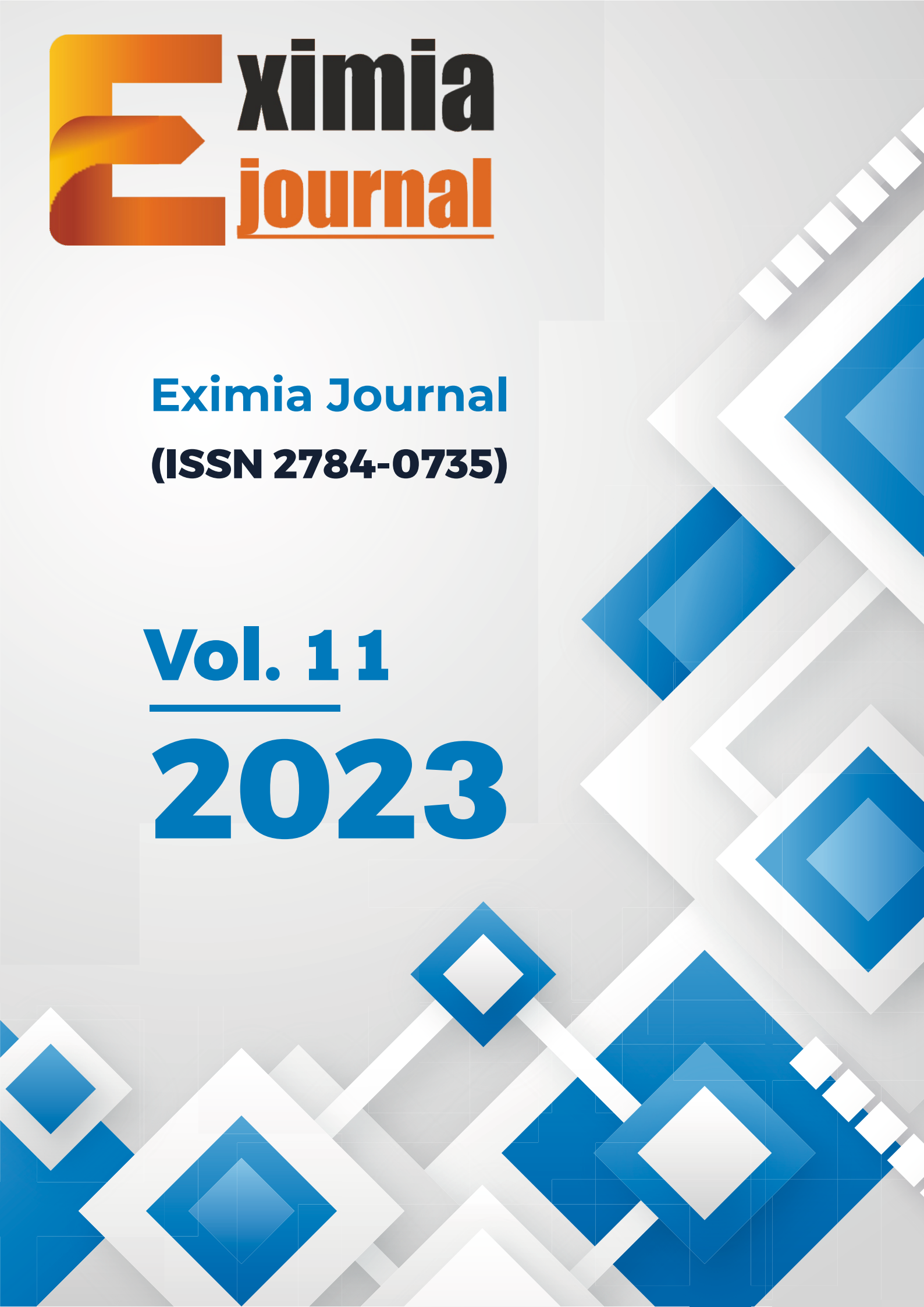




Eximia Journal
(ISSN 2784-0735)

Vol. 11

2023



Attachment procedure

Chiriac Paula

Independent Researcher

Abstract. During criminal proceedings, the competent judicial bodies have the authority to order certain procedural measures to guarantee and ensure the normal conduct of proceedings, the execution of the sentence, the regulation of the damage caused by the crime and the prevention of antisocial acts. Preventive, precautionary, safety and immediate redress measures, defined by doctrine as the return of property and restoration of previous condition, are examples of procedural measures that might be required during criminal proceedings. Precautionary measures are procedural, coercive and effective measures taken by judicial authorities to freeze certain movable or immovable property by confiscating it, to prevent the destruction, concealment, theft or disposal of property subject to special or extended confiscation, to ensure enforcement of fines or court costs, or to make good the damage caused by the criminal offence. Confiscation, seizure and attachment are examples of preventive tactics. As for the functionality of precautionary measures, they are only protective, not remedial. Precautionary measures are intended to prevent the concealment, destruction, disposal or theft of property which may be subject to special or extended confiscation or which may be used to enforce fines or court fees or to make good the damage caused by the criminal offence.

Keywords. seizure, code, judicial bodies, precautionary measures, procedure

1. General notions

1.1. Concept and other common provisions on precautionary measures

Precautionary measures are effective procedural measures which include seizure of movable and immovable property of the defendant, accused person or offender, as well as sums owed to them in any capacity by a third party or by the injured party himself, for the purposes of special attachment, extended attachment, compensation for damage caused by the criminal offence and enforcement of the fine.

Precautionary measures "justify their presence in procedural measures because, until the final resolution of criminal cases and the final decision admitting the civil, restorative action or imposing the penalty of fine, the defendant or civilly liable party could dispose of his assets and become insolvent".¹

As a general rule, as follows from the wording of the legal text (Article 163 of the Code of Criminal Procedure), the adoption of preventive measures is optional and their disposition is left to the discretion of the competent authority depending on the facts of each criminal case, independently of the objective of the measures.

¹ Ion Neagu, Treatise on criminal procedure. General part, Universul Juridic, Bucharest, 2008

The only situation in which preventive measures are required pursuant to Art. 163 of the Code of Civil Procedure is the one mentioned in Art. 163 para. 3 lit. b of the Code of Criminal Procedure.²

As a result, if the injured party is a person without or limited capacity, preventive measures are required pursuant to Art. 163 para. 3 lit. b Code of Criminal Procedure. This is also the only case in which a civil action is brought and brought ex officio (Art. 17(1) to (3) of the Code of Civil Procedure).³

In addition to the requirements laid down in Art. 163, para. 6 lit. a. of the Code of Criminal Procedure., provisions regarding the responsibility to take precautionary measures can be found in Law nr. 78/2000 on the prevention, detection and sanctioning of corruption acts, Law nr. 656/2002 on the prevention and sanctioning of money laundering and Law no. 241/2005 concerning the prevention and combating of financial fraud, it should be noted that the legal arguments set out in the motivation of the Decision of the Constitutional Court no. 191/12.10.2000 regarding compliance with art. 42 para. 1 of the Constitution, relating to equal protection of individual property, are also important for analysing the possible non-compliance of legislation regulating the obligation to take precautionary measures with the constitutional norm, since, in case of committing an offence provided for by a constitutional norm, the provisions governing the obligation to take precautionary measures are also relevant for the analysis.⁴

As a result, a private property owner who is harmed as a result of one of the crimes for which precautionary measures are imposed has an advantage over other private owners who are harmed as a result of other crimes, leading to differentiated and discriminatory protection of private property.

