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Appeals against decisions ordering preventive measures

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Abstract. The Criminal Code highlights facts that constitute crimes and sanctions that can be applied to those who violate them in order to protect the interests of society, legal entities and citizens. The authorities are charged with enforcing the sanctions of the Criminal Code and other consequences, and the accountability of offenders must be done according to specific standards, corresponding to the needs of two major interests: the interests of society and individual interests. Carrying out normal work involving the rapid detection of crimes and the identification of offenders, as well as the implementation of legal consequences that serve as a means of combating and preventing crime, is in the interest of society. Individual interests demand that this activity be strictly regulated by law, with abuses and injustices outlawed, as well as provide citizens with effective ways to defend themselves against a false accusation or more serious than the real one. Official participants in criminal proceedings must do their job objectively and impartially to administer good repressive justice. The law has developed remedies to protect against unfounded or illegal judgments, as well as mistakes committed by courts or other entities with jurisdiction. These remedies may include checking illegal or unfounded decisions and correcting errors.

Keywords. appeals, preventive measures, code, defendant, judge

1. General notions of appeals against decisions ordering preventive measures
1.1. Measures to resolve criminal proceedings
The Romanian Constitution, according to Article 21, provides: "Any person may go to court to defend his/her rights, freedoms and legitimate interests. No law may restrict the exercise of this right. Parties have the right to a fair trial and to a timely settlement of their cases. Special administrative jurisdictions are not required."\(^1\)

Unless otherwise provided in our criminal procedure legislation, the principle of celerity is required, as the fundamental principle of criminal proceedings, because in the shortest possible time, as close as possible to that of committing the crime.

"Criminal proceedings are the activity regulated by law, carried out by competent bodies, with the participation of parties and other persons, in order to ascertain in time and completely the facts that constitute crimes, so that any person who committed a crime is punished according to his guilt and no innocent person is held criminally responsible."\(^2\)

\(^1\) The Constitution of Romania.art.21
\(^2\) [https://www.advocate.ro/definitie_juridica_Proces_penal](https://www.advocate.ro/definitie_juridica_Proces_penal)
În urma revizuirii Constituției, în art.21 alin.3 din legea fundamentală, se prevede că părțile au opțiunea de a soluționa problema într-un anumit interval de timp rezonabil. 

In the European Convention for the Protection of Human Rights and Fundamental Freedoms, the requirement of speed arises from the content of paragraph 1 of Article 6 according to which: everyone has the right to a fair trial within a reasonable period of time.

The notion of efficiency implies both the rapid resolution of criminal cases and, where possible, the simplification of criminal proceedings. However, in criminal proceedings, the principle of expediency must be applied in tandem with the fundamental principle of discovery, striking a balance between the need to expedite proceedings in order to resolve cases in a timely manner and the need for a third party to resolve the established resolution of cases at several levels of jurisdiction.

The current Romanian Code of Criminal Procedure has established a system of judicial review in criminal proceedings, with the defendant having the right to a trial at first instance, as well as to appeals against decisions on preventive measures.

However, as previously stated, a number of adjustments have been adopted to the current Code of Criminal Procedure to ensure the timeliness of criminal proceedings, as shown in Law no. 202/2010 on some methods to improve the speed with which trials are resolved.

In reality, Law no. 202/2010, which regulates some of the articles of our Code of Criminal Procedure, was adopted both to preserve the integrity of the criminal process and to prepare for the adoption of new legislation.

As a result, the Ministry of Justice called it a "minor reform", referring to the "great reform" of criminal and procedural law that will take place once the new laws come into force. In this respect, it was argued in presenting the grounds of this law that one of the most important criticisms against the Romanian justice system was the lack of haste in dealing with problems.

As judicial procedures are often seen as difficult, time-consuming and costly, it has been recognised that the effectiveness of the administration of justice is determined by the extent to which judges' rights and obligations are incorporated into the legal system to ensure stability.

### 1.2. Definition of appeals against decisions ordering preventive measures

Appeals are the means by which judicial review is initiated at the request of the public prosecutor or those accused of a crime, in order to annul unlawful or unjustified criminal decisions and replace them with decisions in accordance with law and truth.

