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The Peremptory Writ in the Code of Criminal Procedure

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Abstract. Criminal proceedings take place in accordance with the law. Both the summons and the transmission of documents or the peremptory writ are carried out according to the criminal procedural decisions established by the Code of Criminal Procedure. The summons, prior to the warrant to be brought, is carried out ex officio, which also implies the obligation to carry out the summons procedure. It is fundamental to carry out the summons procedure correctly and to serve other procedural documents at every stage of criminal proceedings (criminal investigation, preliminary chamber and trial), representing the official way by which the procedural subject is informed about procedural acts performed or procedural measures ordered by justice. Failure to comply with the summons and bringing process may lead to the reopening of criminal proceedings, resulting in delays in solving the case and criminal trials that do not comply with the provisions of the European Convention on Human Rights. It is essential to know the rules of procedure regarding summoning, warranting and serving documents, in order to perform a correct act in court, and in carrying out a good judicial conduct, the clerk plays a very important role, becoming a real help for the activity of a prosecutor or judge. Through the professional and competent performance of his/her duties, the Registrar also has a major role in the prompt resolution of cases.

Keywords. mandate, code, judicial body, stages, tactical rules

1. General notions

Bringing in with a warrant is a custodial measure, precisely because the method of moral coercion is the essence of the mandate. In this way, persons brought with a warrant will remain at the disposal of the judicial body.

Only by the presence of agents of public force at the home of the procedural subject in order to execute the warrant, a type of moral coercion is exercised on them, and in case of refusal, physical coercion is sometimes applied.

From a legal point of view, the arrest warrant is similar to the arrest warrant, given that it is based on the deprivation of liberty of the person concerned.

The person will not be able to be in contact with third parties throughout the bringing, does not have the right to travel as he wishes and is under the close observation of the authorities responsible for implementing the arrest warrant.

Thus, in the case of the arrest warrant, deprivation of liberty is essential for the investigation process, and any misconduct could violate the provisions of art. Article 5 of the Convention, even if the person concerned would accept the measure.

1.1. Definition and purpose of the peremptory writ

A warrant to bring in has the legal nature of a coercive measure and implies the obligation of the person to allow himself to be brought before the legal body that ordered this order.

The measure is designed to achieve the purpose of criminal proceedings and to ensure the optimal conduct of judicial activities, but without exceeding the limits laid down by national and conventional provisions. In order for the requirements to be respected, in addition to strictly observing the relevant legal provisions, a test of the necessity and proportionality of the measure of deprivation of liberty with the purpose pursued by the release of the warrant shall be carried out.

1.2. Conditions for application of the bringing mandate

According to Article 266 paragraph (1) of the Code of Criminal Procedure, under the conditions of application of the arrest warrant, it is mentioned that the arrest warrant is implemented by the public order and criminal investigation bodies within the judicial police.

In this way, the person whose duty it is to execute the warrant, goes to the address mentioned in the warrant, "communicates" the warrant to the person for whom it was issued and asks him to accompany him, and if the summoned person refuses this aspect or wants to flee, he will be brought by obligation.

The execution of the mandate shall be done voluntarily, if the person quoted in the warrant accompanies the person executing the mandate, or by physical coercion, if the executive body is refused to accompany.

For example, "the body in charge of executing the warrant will only forcefully lead, possibly handcuffed, the person concerned before the judicial body, when he refuses to obey the mandate."¹

By way of exception, Art.266 of the Code of Criminal Procedure provides that physical coercion may be used, the police may use force for the purpose and for as long as necessary to bring the interested party before the criminal investigation body or the court."²

"The constraint referred to in the text of the law must be understood in the sense that there is an obligation on the part of the person concerned to allow himself to be brought before the judicial body by the body which received for execution the warrant to bring."³

In accordance with the Court's jurisdiction, we are also of the opinion that the police officer cannot use the means of coercion provided for in Art. 34 para. (1) of Law nr. 218/2002 against the person who does not allow himself to be brought before the judicial body, only if disobedience or opposition endangers the physical integrity or life of the police officer.

The physical restraint applied in these situations may have a negative impact in relation to the right referred to in Art. 3 of the Convention, because "the person in such a case is destabilized" and prone to the risk of facing inhuman and dishonorable treatment. Thus, if the person is deprived of liberty or when he is in conflict with the representatives of law enforcement, the use of physical force by them when it is not absolutely necessary, leads to

¹ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mhai Cătălin, New Code of Criminal Procedure. Commented, Hamangiu Publishing House, Bucharest, 2014

² Mateuț Gheorghită, Treatise on criminal procedure. General part, vol. II, C.H. Beck Publishing House, Bucharest, 2012

³ Mateuț Gheorghită, Treatise on criminal procedure. General part, vol. II, C.H. Beck Publishing House, Bucharest, 2012

harm to human dignity and is a violation of the "right guaranteed by Article 3 of the Convention."

The Court stated that handcuffing the person for arrest does not violate the provisions of Art. 3 of the Convention, if the applicant's attitude was agitated and the executing bodies restrained him by means of handcuffs.⁴

Even if the person tells the executing body that he will appear alone before the judicial body that requested his presence, the obligation of the investigating body is to accompany the person to the place of appearance, "the obligation being extinguished only when the judicial body that issued the warrant became aware of the presence of the person concerned"⁵

The execution of the warrant must comply with the conventional rules relating to the principle of legal certainty but also to the legality of the measure adopted. As regards the existence of a remedy compensating for unlawful deprivation of liberty, from the jurisdiction of the Court formulated around Art. 5 para. (5) of the Convention, it follows that "whenever there is a deprivation of liberty not in accordance with the provisions of the Convention, the person has an enforceable right to compensation."⁶

Even in the case of deprivation of liberty adopted on the basis of a warrant, "it is necessary to have a remedy to compensate for the unlawful deprivation of liberty."⁷

The last paragraph of Art. Article 5 is complied with only when "national rules enable the person concerned to seek effective redress for unlawful deprivation of liberty." If national rules do not approve the obtaining of compensation for unlawful detention, although a violation of the provision of art. 5, the European court finds a violation of Art. 5 para. (5) of the Convention. The effectiveness of the remedy must exist not only in theory, but also in practice. National laws must guarantee the right to compensation referred to in Art. 5 para. (5), "to ensure its effective exercise."⁸

As regards the effectiveness of the remedy, in relation to the amount of compensation, the Court stated that 'it does not confer a right to a certain amount by way of compensation, but it must be reasonable, having regard to the circumstances and case-law of the Court on the matter, and it cannot be concluded that the courts have transformed the right thus guaranteed into a theoretical or illusory right.'⁹

