

LAWFUL TERMINATION OF DISTRRAINT DUE TO EXCEEDED TERM AS STIPULATED BY ART. 250² OF THE CRIMINAL PROCEDURE CODE OF ROMANIA

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ABSTRACT: *The purpose of this paper is to present and analyze a few relevant aspects related to a fairly recent legislative amendment of the Criminal Procedure Code in Romania (28 February 2021), respectively the legal nature and the effects of non-compliance with the time frames established by the newly introduced Article 250² in the Criminal Procedure Code. According to Article 250² Criminal Procedure Code "Throughout the entire criminal trial, the prosecutor, the judge of the Preliminary Chamber or, as the case may be, the court periodically checks, but not later than 6 months during the criminal investigation, respectively one year throughout the trial, if the grounds which determined the taking or maintenance of the asset freezing exist, ordering, as the case may be, the maintenance, restriction or extension of the ordered measure, respectively the lifting of the ordered measure, the provisions of Article 250 and 250¹ applying accordingly".*

Taking into consideration the legal texts applicable in this matter, but also following the model of the procedural sanctions that can intervene in case of non-compliance with the time frames regarding the preventive measures, it is obvious that the competent legal bodies (prosecutor or court) have the obligation to carry out the periodic control on the preventive measures ordered in a criminal case, an obligation whose non-compliance calls forth the application of a/some sanctions. With regard to the type of sanction in question, given that the Romanian legislator omitted to expressly stipulate this issue, two points of view have already been outlined in the judicial practice and doctrine, based on the legal nature of the time limits established by Article 250² Criminal Procedure Code: these are imperative terms whose non-compliance attracts the only possible sanction, the termination de jure of the measure, or there are recommended time frames whose non-compliance could incur the sanction of relative nullity provided the proof of damage to a legitimate interest is proven.

KEYWORDS: *asset freezing; distraint; periodic control; termination de jure; imperative term; recommendation term; substantial term.*

JEL Code: *K40*

In the field of criminal procedure, especially in the context of criminal prosecution for crimes of an economic nature or involving legal entities as defendants, the issue of asset freezing acquires special importance in terms of the impact on the economic activity of the entity targeted by such measures. Moreover, it is important to establish clear rules

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regarding the application of these measures (jurisdiction, conditions to be met, purpose, duration, deadlines, remedies at law).

In the wider context imposed by Romania's commitment, as a member state, regarding the obligation to facilitate the implementation of the Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of a form of consolidated cooperation in what concerns the establishment of the European Public Prosecutor's Office (EPPO)¹, Article 250² was introduced in the Criminal Procedure Code of Romania² by Article 19 section 2 of Law no. 6/2021³.

Although the main argument mentioned in the statement of reasons⁴ of the alleged legal text referred to the need to strengthen and streamline the national system for the recovery of claims resulting from the commission of certain crimes (in particular, the possible disproportionality between the value of the assets targeted by the measures or the amount the expenses and the coverage of the damage and the finality, the quantum of the amounts recovered but also the expenses caused by storage and capitalization), the introduction of such a periodic verification of the grounds that determined the establishment of precautionary measures in a criminal trial is justified also by purely legal criteria (lack of a duration, similar to that regarding preventive measures that would ensure a reasonable duration in relation to the specifics and complexity of the criminal case, the need to maintain the proportionality test (Trandafir, 2022)⁵.

A series of procedural measures of real, temporary⁶ and precautionary nature (Neagu, 1988)⁷ are regulated by Article 249 to 254 of the Criminal Procedure Code, with the aim of "*avoiding the concealment, destruction, disposal or dissipation of the assets that may be subject to special confiscation or extended confiscation or which may serve to secure the penalty by fine enforcement or to pay court fees or to compensate damages caused by the committed offense*" (Article 249 para. 1 Criminal Procedure Code). This is what criminal procedural law and doctrine call "preventive measures." These are defined by the legal literature (Chiriac, 2004) (Cochințu, 2017)⁸ as "*procedural measures of a real nature*

¹ Published in the Official Journal of the EU (OJ L 283 31.10.2017).

² Adopted by Law no. 135/2010 (published in the Official Gazette of Romania no. 486 of 15 July 2010), amended by G.E.O. no. 3/2014 for taking some implementation measures necessary for the application of Law no. 135/2010 on the Criminal Procedure Code and for the implementation of other normative acts (published in Official Gazette no. 98 of 7 February 2014) and entered into force on 1 February 2014, with subsequent amendments and supplements.

