

# PRECAUTIONARY MEASURES IN ROMANIAN CRIMINAL PROCEDURE: JURISPRUDENTIAL APPROACHES TO JUDICIAL REVIEW

Lucia Marina Cristina COC (\*)

## Abstract

*Precautionary measures constitute essential procedural instruments within criminal proceedings, intended to guarantee the effectiveness of patrimonial obligations arising from criminal liability. Their purpose is to prevent the concealment, alienation, destruction or dissipation of assets liable to confiscation, special confiscation, extended confiscation or compensation for damages caused by criminal offences. At the same time, such measures represent interferences with the right to peaceful enjoyment of possessions protected under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR) and must therefore comply with the requirements of legality, necessity and proportionality. The present study examines the judicial review mechanism regulated by Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure, focusing on the divergent jurisprudential approaches developed in judicial practice concerning the maintenance, restriction and lifting of precautionary measures. The analysis addresses several controversial issues, including the legal nature of the review time limits, the consequences of failing to comply with such limits, the determination of the relevant temporal reference point for calculating the review period, the intensity of judicial review exercised by courts and the proportionality assessment of the interference with property rights. By analysing national case-law, doctrinal opinions and the standards established in the jurisprudence of the European Court of Human Rights (ECtHR), the paper highlights the existence of significant interpretative divergences affecting the predictability and consistency of judicial practice in matters concerning precautionary measures. The study further emphasizes the necessity of ensuring effective judicial safeguards capable of maintaining a fair balance between the public interest pursued through criminal proceedings and the protection of fundamental rights.*

**Keywords:** *precautionary measures, judicial review, proportionality, criminal proceedings, property rights, seizure, procedural safeguards, ECtHR jurisprudence.*

## 1. Introduction

Precautionary measures constitute legal instruments of particular importance within criminal proceedings, their essential function being to guarantee the enforcement of patrimonial obligations arising from criminal liability<sup>1</sup>. The institution occupies a complex position at the intersection between

substantive criminal law and criminal procedural law, serving both the protection of the general interest and the preservation of the effectiveness of judicial decisions concerning confiscation, compensation for damages or the recovery of judicial expenses.

Although such measures do not possess a punitive character, they nevertheless represent interferences with the exercise of

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(\*) Student, Faculty of Law, "Nicolae Titulescu" University, Bucharest (e-mail: luciacoc13@gmail.com).

<sup>1</sup> Gh. Mateuț, *Criminal Procedure. General Part (Procedură penală. Partea generală)*, Universul Juridic Publishing House, Bucharest, 2019, p. 95.

the right to property, temporarily restricting the owner's ability to freely dispose of the affected assets. Consequently, their maintenance throughout criminal proceedings must remain subject to effective judicial control capable of preventing excessive or disproportionate restrictions of property rights.

The necessity of regulating precautionary measures derives not only from the general requirement of ensuring the effectiveness of criminal proceedings, but also from the constitutional and conventional standards governing the protection of fundamental rights. Legal doctrine has constantly emphasized that precautionary measures cannot be assimilated to criminal sanctions or procedural penalties, since they do not possess a repressive character, but rather a preventive and provisional one<sup>2</sup>.

The judicial review mechanism regulated by Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure represents the procedural expression of the proportionality principle in matters concerning interferences with property rights during criminal proceedings. The institution is intended to ensure that precautionary measures remain justified throughout the entirety of the proceedings and that the restriction imposed upon the individual continues to preserve a fair balance between the general interest and the protection of fundamental rights.

The relevance of the present topic derives from the increasingly significant role played by precautionary measures in contemporary criminal proceedings, particularly in cases concerning economic and financial criminality. In practice, seizure orders often affect substantial assets and may remain in force for extensive periods of time, thereby generating important consequences for the exercise of property rights and for the

economic activity of the individuals concerned.

The present paper analyses the divergent jurisprudential approaches developed by Romanian courts regarding the application of Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure. Particular attention is devoted to the legal nature of the review time limits, the consequences of failing to observe those limits, the intensity of judicial review exercised by courts and the proportionality assessment of the interference with property rights.