According to the Criminal Code, in art. 539-541, it mentions "a special procedure"¹⁰ to remedy "damage in case of unlawful deprivation of liberty."¹⁰

Thus, after the judicial body finds the illegality of deprivation of liberty, the summoned person will have the possibility to claim damages, according to the decisions of art. 540 of the Code of Criminal Procedure. In Art. 539 para. (1) of the Code of Criminal Procedure, it is

⁴ Mateuț Gheorghită, *Treatise on criminal procedure. General part, vol. II*, C.H. Beck Publishing House, Bucharest, 2012

⁵ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mhai Cătălin, *New Code of Criminal Procedure. Commented*, Hamangiu Publishing House, Bucharest, 2014

⁶ Renucci Jean - Francois, *Treaty on European Human Rights Law*, Hamangiu Publishing House, Bucharest, 2009

⁷ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mhai Cătălin, *New Code of Criminal Procedure. Commented*, Hamangiu Publishing House, Bucharest, 2014

⁸ Anane Ivan, *Elements of criminal procedural law*, Pro Universitaria Publishing House, Bucharest, 2015

⁹ Mateuț Gheorghită, *Treatise on criminal procedure. General part, vol. I*, C.H. Beck Publishing House, Bucharest, 2007

¹⁰ Lupașcu Dan, *Criminal Code and Criminal Procedure Code: September 2021, XXII-th edition*, Universul Juridic, Bucharest, 2021

mentioned that the person who was illegally deprived of liberty is entitled to claim damages, and in para. (2) of the last sentence, it is specified that unlawful deprivation of liberty is determined "by the final decision of the court that was invested with solving the case."

In national theory, courts interpret these provisions to mean that there is no need for a previous court decision finding the arrest illegal, judicial bodies "being able to rule in the same dispute both on the existence of unlawful deprivation and on compensation."¹¹

1.3. Stages of the peremptory writ

The order to bring with warrant in front of the judicial body, being a procedural act, can be carried out only during criminal proceedings. This need will arise only from the evidence analysed after the criminal investigation has begun. Therefore, according to the provisions of the Court, "it is necessary to open the criminal procedural framework, at least in the phase of criminal investigation against the act, being indispensable the existence of criminal procedural relations."¹² The non-opening of the criminal case attests to the fact that the provisions relating to procedural documents cannot be applied.

Apart from criminal proceedings, it is not possible to order a procedural measure aimed at bringing the person for a hearing or for the performance of another procedural act. Also, the Constitutional Court specified that before starting the criminal investigation, documents that represent evidence in the criminal case cannot be drawn up.

Regarding the judicial body that has the ability to decide on the elaboration of a warrant to bring in, the Code of Criminal Procedure, art. 265 para. (3), mentions that, during the criminal investigation, the arrest warrant is issued by the criminal investigation body and by the court during the trial.

According to the doctrine, the criminal investigation bodies cannot draw up a warrant to bring in, because they have a dual capacity of issuer and executor.

If the arrest warrant is drawn up by a court, the measure of deprivation of liberty is based on the legal notions existing in the European Convention, art. 5 para. (1) (b).

If the peremptory writ is issued by the criminal investigation body, according to European regulations, it will violate the legal provisions, being classified as deprivation of liberty. For our state, the principles based on the competences of the criminal investigation body give it the right to order the measure of detention, an action that is considered contradictory with European provisions, being often challenged before the C.E.D.O.

2. Tactical rules used regarding the execution of the peremptory writ

2.1. Entering the domicile / headquarters in order to exercise the peremptory writ

As a result of the thorough analysis of the Code of Criminal Procedure, we noticed that in order to be able to implement the arrest warrant, it is necessary to enter the domiciliary space or the headquarters where the summoned person carries out his activity, facts that occur without his consent. Thus, "the warrant may be ordered, at the reasoned request of the prosecutor, by the judge of rights and freedoms of the court competent to hear the case at first instance or of

¹¹ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroşanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriţă Mhai Cătălin, *New Code of Criminal Procedure. Commented*, Hamangiu Publishing House, Bucharest, 2014

¹² Theodoru Gr. Grigore, *Treatise on Criminal Procedure Law*, Hamangiu Publishing House, Bucharest, 2007

the corresponding court, in its grade, in whose district the seat of the prosecutor's office to which the prosecutor belongs is located.”¹³

Art. 31 para. (1) letter b) of Law nr. 218/2002 regarding the functioning and organization of the Romanian Police, establishes a set of activities characteristic of the police bodies regarding the management at the police headquarters.

This law stipulates that, in order to exercise his/her duties, according to the law, the police officer has the public authority and the right to lead to the police headquarters persons who, by their actions, endanger people's lives, social values or public order, as well as persons suspected of committing illegal actions, whose identity has not been established under the conditions provided by law.

In situations where the orders given by the policeman are not observed, he becomes entitled to use force.

The Constitutional Court mentioned, in the context of constitutional review over the provisions of art. 31 para. (1) letter b), that among the duties of the police bodies is the restriction of the exercise of the freedom of the individual, this being regarded "as a detention", according to the terms of art. Article 23 of the Constitution.

The administrative measure specified in 31 para. (1) letter b), shall be determined from the moment when the person is taken over by the executing bodies, until he reaches the headquarters of the judicial body. The person concerned may be detained for an acceptable period of time at the seat of the judicial body, with a view to optimal judicial administration, during which time the expression "according to legal channels" is taken into account.”

Looking at both national legislation and its interpretation, deprivation of liberty can amount to a total of 56 hours. A time interval of 56 hours is essential for the provisions of national legislation to be consistent with the Convention.

Due to the fact that it is not possible to cumulate the detention measure from the Criminal Code with the administrative one, the duration of 24 hours cannot be exceeded, according to art. 23 para. (3) of the Constitution. In the initial criminal regulation, more precisely, in the Code of Criminal Procedure, art. 144 para. (10) (1968), it was stated that deprivation of liberty caused by the administrative measure is included in the 24-hour time frame.

Currently, the situation is different, given that the new criminal procedure regulation no longer specifies the possibility of deducting the time during which the administrative measure was executed. However, according to Decision No. 132/2002, we wondered how the text of art. 209 para. (3) of the Code of Criminal Procedure with the fundamental law, the Constitutional Court ruling that "the text is constitutional, because the administrative management is deduced from the measure of detention.

