

PRECAUTIONARY MEASURES IN CRIMINAL PROCEEDINGS

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Abstract

Precautionary measures are an area that is constantly being adapted, due to their importance both for the proper conduct of the criminal proceedings and because of their implications affecting the constitutionally recognized rights of the suspect, the defendant or third parties.

Throughout the criminal proceedings, the competent judicial bodies may order certain procedural measures to ensure the proper conduct of the criminal proceedings, including reparation for the damage caused by the crime, payment of the principal penalty of a fine and recovery of court costs incurred in the course of the proceedings.

For this purpose, the legislator has regulated in the current Criminal Procedure Code the precautionary measures, which are located in the General Part, Title V, entitled „Preventive and other procedural measures”, respectively in Chapter III entitled „Precautionary measures, return of things and restoration of the previous situation”, where the legal provisions are laid down on: precautionary measures, seizure procedure, seizure report, mortgage notation, attachment, contesting precautionary measures, as well as the recovery of seized goods.

The large number of measures ordered in recent years has given rise to numerous subsequent conflicts arising from their duration, verification of the precautionary measures, challenging them, the procedure for their application and the procedure for the recovery of assets. Due to their impact, precautionary measures have attracted wide interest in the specialized literature. The present study is intended as a contribution to previous doctrinal efforts, illustrating the current legislative context, so that the latest changes in this area will be analyzed, as well as attempts to adapt to ECtHR case-law.

Keywords: *precautionary measures, types of measures, duration, contestation, competent body.*

1. Introduction

This article deals with precautionary measures, an area which in recent years has given rise to numerous ensuing conflicts arising from their duration, verification of precautionary measures, their contestation, the procedure for their application and the procedure for the recovery of assets.

Throughout the criminal proceedings, the competent judicial bodies may order certain procedural measures to ensure the proper conduct of the criminal proceedings, including reparation for the damage caused by the commission of the offense, payment of the main penalty of the fine and recovery of court costs incurred in the course of the proceedings.

For this purpose, the legislator has regulated in the current Criminal Procedure Code the precautionary measures, which are located in the General Part, Title V, entitled „Preventive and other procedural measures”, respectively in Chapter III entitled „Precautionary measures, return of things and restoration of the previous situation”, where the legal provisions are laid down on: precautionary measures, seizure procedure, seizure report, mortgage notation, attachment, contesting precautionary measures, as well as the recovery of seized goods.

Doctrinally¹ and jurisprudentially², they have been defined as procedural, coercive and real measures by which the judicial authorities seize certain movable or immovable property, by establishing a seizure of them, in order to avoid the concealment, destruction, alienation or evading prosecution of property that may be subject to special confiscation or extended confiscation or that may serve to guarantee the execution of the fine or legal costs or to repair the damage caused by the crime.

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¹ M. Udrioiu, *Summaries of Criminal Procedure, General Part*, vol. II, 5th ed., C.H. Beck Publishing House, 2024, p. 1409.

² Trib. Suceava, Conclusion 2/2025, case 5079/86/2024; Trib. Bistrița Năsăud, Conclusion 356/2024, case 441/112/2024/a1.16; Trib. Bucharest, case 4737/3/2024/a1.7; Trib. Ilfov, Conclusion 522/2024, case 2414/93/2015**/a3. The court decisions were accessed through the *rejust.ro* application.

Because of their impact, precautionary measures have aroused wide interest in the specialized literature. The present study is intended as a contribution to previous doctrinal efforts, illustrating the current legislative context, and will therefore analyze the latest amendments in this area.

2. Content

In analyzing the present topic, we must start from the functionality of the precautionary measures, which is exclusively precautionary and not reparatory³, from which it follows that the purpose for which they are adopted is to avoid the concealment, destruction, alienation or evading from prosecution of property that may be subject to special confiscation or extended confiscation or that may serve to guarantee the execution of the fine or legal costs or to repair the damage caused by the offense.

In concrete terms, precautionary measures consist of the non-availability of movable or immovable property, by seizure by the public prosecutor, during the criminal prosecution, by order, or by the pre-trial judge or the court, in the pre-trial proceedings, or during the trial, of its own motion or at the request of the public prosecutor, by reasoned order, in order to avoid the concealment, destruction, alienation or removal from the investigation of property which may be subject to special or extended confiscation or which may serve to guarantee the enforcement of a fine or legal costs or compensation for damage caused by the offense.