³ Law no. 6 of 18 February 2021 regarding the establishment of measures for the implementation of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of a form of consolidated cooperation regarding the establishment of the European Public Prosecutor's Office (EPPO), published in the Official Gazette no. 167 of 18 February 2021.

⁴ <http://www.cdep.ro/proiecte/2020/600/70/1/em869.pdf> (accessed on 19 November 2022).

⁵ Andra-Roxana Trandafir, *Verificarea periodică a măsurilor asigurătorii în cursul procesului penal*, article on Juridice.ro (*Verificarea periodică a măsurilor asigurătorii în cursul procesului penal* - JURIDICE, accessed on 19 November 2022).

⁶ Decision of the Constitutional Court of Romania no. 629 of 8 October 2015, published in the Official Gazette of Romania no. 868 of 20 November 2015.

⁷ These measures cannot be remedial in nature. Their mere establishment does not automatically imply the possible reparation of the damage, therefore, to repair the damage it is necessary for the court to order by court order the reparation of the damage by the defendant and/or the civilly responsible party - Ion Neagu, *Drept procesual penal*, Academy S.S.R. Publishing House, Bucharest, 1988, p. 327.

⁸ However, the Romanian Constitutional Court also had a role in shaping the normative framework of the asset freezing - details about the role of the Constitutional Court, Lucian Chiriac, *Controlul constituționalității*

that can be taken during the criminal investigation by the prosecutor, the judge of the Preliminary Chamber or by the court and which consist in freezing by imposing a *distrain* on movable assets or immovable property belonging to the suspect or the defendant, the persons with civil liability or other persons, as the case may be, for the purpose of special confiscation or extended confiscation, to repair the damage caused by the crime, as well as to guarantee the execution of the fine or legal expenses" (Mateuț, 2019)⁹.

Thus, the protective measures consist, in essence, in the freezing of movable or immovable assets, by imposing a *distrain* (Boroi & Negruț, 2017)¹⁰ upon such (Article 249 paragraph 2 of the Criminal Procedure Code), a *seizure* or *mortgage notation*. The assets covered by the security measures may be movable or immovable assets that belong to the suspect, the defendant or the civilly responsible person or even to other persons in whose ownership or possession they are, as the case may be¹¹. Regarding the nature of these assets, after a period of uncertainty, the Romanian Supreme Court established that "when preventive measures are established in the criminal investigation, it is not necessary to indicate or prove or to individualize the assets on which the *distrain* is established"¹². We believe that such a point of view imposed by a decision of the supreme court is objectionable considering that it extends far too much the dimension of such a procedural measure. Even the point of view of the General Prosecutor's Office attached to the High Court of Cassation and Justice expressed in the procedure for the resolution of the RIL (*recourse in the interest of law*) in question refers to the necessity of the existence in the patrimony of the person concerned of movable and immovable assets that can be targeted by the asset freezing at the time the measure is ordered¹³.

Starting from the provisions of Article 249 para. 1 Criminal Procedure Code, through grammatical interpretation, we may assume that taking measures is not an obligation, being left up to the competent judicial body to assess the appropriateness of taking the measure, which is, in principle, optional¹⁴. In support of this opinion comes the fact that, when the legislator wanted to impose on the judicial bodies the obligation to take such a measure, he expressly stipulated this matter, as in paragraph 7 of Article 249 Criminal Procedure Code. Thus, by way of exception and, at the same time, as a form of protection, the

ordonanțelor Guvernului, Cluj Napoca, Accent Publishing House, 2004, p. 113; Ionița Cochințu, *Dreptul și obligația Curții Constituționale de a interpreta un text constituțional*, in Ionița Cochințu, Marian Enache (coord.), *In memoriam Ioan Vida*, Bucharest: Hamangiu Publishing House, 2017, p. 133.

⁹ Gheorghită Mateuț, *Procedură penală. Partea generală*, Bucharest: Universul Juridic Publishing House, 2019, p. 898.

¹⁰ *Distrain* regulated by the Criminal Procedure Code is similar to the *distrain* on property regulated by the Civil Procedure Code - Alexandru Boroi, Gina Negruț, *Drept procesual penal*, Bucharest: Hamangiu, 2017, p. 375. In the authors' opinion, this similarity also explains the inconsistency of the legislator regarding the use of the term "seizure" and other times "distrain" (for example, in Article 252² para. 2 Criminal Procedure Code, Article 253 para. 2 letter b) Criminal Procedure Code).