The Constitutional Court also established that art. Article 23 of the Constitution refers to every case in which public authorities present legal authorization to impose the measure of detention of a person, whether it is a preventive measure decided in criminal cases or a detention measure of administrative type. In any event, detention shall not last longer than 24 hours. Thus, within the 24-hour period provided for in art. 23 para. (3) of the Constitution, includes both the period of time during which the person concerned is accompanied by the police bodies and the time during which he travels to the headquarters of the judicial body.

¹³ Radu Răzvan – Horațiu, The mandate to bring from the perspective of the jurisprudence of the European Court of Human Rights, in "Curierul Judiciar" nr. 1/2015

To detain a person for a period of up to 24 hours, without taking into account the interval during which he was taken to the headquarters of the judicial body, on the basis of the arrest warrant, is equivalent to ordering an illegal preventive measure, violating the provisions of art. 5 of the Constitution.

The provisions of Art. 27 letter b) of Government Emergency Ordinance nr. 104/2001, regarding the organization and functioning of the Romanian Border Police, resembles the provisions of Law no. 218/2002, which provide that, in order to exercise his/her duties, the border guard has the right to lead at the border police headquarters, those who, by their actions, endanger the life of persons, public order or other principles of the rule of law, persons suspected of performing illegal acts at the state border, persons whose identity has not been established, but also those pursued at national or international level, to verify their cases and adopt legal measures within 24 hours, "respecting the right to defense."¹⁴

2.2. Execution of the warrant

According to art. 265 para. (1) of the Code of Criminal Procedure, the execution of the arrest warrant implies that the person shall be brought before the court or criminal investigation bodies on the basis of the arrest warrant in the following cases:

- It has been summoned before, but has not appeared, without having a justified reason, and her presence or hearing is important.
- it was not possible to serve the summons in an optimal manner and circumstances demonstrate that the person is evading receipt of the document.

In this case, there are two hypotheses in which it could be requested to bring the person with a mandate, distinct hypotheses, with different conditions to be fulfilled.

According to the first hypothesis, the issuance of the warrant is subject to the following conditions:

- "The summons procedure pursuant to Art. 257." The summons procedure must be lawfully carried out, and if the procedure has been vitiated in any way, the possibility of issuing a warrant for bringing is not admissible.
- "The person summoned must not have appeared before the judicial body that issued the summons."¹⁵ In this case, it must be proved that the person was summoned before the judicial body, but did not appear voluntarily, and the reasons are attributable to him. Thus, it is necessary to verify the existence of objective causes that may prevent the presence of the procedural subject, including cases in which the person is not in the country or cases of illness. It was stated that the persons concerned must justify their absence, and if the person summoned did not prove the justified absence, then he is considered to be unjustifiably absent and the warrant is issued. The opinion must be considered carefully, because in cases of this kind both parties must submit the necessary evidence.

¹⁴ Radu Răzvan – Horațiu, The mandate to bring from the perspective of the jurisprudence of the European Court of Human Rights, in "Curierul Judiciar" nr. 1/2015

¹⁵ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mhai Cătălin, New Code of Criminal Procedure. Commented, Hamangiu Publishing House, Bucharest, 2014

• "If his obedience or presence is necessary, a warrant may be issued to bring him."¹⁶

As the Court has pointed out, the judicial bodies are not obliged to argue additionally for the issuance of the warrant, it is sufficient to demonstrate that all three conditions expressly provided for in the legislative text are met.

However, the person's presence and hearing must be motivated in order to avoid the risk of abuse in the implementation of the warrant.

According to the legal obligation, certain subjects must be heard, but there are cases when the need to bring others (e.g. witnesses) must be thoroughly justified.

Although there is an obligation to testify, the judicial body is not obliged to hear them in all circumstances.

Without any reason for producing witnesses, the measure is considered contrary to the Convention because witnesses do not know the reasons why their presence before judicial bodies is required.

It is not permissible that in any context and without a reason for necessity, a person who has witnessed certain facts is brought with a warrant for questioning.

Careful examination and highlighting of the reasons for the necessity of deprivation of liberty must justify bringing a warrant.

Before a decision is taken ordering the issuance of the warrant, the reasons for non-appearance shall be examined very carefully, as they may constitute justified reasons for non-appearance in one situation or unjustified in another.

Therefore, the decision to bring a person under duress before the judicial body must not be a formal decision, but all relevant circumstances must be considered.¹⁷

In the case of hypothesis number 2, issuance is subject to the following provisions:

- Failure to serve summons.
- Evading the person from receiving the summons.

In this situation, we consider useful a thorough motivation of the impossibility of serving the summons, as the cases can only be imputed to the procedural subject summoned before the judicial body.

The circumstances in which the summoned person absconds from receiving the summons result from the findings of the procedural officer, recorded in the minutes concluded, or arise directly from the evidence in the case.¹⁸

Both hypotheses specified in the Code of Criminal Procedure, art. 256 para. Paragraph 1 shall apply to both defendants and suspects, civil parties, injured persons, witnesses, civil parties, interpreters and experts.

The third hypothesis is mentioned in the Code of Criminal Procedure, art. 265 para. (2), where it is provided that the defendant or suspect may be brought with a warrant, even prior to summoning by summons, "if such measure is necessary in the interests of the resolution of the case."¹⁹

¹⁶ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mhai Cătălin, New Code of Criminal Procedure. Commented, Hamangiu Publishing House, Bucharest, 2014

¹⁷ Anane Ivan, Investigation of criminal prosecution bodies, Rosetti International Publishing House, Bucharest, 2019

¹⁸ Potrivitu Gigel, Discussions regarding the mandate of bringing, in Law Magazine nr. 2/2006

¹⁹ Theodoru Gr. Grigore, Treatise on Criminal Procedure Law, Hamangiu Publishing House, Bucharest, 2007

Compared to the assumptions in para. (1), where the subject of proceedings must have refused to appear before the judicial body or there must be an impossibility to serve the summons on the person concerned, the hypothesis must also contain "justification of the need to immediately question the person" before summoning.

The phrase "in the interest of solving the case" is considered lax, capable of converting the procedure into an arbitrary one, but it must be associated with the provisions of the Code of Criminal Procedure, art. 256 para. (8) letter f), which provide that the warrant for bringing must contain "an indication of the basis and motivation of the need to issue the warrant."²⁰

"Lack of motivation of necessity" leads to violation of art. 5 para. (1) letter b) of the Convention, because the laws applicable to domestic criminal proceedings are not respected, by omitting to disclose the circumstances on which the warrant for bringing is based.

Such deprivation of liberty is not compatible with the requirements of Art. 5 of the Convention, and deprivation of liberty is not done according to legal channels.