The precautionary measures are procedural measures, as they are taken only in the course of criminal proceedings. The precautionary measures have a real⁴ rather than a personal character, since they concern the property of certain persons and not individuals. Precautionary measures are measures of constraint and not measures of protection of the suspect or defendant or of the civilly liable party.

The legislator has established the optional nature of precautionary measures, leaving it to the free discretion of the competent judicial bodies, *i.e.*, the prosecutor, the pre-trial judge or the court, to order precautionary measures if circumstances so require. It should be noted that these measures can only be taken in the course of the criminal proceedings, *i.e.*, there must at least be a criminal prosecution initiated *in personam*, and the application of this type of procedural measure is not conditional on the initiation of criminal proceedings.

There are, however, exceptions to the optional nature of precautionary measures, namely situations in which the legal norm stipulates that taking precautionary measures is mandatory, such as the situation provided for in art. 249 para. (7) CPP in which the injured person is a person who lacks the capacity to exercise or with restricted capacity to exercise, as well as in other special situations, such as: the commission of corruption offenses under Law no. 78/2000, money laundering and terrorist financing offenses, as well as in the case of tax evasion offenses under Law no. 241/2005⁵.

As stated above, the competence to order precautionary measures differs depending on whether they are adopted at the stage of criminal proceedings or at the trial stage.

At the criminal prosecution stage, the judicial body competent to order precautionary measures is the public prosecutor, and the order is the order. The indictment may also include a proposal to take precautionary measures, if they have not been taken previously, or to maintain, revoke or replace precautionary measures already ordered.

Where precautionary measures have been taken during the criminal prosecution and the prosecutor orders a decision not to prosecute, the prosecutor shall maintain the precautionary measures in place for: guaranteeing the reparation of the damage (but they will be abolished by operation of law, but if within 30 days of the final decision the injured party does not file an action in the civil court), payment of legal costs and to guarantee special confiscation (until the pre-trial judge has decided on the proposal for special confiscation, if necessary, otherwise the seizure will be ordered to be lifted).

In pre-trial or trial proceedings, the judicial body competent to order precautionary measures is the pre-trial or trial court, at the request of the public prosecutor or ex officio, by reasoned decision.

Precautionary measures may be ordered in respect of the suspect's assets, provided that the criminal proceedings are initiated *in personam*. A suspect is a person in respect of whom there is reasonable suspicion

³ I. Neagu, M. Damaschin, *Treatise on Criminal Procedure. General Part*, Universul Juridic Publishing House, Bucharest, 2014, p. 655.

⁴ G. Teodoru, *Treatise on Criminal Procedural Law*, Hamangiu Publishing House, Bucharest, 2007, p. 469, D. Lupăscu, *Precautionary Measures in Criminal Proceedings (III). Duration. Lifting of the Measure. Cessation of Law*, <https://www.juridice.ro/essentials/7603/masurile-asiguratorii-in-procesul-penal-iii-durata-ridicarea-masurii-incetarea-de-drept>, 11.03.2024.

⁵ Law no. 241/2005 was published in the Official Gazette of Romania no. 672/27.07.2005.

on the basis of the facts and evidence in the case that he or she has committed an act under criminal law. Once criminal proceedings have been instituted, the suspect becomes the defendant, so that if protective measures may be ordered against the suspect, they may also be ordered against the defendant's property. Precautionary measures may also be ordered against the assets of the party liable under civil law, i.e. the person who, under civil law, is under a legal or contractual obligation to make good, in whole or in part, alone or jointly and severally, the damage caused by the crime and who is called to answer in the criminal proceedings.

These considerations are rooted in the provisions of art. 249 para. (3)-(5) CPP, according to which precautionary measures may be taken on the property of the suspect or defendant, of the person civilly liable or of other persons in whose ownership or possession the property to be confiscated is located.

Precautionary measures to guarantee the enforcement of a fine may be taken only against the property of the suspect or defendant, since criminal liability is personal. Precautionary measures with a view to special confiscation may be taken against the property of the suspect or defendant or of other persons in whose ownership or possession the property to be confiscated is located.

