TERMINATION OF PREVENTIVE MEASURES – COMPARATIVE LAW ISSUES

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Abstract

Preventive measures are one of the most important institutions of the criminal procedural law, because of the fact that by taking it the freedom of the citizen is restricted - one of the most important constitutional rights.
The legislator had a difficult task when it approved the rules governing the conditions for making, revocation and termination of the preventive measures, being necessary to balance the security of criminal procedures on one hand and freedom of the investigated citizen on the other hand.
In this study we intend to analyze the institution of legal cessation of preventive measures, reviewing a comparative presentation with other states that have chosen to regulate the procedural measures.
Not lastly, we will notify the identified inconsistencies and will issue the legislative proposals so that the provision should not be criticized by its recipient.

Keywords: *preventive measures, termination of the right, comparative law, prosecutor, house arrest.*

1. Introduction

The preventive measures are those procedural instruments offered by the legislator to the judicial bodies, so that if there is strong evidence or indications that a person has committed an offence under the criminal law and these are essential for carrying out the criminal procedures in a good condition.

The preventing measures are part of procedural measures category that are defined in the specialized literature as being institutions of constraint which can be ordered by the criminal court to properly perform the criminal proceedings and ensures achieving the object of the action in the criminal proceedings[1].

In the Code of Criminal Procedure, we find as regulated the following institutions which are part of this procedural measures category: preventive measures, security measures of medical nature, ensuring measures, reimbursement of the things and restoring the situation previous to committing the offence.

We believe that this study is of heightened importance given the fact that it examines the institution of legal termination of preventive measures, making a comparison with the other countries that have regulated this way to stop a preventive measure and identify whether the current position is objectionable and what improvements can be made to the standard criminal procedural law.

First we will analyze national legislation, then we will highlight criminal procedural elements identified in other legislations related to the institution of termination of the preventive measures.

The approached topic is well known, and the specialized doctrine chose to write about in several occasions about how these preventive measures cannot be perpetuated in criminal proceedings. In the research I could not identify, however, a paper that comparatively addresses the institution under discussion, meaning that, our duty is to try to offer a comprehensive study on the subject.

2. Preventive measures in the Romanian criminal procedural law

Following the defeat of compliance report, after the individual choses to commit offences under the criminal law, after triggering the mechanism of criminal proceedings, the judicial body has the power to choose whether the preventive measure should be taken not to threaten the smooth conduct of criminal proceedings.

As we already know, according to the national procedural law, the preventive measures that can be taken are detention, judiciary control, judicial control on bail, remand in custody and house arrest.

The 5th title of the General Part of the Code of Criminal Procedure is devoted to analyzing preventive measures and other procedural measures, the former being regulated in article 202- 244 C.C.P.

Having a procedural nature, the preventive measures may only be taken only under the conditions prescribed by law, by certain officials, following a certain procedure and for certain periods. Also, even though it implies a constraint similar to the one resulting from the execution of the penalty of imprisonment, the custodial preventive measures differ from imprisonment because it is only taken during the criminal trial, exceptionally, in order to prevent the suspect or defendant to avoid prosecution, trial or execution of the sentence or to obstruct finding the truth[2].

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[1] I. Neagu, M. Damaschin, *Treaty of Criminal Procedure, Overview*, ed. Universul Juridic, București 2014, p. 583.
[2] G.Mateuț, Treaty of Criminal Procedure, Overview, Vol. II, C.H.Beck, București, 2012, p. 329.

Thus, we see that the legislator established a series of guarantees for people who are being investigated in criminal proceedings, such as periods which the preventive measures can take, category of judicial bodies that can appreciate the opportunity to take an action, revocation, termination of or replacing those measures.

The most important aspect is generated by the facultative character of these procedural measures so that the legislator does not list a number of crimes for which would be essential to take a preventive measure.

Once satisfied the condition of the opportunity to take preventive measures in a certain case, the judicial body imposes the obligation to motivate what was the reason for choosing a particular preventive measure out of the ones offered by the legislator in the article 202 line 4 of C.C.P., and why another one is not sufficient for the good conduct of the criminal trial. We also have to note that this obligation of the judicial bodies is to be found both in taking a preventive measure as well as at the time when questioning the extension or maintaining it.

2.1. Termination of the preventive measure of detention

A. Conditions in which the measure can be taken

According to the provisions of article 209 of C.P.P., the preventive measure of detention may be taken only in the first phase of the criminal proceedings or criminal prosecution stage, by the criminal investigation body or prosecutor towards the suspect or the defendant, if such action is necessary to ensure the conduct of good conditions of the criminal trial, of the breach of absconding the suspect or the defendant from trial or prevent committing of a crime. However, it is necessary not be a cause which prevents the initiation or exercise of criminal proceedings from the ones provided by article 16 of C.C.P and the preventive measure must be proportional to the seriousness of the accusation made to the suspect or the defendant. We hereby observe that the only preventive measure that can be ordered is, on one hand, towards the suspect and, on the other hand, towards the criminal investigation body.

