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## The procedure of the judicial control on bail

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**Abstract.** Preventive measures represent a type of coercive procedural measures through which the authority's judicial systems attempt to restrict the defendant's freedom of movement to ensure that trials criminal proceedings are carried out accordingly. From this point of view, preventive measures reach their goal the objective by interfering with the defendant's individual liberty to the minimum necessary or by his deprivation for a certain period of time. The use of bail as a preventive measure was seen as a way to avoid use measure correctional. The bond represent depositing a sum of money at the court registry by a person against whom it is in during a criminal procedure, being designed as an alternative to prison, this changing the perception of procedural institutions of judicial control on bail. The evolution of the institution led to the emergence of a new profession, that of professional guarantor, which fulfills a function similar to that of a banking service, using own funds to guarantee the release in exchange for a fee. Therefore, we must remain aware that a significant control action judicial bail will only be achieved when attention is focused on these issues important. Pretrial justice ultimately depends on reaching a tipping point which can only take place when major improvements have been shown to be necessary and feasible in the period leading up to the trial. The current bail system causes hardship to defendants and cause considerable financial costs to society.

**Keywords.** judicial bodies, code, bail, judicial control, procedure, defendant

### 1. The general aspects of the judicial control on bail

Judicial control on bail is one of the five preventive measures provided by the New Code of Criminal Procedure. The measure of judicial control on bail is the least intrusive of the preventive measures. "As a result of this feature, judicial control over bail is very easy to impose and maintain in judicial practice. Regarding the general aspects of the preventive measure of judicial review on bail, it has been argued that it represents a particular form of judicial review, their content being largely identical<sup>1</sup>."

Certain judicial bodies perceive judicial review as a procedural tool that can be imposed or maintained without regard to proportionality or necessity. In other words, some judicial authorities consider the effects of judicial review of bail on the rights and freedoms of defendants to be minor, based on the idea that it is the most basic of preventive measures. In reality, the level of judicial review has a significant impact on certain fundamental human rights and freedoms, even if the defendant is not subject to any additional obligations beyond the basic ones. When the defendant has additional obligations, the constraints on his rights and freedoms

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<sup>1</sup> Volonciu Nicolae, Uzlaşu Andreea Simona, *Code of Criminal Procedure commented*, Hamangiu Publishing House, Bucharest, 2014

are more obvious and the consequences are more serious<sup>2</sup>. As a procedural tool to limit or impair fundamental human rights or freedoms, judicial review of bail should be used, extended and maintained only if all legal requirements are met, bearing in mind that it is not an end in itself, but rather a legal instrument designed to ensure that criminal trials are conducted properly, to prevent the defendant from evading prosecution, or to prevent the commission of a crime.

"This measure can be ordered during the criminal investigation, as a rule, by the prosecutor. Also, the judge of rights and liberties can impose judicial review during the criminal investigation. The use of judicial review on bail as a preventive measure is extremely limited because of the inadequate way in which it is regulated. Both doctrine and jurisprudence are not agree on the approach to be followed when taking the measure of judicial review on bail."<sup>3</sup>

According to a doctrinal opinion, in theory, there is a stage of pre-admissibility, and the rules of Article 242 of the Code of Criminal Procedure are applied by analogy. This type of action is frequently used and is considered a good alternative to restricting freedom.

The threat of losing a significant amount of money will force the offender to think carefully about how they comply with court orders. Many prosecutors hesitated to order such a measure because of the jurisprudential difficulties presented above regarding taking this measure, controversies that derive from the legislator's wording itself. I hope that judicial review of bail will receive more attention in the future and that this preventive measure will become a truly viable alternative to deprivation of liberty.

"Preventive measures may be ordered if there is evidence or reasonable suspicion that a person has committed a crime and they are necessary to carry out the proper conduct of criminal proceedings, to prevent the suspect or defendant from evading prosecution or from judgment or to prevent the commission of another crime<sup>4</sup>."

If there is a cause that prevents the initiation or exercise of criminal proceedings, the preventive measure cannot be issued, confirmed, extended or maintained. Any preventive measure must be proportionate to the seriousness of the charge brought against the person against whom it is taken and must be essential to the achievement of the purpose for which it was ordered. "The prosecutor can make use of his discretionary power during the development of the case<sup>5</sup>" in the situation where this preventive measure is necessary to achieve the objective established in article 202 paragraph (2). If the circumstances provided for in paragraph (1) are met, during the pre-trial proceedings, the judge of the preliminary chamber or the court may order the defendant to be placed under judicial control. The preventive measure of judicial control on bail can be ordered under the conditions of art. 223 paragraph (1), (2) C. process pen., respectively if from the administered evidence there is a reasonable suspicion that the defendant has committed a crime and that one of the following conditions has been met: the defendant fled or hid to avoid prosecution or to evade judgment, or made preparations of any kind for such facts, to evade material means of evidence, the defendant tries to influence another participant in the process to have such behavior, if there is a reasonable suspicion that the defendant has committed an intentional crime affecting life, a crime that caused bodily injury or death to a person, or where the evidence gives rise to a reasonable suspicion that the defendant committed a crime affecting the life of a person; a crime of drug trafficking, carrying

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<sup>2</sup> Gheorghe Buzescu, *Police Law - university course*, Sitech Publishing House, Craiova, 2019

<sup>3</sup> Marian Alexandru, *Criminal Procedure, General Part*, Publishing House Pro Universitaria, Bucharest, 2015

<sup>4</sup> Marian Alexandru, *Judicial control and judicial control on bail*, Sitech Publishing House, Craiova, 2016

<sup>5</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

out illegal operations with precursors or other products likely to have psychoactive effects, a crime involving non-compliance with the regime of weapons, ammunition, nuclear materials and explosive materials, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering of money, forgery of coins, stamps or other valuables, blackmail, rape, unlawful deprivation of liberty, tax evasion, outrage, crime of contempt of court, crime of corruption, a crime committed with the help of computer systems or electronic means of communication or another crime for which the law provides for a prison sentence of 5 years or more and it is determined that his deprivation of liberty is justified based on an assessment of the seriousness of the crime, the manner and circumstances in which it was committed, the past and of the environment in which the person in question lives, his previous criminal record and other circumstances related to his person and it is established that deprivation of liberty is necessary to remove a threat to public order<sup>6</sup>.

### **Examining favorable conditions for taking judicial control measures on bail.**

- That the criminal investigation be set in motion. This condition provides that the measure can only be ordered against the defendant, in any of the phases of the criminal process, including during the criminal investigation, the preliminary chamber procedure and during the trial, as the case may be, by the judge of rights and liberties, the chamber judge preliminary or by the court.