The protective measures for extended confiscation may be taken on the property of the suspect or defendant or of other persons in whose ownership or possession the property to be confiscated is located. These other persons in whose ownership or possession the property to be seized is located may be: ascendants, descendants, spouse, third parties or even the legal person that the accused person controls and to whom the property has been transferred by the perpetrator or a third party.

Precautionary measures to make good the damage caused by the crime and to guarantee the enforcement of legal costs may be taken against the assets of the suspect or defendant and of the person liable in civil proceedings, up to the amount of their probable value.

It has been stated in the doctrine that the following conditions must be cumulatively met in order to take precautionary measures to repair the damage caused by the crime:

- there must be material damage;
- the damage must be caused by the crime;
- there must be a criminal trial in relation to the crime;
- there must be a civil party, with the last condition not having to be met when the civil action is brought *ex officio*;
- the measure has to be proportionate⁶.

In the event that precautionary measures are ordered in the course of criminal proceedings with a view to making good the damage caused by the crime, they must relate to the whole of the damage caused and not part of it, but must not exceed what is necessary to make good the damage, and must be in the nature of a guarantee for the civil party, the suspect or accused person or the party liable in civil proceedings.

Precautionary measures to guarantee the enforcement of legal costs may be taken against the assets of the suspect or defendant and of the civilly liable party, up to the amount of their probable value.

In principle, precautionary measures consist in seizing movable or immovable property, but there are also assets that cannot be subject to precautionary measures, such as: assets belonging to a public authority or institution or to another person governed by public law, as well as assets exempted by law.

The goods exempted by the law, which cannot be subject to precautionary measures, are: a. goods for personal or household use indispensable for the debtor's (suspect or defendant or the civilly liable party) and his family's subsistence and objects of worship, unless there are several of the same kind; b. objects indispensable for the disabled and those intended for the care of the sick; c. food necessary for the debtor (suspect or accused person or civilly liable party) and his family for 3 months and, if the debtor is engaged exclusively in agriculture, food necessary until the new harvest, animals for subsistence and fodder necessary for these animals until the new harvest; d. the fuel necessary for the debtor (suspect or defendant or civilly liable party) and his family for 3 winter months; e. letters, photographs and personal family pictures; f. other such property declared non-possessible in the cases and under the conditions provided by law.

However, according to HCCJ dec. RIL 19/2017, when precautionary measures are established in criminal proceedings, there is no need to indicate or prove or individualize the assets on which the precautionary measure is established⁷.

⁶ M. Udriou, *Summaries of Criminal Procedure, General Part*, vol. II, 5th ed., C.H. Beck Publishing House, Bucharest, 2024, p. 1412.

⁷ HCCJ dec. 19/2017, published in the Official Gazette of Romania no. 953/04.12.2017.

The duration of precautionary measures in criminal proceedings is indefinite. It has been stated in legal doctrine that the precautionary measure lasts until the final outcome of the case. It may be revoked even before that date if the grounds on which it was taken by the same body that ordered it or by the court before which the case is pending have disappeared.

To this end, the legislator has laid down an obligation for judicial bodies to periodically verify, both during the criminal prosecution stage, the need to maintain the precautionary measures, on which occasion the extent of the measures will also be assessed, with the possibility of reducing the number of assets subject to the measure, and the possibility of extending the subject matter of the measure.

The precautionary measures are: criminal seizure, mortgage notation and attachment. The unavailability of property belonging to the suspect or the accused or the civilly liable party means that the seized property cannot be disposed of or encumbered by a lien *in rem*, but the owner retains the right of use, unless the seized property has also been ordered to be removed or sealed.

The seizure procedure involves 3 actions, namely: identification of the seized goods, valuation of the goods and declaration as seized.

The identification of the seized goods involves the individualization, listing and detailed presentation of their characteristics so that they cannot be substituted. Valuation of seized property shall mean the determination of the market value of the property, which may, where appropriate, be carried out by valuers or experts. By declaring the property subject to the precautionary measure to be seized, we mean informing third parties of the taking of that measure by means of an entry in the specific publicity registers.

Decision no. 17/2019 handed down by the High Court of Cassation and Justice on the occasion of the resolution of an appeal in the interest of the law established that „When precautionary measures are established in criminal proceedings, it is not necessary to indicate or prove or individualize the assets over which the precautionary measure is established”.

