preventive measures or revocation on the grounds the solution, this obligation is valid also for the Court of appeal in accordance with article 383 paragraf 1 of the code of penal procedure[16].

In the event that the Court has not acted on the decision expressly on the maintenance or revocation action, crossing borders to leave the village, in the doctrine it was considered that this measure cease as with the pronouncement, it is accepted that the preventive measure, which in essence is repressive of indefinite duration, would haveeven beyond the date on which the procedure acts cycle ends; so far, crossing not to leave the place, when it is not replaced during revocata or judging the case, has processual cycle, and if the Court fails to pronounce the judgment adopted on this measure cease[17].

b. in the event of withdrawal of prosecutions, the termination of criminal prosecution or the termination of the criminal proceedings or acquittal;

The interpretation of the text of the law (art. 140, para. C.proc.pen.) at the stage of criminal proceedings, in the event of removal under criminal investigation or prosecution, the Prosecutor ex officio or following the information of the criminal investigation body, has an obligation to ensure the cessation of the preventive measure, for sending immediately the freedom, detained or arrested for possession of premisesa copy of the Ordinance, or an extract[18].

When the case of termination of criminal prosecution or removal under criminal prosecution of a defendant charged or arrested, the Prosecutor must decide on the termination of criminal prosecution or prosecution under the release on the same day in which he received a proposal for termination or removal from the criminal investigation body, whether the Prosecutor has ordered the cessation or removal under criminal investigationthe measure of pre-trial detention of the accused ceases, or the accused being placed immediately in freedom.

In the Ordinance of the Prosecutor shall make mention of the establishment and termination of the pre-trial detention measure, where the cessation or prosecution under criminal prosecution of a defendant charged or arrested.

Note, however, that, according to article 246 of the code of penal procedure, paragraph 2, as regards the procedure for notification about termination of criminal prosecution, provided that where the accused or the suspect is arrested, the Court shall notify by pre-emptively address the administration of the detention, to put it immediately blamed on the freedom or the culprit; therefore,

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[16] Costel Niculeanu, Opinion on the termination of the measure, crossing not to leave the place, if the Court fails to rule on the appeal in accordance with art. 350 para. 1 of the code of criminal procedure, law No. 6\/2009, p. 212.

[17] Costel Niculeanu, Opinion on the termination of the measure, crossing not to leave the place, if the Court fails to rule on the appeal in accordance with art. 350 para. 1 of the code of criminal procedure, law No. 6\/2009, p. 212.

[18] Anca-Lelia Lorincz, termination of right of preventive measures in the case of judgment and don't send in the need to adjust the provisions in this area, following the amendments introduced through law No. 202\/2010 in Law no.9\/2011, p, 213.

should be amended and 246 paragraf 2 of the code of penal procedure, in the sense that, in the event of termination of criminal prosecution or removal under criminal detention place administration finance for implementation immediately accused or indicted person freedom of the detained or arrested to be made by the Prosecutor by providing a copy of the Ordinance in which it was found the cessation of the preventive measure[19].

c. when, prior to the pronouncement of a judgment of conviction in first instance, the duration of the arrest reached half the maximum penalty prescribed by law for the offence which is the subject of accusations without being able to overcome, in the course of criminal proceedings within a reasonable period, and no more than 180 days.

According to article 139 of the code of penal procedure, total length of pre-trial detention during criminal prosecution may not exceed a reasonable period, and no more than 180 days.

Having regard to the provisions of article 140 paragraph 2 of the code of penal procedure, we appreciate that the termination of the pre-trial detention may take place and if its duration exceeds a reasonable time without touching but 180 days, being neither distinction between the two categories of maximum time limits[20].

In regards to it within a reasonable time cannot be determined in abstracto but has to be examined on a case-by-case basis depending on the specific features of it.

The time at which it starts to calculate the duration reasonable (dies a quo) is that which the person accused is detained or arrested[21].

In judicial practice has raised the question of whether or not arresting stops right in the event that the appeal against the closure of the extension of the measure of pre-trial detention in the course of prosecution are judges after expiry of the period of pre-trial detention ordered earlier conclusion.

Some courts have held that in this situation the preventive arrest never ceases.