The preventive measure of detention should not be confused with other forms of deprivation or temporary limitation of freedom of movement:

- Catching the perpetrator and presenting him immediately in front of the prosecution, in the case of flagrante delicto;
- Driving a person to the police station, as an administrative police measure provided under Law no. 218/2002 on the Functioning of the Romanian Police;
- Bringing subpoena and remaining at the disposal of the judicial body for no longer than 8 hours (article 265 of C.P.P.);
- Remaining in the witnesses and expert courtroom at the court of law disposal, after hearing them and until the end of the inquiry act which is carried out in that meeting (article 381 line 9 C.P.P.)[3].

The preventive measure may be imposed for any offense under the Criminal Code or special laws, after the criminal investigation body or prosecutor who hears the suspect or defendant in the presence of the chosen counsel or ex officio. The suspect or the defendant has the right to personally inform his chosen lawyer and this has the obligation to present himself in at least two hours at the judicial body premises.

The judicial bodies have an obligation to inform the detained person of the offence he is accused of, the reason of detention, the order under **which** this measure was taken, the right to bring a complaint against it and the maximum period for which it can be taken.

Regarding the maximum period for which this measure can be ordered, we can see that the legislator sets a 24-hour period, calculated from the initiation time of the measure by ordinance by the prosecutor or criminal investigation body. Therefore, this term will not include driving the suspect or defendant at the judicial body premises, according to law and also any period when the suspect or the accused was under the power of warrant for arrest.

Therefore, this term is a substantial one that is calculated as per the provisions of article 271 of C.P.P., *thus in calculating the periods on preventive measures or any other right restrictive measures, the hour or the day when it starts and ends the period enters its duration*.

B. Termination of the measure

In the theory of criminal trials it was showed that discontinuation of preventive measures happens when there is a legal obstacle in its maintenance, the authority before which the case is under disciplinary and even criminal responsibility, to immediately release the person detained or in custody, or to immediately lift the obligation not to leave the town or country or obligations imposed by judicial control[4].

With reference to 241 of C.C.P. which is the legal basis for termination as preventive measures, we note that the detention may cease in the following situations:

- When the period ends, provided by law – we are in this situation when the prosecutor ordered the detention for a period of 24 hours and at the end of this time the suspect or defendant was released or if a proposal for preventive detention was made but was not solved, the defendant will be released from the witness stand and will plead with him in liberty.

In the specialized literature, it was pointed out that according to their nature and purpose, the preventive measures are always temporal, being taken on a term precisely or relatively fixed[5].

In the article 268 line 2 of C.C.P. marginally called consequences to failure to comply with the term,

[3] N.Volonciu ș.a., New Code of Criminal Procedure, 2nd edition revised and enlarged, ed. Hamangiu 2015, p.470.
[4] G.Theodoru, *Treaty of Criminal Procedural Law*, 3rd edition, ed. Hamangiu, București, 2013, p. 375-376.
[5] V.Dongoroz ș.a., Theoretical explanations of the Romanian Code of Criminal Procedure, ed. All Beck, București, 2003, p. 314.

the legislator regulates the fact that *when a procedural measure can be taken only for a certain term, its expiry draws the termination of the measure*.

- When the term set by the judiciary body expires – we are in this situation when the criminal investigation body or the prosecutor orders the preventive measure of detention on a period of less than 24 hours, meaning that, reaching this term leads to termination of the measure.

Making a practical analysis I have never identified the assumption that the judicial body would order as a preventive measure for a period less than 24 hours, but such a situation is impossible as long as the legislator intended to regulate it.

We are in the position that the defendant might be released before the expiry of the 24-hour term set by the criminal investigation body or by the prosecutor, assuming that it is formulated a proposal for preventive detention, and as per the provisions of article 227 line 1 C.C.P. *the rights and freedom judge, if it considers that the conditions set by the law for the defendant's preventive detention, rejects, by a reasoned conclusion the proposal of the prosecutor, ordering the release of the detained defendant*[6].

This circumstance is more a special revocation type, even though the rights and freedom judge would not order the revocation of detention, but immediately releasing the detained defendant.

2.2. .Termination of the preventive measure of judicial review and judicial control on bail

A. Conditions in which measure can be taken

Depending on the seriousness of the crime incriminating the accused, the manner in which it was committed and the person accused, the judicial body if it believes that a custodial sentence is not necessary for the purposes of criminal proceedings may take a measure restricting liberty, respectively, judicial or judicial bail.

These preventive measures that are similar can be arranged if the following conditions are met:

- There is evidence and clues which point to the reasonable suspicion that a person has committed a crime;
- The measure is necessary to ensure the smooth conduct of the criminal trial, to prevent the defendant from absconding from prosecution or trial or to prevent committing another offense;
- Defendant to be heard in the presence of the lawyer chosen or ex officio;
- The measure to be proportional to the seriousness of the charge and necessary for achieving the goal;
- Not to exist a case which prevents the exercise or initiation of criminal action between those apprehended in article 16 C.C.P.

