The institution of the judge of rights and freedoms

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Abstract: Along with the entry into force, on February 1st 2014, of the Law 255/2013, for the implementation of Law 135/2010 regarding the Code of Criminal Procedure and for amending and supplementing of certain normative acts containing provisions of criminal procedure, in the structure of the Romanian judicial system arose a new institution, respectively that of the Judge of rights and freedoms. As the name suggests, this institution of criminal procedure is designed to guarantee the individuals that are subject to judicial acts, that their rights and freedoms shall not be limited except in accordance with the law and to a reasonable extent, determined by the particularities of the case under investigation by the judicial bodies. So, it is a public interest that requires, as an exception, the limitation of some rights and freedoms for the individuals on which judicial action is taken. The institution is of interest also from the perspective of the human rights, because the philosophy of this concept requires that the positive, national and international law has the power to discourage abuses which public authorities are tempted, for various reasons, to subject the individuals under investigation. The emotions caused by the acts committed by these individuals, the professional pride of the judicial bodies and the pressure of the public opinion sometimes incite to abuses, which are not only human rights violations, but can also create difficulties in the correct determination of the case. This is precisely why the investment of a different judge than the one dealing with the merits of the case, to order precautionary measures involving restrictions on rights and freedoms, is, we believe, the most effective guarantee against the abuse that the investigators could commit.

Keywords: judge of rights and freedoms; precautionary measures; limiting freedom; house arrest; legal restriction pending trial.

Introduction

The new Code of Criminal Procedure [1] provides the framework for the criminal proceedings development in a modern architecture that involves principles, separate judicial functions, participants, litigants, parties, competences, evidences, as well as other institutions, prosecution, trial and ordinary and extraordinary means of appealing against, new mechanisms for the unification of the non-unitary practice, respectively the appeal on points of law, notification of the High Court of Cassation and Justice in view of a prior ruling to unraveling of some issues of law, special procedures.

The project of this new procedural structure was generated both by the need to optimize justice, as a public service, as well as by the pressure exerted by the European Court of Human Rights, which penalized repeatedly Romania for the legislative deficiencies found. It was also aimed to adapt the Romanian judicial proceeding to that applied in the Mainland and, in particular, to that practiced in France, Germany, Italy and Spain. To the same extent, were considered also the European legal instruments relating to human rights observance in judicial proceedings, respectively conventions of the Council of Europe, resolutions and recommendations of the Parliamentary Assembly of the Council of Europe, recommendations of the Committee of Ministers and other acts adopted at the EU level which have been highlighted in the explanatory memorandum of the Code of Criminal Procedure’s draft [2].

The new Code of Criminal Procedure, which entered into force on February 1st 2014, also introduces a new institution in the Romanian judicial system. It is the Judge of rights and freedoms, whose presence was felt the judicial proceedings for a long time, as a guarantee both for the proper administration of justice and the observance of human rights of those that are subject to procedural acts. The creation of this institution is part of a wider reformation program of the judicial system [3], thought to remove, on the one hand, the
failures that are constant over time, and, on the other hand, to meet the requirements of modernization and evolution existing at European and international level.

The issue of human rights has become extremely complex, thing that has spurred the continuous multiplication of the protection mechanisms created for this purpose. Therefore increased in volume and complexity the regulatory framework targeting the areas where there are vulnerabilities regarding life, health, freedom, human dignity, etc.

Such vulnerabilities are present also in the justice. Specific to this scope is the fact that in the interest of proper administration of justice, some limitations to the rights are absolutely necessary. Because we speak of limitations, which should be treated as an exception, they must be proportional to the objective requirements of the procedural acts. Therefore, the consideration of these requirements should be made with great objectivity. The judicial authority invested to solve the case will be tempted to exploit the procedural acts, directing them right to the goal that they have proposed. So it could not take an objective position in the assessment of the limits that are imposed on human rights, limits justified by the need of justice’s fairness. Therefore is required another authority and that, as mentioned, is already in operation in the Romanian judicial system.