## **2. The legal nature of precautionary measures**

### **2.1. Preliminary considerations**

Romanian criminal procedural legislation regulates precautionary measures as procedural measures in rem intended to guarantee the effectiveness of patrimonial obligations arising from criminal proceedings. According to Article 249 of the Romanian Code of Criminal Procedure, such measures may be ordered during any stage of the criminal proceedings in order to prevent the concealment, alienation, destruction or dissipation of assets liable to confiscation, special confiscation or extended confiscation, as well as to guarantee the enforcement of criminal fines, judicial expenses and compensation for damages caused by criminal offences<sup>3</sup>.

The legal nature of precautionary measures has generated extensive doctrinal debate within Romanian criminal procedural law. Although such measures produce significant effects upon the exercise of property rights, legal doctrine has constantly emphasized that they cannot be assimilated

<sup>2</sup> See I. Neagu, M. Damaschin, *Treatise on Criminal Procedure. General Part (Tratat de procedură penală. Partea generală)*, Universul Juridic Publishing House, Bucharest, 2024, p. 793.

<sup>3</sup> Article 249 of the Romanian Code of Criminal Procedure.

either to criminal sanctions or to procedural penalties. Their primary function is not punitive, but preventive, consisting in the preservation of assets liable to satisfy patrimonial obligations arising from criminal proceedings.

From this perspective, precautionary measures possess both an accessory and a provisional character. Their accessory nature derives from the fact that they depend upon the existence of criminal proceedings and serve the enforcement of obligations which may arise from the criminal action or the civil action exercised within the criminal trial. Their provisional nature, on the other hand, results from the temporary justification of the interference, which may subsist only for as long as the grounds underlying the measure continue to exist<sup>4</sup>.

Romanian legal doctrine has further emphasized that precautionary measures constitute procedural measures in rem, operating directly upon assets rather than upon the person concerned. Consequently, the restriction affects primarily the right of disposal, while ownership itself remains unaffected until the final resolution of the criminal proceedings.

More importantly, legal doctrine has emphasized that precautionary measures do not represent an “anticipated punishment”, but rather a guarantee intended to ensure the enforceability of the patrimonial consequences arising from criminal proceedings. Consequently, the procedural safeguards established under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure contribute to maintaining the proportionality between the duration of the precautionary

measure and the restriction imposed upon property rights<sup>5</sup>.

The ordering of precautionary measures requires the fulfilment of several cumulative conditions. First, there must exist pending criminal proceedings concerning the commission of an offence in relation to which there is a reasonable suspicion that a criminal act has been committed. Second, identifiable assets capable of satisfying future patrimonial obligations must exist alongside the risk that such assets may be concealed or dissipated. Finally, the measure must comply with the principle of proportionality, preserving a fair balance between the restriction imposed upon the right to property and the legitimate aim pursued by the judicial authorities.

The provisional nature of precautionary measures constitutes one of their defining characteristics. Such measures remain justified only for as long as the grounds that determined their imposition continue to subsist. Consequently, their maintenance throughout criminal proceedings requires the existence of an effective judicial review mechanism capable of periodically reassessing both the legality and the proportionality of the interference<sup>6</sup>.

This review mechanism is regulated by Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure, which establishes the obligation of the judicial authorities to verify ex officio whether the grounds justifying the measure continue to subsist. The review must be conducted every six months during the criminal investigation phase and every one year during the trial phase.

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<sup>4</sup> Gr. Theodoru, *Treatise on Criminal Procedural Law (Tratat de drept procesual penal)*, Hamangiu Publishing House, Bucharest, 2007, p. 469.

<sup>5</sup> For a detailed analysis, see I. Neagu, M. Damaschin, A.V. Iugan, *Criminal Procedure Law. General Part. Seminar Workbook (Drept procesual penal. Partea generală. Mapă de seminar)*, Universul Juridic Publishing House, Bucharest, 2024, p. 379.

<sup>6</sup> I. Neagu, M. Damaschin, *Treatise on Criminal Procedure. General Part (Tratat de procedură penală. Partea generală)*, p. 796.

The introduction of this review mechanism reflects the legislator's intention to prevent precautionary measures from becoming indefinite restrictions upon property rights. Consequently, judicial review constitutes one of the key procedural safeguards intended to ensure compatibility between domestic criminal procedural law and the standards deriving from Article 1 of Protocol No. 1 to the European Convention on Human Rights.