Measure can be ordered both the prosecution stage and in the preliminary chamber and trial by the prosecutor, the rights and freedom judge, the judge of preliminary chamber or the court, a period of 60 days which can be extended to maximum 1 year[7], two years respectively[8] in the first phase of the criminal investigation and trial up to five years, calculated from the time of prosecuting.

B. Termination of the measure

The criminal procedure law has held a number of cases where preventive measures shall automatically be terminated by operation of law, excluding the possibility of appreciation in these cases from the judicial body on the appropriateness or necessity of ending the measure[9].

Although the legislator regulates what are cases where preventive measures will terminate, they still have to be found by the judicial authorities, in order to identify whether the conditions are met to operate the termination.

Therefore, the cases of termination of the measure as judicial control or judicial control on bail are:

- When the term provided by law expired;

The term set by the legislator is 60 days and will be incident this case of termination of law when the prosecutor had not ordered the extension of the preventive measure of judicial review or judicial control on bail or if the judge for preliminary chamber or the court has not checked legality or validity of the measure.

There were situations in the specialty practice when the courts have failed to question the legality of maintaining the preventive measure of the judicial control, meaning that, at the term, it was discussed the termination of preventive measure given the fact that the term provided by law initially set by the judge expired.

By concluding the hearing in the criminal case[10] no. 45092/3/2016/a1.2, the preliminary chamber judge from the Bucharest Court of Law decided *based on article 348 line 2 Code of Criminal Procedure with reference to article 241 line 1 letter of Code of Criminal Procedure., article 241 line 2 Code of*

[6] The conclusion 270/2014 of Suceava Court of Law ordered in the criminal case no. 7655/86/2014 rejects the proposal of the Prosecution office attached to the Court of Suceava of taking preventive detention for a period of 21 days of the defendant VORNICU IONUȚ ANDREI, as unfounded. Based on art. 227 line 2 of Code of Criminal Procedure reported to article 202 line 4 letter b Code of Criminal Procedure, judicial control measure is taken against the defendant Vornicu Ionut Andrei investigated for the offense of false testimony laid in article 273 line 1 and 2 letter d Code of Criminal Procedure, with application article 35 line1 Code of Criminal Procedure orders releasing the detained defendant Vornicu Ionuț Andrei if not detained or arrested in another case. 2. Rejects the proposal of the Prosecution Office attached to the Court of Law in Suceava to take the preventing detention measure on a period of 21 days of the defendant BALAN DENISIA, as unfounded. Orders the immediate release of the defendant BALAN DENISIA, if not detained or arrested in another case.

[7] article 215^1 line 6 C.C.P. if the penalty provided by law is a fine or imprisonment of up to 5 years.

[8] article 215^1 line 6 C.p.p. if the penalty provided by law is life imprisonment or imprisonment exceeding 5 years.

[9] N.Volonciu ș.a., New Code of Criminal Procedure, Second edition revised and enlarged, ed. Hamangiu 2015, p.565.

[10] http://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000000737017&id_inst=3.

Criminal Procedure, article 2151 line 2 Code of Criminal Procedure determines as being terminated, starting with Nov. 10, 2016, prior to issuing the document instituting preventive measure of judicial control, given to S. V. defendant by the ordinance no. 987/D/P/2016 of September 11, 2016 of the Prosecution Office attached to the High Court of Cassation and Justice – D.I.I.C.O.T. – Bucharest Territorial Service. Enforceable. With the right of appeal within 48 hours from the notification. Decided in the chambers, today, January 17, 2017.

- When the terms given by the judiciary bodies expire;

As I said in the preventive measure of detention, the legislator regulates only the maximum length on which a preventive measure can be taken, meaning the judicial body, the principle of *ad majori ad minus* has the opportunity to dispose the preventive measure to judicial control or judicial control on bail and for a shorter period of time. As a result, if the prosecutor decides to take the measure of judicial control over a period of 50 days, it will lawfully stop, to the extent that the measure would not be extend by an ordinance.

If the procedure of preliminary chamber has been completed and the court has not checked the legality and merits of the judicial control within 60 days from the last maintain of judiciary control and lacked maintenance of judicial control, the preventive measure ceases after this term[11].

In fact, against the defendant it was decided to take judicial supervision for a period of 60 days expiring on July 22, 2016. Subsequently, the DNA representatives – ST Alba Iulia have decided through the Ordinance of July 22, 2016 "the extension" of the judicial control measure for a period of 60 days starting with July 24, 2016. In those circumstances, the defendant made the request for the termination of the preventive measure ordered against him, saying rightly that the initially taken measure expired before the so-called extension. It has been argued that taking such a new measure is possible only if the new elements that had not been known at the date on which the extension could have been applied for the initial considerations for the measure.