The motivation was that in article 140 of the code of penal procedure, look what causes termination of law among them being mentioned and nejudecarii appeal within the 30-day extension of the State of detention ordered by the conclusion of recurata; If the legislator had wanted to understand the imperative nature of provisions oblige the Court of appeal to hear the appeal within a period of extension of the State of detention ordered earlier by subject to judicial review, the ought to correlate this provision with the provisions of article 140 of the code of penal procedure, the only text on this matter are limiting cases and specifically look for termination of right of preventive measures; These entries have been made per a contrario that result in the legislature did not understand to consider case of termination of the pre-trial detention measure non-recourse înlăuntrul term extension of the measure ordered by the conclusion contested[22].

By decision No. 25\/2008, the High Court of Cassation and Justice-offices-United admitted the appeal in the interest of the law, declared by the General Prosecutor of the Prosecutor attached to the High Court of Cassation and justice, on the interpretation and application of article 159, paragraph 8 of the code of penal procedure, is second sentence concerning the resolution of the appeal brought against the conclusion by which it was decided to extend the pre-trial detention ordered in the course of criminal proceedings and decided that: \"the provisions of article 159, paragraph 8 of the code of penal procedure, second sentence, shall be construed that: (1) the words

[19] Anca-Lelia Lorincz, termination of right of preventive measures in the case of judgment and don't send in the need to adjust the provisions in this area, following the amendments introduced through law No. 202\/2010 in Law no.9\/2011, p, 213.

[20] Julius Caesar Dumitrescu, Considerations relating to the duration of the measure of pre-trial detention, the No. 3\/2008, p. 208.

[21] Mikhail Udroiu, Within a reasonable time of pre-trial detention, Law No 3\/2007, p. 142.

[22] Conclusion No. 168\/R in 04.05.2011 pronounced the Court Bucharest, section II of the Penal Code in the file. 32046\/3\/2011 (with the dissenting opinion of Judge Radu and Ioana Cleopatra), unpublished.

used by the legislator \"before the expiry of the duration of pre-trial detention ordered earlier conclusion attacked\" is binding, and no recommendation;

2. appeal against the closure which has ordered the admission or rejection of the proposal to extend the measure of pre-trial detention always will be solved before the expiry of the period of pre-trial detention ordered earlier conclusion. \"[23]

According to article 5 paragraph 1 of the code of penal procedure, indicate absolution date problems as judged is compulsory for instances of the date of publication of the decision (in the interest of law) in the Official Gazette of Romania, part I.

However there were judges who have come to the conclusion that the measure of pre-trial detention shall cease as the situation.

It was reasoned that although appeals against the conclusion of the meeting declared that it was willing to extend the duration of pre-trial detention have no suspensive nature of enforcement, the solution being substantive court enforceable until the pronouncement of the Court for judicial review, this time of the superior court that was established to be the imperative before the expiry of the duration of pre-trial detention ordered earlier conclusion was taken as against the appeal, concluding that it was willing acceptance of the proposal to extend the measure of pre-trial detention was settled after expiry of the period of pre-trial detention ordered earlier conclusion that the measure was taken, was ordered to arrest the suspect stopped as recurring and should be immediately freely if not detained or arrested in another question[24].

d. in other cases specifically provided for by law according to article 350 of the code of penal procedure, the judge has immediately putting freedom of the accused arrested pre-emptively when pronouncing: a. an imprisonment not more than the duration of pre-trial detention, and b. a punishment with imprisonment with conditional suspension of the execution of the times with a stay of execution under supervision or enforcement to work fine educational measures according to paragraf 6 of the same article the Court convicted the accused and the State of ownership is liberat soon during arrest and detention are equal to the length of the sentence handed down, although the decision is not final.

The difference between the cases of article 140 of the code of penal procedure and article 350 of the code of penal procedure, that is, to produce legal effects, for the situations provided for in article 140 of the code of penal procedure, no need for an express provision of the Court to ascertain that preventive measure in cases of ceased, however, provided for in article 350 of the code of penal procedure, device resolution to obligatorily contain this provision[25].

I might add here and the case against the punishment, which applies in full pardon; this case results from all regulations relating to pardons, as a logical consequence of its application[26].