## **2.2. The procedure for reviewing precautionary measures**

The regulation concerning the review of precautionary measures is provided under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure, a legal provision establishing the obligation of the judicial authority to examine *ex officio*, at intervals of no more than six months during the criminal investigation phase and no more than one year during the trial phase, whether the grounds that justified the ordering or maintenance of the precautionary measure continue to subsist.

The legal text thus confirms the temporary and reviewable character of precautionary measures and imposes an effective assessment of both the legality and proportionality of the interference. At the same time, the review procedure must be interpreted in correlation with Articles 250 and 250<sup>1</sup>, according to which appeals may be lodged against the prosecutor's ordinance ordering the maintenance, extension or lifting of precautionary measures, as well as against the decisions delivered by the preliminary chamber judge or by the court following the review of such measures<sup>7</sup>.

The purpose of this mechanism is to prevent precautionary measures from

becoming indefinite restrictions upon the exercise of property rights and to preserve the proportionality between the interference generated by the seizure measure and the legitimate aim pursued through criminal proceedings. Consequently, the judicial review regulated under Article 250<sup>2</sup> represents an important procedural safeguard intended to ensure the temporary nature and proportional character of precautionary measures and the effective protection of the rights of the persons concerned.

Although the legal provisions appear to establish a relatively clear review mechanism, judicial practice has generated divergent interpretations regarding the legal nature of the review periods, the consequences of non-compliance with them and the scope of judicial review exercised by courts in this procedure.

## **3. Jurisprudential approaches to the judicial review of precautionary measures**

### **3.1. Divergent interpretations concerning the legal nature of the review time limits**

One of the principal controversial issues concerns the legal nature of the review time limits established under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure.

A first jurisprudential orientation considers that the statutory review periods possess a substantive and preemptory character, their non-observance leading *ope legis* to the cessation of the precautionary measure<sup>8</sup>. From this perspective, the obligation imposed upon judicial authorities to carry out periodic verification represents an essential safeguard intended to protect the

<sup>7</sup> *Idem*.

<sup>8</sup> Bucharest Court of Appeal, Criminal Division I, Decision no. 56/2026, available on [www.rejust.ro](http://www.rejust.ro) (RJ 842392gg8).

right to property and to ensure the temporary nature of the interference.

Within this interpretation, courts have emphasized that the absence of an express sanction within the legal provision does not deprive the time limit of its mandatory character. Consequently, once the legal period expires without an effective review of the measure, the seizure order automatically ceases by operation of law. In this sense, the mandatory nature of the review mechanism represents an essential procedural safeguard intended to ensure its effectiveness. Furthermore, certain courts have held that the absence of an explicit sanction within the legal text cannot justify depriving the review mechanism of practical effectiveness. Otherwise, the verification obligation would become purely formal and incapable of ensuring effective judicial protection against disproportionate restrictions of property rights.

In contrast, another jurisprudential orientation considers that Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure establishes merely an obligation of periodic review, without expressly providing the sanction of automatic cessation of the precautionary measure<sup>9</sup>. According to this interpretation, procedural sanctions are subject to strict interpretation and cannot be extended in the absence of an explicit legislative provision.

Consequently, the review mechanism is intended to ensure periodic verification of the necessity of the measure, without conditioning its continuation upon automatic termination in the event of non-compliance with the statutory intervals.

The coexistence of these divergent approaches demonstrates the absence of a uniform interpretative standard regarding the legal effects of failure to observe the

statutory review time limits. This divergence indicates a deeper structural uncertainty within the Romanian legal framework concerning the function of periodic judicial control, particularly whether it operates as a mechanism of strict temporal regulation or merely as a flexible procedural safeguard.

This lack of uniformity also raises concerns regarding legal certainty, as the effectiveness of precautionary measures depends not only on their initial justification but also on the predictability of their temporal control.

### **3.2. The temporal reference point for calculating the review period**

Judicial practice reveals divergent interpretations regarding the moment from which the review period provided under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure begins to run, particularly in relation to the periodic judicial control of precautionary measures.

The identification of this starting point is crucial, as it directly determines the intensity and frequency of judicial intervention, thereby influencing the balance between efficiency of criminal proceedings and protection of property rights.