Sequestration consists in placing the property, as a rule, in the hands of the person against whom the measure has been ordered, so that the right of use is preserved, but not the right of disposal. The seized goods may or may not be sealed and remain in the hands of the person against whom the seizure has been ordered, or they may be entrusted to a custodian.

Picking up of goods is optional, but if the judicial authority considers that there is a danger of alienation, it may order the seized goods to be seized.

However, the removal of seized property is mandatory where the subject of the protective measure is perishable goods, precious metals or stones, foreign means of payment, domestic securities, works of art or museum objects, valuable collections and the sums seized.

Mortgage notation is a special form of seizure which consists in the unavailability of immovable property, even movable property that can be mortgaged in order to avoid the concealment, destruction, alienation or evasion from prosecution of property that may be subject to special confiscation or extended confiscation or that may serve to guarantee the execution of the fine or legal expenses or the repair of the damage caused by the crime. For immovable or movable property seized, the prosecutor, the preliminary chamber judge or the court that ordered the seizure shall request the competent body to make a mortgage notation on the seized property, attaching a copy of the ordinance or decision ordering the seizure and a copy of the seizure report.

Attachment is a special form of seizure which consists in the unavailability of sums of money, owed under any title to the suspect or defendant or the civilly liable party by a third person or by the injured party, in their hands, within the limits provided by law, from the date of receipt of the ordinance or decision establishing the attachment. Attachment is the precautionary measure which applies exclusively to sums of money owed in the future to the suspect or defendant or the civilly liable party. The precautionary measure of attachment involves the participation of three persons, namely: the attaching creditor, the attached debtor and the attached third party. The attaching creditor is the injured party constituted as a civil party, a natural or legal person who has suffered damage through the commission of the crime.

In the specialized literature, a subtle difference has been made between attachment and seizure, when they concern amounts of money in accounts, showing that in the first case it is about periodic income that will feed the account, and in the second case about existing amounts.⁸

⁸ M. Udriou, *Criminal Procedure Code, commentary on articles*, 3rd ed., C.H. Beck Publishing House, Bucharest, 2020, p. 1525.

The attached debtor is the suspect or defendant or the civilly liable party. The attached third party is the person who owes sums of money to the attached debtor for any reason, and may even be the person who suffered losses as a result of the offense committed by the attached debtor, whether a natural or legal person.

It is worth mentioning that these amounts owed by the attached third party to the attached debtor presuppose the existence of legal relationships prior to the establishment of the attachment.

In order to guarantee the right to a fair trial, the persons concerned by the establishment of precautionary measures as well as any other person who justifies an interest may file a complaint with the judicial bodies.

The complaint against precautionary measures may have as its object the act by which they were ordered or, as the case may be, the manner of carrying out the precautionary measures applied.

Thus, the challenge to the act by which the precautionary measures were ordered will concern the prosecutor's order or the conclusion of the preliminary chamber judge or the court. The challenge filed by the suspect or defendant or by any other interested person against the prosecutor's order ordering the taking of precautionary measures, during the criminal investigation, is made within 3 days from the date of communication of the order taking the measure to the judge of rights and freedoms of the court that would have the competence to judge the case on the merits. The challenge does not have suspensive effect on execution. The resolution of the challenge is made in the council chamber, with the summons of the person who filed the challenge and the interested persons, by reasoned conclusion, which is final. The drawing up of the minutes is mandatory. The participation of the prosecutor is also mandatory. The case file is returned to the prosecutor within 48 hours from the resolution of the challenge.

By dec. no. 24/20.01.2016, published in the Official Gazette of Romania, Part I, no. 276/12.04.2016, CCR declared unconstitutional the text of the art. 250 para. (1) CPP, which did not allow the contestation of the conclusion of the preliminary chamber judge or the court of law ordering the taking of precautionary measures.

Following this, the criminal procedural norm has undergone changes such that, currently, against the conclusion ordering the taking of a precautionary measure by the preliminary chamber judge, the court of law or the court of appeal, the defendant, the prosecutor or any other interested person may file an appeal within 48 hours of the ruling or, as the case may be, of the communication. The appeal is submitted, as the case may be, to the preliminary chamber judge or the appellate court that issued the contested decision and is submitted, together with the case file, as the case may be, to the preliminary chamber judge at the hierarchically superior court, respectively, to the hierarchically superior court, within 48 hours of registration.

