UNIVERSITY OF CRAIOVA
FACULTY OF LAW AND SOCIAL SCIENCES

DOCTORAL THESIS

THEME:

The Human Rights and the European Arrest Warrant

SUMMARY

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The problem discussed in this doctoral thesis was, in practice, the subject of several specialized works in the scientific research conducted in the field of criminal law.

The work takes the form of a monographic study and is dedicated to the theoretical, legislative, judicial practice and comparative law on detention and human rights.

Thus, scientific research in this field aims to identify and propose elimination, after a thorough analysis of the possible failures that can occur in both legislative activity and in their implementation of regulations to ensure legal protection consistent and fair one of the most important basic human rights - individual freedom.

We also appreciate the choice and analysis of such issues is justified by the need for a judicious examination of how the main judicial activity can be an activity coupled with secondary data, after which individual freedom to intervene damage.

Here are some of the considerations which show interest in addressing the subject of this thesis.

This thesis, divided into 12 chapters, each divided in its turn the chapters, covers both aspects of nature doctrine, traditional fundamentals of analysis related to detention as a means of restricting individual liberty and regulations on legal size concept of freedom in Europe, as well as those related to international instruments that ensure respect for freedom as a fundamental right.

All these attempts to prove the truth of the concept expressed by Aristotle, that "the law is only one slave or free, people by nature do not differ in nothing."

Thus, **Chapter I, Preventative measures** are conceptual boundaries, whereby, according to Art. 23, contained in Title II, entitled "Rights, freedoms and duties" of the revised Constitution, liberty and security of person are inviolable. Constitutional text also obliges the legislator to determine specifically where and procedures must take into account that, according to art. 1 para. (3) of the Constitution, human dignity, rights and freedoms, the free development of human personality and justice are supreme and guaranteed values.

The following are defined terms such as search, arrest, detention, arrest, and legal conditions in which they can commit.

General provisions on preventive measures that are brought to the fore criminal procedural measures that are institutions of criminal procedural law, made available to the criminal judicial bodies consisting of some hardship or constraint, personal or real, to prevent or eliminate certain circumstances or situation liable to endanger the smooth conduct of criminal proceedings.

The criminal procedural measures is precisely defined by law and must not be confused with procedural measures because the measures are directed against certain dangers trial on criminal or adjacent situations and procedural measures current activity provides for the trial (eg search, research on the place, ensuring order and solemnity hearing).

To remove and thus preventing hazards that criminal proceedings could be exposed: hiding, removing or altering the traces of the crime, evading prosecution accused the defendant or the prosecution, the trial or the execution of the sentence, thwarting establish the truth by influencing witnesses or experts, putting pressure on the injured person or that you try a fraudulent deal with it, take preventive measures, which are procedural measures because they can be taken to court during criminal proceedings to ensure achieve its purpose.

For the danger that would threaten the smooth conduct of criminal proceedings can be avoided by taking preventive measure should the act which is the subject of criminal

proceedings is an offense punishable by law with imprisonment, the measures can not be taken if the offense is punishable only by fine or imprisonment is when a fine alternative.

Taking a preventive measure, replacement or revocation measure are related documentation and papers stating take action (ordinance or close) are procedural acts. There are also procedural acts for achieving the measures taken.

In assembling the instrument by which the preventive measure to take into account that it must show that accusation or indictment covered, the legal text as it falls, the punishment prescribed by law for the offense committed and practical reasons that have determined preventive measure. In case of detention and arrest, shall document that they must indicate the case referred to in art. 148 Criminal Procedure Code.

These statements in the document that the preventive measure constitutes a serious procedural guarantee for the freedom of people and serves to make the taking of preventive measures hierarchical control and an opportunity to prove the conditions under which preventive measure was taken.

Contemporary doctrine, holding that limitations to exercise individual rights are exceptional, being established and should be used only in cases of extreme exception, if foreseen and clearly defined by law, be proportionate to the needs created by interests that they serve and are restrictive interpretation, upheld the objective necessity of preventive measures to regulate criminal procedure.

Solving the two goals, and limiting personal freedom in favor of higher social interests, requires the judge to take preventive measures to take account of the impact on public opinion, which equates arrest, often with a penalty previously applicable true sentences, to ensure proper functioning of the criminal process, achieving punishing the guilty person and as a preventive measure to avoid becoming a means of pressure intended to provoke the defendant confessions.

Preventive measures is a consequence of the specific features of legal criminal procedure, in particular that are legal relations of power that arise over and beyond the agreement between the parties.

Chapter 2. Legality of preventive detention

CEDO comes complete, stressing that freedom is primarily a statute, meaning social and political condition, secured by a set of rights and duties, before being conceived by philosophers and theologians as a purely psychological and moral individual characteristic.

According to art. 1 para. (3) of the Constitution, human dignity, rights and freedoms, the free development of human personality and justice are supreme and guaranteed values. Article 13 of the Constitution provides the basic elements of the right to liberty, to ensure its applicability: guaranteeing individual freedom, establishing mandatory judicial office motivated and deadline for communication of this mandate.

Talking about freedom can not begin without notice the ease with which this term can be claimed in any type of discourse, the concept is therefore a moral dimension, religious, metaphysical, legal and political.

In the context of art. 23, contained in Title II, entitled "Rights, freedoms and duties" of the revised Constitution, individual freedom of physical liberty of the person, his right to be able to act and move freely, to not be held in slavery or any other easement, not to be

detained, arrested or detained except in the cases expressly provided by the Constitution forms and laws.To meet it, there are rules of the European Convention on Human Rights.

Human rights are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being.". Human rights are thus considered as universal (applicable everywhere) and egalitarian (the same for all). These rights may exist as natural rights or as legal rights, in both national and international.

