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DETOUR
TOWARDS PRE-TRIAL DETENTION AS ULTIMA RATIO

1st Romanian National Report

DETOUR –
Towards Pre-trail Detention as Ultima Ratio

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Content

1. Introduction – Pre-trial detention in context

Romania is located in the South-Eastern part of Central Europe, and shares borders to the North and the South-Eastern with Ukraine, to the East with the Republic of Moldova, to the South with Bulgaria, South-West with Serbia and to the West with Hungary. From the administrative point of view Romania is organized in 41 counties and the capital city of Bucharest. Each county and the capital city are governed by a county council, respectively the General Council of Bucharest Municipality and a prefect.

In year 2011, the population of Romania was of 20.121.641 inhabitants, in comparison with the number registered in the 2002 census, when the number of inhabitants was 21.698.181 (NIS, 2011). According to Eurostat, Romania is facing the steepest demographic decline, mainly two phenomena contributing: an aging population, and the negative migration. Ethnically, the majority is represented by the Romanians (89.9%) followed by the Hungarians (6.6%) and several other communities like Roma, Germans, Ukrainians, Turks and Tatars etc.

According to the Constitution adopted in 1991, Romania is a Republic. The Parliament is the supreme representative body and the sole legislative authority of the state. Romania has a bicameral Parliament consisting of the Chamber of Deputies and the Senate. They are elected by universal, equal, direct, secret and free, in accordance with the electoral law. Romania is a member of the European Union since 2007 and of the Council of Europe since 1993.

Romania is a civil law country. The main provisions regarding Romanian justice system are provided by Law no. 304/2004 regarding judicial administration. According to this law, justice is made in the name of the law and the judicial system is organized as a hierarchical system of courts, organized as follows: High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*), Courts of Appeal (*curți*

de apel); county courts (*tribunal*) and The Bucharest Municipal Court and local county court (*judecătorie*). Many courts are organized in specialized sections for civil and penal matters. Within the county courts there are sections regarding civil cases, criminal, commercial and family cases, labour conflicts or social insurance matters.

A prosecutor's office (*parchet*) is attached to each court. According to the law, the prosecutors are independent in relation to the courts and to any other public authority and perform their duties according to the principle of legality, impartiality and hierarchical control, under the authority of Minister of Justice. The control of the Minister of Justice is restrained to the supervision of how the prosecutors fulfil their professional duties in general but this control may not concern the measures imposed by prosecutors and decisions they adopt in individual cases. The legal framework provides some safeguards for professional independence of prosecutors, as follows: career decision regarding prosecutors are taken by Superior Council of Magistracy (CSM) - Prosecutor Section; objective criteria are set for distribution of cases to prosecutors and special procedural regulations protect the prosecutor's independence during investigation. Prosecutors are considered magistrates and belong to the judiciary system in Romania.

Having competences in relation with the professional career of judges and prosecutors, the Supreme Council of Magistracy is the institution that guarantees the independence of the judiciary system. The Council is independent and complies only to the law.

After the events of December 1989 a process of reform began in the Romanian judiciary system in order to align its the normative framework to the European standards. The Constitution adopted in 1991 provides guarantees for: the right to life, to physical and mental integrity (art. 22), individual freedom (art. 23) and right to defence (art. 24). Thus, regarding individual freedom, art. 23 stipulates that individual freedom and security are inviolable and search, detainment, or

arrest of a person shall be permitted only in the cases and under the procedure provided by law. Regarding preventive custody, this shall be ordered by a judge and only in the course of criminal proceedings (align. 3). Another relevant constitutional disposition focuses on the length of preventive custody during criminal proceedings. This may only be ordered for 30 days at the most and extended for maximum 30 more days, without the overall length to exceed a reasonable term, and no longer than 180 days (align. 5). After the lawsuit has begun, the court is bound, according to the law, to check, on a regular basis and no later than 60 days, the lawfulness and grounds of the preventive custody. If the grounds for the preventive custody have ceased to exist or if the court finds that there are no new grounds justifying the continuance of the custody, the court shall order at once the release of the defendant. .Another relevant constitutional disposition provides that a person under preventive custody shall have the right to apply for provisional release, under judicial control or on bail. The presumption of innocence is also guaranteed by the Romanian Constitution.

Article 20 of the Constitution establishes that in case of conflict the international regulations prevails over the national law, regarding human rights. Thus, constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania has sign up for. Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.

On 20th of June 1994 Romania ratified the European Convention on Human Rights and this event represented an important step for the alignment process of internal regulations to European standards.

Up until recently, the Romanian penal policy was outlined in the Penal Code adopted in 1968. As it had been adopted during the communist regime, that Penal Code was tributary to that ideology. After 1989 the Penal Code has been subject to substantial reforms meant to bring the provisions in criminal matters in line to the new socio-political realities in Romania. The modifications have impacted on issues like the way different penalties are implemented, the sanctioning system applicable to juveniles or the preventive measures.

A New Penal Code (Law no. 286/2009) has entered into force on 1st February 2014, together with a new Penal Procedural Code. According to the Explanatory Notes, the objectives of the new regulation are to create a coherent legislative framework by eliminating some overlaps existing among the prior regulations, to simplify the criminal procedures eliminating undesirable disparities between cases, to ensure that the criminal trial fulfils the standards imposed by the Romanian Constitution and international treaties on human rights, to transpose in the internal criminal legislation the European regulations and to harmonise the Romanian criminal law system with others EU member states.

The new criminal rules are based on the following principles:
1. The principle of the legality of the incrimination, according to which the penal law provides for the facts which constitute crimes, no person can be penalized for a deed which was not provided for in the criminal law at the time the offense;
2. The principle of the legality of the sanctions of the criminal law, in accordance to which the law provides the criminal penalties applicable to and educational measures which may be taken in relation to persons who committed the infringement. It also provides for the safety measures that may be taken in relation to persons who have committed the deed.
3. The principle of humanism. Although it is not specifically defined in the Penal Code, it is assumed that the entire criminal legislation and its subsequent procedures concerning the human beings, as a fundamental value, is based on this

value. The existence of this principle can be deduced from the rules of criminal proceedings which are aimed at the protection of human rights for the duration of the criminal procedures or prohibition of torture and inhuman or degrading treatment or punishment. In accordance to Article 11 of the Code of penal procedure, any person who is under prosecution or in court must be treated with respect for the dignity of human beings;

4. The principle of equality before the criminal law is a principle that derives from the constitutional provisions. Article 16 stipulates that citizens are equal before the law and public authorities, without any privilege or discrimination, nobody being above the law;

5. The principle of the presumption of innocence, according to which any person is considered innocent until the establishment of his guilt by a final penal decision. Any doubt regarding the guilt should benefit the suspect or the defendant.

6. The principle of finding the truth refers to the fact that the legal authorities have the obligation, on the basis of evidence, to find out the truth with regard to the facts and circumstances of the case and with regard to the suspect or the defendant. At the same time, the penal investigation bodies have an obligation to collect and to manage the evidence both in favour or against the suspect or the defendant;

7. The principle of ne bis in idem, according to which no one shall be prosecuted or judged for committing a crime when a court decision has been issued with regard to the same deed, even under a different legal qualification;

8. The principle of compulsory putting in motion and exercise of the criminal action. According to this principle the prosecutor is compelled to set in motion and pursue the criminal action ex officio when there is evidence of committing an offense and there is no reason that prevents this action, other than those provided for by law. At the same time, under the conditions provided for by law, the prosecutor may waive the exercise of the criminal action if, in relation to the actual elements of the case, there is an overriding public interest in the realization of that objective (e.g. in case of petty crimes);

9 . The principle of fair and reasonable period of trial, according to which the judicial authorities have the obligation to carry out the penal prosecution and judgment complying with the procedural safeguards and with the rights of the trial parties or subjects , in such a way as to timely and fully record facts which constitute the offenses.

