

**Codul de Procedura Penala din 01-iul-2010 CODE OF CRIMINAL PROCEDURE of 1 July 2010 (LAW no. 135/2010) (traducere)**

Codul de Procedura Penala din 01-iul-2010 din 2026.03.23

Status: Acte în vigoare

Versiune de la: 23 Martie 2026

**Text consolidat**

**Intră în vigoare:**

15 Iulie 2010 An

**Codul de Procedura Penala din 01-iul-2010 (traducere) CODE OF CRIMINAL PROCEDURE of 1 July 2010 (LAW no. 135/2010) (traducere)**

Data act: 1-iul-2010

**Emitent: Parlamentul**

---

\*) This Code of Criminal Procedure enters into force on the date to be established by its implementing law. (N.n. - see Article 603(1))

The Parliament of Romania adopts this law.

**GENERAL PART:**

**TITLE I: Principles and limits of the application of the criminal procedure law**

**Article 1: Rules of criminal procedure and their purpose**

(1) The rules of criminal procedure regulate the conduct of criminal proceedings and other judicial proceedings in connection with a criminal case.

(2) The rules of criminal procedure aim to ensure the efficient exercise of the powers of the judicial bodies by guaranteeing the rights of the parties and of the other participants in the criminal process so that the provisions of the Constitution, of the founding treaties of the European Union, of the other

regulations of the European Union on criminal procedure, as well as of the pacts and treaties regarding fundamental human rights to which Romania is a party are respected.

## **Article 2: Legality of the criminal trial**

The criminal trial is conducted according to the provisions provided by the law.

## **Article 3: Separation of judicial functions**

### **(1) In the criminal trial, the following judicial functions are exercised:**

- a) the criminal prosecution function;
- b) the function of disposition over the fundamental rights and freedoms of the person in the criminal investigation phase;
- c) the function of verifying the legality of the referral or non-referral to court;
- d) the judgment function.

(2) Judicial functions shall be exercised ex officio, unless otherwise provided by law.

(3) In the conduct of the same criminal trial, the exercise of a judicial function is incompatible with the exercise of another judicial function, except that provided for in paragraph 1(c), which is compatible with the function of judgment, except where the commencement of the trial is ordered in accordance with Article 341(7)(2)(c).

(4) In the exercise of the criminal prosecution function, the prosecutor and the criminal investigation bodies collect the necessary evidence to ascertain whether or not there are grounds for indictment.

(5) On the acts and measures within the criminal investigation, which restrict the fundamental rights and freedoms of the person, the judge designated with powers in this regard orders, except for the cases provided for by law.

(6) The preliminary chamber judge shall rule on the legality of the indictment and the evidence on which it is based, as well as on the legality of the non-indictment solutions, in accordance with the law.

(7) The trial is carried out by the court, in legally constituted panels.

## **Article 4: Presumption of innocence**

(1) Any person is considered innocent until his guilt is established by a final criminal decision.

(2) After the administration of all the evidence, any doubt in the formation of the conviction of the judicial bodies shall be interpreted in favor of the suspect or defendant.

### **Article 5: Finding the Truth**

(1)The judicial bodies have the obligation to ensure, on the basis of evidence, the finding of the truth about the facts and circumstances of the case, as well as about the person of the suspect or defendant.

(2)The criminal prosecution bodies have the obligation to collect and administer evidence both for and against the suspect or defendant. The rejection or failure to record in bad faith the evidence proposed in favor of the suspect or defendant shall be sanctioned according to the provisions of this Code.

### **Article 6: Ne bis in idem**

No person may be prosecuted or tried for committing a crime when a final criminal decision has previously been pronounced against that person on the same act, even under another legal framework.

### **Article 7: Obligation to initiate and exercise criminal proceedings**

(1)The prosecutor is obliged to initiate and exercise criminal proceedings ex officio when there is evidence of the commission of a crime and there is no legal cause for obstruction, other than those provided for in paragraphs (2) and (3).

(2)In the cases and under the conditions expressly provided for by law, the prosecutor may renounce the exercise of the criminal action if, in relation to the concrete elements of the case, there is no public interest in the achievement of its object.

(3)In the cases expressly provided for by law, the prosecutor initiates and exercises the criminal action after the filing of the prior complaint of the injured person or after obtaining the authorization or notification of the competent body or after fulfilling another condition provided by the law.

### **Article 8: Fairness and reasonable duration of the criminal proceedings**

The judicial bodies have the obligation to carry out the criminal investigation and trial in compliance with the procedural guarantees and the rights of the parties and the subjects of the proceedings, so that the facts that constitute crimes are established in a timely and complete manner, no innocent person is held criminally responsible, and any person who has committed a crime is punished according to the law, within a reasonable time.

### **Article 9: The right to liberty and security**

(1)During the criminal trial, the right of every person to liberty and security is guaranteed.

(2)Any measure depriving or restricting liberty shall be ordered exceptionally and only in the cases

and under the conditions provided by law.

(3) Any arrested person has the right to be informed as soon as possible and in a language he understands about the reasons for his arrest and has the right to appeal against the order of the measure.

(4) When it is found that a measure depriving or restricting liberty has been unlawfully ordered, the competent judicial bodies have the obligation to order the revocation of the measure and, where appropriate, the release of the detained or arrested person.

(5) Any person against whom a measure of deprivation of liberty has been illegally or unjustly ordered during the criminal trial has the right to compensation for the damage suffered, under the conditions provided by law.

#### **Article 10: Right of defence**

(1) The parties and the main subjects of the proceedings have the right to defend themselves or to be assisted by a lawyer.

(2) The parties, the main subjects of the proceedings and the lawyer have the right to benefit from the time and facilities necessary to prepare the defense.

(3) The suspect has the right to be informed immediately and before being heard about the act for which the criminal investigation is carried out and its legal classification. The defendant has the right to be informed immediately about the act for which the criminal action against him was initiated and its legal classification.

(4) Before being heard, the suspect and the defendant must be told that they have the right not to make any statement.

(5) The judicial bodies have the obligation to ensure the full and effective exercise of the right to defense by the parties and the main procedural subjects throughout the criminal trial.

(6) The right to defense must be exercised in good faith, according to the purpose for which it was recognized by law.

(7) Any failure to exercise the right to be assisted by a lawyer chosen during the criminal trial must be voluntary and unequivocal and does not prevent the subsequent exercise, at any time during the criminal trial, of this right. In case of non-exercise of the right to be assisted by a lawyer of his choice, the suspect or defendant shall be informed by the judicial bodies, in a simple language accessible to him, about the content of the right and the possible consequences of not exercising it.

#### **Article 11: Respect for human dignity and privacy**

(1) Any person who is under criminal prosecution or trial must be treated with respect for human dignity.

(2) Respect for private life, the inviolability of the home and the secrecy of correspondence are guaranteed. The restriction of the exercise of these rights is allowed only under the conditions of the law and if it is necessary in a democratic society.

### **Article 12: Official language and the right to an interpreter**

(1) The official language in the criminal trial is Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts, the procedural documents being drawn up in Romanian.

(3) The parties and subjects of the proceedings who do not speak or understand the Romanian language or who cannot express themselves are ensured, free of charge, the opportunity to read the documents of the file, to speak, as well as to make conclusions in court, through an interpreter. In cases where legal aid is compulsory, the suspect or defendant is provided free of charge with the possibility of communicating, through an interpreter, with the lawyer in order to prepare for the hearing, the filing of an appeal or any other request related to the settlement of the case.

(4) Authorized interpreters are used in judicial proceedings, according to the law. Sworn interpreters and translators are included in the category, according to the law.

### **Article 13: Application of the criminal procedural law in time and space**

(1) The Criminal Procedure Law applies in criminal proceedings to the acts performed and the measures ordered, from its entry into force until the moment of its exit from force, except for the situations provided for in the transitional provisions.

(2) The Romanian Criminal Procedure Law applies to acts performed and measures ordered on the territory of Romania, with the exceptions provided by law.

## **TITLE II: Criminal action and civil action in criminal proceedings**

### **CHAPTER I: Criminal action**

#### **Article 14: Object and exercise of the criminal action**

(1) The criminal action has as its object the holding criminally responsible of the persons who committed crimes.

(2) The criminal action is set in motion by the indictment provided by law.

(3)The criminal action can be exercised throughout the criminal trial, under the conditions of the law.

#### **Article 15: Conditions for initiating or bringing criminal proceedings**

Criminal proceedings shall be instituted and brought when there is evidence from which there is a reasonable presumption that a person has committed a crime and there are no cases which prevent the initiation or exercise of the offence.

#### **Article 16: Cases preventing the initiation and prosecution of criminal proceedings**

**(1)The criminal action cannot be initiated, and when it has been set in motion, it can no longer be exercised if:**

- a)the deed does not exist;
- b)the act is not provided for by the criminal law or was not committed with the guilt provided by the law;
- c)there is no evidence that a person has committed the crime;
- d)there is a justifying or non-imputable cause;
- e)there is no prior complaint, authorization or notification of the competent body or any other condition provided by law, necessary for the initiation of the criminal action;
- f)the amnesty or prescription has intervened, the death of the suspect or the defendant who is a natural person or the removal of the suspect or defendant who is a legal person has been ordered;
- g)the preliminary complaint has been withdrawn, in the case of crimes for which its withdrawal removes criminal liability, reconciliation has occurred or a mediation agreement has been concluded under the law;
- h)there is a cause for non-punishment provided for by law;
- i)there is the authority of res judicata;
- j)there was a transfer of proceedings with another state, according to the law.

(2)In the cases referred to in paragraph (1)(e) and (j), the criminal action may be initiated subsequently, under the conditions provided by law.

#### **Article 17: Extinguishing the criminal action**

(1)During the criminal investigation, the criminal action shall be extinguished by closing or by dropping the criminal investigation, under the conditions provided by law.

(2)During the trial, the criminal action is extinguished by the final judgment of conviction, waiver of the application of the penalty, postponement of the application of the penalty, acquittal or

termination of the criminal trial.

### **Article 18: Continuation of the criminal trial at the request of the suspect or defendant**

In case of amnesty, prescription, withdrawal of the preliminary complaint, existence of a cause of non-punishment or non-imputability or in case of abandonment of criminal prosecution, the suspect or defendant may request the continuation of the criminal trial.

## **CHAPTER II: Civil action**

### **Article 19: Object and exercise of the civil action**

**(1) The civil action brought in the criminal trial has as its object the tort civil liability of the persons responsible according to the civil law for the damage caused by the commission of the act that is the subject of the criminal action.**

\*) By Decision no. 3/2026 The High Court of Cassation and Justice, in the unitary interpretation and application of the provisions of Article 19(1) and (5) of the Code of Criminal Procedure, in conjunction with those of Article 1.381, Article 1.385, Article 1.386, Article 1.523(2)(e) and Article 1.535(1) of the Civil Code and Article 1(3) of Government Ordinance no. 13/2011 on the legal remunerative and penalty interest for monetary obligations, as well as for the regulation of some financial-fiscal measures in the banking field, establishes that:

In the case of granting material and/or moral damages to cover the damage caused by the commission of an unlawful act, regardless of whether it is provided for as a crime or not, the date from which the legal penalty interest related to the compensation granted runs is the date of the occurrence of the damage.

**(2) The civil action shall be brought by the injured party or his successors, who shall file a civil action against the defendant and, as the case may be, against the civilly liable party.**

\*) In the interpretation and application of the provisions of Article 19(2) of the Code of Criminal Procedure, a civil action brought by a defendant-participant in the commission of the offence of brawl provided for in Article 198(1) of the Criminal Code against another defendant-participant in the same offence of brawl provided for in Article 198(1) of the Criminal Code shall be admissible.

**(3) When the injured person is deprived of the capacity to exercise or has a restricted capacity to exercise, the civil action shall be brought on his behalf by the legal representative or, as the case may be, by the prosecutor, under the conditions of Article 20(1) and (2), and shall have as its object, depending on the interests of the person for whom it is exercised, to be held liable in tort.**

(4)The civil action shall be settled in the criminal trial, if it does not exceed the reasonable duration of the trial.

**(5)The reparation of material and moral damage is made according to the provisions of the civil law.**

\*) By Decision no. 3/2026 The High Court of Cassation and Justice, in the unitary interpretation and application of the provisions of Article 19(1) and (5) of the Code of Criminal Procedure, in conjunction with those of Article 1.381, Article 1.385, Article 1.386, Article 1.523(2)(e) and Article 1.535(1) of the Civil Code and Article 1(3) of Government Ordinance no. 13/2011 on the legal remunerative and penalty interest for monetary obligations, as well as for the regulation of some financial-fiscal measures in the banking field, establishes that:

In the case of granting material and/or moral damages to cover the damage caused by the commission of an unlawful act, regardless of whether it is provided for as a crime or not, the date from which the legal penalty interest related to the compensation granted runs is the date of the occurrence of the damage.

#### **Article 20: Incorporation as a civil party**

(1)The constitution as a civil party can be done until the beginning of the judicial investigation. The judicial bodies have the obligation to inform the injured person of this right.

(1<sup>1</sup>)Prior to the resolution of the case, the criminal investigation body has the obligation to ask the injured person if he is a civil party and if he requests the introduction of the civilly liable party in the case, concluding a report in this regard.

(2)The constitution as a civil party shall be made in writing or orally, indicating the nature and extent of the claims, the reasons and the evidence on which they are based.

(3)If the constitution as a civil party is made orally, the judicial bodies have the obligation to record it in a report or, as the case may be, in the conclusion.

(4)In case of non-compliance with any of the conditions provided for in paragraphs (1) and (2), the injured person or his successors may no longer constitute a civil party in the criminal trial, being able to bring the action before the civil court.

**(5)Until the end of the judicial investigation, the civil party may:**

- a)corrected the material errors in the application for constitution as a civil party;
- b)increase or decrease the extent of the claims;
- c)request compensation for the material damage by paying monetary compensation, if reparation in

kind is no longer possible.

(6) If a large number of persons who do not have opposing interests have filed a civil action, they may appoint a person to represent their interests in the criminal proceedings. If the civil parties have not appointed a common representative for the proper conduct of the criminal trial, the prosecutor or the court may appoint, by ordinance or by reasoned conclusion, a court-appointed lawyer to represent their interests. The conclusion or order will be communicated to the civil parties, who must notify the prosecutor or the court if they refuse to be represented by the lawyer appointed ex officio. All procedural documents communicated to the representative or of which the representative has become aware are presumed to be known by the persons represented.

(7) If the right to compensation for the damage has been transferred by conventional means to another person, he or she may not bring a civil action in the criminal proceedings. If the transmission of this right takes place after the constitution as a civil party, the civil action may be separated.

(8) The civil action that has as its object the civil liability of the defendant and the civilly liable party, exercised in the criminal court or in the civil court, is exempt from stamp duty.

### **Article 21: Introduction of the civilly liable party in the criminal proceedings**

(1) The introduction of the civilly liable party into the criminal proceedings may take place, at the request of the civil party, until the case is resolved by the prosecutor.

(2) When exercising the civil action, the prosecutor is obliged to request the introduction of the civilly liable party in the criminal proceedings, under the conditions of paragraph (1).

(3) The civilly liable party may intervene in the criminal trial until the end of the judicial investigation at the first instance, taking the procedure from the stage in which it is at the time of the intervention.

(4) The civilly liable party has, as far as the civil action is concerned, all the rights that the law provides for the defendant.

### **Article 22: Waiver of civil claims**

(1) The civil party may waive, in whole or in part, the civil claims formulated, until the end of the debates in the appeal.

(2) The waiver can be made either by written request or orally in the court hearing.

(3) The civil party cannot reverse the waiver and cannot bring an action before the civil court for the same claims.

**Article 23: Settlement, mediation and recognition of civil claims**

(1) During the criminal trial, with regard to civil claims, the defendant, the civil party and the civilly liable party may conclude a settlement or mediation agreement, according to the law.

(2) The defendant, with the consent of the civilly liable party, may recognize, in whole or in part, the claims of the civil party.

(3) In the case of recognition of civil claims, the court shall order compensation to the extent of the recognition. With regard to unrecognized civil claims, evidence may be adduced.

**Article 24: Exercise of civil action by or against successors**

(1) The civil action remains in the jurisdiction of the criminal court in the event of death, reorganization, dissolution or dissolution of the civil party, if the heirs or, as the case may be, the successors in rights or its liquidators express their option to continue the exercise of the civil action, within two months from the date of death or of the reorganization, dissolution or dissolution.

(2) In the event of the death, reorganization, dissolution or dissolution of the civilly liable party, the civil action remains within the jurisdiction of the criminal court if the civil party indicates the heirs or, as the case may be, the successors in rights or liquidators of the civilly liable party, within a maximum of two months from the date on which it became aware of the respective circumstance.

(3) (text of Article 24(3) of Part 1, Title II, Chapter II was repealed on 01-Feb-2014 by Article 102(10) of Title III of Law 255/2013)

**Article 25: Resolution of civil action in criminal proceedings**

(1) The court rules by the same decision on both the criminal action and the civil action.

(2) When the object of the civil action is to repair the material damage by returning the work, and this is possible, the court orders that the work be returned to the civil party.

(3) The court, even if there is no constitution of a civil party, rules on the total or partial abolition of a document or on the restoration of the situation prior to the commission of the crime.

(4) (text of Article 25(4) of Part 1, Title II, Chapter II was repealed on 01-Feb-2014 by Article 102(12) of Title III of Law 255/2013)

(5) In the event of acquittal of the defendant or termination of the criminal proceedings, on the basis of Article 16(1)(b), first sentence, (e), (f) - with the exception of the statute of limitations, (i) and (j), in the event of termination of the criminal proceedings as a result of the withdrawal of the

preliminary complaint, as well as in the case provided for in Article 486(2), the court shall dismiss the civil action.

(6)The court shall also leave the civil action unresolved if the heirs or, as the case may be, the successors in rights or the liquidators of the civil party do not express their option to continue the civil action or, as the case may be, the civil party does not indicate the heirs, successors in rights or liquidators of the civilly liable party within the period provided for in Article 24 (1) and (2).

#### **Article 26: Disjunction of the civil action**

(1)The court may order the separation of the civil action, when its resolution determines the exceeding of the reasonable term for solving the criminal action. The resolution of the civil action remains within the competence of the criminal court.

(2)The disjunction shall be ordered by the court ex officio or at the request of the prosecutor or the parties.

(3)The evidence administered until the disjunction will be used to settle the disjoined civil action.

(4)(the text of Article 26(4) of Part 1, Title II, Chapter II was repealed on 01-Feb-2014 by Article 102(16) of Title III of Law 255/2013)

(5)The conclusion by which the civil action is separated is final.

#### **Article 27: Cases of civil action resolution at the civil court**

(1)If they have not become a civil party in the criminal proceedings, the injured person or his successors may file an action with the civil court for compensation for the damage caused by the crime.

(2)The injured person or his successors, who have become a civil party in the criminal proceedings, may bring an action before the civil court if, by a final decision, the criminal court has left the civil action unresolved. The evidence administered during the criminal trial may be used before the civil court.

(3)The injured person or his successors who have become a civil party in the criminal proceedings may bring an action before the civil court if the criminal proceedings have been suspended. In case of resumption of the criminal trial, the action brought before the civil court shall be suspended under the conditions provided for in paragraph (7).

(4)The injured person or his successors, who initiated the action before the civil court, may leave that court and apply to the criminal prosecution body, the judge or the court, if the initiation of the criminal action took place later or the criminal proceedings were resumed after the suspension.

Leaving the civil court cannot take place if it has pronounced a decision, even a non-final one.

(5) If the civil action was brought by the prosecutor, if new evidence shows that the damage was not fully covered by the final decision of the criminal court, the difference may be claimed by means of an action before the civil court.

(6) The injured person or his successors may bring an action before the civil court, for the reparation of the damage arising or discovered after the constitution as a civil party.

(7) In the case referred to in paragraph (1), the trial before the civil court shall be suspended after the initiation of the criminal action and until the resolution of the criminal case in the first instance, but not more than one year.

### **Article 28: The authority of the criminal judgment in the civil trial and the effects of the civil judgment in the criminal trial**

(1) The final decision of the criminal court has the authority of res judicata before the civil court that judges the civil action, regarding the existence of the act and the person who committed it. The civil court is not bound by the final decision of acquittal or termination of the criminal trial as regards the existence of the damage or the guilt of the perpetrator of the unlawful act.

(2) The final decision of the civil court by which the civil action was settled does not have the authority of res judicata before the criminal judicial bodies regarding the existence of the criminal act, the person who committed it and his guilt.

## **TITLE III: Participants in the criminal trial**

### **CHAPTER I: General provisions**

#### **Article 29: Participants in the criminal trial**

The participants in the criminal trial are: the judicial bodies, the lawyer, the parties, the main procedural subjects, as well as other procedural subjects.

#### **Article 30: Judicial bodies**

The specialized state bodies that carry out the judicial activity are:

- a) criminal investigation bodies;
- b) the prosecutor;
- c) the judge of rights and freedoms;
- d) the judge of the preliminary chamber;

e)courts.

### **Article 31: The lawyer**

The lawyer assists or represents the parties or subjects of the proceedings in accordance with the law.

### **Article 32: Parties**

(1)The parties are the procedural subjects who exercise or against whom a judicial action is exercised.

(2)The parties to the criminal trial are the defendant, the civil party and the civilly liable party.

### **Article 33: Main procedural subjects**

(1)The main subjects of the proceedings are the suspect and the injured person.

(2)The main procedural subjects have the same rights and obligations as the parties, except for those that the law grants only to them.

### **Article 34: Other subjects of the proceedings**

In addition to the participants provided for in Article 33, the following are procedural subjects: the witness, the expert, the interpreter, the procedural agent, the special ascertaining bodies, as well as any other persons or bodies provided for by law having certain rights, obligations or attributions in criminal judicial proceedings.

## **CHAPTER II: Competence of judicial bodies**

### **SECTION 1: Functional competence, by subject matter and by the quality of the person of the courts**

#### **Article 35: Jurisdiction of the court**

(1)The court of first instance judges all crimes, except those given by law in the jurisdiction of other courts.

(2)The Court also resolves other cases specifically provided for by law.

#### **Article 36: Jurisdiction of the court**

(1)**The Court of First Instance shall hear at first instance:**

a)the offences provided for by the Criminal Code in Articles 188-191, Articles 209-211, Articles

254, 256<sup>1</sup>, 263, 282, Articles 289-294, Articles 303, 304, 306, 307, 309, 345, 346, 354 and Articles 360-367;

b) crimes committed with outdated intent that resulted in the death of a person;

c) crimes for which criminal prosecution has been carried out by the Directorate for the Investigation of Organized Crime and Terrorism or the National Anticorruption Directorate, if they are not given by law in the competence of other hierarchically superior courts;

c<sup>1</sup>) money laundering offences and tax evasion offences provided for in Article 9 of Law no. 241/2005 for preventing and combating tax evasion, with subsequent amendments;

c<sup>2</sup>) offences prosecuted by the European Public Prosecutor's Office, in accordance with Council Regulation (EU) 2017/1.939 of 12 October 2017 implementing enhanced cooperation in relation to the establishment of the European Public Prosecutor's Office (EPPO);

d) other offences given by law within its competence.

(2) The Tribunal shall settle conflicts of jurisdiction arising between the courts of its district, as well as appeals against decisions handed down by the Court in the cases provided for by law.

(3) The court also hears other cases specifically provided for by law.

### **Article 37: Jurisdiction of the military court**

(1) The military court judges in the first instance all crimes committed by military personnel up to and including the rank of colonel, except for those given by law in the competence of other courts.

(2) The military court also hears other cases specifically provided for by law.

### **Article 38: Jurisdiction of the Court of Appeal**

(1) **The Court of Appeal hears at first instance:**

a) the offences provided for by the Criminal Code in Articles 394-397, 399-412 and 438-445;

b) crimes regarding Romania's national security, provided for in special laws;

**c) offences committed by judges of judges, tribunals and prosecutors of prosecutors' offices operating under these courts;**

\*) By Decision no. 23/2022 The High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that, in the unitary interpretation and application of the provisions of Article 38(1)(c) and Article 40(1) of the Code of Criminal Procedure, the jurisdiction of the court to resolve criminal cases concerning offences committed by judges and prosecutors who have acquired a higher professional rank than that of the court/prosecutor's

office in which they actually work shall be determined by reference to the court/prosecutor's office where the investigated magistrate actually carries out his activity, and not to his or her higher professional rank.

- d) crimes committed by lawyers, notaries public, bailiffs, financial controllers of the Court of Accounts, as well as external public auditors;
- e) crimes committed by the heads of religious cults organized under the conditions of the law and by the other members of the high clergy, who have at least the rank of bishop or its equivalent;
- f) the crimes committed by the assistant magistrates of the High Court of Cassation and Justice;
- g) crimes committed by the members of the Court of Accounts, the President of the Legislative Council, the Ombudsman, the Ombudsperson's deputies and quaestors;
- h) requests for relocation, in the cases provided for by law.

(2) The Court of Appeal hears appeals against criminal decisions handed down at first instance by judges and tribunals.

(3) The Court of Appeal shall settle conflicts of jurisdiction between the courts of its jurisdiction other than those provided for in Article 36(2), as well as appeals against decisions of courts in cases provided for by law.

(4) The Court of Appeal also resolves other cases specifically provided for by law.

### **Article 39: Jurisdiction of the Military Court of Appeal**

**(1) The Military Court of Appeal hears in the first instance:**

- a) the crimes provided by the Criminal Code in articles 394-397, 399-412 and 438-445, committed by the military;
- b) crimes regarding Romania's national security, provided for in special laws, committed by the military;
- c) crimes committed by the judges of the military tribunals and by the military prosecutors of the military prosecutor's offices operating under these courts.
- d) crimes committed by generals, marshals and admirals;
- e) requests for relocation, in the cases provided for by law.

(2) The Military Court of Appeal hears appeals against criminal judgments handed down by military courts.

(3) The Military Court of Appeal shall settle conflicts of jurisdiction between the military courts of its district, as well as appeals against the decisions rendered by them in the cases provided for by law.

(4)The Military Court of Appeal also hears other cases specifically provided for by law.

#### **Article 40: Competence of the High Court of Cassation and Justice**

**(1)The High Court of Cassation and Justice judges in the first instance the crimes of high treason, the crimes committed by senators, deputies and members of the European Parliament of Romania, by members of the Government, by the judges of the Constitutional Court, by the members of the Superior Council of Magistracy, by the judges of the High Court of Cassation and Justice and by the prosecutors of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the judges of the courts of appeal and the Military Court of Appeal, as well as by the prosecutors of the prosecutors' offices attached to these courts.**

\*) By Decision no. 23/2022 The High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that, in the unitary interpretation and application of the provisions of Article 38(1)(c) and Article 40(1) of the Code of Criminal Procedure, the jurisdiction of the court to resolve criminal cases concerning offences committed by judges and prosecutors who have acquired a higher professional rank than that of the court/prosecutor's office in which they actually work shall be determined by reference to the court/prosecutor's office where the investigated magistrate actually carries out his activity, and not to his or her higher professional rank.

(2)The High Court of Cassation and Justice hears appeals against criminal decisions handed down at first instance by the courts of appeal, the military courts of appeal and the Criminal Section of the High Court of Cassation and Justice.

(3)The High Court of Cassation and Justice hears appeals in cassation against final criminal decisions, as well as appeals in the interest of the law.

(4)The High Court of Cassation and Justice resolves conflicts of jurisdiction in cases where it is the common superior court to the conflicting courts, cases in which the course of justice is interrupted, requests for relocation in cases provided for by law, as well as appeals against decisions pronounced by courts of appeal in cases provided for by law.

(5)The High Court of Cassation and Justice also resolves other cases specifically provided for by law.

#### **SECTION 2: Territorial jurisdiction of the courts**

#### **Article 41: Jurisdiction for crimes committed on the territory of Romania**

**(1) The jurisdiction by territory is determined, in order, by:**

- a) the place where the crime was committed;
- b) the place where the suspect or defendant was apprehended;
- c) the residence of the suspect or defendant who is a natural person or, as the case may be, the headquarters of the defendant who is a legal person, at the time when he committed the act;
- d) the home or, as the case may be, the headquarters of the injured person.

(2) The place where the crime was committed means the place where the criminal activity took place, in whole or in part, or the place where it occurred.

(3) If, according to paragraph 2, an offence has been committed within the jurisdiction of more than one court, either of them shall have jurisdiction to try it.

(4) Where none of the places referred to in paragraph 1 is known, or where two or more of the courts referred to in paragraph 1 are seised successively, jurisdiction shall lie with the court first seised.

(5) The order of priority referred to in paragraph 1 shall apply if two or more courts are seised simultaneously or if the criminal investigation has been carried out in breach of that order.

(6) The offence committed on a ship under the Romanian flag falls within the jurisdiction of the court in whose district the first Romanian port is located in which the ship anchors, unless otherwise provided by law.

(7) The offence committed on an aircraft registered in Romania falls within the jurisdiction of the court in whose district the first landing place on Romanian territory is located.

(8) If the ship does not anchor in a Romanian port or if the aircraft does not land on Romanian territory, and the competence cannot be determined according to paragraph (1), the competence is the one provided for in paragraph (4).

**Article 42: Jurisdiction for crimes committed outside the territory of Romania**

(1) Crimes committed outside the territory of Romania shall be judged by the courts in whose district the residence of the suspect or defendant who is a natural person or, as the case may be, the headquarters of the defendant who is a legal person is located.

(2) If the defendant does not live or, as the case may be, does not have its headquarters in Romania, and the crime falls within the competence of the court, it is judged by the Court of Sector 2 of Bucharest, and in other cases, by the competent court according to the matter or according to the quality of the person in the municipality of Bucharest, unless the law provides

otherwise.

(3)The offence committed on a ship falls within the competence of the court in whose district the first Romanian port in which the ship anchors is located, unless otherwise provided by law.

(4)The offence committed on an aircraft falls within the competence of the court in whose district the first landing place on Romanian territory is located.

(5)If the ship does not anchor in a Romanian port or if the aircraft does not land on Romanian territory, the competence is that provided for in paragraphs (1) and (2), unless otherwise provided by law.

### **SECTION 3:Special provisions on the jurisdiction of the courts**

#### **Article 43: Joining the causes**

(1)The court orders the joining of cases in the case of a continuous crime, a formal concurrence of crimes or in any other cases where two or more material acts constitute a single crime.

**(2)The court may order the joining of cases, if this does not delay the trial, in the following situations:**

- a)when two or more crimes were committed by the same person;
- b)when two or more persons participated in the commission of a crime;
- c)when there is a connection between two or more crimes and the reunion of cases is necessary for the proper execution of justice.

(3)The provisions of paragraphs (1) and (2) shall also apply in cases where there are several cases with the same subject matter before the same court.

#### **Article 44: Jurisdiction in case of joinder of cases**

(1)In the case of joinder, if, in relation to the different perpetrators or the different facts, the jurisdiction belongs, according to the law, to several courts of equal rank, the competence to judge all the facts and all the perpetrators belongs to the court first seized, and if, according to the nature of the facts or the status of the persons, the jurisdiction belongs to courts of different degree, the competence to judge all the joined cases belongs to the higher court.

(2)The competence to judge the joined cases remains acquired even if for the act or for the perpetrator that determined the competence of a certain court, the separation or termination of the criminal proceedings was ordered or the acquittal was pronounced.

(3)The concealment, favoring of the offender and the failure to report some crimes are the

competence of the court that judges the crime to which they refer, and if the competence according to the quality of the persons belongs to courts of different degrees, the competence to judge all the cases joined belongs to the higher court.

(4) If one of the courts is civilian and the other is military, the jurisdiction lies with the civilian court.

(5) If the military court is superior in rank, jurisdiction lies with the civilian court equivalent in rank competent in accordance with Articles 41 and 42.

#### **Article 45: Procedure for joining cases**

(1) The joining of cases may be ordered at the request of the prosecutor, the parties, the injured person and ex officio by the competent court.

(2) Cases may be joined if they are before the first instance, even after the judgment has been annulled or quashed, or before the court of appeal.

(3) The court pronounces by a conclusion that can be appealed only with the merits.

#### **Article 46: Disjunction of causes**

(1) For sound reasons regarding the better conduct of the trial, the court may order its separation with regard to some of the defendants or some of the crimes.

(2) The disjunction of the case shall be ordered by the court, by conclusion, ex officio or at the request of the prosecutor or the parties.

#### **Article 47: Exceptions of lack of competence**

(1) The exception of lack of material competence or according to the quality of the person of the lower court than the one competent according to the law may be invoked throughout the trial, until the final decision is pronounced.

(2) The exception of lack of material competence or according to the quality of the person of the superior court to the competent one according to the law may be invoked until the beginning of the judicial investigation.

(3) The exception of lack of territorial jurisdiction may be invoked under the conditions of paragraph (2).

(4) Exceptions of lack of jurisdiction may be invoked ex officio, by the prosecutor, by the injured person or by the parties.

**Article 48: Jurisdiction in case of change of the defendant's status**

(1) **When the jurisdiction of the court is determined by the quality of the defendant, the court remains competent to judge even if the defendant, after the commission of the crime, no longer has that capacity, in cases where:**

- a) the act is related to the duties of the perpetrator;
- b) The document of notification of the court was read.

(2) The acquisition of status after the commission of the offence shall not lead to a change of jurisdiction, except for offences committed by the persons referred to in Article 40(1).

**Article 49: Jurisdiction in case of change of legal classification or classification of the act**

(1) The court seized with the trial of an offence remains competent to judge it, even if, after the change of legal classification, the offence falls within the competence of the lower court.

(2) The change of the classification of the act by a new law, which occurred during the trial of the case, does not entail the lack of jurisdiction of the court, unless that law would provide otherwise.

**Article 50: Disclaimer of jurisdiction**

(1) The court declining its jurisdiction shall immediately send the file to the court designated as competent by the declining decision.

(2) If the declination was determined by the material jurisdiction or by the quality of the person, the court to which the case was referred may maintain, reasoned, the evidence administered, the acts performed and the measures ordered by the court that declined its jurisdiction.

(3) In case of declination for lack of territorial jurisdiction, the evidence administered, the acts performed and the measures ordered shall be maintained.

(4) The decision declining jurisdiction is not subject to appeal.

**Article 51: Conflict of competence**

(1) When two or more courts recognize that they have jurisdiction to hear the same case or decline jurisdiction from each other, the positive or negative conflict of jurisdiction is resolved by the common hierarchically superior court.

(2) The common hierarchically superior court is seized, in the event of a positive conflict, by the court that has declared itself to have jurisdiction, and in the event of a negative conflict, by the court that declined its jurisdiction.

(3) The referral to the common hierarchically superior court may also be made by the prosecutor or by the parties.

(4) Until the positive conflict of jurisdiction is resolved, the trial is suspended.

(5) The court that has declined its jurisdiction or that has declared itself competent the latter shall take the measures and carry out the acts that require urgency.

(6) The common hierarchically superior court rules on the conflict of jurisdiction, as a matter of urgency, by means of a conclusion that is not subject to any appeal.

(7) When the court seized with the resolution of the conflict of jurisdiction finds that the case falls within the competence of a court other than those between which the conflict occurred and against which it is not a common superior court, it sends the file to the common superior court.

(8) The court to which the case was referred by the decision establishing jurisdiction can no longer declare itself incompetent, except in situations in which new elements arise that attract the jurisdiction of other courts.

(9) The court to which the case has been referred shall apply the provisions of Article 50(2) and (3) accordingly.

#### **Article 52: Preliminary issues**

(1) The criminal court is competent to judge any question prior to the resolution of the case, even if by its nature that matter is within the competence of another court, except in situations where the competence to resolve does not belong to the judicial bodies.

(2) The preliminary question is judged by the criminal court, according to the rules and means of proof regarding the matter to which that matter belongs.

(3) Final decisions of courts other than criminal courts on a preliminary issue in criminal proceedings have the authority of res judicata before the criminal court.

### **SECTION 4: Competence of the judge of rights and freedoms and of the judge of the preliminary chamber**

#### **Article 53: Competence of the judge of rights and freedoms**

The judge of rights and freedoms is the judge who, within the court, according to its competence, resolves, during the criminal investigation, the requests, proposals, complaints, appeals or any other notifications regarding:

a) preventive measures;

- b) precautionary measures;
- c) provisional safety measures;
- d) the acts of the prosecutor, in the cases expressly provided for by law;
- e) the approval of searches, the use of special methods and techniques of surveillance or investigation or other evidentiary procedures according to the law;
- f) the early hearing procedure;
- g) other situations expressly provided for by law.

#### **Article 54: Jurisdiction of the preliminary chamber judge**

The judge of the preliminary chamber is the judge who, within the court, according to its competence:

- a) verifies the legality of the indictment ordered by the prosecutor;
- b) verifies the legality of the administration of evidence and the performance of procedural acts by the criminal prosecution bodies;
- c) settles complaints against non-prosecution or non-indictment solutions;
- d) solve other situations expressly provided for by law.

### **SECTION 5: Criminal prosecution bodies and their competence**

#### **Article 55: Criminal prosecution bodies**

##### **(1) The criminal prosecution bodies are:**

- a) the prosecutor;
- b) the criminal investigation bodies of the judicial police;
- c) special criminal investigation bodies.

(2) Prosecutors are constituted in prosecutors' offices that operate under the courts of law and exercise their powers within the Public Ministry.

##### **(3) In the criminal trial, the prosecutor has the following attributions:**

- a) supervises or conducts the criminal investigation;
- b) notifies the judge of rights and freedoms and the court;
- c) exercises criminal action;
- d) exercise the civil action, in the cases provided for by law;
- e) concludes the guilty plea agreement, in accordance with the law;
- f) formulates and exercises the appeals and remedies provided by law against court decisions;
- g) performs any other duties provided by law.

(4)The duties of the criminal investigation bodies of the judicial police are carried out by specialized workers from the Ministry of Administration and Interior, specifically designated under the special law, who have received the assent of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or the opinion of the prosecutor appointed in this regard.

(5)The duties of the special criminal investigation bodies are performed by officers specifically designated under the law, who have received the assent of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(6)The criminal investigation bodies of the judicial police and the special criminal investigation bodies carry out their criminal investigation activity under the direction and supervision of the prosecutor.

#### **Article 56: Competence of the prosecutor**

(1)The prosecutor directly directs and controls the criminal prosecution activity of the judicial police and of the special criminal investigation bodies, provided for by law. Also, the prosecutor supervises that the criminal prosecution acts are carried out in compliance with the legal provisions.

(2)The prosecutor may carry out any act of criminal prosecution in the cases he leads and supervises.

#### **(3)The criminal prosecution is necessarily carried out by the prosecutor:**

a)in the case of offences for which the competence to try in the first instance belongs to the High Court of Cassation and Justice or to the Court of Appeal;

b)in the case of the offences provided for in Articles 188-191, Articles 257, 277, Articles 279-283 and Articles 289-294 of the Criminal Code;

c)in the case of crimes committed with excessive intent, which resulted in the death of a person;

d)in the case of crimes for which the competence to carry out the criminal investigation belongs to the Directorate for the Investigation of Organized Crime and Terrorism Crimes or to the National Anticorruption Directorate;

e)in other cases provided for by law.

(4)The criminal prosecution in the case of crimes committed by the military is necessarily carried out by the military prosecutor.

(5)The military prosecutors of the military prosecutors' offices or the military sections of the prosecutor's offices shall carry out the criminal investigation according to the competence of the

prosecutor's office to which they belong, against all the participants in the commission of crimes committed by the military, and the competent court shall be notified according to Article 44.

(6)The prosecutor of the prosecutor's office corresponding to the court which, according to the law, tries the case in the first instance is competent to conduct and supervise the criminal investigation, unless otherwise provided by law.

#### **Article 57: Competence of criminal investigation bodies**

(1)The criminal investigation bodies of the judicial police carry out the criminal investigation for any offence that is not given, by law, within the competence of the special criminal investigation bodies or the prosecutor, as well as in other cases provided for by law.

(2)The special criminal investigation bodies shall carry out criminal prosecution acts only under the conditions of Article 55 (5) and (6), corresponding to the specialization of the structure to which they belong, in case of committing crimes by military personnel or in case of committing crimes of corruption and service provided for by the Criminal Code committed by the seafaring personnel of the civil navy, if the act has endangered or could endanger the safety of the ship or navigation or personnel.

#### **Article 58: Verification of competence**

(1)The criminal investigation body is obliged to verify its competence immediately after the notification.

(2)If the prosecutor finds that he is not competent to carry out or supervise the criminal investigation, he shall immediately order, by order, the decline of jurisdiction and refer the case to the competent prosecutor.

(3)If the criminal investigation body finds that it is not competent to carry out the criminal investigation, it immediately sends the case to the supervising prosecutor, in order to notify the competent body.

#### **Article 59: Extension of territorial competence**

(1)When certain criminal prosecution acts are to be carried out outside the territorial area in which the prosecution is carried out, the prosecutor or, as the case may be, the criminal investigation body may carry them out or may order them to be carried out by rogatory commission or by delegation.

(2)Within the same locality, the prosecutor or the criminal investigation body, as the case may

be, carries out all the prosecution acts, even if some of them must be carried out outside its territorial radius.

### **Article 60: Urgent cases**

The prosecutor or the criminal investigation body, as the case may be, is obliged to carry out the criminal investigation acts that are not postponed, even if they concern a case that is not within his competence. The work carried out in such cases shall be immediately sent to the competent prosecutor.

### **Article 61: Acts concluded by some finding bodies**

**(1) Whenever there is a reasonable suspicion that a crime has been committed, they are obliged to draw up a report on the circumstances found:**

- a) the bodies of state inspections, other state bodies, as well as of public authorities, public institutions or other legal persons of public law, for crimes that constitute violations of the provisions and obligations whose observance they control, according to the law;
- b) control and management bodies of public administration authorities, other public authorities, public institutions or other legal persons of public law, for crimes committed in connection with the service by those subordinated or under their control;
- c) the public order and national security bodies, for the crimes found during the exercise of the duties provided by law.

(2) The bodies referred to in paragraph (1) have the obligation to take measures to preserve the place of the crime and to collect or preserve the material means of evidence. In the case of flagrant crimes, the same bodies have the right to carry out body or vehicle searches, to apprehend the perpetrator and to immediately present him to the criminal prosecution bodies.

(3) When the perpetrator or the persons present at the scene of the finding have to make objections or clarifications or have to give explanations regarding what is recorded in the report, the finding body has the obligation to record them in the report.

(4) The documents concluded together with the material means of evidence shall be immediately submitted to the criminal investigation bodies.

(5) The report concluded in accordance with the provisions of paragraph (1) shall constitute an act of notification to the criminal investigation bodies and may not be subject to control by means of administrative litigation.

### **Article 62: Acts concluded by masters of ships and aircraft**

(1)The masters of ships and aircraft shall be competent to carry out searches of bodies or vehicles and to check the things which the perpetrators have with them or use, while the ships and aircraft they command are outside ports or airports and for offences committed on such ships or aircraft, while also having the obligations and rights provided for in Article 61.

(2)The documents concluded together with the material means of proof are submitted to the criminal investigation bodies, as soon as the ship or aircraft arrives at the first Romanian port or airport.

(3)In the case of flagrant crimes, the captains of ships and aircraft have the right to carry out body or vehicle searches, to apprehend the perpetrator and to present him to the criminal prosecution bodies.

(4)The report concluded in accordance with the provisions of paragraph (1) shall constitute an act of notification to the criminal investigation bodies and may not be subject to control by means of administrative litigation.

### **Article 63: Common provisions**

(1)The provisions of Articles 41 to 46, 48 and 50 (2) and (3) shall also be duly applied during the criminal investigation.

(2)The provisions of Article 44(2) shall not apply in the criminal investigation phase.

(3)The criminal prosecution of crimes committed under the conditions provided for in Article 41 shall be carried out by the criminal investigation body of the district of the court competent to judge the case, unless the law provides otherwise.

(4)The conflict of competence between 2 or more prosecutors shall be resolved by the hierarchically superior prosecutor common to them. When a conflict arises between two or more criminal investigation bodies, the competence is established by the prosecutor who supervises the criminal investigation activity of these bodies. If the prosecutor does not supervise the activity of all the criminal investigation bodies between which the conflict has arisen, the competence is established by the chief prosecutor of the prosecutor's office in whose district the criminal investigation bodies are located.

## **SECTION 6:Incompatibility and displacement**

### **Article 64: Incompatibility of the judge**

(1)**The judge is incompatible if:**

- a) was a representative or lawyer of a party or of a main procedural subject, even in another case;
- b) is a relative or relative, up to the fourth degree inclusive, or is in another situation of those provided for in Article 177 of the Criminal Code with one of the parties, with a main procedural subject, with their lawyer or representative;
- c) was an expert or witness in the case;
- d) is the guardian or curator of a party or of a main procedural subject;
- e) has carried out, in the case, criminal prosecution acts or participated, as a prosecutor, in any procedure carried out before a judge or a court;
- f) There is a reasonable suspicion that the judge's impartiality is impaired.

(2) Judges who are spouses, relatives or related to each other, up to and including the fourth degree, or who are in another situation from those provided for in Article 177 of the Criminal Code, may not be part of the same panel of judges.

**(3) The judge who participated in the trial of a case may no longer participate in the trial of the same case in an appeal or in the retrial of the case after the annulment or quashing of the judgment.**

\*) In interpreting and applying the provisions of Article 64(3) of the Code of Criminal Procedure, the High Court of Cassation and Justice establishes that:

A judge who has participated in the trial of a case may not participate in the trial of the same case in an extraordinary appeal, at the stage of admissibility in principle (appeal for annulment, revision and appeal in cassation).

(4) The judge of rights and freedoms may not participate, in the same case, in the preliminary chamber procedure, in the trial on the merits or in the appeals.

(5) The judge who participated in the resolution of the complaint against the solutions of non-prosecution or non-indictment may not participate, in the same case, in the trial on the merits or in the appeals.

(6) The judge who ruled on a measure subject to appeal may not participate in the resolution of the appeal.

#### **Article 65: Incompatibility of the prosecutor, the criminal investigation body, the assistant magistrate and the clerk**

(1) The provisions of Article 64(1)(a) to (d) and (f) shall apply to the prosecutor and the criminal investigation body.

(2)The provisions of Article 64(1) shall apply to the assistant magistrate and the clerk.

(3)The provisions of Article 64(2) shall apply to the prosecutor and the assistant magistrate or, as the case may be, to the registrar, where the cause of incompatibility exists between them or between any of them and the judge of rights and freedoms, the judge of the preliminary chamber or one of the members of the panel of judges.

(4)A prosecutor who has participated as a judge in a case may not, in the same case, exercise the function of criminal prosecution or draw conclusions in the trial of that case in the first instance and in appeals.

#### **Article 66: Abstention**

(1)The incompatible person is obliged to declare, as the case may be, to the president of the court, to the prosecutor supervising the criminal investigation or to the hierarchically superior prosecutor that he/she refrains from participating in the criminal trial, indicating the case of incompatibility and the factual grounds that constitute the reason for the abstention.

(2)The declaration of abstention shall be made as soon as the person obliged to do so has become aware of the existence of the case of incompatibility.

#### **Article 67: Recusal**

(1)If the incompatible person has not made a declaration of abstention, the parties, the main subjects of the proceedings or the prosecutor may request recusal, as soon as they have learned about the existence of the case of incompatibility.

(2)The request for recusal is made only against the person within the criminal investigation body, the prosecutor or the judge who carries out judicial activities in question. The recusal of the judge or prosecutor called to decide on recusal is inadmissible.

(3)The provisions of paragraph (2) shall apply accordingly in the event of the recusal of the assistant magistrate and the clerk.

(4)The request for recusal shall be formulated orally or in writing, with the indication, for each person, of the case of incompatibility invoked and of the factual grounds known at the time of formulation of the request. The oral request for recusal shall be recorded in a report or, as the case may be, in the conclusion of the hearing.

(5)Failure to comply with the conditions laid down in paragraphs 2 to 4 or the filing of a request for recusal against the same person on the same ground of incompatibility with the same factual grounds invoked in a previous request for recusal, which was rejected, shall render the request

for recusal inadmissible. The inadmissibility shall be ascertained by the prosecutor or by the panel before which the request for recusal was made.

(6)The judge of rights and freedoms, the judge of the preliminary chamber or the panel before which the recusal was filed, with the participation of the challenged judge, shall rule on preventive measures.

#### **Article 68: Procedure for resolving abstention or recusal**

(1)The abstention or recusal of the judge of rights and freedoms and of the judge of the preliminary chamber shall be resolved by a judge of the same court.

(2)The abstention or recusal of the judge who is part of the panel of judges shall be resolved by another panel of judges.

(3)The abstention or recusal of the assistant magistrate shall be resolved by the panel of judges.

(4)The abstention or recusal of the clerk shall be resolved by the judge of rights and freedoms, by the judge of the preliminary chamber or, as the case may be, by the panel of judges.

(5)The resolution of the abstention or recusal shall be made, within 24 hours, in the council chamber. If it deems it necessary for the resolution of the request, the judge or the panel of judges, as the case may be, may carry out any verifications and may listen to the prosecutor, the main subjects of the proceedings, the parties and the person who abstains or whose recusal is requested.

(6)In case of admission of abstention or recusal, it will be established to what extent the acts performed or the measures ordered are maintained.

(7)The conclusion by which the abstention or recusal is resolved is not subject to any appeal.

(8)When a judge from the same court or, in the case of courts organized by sections, from the same section or from a section with the same specialization cannot be appointed to resolve the abstention or recusal, the request shall be dealt with by a judge from the hierarchically superior court.

(9)In courts which are not organized by sections, if abstention or recusal is allowed and a judge of the court competent to deal with the case cannot be appointed, the judge of the hierarchically superior court shall appoint another court equal in rank to the court before which the declaration of abstention or the request for recusal was made, from the district of the same court of appeal or from the district of a neighboring court of appeal.

(9<sup>1</sup>)If abstention or recusal is admitted, if the court competent to settle the case is organized by

sections and a judge from the corresponding section of this court cannot be appointed, the case is solved by another section of the same court, which has the same specialization. If there is no section with the same specialization, the judge of the hierarchically superior court shall designate another court equal in rank to the court before which the declaration of abstention or the request for recusal was made, from the district of the same court of appeal or from the district of a neighboring court of appeal.

(10) The provisions of paragraphs (8) to (9<sup>1</sup>) shall also apply accordingly in the case of the resolution of the abstention or recusal of the judge who is part of the panel of judges.

### **Article 69: Procedure for solving the abstention or recusal of the person conducting the criminal investigation**

(1) The abstention or recusal of the person conducting the criminal investigation shall be decided by the prosecutor supervising the criminal investigation.

(2) The request for recusal is addressed either to the challenged person or to the prosecutor. If the request is addressed to the person conducting the criminal investigation, he is obliged to submit it together with the necessary clarifications, within 24 hours, to the prosecutor, without interrupting the course of the criminal investigation.

(3) The prosecutor resolves the abstention or recusal within 48 hours, by means of an ordinance that is not subject to any appeal.

(4) In case of admission of abstention or recusal, it will be established to what extent the acts performed or the measures ordered are maintained.

### **Article 70: Procedure for solving the abstention or recusal of the prosecutor**

(1) During the criminal investigation, the abstention or recusal of the prosecutor shall be decided by the hierarchically superior prosecutor. The declaration of abstention or the request for recusal shall be addressed to him, under penalty of inadmissibility.

(2) The inadmissibility shall be ascertained by the prosecutor before whom the request for recusal was made.

(3) The hierarchical superior prosecutor resolves the request within 48 hours, by means of an ordinance that is not subject to any appeal.

(4) During the criminal investigation, the challenged prosecutor may participate in the resolution of the request regarding the preventive measure and may carry out acts or order any measures justifying the urgency.

(5) In the case of the declaration of abstention, the provisions of paragraphs (3) and (4) shall apply accordingly.

(6) In case of admission of abstention or recusal, the superior hierarchical prosecutor shall determine to what extent the acts performed or the measures ordered shall be maintained.

(7) When the proceedings are conducted before the judge of rights and freedoms, the judge of the preliminary chamber or the court, the declaration of abstention or the request for recusal of the prosecutor participating in the hearing shall be addressed to them, under penalty of inadmissibility. The inadmissibility shall be ascertained by the judge or, as the case may be, by the panel of judges before whom it was filed.

(8) The abstention or recusal of the prosecutor who participates in the court hearing shall be resolved by the judge of rights and freedoms, the judge of the preliminary chamber or, as the case may be, by the panel of judges before whom it was raised, in the council chamber, within 24 hours at the latest. If deemed necessary for the resolution of the request, any verifications may be carried out and the main subjects of the proceedings, the parties and the prosecutor who abstains or whose recusal is requested may be heard.

(9) In case of admission of the abstention or recusal of the prosecutor participating in the court hearing, the judge of rights and freedoms, the judge of the preliminary chamber or, as the case may be, the panel of judges shall determine to what extent the acts performed or the measures ordered shall be maintained.

(10) The conclusion by which the abstention or recusal is resolved is not subject to any appeal.

### **Article 71: Basis for relocation**

The High Court of Cassation and Justice shall transfer the hearing of a case from the competent court of appeal to another court of appeal, and the court of appeal shall transfer the hearing of a case from a tribunal or, as the case may be, from a court of its district to another court of the same degree in its district, where there is a reasonable suspicion that the impartiality of the judges of the court is affected by the circumstances of the case, the quality of the parties or when there is a danger of disturbance of public order. The transfer of the trial of a case from a competent military court to another military court of the same rank shall be ordered by the military court of appeal, the provisions of this section regarding the transfer of the trial of the case by the competent court of appeal being applicable.

### **Article 72: Request for relocation and its effects**

- (1)The relocation can be requested by the parties, by the injured person or by the prosecutor.
- (2)The application is submitted to the court from which the relocation is requested and must include an indication of the grounds for relocation, as well as the reasons in fact and in law.
- (3)The documents on which it is based shall be attached to the application.
- (4)The request mentions whether the defendant is subject to a preventive measure.
- (5)The application shall be submitted immediately to the High Court of Cassation and Justice or to the competent court of appeal together with the attached documents.
- (6)The High Court of Cassation and Justice or the competent court of appeal may request information from the president of the court from which the transfer is requested or from the president of the court hierarchically superior to the one where the case for which the relocation is requested, informing him at the same time of the deadline set for judging the request for relocation. When the High Court of Cassation and Justice is the hierarchically superior court, the information is requested from the president of the court of appeal to which the case whose transfer is requested is located. When the competent court of appeal is the hierarchically superior court, the information shall be requested from the president of the court to which the case whose relocation is requested.
- (7)In case of rejection of the relocation request, a new application may not be made in the same case for the same reasons.
- (8)The submission of a relocation request does not suspend the trial of the case.

### **Article 73: Procedure for solving the relocation request**

- (1)The resolution of the relocation request shall be made in a public hearing, with the participation of the prosecutor, within 30 days from the date of registration of the request.
- (2)The president of the hierarchically superior court to the one in which the case is lodged shall take measures to inform the parties about the submission of the request for relocation, about the deadline set for its resolution, with the mention that the parties may send pleadings and may appear at the deadline set for the resolution of the request.
- (3)In the information sent to the High Court of Cassation and Justice or to the Court of Appeal, express mention is made about the making of the acknowledgments, attaching the proofs of their communication.
- (4)The non-appearance of the parties does not prevent the resolution of the application. If the defendant is under pre-trial arrest or house arrest, the High Court of Cassation and Justice or the

competent court of appeal may order the defendant to be brought to trial on the transfer, if it considers that his presence is necessary for the resolution of the request.

(5)The High Court of Cassation and Justice or the competent court of appeal shall give the floor to the party who made the request for relocation, to the other parties present, as well as to the prosecutor. If the prosecutor has made the request, he is given the floor first.

#### **Article 74: Resolution of the request**

(1)The High Court of Cassation and Justice or the competent court of appeal resolves the request for relocation by sentence.

(2)If it finds the request well-founded, the High Court of Cassation and Justice orders the transfer of the case to a court of appeal adjacent to the court from which the relocation is requested, and the court of appeal orders the transfer of the case to one of the courts of the same level as the court from which the relocation is requested from its district.

(3)The High Court of Cassation and Justice or the competent court of appeal decides to what extent the acts performed before the court from which the case was transferred are to be maintained.

(4)The court from which the case was transferred, as well as the court to which the case was transferred, shall be notified immediately of the admission of the request for relocation.

(5)If the court from which the case was transferred has meanwhile proceeded to hear the case, the decision rendered shall be annulled by the effect of admitting the application for relocation.

(6)The sentence referred to in paragraph (1) shall not be subject to any appeal.

#### **Article 75: Other provisions**

(1)After the case has been transferred, the appeals and other appeals are heard by the appropriate courts in the district of the court to which the case was transferred.

(2)The provisions of Articles 71 to 74 shall be applied accordingly in the preliminary chamber procedure.

(3)When the transfer is ordered during the preliminary chamber procedure, the case is judged by the court to which the case was transferred, and the prosecutor to whom the case was returned, if he orders the case to be sent back to court, will also refer the case to the court to which the case was transferred, unless it is no longer competent.

(4)If the judgment of the appeal of the appeal is ordered, the retrial of the case, in case of

annulment of the sentence with referral for retrial, shall be carried out by the court corresponding in rank to the one that solved the merits in the district of the one to which the case was transferred, indicated by the decision of dissolution.

#### **Article 76: Designation of another court to hear the case**

(1)The prosecutor who conducts or supervises the criminal investigation may ask the High Court of Cassation and Justice to designate a court of appeal other than the one that would have jurisdiction to judge the case in the first instance, to be seized if the indictment is issued.

(2)The prosecutor conducting or supervising the criminal investigation may request the competent court of appeal to designate a different court or, as the case may be, a court other than the one that would have jurisdiction to hear the case at first instance, to be seized if the indictment is issued.

(3)The provisions of Article 71 shall apply accordingly.

(4)The High Court of Cassation and Justice or the competent court of appeal resolves the application in the council chamber within 15 days.

(5)The High Court of Cassation and Justice or the competent court of appeal orders, by reasoned conclusion, either the rejection of the application or the admission of the application and the designation of a court equal in rank to the one that would have jurisdiction to hear the case at first instance, to be seized if the indictment is issued.

(6)The conclusion by which the High Court of Cassation and Justice or the competent court of appeal resolves the application is not subject to any appeal.

(7)In case of rejection of the request for the appointment of another court to hear the case filed, a new request may not be made in the same case for the same reasons.

### **CHAPTER III: Main procedural subjects and their rights**

#### **Article 77: The suspect**

The person in respect of whom, from the data and evidence in the case, there is a reasonable suspicion that he has committed an act provided for by the criminal law is called a suspect.

#### **Article 78: Rights of the suspect**

The suspect has the rights provided by law for the defendant, unless the law provides otherwise.

#### **Article 79: Injured person**

The person who has suffered a physical, material or moral injury through the criminal act is called an injured person.

### **Article 80: Designation of a representative of the injured persons**

(1) If there is a large number of injured persons in the case who do not have opposing interests, they may appoint a person to represent their interests in the criminal proceedings. If the injured persons have not appointed a common representative, for the proper conduct of the criminal trial, the prosecutor or the court of law may appoint, by ordinance, respectively by reasoned conclusion, a court-appointed lawyer to represent their interests. The conclusion or the order shall be communicated to the injured persons, who must know, within 3 days from the receipt of the communication, the prosecutor or the court if they refuse to be represented by the lawyer appointed ex officio. All procedural documents communicated to the representative or of which the representative has become aware are presumed to be known by the persons represented.

(2) The representative of the injured persons exercises all the rights recognized by law to them.

### **Article 81**

**(1) In the criminal trial, the injured person has the following rights:**

a) the right to be informed of their rights;

a<sup>1</sup>) the right to be informed promptly of the fact that the person under arrest, prosecuted or convicted of the offence affecting him or her is released or has escaped from detention, as well as of any relevant measures taken to protect him or her in the event of the offender's release or escape;

b) the right to propose the taking of evidence by the judicial bodies, to raise exceptions and to make conclusions;

c) the right to formulate any other requests related to the resolution of the criminal side of the case;

d) the right to be informed, within a reasonable time, about the status of the criminal investigation, at his/her express request, provided that she indicates an address on the territory of Romania, an e-mail address or electronic messaging, to which this information is communicated;

e) the right to consult the file, in accordance with the law;

f) the right to be heard;

g) the right to ask questions to the defendant, witnesses and experts;

g<sup>1</sup>) the right to benefit free of charge from an interpreter when he/she does not understand, does not express himself well or cannot communicate in Romanian. In urgent cases, technical means of communication may be used, if it is deemed necessary and that it does not prevent the exercise of

the rights of the injured person;

g<sup>2</sup>)the right to be informed of the translation into a language he understands of any decision not to prosecute, when he does not understand the Romanian language;

h)the right to be assisted or represented;

i)the right to use a mediator, in cases permitted by law;

j)other rights provided by law.

(2)A person who has suffered a physical, material or moral injury as a result of a criminal act for which the criminal proceedings are initiated ex officio and who does not wish to participate in the criminal proceedings must notify the judicial body, which, if it deems it necessary, may hear him or her as a witness.

## **CHAPTER IV: The defendant and his rights**

### **Article 82: The defendant**

The person against whom the criminal action has been initiated becomes a party to the criminal proceedings and is called a defendant.

### **Article 83: Rights of the defendant**

During the criminal trial, the defendant has the following rights:

a)the right not to give any statement during the criminal trial, drawing his attention to the fact that if he refuses to give statements he will not suffer any unfavorable consequences, and if he gives statements they can be used as evidence against him;

a<sup>1</sup>)the right to be informed about the act for which he is investigated and its legal classification;

b)the right to consult the file, in accordance with the law;

c)the right to have a lawyer of his choice, and if he does not appoint one, in cases of compulsory assistance, the right to have a lawyer appointed ex officio;

d)the right to propose the taking of evidence under the conditions provided by law, to raise objections and to make conclusions;

e)the right to formulate any other requests related to the resolution of the criminal and civil side of the case;

f)the right to benefit free of charge from an interpreter when he/she does not understand, does not express himself well or cannot communicate in Romanian;

g)the right to use a mediator, in cases permitted by law;

g<sup>1</sup>)the right to be informed of their rights;

h) other rights provided by law.

## **CHAPTER V: The civil party and its rights**

### **Article 84: Civil party**

(1) The injured person who brings a civil action in the criminal proceedings is a party to the criminal proceedings and is called a civil party.

(2) The successors of the injured person shall also have the status of civil party, if they exercise the civil action in the criminal trial.

### **Article 85: Rights of the civil party**

(1) In the course of criminal proceedings, the civil party shall have the rights provided for in Article 81.

(2) The status of civil party of the person who has suffered an injury by crime does not remove the right of that person to participate as an injured person in the same case.

(3) The provisions of Article 80 shall apply accordingly where there is a very large number of civil parties.

## **CHAPTER VI: The civilly liable party and its rights**

### **Article 86: Civilly liable party**

The person who, according to the civil law, has the legal or conventional obligation to repair in whole or in part, alone or jointly, the damage caused by the crime and who is called to answer in the trial is a party to the criminal proceedings and is called a civilly liable party.

### **Article 87: Rights of the civilly liable party**

(1) During the criminal proceedings, the civilly liable party shall have the rights provided for in Article 81.

(2) The rights of the civilly liable party shall be exercised within the limits and for the purpose of settling the civil action.

## **CHAPTER VII: The lawyer. Legal assistance and representation**

### **Article 88: The lawyer**

(1) The lawyer assists or represents, in the criminal trial, the parties or the main subjects of the

proceedings, under the conditions of the law.

**(2) The following may not be the lawyer of a party or of a main subject of proceedings:**

- a) spouse or relative up to the fourth degree with the prosecutor or judge;
- b) the witness summoned in the case, except for the one who availed himself, under the conditions of Article 117(1), of the right not to give statements;
- c) the one who participated in the same case as a judge or prosecutor;
- d) another party or another subject of proceedings.

(3) The lawyer chosen or appointed ex officio is obliged to provide legal assistance to the parties or the main subjects of the proceedings.

(4) The parties or main subjects of the proceedings with opposing interests may not be assisted or represented by the same lawyer.

**Article 89: Legal assistance of the suspect or defendant**

(1) The suspect or defendant has the right to be assisted by one or more lawyers throughout the criminal investigation, the preliminary chamber procedure and the trial, and the judicial bodies are obliged to inform him of this right. Legal aid is provided when at least one of the lawyers is present.

(1<sup>1</sup>) The suspect or defendant may not exercise his or her right to be assisted by a lawyer of his or her choice. The failure of the suspect or defendant to exercise this right must be voluntary and unequivocal, may be brought to the attention of the judicial body orally or in writing and shall not prevent the subsequent exercise, at any time during the criminal trial, of the right to be assisted by a lawyer of his choice.

(1<sup>2</sup>) If the suspect or accused person fails to exercise his or her right to be assisted by a lawyer of his choice under the conditions laid down in paragraph 1, the judicial body shall inform him, in simple and accessible language, of the content of the right provided for in Article 83(c), of the possible consequences of not exercising it, and of the possibility of exercising it subsequently, at any time during the criminal trial, the right to be assisted by a lawyer of his choice.

(1<sup>3</sup>) The decision of the suspect or defendant regarding the non-exercise of the right to be assisted by a lawyer, its voluntary and unequivocal nature, as well as the information provided for in paragraph (1<sup>2</sup>) shall be recorded in writing by the judicial body.

(2) The detained or arrested person has the right to contact the lawyer, ensuring the confidentiality of communications, in compliance with the necessary measures of visual surveillance, security and security, without intercepting or recording the conversation between them. Evidence obtained in

violation of this paragraph shall be excluded.

### **Article 90: Mandatory legal aid for the suspect or defendant**

Legal aid is mandatory:

- a) when the suspect or defendant is a minor, interned in a detention center or in an educational center, when he is detained or arrested, even in another case, when the security measure of medical hospitalization has been ordered against him, even in another case, as well as in other cases provided for by law;
- b) if the judicial body considers that the suspect or defendant could not defend himself;
- c) during the procedure in the preliminary chamber and during the trial in cases where the law provides for the punishment of life imprisonment or imprisonment of more than 5 years for the offence committed.

### **Article 91: Court-appointed lawyer**

(1) In the cases referred to in Article 90, if the suspect or defendant has not chosen a lawyer, the judicial body shall take steps to appoint a lawyer ex officio.

(2) Throughout the criminal proceedings, when legal aid is compulsory, if the chosen lawyer is unjustifiably absent, does not provide substitution or unjustifiably refuses to exercise the defence, although the exercise of all procedural rights has been ensured, the judicial body shall take steps to appoint a court-appointed lawyer to replace him, granting him a reasonable period of time and the necessary facilities for the preparation of an effective defence, mentioning it in a report or, as the case may be, in the conclusion of the meeting. During the trial, when legal aid is mandatory, if the chosen lawyer is unjustifiably absent from the trial term, does not ensure substitution or refuses to perform the defense, although the exercise of all procedural rights has been ensured, the court takes steps to appoint a court-appointed lawyer to replace him, granting him a period of at least 3 days to prepare the defense.

(3) The appointed court-appointed lawyer is obliged to appear whenever requested by the judicial body, ensuring a concrete and effective defense in the case.

(4) The delegation of the public defender ceases when the chosen defender is presented.

(5) If the lawyer is absent from the trial of the case and cannot be replaced under the conditions of paragraph (2), the case shall be adjourned.

### **Article 92: Rights of the lawyer of the suspect and the defendant**

(1) **During the criminal investigation, the lawyer of the suspect or defendant has the right to**

**assist in the performance of any criminal investigation, except:**

a) The situation in which the special methods of surveillance or investigation, provided in chap. IV of Title IV;

b) body search or vehicles in the case of flagrant crimes.

(2) The lawyer of the suspect or defendant may request to be informed of the date and time of the criminal investigation or of the hearing conducted by the judge of rights and freedoms. The notification shall be made by telephone, fax, e-mail or other such means, and a report shall be drawn up in this regard.

(3) The absence of a lawyer shall not prevent the criminal prosecution or hearing from being carried out, if there is proof that he or she has been informed under the conditions of paragraph (2).

(4) The lawyer of the suspect or defendant also has the right to participate in the hearing of any person by the judge of rights and freedoms, to formulate complaints, requests and pleadings.

(5) In the case of a house search, the notification provided for in paragraph (2) may also be made after the criminal investigation body has been presented to the home of the person to be searched.

(6) If the lawyer of the suspect or defendant is present at the performance of a criminal prosecution act, mention is made about it and about any objections made, and the document is also signed by the lawyer.

(7) During the preliminary chamber procedure and during the trial, the lawyer has the right to consult the documents of the file, to assist the defendant, to exercise his procedural rights, to formulate complaints, requests, pleadings, exceptions and objections.

(8) The lawyer of the suspect or defendant has the right to benefit from the time and facilities necessary for the preparation and implementation of an effective defense.

**Article 93: Legal assistance of the injured party, the civil party and the civilly liable party**

(1) In the course of the criminal investigation, the lawyer of the injured party, the civil party or the civilly liable party shall have the right to be informed under Article 92(2), to assist in the conduct of any criminal investigation under Article 92, the right to consult the documents in the file and to make requests and to submit pleadings. The provisions of Article 89(1) shall apply accordingly.

(2) The lawyer of the injured party, the civil party or the civilly liable party shall have the right provided for in Article 92(8).

(3) During the trial, the lawyer of the injured person, of the civil party or of the civilly liable party exercises the rights of the assisted person, except for those exercised personally, and the right to

consult the documents of the file.

(4) Legal aid is mandatory when the injured person or the civil party is a person who has no capacity to exercise or with restricted capacity to exercise or when the injured person or the civil party is the victim of one of the offences provided for in Articles 197, 199, 209-216<sup>1</sup>, 218, 218<sup>1</sup>, 219, 219<sup>1</sup>, 221, 222 and 223 of the Criminal Code.

(5) When the judicial body considers that for certain reasons the injured person, the civil party or the civilly liable party could not defend himself, it orders the taking of measures to appoint a court-appointed lawyer.

#### **Article 94: Consultation of the file**

(1) The lawyer of the parties and the main subjects of the proceedings has the right to request consultation of the file throughout the criminal trial. This right may not be exercised or abusively restricted.

(2) Consulting the file implies the right to study its documents, the right to write down data or information from the file, as well as to obtain photocopies at the client's expense.

(3) During the criminal investigation, the prosecutor shall determine the date and duration of the consultation within a reasonable time. This right may be delegated to the criminal investigation body.

(4) During the criminal investigation, the prosecutor may restrict the consultation of the file for reasons, if this could prejudice the proper conduct of the criminal investigation. After the initiation of the criminal action, the restriction may be ordered for a maximum of 10 days.

(5) During the criminal investigation, the lawyer has the obligation to maintain the confidentiality or secrecy of the data and documents of which he became aware during the consultation of the file.

(6) In all cases, the lawyer's right to consult the statements of the party or of the main subject of the proceedings that he/she assists or represents cannot be restricted.

(7) In order to prepare the defense, the defendant's lawyer has the right to take note of all the material of the criminal prosecution file in the proceedings conducted before the judge of rights and freedoms regarding the deprivation or restrictive measures of rights, in which the lawyer participates.

(8) The provisions of this Article shall apply accordingly with regard to the right of the parties and the main parties to the proceedings to consult the file.

#### **Article 95: Right to lodge a complaint**

(1)The lawyer has the right to lodge a complaint, according to Articles 336-339.

(2)In the situations referred to in Articles 89(2), 92(2) and 94, the hierarchical superior prosecutor shall be obliged to resolve the complaint and to communicate the solution, as well as its reasoning, within 48 hours at the latest.

### **Article 96: Representation**

During the criminal trial, the suspect, the defendant, the other parties, as well as the injured person may be represented, except in cases where their presence is mandatory or is deemed necessary by the prosecutor, judge or court, as the case may be.

## **TITLE IV: Evidence, evidence and evidentiary procedures**

### **CHAPTER I: General rules**

#### **Article 97: Evidence and means of proof**

(1)Evidence is any factual element that serves to ascertain the existence or non-existence of a crime, to identify the person who committed it and to know the circumstances necessary for the fair resolution of the case and that contributes to finding out the truth in the criminal trial.

**(2)The evidence is obtained in the criminal trial by the following means:**

- a)the statements of the suspect or the defendant;
- b)the statements of the injured person;
- c)the statements of the civil party or of the civilly liable party;
- d)witness statements;
- e)documents, expert reports or findings, minutes, photographs, material means of evidence;
- f)any other means of proof that is not prohibited by law.

(3)The evidentiary procedure is the legal way of obtaining the means of evidence.

#### **Article 98: Object of probation**

The object of the evidence is:

- a)the existence of the crime and its commission by the defendant;
- b)facts regarding civil liability, when there is a civil party;
- c)the facts and factual circumstances on which the application of the law depends;
- d)any circumstance necessary for the fair settlement of the case.

#### **Article 99: Burden of proof**

(1) In the criminal action, the burden of proof belongs mainly to the prosecutor, and in the civil action, to the civil party or, as the case may be, to the prosecutor who exercises the civil action if the injured person is deprived of capacity to exercise or has restricted capacity to exercise.

(2) The suspect or defendant benefits from the presumption of innocence, not being obliged to prove his innocence, and has the right not to contribute to his own accusation.

(3) In the criminal trial, the injured person, the suspect and the parties have the right to propose to the judicial bodies the administration of evidence.

#### **Article 100: Administration of evidence**

(1) During the criminal investigation, the criminal investigation body collects and administers evidence both in favor of and against the suspect or defendant, ex officio or upon request.

(2) During the trial, the court administers evidence at the request of the prosecutor, the injured person or the parties and, in the alternative, ex officio, when it considers it necessary to form his conviction.

(3) The request regarding the administration of evidence formulated during the criminal investigation or during the trial shall be admitted or rejected, reasoned, by the judicial bodies.

#### **(4) Judicial bodies may reject a request for the taking of evidence where:**

- a) the evidence is not relevant in relation to the object of the evidence in question;
- b) it is considered that sufficient means of proof were adduced in order to prove the factual element which is the subject of the evidence;
- c) the evidence is not necessary, as the fact is notorious;
- d) the evidence is impossible to obtain;
- e) the request was made by an unjustified person;
- f) the taking of evidence is contrary to the law.

#### **Article 101: The principle of fairness of the taking of evidence**

(1) It is forbidden to use violence, threats or other means of coercion, as well as promises or exhortations in order to obtain evidence.

(2) No listening methods or techniques may be used that affect the person's ability to consciously and voluntarily remember and relate the facts that are the subject of the evidence. The prohibition applies even if the person being listened to consents to the use of such a method or technique of listening.

(3) It is forbidden for criminal judicial bodies or other persons acting for them to provoke a person

to commit or continue to commit a criminal act, in order to obtain evidence.