At the same time, it should be stressed that, although the above-mentioned legislative rules oblige the competent judicial authorities to take preventive measures, such orders are not necessary if the preventive measure is implemented to make good the damage caused by the crime and if there is no civil party involved.

1.2. Purpose and object of precautionary measures

The purpose of precautionary measures is to ensure that the rules in both civil and criminal matters are respected, i.e. compensation for damage and payment of the criminal fine. At the same time, when establishing precautionary measures in anticipation of exceptional or prolonged confiscation, the aim is to ensure that these security measures are implemented.

a) Recovery of damage. Precautionary measures may be used during criminal proceedings only to ensure recovery of material damage (property) caused by the crime, not non-material damage, for which civil action may be initiated.

b) Case-by-case seizures. Article 1 of Law nr. 356/2006 revising and supplementing the Code of Criminal Procedure and amending other laws amended the wording of Article 163 para. 1 of the Code of Criminal Procedure and added the potential for seizure to ensure that any Acquisition of property the value of which clearly exceeds the income legitimately obtained by the guilty person is carried out.

Conditions for exceptional confiscation in general:

- Existence of a dangerous situation.

² <https://www.juridice.ro/693375/masurile-asiguratorii-in-procesul-penal-aspecte-generale.html>

³ Code of Criminal Procedure, art. 163

⁴ Romanian Constitution, art. 42

- Offence or offence⁵.

The provisions of Article 118 of the Criminal Code have carefully described the types of property that may be subject to exceptional confiscation.

Only if the court is responsible for prosecuting the crime in question does it have the authority to impose exceptional confiscation. The prosecutor has the authority to impose exceptional confiscation if an order is issued to withdraw or discontinue criminal prosecution, in accordance with Article 245 para. 1 lit. b of the Code of Criminal Procedure.⁶

c) The provisions of art. I of Law nr. 63/17.04.2012 amending and supplementing the Criminal Code of Romania and Law no. Regulation (EC) No 286/2009 on the Criminal Code incorporated extended confiscation into national legislation.

Confiscarea extinsă este posibilă numai dacă sunt îndeplinite anumite condiții:

- Convicting a person of a serious crime. - committing any of the offences referred to in art. 118 para. 1 of the Criminal Code.

- Acquisition of property the value of which clearly exceeds the income legitimately obtained by the guilty person.

- Determination by the court that property subject to extended confiscation is the result of criminal activity.⁷

- Existence of a dangerous situation.

Judicial entities with the power to impose long-term confiscation. Unlike special confiscation, which can be issued by the public prosecutor when a decision is taken to close or discontinue prosecution, extended confiscation can only be authorised by a court.

d) Imposition of a fine. The main punishments are life imprisonment, imprisonment from 15 days to 30 years and a fine from 100 lei to 50,000 lei, according to art. 53 para. 1, para. 1 of the Criminal Code. The criminal fine is described in theory as "a punishment consisting of a sum of money that the guilty person is obliged to pay to the state" and is coercive because it requires the convicted person to reduce their property.

The movable and immovable property of the accused, the defendant or the civilly liable party, as well as sums of money owed to them, for whatever reason, by a third party or by the injured party himself, may be subject to precautionary measures, in accordance with the legal provisions governing precautionary measures in criminal proceedings (Article 163 et seq. of the Code of Criminal Procedure).

e) Property that may be subject to precautionary measures. The purpose of precautionary measures varies depending on whether they were intended to ensure reparation for damage, exceptional confiscation, prolonged confiscation or enforcement of the fine.

To fix the problem. Precautionary measures to compensate for damage may be taken against property of the defendant, defendant or civilly liable party up to the probable value of the case, pursuant to Section 163(2) of the Code of Criminal Procedure.

To ensure that the fine is enforced. Measures to ensure enforcement of the fine shall be taken exclusively on the property of the defendant or defendant, in accordance with Article 163 para. 3 of the Code of Criminal Procedure.

Due to the personal nature of this criminal penalty, preventive measures adopted with a view to exceptional confiscation may be taken on the property of the accused or accused person.

⁵ Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017

⁶ Code of Criminal Procedure, art. 245, para 1

⁷ Code of Criminal Procedure, art. 118, para 1

In view of the personal nature of this criminal penalty, the preventive measure adopted with a view to exceptional confiscation may be taken against the property of the accused or accused person.

To date, neither judicial practice nor doctrine has provided an answer as to whether property subject to special confiscation under Article 118 of the Criminal Code may be subject to precautionary measures when criminal proceedings are initiated in respect of the crime (in rem) or when criminal proceedings are initiated in respect of the person (in personam), but special confiscation concerns property of a person other than the defendant.

Given that the purpose of adopting a preventive measure in case of special confiscation is to ensure the possibility of special confiscation, it is logical to take preventive measures in the two cases mentioned above. Therefore, as there is no specific provision to this effect, there is a vacuum in the regulation of preventive measures adopted to ensure probable special confiscation. However, it should be stressed that no distinction is made between whether prosecutions are initiated 'in rem' or 'in personam'.

With the intention of extending the period of confiscation, due to the personal nature of this criminal sanction, the preventive measure extending confiscation provided for can only apply to the property of the accused or accused person, as well as because precautionary measures can only be taken 'in the course of criminal proceedings' and the provisions of Article 1182 of the Criminal Code apply to the property of the convicted person.⁸

f) Goods that are exempt from preventive measures. Property belonging to an institution referred to in Article 145 of the Criminal Code, as well as property exempt by law, may not be confiscated. Therefore, inalienable property, which is set aside and cannot be the subject of a civil legal act, cannot be subject to preventive measures.

Depending on the reason for which the attachment is imposed, the actual criminal attachment may concern the movable property of the accused, the accused or the civilly liable party, as permitted by Article 163 of the Code of Criminal Procedure.

Moreover, seizure of objects must be carried out on any objects which meet the criteria for becoming evidence and which are relevant to the purpose of this procedural act.

1.3. Jurisdiction and conditions for taking precautionary measures

Ability to take preventive action.

a) Judicial bodies have the authority to issue protection orders.