Most important legal document, and was able to reveal in a modern form issue rights and freedoms, was adopted on 26 august 1789, during the French Revolution, the "Declaration of the Rights of Man and Citizen", which entered the very first his article idea that "men are born free and remain free and equal in rights. Social distinctions may be based only on equality policy ", establishing the purpose of any political association natural and imprescriptible rights of man, liberty, property, security and resistance to oppression.

The most important documents adopted after the war, in defense of human rights are:

* Universal Declaration of Human Rights (UN - December 10, 1948)
* European Convention on Human Rights and the Protection of Fundamental Freedoms (adopted in Rome on 4 November 1950 and entered into force on 3 September 1953, Romania ratified the Convention by Law No. 30 of May 18, 1994, published in the "Official Gazette" no .135 since May 31, 1994) by the Additional Protocol of 20 March 1952.
* International Covenant on political and civil rights (19 December 1966).

CEDO rules on freedom and personal security is an innovative mechanism designed to lead to the creation of a genuine European public order of human rights by creating a protective system is proven in practice extremely effective. Like other international instruments of human rights, the Convention reflects its whole economy, the interdependence of international peace and security and respect for human rights.

Chapter 3. Detention in the CEDO` view

Romanian legislation regulating arrest is liberal conception, as a measure of exception can be made only in the cases and under the procedure provided by law. Contemporary legal thinking objectively recognized the need for preventive measures to regulate criminal procedure for protecting the general interests of the community.

Consequently, it is recognized that the limits to individual freedom are strictly defined by law, are provisional and exceptional, being put under general interests they serve, there will be no abandonment of personal freedom. People who participates in criminal procedure must show loyalty throughout the trial, or to refrain from fraudulent actions to hinder the truth and just settlement of the criminal case.

Extension of crime in modern society and the need to take effective measures to ensure the safety of citizens and community necessarily involves balancing the possibilities of reaction of society against crime and the protection of individual rights. Otherwise, it appears that the law no longer represent the means of protection of those who comply, but mainly for those who do not comply.

In this respect, Traian Pop mention: "to deprive someone of their liberty only on suspicion, so before trial, found guilty and sentenced, is contrary to the constitutional principle of individual freedom. And yet justice can not stand with folded hands before the contempt that throws the defendant by his attempts to compromise the truth or to the hazard posed by the accused person, so that justice must take prompt and vigorous measures

prevention or elimination of these shortcomings. Or, as Justice to fulfill its role, it might not be another choice than resorting to radical measures to arrest. "

On a more intransigent stood Vintilă Dongoroz, who claimed, among other things, "agree with everyone that criminals should be treated humanely, but we can not admit that humanity can go so far as to leave among honest citizens, sprinkled everywhere tens and hundreds of criminals and ready to commit new crimes. What good is all freedoms and if their names can not have any honest citizen safety, being left alongside all criminals? "

The arrest is a measure of individual freedom seriously touching it with major consequences, sometimes unexpected, the reputation of the person, his private and family life, his happiness.

The arrested person supports the suspicion of guilt, the measure can take effect irreparable. Therefore, the detention is subject to constitutional rules clear and firm disposition of this action is a matter of public authorities acting only by order of law, independent and impartial certain judges.

Two important constitutional rules are provided explicitly in Art. 23:

a) preventive custody shall be ordered *only during trial;*

b) *only the judge* is ordering the measure.

Arrest or detention of a person shall be permitted only in the cases and under the procedure prescribed by law, according to art. 23 para. (2) of the Constitution.

The measure raises complex legal, social and psychological, which can generate genuine individual the presumption of guilt is not always reconcile with the fundamental principle of the presumption of innocence, but mostly it can induce the judge to give a sentence at least the duration of preventive detention.

Judicial cooperation in criminal matters in the European Union is currently performing under Community instruments adopted under Title VI of the EU Treaty, which increasingly more based on the principle of mutual recognition of judgments.

The European arrest warrant (EAW) is the first concrete step in implementing the principle of mutual recognition of criminal judgments of the Tampere European Council decided to make the cornerstone of judicial cooperation between the Member States of the European Union.

The EAW does not overlap the arrest warrant of law, whereas, on the one hand, the European arrest warrant is a judicial decision which is always based on a warrant of arrest or execution of sentence issued under domestic law and, on the other hand, the European arrest warrant is issued only when a warrant of arrest or execution of sentence can not be brought out in the country because the person concerned Fails being the territory of another Member State of the European Union.

Every action you take to enforce the law, the EU needs to consider human rights. Although initially, the European Union has been described as an economic community, today it is considered - is considered - one of the promoters of human rights in Europe.

Although in the past has declined jurisdiction in this area now, with the adoption of the Lisbon Treaty, not only met the requirements to join the European Convention on Human Rights, but has founded its own Charter of Rights fundamental in order to ensure more effective protection of human rights.

After the entry into force of Decision - framework, following a program of harmonization of legal systems, although the Commission stated equal protection of human

rights, according to reports CoE Commissioner empowered to monitor these rights in member countries, there were major deficiencies regarding their protection.

They also noted procedural differences. Thus, while in some countries the right to counsel is guaranteed even after arrest, in other Member States, the attorney is not entitled to be present at the interrogation of the defendant. The police believes that integrity is a sufficient guarantee. Most discrepancies can be observed in procedural criminal law.
Without harmonization of penal systems, it is impossible to develop mutual trust. Without trust there is recognition procedure compromised judicial decisions. Without recognition of judicial criminal cooperation is impossible and EAW efficiency is compromised.

The catalog of constitutional rights and freedoms, the right to liberty as a fundamental right of the citizen, appears as a complex of rights and freedoms recognized and provided in art. 23, 25-28 of the Constitution, freedom of movement or natural person (art. 23), freedom of movement within the country and allowing exit and return to the country (art. 25), the right to protection of private life private and family life (Article . 26), inviolability of the home bounderies (Article 27), inviolability legal means of communication (art. 28).