Their existence stems from the conviction that, because human justice is imperfect, the law should not prohibit the development of a new method if certain elements justify the presumption that it will be beneficial in the administration of justice.

Even with all the legislative guarantees in place to ensure that justice is done fairly, the court's decision could be flawed, either because the parties did not fully inform the judges due to their distortions and involuntary, or because they did it themselves. They did not take an active role, did not examine the facts effectively, or misread or applied the law. Challenges are therefore a major obstacle to legitimacy.

### 1.3. Importance and role of remedies

This principle has been recognized as a human right and is also codified in international treaties under Article 145 of the International Covenant on Civil and Political Liberties, "and

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3 The Constitution of Romania.art.21
4 Law 202/2010 on certain measures to accelerate the settlement of lawsuits, art. 24
punishment imposed." The role of appeals in criminal cases varies with regard to procedural considerations.

Since each party has an interest in a good outcome, the idea that the judgment to be rendered can be overturned by appeal encourages the parties to actively participate in the process, to defend themselves as thoroughly as possible.

The availability of remedies and the ability to use them, on the other hand, serves as a guarantee of the rights of defence, as it guarantees the parties that, if the decision is improperly, it can be set aside and their right will not be prejudiced by an illegal and unjustified decision, which should increase public confidence in the justice system.

Prosecution is a realistic approach for the government to fulfil its obligation to ensure that the law is respected in judicial proceedings so that the general interests of society, the rule of law and individual rights and freedoms are not jeopardised. Since the law does not grant the prosecutor the right to annul a judicial act that he or she considers to be criminally annulled, the prosecutor will refer the case to a higher court or, less usually, to the court that delivered the verdict and ask for a ruling.

As far as courts are concerned, the existence of remedies obliges them to actively participate in the process, comply with all legal requirements and provide a solid and legal outcome that would otherwise be unlikely, the extent to which their decisions have been questioned and reviewed. On the other hand, appeals by the parties or the prosecutor is one of the most effective ways for higher courts to follow the guidance of lower courts.

Judicial review is generally defined as the right and obligation of higher courts, depending on the means of appeal, to review the legality and legitimacy of a decision under the conditions and processes laid down by law. judgments of lower courts and revoke or confirm those valid and founded in whole or in part.

1.4. Necessity of remedies in criminal proceedings

The establishment of remedies stems from the need to monitor the activity of the courts because, if it does not correspond to the law and facts, it seriously endangers the fundamental rights of citizens, with harmful consequences for society.

A presumption of error on the part of the court that issued the judgment appealed against is that a court decision, with all the guarantees given by law, could contain errors of fact and law. The presumption of justification is that defects will be remedied in the next trial, which verifies the appealed verdict.

Therefore, appeals are considered procedural appeals in the sense that they can correct everything that went wrong in court and settle a criminal case.

2. Appeal against decisions ordering preventive measures in the course of criminal proceedings

The defendant and the prosecutor have 48 hours from the date of the judgment or, from the date of service, to appeal against the decisions of the judge of rights and freedoms on preventive measures.

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3 Gheorghe Buzescu, *Place and role of the civil servant in the state apparatus*, Sitech Publishing House, Craiova, 2017

Within 48 hours of the ruling, the appeal must be submitted to the judge of rights and freedoms who pronounced the contested sentence, together with the file, to the judge of the hierarchically superior court.

2.1. Appeal against judgments handed down by the judge of rights and freedoms

Appeals against decisions of the High Court of Cassation and Justice imposing preventive measures shall be heard by a panel of the High Court of Cassation and Justice, in accordance with this article.

The decision ordering the taking or extension of a precautionary measure has been appealed against, or the right of termination has been found to be unenforceable.

"The defendant's appeal shall be resolved within five days of registration. The prosecutor's appeal against the decision rejecting the proposal to continue pre-trial detention, annul a provision or change a preventive measure to another preventive measure must be lodged before the expiry of the term of the previous preventive measure."

The defendant is served with a summons to resolve the appeal. Unless the defendant is unjustifiably absent, has disappeared, or cannot be brought before the judge due to illness, the appeal is decided in his presence.

