

REALITIES AND PERSPECTIVES OF INTRODUCING THE INSTITUTION OF PRELIMINARY CHAMBER IN THE ROMANIAN CRIMINAL TRIAL

Daniela Cristina VALEA*

ABSTRACT: *The aim of the Romanian legislator to regulate a new preliminary phase of the criminal trial respectively the procedure of the preliminary chamber, was justified primarily by the infallible argument of the obligation to meet the predictability exigencies of the legal proceedings imposed by the European Convention on Human Rights, and secondly by the argument for the expediency of the criminal trial.*

The drafting and entry into force of a new Criminal Procedure Code was the perfect opportunity. But, like any novelty, the institution of preliminary chamber was criticized, the criticism having as a support the legislative proposal and then the final regulatory text, and also criticism made after its implementation, some of the weaknesses and shortcomings being revealed only after this point.

This article covers both an overview of the regulatory procedure (the legal nature, the legislative headquarters, the object, the procedure and the resolutions, the appeal) but also a series of considerations following the analysis of certain theoretical and practical aspects.

KEYWORDS: *preliminary chamber; criminal trial; the contradiction principle; unconstitutionality; legality.*

JEL CODE: *K 14; K 42*

1. GENERAL CONSIDERATIONS

By the current Criminal Procedure Code¹ (CPC), the Romanian legislature imposed a new institution of the criminal Romanian trial: the preliminary chamber.

The main regulations are included in Section II of the Special Part within the Criminal Procedure Code (Articles 342-348 CPC). Other legal provisions from the CPC must be added to these, regulations such as those governing the separation of judicial functions (Article 3 CPC); the jurisdiction of the preliminary chamber judge (Article 54 CPC); aspects on the preventive measures during the preliminary chamber procedure (Articles 203, 205, 207, 396 paragraph 9 CPC etc.), etc.; but also other legal texts, such as those

* Associate professor, PhD., „Petru Maior” University of Tîrgu-Mureş; lawyer, Mureş Bar Association; ROMÂNIA.

¹ Romanian Criminal Procedure Code was adopted by Law no. 135/2010, published in Official Gazette no. 486 from July 15, 2010 and enter into force February, 1st, 2014.

regarding the transposition of the trials, in the preliminary chamber, which, at the entry into force of the current CPC, were in the trial process at first instance without being initiated the judicial inquiry (Article 6 paragraph 2 Law no. 255/2013).

Through a specific, distinctive regulation, the current CPC introduces, what the doctrine calls it a new phase² (Iordache M., Bucharest, 2014) (distinct³) (Iordache M., Bucharest, 2014; Laviniu Florin Ușvat L.F., 3/2014; Udroui M., Bucharest, 2014) of the criminal trial: *the preliminary chamber procedure*. The main arguments relate to: the regulation in a distinct title of CPC, separate from the one regulating the prosecution stage and the trial stage; the existence of a distinct judicial function for the review of the legality of arraignment or no indictment and the principle of separation of the judicial functions; the settled object and purpose (either to order the arraignment, either to return the file to the Prosecution); the jurisdiction of the preliminary chamber judge wider than that prescribed expressly by the provisions of Articles 342-348 CPC, which include the settlements of the complaints against the resolution of dropping the criminal charges or no indictment (Articles 340-341 CPC). Although it seems a uniform point of view regarding this issue has already outlined, for the sake of this topic, we may consider a series of arguments that contradict the idea of the status of distinct phase in what concerns the preliminary chamber (this being only a preliminary stage, of the commencement of the trial stage): the incompatibility between the preliminary chamber judge and the judge of the first instance was eliminated (this aspect was recently confirmed even by the Romanian Constitutional Court, according to that, its constitutional the provision of the art. 3 paragraf 3 final theses CPC regarding the compatibility between the function of verifying the legality of the prosecuting and the function of judgment⁴). Analyzing the legal provisions mentioned above, it can be said that it is actually transposed in the CPC (possibly a distinctive procedural stage, also a pre-trial stage), with some corrections and changes, the review procedure of the court notification under Article 300 of the Old Criminal Procedure Code (OCPC)⁵.

² Procedural step or phase, but certainly preliminary to the judgment phase – see Magdalena Iordache, *Camera preliminară în noul Cod de procedură penală*, Universul Juridic Publishing House, Bucharest, 2014, p. 14.