-There should be no reason why criminal proceedings should not be initiated or continued. The purpose of this measure is to see if one of the circumstances listed in Article 16 of the Code of Criminal Procedure prevents the initiation or execution of criminal proceedings. The criminal action cannot be initiated, and once it has been initiated, it can no longer be exercised if:

- a) the offense does not exist;
- b) the offense is not covered by a criminal law or was not committed knowingly;
- c) there is no evidence that the person committed the crime;
- d) there is a well-founded or imputable reason;
- e) there is no prior complaint, authorization or notification of the competent body or any other legal prerequisite to start a criminal procedure;
- f) "the amnesty or the prescription has intervened, the death of the suspect or the defendant natural person or the annulment of the legal personality of the suspect or the defendant has been ordered<sup>7</sup>"
- g) the prior complaint has been withdrawn or, in the case of the offense for which criminal liability is withdrawn, a mediation agreement is made according to the law;
- h) there is a legal basis for non-punishment;
- i) there is a judicial authority;
- j) in accordance with the law, there has been a transfer of proceedings to another state.

"The existence of strong evidence or indicators leading to reasonable grounds for suspicion that the defendant has committed a crime. The legislator is less exacting when it comes to taking, extending or maintaining the amount of judicial control on bail than when it comes to preventive arrest or house arrest<sup>8</sup>." While proof of a reasonable suspicion that the

<sup>6</sup> Gheorghe Buzescu, *Elements of Public Order*, Pro Universitaria Publishing House, Bucharest, 2016

<sup>7</sup> Marian Alexandru, *Judicial control and judicial control on bail*, Sitech Publishing House, Craiova, 2016

<sup>8</sup> Marian Alexandru, *Criminal Procedure, General Part*, Pro Universitaria Publishing House, Bucharest, 2015

defendant has committed a crime is necessary to order the latter preventive measures, strong indications that the defendant has committed a crime are sufficient to take, extend or maintain the measure of judicial review on bail. Simply being accused of a crime triggers the start of legal proceedings.

"Substantial evidence is a collection of data or information that can be used to convict a defendant of the crime he is accused of. In other words, when analyzing the evidence in the file, there are indications that lead to the reasonable conclusion that the accused person committed the crime for which he is being prosecuted<sup>9</sup>." Therefore, the criterion in question involves the presence in the case file of data or information collected through forensic techniques (witness statements, documents, transcripts of records, expert reports) The criteria will be considered met if there is evidence indicating that there is reasonable suspicion and the defendant committed the crime for which he is being prosecuted.

All evidence or information that could convince an objective and impartial observer that the accused has committed the crime for which he is being investigated is considered reasonable suspicion<sup>10</sup>.

Evidence has a common meaning in criminal proceedings and certain factual elements that help to establish the existence or non-existence of a crime, to identify the person who committed it, to establish the circumstances necessary for a fair resolution of the case and contribute to the establishment of the truth, in accordance with article 97 paragraph (1) of the Criminal Procedure Code.

"The seriousness of the accusation against the person against whom judicial control is ordered on bail is proportional to the seriousness of the measure. The criterion of proportionality must be assessed in the light of the facts and circumstances, making a careful distinction between the abstract and concrete gravity of the offense charged to the defendant. Regarding the specifics of the crime committed, I consider that the place the alleged crime occupies in the hierarchy of social values, identified by the right violated or prejudiced and by the crime for which the defendant is accused, must be viewed from an abstract perspective<sup>11</sup>." In other words, the court will analyze the social danger of the crime, starting with the abstract aspect and then moving on to the concrete nature of the danger that is the object of the accusation, having as a reference point the specific punishment limits and the circumstances of the case, any mitigating or aggravating conditions.

Unlike the case of preventive arrest and house arrest, where the judicial body examines the condition of proportionality by reference to a high degree of concrete and abstract social danger, an average degree of concrete and abstract social danger may be sufficient when examining the proportionality condition of the measure of judicial control on bail.

Constitutional guarantees protecting the exercise of fundamental rights and freedoms must be taken into account when determining the proportionality of the measure of judicial review on bail.

### **1.1. General principles of bail**

While all of the legal principles that affect the bail bond process are important, there are some that require special attention as crucial to a common knowledge base. Therefore, the

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<sup>9</sup> Marian Alexandru, *Preventive measures provided for in the new criminal procedure code*, Sitech Publishing House, Craiova, 2017

<sup>10</sup> Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

<sup>11</sup> Ciuncan Dorin, *Provisional release on bail and under judicial control*, Editura Juridic, Bucharest, 2010

decision-making process regarding bail and guarantee is guided by the following principles, which are derived from international best practices:

- Considering the rights of the victims. "Judicial bodies should consider the opinions of victims before making decisions that affect them. In particular, they should consider the safety of victims and their families when setting the bail amount and release conditions for suspects and accused persons. Second, victims should be informed of the bail conditions imposed on suspects and accused persons, particularly those designed to protect victims and victims' families<sup>12</sup>." Third, victims who have requested it should be informed of any applications for bail made by suspects and defendants, as well as the results of such applications.

-The accused person's right to be presumed innocent. "The presumption of innocence constitutes the procedural basis of the right of defense and the procedural rights granted to the accused." Perhaps no legal principle is as important and as incomprehensible at the same time as the principle of the presumption of innocence. "Every accused person is presumed innocent, this is the main reason that an arrested person has the right to be released on bail. Technically, this is the principle that a person cannot be convicted of a crime unless and until when guilt is proven beyond a reasonable doubt, without the burden of proving guilt/innocence being imposed on the accused<sup>13</sup>."

-The presumption of innocence requires that accused persons be released on bail whenever possible. A presumption of innocence in favor of the accused is an indubitable, axiomatic and elementary law, and its application lies at the foundation of the administration of criminal law. Instead, what I wish to raise when an aspect of judicial review of bail which is not alleged to violate any express guarantee of the Constitution is challenged is the defendant's right not to be punished and his understandable desire to be as comfortable as possible during the application of the measure. Consequently, the presumption of innocence has to do with bail, at least so far as it determines the categories of defendants who can be released on bail and the constitutional limits and statutory rights that flow from that decision. This traditional pre-sentence right allows for the unfettered preparation of a defense and serves to prevent the imposition of pre-sentence sentences. Instead, it is better characterized as an "assumption" that is allowed in the absence of evidence to the contrary. Applying this concept to bail, then, the presumption of innocence is like an aura surrounding the accused.