Since these rights and freedoms protect individual and her private life from any interference in constitutional doctrine was known as "inviolability". Protection of fundamental rights and freedoms implies specific obligations of the authorities to ensure their implementation. Law enforcement agencies have an obligation not only to investigate crimes, but also to do everything possible to ensure the protection of rights and legitimate interests, honor and dignity of citizens, especially in the current circumstances, when the focus must be very citizen - rights and freedoms, honor and dignity.

Thus, the constitutional guarantees for the protection of values called also includes provisions relating to the application by the courts to arrest the defendant, based on legal decisions, reasoned and justified.

Freedom to move and to behave according to his will, grants the right to dispose of his movements, his acts and his time, according to his intentions, and thus makes the effective exercise of almost all other individual freedoms.

Detention, while compel resembles achieved through imprisonment, is a measure that can be ordered only procedural reasons, during the process of legal accountability of a crime suspect.

Detention is not a punishment, but is essential administrative and procedural nature, it should not last only as long as required by procedural necessity, reason for arrest advantages and disadvantages must be weighed by reference all specific gravity of the offense and the offender dangerousness, so that it will retain its procedural nature and not turn into a future penalty.

Detention is an exceptional measure, consisting of deprivation of liberty of a person before the intervention of a conviction because of reasons related to the normal course of criminal proceedings being classified in the literature as the most serious procedural measure.

Given these realities objectives constitutional revision of 2003 brought some clarification on this matter, expressly distinguishing between the two phases of the trial, prosecution and judgment. Differences relate only to matters of detail (rhythm during arrest and detention verify the legality of the measure), not the competent authority to issue rules or fundamental legal mandate to issue it.

The profound transformation of criminal procedural rules occurred under the influence of European procedural law, after 1990, in preventive measures and, in particular, arrest, approaching highly democratic countries regulations.

Article 9 of the Declaration of Human Rights and the Citizen, adopted in 1789, identifies, states that "every person should be considered innocent until proven his guilt, if there is bound to be arrested any severity that would violate personality must be rigorously repressed by law ", the first legal definition of presumption of innocence.

Article 23 of the Constitution establishes two fundamental rules of great tradition in the legal and incontestable actuality, namely the presumption of innocence and the legality of the sentence. To these constitutional revision added another rule, which became, in time, tradition in many developed countries, that the inability to provide by law or custodial sanctions in areas other than the criminal.

Romania's Constitutional Court decided that the arrest does not affect, in any way, the presumption of innocence and the attire of the arrested must avoid any confusion with the convict (owned), otherwise the presumption of innocence is affected by the image created by specific clothing the condemned.

In order to take preventive arrest, there are two conditions for preventive arrest in CEDO jurisprudence: the existence of a criminal trial and that there are reasonable suspicion that the person to be deprived of freedom committed an offense "

Arrest to disposition national legislation establishes in Art. 143 Criminal Procedure. pen. mandatory existence of evidence or probable cause of committing an offense under the criminal law. This condition is fully in line with Art. Article 5. 1 letter. c of the European Convention, having essentially the same meaning.

Romanian legislator has opted for an express definition of the concepts of "evidence" and "clues" in the wording of the rules in which they are contained, unlike the notion enshrined in European text whose definition has been CEDO jurisprudence.

Unlike simple plausible assumptions or suspicions are allowing formulating inferences on aspects of solving the case, samples can be obtained only through the evidence and only with the procedure laid down by law, as evidenced by art. Article 64. (2) Criminal Procedure. pen. potivit which, evidence obtained illegally can not be used in criminal proceedings.

The essential difference between "evidence" and "probable cause" is the source of their trial, so the circumstances or facts that constitute clues come to attention the judicial bodies in any other way than evidence.

Deprivation of liberty of a person in a criminal just because it is suspected of having committed an offense under the criminal law and no offense is contrary to the requirement of necessity arrest at the time of the aim pursued her disposition. Therefore, the solution to be followed by the judicial authorities when applying the provisions of art. 143 is a necessarily take account of art. 5 of the Convention.

If the arrest is conditional on committing a "crime" guilty as an essential feature of the offense, not satisfied in any case, because the presumption of innocence operating until a final conviction and judicial bodies are required to refrain from any reference in any way to reflect a bias on the guilt of the accused. In concept Court, house arrest is a measure of coercion sufficient for it to be considered a "deprivation of liberty" within the meaning of Art. 5 of the Convention, can not be equated with preventive measures restricting rights.

House arrest subject to the provisions of art. 218-222 of the new Code of Criminal Procedure, the contents of which are expressly states "A defendant was in house arrest is considered on remand."

Therefore, compared to the Romanian courts diverted practice, this change could be a solution to the problem of misinterpretation of how the arrest served abroad shall be deducted from the sentence imposed.]

Another issue addressed in our research is the case of deprivation of liberty under Article 5 para 1, letter f of the European Convention governing the conditions and peculiarities of these six cases can achieve.

The European Court held that any person entitled to bring an appeal to obtain a quick decision on the lawfulness of his detention could actually wear this right unless it is promptly and adequately informed of the facts and grounds of law on which the deprivation of liberty.

Detainees must be informed and factual grounds for the deprivation of liberty and of the charges brought against him promptly. Since this information must be communicated promptly, do not need to be reported in full by the state authorities even when deprivation of liberty. Assessing the sufficiency of the information provided, in relation to the subject and timeliness of communication, is analyzed in concreto, depending on the particularities of each case.

Enforcement of the final sentence to a term of imprisonment is made according to art. 420 para. (1) Code of Criminal Procedure. 'Imprisonment and life imprisonment shall be enforced by execution of the warrant. "Changes during the execution of the sentence is justified by the discovery of key situations, unknown to the court, on the person convicted, and that the competition between the crimes.