At the same time, the new criminal procedures secure the right to liberty and security in the course of the trial. Article 9 in the Code of penal procedure stipulates that in the course of the trial the right of every person to freedom and safety is guaranteed. Any measure involving deprivation or restrictive of freedom is exceptional and only in the cases and under the conditions provided by law. Furthermore, any person arrested has the right to be informed as soon as possible and in a language which he understands on the reasons for his arrest. He or she has also the right to file an appeal against the disposition of the measure. When a measure involving deprivation or restriction of freedom that has been ordered is found illegal, the judicial authorities have the obligation to order the revocation of the action and, if appropriate, the release of the person detained or arrested. At the same time, any person subject to an unlawful decision of deprivation of liberty has the right to compensation or repair for the damage suffered.

The right to defence is established in article 10 of the new Code of penal procedure. It provides that the main parties in court shall have the right to defend themselves or to be assisted by a lawyer. The suspect has the right to be informed before any hearing about his deed for which is being investigated and legal classification of it. In turn, the defendant has the right to be informed as soon as possible about his deed for which he is prosecuted and the legal classification of it. The provisions of the penal procedures establish also the right to silence.

1.1. Pre-trial Detention and relevant aspects

According to the provisions of New Penal Code, the criminal proceedings includes four stages: criminal prosecution (*urmărirea penală*), the preliminary chamber (*procedura de cameră preliminară*), judgement (*judecata*) and enforcement of court decision (*executarea pedepsei*). Usually, the criminal prosecution started with a formal act called ordinance (*ordonanță*) issued by judicial police confirmed by the prosecutor. In some special cases, when the prosecutor conducts directly the investigation, this ordinance is issued by the prosecutor. In this cases, the aim is to determine the facts of an offence (*in rem* investigations). The prosecutor decides to start the prosecution against a certain person (*in personam*) when he/she has enough reasons to believe, on ground of solid evidences, that a certain person has committed a certain offence. When the prosecutor completed the investigations, the solutions adopted may be: a dismissal of the case, a waiving of the prosecution or an indictment, when the prosecutor decides that he/she has gathered enough evidences to support the criminal charges.

2. Legal background

According to art. 202 of the Criminal Procedure Code (CPP), the preventive measures may be ordered if there is evidence leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings (e.g. not to hamper the evidence). The preventive measures are imposed in order to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense.

The Criminal Procedure Code imposes the principle according to which any deprivation of liberty is an exception and it should be imposed according to the law.

Preventive measures are:

a) taking in custody (*reținerea*);

b) pre-trial arrest (*arestul preventiv*).

2.1 Taking in custody (reținerea)

The criminal investigation body (police) or the prosecutor may order the taking in custody, if the requirements set by art. 202 CPC are met. A person taken in custody shall be informed forthwith, in a language he/she understands, of the offense they are under suspicion and of the reasons for being taken in custody.

Taking in custody may be ordered for a maximum of 24 hours. Taking in custody may be ordered only after hearing the suspect or defendant, in the presence of a retained or court appointed counsel.
Prior to hearing, the criminal investigation body or the prosecutor are under the obligation to inform the suspect or defendant that he/she has the right to be assisted by a retained or court appointed counsel and the right not to make any statement, except for providing information referring to their identity, by drawing their attention that anything they declare can be used against them. A suspect's or defendant's counsel (lawyer) has the right to communicate directly with the former, in conditions ensuring confidentiality.

Taking in custody is ordered by the criminal investigation body or by the prosecutor through an order, which shall include the reasons for taking such measure, the day and time when custody starts, as well as the day and time when custody ends.

During the taking in custody of a suspect or defendant, the criminal investigation body or the prosecutor having ordered the measure have the right to proceed to taking pictures of them and to fingerprinting them. If taking in custody was ordered by the criminal investigation body, they are under an obligation to inform the prosecutor, forthwith and by any means, on having taken such preventive measure.

Against an order of the prosecutor or of the criminal investigation body ordering the taking in custody, a suspect or defendant may file a complaint to the prosecutor supervising the criminal investigation, prior to the expiry of its duration.
Against a prosecutorial order deciding the taking of a suspect or defendant in custody, a complaint may be filed, prior to the expiry of its term, to the chief prosecutor of the prosecutors' office or, as applicable, to the hierarchically superior prosecutor.

The prosecutor shall apply to the Judge for Rights and Liberties of the court of competent jurisdiction for an order to put the defendant on pre-trial arrest, after they were taken in custody, at least 6 hours prior to the expiry of the term of their custody.

A person taken in custody shall be informed, under signature, in writing, about the processual rights and their right to access emergency medical assistance, the maximum term for which such custody may be ordered, as well as their right to file complaint against the measure. If the person taken in custody is unable or refuses to sign, a report shall be prepared.
Immediately after being taken in custody, a person has the right to inform personally or to request judicial bodies[1] having ordered the measure to announce a member of their family, or another person appointed by them, of their being taken in custody and of the location of their custody.

2.2. Pre-trial arrest (Arestul preventiv)

Pre-trial arrest may be ordered by the Judge for Rights and Liberties, during the criminal investigation, by the Preliminary Chamber Judge, in preliminary chamber procedure, or by the Court before which the case is pending, during the trial, only if evidence generates a reasonable suspicion that the defendant committed

[1] In Romania, prosecutors are considered to belong to the judiciary body.

an offense. The preliminary chamber judge is responsible for verifying the legality of the prosecution act, the legality of the evidence and is an appeal body for the decision taken by the prosecutor.

The pre-trial measure may be ordered if one of the following situations exists:

a) the defendant has run away or went into hiding in order to avoid the criminal investigation or trial, or has made preparations of any nature whatsoever for such acts;

b) a defendant tries to influence another participant in the commission of the offense, or a witnesses or an expert to destroy, alter or hide or to steal physical evidence or to determine a different person to adopt such behaviour;

c) a defendant exerts pressures on the victim or tries to reach a fraudulent agreement with them;

d) there is reasonable suspicion that, after the initiation of the criminal action against them, the defendant committed a new offense with intent or is preparing to commit new offense.

Pre-trial arrest of the defendant can also be ordered if the evidence generate reasonable suspicion that they committed an offense with direct intent against life, an offense having caused bodily harm or death of a person, an offense against national security as under the Criminal Code and other special laws, an offense of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or other securities, blackmail, rape, deprivation of freedom, tax evasion, assault of an official, judicial assault, corruption, an offense committed through electronic communication means or another offense for which the law requires a penalty of no less than 5 years of imprisonment. Furthermore, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entou-

rage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is decided that their deprivation of freedom is necessary in order to eliminate a threat to public order. These conditions are presented here not as examples but as all the conditions that can justify the taking of the pre-trial measure.

The prosecutor, if he/she believes that the requirements set by law are met, shall prepare a justified application for the taking of a pre-trial arrest measure against a defendant, by indicating the legal basis for it.

In case of a defendant held in custody, the term for the resolution of a pre-trial arrest application has to be set prior to the expiry of the custody term. The date and time shall be communicated to the prosecutor, who is under an obligation to ensure the presence of the defendant before the Judge for Rights and Liberties. Also, the date and time are communicated to the defendant's counsel, who, upon request, shall be provided with the case file for consultation.