- The accused person's right to freedom. Every accused person has the right to liberty. "Therefore, as a general rule, any accused person should not be arrested, but should be released subject to his bond to appear for trial<sup>14</sup>." The right of every person to the protection of his life and personal liberty is guaranteed, unless the procedure established by law is not followed. The concept of bail and personal liberty go hand in hand and therefore the accused has the right to apply for bail to be released from custody until proven guilty by a court of law. As a person presumed innocent, the accused person is entitled to liberty and every opportunity to conduct his own case and establish his innocence. An accused person who enjoys liberty is in a much better position to deal with his case and defend himself properly.

-Equal protection. It is interesting that equal protection practically incorporates what is considered to be the judicial system as equal protection cannot be denied to any person within the jurisdiction. Discrimination may be prohibited as a violation of the Due Process Clause.

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<sup>12</sup> Istrate Ion, *The Freedom of the Person*, Writingul Românesc Publishing House, Bucharest, 1984

<sup>13</sup> Gorganeanu Ion, *The Presumption of Innocence*, Intact Publishing House and Printing House, Bucharest, 1996

<sup>14</sup> Nistoreanu Gheorghe, Apetrei Mihai, Nae Laurențiu, *Manual of criminal procedural law*, Europa Nova Publishing House, Bucharest, 1999

Equal protection should serve as a compelling basis for imposing fair treatment in the administration of bail, particularly when considering the effect of secured bail. However, there can be no equal justice where the type of trial a man has depends on the amount of money he has. Instead, a man has the right to be released on a "personal recognizance" when other relevant factors lead to a reasonable belief that he will comply with court orders.

- The obligation of the accused to appear at the trial. "Bail provides guarantees that defendants will appear at trial<sup>15</sup>." These are bonds that are intended to obtain the release of a defendant from legal custody. "The right to reasonable bail and reasonable bail conditions<sup>16</sup>." Bail or surety amounts and conditions must be reasonable, taking into account the importance of the right to liberty and the presumption of innocence. This means that bail or surety amounts and conditions must not be higher than necessary to guarantee the appearance of an accused at trial. Second, bail or surety conditions should be appropriate to the offense committed and take into account the personal circumstances of the accused person. In these circumstances, what is reasonable will be determined by reference to the facts and circumstances prevailing in each individual case. Accordingly, in this context, judicial bodies have the power to impose appropriate bail or bond conditions when releasing offenders. If they do not do this, there is a real likelihood that many people who are accused of crimes will not appear in court for their trials.

"Establishing bail must ensure a balance between the rights of accused persons and the interest of justice. On the one hand, judicial authorities should strive to preserve the liberty of an accused person who is presumed innocent and who should be allowed to keep the fabric of his life intact by maintaining employment and family and community ties . Preserving the liberty of an accused person also allows him to take an active part in planning his defence. On the other hand, the state has a duty to prosecute those who commit crimes, which may lead to the qualification of the individual right to liberty. The state has a duty to ensure public safety between the time of arrest and trial of accused persons, as well as a duty to protect the integrity of the criminal justice system<sup>17</sup>." This means that when there is compelling evidence that an accused person may undermine the integrity of the criminal justice system, for example by intimidation of witnesses or tampering with evidence, then there is a need to either refuse such person bail or bond or to set strict bail conditions. Therefore, the interests of justice require that the investigation and prosecution process be protected against likely obstruction by the accused persons. "Appreciating the need to balance the rights of accused persons with the interests of justice, an accused may be denied bail only if the court determines that there are compelling reasons not to be released. Where an accused is refused bail, it must be shown by convincing evidence that his release will present risks and that these risks cannot be managed, even by attaching appropriate conditions. In other words, although the Constitution stipulates that any accused person is entitled to bail, it allows for the denial of bail where the prosecution has reasonable grounds<sup>18</sup>."

- Release must be normality. This concept is part of the general consideration of the right to bail and deserves to be emphasized as its own fundamental legal principle. In our society, freedom is normal, and detention before trial or without trial is the carefully limited

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<sup>15</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>16</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>17</sup> Istrate Ion, *The Freedom of the Person*, Writingul Românesc Publishing House, Bucharest, 1984

<sup>18</sup> Marian Alexandru, *Judicial control and judicial control on bail*, Sitech Publishing House, Craiova, 2016

exception. Besides suggesting the ratio betweenailable and non-ailable defendants, the second part of this sentence warns against a release process that results in detention

**Due process.** Due process generally refers to respecting the legal rights of to people and to protecting individuals from arbitrary or unjust actions of the state or authorities. No person shall be deprived of life, liberty, or property, without due process of law. "The liberty of the person has been declared inviolable." <sup>19</sup>People who did not benefit from the guarantees listed specific could, in theory, raise procedural issues in an appeal against the decision to establish bail. This principle is related to the principle of excessiveness because the analysis for excessiveness begins by examining the government's purpose in limiting pretrial liberty. This is more directly related, however, to the due process clause. Due process requires that a defendant under provisional control to don't be grounded.

"The bail process must be individualized . I noticed that if the bail had been fixed at a uniform sum without regard to the differences between the defendants, this would have been a clear violation of the rules. Each defendant stands before the bar of justice as an individual. On time respectively, the function of the bail was limited to establishing the conditions of liberty designed before the trial to provide reasonable assurance of court appearance." <sup>20</sup>Bail is still limited today, though the purposes of pretrial probation were expanded to include safety publicly, in addition to appearing in court. However, there must be relevant standards for these purposes. Today, there is a list of factor about which it may be say that are "Criteria of individualization" relevant to the limitation of freedom before the trial. The concept of requesting some standards to ensure that there is a principled means of non-arbitration decision-making in justice it is not criminal without a the base solid.

"The right to legal assistance. This principle refers to the accused's right to be assisted by a lawyer for his defense. This right does not attach until the prosecution begins. Commencement, in turn, is the initiation of adversarial criminal court proceedings - whether by means of a formal charge, preliminary hearing, indictment<sup>21</sup>." The best practice standards on pretrial release recommend defense by counsel at the first appearance in every court. There is a study where researchers tried to prove empirically whether or not lawyers' matter during bail hearings. "Thus, these procedural means consist of procedural rights granted to the parties in the process, in order to ensure quality legal assistance<sup>22</sup>."

The privilege against compelled self-incrimination. This fundamental principle refers to the fact that no person shall be compelled, in any criminal case, to be a witness against himself. On bail there can be issues with pre-trial statements as well as incriminating statements the defendant makes while the court is setting release conditions. In this sense, the principle against mandatory self-incrimination is arguably related to the right to counsel, in that counsel can help a particular defendant fully understand his other rights.