The defendant must always be defended by a public defender who has been chosen or appointed. The presence of the prosecutor is required.

2.2. Admission of appeal

"If the defendant's appeal against the decision ordering preventive detention is upheld, it may be ordered that the proposal to take or extend pre-trial detention be refused or, as the case may be, changed to another, more preventive measure and, where appropriate, the immediate release of the defendant, unless he is arrested in another case, under the conditions provided by law."

The prosecutor obtains the case report within 48 hours of the appeal being resolved. If the decision of the judge of rights and freedoms at first instance is not appealed, the case is returned to the public prosecutor within 48 hours of the end of the time limit.

The appeal shall be settled by a final, reasoned decision, which may declare one of the following results:

- Dismiss the appeal as acceptable, maintaining the contested conclusion, where an appeal has been lodged against another appeal resolving the contested conclusion.
- Dismiss the appeal as out of time, maintaining the contested conclusion, where it was brought after the deadline.
- Dismiss the appeal as unfounded, maintaining the contested conclusion, where the contested conclusion is lawful and well founded.
- Admission of appeal.

Upon appeal by the prosecutor, it may be ordered to take or extend the measure of preventive detention of the culprit. If the clauses laid down by law are met, it may be designated to take the preventive measure of judicial control, judicial control on bail, house arrest or increase the amount of bail.

If the defendant appeals against the decision ordering the taking or extension of the detention order, the court may order the defendant to reject the proposal to make or extend the

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pre-trial detention order or, where appropriate, replace him with a lighter preventive measure and, where appropriate, be released immediately if he is not arrested in another case."  


The decision on the settlement of the complaint is taken in the council chamber. The judge of rights and freedoms in charge of hearing the appeal, of the case, cannot make it difficult for the person who made it. The prosecutor obtains the case file within 48 hours of the appeal being resolved.

If no appeal is lodged against the decision of the judge of rights and freedoms at first instance, he or she shall refer the case to the prosecutor within 48 hours of the end of the appeal period.

2.3. Appeal against judgments ordering preventive measures during criminal prosecution provided for in the old Criminal Code

The accused or defendant, as well as the accuser, may file an objection with the court within 24 hours of the statement, for those on the spot, and of service, for those who are absent, against the conclusion by which the judge orders preventive measures, revocation, replacement, termination, or extension of preventive measures, as well as against the conclusion by which the judge rejects the proposal for preventive detention.

The judge's decision to refuse to revoke, replace or terminate the right to preventive measures during criminal proceedings is final.

The arrested defendant or accused will be brought before the Court of Appeal and will be heard in the presence of his/her lawyer. If the culprit or defendant is hospitalized and unable to appear before the judge due to illness, or if mobility is impossible, the appeal will be heard in his absence, but only in the presence of his lawyer, who will be given the opportunity to draw conclusions. The participation of the public prosecutor in the decision of the appeal is required.

"If the accused or accused person is arrested, the case will be referred to the appeal court within 24 hours and the appeal will be resolved within 48 hours, and within 3 days if the defendant is arrested. By order, the court gives its decision on the same day. The appeal court may remove the preventive measure if it considers it unlawful or unjustified, ordering the immediate release of the accused or accused person in the event of pre-trial detention, unless he or she is arrested in another case.

The appeal found that the conclusion ordering the preventive measure is incorrect or that the legal interruption of that measure is not suspensive of enforcement. After solving the appeal, the case file is returned to the criminal investigation body within 24 hours."  


3. Appeal against judgments ordering preventive measures in preliminary chamber proceedings

Against the findings of the preliminary chamber judge, the defendant and the public prosecutor may lodge an objection ordering preventive measures against them within 48 hours of issuance or, as the case may be, notification.

Within 48 hours of registration, the objection shall be forwarded to the preliminary chamber judge who issued the contested decision, together with the case file, to the preliminary chamber judge of the hierarchically superior court.
3.1. Appeal by which the preliminary chamber judge orders preventive measures

According to the law, appeals against judgments of the preliminary chamber judge of the High Court of Cassation and Justice in preliminary chamber proceedings on preventive measures must be heard by another panel of the same court.