³ Magdalena Iordache, *Camera preliminară în noul Cod de procedură penală*, pp. 91-94; Laviniu Florin Ușvat, *Este camera preliminară a fază distinctă a procesului penal?*, in the Review „Dreptul”, no. 3/2014, pp. 103-104; Mihail Udroui, *Fișe de procedură penală. Partea generală. Partea specială*, Universul Juridic Publishing House, Bucharest, 2014, p. 383.

⁴ Decision of the Romanian Constitutional Court no. 552 of 16.07. 2015, unpublished until September 21, 2015 (https://www.ccr.ro/files/products/Decizia_nr.552_din_16_iulie_2015_.pdf).

⁵ According to Article 300 OCPC (publish in Official Gazette no. 145 from November 12, 1968), the court was required to verify *ex officio*, at the first hearing, the *regularity* of the act of apprehension. In case it was found that the apprehension was not made according to the law and the irregularity could not be rectified immediately (for example, the correction of a clerical error) and by granting a term for this purpose, the file was returned to the body that drew up the act of apprehension in order to *reframe it*. The decision by which the Court ruled the return of the file for the act of apprehension to be rebuilt could be challenged by appeal three days of delivery for those present or of communication for those missing (Decision no. XXVIII of 16 April 2007 of the High Court of Cassation and Justice-United Sections by which the referral in the interests of law was admitted, published in Off. G. no 764 of October 12, 2007). The review of the act of apprehension refers to the fulfillment of the *conditions of form and substance* provided by Article 262 (compliance with the legal conditions guaranteeing the truth, the prosecution is complete, the resolution regarding the resolution of the prosecutor on the criminal case: the arraignment and initiation of criminal proceedings if applicable) and 263 OCPC (the contents of the indictment (the fact and the person for which the criminal proceedings started, the mentions provided in Article 203 OCPC regarding the order of the criminal investigation body under which it was ruled on certain facts or

The introduction of this new phase was justified with the need to give efficiency to the expediency principle of the criminal cases and to eliminate the possibility of subsequent restitution, in the trial stage, of the file to the prosecution for a new criminal investigation as long as the legality of the rules of evidence and the arraignment are reviewed in this distinct phase⁶ (Voicu C., Uzlaşu A. S., Tudor G., Văduva V., 2014). Also, the preliminary chamber procedure is designed to meet the predictability exigencies of the judicial proceedings imposed by the European Convention⁷ (Iordache M., Bucharest, 2014).

2. THE OBJECT AND THE TIME LIMITS OF THE PRELIMINARY CHAMBER

According to Article 342 NCPC, the *aim* of the procedure in the preliminary chamber is to review, after the arraignment, the jurisdiction and legality of the court notified but also to review the legality of evidence taken and of the acts carried out by the prosecution.

The procedure in the preliminary chamber is conducted at the court that would have the material and territorial jurisdiction to judge the case on the merits.

Developing specific activities to preliminary chamber fall within the *functional jurisdiction* of the preliminary chamber judge, as established by Article 54 CPC and it involves:

- a) to review the legality of the arraignment ordered by the prosecutor;
- b) to review the legality of the evidence taken and the conduct of procedural acts effected by the prosecution;
- c) to resolve the complaints against the resolutions of arraignment or of no indictment;
- d) to resolve other cases provided by law.

Thus, the CPC establishes a formal *control of the legality* regarding the acts of the prosecutor and of criminal prosecution, without granting the judge the right to intervene in the conduct of the investigation or to give orders to the prosecutor to carry out acts of criminal investigation. It is a posterior legality review conducted after the arraignment

procedure measures (time and place of completion; the name, surname and the position of the one who fills it in; the case to which it refers; the subject of the act or of the procedural measure; its legal basis and the signature of the person drafting it; the special mentions provided by the law for certain facts or measures); data regarding the defendant; the deed for which he was found guilty; the legal classification, the evidence on which the prosecution relies; the preventive measure taken and its duration; the order for arraignment, name and surname of the persons that must be summoned by indication their quality in the process and the place where to be summoned; in case the investigation was carried out by the prosecutor, the indictment must comprise the additional data provided by Article 260 OCPC regarding the data of the report drawn by the criminal investigation body (the place where the means of proof are, precautionary measures regarding the civil remedies or the execution of the fine penalty taken in the course of the criminal investigation, legal costs))) and also compliance with the provisions of Article 264 para. 3 OCPC (regarding the verification of legality and validity of the indictment by the superior prosecutor and the existence of his confirmation). If the provisions of Articles 262, 263 and 264 para. 3 OCPC were respected, the court could not have ruled the returning of the act of apprehension with the purpose to reface it with the reasoning that the legal provisions regulating the prosecution were breached, as the review of the ways the legal provisions regarding the prosecution were respected was a distinct activity, regulated by Article 300 OCPC and 332 OCPC. These were regulating the return of the file to the prosecutor in order to redo the prosecution, in such a way that, at this point, the Court could not rule neither on the legality of the evidence (this being possible only after effecting the forensic investigation) (Decision no. 377/2010 of the High Court of Cassation and Justice).

