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PhD THESIS SUMMARY

**THE PROCESSUAL GUARANTEES OF THE LIBERTY OF THE PERSON IN THE LIGHT OF
THE EUROPEAN CONVENTION OF HUMAN RIGHTS**

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2011

CONTENTS OF THE THESIS

CHAPTER I : INTRODUCTION

SECTION 1: The notion of procedural guarantees and their interference with the notion of liberty (individual liberty and liberty of movement).....page 1

SECTION 2: Types of procedural guarantees and their definitions (guarantees of procedure, substantial guarantees and institutional guarantees).....page 37

A. Institutional guarantees specific to the liberty of people.....page 43

B. Guarantees of procedure specific to the liberty of people.....page 97

B.1. Procedural guarantees in a restricted sense (meaning).....page 111

a. The conditions under which the right to physical freedom of the liberty of movement can be restricted during the criminal trial are strictly regulated by the law, and the preventive measures through which deprivation or restriction of the right to liberty have a limitative feature

b. Depriving or restricting the right to liberty as a preventive measure can be ordered only during a criminal trial

c. The temporary feature of preventive measures depriving or restricting liberty, which results from the obligation of replacing or revoking them in a situation in which the circumstances which justified their being instituted, and respectively from the obligation to observe the lawful ceasing of the measures in those cases provisioned by the law.

d. The time limiting of the duration of measures depriving or restricting liberty, including the periods for which it can be prolonged, and the explicit regulation of the situations in which such a measure is possible.....p.124

e. The regulation of the control of legality and the lawfulness of preventive measures depriving or restricting liberty.....p.132

f. Instituting a regulation system specific to the duration and the method of calculating the substantial and procedural summons concerning preventive measures.....p.136

g. The right to indemnification proper to any person who, during criminal trial, has been deprived of freedom, or whose freedom was restricted illegally or unlawfully, provisioned by art.5 para.4 and respectively by art.504 para.2 Code of Criminal Procedure.....p.139

B.2. The procedural (formal) guarantees of the liberty of the person.....p.140

a. The obligation of the judicial authorities to bring to the attention of the defendant or the culprit to whom the preventive measures are to be applied, the rights recognized through art.143 para.3 Code of criminal procedurep.141

b. The obligation of hearing the defendant or the accused to whom a preventive measure depriving of freedom is taken, in the presence of the chosen defender or the ex-officio defender.....p.146

c. The obligation to immediately communicate to the arrested or the detainee as soon as possible in the language that he/she understands, the reasons of his being detained or of his/her preventive arrest and of the charges he/she faces in the shortest time possible; the obligation of communicating the charge to the defendant only in the presence of a lawyer, chosen or ex-officio.....p.155

d. Announcing a member of the family or another person designated by the defendant or the culprit about the measure taken.....p.159

e. The recognized right of detainee or arrested to have contact with his/her defender, ensuring the confidentiality of their conversations.....page 160

f. The obligation of motivating the proposals regarding the taking of preventive measuresp.161

g. The obligation of drafting the minutes by the judge and by the court respectively, also in the situation in which the judge or the court have decided through court resolution on the measure of preventive arrest.page 162

h. The obligation of motivating the ordinance respectively of the decision through which the preventive measure depriving or restricting liberty is made.....page 163

i. The contents of the arrest warrant.....page 170

j. The execution of the arrest warrant and the imprisonment of the convicts.....page 175

k. The obligation of communicating the fact in the circumstance of the lawful ceasing of the measure of preventive arrest.....page 180

B.3. The substantial guarantees of personal liberty.....p.182

a. The existence of solid proof or clues that the person charged has committed a crime provisioned by criminal law.....p.186

b. The possibility of taking preventive measures only in the cases regarding crimes punished with life imprisonment or prison.....p.192

c. The necessary characteristic of the measure, determined by the purpose of ensuring the smooth development of the criminal trial or in order to prevent the defendant or the accused from eluding criminal investigation, trial or the execution of the punishment.....p.194

d. Regulating the situations in which preventive measures depriving of freedom can be taken.....p.195

SECTION 3: Internal and international regulations applicable in the matter of the right to the liberty of the person.....p.203

a. Internal law

1. The Constitution of Romania and the jurisprudence of the Constitutional Court.....p.204

2. Code of criminal procedure.....p.223

3. The decisions of the High Court of Cassation and Justice – United Sections, regarding the solving of second appeals in the best interest of the law.....p.234

b. International regulations applicable in the matter of the right to liberty of the person

1. The European Convention of Human Rights and the jurisprudence of the European Court of Human Rights.....p.247

2. Protocol no.4 to the European Convention of Human Rights and the Jurisprudence of the European Court of Human Rights in its application of the protocol.....p.260

3. Communitarian law and the jurisprudence of the Court of Justice of the European Union.....p.264

CHAPTER II: GUARANTEES OF THE LIBERTY OF THE PERSON IN THE MATTER OF HOLDING IN CUSTODY.....P.273

SECTION 1: The compatibility of holding in custody with the exigencies of art.5 para.1 letter c of the European Convention of Human Rights.....p.273

SECTION 2: The conditions of holding in custody and differences in relation to preventive arrest.....p.279

SECTION 3: Competent judicial authority and the procedure of holding in custody.....p.286

SECTION 4: The procedure of complaint against the measure of holding in custody provisioned by art.140¹ Code of Criminal Procedure and the compatibility with the exigencies of art.5 para.4 from the European Convention of Human Rightsp.291

SECTION 5: Special rules regarding the preventive holding in custody of minors.....p.295

CHAPTER III: GUARANTEES OF THE LIBERTY OF THE PERSON IN THE MATTER OF PREVENTIVE ARREST.....p.298

SECTION 1: The guarantees imposed by art.5 para.3 of the European Convention regarding the judicial body competent to decide upon the measure of preventive arrest.....p.298

1. *Contents and regulation. Conceptual differences.....p.298*
2. *The competence of taking the measure of preventive arrest in the stage of criminal arrest.....p.312*
3. *The competence of taking the measure of preventive arrest in the jurisdictional phase.....p.323*
4. *The judicial authority competent in ordering the arrest of the defendant in the court.....p.331*
5. *The particularities specific to the functional competence of the judge who orders preventive arrest during criminal investigation.....p.333*
6. *The particularities specific to the functional competence of the courts which order preventive arrest during the jurisdictional phase.....p.365*

SECTION 2: The guarantees of independence and impartiality imposed by art.5 para.3 of the European Convention of Human Rights, on the judicial authorities competent in ordering preventive arrest.....p.372

- a. *The independence of judicial authorities which order preventive arrest.....p.372*
- b. *The impartiality of judicial authorities which order preventive arrest.....p.375*
- c. *Particularities of the guarantee of impartiality of the judge who orders preventive arrest in the phase of criminal investigation.....p.387*
- d. *Particularities of the guarantee of impartiality regarding the court which orders preventive arrest during trial.....p.391*
- e. *Observing procedural exigency regarding the hearing of the defendant or the culprit. Jurisprudential applications.....p.394*

SECTION 3: Conditions and grounds of preventive arrest, in internal law, viewed through the provisions of art.5 para.1 letter c of the European Convention of Human Rights.....p403

