The new regulations concerning detention and preventive arrest

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Abstract: *Recognized and included by the doctrine in the category of toughest preventative measures - either due to actual coercive character of the freedom of movement of an individual indicted /suspected for committing offences, either as a result of reporting on other preventive measures, the institutions that are the subject of the present paper have substantial content changes in relation to the provisions of the old Code of criminal procedure [1]. For these reasons we appreciate that it is necessary to analyze in detail the general and specific conditions needed to be met in order to be able to provide any individualized preventive measures, especially the procedural moments and the procedure to be followed, in view of the overall rules of the new Code of criminal procedure (abbreviated Cpc) [2]. It was not omitted any presentation and detailing situations which may create confusion in terminology (term of detention, for example) by reference to the other institutions of the CPC or special laws that use identical similar/identical terms, specifying the rights and obligations of the suspect/accused, judicial bodies, including the analogy of the domestic regulatory framework with the judicial practice resulting from the interpretation of the European Convention on human rights, taking into account the fact that the measures in question affect one of the fundamental human rights-the right to physical freedom. Without the exhaustive examination of aspects relating to the two institutions, the present paper aims to be a summary and reflection material, whose main effect is to materialize itself in the knowledge, understanding and interpretation of the rules in this area.*

Keywords: *detention; preventive arrest; judicial bodies; conditions; procedure.*

Introduction

The importance of preventive measures as a whole cannot be understood without reference to constitutional provisions [3] and those contained in the fundamental regional instruments in the field of human rights [4], taking into account their specifics - previously highlighted - of the person's inviolability impairment.

As regards the regulatory framework, these institutions - part of the procedural measures - are laid down in the General part, title V, chapter I, article 202-244 CPC (applicable to natural persons) and the Special part, title IV, chapter II, article 493 (applicable to legal persons).

Regulated as institutions with coercive character, their role is to prevent the suspect or defendant to undertake or to carry out certain activities that would have a negative effect on both the deployment of the criminal trial, as well as in terms of its aim, as laid down in article 1 Cpc. Also, in order to ensure the strict observance of the legal provisions which allow for making these types of procedural measures, the legislature has established certain safeguards embodied in the General and specific conditions that must be cumulatively satisfied in order to be able to provide any preventive measures.

1. The detention of the suspect / accused and arrest procedure

Detention is referred to as being the first of preventive measures in the order of enumeration of article 202, paragraph 4 CPC. For taking such measures the general-valid terms must be fulfilled and stipulated in art. 202, paragraphs 1-3, the legislature also regulating certain specific applicable conditions but only in the case of minors - perpetrators of offences or criminal offences committed in front of the panel (offences of audience)

The general conditions of detention are:

a) there is evidence or reasonable clues which shows the reasonable suspicion that a person has committed an offence (pursuant to article 202, paragraph 1, thesis 1, CPC);

b) the prosecution is started both on the deed, and in relation to the offender of the crime (which becomes the prime suspect), or the criminal proceedings with respect to the latter (which becomes the culprit) to be put in motion. We mention that the commencement of criminal proceedings against the suspect, may be

ordered by both the Prosecutor and criminal investigation bodies, the latter having the obligation of informing the supervisory prosecutor thereof (according to article 203, paragraph 1, read in conjunction with article 300, paragraph 2, and article 305 paragraphs 1,3 Cpc);

c) the measure of detention is necessary in order to ensure the proper conduct of criminal process, to prevent the removal of the suspect or the accused from criminal prosecution or trial, or for avoiding committing another offence (pursuant to article 202, paragraph 1, the final thesis of the CPC).

d) there is any cause which prevents the initiation and pursuit of criminal proceedings - under article 16 CPC (pursuant to article 202, paragraph 2 CPC);

e) the detention measure should be proportional to the seriousness of allegations brought to the suspect/defendant and it is required to achieve the aim pursued by the arrangement (pursuant to article 202, paragraph 3 CPC);

f) the suspect or defendant should be heard, in the presence of a lawyer, either chosen or appointed ex officio (article 209, paragraph 5 of the CPC);