### **Article 102: Exclusion of illegally obtained evidence**

(1) Evidence obtained through torture, as well as evidence derived from it, may not be used in criminal proceedings.

(2) Evidence obtained illegally cannot be used in criminal proceedings.

(3) The nullity of the act by which the administration of evidence was ordered or authorized or by which it was administered determines the exclusion of the evidence, as well as the removal from the case file of the means of proof corresponding to the excluded evidence.

(4) Derivative evidence is excluded if it was obtained directly from the evidence obtained illegally and could not have been obtained in any other way.

(5) (the text of Article 102(5) of Part 1, Title IV, Chapter I was repealed on 01-Feb-2014 by Article 102(62) of Title III of Law 255/2013)

### **Article 103: Appraisal of evidence**

(1) The evidence does not have a value established in advance by law and is subject to the free assessment of the judicial bodies following the evaluation of all the evidence administered.

(2) In making the decision on the existence of the crime and the guilt of the defendant, the court decides reasoned, with reference to all the evaluated evidence. The conviction is ordered only when the court is convinced that the accusation has been proven beyond any reasonable doubt.

(3) The decision to convict, waive the application of the sentence or postpone the application of the sentence may not be based to a decisive extent on the statements of the investigator, collaborators or protected witnesses.

## **CHAPTER II: Hearing of individuals**

### **SECTION 1: General rules on the hearing of persons**

#### **Article 104: Persons heard during the criminal trial**

During the criminal trial, under the conditions provided by law, the following persons may be heard: the suspect, the defendant, the injured person, the civil party, the civilly liable party, witnesses and experts.

#### **Article 105: Hearing by interpreter**

- (1) Whenever the person heard does not understand, speaks or expresses himself well in Romanian, the hearing is done through an interpreter. The interpreter may be appointed by the judicial bodies or chosen by the parties or the injured person, from among the authorized interpreters, according to the law.
- (2) Exceptionally, if it is necessary to take urgent procedural action or if an authorised interpreter cannot be provided, the hearing may take place in the presence of any person who can communicate with the person being heard, but the judicial body having the obligation to resume the hearing through an interpreter as soon as this is possible.
- (3) If the person being heard is deaf, mute or deaf-mute, the hearing is done with the participation of a person who has the ability to communicate through special language. In this situation, communication can also be made in writing.
- (4) In exceptional cases, if an authorised person who can communicate in the special language is not present and the communication cannot be carried out in writing, the persons referred to in paragraph 3 shall be heard with the assistance of any person who has communication skills, the provisions of paragraph 2 being duly applied.

#### **Article 106: Special rules on listening**

- (1) If, during the hearing of a person, he or she shows visible signs of excessive fatigue or symptoms of an illness affecting his or her physical or mental capacity to participate in the hearing, the judicial body shall order the interruption of the hearing and, if necessary, arrange for the person to be consulted by a doctor.
- (2) The person in detention may be heard at the place of detention by videoconference, in exceptional cases and if the judicial body considers that this does not prejudice the proper conduct of the trial or the rights and interests of the parties.
- (3) In the case referred to in paragraph 2, if the person heard is in any of the situations referred to in Article 90, the hearing may take place only in the presence of the lawyer at the place of detention.

### **SECTION 2: Hearing the suspect or defendant**

#### **Article 107: Questions about the person of the suspect or defendant**

- (1) At the beginning of the first hearing, the judicial body asks questions to the suspect or defendant regarding the name, surname, nickname, date and place of birth, personal identification number, parents' name and surname, nationality, marital status, military status,

education, profession or occupation, place of work, domicile and address where he actually lives and the address to which he wishes to be served with the procedural documents, the criminal record or if another criminal trial is taking place against him, if he requests an interpreter if he does not speak or understand the Romanian language or cannot express himself, as well as with regard to any other data to establish his personal situation.

(2)The questions referred to in paragraph 1 shall be repeated at subsequent hearings only when the judicial body deems it necessary.

### **Article 108: Communication of rights and obligations**

(1)The judicial body shall communicate to the suspect or defendant the capacity in which he or she is being heard, the act provided for by the criminal law for which he or she is suspected or for which the criminal action has been initiated and its legal classification.

**(2)The suspect or defendant shall be informed of the rights provided for in Article 83, as well as the following obligations:**

a)the obligation to appear at the summons of the judicial bodies, drawing his attention to the fact that, in case of non-fulfillment of this obligation, a warrant may be issued against him, and in case of absconding, the judge may order his preventive arrest;

b)the obligation to communicate in writing, within 3 days, any change of address, drawing his attention to the fact that, in case of failure to comply with this obligation, the summons and any other documents communicated to the first address remain valid and it is considered that he has taken note of them.

(3)During the criminal investigation, before the first hearing of the suspect or defendant, he or she shall be informed of the rights and obligations referred to in paragraph (2). These rights and obligations shall also be communicated to him in writing, under signature, and if he is unable or refuses to sign, a report shall be concluded.

(4)The judicial body must inform the defendant of the possibility of concluding, during the criminal investigation, of an agreement, as a result of the admission of guilt, and during the trial the possibility of benefiting from the reduction of the sentence provided by law, as a result of the admission of the accusation.

### **Article 109: Listening mode**

(1)After the fulfillment of the provisions of Articles 107 and 108, the suspect or defendant is allowed to declare whatever he wishes regarding the act provided for by the criminal law

communicated to him, after which he may be asked questions.

(2)The suspect or defendant has the right to consult with the lawyer both before and during the hearing, and the judicial body, when it deems it necessary, may allow him to use his own notes and notes.

(3)During the hearing, the suspect or defendant may exercise his or her right to remain silent about any of the facts or circumstances about which he or she is questioned.

### **Article 110: Recording of declarations**

(1)The statements of the suspect or defendant shall be recorded in writing. The statement shall record the questions asked during the hearing, mentioning who formulated them, and each time the time of the beginning and the end of the hearing shall be mentioned.

(2)If he agrees with the content of the written statement, the suspect or defendant signs it. If the suspect or defendant has to make additions, rectifications or clarifications, they are indicated at the end of the statement, followed by the signature of the suspect or defendant.

(3)When the suspect or defendant is unable or unwilling to sign, the judicial body shall record this in the written statement.

(4)The written statement shall also be signed by the criminal investigation body that proceeded to hear the suspect or defendant, by the judge of rights and freedoms or by the president of the panel of judges and the clerk, by the lawyer of the suspect, the defendant, the injured person, the civil party or the civilly liable party, if they were present, as well as by the interpreter when the statement was taken through an interpreter.

(5)During the criminal investigation, the hearing of the suspect or defendant is recorded by audio or audiovisual technical means. When registration is not possible, this is recorded in the statement of the suspect or defendant, with a specific indication of the reason why registration was not possible.

## **SECTION 3:Hearing of the injured person, the civil party and the civilly liable party**

### **Article 111: How to hear the injured person**

(1)At the beginning of the first hearing, the judicial body shall put the questions referred to in Article 107 to the injured party, which shall apply accordingly.

(2)**The injured person is informed of the following rights and obligations:**

a)the right to be assisted by a lawyer, and in cases of compulsory assistance, the right to have a

- lawyer appointed ex officio;
- b)the right to call on a mediator in cases permitted by law;
- c)the right to propose the taking of evidence, to raise exceptions and to make conclusions, under the conditions provided by law;
- d)the right to be informed about the conduct of the procedure, the right to file a prior complaint, as well as the right to file a civil party;
- e)the obligation to appear at the summons of the judicial bodies;
- f)the obligation to communicate any change of address;
- g)(the text of Article 111(2)(G) of Part 1, Title IV, Chapter II, Section 3 was repealed on 01-Feb-2014 by Article 102(71) of Title III of Law 255/2013)
- (3)The provisions of Article 109(1) and (2) and Article 110 shall apply accordingly.
- (4)During the criminal investigation, the hearing of the injured person shall be recorded by audio or audio-video technical means, when the criminal investigation body deems it necessary or when the injured person has expressly requested it, and recording is possible.
- (5)The injured person is informed at the first hearing that, if the defendant is deprived of liberty or sentenced to a custodial sentence, he may be informed of his release in any way or his escape.
- (6)In the case of injured persons for whom the existence of specific protection needs has been established under the law, the judicial body shall order one or more of the following measures, without prejudice to the proper conduct of the trial or the rights and interests of the parties:**
- a)hearing them in premises designed or adapted for this purpose;
- b)hearing them through or in the presence of a psychologist or other specialist in victim counseling;
- c)their hearing, as well as their eventual rehearing, shall be carried out by the same person, if this is possible and if the judicial body considers that this does not prejudice the proper conduct of the trial or the rights and interests of the parties;
- d)hearing them by videoconference or other technical means of communication at the place where they benefit from the temporary accommodation protection measure.
- (7)The hearing and, as the case may be, the re-examination by the criminal investigation bodies of the injured persons who have been victims of the offences provided for in Articles 197, 199, 209-216<sup>1</sup>, 218, 218<sup>1</sup>, 219, 219<sup>1</sup>, 221, 222, 223 and 374 of the Criminal Code, as well as in other cases where, due to the circumstances of the commission of the act, this is considered necessary shall be carried out only by a person of the same sex as the injured person. If this is

not possible, without prejudice to the proper conduct of the trial or the rights and interests of the parties, the hearing of these injured persons and, as the case may be, their re-hearing may be carried out by a person who is not of the same sex as the injured person, with the consent of a lawyer and a psychologist or other specialist in victim counseling.

(8) If the injured person is a minor, the recording of his hearing by audio-video technical means is mandatory in all cases. When video recording is not possible, recording is carried out in all cases by audio technical means.

(8<sup>1</sup>) The hearing of the injured person up to 14 years of age takes place in the presence of one of the parents, the guardian or the person or representative of the institution to which the minor is entrusted for upbringing and education, as well as in the presence of a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(8<sup>2</sup>) If the persons referred to in paragraph (8<sup>1</sup>) cannot be present or have the status of suspect, defendant, injured person, civil party, civilly liable party or witness in question, or there is a reasonable suspicion that they may influence the minor's statement, the hearing of the minor shall take place in the presence of a representative of the guardianship authority or a relative with full capacity to exercise, as well as in the presence of a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(8<sup>3</sup>) If the hearing of the minor injured person concerns the activity of the institution to which he/she is entrusted for upbringing and education, the representative of this institution shall be replaced by the representative of the guardianship authority or by a relative with full capacity to exercise, as well as by a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(9) The hearing of the injured person by the judicial body that has registered a complaint regarding the commission of a crime is carried out immediately, and, if this is not possible, it will be carried out after the complaint is filed, without undue delay.

(10) The statement given by the injured person under paragraph (9) constitutes evidence even if it was administered before the start of the criminal investigation.

#### **Article 112: The manner of hearing the civil party and the civilly liable party**

(1) The hearing of the civil party and the civilly liable party shall take place in accordance with the provisions of Article 111(1), (3) and (4), which shall be applied accordingly.

**(2)The civil party, as well as the civilly liable party, are informed of the following rights:**

- a)the right to be assisted by a lawyer, and in cases of compulsory assistance, the right to have a lawyer appointed ex officio;
- b)the right to call on a mediator in cases permitted by law;
- c)the right to propose the administration of evidence, to raise exceptions and to draw conclusions in relation to the resolution of the civil side of the case, under the conditions provided by law.

**Article 113: Protection of the injured person and the civil party**

(1)When the conditions laid down by law relating to the status of threatened or vulnerable witness or for the protection of privacy or dignity are met, or where the release or escape of the offender may endanger the private life or dignity of the injured person, the civil party or the threatened or vulnerable witness or may cause them harm, Regardless of its nature and extent, the criminal investigation body shall order the provisions of Articles 126 and 127 to the injured person or the civil party, which shall be applied accordingly.

(2)Child victims, victims who are in a relationship of dependence on the offender, victims of terrorism, organised crime, trafficking in human beings, violence in close relationships, sexual violence or exploitation, victims of hate crimes and victims affected by a crime due to prejudice or discrimination that could be linked in particular to their characteristics are presumed to be vulnerable victims with disabilities, as well as victims who have suffered considerable damage as a result of the seriousness of the crime.

(3)If the injured person or the civil party is in any of the situations referred to in paragraph (2), the criminal prosecution body shall inform him of the protective measures that can be taken, their content and the possibility of waiving them. The waiver of the injured person or of the civil party to take protection measures shall be recorded in writing and signed by him, in the presence of the legal representative, if applicable.

(4)The re-hearing of the injured person is made only if this is strictly necessary for the conduct of the criminal trial.

(5)At the hearing, the injured person may be accompanied, at his request, by his legal representative and by another person designated by the injured person, unless the judicial body decides otherwise.

(6)Whenever the judicial body cannot determine the age of the injured person and there are reasons to consider him or her to be a minor, the injured person shall be presumed to be a minor.

## **SECTION 4: Hearing of witnesses**

### **Article 114: Persons heard as witnesses**

(1) Any person who has knowledge of facts or factual circumstances that constitute evidence in the criminal case may be heard as a witness.

(2) **Any person summoned as a witness has the following obligations:**

a) to appear before the judicial body that summoned him at the place, day and time indicated in the summons;

b) to take an oath or solemn declaration before the court;

c) to tell the truth.

(3) The quality of witness takes precedence over the quality of expert or lawyer, mediator or representative of one of the parties or of a main procedural subject, with regard to the facts and factual circumstances that the person knew before acquiring this capacity.

(4) Persons who have drawn up reports pursuant to Articles 61 and 62 may also be heard as witnesses.

### **Article 115: Ability to Witness**

(1) Any person may be summoned and heard as a witness, with the exception of the parties and the main subjects of the proceedings.

(2) Persons who are in a situation which reasonably doubts the capacity to be a witness may be heard only when the judicial body finds that the person is capable of consciously relating facts and factual circumstances in accordance with reality.

(3) In order to decide on the capacity of a person to be a witness, the judicial body shall, upon request or ex officio, order any necessary examination, by the means provided for by law.

### **Article 116: Object and limits of the witness's statement**

(1) The witness is heard on facts or factual circumstances that are the object of the evidence in the case in which he was summoned.

(2) The hearing of the witness may be extended to all the circumstances necessary to verify his credibility.

(3) Those facts or circumstances whose secrecy or confidentiality may be opposed by law to the judicial bodies may not be the subject of the witness's statement.

(4) The facts or circumstances referred to in paragraph 3 may be the subject of the witness's

statement where the competent authority or the person entitled to do so agrees or where there is another legal ground for waiving the obligation to maintain secrecy or confidentiality.

(5)(the text of Article 116(5) of Part 1, Title IV, Chapter II, Section 4 was repealed on 01-Feb-2014 by Article 102(73) of Title III of Law 255/2013)

#### **Article 117: Persons who have the right to refuse to give witness statements**

**(1)The following persons have the right to refuse to be heard as witnesses:**

**a)the spouse, ascendants and descendants in the direct line, as well as the brothers and sisters of the suspect or defendant;**

\*) By Decision no. 175/2022, the Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution contained in Article 117(1)(a) of the Code of Criminal Procedure, which excludes from the right to refuse to be heard as a witness persons who have established relationships similar to those between parents and children, if they live with the suspect or defendant, is unconstitutional.

b)persons who had the status of husband of the suspect or defendant.

c)persons who have established relationships similar to those between spouses or those between parents and children, if they prove that they have lived or are living with the suspect or defendant.

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution contained in Article 117(1)(a) and (b), which excludes from the right to refuse to be heard as a witness persons who have established relations similar to those between spouses, is unconstitutional.

(2)After fulfilling the provisions of Article 119, the judicial bodies shall communicate to the persons referred to in paragraph 1 the right not to give statements as witnesses.

(3)If the persons referred to in paragraph 1 agree to make statements, the provisions of Articles 120 and 121 shall apply in respect of them.

(4)A person who fulfils one of the qualities referred to in paragraph 1 in relation to one of the suspects or defendants shall be exempt from the obligation to testify against the other suspects or defendants, if his statement cannot be limited to the latter alone.

#### **Article 118: The right of the witness to silence and non-self-incrimination**

(1)The witness has the right not to declare facts and factual circumstances which, if known, would incriminate him. The judicial body is obliged to inform him of this right before each

hearing, under the conditions of Article 120.

(2) Evidence obtained in violation of the provisions of paragraph (1) may not be used against the witness in any criminal trial. The provisions of Article 102(3) and (4) shall apply accordingly.

(3) The witness statement given by a person who, in the same case, prior to the statement had or subsequently acquired the status of suspect or defendant may not be used against him. The judicial bodies have the obligation to mention, when recording the declaration, the previous procedural capacity.

(4) If the witness appears at the hearing accompanied by a lawyer, he or she may attend the hearing.

#### **Article 119: Questions about the person of the witness**

(1) The provisions of Article 107 shall apply accordingly in the case of the hearing of the witness.

(2) The witness is informed of the subject matter of the case, the facts or factual circumstances for which he or she has been proposed as a witness and is then asked whether he or she is a family member or ex-spouse of the suspect, defendant, injured person or other parties to the criminal proceedings, whether he or she has established relationships similar to those between spouses or between parents and children or is in friendly or hostile relations with such persons, as well as if he suffered any damage as a result of committing the crime.

(3) The witness is not asked questions about his person when an identity data protection measure has been ordered against him.

#### **Article 120: Communication of rights and obligations**

**(1) After taking the oath or solemn declaration, the witness shall be informed of the following rights and obligations:**

- a) the right to be subject to protection measures and to benefit from the reimbursement of the expenses occasioned by the summons before the judicial bodies, when the conditions provided by the law are met;
- b) the obligation to appear at the summons of the judicial bodies, drawing his attention to the fact that, in case of non-fulfillment of this obligation, a warrant may be issued against him;
- c) the obligation to communicate, in writing, within 5 days, any change of address to which he is summoned, drawing his attention to the fact that, in case of failure to comply with this obligation, the sanction provided for in Article 283 (4) may be ordered against him;
- d) the obligation to give statements in accordance with reality, drawing his attention to the fact

that the law punishes the crime of false testimony;

e) the right not to declare facts and factual circumstances which, if known, would incriminate him.

(2) The notification of the rights and obligations provided for in paragraph (1) shall be mentioned in the declaration.

### **Article 121: The Oath and Solemn Statement of the Witness**

(1) During the criminal investigation and trial, after fulfilling the provisions of Article 119, the criminal investigation body and the president of the panel shall request the witness to take the oath or solemn declaration.

(2) The criminal investigation body and the president of the panel ask the witness if he wishes to take a religious oath or a solemn declaration.

(3) The text of the oath is as follows: "I swear that I will tell the truth and I will not hide anything that I know. May God help me in this way!" The reference to divinity in the formula of the oath changes according to the religious faith of the witness.

(4) During the taking of the oath, with the exceptions imposed by religious faith, the witness holds his right hand on the cross or on the Bible.

(5) If the witness chooses to make a solemn declaration, the text of the statement is as follows: "I undertake to tell the truth and to conceal nothing of what I know."

(6) The provisions of paragraphs (1) to (5) shall be applied accordingly in the early hearing procedure, before the judge of rights and freedoms.

### **Article 122: How to hear the witness**

(1) Each witness is heard separately and without the presence of other witnesses.

(2) The witness is allowed to declare everything he knows about the facts or factual circumstances for which he was proposed, then questions may be asked.

(3) The witness may not be asked questions regarding political, ideological or religious choices or other personal and family circumstances, unless they are strictly necessary to find out the truth in question or to verify the credibility of the witness.

### **Article 123: Recording of declarations**

(1) The registration of the declarations shall be made in accordance with the provisions of Article 110, which shall be applied accordingly.

(2) During the criminal investigation, the hearing of the witness shall be recorded by audio or audio-video technical means, if the criminal investigation body deems it necessary or if the witness expressly requests it and recording is possible.

#### **Article 124: Special cases of witness hearing**

(1) The hearing of the minor witness up to 14 years of age takes place in the presence of one of the parents, the guardian or the person or representative of the institution to which the minor is entrusted for upbringing and education, as well as in the presence of a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(2) If the persons referred to in paragraph (1) cannot be present or have the status of suspect, defendant, injured person, civil party, civilly liable party or witness in question, or there is a reasonable suspicion that they may influence the minor's statement, the minor's hearing shall take place in the presence of a representative of the guardianship authority or a relative with full capacity to exercise, as well as in the presence of a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(2<sup>1</sup>) If the hearing of the minor witness concerns the activity of the institution to which he/she is entrusted for upbringing and education, the representative of this institution shall be replaced by the representative of the guardianship authority or by a relative with full capacity to exercise, as well as by a psychologist, established by the judicial body. The psychologist will provide specialized counseling to the minor throughout the judicial proceedings.

(3) (text of Article 124(3) of Part 1, Title IV, Chapter II, Section 4 was repealed on 09-Mar-2023 by Article 1(4) of Law 51/2023)

(4) The hearing of the minor witness must avoid producing any negative effect on his mental state.

(5) A minor witness who has not reached the age of 14 at the date of the hearing shall not be informed of the obligations laid down in Article 120(2)(d) and shall not take an oath, but shall be called upon to tell the truth.

(6) (text of Article 124(6) of Part 1, Title IV, Chapter II, Section 4 was repealed on 01-Feb-2014 by Article 102(77) of Title III of Law 255/2013)

(7) (the text of Article 124(7) of Part 1, Title IV, Chapter II, Section 4 was repealed on 01-Feb-2014 by Article 102(77) of Title III of Law 255/2013)

## **SECTION 5: Witness protection**

### **SUBSECTION 1: Protection of threatened witnesses**

#### **Article 125: The threatened witness**

Where there is a reasonable suspicion that the life, bodily integrity, liberty, property or professional activity of the witness or of a member of his family may be endangered as a result of the data he provides to the judicial bodies or his statements, the competent judicial body shall grant him the status of threatened witness and order one or more of the protective measures provided for in Article 126 or 127, as the case may be.

#### **Article 126: Protection measures ordered during the criminal investigation**

**(1) During the criminal investigation, once the status of threatened witness is granted, the prosecutor shall order the application of one or more of the following measures:**

- a) supervising and guarding the witness's home or providing temporary housing;
- b) accompanying and ensuring the protection of the witness or his/her family members during travel;
- c) protection of identity data, by granting a pseudonym with which the witness will sign his statement;
- d) hearing the witness without him being present, by means of audio-visual means of transmission, with his voice and image distorted, when the other measures are not sufficient.

(2) The prosecutor orders the application of a protection measure ex officio or at the request of the witness, of one of the parties or of a main procedural subject.

(3) In the event of the application of the protection measures provided for in paragraph (1)(c) and (d), the witness's statement shall not include the witness's real address or identity data, these being recorded in a special register to which only the criminal prosecution body, the judge of rights and freedoms, the judge of the preliminary chamber or the court shall have access, in conditions of confidentiality.

(4) The prosecutor orders the granting of the status of threatened witness and the application of protection measures by reasoned order, which is kept confidential.

(5) The prosecutor shall verify, at reasonable intervals, whether the conditions that determined the protection measures are maintained, and if not, he shall order, by reasoned order, their termination.

(6) The judge of the preliminary chamber, within 15 days from the receipt of the file, and the court, before the start of the judicial investigation, as well as before each hearing of a witness benefiting from one of the protection measures provided for in paragraph (1), shall verify of its own motion whether the grounds which determined its taking still exist and shall order by conclusion, as the case may be, the maintenance or termination of the measure. The provisions of Article 128 (4) to (6) and paragraph (7) first sentence shall be applied accordingly.

(6)(text of Article 126(6) of Part 1, Title IV, Chapter II, Section 5, Subsection 1 was repealed on 03-Aug-2019 by the Act of Decision 248/2019)

(7) If the state of danger has arisen during the preliminary chamber procedure, the judge of the preliminary chamber, ex officio or upon notification of the prosecutor, shall order the protective measures provided for in Article 127. The provisions of Article 128 shall apply accordingly.

(8) The protective measures referred to in paragraph 1(a) and (b) shall be communicated to the authority designated with the implementation of the measure.

#### **Article 127: Protection measures ordered during the trial**

During the trial, once the status of threatened witness is granted, the court orders the application of one or more of the following measures:

- a) supervising and guarding the witness's home or providing temporary housing;
- b) accompanying and ensuring the protection of the witness or his/her family members during travel;
- c) non-publicity of the hearing during the hearing of the witness;
- d) hearing the witness without him being present in the courtroom, by means of audio-video means of transmission, with the voice and image distorted, when the other measures are not sufficient;
- e) the protection of the identity data of the witness and the granting of a pseudonym under which he will testify.

#### **Article 128: Order of the measure of protection of the witness during the trial**

(1) The court orders the application of a protection measure ex officio, at the request of the prosecutor, the witness, the parties or the injured person.

(2) **The proposal made by the prosecutor includes:**

- a) the name of the witness to be heard during the trial phase and for whom the protection

measure is to be ordered;

b) concrete motivation of the seriousness of the danger and the necessity of the measure.

(3) Where the application is made by the other persons referred to in paragraph 1, the court may order the prosecutor to carry out urgent checks on the merits of the application for protection.

(4) The request shall be resolved in the council chamber, without the participation of the person who made the request.

(5) The participation of the prosecutor is mandatory.

(6) The court shall rule by reasoned conclusion, which shall not be subject to appeal.

(7) The conclusion ordering the protection measure shall be kept confidential. If the protection of the witness is necessary even after the decision has become final, the provisions of the special law shall apply.

(8) The protection measures provided for in Article 127 letters a) and b) shall be communicated to the authority designated by law with the implementation of the measures.

#### **Article 129: Hearing of the protected witness**

(1) In the situations provided for in Article 126(1)(d) and Article 127(d), the hearing of the witness may be carried out by audio-video means, without the witness being physically present at the place where the judicial body is located.

(2) (text of Article 129(2) of Part 1, Title IV, Chapter II, Section 5, Subsection 1 was repealed on 01-Feb-2014 by Article 102(79) of Title III of Law 255/2013)

(3) The main procedural subjects, the parties and their lawyers may ask questions to the witness heard under the conditions of paragraph (1). The judicial body rejects the questions that could lead to the identification of the witness.

(4) The statement of the protected witness shall be recorded by technical means, video and audio, and shall be rendered in full in written form.

(5) During the criminal investigation, the statement shall be signed by the criminal investigation body or, as the case may be, by the judge of rights and freedoms and by the prosecutor who was present at the hearing of the witness and shall be submitted to the case file. The witness's statement, transcribed, will also be signed by him and will be kept in the file submitted to the prosecutor's office, in a special place, under conditions of confidentiality.

(6) During the trial, the witness's statement shall be signed by the president of the panel of

judges.

(7)The medium on which the witness's statement was recorded, in original, sealed with the seal of the prosecutor's office or, as the case may be, of the court before which the statement was made, shall be kept confidential. The media containing the recordings made during the criminal investigation is forwarded at the end of the criminal investigation to the competent court, together with the case file, and is kept under the same conditions regarding confidentiality.

## **SUBSECTION 2:Protection of vulnerable witnesses**

### **Article 130: Vulnerable witness**

**(1)The prosecutor or, as the case may be, the court may decide to grant the status of vulnerable witness to the following categories of persons:**

- a)the witness who has suffered trauma as a result of the commission of the crime or as a result of the subsequent behavior of the suspect or defendant;
- b)minor witness.

(2)Once the vulnerable witness status has been granted, the prosecutor and the court may order the protective measures provided for in Article 126(1)(b) and (d) or, as the case may be, Article 127(b)(e), which shall be applied accordingly. Distortion of voice and image is not mandatory.

(3)The provisions of Articles 126 and 128 shall apply accordingly.

## **SECTION 6:Confrontation**

### **Article 131: Confrontation**

(1)When it is found that there are contradictions between the statements of the persons heard in the same case, they are confronted if this is necessary to clarify the case.

(2)The persons confronted are heard on the facts and circumstances regarding which the statements previously given contradict each other.

(3)The criminal prosecution body or the court of law may allow the persons confronted to ask each other questions.

(4)The questions and answers shall be recorded in a report.

## **CHAPTER III:Identification of people and objects**

**Article 132: Purpose and object of the measure**

- (1) The identification of persons or objects may be ordered if necessary for the purpose of clarifying the circumstances of the case.
- (2) The identification of persons or objects may be ordered by the prosecutor or by the criminal investigation bodies, during the criminal investigation, or by the court, during the trial.

**Article 133: Pre-hearing of the person making the identification**

- (1) After the measure has been ordered and before the identification is carried out, the person making the identification must be heard about the person or object to be identified.
- (2) The hearing consists of describing all the characteristics of the person or object, as well as the circumstances in which they were seen. The person making the identification shall be asked whether he or she has previously participated in another identification procedure concerning the same person or object, or whether the person or object to be identified has been previously indicated or described.

**Article 134: Identification of persons**

- (1) The person to be identified is presented together with 4-6 other unknown persons, with features similar to those described by the person making the identification.
- (2) The provisions of paragraph (1) shall also apply accordingly in the case of identification of persons by photographs.
- (3) The identification is carried out in such a way that the persons to be identified do not see the one who identifies them.
- (4) The activity of identifying the persons, as well as the statements of the person making the identification, are recorded in a report.
- (5) The report shall include, in addition to the particulars provided for in Article 135(2), the name, surname and address of the persons who have been placed in the identification group or whose photographs have been presented to the person making the identification, the name and surname of the identified person, as well as the order or conclusion ordering the identification of persons.
- (6) During the criminal investigation, if the criminal investigation body deems it necessary, the identification activity is audio-video recorded. The identification record is attached to the report as an integral part of it and may be used as evidence.

**Article 135: Object identification**

(1) Objects that are supposed to contribute to finding out the truth about the commission of a crime are presented for identification, after the person making the identification has described them beforehand. If these objects cannot be brought to be presented, the person making the identification may be taken to the place where the objects are located.

(2) The activity of identifying objects, as well as the statements of the person making the identification, are recorded in a report that must include mentions regarding: the ordinance or conclusion by which the measure was ordered, the place where it was concluded, the date, the time at which it began and the time at which the activity ended, mentioning any moment of interruption, the name, surname of the persons present and the capacity in which they participate, the name and surname of the person who makes the identification, the detailed description of the identified objects.

(3) During the criminal investigation, if the prosecution body deems it necessary, the identification activity and the statement of the person making the identification shall be audio-video-recorded. The identification record is attached to the report as an integral part of it and may be used as evidence.

#### **Article 136: Other identifications**

The identification of voices, sounds or other elements that are the object of sensory perception shall be ordered and carried out in compliance with the procedure provided for in Article 134.

#### **Article 137: Plurality of identifications**

(1) If several persons are called upon to identify the same person or object, the competent judicial bodies shall take measures to avoid communication between those who have made the identification and those who are to carry it out.

(2) If the same person is to participate in several procedures for the identification of persons or objects, the competent judicial bodies shall take measures to ensure that the person subject to identification is located between persons different from those who participated in the previous proceedings, i.e. the object subject to identification is placed among objects different from those previously used.

### **CHAPTER IV: Special methods of surveillance or research**

#### **Article 138: General provisions**

(1) **The following are special methods of surveillance or research:**

- a) interception of communications or any type of remote communication;
- b) access to a computer system;
- c) video, audio or photography surveillance;
- d) locating or tracking by technical means;
- e) obtaining data on a person's financial transactions;
- f) the retention, delivery or search of postal items;
- g) the use of undercover investigators and collaborators;
- h) authorized participation in certain activities;
- i) supervised delivery;
- j) obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public.

(2) Interception of communications or any type of communication means the interception, access, monitoring, collection or recording of communications made by telephone, computer system or any other means of communication.

(3) Access to a computer system means entering a computer system or means of storing computer data either directly or remotely, by means of specialized programs or by means of a network, in order to identify evidence.

(4) A computer system means any device or set of devices that are interconnected or in a functional relationship, one or more of which ensures the automatic processing of data, with the help of a computer program.

(5) Computer data means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program capable of determining the execution of a function by a computer system.

(6) Video, audio or photographic surveillance means photographing people, observing or recording their conversations, movements or other activities.

(7) Location or tracking by technical means means the use of devices that determine the location of the person or object to which they are attached.

(8) The search of postal items means the verification, by physical or technical means, of letters, other postal items or objects transmitted by any other means.

(9) Obtaining data on a person's financial transactions means operations that ensure knowledge of the content of financial transactions and other operations carried out or to be carried out through a credit institution or other financial entity, as well as obtaining from a credit institution or other

financial entity documents or information in its possession relating to transactions or operations of a person.

(10)The use of undercover investigators and collaborators means the use of a person with a different identity than the real one for the purpose of obtaining data and information regarding the commission of a crime.

(11)Authorized participation in certain activities means committing an act similar to the objective side of a corruption crime, carrying out transactions, operations or any kind of agreements regarding a property or a person who is suspected of being missing, who is a victim of human trafficking or kidnapping, carrying out operations on drugs or doping substances, as well as the provision of a service, carried out with the authorization of the competent judicial body, in order to obtain evidence.

(12)Supervised delivery means the surveillance and investigation technique by which the entry, circulation or exit from the territory of the country of goods in respect of which there is a suspicion regarding the illicit nature of their possession or obtainment, under the supervision or with the authorization of the competent authorities, are allowed for the purpose of investigating a crime or identifying the persons involved in its commission.

(13)Technical surveillance means the use of one of the methods referred to in points (a) to (d) of paragraph 1.

### **Article 139: Technical supervision**

**(1)The technical supervision is ordered by the judge of rights and freedoms when the following conditions are cumulatively met:**

- a)there is a reasonable suspicion that one of the offences referred to in paragraph 2 has been prepared or committed;
- b)the measure must be proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime;
- c)the evidence could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable property.

**(2)Technical surveillance may be ordered in the case of crimes against national security provided for by the Criminal Code and special laws, as well as in the case of drug trafficking offences, offences under the regime on doping substances, carrying out illegal operations with**

**precursors or other products likely to have psychoactive effects, offences relating to non-compliance with the arms regime, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of coins, stamps or other securities, counterfeiting of electronic payment instruments, in the case of crimes committed through computer systems or electronic means of communication, against property, blackmail, rape, unlawful deprivation of liberty, tax evasion, in the case of corruption crimes and crimes assimilated to corruption crimes, crimes against the financial interests of the European Union or in the case of other crimes for which the law provides for a prison sentence of 5 years or more.**

\*) Decision no. 15/2024 - HCCJ admits the appeal in the interest of the law filed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

In the unitary interpretation and application of the provisions, Article 152(1)(a) of the Code of Criminal Procedure, in relation to Article 139(2) of the Code of Criminal Procedure, establishes that the offence of embezzlement provided for in Article 295(1) with the application of Article 308(1) of the Criminal Code cannot be classified as a crime against property.

**(3)The recordings referred to in this chapter, made by the parties or by other persons, constitute evidence when they concern their own conversations or communications with third parties. Any other recordings may constitute evidence if they are not prohibited by law.**

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the provisions of Article 139 paragraph (3) final sentence of the Code of Criminal Procedure are constitutional insofar as they do not concern the recordings resulting from the performance of activities specific to the collection of information that imply the restriction of the exercise of fundamental human rights or freedoms carried out in compliance with the legal provisions, authorized according to Law no. 51/1991.

(4)The relationship between the lawyer and the person he assists or represents may not be subject to technical surveillance unless there is evidence that the lawyer is committing or preparing to commit one of the offences referred to in paragraph 2. If, during or after the execution of the measure, it turns out that the technical surveillance activities also concerned the relations between the lawyer and the suspect or defendant whom he defends, the evidence obtained may not be used in any criminal trial, and shall be immediately destroyed by the prosecutor. The judge who ordered the measure is immediately informed by the prosecutor. When the judge deems it necessary, he orders the lawyer to be informed.

## **Article 139<sup>1</sup>: Records obtained from activities specific to information gathering**

(1) Recordings resulting from activities specific to the collection of information involving the restriction of the exercise of fundamental human rights or freedoms may be used as evidence in criminal proceedings if they contain data or information regarding the preparation or commission of one of the offences referred to in Article 139(2) and the legal provisions governing the obtaining of such recordings have been complied with.

(2) The legality of the conclusion by which the respective activities were authorized, of the mandate issued on its basis, of the manner of execution of the authorization, as well as of the resulting recordings shall be verified, as the case may be: a) in the preliminary chamber procedure; b) in the complaint procedure against the closure solution, under the conditions of Article 341 paragraph (7); (c) in the procedure provided for in Article 139<sup>2</sup>.

(3) In the cases referred to in paragraph (2)(a) and (b), if requests and exceptions have been made or, as the case may be, the judge of the preliminary chamber has raised of his own motion exceptions regarding the recordings resulting from the authorized activities, he shall refer the matter to the High Court of Cassation and Justice in order to verify the legality of these activities and shall transmit the case file, together with the requests and exceptions made. Until the conclusion of the High Court of Cassation and Justice becomes final, the preliminary chamber procedure or, as the case may be, the procedure for solving the complaint against the closure solution shall be suspended.

(4) After the notification is registered, the case is randomly assigned to a judge of the preliminary chamber of the High Court of Cassation and Justice. It sets a deadline for resolution in the council chamber and orders the summons of the parties and the injured person and the knowledge of the prosecutor.

(5) The judge who authorized the activities specific to the collection of information referred to in paragraph (1) may not participate in the resolution of the complaint regarding their legality.

(6) Taking into account the requests and exceptions formulated and taking the conclusions of the prosecutor, as well as of the parties and the injured person, if present, the judge of the preliminary chamber of the High Court of Cassation and Justice rules, by conclusion, on the legality of the activities from which the recordings resulted, in relation to the legal provisions under which they were authorized and on the basis of the works and material in the criminal investigation file and any other means of proof. The provisions of Article 345 (1<sup>1</sup>) and (1<sup>2</sup>) shall apply accordingly.

(7) Against the conclusion provided for in paragraph (6), the prosecutor, the parties and the injured

person may lodge an appeal within 3 days from the communication.

(8)The appeal shall be resolved by a panel of 2 judges of the preliminary chamber of the High Court of Cassation and Justice, the provisions of paragraphs (4) to (6) and those of Article 347(4) being applied accordingly.

(9)Once it has become final, the conclusion shall be immediately communicated to the judge of the preliminary chamber who ordered the notification.

(10)The finding of illegality of the authorisation or of the manner in which the activities specific to the collection of information resulting from the recordings are carried out shall entail the application of the provisions of Article 102(3).

### **Article 139<sup>2</sup>: Complaint against an activity specific to the collection of information**

(1)Any person who is the subject of an activity specific to the collection of information referred to in Article 139<sup>1</sup> paragraph (1) and who has not acquired the status of party during the criminal proceedings, as well as the defendant against whom the criminal prosecution has been ordered to be dropped or closed, may lodge a complaint regarding the legality of the conclusion by which those activities were authorized, of the mandate issued on its basis, of the manner of execution of the authorization, as well as of the resulting registrations.

(2)After the cessation of the authorized activities, the prosecutor shall inform, in writing, the person referred to in paragraph (1) of the activities resulting from the recordings used as evidence in the criminal trial. The provisions of Article 145 (2) and (3) and Article 145 (1) (2) shall apply accordingly.

(3)The deadline for filing a complaint is 20 days, the provisions of Article 145<sup>1</sup> paragraph (3) being applied accordingly.

(4)The complaint is addressed to the High Court of Cassation and Justice and is resolved by a judge of the preliminary chamber. The provisions of Article 145(1)(5) and (6) and Article 139(1)(5) shall apply accordingly.

(5)The judge of the preliminary chamber rules on the legality of the activities from which the recordings resulted, by final conclusion, in relation to the legal provisions under which they were authorized and on the basis of the works and material in the criminal investigation file and any other means of evidence. The provisions of Article 145<sup>1</sup> (8) and (9) shall apply accordingly.

### **Article 140: Procedure for issuing the technical surveillance warrant**

(1)Technical surveillance may be ordered during the criminal investigation, for a period of no

more than 30 days, at the request of the prosecutor, by the judge of rights and freedoms of the court of which the case would have jurisdiction to hear the case in the first instance or of the court corresponding in rank to which the seat of the prosecutor's office to which the prosecutor who made the request is located.

(2)The request made by the prosecutor must include: an indication of the technical surveillance measures that are requested to be ordered, the name or other identification data of the person against whom the measure is ordered, if known, the indication of the evidence or data from which there is a reasonable suspicion that a crime for which the measure can be ordered has been committed, indicating the deed and the legal classification, and, in the case of video, audio or photographic surveillance, if it is also requested to allow the criminal prosecution bodies to enter the private spaces indicated in order to activate or deactivate the technical means to be used for the execution of the technical surveillance measure, the motivation of the proportional and subsidiary nature of the measure. The prosecutor must submit the file to the judge of rights and freedoms.

(3)The application requesting the approval of the technical supervision shall be resolved on the same day, in the council chamber, without summoning the parties. The participation of the prosecutor is mandatory.

(4)If he considers that the request is well-founded, the judge of rights and freedoms orders, by conclusion, the admission of the prosecutor's request and immediately issues the technical surveillance warrant. The preparation of the minute is mandatory.

**(5)The conclusion of the judge of rights and freedoms and the mandate must include:**

- a)the name of the court;
- b)date, time and place of issue;
- c)the name, surname and capacity of the person who gave the conclusion and issued the mandate;
- d)indication of the concrete measure approved;
- e)the period and purpose for which the measure was authorized;
- f)the name of the person subject to the technical surveillance measure or his/her identification data, if known;
- g)indicating, if necessary in view of the nature of the measure granted, the identification elements of each telephone, the access point to a computer system, any data known to identify the communication route or account number;
- h)in the case of video, audio or photographic surveillance in private spaces, the mention regarding the approval of the request for the criminal investigation bodies to enter private spaces in order to activate or deactivate the technical means to be used for the execution of the technical surveillance

measure;

i) the signature of the judge and the stamp of the court.

(6) If the judge of rights and freedoms considers that the conditions provided for in Article 139 and the provisions of paragraph (1) of this article are not met, he shall order, by conclusion, the rejection of the application for approval of the technical surveillance measure.

(7) The conclusion by which the judge of rights and freedoms rules on the technical surveillance measures is not subject to appeal.

(8) A new application for the approval of the same measure can be formulated only if new facts or circumstances have appeared or been discovered, unknown at the time of the resolution of the previous request by the judge of rights and freedoms.

(9) At the reasoned request of the injured person, the prosecutor may request the judge to authorize the interception of communications or their recording, as well as of any type of communications made by him by any means of communication, regardless of the nature of the crime that is the subject of the investigation. The provisions of paragraphs 1 to 8 shall apply accordingly.

#### **Rule 141: Authorization of technical surveillance measures by the prosecutor**

**(1) The prosecutor may authorize, for a maximum period of 48 hours, technical surveillance measures when:**

a) there is an urgency, and obtaining the technical surveillance warrant under the conditions of Article 140 would lead to a substantial delay of the investigations, to the loss, alteration or destruction of evidence or would endanger the safety of the injured person, the witness or their family members; and

b) the conditions laid down in Article 139(1) and (2) are met.

(2) The prosecutor's order authorising the technical surveillance measure must include the particulars provided for in Article 140(5).

(3) The prosecutor has the obligation to notify, within 24 hours at the latest from the expiry of the measure, the judge of rights and freedoms of the court to which the case would have competence to judge the case in the first instance or to the court corresponding in rank to that court in whose district the headquarters of the prosecutor's office to which the prosecutor who issued the order belongs, is located, in order to confirm the measure, submitting at the same time a summary report of the technical surveillance activities carried out and the case file.

(4) If the judge of rights and freedoms considers that the conditions provided for in paragraph (1) have been met, he shall confirm within 24 hours the measure ordered by the prosecutor, by

conclusion, pronounced in the council chamber, without summoning the parties.

**(5) With regard to the computer data identified by access to a computer system, the prosecutor may order, by ordinance:**

- a) making and keeping a copy of these computer data;
- b) suppression of access to or removal of such computer data from the computer system.**

The copies are made with appropriate technical means and procedures, in order to ensure the integrity of the information contained therein.

(6) If the judge of rights and freedoms considers that the conditions set out in paragraph (1) have not been complied with, he shall invalidate the measure taken by the prosecutor and order the destruction of the evidence obtained on the basis thereof. The prosecutor destroys the evidence thus obtained and draws up a report in this regard.

(7) Together with the request for confirmation of the measure or separately, the prosecutor may request the judge of rights and freedoms to take the measure of technical surveillance under the conditions of Article 140.

(8) The conclusion by which the judge of rights and freedoms rules on the measures ordered by the prosecutor is not subject to appeal.

#### **Article 142: Implementation of the technical supervision mandate**

(1) The prosecutor shall carry out the technical surveillance or may order that it be carried out by the criminal investigation body or by specialized police personnel.

(1<sup>1</sup>) In order to carry out the activities referred to in Article 138(1)(a) to (d), the prosecutor, the criminal investigation bodies or the specialised police officers shall directly use appropriate technical systems and procedures to ensure the integrity and confidentiality of the data and information collected.

(2) Providers of public electronic communications networks or providers of electronic communications services intended for the public or of any type of communication are obliged to collaborate with the prosecutor, criminal investigation bodies or specialized police workers, within the limits of their competences, for the execution of the technical surveillance warrant.

(3) The persons who are called to give technical assistance to the execution of the surveillance measures have the obligation to keep the secret of the operation carried out, under the sanction of the criminal law.

(4) The prosecutor has the obligation to immediately cease the technical surveillance before the

expiry of the term of office if the grounds justifying the measure no longer exist, immediately informing the judge who issued the warrant about it.

(5)The data resulting from the technical surveillance measures may also be used in another criminal case if they result in conclusive and useful data or information regarding the preparation or commission of another offence referred to in Article 139(2).

(6)The data resulting from the surveillance measures that do not concern the act that is the object of the investigation or that do not contribute to the identification or location of the persons, if they are not used in other criminal cases according to paragraph (5), are archived at the headquarters of the prosecutor's office, in special places, with the assurance of confidentiality. Ex officio or at the request of the parties, the judge or the panel vested may request the sealed data if there is new evidence showing that some of them nevertheless concern the act that is the object of the investigation. After a year from the final settlement of the case, they are destroyed by the prosecutor, who draws up a report in this regard.

\*) By Decision no. 64/2023, the High Court of Cassation and Justice admits the notification requesting the issuance of a preliminary decision for the resolution of some questions of law and establishes the following:

The provision of the necessary infrastructure, by the National Center for Interception of Communications within the Romanian Intelligence Service, in order to ensure the technical conditions for the implementation of the technical surveillance measures, does not represent an activity of execution of the technical surveillance warrant, according to Article 142 of the Code of Criminal Procedure.

### **Article 142<sup>1</sup>**

(1)Any authorized person who performs technical surveillance activities, based on this law, has the possibility to ensure the electronic signature of the data resulting from the technical surveillance activities, using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider.

(2)Any authorized person who transmits data resulting from technical surveillance activities, based on this law, has the possibility to sign the transmitted data, using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider and which allows the unambiguous identification of the authorized person, thus assuming responsibility for the integrity of the transmitted data.

(3)Any authorized person who receives data resulting from technical surveillance activities, based

on this law, has the possibility to verify the integrity of the data received and to certify this integrity by signing the data, using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider and which allows the unambiguous identification of the authorized person.

(4) Each person who certifies the data under electronic signature is responsible according to the law for the security and integrity of this data.

### **Article 143: Recording of technical surveillance activities**

(1) The prosecutor or the criminal investigation body shall draw up a report for each technical surveillance activity, in which the results of the activities carried out concerning the act that is the subject of the investigation or contribute to the identification or location of the persons are recorded, the identification data of the medium containing the result of the technical surveillance activities, the names of the persons to whom it refers, if known, or other identification data, as well as, where applicable, the date and time when the surveillance activity began and the date and time when it ended.

(2) A copy of the support containing the result of the technical supervision activities shall be attached to the report in a sealed envelope. The support or a certified copy thereof shall be kept at the headquarters of the Prosecutor's Office, in special places, in a sealed envelope and shall be made available to the court, at its request. After notifying the court, the copy of the support containing the technical surveillance activities and copies of the minutes shall be kept at the court registry, in special places, in a sealed envelope, at the exclusive disposal of the judge or panel entrusted with the resolution of the case.

(2<sup>1</sup>) Any authorized person who makes copies of a computer data storage medium containing the result of technical surveillance activities has the possibility to verify the integrity of the data included in the original medium and, after making the copy, to sign the data included therein, using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider and allowing unambiguous identification of the person authorised, thus assuming responsibility for the integrity of the data.

(3) Conversations, communications or conversations held in a language other than Romanian are transcribed into Romanian, through an interpreter, who has the obligation to maintain confidentiality.

(4) The intercepted and recorded conversations, communications or conversations, which concern the act that is the object of the investigation or contribute to the identification or location of the

persons, are reproduced by the prosecutor or the criminal investigation body in a report mentioning the warrant issued for their execution, the numbers of the telephone stations, the identification data of the information systems or access points, the names of the persons who made the communications, if known, the date and time of each call or communication. The report is certified for authenticity by the prosecutor.

(5) After the end of the surveillance measure, the prosecutor informs the judge of rights and freedoms about the activities carried out.

#### **Article 144: Extension of the technical surveillance measure**

(1) The measure of technical surveillance may be extended, for duly justified reasons, by the judge of rights and freedoms of the competent court, at the reasoned request of the prosecutor, if the conditions provided for in Article 139 are met, each extension not exceeding 30 days.

(2) The judge of rights and freedoms pronounces in the council chamber, without summoning the parties, by a conclusion that is not subject to appeal. The preparation of the minute is mandatory.

(3) The total duration of the technical surveillance measures, with regard to the same person and the same deed, may not exceed, in the same case, 6 months, except for the video, audio or photographic surveillance measure in private spaces, which may not exceed 120 days.

#### **Article 145: Informing the supervised person**

(1) Within 10 days from the end of the technical surveillance measure, the prosecutor shall inform each supervised person in writing about the technical surveillance measure that has been ordered against him.

(2) Within 20 days from the receipt of the written information referred to in paragraph (1), the supervised person has the right to request the prosecutor to inform him of the content of the minutes in which the technical surveillance activities carried out are recorded, as well as to ensure that he listens to the conversations, communications or conversations or watches the images resulting from the technical surveillance activity.

**(3) The prosecutor may postpone for reasons, at the latest until the resolution of the case, the written information or the presentation of the content of the media on which the technical surveillance activities or playback reports are stored, if this could lead to:**

- a) the disruption or jeopardizing of the proper conduct of the criminal investigation in question;
- b) endangering the safety of the victim, witnesses or their family members;
- c) difficulties in the technical surveillance of other persons involved in the case.

## **Article 145<sup>1</sup>: Complaint against technical surveillance measures**

**(1) After the case has been resolved by the prosecutor, any person in respect of whom a technical surveillance measure has been ordered or confirmed and who has not acquired the status of party in that case, as well as the defendant against whom the criminal prosecution has been ordered to be dropped or closed, may file a complaint against the measure and the manner of its execution.**

\*) According to Law no. 201/2023 - Article II:

"(1) The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2) If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

(2) Immediately after the case has been resolved, the prosecutor shall inform the supervised person in writing about the issuance of the indictment or the order to close or drop the criminal prosecution.

**(3) The term for filing the complaint is 20 days and runs, as the case may be:**

a) from the date of receipt of the written information referred to in paragraph 2, when the written information referred to in Article 145(1) and, where appropriate, the presentation of the contents of the media on which the technical surveillance activities are stored or of the playback reports take place before the case is resolved;

b) from the date of receipt of the written information provided for in Article 145(1) or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, when this takes place after the case has been resolved.

**(4)The complaint is addressed to the judge of the preliminary chamber of the court which, according to the law, would have the competence to judge the case in the first instance.**

\*) According to Law no. 201/2023 - Article II:

"(1)The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2)If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

**(5)The wrongly corrected complaint shall be sent administratively to the competent court and shall be considered valid if it has been submitted within the deadline to the incompetent judicial body.**

\*) According to Law no. 201/2023 - Article II:

"(1)The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official

Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2) If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

**(6) The complaint shall be resolved in the council chamber, with the participation of the prosecutor and with the summons of the petitioner.**

\*) According to Law no. 201/2023 - Article II:

"(1) The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2) If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are

stored or of the playback minutes, if this is subsequent to the entry into force of this law."

**(7)The judge of the preliminary chamber shall verify the legality of the technical surveillance measure, as well as the manner in which it is carried out in relation to the provisions of Articles 139 and 140-144, on the basis of the works and material in the criminal investigation file and any other means of evidence.**

\*) According to Law no. 201/2023 - Article II:

"(1)The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2)If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

**(8)The judge of the preliminary chamber shall rule in the council chamber, by reasoned conclusion, which shall not be subject to any appeal, and may order the following solutions:**

a)dismisses the complaint as inadmissible if it is made in breach of paragraph 1, as out of time if it is made in breach of paragraph 3 or as unfounded;

b)admits the complaint and finds the illegality of the technical surveillance measure, if it has been ordered, confirmed, extended or, as the case may be, illegally enforced.

\*) According to Law no. 201/2023 - Article II:

"(1)The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical

surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2) If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

**(9) If the complaint is admitted, the judge orders the destruction of the data and records resulting from the illegally carried out technical surveillance activities. The prosecutor destroys the evidence thus obtained and draws up a report in this regard, which is submitted to the case file.**

\*) According to Law no. 201/2023 - Article II:

"(1) The provisions of Article 145<sup>1</sup> paragraphs (1) and (4)-(9) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, shall also apply to the technical surveillance measures ordered in criminal cases solved by the prosecutor prior to the entry into force of this law, if they were in execution on July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, or were ordered and enforced between this date and the date of entry into force of this law.

(2) If, prior to the entry into force of this Law, they have not been the subject of final court decisions as to their legality, the technical surveillance measures referred to in paragraph (1) may be challenged within 20 days, elapsing:

a) from the date of entry into force of this law, when the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, and, as the case may be, the presentation of the content of the media on which the technical surveillance

activities are stored or of the playback minutes took place before its entry into force;

b) from the date of receipt of the written information provided for in Article 145 paragraph (1) of Law no. 135/2010, as subsequently amended and supplemented, or, as the case may be, from the date of presentation of the content of the media on which the technical surveillance activities are stored or of the playback minutes, if this is subsequent to the entry into force of this law."

\*) According to Law no. 201/2023 - Article III:

"(1) The persons in respect of whom, starting with July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, technical surveillance measures have been enforced, found to be illegal by court decisions that became final prior to the entry into force of this law, may exercise the action for damages provided for in Article 539<sup>1</sup> of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, within 6 months from the date of entry into force of this law.

(2) The unlawful nature of the technical surveillance measures provided for in paragraph (1) shall be proven by the final conclusion of the judge of rights and freedoms, of the judge of the preliminary chamber or, as the case may be, by the final decision of the court."

\*) According to Law no. 201/2023 - Article IV:

"(1) The following shall be entitled to compensation pursuant to Article 539(1)(b) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, the persons who on 12 May 2021, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 136/2021, were in execution of a preventive measure involving deprivation of liberty or against whom such a measure was ordered after that date.

(2) In the case of the persons referred to in paragraph (1), if the solution of dismissal or acquittal has become final before the entry into force of this law, the action for compensation of the damage may be brought within 6 months from the date of its entry into force."

#### **Article 146: Preservation of materials resulting from technical surveillance**

(1) If a dismissal solution has been ordered in the case, against which no complaint has been filed within the legal term provided for in Article 340 or the complaint has been rejected, the prosecutor shall immediately notify the judge of rights and freedoms thereof.

(2) The judge of rights and freedoms orders the preservation of the material support or its certified copy, by archiving it at the court's headquarters in special places, in a sealed envelope, ensuring confidentiality.

(3) If in the case the court has pronounced a decision of conviction, waiver of the application of the penalty or postponement of the application of the penalty, acquittal or termination of the criminal trial, which has become final, the material support or its copy shall be preserved by archiving together with the case file at the court's headquarters, in special places, ensuring confidentiality.

#### **Article 146<sup>1</sup>: Obtaining data on a person's financial transactions**

**(1) The obtaining of data on the financial transactions carried out may be ordered by the judge of rights and freedoms from the court to which the case would have competence to judge the case at first instance or from the court corresponding in its rank in whose district the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal belongs, with regard to the financial transactions of the perpetrator, to the suspect, the defendant or any person who is suspected of carrying out such operations with the perpetrator, suspect or defendant, if:**

- a) there is a reasonable suspicion that a crime has been prepared or committed;
- b) the measure is necessary and proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime;
- c) the evidence could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable property.

(2) The obtaining of data on the financial transactions to be carried out may be ordered for a period of no more than 30 days by the judge of rights and freedoms from the court to which the case would have jurisdiction to judge the case at first instance or from the court corresponding in rank to its district in whose district the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal belongs, if the conditions set out in paragraph 1 are met.

(3) The provisions of Article 140(2) to (9) shall apply accordingly.

(4) The mandate authorizing the obtaining of data on the financial transactions to be carried out may be extended under the conditions of Article 144, the total duration of the measure not exceeding, in the same case and in respect of the same person, 6 months.

(5) In cases where there is an urgency, and obtaining the warrant under the conditions of paragraph 1 or 2 would lead to a substantial delay in the investigations, to the loss, alteration or destruction of evidence or would endanger the safety of the victim or other persons and the conditions provided for in paragraph 1 or, as the case may be, paragraph 2 are met, the prosecutor may order the

obtaining of data on the financial transactions carried out or to be carried out. The provisions of Article 141 shall apply accordingly.

(6) It is forbidden to obtain data on financial transactions between the lawyer and the suspect, the defendant or any other person whom he defends, except in situations where there is evidence that the lawyer commits or prepares to commit one of the offences referred to in Article 139(2).

(7) Credit institutions or financial entities carrying out financial transactions are obliged to hand over the documents or information referred to in the warrant issued by the judge or in the authorization issued by the prosecutor.

(8) The provisions of Articles 145 and 145<sup>1</sup> shall apply accordingly.

(9) (text of Article 146<sup>1</sup>, paragraph (9) of Part 1, Title IV, Chapter IV was repealed on 09-Jul-2023 by Article I, point 21. of Law 201/2023)

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution contained in the provisions of Article 146<sup>1</sup> of the Code of Criminal Procedure, which does not allow the challenge of the legality of the measure regarding the obtaining of data on the financial transactions of a person by the person concerned by him, who is not a defendant, is unconstitutional.

#### **Article 147: Detention, delivery and search of postal items**

**(1) The detention, surrender and search of postal items may be ordered by the judge of rights and freedoms of the court of which the case would have jurisdiction to hear the case at first instance or of the court corresponding in rank to that district in whose district the seat of the prosecutor's office to which the prosecutor who drew up the proposal belongs, with regard to letters, postal items or objects sent or received by the perpetrator, suspect, defendant or by any person who is suspected of receiving or sending by any means such goods from the perpetrator, suspect or defendant or goods intended for him, if:**

- a) there is a reasonable suspicion that a crime has been prepared or committed;
- b) the measure is necessary and proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime;
- c) the evidence could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable property.

(2) It is forbidden to detain, hand over and search correspondence or postal items sent or received

in the relations between the lawyer and the suspect, the defendant or any other person whom he defends, except in situations where there is evidence that the lawyer is committing or preparing to commit one of the offences referred to in Article 139(2).

(3)The provisions of Article 140 shall apply accordingly.

(4)In cases where there is an emergency, and obtaining a warrant for the detention, surrender and search of postal items under the conditions of Article 140 would lead to a substantial delay in investigations, to the loss, alteration or destruction of evidence or would endanger the safety of the victim or other persons and the conditions laid down in paragraphs 1 and 2 are met, The prosecutor may order, for a maximum period of 48 hours, the measures provided for in paragraph (1). The provisions of Article 141(2) to (8) shall apply accordingly.

(5)Postal or transport units and any other natural or legal persons carrying out transport or information transfer activities are obliged to retain and hand over to the prosecutor the letters, postal items or objects referred to in the warrant issued by the judge or in the authorization issued by the prosecutor.

(6)Correspondence, postal items or objects seized and searched unrelated to the case shall be returned to the addressee.

(7)After carrying out the authorized activities, the prosecutor informs him, within 10 days, in writing, on each subject of a warrant about the measure taken against him. After the moment of information, the person whose correspondence, postal items or objects have been seized and searched has the right to take note of the activities carried out.

(8)The provisions of Article 145(2) and (3) shall apply accordingly.

(9)The measure may be extended under the conditions of Article 144, the total duration of the measure not exceeding, in the same case and in respect of the same person, 6 months.

#### **Article 148: Use of undercover or real-identity investigators and collaborators**

**(1)The authorization of the use of undercover investigators may be ordered by the prosecutor supervising or conducting the criminal investigation, for a maximum period of 60 days, if:**

a)there is a reasonable suspicion of the preparation or commission of a crime against national security provided for by the Criminal Code and other special laws, as well as in the case of drug trafficking offences, doping offences, illegal operations with precursors or other products likely to have psychoactive effects, offences relating to non-compliance with the regime of arms, ammunition, nuclear materials, explosive materials and precursors of restricted explosives,

trafficking and exploitation of vulnerable persons, acts of terrorism or similar acts, terrorist financing, money laundering, counterfeiting of coins, stamps or other valuables, counterfeiting of electronic payment instruments, in the case of crimes committed through computer systems or means of communication electronic fraud, blackmail, unlawful deprivation of liberty, tax evasion, in the case of corruption crimes, crimes assimilated to corruption crimes, crimes against the financial interests of the European Union or in the case of other crimes for which the law provides for a prison sentence of 7 years or more or there is a reasonable suspicion that a person is involved in criminal activities related to the crimes listed above;

b) the measure is necessary and proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime;

c) The evidence or the location and identification of the perpetrator, suspect or defendant could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable property.

**(2) The measure shall be ordered by the prosecutor, ex officio or at the request of the criminal investigation body, by means of an ordinance which shall include, in addition to the particulars provided for in Article 286(2):**

a) indication of the activities that the undercover investigator is authorized to carry out;

b) the period for which the measure was authorised;

c) the identity attributed to the undercover investigator.

**(3) If the prosecutor considers that it is necessary for the undercover investigator to be able to use technical devices to obtain photographs or audio and video recordings, he shall notify the judge of rights and freedoms in order to issue the technical surveillance warrant. The provisions of Article 141 shall apply accordingly.**

\*) By Decision no. 64/2023, the High Court of Cassation and Justice admits the notification requesting the issuance of a preliminary decision for the resolution of some questions of law and establishes the following:

In the procedure provided for in Article 148(3) of the Code of Criminal Procedure and Article 150(5) of the Code of Criminal Procedure, the notification of the judge of rights and freedoms for the purpose of issuing the technical surveillance warrant is mandatory if the prosecutor considers it necessary for the investigator to be able to use technical recording devices, even if there is a technical surveillance warrant of the same nature issued previously, these legal provisions establishing a special procedure, derogating from the provisions of Article 139 of the Code of

## Criminal Procedure.

(4)The undercover investigators are operative workers within the judicial police. In the case of the investigation of crimes against national security and terrorist crimes, operative workers from state bodies that carry out, according to the law, intelligence activities in order to ensure national security, can be used as undercover investigators.

(5)The undercover investigator collects data and information based on the ordinance issued according to paragraph (1) to (3), which he makes available in full to the prosecutor who conducts or supervises the criminal investigation, drawing up a report.

(6)If the performance of the investigator's activity requires authorized participation in certain activities, the prosecutor shall proceed in accordance with the provisions of Article 150.

(7)The judicial bodies may use or make available to the investigator under cover any documents or objects necessary for carrying out the authorized activity. The activity of the person who makes available or uses the documents or objects does not constitute a crime.

(8)Undercover investigators may be heard as witnesses in criminal proceedings under the same conditions as threatened witnesses.

(9)The duration of the measure may be extended for duly justified reasons, if the conditions set out in paragraph 1 are met, each extension not exceeding 60 days. The total duration of the measure, in the same case and in respect of the same person, may not exceed one year, with the exception of crimes against life, national security, drug trafficking offences, offences under the regime on doping substances, non-compliance with the regime of arms, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, trafficking and exploitation of vulnerable persons, acts of terrorism or similar to them, terrorist financing, money laundering, as well as crimes against the financial interests of the European Union.

(10)In exceptional circumstances, if the conditions set out in paragraph 1 are met and the use of the undercover investigator is not sufficient to obtain the data or information or is not possible, the prosecutor supervising or conducting the criminal investigation may authorise the use of a collaborator, who may be assigned a different identity than the real one. Paragraphs 2 to 3 and 5 to 9 shall apply accordingly.

### **Article 149: Measures to protect undercover investigators and collaborators**

(1)The real identity of undercover investigators and collaborators with a different identity than the real one cannot be revealed.

(2)The prosecutor, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law has the right to know the true identity of the undercover investigator and the collaborator, in compliance with professional secrecy.

(3)The undercover investigator, collaborator, informant, as well as their family members or other persons subjected to threats, intimidation or acts of violence, in connection with the activity carried out by the undercover investigator, informant or collaborator, may benefit from specific witness protection measures, according to the law.

#### **Article 150: Authorized participation in certain activities**

**(1)The authorized participation in certain activities under the conditions of Article 138(11) may be ordered by the prosecutor supervising or conducting the criminal investigation, for a maximum period of 60 days, if:**

- a)there is a reasonable suspicion of the preparation or commission of an offence of drug trafficking, offences under the doping regime, illegal operations with precursors or other products likely to have psychoactive effects, offences relating to non-compliance with the regime of weapons, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, trafficking and exploitation of vulnerable persons, acts of terrorism or similar to them, terrorist financing, money laundering, counterfeiting of coins, stamps or other securities, a crime committed through computer systems or electronic means of communication, blackmail, unlawful deprivation of liberty, tax evasion, in the case of corruption crimes, crimes assimilated to corruption crimes and crimes against the financial interests of the European Union or in the case of other offences for which the law provides for a prison sentence of 7 years or more, or if there is a reasonable suspicion that a person is involved in criminal activities which are related, according to Article 43, to the offences listed above;
- b)the measure is necessary and proportionate to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime;
- c)the evidence could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or a danger to the safety of persons or valuable property.

**(2)The measure shall be ordered by the prosecutor, ex officio or at the request of the criminal investigation body, by means of an ordinance which shall include, in addition to the particulars provided for in Article 286(2):**

- a) indication of authorized activities;
- b) the period for which the measure was authorised;
- c) the person who carries out the authorized activities.

(3) Authorised activities may be carried out by a criminal investigation body, an investigator with a real identity, an undercover investigator or a collaborator.

(4) The performance of the activities authorized by the person referred to in paragraph (2) letter c) does not constitute a contravention or crime.

**(5) The implementation of these measures shall be recorded in a report containing: the dates on which the measure began and ended, data on the persons who carried out the authorized activities, the description of the technical devices used if authorized by the judge of rights and freedoms, the use of technical means of surveillance, the identity of the persons in respect of whom the measure was implemented.**

\*) By Decision no. 64/2023, the High Court of Cassation and Justice admits the notification requesting the issuance of a preliminary decision for the resolution of some questions of law and establishes the following:

In the procedure provided for in Article 148(3) of the Code of Criminal Procedure and Article 150(5) of the Code of Criminal Procedure, the notification of the judge of rights and freedoms for the purpose of issuing the technical surveillance warrant is mandatory if the prosecutor considers it necessary for the investigator to be able to use technical recording devices, even if there is a technical surveillance warrant of the same nature issued previously, these legal provisions establishing a special procedure, derogating from the provisions of Article 139 of the Code of Criminal Procedure.

(6) The person who carried out the authorized activities may be heard as a witness in the criminal trial, in compliance with the provisions on the hearing of threatened witnesses, if the judicial body considers that the hearing is necessary.

(7) The judicial bodies may use or make available to the person who carries out the authorized activities any documents or objects necessary for carrying out the authorized activity. The person who makes available or uses the documents or objects will not commit a crime by carrying out these activities, if they constitute crimes.

(8) The measure ordered may be extended by the prosecutor, for duly justified reasons, if the conditions provided for in paragraph (1) are met, each extension not exceeding 60 days.

(9) The total duration of the measure, with regard to the same person and the same deed, may not

exceed one year.

### **Article 151: Supervised delivery**

(1)The supervised delivery may be authorized, by ordinance, by the prosecutor who supervises or conducts the criminal investigation, at the request of the competent institutions or bodies, with or without the total or partial theft or substitution of the goods subject to delivery.

#### **(2)Supervised delivery can only be authorised in the following cases:**

a)whether the discovery or arrest of persons involved in the illegal transport of drugs, doping substances, weapons, stolen objects, explosive materials and precursors of restricted explosives, nuclear, other radioactive materials, sums of money and other objects resulting from illegal activities or objects used for the purpose of committing crimes could not otherwise be done or would involve particular difficulties which would prejudice the investigation or a danger to the safety of persons or persons or valuable goods;

b)whether the discovery or proof of crimes committed in connection with the delivery of illegal or suspicious shipments would otherwise be impossible or very difficult.

#### **(2<sup>1</sup>)Supervised delivery may be carried out on the territory of the country only if the prosecutor supervising or conducting the criminal investigation ensures that the authorities that have, according to the law, powers in relation to the verification or supervision of the entry, circulation or exit from the territory of the country of the goods concerned:**

a)maintains the confidentiality of the activities carried out;

b)guarantees the permanent surveillance of illegal or suspicious transport.

#### **(3)In the situation where the supervised delivery involves cross-border activities, it can be carried out only if the prosecutor supervising or conducting the criminal investigation takes measures and ensures that the authorities of the transit states:**

a)to agree to the entry into their territory of the illegal or suspicious transport and its exit from the territory of the state;

b)ensure that illegal or suspicious transport is continuously monitored by the competent authorities;

c)ensure that the prosecutor, police or other competent State authorities are notified of the outcome of the criminal prosecution of persons accused of offences which have been the subject of the special method of investigation referred to in paragraph 1.

(4)The provisions of paragraph (3) shall not apply if an international treaty to which Romania is a party has provisions to the contrary.

**(5) For each supervised delivery, the public prosecutor shall issue an order, which shall include, in addition to the particulars provided for in Article 286(2):**

- a) the name of the suspect or defendant, if known;
- b) the concrete reasons justifying the measure;
- c) the indication of the goods subject to the supervised supply and the evidence of their illicit nature, of the goods to be stolen or substituted, as well as of the goods to be replaced, as the case may be;
- d) the time and place of delivery or, as the case may be, the itinerary to be traveled in order to make the delivery, if known;
- e) the modalities in which the surveillance will be carried out;
- f) identification data of the persons authorised to supervise the delivery.

**(6)** Supervised delivery is enforced by the police or other competent authority. The prosecutor establishes, coordinates and controls the implementation of the supervised delivery.

**(7)** The implementation of supervised delivery does not constitute a criminal offence.

**(8)** The bodies referred to in paragraph (6) have the obligation to draw up, at the end of the supervised delivery on the territory of Romania, a report on the activities carried out, which they submit to the prosecutor.

#### **Article 152: Obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public**

**(1)** The criminal prosecution bodies, with the prior authorization of the judge of rights and freedoms, may request traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public if the following conditions are cumulatively met:

- a) there is a reasonable suspicion of the commission of an offence referred to in Article 139(2) or an offence of unfair competition, evasion, forgery of documents, offences relating to non-compliance with the regime of arms, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, an offence relating to non-compliance with the provisions on the introduction into the country of waste and residues, an offence relating to the organisation and operation of gambling or an offence relating to the legal regime of drug precursors, and offences relating to operations with products likely to have psychoactive effects similar to those caused by narcotic or psychotropic substances and products;

\*) Decision no. 15/2024 - HCCJ admits the appeal in the interest of the law filed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

In the unitary interpretation and application of the provisions, Article 152(1)(a) of the Code of Criminal Procedure, in relation to Article 139(2) of the Code of Criminal Procedure, establishes that the offence of embezzlement provided for in Article 295(1) with the application of Article 308(1) of the Criminal Code cannot be classified as a crime against property.

- b) there are reasonable grounds for believing that the data requested constitute evidence;
- c) the evidence could not be obtained in any other way or its obtaining would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or valuable property;
- d) The measure is proportional to the restriction of fundamental rights and freedoms, given the particularities of the case, the importance of the information or evidence to be obtained or the seriousness of the crime.

(2) The judge of rights and freedoms shall rule within 48 hours on the request of the criminal investigation bodies to transmit data, by reasoned conclusion, to the council chamber.

(3) Providers of public electronic communications networks and providers of electronic communications services intended for the public that collaborate with the criminal prosecution bodies have the obligation to keep the secret of the operation carried out.

### **Article 153: Obtaining data on a person's financial situation**

(1) The public prosecutor may request a credit institution or any other institution that holds data on a person's financial situation to disclose data on the existence and content of a person's accounts, if there are good indications that a crime has been committed and there are grounds for believing that the requested data constitute evidence.

(2) The measure referred to in paragraph 1 shall be ordered ex officio or at the request of the criminal investigation body, by means of an ordinance which shall include, in addition to the particulars provided for in Article 286(2): the institution which is in possession or which has under control the data, the name of the suspect or defendant, the reasons for the fulfilment of the conditions provided for in paragraph 1, the mention of the institution's obligation to communicate immediately, under conditions of confidentiality, the data requested.

(3) The institution referred to in paragraph 1 shall be obliged to make the requested data available immediately.

## CHAPTER V: Retention of computer data

### Article 154: Retention of computer data

(1) If there is a reasonable suspicion that a crime has been prepared or committed, for the purpose of gathering evidence or identifying the perpetrator, suspect or defendant, the prosecutor supervising or conducting the criminal prosecution may order the immediate preservation of certain computer data, including data relating to information traffic, which have been stored through a computer system and which is in the possession or control of a computer provider. public electronic communications networks or to a provider of electronic communications services intended for the public, where there is a danger of their loss or alteration.

(2) The preservation shall be ordered by the prosecutor, ex officio or at the request of the criminal investigation body, for a maximum period of 60 days, by means of an ordinance which must include, in addition to the particulars provided for in Article 286 (2): providers of public electronic communications networks or providers of electronic communications services intended for the public in whose possession the computer data are in their possession or who have them under their control, the name of the perpetrator, suspect or defendant, if known, the description of the data to be retained, the reasons for the fulfilment of the conditions set out in paragraph 1, the duration for which it was issued, mention of the obligation of the person or providers of public electronic communications networks or providers of electronic communications services intended for the public to immediately preserve the indicated computer data and to maintain their integrity, confidentially.

(3) The preservation measure may be extended, for duly justified reasons, by the prosecutor, only once, for a maximum period of 30 days.

(4) The prosecutor's order shall be immediately transmitted to any provider of public electronic communications networks or provider of electronic communications services intended for the public in whose possession the data referred to in paragraph (1) are located or which has them under its control, the latter being obliged to keep them immediately, in conditions of confidentiality.