Chapter 4. Preventive custody - provides a judicious analysis of the procedural aspects, from the normative legal nature and classification remedies that may be exercised against the ways in which the arrest has taken measures to analyze the preventive measures considered in particular that detention ordered to leave town, ordered to leave the country, arrest and detention.

Forms in which confinement occurs in Romanian penal system can be classified by how regulatory legal and functionality in primary forms and auxiliary forms. The main forms or actual deprivation of liberty understand how the total freedom of the individual is affected, mainly regulated independently and with a clear legal preventive and repressive stand-alone functionality.

Auxiliary forms are ways in which deprivation of liberty occurs as a side effect of another judicial activities, affecting total freedom as a result of the temporary key subsidiary and main activities.

Provisional form of deprivation of liberty in criminal proceedings is illustrated by the institution arrest. Known as preventive detention or arrest, this measure involving deprivation of liberty of a person, without prejudice to the constitutional principle of individual freedom or principle of criminal law, then you can not punish someone before judging and found guilty, as it has character and effects of a punishment regime, but a measure available to justice, criminal judicial bodies generally tend to avoid the drawbacks generated by the defendant to evade prosecution or the court and to ensure undisturbed and fast way normal criminal trial.

Truth, one of the guiding principles of criminal proceedings (Art. 3 Criminal Procedure Code.) Requires a full consistency between the conclusions reached by the judiciary and objective reality on the facts or circumstances of the offense and the individual author.

With the presumption of innocence, the defendant is not required to prove his innocence, even having the right to remain silent, but in this obedience, having regard to the proposed remand filed by the prosecutor, the defendant may bring new, breaches of rights, invoking the nullity, the crime motives.

Of particular importance are the references to the legal classification of the offense and the penalty provided by law, and that the arrest of concrete indication as to report such claims can verify the legality and validity of the arrest warrant issued.

The European arrest warrant addressed Romanian courts must be accompanied by a translation into Romanian or English and French, and if the court require the translation to be made by the issuing authority, pending receipt of the translation procedure is suspended. If the Court of Appeal which has sent the European arrest warrant considers that it has territorial jurisdiction to act upon it, shall forthwith transmit to the competent court office and inform the judicial authority of the issuing Member State.

According to the provisions of Article 86 paragraph 2 of Law no.302/2004 as soon as he received the European arrest warrant, the appellate court in whose jurisdiction the person sought has been reported presence verify that the mandate is accompanied by translations. In the event that these translations are missing, the appellate court will either take action urgently translation (up to 2 working days) to mandate or request the issuing judicial authority to carry out its translation, in which case up to receive translation procedure shall be suspended. If the European arrest warrant is accompanied by translations or translation immediately after receiving the court checks on whether the mandate of Article 79 contains the information specified in paragraph 1, asking if complete data by the issuing authority.

Where information is complete, the appellate court take to identify the person, appreciating this purpose the general prosecutor of the court of appeal that that will work to identify the person sought.

Thus, at this moment, it is the situation where not all fields of mandate were completed and if not reserved for Article 88/1, paragraph 3 and Article 94 paragraph 7 in relation to Article 90 paragraph 2 on the transmission of information necessary for a judgment on the surrender of the person sought.

Prosecutor, after having verified the identity of the person sought, inform in a language which he understands of the existence of a European arrest warrant on a matter, according to the information available either on CEDO received either basis of the Schengen signal or Interpol forms and then, within 24 hours of detention will appear before the competent court of appeal.Requested person shall have the right to be informed of the content of the European arrest warrant, to be assisted by a lawyer and the right to an interpreter if he can not understand or speak Romanian.

Control exercised by the court on the execution of the EAW is different than that performed on extradition, resulted in the following:

If the extradition under the European Convention on Extradition, check the condition of dual criminality is required in all cases, according FD nr.584/JAI/13.06.2006 if foreign judicial authority retained a legal classification related to the 32 offenses established in

Articles 2 alin.239 and actions are considered under the law of the Member State issuing punished by deprivation of liberty for a term of three years or greater or a safety measure involving deprivation of liberty for a similar period.

For other types of offenses, the provisions of Article 85 paragraph 2 of Law nr.224/2006, Romanian legislator chose to leave to the discretion of the judge whether the European arrest warrant executed when the condition of dual criminality.

b.amounts are controlled exclusively from the point of view of the law of the issuing Member State.

Thus, if the facts are on the list of 32 categories of offenses, the court awarded verify facts are punishable by imprisonment or a detention order of imprisonment not less than three years of law of the issuing Member State.In other cases, the facts must comply amounts to punishment under article 81 in the law of the issuing Member State. Compared to the Convention on Extradition note that neither of the two cases highlighted there is no condition on the sentence imposed or provided by Romanian legislation.

c prescription Romanian law can not constitute grounds for refusal to surrender, except for special cases. Contrary to the law of extradition, surrender the requested person will not be refused on the ground of limitation of criminal liability or penalty in Romania unless the facts for which the European arrest warrant has been issued may be prosecuted and punished by the authorities Romanian judicial.

d Romanian nationality of the requested person is not a reason for refusing compulsoryteaching. When the European arrest warrant was issued for the purpose of prosecution, the court may make conditional surrender the requested person is sent to Romania to perform any penalty imposed against him.

Where the European arrest warrant was issued for the purpose of penalty, must we consider two cases:

- If the penalty imposed is consistent with Romanian and Romanian competent authorities undertake to enforce the penalty the court may refuse to surrender. Penalty will be enforced under the provisions of article 115 et seq. of Law no.302/2004, with the issuing state.

- If not, surrender may be refused.