1. *General presentation. Requirements of interpretation from the perspective of the jurisprudence of the European Court of Human Rights.....p.403*
2. *Structure. Classification.....p.409*
3. *De facto grounds for preventive arrest.....p.414*
 - 3.1. *The existence of evidence or solid clues.....p.415*
 - 3.2. *Determining the notion of “deed provisioned by criminal law”.....p.427*
 - 3.3. *The conformity of the material facts which the accusation is based on, with the juridical classification made through the act of apprehension.....p.429*
4. *De jure grounds for preventive arrest.....p.433*
 1. *The culprit or the defendant has fled or has hidden, in order to elude investigation or trial, or there exists information that he/she will attempt to flee or to elude in any way criminal investigation, trial or the execution of punishment (art.148 para.1 letter a, Code of criminal procedure)p.434*
 2. *The culprit or the defendant has malevolently broken the measure of the obligation not to leave the town or the country, or the obligations he/she has during the validity of these measures (art.148 para.1 letter a¹ Code of criminal procedure)p.437*
 3. *The culprit or the defendant tries to stop directly or indirectly the revealing of the truth by influencing one of the parties, a witness or an expert, by destroying, altering or stealing the material means of evidence (art.148 para.1 letter b, Code of criminal procedure)p.442*
 4. *There exist data that the culprit or the defendant is preparing to commit a new crime (art.148 para.1 letter c, Code of criminal procedure)p.446*
 5. *The defendant has intentionally committed a new crime (art.148 para.1 letter d Code of criminal procedure).....p.449*
 6. *There exist certain data that the culprit or the defendant is exerting pressure upon the injured party or that he/she is trying to make a fraudulent settlement with the latter (art.148 para.1 letter e Code of criminal procedure)p.451*
 7. *The culprit or the defendant has committed a crime for which the law orders punishment as life imprisonment or imprisonment for a period longer than 4 years, and there exists evidence that leaving the defendant free represents*

clear danger for public order (art.148 para.1 letter f, Code of criminal procedure)p.453

SECTION 4: The compatibility of the procedure of second appeal against the resolutions regarding the measure of preventive arrest ordered by the judge, with the procedure of *habeas corpus* provisioned by art.5 para.4 of the European Convention of Human Rightsp.460

- a. *General considerations p.460*
- b. *The effects of the legislative evolution in the matter of the juridical body competent in ordering preventive arrest, over the legality control imposed by art. 5 para.4 of the European Convention of Human Rights.....p.471*
- c. *The legality control of the preventive measure depriving of freedom, in the remedies at law exercised upon the resolutions given by the judge in the matter of preventive arrest.....p.490*
 - c.1 *The legislative framework. General conditions.....p.490*
 - c.2. *The conditions for the exercising of the second appeal against the resolution given by the judge during criminal investigation.....p.511*
 - a. *The resolutions given by the judge during criminal investigation through which the measure of preventive arrest was ordered to be taken, which are likely to be contested by second appeal.....p.511*
 - b. *The beholders of the right of second appeal against the resolution issued by the judge during criminal investigation regarding the taking of the measure of preventive arrest p.524*
 - c. *The limiting in time of the exercise of the right to second appeal provisioned in art. 140³ Code of Criminal Procedurep.542*
 - d. *The forms of exercising the second appeal against the resolutions issued by the judge during criminal investigation regarding the measure of preventive arrest.....p.548*
 - e. *The effects of the declaration of second appeal against the resolution issued by the judge during criminal investigation, regarding the solving of the proposal to take the measure of preventive arrest, from the perspective of its compatibility with the requirements provisioned by art.5 para.4 of the European Convention.....p.551*
 - d. *The procedure of the trial of the second appeal against the resolutions issued by the judge during criminal investigation regarding the taking of the measure of preventive*

arrest, regulated by art. 140³ Code of criminal procedure and its compatibility with the requirements provisioned by art.5 para.4 of the European Convention.....p.573

d.1. The judicial authority competent in examining the lawfulness of preventive arrest, within a procedure regulated by art.140³ Code of criminal procedure, against the resolutions issued by the judge during criminal investigation, concerning the taking of the measure of preventive arrestp.573

d.2. The development of judicial control in the procedure of second appeal against the resolution issued by the judge during criminal investigation regarding the taking of the measure of preventive arrest. Respecting the procedural guarantees imposed by art.5 para.4 of the European Convention of Human Rights p.577

SECTION 5: The procedure of the trial of the second appeal against the resolutions issued by the court during trial concerning the preventive measures, regulated by art.141 Code of Criminal Procedure and its compatibility with the requirements of art.5 para.4 of the European Convention of Human Rightsp.589

SECTION 6: The reasonable duration of the measure of preventive arrest and the right to obtain temporary release during the procedurep.596

a. The duration of preventive arrest in the phase of criminal investigation and the procedure of prolonging the measure of preventive arrest of the defendant p.596

b. The lack of existence of a determined duration of the preventive arrest in the trial phase and the procedure of the periodic check of the measure of preventive arrest during trial p.606

c. Special rules regarding the preventive arrest of the minors p.614

CHAPTER IV: GUARANTEES OF PERSONAL LIBERTY IN THE PROCEDURES REGARDING THE MEASURES RESTRICTING OF FREEDOM AND THEIR COMPATIBILITY WITH THE PROVISIONS OF ART.2 OF PROTOCOL NO.4 TO THE EUROPEAN CONVENTIONp.615

SECTION 1: The kind of measures restrictive of liberty and alternatives to imprisonment. Delimitating these from temporary release under judicial control or on bail.....p.615

SECTION 2: The conditions and grounds for taking the measures restricting of liberty	p.621
SECTION 3: The competence of the judicial body (during criminal investigation and during trial) and the procedure of taking preventive measures restrictive of liberty	p.627
SECTION 4: The duration of measures in the phase of criminal investigation and the procedure of <u>prolonging</u>. The lack of existence of duration in the trial phase. The jurisprudence of E.C.H.R.	p.633
SECTION 5: Guarantees of the liberty of the person in the extradition procedures and the procedures of executing the European arrest warrant.....	p.638
<i>a. Conceptual differentiations</i>	<i>p.638</i>
<i>b. Guarantees of the liberty of the person in the extradition procedure</i>	<i>p.649</i>
<i>c. Guarantees of the liberty of the person in the procedure of the European arrest warrant.</i>	<i>p.688</i>

KEYWORDS

Juridical mechanisms which guarantee the freedom and safety of personal liberty and safety. The concept of liberty. Liberty of the person. Physical liberty, individual liberty and the liberty of movement. Personal safety. Human rights. Public liberties. Conceptual differences. Juridical guarantees. Procedural guarantees specific to the liberty of people. Institutional guarantees specific to personal liberty. Components specific to the jurisdictional authorities with attributions in the matter of depriving or restricting the right to liberty. The concept of independence of the judicial authorities. The concept of impartiality of the judicial authorities. Substantial guarantees specific to the liberty of person. Procedural guarantees specific to the liberty of person. Procedural guarantees in a restrained sense and procedural (formal) guarantees of the liberty of person. Categories of measures depriving or restrictive of liberty. Functionality. Procedural and preventive measures restricting or depriving of liberty. Temporary measures depriving of liberty. Proper forms of deprivation and restriction of the liberty of person. Holding in custody. Arrest. Auxiliary forms of deprivation or the restriction of the right to the liberty of person. Competent judicial authorities. Conditions and grounds. Compatibilities. The procedure of habeas corpus. The reasonable duration of the measure of preventive arrest. Measures restricting freedom. Alternatives to detention. Temporary arrest. Guarantees of the liberty of person in the procedures of extradition. Guarantees of the liberty of person in the procedure of the European arrest warrant.

ARGUMENTS. PURPOSE. OBJECTIVES. RESEARCH METHODS.

This paper represents a *juridical research* focused on the method of analyzing the *casuistic procedure* which emphasizes the role of procedural guarantees in the whole of the juridical mechanisms which guarantee the liberty and safety of person in Romanian procedural law with the two components of the concept of liberty, respectively physical or individual liberty and the liberty of movement.

a. The purpose of research: emphasizing the way in which one *transposes into judicial procedure* the procedural guarantees of the liberty of person, established in internal law and the *compatibility* of these guarantees with the exigencies imposed by the European Convention of Human Rights, respectively the way in which one fulfills the positive obligation to *achieve* a normative construction which would ensure the protection of any person against any arbitrary

deprivation or restriction of freedom; emphasizing the way in which the construction of juridical mechanisms which guarantee the freedom and safety of people in Romanian criminal procedural law has been achieved, which constitutes a conclusive *demonstration in the attempt to adapt the institutional system in general and the judicial system in particular to the exigencies imposed by international treaties and conventions ratified by Romania, especially those of the European Convention of Human Rights, at the same time pointing out the role of conventional regulations and the jurisprudence of the instance of European litigation of human rights in the achieving of institutional reform.*

b. The objectives of scientific research:

1. emphasizing the *stimulating effect* of international regulations in legislative reforming, in the problematic of individual freedom in Romanian criminal processual law, of the role of conventional regulation and the jurisprudence of the court of European litigation of human rights in fulfilling institutional reform. In this context it has been stressed that instituting the juridical mechanisms meant to ensure complying with the right to liberty and safety of person, has been achieved in the context of Romania's reintegration in international juridical order, by assuming the regulations with international juridical value which ensure the preeminence of the law in respecting the liberty of person. It has also been stressed that assuming these regulations with international juridical value has required both *respecting institutional exigencies*, as well as reconsidering, imperatively, the contents of orders referring to processual rights of the parties with special reference to criminal trial, which was *radical* from the perspective of the guarantees regarding the liberty of the person, consisting of abrogation and amending of those orders of substantial or processual law which contravened to the exigencies imposed by the reevaluation of the concept of human rights, by replacing a lapidary regulation with an *explicit*, sometimes even *exhaustive*, regulation.