Another case of termination of the pre-trial detention measure represents a situation where, in the course of criminal prosecution or trial, following the administration of evidence takes place a change of the legal classification of the offence, and the new criminal law provides for offence or pedepasa alternative punishment of prison or fine penalty fine.

Taking into account the provisions of article 136 para 6 of the code of penal procedure, that the measure of pre-trial detention may not be ordered in the case of offences for which the law provides for alternative penalty fine, we consider that in this case the competent judicial body has the

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[23] Official Gazette nr. 372 fron03.06.2009.

[24] Ioana Radu Cleopatra, No dissenting opinion at the end. 148\/R of the Bucharest Court pronounced 20.04.2011 section II of the Penal Code in the file. 9712.4.2011, unpublished.

[25] Gigel Potrivitu, Alexandra Sibinovici, Discussions regarding some situations for termination of the preventive measures, Law nr. 6\/2009, p. 217..

[26] Ion Neagu Handled by the criminal proceedings.The general part, Publisher Legal Universe, Bucharest, 2008, p.220.

obligation to ensure the cessation of the measure of pre-trial detention and to send a copy of the Ordinance on the device or by the administration of the place of detention for the purposes of the immediately preceding the preventive arrest.

Against the conclusion that the judge shall, during the cessation of criminal prosecution as a preventive measure, the Prosecutor and the accused or the defendant may appeal to the High Court within 24 hours after its pronouncement, for those present, and from the lack of communication, for those.

Conclusion that, in the course of the prosecution, the judge rejected the request for termination of the measure of pre-trial detention is not subject to any appeal.

In this case the High Court of Justice Casatie and decided to file an appeal in the interest of the law as a conclusion of the ordering, during the criminal investigation, rejecting the application for termination of pre-trial detention may not be contested separately appeal.

Participation of Prosecutor in the judgment the appeal is mandatory[27].

The accused or convicted person arrested will be brought before the Court of appeal and will be listened to, legal assistance is compulsory.

The appeal will be examined in the absence of the accused or indicted when he was in the hospital and because of his State of health cannot be brought before a judge, and when his movement is not possible due to a State of necessity or of a case of force majeure.

And in this case, the judgment of the appeal cannot be made only in the presence of the accused\/defendant\/attorney, which gives the word to make conclusions.

Appeal brought against the conclusion whereby it was found as a cessation of the measure of pre-trial detention during the criminal prosecution is not the suspension of enforcement.

In its judgment the Court conclusion date or call ordering termination of a preventive measure may be attacked separately appeal, the accused or the Prosecutor.

Instead the conclusion by the Court or the Court of Appeal rejected the application for termination of the preventive measure is not subject to any appeal.

Appeal brought against the conclusion whereby it was found as a cessation of the measure of pre-trial detention is not the suspension of enforcement.

Having regard to the matters under examination, we appreciate that, in principle, the legal insitutia of the cessation of the preventive measures include modern regulations covering largely the multitude of situations arising in the judicial practice.

The institution has as its main Foundation to avoid abuse in which the accused or the defendant may be subject to criminal proceedings in the course of taking, extension or maintenance to the preventive measures under conditions other than those provided for by law.

Moreover, taking into account the jurisprudence of the European Court of human rights, the roman legislator inserted in the code of criminal procedure, the procedural guarantees to the accused or indicted person, able to lead us to the conclusion that the criminal process itself will take place within the limits and under the conditions provided for by law and with observance of all the principles that govern the conduct of fundamantale.

Emphasize that with the introduction of the article 140 paragraph 2 of the code of penal procedure relative to article 159 of the code of penal procedure in paragraph 13, of the notion of \"reasonable time\", the legislator has given effective roman and Romanian legislation harmonised with the provisions of the European Convention on human rights.

The main problem facing the practice court at this point is therefore that the preventive arrest is terminated or not right where the appeal against the closure of the extension of the measure of pre-trial detention during the criminal prosecution shall be judges after expiry of the period of pre-trial detention ordered earlier conclusion.

[27]ICCJ United stations, Dec. nr. 12\/2005, published in Official Gazette No. 119 of 08.02.2006.