An appeal against a decision ordering to take or continue a precautionary measure, or to order its legal termination, is not enforceable. Within five days of registration, the defendant's objection must be resolved.

The public prosecutor must appeal against a decision ordering the revocation or commutation of a precautionary measure with another precautionary measure before the end of the period of the precautionary measure previously established.

The defendant is given a notice to resolve the appeal.

Unless the defendant is unjustifiably absent, has disappeared, absconds or cannot be present before the judge for reasons of health, force majeure or necessity, the appeal shall be heard in his presence.

In all cases, a lawyer must be chosen or appointed ex officio to provide legal support to the defendant. "The presence of the prosecutor is required.

If the legal requirements are met, one of the preventive measures listed in Article 202 para. 4 letters b), d) or increase the amount of the security when the appeal is resolved.

The public prosecutor and the defendant have 48 hours from the delivery or, where appropriate, notification to appeal against the decisions of the preliminary chamber judge on preventive measures.

Within 48 hours of being recorded, the objection shall be communicated to the judge of the preliminary chamber who delivered the decision appealed against, together with the case file, to the judge of the preliminary chamber of the hierarchically superior court.

A two-judge panel of the High Court of Cassation and Justice rules on the appeal against the conclusion by which the preliminary chamber judge of the High Court of Cassation and Justice rules on preventive measures.

The defendant's appeal must be lodged within 5 days of registration and the prosecutor's appeal must be resolved before the expiry of the previous preventive measures.

Unless the defendant is absent unjustifiably, has disappeared, is absconding or cannot be brought due to his state of health, due to force majeure, the appeal shall be heard in council chamber.

In all circumstances, the legal assistance of the defendant and the participation of the prosecutor in the resolution of the appeal are required.

The appeal shall be resolved by a final decision and one of the following solutions may be declared:

- Dismiss the appeal as impermissible, maintaining the contested conclusion, where an appeal has been lodged against another appeal resolving the contested conclusion.
- Dismiss the appeal as out of time, maintaining the contested conclusion, where it was filed beyond the 48-hour period.
- The rejection of the appeal as unfounded, while maintaining the contested conclusion, is lawful and well founded.
- Admission of appeal.
If the legal requirements are met, preventive measures such as judicial control, judicial control on bail, house arrest or an increase in the amount of bail may be ordered.  \(^{11}\)

The preliminary chamber judge responsible for hearing the appeal and deciding the case cannot make matters difficult for the person who filed it.

The council chamber is the place where the decision on the appeal is made.

3.2. Appeal against preventive measures, ground for referral to the Constitutional Court of Romania

The Code of Criminal Procedure has undergone a series of revisions and additions following the admission of unconstitutional exceptions or legislative interventions. Art. 348 para. 2 CPC was one of the articles that went through this process.

In its original form, it specified that when a defendant is subjected to a preventive measure, the preliminary chamber judge must verify the legality and constitutionality of the measure. In such circumstances, the judge of the preliminary chamber will rule on the taking, maintenance, replacement, revocation or termination of preventive measures, either upon request or of his own motion.

This item has been changed by wearing a new garment according to statute 75/2016. It states that, in cases where a preventive measure has been ordered against a defendant, the judge of the preliminary chamber of the court that issued the indictment or, as the case may be, the judge of the preliminary chamber of the hierarchically superior court, or the competent panel of the High Court of Cassation; The justice responsible for deciding on the appeal verifies the legality and merits of the preventive measure.

The provisions of Art. 348 para. 2 The CPP are considered unconstitutional by the author of the exception of unconstitutionality because they do not allow any appeal against the preliminary chamber judge of the hierarchically superior court to rule on the preventive measures specified in the indictment, which is final.

Because of the wording of this text, a distinction is drawn between defendants whose challenges are heard by the courts of first instance and those whose challenges are heard directly by the courts concerned in the appeal. Both the defendant and the prosecutor are prohibited from lodging an objection at this stage of the proceedings, as provided for in Art. 205 para. 1 CPC Against judgments by which the preliminary chamber judge imposes preventive measures, within 48 hours of delivery or service, the defendant and the prosecutor may appeal, according to this language of law.