Preventive measures are adopted by the public prosecutor or by the court during criminal proceedings, in accordance with Art. 163 para. 1 of the Code of Criminal Procedure. Therefore, the prosecutor in the criminal investigation phase and the court in the trial phase are the only judicial entities that have the authority to impose preventive measures during criminal proceedings.⁹

b) The act imposing preventive measures, as well as their specificity.

During criminal proceedings, the prosecutor [Article 164 para. 1 of the Code of Criminal Procedure] and the court may impose preventive measures.¹⁰

Conditions for ordering precautionary measures

⁸ Niculae Ioana Nicoleta, *Legal ways to ensure the recovery of damages in the criminal investigation phase*, PhD thesis, Bucharest, 2013

⁹ Code of Criminal Procedure, art. 163, para 1

¹⁰ Code of Criminal Procedure, art. 164, para. 1

These are procedural measures involving the inaccessibility of movable or immovable property of the suspect, the defendant (and, in certain cases, the civilly liable party or others) during criminal proceedings, in order to prevent the concealment, destruction, disposal or evasion of prosecution of property that may be subject to special confiscation or extended confiscation or serve to secure the return of property that may be subject to special confiscation or extended confiscation.

Seizure consists in the freezing of sums of money owed in any capacity to the suspect, defendant or civilly liable person, by a third party or by the injured party. Thus, the New Code of Criminal Procedure enshrines the generic notion of seizure for the purpose of freezing assets, which can also be objectively determined in the form of movable or immovable mortgage inscriptions or seizures.

Attachment consists in the freezing of sums of money owed in any capacity to the suspect, defendant or civilly liable person, by a third party or by the injured party in their hands, within the limits laid down by law, from the date of receipt of the order or decision imposing the seizure.

Precautionary measures are ordered in cases where suspects or accused persons are both natural and legal persons¹¹:

1. They consist of seizing movable or immovable property or income of the suspect, defendant or civilly liable party up to the probable amount of the damage caused, with a view to repairing it;

- No order may be issued to insure damage caused to property other than that of the suspect, defendant or civilly liable party or persons not connected with the criminal proceedings;

- Property acquired as a result of a criminal offence and in the possession of the suspect or accused person may also be confiscated in order to compensate for the damage caused, with compensation for the injured parts;

- If the value of the suspect's or defendant's property exceeds the probable value of the damage caused, a security measure may be applied exclusively to such property and the property of the person civilly liable must not be confiscated; If the judge or court orders the bail to be returned, bail payments may also be confiscated (e.g. if the application for judicial review on bail is rejected as unfounded).

2. The confiscation of the property of the suspect or defendant, up to the exceptional maximum limit of the fine provided for by law, is used to ensure the enforcement of the criminal fine;

- No precautionary measure may be ordered to secure fines on the property of other persons involved in criminal cases, with the exception of the property of the suspect or defendant, or on the property of persons unconnected with the criminal case, since the imposition of such measures takes into account the principle of personality of criminal liability, making the assets of persons liable to be criminally punishable by a fine frozen.

3. Freezing the assets of the suspect or accused person or other persons whose property or possession is located shall be used to implement security, extraordinary confiscation or extended confiscation measures;;

- Goods seized during a house or car search, as well as goods discovered at the scene, may be confiscated;

¹¹ Ioana Nicoleta Niculae, Legal ways to ensure the recovery of damages in the criminal investigation phase, PhD thesis, Bucharest, 2013

- If the prosecution is for money laundering, the public prosecutor or the judge of the preliminary chamber or the trial court may also impose a seizure for special confiscation of property of third parties if there are legitimate indications that there is a link between property acquired by the third party (and which cannot be rationalised by reference to the third person's lawful income) and property acquired by committing criminal offences¹².

4. In order to ensure payment of court costs, the property of the suspect or defendant, as well as of the person civilly responsible, is confiscated up to the probable amount of costs.

- Property belonging to a public authority or institution or to another person subject to public law may not be confiscated, nor may property exempted by law; Therefore, property exempted from confiscation cannot be confiscated in the latter category. According to civil law provisions which are imperceptible, absolute or relative. For example, public property is inalienable, imprescriptible and non-exclusionary; free life annuity, up to the amount claimed by the creditor to provide maintenance, if it has been declared non-exclusive by contract; and the creditor's rights arising from the maintenance contract.¹³

- Assets deemed inalienable by agreement of the parties are also not unassessable and therefore subject to seizure, since assets declared inalienable by law are also not unassessable.¹⁴

- Precautionary measures may be ordered by the public prosecutor, by order (not by the investigating bodies), by the judge of the preliminary chamber, in preliminary chamber proceedings, by order, or by the court by order during criminal proceedings. Preventive measures are, in principle, optional and may be ordered ex officio (including when taken to compensate for the damage; preventive measures taken ex officio by the judicial authorities may also be used by the civil party), at the request of the civil party (when the measure is sought to compensate for the damage caused by the crime) or at the request of the public prosecutor (made either by indictment, either separately during the preliminary investigation). Precautionary measures are only necessary if the person harmed by the offence has no or limited legal power, or if the law expressly requires it.

- Unless repealed, the precautionary measure shall remain in force for the duration of the criminal proceedings;

- If there is a mortgage entry on the same property in the land register at the time of seizure by the criminal judicial authorities to compensate for the damage caused by the crime, it will have a higher rank than the criminal procedural measure; the imposition of precautionary measures in criminal proceedings on real estate means that mortgages or higher-ranking mortgages cannot be enforced until revoked; The claim of the civil party becomes certain, liquid and due with the delivery of a final court decision by which the court settles the civil action exercised in the criminal proceedings in order to order the defendant and/or the civilly liable person to compensate for the damage, but during the enforcement of the claim the existence of other preferential creditors will be taken into account, in the person of those who had a higher-ranking mortgage.

1.4. Bodies carrying out precautionary measures

Those relating to the bodies which execute precautionary measures during criminal proceedings are included among the provisions governing precautionary measures, so Article

¹² Buzescu Gheorghe, *Police Law - University Course*, Sitech Publishing House, Craiova, 2019

¹³ Code of Criminal Procedure, art. 225, para. 2

¹⁴ Code of Criminal Procedure, art. 232

164 of the Code of Criminal Procedure specifies who executes these measures depending on the stage of the criminal proceedings.

The order taking the precautionary measure is enforced by the body that took the measure, in accordance with the first paragraph of Article 164 of the Code of Criminal Procedure, and the court decision ordering the precautionary measure is enforced by the body that took the measure, in accordance with the second paragraph of the same article of the Code of Criminal Procedure. However, these are not the only bodies that can impose precautionary measures, as the circle of persons who can do so is much larger than the circle of persons who can order them.