Of course, there are other legal principles that are of critical importance to defendants during the pretrial phase of the criminal trial, such as certain rights involved in the trial, the rules of evidence and the burden of proof, the right to a speedy trial, and the rules affecting enforcement<sup>23</sup>.

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<sup>19</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>20</sup> Cotoi Florin, *Provisional release under judicial control or on bail*, CHBeck Publishing House, Bucharest, 2015

<sup>21</sup> Ciuncan Dorin, *Legal aid guarantee*, DPR no. 2/2001

<sup>22</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>23</sup> Gheorghe Buzescu, *Place and role of the civil servant in the state apparatus*, Sitech Publishing House, Craiova, 2017

Additionally, there are principles that only appear in certain jurisdictions; for example, depending on the state in which a person is located, the use of money to protect public safety may be expressly illegal, and therefore its prohibition may rise to other more universal legal principles beyond inferential illegality due to its irrationality.

However, the legal grounds listed above are the most likely to occur in bail administration. Therefore, it is essential to them we also learn to recognize the problems that arise within them. Thus, the guiding principle is that where the court considers several aspects, namely the seriousness of the crime, the nature of the evidence, the position and status of the accused in relation to the victim and witnesses, the likelihood that the accused will flee from justice and repeat the crime, the possibility of him tampering with witnesses and obstruct the course justice and other reasons.

Each criminal case presents a specific factual matrix and therefore the court may have to consider certain case-specific reasons. Where the principles are clearly embodied in a piece of legislation, then everyone is on notice that there is a presumption that bail should be granted unless certain conditions are not met. Thus, granting bail is the rule and denial is the exception, so as to ensure that the accused has an opportunity to secure a fair trial.

### **1.2. The content bail**

The concept of bail is a fundamental part of the criminal system and is a principle well recognized by all judicial systems in the world. Bail, in law, means obtaining the release of a person from prison pending trial or appeal, by posting a bond to ensure his appearance at the required time before the judicial authority.

Bail usually involves a surety, deposit of money or some form of property in favor of the court by the suspect in exchange for release from pre-trial detention. If the suspect fails to return to court, bail is forfeited and the suspect may be brought before the court on a felony charge of failure to appear. "Bail guarantees compliance with legal obligations by the defendant<sup>24</sup>."

Later in this paper we will see how history, law, social science research, and national best practice standards combine to help us understand what are the appropriate standards of correct definitions of terms and expressions used in the procedural field. "Most likely the bail consists of a set of restrictions that the suspect will have to comply with for a certain period of time. According to this usage, bail may be granted both before and after trial. For minor crimes, a defendant can be arraigned without the need for bail. The monetary value of the bail is set by the court that has jurisdiction over the detainee<sup>25</sup>."

Bail amounts can vary depending on the type and severity of the crime the suspect is charged with, and practices for setting bail amounts vary. The guarantee can be represented by cash, the documents that give the right of ownership, or the guarantee of private individuals with financial means or of a professional surety or a professional surety company. It follows from the wording that the guarantee is always a sum of money and never a movable or immovable asset through non-disposal. If the person released on bail fails to surrender at the appointed time, it leads to the loss of the guarantee. The word "bail" can be described as a "chameleon-hued" legal term, with surprisingly different meanings depending on general usage. Occasionally, certain definitions will conflict with other definitions or uses of words even within the same source.

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<sup>24</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>25</sup> Ciuncan Dorin, *Provisional release on bail and under judicial control*, Editura Juridic, Bucharest, 2010

The main use of bail in modern legal systems is to secure freedom, until trial, of a person arrested and charged with a crime, although it can be used in some cases and to secure release pending appeal of a conviction. Subject to jurisdictional variations, the use to in cases A low once with the decline of incarceration for debts.

The purposes of bail pending trial in criminal cases are to avoid the infliction of punishment on an innocent person and to encourage the unrestricted preparation of his defense. Disregarding financial ability generated much controversy in the mid-20th century, as bail requirements can discriminate against the poor and certain minority groups, who are thus deprived of an equal chance to secure their freedom until trial.

Some courts now give special consideration to indigent defendants who, because of their standing in the community and their background, are considered likely to appear in court. The court may release the accused on an unsecured promise - that is, on his own recognizance. "Some jurisdictions also allow the accused to post a fraction of the bail, usually 10%, in cash at the court clerk's office."<sup>26</sup> A few jurisdictions make it a separate criminal offense to forfeit bail instead of appearing as required. In all jurisdictions, an arrest warrant can be issued on behalf of the accused who failed to appear, in addition to forfeiture of bail.

Therefore, bail could be considered as a form of security posted to appear before the court for release. "Innocent until proven guilty" is the fundamental principle of our justice system, and to reinforce this principle, the bail rule must be followed. "The content of the bail can be found in article 217 of the Code of Criminal Procedure. The posting of bail is done on behalf of the defendant by depositing a certain amount of money with the judicial body. The bail must be at least 1,000 lei"<sup>27</sup> and must be determined according to the nature of the case against the defendant, his financial situation and his legal obligations. "During the measure, the defendant must comply with the responsibilities provided for in article 215. The bail ensures the defendant's participation in the criminal trial, as well as his compliance with the legal responsibilities. If the measure of judicial control on bail has been replaced by the measure of house arrest or preventive detention, the court orders the confiscation of the bail."<sup>28</sup>

In other cases, the court may order the return of the bail by judgment. If the prosecutor decides not to start the criminal prosecution after notification to the general prosecutor or at the defendant's request, the bail is returned or confiscated by the court of rights and liberties. The decision regarding the request or referral is made in the council room, in the presence of the prosecutor and the defendant.

Within 48 hours of receiving notification of the decision of the judge of rights and freedoms, the defendant and the prosecutor may appeal to the judge of rights and freedoms of the higher court. "The appeal will be resolved in the council chamber without the participation of the prosecutor or the defendant, who will be notified of its date and of their possibility to present written observations until that date."<sup>29</sup> If the defendant in bad faith violates his obligations during the period of judicial control on bail or if there is a reasonable suspicion that he has committed a new crime with intent for which criminal prosecution has been ordered against him, the judge of rights and liberties, the judge of the preliminary chamber or the court, at the reasonable request of the prosecutor or ex officio, may order the replacement of this measure with the measure of house arrest or preventive arrest.