Within 48 hours of registration, the objection shall be filed with the preliminary chamber judge who delivered the contested decision, together with the judge in the preliminary chamber file of the hierarchically superior court.

Equal rights, open access to justice, individual freedom, rights of defence and application of remedies are violated by this paragraph.

The CCR issued Decision 437/2017 on 26 September 2017, which was published in Official Gazette 763. 348 para. Prior to the publication of Law 75/2016, all procedural incidents with preventive measures occurring between the date of conclusion of the preliminary chamber judge and the date of hearing of that appeal by the preliminary chamber judge of the hierarchically superior court were resolved by the preliminary court.

\(^{11}\) Marian Alexandru, Preventive measures provided for in the new Code of Criminal Procedure, Sitech Publishing House, Craiova, 2017
After the publication of Law 75/2016, the preliminary chamber judge of the hierarchically superior court or the competent panel of the High Court of Cassation and Justice, if the court seized of the indictment is the High Court of Cassation and Justice, has the power to rule on preventive measures.

If the judge of the preliminary chamber of the court holding the indictment orders the taking, maintenance or replacement of preventive measures upon request or ex officio, and the judgment is appealed against and the preventive measures ordered or extended expire before the judge resolve your appeal. of the preliminary chamber of the hierarchically superior court, the judge of the preliminary chamber of the hierarchically superior court is competent to rule on preventive measures.

Except in cases of absolute nullity\(^\text{12}\), this procedure constitutes an exception to the rule that no claims or pleas may be raised or raised of their own motion in the outcome of the appeal other than those raised or raised of their own motion before the judge of the preliminary chamber of their own motion. Proceedings before the court seised of the indictment.

The legislature declared that there was no appeal against the outcome of the appeal, so the preliminary chamber judge of the higher court would rule on preventive measures at first and last instance. As a result, in the case before the CCR, the appeal against the decision of the preliminary chamber judge of the higher court ordering preventive measures cannot be pursued. Consequently, the defendant and the prosecutor cannot appeal against the decision of a preliminary chamber judge of a court hierarchically superior to that before which the indictment is brought.

3.3. Subject matter of preliminary ruling chamber proceedings

"The Pre-Trial Chamber is a new, innovative institution aiming to create a modern legislative framework that eliminates the excessive length of judicial proceedings, ensures the legality of the trial and ensures the legality of the taking of evidence, addressing some of the shortcomings that led to Romania's conviction by the European Court of Human Rights for violating the excessive duration of criminal proceedings.

According to the initiator, this institution of criminal procedural law has a direct, positive effect on the resolution of a criminal case by filling a gap in the current criminal procedural provisions in which the legality of the indictment and of the evidence administered within the criminal supervision courts are examined.

In this situation, the preliminary chamber procedure includes provisions that exclude the possibility of repatriating the case to the prosecutor’s office later in the trial phase, since the merits of the evidence and of the prosecution are resolved at this stage.

The preliminary chamber procedure aims to verify the competence and legality of the application to the court, as well as the merits of the administration of evidence and execution of the act by the criminal investigation bodies.”\(^\text{13}\)

The subject matter of the preliminary chamber procedure is to verify, after the indictment, the jurisdiction and lawfulness of the application to the court, as well as to verify the lawfulness of the taking of evidence and the performance of acts by the prosecution authorities.

The duration of proceedings in the preliminary chamber is no more than 60 days from the date of registration of the case with the court.