2. The ***analysis of the system of regulating*** the processual guarantees of the liberty of person in criminal processual law, of their place and role in avoiding arbitrary privation of liberty; this approach also includes the legislative changes in the matter, as a result of coming into effect of Law no. 202/2010 and also of the regulations contained in the New criminal procedure code, the analysis being comparative from this perspective.

3. ***Structuring the information in detail***, by *defining* the concept of processual guarantees and *emphasizing* the particularities of the construction of this protection system, *indicating the regulation framework*, of the interpretations given in jurisprudence, and presenting the manner of practical application, differentiated *in relation to* each of the three categories of processual guarantees, namely institutional, procedural and substantial, respectively. The place and ***role of***

processual guarantees in respecting the right to liberty and safety of person have been emphasized, considering that, speaking of a fundamental and inalienable right, the problematic of individual liberty imposes by its own nature the requirement of instituting an adequate protection system, materialized in the juridical and institutional guarantees, which, *particularized in the context of criminal trial* both from the perspective of the *framework* in which they intervene as well as the *purpose* of their being instituted are circumscribed to the concept of **processual guarantees**. This occurs due to the fact that guaranteeing the liberty of person cannot be ensured solely by establishing individual liberty and the liberty of movement in constitutional regulations, this being naturally doubled by the regulation in juridical norm of the forms in which it can be suppressed or restricted.

4. Emphasizing the major role of judicial practice as a *mechanism to apply* the processual guarantees and the manner in which *the regulations in this matter are transposed into judicial procedure*, differentiated in relation with each of the three guarantees which belong to the concept of processual guarantees, respectively institutional guarantees, procedural guarantees and substantial guarantees, and the **manner in which jurisprudence** outlines these guarantees, the selection of jurisprudence being achieved by relating to the different opinions given in the practice of the courts of law, with reference to each of the aspects that were approached.

The objectives set and emphasized above give the theme approached not only a theoretical *use*, but mostly a *practical* one, by exemplifying the manner in which transposing the regulations of these guarantees of the freedom of person into jurisprudence is achieved, and also of the way in which the principle of direct applicability and the principle of applying with priority the international regulations in the field of human rights, established in art. 20 para.1 and 2 of the Romanian Constitution, are materialized in the activity of judicial bodies in this matter.

c. The methodology of scientific research

In achieving the objectives detailed above, *several methods of research specific to juridical research* have been approached, namely **the method of documentation, respectively bibliographical research, logical research, comparative research and the method of analyzing the casuistic procedure**.

Therefore, the analysis of the legal orders which regulate the processual guarantees of the liberty of person and respectively of the interpretations given to this concept *in the doctrine*, was achieved through the procedure of **bibliographical research, respectively through documentation**, regarding a relatively extended period, starting with the regulations prior to the legislative amendments set through Law no. 281/2003 and the alterations brought to this domain through the new Code of Criminal Procedure, the documentation also aiming at the regulations

provisioned in ECHR and the jurisprudence of the European Court of Human Rights, as well as the points of view expressed in the doctrine at this moment referring to the recent, actual or even future legislative regulations, considering that this paper refers to the regulations contained in the new Code of Criminal Procedure. This method has also been applied in reference to *international regulations in the matter of the right to individual liberty and the liberty of movement*, and also with reference to the *reference doctrines in the matter of European law of human rights*. We have also approached a thorough research of the jurisprudence of the European Court of Human Rights in the matter of the right to liberty and respectively to the liberty of movement, which interferes directly with the problematic approached in the paper.

We have used ***the logical method*** as well, detailing the structure and dynamics of the legislative regulations in this field, and of the jurisprudential interpretations in classifying the conditions and cases in which privation or restriction of liberty of a person during criminal trial can occur.

The ***comparative*** method has also been an essential tool in drafting the present paper, considering that we have approached the legal regulations and the jurisprudential interpretations by relating to *the exigencies imposed by the European Convention and respectively the European Court of Human Rights* and to the relevance which various regulations specific to this domain have in ensuring the exigencies specific to the right to liberty established by art. 5 paragraph 1 letter c, by emphasizing the similarities with the regulations in internal law and the manner in which the putting into practice of these regulations is achieved.

The method of analyzing the casuistic procedure, integrated in the method defined in the juridical research as being the ***quantitative method*** has imposed itself as well, because explaining and analyzing this domain could not be dissociated from the practice of law, especially in the field of substantial guarantees which also have a mainly jurisprudential characteristic.

THE SYNTHESIS OF THE THORETICAL CONTENTS OF THE THEME

The paper is structured into four chapters.

Chapter I contains a first section in which we define the reference framework of the concept of *processual guarantees* and their *interference* with the notion of liberty, - with the two meanings, respectively individual liberty and liberty of movement – starting from the idea that the very nature of this right imposes the demand for instituting an adequate protection system, materialized in juridical and institutional guarantees, which, particularized during criminal trial, are circumscribed to the system of processual guarantees, the existence of an efficient judicial system

meant to confer a truly concrete characteristic to the system of protecting this right, necessarily assuming a normative construction which contains adequate guarantees for avoiding arbitrary privation of liberty, respectively institutional guarantees, guarantees of procedure and substantial guarantees, which are circumscribed to this unique concept.

In defining the concept of processual guarantees of the liberty of person, the approach starts from the etymological meaning of the notion, relating to elements which refer on the one hand to the **framework** in which they intervene, and on the other hand to the **functionality** and the **purpose** of instituting measures depriving or restricting liberty.

1. From the perspective of these criteria, having in view mainly the **manifestation framework**, we have considered that rigor of defining the concept of processual guarantees of the liberty of person imposes first of all **separating it from other forms of deprivation or restriction of the liberty of person, which exceed the development of a judicial activity of criminal nature** which were exemplified within the paper, as the processual guarantees **aim at those specific conditions provisioned by the law, which allow restriction and even deprivation of liberty during criminal trial** (the normative framework which regulates this matter emphasizing the fact that a measure which is restrictive or depriving of liberty constitutes an exception to the exercise of the rights and fundamental liberties of the person, which calls for obeying a procedure provisioned by the law, meant to ensure the possibility of avoiding any abuse of the judicial authorities and which needs guaranteeing of the means to discover and eliminate abuses and errors).

2. In the context of referring to the same *processual framework* in which privation or restriction of liberty occurs, we have considered that in order to define the processual guarantees of the liberty of person another delimitation is necessary, which should relate to the **functionality of processual measures**, through which deprivation or restriction of the liberty of the person is possible, differentiating between the **proper forms of deprivation of freedom**, which occur by instituting preventive measures, and **the auxiliary forms of deprivation of liberty**, materialized in other processual measures which, however, have an auxiliary feature in criminal trial, in relation to the proper forms of deprivation of liberty, the latter, by the very nature of their preventive characteristic and respectively of the purpose in which they were instituted, impose ensuring processual guarantees which have an institutional, procedural and substantial component.