(5) If the data relating to information traffic is in the possession of several providers of public electronic communications networks or providers of electronic communications services intended for the public, the provider in whose possession or control the computer data is located has the obligation to immediately make available to the criminal prosecution body the information necessary to identify the other providers, in order to know all the elements of the communication

chain used.

(6) Within the period provided for in paragraphs (2) and (3), the prosecutor supervising or conducting the criminal investigation may, with the prior authorization of the judge of rights and freedoms, request a provider of public electronic communications networks or a provider of electronic communications services intended for the public to transmit the data stored according to the law or may order the lifting of this measure. The provisions of Article 170(2<sup>1</sup>)-(2<sup>5</sup>), (4) and (5) and Article 171 shall apply accordingly.

(7) The judge of rights and freedoms shall rule within 48 hours on the request of the criminal investigation bodies to transmit data, by reasoned conclusion, to the council chamber.

(7<sup>1</sup>) Paragraphs 1 to 7 shall also apply accordingly to computer data, including data relating to information traffic, stored by means of a computer system in the possession or control of other persons.

(8) Until the end of the criminal investigation, the prosecutor is obliged to know, in writing, the persons against whom the criminal investigation is carried out and whose data have been preserved.

#### **Article 155:**

[the text of Article 155 of Part 1, Title IV, Chapter V was repealed on 01-Feb-2014 by Article 102, point 101. of Title III of Law 255/2013]

### **CHAPTER VI: Search and seizure of objects and documents**

#### **Article 156: Common provisions**

(1) The search can be home, body, computer or a vehicle.

(2) The search is carried out with respect for dignity, without constituting disproportionate interference in private life.

#### **SECTION 1: Home search**

#### **Article 157: Cases and conditions under which a house search can be ordered**

(1) A search of a person's home or property may be ordered if there is a reasonable suspicion that a person has committed an offence or that he or she is in possession of objects or documents relating to a crime and it is assumed that the search may lead to the discovery and collection of evidence relating to that offence, to preserve the traces of the commission of the crime or to

apprehend the suspect or defendant.

(2) Domicile means a dwelling or any space delimited in any way that belongs to or is used by a natural or legal person.

### **Article 158: Procedure for issuing the house search warrant**

(1) A house search may be ordered during the criminal investigation, at the request of the prosecutor, by the judge of rights and freedoms of the court responsible for hearing the case in the first instance or by the court corresponding to its rank in whose district the headquarters of the prosecutor's office to which the prosecutor carrying out or supervising the criminal investigation belongs. During the trial, the search shall be ordered, ex officio or at the request of the prosecutor, by the court hearing the case.

#### **(2) The request made by the prosecutor must include:**

- a) the description of the place where the search is to be carried out, and if there are reasonable suspicions regarding the existence or possibility of transferring the evidence, data or persons sought to neighboring places, the description of these places;
- b) indication of the evidence or data from which there is a reasonable suspicion of the commission of a crime or of the possession of objects or documents related to a crime;
- c) indication of the crime, evidence or data from which it appears that the suspect or defendant is located in the place where the search is requested or evidence of the commission of the crime or traces of the commission of the crime can be discovered;
- d) the name, surname and, if necessary, the description of the suspect or defendant suspected of being in the place where the search is being carried out, as well as the indication of the traces of the commission of the crime or of other objects that are supposed to exist in the place to be searched.

(3) If, during the search, it is found that evidence, data have been transferred or that the requested persons have hidden in neighboring places, the search warrant is valid, under the law, for these places as well. The continuation of the search in this situation is approved by the prosecutor.

(4) The prosecutor submits the request together with the case file to the judge of rights and freedoms.

(5) The request for approval to carry out the house search shall be solved, within 24 hours, in the council chamber, without summoning the parties. The participation of the prosecutor is mandatory.

(6) The judge shall order, by conclusion, the admission of the request, when it is justified, and the

approval of the search and shall immediately issue the search warrant. The preparation of the minute is mandatory.

**(7)The conclusion of the court and the search warrant must include:**

- a)the name of the court;
- b)date, time and place of issue;
- c)the name, surname and capacity of the person who issued the search warrant;
- d)the period for which the warrant was issued, which may not exceed 15 days;
- e)the purpose for which it was issued;
- f)a description of the place where the search is to be carried out or, where appropriate, of the places adjacent to it;
- g)the name or name of the person at the domicile, residence or headquarters of whom the search is carried out, if known;
- h)the name of the perpetrator, suspect or defendant, if known;
- i)description of the perpetrator, suspect or defendant suspected of being in the place where the search is being carried out, indication of the traces of the commission of the crime or of other objects that are presumed to exist in the place to be searched;
- j)the mention that the search warrant can be used only once;
- k)the signature of the judge and the stamp of the court.

(8)If the judge of rights and freedoms considers that the conditions provided for in Article 157 are not met, he shall order, by conclusion, the rejection of the request to carry out the house search.

(9)The conclusion by which the judge of rights and freedoms rules on the request for approval to carry out the house search is not subject to appeal.

(10)A new request to carry out a house search in the same place may be made if new facts or circumstances have arisen or been discovered, unknown at the time of the resolution of the previous request by the judge.

(11)During the trial, ex officio or at the request of the prosecutor, the court may order a search to be carried out in order to execute the preventive arrest warrant of the defendant, as well as if there are reasonable suspicions that in the place where the search is requested there are material means of proof related to the crime that is the subject of the case. The provisions of paragraphs 2 to 8 and Article 157 shall apply accordingly.

**Article 159: Conducting the house search**

(1)The search warrant is communicated to the prosecutor, who takes measures for its execution.

(2)The search shall be carried out by the prosecutor or by the criminal investigation body, accompanied, as the case may be, by operative workers.

(3)The house search cannot be started before 6:00 a.m. or after 8:00 p.m., except for flagrante delicto or when the search is to be carried out in a premises open to the public at that time.

(4)If necessary, the judicial bodies may restrict the freedom of movement of the persons present or the access of other persons to the place where the search is carried out, during the search.

(5)Before the start of the search, the judicial body shall legitimize itself and hand over a copy of the warrant issued by the judge to the person to whom the search will be carried out, to his representative or to a member of the family, and in his absence, to any other person with full capacity to exercise who knows the person on whom the search will be carried out and, if applicable, to the custodian.

(6)In the case of a search carried out at the headquarters of a legal person, the search warrant shall be handed over to its representative or, in the absence of the representative, to any other person with full capacity to exercise who is in the premises or is an employee of that legal person.

(7)If the search is extended to the neighboring dwellings under the conditions of Article 158(3), the persons in these spaces shall be notified of the extension of the search.

(8)The persons referred to in paragraphs 5 and 6 shall be required, before the start of the search, to voluntarily surrender the persons or objects sought. The search is no longer carried out if the persons or objects indicated in the warrant are handed over.

(9)The persons referred to in paragraphs 5 and 6 shall be informed that they have the right to have a lawyer participate in the search. If the presence of a lawyer is requested, the start of the search is postponed until his arrival, but not more than two hours from the moment when this right is communicated, measures being taken to preserve the place to be searched. In exceptional cases, requiring an emergency search, or if the lawyer cannot be contacted, the search may begin even before the expiry of the two-hour period.

(10)Also, the searched person will be allowed to be assisted or represented by a trusted person.

(11)When the person being searched is detained or arrested, he or she will be brought to the search. If it cannot be brought, the seizure of objects and documents, as well as the house search, are carried out in the presence of a representative or assistant witness.

(12)The judicial body carrying out the search has the right to open, by the use of force, the

rooms, spaces, furniture and other objects in which the objects, documents, traces of the crime or the persons sought could be found, if their owner is not present or does not wish to open them voluntarily. When opening them, the judicial bodies carrying out the search must avoid unjustified damages.

(13)The judicial body is obliged to limit itself to the collection only of objects and documents related to the act for which the criminal investigation is carried out. Objects or documents whose circulation or possession is prohibited or in respect of which there is a suspicion that they may be related to the commission of an offence for which the criminal action is initiated ex officio shall always be lifted.

**(14)Exceptionally, the search may begin without handing over a copy of the search warrant, without a prior request to hand over the person or objects, as well as without prior information on the possibility of requesting the presence of a lawyer or a trusted person, in the following cases:**

- a)when it is obvious that preparations are being made to cover the traces or destroy the evidence or elements that are important for the case;
- b)if there is a suspicion that in the space where the search is to be carried out there is a person whose life or physical integrity is endangered;
- c)if there is a suspicion that the requested person may evade the procedure.

(15)If there is no person in the space where the search is to be carried out, it is carried out in the presence of an assistant witness.

(16)In the cases referred to in paragraphs 14 and 15, a copy of the search warrant shall be handed over as soon as possible.

**(17)The judicial bodies carrying out the search may use force, in an appropriate and proportionate manner, to enter a home:**

- a)if there are reasonable grounds to anticipate armed resistance or other types of violence or there is a danger of destruction of evidence;
- b)in the event of a refusal or if no response has been received to the requests of the judicial bodies to enter the home.

(18)It is forbidden to carry out at the same time as the search any procedural acts in the same case, which by their nature prevent the person at whom the search is carried out from participating in its performance, unless several searches are carried out simultaneously in the same case.

(19)The place where the search takes place, as well as the persons or objects found during the search, may be photographed or audio-videotaped recorded.

(20)The audio-video recording or the photographs taken are attached to the search report and are an integral part of it.

#### **Article 160: Identifying and retaining objects**

(1)After identification, the objects or documents are presented to the person from whom they are picked up and to the persons present, to be recognized and marked by them for unchange, after which they are labeled and sealed.

(2)Objects that cannot be marked or to which labels and seals cannot be applied are packed or closed, as far as possible, together, after which seals are applied.

(3)Objects that cannot be picked up are left in the custody of the person with whom they are or of a custodian. The person to whom the objects are left for storage is given the obligation to keep and preserve them, as well as to make them available to the criminal prosecution bodies, at their request, under the sanction provided for in Article 275 of the Criminal Code.

(4)The samples for analysis are taken at least in duplicate and sealed. One of the evidence shall be left to the person from whom it is taken, and in his absence, to one of the persons referred to in Article 159(11).

#### **Article 161: Search report**

(1)The activities carried out during the search are recorded in a report.

##### **(2)The report must include:**

- a)the name, surname and capacity of the person who concludes it;
- b)the number and date of the search warrant;
- c)the place where it is terminated;
- d)the date and time when it began and the time when the search was completed, mentioning any interruption that occurred;
- e)the name, surname, occupation and address of the persons who were present at the search, mentioning their quality;
- f)informing the person to whom the search will be carried out about the right to contact a lawyer to participate in the search;
- g)a detailed description of the place and conditions in which the documents, objects or traces of the crime were discovered and seized, their enumeration and detailed description, in order to be

recognized; information on the place and conditions under which the suspect or defendant was caught;

h) the objections and explanations of the persons who participated in the search, as well as the mentions regarding the audiovisual recording or photographs taken;

i) mentions about objects that have not been picked up, but have been left in storage;

j) the particulars provided by law for special cases.

(3) The report shall be signed on each page and at the end by the person who concludes it, by the person at whom the search was carried out, by his lawyer, if present, as well as by the persons indicated in paragraph (2) letter e). If any of these persons are unable or refuse to sign, mention is made of this and of the reasons for the impossibility or refusal to sign.

(4) A copy of the report shall be left to the person at whom the search was carried out or from whom the objects and documents were seized or to one of the persons referred to in Article 159 (5) or (6) who participated in the search.

#### **Article 162: Measures regarding the objects or documents seized**

(1) The objects or documents seized that constitute means of evidence are attached to the file or otherwise kept, and the traces of the commission of the crime are collected and preserved.

(2) The objects, documents and traces seized, which are not attached to the file, can be photographed. The photos are endorsed by the criminal investigation body and are attached to the file.

(3) The material means of evidence shall be kept by the criminal investigation body or by the court of law where the case is located, until the final resolution of the case.

(4) Objects that are not related to the case are returned to the person to whom they belong, except for those that are subject to confiscation, under the law.

(5) Objects serving as evidence, if they are not subject to confiscation, under the law, may be returned, even before the final settlement of the trial, to the person to whom they belong, unless such restitution could hinder the finding of the truth. The criminal investigation body or the court of law informs the person to whom the objects have been returned that he is obliged to keep them until the final resolution of the case.

#### **Article 163: Conservation or valorization of the objects raised**

Objects serving as evidence, if they are among those provided for in Article 252 (2) and if they are not returned, shall be preserved or recovered in accordance with the provisions of Article

252.

**Article 164: Special provisions concerning searches carried out at a public authority, public institution or other legal persons governed by public law**

The search at a public authority, public institution or other legal persons of public law shall be carried out in accordance with the provisions of this section, as follows:

- a) the judicial body shall legitimize itself and hand over a copy of the search warrant to the representative of the authority, institution or legal person of public law;
- b) the search shall be carried out in the presence of the representative of the authority, institution or legal person of public law or of another person with full capacity to exercise;
- c) A copy of the search report shall be left to the representative of the authority, institution or legal person governed by public law.

**SECTION 2: Other forms of search**

**Rule 165: Cases and conditions under which the body search is carried out**

- (1) A body search involves the external examination of a person's body, mouth, nose, ears, hair, clothing, objects that a person has on him or under his control, at the time of the search.
- (2) If there is a reasonable suspicion that by carrying out a body search, traces of the crime, bodies of crime or other objects that are important for finding out the truth in question will be discovered, the judicial bodies or any authority with powers to ensure public order and security shall proceed to carry it out.

**Rule 166: Carrying out the body search**

- (1) The judicial body must take measures to ensure that the search is carried out with respect for human dignity.
- (2) The search is carried out by a person of the same sex as the person searched.
- (3) Before the start of the search, the searched person is asked to voluntarily hand over the objects sought. If the searched objects are handed over, the search shall no longer be carried out, unless it is considered useful to proceed with it, in order to search for other objects or traces.
- (4) **The search report must include:**
  - a) the name and surname of the person searched;
  - b) the name, surname and capacity of the person who carried out the search;
  - c) the enumeration of the objects found during the search;

- d) the place where it is terminated;
- e) the date and time when it began and the time when the search was completed, mentioning any interruption that occurred;
- f) a detailed description of the place and conditions in which the documents, objects or traces of the crime were discovered and seized, their enumeration and detailed description, in order to be recognized; information on the place and conditions under which the suspect or defendant was found.

(5) The report must be signed on each page and at the end by the person who concludes it and by the person searched. If the searched person is unable or refuses to sign, mention shall be made of him, as well as of the reasons for the impossibility or refusal to sign.

(6) A copy of the report is left to the person searched.

(7) The provisions of Article 162 shall apply accordingly.

#### **Article 167: Search of a vehicle**

(1) The search of a vehicle consists of examining the exterior or interior of a vehicle or other means of transport or its components.

(2) A search of a vehicle shall be carried out under the conditions laid down in Article 165(2).

(3) The provisions of Articles 162, 165 and 166 shall apply accordingly.

#### **Article 168: Computer search**

(1) By search in a computer system or a computer data storage medium means the process of researching, discovering, identifying and collecting the evidence stored in a computer system or computer data storage medium, carried out by means of appropriate technical means and procedures, such as to ensure the integrity of the information contained therein.

(2) In the course of the criminal investigation, the judge of rights and freedoms of the court of which the case would have jurisdiction to hear the case at first instance or of the court corresponding in rank to that court in whose district the seat of the prosecutor's office to which the prosecutor conducting or supervising the criminal investigation belongs may order a computer search to be carried out, at the request of the prosecutor, when in order to discover and collect evidence it is necessary to research a computer system or a computer data storage medium.

(3) The prosecutor submits the request requesting the approval of the computer search together with the case file of the judge of rights and freedoms.

(4)The request shall be resolved in the council chamber, without summoning the parties. The participation of the prosecutor is mandatory.

(5)The judge shall order the admission of the request, when it is well founded, the approval of the computer search and shall immediately issue the search warrant.

**(6)The court's conclusion must include:**

a)the name of the court;

b)date, time and place of issue;

c)the name, surname and capacity of the person who issued the mandate;

d)the period for which the mandate was issued and within which the ordered activity must be carried out;

e)the purpose for which it was issued;

f)the computer system or the computer data storage medium to be searched, as well as the name of the suspect or defendant, if known;

g)the signature of the judge and the stamp of the court.

(7)The conclusion by which the judge of rights and freedoms rules on the request for approval to carry out the computer search is not subject to appeal.

(8)If, during the search of a computer system or a computer data storage medium, it is found that the computer data sought are contained in another computer system or computer data storage medium and are accessible from the initial system or medium, the prosecutor shall immediately order the preservation and copying of the identified computer data and shall urgently request the completion of the warrant, Paragraphs 1 to 7 shall be applied accordingly.

(9)In order to carry out the search ordered, in order to ensure the integrity of the computer data stored on the seized objects, the prosecutor orders the making of copies.

(10)If the seizure of the objects containing the computer data referred to in paragraph (1) would seriously affect the performance of the activity of the persons who possess these objects, the prosecutor may order the making of copies, which serve as evidence. The copies are made with appropriate technical means and procedures, in order to ensure the integrity of the information contained therein.

(11)The search in a computer system or a computer data storage medium shall be carried out in the presence of the suspect or the defendant, the provisions of Article 159 (10) and (11) being applied accordingly.

(12)The search in a computer system or a computer data storage medium is carried out by a

specialist who works within the judicial bodies or outside them, in the presence of the prosecutor or the criminal investigation body.

**(13)The computer search report must include:**

- a)the name of the person from whom the computer system or data storage media was seized or the name of the person whose computer system is investigated;
- b)the name of the person who carried out the search;
- c)the names of the persons present at the search;
- d)description and enumeration of the computer systems or computer data storage media against which the search was ordered;
- e)description and enumeration of the activities carried out;
- f)description and enumeration of the computer data discovered during the search;
- g)the signature or stamp of the person who carried out the search;
- h)the signature of the persons present at the search.

(14)The criminal prosecution bodies must take measures to ensure that the computer search is carried out without the facts and circumstances of the personal life of the person being searched unjustifiably becoming public.

(15)Computer data identified as secret shall be kept in accordance with the law.

(16)During the trial, the computer search shall be ordered by the court, ex officio or at the request of the prosecutor, the parties or the injured person, in the cases provided for in paragraph (2). The warrant for carrying out the computer search ordered by the court shall be communicated to the prosecutor, who shall proceed according to paragraphs (8) to (15).

**Article 168<sup>1</sup>: Conducting the computer search of police workers**

The computer search provided for in Article 168(12) may also be carried out by specialized police officers, in the presence of the prosecutor or the criminal investigation body.

**Article 169:**

[the text of Article 169 of Part 1, Title IV, Chapter VI, Section 2 was repealed on 01-Feb-2014 by Article 102, point 111. of Title III of Law 255/2013]

**Article 170:**

[the text of Article 170 of Part 1, Title IV, Chapter VI, Section 2 was repealed on 01-Feb-2014 by Article 102, point 112. of Title III of Law 255/2013]

**Article 171:**

[the text of Article 171 of Part 1, Title IV, Chapter VI, Section 2 was repealed on 01-Feb-2014 by Article 102, point 114. of Title III of Law 255/2013]

**SECTION 3:Collection of objects and documents****Article 169: Collection of objects and documents**

The criminal investigation body or the court of law has the obligation to seize the objects and documents that can serve as evidence in the criminal trial.

**Article 170: Handing over objects, documents or computer data**

(1)If there is a reasonable suspicion that an offence has been prepared or committed and there are grounds for believing that an object or document may serve as evidence in question, the criminal prosecution body or the court may order the natural or legal person in whose possession it is to produce and surrender it, under evidence.

**(2)Also, under the conditions of paragraph (1), the criminal investigation body or the court of law may order that:**

a)any natural or legal person on the territory of Romania to communicate certain computer data in its possession or control, which are stored in a computer system or on a computer data storage medium;

b)any provider of public electronic communications networks or provider of electronic communications services intended for the public to communicate certain data relating to subscribers, users and the services provided, in its possession or control, other than the content of the communications and those referred to in Article 138(1)(j).

(2<sup>1</sup>)Natural or legal persons, including providers of public electronic communications networks or providers of publicly available electronic communications services, shall have the possibility to ensure the signature of the data requested under paragraph 2 using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider.

(2<sup>2</sup>)Any authorised person submitting data requested pursuant to paragraph 2 shall have the possibility to sign the data submitted using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider and allowing the unambiguous identification of the authorised person, thus assuming responsibility for the integrity of the data submitted.

(2<sup>3</sup>)Any authorised person receiving data requested pursuant to paragraph 2 shall have the

possibility to verify the integrity of the data received and to certify this integrity by signing the data, using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider and allowing the unambiguous identification of the authorised person.

(2<sup>4</sup>) Each person who certifies the data under electronic signature is liable according to the law for the integrity and security of this data.

(2<sup>5</sup>) The application of the provisions of paragraphs (2<sup>1</sup>)-(2<sup>4</sup>) shall be made in compliance with the procedures established by the methodological norms for the application of this law.

(3) repealed

(4) (text of Article 170(4) of Part 1, Title IV, Chapter VI, Section 3 was repealed on 23 May 2016 by Article II, point 33 of Emergency Ordinance 18/2016)

(5) (the text of Article 170(5) of Part 1, Title IV, Chapter VI, Section 3 was repealed on 23 May 2016 by Article II(33) of the Emergency Ordinance 18/2016)

(6) (text of Article 170(6) of Part 1, Title IV, Chapter VI, Section 3 was repealed on 23 May 2016 by Article II, paragraph 33 of the Emergency Ordinance 18/2016)

### **Article 171: Forced seizure of objects and documents**

(1) If the requested object or document is not handed over voluntarily, the criminal prosecution body, by ordinance, or the court, by conclusion, orders the forced removal. During the trial, the order for the forced removal of objects or documents is communicated to the prosecutor, who takes measures to carry it out, through the criminal investigation body.

(2) Any interested person may lodge a complaint against the measure ordered in accordance with paragraph 1 or the manner in which it is carried out. The provisions of Article 250 shall apply accordingly.

(3) The order of the criminal prosecution body or the conclusion of the court must include: the name and signature of the person who ordered the handover, the name of the person who is obliged to hand over the object, document or computer data, the description of the object, document or computer data to be handed over, as well as the date and place where they are to be handed over.

(4) If the criminal investigation body or the court considers that a copy of a document or computer data can also serve as evidence, it retains only the copy.

(5) If the object, document or computer data are secret or confidential, the presentation or

delivery shall be made in conditions that ensure the preservation of secrecy or confidentiality.

## **CHAPTER VII:Expertise and finding**

### **Article 172: Ordering the performance of the expertise or finding**

(1)The performance of an expert opinion is ordered when the opinion of an expert is also necessary for the ascertainment, clarification or evaluation of facts or circumstances that are important for finding out the truth in question.

(2)The expertise shall be ordered, under the conditions of Article 100, upon request or ex officio, by the criminal investigation body, by reasoned order, and during the trial it shall be ordered by the court, by reasoned conclusion.

(3)The request for the expertise must be made in writing, indicating the facts and circumstances subject to the evaluation and the objectives to be clarified by the expert.

(4)The expertise can be carried out by official experts from laboratories or specialized institutions or by independent experts authorized from the country or abroad, under the conditions of the law.

(5)The forensic expertise and examination are carried out within the forensic institutions.

(6)The order of the criminal prosecution body or the conclusion of the court ordering the performance of the expertise must indicate the facts or circumstances that the expert must ascertain, clarify and evaluate, the objectives to be addressed, the deadline within which the expertise must be carried out, as well as the institution or experts appointed.

(7)In strictly specialized fields, if certain specific or other such knowledge is necessary for the understanding of the evidence, the court or the criminal prosecution body may request the opinion of specialists who operate within the judicial bodies or outside them. The provisions relating to the hearing of the witness shall apply accordingly.

(8)Authorized independent experts, appointed at the request of the parties or main subjects of the proceedings, may participate in the performance of the expertise.

(9)When there is a danger of the disappearance of some evidence or of a change in factual situations, or it is necessary to urgently clarify some facts or circumstances of the case, the criminal investigation body may order by order the making of a finding.

(10)The finding is made by a specialist who works within the judicial bodies or outside them.

(11)The medico-legal certificate has the value of a finding report.

(12)After the completion of the finding report, when the judicial body considers that the opinion of

an expert is necessary or when the conclusions of the finding report are contested, an expert report may be ordered.

### **Article 173: Appointment of the expert**

(1) The expert is appointed by order of the criminal prosecution body or by the conclusion of the court.

(2) The criminal prosecution body or the court usually appoints a single expert, except in situations where, due to the complexity of the expertise, specialized knowledge from different disciplines is required, in which case it appoints two or more experts.

(3) When the expertise is to be carried out by a forensic institution, a specialized institute or laboratory, the appointment of one or more experts is made by that institution, according to the law.

(4) The parties and the main subjects of the proceedings have the right to request that an expert recommended by them participate in the performance of the expertise. If the expertise is ordered by the court, the prosecutor may request that an expert recommended by him participate in carrying out the expertise.

(5) The expert, the forensic institution, the institute or the specialized laboratory, at the request of the expert, may request, when it deems it necessary, the participation of specialists from other institutions or their opinion.

(6) The forensic institution, institute or specialized laboratory shall communicate to the judicial body that ordered the performance of the expertise the names of the designated experts.

### **Article 174: Incompatibility of the expert and the specialist**

**(1) A person in any of the cases of incompatibility provided for in Article 64 may not be appointed as an expert, and if he or she has been appointed, the court decision may not be based on his or her findings and conclusions. The reason for incompatibility must be proven by the person who invokes it.**

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution contained in the provisions of Article 174(1), which does not provide for the application of the cases of incompatibility provided for in Article 54 of the same normative act and as regards the specialist who works within or outside the judicial bodies, who makes the finding according to Article 172(10) of the Code of Criminal Procedure, is unconstitutional.

(2) In the same case, a person cannot have both the quality of expert appointed by the judicial body

and that of expert recommended by one of the procedural subjects.

(2<sup>1</sup>) A person who works within the same forensic institution, institute or specialized laboratory as the expert appointed by the management of the respective institution at the request of the judicial body may not be appointed as an expert recommended by the parties in the same case.

(3) (text of Article 174(3) of Part 1, Title IV, Chapter VII was repealed on 01-Feb-2014 by Article 102(118) of Title III of Law 255/2013)

(4) The provisions of Articles 66 to 68 shall apply accordingly.

(5) Paragraphs 1 and 4 shall apply accordingly to the specialists referred to in Article 172(10).

### **Article 175: Rights and obligations of the expert**

(1) The expert has the right to refuse to carry out the expertise for the same reasons why the witness can refuse to testify.

(2) The expert has the right to take note of the material of the file necessary for carrying out the expertise.

(3) The expert may ask for clarification from the judicial body that ordered the expertise to be carried out on certain facts or circumstances of the case to be evaluated.

(4) The expert may ask for clarifications from the parties and the main subjects of the proceedings, with the consent and under the conditions established by the judicial bodies.

(5) The expert is entitled to a fee for the work carried out in order to carry out the expertise, for the expenses that he should incur or has incurred in carrying out the expertise. The amount of the fee is established by the judicial bodies depending on the nature and complexity of the case and the expenses incurred or to be borne by the expert. If the expertise is carried out by the forensic institution or the specialized institute or laboratory, the cost of the expertise is established under the conditions provided by the special law.

(6) The expert may also benefit from protection measures, under the conditions provided for in Article 125.

(7) The expert has the obligation to appear before the criminal investigation bodies or the court whenever he is called and to draw up his expert report in compliance with the deadline established in the order of the criminal investigation body or in the conclusion of the court. The deadline in the ordinance or conclusion may be extended, at the request of the expert, for good reasons, without the total extension granted being more than 6 months.

(8) The unjustified delay or refusal to carry out the expertise entails the application of a judicial

fine, as well as the civil liability of the expert or the institution designated to carry it out for the damages caused.

### **Article 176: Replacing the Wizard**

(1)The expert may be replaced if he refuses or unjustifiably does not complete the expert report by the deadline set.

(2)The replacement shall be ordered by ordinance by the criminal investigation body or by conclusion by the court, after summoning the expert, and shall be communicated to the association or professional body to which he belongs.

(3)The expert is also replaced when his declaration of abstention or the request for recusal is admitted or if he is objectively unable to carry out or complete the expertise.

(4)The replaced expert shall, subject to the penalty provided for in Article 283(4), immediately make available to the judicial body all the documents or objects entrusted to him, as well as his observations on the activities carried out up to the time of his replacement.

### **Article 177: Procedure for conducting the expertise**

(1)The criminal investigation body or the court, when ordering an expert opinion, sets a deadline to which the parties, the main procedural subjects, as well as the expert, if he has been appointed, are summoned.

(2)At the set deadline, the prosecutor, the parties, the main procedural subjects and the expert shall be informed of the subject matter of the expertise and the questions to which the expert must answer and they are told that they have the right to make observations on these questions and that they may request their modification or completion. Also, as the case may be, the object to be analyzed is indicated to the expert.

(3)The expert is notified of the fact that he has the obligation to analyze the object of the expertise, to indicate accurately any observation or finding and to express an impartial opinion on the facts or circumstances evaluated, in accordance with the rules of science and professional expertise.

(4)The parties and the main subjects of the proceedings are informed that they have the right to request the appointment of an expert recommended by each of them, who will participate in the performance of the expertise.

(5)After examining the objections and requests made by the parties, the main procedural subjects and the expert, the criminal prosecution body or the court of law shall inform the expert of the term within which the expertise is to be carried out, informing him at the same time whether the parties

or the main procedural subjects are to participate in its performance.

(6) When the expertise is to be carried out by a forensic institution, a forensic expertise laboratory or any specialized institute, the provisions of Article 173 (3) shall apply, and the presence of the expert before the judicial body shall not be required.

#### **Article 178: Expert report**

(1) After the expertise, the findings, clarifications, evaluations and opinion of the expert are recorded in a report.

(2) When there are several experts, a single expert report is drawn up. The separate opinions are motivated in the same report.

(3) The expert report is submitted to the judicial body that ordered the expertise.

#### **(4) The expert report includes:**

a) the introductory part, which shows the judicial body that ordered the expert's report, the date on which it was ordered, the name and surname of the expert, the objectives to which the expert is to respond, the date on which it was carried out, the material on the basis of which the expert report was carried out, proof of the parties' knowledge, whether they participated in it and gave explanations during the expert's report, the date of preparation of the expert report;

b) the expository part describing the operations of carrying out the expertise, the methods, programs and equipment used;

c) conclusions, which respond to the objectives set by the judicial bodies, as well as any other clarifications and findings resulting from the performance of the expertise, in relation to the objectives of the expertise.

(5) In the event that the expertise was carried out in the absence of the main parties or subjects, they or their lawyer are informed of the preparation of the expert report and of the right to study the report.

#### **Article 179: Hearing of the expert**

(1) During the criminal investigation or trial, the expert may be heard by the criminal investigation body or by the court, at the request of the prosecutor, the parties, the main subjects of the proceedings or ex officio, if the judicial body considers that the hearing is necessary to clarify the findings or conclusions of the expert.

(2) If the expertise was carried out by a forensic institution, institute or specialized laboratory, the institution will designate an expert, from among the persons who participated in the expertise, to

be heard by the criminal investigation body or the court.

(3)The hearing of the expert shall be carried out in accordance with the provisions regarding the hearing of witnesses.

#### **Article 180: Expertise Supplement**

(1)When the criminal prosecution body or the court finds, upon request or ex officio, that the expertise is not complete, and this deficiency cannot be made up by hearing the expert, it shall order the performance of a supplementary expertise by the same expert. When it is not possible to appoint the same expert, another expert is ordered to be carried out by another expert.

(2)When the expertise was carried out within the forensic institution, a specialized institute or laboratory, the criminal investigation body or the court addresses the respective institution in order to carry out the additional expertise.

#### **Article 181: Carrying out a new expertise**

(1)The criminal prosecution body or the court orders a new expertise to be carried out when the conclusions of the expert report are unclear or contradictory or there are contradictions between the content and conclusions of the expert report, and these deficiencies cannot be removed by hearing the expert.

(2)When the criminal investigation body or the court of law orders the performance of a new expertise by a forensic institution, it is carried out by a commission, under the conditions of the law.

#### **Article 181<sup>1</sup>: Object of the finding and finding report**

(1)The criminal investigation body establishes by ordinance the object of the finding, the questions to be answered by the specialist and the term within which the work is to be carried out.

(2)The finding report includes the description of the operations performed by the specialist, the methods, programs and equipment used and the conclusions of the finding.

#### **Article 182: Clarifications requested from the issuing institute**

In cases concerning the crime of counterfeiting currency or other securities, the criminal prosecution body or the court may ask the issuing institute for clarification.

#### **Article 183: Introducing comparison scripts**

(1)In cases concerning the offences of forgery of documents, the criminal prosecution body or the

court of law may order the presentation of comparison scripts.

(2) If the scripts are found in public deposits, the authorities in law are obliged to release them.

(3) If the scripts are found in a person's home, the criminal prosecution body or the court asks him to present them.

(4) The scripts shall be placed in a sealed envelope which shall be endorsed by the criminal investigation body or by the president of the panel of judges and shall be signed by the person presenting them.

(5) The criminal prosecution body or the court may ask the suspect or defendant to present a handwritten piece or to write according to dictation.

(6) If the suspect or defendant refuses, it is mentioned in the report. The refusal to comply with the request of the criminal prosecution body or the court cannot be interpreted to the detriment of the suspect or the defendant.

#### **Article 184: Psychiatric forensic expertise**

(1) In the case of crimes committed by minors between the ages of 14 and 16, in the case of the murder or injury of the newborn child or fetus by the mother, as well as when the criminal prosecution body or the court has a doubt about the discernment of the suspect or defendant at the time of committing the crime that is the subject of the accusation, a forensic psychiatric expertise is ordered, at the same time setting the deadline for submission for examination.

(2) The expertise is carried out within the forensic institution by a commission, established according to the law.

(3) The forensic psychiatric expertise is carried out after obtaining the written consent of the person to be subjected to the expertise, expressed, in the presence of a lawyer chosen or ex officio, in front of the judicial body, and in the case of the minor, also in the presence of the legal guardian.

(4) If the suspect or defendant refuses during the criminal investigation to carry out the expertise or does not appear for examination at the psychiatric forensic commission, the criminal investigation body shall notify the prosecutor or the judge of rights and freedoms in order to issue a warrant for the purpose of presentation to the psychiatric forensic commission. The provisions of Article 265(4) to (9) shall apply accordingly.

(5) If it considers that a complex examination is necessary, which requires the medical hospitalization of the suspect or the defendant in a specialized health institution, and the defendant refuses the hospitalization, the forensic commission notifies the criminal investigation body or the

court about the need to take the measure of involuntary hospitalization.

(6) In the course of the criminal investigation, the prosecutor, if he considers that the request of the forensic commission is well founded, may ask the judge of rights and freedoms from the court to which he would have jurisdiction to judge the case at first instance or from the court corresponding in rank to that court in whose district the place of internment or the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal to take the measure of involuntary internment is located, for a maximum of 30 days, in order to carry out the psychiatric expertise.

(7) The prosecutor's proposal to take the measure of involuntary internment must include, as the case may be, mentions regarding: the act for which the criminal investigation is carried out, the legal classification, the name of the crime; the facts and circumstances from which the doubt arises as to the discernment of the suspect or defendant, the notification of the psychiatric medico-legal commission regarding the refusal of the suspect or defendant to be hospitalized, the motivation of the need to take the measure of hospitalization and its proportionality to the purpose pursued. The proposal together with the case file is presented to the judge of rights and freedoms.

**(8) The judge of rights and freedoms sets the day and time for the resolution of the proposal to take the measure of involuntary internment, within 3 days from the date of notification, having the obligation to summon the suspect or defendant for the fixed term. The deadline shall be communicated to the prosecutor, as well as to the lawyer of the suspect or defendant, who shall be granted, upon request, the right to study the case file and the proposal made by the prosecutor.**

\*) In the unitary interpretation and application of the provisions of Article 184(28) of the Code of Criminal Procedure, the period during which the suspect or defendant was voluntarily or involuntarily interned in a specialized institution, in order to carry out the psychiatric expertise, shall be deducted from the duration of the sentence.

(9) The resolution of the proposal to take the measure of involuntary internment shall be made only in the presence of the suspect or defendant, except in the case when the suspect or defendant is missing, evades or when, due to the state of health or due to force majeure or state of necessity, he cannot appear.

(10) The participation of the prosecutor and the lawyer chosen or appointed ex officio of the suspect or defendant is mandatory.

**(11) In case of admission of the proposal for involuntary hospitalization, the judge's conclusion must include:**

- a) the identity data of the suspect or defendant;
- b) the description of the act of which the suspect or defendant is accused, the legal classification and the name of the crime;
- c) the facts and circumstances from which there is doubt about the mental state of the suspect or defendant;
- d) motivating the need to take the measure of involuntary hospitalization in order to carry out the psychiatric forensic expertise and its proportionality to the purpose pursued;
- e) the duration of the hospitalization measure.

(12) After the measure has been taken, the suspect or defendant shall be informed immediately, in the language he or she understands, of the reasons for the internment, and a report shall be drawn up in this regard.

(13) After the order of detention, if the suspect or defendant is in detention, the judge of rights and freedoms informs the administration of the place of detention about the measure of internment and orders the transfer of the detainee to a psychiatric ward of a penitentiary-hospital.

(14) Against the conclusion of the judge of rights and freedoms, an appeal may be made to the judge of rights and freedoms of the hierarchically superior court by the suspect, defendant or prosecutor within 24 hours from the pronouncement. The appeal against the conclusion ordering involuntary internment does not suspend the execution.

(15) The appeal filed by the suspect or defendant against the conclusion by which the involuntary internment was ordered shall be resolved within 3 days from the date of its registration and shall not suspend its execution.

(16) In order to resolve the appeal filed by the prosecutor, the judge of the hierarchically superior court orders the summoning of the suspect or defendant. The participation of the lawyer chosen or appointed ex officio of the suspect or defendant is mandatory.

(17) In order to settle the appeal filed by the suspect or defendant, the judge of the hierarchically superior court shall communicate to him and to the prosecutor the date set for the trial of the appeal and shall grant them the opportunity to submit written observations by that date, unless he considers that the presence of the suspect or defendant, the participation of the prosecutor and the formulation of oral conclusions by them are necessary for the fair settlement of the appeal.

(18) In case of admission of the appeal filed by the suspect or defendant, the judge of the hierarchically superior court orders the rejection of the proposal for internment and the immediate discharge, if necessary, of the suspect or defendant, if he is not detained or arrested even in another

case.

(19)The case file shall be returned to the prosecutor within 24 hours from the resolution of the appeal. If the conclusion of the judge of rights and freedoms is not challenged with an appeal, he returns the file to the prosecutor within 24 hours from the expiry of the appeal period.

(20)During the trial, if the defendant refuses to carry out the expertise or does not appear for examination at the forensic psychiatric commission, the court, ex officio or at the request of the prosecutor, orders the issuance of a warrant of bringing under the conditions of Article 265.

(21)The measure of involuntary hospitalization may be taken by the court during the trial at the proposal of the psychiatric forensic commission. Paragraphs 6 to 19 shall apply accordingly.

(22)Immediately after the measure of involuntary internment has been taken or in case of a subsequent change of the place of internment, the judge of rights and freedoms or, as the case may be, the president of the panel of judges who ordered the measure shall inform a member of the suspect's or defendant's family or another person designated by him, as well as the forensic institution carrying out the expertise, concluding a report in this regard. The specialized institution has the obligation to inform the judicial bodies about the change of the place of admission.

(23)The decision ordering the involuntary internment shall be enforced by the prosecutor through the police.

(24)If the suspect or defendant is in detention, the judge of rights and freedoms or the court that ordered the measure of internment in a specialized institution in order to carry out the forensic psychiatric expertise shall immediately inform the administration of the place of detention or arrest about the measure ordered.

(25)The measure of medical hospitalization in order to carry out the psychiatric forensic expertise can be extended only once, for a duration of no more than 30 days. The Psychiatric Forensic Expertise Commission notifies the prosecutor or, as the case may be, the court about the need to extend the measure of hospitalization at least 7 days before its expiry. The notification must contain the description of the activities performed, the reasons why the examination was not completed during the hospitalization, the examinations to be performed, the specification of the period for which the extension is necessary. Paragraphs 6 to 24 shall apply accordingly.

(26)If, before the expiry of the duration of the involuntary hospitalization, it is found that it is no longer necessary, the psychiatric forensic expertise commission or the hospitalized person shall immediately notify the body that ordered the measure, in order to revoke it. The notification shall be resolved urgently, in the council chamber, with the participation of the prosecutor, after hearing

the lawyer chosen or ex officio of the hospitalized person. The conclusion pronounced by the judge of rights and freedoms or by the court is not subject to any appeal.

(27) If, during the performance of the psychiatric forensic expertise, it is found that the conditions provided for in Article 247 are met, the commission for psychiatric forensic expertise shall notify the judicial bodies in order to take the safety measure of provisional medical hospitalization.

(28) The period during which the suspect or defendant was admitted to a specialized institution in order to carry out the psychiatric expertise is deducted from the duration of the sentence, under the conditions of Article 72 of the Criminal Code.

### **Article 185: Forensic autopsy**

(1) The forensic autopsy is ordered by the criminal investigation body or by the court, in case of violent death or when it is suspected of being violent or when the cause of death is not known or there is a reasonable suspicion that the death was caused directly or indirectly by a crime or in connection with the commission of a crime. If the victim's body has been buried, exhumation is ordered for examination of the body by autopsy.

(2) The prosecutor immediately orders a forensic autopsy to be carried out if the death occurred during the period when the person is in the custody of the police, the National Administration of Penitentiaries, during involuntary medical hospitalization or in the case of any death that raises the suspicion of non-respect for human rights, the application of torture or any inhuman treatment.

(3) In order to ascertain whether there are reasons to perform the forensic autopsy, the criminal investigation body or the court may request the opinion of the forensic doctor.

(4) The autopsy is carried out within the forensic institution, according to the special law.

(5) Specialists from other medical fields may also be co-opted to perform the forensic autopsy, in order to establish the cause of death, at the request of the forensic doctor, except for the doctor who treated the deceased person.

(6) On the occasion of the forensic autopsy, any legal methods may be used to establish the identity, including the taking of biological samples in order to establish the judicial genetic profile.

(7) The prosecution body must inform a family member of the date of the autopsy and the right to appoint an independent authorised expert to assist in the autopsy.

**(8) The forensic doctor who performed the autopsy draws up an expert report, which includes his findings and conclusions regarding:**

a) the identity of the deceased person or identification elements, if the identity is not known;

- b)the manner of death;
- c)the medical cause of death;
- d)the existence of traumatic injuries, the mechanism of their production, the nature of the vulnerable agent and the causal link between traumatic injuries and death;
- e)the results of the laboratory investigations carried out on the biological samples taken from the corpse and the suspicious substances discovered;
- f)the biological traces found on the body of the deceased person;
- g)the probable date of death;
- h)any other elements that may contribute to the clarification of the circumstances of the death.

#### **Article 186: Exhumation**

- (1)The exhumation may be ordered by the prosecutor or by the court in order to establish the type and cause of death, to identify the corpse or to establish any elements necessary for the resolution of the case.
- (2)The exhumation is done in the presence of the criminal investigation body.
- (3)The provisions of Article 185(4) to (8) shall apply accordingly.

#### **Article 187: Forensic autopsy of the fetus or newborn**

- (1)The forensic autopsy of a fetus is ordered to establish the intrauterine age, the capacity for extrauterine survival, the type and cause of death, as well as to establish the filiation, when appropriate.
- (2)The forensic autopsy of a newborn is ordered to establish whether the child was born alive, the viability, the duration of ectopic survival, the type and medical cause of death, the date of death, whether he or she was given medical care after birth, as well as to establish filiation, if applicable.

#### **Article 188: Toxicological expertise**

- (1)If there is a suspicion of poisoning, a toxicological expertise is ordered.
- (2)Products considered suspected to have caused poisoning are sent to the forensic institution or another specialized institution.
- (3)The conclusions of the toxicological expertise include expert findings regarding the type of toxic substance, the quantity, the route of administration, as well as the possible consequences of the discovered substance, as well as other elements that help establish the truth.

#### **Article 189: Forensic examination of the person**

- (1)The forensic examination of the person in order to ascertain the traces and consequences of a crime is carried out according to the special law.
- (2)The forensic doctor who performed the forensic examination shall draw up a forensic certificate or, as the case may be, an expert report.
- (3)The ascertainment of traumatic injuries is usually carried out through a physical examination. If the physical examination is not possible or necessary, the expertise is carried out on the basis of the medical documentation made available to the expert.
- (4)The expert report or the medico-legal certificate must include: the description of the traumatic injuries, as well as the expert's opinion on the nature and severity of the injuries, the mechanism and date of their occurrence, the consequences they produced.

#### **Article 190: Physical examination**

- (1)The physical examination of a person involves the external and internal examination of his body, as well as the taking of biological samples. The criminal prosecution body must request, in advance, the written consent of the person to be examined. In the case of persons lacking the capacity to exercise, the consent to the physical examination is requested from the legal representative, and in the case of those with restricted capacity to exercise, their written consent must be expressed in the presence of the legal guardians.
- (2)In the absence of the written consent of the person to be examined, of the legal representative or of the consent of the legal guardian, the judge of rights and freedoms shall order, by conclusion, at the reasoned request of the prosecutor, the physical examination of the person, if this measure is necessary to establish facts or circumstances that ensure the proper conduct of the criminal investigation or to determine whether a certain trace or consequence of the crime can be found on or inside her body.
- (3)The request of the criminal prosecution body must include: the name of the person whose physical examination is requested, the reasons for the fulfilment of the conditions provided for in paragraph (2), the manner in which the physical examination is to be carried out, the crime of which the suspect or defendant is accused.
- (4)The judge of rights and freedoms resolves the request to carry out the physical examination in the council chamber, by concluding that it is not subject to any appeal.
- (5)If the examined person does not express his/her consent in writing and there is an urgency, and obtaining the authorization of the judge under the conditions (4) would lead to a substantial delay of the investigations, to the loss, alteration or destruction of evidence, the criminal investigation

body may order, by order, the physical examination. The order of the criminal investigation body, as well as the report in which the activities carried out during the physical examination are recorded are immediately submitted to the judge of rights and freedoms. If the judge finds that the conditions set out in paragraph (2) have been complied with, he shall, by reasoned conclusion, order the validation of the physical examination carried out by the criminal prosecution bodies. The violation by the criminal prosecution bodies of the conditions provided for in paragraph (2) entails the exclusion of the evidence obtained by physical examination.

(6)The validation of the physical examination carried out by the criminal prosecution bodies shall be carried out in accordance with paragraph (4).

(7)The internal physical examination of a person's body or the collection of biological samples must be carried out by a doctor, nurse or a person with specialized medical training, with respect for privacy and human dignity. The internal physical examination of the minor who has not reached the age of 14 can be done in the presence of one of the parents, at the request of the parent. The collection of biological samples by non-invasive methods in order to carry out the forensic genetic expertise can also be carried out by the specialized personnel of the Romanian Police.

(8)In the case of driving a vehicle by a person under the influence of alcoholic beverages or other substances, the collection of biological samples shall be carried out at the disposal of the investigating bodies and with the consent of the person subject to the examination, by a doctor, nurse or by a person with specialized medical training, as soon as possible, in a medical institution, under the conditions established by the special laws.

(9)The activities carried out during the physical examination are recorded by the criminal investigation bodies in a report that must include: the name and surname of the criminal investigation body that concludes it, the ordinance or conclusion by which the measure was ordered, the place where it was concluded, the date, the time at which it began and the time at which the activity ended, the name and surname of the examined person, the nature of the physical examination, the description of the activities carried out, the list of samples collected following the physical examination.

(10)The results obtained from the analysis of biological samples can also be used in another criminal case, if they serve to find out the truth.

(11)The biological samples that were not consumed during the analyzes carried out are preserved and kept in the institution where they were processed, for a period of at least 10 years from the exhaustion of the ordinary remedies of the court decision.

### **Article 191: Forensic genetic expertise**

(1)The judicial genetic expertise may be ordered by the criminal investigation body, by ordinance, during the criminal investigation, or by the court, by conclusion, during the trial, regarding the biological samples collected from persons or any other evidence that has been found or seized.

(2)Forensic genetic expertise is carried out within forensic institutions, a specialized institution or laboratory or any other specialized institution certified and accredited in this type of analysis.

(3)The biological samples collected during the body examination can only be used to identify the forensic genetic profile.

(4)The judicial genetic profile obtained under the conditions of paragraph (3) may also be used in another criminal case, if it serves to find out the truth.

(5)The data obtained as a result of the forensic genetic expertise constitute personal data and are protected according to the law.

## **CHAPTER VIII: Investigation of the crime scene and reconstruction**

### **Article 192: On-site research**

(1)The on-the-spot investigation is ordered by the criminal investigation body, and during the trial by the court, when it is necessary to make a direct finding in order to determine or clarify factual circumstances that are important for establishing the truth, as well as whenever there are suspicions regarding the death of a person.

(2)The criminal investigation body or the court of law may prohibit persons who are or who come to the place where the investigation is carried out to communicate with each other or with other persons.

### **Article 193: Reenactment**

(1)The criminal investigation body or the court, if it finds it necessary to verify and specify some data or evidence administered or to establish factual circumstances that are important for the resolution of the case, may proceed to reconstruct, in whole or in part, the manner and conditions in which the act was committed.

(2)The judicial bodies proceed to reconstruct the activities or situations, taking into account the circumstances in which the deed took place, based on the evidence administered. If the statements of the witnesses, the parties or the main subjects of the proceedings regarding the activities or situations to be reconstructed are different, the reconstruction must be carried out separately for

each variant of the course of the act described by them.

(3) When the suspect or defendant is in any of the situations provided for in Article 90, the reconstitution shall be made in the presence of him, assisted by the lawyer. When the suspect or defendant is unable or unwilling to participate in the reenactment, it is carried out with the participation of another person.

(4) The reconstitution must be carried out in such a way as not to violate the law or public order, not to harm public morals and not to endanger the life or health of persons.

#### **Article 194: Presence of other persons at the on-site investigation and reconstruction**

The criminal investigation body or the court may order the presence of the forensic doctor or any person whose presence it deems necessary.

#### **Article 195: On-site investigation or reenactment report**

**(1) A report shall be concluded on the conduct of the on-site investigation or reconstruction, which shall include, in addition to the information provided for in Article 199, the following:**

- a) indication of the ordinance or conclusion by which the measure was ordered;
- b) the name, surname of the persons present and the capacity in which they participate;
- c) the name and surname of the suspect or defendant, if applicable;
- d) a detailed description of the situation of the place, of the traces found, of the objects examined and those seized, of the position and condition of the other material means of evidence, so that they are rendered accurately and as far as possible with the respective dimensions. In the case of reconstruction, the progress of the reconstruction shall be recorded in detail.

(2) In all cases, sketches, drawings or photographs or other such works may be made, which shall be attached to the minutes.

(3) The activity carried out and the expert's findings are recorded in the minutes.

(4) The report must be signed on each page and at the end by the person who concludes it and by the persons who participated in the research or reconstruction. If any of these persons is unable or refuses to sign the report, mention shall be made of it, as well as of the reasons for the impossibility or refusal to sign.

### **CHAPTER IX: Photographing and taking fingerprints of the suspect, defendant or other persons**

#### **Article 196: Photographing and taking fingerprints of the suspect, defendant or other**

## **persons**

(1)The criminal prosecution bodies may order the photographing and taking of the fingerprints of the suspect, the defendant or other persons in respect of whom there is a suspicion that they are related to the committed act or that they were present at the scene of the act, even in the absence of their consent.

(2)The criminal prosecution body may authorize the publication of a person's photograph, when this measure is necessary to establish the identity of the person or in other cases where the publication of the photograph is important for the proper conduct of the criminal investigation.

(3)If it is necessary to identify the fingerprints that have been found on certain objects or of the persons who can be connected to the act or the place where the act was committed, the criminal prosecution bodies may order the taking of the fingerprints of the persons who are alleged to have come into contact with those objects, respectively the photographing of those who are alleged to have been connected with the committed act or were present at the scene of the crime.

## **CHAPTER X:Material means of proof**

### **Article 197: Objects as evidence**

(1)Objects that contain or bear a trace of the deed committed, as well as any other objects that can serve to find out the truth are material means of proof.

(2)Bodies of evidence are the material means of evidence that have been used or were intended to serve in the commission of a crime, as well as the objects that are the product of the crime.

(3)If the material means of evidence are perishable and are subject to a special legal regime of conservation and preservation, they are handed over to a public authority or institution or to another legal person under public law that has the necessary infrastructure for the management of materials under a special legal regime.

(4)[text of Article 197, paragraph (4) of Part 1, Title IV, Chapter X was repealed on 16-May-2025 by the Act of Law 64/2025]

(5)(text of Article 197(5) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by Act 64/2025)

(6)(text of Article 197(6) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by Act 64/2025)

(7)[text of Article 197, paragraph (7) of Part 1, Title IV, Chapter X was repealed on 16-May-2025 by the Act of Law 64/2025]

(8)(text of Article 197(8) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by Act 64/2025)

(9)(text of Article 197, paragraph (9) of Part 1, Title IV, Chapter X was repealed on 16-May-2025 by the Act of Law 64/2025)

(10)(text of Article 197, paragraph (10) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by the Act of Law 64/2025)

(11)(text of Article 197, paragraph (11) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by the Act of Law 64/2025)

(12)(the text of Article 197(12) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by the Act of Law 64/2025)

(13)(the text of Article 197, paragraph (13) of Part 1, Title IV, Chapter X was repealed on 16 May 2025 by the Act of Law 64/2025)

## **CHAPTER XI:Documents**

### **Article 198: Written evidence**

(1)The documents may serve as means of proof, if, from their content, there are facts or circumstances likely to contribute to the finding of the truth.

(2)The report containing the personal findings of the criminal investigation body or of the court of law is a means of evidence. The reports drawn up by the bodies referred to in Article 61(1)(a) to (c) shall constitute acts of notification to the criminal investigation body and shall not have the value of expert findings in the criminal proceedings.

### **Article 199: Content and form of the minutes**

#### **(1)The minutes include:**

- a)the name, surname and capacity of the person who concludes it;
- b)the place where it is terminated;
- c)the date on which the report was concluded;
- d)the date and time when the activity recorded in the report began and ended;
- e)the name, surname, personal identification number and address of the persons who were present at the drawing up of the report, mentioning their quality;
- f)the detailed description of the findings, as well as of the measures taken;
- g)the name, surname, personal identification number and address of the persons to whom the

report refers, their objections and explanations;  
h) the particulars provided by law for special cases.

(2) The report must be signed on each page and at the end by the person who concludes it, as well as by the persons indicated in letters e) and g). If any of these persons is unable or refuses to sign, mention shall be made of this, as well as of the reasons for the impossibility or refusal to sign.

### **Article 200: Rogatory commission**

(1) When a criminal investigation body or the court of law does not have the possibility to hear a witness, to carry out an on-the-spot investigation, to proceed with the removal of objects or to carry out any other procedural act, it may apply to another criminal investigation body or to another court, which has the possibility to carry them out.

(2) The initiation of criminal proceedings, the taking of preventive measures, the approval of evidence, as well as the ordering of other procedural acts or procedural measures cannot be the object of the rogatory commission.

(3) The rogatory commission may apply only to a body or court of equal rank.

(4) The ordinance or the conclusion by which the rogatory commission was ordered must contain all the clarifications regarding the performance of the act that is the subject of it, and if a person is to be heard, the questions to be asked will also be shown.

(5) The criminal prosecution body or the court of law that carries out the rogatory commission may also ask other questions, if their necessity arises during the hearing.

(6) When the rogatory commission has been ordered by the court, the parties may formulate questions before it, which will be sent to the court to carry out the rogatory commission.

(7) At the same time, any of the parties can request to be summoned to the rogatory commission.

(8) When the defendant is arrested, the court that is to carry out the rogatory commission orders the appointment of a court-appointed lawyer, who will represent him, in the absence of the chosen lawyer.

### **Article 201: Delegation**

(1) The criminal prosecution body or the court of law may, under the conditions set out in Article 200(1) and (2), order the performance of a procedural act also by delegation. The delegation can be given only to a hierarchically inferior body or court.

(2) The provisions relating to the letter rogatory shall also apply accordingly in the case of

delegation.

## **TITLE V: Preventive and other procedural measures**

### **CHAPTER I: Preventive measures**

#### **SECTION 1: General provisions**

#### **Article 202: Purpose, general conditions of application and categories of preventive measures**

(1) Preventive measures may be ordered if there is solid evidence or indicia from which there is a reasonable suspicion that a person has committed a crime and if they are necessary for the purpose of ensuring the proper conduct of the criminal trial, preventing the suspect or defendant from evading criminal prosecution or trial or preventing the commission of another crime.

(2) No preventive measure may be ordered, confirmed, extended or maintained if there is a cause that prevents the initiation or exercise of criminal action.

(3) Any preventive measure must be proportionate to the seriousness of the accusation against the person against whom it is taken and necessary for the achievement of the purpose pursued by its order.

#### **(4) The preventive measures are:**

- a) retention;
- b) judicial control;
- c) judicial control on bail;
- d) house arrest;
- e) pre-trial detention.

#### **Article 203: The competent judicial body and the act ordering preventive measures**

(1) The preventive measure provided for in 202 paragraph (4) letter a) may be taken against the suspect or defendant by the criminal investigation body or by the prosecutor, only during the criminal investigation.

(2) The preventive measures provided for in Article 202(4)(b) and (c) may be taken against the defendant, during the criminal investigation, by the prosecutor and by the judge of rights and freedoms, in the preliminary chamber procedure, by the preliminary chamber judge, and during the trial, by the court.

(3) The preventive measures provided for in Article 202(4)(d) and (e) may be taken against the defendant, during the criminal investigation, by the judge of rights and freedoms, in the preliminary chamber procedure, by the preliminary chamber judge, and during the trial, by the court.

(4) The criminal investigation body and the prosecutor shall order preventive measures by reasoned ordinance.

(5) During the criminal investigation and the preliminary chamber procedure, applications, proposals, complaints and appeals regarding preventive measures shall be resolved in the council chamber, by reasoned conclusion, which shall be pronounced in the council chamber.

(6) During the trial, the court rules on the preventive measures by reasoned conclusion.

(7) The conclusions pronounced by the judge of rights and freedoms, by the judge of the preliminary chamber or by the court of law shall be communicated to the defendant and the prosecutor who were absent from the pronouncement.

#### **Article 204: Appeal against judgments ordering preventive measures in the course of criminal proceedings**

(1) Against the conclusions by which the judge of rights and freedoms orders on preventive measures, the defendant and the prosecutor may lodge an appeal, within 48 hours from the pronouncement or, as the case may be, from the communication. The appeal shall be submitted to the judge of rights and freedoms who pronounced the contested conclusion and shall be submitted, together with the case file, to the judge of rights and freedoms of the hierarchically superior court, within 48 hours from registration.

(2) Appeals against the conclusions by which the judge of rights and freedoms of the High Court of Cassation and Justice orders preventive measures shall be resolved by a panel composed of judges of rights and freedoms of the High Court of Cassation and Justice, the provisions of this article being applied accordingly.

(3) The appeal filed against the conclusion by which the taking or extension of a preventive measure was ordered or by which its legal termination was ascertained is not suspensive of execution.

(4) The appeal filed by the defendant shall be resolved within 5 days from the registration.

(5) The appeal filed by the prosecutor against the conclusion by which it was ordered to reject the proposal to extend the preventive arrest, to revoke a preventive measure or to replace a

preventive measure with another preventive measure shall be resolved before the expiry of the duration of the preventive measure previously ordered.

(6) In order to solve the appeal, the defendant is summoned.

(7) The resolution of the appeal is made in the presence of the defendant, except in the case when he/she is unjustifiably absent, is missing, evades or due to the state of health, due to force majeure or state of necessity cannot be brought before the judge. The defendant deprived of liberty is also considered to be present who, with his consent and in the presence of the lawyer chosen or appointed ex officio and, as the case may be, also of the interpreter, participates in the resolution of the appeal by videoconference, at the place of detention.

(8) In all cases, it is mandatory to provide legal aid to the defendant by a lawyer, chosen or appointed ex officio.

(9) The participation of the prosecutor is mandatory.

(10) In case of admission of the appeal filed by the prosecutor and order of the preventive arrest of the accused, the provisions of Article 226 shall be applied accordingly. In case of admission of the appeal filed by the prosecutor and order the extension of the pre-trial detention of the accused, the provisions of Article 236 (1) and (2) shall be applied accordingly.

(11) If the conditions laid down by law are met, one of the preventive measures provided for in Article 202(4)(b) to (d) may be ordered or the amount of the security may be increased.

(12) In the event of the admission of the appeal filed by the defendant against the conclusion by which the preventive arrest measure was ordered to be taken or extended, it may be ordered, under the conditions provided by the law, the rejection of the proposal to take or extend the preventive measure or, as the case may be, its replacement by another lighter preventive measure and, as the case may be, the immediate release of the defendant, unless he is arrested in another case.

(13) The case file shall be returned to the prosecutor within 48 hours from the resolution of the appeal.

(14) If the conclusion of the judge of rights and freedoms of the first instance is not challenged, he returns the file to the prosecutor within 48 hours from the expiry of the appeal period.

### **Article 205: Appeal against orders ordering preventive measures in the pre-trial chamber proceedings**

(1) Against the conclusions by which the judge of the preliminary chamber of the court seized

with the indictment orders the preventive measures, the defendant and the prosecutor may lodge an appeal, within 48 hours from the pronouncement or, as the case may be, from the communication. The appeal shall be submitted to the judge of the preliminary chamber who pronounced the contested conclusion and shall be submitted, together with the case file, to the judge of the preliminary chamber of the hierarchically superior court, within 48 hours of registration.

(2) Appeals against the conclusions by which the judge of the preliminary chamber of the High Court of Cassation and Justice orders preventive measures in the procedure of the preliminary chamber shall be resolved by another panel of the same court, in accordance with the law.

(3) The appeal filed against the conclusion by which the taking or maintenance of a preventive measure was ordered or by which its legal termination was ascertained is not suspensive of execution.

(4) The appeal filed by the defendant shall be resolved within 5 days from the registration.

(5) The appeal filed by the prosecutor against the conclusion ordering the revocation of a preventive measure or the replacement of a preventive measure by another preventive measure shall be resolved before the expiry of the duration of the preventive measure previously ordered.

(6) In order to solve the appeal, the defendant is summoned.

(7) The provisions of Article 204(7) shall apply accordingly.

(8) In all cases, it is mandatory to provide legal aid to the defendant by a lawyer, chosen or appointed ex officio.

(9) The participation of the prosecutor is mandatory.

(10) If the conditions provided by law are met, once the appeal is resolved, one of the preventive measures provided for in Article 202(4)(b) to (d) may be ordered to be taken or the amount of the deposit may be increased.

#### **Article 206: Appeal against the conclusions ordering preventive measures during the trial**

(1) The defendant and the prosecutor may lodge an appeal against the conclusions by which the court orders, in the first instance, on preventive measures, within 48 hours from the pronouncement or, as the case may be, from the communication. The appeal shall be submitted to the court that pronounced the contested conclusion and shall be submitted, together with the case file, to the hierarchically superior court, within 48 hours from registration.

(2) The conclusions by which the High Court of Cassation and Justice disposes in the first

instance on preventive measures may be challenged before the competent panel of the High Court of Cassation and Justice.

(3)The appeal shall be resolved in a public hearing, with the participation of the prosecutor and with the summons of the defendant.

(4)The appeal filed against the conclusion by which the taking or maintenance of a preventive measure was ordered or by which its legal termination was ascertained is not suspensive of execution.

(5)The appeal filed by the defendant shall be resolved within 5 days from the registration.

(6)The appeal filed by the prosecutor against the conclusion ordering the revocation of a preventive measure or the replacement of a preventive measure by another preventive measure shall be resolved before the expiry of the duration of the preventive measure previously ordered.

(7)If the conditions laid down by law are met, the court may order the taking of one of the preventive measures provided for in Article 202(4)(b) to (d) or an increase in the amount of the bail.

#### **Article 207: Verification of preventive measures in the preliminary chamber procedure**

**(1)When the prosecutor orders the indictment of the defendant against whom a preventive measure has been ordered, the indictment, together with the case file, shall be submitted to the judge of the preliminary chamber of the competent court, at least 5 days before the expiry of its duration.**

\*) In the unitary interpretation and application of the provisions of Article 207 (1) and (2) of the Code of Criminal Procedure, it establishes that:

"The term 'at least 5 days before the expiry of its duration' is a peremptory term, and its violation entails the forfeiture of the prosecutor's right to formulate requests for preventive measures and the nullity of the act done in this regard after the deadline, as well as the impossibility of the judge of the preliminary chamber to verify ex officio the legality and validity of the preventive measure before the expiry of its duration."

(2)Within 3 days from the registration of the file, the judge of the preliminary chamber shall verify ex officio the legality and validity of the preventive measure, before the expiry of its duration, summoning the defendant.

(3)The provisions of Article 235(4) to (6) shall apply accordingly.

(4)When he finds that the grounds that determined the taking of the measure are maintained or

there are new grounds that justify a preventive measure, the judge of the preliminary chamber orders by conclusion the maintenance of the preventive measure against the defendant.

(5) When it finds that the grounds that determined the taking or extension of the preventive arrest measure have ceased and there are no new grounds justifying it, or if new circumstances have arisen resulting in the illegality of the preventive measure, the judge of the preliminary chamber orders by conclusion the revocation of the measure and the release of the defendant, unless he is arrested in another case.

(6) Throughout the preliminary chamber procedure, the judge of the preliminary chamber, ex officio, shall periodically verify, but not later than 30 days, whether the grounds that determined the adoption of the preventive arrest measure and the house arrest measure exist or whether new grounds have arisen, justifying the maintenance of these measures. The provisions of paragraphs 2 to 5 shall apply accordingly.

(7) The judge of the preliminary chamber, during the preliminary chamber procedure, shall verify, ex officio, periodically, but not later than 60 days, whether the grounds which led to the adoption of the measure of judicial control or judicial control on bail exist or whether new grounds have arisen justifying the maintenance of this measure. The provisions of paragraphs 2 to 5 shall apply accordingly.

#### **Article 208: Verification of preventive measures during the trial**

(1) The judge of the preliminary chamber submits the file to the court at least 5 days before the expiry of the preventive measure.

(2) The court shall verify ex officio whether the grounds that determined the taking, prolongation or maintenance of the preventive measure exist, before the expiry of its duration, with the summons of the defendant.

(3) The provisions of Article 207(3) to (5) shall apply accordingly.

(4) Throughout the trial, until the judgment is pronounced, the court, ex officio, by conclusion, shall periodically verify, but not later than 60 days, whether the grounds that determined the maintenance of the preventive arrest measure and the house arrest ordered against the defendant or whether new grounds have emerged to justify the maintenance of these measures. The provisions of Article 207(3) to (5) shall apply accordingly.

(5) Throughout the course of the trial, until the decision is pronounced, the court shall verify, by conclusion, ex officio, periodically, but not later than 60 days, whether the grounds that determined the taking of the measure of judicial control or judicial control on bail or whether

new grounds have arisen, justifying the maintenance of this measure. The provisions of Article 207(3) to (5) shall apply accordingly.

### **Article 208<sup>1</sup>: Modification of the content of some preventive measures**

Within the procedure for verifying preventive measures according to Articles 207 and 208, the obligations in their content may also be modified.

## **SECTION 2: Retention**

### **Article 209: Retention**

(1) The criminal investigation body or the prosecutor may order the detention, if the conditions provided for in Article 202 are met.

(2) The detained person shall be informed immediately, in the language he or she understands, of the offence of which he is suspected and the reasons for the detention.

(3) The detention can be ordered for a maximum of 24 hours. The duration of detention does not include the time strictly necessary for the conduct of the suspect or defendant to the headquarters of the judicial body, according to the law.

(4) If the suspect or defendant has been brought before the criminal investigation body or the prosecutor for questioning, on the basis of a legally issued warrant for the arrest, the period provided for in paragraph (3) shall not include the period during which the suspect or defendant was under the power of that warrant.

(5) The measure of detention may be taken only after the hearing of the suspect or defendant, in the presence of the lawyer chosen or appointed ex officio.

(6) Before the hearing, the criminal investigation body or the prosecutor is obliged to inform the suspect or defendant that he has the right to be assisted by a lawyer chosen or appointed ex officio and the right not to make any statement, except to provide information regarding his identity, drawing his attention to the fact that what he declares may be used against him.

(7) The suspect or defendant has the right to personally acquaint his/her chosen lawyer or to request the criminal investigation body or the prosecutor to inform him/her. The manner of making the knowledge is recorded in a report. The exercise of the right to personally make the announcement may be refused only for sound reasons, which will be recorded in the minutes.

(8) The chosen lawyer has the obligation to appear at the headquarters of the judicial body within a maximum of two hours from the notification. In case of non-appearance of the chosen lawyer,

the criminal investigation body or the prosecutor appoints a lawyer ex officio.

(9)The lawyer of the suspect or defendant has the right to communicate directly with him, under conditions that ensure confidentiality.

(10)The detention shall be ordered by the criminal investigation body or by the prosecutor by ordinance, which shall include the reasons that determined the taking of the measure, the day and time at which the detention begins, as well as the day and time at which the detention ends.

(11)The suspect or defendant detained shall be given a copy of the order referred to in paragraph 10.

(12)During the detention of the suspect or defendant, the criminal investigation body or the prosecutor who ordered the measure has the right to proceed to photograph and take his fingerprints.

(13)If the detention has been ordered by the criminal investigation body, it has the obligation to inform the prosecutor about the taking of the preventive measure, immediately and by any means.

(14)Against the order of the criminal investigation body by which the detention measure was taken, the suspect or defendant may file a complaint with the prosecutor supervising the criminal investigation, before the expiry of its duration. The prosecutor pronounces immediately, by ordinance. If the prosecutor finds that the legal provisions regulating the conditions for taking the detention measure have been violated, the prosecutor orders its revocation and the immediate release of the detainee.

(15)Against the prosecutor's order by which the detention measure was taken, the suspect or the defendant may complain, before the expiry of its duration, to the first prosecutor of the prosecutor's office or, as the case may be, to the hierarchically superior prosecutor. The first prosecutor or the hierarchically superior prosecutor shall pronounce immediately, by ordinance. If he finds that the legal provisions regulating the conditions for taking the detention measure have been violated, the first prosecutor or the hierarchically superior prosecutor orders its revocation and the immediate release of the defendant.

(16)The prosecutor shall notify the judge of rights and freedoms of the competent court, in order to take the measure of preventive arrest against the detained defendant, at least 6 hours before the expiry of the duration of his detention.

(17)The detained person shall be informed, under signature, in writing, of the rights provided for in Article 83, Article 210(1) and (2), the right of access to emergency medical assistance, the

maximum period for which the detention measure may be ordered, as well as the right to lodge a complaint against the measure ordered, and if the detained person is unable or refuses to sign, A report will be concluded.

### **Article 210: Awareness of retention**

(1) Immediately after detention, the detained person has the right to personally inform or request the judicial body that ordered the measure to inform a member of his family or another person designated by him about the detention measure and the place where he is detained.

(2) If the detained person is not a Romanian citizen, he/she also has the right to inform or request the knowledge of the diplomatic mission or consular office of the state of which he/she is a citizen or, as the case may be, of an international humanitarian organization, if he/she does not wish to benefit from the assistance of the authorities of his/her country of origin, or of the representation of the competent international organization, if he is a refugee or, for any other reason, is under the protection of such an organization. The General Inspectorate for Immigration is informed in all situations about the order of the preventive measure against this category of persons.

(3) The provisions of paragraphs 1 and 2 shall apply accordingly in the event of a subsequent change of the place of detention.

(4) (text of Article 210(4) of Part 1, Title V, Chapter I, Section 2 was repealed on 01-Feb-2014 by Article 102(140) of Title III of Law 255/2013)

(5) The detained person may not be denied the exercise of the right to personally make the announcement except for solid reasons, which will be recorded in the report.

**(6) Exceptionally, the acknowledgment may be delayed for a maximum of 4 hours only if, in view of the specific circumstances of the case, there is an urgent need to prevent:**

- a) producing serious negative consequences for the life, liberty or physical integrity of a person;
- b) considerable jeopardising criminal proceedings.

## **SECTION 3: Judicial review**

### **Article 211: General conditions**

(1) In the course of the criminal investigation, the prosecutor may order the judicial review of the defendant if such preventive measure is necessary for the attainment of the purpose set out in Article 202(1).

(2)The judge of the preliminary chamber, in the procedure of the preliminary chamber, or the court, during the trial, may order the taking of the measure of judicial control against the defendant, if the conditions provided for in paragraph (1) are met.

#### **Article 212: Taking the measure of judicial control by the prosecutor**

(1)The prosecutor orders the summons of the defendant who is at liberty or the defendant who is in detention.

(2)The defendant present shall be informed, immediately, in the language he understands, of the crime of which he is suspected and the reasons for taking the measure of judicial control.

(3)The measure of judicial control can be taken only after the hearing of the defendant, in the presence of the lawyer chosen or appointed ex officio. The provisions of Article 209(6) to (9) shall apply accordingly.

(4)The prosecutor orders the taking of the measure of judicial control by reasoned order, which is communicated to the defendant.

#### **Article 213: Appeal against the measure of judicial control ordered by the prosecutor**

(1)Against the prosecutor's order by which the measure of judicial control was taken, within 48 hours from the communication, the defendant may file a complaint with the judge of rights and freedoms of the court whose competence would have the competence to judge the case on the merits.

(2)The judge of rights and freedoms notified pursuant to paragraph (1) sets a deadline for resolution in the council chamber and orders the summoning of the defendant. The complaint shall be resolved within 5 days from registration.

(3)The non-appearance of the defendant does not prevent the judge of rights and freedoms from ruling on the measure taken by the prosecutor.

(4)The judge of rights and freedoms listens to the defendant when he is present.

(5)The legal assistance of the defendant and the participation of the prosecutor are mandatory.

(6)The judge of rights and freedoms may revoke the measure, if the legal provisions regulating the conditions for its adoption have been violated, or may modify the obligations in the content of the judicial review.

(6<sup>1</sup>)The conclusion by which the judge of rights and freedoms resolves the complaint is final.

(7)The case file shall be returned to the prosecutor within 48 hours from the pronouncement of

the conclusion.

#### **Article 214: Taking the measure of judicial review by the judge of the preliminary chamber or the court of law**

(1)The judge of the preliminary chamber or the court of law before which the case is pending may order, by conclusion, the taking of the measure of judicial control against the defendant, at the reasoned request of the prosecutor or ex officio.