In addition to these general conditions, the detention of a minor person (between 14 and 18 years) must be done only in exceptional cases (this is because the provisions of title V, Chapter I, of the new Criminal Code regarding the criminal liability of minors should be envisaged) and only if the effects of liberty deprivation would have on the personality of the minor are not disproportionate to the aim pursued by the arrangement of the detention. Also according to the article 360 CPC, in the case of audience offences, if the President of the judges' Panel finds out about the commission of any criminal acts during the court session and identifies the offender, he prepares a closing meeting (which, in our opinion, is tantamount to an act of ex-officio referral) which he must submit to the Prosecutor. How the Prosecutor is obliged to participate in all cases on the role of the courts (Article 353, paragraph 9, and article 363 CPC) he may declare that he initiates criminal prosecution, puts in motion the criminal action and he may detain the suspect or defendant, without even a prior hearing in the presence of a lawyer, as it was correctly appreciated [5]. We argue this idea due to the fact that, from the procedural - criminal point of view (including the actual judicial practice) the restoration of order and solemnity of the judgment hearing represents a primordial objective. In addition, it would be almost unattainable from the practical point of view to hear the suspect or defendant in the meetings in advance of the moment of detention, in the presence of a lawyer, having in mind that the preventive measure, in cause, shall be ordered by the public prosecutor (article 360, paragraph 2 of the CPC). This does not remove the right of the person retained to have a lawyer (in accordance with article 89, paragraph 2 of the CPC), equivalent to the obligation of the Prosecutor to appoint a lawyer ex officio (if the accused had no lawyer or he did not appear within a particular time period in front of the prosecutor) but only in respect to the actual procedure of restraint which, in temporal terms, is subsequent to the hearing of the suspect / defendant, according to the article 209, paragraph 5 of the CPC.

Before we present the detention procedure, we consider that it is necessary to have made some clarifications with regard to the distinction of this preventive measure from other judicial/extrajudicial activities that may be confused in terms of the identity/similarity of terminology or the period for which he may order [6]. Thus, ***detention should not be confused with***:

- leading some suspicious persons at the headquarters of police units, according to article 31, paragraph 1, letter "b" of the law no. 218/2002 and limiting their freedom of movement for no more than 24 hours (or until they establish their identity), as a administrative measure;
- catching, restraining and leading to the headquarters of police units of the persons who commit criminal offences in accordance with art. 31, paragraph 1, letter "k" of the same normative act and art. 27, paragraph 1, letter "e" of the law no. 550/2004. Moreover, the legislator, in article 209, paragraph 3, final thesis regulated sui generis the distinct interpretation of these activities;
- bringing the suspect or accused before the judicial bodies under a mandate, in accordance with art. 265 of the CPC (period which is not included in the time provided for detention, pursuant to article 209, paragraph 4, in conjunction with art. 265, paragraph 12, CPC);
- catching the perpetrator (including immobilization/limitation of his freedom of movement) according to art. 61, paragraph 2 and article 62, paragraph 3 of the CPC;
- detention of the perpetrator (for the purpose of preventing his run), according to article 310, paragraph 2, of the CPC;

Article 209 CPC provides the procedure that is to be followed in case detention is ordered. From our point of view to arrest the suspect / defendant, the legislature has provided for three categories of activities to which certain rights and obligations correspond in stages, thus:

1. In the first category we included ***previous activities/preceding detention***, which consist of:

- identification/establishment of the defendant or suspect's identity and his calling to the criminal prosecution bodies (or him detection and capture if he evades or attempts to flee);
- hearing of the suspect or defendant by the criminal prosecution bodies, in the presence of the lawyer chosen or appointed ex officio (in accordance with the procedure referred to in article 107-110 of the CPC and in compliance with article 209, paragraphs 7-9 of the CPC);

2. The second category includes the ***actual activity concerning detention*** which includes:

- preparation of Ordinance (procedural act through which detention is ordered, pursuant to article 209, paragraph 10 CPC);
- handing over a copy of the Ordinance and immediately bringing to his attention, in a language he understands, the offence of which he is suspected and the reasons for detention (under article 209, paragraphs 2 and 11, CPC);
- communicating in writing and under signature (if he refuses or is unable to sign an official report will be concluded) the rights provided for in article 83 and article 210, paragraphs 1 and 2 of the CPC, respectively the right of access to emergency medical assistance, the maximum duration for which the measure may be ordered and the right to make a complaint against the measure (according to article 209, paragraph 17 of the CPC). If the retained refuses or is unable to sign communication will end a minutes;