Therefore, the argumentation of necessity must be carried out in such a way as to be the consequence of a process of evaluation and use of data from the evidentiary file, and the motivation and substantiation of the necessity to be mentioned in the document providing for the issuance of the mandate.

In the case "Ghiurau v. Romania", the Court demonstrated that, taking into account the circumstances of the case, the person was not deprived of liberty according to legal channels, which makes his deprivation of liberty incompatible with the requirements of art. 5 of the Convention.

The prosecutor's mandate elaborated under the Code of Criminal Procedure, art. 183 para. (2) (1968), did not include any reason justifying this measure. By omitting to specify the facts on which it is based, the warrant issued by the prosecutor did not comply with the rules of internal criminal procedure, reason which led to violation of conventional provisions.

It cannot be proved after bringing the procedural subject with a warrant that the lack of motivation was caused by the existing factual situation, which required the immediate bringing of the person before the judicial bodies.

As has been demonstrated, deprivation of liberty as an "exceptional exception" cannot arise from presumptions of guilt, but only from reasoned judicial reasons.

Without concrete reasons as regards the situation in question, ordering the measure may induce guilt in the person concerned.

The presumption of innocence may be violated if the warrant is issued to bring the determining circumstances without rigorous reasoning.

Not knowing what his presence is required for, the person concerned may easily become emotionally tense, believing that the judicial bodies consider him guilty for committing certain crimes of which he is not aware.

Written information would reduce the risk of arbitrariness and, at the same time, could guarantee the person a reflection on the facts for which it is necessary to bring him before judicial bodies. It is necessary to "indicate in a rigorous manner the concrete factual grounds" that require this measure, in order to establish by a thorough argumentation that, in the interest of solving the case, the measure is adopted.

²⁰ Mitache Constantin, Mitache Cristian, *Romanian Criminal Law – General part*. According to the new Criminal Code, third edition revised and added, Universul Juridic, Bucharest, 2019

Indicating the status of the person, although it is often difficult, because the procedural development is not known exactly and must be made known to him, as evidenced by the documents currently available in the case file.

This indication may represent a guarantee against the arbitrator, being mandatory for the subject of proceedings to be informed if he is called as a suspect or as a witness.

The role of the warrant is only to hear the person or to carry out the procedural act that made the presence necessary. Without giving the appropriate details, the person involved may be misled because he appears in good faith before the judicial bodies, but in reality the request can be concealed, as the Court found in the case "Khodorkovkiy v. Russia."²¹

The Court noted that a deprivation of liberty cannot be lawful if the specified purpose is different from the actual purpose.

It is particularly important that when the mandate is presented by the executive bodies, "the person concerned is aware of his legal status and is given subsequent guarantees"²², having a minimum of information on the proceedings in which he will take part.

The notification of the mandate cannot be done in a correct manner, unless the person is informed both orally and in writing, by stating in the mandate the existing reasons.

The person must also be informed that refusal to appear²³ may constitute the subsequent reason for applying the preventive measure of detention or for making the proposal for arrest.

The judicial bodies have the obligation to show "both in the procedural act by which the warrant is ordered and in the mandate to bring him", the causes that led to the need to release him, but also the reasons why informing the subject or defendant by summoning and offering the possibility of voluntary compliance before the judicial bodies were not compatible with the interest of solving the case. I disagree with the view expressed in legal literature that reasoning should not be included in the warrant, especially where the person brought with the warrant is the suspect or defendant.

Although the measure of bringing a warrant is of an essentially administrative nature in criminal proceedings, being of short duration and released in an emergency case, it must be "judicially guaranteed"²⁴, because the person concerned is subject to deprivation of liberty for procedural reasons.

According to the national legislation, the procedural provisions provide that the order ordering the issuance of the warrant may be challenged by filing a complaint under the terms of the Code of Criminal Procedure, art. 336, during the criminal investigation, in the case of orders or together with the merits of the case during the trial.

Although immediate judicial intervention would be desirable to identify and prevent measures that violate the physical freedom of the person, the possibility of obtaining compensation is a guarantee against abuse and any excess, but it is fundamental that this possibility is effective.

Therefore, taking into account the provisions of the Code of Criminal Procedure, art. 539-541, I will now consider the question of whether there is an effective remedy that can compensate for unlawful deprivation of liberty.

²¹ Udriou Mihail, Criminal procedure. General part, second edition, C.H. Beck Publishing House, Bucharest, 2015

²² Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017

²³ Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017

²⁴ Mateuț Gheorghică, Treatise on criminal procedure. General part, vol. I, C.H. Beck Publishing House, Bucharest, 2007

At the same time, the measure must be based on strong guarantees, providing sufficient guarantees as regards the procedure, while taking into account the nature of the circumstances surrounding the procedure.

In order to ensure a person's right to liberty, the Code of Criminal Procedure certifies that the limitation of freedom will be reduced to the minimum necessary, only to the extent that is totally necessary to solve the case. Code of Criminal Procedure, para. (11) of Article 11. Article 265, states as a guarantee of individual freedom that the judicial body immediately hears the person who was brought by warrant or issues very quickly the act that required his presence.

According to para. (12), persons who have been brought with a warrant shall be at the disposal of the judicial bodies strictly for the stipulated hearing period, not more than 8 hours, except for the situations in which their preventive arrest or detention has been decided.

It was mentioned in the doctrine that, in order to establish the 8-hour term, it is not taken into account the period of time that has passed until the summoned person is brought to the headquarters of the judicial body, the term is established from the moment he enters the headquarters of the judicial body.

I am of the opinion that this deprivation of liberty should, however, fall within the maximum period of 24 hours referred to in Art. 23 para. (3) of the Constitution, for which it is possible to detain a person.

As regards the possibility of coercing a witness before judicial bodies, although the role of the witness is only to assist the judicial bodies in finding out the truth, the possibility of executing the warrant by coercion provided for by law is not considered to be excessive.

The possibility of coercion, offered to the executing body, is considered a logical measure of the authorities, ensuring the presence of witnesses in the case of a criminal investigation, and coercing the witness would deprive the efficiency of issuing the warrant.²⁵

2.3. Administrative management of persons. Police escort

Art. 31 para. (1) letter b) of Law nr. 218/2002 regarding the organization and functioning of the Romanian Police, formulates a set of activities specific to police bodies, regarding accompaniment to police headquarters.