(2)The judge of the preliminary chamber or the court of law seized pursuant to paragraph (1) shall order the summons of the defendant. The hearing of the defendant is mandatory if he appears at the set deadline.

(3)The presence of the defendant's lawyer and the participation of the prosecutor are mandatory.

#### **Article 215: Content of judicial review**

**(1)During the time he is under judicial control, the defendant must comply with the following obligations:**

- a)to appear before the criminal investigation body, the judge of the preliminary chamber or the court whenever summoned;
- b)to immediately inform the judicial body that ordered the measure or before which the case is pending regarding the change of residence;
- c)to report to the police body designated with his supervision by the judicial body that ordered the measure, according to the surveillance program drawn up by the police body or whenever he is summoned.

**(2)The judicial body that ordered the measure may require the defendant to comply with one or more of the following obligations during the judicial review:**

- a)not to exceed a certain territorial limit, set by the judicial body, except with its prior consent;
- b)not to travel to specific places determined by the judicial body or to travel only to the places determined by it;
- c)wear an electronic surveillance device at all times;
- d)not to return to the family home, not to approach the injured person or his family members, other participants in the commission of the crime, witnesses or experts or other persons specifically designated by the judicial body and not to communicate with them directly or indirectly, by any means;
- e)not to exercise the profession, trade or not to carry out the activity in the exercise of which he committed the act;

- f)to periodically communicate relevant information about its means of subsistence;
- g)undergo medical control, care or treatment, in particular for the purpose of detoxification;
- h)not to participate in sports or cultural events or other public gatherings;
- i)**not to drive vehicles specifically established by the judicial body;**

\*) HCCJ establishes that:

The obligation of the defendant not to drive specifically established vehicles, imposed by the judicial body during the preventive measure of judicial control according to Article 215(2)(i) of the Code of Criminal Procedure, does not constitute a suspension of the exercise of the right to drive, and the violation thereof does not meet the elements of typicality of the offence provided for in Article 335(2) of the Criminal Code.

j)not to own, use or carry weapons;

k)not to issue checks.

(3)The document ordering the taking of the measure of judicial control expressly stipulates the obligations that the defendant must comply with during the measure and draws his attention to the fact that, in case of bad faith violation of his obligations, the measure of judicial control may be replaced by the measure of house arrest or the measure of preventive arrest.

(4)The supervision of the defendant's compliance with his obligations during the judicial review shall be carried out by the institution, body or authority specifically designated by the judicial body that ordered the measure, in accordance with the law.

(5)If the obligation provided for in paragraph (2) letter a) has been imposed on the defendant, a copy of the prosecutor's order or, as the case may be, of the minutes, shall be communicated, on the day of the issuance of the order or of the pronouncement of the conclusion, to the defendant, to the police unit in whose district he resides, as well as to the community public service for the registration of persons, to the Romanian Border Police and to the General Inspectorate for Immigration, in the case of the person who is not a Romanian citizen, in order to ensure that the defendant complies with the obligation incumbent on him. The law enforcement bodies order the defendant to be handed over to the border crossing points.

(6)The institution, body or authority referred to in paragraph (4) shall periodically verify the defendant's compliance with the obligations, and if it finds violations thereof, it shall immediately notify the prosecutor, during the criminal investigation, the judge of the preliminary chamber, in the preliminary chamber procedure, or the court, during the trial.

(7)If, during the judicial review measure, the defendant violates, in bad faith, his obligations or

there is a reasonable suspicion that he has intentionally committed a new offence for which criminal proceedings have been ordered against him, the judge of rights and freedoms, the judge of the preliminary chamber or the court, at the request of the prosecutor or of his own motion, may order the replacement of this measure by the measure of house arrest or preventive arrest, under the conditions provided by law.

(8) During the criminal investigation, the prosecutor may order, ex officio or at the reasoned request of the defendant, by ordinance, the imposition of new obligations on the defendant or the replacement or termination of those initially ordered, if there are solid reasons justifying this, after hearing the defendant. Against the prosecutor's order, the defendant may lodge a complaint with the judge of rights and freedoms of the court which would have jurisdiction to judge the case on the merits, the provisions of Article 213 being applied accordingly.

(8<sup>1</sup>) The provisions of paragraph (8) shall also apply if the measure has been taken by the judge of rights and freedoms.

(9) The provisions of paragraph (8) sentence I shall also apply accordingly in the preliminary chamber procedure or during the trial, when the judge of the preliminary chamber or the court of law orders, by conclusion, at the reasoned request of the prosecutor or the defendant or ex officio, after hearing the defendant. The conclusion may be challenged under the conditions of Article 205 and Article 206 respectively, which shall apply accordingly.

(10) (text of Article 215(10) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

(11) (text of Article 215(11) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

(12) (text of Article 215(12) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

(13) (text of Article 215(13) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

(14) (text of Article 215(14) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

(15) (text of Article 215(15) of Part 1, Title V, Chapter I, Section 3 was repealed on 01-Feb-2014 by Article 102(146) of Title III of Law 255/2013)

## **Article 215<sup>1</sup>: Duration of judicial review**

- (1) During the criminal investigation, the measure of judicial control may be ordered by the prosecutor or by the judge of rights and freedoms for a period of no more than 60 days.
- (2) During the criminal investigation, the judicial control may be extended by the prosecutor, by ordinance, if the grounds that determined the taking of the measure are maintained or new grounds have emerged to justify its extension, each extension not exceeding 60 days. The provisions of Article 212 (1) and (3) shall apply accordingly.
- (3) The provisions of paragraph (2) shall also apply if the measure has been taken by the judge of rights and freedoms.
- (4) The prosecutor's order by which, under the conditions of paragraph (2) or (3), the measure of judicial control was extended shall be communicated to the defendant on the same day.
- (5) Against the prosecutor's order by which, under the conditions provided for in paragraphs (2) and (3), the measure of judicial control was extended, the defendant may lodge a complaint with the judge of rights and freedoms of the court whose competence would be competent to judge the case on the merits, the provisions of Article 213 being applied accordingly.
- (6) During the criminal investigation, the duration of the judicial control measure may not exceed one year, if the penalty provided by law is a fine or imprisonment of no more than 5 years, respectively 2 years, if the punishment provided by law is life imprisonment or imprisonment for more than 5 years.
- (7) The judge of the preliminary chamber, in the procedure of the preliminary chamber, or the court, during the trial, may order the taking of the measure of judicial control against the defendant for a period not exceeding 60 days.
- (8) During the trial, the total duration of the judicial review may not exceed a reasonable period of time and, in no case, may not exceed 5 years from the moment of the indictment.
- (9) Upon expiry of the terms provided for in paragraph (8), the court may order the taking of another preventive measure, under the conditions of the law.

#### **SECTION 4: Judicial control on bail**

##### **Article 216: General conditions**

- (1) In the course of the criminal investigation, the prosecutor may order the measure of judicial control on bail against the defendant, if the conditions laid down in Article 223 (1) and (2) are met, the taking of this measure is sufficient for the achievement of the purpose set out in Article 202 (1), and the defendant shall lodge a bail, the amount of which shall be determined by the

judicial body.

(2)The judge of the preliminary chamber, in the procedure of the preliminary chamber, or the court, during the trial, may order the taking of the measure of judicial control on bail against the defendant, if the conditions provided for in paragraph (1) are met.

(3)The provisions of Articles 212 to 215<sup>1</sup> shall apply accordingly.

### **Article 217: Content of the deposit**

(1)The deposit is made in the name of the defendant, by depositing a determined amount of money at the disposal of the judicial body or by constituting a real guarantee, movable or immovable, within the limit of a determined amount of money, in favor of the same judicial body.

(2)The value of the bail is at least 1,000 lei and is determined in relation to the seriousness of the accusation brought against the defendant, the material situation and his legal obligations.

(3)During the period of the measure, the defendant must comply with the obligations laid down in Article 215(1) and may be required to comply with one or more of the obligations laid down in Article 215(2). The provisions of Article 215(3) to (9) shall apply accordingly.

(4)The bail guarantees the participation of the defendant in the criminal trial and the compliance by the defendant with the obligations provided for in paragraph (3).

(5)The court of law shall order by decision the confiscation of the bail, if the measure of judicial control on bail has been replaced by the measure of house arrest or preventive arrest, for the reasons provided in paragraph (9).

(6)In other cases, the court, by decision, orders the return of the deposit.

(7)The provisions of paragraphs 5 and 6 shall apply to the extent that the payment of the monetary compensation granted for compensation for the damage caused by the crime, the legal costs or the fine has not been ordered, in the following order.

(8)If he orders a solution of non-indictment, the prosecutor also orders the return of the bail.

(9)If, during the period of judicial control on bail, the defendant breaches, in bad faith, his obligations or there is a reasonable suspicion that he has intentionally committed a new offence for which criminal proceedings have been ordered against him, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law, At the reasoned request of the prosecutor or ex officio, he may order the replacement of this measure by the measure of house arrest or preventive arrest, under the conditions provided by the law.

## **SECTION 5: House arrest**

### **Article 218: General conditions for taking the measure of house arrest**

(1) House arrest shall be ordered by the judge of rights and freedoms, by the judge of the preliminary chamber or by the court, if the conditions laid down in Article 223 are fulfilled and the taking of such a measure is necessary and sufficient for the attainment of one of the purposes set out in Article 202(1).

(2) The assessment of the fulfillment of the conditions provided for in paragraph (1) shall be made taking into account the degree of danger of the crime, the purpose of the measure, the health, age, family situation and other circumstances regarding the person against whom the measure is taken.

(3) The measure may not be ordered in respect of the defendant against whom there is a reasonable suspicion that he has committed a crime against a family member with whom he lives, in respect of the defendant who lives with the persons referred to in Article 221(2)(b) or in respect of the person investigated or convicted of the crime of escape.

(4) The person in respect of whom the measure of house arrest has been ordered shall be informed, under signature, in writing, of the rights provided for in Article 83, the right provided for in Article 210 (1) and (2), the right of access to emergency medical assistance, the right to contest the measure and the right to request the revocation or replacement of that measure by another preventive measure, and if the person is unable or refuses to sign, a report will be concluded.

### **Article 219: Taking the measure of house arrest by the judge of rights and freedoms**

(1) The judge of rights and freedoms of the court which would have jurisdiction to hear the case at first instance or of the court corresponding in rank to that court in whose district the place where the crime was found to have been committed or the seat of the prosecutor's office to which the prosecutor carrying out or supervising the criminal investigation belongs, may order, at the reasoned proposal of the prosecutor, house arrest of the defendant.

(2) The prosecutor shall submit to the judge of rights and freedoms the proposal provided for in paragraph (1) together with the case file.

(3) The judge of rights and freedoms, notified in accordance with paragraph (1), sets a deadline for resolution in the council chamber within 24 hours from the registration of the proposal and orders the summons of the defendant.

(4) The non-appearance of the defendant does not prevent the judge of rights and freedoms from solving the proposal submitted by the prosecutor.

(5) The judge of rights and freedoms hears the defendant when he is present.

(6) The legal assistance of the defendant and the participation of the prosecutor are mandatory.

(7) The judge of rights and freedoms admits or rejects the prosecutor's proposal by reasoned conclusion.

(8) The case file shall be returned to the criminal investigation body within 24 hours from the expiry of the deadline for filing the appeal.

(9) The judge of rights and freedoms who rejects the proposal to take the measure of house arrest against the defendant may, by the same conclusion, order the taking of one of the preventive measures provided for in Article 202(4)(b) and (c), if the conditions provided by law are met.

#### **Article 220: Taking the measure of house arrest by the judge of the preliminary chamber or the court of law**

**(1) The judge of the preliminary chamber or the court before which the case is pending may order, by conclusion, the house arrest of the defendant, at the reasoned request of the prosecutor or ex officio.**

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution regulated by the provisions of Article 220 paragraph (1) is unconstitutional, which allows the measure of house arrest to be taken, given that the defendant was previously under preventive arrest or at home in the same case, in the absence of new grounds that make it necessary to deprive him of liberty.

(2) The judge of the preliminary chamber or the court, notified in accordance with paragraph (1), orders the summons of the defendant. The hearing of the defendant is mandatory if he appears within the set deadline.

(3) The legal assistance of the defendant and the participation of the prosecutor are mandatory.

(4) The provisions of Article 219(4), (7) and (9) shall apply accordingly.

#### **Article 221: Content of the house arrest measure**

(1) The measure of house arrest consists in the obligation imposed on the defendant, for a determined period, not to leave the building where he lives, without the permission of the judicial body that ordered the measure or before which the case is pending and to submit to

restrictions established by it.

**(2) During the house arrest, the defendant has the following obligations:**

a) to appear before the criminal investigation body, the judge of rights and freedoms, the judge of the preliminary chamber or the court whenever summoned;

b) not to communicate with the injured person or his/her family members, with other participants in the commission of the crime, with witnesses or experts, as well as with other persons established by the judicial body.

(3) The judge of rights and freedoms, the judge of the preliminary chamber or the court of law may order that during house arrest the defendant must wear an electronic surveillance device at all times and/or comply with one or more of the obligations laid down in Article 215(2)(d) to (k). The provisions of Article 215(8), (8<sup>1</sup>) and (9) shall apply accordingly.

(4) The conclusion ordering the measure expressly stipulates the obligations that the defendant must comply with and he is warned that, in case of bad faith violation of the measure or obligations incumbent on him, the measure of house arrest may be replaced by the measure of preventive arrest.

(5) During the measure, the defendant may leave the building provided for in paragraph (1) in order to appear before the judicial bodies, at their summons.

(6) At the written and reasoned request of the defendant, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law, by conclusion, may allow the defendant to leave the building in order to present himself at the workplace, to educational or professional training courses or to other similar activities or to procure essential means of existence, as well as in other duly justified situations, for a determined period of time, if this is necessary for the realization of legitimate rights or interests of the defendant.

(6<sup>1</sup>) In the situation provided for in paragraph (6), the period of time shall be expressly indicated in the conclusion, as well as, as the case may be, the place of work, educational institution, health unit or other place where the defendant's travel was approved.

(7) In urgent cases, for justified reasons, the defendant may leave the building, without the permission of the judge of rights and freedoms, the judge of the preliminary chamber or the court, for the strictly necessary period of time, immediately informing the institution, body or authority designated with his supervision and the judicial body that took the measure of house arrest or before which the case is pending.

(8) The copy of the conclusion of the judge of rights and freedoms, of the judge of the

preliminary chamber or of the court of law by which the measure of house arrest was taken shall be immediately communicated to the defendant and to the institution, body or authority designated with his supervision, to the police body in whose district he resides, to the community public service for the registration of persons and border bodies.

(9)The institution, body or authority designated by the judicial body that ordered the house arrest periodically verifies the defendant's compliance with the measure and obligations, and if it finds violations thereof, it immediately notifies the prosecutor, during the criminal investigation, the judge of the preliminary chamber, in the preliminary chamber procedure, or the court, during the trial.

(10)In order to supervise the observance of the house arrest measure or the obligations imposed on the defendant during it, the police body may enter the building where the measure is executed, without the consent of the defendant or the persons living with him.

(11)If the defendant violates in bad faith the measure of house arrest or the obligations incumbent on him, or there is a reasonable suspicion that he has intentionally committed a new offence for which criminal proceedings have been ordered against him, the judge of rights and freedoms, the judge of the preliminary chamber or the court, at the reasoned request of the prosecutor or ex officio, may order the replacement of house arrest with the measure of preventive arrest, under the conditions provided by law.

(12)When, in bad faith, the defendant violates the obligation not to leave the building or does not comply with the itinerary or travel conditions, established according to the law, the supervisory body has the right to apprehend the defendant and to present him immediately to the prosecutor, during the criminal investigation, to the judge of the preliminary chamber, in the procedure of the preliminary chamber, or to the court, during the trial, in order to proceed according to paragraph (11).

#### **Article 222: Duration of house arrest**

**(1)During the criminal investigation, house arrest can be taken for a maximum of 30 days.**

\*) From Decision no. 17/2025 The High Court of Cassation and Justice, in interpreting and applying the provisions of Article 222(1) with reference to Article 227(2) and Article 204(12) sentence I of the Code of Criminal Procedure, establishes the following:

In case of admission of the appeal, the Panel of Judges of Rights and Freedoms of the Court of Judicial Control may order the adoption of the measure of house arrest for the remaining period of time until the completion of the substantial term of 30 days calculated from the moment of

preventive arrest of the defendant, based on the order of the judge of rights and freedoms of the first instance.

(2)The house arrest may be extended during the criminal investigation, only in case of necessity, if the grounds that determined the taking of the measure are maintained or new grounds have arisen, each extension not exceeding 30 days.

(3)In the case referred to in paragraph (2), the extension of the house arrest may be ordered by the judge of rights and freedoms from the court that would have jurisdiction to hear the case in the first instance or from the court corresponding in rank to that court in whose district the place where the crime was found to have been committed is located or the headquarters of the prosecutor's office to which the prosecutor conducting or supervising the criminal investigation belongs.

(4)The judge of rights and freedoms is notified in order to extend the measure by the prosecutor, by means of a reasoned proposal, accompanied by the case file, at least 5 days before the expiry of its duration.

(5)The judge of rights and freedoms, notified according to paragraph (4), sets a deadline for solving the prosecutor's proposal, in the council chamber, before the expiry of the duration of the house arrest and orders the summons of the defendant.

(6)The participation of the prosecutor is mandatory.

(7)The judge of rights and freedoms admits or rejects the prosecutor's proposal by reasoned conclusion.

(8)The case file shall be returned to the criminal investigation body within 24 hours from the expiry of the deadline for filing the appeal.

(9)The maximum duration of the house arrest measure, during the criminal investigation, is 180 days.

(10)The duration of the deprivation of liberty ordered by the measure of house arrest shall be taken into account for the calculation of the maximum duration of the measure of preventive arrest of the defendant during the criminal investigation.

(10)(the text of Article 222(10) of Part 1, Title V, Chapter I, Section 5 was repealed on 29 January 2016 by the Act of Decision 740/2015)

(11)The provisions of Article 219(4) to (6) shall apply accordingly.

(12)In the preliminary chamber procedure and during the trial, the measure of house arrest may

be ordered for a period of no more than 30 days. The provisions of Article 239 shall apply accordingly.

## **SECTION 6: Pre-trial detention**

### **Article 223: Conditions and cases of application of the measure of preventive arrest**

**(1) The measure of preventive arrest may be taken by the judge of rights and freedoms, during the criminal investigation, by the judge of the preliminary chamber, in the procedure of the preliminary chamber, or by the court before which the case is pending, during the trial, only if the evidence shows a reasonable suspicion that the defendant has committed a crime and one of the following situations exists:**

- a) the defendant fled or hid, in order to evade criminal prosecution or trial, or made preparations of any kind for such acts;
- b) the defendant attempts to influence another participant in the commission of the crime, a witness or an expert or to destroy, alter, conceal or steal material means of evidence or to cause another person to engage in such behavior;
- c) the defendant exerts pressure on the injured person or tries to make a fraudulent agreement with him;
- d) There is a reasonable suspicion that, after the initiation of criminal proceedings against him, the defendant has intentionally committed a new crime or is preparing to commit a new crime.**

\*) By Decision no. 22/2023 The High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that:

In the unitary interpretation and application of the provisions of Article 223(1)(d) of the Code of Criminal Procedure, in the situation in which the defendant is prosecuted for a crime for which he is being investigated at liberty (first case), and subsequently there is a reasonable suspicion that the defendant has intentionally committed a new crime (second case) or is preparing to commit a new crime, the measure of pre-trial detention based on Article 223(1)(d) of the Code of Criminal Procedure can be ordered only in the first case.

(2) The measure of pre-trial detention of the defendant may also be taken if, from the evidence, there is a reasonable suspicion that he has committed an intentional crime against life, an offence causing bodily injury or death to a person, an offence against national security provided for by the Criminal Code and other special laws, an offence of drug trafficking, an offence under the doping substances regime, carrying out illegal operations with precursors or other products likely

to have psychoactive effects, an offence relating to non-compliance with the regime of weapons, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of coins, stamps or other valuables, blackmail, rape, unlawful deprivation of liberty, tax evasion, outrage, judicial contempt, an offence of corruption, an offence committed by means of information systems or electronic means of communication or another offence for which the law provides for a prison sentence of 5 years or more and, on the basis of an assessment of the seriousness of the act, the manner and circumstances in which it was committed, of the entourage and the environment from which he comes, of the criminal record and other circumstances regarding his person, it is found that his deprivation of liberty is necessary to remove a state of danger to public order.

(3) In respect of the defendant who, in the same case, during the criminal investigation, the preliminary chamber procedure or the trial, has been remanded in custody or who has previously been placed under house arrest, the measure of preventive arrest may be ordered only if new grounds have arisen that make it necessary to deprive him of liberty.

#### **Article 224: Proposal for preventive arrest of the defendant during the criminal investigation**

(1) The prosecutor, if he considers that the conditions provided by the law are met, shall draw up a reasoned proposal for the preventive arrest measure against the defendant, indicating the legal basis.

(2) The proposal referred to in paragraph (1), together with the case file, shall be submitted to the judge of rights and freedoms from the court that would have jurisdiction to hear the case in the first instance or from the court corresponding in rank to that court in whose district the place of detention is located, the place where the crime was found to have been committed or the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal belongs.

#### **Article 225: Resolution of the proposal for preventive arrest during the criminal investigation**

(1) The judge of rights and freedoms notified in accordance with Article 224 paragraph (2) shall set the deadline for solving the proposal for preventive arrest, fixing the date and time at which the resolution will take place.

(2) In the case of the defendant in detention, the deadline for solving the proposal for preventive

arrest must be set before the expiry of the duration of detention. The day and time are communicated to the prosecutor, who has the obligation to ensure the presence of the defendant before the judge of rights and freedoms. Also, the day and time are brought to the attention of the defendant's lawyer, who, upon request, the case file is made available for study.

(3)The defendant who is at liberty is summoned for the fixed term. The deadline is brought to the attention of the prosecutor and the defendant's lawyer, the latter being granted, upon request, the opportunity to study the case file.

(4)The resolution of the proposal for preventive arrest is made only in the presence of the defendant, except in the case when he/she is unjustifiably absent, is missing, evades or due to the state of health, due to force majeure or state of necessity, does not appear or cannot be brought before the judge.

(5)In all cases, the legal assistance of the defendant by a lawyer, chosen or appointed ex officio, is mandatory.

(6)The participation of the prosecutor is mandatory.

(7)The judge of rights and freedoms hears the defendant present about the act of which he is accused and about the reasons on which the proposal for preventive arrest formulated by the prosecutor is based.

(8)Before proceeding to hear the defendant, the judge of rights and freedoms informs him of the crime of which he is accused and the right not to make any statement, drawing his attention that what he declares can be used against him.

#### **Article 226: Admission of the proposal for preventive arrest during the criminal investigation**

(1)The judge of rights and freedoms, if he considers that the conditions provided by the law are met, accepts the prosecutor's proposal and orders the preventive arrest of the defendant, by reasoned conclusion.

(2)The preventive arrest of the defendant can be ordered for a maximum of 30 days. The duration of detention shall not be deducted from the duration of pre-trial detention.

(3)After the measure has been taken, the defendant shall be informed immediately, in the language he understands, of the reasons why the preventive arrest was ordered.

#### **Article 227: Rejection of the proposal for preventive arrest during the criminal investigation**

(1)The judge of rights and freedoms, if he considers that the conditions provided by law for the preventive arrest of the defendant are not met, rejects, by reasoned conclusion, the prosecutor's proposal, ordering the release of the detained defendant.

(2)If the conditions laid down by law are met, the judge of rights and freedoms may order the application of one of the preventive measures provided for in Article 202(4)(b) to (d).

(3)(the text of Article 227(3) of Part 1, Title V, Chapter I, Section 6 was repealed on 23 May 2016 by Article II, point 50 of Emergency Ordinance 18/2016)

### **Article 228: Knowledge about the pre-trial detention and place of detention of the pre-trial defendant**

(1)(the text of Article 228(1) of Part 1, Title V, Chapter I, Section 6 was repealed on 23 May 2016 by Article II, paragraph 51 of Emergency Ordinance 18/2016)

(2)The person in respect of whom the measure of preventive arrest has been ordered shall be informed, under signature, in writing, of the rights provided for in Article 83, the right provided for in Article 210 (1) and (2), as well as the right of access to emergency medical assistance, the right to contest the measure and the right to request the revocation or replacement of the arrest by another preventive measure, and if he cannot or refuses to sign, a report will be concluded.

(3)Immediately after the preventive arrest measure is taken, the judge of rights and freedoms of the first instance or of the hierarchically superior court, which ordered the measure, shall inform a member of the defendant's family or another person designated by him about it. The provisions of Article 210(2) shall apply accordingly. The making of the acknowledgment shall be recorded in a report.

(4)Immediately after being placed in a place of detention, the defendant has the right to personally inform or to request the administration of that place to inform the persons referred to in paragraph 3 about the place where he is detained.

(5)The provisions of paragraph 4 shall also apply accordingly in the event of a subsequent change of place of detention immediately after the change occurs.

(6)The administration of the place of detention has the obligation to inform the defendant under preventive arrest of the provisions of paragraphs (2) to (5), as well as to record in a report the manner in which the notification was made.

(7)The defendant in pre-trial detention may not be denied the exercise of the right to make personal notice except for solid reasons, which are recorded in the report drawn up according to

paragraph (6).

### **Article 229: Taking protective measures in case of preventive arrest during criminal prosecution**

(1) When the measure of preventive arrest has been taken against a defendant in whose protection there is a minor, a person placed under interdiction, a person who has been placed guardianship or guardianship or a person who, due to age, illness or other cause, needs help, the competent authority is immediately notified in order to take legal measures to protect that person.

(2) The obligation of knowledge is incumbent on the judge of rights and freedoms of the first instance or of the hierarchically superior court, who took the measure of preventive arrest, the manner of fulfilling this obligation being recorded in a report.

### **Article 230: Pre-trial arrest warrant**

(1) On the basis of the conclusion by which the preventive arrest of the defendant was ordered, the judge of rights and freedoms of the first instance or, as the case may be, of the hierarchically superior court immediately issues the warrant of preventive arrest.

(2) If, by the same conclusion, the preventive arrest of several defendants has been ordered, a warrant shall be issued for each of them.

#### **(3) The preventive arrest warrant states:**

a) the court to which the judge of rights and freedoms who ordered the preventive arrest measure belongs;

b) date of issuance of the mandate;

c) the name, surname and capacity of the judge of rights and freedoms who issued the mandate;

d) the identity data of the defendant;

e) the duration for which the preventive arrest of the defendant was ordered, with the mention of the date on which it ceases;

f) showing the act of which the defendant is accused, indicating the date and place of its commission, the legal classification, the crime and the punishment provided by law;

g) the concrete grounds that determined the pre-trial detention;

h) the order to arrest the defendant;

i) indication of the place where the defendant under preventive arrest will be detained;

j) the signature of the judge of rights and freedoms;

k) signature of the defendant present. If he refuses to sign, an appropriate mention will be made in the mandate.

(4) When the arrest warrant has been issued after hearing the defendant, the judge who issued the warrant shall hand over a copy of the warrant to the arrested person and to the police.

(4<sup>1</sup>) The arrest warrant may also be sent to the police by fax, electronic mail or by any means capable of producing a written document in conditions that allow the receiving authorities to establish its authenticity.

(5) If the injured person has requested his or her notification of the release or escape of the arrested person in any way, the judge who issued the warrant shall record this in a report, which he shall hand over to the police.

(6) The police body shall hand over the original copy of the preventive arrest warrant and the report provided for in paragraph (5) to the administration of the place of detention.

### **Rule 231: Execution of the preventive arrest warrant issued in the absence of the defendant**

(1) When the preventive arrest measure has been ordered in the absence of the defendant, two original copies of the warrant issued shall be submitted to the police body of the defendant's domicile or residence for execution. If the defendant does not have his domicile or residence in Romania, the copies shall be submitted to the police body in whose territorial jurisdiction the court is located.

(2) The arrest warrant may also be sent to the police body by fax, electronic mail or by any means capable of producing a written document in conditions that allow the receiving authorities to establish its authenticity.

(3) In the situation where the arrest warrant contains material errors, but allows the identification of the person and the establishment of the measure ordered in relation to the identification data of the person existing in the records of the police bodies and the decision of the court, the police body executes the measure, at the same time requesting the court to correct the material errors noticed.

(4) The police body shall proceed to arrest the person indicated in the warrant, to whom it shall hand over a copy thereof, in one of the forms provided for in paragraph (1) or (2), after which it shall take him within 24 hours to the judge of rights and freedoms who ordered the measure of preventive arrest or, as the case may be, to the judge of the preliminary chamber or the panel with which the case file is to be resolved.

(5) In order to execute the preventive arrest warrant, the police body may enter the domicile or

residence of any natural person, without his consent, as well as the headquarters of any legal person, without the consent of his legal representative, if there are solid indications from which there is a reasonable suspicion that the person in charge is in the respective domicile or residence.

(6) If the preventive arrest of the defendant has been ordered in absentia due to his state of health, due to force majeure or state of necessity, the defendant shall be presented, at the end of these reasons, to the judge of rights and freedoms who took the measure or, as the case may be, to the judge of the preliminary chamber or to the panel where the case file is to be resolved.

**(7) The judge of rights and freedoms shall hear the defendant in accordance with Article 225(7) and**

(8), in the presence of his lawyer, and, evaluating the defendant's statement in the context of the evidence adduced and the reasons taken into account when taking the measure, shall order by conclusion, after hearing the prosecutor's conclusions, the confirmation of the preventive arrest and the execution of the warrant or, as the case may be, under the conditions provided by law, the revocation of the preventive arrest or its replacement by one of the preventive measures provided for in Article 202(4)(b-d) and the release of the defendant, unless he is arrested in another case.

#### **Article 232: Failure to find the person provided for in the preventive arrest warrant**

When the person mentioned in the preventive arrest warrant has not been found, the police body in charge of executing the warrant shall draw up a report stating this and notifying the judge of rights and freedoms who ordered the preventive arrest measure, as well as the competent bodies for the prosecution and arrest at the border crossing points.

#### **Article 233: Duration of the defendant's pre-trial detention during the criminal investigation**

(1) During the criminal investigation, the duration of the defendant's pre-trial detention may not exceed 30 days, unless it is extended under the law.

(2) The term provided for in paragraph (1) shall run from the date of enforcement of the measure against the defendant under pre-trial detention.

(3) When a case is transferred for further prosecution from one prosecuting body to another, the pre-trial detention previously ordered or extended remains valid. The duration of pre-trial detention shall be calculated in accordance with the provisions of paragraphs (1) and (2).

**Article 234: Extension of pre-trial detention during criminal proceedings**

(1) The pre-trial detention of the defendant may be extended, during the criminal investigation, if the grounds that led to the initial arrest still require the deprivation of liberty of the defendant or there are new grounds justifying the extension of the measure.

(2) The extension of pre-trial detention may be ordered only at the reasoned proposal of the prosecutor conducting or supervising the criminal investigation.

(3) In the case referred to in paragraph (1), the extension of the pre-trial detention may be ordered by the judge of rights and freedoms from the court that would have jurisdiction to hear the case in the first instance or from the court corresponding in rank to that court in whose district the place of detention is located, the place where the crime was found to have been committed or the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal belongs.

(4) If pre-trial detention was initially ordered by a judge of rights and freedoms of a lower court than that which would have jurisdiction to hear the case at first instance, the extension of this measure may be ordered only by a judge of rights and freedoms of the court having jurisdiction at the time of the decision on the proposal for extension or of the court corresponding in rank to that court in whose district the place of detention is located, the place where the commission of the crime was found or the headquarters of the prosecutor's office to which the prosecutor who drew up the proposal belongs.

(5) When, in the same case, there are several defendants arrested for whom the duration of pre-trial detention expires on different dates, the prosecutor may notify the judge of rights and freedoms with the proposal to extend the pre-trial detention for all defendants.

**Article 235: Procedure for prolonging pre-trial detention during criminal proceedings**

(1) The proposal for the extension of the pre-trial detention together with the case file shall be submitted to the judge of rights and freedoms at least 5 days before the expiry of the duration of the pre-trial detention, under penalty of absolute nullity.

(2) The judge of rights and freedoms sets a deadline for solving the proposal to extend the pre-trial detention before the expiry of the measure. The appointed day and time shall be communicated to the prosecutor, who has the obligation to ensure the presence before the judge of rights and freedoms of the defendant under preventive arrest. The defendant's lawyer is informed and is granted, upon request, the opportunity to study the case file.

(3) The defendant shall be heard by the judge of rights and freedoms on all the grounds on which

the proposal to extend the pre-trial detention is based, in the presence of a lawyer, chosen or appointed ex officio. The defendant may be heard with his consent and in the presence of a lawyer chosen or appointed ex officio and, as the case may be, also by an interpreter, and by videoconference, at the place of detention.

(4) If the defendant under preventive arrest is hospitalized and due to his state of health he cannot be brought before the judge of rights and freedoms or when, due to force majeure or state of necessity, his travel is not possible, the proposal will be examined in the absence of the defendant, but only in the presence of his lawyer, who is given the floor to draw conclusions. The provisions of Article 204(7), final sentence, shall apply accordingly.

(5) The participation of the prosecutor is mandatory.

(6) The judge of rights and freedoms shall rule on the proposal to extend the pre-trial detention before the expiry of its duration.

#### **Article 236: Admission of the proposal to extend the pre-trial detention during the criminal investigation**

(1) The judge of rights and freedoms, if he considers that the conditions provided by the law are met, accepts the prosecutor's proposal and orders the extension of the preventive arrest of the defendant, by reasoned conclusion.

(2) The extension of the defendant's pre-trial detention may be ordered for a maximum period of 30 days.

(3) The judge of rights and freedoms may grant other extensions during the criminal investigation, each of which may not exceed 30 days. The provisions of paragraph 1 shall apply accordingly.

(4) The total duration of the defendant's pre-trial detention during the criminal investigation may not exceed a reasonable period of time and may not exceed 180 days.

#### **Article 237: Rejection of the proposal to extend the pre-trial detention during the criminal investigation**

(1) The judge of rights and freedoms, if he considers that the conditions provided by law for the extension of the pre-trial detention of the defendant are not met, rejects, by reasoned conclusion, the prosecutor's proposal, ordering the release of the defendant at the end of its duration, if he is not arrested in another case.

(2) If the conditions laid down by law are met, the judge of rights and freedoms may order the

replacement of pre-trial detention by one of the preventive measures provided for in Article 202(4)(b) to (d).

### **Article 238: Pre-trial detention of the defendant in the preliminary chamber procedure and during the trial**

(1) The preventive arrest of the defendant may be ordered in the preliminary chamber procedure and during the trial, by the judge of the preliminary chamber or by the court before which the case is pending, ex officio or at the reasoned proposal of the prosecutor, for a period of no more than 30 days, for the same grounds and under the same conditions as the preventive arrest ordered by the judge of rights and freedoms during the criminal investigation. The provisions of Articles 225 to 232 shall apply accordingly.

(2) During the trial, the measure provided for in paragraph (1) may be ordered by the court of law in the composition provided by law. In this case, the preventive arrest warrant is issued by the president of the panel.

(3) (text of Article 238(3) of Part 1, Title V, Chapter I, Section 6 was repealed on 09-Jul-2023 by Article I, point 29 of Law 201/2023)

### **Article 239: Maximum duration of the defendant's pre-trial detention during the trial in the first instance**

(1) During the trial in the first instance, the total duration of the defendant's pre-trial detention may not exceed a reasonable period of time and may not exceed half of the special maximum provided by law for the offence that is the subject of the referral to the court. In all cases, the duration of pre-trial detention in the first instance may not exceed 5 years.

(2) The time limits provided for in paragraph (1) shall run from the date of notification to the court, if the defendant is in pre-trial detention, and, respectively, from the date of enforcement of the measure, when pre-trial detention has been ordered against him in the pre-trial chamber procedure or in the course of the trial or in absentia.

(3) Upon expiry of the deadlines provided for in paragraph (1), the court may order the taking of another preventive measure, under the conditions of the law.

### **Article 240: Medical treatment under permanent guard**

(1) If, on the basis of medical documents, it is found that the person under preventive arrest suffers from a disease that cannot be treated in the medical network of the National Administration of Penitentiaries, the administration of the place of detention shall order the

treatment to be carried out under permanent guard in the medical network of the Ministry of Health. The reasons that determined the taking of this measure are immediately communicated to the prosecutor, during the criminal investigation, to the judge of the preliminary chamber, during this procedure, or to the court, during the trial.

(2) The time during which the defendant is interned under permanent guard, according to paragraph (1), enters the duration of the preventive arrest.

## **SECTION 7: Legal termination, revocation and replacement of preventive measures**

### **Article 241: Automatic cessation of preventive measures**

#### **(1) Preventive measures shall cease by law:**

a) upon expiry of the deadlines provided by law or established by the judicial bodies or upon completion of the maximum duration provided by law;

b) in cases where the prosecutor orders a decision not to prosecute or the court pronounces a decision of acquittal, termination of the criminal trial, waiver of the application of the penalty or postponement of the application of the penalty, or a penalty of fine, which does not accompany the prison sentence, even if it is not final;

c) on the date of the final decision ordering the conviction of the defendant;

d) in other cases specifically provided for by law.

e) (the text of Article 241(1)(E) of Part 1, Title V, Chapter I, Section 7 was repealed on 01-Feb-2014 by Article 102(162) of Title III of Law 255/2013)

f) (the text of Article 241(1)(F) of Part 1, Title V, Chapter I, Section 7 was repealed on 01-Feb-2014 by Article 102(162) of Title III of Law 255/2013)

g) (the text of Article 241(1)(G) of Part 1, Title V, Chapter I, Section 7 was repealed on 01-Feb-2014 by Article 102(162) of Title III of Law 255/2013)

#### **(1<sup>1</sup>) Pre-trial arrest and house arrest shall also cease by law in the following situations:**

a) to the pronouncement in the first instance of a conviction decision with suspension of the execution of the sentence under supervision or to a prison sentence at most equal to the duration of detention, house arrest and pre-trial arrest or, as the case may be, of a decision by which an educational measure not involving deprivation of liberty was applied;

b) on appeal, if the duration of the measure has reached the duration of the sentence pronounced in the conviction decision.

(2) The judicial body that ordered this measure or, as the case may be, the prosecutor, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law before which

the case is pending shall establish, by order or conclusion, ex officio, at the request or upon notification of the administration of the place of detention, the legal termination of the preventive measure, ordering, in the case of the detained or remanded in custody, immediate release, unless detained or arrested in another case.

(3)The judge of rights and freedoms, the judge of the preliminary chamber or the court of law pronounces, by reasoned conclusion, on the legal termination of the preventive measure even in the absence of the defendant. The legal assistance of the defendant and the participation of the prosecutor are mandatory.

(4)The person against whom the preventive measure has been ordered, as well as all the institutions with powers in the execution of the measure, shall be immediately notified of a copy of the ordinance or conclusion by which the judicial body ascertains the legal termination of the preventive measure.

#### **Article 242: Revocation of preventive measures and replacement of one preventive measure with another preventive measure**

(1)The preventive measure shall be revoked, ex officio or upon request, if the grounds that determined it have ceased or new circumstances have arisen resulting from the illegality of the measure, ordering, in the case of preventive detention and arrest, the release of the suspect or the defendant, if he is not arrested in another case.

(2)The preventive measure shall be replaced, ex officio or upon request, by a lighter preventive measure, if the conditions laid down by law for its adoption are met and, following an assessment of the concrete circumstances of the case and the procedural conduct of the defendant, it shall be considered that the lighter preventive measure is sufficient to achieve the purpose set out in Article 202(1).

(3)The preventive measure shall be replaced, ex officio or upon request, by a heavier preventive measure, if the conditions laid down by law for its adoption are met and, following the assessment of the concrete circumstances of the case and the procedural conduct of the defendant, it shall be considered that the heavier preventive measure is necessary for the achievement of the purpose set out in Article 202(1).

(4)If the preventive measure was taken during the criminal investigation by the prosecutor or by the judge of rights and freedoms, the criminal investigation body has the obligation to immediately inform the prosecutor in writing about any circumstance that could lead to the revocation or replacement of the preventive measure. If the prosecutor considers that the

information communicated justifies the revocation or replacement of the preventive measure, the prosecutor orders it or, as the case may be, notifies the judge of rights and freedoms who took the measure, within 24 hours from the receipt of the information. The prosecutor is obliged to notify the judge of rights and freedoms ex officio, when he himself ascertains the existence of any circumstance that justifies the revocation or replacement of the preventive measure taken by him.

(4<sup>1</sup>) During the criminal investigation, the revocation of the preventive measures of judicial control and judicial control on bail, as well as the substitution of these measures between them, shall be ordered by the prosecutor, even if the measure was taken by the judge of rights and freedoms. When replacing the preventive measure of judicial supervision with the measure of judicial supervision on bail, the provisions of Article 216(1) and (3) and Article 217 shall apply accordingly.

(4<sup>2</sup>) A complaint may be lodged against the prosecutor's order, ordered according to paragraph (4<sup>1</sup>), under the conditions of Article 213.

(5) The request for revocation or replacement of the preventive measure formulated by the defendant shall be addressed, in writing, to the prosecutor, the judge of rights and freedoms, the judge of the preliminary chamber or the court, as the case may be.

(6) During the criminal investigation, the prosecutor submits to the judge of rights and freedoms the case file or a copy of it certified by the registry of the prosecutor's office, within 24 hours from its request by the judge.

(7) In order to settle the application, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law sets the date for its resolution and orders the summons of the defendant.

(8) When the defendant is present, the application shall be dealt with only after hearing all the grounds on which the application is based, in the presence of a lawyer chosen or appointed ex officio. The request is also solved in the absence of the defendant, when he does not appear, although he has been legally summoned or when, due to his state of health, due to force majeure or state of necessity, he cannot be brought, but only in the presence of the lawyer, chosen or appointed ex officio, who is given the floor to make conclusions.

(9) The participation of the prosecutor is mandatory.

(10) If the request has as its object the replacement of the measure of preventive arrest or the measure of house arrest with the measure of judicial control on bail, if he finds the request well-

founded, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law, by conclusion, given in the council chamber, admits in principle the request and establishes the amount of the bail, granting the defendant a deadline for its submission.

(1) If the bail is lodged within the fixed period, the judge of rights and freedoms, the judge of the preliminary chamber or the court, by a decision given in the council chamber, shall admit the request for the replacement of the preventive measure with the measure of judicial control on bail, shall establish the obligations to be incumbent on the defendant during the period of the measure and shall order the immediate release of the defendant, unless he is arrested in another case.

(12) If the bail is not deposited within the fixed term, the judge of rights and freedoms, the judge of the preliminary chamber or the court, by conclusion given in the council chamber, in the absence of the defendant and the prosecutor, shall reject as unfounded the request made by the defendant.

(13) The period provided for in paragraph (10) shall run from the date on which the conclusion establishing the amount of the security is finalised.

## **SECTION 8: Special provisions on preventive measures applied to minors**

### **Article 243: Special conditions for the application of preventive measures to minors**

(1) Preventive measures may be ordered against the suspect and the minor defendant according to the provisions provided in sections 1 to 7 of this chapter, with the derogations and additions provided for in this article.

(2) Preventive detention and detention may be ordered against a minor, exceptionally, only if the effects that the deprivation of liberty would have on his personality and development are not disproportionate to the purpose pursued by taking the measure.

(3) When determining the duration for which the preventive arrest measure is taken, the age of the defendant from the date on which the decision is made to take, prolong or maintain this measure shall be taken into account.

(4) When the preventive detention or arrest of a minor has been ordered, the notification provided for in Articles 210 and 228 shall also be made to the legal representative of the minor or, as the case may be, to the person in whose care or supervision the minor is located.

### **Article 244: Special conditions for the execution of the preventive detention and arrest ordered against minors**

The special regime of detention of minors, in relation to the particularities of their age, so that the preventive measures taken against them do not prejudice their physical, mental or moral development, shall be established by the law on the execution of sentences and measures ordered by the judicial bodies during the criminal trial.

**Article 244<sup>1</sup>: Information on the special conditions for the execution of the preventive detention and arrest ordered against the minor**

(1) If the detained or arrested person is a minor, together with the information provided for in Articles 209(17) and 228(2), he or she shall also be informed of the right to special conditions of execution, in accordance with Article 244.

(2) The information provided for in paragraph (1) shall also be made to the parents or, as the case may be, the guardian, curator or the person in whose care or supervision the minor is temporarily located.

(3) If the parents or, as the case may be, the guardian, curator or the person in whose care or supervision the minor is temporarily located could not be found or their information would affect the best interests of the minor or the conduct of the criminal proceedings, the information will be made to another adult who is designated by the minor and accepted in this capacity by the judicial body.

(4) If the minor does not designate another adult in accordance with paragraph (3) or the designated adult is not accepted by the judicial body, the information shall be made to another person chosen by the judicial body, taking into account the best interests of the minor.

(5) If the circumstances referred to in paragraph 3 or 4 cease, the information shall be made in accordance with paragraph 2.

**CHAPTER II: Provisional application of medical safety measures**

**SECTION 1: Provisional obligation to medical treatment**

**Article 245: Conditions of application and content of the measure**

(1) The judge of rights and freedoms, during the criminal investigation, the judge of the preliminary chamber, during the preliminary chamber procedure, or the court, during the trial, may order the provisional obligation to medical treatment of the suspect or defendant, if he is in the situation provided for in Article 109 (1) of the Criminal Code.

(2) The measure provided for in paragraph (1) consists in obliging the suspect or defendant to

regularly follow the medical treatment prescribed by a specialized doctor, until recovery or until an improvement is obtained that removes the state of danger.

(3)The judge of rights and freedoms and the judge of the preliminary chamber shall rule on the measure referred to in paragraph (1) in the council chamber, by reasoned conclusion. The court rules on the measure by reasoned conclusion.

#### **Article 246: Procedure for applying and lifting the measure**

(1)During the criminal investigation or the preliminary chamber procedure, if he considers that the conditions provided by law are met, the prosecutor submits to the judge of rights and freedoms or to the judge of the preliminary chamber of the court whose competence to judge the case in the first instance a reasoned proposal to take the measure of provisional obligation to medical treatment against the defendant.

(2)The proposal provided for in paragraph (1) shall be accompanied by the forensic expertise from which the need to apply the measure of obligation to medical treatment shall result.

(3)The judge notified pursuant to paragraph (1) shall set a deadline for solving the proposal within 5 days from the date of its registration and shall order the summons of the suspect or defendant.

(4)When the suspect or defendant is present, the resolution of the proposal is made only after hearing him, in the presence of a lawyer, chosen or appointed ex officio. The proposal is also resolved in the absence of the suspect or defendant, when he does not appear, although he has been legally summoned, but only in the presence of the lawyer, chosen or appointed ex officio, who is given the floor to make conclusions.

(5)The participation of the prosecutor is mandatory.

(6)The suspect or defendant has the right to be assisted by a doctor appointed by him, who can present conclusions to the judge of rights and freedoms. The suspect or defendant has the right to be assisted by the specialist doctor appointed by him and in the preparation of the therapeutic plan.

(7)The judge rules on the proposal through a conclusion, which can be challenged within 5 days from the pronouncement. The challenge does not suspend the implementation of the security measure.

(8)If he accepts the proposal, the judge orders the provisional obligation to medical treatment of the suspect or defendant and the performance of a forensic expertise, if it has not been submitted

according to paragraph (2).

(9) If, after the order of the measure, the suspect or defendant has recovered or there has been an improvement in his state of health that removes the state of danger to public safety, the judge of rights and freedoms or the judge of the preliminary chamber who took the measure shall, upon notification of the prosecutor or the specialist doctor or at the request of the suspect or the defendant or a member of his family, lifting the measure taken. The provisions of paragraphs 2 to 7 shall apply accordingly.

(10) If, after the order of the measure, the court has been seized by indictment, its lifting, according to paragraph (9), shall be ordered by the judge of the preliminary chamber or, as the case may be, by the court before which the case is pending.

(11) During the trial in the first instance and on appeal, at the proposal of the prosecutor or ex officio, the defendant may be provisionally obliged to medical treatment by the court before which the case is pending, which requests conclusive medical documents or the performance of a forensic expertise. The provisions of paragraphs 4 to 9 shall apply accordingly.

(12) If the suspect or defendant violates in bad faith the measure of provisional obligation to medical treatment, the judge of rights and freedoms, the judge of the preliminary chamber or the court that took the measure or before which the case is pending shall order, upon notification of the prosecutor or the specialized doctor or ex officio, the provisional medical hospitalization of the suspect or defendant, under the conditions provided for in Article 247.

(13) If the prosecutor orders a decision not to prosecute, he or she shall notify the judge of the preliminary chamber for confirmation or, as the case may be, the replacement or termination of the measure. The prosecutor, in the council chamber, with the participation of the prosecutor, hears, if possible, the person subject to the provisional measure, in the presence of his lawyer, and, after carrying out a forensic expertise, pronounces by reasoned conclusion. An appeal may be lodged against the conclusion, within 3 days from the pronouncement, which shall be resolved by the judge of the preliminary chamber of the hierarchically superior court to the one seized or, as the case may be, by the competent panel of the High Court of Cassation and Justice, in the council chamber.

## **SECTION 2: Provisional medical hospitalization**

### **Article 247: Conditions of application and content of the measure**

(1) The judge of rights and freedoms, during the criminal investigation, the judge of the

preliminary chamber, during the preliminary chamber procedure, or the court, during the trial, may order the provisional medical hospitalization of the suspect or defendant who is mentally ill or a chronic consumer of psychoactive substances, if the taking of the measure is necessary to remove a concrete and current danger to public safety.

(2)The measure provided for in paragraph (1) consists in the involuntary medical hospitalization of the suspect or defendant in a specialized medical assistance unit, until recovery or improvement that removes the state of danger that determined the taking of the measure.

(3)The provisions of Article 245(3) shall apply accordingly.

#### **Article 248: Procedure for applying and lifting the measure**

(1)During the criminal investigation or the preliminary chamber procedure, if he considers that the conditions provided by law are met, the prosecutor submits to the judge of rights and freedoms or to the judge of the preliminary chamber of the court whose competence to judge the case in the first instance a reasoned proposal to take the measure of provisional medical hospitalization against the suspect or defendant.

(2)The proposal provided for in paragraph (1) shall be accompanied by the report of the forensic psychiatric expertise from which the need to apply the measure of provisional medical hospitalization shall result.

(3)The judge seized pursuant to paragraph (1) shall immediately set a deadline for the resolution of the proposal and shall order the summons of the suspect or the defendant with a warrant.

(4)The resolution of the proposal is made only after the hearing of the suspect or defendant, if his state of health allows it, in the presence of a lawyer, chosen or appointed ex officio. When the suspect or defendant is already hospitalized in a medical assistance unit and his or her travel is not possible, the judge of rights and freedoms or, as the case may be, the judge of the preliminary chamber shall proceed to hear him/her, in the presence of the lawyer, in the place where he/she is.

(5)The participation of the prosecutor is mandatory.

(6)The suspect or defendant has the right to be assisted by a doctor appointed by him, who may present conclusions to the judge of rights and freedoms or, as the case may be, to the judge of the preliminary chamber. The suspect or defendant has the right to be assisted by the doctor designated by him and to draw up the therapeutic plan.

(7)The judge immediately pronounces on the proposal, through a conclusion that can be

challenged within 5 days from the pronouncement. The appeal does not suspend the implementation of the safety measure.

(8) If the proposal is granted, the judge shall order the provisional medical hospitalization of the suspect or defendant, taking, where appropriate, the measures provided for in Article 229.

(9) If the judge rejects the proposal, he or she may order the suspect or defendant to be provisionally ordered to undergo medical treatment if he or she is in the situation provided for in Article 109(1) of the Criminal Code.

(10) If, after the order of the measure, the suspect or defendant has recovered or there has been an improvement in his state of health that removes the state of danger, at the request of the prosecutor or the attending physician or at the request of the suspect or the defendant or a member of his family, the judge of rights and freedoms or the judge of the preliminary chamber who took the measure or, as the case may be, before which the case is pending, it shall order, by reasoned conclusion, following the performance of the psychiatric forensic expertise, the lifting of the measure of provisional medical hospitalization or, if the suspect or defendant is in the situation provided for in Article 109(1) of the Criminal Code, the replacement of this measure by the measure of provisional obligation to medical treatment. The provisions of paragraphs 3 to 7 shall apply accordingly.

(11) During the trial, the defendant may be ordered to be provisionally hospitalized, at the proposal of the prosecutor, or ex officio, by the court before which the case is pending, following the performance of a psychiatric forensic expertise from which it is necessary to apply the measure of provisional medical hospitalization. Paragraphs 3 to 10 shall apply accordingly.

(12) The provisions of Article 246(13) shall apply accordingly.

### **SECTION 3: Provisions regarding psychiatric forensic expertise**

#### **Article 248<sup>1</sup>: Performing psychiatric forensic expertise**

In the case of forensic psychiatric examinations provided for in this chapter, the provisions of Article 184(2) to (28) shall apply accordingly.

### **CHAPTER III: Precautionary measures, restitution of things and restoration of the situation prior to the commission of the crime**

#### **Article 249: General conditions for taking precautionary measures**

(1) The public prosecutor, in the course of the criminal investigation, the judge of the preliminary

chamber or the court of law, of his own motion or at the request of the prosecutor, in the preliminary chamber proceedings or during the trial, may take precautionary measures in order to avoid the concealment, destruction, alienation or evasion from prosecution of property which may be subject to special confiscation or extended confiscation or which may serve to guarantee the execution of the penalty of the fine or of the court costs or of the reparation of the damage caused by the crime.

(2) The precautionary measures consist in the seizure of movable or immovable property, by establishing a seizure on them.

(3) Precautionary measures to guarantee the execution of the fine may be taken only on the property of the suspect or defendant.

(4) Precautionary measures for special confiscation or extended confiscation may be taken on the property of the suspect or defendant or of other persons in whose property or possession the property to be confiscated is located.

(4<sup>1</sup>) In the case of assets that may be subject to special confiscation or extended confiscation, the public prosecutor must take precautionary measures to avoid the concealment, destruction, alienation or evasion of prosecution of such assets.

(5) Precautionary measures in order to repair the damage caused by the crime and to guarantee the execution of judicial expenses may be taken on the property of the suspect or defendant and of the civilly liable person, up to their probable value.

(6) The precautionary measures provided for in paragraph (5) may also be taken at the request of the civil party. The request shall be addressed to the prosecutor, the judge of the preliminary chamber or the court, as the case may be. The precautionary measures taken ex officio by the judicial bodies referred to in paragraph (1) may also be used by the civil party.

(6<sup>1</sup>) During the criminal investigation, the precautionary measures are taken by the prosecutor by ordinance. The prosecutor immediately orders the taking of precautionary measures when the request is made by the civil party.

(6<sup>2</sup>) The order for taking precautionary measures shall be communicated to the suspect or defendant and to the civil party once these measures are carried out. The order rejecting the civil party's request shall be communicated to it and to the suspect or defendant immediately.

(6<sup>3</sup>) The judge of the preliminary chamber or the court, as the case may be, shall rule on the taking of the precautionary measure in the council chamber, without summoning the parties, by reasoned conclusion. The judgment is made urgently. The participation of the prosecutor is mandatory.

(6<sup>4</sup>) The conclusion by which the precautionary measures were ordered shall be communicated to the defendant and the civil party once these measures are carried out. The decision rejecting the civil party's request shall be communicated to it and to the defendant immediately after the pronouncement.

(7) The precautionary measures taken under paragraph (1) are mandatory if the injured person is a person without exercise capacity or with restricted exercise capacity.

(8) Property belonging to a public authority or institution or to another person governed by public law may not be seized, nor property exempted by law.

### **Article 250: Challenging precautionary measures**

(1) Against the order by which the prosecutor ordered the taking of the precautionary measure or the manner of carrying it out, the suspect, the defendant, the civil party or any other interested person may appeal, within 3 days from the date of communication of the order, to the judge of rights and freedoms of the court whose competence would be competent to judge the case on the merits.

(2) The appeal is not suspensive of execution.

(3) The prosecutor submits the case file to the judge of rights and freedoms, within 24 hours from the request of the case by the latter.

(4) The resolution of the appeal is made in the council chamber, with the summons of the person who made the appeal and the interested persons, by reasoned conclusion, which is final. The participation of the prosecutor is mandatory.

(5) The case file shall be returned to the prosecutor within 48 hours from the resolution of the appeal.

(5<sup>1</sup>) If, until the resolution of the appeal formulated pursuant to paragraph (1), the court has been notified by indictment, the appeal shall be submitted, for competent resolution, to the judge of the preliminary chamber. The provisions of paragraph 4 shall apply accordingly.

**(6) Against the manner of carrying out the precautionary measure taken by the judge of the preliminary chamber or by the court, the prosecutor, the suspect or the defendant or any other interested person may appeal to this judge or to this court, within 3 days from the date of execution of the measure.**

\*) N.R.: "Decision C.C. 24/2016 - Admits the exception of unconstitutionality raised directly by the Ombudsman and finds that the legislative solution contained in Article 250 paragraph (6) of the

Code of Criminal Procedure, which does not allow the challenge to the taking of the precautionary measure by the judge of the preliminary chamber or by the court, is unconstitutional."

(7)The appeal does not suspend the execution and is resolved, in a public hearing, by reasoned conclusion, with the summons of the parties, within 5 days from its registration. The participation of the prosecutor is mandatory.

(8)After the decision becomes final, an appeal can be made according to the civil law only on the manner of carrying out the precautionary measure.

(9)The preparation of the minute is mandatory.

### **Article 250<sup>1</sup>: Challenging the precautionary measures ordered during the trial**

(1)Against the conclusion by which the preliminary chamber judge, the court of law or the court of appeal on the taking of the precautionary measure, the defendant, the prosecutor, the civil party or any other interested person may appeal, within 48 hours from the pronouncement or, as the case may be, from the communication. The appeal shall be submitted, as the case may be, to the judge of the preliminary chamber, the court of law or the court of appeal which pronounced the contested conclusion and shall be submitted, together with the case file, as the case may be, to the judge of the preliminary chamber of the hierarchically superior court, respectively to the hierarchically superior court, within 48 hours from the date of registration.

(2)The appeal against the conclusion by which the judge of the preliminary chamber of the Criminal Section of the High Court of Cassation and Justice took a precautionary measure shall be resolved by a panel consisting of 2 judges of the preliminary chamber, and the appeal against the conclusion by which the Criminal Section of the High Court of Cassation and Justice, in the first instance or on appeal, has taken a precautionary measure and is resolved by the Panel of 5 judges.

(3)The appeal filed according to paragraph (1) is not suspensive of execution. The appeal shall be resolved within 5 days from the registration, in a public hearing, with the participation of the prosecutor and with the summons of the defendant and the interested parties who filed it. The provisions of Article 425<sup>1</sup> et seq. shall apply accordingly.

(4)If the precautionary measure was ordered directly by the decision of the court of appeal, the provisions of paragraphs (1) to (3) shall be applied accordingly.

### **Article 250<sup>2</sup>: Verification of the precautionary measure**

Throughout the criminal trial, the prosecutor, the judge of the preliminary chamber or, as the case may be, the court of law shall periodically verify, but not later than 6 months during the criminal

investigation, respectively one year during the trial, whether the grounds that determined the taking or maintenance of the precautionary measure exist, ordering, as the case may be, the maintenance, restriction or extension of the ordered measure, respectively the lifting of the ordered measure, the provisions of Articles 250 and 250<sup>1</sup> being applied accordingly.

#### **Article 251: The bodies that carry out the precautionary measures**

The ordinance or the conclusion of taking the precautionary measure shall be carried out by the criminal investigation bodies, as well as by the competent bodies according to the law, at the order of the criminal investigation body or of the judge of the preliminary chamber or of the court, as the case may be.

#### **Article 252: Seizure procedure**

(1)The body that proceeds with the application of the seizure is obliged to identify and evaluate the seized assets, and may have recourse, if necessary, to appraisers or experts.

(2)Perishable goods, objects made of metals or precious stones, foreign means of payment, domestic securities, art and museum objects, valuable collections, as well as amounts of money subject to seizure will be compulsorily seized.

(3)Perishable goods are handed over to the competent authorities, according to the activity profile, which are obliged to receive and capitalize on them immediately.

(4)Metals or precious stones or objects made with them shall be deposited at the units of the State Treasury where the precious metals and precious stones considered ownerless goods are deposited, as well as those seized for confiscation or confiscated under the conditions provided by law, and foreign means of payment shall be deposited at the nearest credit institution.

(5)Domestic securities, art or museum objects and valuable collections are handed over for safekeeping to specialized institutions.

(6)The objects referred to in paragraphs (4) and (5) shall be handed over within 48 hours of pick-up. If the objects are strictly necessary for the criminal investigation, the preliminary chamber procedure or the trial, the submission shall be made later, but not later than 48 hours after the pronouncement of a final solution in the case.

(7)The seized objects are kept until the seizure is lifted.

(8)The amounts of money resulting from the recovery made according to paragraph (3), as well as the amounts of money withdrawn according to paragraph (2) shall be deposited in the account established according to the special law, within 3 days from the withdrawal of the money or from

the recovery of the goods.

(9) Other seized movable property is sealed or seized, and a custodian may be appointed.

### **Article 252<sup>1</sup>: Special cases of recovery of seized movable and immovable property**

(1) During the criminal trial, before a final decision is pronounced, the prosecutor, the judge of the preliminary chamber or, as the case may be, the court that instituted the seizure may immediately order the recovery of the seized movable or immovable property, at the request of the owner of the property or with his consent.

**(2) During the criminal trial, before a final decision is pronounced, when there is no agreement of the owner, the movable property on which the precautionary seizure has been instituted may be capitalized, exceptionally, in the following situations:**

- a) when, within one year from the date of the seizure, the value of the seized assets has decreased significantly, respectively by at least 40% compared to that at the time of the precautionary measure. The provisions of Article 252(1) shall apply accordingly in this case as well;
- b) when there is a risk of expiry of the warranty period or when the precautionary seizure has been applied to live animals or birds;
- c) when the precautionary seizure was applied to flammable or petroleum products, to wood and wood materials, to pharmaceutical products and sanitary materials;
- d) when the precautionary attachment has been applied to goods whose storage or maintenance requires disproportionate expenses in relation to the value of the goods.
- e) when the precautionary seizure was applied to a stock of goods or products with a cumulative value less than or equal to the RON equivalent of the amount of EUR 300,000.

**(3) During the criminal trial, before the pronouncement of a final decision, when the following conditions are cumulatively met: the owner could not be identified and the recovery cannot be made according to paragraph (2), the vehicles on which the precautionary seizure was instituted may be capitalized, in the following situations:**

- a) when they have been used, in any way, to commit a crime;
- b) if a period of one year or more has elapsed since the date of the imposition of the precautionary measure on these goods.

**(3<sup>1</sup>) During the criminal trial, before the pronouncement of a final decision, when the precautionary seizure has been applied to a means of road, rail, naval or air transport and the recovery cannot be made according to the provisions of paragraph (2), the goods may be capitalized, when the following conditions are cumulatively met:**

a) the precautionary measure has been ordered to avoid the concealment, destruction, alienation or evasion from prosecution of assets that may be subject to special confiscation or extended confiscation;

b) within one year from the date of the establishment of the precautionary measure, the owner does not record, in the account established according to the special law, an amount of money in an amount equal to the value of the seized property;

c) The property is in the custody of a public institution.

(4) The sums of money resulting from the valuation of movable property made in accordance with paragraph (1) to (3<sup>1</sup>) shall be deposited in the account provided for in Article 252(8).

(5) (text of Article 252<sup>1</sup>, paragraph (5) of Part 1, Title V, Chapter III was repealed on 27-Dec-2015 by Article 47, point 2. of Chapter VIII of Law 318/2015)

### **Article 252<sup>2</sup>: Capitalization of movable property seized during the criminal investigation**

(1) During the criminal investigation, in the situations provided for in Article 252<sup>1</sup> paragraph (2)-(3<sup>1</sup>), if the prosecutor who instituted the seizure considers that it is necessary to recover the seized movable property, he shall refer a reasoned proposal for the recovery of the seized property to the judge of rights and freedoms.

(2) The judge of rights and freedoms seized under the conditions of paragraph (1) sets a deadline, which may not be shorter than 10 days, to which the parties are summoned, as well as the custodian of the property, when one has been appointed. The participation of the prosecutor is mandatory.

(3) At the set deadline, in the council chamber, the parties and the custodian are informed that it is intended to capitalize on the seized movable property and they are informed that they have the right to make observations or requests related to the assets to be capitalized. After examining the objections and requests made by the parties or the custodian, the judge of rights and freedoms shall order by reasoned conclusion on the valuation of the movable property provided for in Article 252<sup>1</sup> paragraph (2)-(3<sup>1</sup>). The absence of legally summoned (2)-(3<sup>1</sup>) parties does not prevent the proceedings from proceeding.

(4) Against the conclusion of the judge of rights and freedoms provided for in paragraph (3), an appeal may be made to the judge of rights and freedoms of the hierarchically superior court by the parties, custodian, prosecutor, as well as by any other interested person within 10 days.

(5) The time limit provided for in paragraph (4) shall run from the communication to the prosecutor, the parties or the custodian or from the date on which they became aware of the

conclusion in the case of other interested persons.

(6)The parties or the custodian may appeal only against the conclusion by which the judge of rights and freedoms ordered the recovery of the seized movable property. The prosecutor may appeal only against the conclusion by which the judge of rights and freedoms rejected the proposal to capitalize on the seized movable property.

(7)The challenge provided for in paragraph (4) is suspensive of execution. The trial of the case is made urgently and especially, and the decision by which the appeal is resolved is final.

### **Article 252<sup>3</sup>: Recovery of movable property seized during the preliminary chamber procedure and the trial**

(1)During the preliminary chamber procedure and the trial, the judge of the preliminary chamber or, as the case may be, the court, ex officio or at the request of the prosecutor, of one of the parties or of the custodian, may order the recovery of the seized movable property. For this purpose, the judge of the preliminary chamber or, as the case may be, the court of law sets a deadline, which may not be shorter than 10 days, at which the parties are summoned to the council chamber, as well as the custodian of the property, when one has been appointed. The participation of the prosecutor is mandatory.

(2)At the set deadline, the parties and, as the case may be, the custodian, in the council chamber, discuss the valuation of the seized movable property and they are told that they have the right to make observations or requests related to them. The absence of legally summoned parties does not prevent the proceedings from proceeding.

(3)On the valuation of the seized movable property, as well as on the applications referred to in paragraph (2), the judge of the preliminary chamber or, as the case may be, the court of law shall order by reasoned conclusion.

(4)An appeal may be lodged against the conclusion referred to in paragraph 3 to the judge of the preliminary chamber of the hierarchically superior court or, as the case may be, to the hierarchically superior court, respectively to the competent panel of the High Court of Cassation and Justice, by the parties, the custodian, the prosecutor, as well as by any other interested person, the provisions of Article 252<sup>2</sup> (4) to (7) being applied accordingly.

### **Article 252<sup>4</sup>: Contesting the way of capitalizing on the seized movable property**

(1)Against the manner in which the conclusion provided for in Article 252<sup>2</sup> paragraph (3) or the court decision on the recovery of the seized movable property, provided for in Article 252<sup>2</sup>

paragraph 7) or Article 252<sup>3</sup> paragraph (3) is to be carried out, the suspect or defendant, the civilly liable party, the custodian, any other interested person, as well as the prosecutor may, in the course of the criminal proceedings, appeal to the court competent to settle the case in the first instance.

(2)The appeal provided for in paragraph (1) shall be made within 15 days from the performance of the contested act.

(3)The court resolves the appeal urgently and especially, in a public hearing, summoning the parties, by final conclusion.

(4)After the final settlement of the criminal trial, if no appeal has been made against the manner of carrying out the conclusion or court decision on the valorization of the seized movable property referred to in paragraph (1), an appeal may be filed according to the civil law.

### **Article 253: Seizure report and mortgage notation or registration**

(1)The body that applies the seizure concludes a report on all the acts carried out according to Article 252, describing in detail the seized assets, indicating their value. The report also shows the goods exempted by law from prosecution, according to the provisions of Article 249 paragraph (8), found at the person to whom the seizure was applied. Also, the objections of the suspect or the defendant or of the civilly liable party, as well as those of other interested persons, are recorded.

**(2)The minutes provided for in paragraph (1) also mention the fact that the parties were informed that:**

a)may request the recovery of the seized asset(s) pursuant to Article 252<sup>1</sup>(1);

b)During the criminal trial, before a final decision is pronounced, the movable property on which the precautionary seizure has been instituted may be recovered by the judicial body, even without the consent of the owner, if the conditions provided by Article 252<sup>1</sup> paragraph (2) are met.

(3)A copy of the report provided for in paragraph (1) shall be left to the person on whose property the seizure has been applied, and in his absence, to those with whom he lives, to the administrator, the doorman or the one who usually replaces him, or to a neighbor. If part or all of the assets have been handed over to a custodian, a copy of the report shall be left with him. A copy shall also be submitted to the judicial body that ordered the precautionary measure, within 24 hours from the conclusion of the report.

(4)For seized immovable property, the prosecutor, the judge of the preliminary chamber or the court of law that ordered the seizure shall ask the competent body for the mortgage notation on the seized property, attaching a copy of the order or conclusion by which the seizure was ordered and a copy of the seizure report.

(5)The provisions of paragraph (4) shall also apply accordingly with regard to the provision of the mortgage registration on movable property.

#### **Article 254: Garnishment**

(1)The sums of money owed for any reason to the suspect or to the defendant or to the civilly liable party by a third person or by the injured party shall be seized in their hands, within the limits provided by law, from the date of receipt of the ordinance or conclusion by which the seizure is established.

(2)The amounts of money referred to in paragraph (1) shall be recorded by the debtors, as the case may be, at the disposal of the judicial body that ordered the garnishment or of the enforcement body, within 5 days from the due date, the receipts being delivered to the prosecutor, the judge of the preliminary chamber or the court of law within 24 hours from the record.

#### **Article 255: Return of things**

(1)If the public prosecutor or judge of rights and freedoms, in the course of the criminal investigation, the judge of the preliminary chamber or the court, in the preliminary chamber proceedings or during the trial, finds, on request or of his own motion, that the things seized from the suspect or defendant or from any person who received them for safekeeping are the property of the injured person or of another person or have been unjustly taken from their possession or possession, orders the restitution of these things. The provisions of Article 250 shall apply accordingly.

(2)The restitution of the seized things takes place only if it does not hinder the establishment of the factual situation and the fair settlement of the case and with the obligation for the person to whom they are returned to keep them until a final solution is pronounced in the criminal trial.

#### **Article 256: Restoration of the previous situation**

The court, during the trial, may take measures to restore the situation prior to the commission of the crime, when the change in that situation resulted from the commission of the crime, and the restoration is possible.

### **TITLE VI:Common procedural and procedural acts**

#### **CHAPTER I:Summons, service of procedural documents and warrant of summons**

#### **Article 257: How to cite**

(1)The summons of a person before the criminal investigation body or the court of law is made by written summons. The summons can also be made by telephone or telegraphic note, concluding a report in this regard.

(2)The service of summons and all procedural documents shall be made, ex officio, by the procedural agents of the judicial bodies or by any other employee thereof, through the local police or through the postal or courier service.

(3)The persons referred to in paragraph (2) shall be obliged to comply with the summons procedure and to communicate the proofs of its fulfilment before the summons deadline set by the judicial body.

(4)In the case provided for in Article 80, the injured persons and the civil parties may be summoned through the legal representative or through a national publication.

(5)The summons can also be made by electronic mail or by any other electronic messaging system, with the consent of the summoned person.

(6)The minor under the age of 16 will be summoned, through the parents or guardian, unless this is not possible.

(7)The judicial body may also orally communicate the following deadline to the person present, informing him of the consequences of non-appearance. During the criminal investigation, the notification of the deadline shall be mentioned in a report, which shall be signed by the person thus summoned.

(8)The summons and service of procedural documents shall be made in a sealed envelope, which shall bear the mention "For justice. To be handed over with priority".

#### **Article 258: Content of the summons**

**(1)The summons is individual and must include the following:**

a)the name of the criminal investigation body or court issuing the summons, its headquarters, the date of issuance and the file number;

b)the name and surname of the summoned, the capacity in which he/she is summoned and the indication of the subject matter of the case;

c)the address of the person quoted;

d)the time, day, month and year, place of appearance, as well as the invitation of the summoned person to appear on the date and place indicated;

e)mention that the summoned party has the right to a lawyer with whom to appear at the set deadline;

f)where appropriate, the statement that, according to Article 90 or Article 93(4), the defence is compulsory, and if the party does not choose a lawyer to appear within the prescribed period, a lawyer shall be appointed ex officio;

g)mention that the summoned party may, in order to exercise the right of defence, consult the file in the archive of the court or the prosecutor's office;

h)the consequences of not appearing before the judicial body.

(2)The summons sent to the suspect or defendant must include the legal classification and the name of the crime of which he is accused, the warning that, in case of non-appearance, he can be brought with a warrant to bring him.

(3)The summons shall be signed by the issuer.

### **Article 259: Meeting place**

(1)The suspect, the defendant, the parties in the trial, as well as other persons are summoned to the address where they live, and if this is not known, to their place of work, through the personnel service of the unit where they work.

(2)The suspect or defendant has the obligation to communicate within 3 days to the judicial body the change of address where he lives. The suspect or defendant shall be informed of this obligation at the hearing and of the consequences of failure to comply with the obligation.

(3)A suspect or defendant who has indicated, by a statement given during the criminal trial, another place to be summoned shall be summoned to the place indicated.

(4)The suspect or defendant may be summoned to the headquarters of the chosen lawyer, if he or she has not appeared after the first legally completed summons.

**(5)If neither the address where the suspect or defendant lives nor his place of work are known, a notice shall be posted at the headquarters of the judicial body which must include:**

a)year, month, day and time when it was made;

b)the name and surname of the person who made the display and its function;

c)the name, surname and domicile or, as the case may be, the residence, respectively the headquarters of the summoned person;

d)the number of the file in relation to which the notification is made and the name of the judicial body on which the file is pending;

e)the mention that the notice refers to the procedural act of the summons;

f)the mention of the deadline set by the judicial body that issued the summons in which the addressee is entitled to appear before the judicial body in order to be served with the summons;

g) the mention that, if the addressee does not appear for service of the summons within the deadline provided for in letter f), the summons is considered to have been served at the end of this period;

h) the signature of the person who posted the notice.

(6) The sick or persons being, as the case may be, in hospitals, medical or social assistance establishments shall be summoned by their administration.