The occurrence of the Judge of rights and freedoms is part of a wider process of courts’ specialization. It is a requirement imposed both by the impetuous increase of the volume, diversity and complexity of court cases and by the need to ensure a balanced functioning of the entire judicial system. The legislative measures adopted for this purpose are a practical answer to the problems raised by the organization and operation of the courts and the frequent claims regarding the correctness of justice.

I. The definition of the institution and its place in the judicial system

The Judge of rights and freedoms is, according to art. 53 of the Criminal Procedure Code, the judge who, in the court, under its jurisdiction, solves, during prosecution, requests, suggestions, complaints, appeals or other intimations regarding: preventive measures, precautionary measures, security measures with a temporary character, prosecutor’s acts in cases expressly provided by law, consent for investigation, the use of special surveillance or investigation methods and techniques or other evidence proceedings according to the law, early hearing procedure and other cases expressly provided by law.

Considering that precautionary measures during prosecution are limitations to the rights and freedoms of the individual, justified by the public interest of fair settlement, in a democratic society, of the facts that constitute offenses, the panels of judges of rights and freedoms performs the duties of provision [4] on them, ensuring compliance with the principle of proportionality and legality of justice.

Even by its name, the competence of the institution falls within the issue of fundamental human rights and freedoms, as an independent, impartial and specialized guarantor of those rights and freedoms during the prosecution stage. Although its attribute is a specialized and limited one, at the same time, in whole judicial activity, however it does not fall outside the concept of court. Emphasis is necessary because, according to art. 30 of the new Code of Criminal Procedure, the judge of rights and freedoms is mentioned distinct from the courts, although, as pointed out by the doctrine [5], the activity is still of judging, and those who are performing it are also members of the court.

II. Constitutional basis

The institution of the judge of rights and freedoms was determined by a variety of factors that occurred in the judicial practice in recent years, factors that have generated, over time, also other adaptations of the legal framework, to ensure the individual who is under a judicial procedure, that he will not be subjected to arbitrary, unfair or disproportionate actions in relation to his deed.

The constitutional reform of 2003 brought significant adjustments also to the civic rights and freedoms, providing more effective guarantees in judicial proceedings where, for reasons of public policy, certain limitations are required. This is also the reason for which the institution of the judge of rights and freedoms was founded. The constitutional basis of the legal regime granted to the institution is represented by art. 21 (access to justice), art. 23 (individual freedom), art. 25 (freedom of movement), art. 26 (intimate, family and private life), art. 27 (inviolability of the home), art. 28 (secrecy of correspondence), art. 44 (right
to private property). In the scope are also applicable art. 20 and art. 148 requiring compliance with the international and European standards on human rights matters.

One of the goals of legislative changes in the criminal matters in recent years was precisely the consecration of some criminal procedures for the protection of the individual against arbitrary detention.

The same need influenced the amendment of art. 23 of the Romanian Constitution, of the 2003 revision. The changes and additions were inspired both by the legal practice and the need to adjust the system for protecting individual freedoms to the Western European legal requirements. Compared to the original text, the new constitutional regulation establishes that the remand is ordered by the judge and only during the criminal trial. Through its clarity, the text eliminates any other interpretation and thus, the replacement of the word ”magistrate” with “judge”, excludes the possibility of issuance of an arrest warrant by the prosecutor, case that was allowed within the previous regulation [6].

The arrest is a measure that seriously touches the individual freedom, with great consequences, sometimes unexpected, on the reputation of the person, his private and family life, his happiness. The arrested person supports the suspicion of guilt, measure which may cause irreparable effects. Therefore, the arrest is subject to some clear and firm constitutional rules [7].

In the attempt to eliminate future abuses, speculations or questionable interpretations [8], the quoted constitutional text adds several rules. So, during prosecution, the remand may be ordered for up to 30 days, it may be consecutively extended by no more than 30 days, without that the overall length exceeds a reasonable term, and no more than 180 days. Through these rules are clearly established the time periods, but, very important, it also focuses on the celerity of the prosecution.