The differentiation was necessary because, even if auxiliary forms of deprivation or restriction of liberty impose respecting some conditions, thus entering the protection sphere of art.5 para.1 of the European Convention of Human Rights, they are circumscribed to other legitimacy situations, however without justifying those specific guarantees which are rooted in the

very nature and the features of preventive measures, and which are imposed in taking into consideration art.5 para.1 letter c of the quoted conventional norm. In the context of this necessary delimitation, it has been emphasized that the auxiliary forms of deprivation of liberty aim at the situation in which deprivation of liberty has a subsequent feature, being a subsidiary consequence of a processual act carried out with a specific purpose, proceeding to exemplify the situations which fall under this category. We have stressed the existing differentiations between the two forms of deprivation of liberty which occur during criminal trial, differentiations which are essential, taking into account that the processual guarantees imposed in the situation of auxiliary forms of deprivation of liberty do not call for a three-dimensional approach of the kind specific to the main forms of deprivation of liberty, achieving the *aim* being sufficient, consisting of executing the obligation settled by a judicial authority, this being the reason for which they were not included in the analysis that is the object of the present theme. We have stressed the fact that the differentiation between the two forms is further emphasized in the current legislative context, taking into account that the provisions of art.184 para.3¹ Code of Criminal Procedure, in the manner in which it was modified by art. XVIII point 19 of Law no.202/2010 regarding some measures for accelerating the resolution of trials, extend the possibility of restricting *the right to liberty* also in the case of the *witness* who refuses to obey the witness summons, in the situation in which preventive measures depriving or restricting individual liberty and liberty of movement, by their very nature, cannot be extended to other categories of participants to the criminal trial, thus representing constraint means which can be taken if certain specific form and contents conditions only against the defendant or the culprit are fulfilled, the clear differentiation between the two forms of privation of liberty proper and auxiliary respectively being emphasized in the new Code of criminal procedure, by art.209 para.3.

3. In defining the concept of processual guarantees, we have approached the differentiation from *other forms of privation of liberty, which also occur during judicial procedure*, having apparently *the same functionality*, respectively the privation or restriction of the liberty of person, yet which are not circumscribed to the main juridical rapport, but they occur during a specific judicial procedure, their **purpose** being different, deriving from the necessity of respecting the principle of the preeminence of the law and the principle on international courtesy and reciprocity, meaning those special forms of arrest, in view of extradition and in the procedure of the European arrest warrant.

Unlike the other forms of deprivation of liberty with extrajudicial or auxiliary characteristic, ***the special forms of deprivation of liberty***, even if there exist differentiations in the perspective of normative construction, which make their instituting possible, from the proper forms of

deprivation or restriction of the right to liberty, (determined by the fact that, even though, from the perspective of the solicitor state there exists a criminal trial in progress, this fact is not in contradiction with the Romanian state, because it does not belong to its sphere of jurisdiction), are however also circumscribed to some *categories of processual guarantees* considering the fact that the interference into the liberty of the person occurs with the purpose of having a judicial procedure which would call to criminal account the person toward whom these are ordered, provisional arrest in view of extradition and arrest in the procedure of the European arrest warrant being circumscribed to this category.

From the perspective of these delimitations, the area of the processual guarantees which are the object of the analysis of the paper aims at ***those specific conditions provisioned by the law which allow restriction or even deprivation of liberty***, in the procedure of taking preventive measures, and respectively in the extradition procedures and in the procedures of executing the European arrest warrant, ***all these being considered main forms of deprivation of liberty***, which can be taken, considering their functionality, only against people regarding whom the main judicial procedure is unrolling. The particularities between these proper and respectively special forms of deprivation of liberty justify the differentiations from the perspective of the normative construction, which make their instituting possible, both being however circumscribed to some *categories of essential processual guarantees*, considering the fact that the interference in the liberty of person occurs with the purpose of carrying out a judicial procedure to call to criminal account the person to which they are ordered.

In the context of the theme approached, of interest are therefore firstly the *proper forms of deprivation and restriction of liberty* of the person, because they imply ensuring the specific processual guarantees, which derive from their preventive feature, a reason which actually justified their being included in the area of preventive measures, and respectively *the special or temporary forms of deprivation of liberty* which imply, in essence, ensuring the same processual guarantees, considering the fact that they have the same functionality although they refer to different judicial procedures, these guarantees not being specific to any other measures or processual orders which can have as an effect deprivation or restriction of the right to liberty.

The processual guarantees of the freedom of the person are circumscribed to the area of reference of the *juridical guarantees* defined above, however not being identical to those, since they contain, besides the elements included in this general category, particularized elements as well, specific to the domain protected by their appointment.

A detailed approach of the concept has also called for differentiating the *processual guarantees* in relation to ***the manner in which protecting legitimate interest or right is ensured, into institutional guarantees*** regarding the competences of judicial authorities with attributions in the matter of the right to liberty, ***procedural guarantees*** which condition the validity of processual or procedural acts, as case may be, and ***substantial guarantees***, represented by the contents conditions provisioned by the law for initiating measures depriving or restricting liberty, therefore the classification criterion being based upon the ***manner of applying the protection mechanism***.

In their turn, the guarantees of procedure have been structured into *processual guarantees – in the restricted meaning of the term – and procedural or formal guarantees*, on the basis of the manner in which the protection mechanism is materialized in conditions which aim at the validity of processual or procedural acts, as case may be.

Another reporting element in the analysis of the concept of processual guarantees refers to their ***regulatory construction***, which is differentiated, being correspondent to the two components of the concept of liberty, respectively ***individual or physical liberty***, protected by art.5 of the European Convention of Human Rights, and ***the liberty of movement, or the liberty of circulation***, guaranteed by art.2, para.1 and 2 of Protocol no.4 to the European Convention of Human Rights, the processual guarantees meant to ensure their observance, having different contents, adapted to the specific particularities.

Even though some of the components of the processual guarantees overlap, considering that during criminal trial, the occurrence of deprivation of liberty or of the restriction of the right to free circulation is achieved in applying the mechanism of preventive measures in the conditions regulated by art.136 Code of criminal procedure, there exist differentiations, both in the category of institutional guarantees, as well as in that of jurisdictional guarantees, justified by the fact that the meaning of the two notions is different, even though in essence they refer to a unique concept, considering that intervention on the part of the authorities upon the physical liberty of the person, which falls under the provisions of art.5 of the European Convention of Human Rights, constitutes *deprivation of liberty*, and intervention upon the freedom of movement or of circulation represents merely *a restriction of the liberty of the person*.

Differentiated development is also materialized in the fact that, in the case of the right to *individual or physical liberty* which falls under the provisions of the protection area of art.5, although included in the category of conditioned rights (respectively susceptible of restrictions or derogations), the estimation margin given to the states part in considering the principle of subsidiarity is limited exclusively to the situations explicitly contained in the text, as opposed to the

situation of the right which art.2 of Protocol no.4 to the European Convention of Human Rights, but also of the other rights established by the Convention (except for those considered intangible) refers to, with reference to which, in terms of the public order clause, exercising the right can be restricted in the situation which is set by the law and necessary in a democratic society, in order to protect public safety, order, health or morality, and in order to protect the liberty of fellow men.

What must be emphasized from the perspective of processual guarantees, both those that aim at respecting the right to individual or physical liberty of the person, as well as those regarding the liberty of movement, is the fact that they occur in the criminal context, because both are circumscribed to the category of preventive measures, which can be taken, respecting the conditions provisioned by the law, only with the purpose of ensuring the optimum course of the criminal trial or in order to prevent the defendant or the culprit from eluding criminal prosecution, trial or execution of the punishment.

In defining the concept of processual guarantees of the liberty of person we have stressed the **existing conceptual differences** also under the aspect of the contents of **the notions of liberty and security** which the text of art.5 of the European Convention of Human Rights refers to, even though these differentiations do not justify the appointment of guarantees specific to the contents of the two notions, considering that the right to physical, individual liberty is also related and interdependent to the right to security, and the two notions, “individual liberty” and respectively “security of the person”, established in the same conventional regulation, although from a doctrinarian perspective do not represent a unique concept, constitute in essence valences of the same inalienable and fundamental right which is the right to the individual liberty of the person, *habeas corpus*.

This conceptual delimitation has been made, emphasizing the fact that **the processual guarantees of the liberty of the person in the extended meaning of the notion, constitute the expression of the right to the liberty of the person**, stressing the fact that, by adopting Law no.135/2010 regarding the new Code of criminal procedure the concept referring to individual liberty is redefined, ensuring a thorough approach of the guarantees established through art.23 of the Romanian Constitution, by regulating *the right to liberty and security* in art.9.