3. The third category includes ***activities subsequent to detention***:

- informing the person detained that he has the right to notify, personally or through the judicial body that has ordered the measure, a family member or other person appointed about the action taken and about the place he is detained;
- if the person detained is a minor the notification of the legal representative or person in whose care he is, is mandatory;
- if the person detained is not a Romanian citizen, he is entitled to claim the notification of the diplomatic mission or of the consular post of the State whose citizen he is or, as the case may be, of an international humanitarian organization (if he does not wish to receive the assistance of the authorities of his country of origin);
- if the person concerned has refugee status or is under the protection of an international organization, he is entitled to notify or to require the notification of such authorities. With respect to these categories of persons, the General Inspectorate for Immigration (subordinate to the Ministry of Internal Affairs, including its territorial structures) must be always informed ex officio by the judicial bodies (under article 210, paragraphs 1 and 2, respectively, article 243, paragraph 4 of the CPC);

If there are solid or exceptional reasons which impose the delay of the notification (typically arguments pertaining to progress/achievement mode of investigation) or the refusal to exercise the right to make the notification personally, it can be delayed for up to 4 hours, and if the personal information is refused, the reasons should be stated/argued in an official report (in accordance with art. 210, paragraphs 5 and 6 of the CPC).

As I mentioned earlier, detention is ordered through Ordinance, for not more than 24 hours, by the criminal investigation bodies or the Prosecutor. If the procedural act is drawn up by a competent criminal prosecution body, it must inform the Prosecutor, who exercises its authority, about the measure, without delay and by whatever means necessary (according to article 209, paragraph 13, of the CPC).

The duration of detention shall not include the time strictly needed for leading the suspect/defendant at the headquarters of the judicial body (article 209, paragraph 3, thesis II). If the person that is to be detained, was brought under a peremptory writ, in calculating the 24 hours it is not included the period he was under the power of this mandate - which cannot exceed 8 hours (according to article 265, paragraph 12, of the CPC); after their expiration the maximum period of 24 hour specific to detention shall be calculated.

If after detention and within the maximum term of 24 hours the suspect/defendant will be moved/transferred to another location, the abovementioned obligations concerning the provision of

family/legal representatives/a diplomatic representative or other authority, shall remain payable by the judicial authority which ordered the measure with regard to the new location.

According to article 209, paragraph 12, the criminal prosecution bodies which has ordered the measure shall be entitled to carry out fingerprinting and photographing the detained person (information which will be later introduced in a national data basis).

Against the detention order a complaint can be made before the end of the 24 hours. If the measure has been ordered by a competent criminal investigation body, the complaint may be made to the prosecutor supervising the prosecution. If the detention was ordered by a Prosecutor, the complaint may be made to the public Prime-prosecutor's Office or the hierarchically superior prosecutor (Chief Prosecutor, Attorney general, Chief Procurator's Department, depending on the structure of the competent prosecutor). If it is found that detention was taken in contravention of legal provisions or if there are no longer grounds justifying the deprivation of liberty, the preventive measure shall be revoked by a decree (in accordance with article 207, paragraphs 14 and 15 of the CPC).

Detention ceases as the deadline for which he has been ordered expires and the suspect/defendant will be released if he is not arrested in another case.

According to the article 209, paragraph 16 of the CPC the prosecutor shall refer the matter to the judge of rights and freedoms from the competent court, in order to take the measure of preventive arrest towards the defendant retained at least 6 hours before the expiry of the duration of detention. In our opinion this text is strictly interpretable in the sense in which this obligation belongs to the Prosecutor (surveillance of criminal prosecution or exercise of its own criminal prosecution) in all cases where the criminal proceedings are put in motion. The underlying arguments to support this are as follows:

- the term used by the legislator does not have a decisive character (phrases like "may refer to", "if it considers necessary", etc. are not used) in the first thesis of art. 209, paragraph 16 of the CPC but the imperative “refers” is used;
- the person to whom the legislature refers to is the "defendant" and not the suspect, which means that there is evidence and not just serious clues concerning the commotion of a criminal offence by him;
- the judge of rights and freedoms verifies with this occasion (on the basis of the powers conferred by article 53 CPC) if the necessary conditions are fulfilled for ordering preventive detention (or he can establish another milder preventive measure). If the preventive arrest proposal is rejected, the judge of freedoms and rights may order the release of the accused retained or the application of one of the preventive measures provided for in article 202, paragraph 4, letters "b-d" of the CPC (judicial control, judicial control on bond or on house arrest) in accordance with article 227, paragraphs 1 and 2, CPC. These measures cannot replace detention; their application can be achieved after the expiry of the maximum period for which detention was ordered;
- last but not least, even though art. 5, paragraph 3 of the European Convention on human rights (ECHR) provides just the right of the person arrested or held under the terms of paragraph 1, letter "c" to be brought promptly before a judge or other magistrate empowered by law to exercise judicial powers (and not of the person detained), we believe, in continuation of the other arguments expressed above, that the imperative referral to the judge of rights and freedoms, according to article 209, paragraph 16 of the CPC represents a further guarantee offered to the detained defendant, taking into account the fact that in the understanding of the European Court of human rights (hereinafter the Court), the criminal prosecution bodies do not belong to the category "judges" or "magistrates empowered by law to exercise judicial powers" [7].

2. The preventive arrest of the defendant and terms

Rightly acclaimed as the toughest of the preventive arrest, in order to put it in motion, it is necessary to comply with the two strict categories of conditions, in conjunction with the existence of some of the cases expressly stipulated by article 223 of the CPC.

Thus, the first category of conditions and situations we encounter to be regulated by art. 223, paragraph 1, letters "a-d" CPC (which have no connection with the danger to the public order of the deed), and the second category - closely related to the appreciation of this danger - are laid down in art. 223, paragraph 2 of the CPC.

A. *The sine qua non alternative/ cumulative conditions, unconditioned by the danger for public order posed by the defendant*:

- *the existence of evidence* (not solid clues) indicating a reasonable suspicion that the defendant (not the suspect) has committed an offence (article 223, paragraph 1, thesis 1 of the CPC);
- *there should not be any cause that prevents the setting in motion or exercise of criminal action* for the crime committed by the defendant, of the ones provided in article 16 CPC (general valid condition for any preventive measures, pursuant to article 202, paragraph 2 CPC);
- *towards the perpetrator of the criminal deed there should have been put in motion the criminal proceedings* for the offence committed (the text of article 223, paragraph 1 of the CPC uses the notion of culprit and not suspect);
- *the existence of one of the following situations* (provided for in article 223, paragraph 1, letter "d", CPC):

* the defendant fled or hid in order to evade prosecution or trial or has made provision of any kind for such acts (the letter, "a");

* the defendant tries to influence another person to commit the crime, a witness or an expert or to destroy, alter, conceal or distort evidence or material means or to cause another person to have such behavior (the letter "b");

* the defendant exercises pressure on the injured person or tries a fraudulent deal with him (the letter "c");

* there is reasonable suspicion that, after setting in motion the criminal action against him, the defendant has intentionally committed a new offence or prepares for committing a new offence ("d").

We appreciated that the above conditions have an alternative/cumulative character taking into account the expression used by the legislator "and one of the following situations exists", which means that it is sufficient for the existence of any of the cases listed above, in order to be able to provide the preventive arrest, without limiting the possibility of meeting two or all of the possibilities provided for in art. 223, paragraph 1, letter "a-d", CPC, in a concrete case, allowing, even more so, the competent judicial authorities to order the preventive arrest of the accused.

B. *Mandatory conditions determined by the danger for the public order of the defendant* (article 223, paragraph 2 CPC):

a) *the existence of evidence indicating a reasonable suspicion that the defendant has committed*:

- an intentional crime against life, a crime which has caused personal injury or death to a person, an offence against national security provided by the Criminal code and other special laws, a crime of trafficking in narcotic drugs, arms trafficking, human trafficking, terrorism, money laundering, counterfeiting or other values, blackmail, rape, deprivation of freedom, tax evasion, outrage, judiciary outrage, a corruption offence, an offence committed by means of electronic communication; or,
- another crime for which the law provides the punishment of imprisonment for 5 years or more.