As regards the trial stage, the court is obliged, under the law, to periodically verify, and for no more than 60 days, the legality and validity of the remand and to order, immediately, the liberation of the defendant, if the ground of this measure does no longer exist. The constitutional norm envisages the defense of individual liberty before a court, not only during the prosecution stage, to prevent abuses, the rule being that a person must be prosecuted and tried without being detained and, the except, under arrest [9]. Also, by this provision are stopped the multiple interpretations given in judicial practice and in the jurisprudence of the Constitutional Court. As an additional guarantee, the text provides that the decisions of the court on remand are subject to appeals provided by the law.

In the previous version, the art. 23 paragraph (4) was determining in what cases the liberation of the detained or arrested person is mandatory. This paragraph has been completed in the sense that the liberation is mandatory not only when the reasons for detention or arrest disappear, but also in other cases provided by the law. It may be noted the practicality of this addition that allows ordinary legislature to intervene, without the need to revise the constitution.

A completion of extensive use and legal and human respiration is the one according to which the penalty of deprivation of liberty can only be of criminal nature [10]. This way the anachronistic process is removed, contrary to human rights, to submit to deprivation of liberty the individuals who commit illegal acts, but which are not criminal acts. The new text gives satisfaction to the idea that the deprivation of liberty is justified only in the case of a criminal offense, because it involves the loss of an essential constitutional right regarding the individual freedom. For the acts that do not have a criminal nature there are sufficient sanctions that do not entail, even for a limited period, the loss of the individual’s freedom.

An important role in the conceptual substantiation of the institution of deprivation of liberty, in concordance with the requirements of the civilized world, was also played by the jurisprudence of the Constitutional Court. "The institution of deprivation of liberty of an individual - is shown in a decision of the Court [11] - is an act of extreme gravity for every citizen. It can be achieved only in conditions strictly regulated by law, to prevent any abuses that would lead to arbitrary and discretionary, directly affecting human values that constitute the essence of the personality of each individual". The severity of the deprivation of liberty does not vary depending on when it occurs during prosecution or during trial, is outlined in another decision [12]. So, there should be no element of differential treatment according to the stage of the criminal trial.

**III. Jurisprudence of European Court of Human Rights**
The creation of the judge of rights and freedoms institution was substantially influenced by the European Court of Human Rights, which ruled in countless violations of art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Under the marginal title of "Right to liberty and security" the text of this article has the following content:

"1. Everyone has the right to liberty and security. No one shall be deprived of his liberty, except the following cases and under legal ways:

   a) if he/she is legally detained, on conviction by a competent court;
   b) if he/she has been the subject of legal arrest or detention for failure to comply with a judgment given by a court, according to the law or, in order to secure the fulfillment of any obligation prescribed by law;
   c) if he/she has been arrested or detained for bringing him/her before the competent legal authority when there are plausible reasons to suspect that he/she committed an offense, or when there are reasonable grounds for the need to prevent him/her from committing an offense or fleeing after committing the offense;
   d) if it is case of the legal detention of a minor, decided for educational purpose under supervision or his legal detention for the purpose of bringing him before the competent authority;
   e) if it is case of the legal detention of an individual liable to transmit a contagious disease, of a mentally ill person, alcoholic, drug addict or a vagrant;
   f) if it is case of the legal arrest or detention of a person in order to prevent illegal entry into the territory or against whom action is being taken with a view to deportation or extradition.

2. Any individual arrested shall be informed, in the shortest possible time and in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 letter c) of this Article shall be brought promptly before a judge, or other officer authorized by law to exercise judicial power, and has the right to trial within a reasonable time or to liberate during pending trial. The liberation may be conditioned by a guarantee that ensures the presence of the individual to the audience.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to make appeal against a court, in order for it to rule in short-term on the legality of his detention and to order the liberation if the detention is unlawful.