A pre-trial arrest proposal shall be ruled only in the presence of the defendant, except for situations where they are unjustifiably absent, are missing, are avoiding coming to court or cannot be brought before the judge due to their health condition or to force majeure events or a state of necessity.

In all cases, the providing of legal assistance to the defendant by a retained or court appointed counsel is mandatory . The presence of the prosecutor is also mandatory.

The Judge for Rights and Liberties hears the defendant on issues related to the act of which they are accused and on the grounds on which the pre-trial arrest proposal filed by the prosecutor is based.

Prior to proceeding to the hearing of the defendant, the Judge for Rights and Liberties shall inform them of the offense of which they are accused and of their right

not to make any statements, by drawing their attention to the fact that anything they declare can be used against them.
If the requirements set by law are met, the Judge for Rights and Liberties shall sustain the prosecutor's application and shall order the pre-trial arrest of a defendant through a reasoned court resolution. A defendant's pre-trial arrest may be ordered for a maximum of 30 days.
The defendant shall be informed forthwith, in a language they understand, of the reasons why pre-trial arrest was ordered. A person against whom a pre-trial arrest measure was ordered shall be informed, under signature, in writing, of their processual rights as well as the right to access emergency medical assistance, the right to challenge the measure and the right to request revocation or replacement of arrest with another preventive measure; if the defendant is unable or refuses to sign, a report shall be prepared on this.
Immediately after ordering a pre-trial arrest measure, the Judge for Rights and Liberties of the first instance court or of the hierarchically superior court having ordered such measure, shall inform the defendant's family member or another person appointed by him/her. After the defendant was placed in a detention facility, they have the right to inform personally or to ask the management of the relevant facility to inform the family or the person appointed about the location where they are detained.

When pre-trial arrest was ordered against a defendant having an underage person under their protection, a person subject to a prohibition, a person subject to guardianship or trusteeship or a person who, due to their age, illness or other cause needs help, the relevant authority shall be informed forthwith, in order to take legal measures for the protection of that person.

Based on the court resolution ordering pre-trial arrest of a defendant, the Judge for Rights and Liberties of the first instance court or, as applicable, of the hierarchically superior court shall issue forthwith a pre-trial arrest warrant.

If the same court resolution ordered the pre-trial arrest of several defendants, one warrant shall be issued for each of them.

A pre-trial arrest warrant shall indicate:

a) the court with which the Judge for Rights and Liberties having ordered the pre-trial arrest measure works;

b) the warrant issuance date;

c) the surname and first name and the capacity of the Judge for Rights and Liberties having issued the warrant;

d) the defendant's identification data;

e) the term for which the pre-trial arrest of the defendant was ordered, by mentioning the date when it expires;

f) the charges against the defendant, by indicating the date and place of their commission, their legal classification, the offenses and the penalty set by law;

g) the actual grounds having caused pre-trial arrest;

h) the order to arrest the defendant;

i) the location where the defendant placed in pre-trial arrest will be detained;

j) the signature of the Judge for Rights and Liberties;

k) the signature of the present defendant. In the event that they refuse to sign, this shall be mentioned in the warrant.

When an arrest warrant was issued after hearing the defendant, the judge having issued the warrant shall hand a copy of the warrant to the arrested person and to the law enforcement body. If a victim requests to be informed of the release in any way of the arrested person, the judge who issued the warrant shall mention this in a report, which shall be delivered by them to the law enforcement body.

For the enforcement of a pre-trial arrest warrant, law enforcement bodies may enter the domicile or residence of any person, without their permission, as well as the premises of any legal entity, without permission from its legal representative, if there are reasons generating a reasonable suspicion that the person indicated in the warrant is at that domicile or residence.

In the event that the pre-trial arrest of a defendant was ordered in absentia due to health condition, to a force majeure event or a state of necessity, the defendant shall be brought, upon cessation of such reasons, before the Judge for Rights and Liberties having ordered the measure or, as applicable, before the Preliminary Chamber Judge or the judicial panel with which the case is pending disposition.

When a person indicated in a pre-trial arrest warrant was not found, the law enforcement body in charge of enforcing the warrant shall prepare a report confirming this and shall inform the Judge for Rights and Liberties having ordered such pre-trial arrest, as well as the competent bodies, in order for them to put out a wanted order and to place the person the border watch list.

During the criminal investigation, the term of a defendant's pre-trial arrest may not exceed 30 days, except for situations where this is extended under the law.

The pre-trial arrest of a defendant may be extended during the criminal investigation if the grounds having caused the initial arrest further require the detention of the defendant or there are new grounds justifying the extension of such measure.

An extension of pre-trial arrest can only be ordered upon a reasoned application submitted by the prosecutor conducting or supervising the criminal investigation.

A 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.

The defendant is heard by the Judge for Rights and Liberties in respect of all reasons on which the proposal to extend the pre-trial arrest term is based in the presence of a retained or court appointed counsel.

If a defendant placed in pre-trial arrest is admitted to a hospital and due to health related reasons cannot be brought before the Judge for Rights and Liberties or when, due to force majeure events or a state of necessity, their transfer is not possible, the proposal will be considered in the absence of the defendant, but only in the presence of their counsel, who shall be allowed to argue in court.
The prosecutor's attendance is mandatory.

The Judge for Rights and Liberties shall rule upon an application for extension of the pre-trial arrest term before the expiry of such term.

The Judge for Rights and Liberties may also award, during the criminal investigation, further extensions. However, each such extension shall not exceed 30 days
The total duration of the defendant's pre-trial arrest during the criminal investigation cannot exceed a reasonable term, and can be no longer than 180 days (see the Constitutional provisions).
During the trial in first instance, the total duration of a defendant's pre-trial arrest may not exceed a reasonable period of time and cannot exceed half of the special maximum limit provided by law for the offense for which the court was informed. In all cases, the duration of pre-trial arrest in first instance may not exceed five years.
If, based on medical documents, it is ascertained that a defendant placed in pre-trial arrest suffers from a disease that cannot be treated in the medical network of the National Administration of Penitentiaries, the management of the detention facility orders that such defendant be treated in the medical network of the Ministry of Health under constant guardianship. The reasons that led to this measure shall be communicated immediately to the prosecutor, during the criminal investigation, to the Preliminary Chamber Judge, during this procedure, or to the Court, during the trial.

Preventive measures shall lawfully cease in the following cases:

a) upon expiry of the term provided by law or established by judicial bodies;
b) in case the prosecutor decides to drop charges or the court issues a judgment for acquittal, termination of criminal proceedings, waiver of penalty, deferral of penalty or a suspended sentence under supervision, even if this is not final;
c) on the date when the judgment to convict the defendant remains final;
d) in other cases specifically provided by law.

A pre-trial arrest and house arrest lawfully ceases as follows:
a) during the criminal investigation or during the trial in first instance, upon reaching the maximum term provided by law;
b) during appeal, if the measure reached the duration of the penalty established by the court sentence ordering conviction.

A preventive measure is revoked ex officio or upon request, if the reasons that caused it ceased or new circumstances confirming the unlawfulness of such measure occurred. The measure can be revoked also when the release of the suspect or the defendant is ordered, if they are held in custody or are under pre-trial arrest, unless arrested in another case.
A preventive measure is replaced, ex officio or upon request, by a less severe preventive measure, if the requirements provided by law for its ordering are met and, after an assessment of the case's specific circumstances and the defendant's conduct in the process, it is deemed that the milder preventive measure is sufficient to achieve the objective laid down by Art. 202

When the defendant is present, the application is ruled only after the defendant is heard on all grounds on which the application is based, in the presence of a retained or court appointed counsel. Such application may rule on also in the absence of the defendant, when they fail to come before the court, although duly summoned, or when, due to health reasons, force majeure events or a state of necessity they cannot be brought before the court, but only in the presence of the

retained or court appointed counsel who is allowed to argue in court. The prosecutor's attendance is mandatory.