The public prosecutor or the court takes precautionary measures, and therefore seizure, pursuant to Art. 163 para. 1 of the Code of Procedure. Only these bodies have the authority to order the measure. In the case of seizure of objects, the law allows ordering this measure for a larger group of people. As a result of the provisions of Article 96 of the Code of Criminal Procedure, the criminal investigation bodies or the court may order the seizure of objects and documents.

1.5. Considerations on taking precautionary measures vis-à-vis the legal person

As a result of the revisions brought by Law nr. 278/2006, the criminal liability of the legal person was introduced in the current Criminal Code. Article 479 of the Code of Criminal Procedure provides that preventive measures may be used against a legal person to ensure exceptional confiscation, make good the damage caused by the criminal offence and ensure payment of the fine. The legislature did not provide for a specific method applicable exclusively to legal persons in the case of preventive measures, as is apparent from the wording of that paragraph, but simply stated the reason why such measures may be taken.

1.6. Regulation of precautionary measures in the new Code of Criminal Procedure

Precautionary measures are controlled under Chapter III of Title V of the new Code of Criminal Procedure, which is called "Precautionary measures, restitution of property and restoration of the state prior to the crime". The regulation of a new scenario for which precautionary measures may be adopted is a new element for the purposes of precautionary measures. Unlike the current legislation, the new Code of Criminal Procedure provides for the possibility of adopting preventive measures to ensure the execution of court costs, in accordance with Article 1 para. 249 para. 1 of the new Criminal Code. Since precautionary measures to compensate for damage or to ensure the enforcement of court costs concern the settlement of the civil side of criminal proceedings, they may be taken only on the property of the suspect, defendant or civilly liable person, in accordance with Art. 249, para. 5 of the New Code of Criminal Procedure.¹⁵

Following the principle of proportionality, in this scenario it is also specified that preventive measures will be implemented up to the estimated amount of damage or costs. Unlike the current legislation, which is deficient in this area, the new Code of Criminal Procedure has explicit regulations on assets that can be confiscated in case of exceptional or extended confiscation. In accordance with Article 249 para. 4 of the New Code of Criminal Procedure, when preventive measures are implemented for the purpose of exceptional or

¹⁵Anane Ivan, Investigation of criminal investigation bodies, Pro Universitaria Publishing House, Bucharest, 2014

prolonged confiscation, they may be imposed on the property of the suspect or defendant, as well as on those persons in whose ownership or possession the confiscated property is located.

While the text is broad, covering a wide range of property that can be subject to both special and extended confiscation, it should be noted that extended confiscation can only be used as a preventive measure against the property of the convicted person and that preventive measures of extended confiscation cannot be used against the property of others.

Although not expressly provided, preventive measures for the purpose of exceptional confiscation may apply to property owned or in the possession of other persons and are to be confiscated only when the conditions set out in Article 112 para. 1 lit. b and c of the N.C.P.C. are met. (property provided for in Law no. 278/2006 revising and supplementing the Criminal Code and other laws, published in the Official Gazette, Part I, no. 601/12.07.2006, goods used in any way or intended to be used in committing a criminal offence, if they belong to the offender or if they belong to another person and the latter knows the purpose of their use; used goods, immediately after the offence has been committed, in order to ensure that the offender escapes or that the benefit or proceeds obtained are preserved, if they belong to the offender or if they belong to another person and the latter knows the purpose of their use.

Precautionary measures may only be used against property of the suspect or accused person in all other cases provided for in Article 112 of the New Code of Criminal Procedure governing exceptional confiscation. As regards property which cannot be confiscated, property belonging to a public authority or institution or to another person governed by public law, as well as property exempted by law, shall not be subject to precautionary measures. The period of application of precautionary measures is not formally controlled in the new regulation of the Code of Criminal Procedure, but, taking into account their purpose, precautionary measures usually last until the final resolution of the case or until the objective for which they were adopted is achieved.

Art. 315 para. 1 lit. c, CPC contains provisions similar to those of the current regulation (Article 245 para. 1 lit. c of the Code of Criminal Procedure) regarding the automatic termination of precautionary measures taken to compensate for the damage caused by the crime if the injured party does not bring an action before a civil court within 30 days from the decision not to prosecute or not to initiate proceedings. The same section of the New Code of Criminal Procedure., art. 315 para. Article 2(a) provides that, when a case is dismissed, the order must also contain information on the lifting or maintenance of precautionary measures.

In case of waiver of criminal prosecution, the provisions of Art. 315 para. 2 lit. a of the New Code of Criminal Procedure. (Article 318 para. 5 of the New Code of Criminal Procedure). It should also be noted that, unlike the current legislation, the new Code of Criminal Procedure does not grant the prosecutor the right to order the confiscation of objects subject to special confiscation when a decision not to prosecute is issued, as provided for in Art. 318 para. 5 of the current Code of Criminal Procedure.¹⁶

If the public prosecutor orders the closure or termination of criminal proceedings and refers the matter to the preliminary chamber for a special measure to confiscate or destroy a document, the preliminary chamber issues an order to that effect in accordance with Article 549 of the New Code of Criminal Procedure.

¹⁶ Code of Criminal Procedure, art. 318, para. 5

2. Seizure and its forms

2.1. Criminal seizure itself

In the practice of judges and lawyers, criminal seizure itself is the most commonly used security measure and involves the immobilization of movable property of the accused, accused person or civilly liable party for special confiscation, extended confiscation, reparation for the damage caused by the crime and enforcement of the sentence.

As previously stated in these papers, criminal seizure itself is a precautionary measure that has the legal nature of a series of procedural controls, in real time, which implies the inaccessibility of the movable property of the accused, the accused or other civilly liable parties, in order to ensure reparation for the damage caused by crimes, as well as the execution of the penalties imposed.¹⁷

Regarding the legal nature of the activity of lifting objects and documents, in the legal literature it has been specified that it is a procedural act that is used and necessary to gather as quickly and as completely as possible the means of evidence that can be used to find out the truth and solve the criminal case. Criminal confiscation, like any other preventive action, is, in theory, discretionary and at the discretion of the competent judicial body. On the other hand, Article 96 of the Code of Criminal Procedure states that it is essential for the prosecution or for the court to seize objects or documents that can be used as evidence in criminal proceedings.

However, both actions are genuine in nature, as they involve the seizure of the assets in question. As regards the procedural phase at which seizure may be ordered, it can only be imposed as a preventive measure during criminal proceedings and therefore cannot be ordered at the pre-trial stage. However, it shall not be conditional on the commencement of criminal proceedings. On the other hand, seizures of objects and documents are not conditional on the commencement of criminal proceedings and may be authorised at any time during the pre-trial phase, with the exception of house searches, which require criminal proceedings to be initiated.