\(^{13}\) Ivan Anane, *Management of criminal prosecution bodies*, Pro Universitaria Publishing House, Bucharest, 2014
Once the indictment has been brought before the court, the case is randomly assigned to the preliminary chamber judge. The certified copy of the indictment and, where applicable, its certified translation shall be served on the defendant at the place of detention or, where appropriate, at the address where he lives or at the address at which he requested service of procedural documents, while being informed of the subject matter of the proceedings in the preliminary chamber, of the right to hire counsel and within the period within which, from the date of service, may make written requests and exceptions to the lawfulness of the taking of evidence and the performance of acts by the prosecution. The time limit is set by the preliminary chamber judge, depending on the complexity and particularities of the case, but cannot be less than 20 days. In cases concerning compulsory legal aid for suspects or defendants, the preliminary chamber judge shall arrange for the appointment of legal defence counsel and determine, depending on the complexity and particularities of the case, the period within which he/she may submit written requests and exceptions to the lawfulness of the taking of evidence and the performance of acts by the prosecution, which may not be less than 20 days. Upon expiry of the above-mentioned deadlines, the preliminary chamber judge communicates the requests and exceptions formulated by the defendant or the objections raised ex officio to the Public Prosecutor's Office, which may reply in writing within 10 days of service.

If requests and exceptions have been made or if he has raised exceptions of his own motion, the judge of the preliminary chamber decides on them, by reasoned conclusion, in the council chamber, without the participation of the prosecutor and the defendant, at the expiry of the period of 10 days from service. If the judge of the preliminary chamber finds irregularities in the document instituting the proceedings, if he sanctions the acts of prosecution carried out in breach of the law or if he excludes one or more pieces of evidence administered, the conclusion is immediately communicated to the public prosecutor's office which issued the indictment. Within 5 days of service, the prosecutor remedies the irregularities of the document instituting the proceedings and informs the preliminary chamber judge whether he maintains the order to bring the case to trial or to return the case.

The judge of the preliminary chamber decides by reasoned conclusion in council chamber without the participation of the public prosecutor and the defendant. The conclusion shall be communicated immediately to the public prosecutor and to the defendant. If no requests and exceptions have been made or no exceptions have been raised ex officio, upon expiry of periods which may not be less than 20 days, the preliminary chamber judge shall ascertain the lawfulness of bringing the case to court, taking evidence and carrying out criminal prosecution acts and ordering the commencement of trial.

The judge of the preliminary chamber returns the case to the public prosecutor's office if:

- the indictment is irregularly drawn up and the irregularity has not been remedied by the prosecutor within the period which cannot be less than 20 days, if the irregularity entails the impossibility of establishing the object or limits of the judgment;
- it excluded all evidence adduced during the prosecution;
- the prosecutor requests the restitution of the case, according to the law, or does not respond within the term provided by the same provisions.

In all other cases where he found irregularities in the notification document, excluded one or more administrative evidence, or sanctioned according to law the criminal prosecution acts carried out in violation of the law, the preliminary chamber judge orders the commencement of the trial. Excluded evidence cannot be taken into account in the trial on the
merits of the case. If the preliminary chamber judge considers that the court seised does not have jurisdiction, he proceeds in accordance with the rules on disclaimer and conflict of jurisdiction. The judge of the preliminary chamber who ordered the commencement of proceedings shall act as judge in the case.

Within 3 days from the notification of the reasoned conclusion, the prosecutor and the defendant may appeal on how to resolve requests and exceptions, as well as against legal solutions. The appeal shall be heard by the preliminary chamber judge of the court hierarchically superior to that seised. When the High Court of Cassation and Justice is seised, the appeal shall be heard by the competent panel, according to the law.

The judge of the preliminary chamber shall rule, on application or of his own motion, on the taking, maintenance, replacement, revocation or termination of preventive measures. In cases where a preventive measure has been ordered against the defendants, the preliminary chamber judge checks the legality and merits of the preventive measure, proceeding in accordance with the legal provisions.

3.4. Obligations of the preliminary chamber judge

"Based on the trials and materials in the prosecution file, as well as any new documents sent to the parties and the victim, if present, and to the prosecutor, the judge decides on the requests and exceptions raised.

Even if the preliminary chamber judge does not check the merits of the evidence or trial, his role is just as important as the role of the court, as his decisions on the legality of the criminal prosecution can have a significant reflection on the criminal settlement.

Once the indictment has been brought before the court, the case is randomly assigned to the preliminary chamber judge.

The preliminary chamber judge informs the defendant of this, as well as the right to hire counsel. And if legal aid is compulsory, then the preliminary chamber judge arranges for the appointment of defence counsel ex officio.