Special provisions on preventive measures enforced against juveniles

Juveniles are considered less than 18 years old. According to Romanian law, children under 14 are not considered responsible. Between 14 to 16 years old they are held responsible if it is proven they were responsible by the time of the deed. Over 16 they are criminally responsible.

However, taking in custody and pre-trial arrest may be ordered exceptionally against an underage defendant, only if the effects of their deprivation of freedom on their personality and development are not disproportionate to the objective pursued by such measure.

In determining the duration of a pre-trial arrest measure, the defendant's age at the date of ordering, extending or maintaining such measure shall be considered.

When ordering the taking in custody or the pre-trial arrest of a juvenile, the minor's legal representative or, where appropriate, the person in whose care or supervision the minor is, has to be notified

Special conditions for enforcing the taking in custody and pre-trial arrest measures against juveniles

The special detention regime of juveniles shall be established by Law on the Service of Penalties and Measures Ordered by Judicial Bodies during the Criminal Trial, based on age particularities, so the preventive measures taken against them should not harm their physical, mental or moral development.

3. Statistics

The data on the number of persons remanded have been obtained from three institutions, as follows:

1. The General Inspectorate of the Romanian Police – The direction of the judiciary police records, statistics and the operative records regarding the number of

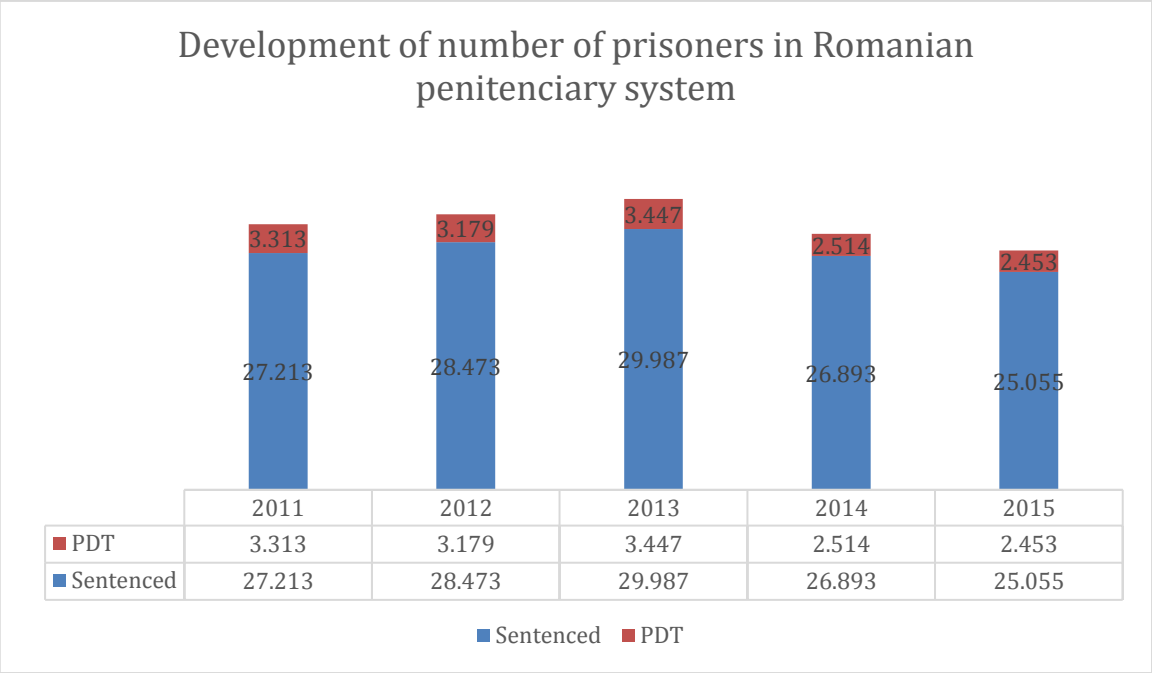
persons who have been remanded and placed within the retaining and the preventive arrest centres within the Romanian Police;
2. The National Administration of Penitentiaries, with regards to the number of persons who have been remanded and have remained in prison subordinated to this structure;
3. The Superior Council of the Magistracy, the data required for the dynamics of preventive measures prepared within the framework of the criminal processes.
4. The National Institute of Statistics, in its yearly directories provides data on the dynamics of the crime phenomenon, the number of the offenses investigated and solved by the police, the number of convicts with final decisions as well as those who serve custodial sentences or under educational measures.

The reference period for the requested data has been the period 2011-2016. At the same time when we examine these data, we must take into account that on 01.02.2014 a new Penal Code has entered into force. As shown above, this new Penal Code introduced a series of fundamental changes regarding the ruling of the pre-trial detention and also expands the alternative measures to the pre-trial detention.

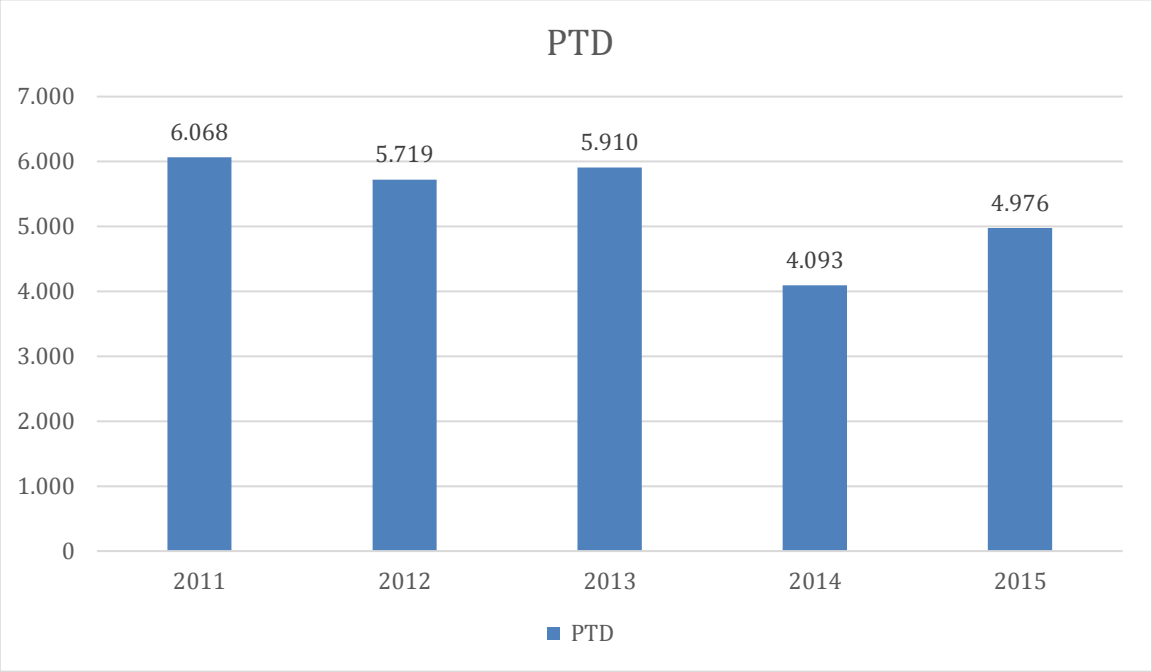
According to the statistic report SPACE I (2014), the average of the prison population at European level was of 124 prisoners to 100,000 inhabitants. Romania had, at that time, a population of 31.637 persons, above level of the European Communities, with 158,6 inmates to 100,000 inhabitants. Compared with 2013, Romania witnessed a descendant trend of the number of persons incarcerated by 4,1 %.
In 2014, a number of 401.094 offences were investigated and solved by the police, 320.255 of them being sent to court. 40.832 persons have been convicted definitively, the penalties imposed by courts being the imprisonment (10.010 causes); conditional suspension of execution of penalty (22.557 causes), the suspension of the penalty execution under supervision (2.764 causes). There have also been

given 336 educational measures custodial arrangements in case of persons under age at the time of the offence.