⁶ Corina Voicu, Andreea Simona Uzlaşu, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, Hamangiu, Publishing House, Bucharest, 2014, p. 395.

⁷ Magdalena Iordache, *Camera preliminară în noul Cod de procedură penală*, p. 9.

ordered by the prosecutor⁸ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014), given before the commencement of the trial.

The object of the control is:

- *to verify the jurisdiction of the appraised court* - requires the review of the court jurisdiction (in all its aspects, material, territorial, the status, position of the defendant) to settle that criminal case.

- *to verify the legality of the court notified* - requires, in fact, verification of the indictment⁹ in terms of meeting the provided substance and form conditions (may be considered: whether the indictment was drawn up by the competent prosecutor, if it contains all the mentions specified in Article 328 CPC; if all deeds are disclosed for which the person was sent to trial and if the incriminating legal text is mentioned, if the fact or facts are described fully and effectively by detailing the *status quo* and the contribution individualization of each defendant, if applicable; if the prosecutor ordered on all the facts and all the defendants mentioned, if the indictment has been reviewed in terms of legality and rationality¹⁰ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014)). For example, it represents a defect in the current act of incrimination (the indictment) the fact that the period, in which the organized criminal group was formed or organized the alleged criminal activities, is not mentioned in this act.

- *to verify the legality of the evidence taken* - requires a formal review, a compliance with the conditions imposed by Title IV of the General Part CPC on “evidence, means of proof and evidentiary procedures”¹¹ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014). It is a control of the way the procedural rules respected or not the rules that govern the taking of evidence¹² (Narița I., 5/2014). For example, they can be considered evidence taken illegally (with the consequence of their exclusion): conducting hearings of witnesses if the defendant’s legal representative was not notified of this hearing. Instead, it is beyond the preliminary chamber the review of the evidence legality, of the sufficiency or insufficiency of the evidence taken at the prosecution stage; of the relevance or pertinence of any evidence¹³ etc.

- *to verify the acts effected by the criminal prosecution authorities* - involves a review of the way the criminal investigating authorities have complied or not with the legal procedures in conducting criminal prosecution, according to the jurisdiction established. For example, the acts carried out by the prosecution targeting two defendants with opposing interests but having the same pleader can be considered void; acts carried out by the criminal investigation authorities without the necessary delegation of effecting the respective acts in cases where the prosecution should be conducted by the prosecutor

⁸ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 396.

⁹ The indictment being the act of apprehension of the Court of justice (Article 329 alin. 1 CPC).

¹⁰ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 397.

¹¹ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 397.

¹² Ilie Narița, *Camera preliminară – sub spectrul neconstituționalității?*, in the Review *Dreptul*, no. 5/2014, pp. 178-179.

¹³ Criminal resolution no. 40/12.02.2015 of the Mureș Tribunal, not published.

(following that any evidence given under these acts to be excluded); failure to comply with legal provisions regarding the commencement of prosecution¹⁴.

According to Article CPC 343, the preliminary chamber procedure is at most 60 days from the date of registration of the case in the court.

The 60 days term is a recommendation term¹⁵ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

A series of preparatory steps are taken for the procedure unrolling in the preliminary chamber, according to Article 344 CPC.

Thus, according to paragraph 1 Article CPC 344, after notifying the court by indictment, the file is assigned randomly to the preliminary chamber judge with no hearing date set (unlike the procedure under the OCPC).

The certified copy of the indictment and, where appropriate, the certified translation thereof shall be communicated to the defendant, notifying him at the same time about the procedure in the preliminary chamber, the right to hire a legal representative and the time available, from the communication, *he may draft written requests and exceptions on the legality of evidence taken and of acts carried out by the prosecution*. The term is set by the preliminary chamber judge, depending on the complexity and particularities of the case, but it may not be shorter than 20 days¹⁶.