If requests and exceptions have been made by the prosecutor or defendant, or raised ex officio exceptions, the preliminary chamber judge decides by reasoned contract, and if he finds irregularities, the conclusion is immediately communicated to the prosecutor's office that issued the indictment.

The prosecutor has 5 days to remedy these irregularities.

The preliminary chamber judge ascertains the lawfulness of the referral to the court, the administration of evidence and the conduct of criminal prosecution acts and orders the commencement of the trial.

The preliminary chamber judge returns the matter to the public prosecutor's office in the following cases:

1. The indictment is irregularly drawn up.
2. Excluded all evidence adduced in the course of criminal investigation.
3. The prosecutor requests that the case be returned.

The judge of the preliminary chamber decides on application or of his own motion whether preventive measures should be taken, maintained, replaced, revoked or terminated de jure."

The judge of the preliminary chamber, within the court, according to the jurisdiction:

• Checks the legality of the prosecution ordered by the prosecutor;
• Checks the legality of the administration of evidence and the performance of procedural acts by police officers or prosecutors;
• Resolves complaints against solutions of non-prosecution or non-prosecution;
• Solves other situations expressly provided by law.

4. Appeal against judgments ordering preventive measures in the course of proceedings

The defendant and the public prosecutor have 48 hours from the date of sentencing or, in some cases, from the date of service, to appeal against decisions of first instance imposing the preventive measure.

The objection must be filed with the court that issued the contested decision within 48 hours of registration and must be forwarded to the hierarchically superior court with the case file. Orders of the High Court of Cassation and Justice ordering preventive measures at first instance may be appealed to the competent panel of the High Court of Cassation and Justice.

4.1. Appeal by which the court orders preventive measures

"The appeal is resolved in a public hearing at which the prosecutor is present and the defendant is summoned. An objection lodged in opposition to a decision ordering or maintaining preventive action or terminating it as a matter of law shall not be subject to enforcement. The defendant's objection shall be resolved within five days of registration. An appeal by the public prosecutor against a decision ordering the revocation or replacement of a precautionary measure by another precautionary measure must be lodged before expiry of the deadline of the precautionary measure previously established. If the legal requirements are met, the court may order the implementation of one of the preventive measures listed in Art. 202 para. (4) subparagraphs (b) to (d) or an increase in the amount of the security. Art. 206, para. 1 and 2, were reproduced with subsequent amendments by Emergency Ordinance nr. 3 of 5 February 2014, Art. III, point 3.\textsuperscript{15}"

The public prosecutor and the defendant have 48 hours from the delivery or, where appropriate, notification to appeal against decisions by which the court decides on preventive measures at first instance.

Within 48 hours of registration, the objection is filed with the court that issued the contested decision and forwarded to the hierarchically superior court, together with the case file. The competent panel of 5 judges of the High Court of Cassation and Justice hears the appeal against the decision by which the High Court of Cassation and Justice orders preventive measures at first instance.

The appeal filed by the defendant must be resolved within 5 days of registration, and the appeal issued by the prosecutor against the decision ordering the revocation or replacement of a preventive measure with another preventive measure must be resolved before the expiry of the previous preventive measure.

The appeal is heard before a public hearing, with the defendant summoned and the prosecutor present.

An appeal lodged against a decision ordering the taking or maintenance of a preventive measure which has been found to have been terminated de jure shall not be suspended until the appeal has been resolved.

\textsuperscript{15} Dan Lupașcu, art. 3-7, \textit{The New Code of Criminal Procedure}, Universul Juridic, 2022
The appeal shall be decided by a decision which cannot be appealed against and one of the following answers may be given:

- Where an appeal is lodged against another appeal which resolves the decision appealed against, the appeal shall be rejected as inadmissible and the decision appealed against shall be upheld.

- Dismissing the appeal as out of time, but maintaining the contested conclusion reached after the expiry of the 48-hour period.

- The appeal shall be rejected as unfounded and the judgment appealed against shall be upheld if the contested decision is lawful and well founded.

- Where it is found that the summons provisions have not been complied with, the judge or panel which issued the case may uphold the appeal, set aside the verdict appealed against, decide the case or order a retrial of the judge or panel which issued it.