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<sup>26</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>27</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>28</sup> Marian Alexandru, *Judicial control and judicial control on bail*, Sitech Publishing House, Craiova, 2016

<sup>29</sup> Gheorghe Buzescu, Manole Nela, *Criminal Law, General Part*, Sitech Publishing House, Craiova, 2018

### **1.3. The role and importance judicial control on bail**

"Bail is an essential component of our criminal justice system. It is essential and has been since the founding of our country<sup>30</sup>." Even if they have never attended a trial or hearing, most people have heard of bail. We all know what bail is from TV shows: an arrested person can pay a set amount of money to the court in exchange for being released from jail pending trial.

Even if she is later found guilty, she gets her bail refunded if she appears in court when required. What the television shows don't say, however, is why we have a bail system. Prosecutors, attorneys, judges, police, local and state politicians, bail agents, victim advocates, and prison authorities are all involved in the bail process. Both public safety and the rights of the accused must be protected by the bail system.

In criminal proceedings, bail decisions are an important part of the prosecution process. The ramifications of these decisions can have far-reaching implications for victims of crime and the public at large. Bail decisions made by a court can result in the defendant being deprived or restricted of liberty for a significant period of time.

For these reasons, the Prosecution Service has incorporated how these choices are made into our legal aid quality standards as a benchmark for the quality of our case management and preparation. Continuously reviewing the judicial review status of defendants and ensuring that custody cases are handled in accordance with the national standard is a measure of the quality of case preparation. The decision to release an accused person on bail or to remand them in custody is a critical step in the criminal justice process.

Detainees in preventive detention represent a significant component of the population. Therefore, reducing the number of defendants in pre-trial detention and increasing the number of those released on bail could reduce both the number of people in prison and the costs associated with pre-trial detention - both for individuals and for society as a result of the costs from criminal justice. At the same time, the decision to release an accused person on bail must be made in the interests of justice and the safety of the community. While many of the bail decisions are straightforward, due to the nature of the crimes charged, a defendant may be eligible for release in some cases due to his circumstances.

"No one can deny that ensuring public safety is important, but we must also ensure that our most fundamental civil rights are protected. The most serious flaw of the constitutional amendment is that it leaves a lot of room for interpretation. Bail reform has gained a lot of momentum, and its advocates hope it will lead to important legislative changes in the coming years<sup>31</sup>." As a result, bail is considered a type of insurance in most states.

For example, a person may have a minimal risk of reoffending but does not have safe housing to which they can be safely released. When an accused's legal eligibility or eligibility for bail is not in doubt, therapy and support programs can allow the accused to begin to address the problem behaviors that led to his bail.

The time between the charge and prosecution or sentencing allows the defendant to stabilize his or her lifestyle through housing, work, training or education, stabilizing relationships, and other means. If these concerns are addressed, the accused may face a reduced sentence or, if not incarcerated, a more stable and pro-social lifestyle. While on bail, therapy and use of programmatic services have been shown to reduce recidivism.

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<sup>30</sup> <https://www.krisorlaw.com/why-bail-is-important-for-defendants-and-the-criminal-justice-system>

<sup>31</sup> Cotoi Florin, *Provisional release under judicial supervision or bail*, C.H.Beck Publishing House, Bucharest, 2015

Supporting the accused to meet basic responsibilities, such as attending court when summoned, can ensure that they obtain the benefits of bail, remain in the community and have the best chance of a non-custodial sentence.

Effective bail support and supervision services<sup>32</sup> are therefore an important aspect of governmental and non-governmental responses to people accused of crime.

Bail is most commonly used in modern legal systems to secure the release of a person arrested and charged with a criminal offense pending trial, but in certain situations it may also be used to secure freedom pending an appeal against a conviction. The Founders saw fit to include the right to reasonable bail in the Bill of Rights because it was quite important. Bail is inextricably linked to the right of an accused person to remain innocent unless proven guilty.

A person should have the right to be released on bail pending trial. She should be able to work and continue her normal routine while she waits for her trial date. At the same time, we must strike a balance between this freedom and the victim's right to a fair trial, hearing and protection. Bail represents a middle way between the refusal not to release a person and the possibility of releasing him on his own responsibility. Therefore, our system has safeguards in place to prevent injustices. For example, bail review hearings ensure that bail is not excessive and that a defendant's mitigating circumstances are taken into account, allowing all parties to be heard on the amount of bail set.

Another essential function of bail in the criminal justice system is to ease the burden on taxpayers. Keeping all defendants in state custody before a trial date is set is expensive. A trial can take months in locations where there is intense criminal activity. Because its principles are based on the presumption of innocence and the right to liberty<sup>33</sup>, the rule of law plays an important role in shaping bail legislation. The judiciary must ensure that the procedure supports the fundamental purpose of bail and that the bail laws remain adequate to achieve these objectives. Except for people sentenced to capital punishment, our state's founders went even further, establishing a fundamental right to bail for everyone. The state legislature has proposed a constitutional amendment that would allow a judge to deny bail.

## **2. The procedure for carrying out the measure of judicial control on bail**

### **2.1. The appeal against the measure of judicial control on bail ordered by the prosecutor**

When determining whether a remedy is appropriate, the key factor to consider is the level of risk presented to a victim or the general public. The type and seriousness of the offense the defendant is facing is relevant if it illustrates the risk posed by the granting of bail. Examples may be extreme cases of physical violence, a substantial risk of harm to public safety and property<sup>34</sup>, a record revealing prior convictions, especially of a similar type against the same victim or victims with comparable characteristics, evidence of undue influence on the victim. A strong indication that the defendant may flee is a reason for appeal in cases where he has no right to remain in the jurisdiction.

"During criminal proceedings, the prosecutor has the authority to issue judicial control on bail"<sup>35</sup> either ex officio, or upon referral to the criminal investigation body, or by decision of

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<sup>32</sup> Gheorghe Buzescu, *Internal and international police cooperation – university course*, Sitech Publishing House, Craiova, 2020

<sup>33</sup> Ivan Anane, *Elements of theory and tactics of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

<sup>34</sup> Gheorghe Buzescu, *Rules of police theory and practice*, Pro Universitaria Publishing House, Bucharest, 2016

<sup>35</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

the judge of rights and liberties tasked with ruling on a proposal to take or extend of a preventive custodial measure. The preventive measure of judicial review is a novelty, primarily in terms of who can rule on it in specific adversarial procedures, compared to previous laws, when only a single judge could rule on its disposition.

In this sense, it is possible to interpret the prosecutor's ability to order the measure as a restriction of the person's freedom. In the absence of a prior arrest, the point of view changes, however, judicial control, although it is no longer the jurisdiction of the court and is no longer a custodial measure, is still a lighter measure under current legislation. The measure can be taken by the magistrate in charge at that stage of the criminal procedure: prosecutor, judge, rights and liberties judge and pretrial chamber judge. It must be emphasized that the judge of rights and liberties cannot act at the request of the prosecutor, because he is obliged to act alone in the criminal investigation phase. However, the rights and liberties judge can impose this unique measure of judicial control on bail instead of pre-trial detention or house arrest.

