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CERTAIN REFLECTIONS ON THE LEGAL FRAMEWORK GOVERNING THE RESUMPTION OF PRELIMINARY CHAMBER PROCEEDINGS

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Abstract: *According to the Explanatory Memorandum accompanying Law No. 135/2010 on the Code of Criminal Procedure, the Preliminary Chamber was intended as a new and innovative institution within the framework of criminal procedural law. It was introduced with the aim of establishing a modern legislative framework designed to eliminate excessive delays in trial proceedings and to vest a judicial body with competence to resolve matters related to the lawfulness of the indictment and the admissibility of evidence. In this way, the institution ensures the prerequisites for expeditious adjudication of the case on the merits, while also addressing deficiencies that have led to Romania being condemned by the European Court of Human Rights for violations of the right to a trial within a reasonable time.*

Keywords*: Preliminary Chamber; suspect; defendant; criminal proceedings; resumption of preliminary chamber proceedings*

1. The Historical Background of the Emergence of the "Preliminary Chamber" Institution in the Code of Criminal Procedure

It should be noted that the institution of the "Preliminary Chamber" is not a recent creation of the Romanian legislator, having previously been established by Decree No. 506/1953 under the name of the "preparatory hearing." Thus, Article 269 of the decree provided the following: "Cases submitted by the prosecutor shall be examined in a preparatory hearing, with the purpose that only those cases in which the necessary, sufficient, and legally administered

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evidence exists shall proceed to trial before the court of first instance, so that the court, when adjudicating the case on the merits, may determine whether the acts are proven and whether the accused committed them and bears criminal responsibility."

Through the provisions of Law No. 3/1956 amending the Code of Criminal Procedure of the People's Republic of Romania, several changes were introduced to the preparatory hearing, particularly concerning the renaming of certain procedural institutions in order to avoid potential confusion. The "statement of accusation" (actul de învinuire) was replaced with the "indictment act" (actul de inculpare), and Article 280[1] was introduced to address an issue frequently encountered in judicial practice—namely, whether the injured party could initiate a private prosecution following dismissal orders issued during the preparatory hearing[2]. This article provided courts with the possibility to reopen criminal proceedings after their termination by dismissal at the preparatory stage. Due to the fact that the "preparatory hearing" raised numerous issues in judicial practice over time, it was eventually repealed by Decree No. 473/1957.[3]

2. The Trial Procedure Before the Preliminary Chamber

According to Article 342 of the Code of Criminal Procedure, the *purpose* of the preliminary chamber proceedings is to examine, following the indictment, the competence of the court and the lawfulness of the referral, as well as the legality of the evidence obtained and of the procedural acts carried out by the criminal investigation authorities.

The duration of the preliminary chamber procedure is limited to a maximum of 60 days from the date the case is registered with the court. *The preparatory measures* are expressly provided in Article 344 of the Code of Criminal Procedure, stipulating that, after the court is seized by indictment, the case file is randomly assigned to the preliminary chamber judge.

The defendant, the other parties, and the injured party are informed of the purpose of the preliminary chamber proceedings, their right to retain legal counsel, and the time limit within which they may submit written motions and objections regarding the lawfulness of the court's referral, the admissibility of the evidence, and the procedural acts carried out by the criminal investigation authorities. This time limit is set by the preliminary chamber judge based on the complexity and particularities of the case, but it may not be shorter than 20 days from the date of notification.[4]

[1] Official Bulletin No. 11 of April 4, 1956, document available online at idrept.ro

[2] Volonciu, N. (1956). The Amendments to the Code of Criminal Procedure of the People's Republic of Romania. Journal of Social Sciences – Legal Sciences, No. 6, p. 162.

[3] Official Bulletin No. 26 of September 30, 1957, document available online at idrept.ro

[4] By Decision No. 14/2018 (published in Official Gazette No. 765 of September 5, 2018), the High Court of Cassation and Justice, sitting as the Panel for the Resolution of Legal Issues in the Interest of the Law, held that the time limit within which the defendant, the injured party, and the other parties may submit written motions and objections regarding the lawfulness of the referral to the court, the admissibility of the evidence, and the acts performed by the criminal investigation authorities is of a recommendatory nature.