The appeal against the conclusion by which the preliminary chamber judge of the Criminal Section of the High Court of Cassation and Justice took a precautionary measure is resolved by a panel of 2 preliminary chamber judges, and the appeal against the conclusion by which the Criminal Section of the High Court of Cassation and Justice, in first instance or on appeal, took a precautionary measure is resolved by the Panel of 5 judges⁹. The appeal does not suspend the execution and is resolved, in a public hearing, by reasoned conclusion, with the summons of the parties, within 5 days from registration. The participation of the prosecutor is mandatory.

The deadlines described in art. 250² CPP, as shown in the doctrine, have the „legal nature of substantial deadlines, since these deadlines protect extra-procedural rights, prerogatives and interests, pre-existing to the criminal process and independent of it.”¹⁰

Similarly, the challenge to the manner of carrying out the precautionary measures ordered by the prosecutor, during the criminal investigation, is made within 3 days from the date of their carrying out, to the judge of rights and liberties of the court that would have the competence to judge the case on the merits. The challenge does not have suspensive effect on execution. The prosecutor submits the case file to the judge of rights and liberties, within 24 hours from the request for the file by the latter. The resolution of the challenge is made in the council chamber, with the summons of the person who made the challenge and the interested persons, by reasoned conclusion, which is final. The drawing up of the minutes is mandatory. The participation

⁹ A.-R. Trandafir, V.R. Gherghe, *On the need for a coherent approach to the matter of precautionary measures ordered in criminal proceedings. 18 proposals for amending the Code of Criminal Procedure*, p. 273, in the Legal Forum no. 1/2024, <https://drept.unibuc.ro/documente/2024/AUBD/1,%202024,%2020.%20Andra-Roxana%20Trandafir,%20Vicentiu%20Razvan%20Gherghe%20-%20Despre%20nevoia%20unei%20abordari%20coerente%20in%20materia%20masurilor%20asiguratorii.pdf> (the authors notice a legislative omission: „However, the text of the law does not provide for the hypothesis in which the precautionary measure is taken by the Panel of 5 judges who judge on appeal.”).

¹⁰ A. Zarafiu, L. Iordache, *Current milestones in the dynamics of precautionary measures in criminal matters*, p. 14, in the Legal Forum no. 1/2025, <https://drept.unibuc.ro/documente/2025/AUBD/1,%202025,%201.%20Andrei%20Zarafiu,%20Livia%20Iordache%20-%20Reper%20actuale%20in%20dinamica%20masurilor%20asiguratorii%20in%20materia%20penala.pdf>.

of the prosecutor is also mandatory. The case file is returned to the prosecutor within 48 hours from the resolution of the challenge.

If the court has been notified by indictment, before the appeal against the ordinance by which the precautionary measures were ordered by the prosecutor, during the criminal investigation, is resolved, the appeal will be resolved by the preliminary chamber judge of the notified court.

The challenge to the manner of carrying out the precautionary measures ordered, by reasoned conclusion, by the preliminary chamber judge or by the court, in the preliminary chamber procedure or, as the case may be, during the trial, is made within 3 days from the date of enforcement of the measure, and may be filed by the prosecutor, the defendant or any other interested person.

The appeal is resolved by the preliminary chamber judge or the court before which the case is pending. The appeal does not suspend the execution and is resolved, in a public hearing, by reasoned conclusion, with the summons of the parties, within 5 days of its registration. The participation of the prosecutor is mandatory. The drawing up of the minutes is mandatory.

After the decision has become final, an appeal may be made according to civil law only on the manner of carrying out the precautionary measure.

To the extent that, following the exercise of the mechanisms for verifying the legality and reliability, it has been found that the precautionary measures adopted comply with the criminal procedural norms, the procedure for the valorization in special cases of seized movable and immovable property, established in the content of art. 252¹ CPP, may be followed, to the extent that the conditions provided for by law are met.