Regarding the incarcerated persons with definitive and irrevocable sentence, or held in preventive arrest or in juvenile detention centre, the dynamics for 2011-2015 is as follows:

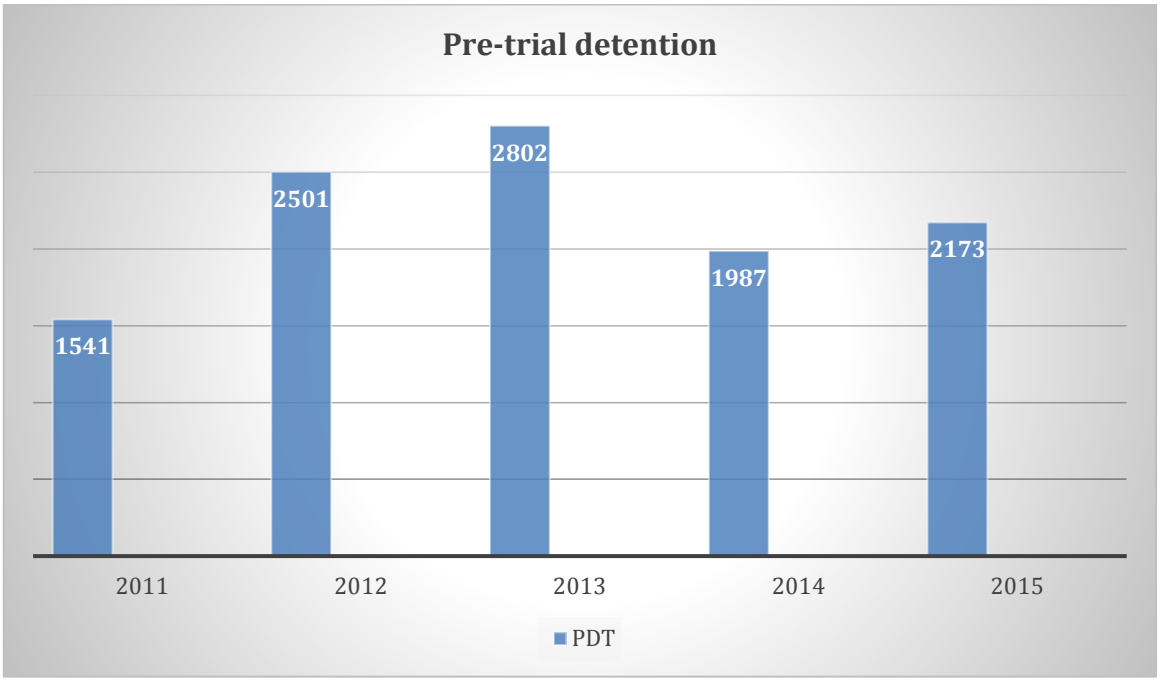


The dynamics of the persons held in arrest and preventive detaining centres of the Romanian Police, for the period 2011-2015 show the following (stock and flow – the persons coming from the previous year and the new ones during the whole year):



The downtrend for 2014-2015 is the result of the provisions of the new penal procedures that entered into force on 01.02.2014 and which regulate in a more accurate manner how pre-trial detention can be imposed. Another significant reason for this trend is that the new penal legislation provided for more alternatives to PTD than the previous one.

Regarding the preventive measures ordered by the courts for the period 2011-2015 the dynamic is as follows (only the new PTD imposed – flow, during the whole year):



4. Literature review

This section presents briefly the current state of affairs regarding the literature dedicated to preventive arrest and other preventive measures. As there is a new Criminal Procedure Code in force since 1st February 2014, the literature included was only from this moment onwards.

The literature search was conducted using Romanian versions of key words such as 'preventive arrest', 'preventive measures', 'judicial control', 'judicial control on bail' and 'home arrest'.

Most of the literature identified describes the content or the procedure for imposing the preventive arrest (Diaconu, 2015; Tuculeanu, A. and Sima, C., 2015) or the judicial control and the judicial control on bail (Potrivitu, 2015)

Another important part of the literature addresses important gaps or difficulties in relation to preventive arrest. Ivan and Ivan (2016), for instance, look into how the preventive arrest can be imposed when the defendant is abroad. Tomulet (2016) critically analyzes the Romanian practice around the notion of threat to

public against the ECHR jurisprudence. Ghigheci (2015) emphasizes the need to align the reasons to impose deprivation of liberty to the judicial practice of the ECHR. The principle of proportionality is the subject of Grigorie (2015) who concludes that individual freedom established in the Constitution should not be an absolute one but it should be restricted when the public order is at risk. But how the proportionality principle is applied in concrete situations is a different matter. In his opinion, the principle of proportionality should be structured along these two notions: necessity and adequacy. The necessity is measured in a concrete situation and not in a generic one. To be adequate, the measure should be the less intrusive one among those able to reach the legit aim. The author mentioned the Ploski v. Poland (2002) to illustrate how the principle of proportionality should be used. He also reminds the readers about the Calmanovici v. Romania and Tarau v. Romania where the Strasburg Court decided that Romania should take more in consideration the alternatives to pre-trial detention.

Human rights in case of preventive arrest is also the focus of Tudorascu paper (2015). Issues like overcrowding, material conditions and proportionality are the main challenges for the European Convention of Human Rights. Doseanu (2015) argues that judicial practice lacks uniformity when it comes to hearing the defendant before imposing the preventive arrest. Furthermore, not hearing the defendant before imposing this measure should attract the nullity of the measure. In another paper, Doseanu and Doseanu (2015) stress on multiple contradictions existent in the Criminal Procedure Code in relation to preventive arrest and judicial control on bail. For instance, there is no clear procedure in place for imposing the judicial control on bail. The only procedure provided in the Criminal Procedure Code is when the PTD is replaced by judicial control on bail.

To conclude, most of the literature published after 2015 on the preventive measures is descriptive and focuses on different aspects of theory or practice.

The only semi-analytic papers are those focusing on the Romanian legislation and practice in contrast with the ECHR jurisprudence.
However, based on this limited literature, we can conclude that proportionality and the use of non-custodial alternatives to pre-trial detention are possible difficulties in the Romanian law and practice.

5. Pre-Trial Detention in the media

Most of the references in the mass media in Romania with regard to the PTD are made in the context in which, on the background of the fight against corruption, a number of important political or business people were remanded. The fact that on several occasions they were shown handcuffed while leaving the headquarters of the National Anti-corruption Direction generated a series of debates in the mass-media with regard to this procedure, with references to the practices which were adopted in other European countries but also by the analysis of the case-law of the CEDO court[2] .
Most of the newspapers and TV stations reflect the poor conditions and the ECHR jurisprudence regarding the pre-trial detention facilities and detention conditions. A number of aspects were revealed referring to precarious hygienic conditions in the detention areas, overcrowding and in the material degradation[3] of the facilities.