(7) Persons deprived of liberty shall be summoned to the place of detention, through its administration. A copy of the summons shall also be communicated to the administration of the place of detention.

(7<sup>1</sup>) The soldiers are summoned to the unit to which they belong, through its commander.

(8) For persons who make up the crew of a sea or river vessel, in transit, the summons is made at the captaincy of the port where the ship is registered.

(9) If the suspect or defendant lives abroad, the summons shall be made, for the first term, according to the norms of international criminal law applicable in relation to the requested state, under the conditions of the law. In the absence of such a rule or if the applicable international legal instrument allows it, the summons shall be made by registered letter. In this case, the acknowledgement of receipt of the registered letter, signed by the addressee, or the refusal to receive it shall serve as proof of completion of the summons procedure. For the first term of the trial, the suspect or defendant will be notified by summons that he has the obligation to indicate an address on the territory of Romania, an e-mail address or electronic messaging, where all communications regarding the trial are to be made. If he does not comply, the communications will be made by registered mail, the receipt for delivery of the letter to the Romanian Post, in which the documents to be sent will be mentioned, taking the place of proof of completion of the procedure.

(10) The staff of diplomatic missions, consular offices and Romanian citizens sent to work in international organizations, family members living with them, while abroad, as well as Romanian citizens abroad for work, including family members accompanying them, are summoned through the units that sent them abroad.

(11) When setting the deadline for the appearance of the suspect or defendant abroad, account shall be taken of the international rules applicable in relation to the State in whose territory the suspect or defendant was located, and in the absence of such rules, of the need for the summons to appear to be received no later than 30 days before the day set for appearance.

(12) Institutions, public authorities and other legal persons shall be summoned to their headquarters, and in case of non-identification of the headquarters, the provisions of paragraph (5)

shall be duly applied.

(13) The summons by electronic mail or an electronic messaging system shall be made at the electronic address or at the coordinates that have been indicated for this purpose to the judicial body by the summoned person or by his representative.

#### **Article 260: Delivery of the summons**

(1) The summons is delivered, wherever it is found, personally to the summoned, who will sign the proof of receipt.

**(2) If the summoned person refuses to receive the summons, the person in charge of serving the summons will post a notice on the addressee's door, concluding a report on the circumstances ascertained. The notification must include:**

- a) The year, month, day, and time when the display was made.
- b) the name and surname of the person who made the display and its function;
- c) the name, surname and domicile or, as the case may be, the residence, respectively the registered office of the person notified;
- d) the number of the file in relation to which the notification is made and the name of the judicial body on which the file is pending, indicating its headquarters;
- e) the mention that the notice refers to the procedural act of the summons;
- f) the mention of the deadline set by the judicial body that issued the summons in which the addressee is entitled to appear before the judicial body in order to be served with the summons;
- g) the mention that, if the addressee does not appear for service of the summons within the deadline provided for in letter f), the summons is considered to have been served at the end of this period;
- h) the signature of the person who posted the notice.

(2<sup>1</sup>) If the summoned person, upon receipt of the summons, refuses or is unable to sign the proof of receipt, the person in charge of serving the summons concludes a report on it.

(3) If the registered letter summoning a suspect or defendant residing abroad cannot be delivered, and if the addressee's state does not permit the summons by post, the summons shall be posted at the premises of the public prosecutor's office or the court, as the case may be.

**(4) The summons can also be made through the competent authorities of the foreign state if:**

- a) the address of the person summoned is unknown or inaccurate;
- b) it was not possible to send the summons by mail;
- c) whether the summons by post was ineffective or inadequate.

(5) When the summons is made in accordance with Article 259 (6) to (8), the units indicated therein

are obliged to immediately hand over the summons to the person summoned under evidence, certifying his signature or showing the reason why his signature could not be obtained. The evidence is handed over to the procedural agent, who forwards it to the criminal investigation body or to the court that issued the summons.

(6)The summons addressed to a public institution or authority or to another legal person shall be handed over to the registry office or to the official in charge of receiving the correspondence. The provisions of paragraph 2 shall apply accordingly.

(7)When the summons is made in accordance with Article 257(5), the person making the summons shall draw up a report.

### **Article 261: Serving the subpoena to other people**

(1)If the summoned person is not at home, the agent hands the summons to the spouse, a relative or any person who lives with him or who usually receives his or her mail. The summons cannot be handed over to a minor under 14 years of age or to a person lacking discernment.

(2)If the summoned person lives in a building with several apartments or in a hotel, in the absence of the persons indicated in paragraph (1), the summons shall be handed over to the administrator, the doorman or the person who usually replaces him.

(3)The person who receives the summons signs the proof of receipt, and the agent, certifying the identity and signature, concludes the report. If she refuses or cannot sign the proof of receipt, the agent displays the summons on the door of the house, concluding the report.

**(4)In the absence of the persons referred to in paragraphs (1) and (2), the agent is obliged to inquire when he can find the person summoned to hand him the summons. When the summoned person cannot be found, the agent shall post on the door of the summoned person's home a notice which must include:**

- a)the year, month, day and time when the submission or, as the case may be, the posting was made;
- b)the name and surname of the person who made the display and its function;
- c)the name, surname and domicile or, as the case may be, the residence, respectively the registered office of the person notified;
- d)the number of the file in relation to which the notification is made and the name of the judicial body on which the file is pending, indicating its headquarters;
- e)the mention that the notice refers to the procedural act of the summons;
- f)the mention of the deadline set by the judicial body that issued the summons in which the

addressee is entitled to appear before the judicial body in order to be served with the summons;  
g)the mention that, if the addressee does not appear for service of the summons within the deadline provided for in letter f), the summons is considered to have been served at the end of this period;  
h)the signature of the person who posted the notice.

(5)If the summoned person lives in a building with several apartments or in a hotel, if the summons did not indicate the apartment or room in which he lives, the agent is obliged to investigate in order to find out. If the investigations have been unsuccessful, the agent posts the summons on the main door of the building, concluding the report and mentioning the circumstances that made it impossible to deliver the summons.

(6)(text of Article 261(6) of Part 1, Title VI, Chapter I was repealed on 01-Feb-2014 by Article 102(178) of Title III of Law 255/2013)

### **Article 261<sup>1</sup>: Inability to communicate the summons**

When the service of the summons cannot be made, because the building does not exist, is uninhabited or the addressee no longer lives in that building, or when the service cannot be made for other similar reasons, the agent draws up a report in which he mentions the situations found, which he sends to the judicial body that ordered the summons.

### **Article 262: Proof of receipt and report of delivery of the summons**

(1)The proof of receipt of the summons must include the file number, the name of the criminal prosecution body or court that issued the summons, the surname, surname and capacity of the summoned person, as well as the date for which he or she is summoned. It must also include the date of delivery of the summons, the name, surname, capacity and signature of the person who delivers the summons, the certification by the latter of the identity and signature of the person to whom the summons was handed over, as well as the indication of its capacity.

(2)Whenever, on the occasion of the delivery, posting or electronic transmission of a summons, a report is concluded, it shall duly include the particulars provided for in paragraph (1). In the event that the summons is made by electronic mail or by any other electronic messaging system, the proof of its transmission shall be attached to the report, if possible.

### **Article 263: Citation incidents**

(1)During the trial, the irregularity regarding the summons is taken into account only if the missing party at the deadline at which the irregularity occurred invokes it at the next deadline at which it is present or legally summoned, the provisions on the sanction of nullity being applied accordingly.

(2) Unless the presence of the defendant is mandatory, the irregularity regarding the procedure for summoning a party may be invoked by the prosecutor, by the other parties or ex officio only at the time when it occurred.

#### **Article 264: Service of other procedural documents**

(1) The other procedural documents shall be served in accordance with the provisions of this chapter.

(2) In the case of persons deprived of their liberty, the other procedural documents shall be served by fax or by any other means of electronic communication available at the place of detention.

#### **Article 265: Warrant for bringing**

(1) A person may be brought before the criminal prosecution body or the court of law on the basis of a warrant of summons, if, having previously been summoned, he has not appeared, unjustifiably, and his hearing or presence is necessary, or if it has not been possible to properly serve the summons and the circumstances indicate unequivocally that the person is evading receiving the summons.

(2) The suspect or defendant may be brought with a warrant of summons, even before being summoned by summons, if this measure is required in the interest of solving the case.

(3) During the criminal investigation, the warrant for bringing is issued by the criminal investigation body, and during the trial by the court.

(4) If, in order to execute the warrant, it is necessary to enter a domicile or premises without consent, during the criminal investigation, the warrant may be ordered, at the reasoned request of the prosecutor, by the judge of rights and freedoms of the court to which the case would have jurisdiction to hear the case at first instance or from the court corresponding to its rank in whose district the seat of the prosecutor's office to which the prosecutor belongs is located.

**(5) The request made by the prosecutor, during the criminal investigation, must include:**

- a) the reasons for the fulfilment of the conditions set out in paragraphs (1) and (2);
- b) indication of the crime that is the subject of the criminal investigation and the name of the suspect or defendant;
- c) indication of the address where the person for whom the issuance of the writ of summons is requested.

(6) The request requesting, during the criminal investigation, the issuance of a warrant of bringing shall be resolved in the council chamber, without summoning the parties.

(7) If he considers that the request is well-founded, the judge of rights and freedoms shall order with reasons, by a final conclusion, the admission of the request of the prosecutor's office and the approval of the bringing of the requested person, immediately issuing the warrant for his arrival.

**(8) The writ of summons issued by the judge of rights and freedoms must include:**

- a) the name of the court;
- b) date, time and place of issue;
- c) the name, surname and capacity of the person who issued the warrant;
- d) the purpose for which it was issued;
- e) the name of the person to be brought with a warrant and the address where he or she lives. In the case of the suspect or defendant, the warrant must mention the offence that is the subject of the criminal investigation;
- f) indicating the reason and motivating the need to issue the warrant;
- g) mention that the warrant of bringing can be used only once;
- h) the signature of the judge and the stamp of the court.

(9) If the judge of rights and freedoms considers that the conditions provided for in paragraphs (1), (2) and (4) are not met, he shall order, by final conclusion, the rejection of the application, as unfounded.

(10) The warrant issued by the criminal investigation body, during the criminal investigation, or by the court, during the trial, must contain, accordingly, the particulars provided for in paragraph (8).

(11) The judicial body immediately hears the person brought with a warrant or, as the case may be, immediately performs the act that required his presence.

(12) The persons brought with a warrant remain at the disposal of the judicial body only for the duration imposed by the hearing or by the performance of the procedural act that made their presence necessary, but not more than 8 hours, unless their detention or preventive arrest has been ordered.

#### **Article 266: Execution of the summons warrant**

(1) The arrest warrant shall be executed through the criminal investigation bodies of the judicial police and the public order bodies. The person entrusted with the execution of the warrant sends the warrant to the person for whom it was issued and asks him or her to accompany him. If the person indicated in the warrant refuses to accompany the person executing the warrant or tries to flee, he will be brought by coercion.

(2) In order to execute the warrant issued by the judge of rights and freedoms or by the court, the

bodies referred to in paragraph (1) may enter the home or premises of any person, where there are indications that the requested person is located, if he refuses to cooperate, prevents the execution of the warrant or for any other reason duly justified and proportionate to the purpose pursued.

(3) If the person named in the warrant cannot be brought for reasons of illness, the person in charge of executing the warrant shall record this in a report, which shall be immediately submitted to the criminal investigation body or, as the case may be, to the court.

(4) If the person in charge of executing the warrant does not find the person provided for in the warrant at the indicated address, he shall carry out investigations and, if they have remained without result, he shall conclude a report which shall include mentions of the investigations carried out. The report shall be submitted immediately to the criminal investigation body or, as the case may be, to the court.

(5) The execution of the warrants for bringing the military is done by the commander of the military unit or by the military police.

**(6) The activities carried out on the occasion of the execution of the arrest warrant are recorded in a report, which must include:**

- a) the name, surname and capacity of the person who concludes it;
- b) the place where it is terminated;
- c) mentions about the activities carried out.

#### **Article 267: Access to electronic databases**

(1) In order to carry out the summons procedure, the communication of procedural documents or the bringing with a warrant to the conduct of the proceedings, the prosecutor or the court have the right of direct access to the electronic databases held by the state administration bodies.

(2) The state administration bodies that own electronic databases are obliged to collaborate with the prosecutor or the court in order to ensure their direct access to the information existing in the electronic databases, under the law.

## **CHAPTER II: Deadlines**

#### **Article 268: Consequences of non-compliance with the deadline**

(1) When the law provides for a certain deadline for the exercise of a procedural right, failure to comply with it entails the forfeiture of the exercise of the right and the nullity of the act made after the deadline.

(2) When a procedural measure can only be taken for a certain period, its expiry entails the cessation of the effect of the measure.

(3)

For the other procedural deadlines, the provisions regarding nullities shall apply, in case of non-compliance.

#### **Article 269: Calculation of procedural time limits**

(1) When calculating the procedural deadlines, the starting point is the hour, day, month or year provided for in the act that caused the deadline to run, unless the law provides otherwise.

(2) When calculating deadlines by hours or days, the hour or day from which the deadline begins to run is not counted, nor the hour or day on which it is fulfilled.

(3) The deadlines calculated by months or years expire, as the case may be, at the end of the corresponding day of the last month or at the end of the corresponding day and month of the last year. If this day falls in a month that does not have a corresponding day, the deadline expires on the last day of that month.

(4) When the last day of a deadline falls on a non-working day, the deadline expires at the end of the first following working day.

#### **Article 270: Acts considered to have been done within the deadline**

(1) The document submitted within the deadline provided by law to the administration of the place of detention or to the military unit or to the post office by registered letter is considered as having been done within the deadline. The registration or attestation made by the administration of the place of detention on the submitted document, the receipt of the post office, as well as the registration or attestation made by the military unit on the submitted document serve as proof of the date of submission of the document.

(2) If an act which should have been done within a certain period has been communicated or transmitted, through ignorance or manifest error on the part of the sender, before the expiry of the period, to a judicial body which does not have jurisdiction, it shall be deemed to have been submitted within the time limit, even if the document reaches the competent judicial body after the expiry of the time limit.

(3) With the exception of appeals, the act performed by the prosecutor is considered to have been done within the deadline if the date on which it was entered in the exit register of the prosecutor's office is within the deadline required by law for the performance of the act.

**Article 271: Calculation of time limits in the case of measures depriving or restricting rights**

In the calculation of the deadlines regarding preventive measures or any measures restricting rights, the time or day from which it begins and the day on which the deadline ends enters its duration.

**CHAPTER III: Court costs****Article 272: Coverage of court costs**

(1) The expenses necessary for carrying out the procedural acts, the administration of evidence, the preservation of the material means of evidence, the administration and, as the case may be, the capitalization during the criminal trial of the seized assets, the lawyers' fees, as well as any other expenses occasioned by the conduct of the criminal trial shall be covered from the amounts advanced by the state or paid by the parties.

(2) The judicial expenses provided for in paragraph (1), advanced by the State, shall be included separately, as the case may be, in the income and expenditure budget of the Ministry of Justice, of the Public Ministry, as well as of other relevant ministries.

**Article 273: Amounts due to the witness, expert and interpreter**

(1) The witness, the expert and the interpreter summoned by the criminal investigation body or by the court have the right to reimbursement of the expenses of transport, maintenance, accommodation and other necessary expenses, occasioned by their calling.

(2) The witness, the expert and the interpreter who are employees are entitled to income from the workplace, during the absence from work caused by the summons to the criminal investigation body or to the court.

(3) The witness who is not an employee, but has income from work, is entitled to receive compensation.

(4) The expert and the interpreter shall be entitled to remuneration for the performance of the task, in the cases and under the conditions provided for by law.

(5) The amounts awarded according to paragraphs (1), (3) and (4) shall be paid on the basis of the provisions taken by the body that ordered the summons and before which the witness, expert or interpreter appeared, from the fund of the specially allocated judicial expenses.

**Article 274: Payment of expenses advanced by the state in case of dropping prosecution, conviction, postponement of the application of the penalty or waiving the application of the**

## **penalty**

(1) In the event of dropping the criminal prosecution, conviction, postponement of the application of the penalty or waiving the application of the penalty, the suspect or, as the case may be, the defendant is obliged to pay the legal expenses advanced by the State, except for the expenses related to the court-appointed lawyers and interpreters appointed by the judicial bodies, which remain the responsibility of the State.

(2) When there are several suspects or, as the case may be, defendants, the prosecutor or, as the case may be, the court decides the part of the judicial costs owed by each one. In determining this part, account shall be taken, for each of the suspects or, as the case may be, defendants, of the extent to which it has incurred the judicial costs.

(3) The civilly liable party, to the extent that it is jointly and severally liable with the defendant to repair the damage, is jointly and severally liable with him and to pay the legal costs advanced by the state.

## **Article 275: Payment of expenses advanced by the state in other cases**

**(1) The judicial expenses advanced by the State are borne as follows:**

**1. in case of acquittal, by:**

- a) the injured person, to the extent that he is found to be at fault in the process;
- b) the civil party whose civil claims have been rejected in their entirety, to the extent that they are found to be at fault in the process;
- c) the defendant who was obliged to compensate for the damage;

**2. in the event of termination of the criminal proceedings, by:**

- a) defendant, if there is a cause for non-punishment;
- b) the injured person, in case of withdrawal of the prior complaint or if the preliminary complaint was submitted late;
- c) the party provided for in the mediation agreement, if criminal mediation has taken place;
- d) the defendant and the injured person, in case of reconciliation.

**3. If the defendant requests the continuation of the criminal trial, the legal costs are borne by:**

- a) the injured person, when he has withdrawn his prior complaint or it has been ordered to be closed pursuant to the provisions of Article 16 (1) letters a) to c) or to acquit the defendant, to the extent that he is found to be at fault in the proceedings;
- b) defendant, when the dismissal is ordered for situations other than those provided for in the

provisions of Article 16(1)(a)-c) or the termination of the criminal proceedings;

4. In the event of the case being returned to the Public Prosecutor's Office in the pre-trial chamber proceedings, the legal costs shall be borne by the State.

(2) In the event of an appeal, an appeal in cassation or the lodging of an appeal or any other application, the legal costs shall be borne by the person who has had his appeal, appeal in cassation, appeal or application rejected or withdrawn.

(3) In all other cases, the legal costs advanced by the state remain the responsibility of the state.

(4) If more than one party or injured person is ordered to bear the legal costs, the court decides the part of the legal costs owed by each one.

(5) The provisions of paragraphs 1 and 2 and 2 to 4 shall apply accordingly in the case of a dismissal in the course of the criminal investigation and in the case of rejection of a complaint lodged against the acts and measures ordered by the criminal prosecution bodies.

(6) The expenses regarding the court-appointed lawyers and interpreters appointed by the judicial bodies, according to the law, remain the responsibility of the state.

(7) In the case of appeals filed by the penitentiary administration in the cases provided for by Law no. 254/2013 on the execution of sentences and measures of deprivation of liberty ordered by the judicial bodies during the criminal trial, with subsequent amendments and completions, the judicial expenses remain the responsibility of the state.

#### **Article 276: Payment of legal costs incurred by the parties**

(1) In case of conviction, dropping of criminal prosecution, waiver of the application of the penalty or postponement of the application of the penalty, the defendant is obliged to pay the injured person, as well as the civil party to whom the civil action has been admitted, the legal costs incurred by them.

(2) When the civil action is admitted only in part, the court may order the defendant to pay all or part of the court costs.

(3) In case of waiver of civil claims, as well as in case of settlement, mediation or recognition of civil claims, the court shall order the costs according to the agreement of the parties.

(4) In the situations referred to in paragraphs 1 and 2, where there are several defendants or if there is also a civilly liable party, the provisions of Article 274 (2) and (3) shall apply accordingly.

(5) In case of acquittal, the injured person or the civil party is obliged to pay the defendant and, as the case may be, the civilly liable party the legal costs incurred by them, to the extent that they

were caused by the injured person or the civil party.

(6) In other cases, the court establishes the obligation of restitution according to the civil law.

#### **CHAPTER IV: Modification of procedural acts, correction of material errors and removal of manifest omissions**

##### **Article 277: Amendments to procedural acts**

(1) Any addition, correction or deletion made to a procedural document shall be taken into account only if these amendments are confirmed in writing, in the content or at the end of the document, by those who signed it.

(2) Changes that are not confirmed, but do not change the meaning of the sentence, remain valid.

(3) Unwritten places in a statement should be crossed out so that no additions can be made.

##### **Article 278: Correction of material errors**

(1) Obvious material errors in a procedural document are addressed by the criminal prosecution body itself, by the judge of rights and freedoms or by the preliminary chamber or by the court that drew up the document, at the request of the interested party or ex officio.

(2) In order to correct the error, the parties may be called upon to give clarifications.

(3) The judicial body shall draw up, as the case may be, a report or a conclusion, mentioning it at the end of the corrected act.

##### **Article 279: Removal of obvious omissions**

The provisions of Article 278 shall also apply if the judicial body, as a result of a manifest omission, has not ruled on the sums claimed by witnesses, experts, interpreters, lawyers, according to Articles 272 and 273, as well as on the restitution of things or the lifting of precautionary measures.

#### **CHAPTER V: Nullities**

##### **Article 280: Effects of nullity**

(1) The violation of the legal provisions regulating the conduct of the criminal trial entails the nullity of the act under the conditions expressly provided by this Code.

(2) The acts performed after the act that was declared null and void are also null and void, when there is a direct link between them and the act declared null.

(3) When it finds the nullity of an act, the judicial body orders, when necessary and if possible, the restoration of that act in compliance with the legal provisions.

### **Article 281: Absolute nullities**

#### **(1) The violation of the provisions regarding:**

##### **a) composition of the panel of judges;**

\*) Admits the exception of unconstitutionality raised by Elena Ilie in Case no. 2.223/192/2016 of the Bolintin-Vale Court and finds that the provisions of Article 281(4)(a) of the Code of Criminal Procedure in relation to Article 281(1)(f) of the same normative act are unconstitutional.

Final and generally binding.

##### **b) the substantive and personal jurisdiction of the courts, when the trial was conducted by a lower court than the legally competent one;**

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the legislative solution contained in the provisions of Article 281 paragraph (1) letter b), which does not regulate in the category of absolute nullities the violation of the provisions regarding the substantive competence and the quality of the person of the criminal prosecution body, is unconstitutional.

b<sup>1</sup>) material competence and competence according to the quality of the person of the criminal investigation body;

c) publicity of the court hearing;

d) the participation of the prosecutor, when his participation is mandatory according to the law;

e) the presence of the suspect or the defendant, when his/her participation is mandatory according to the law;

f) assistance by the lawyer of the suspect and the injured person, respectively of the defendant and the other parties, when assistance is mandatory.

(2) Absolute nullity is established ex officio or upon request.

(3) The violation of the legal provisions provided for in paragraph (1) letters a), b), c) and d) may be invoked at any stage of the trial.

**(4) The violation of the legal provisions provided for in paragraph (1) letter b<sup>1</sup>), e) and f) may be invoked:**

a) until the conclusion of the proceedings in the pre-trial chamber, if the violation occurred in the course of the criminal investigation;

b) at any stage of the trial, if the violation occurred during the pre-trial chamber proceedings or

during the trial;

c) at any stage of the trial, regardless of when the violation occurred, when the court was seized with a plea agreement.

### **Article 282: Relative nullities**

(1) The violation of any legal provisions other than those provided for in Article 281 determines the nullity of the act when the non-compliance with the legal requirement has caused an injury to the rights of the parties or of the main procedural subjects, which cannot be removed other than by abolishing the act.

(2) The relative nullity may be invoked by the suspect, the defendant, the other parties or the injured person, when there is a procedural interest in the observance of the violated legal provision, by the prosecutor, as well as, ex officio, by the judge of rights and freedoms, the judge of the preliminary chamber or, as the case may be, by the court.

(3) Relative nullity shall be invoked during or immediately after the act was performed or at the latest within the time limits laid down in paragraph 4.

**(4) The violation of the legal provisions provided for in paragraph (1) may be invoked:**

a) until the closure of the preliminary chamber procedure, if the infringement occurred in the course of the criminal investigation or in the course of the proceedings;

b) until the first trial term with the legally fulfilled procedure, if the violation occurred during the criminal investigation, when the court was notified with an agreement of admission of guilt;

c) until the next trial term with the full procedure, if the violation occurred during the trial.

**(5) Relative nullity is covered when:**

a) the interested person did not invoke it within the term provided by law;

b) The interested party has expressly waived the invocation of nullity.

## **CHAPTER VI: Judicial fine**

### **Article 283: Misconduct**

**(1) The following offenses committed during the criminal trial are sanctioned with a judicial fine from 100 lei to 1,000 lei:**

a) unjustifiably failing to perform or performing incorrectly or with delay the works of summons or service of procedural documents, transmission of files, as well as any other works, if this has caused delays in the conduct of the criminal trial;

b) failure to fulfill or misfulfill the duties of delivery of summons or other procedural acts, as well

as failure to execute warrants.

(2)The unjustified absence of the witness, as well as of the injured person, the civil party or the civilly responsible party, called to give statements, or the departure, without permission or without a good reason, of the place where they are to be heard is sanctioned with a judicial fine from 250 lei to 5,000 lei.

(3)The unjustified absence of the lawyer chosen or appointed ex officio, without ensuring the substitution, under the law, or the unjustified refusal of the lawyer to ensure the defense, under the conditions in which the full exercise of all procedural rights has been ensured, is sanctioned with a judicial fine from 500 lei to 5,000 lei. The Bar Association is informed of the fine of a member of the Bar Association.

**(4)The following offenses committed during the criminal trial are sanctioned with a judicial fine from 500 lei to 5,000 lei:**

- a)preventing in any way the exercise, in connection with the trial, of the powers incumbent on the judicial bodies, the specialized auxiliary staff of the courts of law and the prosecutors' offices, the experts appointed by the judicial body under the law, the procedural agents, as well as other employees of the courts and prosecutors' offices;
- b)unjustified absence of the summoned legal expert or interpreter;
- c)procrastination by the expert or interpreter of the fulfillment of the tasks received;
- d)failure by any person to comply with the obligation to present, at the request of the criminal prosecution body or the court, the objects or documents requested by them, as well as the failure to fulfill the same obligation by the legal representative of the legal person or by the person in charge of fulfilling this obligation;
- e)failure to comply with the retention obligation provided for in Article 160(3);
- f)failure by the legal representative of the legal entity within which an expertise is to be carried out to carry out the necessary measures for its performance or for the timely performance of the expertise, as well as preventing any person from carrying out the expertise under the law;
- g)failure by the parties, their lawyers, witnesses, experts, interpreters or any other persons to comply with the measures taken by the President of the panel of judges in accordance with Article 352(9) or Article 359;
- h)non-compliance by the parties' lawyers with the measures taken by the president of the panel of judges according to Article 359, except when they support requests, exceptions, conclusions on the merits of the case, as well as when they proceed to hear the parties, witnesses and experts;
- i)irreverent manifestations of the parties, witnesses, experts, interpreters or any other persons

towards the judge or prosecutor;

j)(text of Article 283(4)(J) of Part 1, Title VI, Chapter VI was repealed on 01-Feb-2014 by Article 102(187) of Title III of Law 255/2013)

k)failure by the suspect or defendant to comply with the obligation to inform the judicial bodies in writing, within no more than 3 days, about any change of residence during the criminal trial;

l)failure by the witness to inform the judicial bodies, within a maximum of 5 days, about the change of residence during the criminal trial, according to Article 120(2)(c);

m)the unjustified failure of the criminal investigation body to comply with the written instructions of the prosecutor, within the term set by the prosecutor;

n)abuse of rights consisting in the exercise in bad faith of procedural and procedural rights by the parties, their legal representatives or legal advisors;

o)failure to fulfil the obligation laid down in Article 142(2) or the obligation laid down in Article 152(3) by providers of publicly available electronic communications services;

o<sup>1</sup>)the failure of credit institutions or financial entities carrying out financial transactions to comply with the obligation laid down in Article 146<sup>1</sup>;

p)failure to comply with the obligation laid down in Article 147(5) by postal or transport units or any other natural or legal persons carrying out transport or information transfer activities;

q)failure to fulfil the obligation laid down in Article 153(3) by the service provider or by the person in whose possession or control the data referred to in Article 153(1) is or under control.

(5)The judicial fines imposed constitute revenues to the state budget, being included separately in the budget of the Public Ministry or of the Ministry of Administration and Interior, of the Ministry of Justice, as the case may be, according to the law.

(6)The application of the judicial fine does not remove criminal liability, if the act constitutes a crime.

#### **Article 284: Procedure regarding the judicial fine**

(1)The fine is imposed by the criminal investigation body by ordinance, and by the judge of rights and freedoms, by the judge of the preliminary chamber and by the court of law, by conclusion.

(2)The fined person can request the cancellation or reduction of the fine. The request for cancellation or reduction can be made within 10 days from the communication of the ordinance or the conclusion of the fine.

(3)If the fined person justifies why he could not fulfill his obligation, the judge of rights and freedoms, the judge of the preliminary chamber or the court of law may order the annulment or

reduction of the fine.

(4) The request for annulment or reduction of the fine imposed by the ordinance will be resolved by the judge of rights and freedoms, by conclusion.

(5) The request for annulment or reduction of the fine imposed by the conclusion will be solved by another judge of rights and freedoms, respectively by another judge of the preliminary chamber or by another panel, by conclusion.

## **SPECIAL PART:**

### **TITLE I: Prosecution**

#### **CHAPTER I: General provisions**

##### **Article 285: Subject matter of the criminal investigation**

(1) The purpose of the criminal prosecution is to gather the necessary evidence regarding the existence of crimes, to identify the persons who have committed a crime and to establish their criminal liability, in order to ascertain whether or not it is appropriate to order the indictment.

(2) The procedure during the criminal investigation is non-public.

##### **Article 286: Acts of the criminal prosecution bodies**

(1) The prosecutor disposes of the procedural acts or measures and resolves the case by ordinance, unless otherwise provided by law.

(2) **The ordinance must include:**

a) the name of the prosecutor's office and the date of issue;

b) the name, surname and capacity of the person who prepares it;

c) the act that is the subject of the criminal investigation, its legal classification and, as the case may be, the data regarding the person of the suspect or defendant;

d) the object of the procedural act or measure or, as the case may be, the type of solution, as well as their factual and legal grounds;

d<sup>1</sup>) where appropriate, mention of the available appeal, indicating the deadline within which it can be exercised;

e) data regarding precautionary measures, medical safety measures and preventive measures taken during the follow-up;

f) other information provided by law;

g) the signature of the one who drew it up.

(3)(text of Article 286(3) of Part 2, Title I, Chapter I was repealed on 01-Feb-2014 by Article 102(190) of Title III of Law 255/2013)

(4)The criminal investigation bodies dispose, by ordinance, of the procedural acts and measures and formulate proposals by report. The provisions of paragraph 2 shall apply accordingly.

#### **Article 287: Keeping criminal prosecution documents**

(1)When the law provides that an act or procedural measure must be approved, authorized or confirmed, a copy of the document remains with the prosecutor.

(2)In cases where the prosecutor notifies the judge of rights and freedoms, the judge of the preliminary chamber or other authorities provided by law, in order to solve the proposals or requests formulated during the criminal investigation, he shall submit numbered copies certified by the registry of the prosecutor's office of the documents of the file or only of those related to the request or proposal formulated. The criminal investigation body keeps the original of the documents, in order to continue the criminal investigation.

### **CHAPTER II: Notification of the criminal investigation bodies**

#### **SECTION 1: General Regulations**

#### **Article 288: Referral modes**

(1)The criminal investigation body is notified by complaint or denunciation, by the acts concluded by other ascertaining bodies provided by law or notified ex officio.

(2)When, according to the law, the initiation of the criminal action is made only upon the prior complaint of the injured person, upon the notification formulated by the person provided by the law or with the authorization of the body provided by the law, the criminal action cannot be initiated in their absence.

(3)In the case of crimes committed by the military, the notification of the commander is necessary only with regard to the crimes provided for in Articles 413-417 of the Criminal Code.

#### **Article 289: Complaint**

(1)The complaint is the acknowledgment made by a natural or legal person, regarding an injury caused to him by the crime.

(2)The complaint must include: the name, surname, personal identification number, capacity and domicile of the petitioner or, for legal persons, the name, registered office, unique registration

code, tax identification code, registration number in the trade register or registration in the register of legal persons and bank account, indication of the legal or conventional representative, description of the act that is the subject of the complaint, as well as the indication of the perpetrator and the means of evidence, if known.

(3)The complaint can be made in person or through a representative. The mandate must be special, and the power of attorney remains attached to the complaint.

(4)If it is made in writing, the complaint must be signed by the injured person or by the representative.

(5)The complaint in electronic form meets the formal conditions only if it is certified by electronic signature, in accordance with the legal provisions.

(6)The complaint formulated orally shall be recorded in a report by the body that receives it.

(7)The complaint can also be made by one of the spouses for the other spouse or by the adult child for the parents. The injured person can declare that he does not appropriate the complaint.

(8)For the person lacking the capacity to exercise, the complaint is made by his legal representative. The person with limited capacity to exercise may file a complaint with the consent of the persons provided for by the civil law. If the perpetrator is the person who legally represents or approves the acts of the injured person, the notification of the criminal investigation bodies shall be made ex officio.

(9)The complaint wrongly addressed to the criminal investigation body or to the court of law shall be sent, by administrative means, to the competent judicial body.

(10)If the complaint is drawn up by a person residing on the territory of Romania, a Romanian citizen, a foreigner or a person without citizenship, and thereby notifies the commission of a crime on the territory of another member state of the European Union, the judicial body is obliged to receive the complaint and to transmit it to the competent body of the country on whose territory the crime was committed. The rules on judicial cooperation in criminal matters shall apply accordingly.

(11)The person who does not speak or understand the Romanian language can file the complaint in the language he understands. At the same time as the complaint is filed, it can request that, when summoned, it also receives a translation of the summons.

### **Article 290: Denunciation**

(1)The denunciation is the knowledge made by a natural or legal person about the commission of

a crime.

(2)The denunciation may be made only in person, the provisions of Article 289 (2), (4) to (6) and (8) to (10) being applied accordingly.

(3)(text of Article 290(3) of Part 2, Title I, Chapter II, Section 1 was repealed on 05-Feb-2017 by Article II(3) of Emergency Ordinance 14/2017)

### **Article 291: Notifications made by persons with management positions and by other persons**

(1)Any person with a management position within a public administration authority or within other public authorities, public institutions or other legal persons governed by public law, as well as any person with control powers, who, in the exercise of their duties, have become aware of the commission of an offence for which criminal proceedings are initiated ex officio, They are obliged to immediately notify the criminal investigation body and to take measures so that the traces of the crime, the criminal bodies and any other means of evidence do not disappear.

(2)Any person who performs a service of public interest for which he has been entrusted by the public authorities or who is subject to their control or supervision with regard to the performance of that service of public interest, who in the exercise of his duties has become aware of the commission of an offence for which criminal proceedings are initiated ex officio, is obliged to immediately notify the criminal investigation body.

### **Article 292: Ex officio notification**

The criminal prosecution body shall notify ex officio if it finds out that a crime has been committed by any means other than those provided for in Articles 289-291 and shall conclude a report in this regard.

### **Article 293: Finding the flagrant crime**

(1)The crime discovered at the time of the commission or immediately after the commission is flagrant.

(2)A crime is also considered flagrant if the perpetrator, immediately after the commission of the crime, is pursued by the public order and national security bodies, by the injured person, by eyewitnesses or by the public shout, or shows traces that justify the reasonable suspicion that he has committed the crime or is caught near the place of the crime with weapons, instruments or any other objects likely to imply him a participant in the crime.

(3) In the case of flagrant crime, the public order and national security bodies draw up a report, in which they record all the aspects found and the activities carried out, which they immediately submit to the criminal investigation body.

(4) The complaints and requests submitted in writing, the body of the crime, as well as the objects and documents seized on the occasion of the ascertainment of the crime are made available to the criminal investigation body.

#### **Article 294: Examination of the complaint**

(1) Upon receipt of the notification, the criminal prosecution body shall proceed to verify its competence, and in the case provided for in Article 58(3), it shall forward the case to the prosecutor, together with the proposal to refer the notification to the competent body.

(2) In the event that the complaint or denunciation does not meet the formal conditions provided by the law or the description of the fact is incomplete or unclear, it shall be returned administratively to the petitioner, indicating the missing elements.

(3) When the notification meets the legal conditions of admissibility, but it results in any of the cases of obstruction of the criminal proceedings provided for in Article 16(1), the criminal investigation bodies shall submit the documents to the prosecutor, together with the proposal for closure.

(4) If the prosecutor considers the proposal to be well-founded, he orders, by ordinance, the closure.

#### **Article 294<sup>1</sup>: Authorizations or other prerequisites for further prosecution of a person**

Whenever an authorization or the fulfillment of another precondition is necessary in order to order the continuation of the criminal investigation against a certain person, the prosecutor's office, together with the notification of the competent institution, submits a report drawn up by the prosecutor, which will include data and information on the commission of acts provided by the criminal law by the person in respect of whom the authorization is requested.

### **SECTION 2: Prior complaint**

#### **Article 295: Prior complaint**

(1) The initiation of the criminal action is made only upon the prior complaint of the injured person, in the case of crimes for which the law provides that such a complaint is necessary.

(2) The preliminary complaint is addressed to the criminal investigation body or to the

prosecutor, according to the law.

(3) The provisions of Article 289(1) to (6) and (8) shall apply accordingly.

#### **Article 296: Deadline for lodging the prior complaint**

(1) The prior complaint must be filed within 3 months from the day on which the injured person found out about the commission of the deed.

(2) When the injured person is a minor or an adult who benefits from judicial counseling or special guardianship, the term of 3 months runs from the date when the guardian or his legal representative found out about the commission of the act.

(3) If the perpetrator is the legal representative of the persons referred to in paragraph 2, the 3-month period shall run from the date of appointment of a new legal representative.

(4) The preliminary complaint wrongly directed shall be considered valid, if it has been submitted within the deadline to the incompetent judicial body.

(5) The preliminary complaint wrongly addressed to the criminal investigation body or to the court of law shall be sent, by administrative means, to the competent judicial body.

#### **Article 297: Obligations of the criminal investigation body in the preliminary complaint procedure**

(1) Upon receipt of the preliminary complaint, the criminal investigation body verifies whether it meets the formal conditions and whether it has been submitted within the term provided by law. If it finds that it is late, the criminal investigation body submits to the prosecutor the documents concluded together with the proposal for closure.

(2) If, in a case in which criminal prosecution acts have been carried out, it is found that a prior complaint is necessary, the criminal investigation body calls the injured person and asks him if he intends to file a complaint. If so, the criminal prosecution body continues the investigation. Otherwise, he submits to the prosecutor the concluded documents and the proposal for closure.

#### **Article 298: Procedure in the case of flagrante delicto**

(1) In case of flagrant crime, the criminal investigation body is obliged to ascertain its commission, even in the absence of a prior complaint.

(2) After the flagrante delicto is ascertained, the criminal investigation body calls the injured person and, if he declares that he is making a prior complaint, the criminal investigation begins. Otherwise, the criminal investigation body submits to the prosecutor the concluded documents

and the proposal for closure.

### **CHAPTER III: Management and supervision of the activity of the criminal investigation bodies by the prosecutor**

#### **Article 299: Object of supervision**

(1) The prosecutor supervises the activity of the criminal investigation bodies, so that any crime is discovered and any person who has committed a crime is held criminally responsible.

(2) Also, the prosecutor exercises the supervision of the activity of the criminal investigation bodies so that no suspect or defendant is detained except in the cases and under the conditions provided by the law.

#### **Article 300: Modalities of exercising supervision**

(1) The prosecutor, in the exercise of the power to direct and supervise the activity of the criminal investigation bodies, shall ensure that the criminal prosecution acts are carried out in compliance with the legal provisions.

(2) The criminal investigation bodies are obliged, after notification, to inform the prosecutor about the activities they are carrying out or are about to carry out.

(3) In the exercise of the power to conduct the criminal investigation activity, the prosecutor takes the necessary measures or gives orders to the criminal investigation bodies that take these measures. The prosecutor may assist in the performance of any criminal investigation act or carry it out personally.

(4) In the exercise of the task of supervising the criminal investigation activity, the prosecutor may request for verification any file from the criminal investigation body, which is obliged to send it immediately, with all the documents, materials and data regarding the act that is the object of the investigation. The prosecutor may retain any case in order to carry out the criminal investigation.

#### **Article 301: Referral to the competent body**

(1) When the prosecutor finds that the criminal investigation is not carried out by the criminal investigation body provided for by law, he shall take measures to ensure that the prosecution is carried out by the competent body, proceeding in accordance with Article 63.

(2) In the case referred to in paragraph 1, the procedural acts or measures lawfully carried out shall remain valid.

(3) When the prosecutor finds that any of the cases referred to in Article 43 exist, he shall order the

joining of the cases and subsequently refer the case to the competent body.

### **Article 302: Moving the case from one criminal investigation body to another**

(1)The prosecutor may, if necessary, order that in a case the criminal prosecution be carried out by an investigative body other than the one notified.

(2)The taking over of a case by a hierarchically superior criminal investigation body is ordered by the prosecutor of the prosecutor's office that supervises the criminal investigation in that case, based on the reasoned proposal of the criminal investigation body that takes over the case.

### **Article 303: Orders given by the prosecutor**

(1)The prosecutor may order any criminal investigation to be carried out by the criminal investigation bodies of the judicial police or by the special criminal investigation bodies, as the case may be.

(2)The provisions given by the prosecutor in relation to the performance of criminal investigation acts are mandatory and priority for the investigative body, as well as for other bodies that have powers provided by law in the ascertainment of crimes. The hierarchically superior bodies of the judicial police or of the special criminal investigation bodies may not give guidelines or orders regarding the criminal investigation.

(3)In case of non-fulfillment or defective fulfillment by the criminal investigation body of the provisions given by the prosecutor, it may notify the head of the criminal investigation body, who has the obligation to communicate to the prosecutor the measures ordered within 3 days from the notification, or may apply the sanction of a judicial fine for the judicial misconduct provided for in Article 283(1)(a) or, where appropriate, paragraph 4(m) or may request the withdrawal of the opinion provided for in Article 55(4) and (5).

### **Article 304: Invalidation of procedural or procedural documents**

(1)When the prosecutor finds that an act or procedural measure of the criminal investigation body is not given in compliance with the legal provisions or is unfounded, he shall invalidate it with reasons, ex officio or at the complaint of the person concerned.

(2)The provisions of paragraph (1) shall also apply in the case of verification carried out by the hierarchically superior prosecutor regarding the acts of the hierarchically inferior prosecutor.

## **CHAPTER IV:Conducting the criminal investigation**

## **SECTION 1: Conduct of the criminal investigation**

### **Article 305: Initiation of criminal proceedings**

(1) When the act of notification meets the conditions provided by law, the criminal investigation body orders the initiation of the criminal investigation regarding the act committed or the commission of which is being prepared, even if the perpetrator is indicated or known.

(2) The initiation of the criminal investigation and the continuation of the criminal investigation shall be ordered by an ordinance containing, as the case may be, the particulars provided for in Article 286(2)(a)-(c) and (g).

(3) Where there is evidence giving rise to a reasonable suspicion that a particular person has committed the act for which the criminal investigation was initiated and there is no one of the cases referred to in Article 16(1), the criminal investigation body shall order that the criminal prosecution be continued against him, who acquires the status of suspect. The measure ordered by the criminal investigation body is subject, within 3 days, to the confirmation of the prosecutor supervising the criminal investigation, the criminal investigation body being obliged to present the case file to him.

(4) With regard to the persons for whom the criminal prosecution is conditional on obtaining a prior authorization or on the fulfillment of another precondition, the criminal prosecution may be ordered only after obtaining the authorization or after the fulfillment of the condition.

### **Article 306: Obligations of criminal prosecution bodies**

(1) In order to carry out the object of the criminal investigation, the criminal investigation bodies have the obligation, after notification, to search for and collect data or information regarding the existence of crimes and the identification of the persons who committed crimes, to take measures to limit their consequences, to collect and administer evidence in compliance with the provisions of Articles 100 and 101.

(2) The criminal investigation bodies have the obligation to carry out the investigative acts that are not postponed, even if they concern a case for which they do not have the competence to carry out the criminal investigation.

(3) After the start of the criminal investigation, the criminal investigation bodies collect and administer the evidence, both in favor and against the suspect or defendant.

(4) The criminal investigation body shall rule, by reasoned order, under the conditions of Article 100(3) and (4), on requests for the taking of evidence, within the limits of its competence.

(5)When the criminal investigation body considers that it is necessary to administer evidence or to use special methods of surveillance, which may be authorized or ordered, in the criminal investigation phase, only by the prosecutor or, as the case may be, by the judge of rights and freedoms, it formulates reasoned proposals, which must include the data and information that are mandatory in that procedure. The report is sent to the prosecutor together with the case file.

(6)Bank secrecy and professional secrecy, with the exception of lawyer's professional secrecy, are not enforceable against the prosecutor after the criminal investigation has begun.

(7)The criminal investigation body is obliged to collect the necessary evidence to identify the assets and values subject to special confiscation and extended confiscation, according to the Criminal Code.

#### **Article 307: Raising awareness of the status of suspect**

The person who has acquired the status of suspect shall be informed, before his first hearing, of this capacity, the act for which he is suspected, his legal classification, the procedural rights provided for in Article 83, and a report shall be concluded in this regard.

#### **Article 308: Early Hearing Procedure**

(1)When there is a risk that the injured person, the civil party, the civilly liable party or a witness can no longer be heard during the trial, the prosecutor may refer the matter to the judge of rights and freedoms for an early hearing of the judge.

(2)The judge of rights and freedoms, if he considers the well-founded request, immediately sets the date and place of the hearing, ordering the summoning of the parties and the main subjects of the proceedings. When the hearing takes place at the court's premises, it takes place in the council chamber.

(3)The participation of the prosecutor is mandatory.

(4)Paragraphs 1 to 3 shall apply accordingly to the hearing of the minor witness or civil party, as well as to the hearing of the injured person if, in relation to their person or the nature of the case, the prosecutor considers that it is in their interest to avoid repeated hearing during the trial.

#### **Article 309: Initiation of criminal action**

(1)Criminal proceedings shall be initiated by the prosecutor, by order, during the criminal investigation, when he finds that there is evidence showing that a person has committed a crime and that there are no cases of obstruction provided for in Article 16 (1).

(2)The initiation of the criminal action is communicated to the defendant by the criminal investigation body that calls him to hear him. The provisions of Article 108 shall be applied accordingly, and a report shall be drawn up in this regard.

(3)Upon request, the defendant is issued a copy of the order ordering the measure.

(4)When he considers it necessary, the prosecutor may personally proceed to the hearing of the accused and to the communication provided for in paragraph (2).

(5)The criminal investigation body continues the investigation without hearing the defendant when he is unjustifiably absent, evades or is missing.

### **Article 310: Provisions regarding the taking of measures against the perpetrator**

(1)In the case of flagrante delicto, any person has the right to catch the perpetrator.

(2)If the perpetrator has been caught under the conditions of paragraph (1), the person who detained him must immediately hand him over, together with the criminal bodies, as well as the objects and documents seized, to the criminal investigation bodies, which draw up a report.

### **Article 311: Extension of criminal prosecution or change of legal classification**

(1)If, after the start of the criminal investigation, the criminal investigation body finds new facts, data regarding the participation of other persons or circumstances that may lead to a change in the legal classification of the act, it orders the extension of the criminal investigation or the change of the legal classification.

(2)When the criminal investigation is carried out against a person, the extension ordered by the criminal investigation body is subject to the reasoned confirmation of the prosecutor supervising the criminal investigation, within 3 days from the date of issuance of the ordinance, the criminal investigation body being obliged to present the case file at the same time.

(3)The judicial body that ordered the extension of the criminal investigation or the change of the legal classification is obliged to inform the suspect about the new facts in respect of which the extension was ordered or about the change of legal classification.

(4)If the extension of the criminal investigation has been ordered in respect of several persons, the criminal investigation body has the obligation to proceed with these persons according to Article 307.

(5)The prosecutor notified by the investigating body following the extension of the criminal investigation or ex officio regarding the cases referred to in paragraph (1) may order the extension of the criminal action with regard to the new aspects.

## **SECTION 2: Suspension of criminal prosecution**

### **Article 312: Cases of suspension**

(1) If it is found by a forensic expertise that the suspect or defendant suffers from a serious illness, which prevents him from taking part in the criminal trial, the criminal investigation body submits its proposals to the prosecutor together with the file, in order to order the suspension of the criminal investigation.

(1<sup>1</sup>) The prosecutor orders the suspension of the criminal investigation only if, taking into account all the circumstances of the case, he considers that the suspect or defendant could not be heard at his place or by means of videoconference, or that hearing him in this way would prejudice his rights or the proper conduct of the criminal investigation.

(1<sup>2</sup>) If the suspension of the criminal investigation is not ordered, the hearing of the suspect or defendant at his place or by videoconference can only take place in the presence of the lawyer.

(2) The suspension of the criminal investigation is also ordered in the situation where there is a temporary legal impediment to initiating the criminal action against a person.

(3) The suspension of the criminal investigation is also ordered during the mediation procedure, according to the law.

### **Article 313: Task of the prosecuting body during the suspension**

(1) After the suspension of the criminal investigation, the prosecutor returns the case file to the criminal investigation body or may order its takeover.

(2) The order suspending the criminal investigation shall be communicated to the parties and the main subjects of the proceedings.

(3) While the prosecution is suspended, the criminal investigation bodies continue to carry out all acts whose performance is not prevented by the situation of the suspect or defendant, in compliance with the right of defense of the parties or subjects of the proceedings. Upon resumption of the criminal investigation, the acts performed during the suspension may be redone, if possible, at the request of the suspect or defendant.

(4) The criminal investigation body is obliged to verify periodically, but no later than 3 months from the date of the suspension order, whether the cause that led to the suspension of the criminal investigation still exists.

## **SECTION 3: Closing and dropping the criminal prosecution**

#### **Article 314: Non-prosecution and non-prosecution solutions**

**(1) After examining the notification, when he finds that the necessary evidence has been collected according to the provisions of Article 285, the prosecutor, at the proposal of the criminal investigation body or ex officio, resolves the case by order, ordering:**

- a) dismissal, when it does not bring criminal proceedings or, as the case may be, extinguishes the criminal proceedings brought, as one of the cases referred to in Article 16(1) exists;
- b) waiving the criminal prosecution, when there is no public interest in continuing the criminal investigation.

**(2) The prosecutor draws up a single ordinance even if the work of the case concerns several facts or several suspects or defendants and even if they are given different solutions according to paragraph (1).**

#### **Article 315: Ranking**

**(1) The classification is ordered when:**

- a) the criminal investigation cannot be initiated, as the essential substantive and formal conditions of the notification are not met;
- b) there is one of the cases referred to in Article 16(1).

**(2) The closure order shall contain the particulars provided for in Article 286(2), as well as provisions regarding:**

- a) lifting or maintaining precautionary measures; these measures cease by law if the injured person does not file an action before the civil court, within 30 days from the communication of the solution;
- b) the return of the seized goods or the deposit;
- c) notification of the preliminary chamber judge with the proposal to take the security measure of the special confiscation;
- d) the notification of the preliminary chamber judge with the proposal of total or partial abolition of a document;
- e) referral to the judge of the preliminary chamber with the proposal to take or, as the case may be, to confirm, replace or terminate the security measures provided for in Article 109 or 110 of the Criminal Code, the provisions of Article 246(13) being duly applied;
- f) legal costs.

**(3) If during the criminal investigation one of the security measures provided by the law has been taken, it shall be mentioned.**

(4)The ordinance will also mention the legal termination of the preventive measure ordered in the case.

(5)The mention of the factual and legal reasons is mandatory only if the prosecutor does not endorse the arguments contained in the proposal of the criminal investigation body or if there was a suspect in the case.

#### **Article 316: Notice of Termination**

(1)The closure order shall be communicated in copy to the person who made the notification, to the suspect, to the defendant or, as the case may be, to other interested persons. If the ordinance does not include the factual and legal reasons, a copy of the report of the criminal investigation body shall also be communicated.

(2)If the defendant is remanded in custody, the prosecutor shall notify the administration of the place of detention by letter of the termination of the preventive detention measure by law, with a view to the immediate release of the defendant.

#### **Article 317: Return of the file to the criminal investigation body**

The prosecutor seized with the proposal for closure by the criminal investigation body, when he finds that the legal conditions for ordering the closure are not met or when he orders the partial closure and separates the case according to Article 46, returns the file to the criminal investigation body.

#### **Article 318: Dropping criminal prosecution**

(1)In the case of crimes for which the law provides for a fine or a prison sentence of no more than 7 years, the prosecutor may drop the criminal prosecution when he finds that there is no public interest in prosecuting the act.

(2)**The public interest is analyzed in relation to:**

- a)the content of the deed and the concrete circumstances of committing the deed;
- b)the manner and means of committing the act;
- c)the purpose pursued;
- d)the consequences produced or that could have been produced by the commission of the crime;
- e)the efforts of the criminal prosecution bodies necessary for the conduct of the criminal trial in relation to the seriousness of the deed and the time elapsed since its commission was committed;
- f)the procedural attitude of the injured person;
- g)the existence of a manifest disproportion between the expenses that would be involved in the

conduct of the criminal trial and the seriousness of the consequences produced or that could have occurred by the commission of the crime.

(3) When the perpetrator of the act is known, the person of the suspect or defendant, the conduct prior to the commission of the crime, the attitude of the suspect or defendant after the commission of the crime and the efforts made to remove or reduce the consequences of the crime are also taken into account when assessing the public interest.

(4) When the perpetrator of the act is not identified, the criminal prosecution may be dropped only in relation to the criteria provided in paragraph (2) letters a), b), e) and g).

(5) It is not possible to order the abandonment of the criminal prosecution for the crimes that resulted in the death of the victim.

**(6) The prosecutor may, after consulting the suspect or defendant, order the suspect or defendant to fulfil one or more of the following obligations:**

a) to remove the consequences of the criminal act or to repair the damage caused or to agree with the civil party a way of repairing it;

b) publicly apologize to the injured person;

**c) to perform unpaid work for the benefit of the community, for a period of between 30 and 60 days, unless, due to the state of health, the person cannot perform this work;**

\*) In the event of the waiver of criminal prosecution against a suspect or minor defendant who has reached the age of 16, the obligation to perform unpaid work for the benefit of the community may be ordered against him.

d) attend a counseling program.

(7) If the prosecutor orders the suspect or defendant to fulfill the obligations provided for in paragraph (6), he shall establish by ordinance the term by which they are to be fulfilled, which may not exceed 6 months or 9 months for obligations assumed by mediation agreement concluded with the civil party and which runs from the service of the ordinance.

(8) The order waiving prosecution shall include, where appropriate, the particulars referred to in Article 286(2) as well as provisions on the measures ordered pursuant to paragraph 6 of this Article and Article 315(2) to (4), the period within which the obligations referred to in paragraph 6 of this Article must be fulfilled and the penalty for failure to submit evidence to the prosecutor, as well as court costs.

(9) In case of failure to perform the obligations in bad faith within the term provided for in paragraph (7), the prosecutor shall revoke the order. The task of proving the fulfillment of the

obligations or presenting the reasons for their non-fulfillment lies with the suspect or the defendant.

(10)The ordinance by which the criminal prosecution was ordered to be dropped is verified in terms of legality and soundness by the first prosecutor of the prosecutor's office or, as the case may be, by the general prosecutor of the prosecutor's office attached to the court of appeal, and when it has been drawn up by the latter, the verification is made by the hierarchically superior prosecutor. When it has been drawn up by a prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice, the ordinance is verified by the chief prosecutor of the section, and when it has been drawn up by him, the verification is made by the prosecutor general of this prosecutor's office.

(11)The provisions of paragraph 10 shall apply accordingly when the hierarchy of functions in a structure of the prosecutor's office is established by special law.

(12)The order ordering the withdrawal of criminal prosecution, verified according to paragraph (10), shall be communicated in copy, as the case may be, to the person who made the notification, to the parties, to the suspect, to the injured person and other interested persons and shall be sent, for confirmation, within 10 days from the date on which it was issued, to the judge of the preliminary chamber of the court to which it would be responsible, According to the law, the competence to judge the case in the first instance.

(13)The judge of the preliminary chamber shall set the deadline for the resolution and shall order the summons of the persons referred to in paragraph 12.

(14)The judge of the preliminary chamber shall decide by reasoned conclusion, in the council chamber, summoning the persons referred to in paragraph (12), as well as with the participation of the prosecutor, on the legality and validity of the decision to drop the criminal prosecution. The non-appearance of the legally summoned persons does not prevent the resolution of the confirmation request.

**(15)The judge of the preliminary chamber verifies the legality and validity of the decision to drop the criminal prosecution on the basis of the works and material in the criminal investigation file and the new documents submitted and, in conclusion, admits or rejects the request for confirmation made by the prosecutor. If the application for confirmation is rejected, the judge of the preliminary chamber shall:**

a)abolishes the solution of dropping the criminal prosecution and sends the case to the prosecutor in order to start or complete the criminal investigation or, as the case may be, to

initiate the criminal action and complete the criminal investigation;

b) abolishes the solution of dropping the criminal prosecution and orders the closure.

(16) The conclusion by which one of the solutions provided for in paragraph (15) was pronounced is final. If the judge has rejected the request for confirmation of the decision to drop the criminal prosecution, a new waiver can no longer be ordered, regardless of the reason invoked.

### **Article 319: Continuation of the criminal investigation at the request of the suspect or defendant**

(1) In case of dismissal following the finding that the amnesty, the statute of limitations, the withdrawal of the preliminary complaint or the existence of a cause of non-punishment has occurred, the suspect or defendant may request, within 20 days from the receipt of the copy of the order settling the case, the continuation of the criminal investigation.

(2) If, after the submission of the application within the legal period, a different case of non-indictment is found than those provided for in paragraph (1), the prosecutor shall order the case to be closed in relation to him.

(3) If the situation provided for in paragraph (2) is not ascertained, the first solution of non-indictment shall be adopted.

### **Article 320: How to notify the prosecutor for the resolution of the case**

The criminal investigation body that ascertains the incidence of one of the cases that determines the closure of the case or the abandonment of the criminal prosecution sends the file to the prosecutor with an appropriate proposal.

## **SECTION 4: Termination of the criminal investigation**

### **Article 321: Submission of the case concerning the defendant**

(1) As soon as the criminal investigation is over, the investigative body submits the file to the prosecutor, accompanied by a report.

(2) The report must include the particulars provided for in Article 286(4), as well as additional data regarding the material means of evidence and the measures taken with regard to them during the criminal investigation, as well as the place where they are located.

(3) When the criminal investigation concerns several facts or several defendants, the report must include the particulars indicated in paragraph (2) regarding all the facts and all the defendants

and, if applicable, it must indicate for which facts or perpetrators it is proposed to close or drop the prosecution.

### **Article 322: Verification of criminal prosecution works**

(1) Within 15 days from the receipt of the file sent by the criminal investigation body pursuant to Articles 320 and 321 (1), the prosecutor shall proceed to verify the proceedings of the criminal investigation and rule on them.

(2) The resolution of the cases in which they are arrested is done urgently and especially.

### **Article 323: Return of the case or referral to another prosecution body**

(1) In the event that the prosecutor finds that the criminal investigation is not complete or that it has not been carried out in compliance with the legal provisions, he shall return the case to the body that carried out the criminal investigation in order to complete or resume the criminal investigation or send the case to another criminal investigation body in accordance with the provisions of Article 302.

(2) When the completion or resumption of the criminal investigation is necessary only with regard to certain facts or to some defendants, and the separation is not possible, the prosecutor orders the restitution or referral of the entire case to the criminal investigation body.

(3) The order for restitution or referral shall include, in addition to the particulars referred to in Article 286(2), an indication of the criminal prosecution acts to be carried out or redone, the facts or circumstances to be established and the means of proof to be adduced.

## **SECTION 5: Provisions regarding the prosecution by the prosecutor**

### **Article 324: Prosecution by the prosecutor**

(1) The criminal prosecution is mandatorily carried out by the prosecutor in the cases provided for by law.

(2) The prosecutor may order the taking over of any case in which he exercises supervision, regardless of its stage, in order to carry out the criminal investigation.

(3) In cases where the prosecutor conducts the criminal investigation, he may delegate, by ordinance, to the criminal investigation bodies the performance of criminal prosecution acts.

(4) The initiation of criminal proceedings, the taking or proposal of measures restricting rights and freedoms, the approval of evidence or the ordering of other procedural acts or measures may not be the subject of the delegation provided for in paragraph (3).

**Article 325: Taking over cases from other prosecutors' offices**

(1)The prosecutors of the superior hierarchical prosecutor's office may take over, in order to carry out or supervise the criminal investigation, cases within the competence of the hierarchically lower prosecutor's offices, by the reasoned order of the head of the superior hierarchical prosecutor's office.

(2)The provisions of paragraph (1) shall also apply accordingly when the law provides for another hierarchical subordination.

**Article 326: Referral of the case to another public prosecutor's office**

When there is a reasonable suspicion that the criminal prosecution activity is affected by the circumstances of the case or the capacity of the parties or the main subjects of the proceedings or there is a danger of disturbance of public order, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, at the request of the parties, of a main procedural subject or ex officio, may refer the case to a prosecutor's office of equal rank, the provisions of Articles 73 and 74 being duly applicable.

**CHAPTER V: Solving cases and notifying the court****Article 327: Solving the causes**

When the prosecutor finds that the legal provisions guaranteeing the finding of the truth have been complied with, that the criminal investigation is complete and there is the necessary evidence and legally administered, the prosecutor:

- a) issues an indictment ordering the indictment, if it appears from the criminal investigation material that the act exists, that it was committed by the defendant and that he is criminally liable;
- b) issues an ordinance by which it closes or renounces the prosecution, according to the legal provisions.

**Article 328: Contents of the indictment**

(1)The indictment shall be limited to the act and the person for which the criminal investigation was carried out and shall duly include the particulars provided for in Article 286(2), the data concerning the act charged against the defendant and its legal classification, the evidence and means of proof, the legal costs, the particulars provided for in Articles 330 and 331, the order for indictment, as well as other mentions necessary for the resolution of the case. The indictment is verified in terms of legality and soundness by the first prosecutor of the prosecutor's office or, as

the case may be, by the prosecutor general of the prosecutor's office attached to the court of appeal, and when it has been drawn up by him, the verification is made by the hierarchically superior prosecutor. When it has been drawn up by a prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice, the indictment is verified by the chief prosecutor of the section, and when it has been drawn up by him, the verification is made by the prosecutor general of this prosecutor's office. In cases involving detainees, the verification shall be carried out urgently and before the expiry of the duration of the preventive detention.

(2)The indictment shows the name and surname of the persons to be summoned in court, indicating their capacity in the trial, and the place where they are to be summoned.

(3)The prosecutor draws up a single indictment even if the criminal investigation works concern several facts or several suspects and defendants and even if they are given different resolutions, according to Article 327.

#### **Article 329: The act of initiating the court**

(1)The indictment is the act of notifying the court.

(2)The indictment accompanied by the case file and a necessary number of certified copies of the indictment, in order to be communicated to the defendants, shall be sent to the court competent to judge the case on the merits.

(3)In the event that the defendant does not know Romanian, measures shall be taken for the authorized translation of the indictment, which shall be attached to the documents mentioned in paragraph (2). When there are no certified translators, the translation of the indictment is done by a person who can communicate with the defendant.

(4)The defendant, a Romanian citizen belonging to a national minority, may request to be served with a translation of the indictment into his mother tongue.

#### **Article 330: Provisions on preventive or precautionary measures**

When the prosecutor orders the indictment of the defendant, the indictment may also include the proposal to take, maintain, revoke or replace a preventive measure or a precautionary measure.

#### **Article 331: Provisions on safety measures**

If he considers that it is necessary to take a medical safety measure against the defendant, the prosecutor, by indictment, proposes to take that measure.

### **CHAPTER VI: Resumption of criminal prosecution**

### **Article 332: Cases of resumption of criminal prosecution**

**(1) The criminal investigation is resumed in the event of:**

- a) termination of the cause for suspension;
- b) return of the case by the judge of the preliminary chamber;
- c) reopening of the criminal investigation.

(2) The resumption of the criminal investigation cannot take place if a case has arisen that prevents the initiation of the criminal action or the continuation of the criminal trial.

### **Article 333: Resumption of criminal prosecution after suspension**

The resumption of the criminal investigation after the suspension takes place when it is found by the prosecutor or the criminal investigation body, as the case may be, that the cause that determined the suspension has ceased. The criminal investigation body that finds that the suspension case has ceased submits the prosecutor's file to order the resumption.

### **Article 334: Resumption of criminal prosecution in case of restitution**

(1) The criminal proceedings shall be resumed when the preliminary chamber judge has ordered the case to be returned to the public prosecutor's office pursuant to Article 346(3)(b).

(2) If the decision is based on the provisions of Article 346(3)(a), the resumption shall be ordered by the head of the prosecutor's office or the hierarchically superior prosecutor provided for by law, only when he finds that criminal prosecution is necessary to remedy the irregularity. The order to resume the criminal investigation shall also mention the acts to be performed.

(3) In the cases of restitution referred to in paragraphs (1) and (2), the prosecutor shall carry out the criminal investigation or, as the case may be, shall refer the case to the investigative body, ordering by ordinance the criminal prosecution acts to be carried out.

### **Article 335: Resumption in case of reopening of criminal proceedings**

**(1) If the hierarchically superior prosecutor to the one who ordered the solution subsequently finds that the circumstance on which the closure was based did not exist, he shall invalidate the ordinance and order the reopening of the criminal investigation. The provisions of Article 317 shall apply accordingly.**

\*) In the unitary interpretation and application of the provisions of Article 335 (1) of the Code of Criminal Procedure regarding the resumption in case of reopening of the criminal investigation, by Decision no. 23/2020 The High Court of Cassation and Justice establishes that:

The Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, in the event of the invalidation of a decision ordered by a prosecutor from the subordinate prosecutor's offices or the specialized structures of the Prosecutor's Office attached to the High Court of Cassation and Justice (National Anticorruption Directorate, Directorate for the Investigation of Organized Crime and Terrorism), does not in all cases have the capacity expressly provided for by Article 335(1) of the Code of Procedure in which reference is made to "the hierarchical prosecutor superior to the one who ordered the solution".

(2) If new facts or circumstances have arisen from which it results that the circumstance on which the closure was based has disappeared, the prosecutor revokes the order and orders the reopening of the criminal investigation.

(3) When the prosecutor finds that the suspect or defendant has not fulfilled his obligations under Article 318 (6) in bad faith, he shall revoke the order and order the reopening of the criminal investigation.

(4) The reopening of the criminal investigation is subject to confirmation by the judge of the preliminary chamber, within a maximum of 3 days, under penalty of nullity. The judge of the preliminary chamber decides by reasoned conclusion, in the council chamber, summoning the suspect or, as the case may be, the defendant and with the participation of the prosecutor, on the legality and validity of the ordinance ordering the reopening of the criminal investigation. The non-appearance of the legally summoned persons does not prevent the resolution of the confirmation request.

(4<sup>1</sup>) The judge of the preliminary chamber, solving the request for confirmation, verifies the legality and validity of the ordinance ordering the reopening of the criminal investigation on the basis of the works and material in the criminal investigation file and any new documents presented. The conclusion of the preliminary chamber judge is final.

(5) If the closure has been ordered, the reopening of the criminal investigation also takes place when the judge of the preliminary chamber has admitted the complaint against the solution and has sent the case to the prosecutor in order to complete the criminal investigation. The orders of the preliminary chamber judge are binding on the criminal investigation body.

(6) If the hierarchically superior prosecutor to the one who ordered the solution invalidates the decision of non-indictment and orders the reopening of the criminal investigation, prior to the communication of the ordinance containing this solution, the reopening of the criminal investigation is not subject to confirmation by the judge of the preliminary chamber.

## **CHAPTER VII: Complaint against criminal prosecution measures and acts**

### **Article 336: Right to lodge a complaint**

(1) Any person may lodge a complaint against the measures and acts of criminal prosecution, if they have harmed his legitimate interests.

(2) The complaint is addressed to the prosecutor who supervises the activity of the criminal investigation body and is submitted either directly to him or to the criminal investigation body.

(3) The lodging of the complaint shall not suspend the enforcement of the measure or act which is the subject of the complaint.

### **Article 337: Obligation to lodge a complaint**

When the complaint has been submitted to the criminal investigation body, it is obliged to forward it to the prosecutor with his explanations within 48 hours from its receipt, when necessary.

### **Article 338: Deadline for resolution**

The prosecutor is obliged to resolve the complaint within 20 days of receipt and to immediately communicate to the person who made the complaint a copy of the ordinance.

### **Article 339: Complaint against the prosecutor's acts**

(1) The complaint against the measures taken or the acts carried out by the prosecutor or carried out on the basis of the instructions given by him shall be resolved, as the case may be, by the first prosecutor of the prosecutor's office, by the general prosecutor of the prosecutor's office attached to the Court of Appeal, by the chief prosecutor of the section of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) If the measures and acts are of the Chief Prosecutor, of the General Prosecutor of the Prosecutor's Office attached to the Court of Appeal, of the Chief Prosecutor of the Section of the Prosecutor's Office attached to the High Court of Cassation and Justice or were taken or carried out on the basis of the orders given by them, the complaint shall be resolved by the hierarchically superior prosecutor.

(3) The provisions of paragraphs (1) and (2) shall be applied accordingly when the hierarchy of functions in a structure of the prosecutor's office is established by special law.

(4) In the case of closure solutions, the complaint shall be made within 20 days from the communication of the copy of the document by which the solution was ordered.

**(5)The ordinances by which complaints against solutions, acts or measures are solved can no longer be appealed with a complaint to the superior hierarchical prosecutor and are communicated to the person who made the complaint and to the other interested persons.**

\*) By Decision no. 9/2022, the High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that the judicial body competent to settle the complaint of the dissatisfied person in the event that the hierarchical prosecutor superior to the one who issued the dismissal decision admitted it, invalidated the case prosecutor's solution and gave a new dismissal solution, for reasons other than those invoked by the petitioner, in accordance with the provisions of Article 339(5) of the Code of Criminal Procedure, is the judge of the preliminary chamber.

(6)The provisions of Articles 336 to 338 shall be applied accordingly, unless otherwise provided by law.

#### **Article 340: Complaint against non-prosecution or non-prosecution solutions**

(1)A person whose complaint against the decision to dismiss the case, ordered by order or indictment, has been rejected in accordance with Article 339 may lodge a complaint, within 20 days from the date of communication, to the judge of the preliminary chamber of the court whose jurisdiction would be, according to the law, competent to judge the case in the first instance.

(2)If the complaint has not been resolved within the period provided for in Article 338, the right to lodge a complaint may be exercised at any time after the expiry of the 20-day period in which the complaint was to be resolved, but no later than 20 days from the date of communication of the resolution method.

(3)The complaint must include: the name, surname, personal identification number, capacity and domicile of the petitioner or, for the legal person, the name, headquarters, indication of the legal or conventional representative, the date of the contested ordinance or indictment, the file number and the name of the prosecutor's office, indication of the reasons for the complaint.

(4)The provisions of Article 289(3) to (5) shall apply accordingly.

(5)If it does not include the date of the contested order or indictment, the file number and the name of the prosecutor's office, the complaint shall be returned administratively, in which case the complaint may be completed no later than 20 days from the date of restitution.

#### **Article 341: Resolution of the complaint by the judge of the preliminary chamber**

(1)Once the complaint has been registered with the competent court, it shall be sent on the same day to the judge of the pre-trial chamber. The wrongly corrected complaint shall be sent

administratively to the competent judicial body.

(2)The judge of the preliminary chamber shall set the deadline for resolution and shall order the summons of the petitioner and the respondents and the acknowledgement of the prosecutor, with the mention that they may submit written notes on the admissibility or merits of the complaint. If the criminal action has been initiated in the case, the petitioner and the respondents may make requests and raise exceptions also regarding the legality of the taking of evidence or the conduct of the criminal investigation.

(3)The prosecutor shall, within 3 days from the receipt of the communication referred to in paragraph (2), transmit the case file to the judge of the preliminary chamber.

(4)If the complaint has been submitted to the prosecutor, he will forward it, together with the case file, to the competent court.

(5)The complaint shall be resolved in the council chamber, with the participation of the prosecutor, by reasoned conclusion, pronounced in the council chamber. The failure to appear of the persons summoned according to paragraph (2) does not prevent the resolution of the complaint.

(5<sup>1</sup>)The judge of the preliminary chamber, in deciding on the complaint, in the case referred to in paragraph 6, shall verify the contested solution on the basis of the documents and material in the criminal investigation file and any new documents submitted, and in the case referred to in paragraph 7, on the basis of the documents and material in the criminal investigation file and any other means of evidence.

**(6)In cases in which the initiation of the criminal action has not been ordered, the judge of the preliminary chamber may order one of the following solutions:**

- a)dismisses the complaint as late or inadmissible or, as the case may be, as unfounded;
- b)admits the complaint, abolishes the contested solution and sends the case to the prosecutor in order to start or complete the criminal investigation or, as the case may be, to initiate the criminal action and complete the criminal investigation;
- c)admits the complaint and changes the legal basis of the appealed dismissal solution, if this does not create a more difficult situation for the person who made the complaint.**

\*) The provisions of Article 341(6)(c) and, by extension, of Article 341(7)(2)(d) of the Code of Criminal Procedure are unconstitutional by preventing access to justice in the case of decisions to drop criminal prosecution.

**(7)In cases where criminal proceedings have been ordered, the judge of the preliminary chamber:**

1. dismisses the complaint as out of time or inadmissible;
2. **verifies the legality of the taking of evidence and the conduct of the criminal investigation, excludes the evidence illegally administered or, as the case may be, sanctions according to Articles 280-282 the acts of criminal investigation carried out in violation of the law and:**

a) dismisses the complaint as unfounded;

b) admits the complaint, abolishes the contested solution and sends the case to the prosecutor in order to complete the criminal investigation;

c) admits the complaint, abolishes the contested solution and orders the start of the trial on the facts and persons for whom, during the criminal investigation, the criminal action was initiated, when the legally administered evidence is sufficient, sending the file for random assignment;

d) **admits the complaint and changes the legal basis of the appealed dismissal solution, if this does not create a more difficult situation for the person who made the complaint.**

\*) The provisions of Article 341(6)(c) and, by extension, of Article 341(7)(2)(d) of the Code of Criminal Procedure are unconstitutional by preventing access to justice in the case of decisions to drop criminal prosecution.