It seems deficient the formulation of Article 344 paragraph 2 and 3 CPC on the right of the defendant or his lawyer to “prepare requests and exceptions with regard to the legality of evidence and of the acts carried out by the prosecution” being limitative reported to Article 342CPC on the object of the preliminary procedure. Interpreting strictly the text quoted above, it could be argued that the defendant or his lawyer may submit a request and invoke exemptions only on two aspects forming the object of the procedure (the legality of the evidence taken and of the acts carried out by the prosecution) and not on the jurisdiction of the court and the legality of the appraisal (respectively of the indictment). Interpretation which, hopefully, will not be confirmed by the judicial case law, in this matter.

In cases provided by Article 90 (regarding the legal aid to the suspect or the defendant is compulsory), the judge of the preliminary chamber takes measures to appoint a public defender and sets, depending on the complexity and particularities of the case, the period within which he may submit written requests and exceptions on the legality of evidence and the acts carried out by the prosecution, a term which may be not less than 20 days.

Thus, guarantees are provided to ensure the right to defense¹⁷ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

After the expiration of the period so determined, the preliminary chamber judge communicates the requests and exceptions made by the defendant or the exceptions raised *ex officio* to the prosecutor, who can respond in writing within 10 days from communication.

¹⁴ Criminal resolution no. 40/12.02.2015 of the Mureș Tribunal, not published.

¹⁵ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 398.

¹⁶ As there are frequently many cases in which the term is of 21 or 22 days!

¹⁷ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 398.

3. THE PROCEDURE IN THE PRELIMINARY CHAMBER

Specifically, the procedure in the preliminary chamber is governed by Article 345 CPC.

If claims and exceptions were drafted or raised *ex officio*, the judge of the preliminary chamber rules on these claims and exceptions, by reasoned resolution in the Council room by summoning the prosecutor, the defendant and the other parties or main procedure subjects¹⁸, at the expiration of the deadline provided in Article 344 paragraph 4 CPC¹⁹.

Although the Romanian legislature's intention was to establish *a par excellence* written procedure²⁰ publicat în B.Of. nr. 145 din 12 noiembrie 1968, subsequently, by the intervention of the Constitutional Court of Romania, the debate in the preliminary chamber procedure subscribes to the requirements of the contradiction and principles of orality and to the effective compliance with the right of defense.

Procedurally, if only the defendant raised exceptions the preliminary chamber judge communicates a copy of the written notes submitted by the defendant (or his lawyer) to the prosecutor. In case the defendant raised exceptions *ex officio*, the preliminary chamber judge must draft a resolution which subsequently communicates to the prosecution office²¹ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

In case the requests or exceptions were not raised, neither by the defendant or *ex officio*, the judge will issue a reasoned resolution by which he would determine the legality of the court notification, of the evidence taken and of the criminal prosecution carried out and will order the arraignment. The conclusion is final and will be communicated to the prosecution²² (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

If the preliminary chamber judge finds irregularities of a complaint, in case he sanctions according to Articles 280-282 CPC criminal prosecution made in breach of the law (these being canceled) or if he excludes one or more evidence taken, the conclusion is immediately communicated to the prosecutor's office that issued the indictment. Within 5 days of communication, the prosecutor fixes irregularities of the act of apprehension and communicates to the preliminary chamber judge if he maintains the order of arraignment or requests the returning of the case to the prosecution.

If the preliminary chamber judge excluded all evidence gathered during the criminal prosecution, the only solution would be that through the same resolution to order the

¹⁸ Summoning the prosecutor and the defendant, and also the other participants has also been imposed by the Decision of the Romanian Constitutional Court no. 614 of 11.11.2014, published in the Official Gazette. no. 887 of 05.12.2014.

¹⁹ The initial text of the Article 344 para. 4 was declared unconstitutional by the Constitutional Court Decision no. 614 of 11.11.2014, as it would limit the role of the prosecutor within the criminal proceedings respectively in the proceedings for the preliminary chamber ("Regarding the role of the prosecutor in the preliminary chamber procedure, from the provision of the criticized law, the Court notes that it has only a limited participation in this procedural stage. Starting from the object of the preliminary chamber procedure, from the importance of evidence in the criminal trial but also from the role the prosecutor has in the criminal trial, the Court notes that the latter should also enjoy equal rights to an oral hearing").

²⁰ Also consider to be a sacrifice of the fundamental guarantees of the right to a fair trial in the interest of celerity - see Ramona Mihaela Coman, *Preliminary chamber – evolution or involution in the Romanian Criminal Procedure*, in the Review „Curentul Juridic”, no. 2/2014, p. 99.