In other cases mass media comment on the leniency of the court when not imposing PTD on 'horrible' crimes. For example, in the case of a person being investi-

[2] http://www.contributors.ro/administratie/justitieordine-publica/utilizarea-catuselor-%E2%80%93-da-nu-poate-uneori-%E2%80%A6/

[3] Poveşti incredibile despre condiţiile din arestul Poliţiei, Cuget liber, 17.09.2011, http://www.cugetliber.ro/stiri-eveniment-povesti-incredibile-despre-conditiile-din-arestul-politiei-105348

gated for manslaughter and running away from the scene of the accident, the titles of mass-media made reference to the fact that the magistrates " have left the driver in liberty "[4] .

In certain situations, the reaction of the mass-media comes on the background of a state of emotion created in the public's opinion of a substantial media coverage of the case in the press or social network accounts.

Also in some situations there is a tendency for mass-media to present the cases when a person is investigated in liberty, as a failure of the prosecutors in their investigation. This fact is visible in particular in the case of the personalities from the political area or of the business environment. There were times when the press uses such words as "blow" or "failure"[5] .

In some situations where the courts decide replacing detention or application of alternatives to PTD, mass-media notes that these persons „were left in liberty" without specifying that alternative measures decided for them imply compliance to several conditions[6].

We have not identified the existence of substantial concerns of journalists to present the grounds for the decision of the magistrates to investigate in liberty some suspects/defendants. Sometimes they even provide contradictory information

[4] Autorul accidentului mortal prins la îndemnul poliţistului Godină, lăsat în libertate, Mediafax, 28.08.2016 http://www.mediafax.ro/social/autorul-accidentului-mortal-prins-la-indemnul-politistului-godina-lasat-in-libertate-15621054

[5] Lovitură încasată de DIICOT: Judecătorii au lăsat un important politician în libertate, www.stiripesurse.ro, 17.06.2016, http://www.stiripesurse.ro/lovitura-incasata-de-diicot-judecatorii-au-lasat-un-important-politician-in-libertate_1139279.html

[6] Arestări la Slobozia, într-un dosar de distrugere. Principalul suspect a fost lăsat liber, Adevărul, 04.11.2016, http://adevarul.ro/locale/slobozia/arestari-slobozia-intr-un-dosar-distrugere-principalul-suspect-fost-lasat-liber-1_581c8ffd5ab6550cb83506f3/index.html ; Judecătoria CONSTANŢA a lăsat în libertate doi presupuşi violatori ai unei tinere de 19 ani, Evenimentul zilei, 26.08.2016, http://www.evz.ro/judecatoria-constanta-a-lasat-in-libertate-doi-preuspusi-violatori-ai-unei-tinere-de-19-ani.html ; Un violator din Bârlad a fost lăsat în libertate, www.jurnalisti.ro, 09.01.2016, http://www.jurnalistii.ro/creator-de-moda-din-barlad-acuzat-ca-ar-fi-violat-o-eleva-olimpica-lasat-libertate

within the same material, stressing, for example, that the decision of non-custodial investigation has been taken as a result of lack of evidence regarding the existence of the offense.
In these cases, words like „rapist", „necrophile" or „thug" were used. Also, headlines used in these situations, have a strong negative load and use words like „incredible" or "outrageous"[7].

Investigating suspects or defendants without being detained, are sometimes presented in a negative light in the media. Sometimes titles such as "What insolence!", "nerve", "incredible" are used when referring to them.
Our observation is that media shows little interest for the protection of the right to private life. Many times the defendants appear presented in photos that allow their identification. Sometimes media even supplies information permitting their localization. .

6. Alternatives to Pre-Trial Detention

According with the New Criminal Procedure Code, the alternatives to PDT are:

a. Judicial control (*controlul judiciar*)
b. Judicial control on bail (*controlul judiciar sub cauțiune*)
c. House arrest (*Arestul la domiciliu*)

In all cases the official body responsible for implementing these measures is the Police.

6.1 Judicial control (controlul judiciar)

[7] TUPEU! Atacatorul taximetristului botosanean vrea in LIBERTATE!, Gazeta de Botoşani, 26.02.2016, http://www.gazetabt.ro/local-tupeu-atacatorul-taximetristului-botosanean-vrea-in-libertate-cum-comentezi.html; TUPEU: Proxeneţii care s-au ales cu arest la domiciliu vor libertate, 23.04.2014 http://www.replicaonline.ro/tupeu-proxenetii-care-s-au-ales-cu-arest-la-domiciliu-vor-libertate-172455/; TUPEU REVOLTĂTOR! Avocatul ieşean care a ucis un pieton ŞI A FUGIT de la locul accidentului se cere în LIBERTATE, 20.09.2016, http://www.evz.ro/tupeu-revoltator-avocatul-iesean-care-a-ucis-un-pieton-si-a-fugit-de-la-locul-accidentului-se-cere-in-libertate.html

During the criminal investigation, a prosecutor may order the judicial control measure against a defendant, if such preventive measure is necessary for the attainment of the purpose set by art. 202.

The Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial, may also order a judicial control measure against a defendant.
The attending defendant shall be informed forthwith, in a language they understand, of the offense of which they are under suspicion of, and of the reasons for taking a judicial control measure.

A judicial control measure may be ordered only after hearing the defendant, in the presence of a retained or court appointed counsel.
A prosecutorial order through which a judicial control measure was taken can be challenged by a defendant through complaint with the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule on the case in first instance within 48 hours of its communication. Providing legal assistance to the defendant and the prosecutor's participation are mandatory.
The Judge for Rights and Liberties may revoke such measure, if the legal provisions regulating the requirements for taking it were violated.
The Preliminary Chamber Judge or the court in which the case is pending may order, through a court resolution, the taking of a judicial control measure against a defendant, based on a reasoned application from the prosecutor or ex officio.

While under judicial control, a defendant shall comply with the following obligations:
a) to appear before the criminal investigation body, the Preliminary Chamber Judge or the court at any time they are called;
b) to inform forthwith the judicial bodies having ordered the measure or in which their case is pending on any change of domicile;

c) to appear before the law enforcement body appointed to supervise them by the judicial bodies having ordered the measure, according to the supervision schedule prepared by the law enforcement body or whenever they are called.

Judicial bodies having ordered the measure may require that the defendant, during the judicial control, comply with one or more of the following obligations:

a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;

b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;

c) to permanently wear an electronic surveillance system;

d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly;

e) not to practice a profession, craft or activity associated to their prior offence;

f) to periodically provide information on their living means;

g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;

h) not to take part in sports or cultural events or to other public gatherings;

i) not to drive specific vehicles established by the judicial bodies;

j) not to hold, use or carry weapons;

k) not to issue cheques.

These are all the obligations that a judge may impose on a defendant under pretrial detention.

A document ordering a judicial control measure specifies explicitly the obligations that have to be observed by a defendant during such measure, and they are warned that, in case of breaching in ill-faith the obligations resting upon them, a judicial control measure can be replaced by a house arrest measure or pre-trial arrest.

The observance by the defendant of the obligations resting upon them during a judicial control is supervised by the institution, body or authority appointed by the judicial bodies having ordered the measure, under the law.
The institution, body or authority periodically checks the compliance of obligations by the defendant, and if it finds violations shall immediately notify the prosecutor, during the criminal investigation, the Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial.

If, during the term of a judicial control measure, a defendant breaches in ill-faith their obligations or there is a reasonable suspicion that they intentionally committed a new offense in respect of which initiation of a criminal action against them was ordered, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court, upon request by the prosecutor or ex officio, may order the replacement of this measure by a house arrest measure or a pre-trial arrest measure, under the terms set by the law.