We mention that, for the first category of crimes, the legislature has not conditioned the penalty provided for by law, the offence in question is sufficient to be a part of that category or group of crimes, but in the case of the other offences provided for in the Criminal code or in special laws, the mandatory condition is closely related to the special maximum penalty provided for, which must be equal to or greater than 5 years.

b) *there should not be any cause that prevents the setting in motion or exercise of criminal action* from the ones provided in article 16 CPC (general valid condition, pursuant to article 202, paragraph 2 CPC);

c) for the offence committed *the criminal proceedings should be put in motion*;

d) *deprivation of liberty of the accused may be required for the removal of a threat to public order* (the final thesis of article 223, paragraph 2 of the CPC), threat which must be assessed in light of the seriousness of the offence, the manner and circumstances of committing it, the entourage and the environment from which the defendant comes from, the criminal history, and other personal circumstances [8];

e) *the preventive detention measure should be necessary in order to ensure the proper conduct of the criminal trial*, to prevent the removal of the accused from criminal prosecution or trial of a prevention or other offences (general condition applies, pursuant to article 202, paragraph 1 of the CPC);

f) *the measure of arrest should be proportional to the seriousness of the accusation brought to the defendant and necessary for achieving the aim pursued by its layout* (general applicable condition, pursuant to article 202, paragraph 3 the CPC);

g) *the prior hearing of the defendant, in the presence of a lawyer* (either chosen or appointed ex officio), according to the article 225, paragraphs 5, 7, 8 and article 238, paragraph 1, final thesis CPC. Exceptions prior hearing: when the defendant is unreasonably absent or is missing, evades or cannot be brought before the judge because of his state of health, force majeure cause or necessity state (in accordance with article 225, paragraph 4 of the CPC). Also, in accordance with article 225, paragraph 8 of the CPC, another exception from the requirement of a prior hearing of the defendant is represented by his option for the right to silence.

If the defendants are minors, their preventive arrest may be available under the same conditions as their detention.

3. Procedure and procedural moments of preventive arrest

Article 203, paragraph 3 of the CPC (with reference to article 204, paragraph 4, point "e", CPC) requires that this preventive measure may be taken both in the course of criminal proceedings and in proceedings of preliminary room or in court.

3.1. *The preventive arrest in the prosecution stage*

In this procedural moment the proposition of taking the preventive arrest measure is the responsibility of the Prosecutor, which must draw up a reasoned report (with reference to fulfillment of the conditions prescribed by law and the necessity of the measure) which he must submit to the competent judge of rights and freedoms (either from the Court which would revert the competence to judge in the first instance or from the court corresponding in degree with the court to which it would revert the competence to judge in the first instance - in whose constituency is the place of detention, the place where he found the commission of the offence or the headquarters of the prosecution which includes the prosecutor that drew up the proposal), along with the dossier of the case or numbered and certified copies of the file's documents or only from the documents that relate to the proposal (article 224 of the CPC). If the defendant was previously detained, the referral of the judge of rights and freedoms must be made at least 6 hours before the expiry of his detention period - aspect which must be read in conjunction with the details of the restraint.

After receiving the proposal, the judge of rights and freedoms sets the date and time at which the settlement will take place, which are communicated to both the Prosecutor (who is obliged to ensure the presence of the accused detainee) and the lawyer (elected or ex officio) of the defendant - which must be given the opportunity of study the dossier before the start of the meeting. It takes place in the Council Chamber.

The settlement of the proposal shall be made only in the presence of the accused. Exceptions: when the defendant is unreasonably absent or is missing, evades or cannot be brought before the judge because of his state of health, force majeure cause or necessity state.

The legal assistance of the accused and the Prosecutor's participation are required. Listening and hearing the defendant, if he is present, are also required (except for the situation when they avail themselves of the right to silence).

The debate of the proposal has as its starting point the argument of the Prosecutor, followed by the defendant's lawyer and the defendant.