Thus, during the criminal trial, before a final judgment is rendered, when there is no agreement from the owner, the movable assets on which the precautionary seizure was instituted may be used, exceptionally, in the following situations:

- when, within one year from the date of the institution of the seizure, the value of the seized assets has decreased significantly, namely by at least 40% in relation to the value at the time of ordering the precautionary measure;
- when there is a risk of the warranty period expiring or when the precautionary seizure was applied to live animals or birds;
- when the precautionary seizure was applied to flammable or petroleum products;
- when the precautionary seizure was applied to assets whose storage or maintenance requires expenses disproportionate to the value of the asset;
- when the insurance seizure was applied to a stock of goods and products with a cumulative value less than or equal to the equivalent in lei of the amount of 300,000 euro, as stated in art. 252¹ para. (2) CPC.

Also, during the criminal trial, before the final judgment is pronounced, when the following conditions are cumulatively met: the owner could not be identified and the recovery cannot be made according to paragraph 2, the vehicles or means of transport on which the precautionary seizure was instituted may be recovered in the following situations: a) when they were used, in any way, in the commission of a crime; b) if a period of one year or more has passed since the date of the establishment of the precautionary measure on these goods.

The amounts of money resulting from the recovery of assets are deposited in the account established according to the special law, namely Law no. 318/2015 for the establishment, organization and operation of the National Agency for the Administration of Seized Assets and for the amendment and completion of certain normative acts, in accordance with the Working Methodology regarding the evaluation and recovery of seized movable assets approved by Joint Order 4344/C/2843/2016 of the Minister of Justice and the Minister of Public Finance¹¹.

At the same time, in the content of the current regulation, namely in the content of art. 252² CPC, it is possible to capitalize on movable assets seized during the criminal investigation. Thus, during the criminal investigation, when there is no consent from the owner, if the prosecutor who instituted the seizure considers that the capitalization of the seized movable assets is required, he/she notifies the judge of rights and freedoms with a reasoned proposal for the capitalization of the seized assets, who sets a term, which cannot be shorter than 10 days, to which the parties are summoned, as well as the custodian of the assets, when one has been appointed.

¹¹ Published in the Official Gazette of Romania no. 1037/22.12.2016.

At the set term, the parties and the custodian are informed of the intention to capitalize on the seized movable assets and they are informed that they have the right to make observations or requests related to the assets to be capitalized. After examining in the council chamber the objections and requests made by the parties or the custodian, the judge of rights and freedoms shall decide by decision on the disposal of the movable assets provided for in art. 252¹ para. (2)-(3¹) CPC. The absence of the legally summoned parties does not prevent the conduct of the procedure, as stated in art. 252² para. (3) CPC.

The parties, the custodian, and any other interested person may appeal against the decision by which the seized assets were realized to the preliminary chamber judge of the court that would have jurisdiction to judge on the merits.

A similar procedure is enshrined in the content of art. 252³ CPC, namely the realization of movable assets seized during the preliminary chamber and the trial.

Thus, during the trial, the court, *ex officio* or at the request of the prosecutor, one of the parties or the custodian, may order the realization of the seized movable assets. For this purpose, the court sets a term, which cannot be shorter than 10 days, within which the parties are summoned, as well as the custodian of the assets, when one has been appointed.

At the set deadline, the parties shall discuss, in the council chamber, the disposal of the seized movable assets and shall be informed that they have the right to make observations or requests related to them. The absence of the legally summoned parties shall not prevent the proceedings from proceeding.

The decision to dispose of the seized movable assets may be appealed to the court competent to resolve the case on the merits within 15 days; the court shall resolve the appeal urgently and preferably in a public hearing, with the summons of the parties, the decision being final.

Undoubtedly, in the case of the adoption of precautionary measures, the person who is obliged to bear their effect will suffer a patrimonial restriction, which may involve discussions from the perspective of the incidence of art. 1 of the Protocol 1 to the ECHR Convention and art. 44 of the Romanian Constitution¹². The proportionality of the deprivation of property is questionable in the event that the criminal proceedings are concluded with a dismissal or acquittal. Additionally, problems may arise from the perspective of the duration of the precautionary measures.