To this aspect and taking into account the solutions which we have argued throughout the trial, we consider as a logical conclusion that is relevant and of nesesar ferenda amending article. 140 C.proc.pen., within the meaning of that provision of express the extent of pre-trial detention law ceases when the appeal against the closure which has ordered the admission or rejection of the proposal to extend the measure of pre-trial detention in the course competencies will have as a basis of settlement once duration of pre-trial detention after expiry of the previously arranged.

References

Books

- Grigore Theodoru, Procedural law criminal. Special part, vol. II, Alexandru Ioan Cuza University, Iaşi, Faculty of law, 1974, p. 194
- Grigore Theodoru, Criminal procedural law. Treatise, Publisher. Hamangiu, Bucharest 2007, p. 491
- Ion Neagu, Handled by the criminal proceedings.The general part, Publisher Legal Universe, Bucharest, 2008, p. 536
- Nicolae Volonciu, Dealt with in criminal proceedings. The general part, vol. I, Publisher Paideea, Bucharest, 1996, p. 399

Journal articles

- Anca-Lelia Lorincz, termination of right of preventive measures in the case of judgment and don't send in the need to adjust the provisions in this area, following the amendments introduced through law No. 202\/2010 in Dreptul no.9\/2011, p, 213
- Costel Niculeanu, Opinion on the termination of the measure, crossing not to leave the place, if the Court fails to rule on the appeal in accordance with art. 350 para. 1 of the code of criminal procedure, Dreptul No. 6\/2009, p. 212
- Gigel Potrivitu, Alexandra Sibinovici, Discussions regarding some situations for termination of the preventive measures, Dreptul nr. 6\/2009, p. 217
- Ioan Cristian Uța, Checks on the arrest of the accused during the judgment against arbitrary-warranty maintenance of preventive measure, Dreptul No. 2\/2006, p. 219
- Ionuț Matei, Bucharest Court of appeal. Collection of judicial practice in criminal matters-2005., Bucharest 2006, p. 77
- Julius Caesar Dumitrescu, Arrest the accused at the stage of proceedings, in the RDP. 2\/2006, p. 91
- Julius Caesar Dumitrescu, Considerations relating to the duration of the measure of pre-trial detention, the No. 3\/2008, p. 208
- Leontin Coras, Foetus, the preventive arrest.Termination of the measure of pre-trial detention of the accused, the No. 6\/2005, p. 181
- L.N. Pirvu, arresting during criminal prosecution against No. 3\/2004, p. 28-44
- Mihail Udroiu, Within a reasonable time of pre-trial detention, Dreptul No 3\/2007, p. 142
- Mircea I Cretu, The preventive arrest.Recent legislation in the RDP. 3\/2004, p. 129

Jurisprudence

- The Bucharest Court of appeal, Criminal Division II, criminal decision No. 12\/2005 in Dan Lupascu, Antoneta Nedelcu, Ionut Matei, Collection of practice in criminal matters through Court -2005, Publishing House universe binding , Bucharest, 2006, p.77,
- Braşov, Court of appeal, the conclusion of 12.01.2004, file No. 155\/ap\/2004 in Braşov court of appeal, Judicial practice gathering in criminal matters, 2003-2004. Criminal law.The criminal procedural law, Publisher Merona, Bucharest, 2005
- Conclusion No. 168\/R in 04.05.2011 pronounced the Court Bucharest, section II of the Penal Code in the file. 32046\/3\/2011 (with the dissenting opinion of Judge Radu and Ioana Cleopatra), unpublished.

- Ioana Radu Cleopatra, No dissenting opinion at the end. 148\/R of the Bucharest Court pronounced 20.04.2011 section II of the Penal Code in the file. 9712.4.2011, unpublished
- ICCJ United stations, Dec. nr. 12\/2005, published in Official Gazette No. 119 of 08.02.2006
- The Superior Council of Magistracy, the 2004-2005 National Jurisprudence, ed. Brilliance, Piatra Neamț, 2006, p. 704

Legislation

- The romanian code of criminal procedure
- Constitution Of Romania
- Official Gazette nr. 475 from 01.06.2006
- Official Gazette nr. 372 fron03.06.2009