In cases where motions or objections have been submitted, or where the judge has raised objections *ex officio*, pursuant to Article 344 paragraph (4) of the Code of Criminal Procedure, upon the expiry of the time limits set out in paragraphs (2) and (3)—namely, the minimum 20-day period—the preliminary chamber judge shall set a hearing date for their resolution. The parties and the injured party shall be summoned, and the prosecutor shall participate in the hearing.

According to the provisions of Article 345 paragraph (1) of the Code of Criminal Procedure, *the preliminary chamber judge shall adjudicate the motions and objections submitted*, as well as those raised *ex officio*, in chambers, after hearing the submissions of the parties and the injured party, if present, as well as those of the prosecutor. The judge shall issue a ruling in chambers, based on the case file, the materials from the criminal investigation, and any other means of evidence.[1]

It should also be noted that, in a criminal case, it is possible for the prosecutor's indictment to be based on evidence that constitutes classified information. In such a situation, the preliminary chamber judge from the court competent to hear the case at first instance must urgently request the competent authority to declassify such information or to downgrade its classification level.

Access to the classified information must be granted to the legal counsel of the parties and of the injured party, provided they hold the security clearance required by law.

If such clearance is not held and the parties or, where applicable, the injured party do not appoint another counsel who possesses the legally required authorization, the preliminary chamber judge is obliged to take steps to appoint ex officio attorneys who are authorized accordingly.

The ruling delivered by the preliminary chamber judge shall be communicated without delay to the prosecutor, the parties, and the injured party. Upon examining the case file and the act of referral to the court, the preliminary chamber judge may: identify irregularities in the act of referral; apply sanctions, in accordance with Articles 280–282 of the Code of Criminal Procedure, to acts of criminal investigation carried out in breach of the law; exclude one or more pieces of evidence that were unlawfully obtained.

In such cases, within 5 days from the communication of the ruling, the prosecutor must remedy the irregularities in the act of referral and inform the preliminary chamber judge

[1] By Decision No. 802/2017 (published in Official Gazette No. 116 of February 6, 2018), the Constitutional Court upheld the exception of unconstitutionality and found that the legislative solution set forth in Article 345 paragraph (1) of the Code of Criminal Procedure—which does not allow the preliminary chamber judge, when ruling on motions and objections submitted or raised ex officio, to administer other means of evidence beyond "any new documents submitted" —is unconstitutional.

whether the decision to refer the case to trial is upheld or whether a request is made for the case to be returned to the prosecution office.

If *no motions or objections have been submitted and no objections have been raised ex officio*, and the preliminary chamber judge finds that the referral to the court, the administration of evidence, and the acts carried out during the criminal investigation are lawful, *the judge shall order the commencement of the trial*. The preliminary chamber judge shall rule in chambers, without summoning the parties or the injured party and without the participation of the prosecutor, by means of a ruling that is communicated without delay to all parties concerned.

If the preliminary chamber judge *rejects the motions and objections raised by the parties or ex officio*, the same ruling shall also confirm the lawfulness of the referral to the court, the administration of evidence, and the acts carried out during the criminal investigation, and *shall order the commencement of the trial.*

The preliminary chamber judge may also *return the case to the prosecution office* in the following situations: the indictment has been issued by a prosecutor lacking jurisdiction, either *ratione materiae* or *ratione personae*; the indictment is irregularly drafted, and the irregularity has not been remedied by the prosecutor within 5 days, where such irregularity prevents the determination of the subject matter or the limits of the trial; all evidence obtained during the criminal investigation has been excluded; the prosecutor requests the return of the case, in accordance with Article 345 paragraph (3) of the Code of Criminal Procedure; or the prosecutor fails to respond within the time limit provided by the same legal provisions.

In all other cases where the preliminary chamber judge identifies irregularities in the act of referral - irregularities which, although not remedied as required under Article 345 paragraph (3) of the Code of Criminal Procedure, do not prevent the determination of the subject matter or the limits of the trial—or where the judge excludes one or more pieces of evidence, or applies sanctions in accordance with Articles 280–282 of the Code of Criminal Procedure for procedural acts carried out unlawfully during the investigation, *the judge shall order the commencement of the trial*.