"If the prosecutor ordered the measure of judicial control on bail against the defendant during the criminal investigation, the law only allows the defendant to appeal, the appeal being the complaint, and the term provided by the law is 48 hours from the date on which the ordinance was communicated to the defendant. The complaint must be addressed to the court from the section of rights and freedoms that will be competent to judge the case on the merits and thus rule on the defendant's appeal. The court will rule on the complaint in council chambers." <sup>36</sup>The court will make a decision in the boardroom on the complaint: the judge of rights and liberties can reject or admit the complaint and cancel the preventive measure if it is determined that it was previously placed in violation of the law. The prosecutor has the right to appeal the bail decision. This rule applies whenever the prosecutor intends to challenge a court's decision to release a defendant on bail and where the defendant has been charged with or convicted of a possible crime that requires imprisonment. The prosecutor must inform the court of the decision to appeal at the end of the bail hearing before the defendant is released. The judge who granted bail must exercise discretionary power to remand the defendant pending resolution of the appeal.

"A defendant who has been released on bail may file an appeal to obtain a review of the conditions of supervision, the guilty plea, or the terms of the sentence. Before the sentencing, the offender may file an appeal against the bail decision." <sup>37</sup>Also, before being sentenced, a defendant may appeal a decision to set, modify, revoke, deny, or refuse to modify bail or its conditions. The defendant must first file a written request with the court to set the bond required on appeal before exercising the right to appeal. The following information must be included in the application: the defendant's financial situation, his residential addresses and employment history for the past ten years, his occupation, and the name and address of his employer, if employed, or of his school, if enrolled school, his family situation <sup>38</sup>, any previous criminal record and any other relevant facts.

If the order is issued at the request of the prosecutor, the facts mentioned above must be included in the defendant's confirmed answer to the request. The court must grant permission to the prosecutor who wishes to exercise his right of appeal. Prosecutors will apply to the court

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<sup>36</sup> Tulbure Adrian Ștefan, *Complaint against criminal prosecution measures and acts*, RDP no 1/1999

<sup>37</sup> Marian Alexandru, *Preventive measures provided for in the new criminal procedure code*, Sitech Publishing House, Craiova, 2017

<sup>38</sup> Ivan Anane, *Elements of computerized records of the person*, Pro Universitaria Publishing House, Bucharest, 2015

for notification of the bail decision under the Basic Rules of Criminal Procedure. A written notice of appeal must be sent to the court and the defendant within two hours of the conclusion of the bail hearing. If the defendant does not receive the notice, it is assumed that the appeal was dismissed and that he was released. If necessary, the defendant must appear in court within two hours to personally serve the written notice. Appeals must be filed or heard within 48 hours of the end of the bail hearing, excluding weekends and holidays. A prosecutor may waive the appeal by notifying the magistrates before the hearing begins.

If one compares the provisions of Article 216 with those of Article 213 of the new Code of Criminal Procedure, it is clear that it does not provide a complete list of solutions that a judge of rights and liberties can order to resolve the defendant's complaint. "Furthermore, the appeal against the measure of judicial control ordered by the prosecutor is formulated against the order of the prosecutor by which the measure was ordered, not against the procedural measure, and the hypothesis of the revocation of the preventive measure is the result of admitting the complaint and canceling the order against which the appeal was formulated<sup>39</sup>." In the absence of a comprehensive list of the solutions available to be taken into account when resolving the judicial control on bail, without reaching the revocation of the measure but only the modification of its content in the sense of mitigating the obligations imposed and those that the prosecutor has, the competence emerges to fulfill them individually.

Since, on the one hand, the judge of rights and liberties verifies the fulfillment of the requirement of proportionality and necessity, and on the other hand, according to art. 216 related to art. 215 para. (8) of the new Code of Criminal Procedure, after taking the measure, the prosecutor can intervene and change the substance of the bail judicial control, either ex officio or at the defendant's request, in order to reduce the sentence. In accordance with Article 204 of the new Code of Criminal Procedure, decisions imposing preventive measures during criminal proceedings can be appealed within 48 hours of the pronouncement in the case of those present, and within 48 hours of notification, in the case of those who are not present.

In judicial practice and in doctrine, it has been overwhelmingly ruled that the conclusion of the judge of rights and liberties can be questioned by appeal, under the general regime provided by art. 204 of the new Criminal Procedure Code. In practice, there is also a minority opinion according to which the decision of the judge of rights and freedoms in the complaint resolution procedure is final, without the right of appeal, and that such an appeal would be rejected as inadmissible. First of all, in accordance with art. 216 in conjunction with art. 213 of the new Code of Criminal Procedure, the judge of rights and liberties issues a decision already pronounced in the resolution of an appeal, and the new Code, unlike the old one, does not control the situations in which the appeal has two distinct degrees, even in the case more serious preventive measures.

The provisions of art. 204 of the new Code of Criminal Procedure, on the other hand, were considered inapplicable in this case because they refer to the decisions taken during the criminal investigation regarding the preventive measures as the main referral while in the case of the decision regulated by article 216 related to the article 213 of the new Criminal Procedure Code, the main decision refers to the legality and validity of the ordinance previously issued by the court.

"The new regulation recognizes the competence of the prosecutor, the judge and, if applicable, the judge of rights and liberties to order judicial review or judicial review on bail,

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<sup>39</sup> Mitra Mariana, *Manual of criminal law for public administration and local police specializations*, Pro Universitaria Publishing House, Bucharest, 2015

which are controlled as independent preventive institutions<sup>40</sup>." The proposed legislation changes the approach of procedural institutions to judicial review of bail, which previously applied exclusively to an accused person who has been remanded in custody.

This preventive measure underwent major changes as a result of the application of law number 255/2013. Thus, judicial review was initially only available to judges of rights and liberties. Exceptionally and in case of emergency, the prosecutor can order that the defendant be placed under judicial control on bail for a period of up to 5 days during the criminal investigation phase. The prosecutor must notify the judge of rights and liberties about 3 days before the expiration of the term for which the measure is taken and summon the defendant, whose presence is not mandatory, but the presence of the legal assistant and the prosecutor is required.