5. Any individual, victim of arrest or detention under conditions that are in contravention of the provisions of this article shall have the right to compensation”.

The doctrine stresses [13] strongly the particular importance that this text has for anyone, since enshrines a fundamental right to liberty and security. It is an inalienable right, which cannot be waived, and in regard to guarantees, it is *erga omnes* opposable. The rule is that "no one shall be deprived of his liberty" and exceptions are strictly of interpretation and relate to cases where for good reasons, of judicial or public order, some individuals may be deprived of their liberty. The deprivation of liberty is an exclusive attribute of the public authorities, and the measure shall be applied in strict accordance with the law. Article 5 of the Convention is also intended to protect the individual against arbitrary interference of the State authorities.

The Romanian state was sentenced several times by the European Court of Human Rights being used against various violations of art. 5 of the Convention. Specifically, it is the case of the issues related to the independence and impartiality of the magistrate and to the significance of the term “magistrate” [14], the absence from the national law of certain provisions requiring the prosecutor to immediately bring before the judge [15] of the retained individual, the lack of clarity of the national rules governing the procedure of maintaining remand during the trial [16], the fact that the national legislation remedies are not sufficiently reliable in practice, being deprived of requisite accessibility and effectiveness [17], the lack of motivation or insufficient motivation of the measure of remand, without the prosecutor or the court to give convincing arguments for this measure or without an individual analysis of the situation and the applicant's defense [18].

All these reasons are serious legislative gaps, direct result of how poorly the authorities vested with normative powers creates the legislative framework for such activities. The courts, faced with an incoherent, confused and incomplete law, give, of course, solutions contrary to the Convention, which entail such convictions that put Romanian state in a uncomfortable position, not to mention the compensation costs that they incur.

This situation claims remedies, both on the content and the quality of the regulations, in the sense that the law should ensure clear and effective guarantees of the fundamental rights and freedoms throughout
the criminal trial, as well as in the organization of the courts, so that the guarantee of independence and impartiality characterizing them to be fully realized, also throughout the criminal trial.

Considering the new regulation of the judge of the rights and freedoms institution, which exceeded the previous confusion of the term "magistrate", it deserves to be brought before the clarification that the European Court does, in this regard, arguing that the prosecutor cannot be considered magistrate under the meaning of art. 5 parag. 3 of the Convention. Thus, "for considering that a magistrate is exercising judicial functions - stated in the ECHR jurisprudence [19], - under this provision, it must meet certain conditions, which represents, for the arrested person, guarantees against arbitrary interference and unjustified deprivation of liberty (...). So, the magistrate must be independent from the executive and from parties (...). In this regard, some objective circumstances existing at the time of taking remand measure may be relevant: if the magistrate may intervene in criminal proceedings subsequent to taking remand measure, as a prosecution body, its independence and impartiality could be questioned". It is understood, unequivocally, that the prosecutor cannot be independent because, on the one hand, is part of the executive, and, on the other hand, having an important role in judging the case and in the achievement of evidentiary material, will be tempted to abuse from precautionary measures, or to apply them arbitrarily.

Also, in the same case, are clarifications with regard to the guarantees that are required in the proceedings before the court. This way, "the first sentence of Article 5 does not limit the access of the arrested person before a judicial authority, but it requires the magistrate before whom the arrested person is presented, the obligation to examine the circumstances militating for and against continuing arrest, to decide according to the legal criteria on the existence of reasonable grounds that could justify the arrest and, in their absence, to order the liberation" [20]. Moreover, para. 3 of art. 5 of the Convention also requires "the immediate intervention of the judicial control on the legality of the measure of preventive arrest" and in the interpretation and application of the concept of " promptness", "the principle of flexibility cannot be applied, unless to a very small extent (...), a rapid judicial control on the preventive arrest for the person concerned constitutes an important guarantee against some maltreatments" [21].