¹¹ Starting from the provisions of Article 249, especially para. 4 (which refers to other persons who are owners or possess the goods in question) and para. 5 (which expressly refers to the civilly responsible person) Criminal Procedure Code or Articles 250-251 Criminal Procedure Code (which refers to "any other interested person").

¹² RIL [*recourse in the interest of law*] – Decision of the High Court of Cassation and Justice no. 19 of 16 October 2017, published in Official Gazette of Romania no. 953 of 4 December 2017.

¹³ Address no. 1785/C/1983/III-5/2017 issued by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice in RIL - the High Court of Cassation and Justice Decision no. 19 of 16 October 2017, published in Official Gazette of Romania no. 953 of 4 December 2017.

¹⁴ Decision of the Constitutional Court of Romania no. 894 of 17 December 2015, published in the Official Gazette of Romania no. 168 of 4 March 2016.

Criminal Procedure Code provides that asset freezing is *mandatory* for the judicial bodies to order in case the injured person is a person lacking mental competence or with limited mental competence. Also, the establishment of asset freezing is mandatory in the case of serious crimes: corruption crimes (Article 20 of Law no. 78/2000 on the prevention, detection and sanctioning of corruption acts), money laundering and terrorist financing crimes (Articles 32 and 33 of Law no. 656/2002 on preventing and sanctioning of money laundering, as well as setting up measures for prevention and combating terrorism financing), tax evasion (Article 11 of Law no. 241/2005 on preventing and combating tax evasion).

Relevant to the present study is one of the most important features of precautionary measures, namely their *temporary nature*. Therefore, once these measures are ordered, they begin to produce legal effects from the moment of their establishment, usually until the completion of the criminal trial, through the pronouncement of a final judgment. According to the provisions of the Criminal Procedure Code, the court is obliged to issue a ruling on the asset freezing, either ordering confiscation or lifting the seizure (Article 397). The temporary nature derives from the preventive feature of these measures, they being instituted with the aim of preventing the concealment, destruction, disposal or dissipation of the assets that could be used to achieve the purpose of the measures (Volonciu, 2017)¹⁵. When the court of competent jurisdiction is notified by the prosecutor through an indictment, the notification document may also contain the proposal to take, maintain, revoke or replace asset freezing, according to Article 330 Criminal Procedure Code. During the criminal investigation, the prosecutor is competent to rule on the maintenance, revocation or replacement of the asset freezing.

At the time of this Criminal Procedure Code entered into force, there was no express regulation regarding the periodic verification of preventive measures, respectively a duration of their establishment, as in the case of (certain¹⁶) preventive measures. Later, the Article 250² Criminal Procedure Code was introduced by Article 19 section 2 of Law no. 6/2021, a normative act that entered into force on 28 February 2021.

Thus according to Article 250² Criminal Procedure Code "*Throughout the criminal investigation, the prosecutor, the Preliminary Chamber judge or, as the case may be, the court periodically checks, but not later than 6 months during the criminal investigation, respectively one year during the trial, if the grounds exist which determined the taking or maintenance of the asset freezing measure, ordering, as the case may be, the maintenance, restriction or extension of the ordered measure, respectively the lifting of the ordered measure, the provisions of Article 250 and 250¹ being applied accordingly*".

Although in the doctrine, the legislator's intervention in this regard was welcomed and appreciated, a series of shortcomings of the text were also noticed, a series of criticisms were raised or certain questions (Trandafir, 2022) (Chirvase & Vlaicu, 2022) (Rusu &

¹⁵ Nicolae Volonciu (scientific coordinator), *Codul de procedură penală comentat*, Bucharest: Hamangiu, 2017, p. 653.

¹⁶ It should be noted that not even with regard to all preventive measures, a determined duration was not stipulated from the beginning, this default being repaired after entry into force, as a rule, as a result of the intervention of the Constitutional Court of Romania – it is about the case of the duration of the judicial control measure and judicial control on bail (Article 215¹ Criminal Procedure Code was introduced by Article I section 7 of G.E.O. no. 82/2014, published in the Official Gazette of Romania no. 911 of 14 December 2014, approved by Law no. 75/2016, published in the Official Gazette of Romania no. 334 of 29 April 2016).

Dumitrache, 2022)¹⁷ were raised, mainly regarding: the nature of the 6-month, respectively 1-year term; calculation of the term within which the periodic control must be fulfilled; the sanction was not expressly established in case of control failure within the established time limit or late verification; the motivation/non-motivation of the act by which the verification is done; remedy at law, etc.

Regarding the term of 6 months, respectively 1 year established by the newly introduced Article 2502 of the Criminal Procedure Code, some observations must be made regarding the legal nature and the penalty for non-compliance.