Mandatory grounds for refusal of surrender are inserted in Article 88 paragraph 1 of Law no.302/2004:

1. when the information available, that the requested person has been finally judged for the same offense by a Member State other than the issuer, provided that, in case of conviction, the sentence has been prescribed penalty was pardoned times offense was amnestied or another cause intervened to prevent the execution, according to the law of the issuing State;

2. the offense on which the European arrest warrant is based is covered by amnesty in Romania, where the Romanian judicial authorities have jurisdiction to prosecute the offense;

3. the person subject to the European arrest warrant is not criminally responsible due to his age, the facts on which the European arrest warrant, under Romanian law.

Optional grounds for refusal are set out in Article 88 paragraph 2 of Law nr.224/2006 and covers the following situations:

1.In the case provided for in Art. Article 85. (2) of the Act, in exceptional cases, in terms of taxes, customs and exchange, execution of the European arrest warrant can not be refused because the Romanian legislation does not impose the same kind of tax or duty or

does not contain the same type of statutory taxes, customs and exchange regulations as the law of the issuing Member State;

2.when person subject to the European arrest warrant is being prosecuted in Romania for the same offense that motivated the European arrest warrant;

3.when against the person subject to the European arrest warrant was issued in another Member State of the European Union a final decision on the same facts;

4 when the person subject to the European arrest warrant was finally judged the same facts in another member State which is not a member of the European Union, provided that, in case of conviction, the sentence has been served or to be at that moment being served or to be prescribed, or the offense was amnestied or pardoned penalty was the law of the issuing State;

5.when European arrest warrant relates to offenses under Romanian law committed on the territory of Romania;

6. when European mandate includes crimes that have been committed outside the territory of the issuing State and Romanian law does not allow prosecution of these acts when they are committed outside Romanian territory;

7. when, according to Roman law, the liability for the offense on which the European arrest warrant or penalty applied were prescribed, if the facts had been for the Roman authorities;

8. when competent Romanian judicial authority decided either not to prosecute or to drop proceedings requested person for the offense on which the European arrest warrant.

Court of Appeal's decision

The Court of Appeal shall decide on the request by a reasoned judgment for the purposes of teaching or teaching refusal or conditional surrender. Criminal sentence imposed shall be notified, in accordance with common law required at the establishment where the person is detained or if it was released at last declared address and issuing judicial authority. The final decision shall be communicated to the issuing judicial authorities of the European arrest warrant, police authorities and the Ministry of Justice.

Appeals against the judgment of the Court of Appeal

Regarding remedies that may be exercised against rulings of the Court of Appeal on the situation is different, depending on whether the requested person has consented or surrender. If the first case in the first instance judgment is final, in the second case, in accordance with the provisions of Article 17 paragraph 3 and 4 of the Framework Decision, the Romanian legislator has provided an appeal within 5 days, flowing the references, if requested person was present and communication, if the person sought has been missing from delivery. The file is submitted the High Court of Cassation and Justice as soon as the appeal was justified or expiration of motivation and judged within 3 days of the submission dossier. Appeal shall stay the execution.

Surrender of the person sought judicial authorities of the issuing State

The surrender conditions are final in Article 69 and 97 of Law no.302/2004 and whereas explicit legal text is not meant to dwell on this issue. special situations. Article 99 provides procedure where several states have issued a European arrest warrant against the same person, including various facts and procedure in case of competition between a European arrest warrant and extradition request. If in the first case the choice to execute the European arrest warrant is made by the court of appeal, if necessary

after consulting Eurojust, given the location offense, seriousness of the offense, date of issue mandates, and why their issue (for criminal prosecution, judgment or sentence and safety measure), in the second case, the appellate court decided to postpone judgment pending receipt of The surrender records and support of the extradition request and decide on the priority of the European arrest warrant or extradition request based the conditions inserted in the Convention or applicable agreement.

Chapter 5. Extension of Preventive custody

In Romanian law, the doctrine of specialty, there are two opinions regarding final timing should be taken into account in calculating the reasonable length of detention on remand.

In the first opinion when final judgment is given by the national court of first instance A second opinion is based on art. 350 of the Criminal Procedure Code that "the court has a duty to its judgment (judgment in first instance nn) to decide on the revocation, maintenance or arrest defendant taking the measure taking into account the provisions of the general ... "is that a criminal judgment of conviction may be enforced only if it is final, the only alternative for a person is kept in detention is still detention.

Given the arguments expressed, we share the view expressed both Austrian law and the Romanian law that must be taken into account given the enforceability of the judgment at first instance and the specificities of each system separately.

Chapter 6. Replacement and revocation of Preventive custody

European Court of Human Rights maintains that the procedure, the judicial bodies acting with all readiness, behavior can not be attributed to the person deprived of liberty and detention assessment is overall in the prosecution and trial, this term will be be considered under the requirements of a reasonable time.

The Romanian criminal procedural knowledge at both the constitutional and legal level, detailed rules designed to ensure a coherent regulatory framework in line with the requirements of the European Court of Human Rights, which shows great concern for equal protection of personal freedom .

Special damage must not only personal freedom is circumscribed and limited cases expressly provided for by law and to act according to procedure prescribed by law, but also to be limited in time. Setting a maximum duration individualized strictly in terms of time, in terms of detention, meet principles of art. Article 5. 3 of the CEDO, according to which provisional detention of an accused can not be maintained beyond its reasonable limits and at the same time, is circumscribed essential objective established practice of the European Court of Human Rights, the deprivation of liberty of a person not be arbitrary.

It may be noted the intention of the legislature to determine, a priori, a time limit disciplining measure individual separately, for each of the phases in reaching judicial activity and status or position of the person referred (charged or accused, minor or major). Preventive measures is replaced by another preventive measure when they changed the grounds for the taking of the measure. When preventive measure was taken in violation of the law or not there is any reason that could justify a preventive measure, it should be revoked ex officio or upon request, ordering, in the case of detention and arrest, the release of the defendant if he is not arrested in another case.