Even though, apparently, this statement seems to have no other connotations than those established in the current regulation, considering that the word “security” does not have a meaning independent from the word “liberty”, the specification of the legislator is important because security, having a meaning which goes beyond the individual liberty of the person, implies the protection of the person against the arbitrary interferences of the public authorities in his/her right to liberty, and the regulations contained in para.2, 4 and 5 respectively, of the text of

art.9 of the new Code of criminal Procedure, constitute – together with the specific regulations regarding the commitment for criminal, disciplinary, material etc. responsibility of the authorities involved in initiating or executing these measures – means through which the security of the person is guaranteed, emphasizing the obligation of judiciary authorities to effectively guarantee the right to the liberty of the person, by fulfilling the demand to respect the conditions provisioned by the law in appointing these measures, the references to the situations in which the measure depriving or restricting liberty was ordered “unlawfully” leading to this conclusion, the necessity of respecting the legal ways in restricting this right, and especially the exceptional feature of instituting a measure depriving or restricting liberty being imperatively mentioned in paragraph 2 of the text quoted above.

This law text actually *states, structured in the contents of the same article*, unlike the current regulation, the *jurisdictional guarantees* specific to the privation of liberty, consisting in the right that any arrested person has to be informed, in the shortest period of time and in a language that he/she understands, about the reasons for his/her arrest and respectively the right to formulate an appeal against the ordering of the measure, giving a different value to the obligation established in art.5 paragraph 2 and respectively in art.5 paragraph 4 of the European Convention of Human Rights, thus one being able to draw the conclusion that the obligations referred to in the provisions of para.4 and 5 of the new Code of criminal procedure and also the establishing of the exceptional feature of the measures depriving or restricting liberty in paragraph 2 of the same law text, constitute a ***transposition of the guarantees aimed at the security of the person***, which, even though they cannot be dissociated from the rest of the guarantees aimed at the deprivation or the restriction of the right to liberty, join these guarantees.

At the same time, the statement contained in art. 9 of the new Code of Criminal Procedure which aims at the right to *liberty and safety*, reunites within the same concept the *physical liberty* of the person, by referring to the measures depriving of freedom, with the *liberty of movement*, referring to the measures restricting freedom which have a correspondent in the preventive measures of judicial or on bail control, within which the interdiction that the defendant should not leave the country or town be instituted.

Another particularity specific to the new Code of criminal procedure, from the perspective of the processual guarantees of the liberty of the person resides in the fact that it allows for substantial alterations in the matter of preventive measures in general, and of the preventive measures privative of liberty or restrictive of liberty in particular, since it outlines practically a new approach in the matter, valuing in another manner the guarantees specific to the liberty of the person, exemplifying in this respect the regulation of the competences in this matter in the stage

of criminal prosecution and in the procedure of preliminary chamber, the explicit regulation of the principle of proportionality of any preventive measure with the severity of the accusation made upon a person, as well as the principle of necessity of such a measure for the fulfilling of the legitimate aim wanted by its being ordered; the regulation of the necessity for written notice of the person subject to any preventive measure over all rights that the law bestows upon them; instituting on a principle level, the exceptional and subsidiary feature of the measure of preventive arrest in relation to other preventive measures; the regulation as distinct preventive measure of the measure of judicial control or of judicial control on bail; reformulating the cases in which one can order the preventive arrest of a person; setting the legal criteria according to which the concrete danger for public order can be assessed, which can constitute the grounds for preventive arrest in the case of serious crimes; the regulation of a new preventive measure, respectively house arrest, thus enlarging the possibilities for individualizing preventive measures; appointing a maximum duration of preventive arrest in the trial phase as well, and instituting, in the case of minors as a general rule, the possibility of deprivation of liberty, only if the effects of such a measure on their personality and development would not be disproportioned from the legitimate purpose intended by taking the measure.

It has been emphasized that the new regulations established by the legislative act detailed above, contain from the perspective of preventive measures privative of liberty, also a restriction of some processual guarantees, justified in the reasoning for the mentioned legislative act by the purpose of speeding the development of the criminal trial, the approach of a point of view from the perspective of justification of such a restriction of processual guarantees in relation to the stated purpose, being achieved within the next chapters, in the comparative analysis with the guarantees recognized in the matter by the current regulation.

In Section 2 we have proceeded to define and classify the processual guarantees into three categories, having in view the criterion of the ***manner to materialize the protection mechanism***, into ***guarantees of procedure, substantial guarantees and institutional guarantees***.

In defining the concept of processual guarantees of the liberty of the person it has been emphasized that, in the contents of this notion it is included the whole of the ***general juridical guarantees*** of observing the criminal processual law, subordinated to the ideas of the independence of justice as the manifestation of the principle of preeminence of the right and of setting the criminal trial on fundamentally democratic principles, materialized in constitutional regulations and in the principles directing the criminal trial, to which the ***specific guarantees*** are

added, particularized in relation to the stage of the criminal trial and the nature of the processual right protected by those guarantees.

The processual guarantees of the liberty of the person are circumscribed to the field of reference of **the juridical guarantees**, however without identifying themselves with the latter, since they also contain, besides the elements included in this general category, particularized aspects, *specific to the domain protected by their initiation*.

*The processual guarantees specific to the right to the liberty of person, in the extended signification of the notion of liberty, are defined as being a **regulatory construction which contains institutional guarantees, guarantees of procedure and substantial guarantees, representing the whole of the juridical means which ensure the inviolability of the person, being circumscribed to the unique concept of processual guarantees in a large sense, considering that the restriction of the right to individual liberty and to the liberty of movement occurs mostly within a judicial procedure and respectively during a criminal trial.***

The processual guarantees of the liberty of person, in the extended signification of this concept, represent the whole of the mechanisms through which is ensured the observance of the right to liberty recognized by the law to the participants in the criminal trial, respectively to the defendant or the culprit, referring to whom such measures can be taken as to ensure the protection of this right in applying the processual institutions or in taking processual measures during criminal trial, so that the deprivation or restriction of liberty should be legitimate.

Starting from the approach according to which the processual guarantees of the liberty of person constitute the whole of the means through which the right to liberty of the accused or defendant is ensured during the criminal trial, they were classified *according to the manner in which the protection mechanism is materialized into conditions which aim at the authority with attributions in the matter of the right to liberty, the procedure or into contents conditions, into **institutional guarantees**, which concern the competences of the judiciary authorities with attributions in the matter of the right to freedom, **guarantees of procedure**, which condition the validity of processual or procedural acts as case may be, and **substantial guarantees** represented by the contents conditions provisioned by the law in order to appoint measures depriving or restricting of liberty.*

The category of the **guarantees of procedure** was also structured into two distinct categories, according to the manner in which the protection mechanism is materialized in conditions which refer to the validity of the processual or procedural acts, into **processual**

guarantees in a restricted meaning, which refer to the validity of the processual acts, and **procedural guarantees**, which condition the validity of the procedural acts.

This classification of the guarantees of procedure is justified by the fact that the measures through which deprivation or restriction of the liberty of the person in the criminal trial is ordered, respectively the act of disposition of the judicial authority competent to order the deprivation or restriction of the right to freedom is carried out in **processual acts** and is materialized in **procedural acts**, the conditions for their validity provisioned by the law constituting, in essence, together with those emphasized above, guarantees of a legitimate deprivation or restriction of liberty.

The processual guarantees specific to the right to the liberty of the person, in the extended meaning of the concept, are therefore materialized in the *whole of the regulations which define the component of the jurisdictional authority and of the authority of the Public Ministry* from the perspective of the *competences and attributions* in the matter of depriving respectively of restricting the right to liberty, as well as the regulations which aim at **the form and contents conditions** in which measures can be initiated.

The components specific to the jurisdictional authority, respectively to the power of the court and of the authority of the Public Ministry, which enters the sphere of **institutional guarantees**, is relevant from the perspective of the exigencies which refer to the jurisdictional control of arrest or detention provisioned by art.5 para.3 and respectively para.4 of the European Convention of Human Rights, the competences of the jurisdictional authority in the matter being naturally predominant.