Regarding the term imposed by Article 250² of the Criminal Procedure Code for the periodic control of whether the grounds that determined the taking or maintenance of the asset freezing exist, two different kinds of opinions (Nestor, 2022)¹⁸ have already been formulated: either it is about a term of recommendation (point of view already embraced by some of the courts, stating, mainly, the fact that the legal text does not expressly provide for a sanction in case of non-compliance; the legal termination of the asset freezing is not expressly stipulated as in the case of preventive measures and the regulations regarding these measures cannot be applied by analogy to asset freezing (Nestor, 2022)¹⁹), either it is about a substantial term or an imperative term (pleading, mainly, the fact that the legal text imposes a periodic verification obligation on the judicial bodies, and not just an option, the non-compliance of which leads to the legal termination of the measure (Nestor, 2022)²⁰).

¹⁷ Andra-Roxana Trandafir, *Verificarea periodică a măsurilor asigurătorii în cursul procesului penal*, article on Juridice.ro (<https://www.juridice.ro/729837/verificarea-periodica-a-masurilor-asiguratorii-in-cursul-procesului-penal.html>, 5 May 2021, accessed on 19 November 2022); Adrian Chirvase, Adina Vlaicu, *O nouă perspectivă asupra măsurilor asigurătorii în procesul penal. Consecințele încălcării dispozițiilor art. 250/2 Cod procedură penală*, article on Juridice.ro (<https://www.juridice.ro/769318/o-noua-perspectiva-asupra-masurilor-asiguratorii-in-procesul-penal-consecintele-incalcarii-dispozitiilor-art-250-2-cod-procedura-penala.html>, 07 February 2022, accessed on 19 November 2022); Adrian Rusu, Dan Dumitrache, *Încetarea de drept a măsurilor asigurătorii ca urmare a verificării tardive – Nulitatea ordonanței procurorului de menținere a măsurilor asigurătorii*, article on Juridice.ro (<https://www.juridice.ro/809527/inctetarea-de-drept-a-masurilor-asiguratorii-ca-urmare-a-verificarii-tardive-nulitatea-ordonantei-procurorului-de-mentinere-a-masurilor-asiguratorii.html>, 11 November 2022, accessed on 19 November 2022); Raul Alexan (Nestor, 2022)dru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asigurătorii în procesul penal*, article on Juridice.ro (<https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html>) (accessed on 20 November 2022).

¹⁸ Raul Alexandru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asigurătorii în procesul penal*, article on juridice.ro (<https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html>, accessed on 20 November 2022).

¹⁹ The penal judgement of 13 July 2022 pronounced by the judge of rights and freedoms of the Mureș Court (unpublished). Decision of the High Court of Cassation and Justice no. 524/25 May 2021 cited in Raul Alexandru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asigurătorii în procesul penal*, article on juridice.ro (<https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html>, accessed on 20 November 2022).

²⁰ Decision of Brașov Court of Appeal no. 39/23 April 2021 (unpublished) cited in Raul Alexandru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asigurătorii în procesul penal*, article on juridice.ro (<https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html>, accessed 20 November 2022).

According to Article 268 Criminal Procedure Code "(1) *When the law stipulates a certain time frame for the exercise of a due process right, failure to comply with that time frame shall entail loss of that right and nullification of the act that was performed beyond that time frame.* (2) *When a procedural step can only be taken for certain duration of time, expiry of that duration shall lawfully entail a cessation of that step's effect.* (3) *Stipulations concerning nullifications shall apply to cases of failure to comply with the other procedural time frames*".

In the field of criminal law and criminal procedural law in Romania, the general regulatory framework of terms is established by Articles 268-271 of the Criminal Procedure Code of Romania and refers to: legal nature, forms, calculation and their flow. In addition, there are other provisions of the Romanian Criminal Procedure Code on certain aspects and special rules regarding certain deadlines. But, in order to have an overview of the organization of time frames in the criminal process, especially since these aspects (duration and method of calculation) are of concern to the entire criminal process, the rules and guarantees provided by the Convention for the Protection of Rights and Fundamental Freedoms must also be taken into account (European Convention), as well as the ECHR and even the jurisprudence of the Romanian Constitutional Court.

The time frames were defined as being "*intervals of time within or after the expiration of which rights may be exercised and procedural and procedural acts and measures can be fulfilled*" (Theodoru, 2007) (Neagu & Damaschin, 2014) (Crișu, 2011) (Ștefan, 2014)²¹.