Both criminal and non-criminal seizures of things or documents are often carried out *ex officio*, although the affected person retains the right to make such a request.

Attachment procedure.

The seizing body is obliged to identify and assess confiscated property and, if necessary, may call on assessors or experts. Perishable objects, precious metals or articles of precious stone, foreign currency, national securities, works of art and museum objects, valuable collections and sums of money susceptible to confiscation must be taken into account. Perishable items must be handed over to the competent authorities, according to the activity profile, who must receive and retrieve them as soon as possible.

Precious metals, precious stones and goods created with them, as well as foreign currencies, must be deposited with the nearest financial institution.

National securities, works of art or museum objects and valuable collections must be handed over to specialised organisations for safekeeping. The items mentioned above must be returned within 48 hours of pick-up. If the objects are of vital importance for the prosecution, preliminary proceedings or trial, they will be handed over later, but no later than 48 hours after the final decision of the case.

Confiscated items must be stored indefinitely until the seizure is lifted. Money recovered in accordance with the law, as well as sums collected in accordance with the law, shall be recorded, as the case may be, in the name of the suspect, defendant or civilly responsible person, at the disposal of the judicial body that ordered the confiscation, to which the receipt for

¹⁷ Ion Neagu, *Treatise on Criminal Procedure*, PRO Publishing House, Bucharest, 1997

recording the amount is handed over, no later than three days after the money has been collected or the property has been confiscated. The other seized movable property must be sealed or removed, and a custodian may be appointed.

Before a final decision is given in a criminal case, the public prosecutor or the court ordering confiscation may order the confiscated movable property to be recovered immediately, at the owner's request or permission.

Movable property that has been confiscated may be recovered under extraordinary circumstances during criminal proceedings, before a final judgment is handed down, if the owner has not given his consent:

- if the value of confiscated property has decreased considerably within one year of confiscation, i.e. by at least 40% compared to the value at the time of confiscation.
- where the guarantee period is about to expire or where restraining has been imposed on live animals or birds;
- if the sequestration device has been used on combustible or petroleum-based materials;
- where the seizure applies to property for which storage or maintenance costs are disproportionate to its value.

When all of the following conditions are met during criminal proceedings before a final judgment: the owner could not be found and recovery could not be made in accordance with the law, cars on which a lien has been established may be recovered in the following situations:

- if they have been used in any way to commit a criminal offence;
- where one year or more has passed since the security measure was imposed on those assets.

Money resulting from lawful confiscation of movable property shall be recorded in the name of the suspect, defendant or civilly liable person and made available to the judicial authority that ordered the confiscation. Sums derived from lawful confiscation of movable property shall be deposited in the name of the perpetrator, suspect, defendant or civilly liable person or, where appropriate, into a special account set up for that purpose in accordance with the applicable legal provisions, at the disposal of the judicial body which ordered the confiscation.

If the seizing prosecutor considers that confiscated movable property should be recovered during criminal proceedings and the owner has not given his consent, he or she must submit a reasoned request for recovery of confiscated property to the judge of rights and freedoms. When served, the judge of rights and freedoms sets a deadline, which may not be less than 10 days, within which the parties, as well as the custodian of property, if one has been appointed, must appear. The presence of the prosecutor is mandatory.

The parts and the custodian shall be informed of the intention to recover seized movable property at the appointed time in the courtroom and shall be informed that they have the right to make observations or requests concerning the property to be recovered. After examining the observations and requests of the parts and the custodian, the judge of rights and freedoms orders the recovery of the movable property provided for by law in a reasoned decision.

The parts, the custodian, the prosecutor and any other interested person have 10 days to appeal the decision of the judge of rights and freedoms to the judge of rights and freedoms of the superior institution.

The time limit starts to run from the day on which the public prosecutor, the parts or the custodian were notified of the decision or from the day on which they became aware of the decision in the case of other interested parties. Only the decision of the judge of rights and

freedoms ordering the recovery of confiscated movable property can be appealed by the parties or by the custodian.

The Prosecutor General can no longer challenge the decision of the judge of rights and freedoms to reject the proposal to claim seized assets. The appeal will stop the execution of the sentence. The case will be heard as soon as possible and at first instance and the appeal decision will be final. The court may order confiscated movable property to be recovered during the trial, either on its own initiative or at the request of the public prosecutor, one of the parts or the custodian.

To achieve this, the Agency shall set a deadline of at least 10 days within which the parties, as well as the custodians of buns, if one has been appointed, must appear in the boardroom. The presence of a prosecutor is required. The parts will be summoned to a courtroom at a specified time to discuss the value of confiscated mobile phones and will be informed that they have the right to make comments or requests in this regard. The absence of parties duly summoned will not prevent the proceedings from taking place.

The court should order by reasoned decision the recovery of confiscated movable property as well as of the claims provided for by law. The court's decision is final.

During criminal proceedings, the suspect or accused person, the civilly liable party, the custodian, any other interested party and the public prosecutor may appeal to the court competent to hear the case at first instance against the manner in which the decision or order for the recovery of confiscated movable property has been enforced. The objection must be filed within 15 days from the date of conclusion of the contested act. The court will give a final decision on the appeal as soon as possible and in open court, summoning the parties. If no appeal has been lodged against the enforcement of the court's decision or decision to recover confiscated movable property after the criminal proceedings have been completed, a civil appeal may be lodged.

The confiscation body must draw up a report detailing all actions taken in accordance with the law, including a detailed description of the confiscated property and its values. The report shall also list all property identified on the natural person to whom confiscation has been applied and which is immune from prosecution under the law. The report must also keep records of the objections of the suspect, accused or offender, as well as those of other interested parties. The minutes shall also state that the parties have been informed of the following:

- In accordance with the law, you have the right to demand restitution of confiscated property or assets;
- Movable property that has been seized may be claimed by the judicial body during criminal proceedings, even without the owner's permission, if the legal conditions are met, even before a final judgment is handed down.

A copy of the report must be submitted to the person who has been seized and, failing that, to the person with whom he lives, to the administrator, to the landlord or regular replacement, or to a neighbour. A copy of the report must be left with the custodian if part or all of the property has been handed over to him. Within 24 hours of the conclusion of the report, a copy must be sent to the judicial authority that ordered the confiscation.

For seized immovable property, the public prosecutor, the judge of the preliminary chamber or the court which ordered the attachment, the competent body Mortgage notation of seized property, attaching a copy of the order or agreement pursuant to which the attachment was ordered, as well as an example of a seizure report.

No special authorisation from the judge is required to enter the home of the defendant, accused person or person civilly liable for confiscation of their movable property. If the

legislature considered it essential to enter a person's home on the basis of the judge's authorization, regardless of the consent of the person using the dwelling to enter another person's home, it expressly provided for this in the case of a search in order to avoid possible abuses.