The *guarantees of procedure*, with their two components – respectively processual guarantees in a restricted sense and procedural guarantees, must be observed when considering the condition of “the regularity” of detention, expressed through the syntagm “according to manners provisioned by the law” contained in paragraph 1 art.2 of the European Convention of Human Rights.

The institutional guarantees specific to the liberty of the person are materialized in the whole of the regulations which define the **component of judiciary authorities**, respectively of *the power of the court and of the authority of the Public Ministry, identifying with the guarantees that each of the authorities mentioned above can offer, from the perspective of prerogatives and competences specific in this matter.*

The institutional guarantees being circumscribed to the concepts of *independence and impartiality of judiciary authorities*, we have proceeded to analyze their contents, the concepts of *independence* and respectively of *impartiality* having different meanings, assuming the fulfilling of

certain specific conditions, constituting the substance of a unique principle which conditions the legitimacy of deprivation of liberty that enters the sphere of protection of the right provisioned by art.5 para.1 letter c of the conventional norm quoted above, the exercise of a jurisdictional control of deprivation of liberty by an authority which implies the fulfillment of these conditions being the essence of guaranteeing this right.

We have specified the sphere of application of the guarantees of independence and impartiality, by relating to the condition of ***the independence and impartiality of the magistrate who exercises jurisdictional control in the matter of preventive arrest of detention***, instituted in considering the necessity of respecting the requirement provisioned in the contents of the right provisioned by art.5 para.3 of the European Convention of Human Rights, which refers to the automatic control of the legality of the measure consisting of the presentation “at once” of the arrested or detainee to a judge or another magistrate authorized by the law to execute judiciary competences, who has the capacity of ordering the release, if he/she notices that the measure taken is unlawful or ungrounded; the sphere of application to the condition of *independence and impartiality of the magistrate commissioned with the control of an arrest or detention ordered with the purpose of sending a person to court*, this reference aiming at the issue of maintaining in preventive detention during criminal trial, respectively the condition of independence and impartiality of the magistrate who rules upon prolonging the provisory detention, at the request of *independence and impartiality imposed upon the court which judges the second appeal* which art. 5 paragraph 4 of the European Convention of Human Rights refers to, respectively of the court which examines the legality of the measure privative of liberty, by relating to the procedural and the demands of form needed to order such a measure.

Discussing the analysis of the contents of the concepts “independence” and “impartiality” of the judicial authorities with competences in the matter of deprivation or restriction of the liberty of the person carried out differently by relating to the independence and impartiality of the judicial power and by the authority of the Public Ministry, has been *achieved both by relating to the European standards* of protecting the right to liberty and also by relating to the ***vulnerabilities*** of the concept if independence of the judge in the current context of regulation from the perspective of ***protecting him/her from unsuitable influences, pressures, threats or direct or indirect interferences, from the other powers of the state respectively political power and executive power, but also in what concerns his/her protection from the pressure used by various interest groups, including by mass-media***. Starting from the principle according to which guaranteeing the independence of the judges implies the existence of an adequate protection against external powers and that it cannot be considered sufficient to merely state this principle,

without the regulatory construction of those instruments meant to offer adequate protection from this point of view, also, we have pointed out specific situations in which these vulnerabilities were manifested by the intervention of the political or executive power but also of the pressure groups, by remarks regarding the building and settling of certain cases which are on trial, which are capable of influencing the exercise of judiciary functions, to the perception of the judicial system on the manner in which the independence of the judicial system is ensured and which outline the inexistence of a real protection of the judges from outer pressures. We have stressed the fact that these pressures harm not only *the functional independence* by diminishing the trust that, in a democratic society, the judicial authorities should urge upon the litigants, but also the *personal independence*, by disputing those capacities and respectively qualities of the judge invested with the settling of a proposal to take preventive measures especially those privative of liberty, which are indispensable to fulfilling his role, and which show great relevance from the perspective of the notion of independence, in relation to the demand of appearance implied by this concept.

From the perspective of institutional guarantees, we have stressed the fact that an essential component of the independence of the judge is also constituted by the regulation in art.126 para.3 of the Romanian Constitution which *defines the role of the High Court of Cassation and Justice in ensuring the unitary interpretation and application of the law*, transposed into the regulations contained in the special laws respectively in the procedural regulations, which are essential from the perspective of the guarantee of independence of the judge, because they ***state the creative role of the judge between the law and the right, thus consolidating the power of the judge in relation to the legislative and executive power, by imposing the rule of the right to the state, in the context of ambiguous regulations, which are insufficient or contrary to the exigencies imposed by the necessity of respecting fundamental rights and values.***

This occurs because, through these regulations, ***the balance between the judicial and the legislative*** is created, which *controls the judicial by the power to set the courts, the competence and the procedure to follow* according to the provisions of art. 126 of the Romanian Constitution, by ***stating the role of jurisprudence in the mentioned situations, which do not regulatory function, giving autonomy to the judicial within the state norm, autonomy which states and emphasized the independence of the judge.*** Relevant from the perspective of this component of the concept of independence of the judge, is the regulation comprised in the New Code of criminal procedure, adopted by Law no.135/2010, by the new approach of the institution of second appeal in the interest of the law, comprised in art.471-474 of the New Code of criminal procedure, emphasizing the independence of the judge, imposing that the rule of the right to the

state being done determinedly, from the same point of view analyzing the alteration made by art. XVIII point 57 of Law no.202/2010 regarding some measures for accelerating the solving of trials, of orders, art. 414² Code of criminal procedure. We have stressed the fact that these regulations, as well as those existent in this matter in the current Code of criminal procedure, from the perspective of the concept of independence of the judge have another connotation, ***the obligation of standardizing the judicial practice and the unitary application of the law*** constituting in itself an indispensable guarantee for observing the rights acknowledged to the parties in the trial, especially in the matter of the right to liberty.

From the perspective of the authority of the Public Ministry, *the meaning of the concept of independence is different, considering the problematic of the independence of the prosecutors in the resolutions given*, with the limitations specific to this concept, proceeding to a critical analysis of the alterations brought from this perspective by introducing art.217¹ Code of criminal procedure in the current Code of criminal procedure, on the basis of art. XVIII point 27 of Law no.202/2010. We have stressed the fact that these regulations render as inefficient the guarantee comprised in art.64 para.4 of Law no.304.2004 regarding judicial organization, republished and amended, by instituting a form of prorogation of their competence to the will of the General Prosecutor of The Public Prosecutor's Office attached to the High Court of Cassation and Justice, with consequences both from the perspective of setting the court competent to solve the case at first instance, which can bring into discussion the principle of equality of the parties in the trial, but also **the appearance of impartiality** of the judges, the regulation acting contrary to Recommendation no.2000(19) of the Committee of Ministers of the Council of Europe regarding the role of the Public Ministry in the criminal judicial system.

As to what concerns the guarantee of impartiality of the judge, we have analyzed the differentiation between the *functional component and the personal component*, referring to the non-unitary aspects which exist in national jurisprudence, emphasized from this perspective, in the contents of the minutes of the meetings between the members of the “Standardizing judicial practice” committee within the Superior Council of the Magistracy, and with the president of the Criminal Section of the High Court of Cassation and Justice and with the presidents of the criminal sections of the appeal courts, referring to interpretations bound to emerge from the possibility of appointing as judge of a magistrate who previously acted as a prosecutor; we have also presented recent situations fortuitous in judicial practice, in which the prosecutor appointed as judge performs the tasks specific to this function, without the fulfilling of the conditions provisioned by the law to be ensured.

From the perspective of the guarantees of impartiality, we have presented the **conception of the new Code of criminal procedure, which consolidates the institutional guarantees in the matter of the right to liberty and security of the person, the arguments that lead to this conclusion being stressed**, also emphasizing, in the contents of the analysis of institutional guarantees regarding the competences in the matter of preventive measures depriving or restricting liberty, the amendments occurring in the current regulation on the basis of art. XVIII point 16 of Law no.202/2010 concerning some measures for accelerating the resolution of trials regarding the judicial bodies competent in acknowledging the rightful ceasing of the preventive measures, extending the role of the prosecutor in this matter, by amending art.140 para.3 of the Code of Criminal Procedure, its modification being in conformity with the competences recognized by the new Code of Criminal Procedure, by the provisions of art. 241, para.2.