A more complex definition was offered by the Constitutional Court of Romania when it had the opportunity²²: "*the time frame, in the matter of criminal procedure ... is the time interval within which or until which certain activities or acts can or must be performed in the criminal investigation, it is also the date on which or the time interval within which or until which an act, an activity or a procedural measure or the exercise of a procedural right, a sanction or the measure of criminal law can be fulfilled, are not allowed to be fulfilled or must be fulfilled, as the case may be*".

A first classification of terms, according to the nature of the interests and rights in consideration of which they are established (Ștefan, 2014)²³, divides them into substantive terms and procedural terms.

Substantial terms (also called "substantive law" terms) are time intervals established by law for the taking or application of measures by judicial bodies regarding the deprivation or restriction of extra-procedural rights of individuals, in order to protect some extra-procedural rights or interests (Mateuț, 2019) (Neagu & Damaschin, 2014)²⁴. The

²¹ Grigore Theodoru, *Tratat de drept procesual penal*, Bucharest: Hamangiu Publishing House, 2007, p. 490; Ion Neagu, Mircea Damaschin, *Tratat de procedură penală. Partea generală*, Bucharest: Universul Juridic Publishing House, 2014, p. 665; Anastasiu Crișu, *Drept procesual penal*, Bucharest: Hamangiu Publishing House, 2011, p. 365. The doctrine also offered other definitions of the term in the criminal trial, almost all of them having as a reference point the "time interval". See also Cristian-Valentin Ștefan, *Cartea de termene în procedura penală*, Bucharest: C.H. Beck Publishing House, 2014, p. 7 - "*term in the criminal investigation means the time interval within which or after the expiration of which a trial or procedural act is carried out, as well as the time interval in which a procedural measure comes into existence*".

²² Decision of the Constitutional Court of Romania no. 336 of 30 April 2015, published in the Official Gazette of Romania no. 342 of 19 May 2015.

²³ Cristian-Valentin Ștefan, *Cartea de termene în procedura penală*, Bucharest: C.H. Beck Publishing House, 2014, p. 10.

²⁴ Gheorghiuță Mateuț, *op.cit.*, p. 971; Ion Neagu, Mircea Damaschin, *op.cit.*, 2014, p. 666.

institution of substantial terms aims at "protecting legitimate rights and freedoms in case of their restriction"²⁵ (for example (Udroiu, 2020)²⁶: time frames in which various preventive measures may be taken, time frames in the case of restrictive measures regarding the private life of individuals, prescription time frames for criminal liability, time frames regarding rehabilitation, time frames applicable in the field of probation, duration of sentences, etc.).

Procedural terms are time frames in which certain procedural rights must be exercised, ensuring the discipline and systematization of the criminal trial (Theodoru, 2007) (Mateuș, 2019)²⁷. The purpose of the procedural time frame is to ensure "*that all operations specific to each procedural phase are carried out at a reasonable pace, in order to achieve the purpose of the criminal trial, without preventing the discovery of the truth or harming the rights and legitimate interests of the parties in any way*"²⁸.

In their turn, the procedural terms are classified according to several criteria. The classification according to the criterion of their nature and the effects produced are relevant from the perspective of the theme of this paper. Thus, the following three categories of terms must be taken into account according to the criterion of the character and the effects produced:

a. imperative terms (peremptory) – are those time frames within which an act must be fulfilled or performed. Non-compliance with these time frames entails the application of procedural sanctions, as the case may be: either lapse of the exercise of a right (firstly) and (absolute) nullity (secondly, as a derivative procedural sanction (Ștefan, 2014)²⁹), or termination of a temporary procedural measure (for example: the time frame of submitting the proposal to extend pre-trial arrest shall be submitted along with the case file with the Judge for Rights and Liberties, at least 5 days before the pre-trial arrest term expires (Article 235 paragraph 1 Criminal Procedure Code); the time frame in which the prosecutor must forward the indictment and the case file to the Preliminary Chamber Judge after ordering the referral to court of a defendant against whom a preventive measure has been ordered (Article 207 paragraph 1 Criminal Procedure Code³⁰); the 48-hour time frame for contesting the judge's decision on preventive measures; the minimum time frame of 20 of days in which requests can be made and exceptions can be raised in the preliminary chamber procedure (Article 344 para. 1 Criminal Procedure Code); the 10-day appeal period (Article 410 para. 1 Criminal Procedure Code); the 3-day period in which the asset freezing or the way of carrying out the measure ordered by the prosecutor can be contested (Article 250 para. 1 Criminal Procedure Code).

b. prohibitory terms (dilatatory) – are the time frames that allow the fulfillment or performance of an act only after their expiration. Non-compliance with such a term, i.e.