During the criminal investigation, the prosecutor having taken the measure may order, ex officio or upon justified request by the defendant, the imposition of new obligations for the defendant or the replacement or termination of those ordered initially, if well-grounded reasons justifying this occur, after hearing the defendant.

6.2 Judicial control on bail (Control judiciar sub cauțiune)

Bail shall be posted in the defendant's name, by depositing a set amount of money with the judicial bodies or by posting a property bond, in securities or real estate, within the limits of the set money amount, in favor of the same judicial bodies.

The value of a bail is of at least RON 1,000 (200 Euro) and is determined based on the seriousness of the accusation brought against the defendant, their material situation and their legal obligations.

During such a measure, the defendant must comply with the obligations listed at judicial control.
Bail guarantees the participation by the defendant in criminal proceedings and their compliance with the obligations.
The court shall order, by a court decision, confiscation of bail if a judicial control on bail was replaced by a house arrest or pre-trial arrest measure.
In other cases, the court shall order restitution of the bail, through a court decision.
In case of a decision to drop charges the prosecutor shall also order restitution of the bail.

In the event that, during a measure of judicial control on bail, a defendant violates in ill-faith the obligations resting upon them, or there is a reasonable suspicion that they committed a new offense with direct intent in respect of which initiation of a criminal action against them was ordered, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court, upon justified application by the prosecutor or ex officio, may order replacement of this measure by a house arrest or a pre-trial arrest measure, under the law.

6.3 House arrest (Arestul la domiciliu)

House arrest is ordered by the Judge for Rights and Liberties, by the Preliminary Chamber Judge or by the court, if the requirements set by art. 223 are met and if such measure is necessary and sufficient for the attainment of one of the purposes set by art. 202 par. (1).

The fulfilment of the terms set under previous provision is assessed by considering the threat level posed by the offense, the purpose of such measure, the health condition, age, family status and other circumstances related to the person against whom such measure is taken.

House arrest may not be ordered against a defendant who allegedly committed an offense against a family member and in relation to whom final conviction for an escape[8] offense was issued in the past.

The Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule in the case in first instance or of the court of the same level within the territorial jurisdiction of which the location where the committed offense was ascertained or the premises of the prosecutors' office with which the prosecutor conducting or supervising the criminal investigation belongs is located may order a defendant placed under house arrest, based on a reasoned proposal from the prosecutor.
Failure by the defendant to appear shall not prevent the Judge for Rights and Liberties from ruling on the proposal advanced by the prosecutor.
The Judge for Rights and Liberties shall hear the defendant, when the latter is present.
The providing of legal assistance of the defendant and the prosecutor's attendance are mandatory.

[8] Acording to art. 285 Penal Code, escape is a offence and it is punishable with 6 months to 3 years imprisonment.

The Judge for Rights and Liberties sustains or denies an application by the prosecutor through a reasoned court resolution.
The Preliminary Chamber Judge or the court in which the case is pending may also impose house arrest.
A house arrest measure consists of an obligation imposed on a defendant, for a determined period of time, not to leave the building where they live, without permission from the judicial bodies. Having ordered such measure the judge may also impose some restrictions.

During house arrest, a defendant has the following obligations:
a) to appear before criminal investigation bodies, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court whenever they are called;
b) not to communicate with the victim or with members of their family, with other participants in the commission of the offense, with witnesses or experts, as well as with other persons established by the judicial bodies.

The Judge for Rights and Liberties, the Preliminary Chamber Judge or the court may order that, during house arrest, a defendant permanently wear an electronic surveillance system.
The court resolution ordering such measure specifies explicitly the obligations that have to be observed by a defendant, and their attention is drawn to the fact that, in case of violation in ill-faith of the measure or of the obligations resting upon them, such house arrest measure may be replaced by pre-trial arrest..
During such measure, a defendant may leave the building for the purpose of appearing before judicial bodies, at their call.

Based on a written and justified request from the defendant, the Judge for Rights and Liberties or the Preliminary Chamber Judge or the Court, through a court resolution, may allow them to leave the premises in order for them to attend work

or education, or other similar activities for the purpose of procuring their essential living means. The exception may also be granted as well as in other well-grounded situations, for a limited time period, if this is necessary for the exercise of certain legitimate rights or interests of the defendant.

In emergency cases, for well-grounded reasons, a defendant may leave the building without the permission of the Judge for Rights and Liberties, the Preliminary Chamber Judge or of the court, during a strictly necessary period of time, by informing immediately on this the institution, the body or the authority appointed in charge of their supervision and the judicial bodies having taken the house arrest measure.

A copy of the court resolution by the Judge for Rights and Liberties, the Preliminary Chamber Judge or of the Court ordering a house arrest measure shall be communicated forthwith to the defendant and to the institution, body or authority appointed in charge of their supervision, to the law enforcement body within the territorial jurisdiction of which they live, to the public vital statistics service, and to border authorities.

The institution, body or authority appointed in charge of a defendant supervision by the judicial bodies having ordered house arrest regularly checks observance of the measure and of their obligations by the defendant, and if it finds breaches of these, shall immediately notify the prosecutor, during the criminal investigation, the Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial.
The house arrest may be replaced with pre-trial detention in case of breach.

During the criminal investigation, house arrest may be ordered for a duration of maximum 30 days.

During the criminal investigation, house arrest may be extended only in case of need, if the reasons having determined the taking of such measure continue to exist or if new reasons have occurred; however, each such extension may not exceed 30 days.

In the situation when the extension of a house arrest term can be ordered by the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to decide upon the case in first instance or of the court of the same level within the territorial jurisdiction of which the location where the committed offense or the premises of the prosecutors' office with which the prosecutor conducting or supervising the criminal investigation works are located.

The prosecutor's attendance and the hearing of the defendant are mandatory.

The Judge for Rights and Liberties sustains or denies a prosecutor's proposal through a reasoned court resolution.

During the criminal investigation, the maximum duration of house arrest is 180 days.

The term for deprivation of freedom established through a house arrest measure is not considered in calculating the maximum duration of the defendant pre-trial arrest measure during the criminal investigation.

7. The "European Element"

The ratification of the European Convention of Human Rights has created in Romania the possibility for the violations of human rights to be observed also by the European Court of Human Rights. The Court's jurisprudence was a factor that triggered a significant number of changes both at the judicial and legislative level. In the specific case of Romania, it is to be noticed the fact that the majority of the causes before the Court affects the conditions of detention and the preventive arrests.

As a result of numerous complaints made in relation to breaches of the provisions of Article 3 of the Convention relating to the prohibition of torture or penalties and inhuman or degrading treatment or punishment, the ECHR within the framework of Iacov Stanciu vs. Romania case adopted a quasi-pilot decision which defined the poor material conditions in prisons and the level of medical care as substandard.

Even if Iacov Stanciu v Romania is not a pilot decision, it emphasized the systemic nature of the overcrowding and poor material conditions in the penitentiary system in Romania, underlining the fact that their resolution is not the exclusive competence of the National Administration of Penitentiaries.

The Court jurisprudence regarding preventive measures is focused on three main issues as far as Romania is concerned: poor conditions in detention facilities, prolongation of preventive arrest without a proper analysis of legal criteria and unlawfully held of applicants without being issued a remand/preventive arrest warrant.