If preventive measure was taken during prosecution, the court or prosecutor, criminal investigation body is obliged to immediately inform the prosecutor about the change or termination grounds that motivated preventive measure.When preventive measure was taken during prosecution, the prosecutor or the court, the prosecutor, if it considers that the information received from the criminal investigation body or revocation warrant replacement measure, has it or, where appropriate, notify the court.

The prosecutor must notify the court of its own motion to revoke or preventive measures taken by it, he finds himself that there is no basis that justified taking action. Also, if the court finds, based on forensic, that the police custody suffering from a disease that can not be treated in the medical network of the General Directorate of Prisons, available on request or ex officio, revocation remand.

Chapter 7. Reasonable period of Preventive custody

A requirement, reasonable time "is a central theme with particular importance in the European Convention on Human Rights.This issue is striking, especially when you have applied in criminal matters because freedom is directly linked to the person.

Notion of, reasonable time "has acquired multiple meanings over time. It must be noted that any legislation does not define the term,, within a reasonable time ".

Based on this pretext, some argue that we are dealing with a flou legal term that is hard to define. However, the European Court of Human Rights case-law that spreads, covering at least part of this legal vacuum, at least because the appreciation in concreto used as a method of analysis of reasonable length of detention on remand, thereby causing default and coordinates showing the content of the concept of reasonable time.

Analyzing the judicial systems of the Member States of the Council, through the jurisprudence of the Court, it appears obvious that one of the most pressing challenges facing the European countries is related to the course of judicial proceedings, judicial efficiency is a real priority in terms of European court both in terms of art. 5 § 3 and under Art. 6 § 1. Here is the context in which it develops and acquires the notion of reasonable effectiveness.

In accordance with the Constitution, art. 159, alin.13, the last sentence of the Code of Criminal Procedure, as amended by art. I pct.86 of nr.281/2003 law states that the total duration of preventive detention during criminal proceedings can not exceed a reasonable time, not more than 180 days. By interfering with these changes, in the absence of express reference to the notion of, reasonable "protection against arbitrary induvidului was one inaccurate and ineffective.

It is important to remember that the right not to be detained in preventive custody beyond a reasonable time, is distinguished from the right to compensation for deprivation of liberty.

Both the Court and the case law of national courts is commonly accepted that the reasonable duration of preventive detention should not be assessed in the abstract, but must be assessed specifically in light of the facts and circumstances of each case. Whenever you asked this question, the Court found it appropriate to examine the specific facts of the case first analyzed, then being able to ascertain whether or not a violation of the Convention text. This position of principle is explained taking into account, on the one hand, the variety of situations that may arise, and on the other hand, the diversity of applicable laws. The doctrine also shows that the very concept of swift sparks a great deal of variability ".

When we determine the reasonableness of a detention by reference to the nature of the dispute, we must consider, first, the complexity of the business discussed. Both the Convention organs and most national jurisdictions have admitted on several occasions that during arrest may depend to some extent on the difficulties impinging competent bodies during training. Are taken into account issues such as number of offenses committed, number of participants, the difficulty may be some evidence, need to use the expertise or foreign letters rogatory, which requires the development statements, not infrequently, a recovery investigations. Thus, complexity, and training judicial information "such as the number of people indicted and nature of the offense committed, are likely to warrant maintaining perovizorii detention is a period of time.

Chapter 8. Rightful ending of preventive arrest

The base material is to art. 140 and following of the Code of Criminal Procedure.

Thus, preventive measures ceases as:

a) expiry of the deadline set by law or determined by judicial or after the date stipulated in art. 160 b para. 1, if the court has not verified the legality and validity of this term preventive detention;

b) in case of discontinuing the proceedings, termination or cessation of criminal trial or acquittal.

Chapter 9. Special provisions for minors

United Nations Framework Convention adopted in 1989 the Convention on the Rights of the Child, international document which summarizes all the civil, political, economic, social, cultural and educational child in all called International Bill of Rights of the Child.

Juvenile crime is a major concern and permanent criminal policy in all modern states, raising particular problems and specific prevention and control, because of the multitude and diversity of factors that can negatively mark their adaptability to the demands of socially accepted norms of conduct but also because of the immature and influence their personality. Were developed a number of general principles enshrined protection and promotion of children's rights.

However, it was found that children are tempted to defend themselves using various types of lies. Due to the specific features of this period of age (memory, will, attention, etc..), It is recommended that the hearing take place in the presence of a psychologist or social worker specializing in child development. The story will focus on spontaneous, and questions will be addressed in a child's accessible language, will direct a gentle tone, short and precise.

Domestic law provide that the minimum age of criminal responsibility begins at age 14, the age at which a minor is assumed normal psycho-moral development and the degree of maturity necessary understanding social and legal significance of his actions or inactions in relation to requirements of criminal law. Consequently, from the age of 14, the child developed normally credited with criminal capacity, assuming that it can become an active subject of the offense, having a sufficient development of criminal guilt characterize psychological factors.

However, children between 14 and 16 years criminally liable only if it appears, on the basis of a forensic psychiatric that they acted with discernment.

During detention or arrest, juveniles are held separately from adults, in particular places for minors under preventive arrest.And the special rights provided by law for minors detained or arrested prevention is achieved by controlling a specially designated by the president judge of the court, by visiting places remanded by the prosecutor, and the control of other bodies authorized by law to visit remand prisoners .

Chapter 10. The Parole release

Adversarial criminal type, especially positive models (model which corresponds in part and Romanian criminal) support in various forms, limitations liberatis status anticipated by preventive measures when justified by the exigencies of social protection, the protection of the community and the requirements of procedural public policy.

In the literature it was considered that provisional release is a procedural measure applicable to detainees, but not as legal a preventive measure. Also, despite the clarity of the text excludes the temporary release from the measures of prevention some authors continue to qualify as a preventive measure.