(7<sup>1</sup>) If, after notifying the preliminary chamber judge, the hierarchically superior prosecutor admits the complaint and orders the invalidation of the appealed solution, the complaint will be rejected as devoid of purpose. The legal expenses advanced by the state remain the responsibility of the state.

(8) The conclusion by which one of the solutions provided for in paragraph (6), paragraph (7) item 1, item 2 letter a), b) and d) and paragraph (7<sup>1</sup>) was pronounced is final.

(9) In the case provided for in paragraph (7) item 2 letter c), within 3 days from the communication of the conclusion, the prosecutor, the petitioner and the respondents may object, reasoned, to the order to start the trial, as well as to the manner of solving the exceptions regarding the legality of the administration of evidence and the conduct of the criminal investigation.

(10) **The appeal shall be submitted to the judge who dealt with the complaint and shall be submitted for resolution to the judge of the preliminary chamber of the hierarchically superior court or, when the court seized of the complaint is the High Court of Cassation and Justice, to the competent panel according to the law, which shall resolve it in the council chamber, summoning the petitioner and the respondents and with the participation of the prosecutor, by reasoned conclusion, pronounced in the council chamber, being able to order one of the following solutions:**

a) rejects the appeal as late, inadmissible or, as the case may be, as unfounded, and maintains the order to start the trial;

b) admits the appeal, abolishes the conclusion and retries the complaint according to paragraph (7) item 2, if the exceptions regarding the legality of the taking of evidence or of conducting the criminal investigation have been wrongly resolved.

(11) The evidence that was excluded cannot be taken into account in the trial of the merits of the case.

## **TITLE II: Pre-trial chamber**

### **Article 342: Subject-matter of the proceedings in the pre-trial chamber**

The object of the preliminary chamber's procedure is to verify, after the indictment, the competence and legality of the referral to the court, as well as to verify the legality of the taking of evidence and the performance of acts by the criminal prosecution bodies.

### **Article 343: Duration of the proceedings in the pre-trial chamber**

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

### **Article 344: Preliminary measures**

(1) After the indictment is brought before the court, the case is randomly assigned to the preliminary chamber judge.

(2) The certified copy of the indictment and, as the case may be, its authorized translation shall be served on the defendant at the place of detention or, as the case may be, at the address where he lives or at the address where he requested the service of the procedural documents. The defendant, the other parties and the injured person are informed of the subject matter of the proceedings in the pre-trial chamber, the right to hire a lawyer and the deadline within which, from the date of communication, they may formulate in writing requests and exceptions regarding the legality of the referral to the court, the legality of the taking of evidence and the performance of acts by the criminal prosecution bodies. The deadline is set by the judge of the preliminary chamber, depending on the complexity and particularities of the case, but it cannot be shorter than 20 days.

(3) In the cases referred to in Article 90, the judge of the preliminary chamber shall take measures to appoint a defence counsel ex officio and shall determine, depending on the complexity and particularities of the case, the time limit within which he may formulate in writing requests and

exceptions regarding the legality of the referral to the court, the legality of the taking of evidence and the performance of acts by the criminal prosecution bodies, which cannot be shorter than 20 days.

(4) Upon expiry of the time limits provided for in paragraphs (2) and (3), if requests or exceptions have been formulated or if he has raised exceptions ex officio, the judge of the preliminary chamber shall set the deadline for their resolution, summoning the parties and the injured person and with the participation of the prosecutor.

### **Article 345: Procedure in the pre-trial chamber**

(1) Within the time limit established in accordance with Article 344(4), the judge of the preliminary chamber shall decide on the applications and exceptions made, as well as the exceptions raised ex officio, in the council chamber, on the basis of the documents and material in the criminal investigation file and any other means of evidence, hearing the conclusions of the parties and the injured person, if present, as well as of the prosecutor.

(1<sup>1</sup>) If the notification is based on evidence constituting classified information, the judge of the preliminary chamber shall request the competent authority, as a matter of urgency, to declassify it or to move it to a lower level of classification and, as the case may be, shall grant the defence counsel of the parties and the injured person access to the classified information, subject to the possession of the access authorisation provided by law. If they do not have the access authorisation provided by law, and the parties or, as the case may be, the injured person does not appoint another defence counsel who holds the authorisation provided by law, the preliminary chamber judge shall take steps to appoint court-appointed lawyers who hold this authorisation.

(1<sup>2</sup>) After consulting the competent authority, the preliminary chamber judge may, in conclusion, refuse access to classified information on a reasoned basis if it could lead to serious endangerment of a person's life or fundamental rights or if the refusal is strictly necessary for the defence of national security or other important public interest. In this case, the classified information cannot be used to pronounce a conviction, to waive the application of the sentence or to postpone the application of the sentence in question.

(2) The judge of the preliminary chamber pronounces in the council chamber, by conclusion, which is immediately communicated to the prosecutor, the parties and the injured person.

**(3) If the judge of the preliminary chamber finds irregularities in the act of notification or if he sanctions according to Articles 280-282 the acts of criminal prosecution carried out in violation of the law or if he excludes one or more pieces of evidence administered, within 5 days from the communication of the conclusion, the prosecutor shall remedy the irregularities of the act of**

**notification and shall notify the judge of the preliminary chamber whether he maintains the order of indictment or requests restitution of the case.**

\*) By DECISION no. 23/2022, the HCCJ admits the complaint filed by the Tribunal of Brasov - Criminal Section requesting the issuance of a preliminary decision for the resolution of the following question of law: "Whether the act must be verified for legality and soundness by the hierarchically superior prosecutor and what is the deadline by which this verification could take place" and establishes the following:

"The act by which the prosecutor remedies the irregularities of the indictment, under the conditions provided for in Article 345 (3) of the Code of Criminal Procedure, shall not be subject to verification for legality and soundness by the hierarchically superior prosecutor."

#### **Article 346: Solutions**

(1) If no requests and exceptions have been made within the time limits provided for in Article 344 (2) and (3) and no exceptions have been raised ex officio, at the expiry of those periods, the judge of the preliminary chamber shall find that the matter has been brought before the court, the taking of evidence and the criminal prosecution proceedings have been brought and the proceedings have been commenced. The judge of the preliminary chamber shall rule in the council chamber, without summoning the parties and the injured person and without the participation of the prosecutor, by conclusion, which shall be communicated to them immediately.

(2) If he rejects the requests and exceptions invoked or raised ex officio, under the conditions of Article 345 (1) and (2), by the same conclusion, the judge of the preliminary chamber shall find the legality of the referral to the court, the taking of evidence and the performance of the criminal prosecution acts and shall order the commencement of the trial.

**(3) The judge of the preliminary chamber returns the case to the prosecutor's office if:**

a) the indictment is issued by a prosecutor who is not competent according to the subject matter or the quality of the person or is irregularly drawn up, and the irregularity has not been remedied by the prosecutor within the period provided for in Article 345 (3), if the irregularity makes it impossible to establish the object or limits of the trial;

b) excluded all evidence adduced in the course of the criminal investigation;

c) The prosecutor shall request the return of the case, under the conditions of Article 345 paragraph (3), or shall not respond within the time limit provided for by the same provisions.

(4) In all other cases in which he has found irregularities in the act of notification, excluded one or more pieces of evidence administered, or sanctioned according to Articles 280-282 the acts of

criminal prosecution carried out in violation of the law, the judge of the preliminary chamber shall order the commencement of the trial.

(4<sup>1</sup>) In the cases referred to in paragraph 3 (a) and (c) and paragraph 4, the judge of the preliminary chamber shall pronounce by conclusion, in the council chamber, with the summons of the parties and the injured person and with the participation of the prosecutor. The conclusion shall be immediately communicated to the prosecutor, the parties and the injured person.

(4<sup>2</sup>) In the case referred to in paragraph 3(b), the case shall be returned to the public prosecutor by the conclusion provided for in Article 345(2).

(5) The excluded evidence cannot be taken into account in the trial on the merits of the case.

(6) If the judge of the preliminary chamber considers that the court seized does not have jurisdiction, he shall proceed in accordance with Articles 50 and 51, which shall be applied accordingly.

(7) The judge of the preliminary chamber who ordered the commencement of the trial shall exercise the function of judge in the case.

#### **Article 347: Appeal**

(1) Within 3 days from the communication of the conclusions provided for in Article 346 (1) to (4<sup>2</sup>), the prosecutor, the parties and the injured person may appeal. The appeal may also concern the manner of solving the requests and exceptions.

(2) The appeal shall be judged by the judge of the preliminary chamber of the court hierarchically superior to the one seized. When the court seized is the High Court of Cassation and Justice, the appeal is judged by the competent panel, according to the law.

(3) The appeal shall be resolved in the council chamber, with the summons of the parties and the injured person and with the participation of the prosecutor. The provisions of Articles 345 and 346 shall apply accordingly.'

(4) In the resolution of the appeal, no requests or exceptions other than those invoked or raised ex officio before the judge of the preliminary chamber in the procedure carried out before the court seized with the indictment may not be invoked or raised ex officio, except in cases of absolute nullity.

#### **Article 348: Preventive measures in pre-trial chamber proceedings**

In the preliminary chamber procedure, the preliminary chamber judge of the court seized of the indictment shall rule on the preventive measures.

## **TITLE III: Judgment**

### **CHAPTER I: General provisions**

#### **Article 349: The role of the court**

(1) The court resolves the case brought to trial with the guarantee of respect for the rights of the subjects of the proceedings and ensuring the administration of evidence for the complete clarification of the circumstances of the case in order to find out the truth, in full compliance with the law.

(2) The court may decide the case only on the basis of the evidence adduced at the stage of the criminal investigation, if the defendant so requests and fully acknowledges the facts held against him and if the court considers that the evidence is sufficient to find out the truth and the fair resolution of the case, unless the criminal action concerns an offence punishable by life imprisonment.

#### **Article 350: The place where the trial takes place**

(1) The trial takes place at the court's headquarters.

(2) For good reasons, the court may order that the trial be held in another place.

#### **Article 351: Orality, Immediacy and Contradiction**

(1) The trial of the case shall be made before the court constituted according to the law and shall be conducted in a hearing, oral, directly and in adversarial proceedings.

(2) The court is obliged to discuss the requests of the prosecutor, the parties or the other subjects of the proceedings and the exceptions raised by them or ex officio and to rule on them by reasoned conclusion.

(3) The court also rules on all measures taken during the trial.

#### **Article 352: Publicity of the court hearing**

(1) The court hearing is public, except in the cases provided for by law. The meeting held in the council chamber is not public.

(2) Minors under 18 years of age may not attend the court hearing, unless they are parties or witnesses, as well as armed persons, except for the personnel who ensure security and order.

(3) If the trial in a public hearing could prejudice the interests of the state, morals, dignity or private life of a person, the interests of minors or justice, the court, at the request of the prosecutor, the

parties or of its own motion, may declare a non-public hearing for the entire course or for a certain part of the trial of the case.

(3<sup>1</sup>) Ex officio or at the express request of the injured person or the prosecutor, the hearing shall be declared non-public for its entire course if the injured person is a minor and is the victim of one of the offences provided for in Articles 197, 199, 209-216<sup>1</sup>, 218, 218<sup>1</sup>, 219, 219<sup>1</sup>, 221, 222, 223 and 374 of the Criminal Code.

(3<sup>2</sup>) At the express request of the injured person or the prosecutor, the hearing is declared non-public for its entire course if the trial in a public hearing could prejudice state interests, morals, dignity or private life of a person.

(4) The court may also declare a hearing non-public at the request of a witness if his or her hearing in open court would undermine the safety or dignity or private life of the witness or his family members, or at the request of the prosecutor, the injured person or the parties, if a public hearing would jeopardise the confidentiality of information.

(5) The declaration of the non-public hearing shall be made in a public hearing, after hearing the parties present, the injured person and the prosecutor. The court's order is enforceable.

(6) During the non-public hearing, only the parties, the injured person, their representatives, lawyers and other persons whose presence is authorized by the court are admitted to the courtroom.

(7) The parties, the injured person, their representatives, lawyers and experts designated in the case have the right to take cognizance of the documents and the content of the file.

(8) The president of the panel has the duty to inform the persons participating in the trial held in a non-public hearing the obligation to maintain the confidentiality of the information obtained during the trial.

(9) During the trial, the court may prohibit the publication and dissemination, by written or audiovisual means, of texts, drawings, photographs or images capable of revealing the identity of the injured person, the civil party, the civilly liable party or the witnesses, under the conditions provided for in paragraph (3) or (4).

(10) The information of public interest in the file shall be communicated in accordance with the law.

(11)

(text of Article 352(11) of Part 2, Title III, Chapter I was repealed on 09-Jul-2023 by Article I(41) of Law 201/2023)

(12)

(text of Article 352(12) of Part 2, Title III, Chapter I was repealed on 09-Jul-2023 by Article I, point 41 of Law 201/2023)

### **Article 353: Summons to court**

(1)The trial can take place only if the injured person and the parties are lawfully summoned and the procedure is completed. The defendant, the civil party, the civilly liable party and, as the case may be, their legal representatives shall be summoned ex officio by the court. The court may order the summoning of other procedural subjects when their presence is necessary for the resolution of the case. The appearance of the injured person or of the party in court, in person or through a representative or lawyer chosen or a lawyer ex officio, if the latter has contacted the person represented, covers any illegality that occurred in the summons procedure.

(2)A party or other principal subject of proceedings who is present in person, through a representative or counsel chosen at a time limit, as well as a person to whom, personally, by an elected representative or counsel or by the official or person in charge of receiving correspondence, has been lawfully given the summons for a trial term are no longer summoned for subsequent time limits, even if they are absent from any of these time limits, except in situations where their presence is mandatory. The soldiers and detainees are summoned ex officio at each term.

(3)For the first trial term, the injured person is summoned with the mention that he can file a civil party until the start of the judicial investigation.

(4)The non-appearance of the injured person and the summoned parties does not prevent the trial of the case. When the court considers that the presence of one of the missing parties is necessary, it may take measures for its presentation, postponing the trial for this purpose.

(5)(text of Article 353(5) of Part 2, Title III, Chapter I was repealed on 01-Feb-2014 by Article 102(229) of Title III of Law 255/2013)

(6)Throughout the trial, the injured person and the parties may request, orally or in writing, that the trial be held in absentia, in which case they will not be summoned for the next deadlines.

(7)When the trial is postponed, the parties and the other persons participating in the trial become aware of the new trial term.

(8)At the request of the persons who take cognizance of the deadline, the court gives them summonses, in order to serve as justification at the workplace, in order to present themselves at the

new deadline.

(9)The participation of the prosecutor in the trial of the case is mandatory.

(10)The panel entrusted with the trial of a criminal case may, ex officio or at the request of the parties or of the injured person, change the first term or the term taken into account, in compliance with the principle of continuity of the panel, in the situation in which, for objective reasons, the court cannot carry out its trial activity within the fixed term or in order to solve the case quickly. The change of the term is ordered by the resolution of the judge in the council chamber and without summoning the parties. The parties will be summoned immediately for the new deadline.

#### **Article 354: Composition of the court**

(1)The court judges in a panel of judges, whose composition is the one provided by law.

(2)The panel of judges must remain the same throughout the trial of the case. When this is not possible, the panel may change until the start of the debates.

(3)After the start of the debates, any change in the composition of the panel entails the resumption of the debates.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 354 establishes that the judge who closed the debates, remaining in ruling on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 355: Emergency Judgment in Cases with Pre-Trial Arrest or Under House Arrest**

(1)If the defendants are under preventive arrest or under house arrest, the trial is made urgently and especially, the trial terms being, as a rule, 7 days.

(2)For duly justified reasons, the court may grant shorter or longer time limits.

#### **Article 355<sup>1</sup>: Emergency Judgment in Cases with Minor Injured Persons**

Cases involving minor injured persons who are victims of one of the offences referred to in Articles 197, 199, 209-216, 218, 218, 219, 219, 221, 222, 223 and 374 of the Criminal Code shall be judged urgently and in particular, under the conditions of Article 355.

#### **Article 356: Defense Insurance**

- (1) The injured person, the defendant, the other parties and their lawyers have the right to take cognizance of the documents in the case throughout the trial.
- (2) Where the injured person or one of the parties is in detention, the President of the panel shall take measures to enable him or her to exercise the right referred to in paragraph 1 and to be able to contact his or her lawyer.
- (3) During the trial, the injured person and the parties are entitled to a single term for hiring a lawyer and preparing the defense.
- (4) If the injured person or one of the parties no longer benefits from the legal assistance provided by his or her chosen lawyer, the court may grant another deadline for hiring another lawyer and preparing the defence.
- (5) In the situations referred to in paragraphs 1 to 4, the granting of the facilities necessary for the preparation of the effective defence shall be in accordance with the observance of the reasonable time limit of the criminal proceedings.

#### **Article 357: Duties of the president of the panel**

- (1) The president of the panel conducts the sitting, fulfilling all the duties provided by law, and decides on the requests made by the prosecutor, the injured person and the parties, if their resolution is not given in the fall of the panel.
  - (2) During the trial, the president, after consulting the other members of the panel, may reject the questions formulated by the parties, the injured person and the prosecutor, if they are not conclusive and useful for the resolution of the case.
  - (3) The orders of the president of the panel are binding on all persons present in the meeting room.
- \*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 357 establishes that the judge who closed the debates, remaining in ruling on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 358: Summoning the case and appealing those summoned**

- (1) The president of the panel shall announce, according to the order on the hearing list, the case whose trial is in line, shall order the appeal of the parties and the other persons summoned and

shall ascertain which of them have appeared. In the case of absent participants, check whether they have been given the summons under the conditions of Article 260 and whether they have justified their absence in any way.

(2)The parties and the injured person may appear and participate in the trial even if they have not been summoned or have not received the summons, the president having the duty to establish their identity.

### **Article 359: Ensuring the order and solemnity of the meeting**

(1)The President shall ensure that the order and solemnity of the sitting are maintained and may take the necessary measures for this purpose.

(2)The President may limit public access to the hearing, taking into account the size of the courtroom.

(3)The parties and persons attending or participating in the court hearing are obliged to maintain the discipline of the hearing.

(4)When a party or any other person disturbs the meeting or disregards the measures taken, the president calls his attention to respect the discipline, and in case of repetition or serious misconduct, orders his removal from the room.

(5)The distant party or person is called to the room before the start of the debates. The President informs him of the essential acts carried out in absentia and reads the statements of those heard. If the party or person continues to disturb the sitting, the President may again order his or her removal from the Chamber, and the debates shall take place in the absence of the Chairperson.

(6)If the party continues to disturb the sitting and on the occasion of the pronouncement of the decision, the president of the panel may order his removal from the courtroom, in which case the decision shall be communicated to him.

### **Article 360: Finding of hearing offences**

(1)If, during the hearing, an act provided for by the criminal law is committed, the president of the panel of judges shall ascertain that act and identify the perpetrator. The conclusion of the hearing shall be sent to the competent prosecutor.

(2)If the prosecutor participates in the trial, he can declare that he is starting the criminal investigation, start the criminal action and detain the suspect or the defendant.

### **Article 361: Preparation of the court hearing**

(1)(the text of Article 361(1) of Part 2, Title III, Chapter I was repealed on 01-Feb-2014 by Article 102(234) of Title III of Law 255/2013)

(2)The president of the panel of judges has the duty to take all necessary measures in advance so that the trial of the case is not postponed by the trial deadline set.

(3)To this end, the files randomly assigned to the panels will be taken over by the president of the panel, who will take the necessary measures in order to prepare the trial, so as to ensure the speedy resolution of the case.

(4)In cases where legal aid is compulsory, the president of the panel will take steps to appoint the court-appointed lawyer.

(5)In the situation in which both the legal person and its legal representatives have the status of defendant in the same case, the president verifies whether the defendant legal person has appointed a representative, and if not, proceeds to appoint a representative from among the insolvency practitioners.

(6)Also, the president verifies the fulfillment of the provisions regarding the summons and, as the case may be, proceeds to complete or redo them.

(7)The president of the panel shall ensure that the list of cases set for trial is drawn up and posted to the court, 24 hours before the trial deadline.

(8)When drawing up the list, the date of entry of the cases before the court is taken into account, giving priority to the cases in which they are detained or placed under house arrest and those in respect of which the law provides that the trial is to be carried out urgently.

### **Article 362: Preventive measures during the trial**

(1)Throughout the course of the trial, until the decision is pronounced, the court shall rule, upon request or ex officio, on the taking, replacing, revocation or termination of preventive measures.

(2)In cases in which a preventive measure has been ordered against the defendant, the court is obliged to verify, throughout the trial, until the decision is pronounced, in a public hearing, the legality and validity of the preventive measure, proceeding according to the provisions of Article 208.

### **Article 363: Participation of the prosecutor in the trial**

(1)The participation of the prosecutor in the trial is mandatory.

(2)During the trial, the prosecutor exercises an active role, in order to find out the truth and to

comply with the legal provisions.

(3) During the trial, the prosecutor formulates requests, raises exceptions and draws conclusions.

The prosecutor's requests and conclusions must be reasoned.

(4) When the prosecutor considers that there are any of the causes that prevent the prosecution of criminal proceedings, as the case may be, concludes acquittal or termination of the criminal proceedings.

#### **Article 364: Participation of the defendant in the trial and his rights**

(1) The trial of the case takes place in the presence of the defendant. The bringing of the defendant in detention to trial is mandatory. The defendant deprived of liberty is also considered to be present who, with his consent and in the presence of the lawyer chosen or appointed ex officio and, as the case may be, also of the interpreter, participates in the trial by videoconference, at the place of detention.

(2) The trial can take place in the absence of the defendant if he is missing, evades the trial or has changed his address without bringing it to the attention of the judicial bodies and, following the verifications carried out, his new address is not known.

(3) The trial may also take place in the absence of the defendant if, although lawfully summoned, he is unjustifiably absent from the trial of the case.

(4) Throughout the trial, the defendant, including if deprived of liberty, may request, in writing, to be tried in absentia, being represented by his lawyer of his choice or ex officio. If the defendant in detention has requested to be tried in absentia, the court may order, upon request or ex officio, that he may make conclusions during the debates and be given the floor by videoconference, in the presence of the chosen counsel or ex officio.

(5) If it deems it necessary for the defendant to be present, the court may order the defendant to be brought with a warrant.

(6) The defendant may formulate requests, raise exceptions and make conclusions, including in the situation provided for in paragraph (1) of the final sentence.

#### **Article 365: Participation of the other parties in the trial and their rights**

(1) The civil party and the civilly liable party may be represented by a lawyer.

(2) The civil party and the civilly liable party may formulate requests, raise exceptions and make conclusions.

### **Article 366: Participation of the injured person and other procedural subjects in the trial and their rights**

- (1) The injured person may be represented by a lawyer.
- (2) The injured person can formulate requests, raise exceptions and make conclusions in the criminal side of the case.
- (3) Persons whose property is subject to confiscation may be represented by a lawyer and may make requests, raise objections and make conclusions on the confiscation measure.

### **Article 367: Suspension of the trial**

- (1) When it is found on the basis of a forensic expertise that the defendant suffers from a serious illness, which prevents him from participating in the trial, the court orders, by conclusion, the suspension of the trial until the state of health of the defendant allows him to participate in the trial.
  - (1<sup>1</sup>) The court orders the suspension of the trial only if, taking into account all the circumstances of the case, it considers that the suspect or defendant could not be heard at his place or by videoconference or that hearing him in this way would prejudice his rights or the proper conduct of the trial.
  - (1<sup>2</sup>) If the suspension of the trial is not ordered, the hearing of the suspect or defendant at the place where he is or by videoconference can only take place in the presence of the lawyer.
  - (2) If there are several defendants, and the basis for the suspension concerns only one of them and the separation is not possible, the suspension of the entire case is ordered.
  - (3) The suspension of the trial is also ordered during the mediation procedure, according to the law.
  - (4) The conclusion given in the first instance by which it was ordered regarding the suspension of the case may be appealed separately with an appeal to the hierarchically superior court within 24 hours from the pronouncement, for the prosecutor, the parties and the injured person present, and from the communication, for the parties or the injured person who are absent. The appeal shall be submitted to the court that pronounced the contested conclusion and shall be submitted, together with the case file, to the hierarchically superior court, within 48 hours from registration.
  - (5) The appeal does not suspend the execution and is judged within 3 days from the receipt of the file.
  - (6) The criminal trial is resumed ex officio as soon as the defendant can participate in the trial or in the conclusion of the mediation procedure, according to the law.
  - (7) The court is obliged to check periodically, but not later than 3 months, whether the cause that

determined the suspension of the trial still exists.

(8) If the defendant is under house arrest or is under preventive arrest, or the defendant has been ordered to be subject to judicial control or judicial control on bail, the provisions of Article 208 shall be applied accordingly.

(9) The raising of an exception of unconstitutionality does not suspend the trial of the case.

### **Article 368: Suspension of the trial in case of active extradition**

(1) If, according to the law, the extradition of a person is requested for the purpose of trial in a criminal case, the court before which the case is pending may order, by reasoned conclusion, the suspension of the trial until the date on which the requested State communicates its decision on the extradition request. The conclusion of the court is subject to appeal within 24 hours from the pronouncement, for those present, and from the communication, for those missing, to the hierarchically superior court.

(2) If the extradition of a defendant tried in a case with several defendants is requested, the court may, in the interest of a good trial, order the case to be separated.

(3) The appeal shall be submitted to the court that pronounced the contested conclusion and shall be submitted, together with the case file, to the hierarchically superior court, within 48 hours from registration.

(4) The appeal does not suspend the execution and is judged in a public hearing, within 5 days from the receipt of the file, with the summons of the parties and the injured person and with the participation of the prosecutor.

### **Article 369: Notes on the conduct of the court hearing**

(1) The conduct of the court hearing is recorded with audio technical means.

(2) During the court hearing, the clerk takes notes on the progress of the trial. The prosecutor and the parties may request that the notes be read and endorsed by the president.

(3) After the end of the court hearing, the participants in the trial receive, upon request, a copy of the clerk's notes.

(4) The Registrar's notes may be challenged at the latest by the next deadline.

(5) In case of contestation by the participants in the trial of the clerk's notes, they will be verified and, possibly, completed or rectified on the basis of the recordings of the court hearing.

(6) Upon request, the parties, at their own expense, may obtain an electronic copy of the recording

of the hearing in respect of their case, except in situations where the hearing was not public in whole or in part.

### **Article 370: Type of decisions**

(1)The decision by which the case is solved by the first instance of law or by which it is divested without solving the case is called a sentence. The court also pronounces by sentence in other situations provided by law.

(2)The decision by which the court rules on the appeal, the appeal in cassation and the appeal in the interest of the law is called a decision. The court shall also rule by decision in other situations provided for by law.

(3)All other decisions rendered by the courts during the trial are called conclusions.

**(4)The conduct of the trial in the court hearing is recorded in a conclusion that includes:**

- a)the day, month, year and name of the court;
- b)mention whether the meeting was public or not;
- c)the name and surname of the judges, the prosecutor and the clerk;
- d)the name and surname of the parties, lawyers and other persons participating in the trial and who were present at the trial, as well as of those who were absent, showing their standing to bring proceedings and mentioning the completion of the procedure;
- e)the act for which the defendant was sent to trial and the legal texts in which the act was framed;
- f)the means of proof that have been submitted to the contradictory debate;
- g)requests of any kind made by the prosecutor, the injured person, the parties and the other participants in the trial;
- h)the conclusions of the prosecutor, the injured person and the parties;
- i)measures taken during the meeting.

(5)The conclusion shall be drawn up by the clerk within 72 hours at the latest from the end of the hearing and shall be signed by the president of the panel of judges and the clerk.

(6)When the decision is pronounced on the day on which the trial took place, the conclusion is not drawn up.

## **CHAPTER II: Trial in the first instance**

### **SECTION 1: Conduct of the trial of cases**

#### **Article 371: Object of the trial**

The judgment is limited to the facts and persons shown in the act of initiating the court.

#### **Article 372: Checks on the defendant**

(1) At the trial term, after the case has been summoned and the parties have appealed, the president verifies the identity of the defendant.

(2) In the case of the defendant who is a legal person, the president checks on the name, the registered office and the secondary offices, the unique identification code, the identity and the quality of the persons empowered to represent him.

#### **Article 373: Preliminary measures concerning witnesses, experts and interpreters**

(1) After the call of witnesses, experts and interpreters, the President asks the witnesses present to leave the meeting room and instructs them not to leave without his consent.

(2) The experts remain in the courtroom, unless the court orders otherwise.

(3) Witnesses, experts and interpreters present may be heard, even if they have not been summoned or have not been summoned, but only after their identity has been established, taking into account the provisions of Article 122.

#### **Article 374: Bringing the accusation to attention, clarifications and requests**

(1) At the first deadline at which the summons procedure is legally completed and the case is in a state of judgment, the President orders the Registrar to read the document by which the indictment was ordered or, as the case may be, the document by which the trial was ordered to begin or to make a brief presentation of it.

(2) The President shall explain to the defendant what the accusation against him consists of, shall inform the defendant of the right not to make any statement, drawing his attention to the fact that what he declares may also be used against him, as well as of the right to ask questions of the co-defendants, the injured person, the other parties, witnesses, experts and to give explanations throughout the judicial investigation, when he deems it necessary.

(3) The President shall inform the injured person that he may file a civil action until the start of the judicial investigation.

(4) In cases where the criminal proceedings do not concern an offence punishable by life imprisonment, the President shall inform the defendant that he may request that the trial be held only on the basis of the evidence adduced during the criminal investigation and the documents submitted by the parties and the injured person, if he fully admits the facts held against him,

informing him of the provisions of Article 396(10).

(5)The President asks the prosecutor, the parties and the injured person if they propose the taking of evidence.

(6)If evidence is proposed, the facts and circumstances to be proved, the means by which such evidence may be adduced, the place where the evidence is located, and in the case of witnesses and experts, their identity and address.

(7)The evidence administered during the criminal investigation and not contested by the parties or by the injured person shall not be readministered during the judicial investigation. These are put in the contradictory debate of the parties, the injured person and the prosecutor and are taken into account by the court at deliberation.

(8)The evidence referred to in paragraph (7) may be administered ex officio by the court, if it considers that it is necessary to find out the truth and the fair resolution of the case.

(9)The prosecutor, the injured person and the parties may request the administration of new evidence during the judicial investigation as well.

(10)The court may order ex officio the administration of evidence necessary to find out the truth and the fair settlement of the case.

(11)If evidence constituting classified information is to be administered, the court shall urgently request the competent authority to declassify it or move it to a lower level of classification and, as the case may be, shall grant the parties' and injured party's lawyers access to the classified information, subject to the possession of the access authorisation provided by law. If they do not have the access authorisation provided by law, and the parties or, as the case may be, the injured person does not appoint another defence counsel who holds the authorisation provided by law, the court takes steps to appoint court-appointed lawyers who hold this authorisation.

(12)After consulting the competent authority, the court may, by way of conclusion, refuse access to classified information on a reasoned basis if it could lead to serious endangerment of a person's life or fundamental rights or if the refusal is strictly necessary for the defence of national security or another important public interest. In this case, the classified information cannot be used to pronounce a conviction, to waive the application of the sentence or to postpone the application of the sentence in question.

### **Article 375: Procedure in case of acknowledgment of accusation**

(1)If the defendant requests that the trial be held under the conditions provided for in Article

374(4), the court shall hear him, after which, taking the conclusions of the prosecutor and the other parties, it shall rule on the application.

(1<sup>1</sup>)The defendant may admit the facts and request the trial of the case under the conditions provided for in Article 374 (4) and by means of an authentic document.

(1<sup>2</sup>)In the cases referred to in paragraphs (1) and (1<sup>1</sup>), if the defendant is a minor, the consent of his legal representative is also required.

(2)If it admits the request, the court asks the parties and the injured person if they propose to take evidence with documents.

(3)If the court rejects the application, it shall proceed in accordance with Article 374(5) to (12).

#### **Article 376: Order of the judicial investigation**

(1)The court starts conducting the judicial investigation when the case is ready for trial.

(2)The order of carrying out the acts of judicial investigation shall be the one provided for in the provisions contained in this section.

(3)After hearing the defendant, the injured person, the civil party and the civilly liable party, the approved evidence is administered.

(4)The administration of evidence ex officio can be done at any time during the judicial investigation.

(5)The court may order a change of order when necessary.

#### **Article 377: Judicial investigation in case of admission of accusation**

(1)If it has ordered that the trial be held under the conditions provided for in Article 375 (1), the court shall administer the evidence with the approved documents.

(2)Documents may be produced on the time limit on which the court rules on the application referred to in Article 375(1) or at a later time limit granted for that purpose. For the presentation of documents, the court can only grant one deadline.

(3)The provisions of Article 383(3) shall apply accordingly.

(4)If the court finds, ex officio, at the request of the prosecutor, the parties or the injured person, that the legal classification given to the act by the notification act must be changed, it is obliged to discuss the new classification, the provisions of Article 386 being applied accordingly.

(5)If, in order to establish the legal classification, as well as if, after the change of legal classification, it is necessary to administer other evidence, the court, taking the conclusions of

the prosecutor, the parties or the injured person, orders the judicial investigation to be carried out, the provisions of Article 374 (5) to (12) being applied accordingly.

### **Article 378: Hearing of the defendant**

(1)The defendant is allowed to show everything he knows about the act for which he was sent to trial, then he can be asked questions directly by the prosecutor, the injured person, the civil party, the civilly liable party, the other defendants, as well as their lawyers and the defendant's lawyer whose hearing is being held. The President and the other members of the panel may also ask questions, if they deem it necessary, for the fair resolution of the case.

(2)The court may reject questions that are inconclusive and useful to the case. The rejected questions shall be recorded in the conclusion of the hearing.

(3)In situations where the law provides for the possibility that the defendant is obliged to perform unpaid work for the benefit of the community, he will be asked if he agrees in this regard, if he is found guilty.

(4)When the defendant no longer remembers certain facts or circumstances or when there are contradictions between the statements made by the defendant in court and those previously given, the president asks him for explanations and may read, in whole or in part, the previous statements.

(5)When the defendant refuses to give statements, the court orders the reading of the statements he has previously given.

(6)The defendant can be re-heard whenever necessary.

### **Article 379: Hearing of co-defendants**

(1)If there are several defendants, the hearing of each of them is done in the presence of the other defendants.

(2)When the interest in finding out the truth so requires, the court may order the hearing of any of the defendants without the others being present.

(3)The statements taken separately are compulsorily read to the other defendants, after their hearing.

(4)The defendant may be heard again in the presence of the other defendants or of some of them.

### **Article 380: Hearing of the injured person, the civil party and the civilly liable party**

(1)The court shall hear the injured person, the civil party and the civilly liable party in

accordance with the provisions of Articles 111 and 112, after hearing the defendant and, as the case may be, the co-defendants.

(2)The mentioned persons are allowed to show everything they know about the act that is the subject of the trial, then they can be asked questions directly by the prosecutor, the defendant, the defendant's lawyer, the injured person, the civil party, the civilly liable party and their lawyers. The President and the other members of the panel may also ask questions, if they deem it necessary, for the fair resolution of the case.

(3)The court may reject questions that are inconclusive and useful to the case. The rejected questions shall be recorded in the conclusion of the hearing.

(4)The injured person, the civil party and the civilly liable party may be heard again whenever necessary.

#### **Article 381: Hearing of the witness and the expert**

(1)The hearing of the witness shall be carried out in accordance with the provisions of Articles 119 to 124, which shall be applied accordingly.

(2)If the witness has been proposed by the prosecutor, he or she may be asked questions directly by the prosecutor, the defendant, the injured person, the civil party, the civilly liable party. If the witness or expert has been proposed by one of the parties, questions may be put to him by the latter, by the prosecutor, the injured person and by the other parties.

(3)The President and the other members of the panel may ask questions to the witness whenever he deems it necessary, for the fair resolution of the case.

(4)The court may reject questions that are inconclusive and useful to the case. The rejected questions shall be recorded in the conclusion of the hearing.

(5)The witness who possesses a document in relation to the deposition made may read it in court. The prosecutor and the parties have the right to examine the document, and the court may order the retention of the document in the file, in original or in copy.

(6)When the witness no longer remembers certain facts or circumstances or when there are contradictions between the statements made in court and those previously given, after the witness has been allowed to state everything he knows, the President may read, in whole or in part, the previous statements.

(7)If it is no longer possible to hear any of the witnesses, and during the criminal investigation phase he has given statements before the criminal investigation bodies or has been heard by the

judge of rights and freedoms under the conditions of Article 308, the court shall order the reading of the statement given by him during the criminal investigation and shall take it into account when judging the case.

(8) If one or more witnesses are absent, the court may order either the continuation of the trial or the postponement of the case. A witness whose absence is not justified may be brought with a warrant of summons.

(9) The witnesses heard remain in the courtroom, at the disposal of the court, until the end of the judicial investigation acts that are carried out in the respective hearing. If the court finds it necessary, it may order their withdrawal or of some of them from the courtroom, in order to re-hear or confront them.

(10) The court, taking the conclusions of the prosecutor, the injured person and the parties, may approve the departure of witnesses after their hearing.

(11) Paragraphs 1 to 10 shall also apply accordingly in the event of a hearing of the expert or interpreter.

(12) The provisions of Articles 130 to 134 and Article 306(6) shall apply accordingly.

### **Article 382: Recording of declarations**

The statements and answers of the defendants, witnesses or other persons heard in the case shall be recorded exactly under the conditions provided for in Article 110(1) to (4), the rejected questions being recorded in the conclusion of the hearing according to Articles 378-380.

### **Article 383: Waiver of evidence and impossibility of administering evidence**

(1) The prosecutor, the injured person and the parties may renounce the evidence they have proposed.

(2) After the waiver has been challenged, the court may order that the evidence no longer be administered, if it considers that it is no longer necessary.

(3) If, during the course of the judicial investigation, the administration of evidence previously admitted appears to be useless or is no longer possible, the court, after hearing the prosecutor, the injured person and the parties, may order that the evidence no longer be administered.

(4) If the impossibility of administering refers to evidence administered during the criminal investigation phase and approved by the court, it shall be discussed by the parties, the injured person and the prosecutor and shall be taken into account when judging the case.

**Article 384: Presentation of the material means of proof**

When there are material means of proof in the case submitted for trial, the court, upon request or ex officio, orders that they be brought and presented, if possible.

**Article 385: Postponement for new tests**

If the judicial investigation shows that in order to clarify the facts or circumstances of the case, it is necessary to administer new evidence, the court orders either the further trial of the case or its postponement for the administration of evidence.

**Article 386: Change of legal classification**

(1) If, during the trial, it is considered that the legal classification given to the deed by the notification act is to be changed, the court is obliged to discuss the new classification and to draw the attention of the defendant that he has the right to request the case to be left at the end or the postponement of the trial, in order to prepare his defense. If it orders the change of legal classification, the court shall inform the defendant that he has the right to request that the case be left behind or that the trial be postponed, in order to prepare the defense against the new classification.

(2) If the new legal classification concerns a crime for which the prior complaint of the injured person is necessary, the court calls the injured person and asks him if he intends to make a prior complaint. In the event that the injured person files a prior complaint, the court continues the judicial investigation, otherwise ordering the termination of the criminal proceedings.

**Article 386<sup>1</sup>: Resumption of the preliminary chamber procedure**

If during the trial the absolute nullity of the preliminary chamber procedure is established, the court, by conclusion, shall abolish the act by which the trial was ordered and shall establish the limits within which the procedure will be resumed, the conclusion being subject to challenge under the conditions of Article 425<sup>1</sup>.

**Article 387: Completion of the judicial investigation**

(1) Before declaring the judicial investigation finished, the president asks the prosecutor, the injured person and the parties if they still have to give explanations or formulate new requests to complete the judicial investigation.

(2) If no requests have been made or if the requests made have been rejected or if the requested additions have been made, the President shall declare the judicial investigation closed.

**Article 388: Debates and the order in which the floor is given**

(1) After the end of the judicial investigation, the debates are held, giving the floor in the following order: to the prosecutor, to the injured person, to the civil party, to the civilly liable party and to the defendant.

(2) The president can also give the floor in reply.

(3) The duration of the submissions of the prosecutor, the parties, the injured person and their lawyers may be limited. The President of the panel may decide that they must have a similar duration.

(4) The President has the right to interrupt those who have the floor, if their claims exceed the limits of the case being tried.

(5) (the text of Article 388(5) of Part 2, Title III, Chapter II, Section 1 was repealed on 01-Feb-2014 by Article 102(246) of Title III of Law 255/2013)

(6) For good reasons, the debates may be interrupted. The interruption cannot be longer than 3 days.

**Article 389: The last word of the defendant**

(1) Before concluding the debates, the president gives the last word to the defendant personally.

(2) During the time when the defendant has the last word, he cannot be asked questions. If the defendant reveals new facts or circumstances, essential for the resolution of the case, the court orders the resumption of the judicial investigation.

**Article 390: Written conclusions**

(1) The court may ask the parties, after the closing of the proceedings, to submit written submissions.

(2) The prosecutor, the injured person and the parties may submit written submissions, even if they have not been requested by the court.

**SECTION 2: Deliberation and decision of the court****Article 391: Resolution of the case**

(1) The deliberation, drafting and pronouncement of the decision shall be made within a maximum period of 60 days from the closing of the debates.

(2) At the end of the debates, the president of the panel informs the parties and the injured person

present about the date and manner of the decision.

(3) In duly justified cases, if the deliberation, drafting and delivery of the decision cannot take place within the period provided for in paragraph (1), the court may successively postpone the pronouncement, each postponement not exceeding 30 days. In all cases, the deliberation, drafting and delivery of the decision may not take place later than 120 days after the closure of the debates.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 391 establishes that the judge who closed the debates, remaining in ruling on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 392: Resolution**

(1) Only the members of the panel before which the debate took place take part in the deliberation.

(2) The panel of judges deliberates in secret.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 392 establishes that the judge who closed the debates, remaining in ruling on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 393: Purpose of the deliberation**

(1) The panel of judges deliberates first on questions of fact and then on questions of law.

(2) The deliberation relates to the existence of the deed and the guilt of the defendant, to the establishment of the punishment, to the establishment of the educational measure or the security measure, if it is to be taken, as well as to the deduction of the duration of the preventive measures of deprivation of liberty and medical hospitalization.

(3) The panel of judges also deliberates on the reparation of the damage caused by the crime, on

the preventive and precautionary measures, on the material means of evidence, on the judicial costs, as well as on any other issue regarding the fair settlement of the case.

(4) All members of the panel of judges have the duty to express their opinion on each issue.

(5) The president speaks his opinion last.

#### **Article 394: Decision-making**

(1) The decision must be the result of the agreement of the members of the panel of judges on the solutions given to the issues submitted for deliberation.

(2) When unanimity cannot be met, the decision is taken by majority.

(3) If more than two opinions result from the deliberation, the judge who gives the opinion for the most severe solution must join the one closest to his opinion.

(4) The motivation of the separate opinion is mandatory.

(5) In the event that the panel of judges cannot meet a majority or unanimity, the trial of the case shall be resumed in a panel of divergence.

#### **Article 395: Resumption of judicial investigation or debates**

(1) If, during the deliberation, the court considers that a certain circumstance needs to be clarified and it is necessary to resume the judicial investigation or debates, it puts the case back on the docket. The provisions on summons apply accordingly.

(2) If the trial took place under the conditions of Article 375 (1) and (2), and the court finds that in order to settle the criminal proceedings, it is necessary to take evidence other than the documents provided for in Article 377 (1) to (3), it shall put the case back on the docket and order the judicial investigation to be carried out.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 395, establishes that the judge who closed the debates, remaining in a ruling on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 396: Resolution of the criminal action**

(1) The court decides on the accusation brought against the defendant, pronouncing the

conviction, waiving the application of the penalty, postponing the application of the penalty, acquitting or terminating the criminal trial.

(2)The conviction is pronounced if the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant.

(3)The waiver of the application of the penalty is pronounced if the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant, under the conditions of Articles 80-82 of the Criminal Code.

(4)The postponement of the application of the sentence is pronounced if the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant, under the conditions of Articles 83-90 of the Criminal Code.

(5)The acquittal of the defendant shall be pronounced in the cases provided for in Article 16(1)(a)-(d).

(6)The termination of the criminal proceedings shall be pronounced in the cases provided for in Article 16(1)(e)-(j).

(7)If the defendant has requested the continuation of the criminal trial according to Article 18 and it is found, as a result of the continuation of the trial, that the cases provided for in Article 16(1)(a)-d) are incidental, the court shall pronounce the acquittal.

(8)If the defendant has requested the continuation of the criminal trial in accordance with Article 18 and it is found that the cases referred to in Article 16(1)(a) to (d) are not relevant, the court shall order the termination of the criminal proceedings.

(9)If, in the course of the criminal investigation, the preliminary chamber procedure or the trial, the defendant has been taken the preventive measure of judicial control on bail or the replacement of another preventive measure by the preventive measure of judicial control on bail has been ordered and the defendant is sentenced to a fine, the court shall order the payment of the bail from the bail, according to the provisions of Article 217.

**(10)When the trial was conducted under the conditions of Article 375 (1), (1<sup>1</sup>) and (2), when the defendant's request for the trial to take place under these conditions was rejected or when the judicial investigation took place under the conditions of Article 377 (5) or Article 395 (2), and the court retains the same factual situation as that acknowledged by the defendant, In case of conviction or postponement of the application of the penalty, the limits of punishment provided by law in the case of imprisonment are reduced by one third, and in the case of a fine, by one fourth. For juvenile defendants, the court will take**

**these aspects into account when choosing the educational measure; In the case of educational measures involving deprivation of liberty, the limits of the periods for which these measures are ordered, provided for by law, are reduced by one third.**

\*) In application of the provisions of Articles 480 to 485 of the Code of Criminal Procedure, it establishes that the prosecutor may not, in the criminal investigation phase, in the procedure of the plea agreement, retain the provisions of Article 396(10) of the Code of Criminal Procedure, with direct consequences on the reduction of the limits of punishment provided by law for the offence committed

\*) The High Court of Cassation and Justice admits the appeal in the interest of the law and in the unitary interpretation and application of the provisions of Article 396 paragraph (10) establishes the following:

In the event that the court has granted the defendant's request for trial in the simplified procedure for the admission of the charge, and the case has been judged according to this procedure, it is not possible to issue an acquittal decision based on the provisions of Article 16(1)(b) sentence II and letter c) of the Code of Criminal Procedure.

#### **Article 397: Resolution of the civil action**

(1)The court rules by the same decision on the civil action.

(2)If the court admits the civil action, it examines, according to Articles 249 to 254, the need to take precautionary measures regarding civil reparations, if such measures have not been taken previously.

(3)Also, the court shall rule by decision on the restitution of things and the restoration of the previous situation, according to the provisions of Articles 255 and 256.

(4)The provisions of the decision regarding the taking of precautionary measures and the return of things are enforceable.

(5)If, according to the provisions of Article 25(5), the court leaves the civil action unresolved, the precautionary measures shall be maintained. These measures cease by law if the injured person does not file an action before the civil court within 30 days from the decision becoming final.

(6)If, in the course of the criminal investigation, the preliminary chamber procedure or the trial, the defendant has been taken the preventive measure of judicial control on bail or the replacement of another preventive measure by the preventive measure of judicial control on bail

has been ordered and the civil action is admitted, the court shall order the payment of bail of the compensation awarded for the reparation of the damage caused by the crime, according to the provisions of Article 217.

### **Article 398: Court costs**

The court shall also rule by decision on the judicial costs, in accordance with the provisions of Articles 272-276.

### **Article 399: Provisions on preventive measures**

(1) The court has the obligation, by decision, to rule on the maintenance, revocation, replacement or termination of the preventive measure ordered during the criminal trial regarding the defendant.

(2) In case of waiver of the application of the penalty, postponement of the application of the penalty, acquittal or termination of the criminal trial, the court shall order the immediate release of the defendant under preventive arrest.

**(3) Also, the court orders the immediate release of the defendant under preventive arrest when it pronounces:**

- a) a prison sentence at most equal to the duration of detention, house arrest and pre-trial detention;
- b) a prison sentence, with suspension of execution under supervision;
- c) a penalty with a fine, which does not accompany the prison sentence;
- d) a non-custodial educational measure.

(4) The decision pronounced under the conditions of paragraphs (1) to (3) regarding preventive measures shall be enforceable.

(5) When, in accordance with the provisions of paragraphs 1 to 3, the defendant is released, the court shall notify the administration of the place of detention.

(6) The defendant convicted by the first instance and in pre-trial detention shall be released as soon as the duration of the detention and that of the arrest become equal to the duration of the sentence pronounced, although the decision is not final. The release shall be ordered by the administration of the place of detention, which shall be communicated, immediately after the decision has been pronounced, a copy of the device or extract.

(7) In the event of waiver of the application of the penalty, postponement of the application of the penalty, acquittal or termination of the criminal proceedings, if the preventive measure of

judicial control on bail has been taken during the criminal investigation or trial, the court shall order the refund of the amount deposited as bail, if the payment of the compensation granted for the reparation of the damage has not been ordered and if the bail payment provided for in Article 217(7) has not been ordered.

(8)The court shall order the confiscation of the bail if the measure of judicial control on bail has been replaced by the measure of house arrest or pre-trial detention, for the reasons set out in Article 217(9), and the payment of the amounts provided for in Article 217 has not been ordered.

(9)The duration of the house arrest measure is deducted from the sentence imposed by equating one day of house arrest with one day of the sentence.

(10)After the decision has been pronounced, until the appeal court has been notified, the court may order, upon request or ex officio, the taking, revocation, replacement or maintenance of a preventive measure with regard to the convicted defendant, in accordance with the law.

#### **Article 400: Min**

(1)Except in cases where the provisions of Article 406(1) are applicable, the result of the deliberation of the court or, as the case may be, of the judge, irrespective of the judicial function he performs, shall be recorded in one minute, which shall have the content provided for the operative part of the judgment.

(2)The minute shall be signed by the members of the panel of judges.

(3)The minute is drawn up in two original copies, one of which is attached to the case file, and the other is submitted, for preservation, to the court's minute file.

#### **Article 401: Content of the decision**

The decision by which the criminal court decides on the merits of the case must contain an introductory part, a statement and the operative part.

#### **Article 402: Content of the introductory part**

(1)The introductory part shall contain the particulars referred to in Article 370(4).

(2)When a conclusion of the hearing has been drawn up, according to the provisions of Article 370, the introductory part is limited only to the following information: the name of the court that tried the case, the date of delivery of the judgment, the place where the case was tried, as well as the name and surname of the members of the panel of judges, the prosecutor and the registrar, mentioning that the other dates were included in the conclusion of the hearing.

(3)The decisions of the military courts must also indicate the military rank of the members of the panel of judges and of the prosecutor. When the defendant is a military officer, his rank is also mentioned.

### **Article 403: Content of the exhibition**

#### **(1)The exposure must include:**

- a)data on the identity of the parties;
- b)the description of the act that is the subject of the indictment, showing the time and place where it was committed, as well as the legal classification given to it by the notification document;
- c)motivating the solution on the criminal side, by analyzing the evidence that served as a basis for solving the criminal side of the case and those that were dismissed, and motivating the solution on the civil side of the case, as well as analyzing any factual elements on which the solution given in the case is based;
- d)showing the legal grounds justifying the solutions given in the case.

(2)In case of conviction, waiver of the application of the penalty or postponement of the application of the penalty, the statement must include each act held by the court against the defendant, the form and degree of guilt, the aggravating or mitigating circumstances, the state of recidivism, the time to be deducted from the sentence pronounced, respectively the time that will be deducted from the sentence established in case of annulment or revocation of the waiver of the application of the penalty or the postponement of the application of the penalty, as well as the documents from which the period to be deducted results.

(3)If the court holds against the defendant only a part of the facts that are the subject of the indictment, it shall be stated in the judgment for which certain facts the conviction was pronounced or, as the case may be, the waiver of the application of the penalty or the postponement of the application of the penalty and for which certain facts, the termination of the criminal trial or the acquittal.

(4)In the case of waiver of the application of the penalty and postponement of the application of the penalty, as well as in the case of suspension of the execution of the sentence under supervision, the reasons that determined the waiver or postponement or, as the case may be, the suspension shall be presented in the decision and the consequences to which the person against whom these solutions have been ordered exposes himself if he commits further crimes or, as the case may be, if he/she does not comply with the supervision measures or does not execute his/

her obligations during the supervision term.

#### **Article 404: Device content**

(1)The operative part must include the data provided for in Article 107 regarding the person of the defendant, the solution given by the court regarding the crime, indicating its name and the text of the law in which it falls, and in case of acquittal or termination of the criminal proceedings, also the case on which it is based according to Article 16, as well as the solution given regarding the resolution of the civil action.

(2)When the court orders the conviction, the operative part mentions the main penalty imposed. If it orders the suspension of its execution, the operative part shall also mention the supervision measures and the obligations, provided for in Article 93(1) to (3) of the Criminal Code, which the convicted person must comply with, the consequences of non-compliance with them and of the commission of new offences shall be taken into account and two entities in the community shall be indicated where the obligation to perform unpaid work for the benefit of the community is to be performed, provided for in Article 93(3) of the Criminal Code, after consulting the list of concrete possibilities of execution existing at the level of each probation service. The probation counselor, based on the initial assessment, will decide in which of the two institutions in the community mentioned in the court decision the obligation and the type of activity are to be performed. When the court orders the educational measure of supervision, the device mentions the person who carries out the supervision and guidance of the minor.

(3)When the court orders the waiver of the application of the penalty, the operative part mentions the application of the warning, according to Article 81 of the Criminal Code, and when it orders the postponement of the application of the penalty, the operative part mentions the established punishment whose application is postponed, as well as the supervision measures and obligations, provided for in Article 85 (1) and (2) of the Criminal Code, that the defendant must comply with, the consequences of non-compliance with them and of the commission of new crimes are taken into account, and if he has imposed the obligation to perform unpaid work for the benefit of the community, two entities in the community are mentioned where this obligation is to be executed, after consulting the list of concrete possibilities of execution existing at the level of each probation service. The probation counselor, based on the initial assessment, will decide in which of the two institutions in the community mentioned in the court decision the obligation and the type of activity and guidance of the minor are to be executed.

**(4)The operative part must also include, as the case may be, those decided by the court**

**regarding:**

- a) deduction of the duration of the preventive measure of deprivation of liberty and of medical hospitalization, indicating the part of the sentence served in this way;
- b) preventive measures;
- c) precautionary measures;
- d) safety measures;
- e) court costs;
- f) return of things;
- g) restoration of the previous situation;
- h) bail;
- i) solving any other problem regarding the just settlement of the case.

(5) When the court pronounces the sentence of imprisonment, the operative part mentions that the convicted person is deprived of the rights or, as the case may be, some of the rights provided for in Article 65 of the Criminal Code, for the period provided for in the same article.

(6) When the court has pronounced the sentence of imprisonment, and the injured person has requested notification of the release in any way or escape of the convicted person, the court makes a mention in this regard in the operative part of the judgment.

(6<sup>1</sup>) When the court has ordered the postponement of the application of the penalty or the prohibition of one or more of the rights provided for in Article 66(1)(l)-o) of Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented, with the application of the accessory punishment or the complementary punishment of the prohibition of the exercise of certain rights, the operative part shall include the mention that the person or persons benefiting from the protection measures may request the issuance of a European protection order under the law.

(7) The operative part must include the mention that the decision is subject to appeal, showing the term within which it can be exercised, indicating the date on which the decision was pronounced and the fact that the pronouncement was made in open session.

**Article 405: Delivery of the judgment**

(1) The decision shall be pronounced, after drafting, in a public session by the President or by another member of the panel of judges appointed by the President, assisted by the Registrar, who shall read the operative part of the Judgment, or shall be pronounced by making it available to the parties, the injured person and the prosecutor, through the court registry.

(2) In cases where the result of the deliberation is recorded in one minute, the deliberation and pronouncement of the decision take place within 15 days from the closing of the debates, unless the law provides otherwise. In duly justified cases, if the deliberation and delivery of the decision cannot take place within this period, the court may postpone the decision only once, for a period of no more than 15 days. The president or, as the case may be, another member of the panel shall pronounce the minutes of the decision, under the conditions (1), unless the law provides otherwise.

(3) When the decision is pronounced, the parties and the injured person are not summoned.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 405, establishes that the judge who closed the debates, remaining in pronouncement on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 406: Drafting and signing of the decision**

(1) The judgment must be drawn up at the time of delivery in cases where one of the solutions provided for in Articles 396 and 397 is pronounced.

(2) The decision referred to in paragraph (1) shall be drawn up by the members of the panel of judges who participated in the settlement of the case and shall be signed by all the members of the panel and by the registrar. In case of impediment of the clerk, the decision shall be signed by the chief clerk, mentioning on the decision the cause that determined the impediment.

(3) In cases where the result of the deliberation is recorded in one minute, the decision shall be drawn up by the President or by another member of the panel of judges appointed by the President within 30 days from the delivery of the minutes and shall be signed by all the members of the panel of judges and the clerk. The operative part of the decision must be in accordance with the minute.

(4) In the cases referred to in paragraph 3, if any of the members of the panel of judges is prevented from signing, the decision shall be signed in his place by the president of the panel. If the president of the panel is also prevented from signing, the decision shall be signed by the president of the court. Where the impediment concerns the clerk, the decision shall be signed by the chief clerk. In all cases, the decision shall mention the cause that determined the impediment.

(5) The decision shall be drafted in two original copies, one of which shall be attached to the case file, and the other shall be submitted, for preservation, to the court's decision file.

\*) By Decision no. 10/2025 The High Court of Cassation and Justice admits the appeal in the interest of the law and, in the unitary interpretation and application of the provisions of Article 406 establishes that the judge who closed the debates, remaining in pronouncement on the solution on the merits of the criminal action, is not obliged to take part in the deliberation, to draft and pronounce the decision in the event that, After the closing of the debates, he was transferred, delegated, seconded or, as the case may be, effectively promoted to the higher court, as he is no longer a judge of that court.

#### **Article 407: Service of the judgment**

(1) After the pronouncement, a copy of the decision or, as the case may be, of the minutes shall be communicated to the prosecutor, to the parties, to the injured person and, if the defendant is arrested, to the administration of the place of detention, in order to exercise the appeal. In cases where the result of the deliberation is recorded within one minute, after the decision has been drafted, it shall be communicated to the prosecutor, the parties and the injured person in its entirety. If the parties or the injured person do not understand the Romanian language, the decision or, as the case may be, the minute shall be communicated to them in a language they understand.

(1<sup>1</sup>) If the persons referred to in paragraph (1) appear at the pronouncement made at the hearing, the delivery, upon request, under evidence, of the decision or, as the case may be, of the minute shall be considered communication. Also, the delivery, under evidence, of the decision or, as the case may be, of the minutes, through the court registry, is also considered to be service.

(2) If the court has ordered the postponement of the application of the sentence or the suspension of the execution of the sentence under supervision, the decision shall be communicated to the probation service and, as the case may be, to the body or authority competent to verify compliance with the obligations ordered by the court.

### **CHAPTER III: The call**

#### **Article 408: Decisions subject to appeal**

(1) The sentences can be appealed, unless the law provides otherwise.

(2) Conclusions may be appealed only at the same time as the sentence, except in cases where, according to the law, they may be appealed separately.

(3)The appeal against the sentence is also considered to have been made against the conclusions.

#### **Article 409: Who can appeal**

(1)**The following can be appealed:**

- a)the prosecutor, regarding the criminal and civil sides;
- b)the defendant, as regards the criminal and civil sides;
- c)the civil part, with regard to the criminal and civil sides, and the civilly liable party, with regard to the civil side, and with regard to the criminal side, to the extent that the solution on this side influenced the solution on the civil side;
- d)the injured person, as far as the criminal side is concerned;
- e)the witness, the expert, the interpreter and the lawyer, with regard to the judicial fines imposed by the sentence, as well as with regard to the legal costs and indemnities due to them;
- f)any natural or legal person whose legitimate rights have been directly harmed by a measure or act of the court, with regard to the provisions that caused such harm.

(2)For the persons referred to in paragraph (1)(b)-f), the appeal may also be declared by the legal representative or by the lawyer, and for the defendant, also by his spouse.

#### **Article 410: Deadline for filing the appeal**

(1)For the prosecutor, the injured person and the parties, the time limit for appeal is 10 days, unless otherwise provided by law, and runs from the date of communication of the decision, in the cases provided for in Article 406 (1), or, as the case may be, from the date of communication of the copy of the minutes, in the other cases.

(2)In the case referred to in Article 409 (1) (e), an appeal may be lodged immediately after the delivery of the judgment ordering the costs and damages and at the latest within 10 days of the delivery of the judgment settling the case or, as the case may be, within 10 days of the notification of the judgment imposing the judicial fine or ordering the court costs or indemnities.

(3)For the persons referred to in Article 409(1)(f), the time limit for appeal is 10 days and runs from the date on which they learned about the act or measure that caused the injury.

#### **Article 411: Restoration of the deadline**

(1)The appeal declared after the expiry of the term provided by the law is considered to have been made within the time limit if the court of appeal finds that the delay was determined by a solid cause of impediment, and the request for appeal was made within 10 days from its termination.

(2)The decision is final until the appeal court admits the request for reinstatement.

(3) Until the resolution of the time limit, the appeal court may suspend the execution of the appealed decision.

(4) The provisions of paragraphs (1) and (3) shall not apply in the case of the reopening of the criminal trial requested by the person convicted in absentia.

#### **Article 412: Declaration and reasoning of the appeal**

(1) **The appeal is declared by written request, which must contain the following:**

- a) file number, date and number of the sentence or conclusion appealed;
- b) the name of the court that delivered the judgment under appeal;
- c) the name, surname, personal identification number, capacity and domicile, residence or dwelling, as well as the signature of the person declaring the call.

(2) For the person who is unable to sign, the application will be certified by a clerk of the court whose decision is appealed or by a lawyer.

(3) The unsigned or uncertified appeal request may be confirmed in court by the party or by its representative at the first trial term with the legally fulfilled procedure.

(4) The appeal shall be motivated in writing, showing the factual and legal grounds on which it is based.

#### **Article 413: The court to which the appeal is lodged**

(1) The request for an appeal drawn up under the conditions provided for in Article 412 shall be submitted to the court whose decision is appealed.

(2) The person who is in detention may also submit the appeal request to the administration of the place of detention.

(3) The request for appeal registered or attested under the conditions (2) or the report drawn up by the administration of the place of detention shall be immediately submitted to the court whose decision is appealed.

#### **Article 414: Dropping the call**

(1) After the judgment has been pronounced and until the expiry of the time limit for filing the appeal, the parties and the injured party may expressly waive this remedy.

(2) The waiver, with the exception of the appeal concerning the civil side of the case, may be returned within the deadline for declaring the appeal.

(3) The waiver or reversal of the waiver can be made personally or through a special representative.

### **Article 415: Call Withdrawal**

(1) Until the closing of the debates at the court of appeal, the injured person and any of the parties may withdraw their declared appeal. The withdrawal must be made personally by the party or through a special representative, and if the party is in a state of detention, by a declaration attested or recorded in a report by the administration of the place of detention. The declaration of withdrawal can be made either at the court whose decision was appealed or at the court of appeal.

(2) The legal representatives may withdraw the appeal, subject to the observance, as far as the civil side is concerned, of the conditions provided by the civil law. The minor defendant cannot withdraw the appeal declared personally or by his legal representative.

(3) The appeal declared by the prosecutor may be withdrawn by the hierarchically superior prosecutor.

(4) The appeal declared by the prosecutor and withdrawn can be appropriated by the party in whose favor it was declared.

### **Article 416: The suspensive effect of the appeal**

The appeal declared within the time limit is suspensive of execution, both in terms of the criminal side and in terms of the civil side, unless the law provides otherwise.

### **Article 417: The devolutionary effect of the appeal and its limits**

(1) The court hears the appeal only with regard to the person who declared it and the person to whom the statement of appeal refers and only in relation to the capacity that the appellant has in the trial.

(2) Within the limits set out in paragraph 1, the court is obliged, in addition to the grounds invoked and the claims made by the appellant, to examine the case from all aspects of fact and law.

### **Article 418: Failure to aggravate the situation in your own appeal**

(1) The court of appeal, in resolving the case, cannot create a more difficult situation for the one who filed the appeal.

(2) Also, in the appeal declared by the prosecutor in favor of a party, the court of appeal cannot aggravate his situation.

### **Article 419: The extensive effect of the call**

The appeal court examines the case by extension and with regard to the parties who have not filed

an appeal or to whom it does not refer, being able to decide on them as well, without being able to create a more difficult situation for these parties.

### **Article 420: Judgment of the appeal**

- (1)The appeal is judged by summoning the parties and the injured person.
- (2)The appeal can only be heard in the presence of the defendant, when he is in detention.
- (3)The participation of the prosecutor in the trial of the appeal is mandatory.
- (4)The appeal court proceeds to hear the defendant, when possible, according to the rules of the trial on the merits.
- (5)The appeal court may re-administer the evidence adduced at the first instance and may administer new evidence, under the conditions of Article 100.
- (6)When the appeal is ready for trial, the president of the panel gives the floor to the appellant, then to the respondent and then to the prosecutor. If among the declared appeals there is also the prosecutor's appeal, the prosecutor has the first word.
- (7)The prosecutor and the parties have the right to reply to new issues arising during the debates. The defendant is given the last word.
- (8)The court verifies the appealed decision on the basis of the documents and material in the case file, as well as any evidence adduced before the appeal court.
- (9)In order to resolve the appeal, the court, reasoned, may give a new assessment to the evidence.
- (10)The court rules on all the grounds of appeal invoked.
- (11)The rules of the trial on the merits shall apply to the judgment on the merits, insofar as there are no contrary provisions in this title.
- (12)The appeal against the conclusions that, according to the law, can be appealed separately is heard in the council chamber without the presence of the parties, who may submit written conclusions, except in cases where the law provides otherwise or in those in which the court considers that it is necessary to judge in a public hearing.

### **Article 421: The solutions to the appeal**

- (1)The court, judging the appeal, pronounces one of the following solutions:
  1. **dismisses the appeal, maintaining the judgment under appeal:**
    - a)whether the appeal is late or inadmissible;
    - b)whether the appeal is unfounded;

## 2. admits the appeal and:

a) abolishes the sentence of the first instance and pronounces a new decision, proceeding according to the rules regarding the settlement of the criminal action and the civil action at the trial on the merits. The court of appeal shall readminister the statements on which the first instance based its acquittal, the provisions of Article 374(7) to (12) and Article 383(3) and (4) being applied accordingly;

b) annuls the sentence of the first instance and orders the retrial by the court whose decision was annulled on the ground that the trial of the case at that court took place in the absence of a party illegally summoned or who, legally summoned, was unable to appear and to notify the court of this impossibility, invoked by that party. The retrial by the court whose decision has been annulled shall also be ordered when the court has not ruled on a fact held against the defendant by the notification document or on the civil action or when there is any of the cases of absolute nullity, except in the case of lack of jurisdiction, when the retrial by the competent court is ordered.

(2) The provisions of Article 406(1), (2) and (5) shall apply.

### **Article 422: Complementary issues**

The court, deliberating on the appeal, shall apply, where appropriate, the provisions regarding the resumption of debates and those regarding the resolution of the civil action, precautionary measures, judicial expenses and any other aspects on which the complete resolution of the appeal depends. The appeal court shall also verify whether the provisions regarding the deduction of the duration of detention, pre-trial detention, house arrest or medical hospitalization have been fairly applied by the court of first instance and shall add, if applicable, the time of arrest elapsed since the judgment appealed against on appeal.

### **Article 423: Annulment of the decision**

(1) If the appeal is admitted, the appealed decision shall be annulled, within the limits of the provisions on the devolutionary and extensive effect of the appeal.

(2) The decision may be annulled only with regard to certain facts or persons or only with regard to the criminal or civil aspect, if this does not prevent the fair settlement of the case.

(3) In case of annulment of the decision, the court of appeal may maintain the measure of preventive arrest.

### **Article 424: Content of the appeal court's decision and its communication**

(1)The decision of the court of appeal must include in the introductory part the particulars provided for in Article 402, and in the exposition the factual and legal grounds that led, as the case may be, to the rejection or admission of the appeal, as well as the grounds that led to the adoption of any of the solutions provided for in Article 421. The operative part includes the solution given by the appeal court, the date of the decision and the mention that the decision was made in a public hearing.

(2)The court of appeal rules on preventive measures according to the provisions regarding the content of the sentence; Where the case has been ordered to be referred back to the court of first instance or to the competent court, the appeal court may apply Article 399(10) accordingly.

(3)If the defendant is under preventive arrest or house arrest, the exposure and device show the time that is deducted from the sentence.

(4)When the retrial has been ordered, the decision must indicate which is the last remaining valid procedural act from which the criminal trial must resume its course, otherwise all procedural acts will be abolished by law.

(5)The decision of the court of appeal shall be communicated to the prosecutor, the parties, the injured person and the administration of the place of detention.

#### **Article 425: Limits of retrial**

(1)The court of retrial must comply with the decision of the court of appeal, to the extent that the factual situation remains the one envisaged at the time of the appeal.

(2)If the decision was annulled in the prosecutor's appeal, declared against the defendant or in the appeal of the injured person, the court that retries it may aggravate the solution given by the first instance.

(3)When the judgment is annulled only on certain facts or persons or only on the criminal or civil side, the court of retrial pronounces within the limits in which the judgment was annulled.

### **CHAPTER III<sup>1</sup>:Appeal**

#### **Article 425<sup>1</sup>: Declaration and resolution of the appeal**

(1)The appeal may be exercised only when the law expressly provides for it, the provisions of this article being applicable when the law does not provide otherwise.

(2)**The prosecutor and the procedural subjects to whom the appealed decision, as well as the persons whose legitimate interests have been harmed by it, may appeal within 3 days, which**

**runs from the pronouncement for the prosecutor and from the communication for the other persons, the provisions of Article 411 paragraph (1) being applied accordingly.**

\*) The High Court of Cassation and Justice establishes that in the context of the procedure for revoking the suspension of the execution of the sentence under supervision, provided for in Article 583 of the Code of Criminal Procedure, the probation service is a procedural subject to which the contested decision refers, within the meaning of Article 425<sup>1</sup> paragraph (2) sentence I of the Code of Criminal Procedure in relation to Article 34 final sentence of the same Code.

(3)The appeal shall be lodged with the judge of rights and freedoms, the judge of the preliminary chamber or, as the case may be, with the court that pronounced the decision to be appealed and shall be motivated by the deadline set for the resolution, the provisions of Article 415 being applied accordingly.

(4)When settling the appeal, the provisions of Article 416 and Article 418 shall be applied accordingly; Within these limits, when settling the appeal against the conclusion on a preventive measure, a less serious measure may be ordered than the one requested or the one ordered by the contested conclusion, or the obligations in the content of the contested measure may be modified.

(5)The appeal shall be resolved by the judge of rights and freedoms, respectively by the judge of the preliminary chamber of the superior court of the one seized or, as the case may be, by the superior court of the one seized, respectively by the competent panel of the High Court of Cassation and Justice, in a public hearing, with the participation of the prosecutor.

(6)When the appeal is resolved, the person who filed the appeal is summoned, as well as the procedural subjects to whom the appealed decision refers, the provisions of Article 90 and Article 91 being applied accordingly.

**(7)The appeal is resolved by decision, which is not subject to any appeal, and one of the following solutions may be pronounced:**

**1. the rejection of the appeal, with the maintenance of the appealed decision:**

- a)when the appeal is late or inadmissible;
- b)when the appeal is unfounded;

**2. admission of the appeal and:**

- a)the annulment of the appealed decision and the resolution of the case;
- b)annulment of the appealed decision and ordering the retrial of the case by the judge or panel that pronounced it, when it is found that the provisions on summons have not been complied with.

## CHAPTER IV:

[text of Part 2, Title III, Chapter IV was repealed on 01-Feb-2014 by Article 102, point 260. of Title III of Law 255/2013]

## CHAPTER V: Extraordinary remedies

### SECTION 1: Appeal for annulment

#### Article 426: Cases of appeal for annulment

An appeal for annulment may be filed against final criminal decisions in the following cases:

a) when the appeal trial took place without the lawful summons of a party or when, although lawfully summoned, he was unable to appear and notify the court of this impossibility;

**b) when the defendant was convicted, although there was evidence of a cause for termination of the criminal proceedings;**

\*) By Decision no. 67/2022 The High Court of Cassation and Justice admits the notifications and establishes the following:

"2. The court that resolves the appeal for annulment, based on the effects of the decisions of the Constitutional Court no. 297 of April 26, 2018 and no. 358 of May 26, 2022, cannot reconsider the statute of limitations of criminal liability, if the appeal court has debated and analyzed the incidence of this cause for termination of the criminal proceedings during the trial prior to the latter decision."

c) when the decision on appeal was pronounced by a panel other than the one that took part in the debate on the merits of the trial;

d) when the court of appeal was not composed according to the law or there was a case of incompatibility;

e) when the appeal trial took place without the participation of the prosecutor or the defendant, when it was mandatory, according to the law;

f) when the appeal trial took place in the absence of a lawyer, when the defendant's legal assistance was mandatory, according to the law;

g) when the appeal hearing was not public, except in cases where the law provides otherwise;

h) when the court of appeal did not proceed to the hearing of the defendant present, if the hearing was legally possible;

i) when two final judgments have been pronounced against a person for the same act.

\*) D. 43/2023 HCCJ: The provisions of Article 426 letter b) and Article 431 of the Code of

Criminal Procedure are interpreted as meaning that the court that resolves the appeal for annulment on the merits has the competence to reconsider which of the criminal laws that have succeeded each other over time is more favorable if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law that has not been held to be more favorable in cause?";

The provisions of Article 426(b) of the Code of Criminal Procedure are interpreted as meaning that the court hearing the appeal for annulment has the competence, at the stage of settling the appeal on the merits, to reconsider which of the criminal laws that have succeeded each other over time is more favourable, if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law that was not taken into account in the analysis process of the criminal law applicable to the case?; and

Can the failure of the court of appeal to rule on the incidence of a cause for termination of the criminal proceedings in relation to the more favourable criminal law from the date of the commission of the act until the date of the trial of the appeal case be invoked by means of an appeal for annulment based on the provisions of Article 426 letter b) of the Code of Criminal Procedure?" and establishes the following:

1. The provisions of Article 426(b) of the Code of Criminal Procedure shall be interpreted as meaning that the court hearing the merits of the appeal for annulment may not reconsider which of the criminal laws that have succeeded each other over time is more favourable if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law which has not been held to be more favourable in the case.

2. The failure of the court of appeal to rule on the incidence of a cause for termination of the criminal proceedings in relation to the more favourable criminal law from the date of the commission of the act until the date of the trial of the appeal case may not be invoked by means of an appeal for annulment based on the provisions of Article 426 letter b) of the Code of Criminal Procedure.