This law text certifies that, in performing his/her duties, according to the law, the police officer is entrusted with the exercise of public authority and has the right to lead to the police headquarters persons who, through their actions, endanger both people's lives, public order and other social values, as well as persons who bear suspicion of carrying out illegal acts, and their identity could not be determined according to law. If the directives given by the police officer are not respected, he has a justified reason to apply force, the analysis of the cases of these categories of persons and the adoption of legal measures is carried out within 24 hours, as an administrative measure.

This provision requires a strict interpretation, and cannot be invoked, so that the measure becomes an instrument justifying any management of a person to public authorities, under any condition.²⁶

As regards the constitutional review of the directives of art. 31 para. (1) letter b), the Constitutional Court, in accordance with the conventional legislation formulated around art. 5 para. (1) letter b) of the Convention, it has been demonstrated that the activity carried out by

²⁵ Anane Ivan, *Elements of computerized evidence of the person*, Pro Universitaria Publishing House, Bucharest, 2015

²⁶ Buzescu Gheorghe, *Police law - university course*, Sitech Publishing House, Craiova, 2019

the police is based on the diminution of the exercise of individual freedom and can be described as detention, according to art. 23 of the Constitution.

Therefore, although the text does not directly mention the taking of detention measures against persons subject to observation, it is controversial that the verification activity carried out by the police implies the diminution of individual freedom. It was proved that the administrative measure provided for in the text of the law did not violate the provisions of art. 23 para. (3) of the Constitution, regarding detention, given that the activity entitled in this way is carried out within maximum 24 hours, i.e. within the time specified by the constitutional text.

The administrative measure referred to in 32 para. (1) letter b), shall be calculated from the moment when the person is taken over by the bodies executing the warrant, until the moment when he enters the headquarters of the judicial body. From that moment on, deprivation of liberty is included in Art. 265 para. (12) of the Code of Criminal Procedure.

At the seat of the judicial body, the person may be detained for a reasonable period of time in the interests of the proper administration of justice, a period which, however, must comply with the condition "according to legal channels", as indicated above. In relation to the jurisprudence of the Constitutional Court, which ruled that the administrative detention measure is assimilated to detention as a preventive measure, we can conclude that in all cases where deprivation of liberty can be ordered, cumulatively, it cannot exceed the duration of 24 hours.

Examining national legislation and its interpretation, deprivation of liberty can reach up to a total of 56 hours. This measure may order deprivation of liberty for a maximum of 24 hours pursuant to Art. 31 para. (1) letter b), for maximum 8 hours under the Code of Criminal Procedure, art. 265 para. (12) and for a maximum of 24 hours pursuant to Article 12. 207 of the same Code.

Exceeding the maximum duration of 24 hours is equivalent to ordering an illegal preventive measure, violating constitutional provisions, which will automatically determine the violation of art. 5 of the Convention. A solution in this regard, which is appropriate for the aforementioned regulations to be in line with conventional jurisprudence, would be to provide in the Constitution for a longer term for the detention of a person. A deadline of 56 hours is essential for regulations in national legislation to be consistent with the Convention.

The Constitutional Court also specified that, given that there is no possibility to cumulate the detention measure from the Code of Criminal Procedure with an administrative measure, the 24-hour term specified in art. 23 para. (3) of the Constitution. Such a case exists in the case of the regulation of initial criminal procedure, where in art. 144 para. (1) (1968), it was mentioned that deprivation of liberty caused by the administrative measure is included in the 24-hour period during which it is possible to implement the detention measure. The situation is completely different in the case of the new criminal procedure regulation, where there is no longer the possibility of deducting the time during which the administrative measure was implemented.

Basically, in art. 209 para. (3) of the Code of Criminal Procedure, it is mentioned that during detention, the time necessary to drive the accused or suspected person to the headquarters of the judicial body shall not be added.

In this respect, it has been demonstrated that the time during which the accused person was brought to the headquarters of the judicial body with a warrant will not be taken into account when it comes to calculating the 24 hours for which detention can be decided, nor the 8 hours for which freedom can be restricted, as a result of the warrant issued for the purpose of carrying out the procedures.

Thus, the new regulation is interpreted as meaning that the administrative measure is cumulated with the duration of detention. However, in relation to the decision of the Constitutional Court nr. 132/2002, we wonder to what extent the text of art. 209 para. (3), belonging to the Code of Criminal Procedure, which excludes the possibility of deduction, complies with the fundamental law, the Constitutional Court holding that the text is constitutional because the administrative management is deduced from the measure of detention. It is considered, however, that, in relation to the jurisprudence of the Constitutional Court and the conventional one regarding the notion of "legality of deprivation of liberty", the measure of administrative management must be deduced from the preventive measure of detention.

The Constitutional Court also pointed out that art. Article 23 of the Constitution refers to all cases in which the competent public authorities are authorized by law to take the measure of detention of a person, whether it is a preventive measure ordered in criminal proceedings or another measure of detention of an administrative nature. In all cases, detention may not exceed 24 hours. The absence of the possibility to deduct the period of time during which the accused was transported by the executing bodies on the basis of the arrest warrant, in case of his detention, means that after the 24 hours have elapsed, the total duration of the deprivation of liberty may exceed, in certain situations, the maximum duration allowed by the Constitution.

Therefore, within the 24 hours provided for in art. 23 para. (3) of the Constitution includes both the period of time during which the person concerned was led by the police bodies, but also the time during which he was at the headquarters of the judicial body.

Deprivation of liberty may not run from the date of formal issuance of a detention order, but from the moment when the person is under the control of the authorities and is led to the judicial body. The fact of detaining a person for a period of up to 24 hours, without taking into account the time during which he was conducted on the basis of the warrant to bring him to the headquarters of the judicial body, is equivalent to ordering an illegal preventive measure, violating constitutional provisions, which will automatically determine the violation of art. 5 of the Convention.

If the administrative measure of the management or the procedural measure of bringing the warrant have a duration of 24 hours, the preventive measure of detaining the person is no longer possible, and only the measure of arrest can be adopted, if necessary. Similar to the provisions of Law nr. 218/2002, are also the provisions of art. 27 letter b) of Government Emergency Ordinance nr. 104/2001, regarding the organization and functioning of the Border Police, which specifies that, in fulfilling his/her duties, the border guard empowered with the exercise of his/her public duties, having the right to take to the border police headquarters those who, by their actions, endanger both the life of persons, public order, and other state values, persons suspected of committing illegal actions at the state border, persons whose identity could not be determined, as well as those pursued at national and international level, to analyze their situation and adopt legal measures within 24 hours, respecting the right to defense.