By Conclusion no. 6/08.08.2016, the rights and freedoms judge of the Alba Court of Appeal upheld the finding of the defendant's request for termination of the measure as judicial control. The court noted in this context that *the extension of a preventive measure implies that prerequisite situation the pre-existence of such a measure, ordered as per the legal dispositions, we well as an unbroken continuity between the period of 60 days to measure judicial control established and duration for ordering the extension of this measure. Therefore, the prosecutor's decision ordering the extension of the measure, although it was given before its expiry and its fining cessation termination of the judicial control, taking place on July 22, 2016, a legal appearance, can no longer take effect when the rights and freedoms judge finds terminated the measure taken against the defendant.*

By Ordinance of October 08, 2016, the prosecutor's office representatives order again the preventive measure to judicial control against the same defendant for the same reasons taken into account at the previous "extension". Following the complaint made against that ordinance, the rights and freedoms judge of the Court of Appeal Alba received and noted the conclusions of the defender to the defendant meaning that taking a new measure may be ordered only if there is new evidence to justify the need for it.

For these reasons, the conclusion of the criminal case no. 7 of August 12, 2016, the court admitted the complaint stating that the prosecutor did not find the existence of new facts or circumstances, arising after the date on which it was ordered extension of judicial review (even if regarding this it has been found that its effects have been exhausted due to the termination of the initially ordered measure) and to justify taking a new preventive measure against the defendant, ordinance from August 10, 2016 is, in reality, an extension of the preventive measures that ceased and ceased to have effect.

The rights and freedoms judge has estimated that despite the provisions of article 238 line 3 Code of Criminal Procedure refers only to preventive detention, they should be applied *mutatis mutantis* in any similar situation. Therefore, taking a new preventive measure (regardless of its nature) is possible only if the emergence of new elements showing the need for it[12].

- During the criminal investigation or during the trial at first hearing on reaching the maximum term provided by law;

As mentioned above, these preventive measures may be ordered for a period of 60 days and can be extended up to one year, respectively two years during the criminal investigation of 5 years during the judgment at first instance, this last term when calculating from the moment of prosecuting.

We observe that legislator did not set a maximum term for the measure of judicial control or on bail during the preliminary room, we believe that it is applied the term stipulated for the trial stage, meaning it may not exceed 5 years from the moment when referring the court with the indictment.

During the trial the same obligation applies to periodically check but not later than 6o days the legality and merits of the preventive measure, meaning that this operation will not interfere, the preventive measure will be found as terminated.

- In cases where the prosecutor decides not to indict a solution or the court of law issues a solution of acquittal, closure of the prosecution,

[11] M.Udroiu, Criminal proceedings.Overview, ed.3, ed. C.H.Beck, p.677.
[12] http://www.chirita-law.com/prelungirea-controlului-judiciar-ulterior-incetarii-de-drept-a-masurii-preventive.

waiving the penalty or postponement of penalty or punishment by fine, even not final;

Naturally, if the judicial body considers that there must be a solution of conviction against the defendant who is being investigated in a case, not even keeping the preventive measure judicial control or bail cannot exist, since it is not longer necessary for the proper conduct of the trial.

Assuming that the prosecutor decides to cancel the prosecution, we consider that the preventive measure shall terminate as from the date of issue of the order, without regard to subsequent proceedings for confirmation of the order imposed by the judge for preliminary chamber, given the fact that the prosecutor appreciated on the opportunity to exercise criminal action, meaning that no measure cannot subsist, this no longer being needed.

We note, however, that if the court gives the suspension solution under surveillance or when applied to a non-custodial educational measure, it will not be found as being terminated the preventive measure judicial control or on bail, being able to maintain this measure or on the contrary, may be revoked.

In the specialized literature[13], it is considered that the measure of judiciary control will terminate even when the fine penalty accompanies imprisonment, if the court of law decides to delay the enforcement of the penalty; therefore when the fine penalty is accompanied by imprisonment, it is not necessary for the court to have a solution for sentencing, the provisions of article 62 of C.C.P. may be applied when it is delayed the enforcement of the penalty.

- The date of the final judgment when the defendant was convicted.

The need of perpetuating the preventive measure no longer exist, given the completion of the judgement by convicting the defendant, taking into consideration that its purpose was generated even by the good conduct of the criminal trial.

2.3. Termination of the measure of house arrest and preventive detention

These two preventive measures are the toughest of the five measures covered by the legislator, which can be taken both in the prosecution phase as well as during the preliminary trial chamber, consisting of deprivation of liberty for a determined period of time. The legislator pays special attention to the conditions under which these preventive measures can be arranged, by introducing a number of guarantees against the defendant for which it is considered the need for home arrest of preventive detention.

A. General conditions for taking these preventive measures:

- There are evidence and important clues which point to the reasonable suspicion that a person has committed a crime;
- The measure is necessary to ensure the good functioning condition of the criminal trial, of preventing the defendant from absconding from the prosecution or trial or to prevent committing another offense;
- The defendant to be heard in the presence his chosen lawyer or ex officio.;
- The measure be proportional to the seriousness of the charge and necessary for achieving the goal;
- Not to be a case which prevents the initiation or exercise of criminal action between those provided in article 16 C.C.P;
- To be found as alternative achievement any of the situations referred to in article 223 C.C.P.[14].