Regarding poor conditions in detention facilities, the complains are in relation to detention units of the Romanian Police. In many cases, the applicants are placed in this units during penal investigation, being placed in facilities administrated by National Prisons Administration after the procedure of indictment. The problems underlined by applicants are similar: lack of space (under 4 sq. m for each person), lack of ventilation, without enough natural light etc. Sometimes these conditions worsen health problems of suspects/defendants. In all cases, the Court concluded that the conditions of detention caused the applicants harm that exceeded the unavoidable level of suffering inherent in detention and have thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3 of the Convention. In all decisions the Court was referring to inspections reports in police/prison arrest facilities, reports issued by the European Committee for the Prevention of Torture (CPT), The Association for the Defence of Human Rights in Romania – the Helsinki Committee

(APADOR-CH). In the report issued in 2014 by CPT, the Committee underlined the necessity to reduce the period of time spent in police arrest units by suspects/defendants. The Committee noticed the efforts made in order to improve the conditions in the police stations arrest facilities. Despite these efforts, general conditions are described as mediocre, especially regarding overcrowding, hygiene and insufficient access to natural light and fresh air.

Relevant jurisprudence in relation to poor material conditions in the police stations is:

- *Constantin Aurelian Burlacu vs. Romania* (2014) - regarding poor detention conditions during preventive arrest (Central Arrest – Police General Direction Bucharest and Rahova Prison). The main problems are represented by overcrowding and subsequent problems (lack of ventilation and problems regarding the hygiene of detention facilities). The Court found that art. 3 from European Human Right Convention was violated and decided 8400 Euros moral prejudice.
- *Catană vs. Romania*(2013)- regarding poor detention conditions during preventive arrest (Bacău Police Inspectorate preventive arrest facilities). Main problems are represented by overcrowding, lack of a permanent water supply and of a toilet in detention cell. The applicant revealed some problems regarding medical care during preventive arrest (TB treatment). The Court found that art. 3 from Convention was violated and decided 3900 Euros as moral prejudice.

In relation with the prolongation of preventive arrest without a proper analysis of legal criteria, the Court underlined that extending the pre-trial detention must be examined in correlation with the individual circumstances of the suspect/defendant. In such circumstances the domestic authorities have the obligation to examine the applicant's personal situation in greater detail and to give specific

reasons for holding him/her in custody. Even criteria as exist a reasonable suspicion that suspect/defendant had committed a serious offence is not enough to justify a repeated prolongation of pre-trial detention.

Regarding the unlawful isolation of applicants without being issued a remand/preventive arrest warrant, the Court reiterated that, in order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be his concrete situation. This maens that a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question must be taken into account. The Court jurisprudence underlines the obligation of authorities (especially police and prosecutors) to inform the suspect/defendant regarding his legal status and the guarantees they have access to.

Relevant jurisprudence in this respect are:

- *Creangă vs. Romania* (2012). The applicant complained under Article 5 of the Convention that there had been no legal basis for his detention on 16 July 2003. In this case, no warrant had been issued for the applicant's placement in police custody. Consequently, the Chamber considered that the applicant's deprivation of liberty from 10 a.m. to 10 p.m. on 16 July 2003 had had no basis in domestic law and that accordingly, there had been a breach of Article 5 § 1 of the Convention. The Court found that art. 5 from Convention was violated and decided Euro 8,000 in compensation for non-pecuniary damage.
- *Valerian Popescu vs. Romania (2014).* The applicant complained under Article 5 § 1 of the Convention that there had been no legal basis for his detention for almost eleven hours on the premises of the prosecuting authorities. Under Article 3 of the Convention he complained about the conditions of his detention at the Bucharest Police Station detention facility, mainly on account of overcrowding and improper conditions of hygiene (the applicant's personal space turns out to have been less than 4 square

metres, the toilet and the shower were not separated from the living area by a real partition). The Court considered that from the applicant's arrival at the National Anticorruption Direction headquarters at 9.20 p.m. on 8 February 2011, the prosecutor had a sufficiently strong suspicion to justify the applicant's deprivation of liberty for the purposes of the investigation, and that Romanian law provided for the measures to be taken in that regard, namely placement in police custody or pre-trial detention. However, the prosecutor decided only at a very late stage, after almost thirteen hours, to place the applicant in custody, which is a violation of art. 5 § 1 of the Convention. The Court found that art. 3 and 5 § 1from Convention were violated and decided Euro 4,000 in compensation for non-pecuniary damage.

Romania has ratified also the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which means the joining the mechanism for verifying the detaining conditions by means of visits to the Committee for the Prevention of Torture (CPT). Reports drawn up on the occasion have been used in the course of time by the European Court of Human Rights in substantiating its decisions.

The report written after the 2015 visit stresses that progress have been made by the Romanian authorities in order to improve the conditions within the premises of detention of the police or the National Administration of Penitentiaries. The report also mentions that there has been implemented a series of procedures which would lead to a more transparent medical procedure, so that any cases of ill-treatment or torture can identified.

However, the report mentions that, in spite of this progress, the conditions of detention of the police remain mediocre, in particular concerning overcrowding, poor condition of infrastructure, insanity and insufficient access to natural light and ventilation. In prisons CPT has found a large degree of overcrowding, with a maximum of 2 m^2 of space of person (in the penitentiary of women Targsor, for

example), aggravated by the fact that the convicts spend between 20 and 22 hours per day in their cells.

In principle, once the arrested person is prosecuted, he/she is transferred from the Police remand centre to the prison.

The CPT observations were duplicated by a series of visits made by the institution of the Ombudsman and by the non-governmental organizations, such as the Association for the Defence of Human Rights in Romania - the Helsinki Committee (APADOR-CH).
These reports were also mentioned in several ECHR decisions.

The Ombudsman's report, for example, makes several recommendations such as:
1. the need to set up a specialised medical body within the centres of retention and preventive arrest of the Romanian Police.
2. The shortening of the period spent in the police arrest by the persons remanded and transferring them in prison units, in order to ensure a higher degree of safety;
3. Intensification of the role of the judge that supervises the depriving of liberty with regard to persons in police custody;
4. Allocation of financial resources for the improvement of the conditions of detention both at the level of the Romanian Police but also for the National Administration of Penitentiaries

APADOR-CH carries out visits to the centres of preventive arrest and in the prisons, and publishes periodic reports on the results of these visits [9]. APADOR-CH is the organization with the most active involvement in monitoring the conditions of detention in Romania.

[9] For more info, visit: http://www.apador.org/monitorizarea-conditiilor-de-detentie-aresturi/

A novelty in the Romanian legal system is the appointment of the Romanian Ombudsman, as the institution that fulfils the role of national mechanism to prevent torture in places of detention within the framework of the Optional Protocol, adopted in New York on 18 December 2002, of the Convention against torture and other punishments or cruel, inhuman or degrading treatment,. This Protocol was ratified by Romania in 2009 (Law no. 109/2009).

The tasks of Romanian Ombudsman are:

1. Visiting the place of detention to verify the conditions of detention;
2. Formulating recommendations to the management of visited detention places;
3. Formulating proposals to enhance the legislation regarding detention conditions;
4. Liaising with the Subcommittee of Prevention;
5. Organizing and coordinating education and training campaigns to prevent torture and other cruel, inhuman or degrading treatment and punishment.

Also, in some cases the Romanian Courts have an important role in imposing to management of detention places to improve the conditions from detention facilities. Thus, in a case, the High Court of Cassation and Justice imposed to ensure the detention of inmate in a place respecting the legal standards.

8. Closing remarks

This report is only a mapping of the pre-trial detention and its alternatives in Romania. It is only the legal and institutional context that will be taken into account in performing the research that will follow. The report is made deliberately mainly descriptive. Further analysis and interpretation will be conducted during the research phase of the project.

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