The trial hearing constitutes the central core of the entire adjudication process. It is divided into the following distinct sub-stages: the opening of the trial, the judicial investigation, and the closing arguments.

The opening phase of the trial hearing involves the performance of organizational activities intended to ensure the proper conduct of the subsequent stages of the proceedings.

Following the amendments to the provisions governing the trial stage, two forms of conducting the judicial investigation may be identified: the *simplified judicial investigation*, applicable when the defendant acknowledges the charges brought against them through the act of referral to the court; the *ordinary judicial investigation*, characterized by the possibility of administering new evidence, in accordance with Article 374 paragraphs (9) and (10) of the Code of Criminal Procedure.

The purpose of the judicial investigation is to re-administer the evidence collected during the criminal investigation phase, in accordance with the principle of immediacy governing the trial hearing, so as to allow the court to directly and personally assess the evidence.[1]

Article 383 of the Code of Criminal Procedure expressly regulates the possibility for the prosecutor, the injured party, and the other parties to waive the evidence they have proposed, regardless of whether such evidence was to be obtained from witness statements or other sources, as was previously required.

Thus, after the waiver of evidence is debated, the court may decide that the proposed evidence shall no longer be administered, if it considers that it is no longer necessary.

If, during the course of the judicial investigation, the administration of previously admitted evidence proves to be either unnecessary or no longer feasible, the court is entitled—after hearing the prosecutor, the injured party, and the other parties—to order that the evidence in question shall not be administered[2].

According to Article 388 paragraph (1) of the Code of Criminal Procedure, once the judicial investigation is completed, the trial proceeds to the closing arguments, which are presented in the following order: the prosecutor, the injured party, the civil party, the party with civil liability, and finally the defendant.

Pursuant to Article 389 of the Code, before the conclusion of the debates, the presiding judge grants the defendant the right to speak last, personally.

According to Article 391, deliberation, drafting, and delivery of the judgment must take place *within a maximum of 60 days from the closing of the debates*. In duly justified cases, the court may postpone the delivery of the judgment successively, provided that each postponement does not exceed *30 days*, if deliberation, drafting, and pronouncement cannot be completed within the legal time limit.

In all cases, deliberation, drafting, and pronouncement of *the judgment may not take place later than 120 days from the closing of the debates.*

The deliberation represents the procedural act by which the panel of judges, after the closing of the debates, reviews and evaluates the evidentiary and procedural material of the case, in order to reach a definitive assessment and determine the appropriate solution to the criminal law conflict, with a view to resolving the case at first instance.[3]

[1] Gr. Gr. Theodoru, (2013) Treatise on Criminal Procedural Law, 3rd edition, Hamangiu Publishing House, Bucharest, p. 581.
[2] V. Văduva, in N. Volonciu, A.S. Uzlău (eds.), R. Moroșanu, C. Voicu, V. Văduva, G. Tudor, D. Atasiei, C. Ghigheci, T.V. Gheorghe, C.M. Chiriță, T. Manea, (2017) The Code of Criminal Procedure – Commentary, 3rd edition, Hamangiu Publishing House, Bucharest, p. 1116.
[3] V. Dongoroz et al., op. cit., vol. VI, p. 199, cited in V. Văduva, in N. Volonciu, A.S. Uzlău (eds.), op. cit., p. 1131.

3. Resumption of the Judicial Investigation, the Closing Arguments, and the Preliminary Chamber Proceedings

If, during deliberation, the court considers that a certain circumstance requires clarification and that it is necessary to resume the judicial investigation or the closing arguments, *it shall reopen the proceedings.* The provisions concerning the summoning of the parties shall apply accordingly.

According to Article 395 paragraph (2) of the Code of Criminal Procedure, if the trial was conducted under the simplified procedure and the court finds that additional evidence—other than the documents accepted by the parties—is necessary to resolve the criminal action, it shall reopen the proceedings and order that the judicial investigation be carried out under the *ordinary procedure*.

The defendant shall continue to benefit from the reduction of the sentencing limits, provided that the factual situation established by the court following the administration of the additional evidence is the same as that described in the act of referral and admitted by the defendant.