The Romanian State has suffered several convictions from the Strasbourg court, the ECtHR finding a violation of the right to a fair trial, but also of the right to property protected by art. 1 of the Protocol no. 1 to the ECHR, motivated by the duration for which the precautionary measures were established and maintained, the lack of regulation of appeals against the acts of disposition of the judicial bodies in this matter, all of these, however, in relation to the national legislation and the judicial procedures carried out prior to 1.02.2014. Examples in this direction are: *Case Călin v. Romania*¹³, *Case Wellane Limited v. Romania*¹⁴, *Case Credit Europe Leasing IFN SA v. Romania*¹⁵, *Case Cernea v. Romania*.

The common element of these cases is that the European judge held that the precautionary measures represent an interference with the property rights of the interested person, an interference that is provided for by law and pursues a legitimate purpose, namely „combating crime and guaranteeing coverage of damage caused by unlawful acts”¹⁶, but is not proportionate, given its duration¹⁷ or the impossibility of contesting it, when it was ordered by the prosecutor's office¹⁸, or the value of the seized assets.¹⁹

The above judgments have been capitalized by the legislature, with specific avenues for verification of the precautionary measures and for appeals being subsequently established.

¹² The Constitutional Court has examined on several occasions the constitutionality of art. 249 para. (1) CPP and, according to a homogeneous jurisprudence, reconfirmed by dec. no. 307/2024, published in the Official Gazette of Romania no. 976/27.09.2024, did not identify any aspects of unconstitutionality, assessing that the right to property is not an absolute right and that the deprivation of property is provided for by the criminal procedural law, pursues a legitimate purpose, namely the conduct of the criminal investigation and is proportionate, since the measures ordered are temporary.

¹³ <https://hudoc.echr.coe.int/eng#{%22languageisocode%22:%22ENG%22,%22appno%22:%2254491/14%22,%22documentcollectionid%22:%22CHAMBER%22,%22itemid%22:%22001-216860%22}}>.

¹⁴ <https://ier.gov.ro/wp-content/uploads/2021/11/Wellane-Limited-impotriva-Romaniei.pdf>.

¹⁵ <https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-228010%22}}>.

¹⁶ *Case Cernea v. Romania*, para. 42, <https://hudoc.echr.coe.int/eng?i=001-123324>.

¹⁷ *Case Călin v. România*, para. 84.

¹⁸ *Case WELLANE LIMITED v. Romania*, para. 36.

¹⁹ *Case CREDIT EUROPE LEASING IFN S.A. v. Romania*, para. 87.

3. Conclusions

The precautionary measures, despite their character resulting from their very name, arouse real interest in practice, due to the deprivation of property that they entail.

The amendments and additions made to the initial version of the Code of Criminal Procedure by subsequent laws, Law no. 255/2013²⁰, Law no. 318/2015²¹, GEO no. 18/2016²², Law no. 228/2020²³, Law no. 6/2021²⁴, Law no. 230/2022²⁵, Law no. 214/2023²⁶, although they seem to generate legislative instability, were in fact successful attempts to adapt the legal legislation to the judicial realities, the CCR decisions and the ECtHR rulings on the matter.

The presentation of the subsequent legislative solutions and the ECtHR case-law represents a contribution of exhaustive doctrinal descriptions, capable of providing a useful working element for practitioners.

References

- *Case Călin v. Romania*, para. 84;
- *Case Cernea v. Romania*, para. 42, <https://hudoc.echr.coe.int/eng?i=001-123324>;
- *Case CREDIT EUROPE LEASING IFN SA v. Romania*, para. 87;
- *Case WELLANE LIMITED v. Romania*, para. 36;
- CCR dec. no. 307/2024, published in the Official Gazette of Romania no. 976/27.09.2024;
- GEO no. 18/2016, published in the Official Gazette of Romania no. 389/23.05.2016;
- HCCJ dec. no. 19/2017, published in the Official Gazette of Romania no. 953/04.12.2017;
- <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-228010%22%7D>;
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- <https://ier.gov.ro/wp-content/uploads/2021/11/Wellane-Limited-impotriva-Romaniei.pdf>;
- Law no. 214/2023, published in the Official Gazette of Romania no. 634/11.07.2023;
- Law no. 228/2020, published in the Official Gazette of Romania no. 1019/02.11.2020;
- Law no. 230/2022, published in the Official Gazette of Romania no. 734/21.07.2022;
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