For the application of the European Convention on Human Rights and the jurisprudence of the ECHR must be noted that these institutions do not replace national authorities regarding the determination of appropriate means necessary to guarantee the civil rights and freedoms in judicial activity, they are not responsible to establish the facts determining the national courts to take a particular decision. The Court's role is to determine, under the light of the Convention, the decisions taken by the national authorities, in the exercise of discretion, in the sense of their consequences compatibility with the Convention's provisions. The responsibility for the interpretation and application of the provisions of criminal law, in compliance with the Convention for the protection of fundamental rights, lies primarily to the national judge.

To the same extent is also required the application of the European Union Law, respectively the Charter of Fundamental Rights of the European Union, which "led to the development, by the Court of Justice of the European Union, of a genuine culture of fundamental rights" [22].

IV. Competence of the judge of rights and freedoms

As outlined, the institution of the judge of rights and freedoms is a modern creation of the Romanian legislator, who, along with other judicial bodies, is required to ensure the balance of compliance of the procedural guarantees established for the achievement of an independent, impartial and qualitative judicial act in the interests of individuals, this helping to strengthen the rule of law in a democratic society [23].

Art. 3 of the new Code of Criminal Procedure, under the marginal title of "Separation of judicial functions" specifies in par. (1) b) "the function of provisioning on the fundamental human rights and freedoms in the prosecution stage", and in paragraph (5) that "on the acts and measures from criminal prosecution, which restricts the fundamental rights and freedoms of the person responsible, decides the judge appointed in this regard, except the cases specified by law."

Corresponding to the position that is invested, the judge of rights and freedoms has a competence specifically set by art. 53 of the new Code of Criminal Procedure. According to the text of this article "The judge of rights and freedoms is the judge who, within the court, under its competence, settles, during prosecution, requests, suggestions, complaints, objections or other intimations regarding: a) preventive
measures; b) precautionary measures; c) provisional safety measures; d) the prosecutor’s acts, in cases provided by law; e) consent for investigations, for the use of special surveillance and investigation methods and techniques or other evidence methods according to the law; f) early audience procedure; g) other cases expressly provided by the law”.

According to the legal framework established, the essential feature of this new institution consists in its autonomy over other judicial authority. Precisely this quality allows it to rule impartially on the measures to be taken during the prosecution and the rights and freedoms of individuals. This is a guarantee that the measures will not be excessive and that their suitability to the case will ensure the relevance of the justice.

This way, the judge of rights and freedoms has the attribution to verify, through requests and proposals exercised by the holders or by specific means of judicial control, through complaints, appeals or any other intimations, the necessary measures for the proper and efficient conduct of criminal proceedings. They may consist of, for example, the prevention of the absconding of the suspect or the accused person from prosecution or trial, or the prevention from committing another crime, avoidance of concealment, destruction, disposal or circumvention of the goods that may be the subject of special or extended confiscation, or which may serve to ensure the penalty, fine or court costs or for the compensation of the damage caused by the offense, the application of provisionally safety measures or prosecutor’s acts in cases expressly provided by law, consent for searches or other probative procedures (using special surveillance or investigation methods and techniques), early audience if there is a risk that a witness would not be heard during the trial.

Through the mass media, the public becomes aware, more frequently, of the measures being applied to persons against whom prosecution was ordered. Of course, this is the case of people who have a certain reputation in society or in politics, or who have committed totally unique acts that attract public attention, being subject of media interest. The people also perceives, however, the fact that in many cases, preventive or protective measures, decided against suspects or defendants, are not imposed by the need to conduct properly the criminal proceedings or prevent other risks. This perception is supported especially by an excessive mediatization, when the persons subject to these measures are exposed in uncomfortable situations, accompanied by comments specifically designed to attract public attention and possibly cause a reaction of disapproval on its part. We believe that this is not the purpose of preventive or protective measures nor the abusive mediatization does serve the cause of justice. Everyone has the right to an image and for some it may have a supreme value. Therefore, as long as the suspect or the accused was not guilty of the offense for which he is being held, his rights and freedoms must be protected just like for anyone else. There are many cases where the prosecution proceeding against the suspects was taken, for example, the remand measure, therefore the deprivation of liberty, so that, finally, the court does not consider them guilty. However, the persons placed in such situations had to bear moral, physical and even patrimonial consequences.