If we consider the social value concerned by this measure, it should be noted that judicial long been regarded as a substitute for provisional detention, in reality it replaces freedom rather than provisional detention. Thus, without a measure of prevention per se, being excluded from the list of legal art. 136 which recognizes as proper preventative measures only detention ordered not to leave the city or country and arrest the legislature chose to regulate temporary release under Chapter I of Title IV of the General Part of the Criminal Procedure Code, entitled "preventive measures".

Provisional release is an institution designed to reconcile individual freedom (by avoiding detention) and social protection (imposing control over persons released by restriction of freedom).

Chapter 11. The appeal

Ordinary appeal is the appeal at the request of the prosecutor and stakeholders, ensure repair errors in judgments in fact, being the third instance.With the adoption of the new Code of Civil Procedure shall be subject to appeal further adjustments designed to provide some corrective to the shortcomings of current legislation.

The appeal will continue to be governed as an extraordinary remedy. As apparent from the wording of Art. 477 para. (3) of the new Code of Civil Procedure, the appeal seeks to obey the High Court of Cassation and Justice examining the law, the judgment under appeal conformity with applicable rules of law. Moreover, taking into account all relevant provisions remedies, Î.CCJ is the court which is especially desemnaă to resolve the appeal the appeal. Of course, as was natural, art. 477 para. (4) of the new additions to the code stating: "In certain cases provided by law, the appeal is resolved by a higher court whose decision the appeal."

Appeal in the matter of arrest has dichotomous in nature - in the prosecution or, as appropriate, during the trial.

Chapter 12. Compensation for wrongfully arrest arrangement

The obligation to compensation for condemnation or taking a preventive measure unfairly - any offense under paid and for which payment has occurred - resulting in public relations and they are due to judicial error.

Responsibility lies with the state, under art. 504 and seq. C.pr. pen., resulting in public relations, not natural or juridical person who notified authorities alleged criminal offense committed in connection with the service and even terminate the employment of the person concerned as causative factor of injury is judicial error arising from the employment relationship.

Compensation must be complete, without distinction, as it is material or moral. As regards non-pecuniary damage, the judge considers the case where the damage be repaired as money and what amount or, conversely, if not so fixed as gravity does not justify it.

Infringement of moral damages consist of values that define human personality, values relating to physical existence of human health and bodily integrity, the honor, the dignity, honor, professional prestige and other similar values.

Injurious factor is limited to the duration of preventive detention since then put the loose, running trial - which ended with a judgment of acquittal - is a lawful cause for which the State can not be held liable, regardless of the moral consequences, physically and mentally that process would have had on that person.

When finding an unjust sentence or detention or restriction of liberty unlawfully or unjustifiably injured person is entitled to claim compensation for material or moral by the Romanian state, represented by the Ministry of Finance, by way of a civil action tort.

In Article 504 of Cp.p. to establish rules concerning judicial errors can be held liable state. This provision is consistent with Article 52 paragraph 3 of the Constitution, which states that the State liable for the damages caused by judicial errors.

With regard to pecuniary damage should be considered so as to fix the actual damage (damnum emergens) and loss of earnings (lucrum cessans).

Repair can be either pay a fee or in the establishment of an annuity, taking into account the conditions of entitled to compensation and the nature of damage caused either obligation at the expense of the state, private or freedom whose liberty has been restricted to be assigned a social worker and medical institutions.

After the damage was covered under a final judgment, the Romanian state has an obligation to bring an action for damages against the judge or prosecutor who, in bad faith or gross negligence committed legal error causing injury. The State must prove the action of regression that has paid damages to which he was obliged, under a final judgment, the person wrongfully convicted and imprisoned unlawfully and that the magistrate product in bad faith or gross negligence judicial error causing injury.

Limitation of the right of action is one year and begins on the date of the final order or judgment which found the existence of criminal illegal act and the bad faith or gross negligence of the magistrate determined liability state.

CONCLUSIONS

We showed that:

1. Preventive measures are procedural measures, characterized by a concrete application, accurate initiation grounds and different degree of coercion.
2. Detention, in particular, implies a constraint similar to that resulting from imprisonment, except that it differs from the last measure in that it applies only to criminal proceedings (prosecution and examination of the case in court);

3. Detention, being an institution of criminal procedural law, be made available to judicial authorities is personal restrictions and constraints defendant caused by conditions and circumstances under which the criminal proceedings.
4. Arrest is the most severe measure applied to the accused or defendant in the criminal investigation or examination of the case in court, to ensure the proper conduct of criminal proceedings;
5. In terms of the nature of preventive measures present in the Romanian criminal procedural law, they are divided into two categories: non-custodial preventive measures and preventive measures involving deprivation of liberty;
6. Concern for basic human values - life and his freedom - has emerged as the Romanian legislation to protect. Human deprivation of the right to liberty and personal inviolability is a means guaranteeing security criminal proceedings against illegal counterplay defendant. This tool is an exceptional measure, as dictated by the nature of the offense, its severity, the personality of the offender, applying only where other preventive measures could not counteract illegal counterplay accused, defendant and thus can not be solved tasks of making justice;
7. Protection of fundamental rights and freedoms of citizens involves concrete obligations of state authorities to ensure the realization of their legitimate otherwise wronged person may submit a complaint to the CEDO and the state may be obliged to pay compensation;
8. Protecting human rights and fundamental freedoms can be ensured only by unifying international standards legislation. Thus, in Romania, there was a real possibility that any person detained, arrested, whatever stage they are criminal, to be assisted by choosing or, where appropriate, to be appointed a public defender;
9. In Romania, the arrest was ruled out of the public prosecutor, knowing that they are subordinated in their Counsel, there is suspicion that an intimate conviction of one who is faced with arrest, for example, be vitiated or influenced. In this respect, detention may be operated only by a judge, knowing that it "is subject only to the law and his own conscience" while being immovable;
10. Were held for the first time, special conditions for detention and custody of juveniles, the most significant being that the effect that detention is only possible if the deed law provides that penalty of life imprisonment or imprisonment exceeding 10 years this change arising from the need for a normal psychophysical development of the child;
11. According to Romanian legislation, the defender can not address the court findings, but will assist the accused, when it is heard by the judge before the trial detention. Counsel may be given the floor to draw conclusions only if the accused is not present in court, which seems unnatural (Article 146 para. 5 and 6 in conjunction with art. Paragraph 6 1491 Romanian Criminal Procedure Code).