Since the application of the precautionary measure frequently requires the entry of the body which applies it to a person's domicile against the will or even in the absence in order to identify and assess property or to seize it, it has been concluded in legal literature 44 that the ordinary legislature has empowered the bodies entrusted with such a task with the right to enter a person's domicile against the will or even in the absence thereof.¹⁸

With regard to the attachment procedure, the legal doctrine raised the question whether the prosecutor is obliged to notify the lawyer of the date and time of seizure, taking into account the provisions of Art. 172 Code of Civil Procedure. on lawyers' rights, and it was decided that: "Beyond the literal interpretation of the text, it is obvious that if such prior notification were made, the accused/accused could hide part of the property or property that could be seized, which would render the prosecution ineffective. Taking into account these factors and the provisions of Article 53 para. 1 of the Constitution, I consider that there is no obligation to notify the lawyer in such cases.

2.2. Mortgage inscription

The mortgage inscription is also a precautionary measure, which is a type of attachment that applies only to real estate. When seals are affixed, it has the effect that immovable property becomes unavailable for seizure, meaning that the person holding it loses the right to dispose of, encumber or even use it, just like any other precautionary measure. The introduction of this measure, which has the effect of freezing immovable property, "practically temporarily removes the seized property from the civil circuit", according to the specialized literature, because, if it were ordered, such a legal transaction would be null and void, because the legal object is not in the civil circuit.

The immovable property covered by this protection measure may be the exclusive property of the defendant, defendant or offender, or may be jointly owned by the spouses or co-owned with other persons, and in the case of enforcement, the part of the property to which the protection measure applies is taken into account.¹⁹

2.3. Attachment

Attachment is a precautionary measure, a type of attachment, used in criminal proceedings to collect sums of money owed in any way to the defendant, defendant or civilly liable party by a third party or by the person who has suffered damage at the hands of a third party. The measure is supported by the large number of cases where the accused, the defendant or the civilly liable party is also a creditor. In criminal proceedings, the measure is also used to enforce the rights of the debtor, the defendant or the civilly liable party. It covers amounts owed to the person whose property has been seized, regardless of their capacity.

The attachment procedure in criminal cases is divided into two sections:

¹⁸ Code of Criminal Procedure, ar. 165-166

¹⁹Ioana Nicoleta Niculae, Legal ways to ensure the recovery of damages in the criminal investigation phase, PhD thesis, Bucharest, 2013

The first moment is attachment, which is an order given to a third party, such as an accused, a defendant or a civilly liable party, not to pay the amount owed and to keep it at the disposal of the judicial authority that instituted the seizure.²⁰

Attachment is represented by sums of money owed by any title to the suspect or defendant or to the civilly liable party by a third person or by the injured party are seized in their hands, within the limits of law, from the date of receipt of the order or conclusion imposing the seizure. Within five days of the due date, the debtor must deposit the sums of money at the disposal of the judicial body that ordered the seizure or of the enforcement body, and the receipts must be handed over to the prosecutor, the preliminary chamber judge or the court within 24 hours of their submission.

The second moment is when the debtor (seized) deposits the amount due to the defendant, defendant or civilly liable party, as the case may be, at the disposal of the body that ordered the seizure or of the enforcement body, within 5 days from the due date, with the receipt handed over to the judicial body within 24 hours of submission.

The rules of Section 783 of the Code of Civil Procedure apply to the implications of the notice of attachment drawn up during criminal proceedings.

The quantities of money owed by any title to the accused, defendant or civilly liable party by a third person or by the injured party himself, as provided for in Section 167 of the Code of Criminal Procedure, serve as an object of seizure.

2.4. Seizure and its forms, in the regulation of the new Code of Criminal Procedure

There are specific provisions on seizure and types of seizure, as well as the attachment procedure and attachment report, in line with the regulations on preventive measures in the new Code of Criminal Procedure. In accordance with the rules of Art. 249 para. 2 of the New Code of Criminal Procedure., among the precautionary measures that can be implemented during criminal prosecution is the seizure of movable or immovable property by imposing a seizure on it. The identification and examination of seized movable property begins the attachment procedure, and if necessary, the body that instituted the seizure may bring valuers or experts art. 252 of the New Code of Criminal Procedure.²¹

It should be noted that, while regulating the seizure procedure, the legislators of the new Code of Criminal Procedure broadened the spectrum of persons who can help the seizure body, allowing the hiring of evaluators in addition to specialists, if necessary. At the same time, unlike the current legislation, which provided for seized perishable assets to be handed over to commercial units with majority state capital, depending on their activity profile, the new Code of Criminal Procedure provides for the same assets to be handed over to "competent authorities, depending on their activity profile".

The rule in the new Code of Criminal Procedure addressing the execution of attachment with or without seizure of movable property represents a significant change. Whereas the current Code of Criminal Procedure provides that other seized movable property must be sealed, removed or a custodian appointed only if the seized property is in danger of being disposed of (Article 165(9) of the Code of Criminal Procedure.²² The new Code of Criminal Procedure stipulates that other seized movable property must be sealed, removed or a custodian must be appointed in all cases (Article 252(9) of the Code of Criminal Procedure. Therefore, leaving

²⁰ Ivan Anane, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

²¹ Code of Criminal Procedure, art. 249, para. 2

²² Code of Criminal Procedure, art. 165, para. 9

seized and unsealed movable property in the custody of the person against whom the measure was taken is no longer an option.

The obligation of the judicial body that ordered the seizure to request from the competent body the mortgage note on the seized movable property, attaching a copy of the order or conclusion ordering the seizure and a copy of the seizure report, is an absolute novelty in the new Code of Criminal Procedure. It should be noted that the new Civil Code unifies the regulations on securities (including accounts and receivables), renaming them "movable mortgages" and using the term "pledge" to define only deposited securities (implies a considerable discharge by a creditor of a vehicle subject to collateral or debt).

3. Recovery of movable property seized during criminal proceedings

3.1. Special cases of recovery of seized movable property

The provisions of Art. 168 of the Code of Criminal Procedure, introduced by Law nr. Regulation (EC) No 28/2012 regulates the possibility for the criminal prosecution body or the court which imposed the seizure to order the recovery of seized movable property immediately, during the criminal investigation, before a final decision, at the request of the owner of the property or with his consent. On the substance, Article 168 para. 1 The Code of Criminal Procedure appears to establish a general rule that confiscated property must be recovered with the consent of the owner, regardless of whether confiscated property is recovered on its own initiative or at the request of the judicial authorities.²³

The need to obtain the consent of the owner in order to recover the seized assets "derives from his very capacity as owner and is justified by the right to dispose of that property, until the final settlement of the criminal proceedings, taking into account the presumption of innocence", according to the doctrine.