An area of wide interest and which also falls within the competence of the judge of rights and freedoms is the consent for investigations, the use of special surveillance or investigation methods and techniques or other probative proceedings according to the law. We say that it is of wide interest also due to the mediatization. This way, the public opinion finds out the intimacies of the pursued persons, without realizing what value the privacy represents for each and how important is the right to intimate, family and private life and secrecy of correspondence. The curiosity for such information often exceeds the sense of reason. But here comes the problem, in the first place, from the perspective of those who order such measures, as well as those who manage the information obtained this way.

According to art. 152 of the present Code of Criminal Procedure, the judge of rights and freedoms authorizes the request that the criminal prosecution bodies addresses to a provider of public electronic communications networks or a provider of publicly available electronic communications services to transmit the data retained, based on the special law regarding the retention of data generated or processed by providers of public electronic communications networks and providers of publicly available electronic communications services, other than the contents of communications. The legal basis for requiring such data is the reasonable suspicion of committing an offence and there are certain clues to believe that the requested data constitute evidence for the categories of offenses under the law on the retention of data generated or processed by providers of public electronic networks and providers of publicly available electronic communications services. The text of par. (3) of this article obliges the providers to keep the secret on the operations performed.
Currently the law referred to by art. 152 is the Law 82/2012 on the retention of data generated or processed by providers of public electronic communications networks and providers of publicly available electronic communications services for the public and for the amendment of Law no. 506/2004 concerning the processing of personal data and privacy in the electronic communications sector [24]. The Law transposes into national legislation the Directive 2006/24 / EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002 / 58 / EC, and was adopted after declaring the unconstitutionality of the previous enactment on the same subject. By Decision no. 1258/2009 [25], the Constitutional Court declared unconstitutional the law 298/2008 on the retention of data generated or processed by providers of publicly available electronic communications services or of public communications networks and amending Law 506/2004 regarding the processing of personal data and protection of privacy in the electronic communications sector.

As grounds for its decision, the Constitutional Court stated that, although the Law 298/2008 refers to predominantly technical data, however, they are retained with the purpose of providing information about the individual and his private life and, therefore, are necessary guarantees compliance with these fundamental human rights. "Limiting the exercise of personal rights by reason of collective rights and public interests aimed at national security, public order and criminal prevention - to the decision of the Constitutional Court - was always a sensitive operation in terms of regulation, so as to maintain a fair balance between individual rights and interests, on the one hand, and society, on the other hand". The Court brought as argument in declaring unconstitutional the law 298/2008 also the jurisprudence of European Court of Human Rights. Thus in the case Klauss against Germany in 1978, the Court stated that measures of supervision, without adequate and sufficient guarantees can lead to "the destruction of democracy under the pretext of defending them" [26].

Likewise, the ECHR jurisprudence showed that due to the fact that telephone conversation are included in the notions of "private life" and "correspondence", in order to intercept them, to store data thus obtained and their possible use in legal proceedings should exist an appropriate legal basis to establish reasonable limits and effective guarantee regime as an interference with the operation of the a public authority with the exercise of the rights guaranteed by art. 8 of the European Convention on Human Rights. [27].