B. Termination of house arrest and preventive detention

Analyzing article 241 of C.C.P., regulatory framework of the institution of termination of preventive measures, we observe that the legislator establishes under line 1 general cases applicable to all preventive measures and in the second line special cases which are incident only in the case of house arrest and preventive detention. Thus, the magistrate will determine as being terminated the preventive measures analyzed in the following cases:

- When the term provided by law or determined by the judicial body expires or on the expiry of 30 days term, unless the judge for preliminary chamber or court has not checked the legality and merits of preventive arrest in this period, namely at the expiry of 60 days period, if the court has not checked the legality and merits of the home arrest or preventive detention[15].

The term set by the legislator for taking these preventive measures is 30 days, meaning that, if the rights and freedoms judge or the court does not decide setting the extension or maintenance of such measures,

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[13] M.Udroiu, Procedură penală.Partea generală, ed.3, ed. C.H.Beck, p.678.

[14] 1. a) the defendant escaped or has been hiding, in order to evade prosecution or court, or has been any type of preparing for such acts.

b) the defendant tries to influence another participant in the committing the offense, a witness or an expert, or to destroy, alter, hide or to escape as evidence or to cause another person to have such conduct.

c) the defendant puts pressure on the injured person or tries to achieve a fraudulent deal with him.

d) there is reasonable suspicion that after the initiation of criminal proceedings against him, the defendant has intentionally committed or prepares to commit a new crime.

2. The preventive detention of the defendant may be taken if from the evidence there is reasonable suspicion that he committed a deliberate crime against life, a crime that has caused injury or death to a person, a crime against national security stipulated in the Criminal Code and other special laws, an offense of drug dealing, arms trafficking, human trafficking, terrorism, money laundering, counterfeiting money or other valuables, blackmail, rape, deprivation of liberty, tax evasion, assault, judicial assault, corruption, an offense committed by means of electronic communication or another offense for which the law prescribes imprisonment of five years or more and, based on assessing the seriousness of the offense, the manner and circumstances of committing it, of the entourage and the environment from which it originated, criminal background and other circumstances relating to his person, shows that deprivation of liberty is necessary to eliminate a state of danger to public order.

[15] M.Udroiu, Criminal Procedure. Overview, ed.3, ed. C.H.Beck, p.591.

they shall terminate, the defendant being released, and such legislation having a strong protection and security trait against illegal extensions.

During the criminal investigation, the total duration that can be taken in preventive detention and house arrest is of 180 days. According to article 222 line 10 C.P.P. reproduced as amended by article I of Law 116/2016, following the occurrence of the Constitutional Court Decision no. 927 of December 15, 2015[16], *the length of deprivation of liberty ordered by the house arrest measure it is taken into account for calculating the maximum time of preventive detention of the defendant during the criminal investigation.* We see therefore that in the event that a certain cause was decided both the house arrest and preventive detention, these two measures can be taken over a period of maximum 180 days.

In the event that the defendant was taken into preventive detention for a period of 180 days during the criminal investigation and was ordered the prosecution in preventive custody, if the judge of the preliminary chamber decides to return the case to the prosecution, this will not be able to also maintain the preventive measure because it would have exceeded the maximum limit regulated both in CCP and the Constitution.

- If the prosecutor decides to dismiss or waive the criminal prosecution or the first court ordered by the sentence an acquittal solution, to terminate the criminal proceedings, to wave the penalty, to delay the enforcement of the penalty or suspended sentence of the execution of sentence under supervision;

Given that the fact that the first phase of the criminal proceedings ceases through a nolle prosequi or waiver solution of the criminal prosecution, obviously preventive measure cannot subsist beyond those limits. Moreover, looking at the cases where other solutions are disposed, we notice that they are incompatible with the perpetuation of a state of detention against the defendant.

- When before giving a solution in the first instance, during the arrest he has reached half the maximum penalty provided by law for the offense that is the subject of accusations, without exceeding the term of 5 years from the date of notifying the court of law;

In order to identify which is the special maximum of the punishment, we will relate to the punishment provided in the text of law without taking into account the obvious reasons for reducing or increasing the punishment.

- In the appeal, if the preventive measure of preventive detention or house arrest has reached the penalty ordered by the conviction sentence;

It will be found the termination of the preventive detention measure also assuming that the court of appeal admits an appeal declared only by the defendant and sends the case back to the first court, if the penalty imposed in the first instance is equal to the duration of the preventive detention; in this case, due to applying the *non reformatio in peius* principles courts will not impose a punishment greater than the punishment originally applied[17].

When the court orders by sentence convicting the defendant to imprisonment equal to the duration of detention, preventive detention and house arrest;

Clearly, the same reasoning is applied and intervene the termination by law and if the punishment set by the court is shorter than the duration of deprivation of liberty through the preventive measure.

When the seized the court of law decides upon a sentence to the penalty fine or a non-custodial educational measure;

From our perspective, we will operate with this institution of termination and when the court decides that the fine penalty is accompanied by imprisonment, and on which suspends the supervision or delays the enforcement of the penalty.

- At the date of the final decision of conviction to imprisonment with execution or life imprisonment;

In this circumstance, the preventive measure converts to penalty, which is to be enforced by the convicted person, the latter becoming convicted person from a person under arrest.