Within the same section, we have discussed the **guarantees of procedure specific to the liberty of the person**, representing conceptually **the whole of the regulations which define the validity conditions of the processual acts through which they initiate preventive measures depriving or restricting freedom and the validity conditions of the procedural acts in which the order of the authorities regarding this aspect is materialized**.

The category of *guarantees of procedure* was structured according to the manner in which the **mechanism of protection is materialized in conditions** which aim at the **validity of processual or procedural acts**, into **processual guarantees in a restricted sense**, which aim at the validity of processual acts, and **procedural or formal guarantees**, which condition the validity of procedural acts.

Subdividing the guarantees of procedure into the two categories is justified by the fact that, from a theoretical and normative point of view, they represent **two distinct species by their contents, function and finality**, the importance of this differentiation being of interest not only from a theoretical, but mostly **practical** perspective, since their relevance in the context of preventive measures depriving or restricting freedom is different as well. The sphere of the guarantees of procedure initiated in the matter of preventive measures **particularizes the judicial procedure** proper to the adopting of these measures by the main judicial activity, special rules being appointed, which are derogatory from the general rules applicable in the criminal trial, achieving a normative construction characterized not only by an *adjacent* feature in relation to the main judicial activity, but also by a *specific* feature, resulting from the nature of the protected right.

The judiciary procedure of taking preventive measures – from the perspective of the whole of the processual guarantees in the restricted sense of the concept and respectively from

that of the procedural, respectively formal guarantees – can therefore be defined as being a **judicial procedure subsequent** to the main activity, having **its own juridical configuration**, determined by the nature of the protected right and also by the characteristic derived in relation to the main judicial activity. In the process, the general rules applicable in the criminal trial have specific particularities and derogations which differentiate it from the main judicial activity, aiming mainly at the manner of putting into practice the *principle of contradictoriness in the stage of criminal prosecution and in the stage of the case being on trial*, of the principle that the court meeting is public, materializing especially in the regulatory construction of the processual guarantees in a restricted sense and of the procedural or formal guarantees, being particularized by the fact that it implies adapting to and correlating with another processual discipline, characterized by an accentuated dynamism, imposed by the demand for avoiding arbitrary deprivation of liberty.

Processual guarantees in a restricted sense are defined as being the **whole of the regulations which condition the validity of processual acts** through which the taking of preventive measures depriving or restricting freedom is ordered, there existing elements common to all categories of preventive measures but also differentiations according to their nature, the following being circumscribed to this category: *a. the conditions in which the right to physical liberty or the liberty of movement can be restricted during the criminal trial are strictly regulated by the law and the preventive measures through which deprivation or restriction of liberty are ordered have a limitative characteristic; b. deprivation or restriction of liberty as a preventive measure can be ordered only during a criminal trial; c. the temporary feature of the preventive measures depriving or restricting freedom, which derives from the obligation of replacing or revoking them in the situation in which the circumstances which justified their being instituted no longer exist, and respectively from the obligation of noticing the ceasing de jure of the measures in the cases provisioned by the law; the limitation in time of the duration of the measures depriving or restricting liberty, including the periods for which they can prolong the explicit regulation of the situations in which such a measure is possible; e. the regulation of the control of legality and the opportunity of preventive measures depriving or restricting liberty; f. initiating a specific system of regulating the duration and manner of calculating the substantial and procedural time limits in the matter of preventive measures; g. the right to indemnification, acknowledged to any person who has been, during criminal trial, deprived of liberty or whose liberty has been restricted illegally or unlawfully, regulated by art.5 para.4 and respectively by art.504 para.2 of the Code of Criminal procedure.*

The procedural or formal guarantees of the liberty of the person are materialized in the whole of the regulations which condition the validity of procedural documents issued in the context of executing processual acts through which they order the taking of preventive measures depriving or restricting freedom, having ***the characteristic of procedural guarantees those references provisioned by the law which recognize the observance of processual guarantees, allowing control over the manner of fulfilling processual acts and obliging judicial authorities to observe the provisions of the law in instituting the preventive measures depriving or restricting freedom***, a definition which underlines their formal characteristic, which allows for them to be included in the category of formal guarantees.

The procedural guarantees, although they are mostly formal apparently, in their substance they have a complex characteristic, also concentrating in their contents elements which belong to processual guarantees in a restricted sense. Considering that their materialization is necessarily transposed into the contents of a procedural act, they were classified in the category of procedural guarantees, the conditions of form being essential in order to achieve the goal for which they were initiated in the first place. The following were listed in this category: a. *the obligation of the judiciary authorities to bring to the knowledge of the defendant or the culprit regarding which the preventive measure is to be taken, the rights provisioned by art.143 para.3 Code of criminal procedure (with emphasis on the abusive practices in exercising this right); b. the obligation of hearing the defendant or the accused regarding whom a preventive measure depriving or restricting freedom is taken in the presence of the chosen or ex-officio defender; c. the obligation of informing the arrested or the detainee, in the shortest period of time and in a language that he/she understands, about the reasons for his/her preventive arrest and about the charges; the obligation of informing him/her about the charge only in the presence of the chosen or ex-officio defender; d. informing a member of the family or of another person designated by the defendant about the measure being taken; e. the acknowledged right of the detainee or arrested to get in touch with the defender, ensuring the confidentiality of their conversations; f. the obligation of motivating the proposals regarding the taking of preventive measures; g. the obligation of drafting the minutes by the judge and respectively by the court also in the situation in which the judge or the court has decided through a resolution on the measure of preventive arrest; h. the obligation of motivating the ordinance respectively the resolution through which the preventive measure depriving or restricting freedom is ordered; i. the contents of the preventive arrest warrant; j. the execution of the arrest warrant and imprisonment of the convicts; k. the obligation of communicating in the situation in which the measure of preventive arrest is considered to cease de jure.*

The substantial guarantees of the liberty of the person are circumscribed to the conditions of contents in which it is possible to institute preventive measures, depriving or restricting freedom, the characteristic of substantial guarantees of the conditions of contents forced in the case of deprivation or restriction of liberty being defined by their functionality, since they prevent the arbitrary in taking the measure of preventive arrest.

The degree of precision being low compared to the other guarantees specific to individual liberty, and the abstract manner of regulation, by using imprecise expressions, undefined by the law, has generated, in national jurisprudence, different interpretations of some concepts, for lack of an efficient mechanism to standardize judicial practice.

One can state that putting these guarantees into practice, which imply necessarily their relating to the concrete circumstances of the case, constitutes the vulnerable element in national jurisprudence in applying the regulations specific to the liberty of the person, without ensuring the indispensable balance between the right to liberty and the necessity for intervention of the authorities in this field, there being no standardized and consistent perspective in interpreting orders which regulate the conditions of contents which make such an intervention possible.

It is not less true that this domain of substantial guarantees ensures the possibility for a judge to prove *the force of the juridical argument*, and the valences implied by the concept of individual liberty can gain coherent and logic consistency.

The substantial guarantees of the liberty of the person were structured according to the contents of the regulations into *general guarantees*, common to all forms of interference in the liberty of the person, and *guarantees specific* to certain forms which refer to the preventive measures depriving of freedom, each of these guarantees representing, from the point of view of their specificity, *general grounds* for taking preventive measures, representing those generic conditions, not materialized into determinate elements (being provisioned in art.136 para.1 Code of Criminal procedure, assuming a negative condition and respectively a positive condition), or *specific grounds* which in turn can be *de facto* (those regulated by art.143 para.1 Code of Criminal procedure, consisting of the existence of solid clues that a deed provisioned by criminal law has been committed) and *de jure*, the latter being materialized in the text of para.1 of art.148 of the Code of Criminal procedure.