#### **Article 427: Application for appeal for annulment**

(1)The appeal for annulment can be made by any of the parties, by the injured person or by the prosecutor.

(2)In the request for an appeal for annulment, the contestant must indicate the cases of appeal that he invokes, as well as the reasons given in support of them.

**Article 428: Deadline for filing an appeal for annulment**

(1) The appeal for annulment for the reasons provided for in Article 426 letters a) and c)-h) may be filed within 30 days from the date of communication of the decision of the court of appeal.

(2) An appeal for annulment on the grounds set out in Article 426(b) and (i) may be lodged at any time.

**Article 429: Competent court**

(1) The appeal for annulment is filed with the court that pronounced the decision whose annulment is requested.

(2) The appeal for annulment in the case where the authority of res judicata is invoked shall be filed with the court where the last decision became final.

**Article 430: Suspension of execution**

Until the resolution of the appeal for annulment, the court seized, taking the prosecutor's conclusions, may suspend the execution of the decision whose annulment is requested.

**Article 431: Admission in principle**

(1) The court examines the admissibility in principle, in the council chamber, with the summons of the parties and with the participation of the prosecutor. The failure to appear of the persons duly summoned does not prevent the examination of admissibility in principle.

(2) The court, finding that the request for an appeal for annulment is made within the time limit provided by law, that the ground on which the appeal is based is one of those provided for in Article 426 and that evidence that is in the file is submitted or invoked in support of the appeal, admits in principle the appeal and orders the summoning of the interested parties.

\*) D. 43/2023 HCCJ: The provisions of Article 426 letter b) and Article 431 of the Code of Criminal Procedure are interpreted as meaning that the court that resolves the appeal for annulment on the merits has the competence to reconsider which of the criminal laws that have succeeded each other over time is more favorable if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law that has not been held to be more favorable in cause?";

The provisions of Article 426(b) of the Code of Criminal Procedure are interpreted as meaning that the court hearing the appeal for annulment has the competence, at the stage of settling the appeal on the merits, to reconsider which of the criminal laws that have succeeded each other

over time is more favourable, if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law that was not taken into account in the analysis process of the criminal law applicable to the case?; and

Can the failure of the court of appeal to rule on the incidence of a cause for termination of the criminal proceedings in relation to the more favourable criminal law from the date of the commission of the act until the date of the trial of the appeal case be invoked by means of an appeal for annulment based on the provisions of Article 426 letter b) of the Code of Criminal Procedure?" and establishes the following:

1. The provisions of Article 426(b) of the Code of Criminal Procedure shall be interpreted as meaning that the court hearing the merits of the appeal for annulment may not reconsider which of the criminal laws that have succeeded each other over time is more favourable if the incidence of a cause for termination of the criminal proceedings is invoked in relation to a successive law which has not been held to be more favourable in the case.
2. The failure of the court of appeal to rule on the incidence of a cause for termination of the criminal proceedings in relation to the more favourable criminal law from the date of the commission of the act until the date of the trial of the appeal case may not be invoked by means of an appeal for annulment based on the provisions of Article 426 letter b) of the Code of Criminal Procedure.

### **Article 432: Trial procedure**

(1) At the time limit set for judging the appeal for annulment, the court, hearing the parties and the prosecutor's conclusions, if it finds the appeal well-founded, shall annul by decision the decision whose annulment is requested and shall proceed either immediately, or by granting a deadline, as the case may be, for the retrial of the appeal or for the retrial of the case after the annulment.

(2) If the appeal for annulment invokes the authority of res judicata, the judgment of the appeal is made by summoning the interested parties in the case in which the last decision was pronounced. The court, after hearing the parties and the prosecutor's conclusions, if it finds the challenge well-founded, shall abolish by decision or, as the case may be, by sentence the last decision or that part of the last decision in respect of which there is the authority of res judicata.

(3) The trial of the appeal for annulment can only take place in the presence of the defendant, when he is in possession.

(4) The sentence given in the appeal for annulment is subject to appeal, and the decision given on

appeal is final.

## **SECTION 2: Appeal in cassation**

### **Article 433: The purpose of the appeal in cassation and the competent court**

The appeal in cassation aims to submit to the High Court of Cassation and Justice the judgment, in accordance with the law, of the conformity of the appealed decision with the applicable rules of law.

### **Article 434: Decisions subject to appeal in cassation**

(1) Decisions handed down by the courts of appeal and the High Court of Cassation and Justice, as courts of appeal, may be appealed in cassation, with the exception of decisions ordering the retrial of cases

#### **(2) The following may not be appealed in cassation:**

- a) decisions rejecting the application for revision as inadmissible;
- b) the decisions rejecting the request to reopen the criminal trial in the case of trial in absentia;
- c) the decisions pronounced in the matter of the execution of sentences;
- d) decisions pronounced in the field of rehabilitation;
- e) (text of Article 434(2)(E) of Part 2, Title III, Chapter V, Section 2 was repealed on 08 July 2022 by the Act of Decision 208/2022)
- f) (the text of Article 434(2)(F) of Part 2, Title III, Chapter V, Section 2 was repealed on 01-Feb-2018 by the Act of Decision 651/2017)
- g) (the text of Article 434(2)(G) of Part 2, Title III, Chapter V, Section 2 was repealed on 28 December 2018 by the Act of Decision 573/2018)

(3) The appeal in cassation exercised by the prosecutor against the decisions by which the acquittal of the defendant was ordered cannot be aimed at obtaining his conviction by the court of appeal in cassation.

### **Article 435: Deadline for filing an appeal in cassation**

The appeal in cassation may be lodged by the parties or the prosecutor within 30 days from the date of communication of the decision of the court of appeal.

### **Article 436: Declaration of the appeal in cassation**

#### **(1) The following may file an appeal in cassation:**

- a) the prosecutor, in terms of the criminal and civil sides;

- b) the defendant, as regards the criminal and civil sides, against the decisions ordering the conviction, waiver of the application of the penalty or postponement of the application of the penalty or termination of the criminal trial;
- c) the civil party and the civilly liable party, as far as the civil side is concerned, and with regard to the criminal side, to the extent that the solution on this side has influenced the solution on the civil side.

(2)

(text of Article 436(2) of Part 2, Title III, Chapter V, Section 2 was repealed on 31-Oct-2016 by Article I(2) of Emergency Ordinance 70/2016)

(3) Until the closing of the debates at the court of appeal, the parties and the prosecutor may withdraw their appeal in cassation. The withdrawal must be made personally by the party or through a special representative, and if the party is in possession, by a statement attested or recorded in a report by the management of the place of detention. The declaration of withdrawal can be made either at the court whose decision was appealed or at the court of appeal.

(4) The legal representatives may withdraw the appeal in cassation with the observance, as far as the civil side is concerned, of the conditions provided by the civil law. The minor defendant may not withdraw the appeal in cassation declared personally or by his legal representative.

(5) The appeal in cassation filed by the prosecutor may be withdrawn by the hierarchically superior prosecutor.

(6) The decision of the court of appeal by which the appeal was rejected cannot be appealed in cassation by persons who have not exercised the appeal or when their appeal has been withdrawn.

### **Article 437: Grounds of the appeal in cassation**

**(1) The request for appeal in cassation shall be made in writing and shall include:**

- a) the name and surname, domicile or residence of the party or, as the case may be, the name and surname of the prosecutor who exercises the appeal in cassation, as well as the judicial body to which he belongs;
- b) indication of the judgment to be appealed;
- c) the indication of the cases of appeal in cassation on which the request is based and their reasoning;
- d) the signature of the person who exercises the appeal in cassation.

(2) All the documents invoked in its motivation shall be attached to the application.

## **Article 438: Cases in which an appeal can be lodged in cassation**

### **(1) Decisions are subject to quashing in the following cases:**

1. during the trial, the provisions regarding the jurisdiction according to the subject matter or the quality of the person were not complied with, when the trial was carried out by a lower court than the legally competent one;
2. repealed
3. repealed
4. repealed
5. repealed
6. repealed
7. the defendant was convicted of an act that is not provided for by the criminal law;
8. (text of Article 438(1)(8) of Part 2, Title III, Chapter V, Section 2 was repealed on 26 May 2025 by the Act of Decision 50/2025)
9. repealed
10. repealed
11. the pardon was not found or it was wrongly found that the sentence imposed on the defendant was pardoned;
12. penalties have been imposed within limits other than those provided for by law;
13. repealed
14. repealed

(2) The cases referred to in paragraph 1 may be grounds for quashing the judgment only if they have not been invoked on appeal or during the appeal or if, although they have been invoked, they have been rejected or the court has failed to rule on them.

(3) If the application for an appeal in cassation has been rejected, the party or the prosecutor who filed the appeal in cassation may not file a new application against the same decision, regardless of the reason invoked.

## **Article 439: Communication procedure**

(1) The application for an appeal in cassation together with the attached documents shall be submitted, accompanied by copies for the prosecutor and the parties, to the court whose decision

is appealed.

(2) The president of the court whose decision is appealed or the judge delegated by him shall communicate to the prosecutor and to the parties copies of the request for appeal in cassation and the other supporting documents, with the mention that the written conclusions may be submitted within 10 days from the receipt of the communications, to the same court.

(3) The failure of the parties and the prosecutor to submit written submissions does not prevent the appeal from being judged in cassation.

(4) Within 5 days from the submission of the written submissions or from the expiry of the deadline for submitting them, the president of the court or the judge delegated by him will submit to the High Court of Cassation and Justice the case file, the request for appeal in cassation, the attached documents, the proof of communication made, as well as, as the case may be, the written conclusions.

(4<sup>1</sup>) Where an application for an appeal on a point of law is lodged against a decision referred to in Article 434(2), the President of the Court or the judge delegated by him shall return the application for an appeal on a point of law to the party by administrative means.

(5) If the communication procedure provided for in paragraphs (2) and (4) is not fulfilled or if it is not complete, the assistant magistrate of the High Court of Cassation and Justice, appointed to verify the completion of the communication procedure and the preparation of the report on the application for appeal in cassation, shall complete or supplement, as the case may be, procedure.

(6) In the case of appeals in cassation filed against decisions pronounced by the Criminal Section of the High Court of Cassation and Justice, as a court of appeal, the communication procedure is carried out at the level of the Criminal Section of the High Court of Cassation and Justice, and in the case of appeals in cassation declared against decisions pronounced by panels of 5 judges, as courts of appeal, The communication procedure is carried out at the level of panels of 5 judges.

#### **Article 440: Admission in principle**

(1) The admissibility of the application for appeal in cassation shall be examined in the council chamber by a panel consisting of a judge, after the submission of the assistant magistrate's report and when the communication procedure is legally completed, without summoning the parties and without the participation of the prosecutor.

(2) If the application for an appeal in cassation is not made within the time limit provided for by law or if the provisions of Article 434, Article 436(1) and (6), Article 437 and Article 438 have not been complied with, the court shall dismiss the application for an appeal in cassation by final

conclusion.

(3) If the application for appeal in cassation has been withdrawn, the court takes note of the withdrawal, by conclusion.

(4) If the court finds that the application meets the conditions laid down in Articles 434 to 438, it shall order the admission in principle of the application for an appeal in cassation and shall refer the case to the appeal in cassation.

(5) In the case of appeals in cassation against decisions handed down by panels of 5 judges, as courts of appeal, the judge examining the admissibility of the application for an appeal in cassation under the conditions laid down in paragraphs 1 to 4 must be a member of a panel of 5 judges.

#### **Article 441: Suspension of execution**

(1) The court which admits in principle the application for an appeal in cassation or the panel hearing the appeal in cassation may suspend the execution of the judgment on grounds, in whole or in part, and may require the convicted person to comply with some of the obligations laid down in Article 215(1) and (2).

(2) If the convicted person fails to comply with the obligations imposed by the conclusion, the panel that will hear the appeal in cassation, ex officio or at the request of the prosecutor, may order the revocation of the suspension measure and the resumption of the execution of the sentence.

(3) The enforcement of the provisions for the suspension of the execution of the judgment and the supervision of the observance of the imposed obligations are made by the enforcement court.

#### **Article 442: The devolutionary effect and its limits**

(1) The court hears the appeal in cassation only with regard to the person who declared it and the person to whom the declaration of appeal in cassation refers and only in relation to the capacity that the appellant has in the trial.

(2) The court of appeal in cassation examines the case only within the limits of the grounds for cassation provided for in Article 438, invoked in the application for an appeal in cassation.

#### **Article 443: Extensive effect and its limits**

(1) The court examines the case by extension also with regard to the parties who have not filed an appeal in cassation or to whom it does not refer, and may also decide on them, without being

able to create a more difficult situation for these parties.

(2)The prosecutor, even after the expiry of the deadline for appealing in cassation, may request the extension of the appeal in cassation filed by him within the deadline and to persons other than those to whom he referred, without being able to create a more difficult situation for them.

#### **Article 444: Failure to aggravate the situation in its own appeal in cassation**

(1)The court, in solving the case, cannot create a more difficult situation for the one who filed the appeal in cassation.

(2)In an appeal in cassation filed by the prosecutor in favour of a party, the court of appeal in cassation may not aggravate his situation.

#### **Article 445: Presence of the parties and the prosecutor**

(1)The judgment of the appeal in cassation admitted in principle is made with the summons of the parties. The provisions of Articles 90 and 93(5) shall apply accordingly.

(2)The participation of the prosecutor in the trial of the appeal in cassation is mandatory.

#### **Article 446: Judgment of the appeal in cassation**

(1)The president of the panel gives the floor to the appellant, then to the respondent and the prosecutor. If among the appeals in cassation declared there is also the prosecutor's appeal, he has the first word.

(2)The prosecutor and the parties have the right to reply to new issues arising during the debates.

#### **Article 447: Verification of the legality of the decision**

The court is obliged to rule on all cases of appeal in cassation invoked by request by the prosecutor or by the parties, verifying exclusively the legality of the appealed decision.

#### **Article 448: The solutions to the judgment of the appeal in cassation**

(1)**The court, judging the appeal in cassation, pronounces one of the following solutions:**

1. rejects the appeal in cassation, maintaining the appealed decision, if the appeal in cassation is unfounded;
2. **admits the appeal in cassation, quashing the appealed decision, and:**
  - a)acquittes the defendant or orders the termination of the criminal trial or removes the misapplication of the law;
  - b)orders the retrial by the court of appeal or by the court with material jurisdiction or

according to the capacity of the person, if the other cases of cassation provided for in Article 438 are incidental.

(2) If the appeal in cassation concerns the wrong resolution of the civil side, the court, after admitting the appeal, shall remove the illegality found or order the retrial by the court whose decision was quashed, under the conditions of paragraph (1) item 2 letter b).

(3) In the case referred to in paragraph (1)(2)(a), the court of appeal in cassation shall also annul the decision of the first instance, if the same violations of the law as in the appealed decision are found.

(4) If the convicted person is in the course of the execution of the sentence, the court, admitting the appeal in cassation and pronouncing the quashing with reference, shall order the state of liberty of the convicted person and may take a preventive measure.

#### **Rule 449: Annulment of the decision and the content of the decision**

(1) If the appeal is allowed in cassation, the appealed decision shall be quashed within the limits provided for in Articles 442 and 443.

(2) The decision may be annulled only with regard to certain facts or persons or only with regard to the criminal or civil aspect, if this does not prevent the fair settlement of the case.

(3) The decision of the court of appeal in cassation must contain, in the introductory part, the particulars provided for in Article 402, and in the exposition, the legal grounds that led to the dismissal or admission of the appeal in cassation. The operative part must include the decision pronounced by the court of appeal in cassation, the date of delivery of the decision and the mention that the decision was made in a public hearing.

(4) When the retrial has been ordered, the decision must indicate which is the last remaining valid procedural act from which the criminal trial must resume its course.

#### **Article 450: Limits of judgment**

(1) The court of retrial must comply with the decision of the court of appeal in cassation, to the extent that the factual situation remains the one envisaged when admitting the appeal in cassation.

(2) When the judgment is annulled only on certain facts or persons, the court shall rule within the limits within which the judgment was quashed.

#### **Article 451: Retrial procedure**

The retrial of the case after the quashing of the appealed decision is carried out according to the provisions of chap. II or III of Title III of the special part, which shall be applied accordingly.

### **SECTION 3: Review**

#### **Rule 452: Decisions subject to review**

**(1) Final court decisions may be subject to review both on the criminal and civil sides.**

\*) By Decision no. 68/2020 The High Court of Cassation and Justice establishes that, in the interpretation of the provisions of Article 452(1) of the Code of Criminal Procedure, an application for review based on the provisions of Article 453(1)(f) of the Code of Criminal Procedure may also be directed against a final criminal decision, issued in the resolution of an application based on the provisions of Article 595 of the Code of Criminal Procedure.

(2) When a judgment concerns several offences or several persons, revision may be requested for any of the acts or perpetrators.

#### **Article 453: Review cases**

**(1) The revision of the final court decisions, regarding the criminal aspect, may be requested when:**

- a) facts or circumstances have been discovered that were not known at the time of the resolution of the case and which prove the groundlessness of the decision pronounced in the case;
- b) the decision whose revision is requested was based on the statement of a witness, the opinion of an expert or on the situations envisaged by an interpreter, who committed the crime of false testimony in the case whose revision is requested, thus influencing the solution pronounced;
- c) a document that served as the basis of the decision whose revision is requested was declared false during the trial or after the judgment was pronounced, a circumstance that influenced the solution pronounced in the case;
- d) a member of the panel of judges, the prosecutor or the person who has carried out criminal prosecution acts has committed an offence in relation to the case whose review is requested, a circumstance that influenced the decision pronounced in the case;
- e) when two or more final court decisions cannot be reconciled;
- f) The decision was based on a legal provision which, after the decision became final, was declared unconstitutional as a result of the admission of an exception of unconstitutionality raised in that case, in the situation in which the consequences of the violation of the constitutional provision continue to occur and can only be remedied by revising the decision

rendered.

(2)The review of final criminal court decisions, exclusively on the civil side, can be requested only before the civil court, according to the Code of Civil Procedure.

(3)The case referred to in paragraph 1(f) may be invoked as a ground for review only in favour of the convicted person or the person against whom the application of the sentence or the postponement of the application of the sentence has been ordered.

(4)The case referred to in paragraph 1(a) shall constitute grounds for review if, on the basis of new facts or circumstances, it can be established that the decision of acquittal, conviction, waiver of the imposition of the penalty, postponement of the application of the penalty or termination of the criminal proceedings may be unfounded, and the cases referred to in paragraph 1(b) to (d) and (f) shall constitute grounds for review if they have led to the imposition of an unlawful or unfounded decision.

(5)In the case referred to in paragraph 1(e), all decisions which cannot be reconciled shall be subject to review.

#### **Article 454: Proving revision cases**

(1)The situations constituting the cases of revision provided for in Article 453(1)(b) to (d) shall be proved by a final court decision by which the court has ruled on the merits of the case, finding the existence of forgery or the existence of facts and their commission by those persons.

(2)In cases where proof cannot be provided in accordance with paragraph 1 because of the existence of a cause preventing the initiation or prosecution of criminal proceedings, the proof of the cases of revision referred to in Article 453(1)(b) to (d) may be made in the revision procedure by any means of proof.

#### **Article 455: Who can request the review**

##### **(1)I can request the review:**

- a)the parties to the proceedings, within the limits of their standing to bring proceedings;
- b)a family member of the convicted person, even after his death, only if the request is made in favor of the convicted person.

(2)The prosecutor may request ex officio the review of the criminal side of the decision.

#### **Article 456: Request for review**

(1)The request for revision is addressed to the court that heard the case in the first instance.

(2)The request shall be made in writing and shall be reasoned, indicating the case of revision on which it is based and the means of proof in proving it.

(3)The request will be accompanied by copies of the documents that the person who formulated the request for revision intends to use in the process, certified for conformity with the original. When the documents are drafted in a foreign language, they will be joined in translation by a certified translator.

(4)If the application does not meet the conditions laid down in paragraphs 2 and 3, the court shall instruct the applicant to complete it, within a period fixed by the court, under the penalty provided for in Article 459(5).

#### **Article 457: Deadline for submitting the application**

(1)The request for revision in favour of the convicted person may be made at any time, even after the sentence has been served or considered to have been executed or after the death of the convicted person, except as provided for in Article 453(1)(f), when the request for revision may be made within one year from the date of publication of the decision of the Constitutional Court in the Official Gazette of Romania, Part I.

**(2)The request for revision against the convicted person, the acquitted person or the person against whom the criminal proceedings have been terminated can be made within 3 months, which runs:**

a)in the cases referred to in Article 453(1)(a) to (d), where they are not established by a final decision, from the date on which the facts or circumstances became known to the person making the request or from the date on which he became aware of the circumstances for which the offence cannot be established by a criminal decision, but not later than 3 years from the date on which they occurred;

b)in the cases referred to in Article 453(1)(a) to (d), if established by a final judgment, from the date on which the judgment was known to the person making the request, but not later than one year after the date on which the criminal judgment became final;

c)in the case referred to in Article 453(1)(e), from the date on which the decisions which are not reconciled have been known to the person making the request.

(3)The provisions of paragraph (2) shall also apply if the prosecutor is notified ex officio.

(4)The revision to the detriment of the defendant cannot be made when a case has arisen that prevents the initiation of the criminal action or the continuation of the criminal trial.

**Rule 458: Competent court**

The court that heard the case in the first instance is competent to hear the application for review. Where the basis of the application for revision consists in the existence of decisions which cannot be reconciled, jurisdiction shall be determined in accordance with the provisions of Article 44.

**Rule 459: Admission in principle**

(1) Upon receipt of the request for review, a deadline is set for examining the admissibility in principle of the request for review, the president ordering the attachment of the case file.

(2) Admissibility in principle is examined by the court, in the council chamber, with the summons of the parties and with the participation of the prosecutor. The failure to appear of the persons duly summoned does not prevent the examination of admissibility in principle.

**(3) The court examines whether:**

**a) the request was made within the deadline by one of the persons referred to in Article 455;**

b) the application was drawn up in compliance with the provisions of Article 456 (2) and (3);

c) legal grounds were invoked for the reopening of criminal proceedings;

d) the facts and means of proof on the basis of which the request is formulated were not presented in a previous request for review that was finally judged;

e) the facts and means of proof on the basis of which the request is formulated obviously lead to the establishment of legal bases that allow the review;

f) The person who made the request complied with the requirements of the court ordered under Article 456(4).

(4) If the court finds that the conditions laid down in paragraph 3 are met, it shall order the application for review to be admitted in principle.

(5) If the court finds that the conditions provided for in paragraph (3) are not met, it shall order by sentence the rejection of the request for revision, as inadmissible.

(6) Where the application for revision has been made in respect of a deceased convicted person, or where the convicted person who made the application or in whose favour the revision was made has died after the application was made, by way of exception to the provisions of Article 16 (1) (f), the revision procedure shall continue and, in the event of a retrial, after admission in principle, The court shall decide in accordance with the provisions of Article 16, which shall be duly applied.

(7) The conclusion by which the request for revision is admitted in principle is final. The sentence rejecting the application for revision, after analyzing the admissibility in principle, is subject to the same appeal as the decision to which the revision refers.

#### **Article 460: Measures that may be taken with or after admission in principle**

(1) Once the application for revision has been admitted in principle or subsequently thereafter, the court may suspend the execution of the judgment subject to revision in whole or in part, and may order the convicted person to comply with some of the obligations laid down in Article 215(1) and (2).

(2) Against the conclusion ordering the suspension of the decision subject to review, provided for in paragraph (1), the prosecutor or the interested person may lodge an appeal within 48 hours from the pronouncement for those present and from the communication for those absent. The appeal filed by the prosecutor is suspensive of execution. The provisions of Article 597(2) to (5) shall apply accordingly.

(3) If the convicted person does not comply with the obligations established by the conclusion, the court, ex officio or at the request of the prosecutor, may order the revocation of the suspension measure and the resumption of the execution of the sentence.

(4) If the request for revision is admitted in principle for the existence of decisions that cannot be reconciled, the cases in which these decisions were pronounced shall be joined for retrial.

#### **Article 461: Retrial**

(1) The retrial of the case after the admission in principle of the request for revision is made according to the rules of procedure regarding the trial in the first instance.

(2) The court, if it finds it necessary, administers the evidence again during the first trial.

(3) If the court finds that the factual situation cannot be established directly or that it could only be done with a long delay, it orders the necessary investigations to be carried out by the prosecutor of the prosecutor's office attached to this court, within a period not exceeding 3 months.

(4) After carrying out the investigations, the prosecutor submits all the material to the competent court.

(5) The persons referred to in Article 453 (1) (b) and (d) may not be heard as witnesses in the case subject to revision if the proof of such cases of revision has been made by a court decision.

**Rule 462: Solutions after the retrial**

(1) If the application for revision is found to be well founded, the court shall set aside the judgment, in so far as the revision has been granted, or the judgments which cannot be reconciled, and shall issue a new judgment in accordance with the provisions of Articles 395 to 399, which shall be duly applied.

(2) The court shall retry the case by extension and with regard to the parties who have not filed a request for revision, being able to decide on them as well, without being able to create a more difficult situation for them.

(3) The court shall take measures to restore the previous situation, ordering, if necessary, the restitution of the fine paid and of the confiscated property, of the legal costs which the person in whose favour the revision was admitted was not obliged to bear or other such measures.

(4) If the court finds that the request for revision is unfounded, it rejects it and orders the revisionist to pay the legal costs to the state, as well as the resumption of the execution of the sentence, if it has been suspended.

**Article 463: Appeal**

The sentence by which the court rules on the request for revision, after the retrial of the case, is subject to the same appeal as the decision to which the revision refers.

**Article 464: Effects of the rejection of the request for review**

If the request for revision is rejected as inadmissible or unfounded, a new request may not be made for the same reasons.

**Article 465: Review of judgments and opinions of the European Court of Human Rights**

(1) Final judgments rendered in cases in which the European Court of Human Rights has found a violation of fundamental rights or freedoms or has ordered the case to be removed from the docket, following an amicable settlement of the dispute between the State and the applicants, may be subject to review if any of the serious consequences of the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols thereto continue to occur and do not can only be remedied by reviewing the judgment rendered.

**(1<sup>1</sup>) The final judgment rendered in the case in which the European Court of Human Rights has issued an advisory opinion may be subject to review, if the following conditions are cumulatively met:**

a)the final decision was pronounced prior to the communication by the Government Agent to the European Court of Human Rights of the advisory opinion, translated into Romanian;

b)the contradiction between the interpretation of the final judgment and the one established by the opinion generates a violation of fundamental rights or freedoms and any of the serious consequences of the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols thereto continue to occur and can only be remedied by reviewing the judgment pronounced.

\*) Enter into force on the date of entry into force, for Romania, of Protocol no. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. This Protocol shall enter into force on the first day of the month following the expiry of a period of 3 months from the date on which ten High Contracting Parties to the Convention have expressed their consent to be parties to the Protocol in accordance with the provisions of Article 7.

**(2)I can request the review:**

a)the person whose right has been violated;

b)family members of the convicted person, even after his death, only if the request is made in favor of the convicted person;

c)the prosecutor.

(3)The application for revision shall be lodged with the court that issued the decision whose revision is sought.

(4)The request for revision may be made at the latest within 3 months from the date of publication in the Official Gazette of Romania, Part I, of the final judgment pronounced by the European Court of Human Rights.

**(4<sup>1</sup>)The request for revision, formulated according to paragraph (1<sup>1</sup>), may be made at the latest within 3 months from the date of publication in the Official Gazette of Romania, Part I, of the opinion issued by the European Court of Human Rights.**

\*) Enter into force on the date of entry into force, for Romania, of Protocol no. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. This Protocol shall enter into force on the first day of the month following the expiry of a period of 3 months from the date on which ten High Contracting Parties to the Convention have expressed their consent to be parties to the Protocol in accordance with the provisions of Article 7.

(5)After notification, the court may order, ex officio, at the proposal of the prosecutor or at the request of the party, the suspension of the execution of the contested decision. The provisions of

Article 460(1) and (3) shall apply accordingly.

(6)The participation of the prosecutor is mandatory.

(7)When judging the request for revision, the parties are summoned. The detained party is brought to trial.

(8)When the parties are present at the hearing of the application for revision, the court also hears their conclusions.

(9)The court examines the application on the basis of the documents in the file and pronounces by decision.

(10)The court rejects the application if it finds that it is late, inadmissible or unfounded.

**(11)When the court finds that the claim is well founded:**

a)annuls, in part, the appealed decision in terms of the violated right and, rejudging the case, with the application of the provisions of section 1 of chap. V of Title III of the special part, removes the consequences of the violation of the law;

b)annuls the decision and, when it is necessary to administer evidence, orders the retrial by the court before which the violation of the right occurred, applying the provisions of section 1 of chap. V of Title III of the special part.

(12)The decision rendered is subject to the remedies provided by law for the revised decision.

#### **SECTION 4:Reopening of the criminal trial in the case of trial in the absence of the convicted person**

##### **Article 466: Reopening of the criminal trial in the case of trial in the absence of the convicted person**

(1)A person who has been definitively convicted and tried in absentia may request the reopening of the criminal proceedings within one month from the day on which he became aware, by any official notification, that a criminal trial had been held against him.

(2)A convicted person who has not been summoned to the trial and has not become aware of it in any other official way, i.e., although he was aware of the trial, justifiably absent from the trial of the case and could not inform the court, is considered to have been tried in absentia. A convicted person who has appointed a chosen counsel or a representative if they have appeared at any time during the trial, nor a person who, after the communication of the conviction sentence in accordance with the law, has not appealed, has renounced his declaration or has withdrawn his appeal, shall not be considered to be tried in absentia.

(3) In the case of a convicted person who has been tried in absentia and whose extradition or surrender has been ordered by a foreign State on the basis of a European arrest warrant, the period referred to in paragraph 1 shall run from the date on which, after being brought to the country, the conviction decision was communicated to him.

(4) The criminal trial cannot be reopened if the convicted person has requested to be tried in absentia.

(5) The provisions of the preceding paragraphs shall apply accordingly to the person against whom a decision has been made to waive the application of the penalty or to postpone the application of the penalty.

#### **Article 467: Request to reopen the criminal trial**

(1) The request for the reopening of the criminal trial may be made by the person tried in absentia and shall be addressed to the court that tried the case in the first instance.

(2) When the person tried in absentia is deprived of liberty, the application may be submitted to the administration of the place of detention, which shall immediately send it to the competent court.

(3) The request shall be made in writing and shall state reasons as to the fulfilment of the conditions laid down in Article 466.

(4) The request may be accompanied by copies of the documents that the person tried in absentia intends to use in the trial, certified for conformity with the original. When the documents are written in a foreign language, they will be accompanied by a translation.

(5) If the application does not meet the conditions set out in paragraphs 3 and 4, the court shall instruct the applicant to complete it by the first trial deadline or, as the case may be, within a short period of time determined by the court.

#### **Article 468: Preliminary measures**

(1) Upon receipt of the request for the reopening of the criminal trial, a deadline is set for examining the admissibility in principle, the president ordering the attachment of the case file, as well as the summoning of the parties and the main interested procedural subjects.

(2) When the person who requested the reopening of the criminal trial is deprived of liberty, even in another case, the President orders that he be informed of the deadline and takes measures for the appointment of a court-appointed lawyer.

(3) The person deprived of liberty shall be brought to trial.

**Article 469: Judgment of the request for the reopening of the trial**

**(1) The court, after hearing the conclusions of the prosecutor, the parties and the main subjects of the proceedings, examines whether:**

- a) the request was made within the deadline and by one of the persons referred to in Article 466;
- b) legal grounds were invoked for the reopening of the criminal trial;
- c) The grounds on which the request is made were not presented in a previous request for the reopening of the criminal trial, which was finally judged.

(2) The application shall be examined as a matter of urgency, and if the convicted person is serving the custodial sentence imposed in the case whose retrial is sought, the court may suspend the execution of the judgment, in whole or in part, for reasons and may order the convicted person to comply with one of the obligations laid down in Article 215(1) and (2). If the execution of the prison sentence has not begun, the court may order the convicted person to comply with one of the obligations laid down in Article 215(1) and (2).

**(3) If the court finds that the conditions provided for in paragraph (1) are met, it shall order the admission of the request for the reopening of the criminal trial.**

\*) The Constitutional Court admits the exception of unconstitutionality and finds that the provisions of Article 469 paragraph (3) of the Code of Criminal Procedure, in the interpretation given by Decision no. 13 of 3 July 2017, pronounced by the High Court of Cassation and Justice - The panel competent to judge the appeal in the interest of the law, as regards the procedural phase from which the criminal trial is resumed, are unconstitutional.

(4) If the court finds that the conditions provided for in Article 466 have not been met, it shall order the rejection of the request for the reopening of the criminal trial.

(5) The conclusion admitting the request for the reopening of the criminal proceedings may be appealed on the merits.

(6) The decision rejecting the request for the reopening of the criminal trial is subject to the same appeal as the decision pronounced in the absence of the convicted person.

(7) The admission of the request for the reopening of the criminal trial entails the automatic annulment of the decision or, as the case may be, of the decisions pronounced in the absence of the convicted person. The trial resumes from the procedural phase carried out in the absence of the convicted person.

(8) The court shall reopen the criminal proceedings by extending the application to the parties

who have not filed a request, being able to decide on them as well, without being able to create a more difficult situation for them.

(9) Once the request for the reopening of the criminal proceedings is admitted, the court, ex officio or at the request of the prosecutor, may order the defendant to take one of the preventive measures provided for in Article 202(4)(b)-(e). The provisions of Title V of the General Part shall apply accordingly.

#### **Article 470:**

(the text of Article 470 of Part 2, Title III, Chapter V, Section 4 was repealed on 23 May 2016 by Article II, paragraph 116 of Emergency Ordinance 18/2016)

### **CHAPTER VI: Provisions on ensuring a uniform judicial practice**

#### **SECTION 1: Appeal in the interest of the law**

##### **Article 471: Appeal in the interest of the law**

(1) In order to ensure the uniform interpretation and application of the law by all courts, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, ex officio or at the request of the Minister of Justice, the Governing Board of the High Court of Cassation and Justice or the Governing Boards of the Courts of Appeal, as well as the Ombudsman have the duty to request the High Court of Cassation and Justice to rule on questions of law that have been resolved differently by the courts.

(2) The request must include the different solutions given to the legal problem and their motivation, the jurisprudence of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights or, as the case may be, the Court of Justice of the European Union, the opinions expressed in the relevant doctrine in the field, as well as the solution that is proposed to be pronounced in the appeal in the interest of the law.

(3) The application for an appeal in the interest of the law must be accompanied, under penalty of rejection as inadmissible, by copies of final court decisions from which it appears that the questions of law which are the subject of the judgment have been resolved differently by the courts.

##### **Article 472: Conditions of admissibility**

An appeal in the interest of the law is admissible only if it is proven that the legal issues that are the subject of the judgment have been solved differently by final court decisions, which are

annexed to the application.

**Article 473: Adjudication of the appeal in the interest of the law**

(1) The appeal in the interest of the law shall be heard by a panel consisting of the President of the High Court of Cassation and Justice or, in his absence, the Vice-President of the High Court of Cassation and Justice, the presidents of the sections within it, a number of 14 judges from the section within whose jurisdiction the question of law that has been resolved differently by the courts of law falls, as well as 2 judges from the other sections. The president of the panel is the president of the High Court of Cassation and Justice or, in his absence, the vice-president of the High Court of Cassation and Justice.

(2) If the question of law is of interest to two or more sections, the President of the High Court of Cassation and Justice shall determine the sections from which the judges who will make up the panel of judges come.

(3) After notifying the High Court of Cassation and Justice, its president shall take the necessary measures for the random appointment of the judges of the section within whose competence the question of law that has been solved differently by the courts of law, as well as of the judges of the other sections that make up the panel referred to in paragraph (1).

(4) Upon receipt of the request, the president of the panel will designate a judge from the section within whose competence the question of law that has been resolved differently by the courts falls, in order to draw up a report on the appeal in the interest of the law. If the question of law is of interest to two or more sections, the president of the panel will designate 3 judges from these sections to draw up the report. The rapporteurs are not incompatible.

(5) In order to draw up the report, the president of the panel may request a written opinion on the questions of law resolved differently from recognized specialists.

(6) The report will include the different solutions given to the legal problem and the arguments on which they are based, the relevant jurisprudence of the Constitutional Court, the High Court of Cassation and Justice, the European Court of Human Rights, the Court of Justice of the European Union and the opinion of the specialists consulted, if applicable, as well as the doctrine on the matter. At the same time, the judge or, as the case may be, the reporting judges will draw up and motivate the draft of the solution that is proposed to be given to the appeal in the interest of the law.

(7) The meeting of the panel shall be convened by its president at least 20 days before its meeting. With the summons, each judge will receive a copy of the report and the proposed

solution.

(8) All the judges of the panel participate in the sitting. If there are objective reasons, they shall be replaced, subject to the rules laid down in paragraph 3.

(9) The appeal in the interest of the law shall be lodged before the panel, as the case may be, by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or by the prosecutor appointed by him, by the judge appointed by the governing board of the High Court of Cassation and Justice, respectively of the Court of Appeal, or by the Ombudsman or by a representative thereof.

(10) The appeal in the interest of the law shall be judged within 3 months from the date of notification to the court, and the solution shall be adopted by at least two thirds of the number of judges of the panel. Abstentions from voting are not allowed.

#### **Article 474: Content of the judgment and its effects**

(1) The panel of the High Court of Cassation and Justice shall rule on the request for appeal in the interest of the law.

(2) The decision is pronounced only in the interest of the law and has no effect on the court decisions examined nor on the situation of the parties in those lawsuits.

(3) The decision shall be motivated within 30 days from the pronouncement and shall be published within 15 days from the motivation in the Official Gazette of Romania, Part I.

(4) The resolution given to the issues of law judged is mandatory for the courts from the date of publication of the decision in the Official Gazette of Romania, Part I.

#### **Article 474<sup>1</sup>: Termination or modification of the effects of the decision**

The effects of the decision cease in the event of repeal, finding unconstitutionality or amending the legal provision that generated the resolved legal issue, unless it subsists in the new regulation.

### **SECTION 2: SECTION 2: Referral to the High Court of Cassation and Justice in order to pronounce a preliminary decision for the resolution of some questions of law**

#### **Article 475: Subject matter of the complaint**

If, in the course of the proceedings, a panel of judges of the High Court of Cassation and Justice, the Court of Appeal or the General Court, hearing the case at last instance, finds that there is a point of law, the clarification of which depends on the resolution of the merits of the case and on

which the High Court of Cassation and Justice has not ruled by a prior decision or by an appeal in the interest of the law and is not the subject of an appeal in the interest of the law being resolved, it will be able to request the High Court of Cassation and Justice to pronounce a decision by which to resolve in principle the question of law with which it has been seized.

#### **Article 476: Trial procedure**

(1) The referral to the High Court of Cassation and Justice shall be made by the panel of judges after contradictory debates, if the conditions provided for in Article 475 are met, by a conclusion that is not subject to any appeal. If the notification is ordered by conclusion, it shall include the reasons that support the admissibility of the notification according to the provisions of Article 475, the point of view of the panel of judges and the parties.

(2) By the conclusion provided for in paragraph (1), the case may be suspended until the preliminary decision for the resolution of the question of law has been pronounced. If the suspension has not been ordered at the same time as the notification, and the judicial investigation is completed before the High Court of Cassation and Justice rules on the notification, the court shall suspend the debates until the decision provided for in Article 477(1) has been pronounced. If the defendant is under house arrest or is under preventive arrest, or if the defendant has been ordered to be placed under judicial control or judicial control on bail, the provisions of Article 208 shall be duly applied throughout the suspension.

(3) After the case has been registered with the High Court of Cassation and Justice, the conclusion of the referral shall be published on the website of this court.

(4) Similar cases, pending before the courts, may be suspended until the complaint is resolved.

(5) The assignment of the complaint shall be made by the President or, in his absence, by one of the Vice-Presidents of the High Court of Cassation and Justice or by the person designated by them.

(6) The complaint shall be judged by a panel consisting of the president of the corresponding section of the High Court of Cassation and Justice or by a judge appointed by him and 8 judges from the respective section. The president of the section or, in case of impossibility, the judge appointed by him shall be the president of the panel and shall take the necessary measures for the random appointment of judges.

(7) After the composition of the panel according to paragraph (6), its president shall appoint a judge to draw up a report on the question of law submitted to the court. The Judge designated as rapporteur does not become incompatible.

(8)When the question of law concerns the activity of several chambers of the High Court of Cassation and Justice, the President or, in his absence, one of the Vice-Presidents of the High Court of Cassation and Justice shall transmit the notification to the Presidents of the Chambers concerned with the resolution of the question of law. In this case, the panel will be composed of the president or, in his absence, the vice-president of the High Court of Cassation and Justice, who will preside over the panel, the presidents of the sections interested in solving the question of law, as well as 5 judges from the respective sections, randomly appointed by the president of the panel. After the panel is constituted, for the preparation of the report, the president of the panel will appoint one judge from each section. The rapporteurs are not incompatible.

(9)The report will be communicated to the parties, who, within 15 days from the communication, may submit, in writing, through a lawyer or, as the case may be, through legal counsel, their points of view on the question of law submitted to the court.

(10)The provisions of Article 473(5) to (8) shall apply accordingly.

(11)The notification shall be judged without summoning the parties, within a maximum of 3 months from the date of investiture, and the solution shall be adopted with at least two-thirds of the number of judges of the panel. Abstentions from voting are not allowed.

#### **Article 477: Content and effects of the judgment**

(1)On the notification, the panel for the resolution of some questions of law pronounces by decision, only on the question of law submitted for resolution.

(2)The provisions of Article 474(3) shall apply accordingly.

(3)The resolution of questions of law is binding on the courts from the date of publication of the decision in the Official Gazette of Romania, Part I.

(4)(text of Article 477(4) of Part 2, Title III, Chapter VI, Section 2 was repealed on 23 May 2016 by Article II, paragraph 117 of Emergency Ordinance 18/2016)

#### **Article 477<sup>1</sup>: Termination or modification of the effects of the decision**

The effects of the decision cease in the event of repeal, finding unconstitutionality or amending the legal provision that generated the resolved legal issue, unless it subsists in the new regulation.

### **TITLE IV:Special procedures**

#### **CHAPTER I:Plea agreement**

**Article 478: Holders of the plea agreement and its limits**

(1) During the criminal investigation, after the initiation of the criminal action, the defendant and the prosecutor may conclude an agreement, as a result of the defendant's admission of guilt.

(2) The effects of the plea agreement are subject to the opinion of the hierarchically superior prosecutor.

(3) The guilty plea agreement can be initiated by both the prosecutor and the defendant.

(4) The limits of the conclusion of the guilty plea agreement shall be established by the prior and written opinion of the superior hierarchical prosecutor.

(5) If criminal proceedings have been initiated against several defendants, a separate plea agreement may be concluded with each of them, without prejudice to the presumption of innocence of the defendants for whom no agreement has been concluded.

(6) Juvenile defendants may conclude guilty plea agreements, with the consent of their legal representative, under the conditions of this chapter.

**Article 479: Object of the plea agreement**

The guilty plea agreement has as its object the recognition of the commission of the act and the acceptance of the legal framework for which the criminal action was initiated and concerns the type and amount of the penalty, as well as the form of its execution, respectively the type of educational measure or, as the case may be, the solution of waiving the application of the penalty or postponing the application of the penalty.

**Article 480: Conditions for concluding the plea agreement**

(1) The plea agreement can be concluded only with regard to crimes for which the law provides for a fine or imprisonment of not more than 15 years.

(2) The guilty plea agreement is concluded when, from the evidence administered, there is sufficient data on the existence of the act for which the criminal action was initiated and on the guilt of the defendant. At the conclusion of the plea agreement, legal aid is mandatory.

(3) (the text of Article 480(3) of Part 2, Title IV, Chapter I was repealed on 01-Feb-2014 by Article 102(288) of Title III of Law 255/2013)

(4) The defendant benefits from the reduction by one third of the punishment limits provided by law in the case of imprisonment and the reduction by one quarter of the punishment limits provided by law in the case of the penalty of a fine. For minor defendants, these aspects will be

taken into account when choosing the educational measure; In the case of educational measures involving deprivation of liberty, the limits of the periods for which these measures are ordered, provided for by law, are reduced by one third.

#### **Article 481: Form of the plea agreement**

(1) The plea agreement shall be concluded in writing.

(2) In the event that a guilty plea agreement is concluded, the prosecutor shall no longer draw up an indictment regarding the defendants with whom he has concluded an agreement.

#### **Rule 482: Content of the plea agreement**

(1) **The plea agreement includes:**

- a) date and place of completion;
- b) the name, surname and status of those between whom it ends;
- c) data relating to the person of the defendant, referred to in Article 107(1);
- d) the description of the act that is the subject of the agreement;
- e) the legal classification of the act and the punishment provided by law;
- f) evidence and means of proof;
- g) the express declaration of the defendant by which he acknowledges the commission of the act and accepts the legal framework for which the criminal action was initiated;
- h) the type and amount of the punishment or educational measure, as well as the form of execution of the sentence or the solution of waiving the application of the sentence or postponing the application of the sentence, on which an agreement was reached between the prosecutor and the defendant;
- i) the signature of the prosecutor, the defendant, the lawyer and, as the case may be, of the legal representative.

(2) In case of failure to conclude the plea agreement or its rejection by a final court decision, the statement given by the defendant in order to conclude the plea agreement cannot be used to settle the case in the absence of his express consent, expressed in writing in the presence of the chosen or ex officio-appointed defense counsel. In the absence of this agreement, the document recording the statement given by the defendant in order to conclude the plea agreement shall be removed from the case file.

#### **Article 483: Referral to the court with the plea agreement**

(1) After concluding the guilty plea agreement, the prosecutor notifies the court that would have

jurisdiction to judge the case on the merits and sends it the guilty plea agreement, accompanied by the criminal prosecution file.

(2) In the event that the agreement is concluded only on some of the facts or only on some of the defendants, and for the other facts or defendants the indictment is ordered, the court is notified separately. The prosecutor submits to the court only the criminal prosecution documents that refer to the facts and persons who were the subject of the guilty plea agreement.

(3) If the provisions of Article 23(1) are applicable, the prosecutor shall submit to the court the plea agreement accompanied by the settlement or mediation agreement.

#### **Article 484: Procedure before the court**

(1) If the plea agreement lacks any of the particulars provided for in Article 482 or if the conditions provided for in Article 483 have not been complied with, the court shall order the omissions to be covered within 5 days and shall notify the head of the prosecutor's office that issued the agreement in this regard.

(2) At the set deadline, the defendant, the other parties and the injured person are summoned. The court shall rule on the plea agreement by sentence, in a public hearing, after hearing the prosecutor, the defendant and his lawyer, as well as, if present, the other parties and the injured person.

(3) The provisions contained in Title III of the special part on trial which are not contrary to the provisions of this Chapter shall be applied accordingly.

#### **Article 485: Court solutions**

(1) **The court, analyzing the agreement, pronounces one of the following solutions:**

a) admits the plea agreement and pronounces the solution on which an agreement has been reached, if the conditions set out in Articles 480 to 482 are met with regard to all the facts held against the defendant, which were the subject of the agreement;

b) rejects the plea agreement and sends the case to the prosecutor for further prosecution, if the conditions set out in Articles 480-482 are not met with regard to all the facts held against the defendant, which were the subject of the agreement, or if it considers that the solution on which an agreement was reached between the prosecutor and the defendant is illegal or unjustifiably mild in relation to the seriousness of the crime or the dangerousness of the offender.

(2) The court can admit the plea agreement only with respect to some of the defendants.

(3) In the situation provided for in paragraph (1)(b), the court shall rule ex officio on the state of arrest of the defendants.

(4)The provisions of Article 396(9), Article 398 and Article 399 shall apply accordingly.

#### **Article 486: Settlement of the civil action**

(1)If the court admits the plea agreement and a settlement or mediation agreement has been concluded between the parties regarding the civil action, the court takes note of this by sentence.

(2)If the court admits the plea agreement and no settlement or mediation agreement has been concluded between the parties regarding the civil action, the court leaves the civil action unresolved. In this situation, the decision by which the plea agreement was admitted does not have the force of res judicata on the extent of the damage before the civil court.

#### **Article 487: Content of the sentence**

The sentence must include:

- a)the particulars referred to in Articles 370(4), 403 and 404;
- b)the act for which the guilty plea agreement was concluded and its legal classification.

#### **Article 488: Appeal**

(1)Against the sentence pronounced according to Articles 485 and 486, the prosecutor, the defendant, the other parties and the injured person may file an appeal within 10 days from the communication.

(2)The appeal may be declared under the conditions of Article 409, which shall be applied accordingly.

(3)The parties and the injured person shall be summoned at the resolution of the appeal.

(4)**The appeal court pronounces one of the following solutions:**

- a)dismisses the appeal, maintaining the appealed decision, if the appeal is late or inadmissible or unfounded;
- b)admits the appeal, annuls the sentence by which the recognition agreement was admitted and pronounces a new decision, proceeding according to Articles 485 and 486, which shall be applied accordingly;
- c)admits the appeal, annuls the sentence by which the plea bargain was rejected, admits the plea bargain, the provisions of Article 485(1)(a) and Article 486 being duly applied.

### **CHAPTER I<sup>1</sup>:Appeal regarding the duration of the criminal trial**

#### **Article 488<sup>1</sup>: Submission of the appeal**

(1) If the criminal prosecution or trial activity is not carried out within a reasonable time, an appeal may be filed, requesting the acceleration of the procedure.

(2) The appeal can be filed by the suspect, the defendant, the injured person, the civil party and the civilly liable party. During the trial, the appeal can also be filed by the prosecutor.

**(3) The appeal can be formulated as follows:**

a) after at least one year from the start of the criminal investigation, for cases in the course of the criminal investigation;

b) after at least one year from the indictment, for cases pending before the court of first instance;

c) after at least 6 months from the referral of an appeal to the court, for cases under ordinary or extraordinary appeals.

(4) The appeal can be withdrawn at any time until it is resolved. The appeal can no longer be reiterated during the same procedural phase in which it was withdrawn.

### **Article 488<sup>2</sup>: Settlement competence**

**(1) The competence to settle the appeal belongs as follows:**

a) in criminal cases pending criminal investigation, the judge of rights and freedoms of the court whose competence would be competent to judge the case at first instance;

b) in criminal cases pending or in appeals, ordinary or extraordinary, to the court hierarchically superior to the one before which the case is pending.

(2) When the judicial procedure on which the appeal is filed is pending before the High Court of Cassation and Justice, the competence to settle the appeal belongs to another panel within the same section.

### **Article 488<sup>3</sup>: Content of the appeal**

The appeal shall be formulated in writing and shall include:

a) the name, surname, domicile or residence of the natural person, respectively the name and registered office of the legal person, as well as the capacity in question of the natural or legal person who prepares the application;

b) the name and capacity of the person representing the party in the proceedings, and in the case of representation by a lawyer, his name and professional headquarters;

c) correspondence address;

d) the name of the prosecutor's office or court and the file number;

e) the factual and legal grounds on which the appeal is based;

f) date and signature.

#### **Article 488<sup>4</sup>: Procedure for solving the appeal**

**(1) The judge of rights and freedoms or the court, in order to settle the appeal, orders the following measures:**

- a) informing the prosecutor, respectively the court before which the case is pending, about the appeal filed, mentioning the possibility of formulating a point of view on it;
- b) the transmission within 5 days of the file or a certified copy of the case file by the prosecutor, respectively by the court pending the case;
- c) informing the other parties to the proceedings and, where appropriate, the other persons referred to in Article 488<sup>1</sup> paragraph (2) of the appeal lodged and of the right to express their point of view within the time limit granted for this purpose by the judge of rights and freedoms or by the court.

(2) If the suspect or defendant is deprived of his liberty, in that case or in another case, the information provided for in paragraph 1(c) shall be made both to him and to his lawyer, chosen or appointed ex officio.

(3) Failure to submit the point of view referred to in paragraph (1)(a) and (c) within the time limit set by the court shall not prevent the resolution of the appeal.

(4) The judge of rights and freedoms or the court resolves the appeal within 20 days from its registration.

(5) The appeal is resolved by conclusion, in the council chamber, with the summoning of the parties, of the main procedural subjects and with the participation of the prosecutor. The non-appearance of the legally summoned persons does not prevent the resolution of the appeal.

#### **Article 488<sup>5</sup>: Resolution of the appeal**

(1) The judge of rights and freedoms or the court, in resolving the appeal, verifies the duration of the proceedings on the basis of the works and material in the case file and the points of view presented and pronounces by conclusion.

**(2) The judge of rights and freedoms or the court, in assessing the reasonableness of the duration of the judicial procedure, will take into account the following elements:**

- a) the nature and subject matter of the case;
- b) the complexity of the case, including by taking into account the number of participants and the difficulties in administering the evidence;
- c) the extraneous elements of the case;

- d) the procedural phase in which the case is located and the duration of the previous procedural phases;
- e) the conduct of the contestant in the analyzed judicial procedure, including from the perspective of exercising his procedural and procedural rights and from the perspective of fulfilling his obligations during the trial;
- f) the behaviour of the other participants concerned, including the authorities involved;
- g) the intervention of legislative changes applicable to the case;
- h) other elements likely to influence the duration of the procedure.

### **Article 488<sup>6</sup>: Solutions**

**(1) When the judge of rights and freedoms or the court considers the appeal to be well-founded, the judge of rights and freedoms or the court shall admit the appeal and establish the term within which the prosecutor shall resolve the case according to Article 327, respectively the court of law shall settle the case, as well as the term within which a new appeal may not be filed.**

\*) By Decision no. 7/2022, the High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that, in the unitary interpretation and application of the provisions of Article 488<sup>6</sup> paragraph (1) of the Code of Criminal Procedure in relation to Article 285 of the same Code and Article 154 of the Criminal Code, in cases concerning appeals regarding the duration of the trial in the case of acts whose perpetrators have not been identified (or identifiable), Although the criminal investigation bodies have taken the necessary steps for this purpose, deadlines are set for the completion of the criminal investigation (which also involves the identification of the perpetrators) and, respectively, in which a new appeal cannot be filed.

(2) In all cases, the judge of rights and freedoms or the court that resolves the appeal will not be able to give guidance or provide solutions on questions of fact or law that anticipate the way in which the trial will be resolved or that affect the freedom of the judge of the case to decide, according to the law, on the solution to be given to the trial, or, as the case may be, the prosecutor's freedom to pronounce the solution that he considers legal and sound.

(3) If it has been found that the reasonable time has been exceeded, a new appeal in the same case will be resolved by taking into account exclusively the reasons arising after the previous appeal.

(4) The abuse of rights consisting in the formulation of the appeal in bad faith is sanctioned with a judicial fine from 1,000 lei to 7,000 lei and the payment of the incurred legal expenses.

(5) The conclusion shall be motivated within 5 days from the pronouncement. The file is returned

on the day of the reasoning.

(6) The decision shall be communicated to the challenger and shall be sent for information to all parties or persons listed in Article 488<sup>4</sup> paragraph (c) of the case file, who are required to comply with the deadlines contained therein.

(7) The conclusion by which the judge of rights and freedoms or the court resolves the appeal is not subject to any appeal.

(8) The appeal filed in breach of the deadlines provided by this chapter shall be administratively returned.

## **CHAPTER II: Procedure regarding the criminal liability of the legal person**

### **Article 489: General provisions**

(1) In the case of offences committed by legal persons referred to in Article 135(1) of the Criminal Code in the pursuit of the object of activity or in the interest or on behalf of the legal person, the provisions of this Code shall be applied accordingly, with the derogations and additions provided for in this chapter.

(2) The provisions of the preliminary chamber procedure, which are duly applied, shall also be applicable in the procedure for the criminal liability of the legal person.

### **Article 490: Object of the criminal action**

The criminal action has as its object the criminal liability of the legal persons who have committed crimes.

### **Article 491: Representation of the legal entity**

(1) The legal person is represented in the performance of procedural and procedural acts by its legal representative.

(2) If, for the same or related facts, criminal proceedings have also been initiated against the legal representative of the legal person, it shall appoint a representative to represent it.

(3) In the case referred to in paragraph (2), if the legal person has not appointed a representative, he or she shall be appointed, as the case may be, by the prosecutor conducting or supervising the criminal investigation, by the judge of the preliminary chamber or by the court, from among the insolvency practitioners, authorized according to the law. The provisions of Article 273(1), (2), (4) and (5) shall apply to the insolvency practitioners so designated.

**Article 492: Place of summons of the legal entity**

(1) The legal person shall be summoned to its headquarters. If the registered office is fictitious or the legal person no longer operates at the declared registered office, and the new registered office is not known, a notice shall be posted at the seat of the judicial body, the provisions of Article 259(5) being applied accordingly.

(2) If the legal person is represented by a trustee, appointed under the conditions of Article 491 (2) and (3), the summons shall be made at the domicile of the trustee or at the headquarters of the insolvency practitioner appointed as trustee.

**Article 493: Preventive measures**

**(1) The judge of rights and freedoms, during the criminal investigation, at the proposal of the prosecutor, or, as the case may be, the judge of the preliminary chamber or the court, may order, if there are good reasons justifying the reasonable suspicion that the legal person has committed an act provided for by the criminal law and only in order to ensure the proper conduct of the criminal trial, one or more of the following measures:**

**a) prohibition of initiating or, as the case may be, suspending the procedure for dissolution or liquidation of the legal entity;**

\*) By RIL Decision no. 18/2020, the HCCJ admits the appeal in the interest of the law filed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice and in the unitary interpretation and application of the provisions of Article 493 paragraph (1) letter a) of the Code of Criminal Procedure establishes:

"The prohibition of initiating or, as the case may be, suspending the dissolution or liquidation procedure of the legal entity does not refer to the dissolution, respectively the liquidation in the bankruptcy procedure provided by Law no. 85/2014 on insolvency prevention and insolvency procedures."

b) the prohibition of initiating or, as the case may be, suspending the merger, division or reduction of the share capital of the legal entity, initiated before or during the criminal investigation;

c) the prohibition of some patrimonial operations, likely to lead to the diminution of the patrimonial asset or the insolvency of the legal entity;

d) prohibition of the conclusion of certain legal acts, established by the judicial body;

e) prohibition of carrying out activities of the nature of those on the occasion of which the crime was committed.

(2) In order to ensure compliance with the measures provided for in paragraph (1), the legal entity

may be obliged to deposit a deposit consisting of an amount of money that cannot be less than 10,000 lei. The bail shall be returned on the date of the final date of the decision of conviction, postponement of the application of the penalty, waiver of the application of the penalty or termination of the criminal trial, pronounced in the case, if the legal person has complied with the preventive measure or measures, as well as if, by a final decision, the acquittal of the legal person has been ordered.

(3)The deposit shall not be returned in case of non-compliance by the legal person with the preventive measure or measures taken, being paid to the state budget on the date of the final decision pronounced in the case, as well as if the payment of the bail has been ordered, in the following order, of the monetary compensation granted for the reparation of the damages caused by the crime, of the judicial expenses or of the fine.

(4)The preventive measures provided for in paragraph (1) may be ordered for a period of no more than 60 days, with the possibility of extension during the criminal investigation and maintenance during the preliminary chamber procedure and the trial, if the grounds for their adoption are maintained, each extension not exceeding 60 days.

(5)During the criminal investigation, preventive measures are ordered by the judge of rights and freedoms by reasoned conclusion given in the council chamber, with the summons of the legal person.

(6)The participation of the prosecutor is mandatory.

(7)An appeal against the conclusion may be made to the judge of rights and freedoms or, as the case may be, to the judge of the preliminary chamber or the hierarchically superior court, by the legal person and the prosecutor, within 24 hours from the pronouncement, for those present, and from the communication, for the missing legal person.

(8)Preventive measures shall be revoked by the judge of rights and freedoms at the request of the prosecutor or the legal person, and by the judge of the preliminary chamber and by the court and ex officio, only when it is found that the grounds justifying their adoption or maintenance no longer exist. The provisions of paragraphs 5 to 7 shall apply accordingly.

(9)The measures provided for in Articles 265 and 283(2) may be taken against the representative of the legal person or its representative, and against the insolvency practitioner, the measure provided for in Article 283(2).

(10)The taking of preventive measures does not prevent the taking of precautionary measures according to Articles 249-256.

**Article 494: Precautionary measures**

Precautionary measures may be taken against the legal person, the provisions of Articles 249-256 and 549<sup>1</sup> being applied accordingly.

**Article 495: Information procedure**

(1)The prosecutor, during the criminal investigation, shall communicate to the body that authorized the establishment of the legal person and to the body that registered the legal person the initiation of the criminal action and the indictment of the legal person, on the date of ordering these measures, in order to make the appropriate mentions.

(2)In the case of institutions which are not subject to the condition of registration or authorisation in order to acquire legal personality, the information referred to in paragraph 1 shall be made to the body which established that institution.

(3)The bodies referred to in paragraphs (1) and (2) shall be obliged to communicate to the judicial body, within 24 hours from the date of registration, in a certified copy, any mention registered by them regarding the legal person.

(4)The legal entity is obliged to communicate to the judicial body, within 24 hours, the intention to merge, divide, dissolve, reorganize, liquidate or reduce the share capital.

(5)The provisions of paragraphs (1) to (3) shall be applied accordingly in the case of taking preventive measures against the legal person.

(6)After the decision of conviction to the penalty of the fine becomes final, the executing court communicates a copy of the operative part of the decision to the body that authorized the establishment of the legal person, to the body that registered the legal person, to the body that established the institution not subject to authorization or registration, as well as to the bodies with powers of control and supervision of the legal person, in order to make the appropriate mentions.

(7)Failure to fulfill, immediately or until the expiry of the stipulated deadlines, the obligations provided for in paragraphs (3) to (5) shall constitute judicial misconduct and shall be punished with the judicial fine provided for in Article 283(4).

**Article 496: The effects of the merger, absorption, division, reduction of the share capital, dissolution or liquidation of the convicted legal person**

(1)If, after the judgment condemning the legal person has become final and until the sentences imposed have been executed, there is a case of merger, absorption, division, dissolution, liquidation or reduction of its share capital, the authority or institution which has the power to

authorise or register this operation is obliged to refer the matter to the executing court and to inform about the legal person created by the merger, absorption or who has acquired fractions of the patrimony of the divided person.

(2)The legal person resulting from merger, absorption or which has acquired fractions of the patrimony of the divided person shall take over the obligations and prohibitions of the convicted legal person, the provisions of Article 151 of the Criminal Code being applied accordingly.

#### **Article 497: Enforcement of the penalty of a fine**

(1)The legal person sentenced to the penalty of the fine is obliged to submit the receipt for the full payment of the fine to the judge delegated with enforcement, within 3 months from the final date of the conviction decision.

(2)When the convicted legal person is unable to pay the fine in full within the term provided for in paragraph (1), the judge delegated with enforcement, at the request of the legal person, may order the payment of the fine to be staggered for a maximum of 2 years, in monthly installments.

(3)In case of failure to comply with the obligation to pay the fine within the period indicated in paragraph (1) or failure to pay an installment according to the instalment, the enforcement court shall communicate an extract from that part of the operative part concerning the application or rescheduling of the fine to the competent bodies, in order to enforce it according to the procedure for the forced execution of tax claims.

#### **Article 498: Enforcement of the complementary penalty of dissolution of the legal person**

(1)The copy of the operative part of the conviction decision shall be communicated, on the date of finality, by the judge delegated with the execution of the respective legal person, as well as to the body that authorized the establishment of the legal person, respectively to the body that registered the legal person, requesting at the same time information on the manner of carrying out the measure.

(2)On the date of the final decision of the sentence to the complementary penalty of dissolution, the legal person enters into liquidation.

#### **Article 499: Enforcement of the complementary penalty of suspension of the activity of the legal entity**

A copy of the operative part of the conviction decision by which the penalty of suspension of the activity or of one of the activities of the legal person was applied shall be communicated, on the date of becoming final, to the body that authorized the establishment of the legal person, to the

body that registered the legal person, to the body that established the institution not subject to authorization or registration, as well as to the bodies with powers of control and supervision of the legal person, to take the necessary measures.

**Article 500: Enforcement of the complementary penalty of the closure of some work points of the legal person**

A copy of the operative part of the conviction decision by which the penalty of closing some work points was applied to the legal person shall be communicated, on the date of becoming final, to the body that authorized the establishment of the legal person and to the body that registered the legal person, to the body that established the institution not subject to authorization or registration, as well as to the bodies with attributions of control and supervision of the legal person, to take the necessary measures.

**Article 501: Enforcement of the additional penalty of prohibiting the legal person from participating in public procurement procedures**

**(1) A copy of the operative part of the decision by which the penalty of prohibition to participate in public procurement procedures was imposed on the legal person shall be communicated, on the date of becoming final:**

- a) the Trade Register Office, in order to carry out the formalities of publicity in the Trade Register;
- b) to the Ministry of Justice, in order to carry out the formalities of publicity in the National Register of Legal Persons without patrimonial purpose;
- c) to any authority that keeps track of legal persons, in order to carry out the publicity formalities.
- d) administrator of the electronic public procurement system.

(2) A copy of the operative part of the conviction decision imposing on the legal person the penalty of prohibition from participating in public procurement procedures shall be communicated, on the date of becoming final, to the body that authorized the establishment of the legal person and to the body that registered the legal person, in order to take the necessary measures.

**Article 501<sup>1</sup>: Enforcement of the additional penalty of placement under judicial supervision**

(1) The powers of the judicial agent regarding the supervision of the activity of the legal person are contained in the operative part of the conviction decision by which the penalty of placement under judicial supervision was applied.

(2) The judicial representative cannot substitute himself for the statutory bodies in the management of the activities of the legal person.

## **Article 502: Enforcement of the complementary penalty of posting or publishing the conviction**

(1) An extract of the conviction decision regarding the application of the complementary penalty of posting the conviction decision shall be communicated, on the date of finality, to the convicted legal person, in order to display it in the form, place and for the period established by the court.

(2) An extract of the conviction decision concerning the application of the complementary penalty of publication of the conviction decision shall be communicated, on the date of finality, to the convicted legal person, in order to publish the decision in the form established by the court, at its own expense, through the written or audiovisual press or through other audiovisual means of communication, designated by the court.

(3) The convicted legal person shall submit to the executing court the proof of the commencement of the execution of the posting or, as the case may be, the proof of execution of the publication of the conviction decision, within 30 days from the communication of the judgment, but no later than 10 days from the commencement of the execution or, as the case may be, from the execution of the main sentence.

(4) A copy of the conviction decision, in its entirety or in its extract, shall be communicated on the date of its final date to the body that authorized the establishment of the legal person, to the body that registered the legal person, to the body that established the institution not subject to authorization or registration, as well as to the bodies with powers of control and supervision of the legal person, in order to take the necessary measures.

## **Article 503: Supervision of the execution of complementary penalties imposed on legal persons**

(1) In the event of non-execution in bad faith of the additional penalties imposed on the legal person, the executing court shall apply the provisions of Article 139(2) or, as the case may be, Article 140(2) or (3) of the Criminal Code.

(2) The court shall be notified ex officio by the delegated judge of the executing court, according to Articles 499-502.

(3) The legal person is summoned to court.

(4) The participation of the prosecutor is mandatory.

(5) After the prosecutor's conclusions and the hearing of the convicted legal person, the court pronounces by sentence.

### **CHAPTER III: Procedure in cases involving juvenile offenders**

#### **Article 504: General provisions**

(1) The prosecution and trial of crimes committed by minors, as well as the enforcement of decisions concerning them, shall be carried out according to the usual procedure, with the additions and derogations provided for in this chapter and in section 8, chap. I of Title V of the General Part.

(2) During the criminal investigation, the procedure in cases involving juvenile offenders also applies to persons who have reached the age of 18, up to the age of 21, if they were minors on the date of acquiring the status of suspect, when the judicial body deems it necessary, taking into account all the circumstances of the case, including the degree of maturity and the degree of vulnerability of the person concerned.

(3) Whenever the judicial body cannot determine the age of the suspect or defendant and there are reasons to consider him or her to be a minor, the person shall be presumed to be a minor.

(4) The results of the medical examination of the suspected or accused minor on whom a preventive measure of deprivation of liberty has been ordered, carried out in the place of detention, in accordance with the law on the execution of sentences and measures of deprivation of liberty ordered by the judicial bodies during the trial, are taken into account in order to assess his capacity to be subjected to the acts or measures ordered during the criminal trial.

#### **Article 505: Persons summoned to the criminal investigation body**

(1) When the suspect or defendant is a minor, at any hearing or confrontation with him, the criminal investigation body orders the summoning of the parents or, as the case may be, of the guardian, curator or of the person in whose care or supervision the minor is temporarily located, as well as of the General Directorate of Social Assistance and Child Protection of the locality where the hearing takes place.

(1<sup>1</sup>) When carrying out any other act of criminal prosecution to which the minor suspect or defendant is summoned, the parents or, as the case may be, the guardian, the curator or the person in whose care or supervision the minor is temporarily located, shall be summoned, if the judicial body considers that their presence is in the best interest of the minor and is not likely to prejudice the proper conduct of the criminal proceedings.

(1<sup>2</sup>) If the parents or, as the case may be, the guardian, curator or person in whose care or supervision the minor is temporarily placed could not be found or their presence would affect the best interests of the minor or the conduct of the criminal proceedings, the summons shall be made

to another adult who is designated by the minor and accepted in this capacity by the judicial body.

(1<sup>3</sup>) If the minor does not designate another adult according to paragraph (1<sup>2</sup>) or the designated adult is not accepted by the judicial body, the summons shall be made to another person chosen by the judicial body, taking into account the best interests of the minor.

(1<sup>4</sup>) If the circumstances set out in paragraph (1<sup>2</sup>) or (1<sup>3</sup>) cease, the summons shall be made in accordance with paragraph (1<sup>1</sup>).

(2) (text of Article 505(2) of Part 2, Title IV, Chapter III was repealed on 24 June 2018 by the Act of Decision 102/2018)

(3) The failure of the legally summoned persons to hear or confront the minor does not prevent these acts from being performed.

### **Article 505<sup>1</sup>: Informing the suspect or minor defendant**

**(1) In cases involving juvenile suspects or defendants, before the first hearing, they shall be informed, in addition to those provided for in Article 108, of the following:**

- a) information on the main stages of the criminal process;
- b) the right for the parents or, as the case may be, the guardian, curator or person in whose care or supervision the minor or another adult who is designated by the minor and accepted in this capacity by the judicial body to receive the same information communicated to the minor;
- c) the right to the protection of private life, under the conditions of the law;
- d) the right to be accompanied by parents or, as the case may be, guardian, curator or the person in whose care or supervision the minor is temporarily or by another adult who is designated by the minor and accepted as such by the judicial body, during the various stages of the procedure under this law;
- e) the right to be evaluated by means of the evaluation report;
- f) the right to medical evaluation and medical assistance in case they will be subjected to a preventive measure involving deprivation of liberty;
- g) the preventive measures that may be applied to them, as well as the right for the preventive measure of deprivation of liberty to be applied on an exceptional basis, according to Article 243, the period for which it may be ordered and the maximum duration of the preventive measure of deprivation of liberty, the conditions for its extension and maintenance, as well as the right to periodic verification of the measure, under the conditions of the law;
- h) the right to be present at the trial of the case;
- i) the right to exercise remedies, under the law.

- (2) All communications to the minor suspect or defendant are made in a simple and accessible language, adapted to his age.
- (3) The information referred to in Article 108 and the information referred to in paragraph 1 shall also be communicated to the parents or, as the case may be, to the guardian, curator or person in whose care or supervision the minor is temporarily located.
- (4) If the persons referred to in paragraph 3 could not be found or the communication to them would be contrary to the best interests of the minor or would affect the conduct of the criminal proceedings, the information referred to in Article 108 as well as the information referred to in paragraph 1 shall be communicated to another adult designated by the minor and accepted by the judicial body.
- (5) If the minor does not designate another adult in accordance with paragraph (4) or the designated adult is not accepted by the judicial body, the information shall be communicated to another person chosen by the judicial body, taking into account the best interests of the minor.
- (6) If the circumstances referred to in paragraph (4) cease, the communication shall be made to the parents, guardian, curator or the person in whose care or supervision the minor is temporarily located.

### **Article 505<sup>2</sup>: Costs**

When the suspect or defendant is a minor, the expenses generated by the audio-video recordings, which would have fallen to him or her under Article 274 or 275, remain the responsibility of the State.

### **Article 506: Minor Assessment Report**

- (1) In cases involving juvenile defendants, the criminal prosecution bodies may request, when they deem it necessary, the evaluation report by the probation service attached to the court in whose territorial district the minor resides, according to the law.
- (1<sup>1</sup>) If the minor is sent to court, the request for the evaluation report is mandatory, unless this would be contrary to the best interests of the minor.
- (2) During the trial, the court may request the evaluation report to be carried out by the probation service attached to the court in whose district the minor resides, according to the law. In the event that the evaluation report has not been requested during the criminal investigation, according to the provisions of paragraph (1) or (1<sup>1</sup>), the court must order the report to be carried out.
- (3) (text of Article 506(3) of Part 2, Title IV, Chapter III was repealed on 01-Feb-2014 by Article

102(305) of Title III of Law 255/2013)

(4) Through the evaluation report, the requested probation service can make reasoned proposals regarding the educational measures that can be taken towards the minor.

(4<sup>1</sup>) If the elements that constitute the basis of the evaluation report change considerably, the criminal prosecution body or, as the case may be, the court will request the preparation of a new evaluation report. The request can be made ex officio or following the notification made by the probation service, by the minor or by the parents or, as the case may be, guardian, curator or the person in whose care or supervision the minor is temporarily located, regarding the changes that have occurred.

(5) (text of Article 506(5) of Part 2, Title IV, Chapter III was repealed on 01-Feb-2014 by Article 102(307) of Title III of Law 255/2013)

#### **Article 507: Composition of the court**

(1) The cases in which the defendant is a minor are judged according to the usual rules of jurisdiction by judges specifically designated according to the law.

(2) The court composed in accordance with paragraph 1 shall remain competent to try according to the special procedural provisions concerning minors, even if the defendant has reached the age of 18 in the meantime.

(3) The defendant who committed the crime while he was a minor is tried according to the procedure applicable in cases involving juvenile offenders, if he did not reach the age of 18 on the date of the referral to the court. If, on the date of notification to the court, the defendant had reached the age of 18, but was a minor on the date of acquiring the status of suspect, the court seized, taking up the case, may decide to apply the procedure for cases involving juvenile offenders, when it deems it necessary, taking into account all the circumstances of the case, including the degree of maturity and the degree of vulnerability of the person concerned.

#### **Article 508: Persons summoned to the trial of minors**

(1) The probation service, the minor's parents or, as the case may be, the guardian, the curator or the person in whose care or supervision the minor is temporarily located, are summoned at the trial of the case.