3. Aspects of Comparative Law

Analyzing other countries' legislation, we find that detention measure may be taken for a period of 24 hours in Luxembourg, Greece, Canada, Colombia and Germany and in Portugal, Russia or Poland of 48 hours and 5 days in Brazil.

In the Netherlands, as a preventive measure may be ordered for a period of 3 days, which may be extended by the prosecutor for a further period of 3 days.

In The Republic of Moldova[18], in case when the instruction judge, examining the steps regarding the application for preventive detention of the suspect according to article 307 of the CCP, rejects the request or applies a lighter preventive measure, the detained suspect is released after the expiry of 72 hours, and if in the process of examining steps it is found an essential violation of law to the person's arrest, he will be released immediately from the hearing room.

According to the criminal procedural legislation of the Republic of Moldova, the preventive measure terminates:

- when the terms provided by law or determined by the prosecuting authority expire (taking into account by the prosecutor) or by the court of law, if it was not extended according to the law;

[16] www.ccr.ro.
[17] M.Udroiu, Procedură penală.Partea generală, ed.3, ed. C.H.Beck, p.593.
[18] https://dreptmd.wordpress.com/teze-de-an-licenta/masurile-procesuale-de-constringere-in-legislatia-procesual-penala-a-republicii-moldova.

- in case of removing the person from criminal prosecution, finishing the criminal proceedings or of the person's acquittal;
- in case of execution of the conviction sentence;
- in case of adopting a conviction sentence with non- custodial penalty;
- the expiry of 10-day term of preventive detention or any preventive measures applied to the suspect, 30 days of arrest of the accused, or 6 months, 12 months or 4 months to extend the preventive detention of the accused, of 30 days ordering the not to leave town or the country by the accused:
- conviction with establishing the sentence and with exempting from punishment;
- conviction without punishment, and exempting from criminal liability;
- imprisonment with suspension of parole.

The Dutch Code of Criminal Procedure regulates in Title IV, the special means of coercion that can be arranged in criminal proceedings. Analyzing the criminal law legislation, we can observe that the concept of termination of coercive measures is regulated, but it uses the cancellation phrase, as follows:

- if case of decisions regarding the declaration of incompetence and release from prosecution, the temporary arrest will be canceled;
- in case of all final sentences - except for the provisions of line 6 and article 17 line 2 - the temporarily arrest will be canceled if, in connection with the offense for which the order was issued, the defendant is not required unconditionally the punishment of imprisonment for a period greater than the time spent by him in temporary custody, nor any measure that would attract imprisonment or which may attract imprisonment;
- in case that the period of the penalty of deprivation of liberty it is unconditionally imposed already exceeds the period made during the temporary arrest with less than 60 days, and it was not unconditionally imposed any measure that entails or may entail imprisonment, the temporary arrest will be cancelled in the final decision, without breaching the provisions of Article 69 with effect from the moment during this arrest is equal to the respective penalty.

In the Serbian Criminal Procedure Code, we have identified as incident the following measures to ensure the presence of the defendant and peaceful conduct of criminal proceedings, which are: summons, mandatory presence, provisions relating to travel and other restrictions, bail and detention. In the case of the measures on travel[19], according to article 168 line 11, these can last as long as necessary, but not later than the judgment becomes final. Instruction judge or the presiding judge has the obligation to check every two months if the measure applied is required.

The detention may be ordered for a period of one month, which can be extended up to two months, up to three months respectively, when the punishment provided by law is five years or more. In the event that, at the end of the periods charges are not brought, the defendant is released (in procedure held before the instruction judge).

The Belgian Code of Criminal Procedure governs the preventive detention. Thus, the arrest may be ordered for a period of 24 hours in case of flagrante delicto or where there are serious indications of guilt on a felony or a misdemeanor, but this time, with further conditions.

The person arrested or detained shall be released as soon as the measure has ceased to be necessary. The deprivation of liberty may in no case exceed 24 hours reckoned from the notification of the decision, if precautionary measures of coercion were taken from the time when the person no longer has the freedom to come and go.

The arrest warrant issued by the instruction judge is valid for a maximum of five days from its execution. The ordinance to keep in detention is valid for one month from the day in which it was given. As long as the detention has not ended and the instruction is not closed, the Council chamber is called upon to decide, every month, on maintaining the detention. Before the action of the defendant presents himself before the Council Chamber, provided in Article 262, the instruction judge can decide on the withdrawal of the arrest warrant by a reasoned order and immediately informs the King's prosecutor.

This ordinance is not subject to any appeal. Following the decision of the Council chamber under article 262, the instruction judge may, during the instruction, lifting the arrest warrant by a reasoned order and also informs the King's prosecutor. The Registrar shall inform as soon as possible in writing the defendant and his counsel. If the King's prosecutor does not oppose this ordinance within 24 hours of notification, the defendant is released. If the Council chamber did not decide within that period, the defendant is released.