²⁵ Decision of the Constitutional Court of Romania no. 336 of 30 April 2015, published in the Official Gazette of Romania no. 342 of 19 May 2015.

²⁶ Grigore Theodoru, *op.cit.*, 2007, p. 491; Ion Neagu, Mircea Damaschin, *op.cit.*, 2014, p. 666; Ion Neagu, *Drept procesual penal*, 1988, p. 351; Gheorghiuță Mateuș, *op.cit.*, 2019, p. 971; Mihail Udriou (coord.), *Codul de procedură penală. Comentariu pe articole*, 3rd edition, Bucharest: C.H. Beck Publishing House, 2020, p. 1624.

²⁷ Grigore Theodoru, *op.cit.*, 2007, p. 490; Gheorghiuță Mateuș, *op.cit.*, 2019, p. 972.

²⁸ Decision of the Constitutional Court of Romania no. 336 of 30 April 2015, published in the Official Gazette of Romania no. 342 of 19 May 2015.

²⁹ Cristian-Valentin Ștefan, *op.cit.*, 2014, p. 37.

³⁰ Decision of the Constitutional Court of Romania no. 145 of 17 March 2016, published in the Official Gazette of Romania no. 437 of 10 June 2016.

carrying out the trial or procedural steps before the deadline is fulfilled, brings on the sanction of (absolute) nullity unconditionally of causing any procedural injury (Ștefan, 2014)³¹ (for example, the terms provided by Article 488¹ Criminal Procedure Code after which the appeal regarding the duration of the criminal trial can be formulated; the definitively convicted person judged in absentia against whom a foreign state has ordered extradition or surrender based on a European arrest warrant can request the reopening of the criminal investigation within one month but which only runs from *the date on which, after bringing him to the country*, the sentencing decision was communicated to him - Article 466 paragraphs 1 and 3 of the Criminal Procedure Code; the terms of legal rehabilitation; the term between the pronouncement of a court decision and the moment of the definitive stay (Neagu, 1988)³²).

c. recommendation time frames (ordering) - are those deadlines which, although they establish a period of time in which an act is to be carried out or fulfilled, however, failure to comply with this period does not, as a rule, entail any procedural sanction, instead being able to entail the application, possibly of a disciplinary sanction or a judicial fine. As an exception, and taking into account the provisions of Article 268 para. 3 Criminal Procedure Code, non-compliance with a regulatory time frame could entail the sanction of relative nullity (Ștefan, 2014)³³ (for example, the 60-day time frame for the preliminary chamber procedure according to Article 343 Criminal Procedure Code; deadline for filing the pleadings or studying the file).

According to the criterion of the sanction incurred in case of non-compliance, the time frames are classified into:

a. absolute (comminatory) terms – are the deadlines whose non-compliance produces effects on the validity of the act performed and their non-compliance entails either the sanction of forfeiture from the exercise of the relevant procedural right and the nullity of the act made after the deadline (sanction of nullity (Giurgea & Lazăr, 2017)³⁴), or the termination of the measure effect.

b. relative terms (recommendation) – are time frames whose non-compliance does not affect the validity of the act performed and does not challenge the application of any procedural sanction for the act not performed.

According to Article 268 para. 1 Criminal Procedure Code, when for the exercise of a procedural right the law provides for a certain time frame, failure to comply with it entails the *forfeiture* of the exercise of the right and the *nullity* of the act made after the deadline (for example, bringing a civil party made after the start of the judicial investigation; notification to the court with a proposal to extend the measure of preventive arrest without respecting the 5-day time frame established by Article 235 paragraph 1 Criminal Procedure

³¹ Cristian-Valentin Ștefan, *op.cit.*, 2014, p. 38.

³² Ion Neagu, *Criminal procedural law*, 1988, p. 351.

³³ Cristian-Valentin Ștefan, *op.cit.*, 2014, p. 38.

³⁴ Mihai Giurgea, Ioan Lazăr, *Discuții referitoare la momentul la care începe să curgă termenul de declarare a contestației pentru procuror în materia măsurilor preventive*, in the Review "Dreptul" no. 7/2017, p. 174.

Code³⁵). The terms that fall under the scope of this legal text must be considered absolute terms (Giurgea & Lazăr, 2020)³⁶.