(2) The persons referred to in paragraph (1) have the right and duty to give clarifications, to formulate requests and to submit proposals regarding the measures to be taken.

(3) The non-appearance of the legally summoned persons does not prevent the trial of the case.

(4) If none of the persons referred to in paragraph 1 could be found or their presence would affect the best interests of the minor or the conduct of the criminal proceedings, the summons shall be made to another appropriate adult who is designated by the minor and accepted as such by the judicial body.

(5) If the minor does not designate another adult in accordance with paragraph (4) or the designated adult is not accepted by the judicial body, the summons shall be made to another person chosen by the judicial body, taking into account the best interests of the minor.

(6) If the circumstances of paragraph 4 or 5 cease, the summons shall be made in accordance with paragraph 1.

### **Article 509: Conduct of the trial**

(1) Cases with minor defendants are judged urgently and especially.

(2) The court hearing is non-public. With the consent of the court, other persons may attend the trial, in addition to the persons referred to in Article 508.

(3) When the defendant is a minor under the age of 16, the court, if it considers that the taking of certain evidence may have a negative influence on him, may order his removal from the hearing. Under the same conditions, parents or guardians, curators or the person in whose care or supervision the minor is temporarily placed may also be temporarily removed from the courtroom.

(4) When the persons referred to in paragraph (3) are summoned to the courtroom, the president of the panel shall inform them of the essential acts performed in their absence.

(5) The hearing of the minor will take place only once, and his re-hearing will be admitted by the judge only in well-justified cases.

(6) When the injured person is a minor under the age of 16, a victim of the offences referred to in Articles 197, 199, 209-216, 218, 218, 219, 219, 221, 222, 223 and 374 of the Criminal Code, the court, if it considers that the taking of certain evidence may have a negative influence on him, shall order the removal of the minor from the hearing. Under the same conditions, the parents or guardian, curator or person in whose care or supervision the minor is temporarily placed may also be temporarily removed from the courtroom.

(7) When the persons referred to in paragraph (6) are recalled to the room, the president of the panel shall inform them of the essential acts performed in their absence.

(8) In the case of the offences referred to in Articles 197, 199, 209-216, 218, 218, 219, 219, 221, 222, 223 and 374 of the Criminal Code, the court shall make available to the parties the audio-

video or audio recording obtained pursuant to Article 111(8). The court hears the injured person only in duly justified cases.

#### **Article 510: Juvenile and adult defendants**

(1) When there are several defendants in the same case, some of whom are minors and others adults, and it is not possible to separate them, the trial shall take place in accordance with the provisions of Article 507 (1) and according to the usual procedure.

(2) With regard to juvenile defendants in these cases, the provisions regarding the procedure in juvenile offender cases apply.

#### **Article 511: Implementation of non-custodial educational measures**

If any of the non-custodial educational measures have been taken against the minor, after the decision becomes final, a deadline is set for when the minor is brought in, the legal representative of the minor, the representative of the probation service for the execution of the measure taken and the persons designated to supervise it.

#### **Article 512:**

[the text of Article 512 of Part 2, Title IV, Chapter III was repealed on 01-Feb-2014 by Article 102, point 310. of Title III of Law 255/2013]

#### **Article 513: Extension or replacement of non-custodial educational measures**

(1) The extension of the non-custodial educational measure if the minor does not observe, in bad faith, the conditions of execution and the obligations imposed shall be ordered by the court that pronounced this measure.

(2) The replacement of the measure initially taken by another more severe non-custodial educational measure or the replacement of the measure initially taken with an educational measure involving deprivation of liberty for any of the cases provided for in Article 123 of the Criminal Code shall be ordered by the court that pronounced this measure.

#### **Article 514: Enforcement of internment in an educational center**

(1) If the educational measure of internment in an educational center has been taken against the minor, the enforcement is done by sending a copy of the decision to the police body from the place where the minor is located, after the decision has become final.

(2) The police body takes measures for the hospitalization of the minor.

(3) On the occasion of the implementation of the educational measure of internment in an educational center, the police body may enter the domicile or residence of a person without his consent, as well as the headquarters of a legal person without the consent of his legal representative.

(4) If the minor for whom the educational measure of internment in an educational center has been taken is not found, the police body ascertains this through a report and immediately notifies the competent bodies for the prosecution, as well as for the arrest at the border crossing points. A copy of the report shall be submitted to the educational center where the internment will be made.

(5) The copy of the decision shall be handed over on the occasion of the execution of the measure of the educational center where the minor is hospitalized.

(6) The head of the educational center immediately communicates to the court that ordered the measure about the internment.

#### **Article 515: Enforcement of detention in a detention centre**

(1) The educational measure of the minor's internment in a detention center is enforced by sending a copy of the operative part of the decision by which this measure was taken to the police body of the place where the minor is located, when he is free, or to the commander of the place of detention, when he is under preventive arrest.

(2) Once the educational measure of the minor's internment in a detention center is implemented, the delegated judge will also issue the order prohibiting the minor from leaving the country. The provisions on the preparation and content of the order in the event of the execution of the prison sentence shall be applied accordingly.

(3) If the enforcement of the measure is the responsibility of the police, the provisions of Article 514(2) to (4) shall apply accordingly.

(4) The copy of the decision shall be handed over on the occasion of the execution of the measure of the detention center where the minor is interned.

(5) The head of the detention centre shall immediately inform the court that ordered the measure about the internment.

#### **Article 516: Changes regarding the educational measure of internment in an educational center**

(1) The maintenance of the measure of the minor's internment in an educational center, its extension or replacement by internment in a detention center in the cases provided for in Article

125 (3) of the Criminal Code is ordered by the court that has jurisdiction to judge the new crime or the concurrent crime previously committed.

(2)The replacement of the minor's internment with the educational measure of daily assistance and the release from the educational center at the age of 18 shall be ordered, according to the provisions of the law on the execution of sentences, by the court in whose territorial district the educational center is located, corresponding in rank to the executing court. The reversal of the replacement or release, if he/she does not observe, in bad faith, the conditions for the execution of the educational measure or the obligations imposed, shall be ordered, ex officio or upon notification of the probation service, by the court that judged the case in the first instance.

(3)In the case provided for in Article 125(7) of the Criminal Code, the reversal of the substitution shall be ordered by the court which has jurisdiction to try the new offence committed by the minor.

#### **Article 517: Changes regarding the educational measure of internment in a detention center**

(1)The extension of the measure of the minor's detention in the detention centre in the cases provided for in Article 125 (3) of the Criminal Code shall be ordered by the court which has jurisdiction to judge the new offence or the concurrent offence previously committed.

(2)The replacement of the minor's internment with the educational measure of daily assistance, the release from the detention center at the age of 18 shall be ordered, according to the provisions of the law on the execution of sentences, by the court in whose territorial district the detention center is located, corresponding in rank to the executing court. The reversal of the replacement or release, if he/she does not comply in bad faith with the conditions for the execution of the educational measure or the obligations imposed, is ordered, ex officio or upon notification of the probation service, by the court that tried the minor in the first instance.

(3)In the case provided for in Article 125(7) of the Criminal Code, the reversal of the substitution and the extension of the duration of the internment shall be ordered by the court which has jurisdiction to try the new offence committed by the minor.

#### **Article 518: Change of enforcement regime**

In the cases provided for in Article 126 of the Criminal Code, the continuation of the execution of the educational measure involving deprivation of liberty in a penitentiary by the internee who has reached the age of 18 may be ordered in accordance with the provisions of the Law on the Execution of Sentences by the court in whose territorial district the educational center or detention center is located, corresponding in rank to the executing court.

**Article 519: Postponement or interruption of the execution of custodial measures**

The execution of the educational measure of internment in an educational center or the educational measure of internment in a detention center may be postponed or interrupted in the cases and under the conditions provided by law.

**Article 520: Appeal provisions**

The provisions relating to the trial at first instance in cases concerning offences committed by minors shall also apply accordingly to the trial on appeal.

**CHAPTER IV: Prosecution procedure****Article 521: Prosecution**

(1) Prosecution is requested and ordered for the identification, search, location and apprehension of a person in order to bring him before the judicial bodies or to enforce certain court decisions.

**(2) The prosecution is requested and ordered in the following cases:**

- a) it was not possible to execute a preventive arrest warrant, a warrant for the execution of a custodial sentence, an educational measure involving deprivation of liberty, the measure of medical internment or the measure of expulsion, since the person against whom one of these measures was taken was not found;
- b) the person escaped from the legal state of detention or detention or fled from an educational center, detention center or from the unit where he was executing the measure of medical hospitalization;
- c) in order to detect an internationally wanted person about whom there is data that he is in Romania.

**(3) The prosecution is requested by:**

- a) the police body that found it impossible to execute the measure provided for in paragraph (2) letter a);
- b) the administration of the place of detention, the educational centre or the medical unit referred to in paragraph (2)(b);
- c) the competent judicial body according to the special law, in the case referred to in paragraph (2)(c);

(4) The prosecution shall be ordered, by order, by the General Inspectorate of the Romanian Police, the General Directorate of Police of the Municipality of Bucharest or, as the case may be, by the county police inspectorate, notified according to paragraph (3).

(5) The order for the prosecution shall be communicated as soon as possible to the bodies competent to issue the passport, which have the obligation to refuse the issuance of the passport or, as the case may be, to provisionally collect the passport for the duration of the measure, as well as to the border authorities for the purpose of issuance.

**(6) Also, the order for prosecution shall be communicated in copy:**

- a) the person in front of whom the person pursued at the time of apprehension is to be brought
- b) the competent judicial body supervising the activity of pursuing the person being pursued.

### **Article 522: Tracking**

(1) The warrant for prosecution shall be immediately executed by the competent structures of the Ministry of Administration and Interior, which shall carry out, at national level, activities of identification, search, location and apprehension of the pursued person.

(2) Public institutions are obliged to support, under the conditions of the law and according to the legal competences, the police bodies that carry out the pursuit of a person in pursuit.

(3) The activity of prosecuting a person under preventive arrest, carried out by the police bodies, is supervised by prosecutors specifically designated from the prosecutor's office attached to the court of appeal in whose district the headquarters of the competent court that resolved the proposal for preventive arrest is located. When the preventive arrest warrant has been issued in a case under the competence of the Prosecutor's Office attached to the High Court of Cassation and Justice, the supervision of the prosecution activity is the responsibility of the prosecutor who carries out or has carried out the criminal investigation in question.

(4) In other cases, the activity of prosecuting the accused persons is supervised by prosecutors specifically designated from the prosecutor's office attached to the court of appeal in whose district the seat of the executing court or of another competent court according to the special law is located.

### **Article 523: Activities that can be carried out in the follow-up procedure**

**(1) In order to identify, search, locate and catch the persons being tracked, the following activities may be carried out, under the conditions provided by the law:**

- a) technical supervision;
- b) the retention, delivery and search of correspondence and objects;
- b<sup>1</sup>) obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public;

c)search;

d)the collection of objects or documents;

e)(text of Article 523(1)(E) of Part 2, Title IV, Chapter IV was repealed on 01-Feb-2014 by Article 102(312) of Title III of Law 255/2013)

(2)The activities referred to in paragraph 1(a) to (c) may be carried out only on the basis of a warrant issued by the judge of rights and freedoms of the court competent to hear the case at first instance or of the executing court or by the judge of rights and freedoms of the court competent under the special law in the case referred to in Article 521(2)(c).

(3)The activities referred to in paragraph (1)(d) may be carried out only with the authorization of the prosecutor supervising the activity of the police bodies pursuing the person being pursued.

**Article 524: Technical surveillance, retention, delivery and search of correspondence and objects, search and obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public in the procedure of prosecution**

(1)The technical surveillance, the detention, delivery and search of correspondence and objects, the search and obtaining of traffic and location data processed by the providers of public electronic communications networks or the providers of electronic communications services intended for the public may be ordered, at the request of the prosecutor supervising the activity of the police bodies carrying out the pursuit of the person being pursued by the judge of rights and freedoms of the the competent court, if it considers that the identification, search, location and apprehension of the persons wanted cannot be done by other means or would be long delayed.

(2)The provisions of Articles 138 to 144, 147, 152 and 157 to 160 shall apply accordingly.'

**Article 525: Seizure of objects or documents in the prosecution procedure**

(1)The seizure of objects or documents in order to identify, search, locate and apprehend the persons being pursued may be ordered by the prosecutor supervising the activity of the police bodies that carry out the pursuit of the person.

(2)The provisions of Articles 169 and 171 shall apply accordingly.

**Article 526: Revocation of Tracking**

(1)The prosecution shall be revoked when the accused person is apprehended or when the grounds justifying the prosecution have disappeared.

**(2)The revocation shall be ordered by order of the General Inspectorate of the Romanian Police, which shall be sent in copy, immediately:**

- a)the competent prosecutor's office supervising the activity of pursuing the person being pursued;
- b)the competent bodies to issue the passport and the border authorities.

(3)The prosecutor who supervises the activity of pursuing the person in pursuit shall immediately order the cessation of the surveillance activities taken in accordance with Article 524, informing the judge of rights and freedoms thereof.

## **CHAPTER V:Rehabilitation procedure**

### **Article 527: Rehabilitation**

Rehabilitation shall take place either by law, in the cases provided for in Article 150 or 165 of the Criminal Code, or upon request, granted by the court, under the conditions provided for in this chapter.

### **Article 528: Rehabilitation by law**

(1)Upon completion of the 3-year term provided for in Article 165 of the Criminal Code, if the convicted person has not committed another crime, the authority keeping records of the criminal record shall delete ex officio the mentions regarding the sentence imposed on the convicted person.

(2)Upon completion of the 3-year term provided for in Article 150 of the Criminal Code, if the convicted person has not committed another crime, the body that authorized the establishment of the legal person and the body that registered the legal person will automatically delete the mentions regarding the punishment imposed on the legal person.

### **Article 529: Judicial rehabilitation**

Competent to rule on judicial rehabilitation is either the court that tried in the first instance the case in which the conviction for which rehabilitation is requested was pronounced, or the corresponding court in whose district the convicted person resides or in which he had his last domicile, if on the date of filing the application he resides abroad.

### **Article 530: Rehabilitation application**

(1)The request for judicial rehabilitation is formulated by the convicted person, and after his death, by the spouse or close relatives. The spouse or close relatives can continue the rehabilitation procedure started before the death.

(2)Judicial rehabilitation shall be ordered in the cases and under the conditions provided for in Articles 166 and 168 of the Criminal Code.

**(3)The application must mention:**

- a)the address of the convicted person, and when the request is made by another person, his or her address;
- b)the conviction for which rehabilitation is requested and the act for which that conviction was pronounced;
- c)the localities where the convicted person lived and the workplaces from the entire period of time from the execution of the sentence until the submission of the application, and if the execution of the sentence was prescribed, from the date of the decision becoming final until the submission of the application;
- d)the grounds of the request;
- e)useful indications for identifying the file and any other data for solving the request.

(4)The application shall be accompanied by the documents showing that the conditions of rehabilitation are met.

**Article 531: Preliminary measures**

After setting the deadline for solving the request for rehabilitation, the summoning of the person who requested the rehabilitation and of the persons whose hearing the court considers necessary is ordered, measures are taken to bring the file in which the conviction was pronounced and a copy of the criminal record of the convicted person is requested.

**Article 532: Rejection of the application for non-fulfilment of the formal and substantive conditions**

**(1)The request for rehabilitation is rejected for not fulfilling the formal and substantive conditions in the following cases:**

- a)was introduced before the legal deadline;
- b)the mention provided for in Article 530 (3) letter a) is missing and the petitioner did not appear at the deadline for appearance;
- c)any of the particulars provided for in Article 530(3)(b)-e) are missing and the petitioner has not completed the application by the deadline for appearing or by the deadline granted to him for completion.

(2)In the case referred to in paragraph 1(a), the application may be repeated after the expiry of the

statutory time limit, and in the cases referred to in paragraph 1(b) and (c), at any time.

(3) In the event of a statute of limitations for the execution of the sentence, the person referred to in Article 530(1) may not apply for rehabilitation if the failure to execute is attributable to the convicted person.

(4) A request for rehabilitation in respect of which it appears that it does not concern a specific convicted person, as well as an application made on behalf of a convicted person, without a warrant from him, given under the law, are inadmissible.

#### **Article 533: Resolution of the request**

(1) At the set deadline, in a non-public hearing, the court hears the summoned persons present, the conclusions of the prosecutor and the petitioner and verifies whether the conditions required by law for the admission of rehabilitation are met.

(2) If, before the resolution of the request for rehabilitation against the convicted person, the criminal action for another crime was initiated, the examination of the request shall be suspended until the final resolution of that case.

#### **Article 534: Situations regarding civil damages**

(1) When the convicted person or the person who made the application for rehabilitation proves that it was not possible for him to pay civil damages and court costs, the court, assessing the circumstances, may order rehabilitation or grant a deadline for payment in whole or in part of the amount due.

(2) The term provided for in paragraph (1) may not exceed 6 months.

(3) In case of joint and several obligation, the court fixes the amount to be paid, in order to rehabilitate, by the convicted person or his successors.

(4) The rights granted to the civil party by the conviction decision shall not be modified by the decision given on rehabilitation.

#### **Article 535: Appeal**

The sentence by which the court resolves the request for rehabilitation is subject to appeal within 10 days from the communication, which is resolved by the hierarchically superior court. The judgment of the appeal to the decision of the first instance is made in a non-public hearing, with the summons of the petitioner. The participation of the prosecutor is mandatory. The decision of the court by which the appeal is resolved is final.

**Article 536: Cancellation of rehabilitation**

(1) In the case provided for in Article 171 of the Criminal Code, the court referred to in Article 529 shall order the annulment of the rehabilitation, ex officio or at the request of the prosecutor.

(2) The provisions of Article 533 shall apply accordingly.

**Article 537: Mentions about rehabilitation**

After the decision on rehabilitation or its annulment becomes final, the court orders that it be mentioned in the decision by which the conviction was pronounced.

**CHAPTER VI: Procedure for compensation for material damage or non-material damage in case of miscarriage of justice or in case of unlawful deprivation of liberty or in other cases****Article 538: Right to compensation for damage in the event of a miscarriage of justice**

**(1) The person who has been definitively convicted, regardless of whether the sentence imposed or the educational measure involving deprivation of liberty has been enforced or not, has the right to compensation by the State for the damage suffered if, following the retrial of the case, after the annulment or annulment of the conviction for a new or recently discovered fact proving that a judicial error has occurred, A final acquittal decision was pronounced.**

\*) The law applicable to the right to compensation for damage by the State following an acquittal decision subsequent to the final conviction is the one in force at the time the acquittal decision becomes final, established according to the rules laid down in Articles 416-417 of the 1968 Code of Criminal Procedure and Articles 551 and 552 of the 2010 Code of Criminal Procedure.

(2) The provisions of paragraph (1) shall also apply in the case of the reopening of the criminal proceedings with regard to the convicted person tried in absentia, if a final acquittal decision has been pronounced after the retrial.

(3) The person referred to in paragraph 1 and the person referred to in paragraph 2 shall not be entitled to claim compensation by the State for the damage suffered if, by false statements or in any other way, they have led to the conviction, except in cases where they have been obliged to do so.

(4) The convicted person to whom the failure to discover in a timely manner the unknown or recently discovered fact is not entitled to compensation for the damage.

**Article 539: The right to compensation for damage in the event of unlawful or unjust**

## **deprivation of liberty**

**(1)The person against whom, during the criminal proceedings, a preventive measure involving deprivation of liberty was ordered shall also have the right to compensation for the damage, if:**

a)the measure was found to be illegal;

**b)For the offence which justified the taking of the measure, the dismissal or acquittal was ordered under Article 16(1)(a) to (d), unless the solution was ordered as a result of the decriminalisation of the act committed.**

\*) According to Law no. 201/2023 - Article IV:

"(1)The following shall be entitled to compensation pursuant to Article 539(1)(b) of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, the persons who on 12 May 2021, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 136/2021, were in execution of a preventive measure involving deprivation of liberty or against whom such a measure was ordered after that date.

(2)In the case of the persons referred to in paragraph (1), if the solution of dismissal or acquittal has become final before the entry into force of this law, the action for compensation of the damage may be brought within 6 months from the date of its entry into force."

(2)The situations referred to in paragraph (1) shall be proved by the prosecutor's order revoking the detention measure or of dismissal, by the final conclusion of the judge of rights and freedoms, of the judge of the preliminary chamber or of the court of law revoking the preventive measure of deprivation of liberty or by which its legal termination was ascertained or, as the case may be, by the final acquittal decision.

(3)In the situation referred to in paragraph (1)(b), the person shall not be entitled to claim compensation from the State for the damage suffered if, by means of false statements or in any other way, he has determined the taking of the preventive measure of deprivation of liberty, except in cases where he has been obliged to do so.

## **Article 539<sup>1</sup>: The right to compensation for damage in the case of technical surveillance measures or activities specific to the collection of information ordered unlawfully**

(1)A person against whom a technical surveillance measure has been unlawfully ordered, confirmed, extended or enforced shall be entitled to compensation for the damage caused by this measure. This right also benefits, under the same conditions, to the person against whom an activity specific to the collection of information has been authorized or enforced, which involves

the restriction of the exercise of fundamental human rights or freedoms.

(2) The unlawfulness of the technical surveillance measure shall be determined by the conclusion provided for in Article 145(1)(b) or, as the case may be, by the final conclusion of the preliminary chamber judge on the basis of Article 341(7)(2) or Article 345(2).

(3) The illegality of the activity specific to the collection of information shall be established by the final conclusion pronounced by the judge of the preliminary chamber of the High Court of Cassation and Justice in the procedure provided for in Article 139<sup>1</sup> or, as the case may be, in Article 139<sup>2</sup>.

\*) According to Law no. 201/2023 - Article III:

"(1) The persons in respect of whom, starting with July 6, 2017, the date of publication in the Official Gazette of Romania, Part I, of the Decision of the Constitutional Court no. 244/2017, technical surveillance measures have been enforced, found to be illegal by court decisions that became final prior to the entry into force of this law, may exercise the action for damages provided for in Article 539<sup>1</sup> of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, within 6 months from the date of entry into force of this law.

(2) The unlawful nature of the technical surveillance measures provided for in paragraph (1) shall be proven by the final conclusion of the judge of rights and freedoms, of the judge of the preliminary chamber or, as the case may be, by the final decision of the court."

#### **Article 540: The type and extent of the repair**

(1) In determining the extent of the reparation, account shall be taken of the duration of the unlawful or unjust deprivation of liberty, as well as of the consequences produced on the person, on the family of the person deprived of liberty or on the person in the situation provided for in Article 538, and in the case of the person in the situation provided for in Article 539<sup>1</sup> paragraph (1), the duration and consequences of the measure on the person and on private life, family and private affairs.

(2) In the cases provided for in Articles 538 and 539, the reparation consists in the payment of a sum of money or in the constitution of a life annuity or in the obligation that, at the expense of the State, the person illegally detained or arrested is entrusted to an institute of social and medical assistance. In the case referred to in Article 539<sup>1</sup> paragraph (1), the reparation shall consist of the payment of a sum of money.

(3) When choosing the type of repair and determining its extent, the situation of the person entitled to repair the damage and the nature of the damage caused shall be taken into account.

(4) Persons entitled to compensation for damage, who were employed before the deprivation of liberty or imprisonment as a result of the execution of a custodial sentence or educational measures, shall also be calculated, at the length of service established by law, the time they were deprived of liberty.

(5) The reparation is in all cases borne by the state, through the Ministry of Public Finance.

#### **Article 541: Action to repair the damage**

(1) The action for reparation of the damage may be initiated by the entitled person, according to Articles 538-539<sup>1</sup>, and after his death it may be continued or initiated by the persons who were dependent on him at the time of death.

(2) The action may be filed within 6 months from the date of the final decision of the court, of the ordinance or, as the case may be, of the conclusions of the judicial bodies by which the judicial error was found, the illegal or unjust deprivation of liberty, respectively the illegal nature of the technical surveillance measure.

(3) In order to obtain compensation for the damage, the entitled person may apply to the court in whose district he resides, summoning the state, which is summoned by the Ministry of Public Finance, to civil court.

(4) The action is exempt from the judicial stamp fee.

#### **Article 542: Action in regression**

(1) If compensation for the damage has been granted in accordance with Article 541, for any of the cases provided for in Articles 538 and Article 539(1)(a), as well as in the situation in which the Romanian State has been convicted by an international court for any of these cases, the action for recourse for the recovery of the amount paid may be directed against the person who, in bad faith or due to serious negligence, has caused the situation generating damages or against the institution to which it is insured for compensation in case of damages caused in the exercise of the profession.

(2) The State must prove in the context of the action for regression, by the prosecutor's order or final criminal decision, that the insured person under the conditions (1), in bad faith or due to serious professional misconduct, has produced the judicial error or the unlawful deprivation of liberty causing damage or, as the case may be, has illegally ordered, confirmed, prolonged or executed the technical surveillance measure.

### **CHAPTER VII: Procedure in case of disappearance of judicial files and judicial documents**

**Article 543: Ascertainment of the disappearance of the file or document**

(1) In the event of the disappearance of a judicial file or of a document belonging to such a file, the criminal investigation body or the president of the court where the file or document was found shall draw up a report stating the disappearance and showing the measures taken to find it.

(2) On the basis of the report, it shall proceed according to the provisions provided in this chapter.

**Article 544: Subject-matter of the special procedure**

(1) When the missing file or document is claimed by a justified interest and cannot be reconstructed according to the usual procedure, the prosecutor by order or the court of law by conclusion orders, as the case may be, the replacement or reconstitution of the file or document in respect of which the disappearance was ascertained.

(2) The court shall rule by conclusion, without summoning the parties, unless the court deems it necessary to summon them.

(3) The conclusion is not subject to any appeal.

**Article 545: Jurisdiction in the event of replacement or reconstitution**

(1) The replacement or reconstitution shall be carried out by the criminal investigation body or by the court of law before which the case is pending, and in the cases definitively resolved, by the court with which the case is in preservation.

(2) When the disappearance has been established by a criminal investigation body or by a court of law, other than those indicated in paragraph (1), the criminal investigation body or the court of law that found the disappearance shall send to the criminal investigation body or to the competent court of law all the materials necessary to carry out the replacement or reconstitution of the missing document.

(3) In the event of the disappearance of a judicial file during the preliminary chamber procedure, the replacement or reconstitution shall be carried out by the court in which the preliminary chamber operates.

**Article 546: Substitution of the document**

(1) The replacement of the missing document takes place when there are official copies of that document. The criminal prosecution body or the court of law takes measures to obtain the copy.

(2) The copy obtained takes the place of the original document until it is found.

(3) The person or authority who handed over the official copy shall be issued with a certified copy

thereof.

#### **Article 547: Reconstruction of the document or file**

- (1) When there is no official copy of the missing document, it is reconstructed.
- (2) The reconstitution of a file is done by reconstituting the documents it contained.
- (3) In order to reconstruct any means of proof provided by law may be used.
- (4) The result of the reconstitution shall be ascertained, as the case may be, by the prosecutor's order or by the court's decision summoning the parties, after hearing them and the prosecutor.
- (5) The non-appearance of the legally summoned parties does not prevent the trial of the case.
- (6) The decision of reconstitution is subject to appeal.
- (7) Any person who justifies a legitimate interest may lodge a complaint against the prosecutor's order on the outcome of the reconstitution, the provisions of Articles 336 to 339 being duly applied.

### **CHAPTER VIII: Procedure for International Judicial Cooperation and Implementation of International Treaties in Criminal Matters**

#### **SECTION 1: General provisions**

#### **Article 548: Provisions on international legal aid**

- (1) International judicial cooperation shall be requested or granted in accordance with the provisions of the legal acts of the European Union, the international treaties in the field of international judicial cooperation in criminal matters to which Romania is a party, as well as with the provisions contained in the special law and in this chapter, unless otherwise provided in the international treaties.
- (2) The documents of the seconded foreign members of a joint investigation team carried out on the basis of and in accordance with the agreement concluded and the provisions of the team leader have a value similar to the acts carried out by the Romanian criminal prosecution bodies.

#### **SECTION 2: Recognition of foreign judicial documents**

#### **Article 549: Enforcement of civil provisions of a foreign criminal court decision**

The enforcement of civil provisions of a foreign criminal court decision shall be made according to the rules provided for the enforcement of foreign civil judgments.

## **CHAPTER IX: Procedure for confiscation or dismantling of a document in case of closure**

### **Article 549<sup>1</sup>: Procedure for confiscation or abolition of a document in case of closure**

(1) If the prosecutor has ordered the closure or abandonment of the criminal investigation, confirmed by the judge of the preliminary chamber, and the notification of the judge of the preliminary chamber in order to take the security measure of the special confiscation or the dismantling of a document, the order of closure or, as the case may be, the order by which the withdrawal of the criminal prosecution confirmed by the judge of the preliminary chamber was ordered, accompanied by the case file, it shall be submitted to the court which, according to the law, would have jurisdiction to hear the case at first instance, after the expiry of the period provided for in Article 339(4) or, as the case may be, in Article 340 or after the decision by which the complaint was rejected or by which the order to drop criminal proceedings was confirmed.

(2) The judge of the preliminary chamber sets the deadline for resolution, depending on the complexity and particularities of the case, which cannot be shorter than 30 days.

(3) For the fixed term, the prosecutor is informed and the persons whose rights or legitimate interests may be affected are summoned, who are served with a copy of the ordinance, noting them that within 20 days from the receipt of the communication they can submit written notes.

(4) The judge of the preliminary chamber shall pronounce by conclusion, in a public hearing, after hearing the prosecutor and the persons whose rights or legitimate interests may be affected, if they are present. The provisions contained in Title III of the special part on trial which are not contrary to the provisions of this Article shall be applied accordingly.

**(5) The judge of the preliminary chamber, in deciding on the application, may order one of the following solutions:**

a) rejects the proposal and orders, as the case may be, the restitution of the property or the lifting of the precautionary measure taken for confiscation;

b) admits the proposal and orders the confiscation of the assets or, as the case may be, the abolition of the document.

(6) Within 3 days from the communication of the conclusion, the prosecutor and the persons referred to in paragraph (3) may lodge, reasoned, an appeal. The unmotivated appeal is inadmissible.

**(7) The appeal shall be resolved according to the procedure provided for in paragraph (4) by the judge of the preliminary chamber of the court hierarchically superior to the one seized or, when the court seized is the High Court of Cassation and Justice, by the competent panel**

**according to the law, which may order one of the following solutions:**

- a) rejects the appeal as late, inadmissible or unfounded;
- b) admits the appeal, abolishes the conclusion and retries the proposal according to paragraph (5).

## **TITLE V: Enforcement of criminal judgments**

### **CHAPTER I: General provisions**

#### **Article 550: Enforceable decisions**

(1) The decisions of the criminal courts become enforceable on the date when they have become final.

(2) Non-final decisions are enforceable when the law so provides.

#### **Article 551: Finality of the judgment of the first instance**

The decisions of the first instance shall remain final:

1. on the date of delivery, when the decision is not subject to appeal or appeal;
2. **on the date of expiry of the deadline for appealing or lodging the appeal:**
  - a) when no appeal or appeal has been declared within the deadline;
  - b) when the appeal or, as the case may be, the declared appeal was withdrawn within the deadline;
3. on the date of withdrawal of the appeal or, as the case may be, of the appeal, if it occurred after the expiry of the deadline for appealing or lodging the appeal;
4. on the date of the decision rejecting the appeal or, as the case may be, the appeal.

#### **Article 552: Finality of the decision of the court of appeal and of the decision rendered in the appeal**

(1) The decision of the court of appeal remains final on the date of its pronouncement, when the appeal has been admitted and the trial has ended before the court of appeal.

(2) The decision pronounced in the appeal of the appeal remains final on the date of its pronouncement, when the appeal has been admitted and the trial has ended before the court that tries it.

#### **Article 553: Enforcement court**

(1) The decision of the criminal court, which has become final at the first instance or at the

hierarchically superior court or at the court of appeal, shall be enforced by the first court of law.

(2)The decisions pronounced in the first instance by the High Court of Cassation and Justice shall be enforced, as the case may be, by the Bucharest Tribunal or by the Military Tribunal.

(3)When the decision becomes final before the court of appeal or before the hierarchically superior court, it sends to the executing court an extract from that decision, with the data necessary for enforcement, on the day of delivery of the decision by the court of appeal or, as the case may be, by the hierarchically superior court.

(4)The provisions of paragraphs (1) to (3) shall also apply in the case of decisions that are not final, but enforceable, except for those concerning security measures, precautionary measures and preventive measures, which are enforced, as the case may be, by the judge of rights and freedoms, the judge of the preliminary chamber or by the court that ordered them.

(5)When the decision of the court of appeal has been modified by the decision of the High Court of Cassation and Justice, pronounced on appeal in cassation, the High Court of Cassation and Justice shall proceed according to paragraph (3).

(6)In the case of non-custodial sentences and measures, the judge delegated with enforcement within the executing court may delegate certain powers to the judge delegated with execution from the court corresponding in rank to the court of execution in whose district the person being executed resides.

#### **Article 554: The judge delegated with enforcement**

(1)The executing court shall delegate one or more of its judges to carry out the enforcement.

(2)If, during the enforcement of the judgment or during the execution, any doubt or impediment to enforcement arises, the judge delegated with enforcement may refer the matter to the enforcement court, which shall proceed in accordance with the provisions of Articles 597 and 598.

### **CHAPTER II: Enforcement of judgments**

#### **SECTION 1: Enforcement of the main sentences**

#### **Article 555: Enforcement of imprisonment or life imprisonment and ancillary punishment**

(1)The prison sentence and the sentence of life imprisonment shall be enforced by the issuance of the execution warrant. The execution warrant shall be issued by the judge delegated with enforcement on the day on which the decision becomes final at the court of first instance or, as the case may be, on the day of receipt of the extract provided for in Article 553(3), shall be

drawn up in 3 copies and shall include: the name of the executing court, the date of issue, the data concerning the person of the convicted person, the number and date of the judgment to be enforced and the name of the court that pronounced it, the sentence pronounced and the text of the law applied, the accessory punishment applied, the time of preventive detention and arrest or house arrest, which was deducted from the duration of the sentence, the mention whether the convicted person is a repeat offender, as well as, as the case may be, the mention provided for in Article 404 paragraph (6), the arrest and detention order, the signature of the delegated judge, as well as the stamp of the executing court.

(2) If the convicted person is at liberty, with the issuance of the warrant for the execution of the prison sentence or the sentence of life imprisonment, the judge delegated with the execution also issues an order prohibiting the convicted person from leaving the country. The order is drawn up in 3 copies and includes: the name of the executing court, the date of issue, the data regarding the person of the convicted person, the sentence pronounced against him, the number and date of the conviction decision, the name of the court that pronounced it, the number of the warrant for the execution of the sentence issued in the name of the convicted person, the order prohibiting him from leaving the country, the signature of the delegated judge, as well as the stamp of the executing court.

#### **Article 556: Sending the warrant for execution**

(1) In order to carry out the execution warrant, two copies shall be sent to the police body of the convicted person's domicile or residence, and if the convicted person does not have his domicile or residence in Romania, to the police body in the territorial area of which the executing court is located, when the convicted person is free, or, as the case may be, when the convicted person is arrested, of the commander at the place of detention.

(1<sup>1</sup>) In the event that the execution warrant contains material errors, but allows the identification of the person for the purpose of enforcement, in relation to the identification data of the person existing in the records of the police bodies and the decision of the court, the police body executes the decision, requesting, at the same time, the court to correct the material errors noticed.

(2) In order to comply with the order prohibiting the departure of the country, a copy shall be sent immediately to the body competent to issue the passport and to the General Inspectorate of the Border Police.

(2<sup>1</sup>) The execution warrant or the order prohibiting the departure of the country may also be sent

to the competent authorities by fax, electronic mail or by any means capable of producing a written document in conditions that allow the receiving authorities to establish its authenticity.

(3) If the convicted person is at liberty, the enforcement bodies referred to in paragraphs 1 and 2 shall be obliged to take the measures provided for by law in order to execute the warrant for the execution of the sentence and the order prohibiting him from leaving the country, on the day of receipt.

**Article 557: Execution of the warrant for the execution of the sentence and the order prohibiting the departure of the country. The court's agreement to leave the country**

(1) On the basis of the execution warrant, the police body proceeds to arrest the convicted person. The arrested person is given a copy of the warrant and taken to the nearest place of detention, where the police hand over the other copy of the execution warrant. Within 10 days from the arrest, the person deprived of liberty shall be served with a copy of the decision.

(1<sup>2</sup>) Once the execution warrant is handed over, the convicted person shall be informed, under his signature, in writing, of the right provided for in Article 466 (1), and if the person is unable or refuses to sign, a report shall be concluded.

(1<sup>1</sup>) (text of Article 557, paragraph (1<sup>1</sup>) of Part 2, Title V, Chapter II, Section 1 was repealed on 05-Feb-2017 by Article II, point 4. of Emergency Ordinance 14/2017)

(2) In order to execute the warrant issued in execution of a final conviction decision, the police body may enter the domicile or residence of a person without his consent, as well as the headquarters of a legal person without the consent of his legal representative.

(3) The provisions of Article 229 on the taking of protection measures are duly applicable, the obligation of knowledge being incumbent on the police body.

(4) If the person against whom the warrant has been issued is not found, the police body ascertains this by means of a report and takes measures for the prosecution, as well as for the registration at the border crossing points. A copy of the report together with a copy of the execution warrant shall be sent to the court that issued the warrant.

(5) If the convicted person refuses to obey the warrant or tries to flee, he or she will be forced to do so.

(6) When the convicted person is in detention, a copy of the execution warrant shall be handed over to him by the commander of the place of detention.

(7) The commander of the place of detention shall record in a report the date from which the

convicted person began to serve his sentence.

(8) A copy of the report shall be sent immediately to the executing court.

(9) On the basis of the order prohibiting the departure of the country, the law enforcement bodies refuse the convicted person to issue the passport or, as the case may be, proceed to collect it and take measures to give the convicted person a notice at the border crossing points.

(10) During the term of supervision, the supervised person may request the executing court to authorize the departure of the territory of Romania in accordance with Article 85(2)(i) or Article 93(2)(d) of the Criminal Code. The executing court resolves the request in the council chamber, after hearing the supervised person and the probation counselor, by final conclusion. If the application is granted, the court shall determine the period for which the supervised person may leave the territory of Romania.

#### **Article 558: Knowledge of the arrest for the purpose of executing the warrant**

(1) Immediately after arrest for the purpose of executing the warrant, the convicted person has the right to personally inform or request the administration of the place of detention to inform a member of his family or another person designated by him about the arrest and the place where he is detained.

(2) If the convicted person is not a Romanian citizen, he/she also has the right to inform or request the knowledge of the diplomatic mission or consular office of the state of which he/she is a citizen or, as the case may be, of an international humanitarian organization, if he/she does not wish to benefit from the assistance of the authorities of his/her country of origin, or of the representation of the competent international organization, if he is a refugee or, for any other reason, is under the protection of such an organization.

#### **Article 559: Enforcement of the criminal fine**

(1) The person sentenced to the penalty of the fine is obliged to submit the receipt for full payment of the fine to the judge delegated with enforcement, within 3 months from the final date of the decision.

(2) When the convicted person is unable to pay the fine in full within the term provided for in paragraph (1), the judge delegated with enforcement, at the request of the convicted person, may order the payment of the fine to be staggered for a period of no more than 2 years, in monthly installments.

#### **Article 560: Replacing the penalty of fine with unpaid work for the benefit of the**

## **community**

(1)The court competent to order the replacement of the obligation to pay the unexecuted fine with the obligation to perform unpaid work for the benefit of the community, according to Article 64(1) of the Criminal Code, is the enforcement court.

(2)The notification to the court is made ex officio or by the body that, according to the law, executes the fine or by the convicted person. When ordering the replacement of the fine penalty with the performance of unpaid work for the benefit of the community, the court will mention in the operative part two entities in the community where the unpaid work for the benefit of the community is to be performed. The probation counselor, based on the initial assessment, will decide in which of the two institutions in the community mentioned in the court decision the obligation and the type of activity are to be performed.

(3)The obligation to perform unpaid work for the benefit of the community is enforced by sending a copy of the decision to the probation service.

### **Article 561: Replacing unpaid community work with prison**

(1)The court competent to order, according to Article 64 (5) (a) of the Criminal Code, the substitution of community service for imprisonment is the executing court, and in the case provided for in Article 64 (5) letter b) of the Criminal Code, the court that tries in the first instance the offence committed before the full performance of the community service.

(2)The notification to the court is made ex officio or by the body that, according to the law, executes the fine or upon notification of the probation service.

(3)The execution of the decision shall be made according to Articles 555-557.

## **SECTION 2: Enforcement of additional penalties**

### **Article 562: Prohibition of the exercise of certain rights**

The penalty of prohibition of the exercise of certain rights is enforced by the delegated judge of the executing court sending a copy of the operative part of the judgment, depending on the rights whose exercise has been prohibited, to the legal person governed by public or private law authorised to supervise the exercise of that right.

### **Article 563: Prohibition of foreigners from being on the territory of Romania**

(1)When the sentence of imprisonment has applied the complementary penalty of the prohibition of the foreigner's right to be on the territory of Romania, it is mentioned in the warrant for the

execution of the prison sentence that on the date of release the convicted person is to be handed over to the police, which will proceed to remove him from the territory of Romania.

(2) If the complementary punishment does not accompany the prison sentence, the communication shall be made to the police body, as soon as the decision has become final.

(3) In order to enforce the sentence of prohibiting the foreigner from being on the territory of Romania, the police body may enter the domicile or residence of a person without his consent, as well as the headquarters of a legal person without the consent of his legal representative.

(4) If the person against whom the complementary punishment of the prohibition to be on the territory of Romania has been taken is not found, the police body ascertains this through a report and takes measures for the prosecution, as well as for the arrest at the border crossing points. A copy of the report shall be sent to the executing court.

#### **Article 564: Military degradation**

The penalty of military degradation is enforced by sending by the judge delegated with execution a copy of the operative part of the decision of the commander of the military unit in whose record the convicted person is taken, respectively to the county or zonal military center at the convicted person's home.

#### **Article 565: Publication of the conviction**

The penalty of publication of the conviction is enforced by sending the extract, in the form established by the court, to a local daily newspaper appearing in the district of the court that pronounced the conviction or to a national daily newspaper, for publication, at the expense of the convicted person.

### **SECTION 3: Implementation of safety measures**

#### **Article 566: Forcing medical treatment**

(1) The security measure of the obligation to medical treatment taken by a final decision shall be enforced by communicating the copy of the device and the copy of the forensic expertise report to the public health authority of the county on whose territory the person against whom this measure was taken resides. The public health authority shall immediately notify the person against whom the measure of requiring medical treatment has been taken the health unit at which the treatment is to be performed.

(2) The executing court informs the person against whom the measure of obliging medical

treatment has been taken that he is obliged to immediately report to the health unit where his treatment is to be performed, drawing his attention that in case of non-compliance with the measure taken, medical hospitalization will be ordered.

(3) If the obligation to undergo medical treatment accompanies the sentence of imprisonment or life imprisonment or concerns a person in detention, the communication referred to in paragraph 1 shall be made to the administration of the place of detention.

#### **Article 567: Obligations in relation to medical treatment**

**(1) The health unit to which the perpetrator was assigned for medical treatment is obliged to communicate to the court:**

- a) whether the person obliged to the treatment presented himself to undergo the treatment;
- b) if the person obliged to the treatment avoids the treatment after presentation;
- c) if, due to the worsening of the health condition of the person against whom the measure of obliging medical treatment was taken, medical hospitalization is necessary;
- d) if, due to the improvement of the health condition of the person against whom the safety measure of the obligation to medical treatment has been taken, the performance of medical treatment is no longer required.

(2) If the health unit is not located in the jurisdiction of the court that ordered the enforcement, the communication provided for in paragraph (1)(b-d) shall be made to the court in whose district the health unit is located.

(3) The provisions of paragraphs 1(b) to (d) and paragraph 2 shall also apply accordingly in the case referred to in Article 566(3).

#### **Article 568: Maintaining, replacing or ending the obligation to undergo medical treatment**

(1) Upon receipt of the service, the executing court or the court referred to in Article 567(2) shall, in the situations referred to in Article 567(1)(a) and (b), consider whether it is necessary to maintain medical treatment or order medical hospitalization. If it considers that medical hospitalization is necessary or in the situations provided for in Article 567 (1) letters c) and d), it orders the performance of a forensic expertise on the state of health of the person against whom the safety measure is taken.

(2) In the cases referred to in Article 567(1)(c) and (d), the person obliged to undergo medical treatment shall have the right to request that he also be examined by a specialist doctor appointed by him, the conclusions of which shall be submitted to the court referred to in paragraph 1.

(3) If the person obliged to undergo medical treatment refuses to attend the examination for the purpose of carrying out the expertise, the provisions of Article 184(4) shall apply.

(4) After receiving the forensic expert report and the conclusions of the specialist doctor referred to in paragraph (2), the court, in a public hearing, shall hear the conclusions of the prosecutor, of the person against whom the security measure is taken and of his lawyer, as well as of the expert and the doctor appointed by him/her, when it deems it necessary, and shall order, as the case may be, the maintenance, termination of the measure of obligation to medical treatment or medical hospitalization.

(5) If the person against whom the security measure has been taken does not have a lawyer, he is provided with a lawyer *ex officio*.

(6) A copy of the operative part of the final judgment of the court referred to in Article 567(2) shall be communicated to the executing court.

#### **Article 569: Medical hospitalization**

(1) The safety measure of medical hospitalization taken by a final decision is enforced by communicating the copy of the decision and a copy of the forensic expertise report to the public health authority of the county on whose territory the person against whom this measure was taken resides.

(2) The judge delegated with enforcement who works at the enforcement court shall notify the court in whose district the health unit where the admission was made is located the date on which it was performed, in order to be taken into supervision.

(3) After receiving the communication, the judge delegated with enforcement from the court in whose district the health unit is located shall periodically check, but not later than 12 months, whether medical hospitalization is still necessary. To this end, the judge delegated with enforcement orders the performance of a medico-legal expertise on the state of health of the person against whom the measure of medical hospitalization has been taken and, after receiving it, notifies the court in whose district the health unit is located in order to order the maintenance, replacement or termination of the measure.

#### **Article 570: Obligations in relation to medical admission**

(1) The public health authority is obliged to ensure the hospitalization, informing the executing court about it.

(2) If the person against whom the measure of medical hospitalization has been taken refuses to

submit to hospitalization, the execution of this measure will be done with the support of the police bodies. In order to execute the measure of medical hospitalization, the police body may enter the domicile or residence of a person without his consent, as well as the headquarters of a legal person without the consent of his legal representative.

(3) If the person against whom the measure of medical hospitalization has been taken is not found, the public health authority notifies the police bodies for the pursuit, as well as for the registration at the border crossing points. A copy of the notification addressed to the police bodies is sent to the executing court.

(4) The health unit to which the hospitalization was made has the obligation, if it considers that hospitalization is no longer necessary, to inform the court in whose district the health unit is located.

#### **Article 571: Maintaining, replacing or terminating the measure of medical hospitalization**

(1) The Court, after receiving the information provided for in Article 570(4), shall order a forensic expertise to be carried out.

(2) The court shall rule on the notification referred to in Article 569(3) or the notification referred to in Article 570(4), after hearing the submissions of the public prosecutor, the person in respect of whom the measure of detention is taken, where it is possible to bring him before the court, his lawyer and the expert who drew up the forensic expertise, when he considers it necessary, and orders, as the case may be, the maintenance of the medical hospitalization, its termination or its replacement with the measure of obliging medical treatment.

(3) The termination or replacement of the internment measure may also be requested by the interned person or by the prosecutor. In this case, the court orders the forensic expertise to be carried out. The provisions of Article 568(4) shall apply accordingly.

(4) If the hospitalized person does not have a lawyer, he is provided with a lawyer ex officio.

(5) A copy of the operative part of the final decision ordering the maintenance, replacement or termination of the medical admission shall be communicated to the executing court.

#### **Article 572: Provisional safety measures**

(1) If the measure of ordering medical treatment or medical hospitalization has been provisionally taken during the criminal investigation or trial, enforcement shall be made by the judge of rights and freedoms or by the court of law that took this measure.

(2) The provisions of Articles 566 to 571 shall apply accordingly.

### **Article 573: Prohibition of the exercise of the right to hold a position or to exercise a profession or other activity**

(1) The security measure of the prohibition of a function, profession or activity is enforced by communicating a copy of the device to the body entitled to carry out these measures and to supervise their observance.

(2) This body has the duty to ensure the execution of the measure taken and to notify the criminal investigation body in case of evasion from the execution of the security measure.

(3) The person in respect of whom the measure provided for in Article 111(1) of the Criminal Code has been taken may apply to the executing court for the revocation of the measure, under the conditions of Article 111(2) of the Criminal Code.

(4) The resolution of the request shall be made by summoning the person against whom the measure is taken, after listening to the conclusions of his lawyer and the prosecutor.

### **Article 574: Execution of Special Confiscation and Extended Confiscation**

The security measure of special confiscation or extended confiscation, taken by the decision of the court, shall be executed as follows:

a) the confiscated things are handed over to the bodies entitled to take over or capitalize on them according to the law;

b) If the confiscated goods are in the custody of the police or other institutions, the judge delegated with enforcement sends a copy of the operative part of the decision of the body with which he is located. After receiving the copy of the device, the confiscated items are handed over to the bodies entitled to take them over or capitalize on them according to the provisions of the law;

c) when the confiscation concerns amounts of money that have not been recorded at banking units, the judge delegated with enforcement sends a copy of the operative part of the decision of the tax authorities, in order to execute the confiscation according to the provisions on budgetary receivables;

d) When the destruction of the confiscated things has been ordered, this is done in the presence of the judge delegated with enforcement, drawing up a report that is submitted to the case file.

## **SECTION 4: Enforcement of other provisions**

### **Article 575: Warning**

(1)The execution of the warning takes place immediately, in the hearing in which the decision was pronounced.

(2)If the warning cannot be enforced immediately after the pronouncement, it shall be enforced when the judgment becomes final, by communicating a copy of it to the person to whom it applies.

#### **Article 576: Measures and obligations imposed by the court**

(1)The enforcement of the measures and obligations provided for in Article 85 (1) and (2) of the Criminal Code, the provisions of Articles 87, 93, 95, Article 101 (1) and (2) and Article 103 of the Criminal Code shall be made by sending a copy of the operative part of the decision to the competent probation service.

(2)In the case of the obligations laid down in Article 85(2)(e) to (j), Article 93(2)(d) and Article 101(2)(c) to (g) of the Criminal Code, an extract from the operative part of the judgment shall be sent to the body or authority competent to verify compliance with them.

### **SECTION 5:Enforcement of the judicial fine and the judicial expenses advanced by the State**

#### **Article 577: Judicial fines**

(1)The judicial fine is enforced by the judicial body that applied it.

(2)The enforcement is made by sending an extract from that part of the device that concerns the application of the judicial fine to the body that, according to the law, executes the criminal fine.

(3)The enforcement of judicial fines shall be carried out by the body referred to in paragraph (2).

#### **Article 578: Legal expenses advanced by the state**

(1)The provision of the criminal decision or of the prosecutor's order regarding the obligation to pay the judicial expenses advanced by the state shall be enforced by sending an extract from that part of the operative part concerning the application of judicial expenses to the body which, according to the law, executes the criminal fine.

(2)In the event that the person obliged to pay the legal costs to the state does not submit the receipt for their full payment to the executing court or to the prosecutor's office, within 3 months from the final decision or order of the prosecutor, the execution of the judicial costs shall be made by the body referred to in paragraph (1).

### **SECTION 6:Enforcement of the civil provisions of the judgment**

**Article 579: Restitution of things and recovery of uncollected things**

(1) When the criminal decision has ordered the restitution of some things that are in the custody or at the disposal of the executing court, the restitution is made by the judge delegated with enforcement, by remitting those things to the persons entitled to it. For this purpose, the persons to whom the things are to be returned are known.

(2) If within 6 months from receiving the information, the summoned persons do not present themselves to receive them, things pass into the property of the state. The judge delegated with the execution ascertains this by conclusion and orders the handover of the things to the bodies entitled to take over or capitalize on them according to the provisions of the law.

(3) If the return of the things could not be carried out because the persons to whom they should be returned are not known and no one has claimed them within 6 months of the decision becoming final, the provisions of paragraph (2) shall be duly applicable.

(4) When the restitution of the things has been ordered by the prosecutor or by the criminal investigation body, he shall proceed according to the provisions of paragraphs (1) to (3).

(5) When the criminal decision has ordered the restitution of some things that are in the custody of the criminal investigation bodies, the restitution shall be made by them, after receiving the copy of the operative part of the criminal decision by which the restitution of the things was ordered, proceeding according to paragraph (1).

(6) If within 6 months from receiving the information, the summoned persons do not present themselves to receive them, things pass into the property of the state. The investigative body shall ascertain this by means of a report and shall proceed according to paragraph (2). The provisions of paragraph 3 shall apply accordingly.

**Article 580: Documents declared false**

(1) The provision of the criminal decision declaring a document to be false in whole or in part shall be enforced or enforced by the judge delegated with enforcement.

(2) When the document declared false has been cancelled in its entirety, it is mentioned on each page, and in case of partial cancellation, only on the pages containing the forgery.

(3) The document declared false remains in the case file.

(4) If it is necessary to mention the document declared false in the deeds of a public institution, a copy of the operative part of the decision shall be sent to it.

(5) If, for any reason, the falsified document is not in the original file, the court will send a copy

of the operative part of the decision to the public institutions that have a copy of it or that have the record of mentions regarding it.

(6)The court may, when it finds the existence of a legitimate interest, order the release of a copy, with the particulars indicated in paragraph (2), of the forged private document. Under the same conditions, the court may order the return of the partially falsified official document.

### **Article 581: Civil damages and court costs**

The provisions of the criminal judgment regarding civil damages and legal costs due to the parties shall be enforced in accordance with the civil law.

## **CHAPTER III:Other enforcement provisions**

### **SECTION 1:SECTION 1: Conviction in case of annulment or revocation of the waiver of the application of the sentence or postponement of the application of the sentence**

#### **Article 581<sup>1</sup>: Cancellation of the waiver of the application of the penalty**

(1)The annulment of the waiver of the application of the penalty shall be ordered, ex officio or upon notification of the prosecutor, by the court that judges or has judged in the first instance the offence that entails the annulment.

(2)If it finds that the conditions of Article 82(3) of the Criminal Code are met, the court, annulling the waiver of the penalty, orders the conviction of the defendant for the offence in respect of which the application of the penalty had been waived, determines the penalty for it, then applying, as the case may be, the provisions on the concurrence of offences, recidivism or intermediate plurality.

(3)When determining the penalty for the offence in respect of which the waiver of the application of the penalty is annulled, the court will take into account only the individualization criteria and the circumstances in which the decision to waive the application of the penalty was initially pronounced. The provisions of Article 396(10) shall apply accordingly.

#### **Article 582: Revocation or cancellation of the postponement of the application of the penalty**

(1)The revocation or cancellation of the postponement of the application of the sentence shall be pronounced, ex officio or at the request of the prosecutor or probation counselor, by the court that judges or has judged in the first instance the offence that could entail the revocation or annulment.

(2) If, by the expiry of the period provided for in Article 86(4)(c) of the Criminal Code, the person in respect of whom the postponement of the sentence has been ordered has not complied with the civil obligations established by the decision ordering the postponement, the competent probation service shall notify the court which pronounced the postponement in the first instance, with a view to revoking it. The notification can also be made by the prosecutor or by the interested party, until the expiry of the term of supervision.

(3) If it finds that the conditions of Article 88 or 89 of the Criminal Code are met, the court, annulling or, as the case may be, revoking the postponement of the application of the penalty, orders the conviction of the defendant and the execution of the sentence established by the postponement decision, then applying, as the case may be, the provisions regarding the concurrence of crimes, recidivism or intermediate plurality.

## **SECTION 1<sup>1</sup>: Changes in the enforcement of judgments**

### **Article 583: Revocation or cancellation of the suspension of the execution of the sentence under supervision**

(1) On the revocation or annulment of the suspension of the execution of the sentence under supervision provided for in Article 96 or 97 of the Criminal Code, the court that judges or has judged in the first instance the offence that could lead to revocation or annulment shall be pronounced *ex officio*, upon notification of the prosecutor or probation counselor.

(2) If, by the expiry of the period provided for in Article 93(5) of the Criminal Code, the convicted person has not complied with the civil obligations laid down in the conviction decision, the competent probation service shall notify the court which pronounced the suspension at first instance with a view to revoking it. The notification can also be made by the prosecutor, the probation counselor or the interested party, until the expiry of the supervision term.

### **Article 584: Replacement of life imprisonment**

(1) The replacement of the sentence of life imprisonment by the sentence of imprisonment shall be ordered, at the request of the prosecutor or the convicted person, by the executing court, and if the convicted person is in detention, by the corresponding court in whose district the place of detention is located.

(2) The replacement decision, which has become final, shall be enforced in accordance with the provisions of Articles 555-557.

**Article 585: Other changes in penalties**

(1) **The sentence pronounced may be modified, if at the execution of the decision or during the execution of the sentence it is found, on the basis of another final decision, the existence of any of the following situations:**

- a) the concurrence of crimes;
- b) recurrence;
- c) intermediate plurality;
- d) acts that fall within the content of the same crime.

(2) The court competent to order the modification of the sentence is the court that executed the last judgment or, if the convicted person is in detention, the corresponding court in whose district the place of detention is located.

(3) The court is notified ex officio, at the request of the prosecutor or the convicted person.

(4) Upon receipt of the request, the president of the panel of judges orders the attachment of the documents to the file and the taking of all necessary measures to solve the case.

**Article 586: Replacing the fine with imprisonment**

(1) The replacement of the fine by imprisonment, in the case provided for in Article 63 of the Criminal Code, shall be ordered by the executing court.

(2) The notification to the court is made ex officio or by the body that, according to the law, executes the fine.

(3) The convicted person is summoned to the hearing of the complaint, and if he does not have a lawyer, the court appoints one ex officio.

(4) The convict deprived of liberty will be brought to trial.

(5) The replacement decision, which has become final, shall be enforced in accordance with the provisions of Articles 555-557. If the fine has accompanied the prison sentence, a new execution warrant will be issued for the resulting sentence according to Article 63 (2) of the Criminal Code.

(6) If the convicted person pays the fine during the settlement of the case, the notification will be rejected as unfounded.

**Article 587: Conditional release**

(1) Conditional release shall be ordered, at the request or proposal made in accordance with the

provisions of the law on the execution of sentences, by the court in whose district the place of detention is located.

(2) When the court finds that the conditions for granting conditional release are not met, it sets the deadline after which the proposal or application may be renewed by the rejection decision. The term may not exceed one year and runs from the date the decision becomes final.

**(3) The court's decision may be appealed to the court in whose district the place of detention is located, within 3 days from the communication. The appeal filed by the prosecutor is suspensive of execution.**

\*) By Decision no. 17/2024 The High Court of Cassation and Justice admits the appeal in the interest of the law and establishes that, in interpreting and applying the provisions of Article 587(3) of the Code of Criminal Procedure, the court competent to hear the appeal against the sentence handed down by the court in matters of conditional release is the hierarchical court superior to the court that pronounced the contested sentence, in whose district the place of detention was located on the date of formulation requests.

(4) A copy of the final decision shall be communicated to the competent probation service, as well as to the police unit in whose district the released person resides.

#### **Article 588: Cancellation and revocation of conditional release**

(1) The annulment of the conditional release provided for in Article 105 (1) of the Criminal Code shall be ruled ex officio or at the request of the prosecutor or probation counsellor by the court that judges or has tried in the first instance the offence that entails the annulment.

(2) The court referred to in paragraph (1) shall also rule on the revocation of conditional release, in the situation provided for in Article 104(2) of the Criminal Code.

(3) The court referred to in Article 587(1) shall also rule on the revocation of conditional release, in the situation provided for in Article 104(1) of the Criminal Code, upon referral to the probation service, as well as if the court which tried the convicted person for another offence has not ruled on the matter.

(4) The court before which the decision has become final is obliged to communicate to the place of detention and to the probation service, where appropriate, a copy of the device by which the revocation of the conditional release was ordered.

#### **SECTION 2: Postponement of the execution of the prison sentence or life imprisonment**

## **Article 589: Cases of postponement**

**(1) The execution of the prison sentence or life imprisonment may be postponed in the following cases:**

- a) when it is found, on the basis of a forensic expertise, that the convicted person suffers from an illness that cannot be treated in the health network of the National Administration of Penitentiaries and which makes it impossible to immediately execute the sentence, if the specificity of the disease does not allow it to be treated with the provision of permanent security in the health network of the Ministry of Health and if the court considers that the postponement of the execution and release does not present a danger to public order. In this situation, the execution of the sentence is postponed for a determined period;
- b) when the convicted person is pregnant or has a child under one year old. In these cases, the execution of the sentence is postponed until the end of the cause that determined the postponement.

(2) In the case provided for in paragraph (1)(a), the postponement of the execution of the sentence may not be ordered if the convicted person has caused his own illness, by refusing medical treatment, surgery, by self-harm or other harmful actions, or in the situation in which he evades the performance of the forensic expertise.

(3) The request for postponement of the execution of the prison sentence or life imprisonment can be made by the prosecutor and the convicted person.

(4) The request may be withdrawn by the person who made it.

(5) The decisions ordering the postponement of the execution of the sentence are enforceable from the date of the pronouncement.

(6) If, during the postponement of the execution of the sentence, another warrant for the execution of the prison sentence is issued in the name of the convicted person, it may not be executed until the expiry of the postponement period set by the court or, as the case may be, until the end of the case that determined the postponement.

(7) The decision by which the court rules on the request for postponement of the execution of the sentence may be appealed to the hierarchically superior court, within 3 days from the communication.

## **Article 590: Obligations of the convicted person in case of postponement of execution**

**(1) During the postponement of the execution of the sentence, the convicted person must comply with the following obligations:**

- a) not to exceed the territorial limit set only under the conditions established by the court;
- b) to contact, within the term set by the court, the police body designated by the court in the decision to postpone the execution of the prison sentence in order to be taken into account and to establish the means of permanent communication with the supervisory body, as well as to appear in court whenever summoned;
- c) not to change their residence without prior information to the court that ordered the postponement;
- d) not to own, use or carry any category of weapons;
- e) in the case referred to in Article 589(1)(a), report immediately to the health facility where the treatment is to be carried out, and in the case referred to in Article 589(1)(b), take care of the child under one year of age.

**(2) During the postponement of the execution of the sentence, the court may require the convicted person to comply with one or more of the following obligations:**

- a) not to be in certain places or at certain sports, cultural or other public gatherings, established by the court;
- b) not to communicate with the injured person or his family members, with the persons with whom he committed the crime or with other persons, established by the court, or not to approach them;
- c) not to drive any vehicle or certain established vehicles.

(3) repealed

**Article 591: Competent court**

- (1) The court competent to rule on the granting of the postponement of the execution of the sentence is the executing court.
- (2) In the case provided for in Article 589(1)(a), the application for postponement of the execution of the sentence shall be submitted to the judge delegated with enforcement, accompanied by medical documents. The judge delegated with enforcement verifies the competence of the court and orders, as the case may be, by conclusion, the declination of the competence to solve the case or the performance of the forensic expertise. After receiving the forensic expertise report, the case shall be solved by the executing court, according to the provisions of this chapter.
- (3) The executing court shall communicate the decision postponing the execution of the sentence, on the day of the pronouncement, to the police body designated in the decision to postpone the

execution of the prison sentence in order to take into account the person, the gendarmerie, the police unit in whose district the convicted person resides, the bodies competent to issue the passport, the border bodies, as well as other institutions, in order to ensure compliance with the imposed obligations. The legal bodies refuse to issue the passport or, as the case may be, provisionally collect the passport for the duration of the postponement.

(4) In the event of a breach in bad faith of the obligations laid down in Article 590, the executing court shall revoke the postponement and order the execution of the custodial sentence. The police body designated by the court in the decision with the supervision of the person against whom the postponement of the execution of the sentence has been ordered periodically verifies the compliance with the obligations of the convicted person and draws up a monthly report in this regard to the executing court.

(5) If it finds breaches of the obligations established according to Article 590, the police body shall immediately notify the executing court.

(6) The enforcement court keeps a record of the postponements granted and, at the end of the term, takes measures to issue the execution warrant, and if the warrant has been issued, it takes measures to carry it out. If a postponement deadline has not been set, the enforcement judge of the enforcement court is obliged to notify the enforcement court in order to verify the existence of the grounds for the postponement, and when it is found that they have ceased, to take measures to issue the execution warrant or to carry it out.

### **SECTION 3: Interruption of the execution of the prison sentence or life imprisonment**

#### **Article 592: Cases of interruption**

(1) The execution of the sentence of imprisonment or life imprisonment may be interrupted in the cases and under the conditions provided for in Article 589, at the request of the persons referred to in paragraph 3 of the same article, and in the case provided for in Article 589 (1) (a), also at the request of the prison administration.

(2) The provisions of Articles 590 and 591(2) to (5) shall apply accordingly.

(3) The appeal filed by the prosecutor is suspensive of execution.

#### **Article 593: Competent court**

(1) The court competent to order the interruption of the execution of the sentence is the court in whose district the place of detention is located, corresponding in rank to the executing court.

**(2)The request for extension of the previously granted interruption shall be resolved by the court that ordered the interruption of the execution of the sentence.**

(3)The decision by which the court rules on the request for interruption of the execution of the sentence may be appealed to the hierarchically superior court, within 3 days from the communication.

#### **Article 594: Evidence of interruption of the execution of the sentence**

(1)The court which ordered the interruption of the execution of the sentence shall immediately communicate this measure to the executing court, the place of detention and the police.

(2)The executing court and the administration of the place of detention keep records of the interruptions granted. If, at the end of the term of suspension, the person sentenced to imprisonment does not present himself at the place of detention, the administration shall immediately send a copy of the execution warrant to the police for execution. The copy of the execution warrant also mentions how much remains to be executed during the duration of the sentence.

(3)The administration of the place of detention shall notify the executing court of the date on which the execution of the sentence resumed.

(4)The time during which the execution was interrupted is not counted in the execution of the sentence.

(5)The accessory punishment shall also be served during the interruption of the execution of the prison sentence or life imprisonment.

#### **SECTION 4:Removal or modification of the sentence**

##### **Article 595: Intervention of a new criminal law or a decision of the Constitutional Court**

**(1)When, after the conviction decision or the decision by which an educational measure was applied, a law is introduced that no longer provides as a crime the act for which the conviction was pronounced or a law that provides for a lighter punishment or educational measure than the one that is being executed or is to be executed, the court shall take measures to enforce, as the case may be, the provisions of Articles 4 and 6 of the Criminal Code.**

\*) Admits the exception of unconstitutionality raised by Remus Adrian Borza in Case no. 3.514/2/2016 of the Bucharest Court of Appeal - Criminal Section I and by Viorel Popescu in the

Case no. 2.499/93/2016 of the Ilfov Tribunal - Criminal Section and finds that the legislative solution contained in Article 595 paragraph (1) of the Code of Criminal Procedure, which does not provide for the decision of the Constitutional Court finding the unconstitutionality of an incriminating norm as a case of removal or modification of the educational punishment/measure, is unconstitutional.

(1<sup>1</sup>) The provisions of paragraph (1) shall also apply accordingly in the event of the admission of an exception of unconstitutionality, if, following this decision of the Constitutional Court, a determined act no longer meets the constituent elements of a crime or the form of guilt required by law for the existence of the crime or if that decision determines the reduction of the maximum limit of the penalty or of the measure provided by law, and the punishment or measure that is executed or is to be executed exceeds this maximum.

(2) The provisions of paragraphs (1) and (1<sup>1</sup>) shall be applied ex officio or at the request of the prosecutor or the convicted person by the executing court, and if the convicted person is in the execution of the sentence or an educational measure, by the court corresponding in rank in whose district the place of detention is located or, as the case may be, educational center or detention center.

#### **Article 596: Amnesty and pardon**

(1) The application of amnesty and pardon, when they occur after the decision has become final, is made by the judge delegated with execution from the executing court, and if the convicted one is in execution of the sentence, by the judge delegated with execution from the corresponding court in whose district the place of detention is located.

(2) The judge pronounces by enforceable conclusion, given in the council chamber, with the participation of the prosecutor.

(3) The prosecutor may declare an appeal against the conclusion pronounced according to paragraph (2) within 3 days from the pronouncement. The appeal is suspensive of execution.

### **CHAPTER IV: Common provisions**

#### **Article 597: Procedure at the enforcement court**

(1) When the resolution of the situations regulated in this Title is given to the jurisdiction of the executing court, the president of the panel of judges shall order the summoning of the interested parties and, in the cases provided for in Article 90, shall take measures for the appointment of a court-appointed lawyer. When judging cases of interruption of the execution of the prison sentence

or life imprisonment, the administration of the penitentiary in which the convicted person serves his sentence shall also be summoned.

(2) The convicted person in detention or interned in an educational center is brought to trial.

(2<sup>1</sup>) The convicted person who is in detention or interned in an educational center may participate in the trial in order to resolve the situations regulated in this title also by means of videoconference, at the place of detention, with his consent and in the presence of the lawyer chosen or appointed ex officio and, as the case may be, also of the interpreter.

(3) The participation of the prosecutor is mandatory.

(4) After hearing the conclusions of the prosecutor and the parties, the court pronounces by sentence.

(5) The provisions contained in Title III of the special part on trial which are not contrary to the provisions of this Chapter shall be applied accordingly.

(6) The provisions of paragraphs (1) to (5) shall also apply if the resolution of one of the situations regulated in this title is given to the jurisdiction of the court in whose district the place of detention is located. In this case, the solution is communicated to the enforcement court.

(7) The decisions rendered in the first instance in the matter of enforcement according to this title may be appealed to the hierarchically superior court, within 3 days from the communication.

(8) The judgment of the appeal against the decision of the first instance shall be made in a public hearing, with the summons of the convicted person. The convicted person in detention or interned in an educational center is brought to trial. The participation of the prosecutor is mandatory. The decision of the court by which the appeal is resolved is final. The provisions of paragraph 5 shall apply accordingly.

#### **Article 598: Challenge to enforcement**

**(1) The appeal against the execution of the criminal judgment can be made in the following cases:**

- a) when a judgment that was not final was enforced;
- b) when the execution is directed against a person other than that provided for in the conviction decision;
- c) when there is any doubt about the decision to be enforced or any impediment to enforcement;
- d) when amnesty, prescription, pardon or any other cause for extinguishing or reducing the sentence is invoked.

(2) In the cases referred to in paragraph 1(a), (b) and (d), the appeal shall be lodged, as the case may be, with the court referred to in Article 597(1) or (6), and in the case referred to in paragraph 1(c), with the court that pronounced the decision to be enforced. If the doubt concerns a provision of a judgment rendered on appeal or on appeal in cassation, jurisdiction rests, as the case may be, with the appeal court or the High Court of Cassation and Justice.

#### **Article 599: Resolution of the appeal to enforcement**

(1) The procedure for resolving the challenge to enforcement is the one provided for in Article 597.

(2) In the case referred to in Article 598(1)(d), if the enforced decision does not show the dates and situations on which the settlement of the appeal depends, the finding thereof shall be made by the court competent to hear the appeal.

(3) The request may be withdrawn by the convicted person or by the prosecutor, when it is formulated by the latter.

(4) After the final solution has been pronounced following the admission of the challenge to enforcement, a new enforcement shall be made according to the procedure provided for in this title.

(5) Subsequent requests for an objection to enforcement are inadmissible if there is identity of person, legal basis, reasons and defenses.

#### **Article 600: Appeal regarding the enforcement of civil provisions**

(1) An appeal against the enforcement of the civil provisions of the judgment shall be lodged, in the cases referred to in Article 598(1)(a) and (b), to the court of enforcement referred to in Article 597, and in the case referred to in Article 598(1)(c), to the court which pronounced the judgment to be enforced. The provisions of Article 598(2), sentence II, shall apply accordingly.

(2) The provisions of Article 597(1) to (5) shall apply accordingly.

(3) The appeal against the enforcement acts is resolved by the civil court according to the civil law.

#### **Article 601: Appeal regarding judicial fines**

(1) The appeal against the enforcement of judicial fines shall be resolved by the court that enforced them.

(2) The provisions of Article 597(1) to (5) shall apply accordingly.

#### **Article 601<sup>1</sup>: Resolution of fictitious claims**

Applications provided for in this Title in respect of which it appears that they do not concern a specific convicted person or made against a person who cannot be determined, as well as applications formulated on behalf of a convicted person, without a warrant from him, given under the law, shall be inadmissible.

## **TITLE VI:Final provisions**

### **Article 602: Terms explained in the Criminal Code**

The terms or expressions whose meaning is specifically explained in the Criminal Code have the same meaning in the Code of Criminal Procedure.

### **Article 603: Entry into force**

(1)This Code shall enter into force on the date to be established by its implementing law.

(2)Within 12 months from the date of publication of this Code in the Official Gazette of Romania, Part I, the Government shall submit to Parliament for adoption the draft law for the implementation of the Code of Criminal Procedure.

\*

This law transposes the provisions:

1.-Article 3(1) to (4), Article 4, Article 5(1) to (3), Article 6(1) and (2), Article 7(1), Article 8(1) and (3), Article 9, Article 10(2), Article 12(1) and (2), Article 13 and Article 15(2) of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant procedures, as well as the right for a third person to be informed following the deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty, published in the Official Journal of the European Union, L series, no. 294 of 6 November 2013;

2.-Article 2(3) and (4), Article 3(3), Article 4, Article 5, Article 6(1)-(5) and (7), Article 7(1)-(8), Article 8(2), Article 9(1) and (2), Article 10, Article 11, Article 13, Article 14(1)-(3), Article 15, Article 16, Article 18, Article 19, Article 20(1) and (2) and Article 22 of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, published in the Official Journal of the European Union, L series, no. 132 of 21 May 2016.

3.the provisions of Articles 10 and 13 of Directive (EU) 2024/1.226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for infringements

of Union restrictive measures and amending Directive (EU) 2018/1.673, published in the Official Journal of the European Union, L series, 2024/1.226 of 29 April 2024.

\_\*\*\*\_

This law was adopted by the Romanian Parliament, in compliance with the provisions of Article 75 and Article 76 paragraph (1) of the Romanian Constitution, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES

ROBERTA ALMA ANASTASE

PRESIDENT OF THE SENATE

MIRCEA-DAN GEOAN

Published in the Official Gazette number 486 of 15 July 2010