According to article 267 C.C.P., in case of unwatched ordinance or resubmission ordinance to the police, the defendant is released, provided that he is not sent back for an act constituting an offense under Articles 418 and 419 of the Criminal Code or article 33, § 2, and 36 of the Law of March 16, 1968 relating to the road traffic police.

If the Council chamber resends the defendant before the Criminal Court or the police court, on

[19] (1) If there are circumstances indicating that the accused might run away, might hide or could go into an unknown place or abroad, the court may prohibit him from leaving home without permission by issuing a decision with stating of the reasons. (2) In situations referred to in paragraph 1 of this Article, the court may issue a decision prohibiting the defendant to leavehe the apartment or house, or ordering him to leave the apartment under surveillance on certain people. (3) According measures 1 and 2 of the article, the defendant may be ordered the following:1) prohibition from visiting certain places; 2) prohibition to meet with certain people; 3) to be present, occasionally and on exact time, in front of the court of law or any other state body; 4) temporary depriving of travel documents; 5) temporary deprivation of driving license and vehicle driving ban.

grounds of a deed which should not lead to a penalty equal to or greater than a year, the defendant will be released on condition to be present on a fixed day before the competent court.

When the Council chamber, adjusting the procedure, resends the defendant before a police court for reasons of an act for which preventive detention is founded and which is legally punishable by imprisonment superior to the duration of preventive detention which has already been subject to, it can release the defendant or decide by ordinance that the defendant will remain in custody, or he will be released, imposing him more conditions.

Provided that he is not be detained in another case, the defendant or remand prisoner is, despite the call, immediately released if acquitted, sentenced suspended or only fined, or if they benefit from have suspension of the pronounced sentence. The immediate release of the defendant or the remand prisoner involves, as far as he is concerned, the ban on the use of any means of coercion.

If he is sentenced to primary prison without delay, he is released, despite the appeal, from the time of the undergone detention is equal to the main prison term; in other cases, he remains detained for the time the decision will be given because of the action that motivated the detention.

In the IVth book of the Italian C.P.P. there are regulated the preventive measures (preventive detention and house arrest) and coercion (prohibition of expatriation, obligation to present oneself to the judicial police, the removal of the family home, the ban and obligation of the residence).

Analyzing the article 300 of C.C.P., we can observe as being regulated the institution of termination of measures following the delivery of certain sentences, such as:

- The measures ordered against a particular act immediately lose their effectiveness when, for this act and against the same person, archiving[20] is decided or sentence is pronounced due to lack of procedure in order to continue or to be released;
- If the defendant is in a state of preventive detention and by the sentence of release or lack of procedure to continue to apply the security measure of internment in the judiciary psychiatric hospital, the judge takes action according to Article 312;
- When in any court it is pronounced a convicting sentence, the measures lose efficiency if the imposed penalty is declared extinctive or conditionally suspended;
- The preventive detention also loses its effectiveness when the convicting sentence is pronounced, yet it is subject to the attack, if the period of the arrest is already lower in amount than the imposed penalty;
- The released defendant or against whom the judgment has been issued for lack of procedure in order to continue is subsequently convicted for the same offense may be ordered some coercive measures against him when preventive requirements are restored as per article 274 paragraph 1 b) or c).

Termination of the arrest due to not taking to the questioning of the person in a state of preventive detention, can intervene if happens during the preliminary investigation and judge does not take the interrogation in a certain period of time. However, the preventive detention loses its effectiveness when:

- the commencement of its execution the terms provided by the law already passed without the provision the judgment or order through which the judge has short judgment to have been issued according to article 438, or without being pronounced the sentence of enforcement of the penalty at the request of the parties;
- three months, when action is taken for an offense for which the law provides imprisonment not exceeding a maximum of 6 years;
- six months, when action is taken for an offense for which the law provides imprisonment of more than 6 years, except the provisions from no. 3;
- a year, when action is taken to an offense for which the law provides imprisonment for life or with imprisonment of not less than 20 years, or for one of the offenses indicated in article 407, paragraph 2, letter a), provided that this law provides for imprisonment of up to maximum 6 years.;
- from issuing the provision which requires judgment or from execution of the arrest have passed following terms without being pronounced the convicting sentence in the first instance:
- six months, when action is taken for an offense for which the law provides imprisonment of more than maximum 6 years;
- a year, when action is taken for an offense for which the law provides imprisonment of not more than 20 years, except for the provisions of no. 1;
- one year and six months, when action is taken for an offense for which the law provides imprisonment for life or with imprisonment exceeding maximum 20 years;

The total duration of arrest, taking into account the extensions provided by article 305, cannot exceed the following limits:

1. two years, until action is taken for an offense for which the law provides imprisonment not exceeding a maximum of 6 years;
2. four years, when action is taken for an offense for which the law provides imprisonment of not more than 20 years, except the provisions of letter a);
3. six years, when action is taken for an offense for which the law provides imprisonment for life or with imprisonment exceeding maximum 20 years;

[20] Until the dates provided for previous articles, the prosecutor, if the information on the case is unfounded, shows the judge the archiving request.