According to Article 268 para. 2, when a trial measure can only be instituted for a certain period of time, its expiration leads to the *de jure termination of the effects* of the measure, considered as a consequence specific to substantial terms, different from nullity or forfeiture (Ștefan, 2014)³⁷. The terms that fall under this legal text must also be considered absolute terms (Giurgea & Lazăr, 2020)³⁸. The Criminal Procedure Code expressly stipulates the sanction of legal termination in certain situations: Article 241 para. 1 Criminal Procedure Code according to which preventive measures cease by law in certain situations (for example, the preventive measure of detaining the suspect or defendant can be ordered for a maximum of 24 hours, and at the end of the period the person must be released immediately if the person is not detained or arrested because of another case or the person is not subject to the measure of preventive arrest or house arrest. The "immediate" release is mandatory in order to comply with the provisions of article 5 paragraph 1 of the European Convention (Udroiu, 2016)³⁹); Article 246 para. 13 Criminal Procedure Code regarding the termination of the provisional obligation measure to medical treatment; Article 348 para. 1 Criminal Procedure Code; Article 262 para. 2 Criminal Procedure Code.

Although the text of Article 268 para. 2 of the Criminal Procedure Code refers to "procedural measures", this text also covers evidentiary procedures (Ștefan, 2014)⁴⁰ whose duration is subject to time limitations (for example, the 24-hour period in which the prosecutor, who authorized a certain measure of technical supervision, based on Article 141 paragraph 1 Criminal Procedure Code, has the obligation to notify the competent judge of rights and liberties in order to confirm the measure).

For non-compliance with the other procedural terms, the provisions on invalidity apply, according to Article 268 para. 3 Criminal Procedure Code, following that the applicable concrete sanction (relative or absolute nullity) will be established according to the existence of the injury and the nature of the act (Giurgea & Lazăr, 2020)⁴¹.

In the doctrine it was argued that in the absence of an express regulation by Article 250² of the Criminal Procedure Code, the sanction of legal termination of an asset freezing cannot be applied (especially since the legislator expressly provided for such a possibility when he considered it necessary - with reference to Article 397 paragraph 4 of the Criminal Procedure Code according to which the distraint measure ceases by law if the civil party

³⁵ Judgment no. 131 of 24 November 2016 of the Mureș Court (remained final by non-appeal), which established the absolute nullity of the proposal to extend the preventive arrest measure made by the prosecutor, the extension request being rejected as tardy.

³⁶ Mihai Giurgea, Ioan Lazar, *Sancțiunile procedurale penale*, Bucharest: C.H. Beck Publishing House, 2020, p. 48.

³⁷ Cristian-Valentin Ștefan, *op.cit.*, 2014, p. 38.

³⁸ Mihai Giurgea, Ioan Lazar, *Sancțiunile procedurale penale*, Bucharest C.H. Beck Publishing House, 2020, p. 48.

³⁹ Mihail Udroiu, *Procedură penală. Partea generală*, Bucharest: Ed. C.H. Beck Publishing House, 2016, p. 827.

⁴⁰ Cristian-Valentin Ștefan, *op.cit.*, 2014, p. 39.

⁴¹ Mihai Giurgea, Ioan Lazar, *Sancțiunile procedurale penale*, Bucharest: C.H. Beck Publishing House, 2020, p. 48.

does not notify the civil court regarding the analysis of the civil claims within 30 days) (Nestor, 2022)⁴².

Although, regarding the legal termination of the precautionary measures in the event that the verification required by the text of Article 250² Criminal Procedure Code within the established terms, this sanction is not expressly stipulated, the lack of this express provision could not by itself represent grounds for not applying the sanction.

Being a restrictive measure of rights (in this case, the right of ownership, respectively the right of disposition regarding the assets covered by the distraint measure) these are subject to the rigors and guarantees established by law, including the provisions of Article 268 para. 2 Criminal Procedure Code. This legal text stipulates that the expiration of the time frame results in the legal termination of the measure.

On the other hand, the period of 6 months, respectively one year in which the competent judicial body is obliged to periodically check whether the grounds that determined the taking or maintenance of the precautionary measure exist, may be considered an imperative and absolute period. The legal text imposes on the competent judicial body an obligation to check whether the grounds exist that determined the taking or maintaining of the precautionary measure, therefore it can be concluded that the intention of the legislator was to impose a time limit regarding the taking/maintaining of these measures. Therefore, they can be included in the category of procedural measures that can only be taken for a certain period (Rusu & Dumitrache, 2022)⁴³. For that purpose, the supreme court as well ruled in a case decision, appreciating that the asset freezing "*cannot be maintained sine die*" (not even in the situation where ordering them is a mandatory act as in the case of Article 11 of Law no. 241/2005) "*without analyzing their purpose and proportionality in relation to the duration of the intromission with the right to dispose of the assets*"⁴⁴.