"According to the initial project, if the defendant was present and was to be heard by a judge of rights and liberties, the judge was to rule on the legality and validity of the prosecutor's order within 5 days, having the possibility to confirm the measure taken by prosecutor if it was taken in accordance with the legal provisions or, on the other hand, to revoke it if the legal provisions regarding the conditions for taking it were not respected<sup>41</sup>." Within 48 hours of receiving the reasoned decision, the prosecutor must receive the case file. At the motivated proposal of the prosecutor or ex officio through a decision, it can be ordered by the court before which the case is pending. The hearing is required if the defendant appears at the appointed time, as well as the presence of the defendant's lawyer and the participation of the prosecutor. Since judicial review can no longer be used against the accused, but only against the suspect, the prosecutor must issue an order to initiate criminal prosecution if this stage is intended.

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<sup>40</sup> Marian Alexandru, *Preventive measures provided for in the new criminal procedure code*, Sitech Publishing House, Craiova, 2017

<sup>41</sup> Volonciu Nicolae, Uzlău Andreea Simona, *Code of Criminal Procedure commented*, Hamangiu Publishing House, Bucharest, 2014

## **2.2. Taking the measure of judicial review on bail by the judge of the preliminary chamber or the court**

The procedure for obtaining a judicial review on bail appears to be the same as the procedure for obtaining a judicial review.

A source of criticism of the legal texts is the lack of specific regulations regarding the procedure for imposing the measure of judicial control on bail, especially in cases where the competence to impose this measure belongs to a magistrate judge in the preliminary chamber phase, in the trial phase or even in the prosecution phase, when the rights and liberties judge is responsible for resolving the claims. Before the preventive measure can be ordered, the defendant must submit a bond, but the bond cannot be assessed and submitted directly by the defendant, because its amount must be determined by the judicial body, and the resolution of the proposal to take the preventive measure proposed by the judicial control must to be solved in two phases:

a) when examining admissibility, it must be ensured that all the legal requirements for this preventive measure are met: if the request is considered admissible in principle, it must specify the amount of the bond and the deadline for presenting the bond by the defendant;

b) to impose judicial control on bail when the requirement to deposit the bail is met by the judicial authority; Taking the measure of judicial control by the judge of the preliminary chamber or the court "At the request of the prosecutor, who must present his reasons, or on his own initiative, the judge of the preliminary chamber or the court in which the case is being conducted can decide that the defendant be placed under judicial control by means of a decision. The defendant is summoned by the convened court<sup>42</sup>." If the defendant appears on time, a hearing will be requested. The institution, body or authority regularly checks the defendant's compliance with his responsibilities and, if it finds that he has violated them, immediately informs the prosecutor in criminal proceedings, the judge of the preliminary chamber or the court. The judge sets a trial term in the council chamber within 5 days of the registration of the proposal or request, warning the prosecutor and the defendant about this term.

"The proposal or request is resolved by a judge of rights and liberties in the absence of the defendant and the prosecutor. The defendant and the prosecutor have the right to present written conclusions to the judge of rights and liberties at least 24 hours before the expiration of the term for rendering a verdict on the proposal or request<sup>43</sup>." If the defendant is subject to obligations during the criminal proceedings, the judge who imposed the measure must check ex officio, by means of orders, every 60 days whether the reasons that were indicated as the basis for imposing the obligation remain valid and, if necessary, may order their replacement or termination

## **2.3. Duration control judicial on bail**

"Only if the prerequisites for taking preventive measures are met, a person can be placed under judicial control on bail. Although these limitations were designed to protect defendants from being unfairly subjected to a double restriction of liberty and financial conditions, the result appears to be the opposite. The prosecutor prefers to impose the measure of imprisonment without the possibility of imposing bail once the conditions I have specified have been met<sup>44</sup>." Pre-trial detention which is only required under the maximum sentence is sometimes preferable

<sup>42</sup> Marian Alexandru, *Judicial control and judicial control on bail*, Sitech Publishing House, Craiova, 2016

<sup>43</sup> Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

<sup>44</sup> [http://old.mpublic.ro/durata\\_control\\_judiciar.pdf](http://old.mpublic.ro/durata_control_judiciar.pdf)

to dual monitoring of the offender in terms of freedom of movement and financial resources. Another factor behind the lack of practical effectiveness of bail is the legal framework that regulates it. According to an analysis of the legislation governing the measure of judicial review on bail, there is no time limit for the period during which this measure can be used during criminal proceedings. In contrast, the previous standards for the measure that came closest to judicial review of bail from a legal point of view included an initial duration, an extension mechanism and a maximum total duration for the duration of criminal proceedings. Thus, the term of the measure of the obligation not to leave the locality<sup>45</sup> and the measure of the obligation not to leave the country (measures partially comparable to judicial control on bail) cannot exceed 30 days in accordance with the former Code of Criminal Procedure, unless was increased by law.

As these measures may affect, as appropriate, the right to free movement and the right to respect for personal and family life, the lack of a maximum period of judicial review on bail may cause problems in terms of compliance with national and international treaties with higher legal force that regulate a series of fundamental human rights. As a result, in order to comply with legal norms, measures that violate fundamental rights must be limited not only to the circumstances provided for by law, but also in time. Judicial review of bail in accordance with current legislation is still present throughout the criminal process.

"During the criminal investigation. The prosecutor has the authority to order judicial review of bail for a maximum of 60 days during criminal proceedings. According to the normative act, all preventive measures of judicial control on bail that are in force at the time of the entry into force of the new emergency ordinance are continued and maintained for a period of 60 days<sup>46</sup>."

In criminal cases, the prosecutor confirms, *ex officio*, if the reasons for imposing judicial control on bail are real, in the preliminary chamber procedure by the judge of the preliminary chamber and by the court in the trial procedure, the Prosecutor can order judicial control on bail for a maximum period of 60 days, with the possibility of extension if the reasons that were the basis of the measure or additional ones are maintained; each extension cannot exceed 60 days. If the penalty imposed by law is a fine or a prison sentence of up to 5 years, the total duration resulting from successive extensions of the amount during the prosecution may not exceed 1 year or 2 years in cases where the prescribed penalty by law is life imprisonment or a prison sentence of more than 5 years.

During the preliminary chamber stage and the trial stage. The court can order a measure of judicial control on bail for a maximum period of 60 days during the preliminary ruling phase and the trial phase in the preliminary chamber. The judge is obliged to check *ex officio* every 60 days to assess whether the reasons for maintaining the judicial control measure are still valid or if new reasons have been published that create legal liability.