In the following circumstances, seized movable property may be realised during criminal proceedings:

1. When the owner of the movable property makes a specific request;
2. Even if the owner of the movable property does not request this by request, his consent is valid;
3. If the owner of the movable property does not give his consent, it can be realised if:
 - a) The value of confiscated assets decreased significantly within one year of confiscation, i.e. by at least 40% compared to the value at the time of confiscation;
 - b) there is a possibility that the guarantee period will expire or that the insurance will apply to live animals or birds;
 - c) seizures have been imposed on flammable or petroleum-based products;
 - d) seizure was applied for objects the storage or maintenance of which requires expenses disproportionate to their value;;
4. If the owner of the seized motor vehicles or means of transport cannot be identified and recovery is not possible in accordance with point 3, such property may be recovered in the following circumstances:
 - a) when they have been used to commit a criminal offence in any way;
 - b) if a period of one year or more has elapsed since a precautionary measure was taken to establish such property.

²³ Code of Criminal Procedure, art. 168, para 1

Money resulting from the confiscation of movable property pursuant to points 1 to 3 must be deposited in the name of the suspect, defendant or civilly liable person at the disposal of the judicial body ordering the confiscation, which must be served with the deposit receipt no later than three days after the confiscation of the property.

Money resulting from the confiscation of movable property pursuant to point 4 must be deposited in the name of the perpetrator, suspect, defendant or civilly liable person or, where appropriate, in a special account set up for that purpose in accordance with Hungarian law, at the disposal of the judicial body ordering the confiscation, which must be served with the receipt for depositing the amount within three days of confiscation.

3.2. Procedure for the realisation of movable property during criminal prosecution

In the cases referred to in points 1, 2 and 4, the prosecutor orders the recovery of seized movable property, taking into account the owner's request/consent, i.e. the impossibility to identify the owner of the property.

In the absence of the owner's consent, the public prosecutor cannot recover the movable property designated by law without first taking the following procedural steps:

a) If the seizing prosecutor considers it reasonable to recover confiscated movable property, he or she must submit a reasoned request to the judge of rights and freedoms to recover the confiscated property;

b) The appointed judge of rights and freedoms sets a time limit, which may not be less than ten days, within which the parties, as well as the depositary of the goods, if one has been appointed, must be summoned. The presence of the prosecutor is required;

c) The summoned persons (who appear at the time set by the prosecutor) are informed that the recovery of seized movable property is being sought and that they are not entitled to make observations or comments on the property to be recovered; their absence shall not prevent the procedure from taking place;

d) Taking into account the objections and requests of the parties or the custodian before issuing a recovery decision;

e) If it is still considered necessary to claim seized movable property, the judge of rights and freedoms may order its modification.

The parts, the guardian, the prosecutor and any other interested person may appeal against the decision of the judge of rights and freedoms to the judge of rights and freedoms of the superior court within 10 days from the date of notification, in the case of the prosecutor, the parties or the guardian, or from the date on which they became aware of the decision, in the case of other interested persons.

The parts or the caregiver can no longer challenge the judge's order of rights and freedoms to recover confiscated movable property.

The prosecutor can no longer appeal against a decision of the court of rights and freedoms rejecting the proposal to take over movable property.

The appeal is pending; the decision of the judge of rights and freedoms ordering recovery is not enforceable; the appeal is heard quickly and early; and the decision on the appeal is final.²⁴

²⁴ Mihail Udroi, Criminal procedure. General part. The New Code of Criminal Procedure, C.H. Beck Publishing House, Bucharest, 2014

3.3. Procedure for the realisation of movable property during the trial

Jurisdiction: the legal structure of the court to which the case was randomly assigned;

Referral: ex officio or at the request of the public prosecutor, one of the parties or the custodian;

Procedure:

a) After the court has been informed, it must set a deadline of at least 10 days within which the parties, as well as the custodian of the property, if one has been appointed, must be summoned; The involvement of the prosecutor is mandatory;

b) The parts will be invited to discuss the value of seized movable property in the Council Chamber on the appointed date and will be informed that they have the right to comment or comment thereon;

c) Deliberation on legislation and adoption of minutes of decision at a public hearing; The proclaimed conclusion is definitive;

d) The court's decision on asset recovery is currently being drafted. ²⁵

3.4. Challenging the use of seized movable property and precautionary measures during criminal prosecution

1. The suspect or defendant, the civilly liable party, the custodian, any other interested party and the prosecutor are all in active proceedings;

2. Competence: In the first instance, a competent agency solves the problem;

3. The deadline for lodging an appeal is 15 days from the date on which the contested act was performed;

4. Procedure: urgent and, ideally, in open court, summoning the parties, by final judgment. ²⁶

If no appeal has been lodged against the execution of seized movable property after the criminal proceedings have been concluded, a civil appeal may be filed.

During criminal proceedings, a suspect, defendant or any other interested party may lodge an appeal against:

- Precautionary steps taken by the public prosecutor (e.g. the fact that seized property could not be precautionary measure or that the precautionary measure is taken on property whose value far exceeds the amount of damage established in the case or on property which is not susceptible to confiscation, etc.);

- How the prosecutor's safeguards are implemented (e.g. towards the report on the execution of the security measure).

According to the NCPP, a rapid judicial review can be obtained against precautionary measures taken in the course of criminal proceedings by lodging an appeal with the judge of rights and freedoms of the court that would be competent to hear the case on the merits; Therefore, unlike the old Code of Procedure drawn up under it, a rapid judicial review can be obtained against precautionary measures taken in the course of criminal proceedings by lodging an appeal with the judge of rights and freedoms of the court who would be competent to hear the case on the merits.

²⁵ Mihail Udriou, Criminal procedure. General part. The New Code of Criminal Procedure, C.H. Beck Publishing House, Bucharest, 2014

²⁶ Mihail Udriou, Criminal procedure. General part. The New Code of Criminal Procedure, C.H. Beck Publishing House, Bucharest, 2014

Nothing prevents the person concerned from lodging a complaint with a prosecutor superior to the one who ordered the precautionary measure at any stage of the criminal proceedings, and that prosecutor from ruling on the legality and merits of the preventive measure, the senior prosecutor may assess ex officio the actions of the lower prosecutor during the criminal proceedings and, if he considers them to be illegal or unfounded, may order their annulment.²⁷

An appeal to the judge of rights and freedoms may be lodged at any time during the criminal investigation, but must be lodged within three days of the date of service or implementation of the order on precautionary measures.

The precautionary measure remains in force for the duration of the proceedings before the judge of rights and freedoms, even if an appeal is lodged.

The rights and freedoms judge must request the prosecution file from the prosecutor, who is obliged to hand it over within 24 hours of the prosecutor's request to rule on the appeal.