With regard to the observation made with regard to Art. 31 para. (1) letter b) of Law nr. 218/2002, the argument detailed above also applies to these provisions, with the mention that, if the Constitutional Court were to notify the unconstitutionality of these provisions, they would be considered constitutional, only if the 24-hour deadline is not exceeded.

2.4. Exceptions for non-execution of the warrant

Analyzing the specialized literature, we can see that the exceptions regarding the non-execution of the warrant are very few, these being mainly due to the health of the person summoned.

If the summoned person cannot be brought, the body in charge of executing the arrest warrant must ascertain this fact by drawing up a report that will be handed over to the criminal investigation body or to the court.

The non-execution of the warrant may also be due to the absence of the summoned person from home, which obliges the person in charge of executing the warrant to make investigations to find that person. If the investigations of the body remain fruitless, it must draw up a report containing mentions of the investigations carried out, and then hand it over to the judicial body.²⁷

The investigations specific to the identification of the quoted person are the following: checks at the administration of the block where the summoned person has his domicile, checks carried out among neighbors through specific questions, checks at the workplace where he appears as an employee.²⁸ (if where applicable), etc.

Since there are also situations of non-execution of the warrant due to the refusal of the accused or accused, it should be noted that the executing body may coerce him by specific methods (convincing, categorical, severe tone), but without using brute force.

It is also the duty of the executing body to specify to the person concerned the consequences of non-compliance with the legal provisions.

At the same time, in order to avoid accusations of committing the crime of violation of domicile, as well as violent reactions invoked as legitimate defense, if the person on whose name the warrant was issued is at home, it is forbidden to enter by force in his yard or home, preferably trying to attract that person outside it.

In the event that the person concerned invites the enforcement body into the dwelling, acceptance of the invitation will usually be made in the presence of at least two witnesses.²⁹

If the person indicated in the warrant invokes the fact that he must notify counsel of his choice and communicates a reasonable date on which he will appear, mention shall be made of this in the report of execution of the warrant, to which shall be attached the handwritten statement, under the signature of the person concerned. Failure to execute the warrants constitutes judicial misconduct and is sanctioned with a judicial fine from 100 lei to 1000 lei, according to the Code of Criminal Procedure, art. 198 para. (1) (b).

2.5. Content of the writ warrant

According to the criminal procedure, the person concerned may be brought before the bodies empowered with criminal prosecution, only if the summons measure was previously applied, a measure that remained without consequences due to the failure of the summoned person to appear. However, the Code of Criminal Procedure indicates that a person may be brought before the criminal procedure body without being summoned, as long as this action is

²⁷ Mitra Mariana, Manual of criminal law for public administration and local police specializations, Pro Universitaria Publishing House, Bucharest, 2015

²⁸ Anane Ivan, Management of criminal prosecution bodies, Pro Universitaria Publishing House, Bucharest, 2014

²⁹ Volonciu Nicolae (coord.), Uzlău Andreea Simona (coord.), Moroșanu Raluca, Văduva Victor, Atasiei Daniel, Ghigheci Cristinel, Voicu Corina, Tudor Georgiana, Gheorghe Teodor-Viorel, Chiriță Mihai Cătălin, New Code of Criminal Procedure. Commented, Hamangiu Publishing House, Bucharest, 2014

carried out in the interest of solving the case. The criminal investigation body is empowered to issue the warrant for bringing as long as the person concerned is a party to the criminal investigation. When the person concerned is a party to a case pending trial, the warrant will be issued by the court concerned.

During the criminal investigation, in order to issue a warrant to bring a request, which is made by the prosecutor. In order to validate this application, it is necessary to respect issues such as:

- compliance with all the conditions set out in para. (1) and para. (2);
- mention of the offence being prosecuted;
- name and surname of the suspect or defendant, as appropriate;
- indication of the residence address of the defendant or suspect for whom the

warrant is required.

The Council Chamber is the one empowered to resolve the application for the issuance of the warrant, at this stage it is not necessary to summon the parties. If the judge of rights and freedoms considers that the application for the release of the warrant is well founded, he orders by final conclusion that the application made by the prosecutor be granted. Therefore, the warrant issued by the judge must meet the following aspects:

- contain the name of the court;
- find the date, time and place where the warrant was issued;
- the name, surname and capacity of the issuing person must be specified;
- specify the purpose of issuing the warrant;
- the name of the person concerned and his home address must be indicated. If the person concerned has the status of defendant or suspect, the criminal offence to be prosecuted must also be specified;
- specify both the basis and the reasons for the need to issue the warrant;
- it should be noted that the warrant for bringing in can only be used once;
- contain both the signature of the judge of rights and freedoms and the stamp of the court where the warrant was issued.

3. New Code of Criminal Procedure and ECHR case-law

3.1. Mandate and perspective of ECHR jurisprudence on the right to liberty

According to the ECHR, a warrant is not considered the most effective method of coercing the defendant to appear before the judge, as this measure is considered a violation of the right to liberty. In the following, I will present the European Court's view on human rights and the right to liberty, which is based on the European Convention.

The right to liberty is regulated at European level by art. 5 of the European Convention on Human Rights, and at national level by the Code of Criminal Procedure, art. 9 and Art. 23 of the Romanian Constitution. All this protects the physical freedom of individuals against measures of deprivation of liberty, the European Union considering that "no one shall be arbitrarily deprived of liberty."³⁰

³⁰ Deleanu Ion, *Constitutional Institutions and Procedures – in Romanian Law and Comparative Law*, C.H. Beck Publishing House, Bucharest, 2006

These regulations are intended to ensure effective protections "against any unjustified interference with freedom"³¹, and deprivation of liberty is possible only if it is accompanied by collateral.

Deprivation of liberty is a particularly serious measure, which requires clear and rigorous regulation by state authorities. All these measures are necessary because individual freedom is considered to be the most sensitive and complex value of the human being.

The European Convention insists that the fundamental right to liberty is a matter to be protected against executive, legislative and even judicial powers, which can be achieved by providing effective safeguards in order to protect the safety and freedom of individuals against arbitrary detention or arrest.

The European Court of Human Rights has stated "in its case-law that Art. 5 para. (1) of the Convention guarantees, first of all, the lawfulness of detention, including compliance with the legal remedies provided for in domestic law, through the obligation to comply with normative and procedural provisions, but also the compliance of any deprivation with the purpose of art. 5, namely protecting the person against arbitrariness."³²

Apart from the need for deprivation of liberty in accordance with legal channels, it is necessary to verify the proportionality between the measure and its purpose. It is necessary to strike a balance between the measure of deprivation of liberty and the importance of the right to liberty, the most important factor being the length of detention. At all this time, it is essential for the competent institution to consider the possibility of applying measures aimed at avoiding the deprivation of liberty of the person, the latter being considered an extreme measure in a democratic state.