During the trial at first instance. During the trial at first instance, safeguards associated with bail judicial review may satisfy the proportionality standard. Every 60 days, the panel hearing the case should carry out a continuous review. "The total duration of judicial control monitoring cannot exceed a fair period of time, and in no case can it exceed five years. Within 60 days from the entry into force of GEO 82/2014, the prosecutor in criminal cases, the preliminary chamber judge in the preliminary chamber process and the court in the trial process

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<sup>45</sup> Gheorghe Buzescu, *Particularities of contravention law*, Sitech Publishing House, Craiova, 2017

<sup>46</sup> Nistoreanu Gheorghe, Apetrei Mihai, Nae Laurențiu, *Manual of criminal procedural law*, Europa Nova Publishing House, Bucharest, 1999

shall verify, ex officio, whether the grounds for the adoption remain valid judicial control on bail and, alternatively, if new grounds arise, extending, maintaining or revoking the preventive measure of judicial control on bail, as the case may be."<sup>47</sup>

### **3. Obligations of the judicial body during the bail judicial control**

As each criminal case has its own situation, the court may be required to consider certain decisive factors for certain cases. The sole task of the court is to determine whether or not there is a case against the accused. The court is not obliged to conduct a detailed examination of the evidence<sup>48</sup>.

Bail is the term used to describe the temporary release of a defendant from custody after being charged with a crime. During criminal proceedings, the defendant is granted judicial review or judicial bail, which is the legal release of a defendant accused of a particular crime, subject to certain restrictions and the need for him to remain within the court's jurisdiction.

Judicial bodies have a key role in preparing, organizing and suggesting parole. The judicial entity appearing on behalf of the defendant is required to comply with strict bail conditions. It is not the responsibility of the judicial authority to ask the court to grant bail under stricter conditions if the defendant has been arrested for violating bail restrictions. If bail restrictions are imposed that appear to be unduly onerous, it is the prosecutor's responsibility to make a reasonable case to the court.

The judiciary has a responsibility not to urge their defendant to accept bail restrictions, as this would only create more problems for him. The judicial body is responsible for determining whether the bail condition in the application is consistent with the previous bail condition. The judicial body must ensure that the observations are accurate and otherwise there are usually no other options. The judiciary said a new dilemma had formed as people feared an unfavorable court ruling if they sought unconditional freedom. The emergency ordinances are continued and maintained for a period of 60 days." In criminal cases, the prosecutor confirms, ex officio, if the reasons for imposing judicial control on bail are real, in the preliminary chamber procedure by the judge of the preliminary chamber and by the court in the trial procedure, the Prosecutor can order judicial control on bail for a maximum period of 60 days, with the possibility of extension if the reasons that were the basis of the measure or additional ones are maintained; each extension cannot exceed 60 days<sup>49</sup>. If the penalty imposed by law is a fine or a prison sentence of up to 5 years, the total duration resulting from successive extensions of the amount during the prosecution may not exceed 1 year or 2 years in cases where the prescribed penalty by law is life imprisonment or a prison sentence of more than 5 years.

During the preliminary chamber stage and the trial stage. The court can order a measure of judicial control on bail for a maximum period of 60 days during the preliminary ruling phase and the trial phase in the preliminary chamber. The judge is obliged to check ex officio every 60 days to assess whether the reasons for maintaining the judicial control measure are still valid or if new reasons have been published that create legal liability.

During the trial at first instance. During the trial at first instance, safeguards associated with bail judicial review may satisfy the proportionality standard. Every 60 days, the panel

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<sup>47</sup>[http://old.mpublic.ro/durata\\_control\\_judicial.pdf](http://old.mpublic.ro/durata_control_judicial.pdf)

<sup>48</sup> Ivan Anane, *Investigation of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014

<sup>49</sup> [http://old.mpublic.ro/durata\\_control\\_judiciar.pdf](http://old.mpublic.ro/durata_control_judiciar.pdf)

hearing the case should carry out a continuous review. "The total duration of judicial control monitoring cannot exceed a fair period of time, and in no case can it exceed five years. Within 60 days from the entry into force of GEO 82/2014, the prosecutor in criminal cases, the preliminary chamber judge in the preliminary chamber process and the court in the trial process shall verify, ex officio, whether the grounds for the adoption remain valid judicial control on bail and, alternatively, if new grounds appear, extending, maintaining or revoking the preventive measure of judicial control on bail, as the case may be."

"They typically request electronic monitoring or restricted release to prevent their client's incarceration and convince the court. They have been observed engaging in a kind of negotiation where they try to reach a compromise and accept a restriction on the suspect's liberty as long as imprisonment is avoided, especially when the restriction is quite moderate." Other trial participants are aware of the judiciary's strong stance, judges are expected to take the lead on alternative measures, and prosecutors routinely proclaim they will not object.

The main responsibilities of this body during judicial control on bail are: to ensure that the released person is handed over to custody<sup>50</sup>, is made available for investigation or appears in court at the date, time and place established for this purpose, to maintain daily contact with the released person and file a police report within 24 hours of losing contact with the released person, ensure that the released person remains in the country unless deported. Any arrangement to compensate a person for any of the bail requirements is also void. The later knowingly entering into such an element of arrangement makes a person guilty of an offence.

"In judicial practice, the question has arisen as to whether a rights and liberties judge has jurisdiction to order the modification requirements when a rights and liberties court has ordered judicial review on bail as a result of the rejection of the proposal by a preventive measure of arrest."

Despite the fact that there are arguments on both sides, I believe that, in the absence of express provisions, the interpretation given by the Supreme Court in a relatively similar situation, in which it analyzed the issue of the jurisdiction of the judicial body to order, within the framework of the judicial control on bail, preventive measures not to leave the locality or not to leave the country, is adequate.

Only in the cases expressly allowed by art. 146 para. 1 and art. 139 para. (l) of the Code of Criminal Procedure, the judge has the ability to issue a restraining order or a prohibition order not to leave the territory. Because of the restrictive nature of the interpretation of the procedural provisions, it is important to note that, regardless of the judicial body that is empowered to take preventive measures to ensure that the defendant does not leave the locality or the country during the period of judicial control on bail, the presiding or supervising prosecutor must to extend these measures.

Although the solution pronounced in the sense of clarifying whether, during the measure of judicial control on bail, the judge of rights and liberties who took the measure or, on the contrary, the prosecutor has the power to impose new responsibilities on the defendant, the opinion of the judge-rapporteur expressed in the considerations of the decision is in meaning that, according to art. 215 para. 8 of the Code of Criminal Procedure, the power to impose new obligations on the defendant, to replace them or to extinguish those originally imposed, belongs to the prosecutor.

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<sup>50</sup> Gheorghe Buzescu, *Comparative Systems of Public Order – university course I*, Sitech Publishing House, Craiova, 2020

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