The court responsible for hearing the appeal and deciding the matter cannot make matters worse for the person who filed it.

The outcome of an appeal against the conclusion of a precautionary measure may, in all circumstances, provide for a less serious measure than that sought or required by the finding, but may affect the liabilities contained in the contested measure.16

4.2. Composition of the formation of the court

The number of judges who participate in the trial of a criminal case at a given procedural level is referred to as a full court.

"The judicial organization is regulated by Law nr. Regulation (EC) No 304/2004, specifying the composition of the formation."17

The text of the law also incorporates the concept of continuity of the bench, any change in the composition of the panel after the start of discussions requiring a resumption of debates from the beginning.

As a result, each member of the panel is obliged to participate in the proceedings, the legislator considering that direct access to the conclusions of all participants in the criminal proceedings is in the interest of a fair resolution of the case.

The composition of the court is defined as the number of judges appointed by law (quantitative determination of court composition) who have the functional capacity to exercise criminal jurisdiction in the situations and circumstances provided for by law (qualitative determination of court composition).

The word 'composition of the court' should not be confused with 'constitution of the court', which refers to the bench as well as the prosecutor and registrar.

"The emphasis is justified by the fact that, in the context of a deficient regulation of Law no. 304/2004 on judicial organisation, a normative act whereby the semantic difference between the two terms (constitution/composition) is not reflected in their content., there is a reasonable possibility of confusion.18"

The court consists of all judges, according to the statute. The set must remain constant during operation. If this is not possible, the panel will be amended until the debate begins.

Any change in the composition of the committee after the start of the discussion will require the debate to be resumed.

16 Gheorghe Buzescu, Police law - university course, Sitech Publishing House, Craiova, 2019
17 Law no. 304/2004, art. 2 on the composition of the panel of judges
18 Law no. 304/2004, art. 3 on judicial organization
The court solves the case submitted to trial with the guarantee of respect for the rights of the procedural subjects and ensuring the administration of evidence for the complete clarification of the circumstances of the case in order to find out the truth in full compliance with the law.\(^{19}\)

The trial is held at the seat of the court. The trial of the case is made before the court constituted according to the law and is held in session, orally, directly and contradictory.

The court session is public, minors under 18 years of age cannot attend the court hearing. During the trial, the court may prohibit the ordering and dissemination by written or audio-visual means of texts, drawings, photographs or images capable of revealing the identity\(^{20}\) of the injured party, the civil party, the civilly liable party or witnesses.

The trial may take place only if the injured party and the parties are duly summoned and the procedure is carried out.

The participation of the prosecutor in the trial of the case is mandatory. The court sits in a panel whose composition is as provided by law. The bench must remain the same throughout the hearing of the case.

If the defendants are under preventive arrest or under house arrest, the trial is made urgently and in particular, the trial term being usually 7 days.

The presiding judge chairs the hearing. The presiding judge announces according to the order on the list of hearings the case whose trial is in a row, at the same time the president watches over the maintenance and solemnity of the hearing.

The presiding judge has the duty to take all necessary measures in advance so that the fixed trial term and the trial of the case are not delayed.

The court decides upon request or ex officio on the taking, replacement, revocation or legal termination of preventive measures.

The trial takes place in the presence of the defendant, the civil party and the civilly liable party may be represented by a lawyer.

The injured person may be represented by a lawyer, the conduct of the court hearing is recorded by audio and video means.

During the hearing, the Registrar takes notes on the progress of the criminal proceedings.

### 4.3. Appeal against judgments ordering preventive measures during trial provided for in the old Criminal Code

Articles 141 and 160 of the Old Code of Criminal Procedure provided for an appeal against the court's decision on preventive measures during trial, as well as an appeal against the decision of the provisional release court.

The applicable legislation clarifies by art. the same court, the judgment being given in accordance with the rules of the old law. The court may order any of the preventive measures provided for by the new law if the appeal is upheld and the contested conclusion is annulled and the judgment is given in accordance with this law.

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\(^{19}\) Gheorghe Buzescu, *Internal and international police cooperation*, Sitech Publishing House, Craiova, 2020

References