²¹ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 399.

²² Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 399.

return of the case to the prosecution and, the prosecutor's opinions are no longer required²³ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

After the expiry of 5 days provided in Article 345 paragraph 3 CPC, due term necessary to remedy the irregularities and to allow the prosecutor to express his option on maintaining the arraignment, the preliminary chamber judge decides, through a new reasoned resolution in the Council room. The resolution is immediately communicated to the prosecutor and to the defendant.

Once the resolution through which the preliminary chamber judge pronounces his judgment is final, he will set a hearing date.

4. THE SOLUTIONS IN THE PROCEDURE OF PRELIMINARY CHAMBER

Given the current regulations, the preliminary chamber judge shall have the following solutions:

A. the preliminary chamber judge, by a *final reasoned resolution* determines the *legality* of the court notified, the evidence taken and the criminal prosecution carried out and *orders the arraignment*, unless a request and exceptions were submitted *ex officio*, at the expiration of the deadlines provided in Article 344 paragraph 2 or 3 CPC – 20 days.

B. the preliminary chamber judge by the reasoned resolution - which is not final - orders:

b1. the return of the case to the prosecution if:

a) the indictment is drafted irregularly and the irregularity has not been corrected by the prosecutor within the period provided in Article 345 paragraph 3 CPC, if the breach entails impossibility of establishing the object or the judgment limits;

b) the judge excluded all evidence gathered during criminal investigations;

c) the prosecutor seeks the restitution of the case under Article 345 paragraph 3 CPC, or does not respond within the term provided by the same provisions.

b2. the preliminary chamber judge, through the reasoned resolution - which is not final - orders the arraignment - in all other cases in which he discovered irregularities in the act of apprehension, excluded one or more samples taken or sanctioned according to Articles 280-282 CPC²⁴ the criminal prosecution made in breach of the law, if the prosecutor has resolved the deficiencies and maintained the disposal of arraignment. The legality of the act of appraisal cannot be challenged over aspects that are related to the prosecution stage²⁵ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

The excluded evidence cannot be considered on the merits of the case.

In case the exception related to the lack of jurisdiction of the court was invoked and if the preliminary chamber judge considers that this exception is grounded, he proceeds according to Article 50 and 51 CPC, which applies correspondingly, respectively orders the declining of the jurisdiction in favor of the of the competent court.

According to Article 346 paragraph 7 CPC, the preliminary chamber judge who ordered the arraignment shall conduct the proceedings in question, thus eliminating the

²³ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 400.

²⁴ Regulates the institution of invalidity.

²⁵ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 401.

incompatibility between the preliminary chamber judge and the judge at first instance in the same criminal case.

5. THE APPEAL AGAINST THE RESOLUTION RENDERED IN THE PRELIMINARY CHAMBER PROCEDURE

According to Article 347 paragraph 1 CPC, within 3 days from the communication of the resolution provided in Article 346 paragraph 1 CPC, the prosecutor and the defendant may appeal on the manner of handling the requests and exceptions and against the solutions provided in Article 346 paragraph 3 - 5 CPC.

Thus, the prosecutor and the defendant may *appeal* against the resolution of the preliminary chamber judge by which he orders²⁶ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014):

- the commencement of the trial, in case exceptions were admitted and therefore evidence were excluded or criminal prosecution canceled, but the prosecutor communicated that he maintains the arraignment
- the commencement of the trial, in case exceptions were submitted or requests were drafted but rejected;
- return of the case to the prosecution.

By appeal one may challenge also the resolution of finding irregularities in the act of apprehension/ of sanctioning the prosecution/of excluding the evidence.

The resolution of the preliminary chamber judge ordering the arraignment without being formulated requests or exceptions raised by the defendant or *ex officio* within the set period, is final.

The appeal shall be submitted to the preliminary chamber judge that delivered the solution that will be challenged and shall be reasoned by the deadline set for the settlement, according to Article 425¹ paragraph 3 CPC.

The appeal shall be judged by the preliminary chamber judge of the higher court to that notified. When the High Court of Cassation and Justice is notified, the appeal shall be judged by the competent panel, according to the law.

The appeal filed may be withdrawn until the conclusion of proceedings in appeal, according to Article 415 CPC, except for the minor who declared it personally or through the legal representative. The challenge drafted within the statutory period is suspensive of execution regarding the restitution of case to the prosecutor or, where applicable regarding the arraignment, according to Article 416 CPC²⁷ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014).