Study on the issue raised has enabled us to come up with the following recommendations:

a) legislative framework must be stable;

b) it is necessary legislative gaps and clarify existing uncertainties;

c) aspects of the unified judicial practice should be topics for SCM and MJ, in order to take appropriate measures;

d) it is necessary to remove inconsistencies between the various laws to ensure a uniform framework and to eliminate ambiguous provisions that may give rise to multiple

interpretations, in the discussions, specifically noted that the provisions of the it must be changed;

e) have introduced explicit regulations on the disposal of the two measures during criminal proceedings;

f) should be amended Law on the Constitutional Court suspended matter to trial claiming unconstitutionality - these provisions contravene the prompt resolution of all cases;

g) currently is constantly changing some texts of law without law judge as a whole when drafting, the result is obviously mismatch with other texts and uneven practice of courts.

h) to comply with the principle of incompatibility judges consider that 47 CPC Romanian, imposing an explicit statement

i) introduction of the Code of Criminal Procedure of the Romanian new institutions: "Judge rights and freedoms" and "preliminary chamber judge," Judge rights and freedoms. "To this end, we propose supplementing the Code of Criminal Procedure of Romania with an article covering the rights and freedoms judge competence as follows: Art ... Judge competence rights and freedoms rights and freedoms judge is the judge in the court, according to its competence, process applications, proposals, complaints, appeals or other notices on:

- preventive measures;
- precautionary measures;
- temporary safety measures;
- prosecutor acts in cases provided by law;
- authorize searches, special surveillance techniques or procedures or other research
- evidence law;
- Early administration of evidence.
- any other cases provided by law.

We also propose the introduction of the institution of law ferenda "judge preliminary chamber by introducing a new article as follows: preliminary Room Art ... judge is the judge in the court under its jurisdiction:

- check the legality of evidence and sent to court;
- handles complaints against solutions not to indict;

resolve any other cases provided by law.

As a result of the introduction of these new institutions, preventive custody will be taken by the judge of the rights and freedoms during prosecution, the judge of the Chamber referred, the preliminary procedure room or the court before which are because, during the trial.

j) Consider it justified proposal for reconsideration and updating of application conditions and cazurillor remand, the introduction of a new item "g" in art. 148 Criminal Procedure Code of Romania. Thus, section g) "preventive custody of the defendant may be taken and if the evidence resulting reasonable suspicion to believe that he has committed an intentional crime against life, a crime which has caused injury or death to a person, a crime against national security under the Criminal Code and other special laws, a crime of drug trafficking, arms trafficking, human trafficking, terrorism, money laundering, counterfeiting money or other valuables, extortion, rape, deprivation of liberty , tax evasion, corruption, crime committed by electronic means or another crime for which the law prescribes a penalty

of 5 years imprisonment or more and, based on assessing the seriousness of the offense, the manner and circumstances of its commission, the defendant's character, his entourage and the environment from which it came, criminal background and other relevant data concerning his person, his deprivation of liberty is necessary to remove a specific and actual threat to public order. "

k) Completion of Art. 146 Criminal Procedure Code of Romania and bring them fully in line with the art. 23 para. 5 of the Constitution, which requires judicial body that ordered the arrest to provide, without delay, inform the arrested, in a language which he understands, of the reasons for arrest. In case of force majeure and the state of necessity can be understood that these are unavoidable circumstances that would justify the grant of detention without hearing the person concerned, and without enforcement of the provisions of art. 23 para. 5 of the Constitution, but the same can not be said about the fact the accused health, which must be assessed on a case by case basis. Also in the case provided by art. 146 Criminal Procedure Code of Romania judge if there is a circumstance referred to in art. 150 Criminal Procedure Code of Romania, the accused is gone, is abroad or to evade prosecution or trial.

l) to prevent various failures to transfer files from one court to another, it is proposed that the Criminal Procedure Code of Romania is provided an article no. 367-a, which would regulate the following procedure: "In the event of an appeal by the defendant was in custody, the presiding judge whose decision is being appealed shall have to send the file to the court for judicial review before the 10 days expiry of 60 days to major culprit for 40 days for minor defendant more than 16 years and 30 days for minor defendant between 14 and 16 years calculated giving judgment on them. "

m) as a preventive measure ferenda bill introducing "house arrest" as the judge ordering of rights and freedoms, the preliminary chamber judge or by the court. House arrest measure is the obligation imposed on the defendant for a specified period, not to leave the building where he lives permanently, without permission of the court that ordered the measure or before which the case is pending and is subject to restrictions.

n) where to order the defendant to judicial review, the introduction in Romanian Criminal Procedure Code a new preventive measures aimed at reducing the number of preventive arrests (wearing an electronic surveillance - 'electronic bracelet,,). Electronic device is actually a bracelet that apply to the person if a judge ordered ban on leave town or country. Movement of the subject area is closely monitored by a GPS system, by allowing them to determine where they are at all times that. In addition, when the defendant would be in an area that was denied access, a mobile team can hold on, to commit a new fact or attempt to evade prosecution, trial or of enforcement.

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Notes

See Article 88/1 paragraph 5 of Law nr.224/2006 and Article 91 of the Law nr.224/2006 on issues discussed on page 8.
See Article 102 paragraph 1 of Law nr.224/2006 and article 111, paragraph 3 of Law nr.224/2006 on issues discussed on page 10.