4. The procedure through which a preventive measure is established as terminated

The holders of issuing a preventive measure as being terminated as are the judicial bodies which having ordered the measure, or prosecutor, the rights and freedoms judge, the preliminary chamber judge or the court of law before which the case is pending. The judicial bodies will decide by an ordinance (the prosecutor) or terminate ex officio upon the request or referral of the prison administration[21].

The judicial bodies will have the right decide upon the termination of the preventive measures, ordering if the one detained or taken into preventive detention to immediately release him, if not detained or arrested in another case. Therefore, we find another incongruity of the legislator which does not also mention the situation of the one under house arrest for the same reasons there should be the same solution.

The rights and freedom judge, the preliminary chamber judge and not least the court of law shall rule by a reasoned conclusion in the presence of the defendant, who will be mandatorily assisted and with the participation of the prosecutor. There is a possibility that the judiciary bodies to rule in absentia but is required to be represented by a lawyer chosen or not producing any harm in such case, but aiming to promptly solve the request or notification. The judicial bodies are incumbent upon the obligation to immediately notify[22] the person against whom the preventive measure was decided and the institutions responsible for enforcement of the measure a copy of the order or conclusion / judgment / decision through which it has been detected the termination of preventive measure.

Against that conclusion, a complaint can be made by the prosecutor or the defendant within 48 hours of delivery for those present, and from the communication of the prosecutor or the defendant, who missed the pronouncement. The complaint filed against the decision through which the termination of this measure was found does not suspend the execution, the termination being enforceable[23].

5. Conclusions

Through this work we tried to go over the cases of termination as preventive measures under national law and a comparative presentation with other legislation on criminal procedure. The study developed under review we identified deficiencies institution and also have highlighted tasks judicial bodies in this matter and the rights of persons subject to preventive measures.

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[21] See Judgment 206/2015 of I.C.C.J. file no. 1054/2 / 2014 / a18: Admits the complaint filed by the defendant Chiriţă Mihai Gustin against the decision from date of February 3, 2015 of the Court of Appeal, Criminal Division II in case no. 1054/2/2014. Completely abolishes the contested conclusion and, re-judging: admits notification ANP and finds terminated the preventive detention measure taken against the defendant Chiriţă Mihai Gustin. Orders the release of the defendant under the power of preventive arrest warrant no. 17 / UP / 25.11.2013 issued by the Court of Appeal, Criminal Division I. Legal costs remain the responsibility of the state. Onorariul parțial cuvenit apărătorului desemnat din oficiu până la prezentarea apărătorului ales, în cuantum de 50 lei, se va suporta din fondul Ministerului Justiției. Definitivă.

[22] See case Ogică c. Romania (judgment of May 27, 2010): Friday, January 31, 2003, immediately after final judgment according to which the sentence imposed expires at midnight (see paragraph. 8), the Registry of the Court of Appeal Bucharest wrote a letter to inform the Bucharest-Jilava Penitenciary about the judgment so that the administration can take appropriate action. A report prepared in the same day at 3:10 p.m. graft court of appeal referred to the steps taken on the basis of the judgment mentioned above. In this it is mentioned that, on the phone, the commander of the Bucharest-Jilava Penitentiary Registry informed that the secretariat was closed and that no one could receive the fax regarding the judgment. According to this report, the commander redirected the call to the prison guard officer who, in turn, stated that releasing the defendant cannot be made solely on the basis of a phone call, in the absence of a written document. After receiving the fax, on Monday, February 2, 2003 at 7:52 am, the judgment of 31 January 2003, the Bucharest-Jilava Penitentiary administration has taken the necessary steps and, at 10:40, the defendant was released. Concerned, the Court notes that the final decision of 31 January 2003 sentenced the defendant to a term equal to the duration of detention already served by that date and that, immediately after the judgment, the Registry of the Court of Appeal contacted the Bucharest-Jilava Penitenciart to take the necessary steps in order to release the interested party; The Court notes that the failure of these efforts was recorded in the minutes drawn up on the same day at 3:10 p.m. The Court recalls that, in considering the term for enforcement of judgments for reconditional discharge of the plaintiff in cases where the conditions required for the release were achieved at a time when prison staff in charge of operations required in this regard was not present due to the work program, it did not exclude periods as evening and night. It can not, much less, to adopt an approach to the question especially since, unlike the case *Calmanovici*, the Registry of the Court of Appeal contacted the administration of the Bucharest-Jilava Penitentiary during the day to inform of the final judgment and the need to take the measures required to release the defendant. The Court can not accept that, because of the work program of the secretariat, the administration of prisons do not take steps to reception, on Friday, in the early afternoon, a document sent through fax, necessary for releasing the defendant, knowing that closure of Secretariat will result in maintaining the concerned party of an additional detention for more than forty-eight hours. According to the Court, such a delay can not be an "inevitable minimal delay" for the execution of a final judgment has the effect of releasing an individual. Therefore,the detention in question was not based on one of the paragraphs of art. 5 of the Convention. Therefore, it appears that a violation of Article. 5 § 1.

[23] http://cks.univnt.ro/cks_2015_archive/cks_2015_articles.html.

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