The provisions of articles 343-346 CPC (in compliance with the Constitutional Court's decisions in this matter) are applied properly also in the settlement procedure of the dispute.

As for the appeal, the solutions may be²⁸ (Voicu C., Uzlău A. S., Tudor G., Văduva V., 2014):

²⁶ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 401.

²⁷ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 402.

²⁸ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, Victor Văduva, *Noul Cod de procedură penală – Ghid de aplicare pentru practicieni*, p. 404.

- the dismissal of the appeal as tardily (filed beyond the settled time) inadmissible (drafted by an unjustified person) or unfounded (the issues raised by the opponent are unfounded);
- accepts the appeal and dissolves the challenged resolution and, where appropriate:
 - a. accepts the requests and exceptions and therefore excludes evidence or cancels proceedings;
 - b. rejects request and exceptions that had been accepted by the preliminary chamber judge of the first instance, with the consequence of the returning of the excluded evidence or documents previously canceled
 - c. determines irregularities of the act of apprehension and disposes their remedy by the prosecutor;
 - d. abolishes the provisions that, unlawfully, the preliminary chamber judge determined the irregularity of the act of apprehension and orders the arraignment;
 - e. excludes all evidence taken in the prosecution stage and orders the return of the file to the prosecution;
 - f. notifies the competent court (when the judge wrongly rejected an exception of non jurisdiction of the court notified or has not ruled on it yet);
 - g. orders the retrial of the case by the judge who ruled it when it was found that it did not comply with the provisions on communication.

6. PREVENTIVE MEASURES IN THE PRELIMINARY CHAMBER PROCEDURE

According to Article 348 paragraph 1 CPP, the preliminary chamber judge pronounces on request or *ex officio*, on the use, maintenance, replacement, revocation or termination of the preventive measures.

During the course of the preliminary chamber procedure, the judge of the preliminary chamber is competent to order the preventive measures covered by Article 203 paragraph 4 CPC except for the use of the detention measure.

Speaking about preventive measures, the procedure will be conducted by summoning the defendant and the mandatory participation of the prosecutor.

In cases where the defendant was ordered a preventive measure during prosecution, the preliminary chamber judge reviews the legality and rationality of the preventive measures, proceeding according to Article 207 CPC.

Throughout the preliminary chamber procedure, the preliminary chamber judge periodically reviews the validity of the preventive arrest and of the house arrest ordered against the defendant but no later than 30 days.

Also, the preliminary chamber judge may determine on request, *ex officio* or upon notification of the prison administration, the termination of the preventive measures. The judge of the preliminary chamber rules on the revocation requests or replacement of preventive measures as well as on the reasoned written request of the defendant against whom the house arrest was ordered for not leaving the building, under Article 221 paragraph 6 CPC, or on the reasoned request of the prosecutor with the replacement of the house arrest measure with the preventive detention.

The resolutions ruled by the preliminary chamber judge on the preventive measures shall be communicated to the defendant and the prosecutor who were absent from the rule delivery and may be challenged by appeal under Article 205 CPC.

7. CONCLUSIONS AND PROPOSALS ACCORDING TO THE INTENDED LAW

The Romanian legislature's stated intention was that of establishing a new phase of the criminal trial, a preliminary stage of judgment which is intended to act as a filter of the criminal cases on which judgment may be commenced. The filtration criterion being essentially the formal legal elements which, once verified and confirmed no more burdens the activity of the judge of first instance being "definitely won". And obviously, there will not be reasons to delay the judgment by returning the file to the prosecutor.

The regulation of preliminary chamber, beyond the intention of the legislator contained from the beginning a series of "clumsinesses", some resolved through the intervention of the constitutional justice (punishing the non compliance with the contradiction and orality principle by excluding the prosecutor, the defendant and procedural subjects mainly from the course of the procedure) other being resolved either by practical solutions or by other legislative interventions.

As mentioned above, the wording of Article 344 paragraph 2 and 3 CPC seems defective in what concerns the requests and exceptions relating only to the lawfulness of evidence taking and of the prosecution carried out, thus proposing a rewording of this article in order to be put in line with the wording of Article 342 CPC.

Finally, and perhaps the most justified criticism concerns the compatibility between the judge of preliminary chamber and the judge of the first instance, which might affect the impartiality of the legal act (Article 124 paragraph 2 of the Romanian Constitution, republished) and the separation of judicial functions (Article 3 CPC).

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