In the administrative and judicial practice from Romania has become established a certain mentality according to which, what is in compliance with or based on law would be fair and undeniable. Of course authorities base their actions on the law and, even when exceeding the legal limits and commit abuses, they also invoke the law. But the most important issue, which unfortunately escapes public attention, regards to the quality of the law. Due to the serious deficiencies and the undemocratic way in which the legislative process is conducted, it came that, in a worrying extent, the source of the injustice and disregard of the civil rights and freedoms to be represented precisely by the law. Is also the case of the Law 298/2008, declared unconstitutional. The expression "provided by the law" - indicated in ECHR jurisprudence - not only requires compliance with national law, but also refers to the quality of the law, which should be compatible with the rule of law. In the context of secret surveillance exercised by public authorities, the national law should provide protection against arbitrary interference in the exercise of the right of an individual in relation to art. 8. In addition, the law should use sufficiently precise terms indicate the persons, in a satisfactory manner, the circumstances and conditions which enables the public authorities to take such secret measures. If, whatever the system, it can never completely remove the event of an unlawful action of a dishonest, careless or overzealous official, the elements that matters to exercise control of the concerned Court are the probability of such an action and the guarantees provided for to protect themselves against it [28].

We believe that the new system established by the Code of Criminal Procedure which confers the judge of rights and freedoms the power to authorize the request of the prosecution to use data generated or processed by providers of electronic communications networks constitute a guarantee, as indicated by Constitutional Court and ECHR jurisprudence. Also a guarantee is set by art. 154 lin. (6) of the Criminal Procedure Code, which regulates in the competence of the judge of rights and freedoms the prosecutor's authorization to request a provider of public electronic communications network or service provider of publicly available electronic communications the transmission of preserved data according to law or waiver of such measure.
Subjecting these delicate measures to the control of the courts strengthens the guarantee that interference with private life of the individual will be strictly reasonable determined as intensity by the public interest that is required to be defended in a really State of law [29]. Ordering about serious interferences on the individual freedom, intimate and private life, as well as other rights and freedoms, the judge of rights and freedoms does not only carry out an examination of legality, but also of proportionality, of reasonability of the measure that is required to be ordered. His activity gives expression to modern concepts of criminal proceedings and the act of justice generally as defined in the Criminal Procedure Code. Concepts like "reasonable suspicion" (art. 139 and art. 152), "proportionate measure to the restriction of rights and freedoms" (139) "disproportionate interference" etc., require the examination of the whole problematic of the preventive and protective measures from the perspective of the fundamental values of the rule of law, namely, the human dignity [30].

Conclusions

The institution of the judge of rights and freedoms, given its novelty character in the Romanian judicial system, which came into operation less than two years, faced with a multitude of legal uncertainties and inertia of jurisprudence. However, there is a positive and optimistic attitude regarding its consolidation and strengthening of the role that has been assigned. The jurisprudence so far reveals, in the first place, that the institution is proving to be particularly useful. The examination of the conditions of legality regarding to each preventive measures applied in judicial proceedings is made more carefully, being manifested, precisely because of the autonomy, an equilibrium essential for a proper resolution of each case. It was proved already, in the casuistry so far, that the judge of rights and freedoms may establish better the junction between the public interest, on the one hand, and the individuals, on the other hand, than does the court judging the merits of the case or other judicial authorities. The intensification of judicial control on preventive measures through this institution, gives more efficiency to the procedural guarantees offered to the suspect or defendant, which emphasizes the foreseeability, predictability and quality of the new provisions on criminal proceedings.

References


in the fight against organized crime; Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime; Council Resolution of 17 January 1995 on the legal interception of telecommunications in mode.


[16] Decision of 1 April 2008 pronounced in case Varna against Romania (www.echr.coe.int).


[24] Published in the Official Gazette., No. 406/18.06.2012; republished in the Official Gazette. no.211/25.03.2014.


[29] We consider in this respect, Nita Nelu, Challenges of the public order and safety in Romania for sustainable strengthening the rule of law, in the Pro Patria Lex Magazine, Journal of Legal Studies and Research, Vol. XI, no. 1 (22) / 2013, according to which: "For sustainable strengthening the rule of law in Romania, according to the attributes conferred by law, must act consistently to strengthen all state institutions, for to be ensured all the guarantees for affirmation the Romania on international arena as a factor of stability and progress, of guarantee fundamental rights and freedoms”;