According to the provisions of Article 386[1] of the Code of Criminal Procedure, the resumption of preliminary chamber proceedings during trial may be ordered by the court, by way of a ruling, when it finds that an absolute nullity affects the preliminary chamber procedure. The court's ruling annulling the act by which the commencement of the trial was ordered may be challenged, pursuant to Article 425[1] of the Code of Criminal Procedure.

Thus, in one particular case, the court upheld the objection concerning the lack of jurisdiction based on the legal status of the defendant and annulled in full the judgment rendered by the first-instance court, ordering the retrial of the case before the competent court—still the Bucharest Court of Appeal—while also ordering the resumption of the preliminary chamber proceedings[1].

These provisions may be subject to criticism, considering that—although the criminal investigation may be resumed, as regulated under Articles 332–335 of the Code of Criminal Procedure—the legislator deemed it necessary and justified to provide a mechanism for the resumption of preliminary chamber proceedings even after the case has reached the trial phase. This is particularly relevant in situations where the preliminary chamber judge, after issuing the ruling by which the trial is initiated, remains competent, under Article 346 paragraph (7) of the Code of Criminal Procedure, to hear the case. In other words, the same judge who initially, under Article 342, verified the lawfulness of the referral to the court, assessed their own jurisdiction, and reviewed the legality of the evidence gathered by the prosecution, is also the one who may order the resumption of the preliminary chamber proceedings.

[1] G. Negruț, A. Boroi, (2024) *Criminal Procedural Law*, 4th revised and updated edition, Hamangiu Publishing House, Bucharest, p. 586.

4. Conclusions

As a result of the recommendations concerning the need to ensure promptness in criminal proceedings, the Code of Criminal Procedure was supplemented with provisions aimed at enhancing the efficiency of the trial process. These provisions contribute to eliminating burdensome and unnecessary procedures, reducing the duration of trials, and simplifying criminal judicial proceedings. The overarching goal is to establish a consistent national case law, in compliance with the most rigorous international standards in criminal procedure, particularly those set by the European Court of Human Rights.

Among these developments, the preliminary chamber procedure stands out—an institution with initially controversial provisions, later clarified through decisions of the Constitutional Court and subsequently regulated through specific legislative or governmental measures. The same applies to the resumption of preliminary chamber proceedings, which the legislator has chosen to regulate in response to consistent developments in judicial practice.

The regulation of the resumption of preliminary chamber proceedings reflects a broader legislative effort to maintain procedural coherence and ensure the protection of fundamental rights throughout all phases of the criminal trial. By granting courts the authority to reopen preliminary proceedings when serious procedural flaws are identified, the legislator aims to safeguard both the legality of the criminal process and the right to a fair trial.[1] However, this mechanism also requires a careful balancing of interests—between the need for procedural efficiency and the imperative to uphold constitutional guarantees, such as equality of arms and the right to effective legal representation.[2]

In this context, the Romanian legal system demonstrates its capacity for adaptation, integrating constitutional case law and practical judicial experience into its procedural norms.[3] Nonetheless, the current framework would benefit from further clarification regarding the specific conditions, limits, and procedural safeguards applicable to the resumption of preliminary chamber proceedings. Clearer legislative guidance could prevent divergent interpretations and enhance legal certainty, thereby strengthening the overall integrity and predictability of the criminal justice system[4].

[1] Negruț, G., & Boroi, A. (2024). Criminal Procedural Law, 4th revised and updated edition. Bucharest: Hamangiu, p. 586; Văduva, V. in Volonciu, N., & Uzlău, A.S. (eds.) (2017). The Code of Criminal Procedure – Commentary, 3rd edition. Bucharest: Hamangiu, p. 1131

[2] Decision No. 802/2017, Official Gazette No. 116/2018

[3] Dongoroz et al., vol. VI, p. 199, as cited in Văduva in Volonciu & Uzlău (2017), p. 1131

[4] Theodoru, Gr. Gr. (2013). Treatise on Criminal Procedural Law, 3rd edition. Bucharest: Hamangiu Publishing House, p. 581

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