The European Convention, we clearly show on the basis of art. 5, cases in which a person may be deprived of liberty. Among them, priority is: deprivation of liberty applies to persons who are subject to detention or arrest, with the purpose of complying with the decision decided by the court, applying to persons the deprivation of liberty, if the execution of an obligation is required, obligation that is specified by law and conditioned by the strict fulfillment of the law in question.

Therefore, we can say that the obligation needs to be "sufficiently specified in the text of the law, but also sufficiently concrete" in order to comply with the norms provided by art. 5 of the Convention.

3.2. Existence of a remedy in the event of unlawful deprivation of liberty

In the case of an effective remedy in order to compensate for a possible deprivation of liberty, we find information in art. 5, para. (5) of the Convention, from which it follows that, "whenever there is a deprivation of liberty not in accordance with the provisions of the Convention, the person has an enforceable right to compensation." It may therefore be specified that, where a deprivation of liberty did not comply with conventional directives, the person concerned is entitled to an enforceable right to compensation, and the same applies to an irregular deprivation of liberty resulting from the execution of the warrant. In the last excerpt of Art. 5 of the Convention, it is emphasized that this remedy can be claimed by the person, only when domestic rules allow this.

³¹ Mateuț Gheorghiță, *Treatise on criminal procedure. General part*, vol. I, C.H. Beck Publishing House, Bucharest, 2007

³² Bîrsan Corneliu, *European Convention on Human Rights. Commentary on articles*, second edition, C.H. Beck Publishing House, Bucharest, 2010

If national rules do not allow the person to obtain a reparative allowance, even if this has been established, the settlement will be found only in the European courts, on the basis of art. 5, para. (5) of the Convention.

Access to this remedy must exist both in theory and in practice, but certainty of the right to redress is necessary in order to be able to exercise it effectively.

Regarding the effectiveness of the remedy, the European Court did not impose a certain amount as reparation, but specified that it must be reasonable and directly proportionate to the circumstances. Thus, we cannot conclude that the courts have transformed the right guaranteed by the European Court into a "theoretical or illusory"³³ right, as people in these situations have often accused.

The European Court has indicated³⁴ that the compensation indicated in Art. Article 5 of the Convention must be established by an effective remedy against the defendant, which must challenge both the illegality of the deprivation of liberty and its finding. The Code of Criminal Procedure mentions a special procedure when it comes to compensation for damage caused by unlawful deprivation of liberty, applicable at national level.

Therefore, the person who has suffered damage is entitled to claim compensation, according to the provisions of art. 540 of the Code of Criminal Procedure, but only if there is a finding of illegality of the deprivation of liberty he had.

Due to the fact that this compensation is not very well defined by the legislation in force, there is uncertainty about the need for a separate court decision from that of finding non-observance of the rights to liberty. Thus, in the Code of Criminal Procedure, art. 539 para. (1), we find provisions regarding the injured's entitlement to benefit from compensation, and in para. (2) of the same article specifies that this right may be established "by the final decision of the court hearing the case."³⁵

Within the framework of national jurisprudence, we can find examples of courts which, by interpreting the provisions of Art. 539, decide that no previous court decision is necessary, but there are courts that rule otherwise.

Therefore, we can conclude that, until a concrete legislative clarification, this aspect of the existence of a remedy in case of unlawful deprivation of liberty will be strictly limited to the interpretation of the law by magistrates.

3.3. Access to electronic databases (Code of Criminal Procedure)

Access to electronic databases is considered to be a useful procedure for issuing summonses, criminal procedure documents or when drafting a warrant. Access to electronic databases, in order to carry out the procedures described above, will be carried out by the case prosecutor or court.

³³ECHR, judgment of 26 May 2009, *Damian-Burueană and Damian v. Romania*, p. 89. In the present case, the domestic courts awarded a lower amount than that claimed by the applicants. Available at <http://ier.gov.ro/wp-content/uploads/cedo/Cauza-Damian-Burueana-si-Damian-%C3%AEmpotriva-Rom%C3%A2niei.pdf>, accessed on 10.03.2022;

³⁴ECHR, judgment of 10 June 2008, *Tase v. Romania*, pp. 39-46. The Court concluded that the criminal procedural law did Romanian allow for an enforceable right to compensation, given that the applicant had no effective remedy challenging the illegality of his deprivation of liberty. Available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-123861%22%5D%7D>, accessed on 10.03.2022;

³⁵ Birsan Corneliu, *European Convention on Human Rights. Commentary on articles*, second edition, C.H. Beck Publishing House, Bucharest, 2010

Initially, electronic databases are accessed to draft the subpoena, a procedure that is considered to precede the issuance of the warrant. Electronic databases are polyfunctional, belonging to public administration bodies, and the most complex databases are owned by Local and County Councils.³⁶

Public administration bodies that hold such databases have the obligation to collaborate with the judge or court, collaboration consisting in unconditional access to the information existing in these databases. This collaboration is regulated by law by law nr. 202/2010, law referring to a series of measures in order to speed up the settlement of pending lawsuits.

Both for the issuance of the warrant and for the summons procedure, the electronic database can be accessed for aspects such as the defendant's address, to identify relatives or even to find out the place of work (information required in the order to bring in, if the data subject is not found at that address, and the person in charge of executing the warrant, carry out a series of investigations with the aim of locating the data subject).

3.4. Peremptory writ into light the New Code of Criminal Procedure

The second chapter of the Code of Criminal Procedure, entitled "service of procedural documents, warrant to bring", sets out the conditions under which warrants may be formulated and enforced.

According to art. 183 para. (1) of the Code of Criminal Procedure, a person may be before the body in charge of criminal prosecution or before the court, as a result of a warrant created in accordance with the provisions of Art. 176, if he has been summoned before and has not appeared, and his hearing is mandatory. The accused person may be requested with a warrant to bring him even before he was served by summons, if the body responsible for the prosecution or the court decides that this measure is important in solving the case.

In the third paragraph³⁷ of Art. According to Art. 184 of the Code of Criminal Procedure, it is mentioned that if the defendant opposes the submission to the warrant or if he tries to escape, he will have to be forced to accept the warrant. It will be executed through police, community police or gendarmerie.