Regarding the legal nature of this term, it was also argued that it depends on the mixed nature of the periodic verification institution: "*The time frames of 6 months and 1 year, respectively, established by the new law are substantial terms (which is why the sanction for their non-compliance is the legal termination of the measure), and the procedure for verifying the asset freezing is regulated by procedural rules. For this reason, in the case of this institution, regulated by Article 250 ind. 2 of the Criminal Procedure Code, we may speak about an institution with a mixed character, respectively of substantive law regarding the material content of the institution (the existence of the right) and of*

⁴² Raul Alexandru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asiguratorii în procesul penal*, article on [juridice.ro](https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html) (https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html, accessed on 20 November 2022).

⁴³ Adrian Rusu, Dan Dumitrache, *Încetarea de drept a măsurilor asiguratorii ca urmare a verificării tardive – Nulitatea ordonanței procurorului de menținere a măsurilor asiguratorii*, article on [Juridice.ro](https://www.juridice.ro/809527/incetarea-de-drept-a-masurilor-asiguratorii-ca-urmare-a-verificarii-tardive-nulitatea-ordonantei-procurorului-de-mentinere-a-masurilor-asiguratorii.html) (https://www.juridice.ro/809527/incetarea-de-drept-a-masurilor-asiguratorii-ca-urmare-a-verificarii-tardive-nulitatea-ordonantei-procurorului-de-mentinere-a-masurilor-asiguratorii.html, 11.11.2022, accessed on 19 November 2022).

⁴⁴ Decision no. 260 of 20 April 2022 of the High Court of Cassation and Justice – criminal section (https://sintact.ro/#/jurisprudence/520841034/1/decizie-rezumata-nr-260-2022-din-20-apr-2022-inalta-curte-de-casatie-si-justitie-bucuresti?keyword=250%20ind.%20%20Cod%20procedur%C4%83%20penal%C4%83%20%20250%20ind.%20%20verificare%20m%C4%83sur%C4%83%20asigur%C4%83torie%20%20Incheiere%202022&cm=SR-EST) (accessed on 20 November 2022).

procedural law regarding the formality and manner of exercising that right" (Chirvase & Vlaicu, 2022) (Nestor, 2022)⁴⁵.

Therefore, in conclusion, in consideration of the mixed nature, on the one hand of substantive law in terms of the material content, its non-compliance by the competent judicial body entails the sanction stipulated by Article 268 para. 2 of the Criminal Procedure Code, on the other hand of procedural law in terms of the formality and manner of the exercise, but an imperative term, its non-compliance entails the sanction of legal termination of the measure (Rusu & Dumitrache, 2022)⁴⁶.

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⁴⁵ Decision no. 39/23.04.2021 of the Court of Appeal Brașov unpublished, cited in Adrian Chirvase, Adina Vlaicu, *O nouă perspectivă asupra măsurilor asigurătorii în procesul penal. Consecințele încălcării dispozițiilor art. 250/2 Cod procedură penală*, article on Juridice.ro (<https://www.juridice.ro/769318/o-noua-perspectiva-asupra-masurilor-asiguratorii-in-procesul-penal-consecintele-incalcarii-dispozitiilor-art-250-2-cod-procedura-penala.html>), 07 February 2022, accessed on 19 November 2022) and Raul Alexandru Nestor, *Importanța determinării naturii juridice a termenelor reglementate pentru verificarea periodică a măsurilor asigurătorii în procesul penal*, article on Juridice.ro (<https://www.juridice.ro/781641/importanta-determinarii-naturii-juridice-a-termenelor-reglementate-pentru-verificarea-periodica-a-masurilor-asiguratorii-in-procesul-penal.html>), accessed on 20 November 2022).

⁴⁶ In this regard, there is also recent jurisprudence - Judgement of Tulcea Court no. 27/12 July 2022 (cited in Adrian Rusu, Dan Dumitrache, *Încetarea de drept a măsurilor asigurătorii ca urmare a verificării tardive – Nulitatea ordonanței procurorului de menținere a măsurilor asigurătorii*, article on Juridice.ro (<https://www.juridice.ro/809527/incetarea-de-drept-a-masurilor-asiguratorii-ca-urmare-a-verificarii-tardive-nulitatea-ordonantei-procurorului-de-mentinere-a-masurilor-asiguratorii.html>), 11 November 2022, accessed on 19 November 2022).

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