The judge of rights and freedoms deliberates and records the solution in a minute. He can provide:

a) *the admission of the proposal, the drawing up of the preventive arrest mandate and informing the accused* in a language he understands, of the reasons for arrest and giving him a copy of the mandate. Also, the defendant must be notified in writing and under signature (if he cannot or refuses to sign an official report will be concluded) of the rights referred to in art. 228, paragraph 2 CPC. The obligation to notify a family member or a person designated by the defendant about the initiation of the measure and the place of detention shall are tasks that belong to the judge of rights and freedoms. In addition, the rights of the person detained, if he is not a Romanian citizen, are valid in the case of preventive arrest (to inform the diplomatic mission or consular post, international organization, etc.). Changing custody creates the obligation to notify

the same categories of persons/institutions. The way in which it is done shall be recorded in a report. When the measure was taken against a defendant in whose protection is a minor, a person placed under interdiction, a person who has established guardianship or trusteeship or a person who, because of age, illness or other cause, needs help, a competent authority (usually the social assistance services/offices) is notified as soon as possible, in order to take the legal measures of protection. This obligation rests with the judge of rights and freedoms which has taken the measure of preventive arrest, activity recorded in a report.

b) *the rejection of the proposal*, when the conditions for its admission are not met, and the disposition to release the defendant previously detained (pursuant to article 227, paragraph 1 of the CPC);

c) *the rejection of the proposal and taking other preventive measures* (judicial control, judicial control on bail or house arrest) - according to the article 227, paragraph 2.

Whatever any of the three cases, the judge of rights and freedoms must draw up a reasoned conclusion regarding the solution ordered.

The preventive arrest shall be ordered for a period of not more than thirty days, without being able to deduct the length of his detention from the preventive arrest. The arrest warrant issued in absentia can be executed through the intrusion in the domicile or residence of a person without his consent, or in the office of a legal person without the consent of their legal representative (in accordance with art. 231 CPC detailing the execution of the mandate issued in absentia.)

The prolongation of preventive arrest is made under the conditions of art. 234-235 CPC, for a term of not more than 30 days, and with the same procedure.

The total duration of preventive arrest in the criminal investigation phase may not exceed a reasonable period and no more than 180 days (in accordance with article 236, paragraph 4, CPC, in accordance with article 23, paragraph 5 of the Romanian Constitution).

Against the judge's conclusion concerning the order on the preventive arrest proposal, an appeal can be made within 48 hours since the pronunciation (for the present) or since the communication (for the Prosecutor and the defendant that lacked), with the procedure provided for by article 204 CPC. If the conclusion is not appealed, the judge of rights and freedoms must return the dossier of the public prosecutor within 48 hours following the expiry of the appeal date (48 hours after delivery). Also, the appeal formulated does not suspend the execution; the measure/solution previously ordered remains valid and the judge of rights and freedoms hierarchically superior is forced to settle the dispute within 5 days.

If the defendant has previously been arrested in the same case, his preventive arrest may be order again in the course of criminal prosecution, under the condition of existence of new grounds which would have required that measure

3.2. *The preventive arrest in the procedure of preliminary chamber*

According to article 238 of the CPC, on a motivated proposal from the Prosecutor (formulated by indictment) or ex-officio, the judge of the preliminary chamber may order the preventive arrest of the accused (in connection with this new phase of the criminal process see also article 342 - 348 of the CPC). We note that the Prosecutor's proposal on taking the measure of preventive arrest may even be made subsequently after issuing the indictment, during the 60 days the procedure takes place in this new procedural phase.

The judge of the preliminary chamber, through motivated conclusion, may provide only one of the following solutions (according to article 238, paragraph 1 of the CPC):

a) *preventive arrest for a period not exceeding 30 days*, when the necessary conditions are fulfilled (mentioned at the preventive arrest in the phase of criminal prosecution);

b) *rejection of this proposal of preventive arrest*, per a contrario.

The settlement is made in the Council chamber and is noted in a reasoned conclusion.

The details of the procedure in the stage of criminal prosecution, including the appeal, are also valid in this procedural phase with the mention that the resolution of the appeal lies in the duties of the preliminary chamber judge from the superior court. If the defendant is sent to trial in the stage of preventive arrest, and the dossier is in the preliminary chamber, the procedure referred to in article 207 in conjunction with article 248, CPC is applicable.

3.3. *The preventive arrest during trial*

At the reasoned proposal of the Prosecutor or ex officio, the Court may order the preventive arrest of the accused. Summoning the defendant, the legal assistance, publishing the court hearing, the notification, and other activities specific to the other two phases are identical under procedural aspect.

The Court, just like the judge of rights and freedoms and that of the preliminary chamber also decides through a reasoned conclusion; the solutions are identical to those of the preliminary chamber, respectively, the acceptance of proposal and the preventive arrest, or rejection of proposal.