The new Code of Criminal Procedure, which was issued by the Ministry of Justice and Civil Liberties, contains new provisions regarding the issuance of the warrant, which brings and puts the defendant in execution of the sentence. This warrant to bring is a special summons in the present regulation, as long as the body entrusted with the task of executing the warrant is not allowed to enter a dwelling and the measure by which the coercion is effected lies in the obligation of the defendant to be allowed to be taken by the entrusted bodies, before the judging bodies.

According to some specialists, the inclusion of para. (3) of Article 3. Article 184 of the Code of Criminal Procedure, is an excess of specification and, as with anything done in excess, is of the nature of harming rather than helping to solve problems.³⁸

The most important discussions encountered in judicial doctrine and practice dealing with the execution of arrest warrants focused, in particular, on the following situations:

³⁶ Buzescu Gheorghe, Place and role of the civil servant in the state apparatus, Sitech Publishing House, Craiova, 2017

³⁷ Code of Criminal Procedure

³⁸ Potrivitu Gigel, Discussions regarding the mandate of bringing, in Law 2/2006 Journal

- If the executing body has the right to proceed with the execution of the warrant by means of coercion, including entering the defendant's home without his will? What about when the defendant is in another person's home?
- What can be the limits of coercion if the person in charge of the warrant does not agree to obey or if he tries to be removed?

Another opinion also mentions a possibility that can lead to an assurance of the presence of the defendant, witness before the prosecution bodies or before the court, and this represents the idea of drafting a law in the context of art. Article 53 of the Romanian Constitution, which must provide for a new exception to the general rules referring to the inviolability of residence.³⁹

According to art. 53 of the Romanian Constitution, certain rights or freedoms may be restricted only by law and only if this is required in order to protect national security, protect health, order, citizens' rights or freedoms, avoid certain consequences of natural disasters, etc.

Art. 27 of the Romanian Constitution, which refers to the inviolability of domicile, aims to protect people against any abuses coming from the authorities and strict regulations of exceptions to this principle referring to the banishment of dangers to physical integrity or to certain material goods of individuals, protection of public order and national security, etc.

The new Code of Criminal Procedure included in art. 266, two arrest warrants that may be issued in criminal prosecution:

- The first warrant for bringing shall be issued by the prosecutor during criminal proceedings against a person who did not appear in a previous summons without a justified reason, and the presence of such person was necessary or where appropriate service for a summons could not have been possible and circumstances demonstrate that the person avoided receiving the summons, The defendant may be brought before the courts by a warrant to bring him just before the moment of summons by summons, if it is found that this measure is necessary to resolve the case.

- The second warrant will be issued by the judge of rights and freedoms in the court that received jurisdiction to hear the case, in the initial court during the criminal investigation when, in order to execute it, it is necessary to enter a dwelling or domicile.

We can consider that the provisions of the New Code of Criminal Procedure according to which, in the criminal investigation process or during the trial, the judge of rights and freedoms may issue the warrant to bring in, and based on it, the national security and public order bodies may enter the home of any defendant for whom there is evidence that he would be in that dwelling, may fall within the exception relating to the inviolability of domicile provided for in Art. 27 para. (1) letter a) of the Romanian Constitution.

According to the article just mentioned, residence or domicile cannot be violated: no one has the right to enter or stay in a person's home without being invited by him, except in the case of execution of the situation in which an arrest warrant or a court decision is executed.

The judge of rights and freedoms may rule during the criminal investigation on the request made by the prosecutor for the issuance of the warrant for bringing by completion based on reasons, and the completion is in accordance with the Code of Criminal Procedure.

As a result of this new regulation, the provisions of Art. 5 of the European Convention on Human Rights which regulates the occurrences in which a person may be deprived of release or if he has been the object of lawful arrest or detention as a result of disobedience to a decision handed down in the spirit of law by the court.

³⁹ Rusu Ion, Execution of the warrant to bring. Critical opinions. Proposals de lege ferenda, in Law Journal nr. 6/2004

The arrest warrant is thus a means by which the person's freedoms are restricted, including for a shorter period of time.

The entrance to the dwelling of a person for whom there are indications that he is in that place is conditional, according to art. 267, para. (2) of the New Code of Criminal Procedure, non-acceptance of the person to cooperate, inability to execute the warrant or due to any reason that can be motivated and justified depending on the purpose pursued.

The principle of proportionality encountered in the practice of the European Court of Human Rights is determined by the need for a balance between limiting the freedom of the person and the public interest, taking into account also the goal to be achieved, the person against whom measures are taken or circumstances.

Under the current regulation, if the defendant does not agree to obey the warrant or tries to escape, he will have to be physically coerced.

In the New Code of Criminal Procedure, the measure by which coercion is carried out refers to the individual mentioned in the warrant who does not accept to accompany the body in charge of execution or tries to escape, thus increasing the scope by which coercion measures are applied.

Therefore, the use of coercive measures may be possible against any person for whom warrants are issued, not only against those accused or accused.

It is also necessary to raise the issue of compliance with the Convention, if the police authorities resort to coercion of the accused, to comply with the arrest warrant if it was drawn up by criminal prosecution bodies that do not belong to the court, according to the Convention.

For this reason, it should be taken into account that the provisions of the New Code of Criminal Procedure are contrary to those of the Convention, in the sense that no differentiation is made regarding the application of the warrant by coercing the person depending on the body that drafted the mandate, the body whose task is the criminal prosecution, the court, Judge of Rights and Freedoms.

Issued by the rights and freedoms judge or the court, the arrest warrant gives the executor the option of using coercion to bring the summoned person.

At the same time, the New Code of Criminal Procedure did not clearly present the term "coercion" which should be understood as a means by which the accused person is brought before the judicial body against his will.

Following Art. 34 para. (1) of Law nr. 218/2002 referring to the organization and functioning of the Romanian Police, in order to discourage and prevent the aggressiveness of individuals who disturbed public order and peace, events that could not be stopped by using other means, it came to the situation where police officers could use rubber batons, protections, tear gas devices, rubber bullet weapons but also other devices and equipment that could immobilize a person, but not endangering his life or causing serious bodily injury.

Commenting on the provisions referring to the issuance and execution of arrest warrants, from a logical and legal point of view, leads us to the conclusion that law enforcement agencies and those dealing with national security have the right to use the means of coercion provided for in art. 34 para. (1) of Law nr. 218/2008, only when it happens that the defendant opposes or disobeys the warrant or when the life and bodily integrity of the policeman is in danger.

We can appreciate the fact that entering a person's home on the basis of the arrest warrant issued by the judge is a procedural act that has no purpose as long as that person would not be forced to come before the court.

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