The appeal will be settled in the council chamber, with the call of the person who filed the appeal and the parties involved; Legal aid is not required in this procedure (unless it is required during the prosecution phase), but the involvement of the public prosecutor is required.

The appeal shall be settled by final decision and the judge of rights and freedoms may order that the appeal be upheld and that the precautionary measure or forms of enforcement drawn up in an improper manner be annulled or that the appeal be dismissed as late or unjustified.

Within 48 hours of the appeal, the prosecutor must receive the file.

Challenging precautionary measures in the preliminary chamber or during the trial:

If the preliminary chamber judge or the trial court takes a preventive measure, the NCPP allows an appeal not against the way in which the preliminary chamber judge or the trial court took the preventive measures, but against the preventive measure itself, this time incorporating judicial review.

Within 3 days of the implementation of the measure, the prosecutor, suspect, defendant or any other interested party may lodge an appeal with the preliminary chamber judge or the court.

The appeal shall not prevent enforcement and shall be heard in open court, summoning the parties and summoning the prosecutor, within five days of its submission.

The prosecutor's indictment may contain a request to adopt or maintain precautionary measures if he or she orders an indictment; In this case, the preliminary chamber judge must rule on the prosecutor's proposal.

If the public prosecutor decides not to prosecute, the protective measures relating to civil redress and restoration of the situation prior to the crime may be maintained; However, if the injured party does not join a civil action within 30 days of receipt of the notification of non-initiation or termination of criminal proceedings, the public prosecutor must order the revocation of the precautionary measures.

If the court upholds the civil action, it must consider whether precautionary civil redress measures are necessary if they have not been taken previously; the provisions of the judgment on precautionary measures are enforceable - if the court has left the civil action unresolved, the precautionary measures taken in the case are maintained; These measures automatically cease if the injured party does not bring the matter before the civil court within 30 days.

²⁷ Code of Criminal Procedure, Article 304

If no appeal has been lodged against the enforcement of the precautionary measure, once the judgment has become final, an appeal may be lodged in civil matters; Thus, once the court decision has become final, an appeal can be lodged against the procedural act by which the precautionary measure was established (the order of the prosecutor or the conclusion of the preliminary chamber judge or of the institution), and only the manner of enforcement of the measure can be appealed unchallenged.

3.5. Restitution of things

- It is a procedural measure that involves the restitution of objects wrongfully taken from a suspect or accused, or from any other person who received them in order to keep them, to the injured person or to another person in whose possession or custody they were wrongfully taken, as long as restitution does not prevent the establishment of the facts or the fair settlement of the case;

- The procedural action is temporary in nature, aimed at compensating for the damage and lasts until the problem is fully resolved; the person to whom they are returned shall be obliged to keep them until the decision is final;

- During the criminal investigation, the public prosecutor may order the return of the property on request or ex officio (not by the investigating bodies), i.e. by the judge of rights and freedoms by order (if he/she hears the appeal against the prosecutor's order rejecting the request for restitution), by the judge of the preliminary chamber at this stage of the proceedings and by the court at the trial stage by order;

- Any other person claiming to have a right to confiscated property may lodge an objection with the public prosecutor or the judge of rights and freedoms during criminal proceedings, with the judge of the preliminary chamber during the preliminary chamber proceedings or with the court during the trial to establish this right and return the property (e.g. the owner of the property may request its restitution if the property was confiscated from the defendant's apartment during a search and has nothing to do with the case).

- During criminal proceedings, the suspect, accused person or any other interested party may appeal against the prosecutor's decision requesting restitution of property; The injured party or any other interested party may also appeal against the prosecutor's order rejecting the application for restitution of property;

- The judge of rights and freedoms of the court which would be competent to hear the case on its merits is competent to rule on the appeal; an appeal may be lodged at any time during the criminal proceedings, but within three days of service of the order ordering the return of property; the lodging of an appeal shall not prevent enforcement; The rights and freedoms judge must ask the PRO SE judge to rule on the appeal And although legal aid is not required in this procedure (unless it is required during the criminal investigation phase as a whole), the participation of the public prosecutor is required and the appeal is decided by a judge of rights and freedoms.

- If the preliminary chamber judge or court orders the property to be returned, the NCPP allows an appeal not only against the manner in which the measures of the preliminary chamber judge or the court were carried out, but also against the procedural act itself; the appeal shall not suspend enforcement and shall be heard in open court, summoning the parties and with compulsory participation, within five days of registration; the decision of the preliminary chamber judge or court is final; the decision of the preliminary chamber judge or court is final; the decision of the preliminary chamber judge or court is final; the judge of the preliminary chamber or of the court is final; Preliminary Chamber Judge;

- The court may also decide on the restitution of property by decision or decision after deliberation; In this case, an appeal may be lodged against the first instance decision against the provisions on restitution of property (e.g. if the court ordered restitution of property instead of confiscation).

- Following the conclusion of criminal proceedings, an appeal may be lodged under civil law in respect of things taken and not returned during the trial.²⁸

Bibliography

- [1] Anane Ivan, Elements of computerized evidence of the person, Pro Universitaria Publishing House, Bucharest, 2015;
- [2] Anane Ivan, Elements of criminal procedural law, Pro Universitaria Publishing House, Bucharest, 2015;
- [3] Anane Ivan, Investigation of criminal investigation bodies, Pro Universitaria Publishing House, Bucharest, 2014;
- [4] Anane Ivan, Management of criminal prosecution bodies, Pro Universitaria Publishing House, Bucharest, 2014;
- [5] Buzescu Gheorghe, Elements of Public Order, Pro Universitaria Publishing House, Bucharest, 2016;
- [6] Buzescu Gheorghe, Locul și rolul funcționarului public în aparatul de stat, Editura Sitech, Craiova, 2017;
- [7] Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017;
- [8] Buzescu Gheorghe, Police law - university course, Sitech Publishing House, Craiova, 2019;
- [9] Code of Criminal Procedure.
- [10] Criminal Code;
- [11] Ioana Nicoleta Niculae, Legal ways to ensure the recovery of damages in the criminal investigation phase, PhD thesis, Bucharest, 2013;
- [12] Ion Neagu, Mircea Damaschin, Treatise on criminal procedure. The Special Part, Universul Juridic, Bucharest, 2015;
- [13] Ion Neagu, Treatise on criminal procedure. General part, Universul Juridic, Bucharest, 2008;
- [14] Mihail Udriou, Criminal procedure. General part. The New Code of Criminal Procedure, C.H. Beck Publishing House, Bucharest, 2014;
- [15] Romanian Constitution;
- [16] Tudorel Toader, Criminal Code. Code of Criminal Procedure, Hamangiu Publishing House, Bucharest, 2012;

²⁸ Mihail Udriou, Criminal procedure. General part. The New Code of Criminal Procedure, C.H. Beck Publishing House, Bucharest, 2014