The appeal may be made to the superior court, within 48 hours since the pronunciation (for the present) or communication (for absentees); the result is communicated in open court.

The maximum period permitted regarding the preventive arrest of the accused in the course of the judgment in first instance is provided by art. 239 CPC, this being:

- either a reasonable term, depending on the specifics of the case;
- either less or equal to half of the special maximum of the crime of which the defendant is accused;
- never more than 5 years;

The calculation shall be made from the date of referral to the Court (if the defendant is in a State of preventive arrest) or from the date of the execution of the measure (either in the preliminary chamber or during the judgment). If the time limits referred to above expire, the Court may order taking other preventive measures (judicial control, judicial control on bail or house arrest).

Also, the period while the defendant is under constant guard in the Ministry of health medical network, enters in the duration of preventive arrest, pursuant to article 240 CPC.

Termination, revocation and replacement, sui generis, of the preventive measures (including arrest and preventive arrest) is done under the conditions and pursuant to the procedure referred to in article 241 and 242 CPC.

Conclusions

Trend growth and escalating crime, risks and threats to public order and security is present and remains well defined in the future, because these phenomena can never be eliminated, but limited.

Therefore, designed and presented - for objective reasons - as a synthesis of the main features characteristic to both preventive measures, the subject institutions of the present paper will almost certainly be explored and developed in the future, fallowing that the doctrine of judicial practice to complete their understanding and applicability.

References

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[2] Law no. 135/2010 on the Code of Criminal Procedure, published in Official Gazette no. 486 of July 15, 2010, amended by Law no. 255/2013 on the implementation of Law no. 135/2010, published in Official Gazette no. 515 of August 14, 2013, respectively the Government Emergency Ordinance no. 3/2014, published in Official Gazette no. 98 of February 7, 2014;
[3] Article 23 of the Romanian Constitution, published in Official Gazette no. 767 of October 31, 2003, following the amendment and completion of Law Review no. 429/2003, published in Official Gazette no. 758 of October 29, 2003;
[4] See, in particular, Art. 5, paragraph 1, letter "c" of the European Convention on Human Rights, ratified by Romania through Law no. 30/1994, published in Official Gazette no. 135 of May 31, 1994 and article 6 of the Charter of Fundamental Rights of the European Union, published in the Official Journal of the European Union C 303 of December 14, 2007;
[5] Mihail Udroiu, *Fişe de procedură penală / Sheets of Criminal Procedure*, Universul Juridic Publishing House, Bucharest, 2014, p 197;
[6] See Law no. 218/2002 on the organization and functioning of the Romanian Police, updated, published in Official Gazette no. 305 of May 9, 2002; Law no. 550/2004 on the organization and functioning of the Romanian Gendarmerie, updated, published in Official Gazette no. 1175 of October 13, 2004 and Law no. 155/2010 on local police, published in Official Gazette no. 483 of July 14, 2010;
[7] In connection with article 5, paragraph 3 of the ECHR we recommend - Radu Chirita, *Convenţia europeană a drepturilor omului. Comentarii şi explicaţii / European Convention on Human Rights. Comments and*

explanations. 2nd Edition, C. H. Beck Publishing, Bucharest, 2008, pp. 171-174, respectively Bîrsan Cornelius, European Convention on Human Rights. Comments on articles. Volume I, Rights and freedoms, C. H. Beck Publishing, Bucharest, 2005, p. 348-356;

[8] In this regard see also Nelu Nita, *Managementul excelenţei în instituţiile de ordine şi siguranţă publică* / *The Management of the excellence in institutions of public order and safety*, Tehnopress Publishing House, 2013, p. 80-82. According to this author: "Public order is a state of law and fact, which allows the company to achieve and maintain balance, based on the consensus requirement for optimal social assembly, respecting the legal regulations in force, the consecration of defense and rights and freedoms citizens' fundamental to public and private property, as well as other supreme values, to promote social progress and affirmation in a democratic society". In the same context the author defines public safety as "a state of protection of the individual and society, from any kind of danger, of any unlawful action against the consequences and the consequences of curfew or conflicts social, natural disasters, epidemics, disease outbreaks, disasters, accidents and fires, as appropriate";