General guarantees are common to all forms of interference in the liberty of the person, including among them, both the *general grounds* of taking preventive measures as well as *grounds de facto*, regarding the demand *for the existence of solid evidence or clues that the person in question has committed a crime sanctioned by criminal law, the possibility of taking preventive measures only in the cases regarding crimes punished with life imprisonment or with*

prison, the necessary feature of the measure determined by the purpose of ensuring that the criminal trial goes well, or in order to prevent the defendant or the culprit to elude criminal investigation, trial or execution of punishment.

Besides these common guarantees, in the case of preventive measures depriving of freedom, the Code of criminal procedure institutes a substantial guarantee specific to the measures, as well, consisting of the necessity for *the existence of one of the situations provisioned by art.148 para.1 Code of criminal procedure.*

Regulation of the cases in which preventive measures depriving of freedom can be ordered respectively of the lawful grounds which justify the measure of preventive arrest, constitutes a substantial guarantee of the liberty of the person, since it ensures protection against arbitrary deprivation of liberty; in this respect we approached the differentiated analysis between the current regulation and the one provisioned in the new code of criminal procedure.

Internal and international regulations applicable in the matter of the right to freedom of the person from the perspective of legislative evolution are approached in a distinct section.

In the second chapter we analyzed the guarantees of the liberty of the person in the matter of holding in custody, from the perspective of their compatibility with the requirements of art.5 para.1 let. c of the European Convention of Human Rights, the conditions for holding in custody and differences in relation to preventive arrest, the competent judicial authority and the procedure for holding in custody, the procedure of complaint against the measure of holding in custody provisioned by art.140¹ Code of criminal procedure and its compatibility with the provisions of art.5 para.4 of the European Convention of Human Rights, special rules regarding preventive holding in custody of the minors, with approaching the problem from the perspective of processual guarantees, both those acknowledged by the current regulation and also by those provisioned by the new code of criminal procedure, emphasizing the situations of non-unitary judicial practice in the matter.

Chapter III contains the analysis of the liberties of the person in the matter of preventive arrest, thus approaching, in distinct sections, the guarantees imposed by art.5 para.3 of the European Convention, regarding the judicial body competent to order the measure of preventive arrest, analyzing the contents of this guarantee and the regulation framework, the competence of taking the measure of preventive arrest in the stage of criminal prosecution, in the jurisdictional stage, the judicial authority competent to order the arrest of the accused in court, the particularities specific to the functional competence of the judge who orders preventive arrest during criminal prosecution, with analysis of the notion “competence” from the perspective of the European standard of protection and of the particularities specific to internal law and respectively

of the particularities specific to the functional competence of the courts which order preventive arrest in the jurisdictional stage.

We have also emphasized regulations which restrict the capacity of the first instance of ordering that the person arrested preventively be freed; we have also argued the necessity for setting grounds specific to the trial stage, regarding the aspect of the capacity of the court to order the release of the person, analyzing the conditions set by the demand for specialization; we have also discussed the problem of the competence of the court which orders preventive arrest in the case of crimes, of the hearing, to analyze the lawfulness of preventive arrest and to order the release of the person under arrest.

The guarantees of independence and impartiality established by art.5 para.3 of the European Convention of Human Rights on the judicial authorities competent in ordering preventive arrest have also constituted the object of the analysis within a distinct section in the same chapter; we have also approached the issue of independence of the judicial authorities who order preventive arrest, of the impartiality of judicial authorities who order preventive arrest, the particularities of the guarantee of impartiality of the judge who orders preventive arrest during criminal prosecution, the particularities of the guarantee of impartiality regarding the court which orders preventive arrest during trial and the respect for the exigencies of procedure regarding the hearing of the defendant or the culprit, the approach being related to jurisprudential applications.

The conditions and grounds for preventive arrest in internal law seen through the provisions of art.5 para.1 lett.c of the European Convention of Human Rights were also analyzed within one section, by presenting the requirements for interpretation from the jurisprudence of the European Court of Human Rights, the *grounds de facto for preventive arrest consisting of the existence of solid evidence or clues; we have determined the notion of “deed provisioned by criminal law” and we have approached the issue of the conformity of the material deeds which the accusation is based on, with the legal classification set by the act of apprehension and respectively the grounds de jure of preventive arrest, both those provisioned in the current regulation, as well as those provisioned in the new Code of criminal procedure.*

In section 4 of the same chapter we have analyzed the compatibility of the procedure of second appeal against resolutions regarding the measure of preventive arrest ordered by the judge, with the procedure of habeas corpus, provisioned by art.5 para.4 of the European Convention of Human Rights, in this respect analyzing the effects of the legislative evolution in the matter of the judicial body competent in ordering preventive arrest over the control of legality established by art.5 para.4 of the European Convention of Human Rights, the issue of the legality

of preventive measures depriving of liberty in the remedy at law against the resolutions issued by the judge in the matter of preventive arrest, the conditions of exercising the right to second appeal against the resolution issued by the judge during criminal investigation, the subjects of the right to second appeal against the resolution issued by the judge during criminal investigation regarding the ordering for the measure of preventive arrest, the limiting in time of exercising the right to second appeal established in art. 140³ Code of criminal procedure, the forms of exercising the second appeal against the resolutions issued by the judge during criminal investigation regarding the taking of the measure of preventive arrest, the effects of the declaration of second appeal against the resolution issued by the judge during criminal investigation, regarding the solving of the proposal to take the measure of preventive arrest, from the perspective of compatibility with the requirements provisioned by art.5 para.4 of the European Convention, the trial procedure of the second appeal against the resolutions issued by the judge during criminal investigation regarding the taking of the measure of preventive arrest, regulated by art.140³ of the Code of criminal procedure and the compatibility with the requirements provisioned by art.5 para.4 of the European Convention.

Section 5 within the same chapter refers to the trial procedure of the second appeal against the resolutions issued by the court during trial regarding the preventive measures regulated by art.141 Code of criminal procedure and the compatibility with the requirements of art.5 para.4 of the European Convention of Human Rights, and section 6 refers to the reasonable duration of the measure of preventive arrest and the right to obtain temporary release during the procedure, from this latter perspective we have thus analyzed the duration of preventive arrest in the stage of criminal prosecution and the procedure of extending the measure of the preventive arrest of the accused, the issue of the inexistence of a determined duration of preventive arrest in the trial stage and the procedure of periodical check of the measure of preventive arrest during trial and respectively special rules regarding the preventive arrest of the minors.

Chapter 5 contains an analysis of **the guarantees of the liberty of the person in the procedures regarding the preventive measures restricting freedom and their compatibility with the provisions of art.2 of Protocol no.4 to the European Convention of Human Rights**, by discussing an analysis of the categories of measures restricting freedom and alternative to detention and a delimitation between these and temporary release under judicial control or on bail, considering that there have been confusions between these categories of measures in the national jurisprudence.

We have discussed in distinct sections the analysis of the conditions and grounds for ordering measures restricting freedom, of the competence of the judicial body (in the stage of

criminal investigation and in the trial stage), the procedure of taking preventive measures restricting liberty and respectively the duration of measures in the stage of criminal investigation, and the procedure of extension, the effects of the inexistence of a determined duration in the trial stage from the perspective of the jurisprudence of the European Court of Human Rights in this matter.

A distinct section within the same chapter refers to the guarantees of the liberty of the person in extradition procedures and in the procedures for executing the European arrest warrant, emphasizing the conceptual differences between preventive arrest and temporary arrest, and we have analyzed separately the *guarantees of the liberty of the person in the extradition procedure and the guarantees of the liberty of the person in the procedure of the European arrest warrant*.

The approach of each of these categories of guarantees has also been achieved by relating to a jurisprudential analysis concentrated mainly upon the various opinions given within the practice of the court, emphasizing the variety of interpretations and even the inconsequence in defining specific concepts, but also the difficulty of the process of legislative adaptation considering that successive legislative changes did not succeed in eliminating the discussions and controversies in applying the regulations regarding the right to liberty, but, they in fact generated them and fuelled them by abstract expressions, or by not correlating the regulations inherent in this matter, a fact which justifies the utility of the theme, especially since the analysis has referred to the regulations contained in the new Code of criminal procedure.

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