A first jurisprudential orientation considers that the relevant temporal reference point is the date on which the precautionary measure is initially imposed. Within this interpretation, the assessment of the proportionality of the measure is carried out by reference to the entire duration of the interference with property rights, viewed as a continuous situation extending from the moment of imposition. In this view, the passage of time does not, in itself, generate legal consequences capable of affecting the validity of the measure, as the interference is

<sup>9</sup> Bucharest Court of Appeal, Criminal Division II, Decision no. 857/2025, available on [www.rejust.ro](http://www.rejust.ro) (RJ 659568583).

considered unitary and continuous, irrespective of subsequent procedural acts<sup>10</sup>

In support of this approach, courts emphasize that the proportionality analysis must be conducted in concreto, taking into account the complexity of the criminal case, the procedural stage, and the conduct of the parties. The duration of the precautionary measure is thus justified by the specific circumstances of the proceedings, without being fragmented by successive judicial verifications.

A second jurisprudential orientation, however, considers that the review mechanism established under Article 250<sup>2</sup> has a cyclical and successive nature. According to this interpretation, the relevant temporal reference point is represented by the last judicial review of the measure or by the last procedural act through which the precautionary measure was maintained or confirmed<sup>11</sup>.

Within this framework, each judicial review generates a new procedural interval, requiring a renewed assessment of the necessity and proportionality of the measure in light of the factual and procedural circumstances existing at that moment. Consequently, the mechanism of periodic review is understood as an autonomous procedural safeguard, independent from the initial moment of imposition of the measure.

This divergence of jurisprudential approaches reflects the absence of a uniform interpretative standard in relation to the starting point of the review period under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure, generating uncertainty regarding the temporal framework of judicial control and, implicitly, the stability of precautionary measures.

### 3.3. The scope and intensity of judicial review

Another important aspect in which judicial practice does not appear fully uniform concerns the intensity of judicial review exercised by courts when assessing the legality and merits of precautionary measures under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure. Although the legal framework requires the examination of both legality and merits, case law reveals the existence of two distinct jurisprudential orientations that reflect different understandings of the role of the court within the review procedure.

This divergence highlights the absence of a clearly defined standard regarding the intensity of judicial review, which results in variability in the protection of property rights depending on the interpretative approach adopted by national courts.

Within a first orientation, courts conduct a substantive and individualized reassessment of the necessity and proportionality of the precautionary measure, in relation to the current procedural situation and any newly intervened circumstances. This approach presupposes that judicial review is dynamic in nature and must reflect the evolution of the criminal proceedings, including changes in the evidentiary framework and procedural context.

In this respect, judicial control involves a concrete and updated examination of whether the factual and legal grounds that initially justified the measure continue to exist. Courts adopting this approach consider that the passage of time and procedural developments may significantly affect the

<sup>10</sup> Bucharest Tribunal, Criminal Divion, Ruling of 22 December 2023, available on [www.rejust.ro](http://www.rejust.ro) (RJ 869482356).

<sup>11</sup> Bucharest Court of Appeal, Criminal Division I, Decision no. 316/2024, available on [www.rejust.ro](http://www.rejust.ro) (RJ 8635d5498).

justification of the measure, requiring a renewed assessment of its necessity.

This duality reflects an underlying tension between a dynamic model of judicial control, oriented towards continuous reassessment, and a static model focused primarily on the persistence of the initial legal conditions.

This approach is illustrated in the case law of the Alba Iulia Court of Appeal, which held that no new factual elements had intervened capable of altering the factual situation or the justification of the precautionary measures. Similarly, the court analysed whether defence arguments and procedural developments could justify a different solution regarding the maintenance or partial lifting of the measure<sup>12</sup>.

Such inconsistencies indicate that judicial review under Article 250<sup>2</sup> is not applied as a uniform procedural mechanism, but rather as a context-dependent assessment, which may weaken the predictability of judicial outcomes.

Within another jurisprudential orientation, courts limit the review under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure to a formal examination of whether the grounds that initially justified the measure continue to exist, without conducting a full reassessment of proportionality or necessity. This perspective is grounded in the idea that precautionary measures function as procedural safeguards whose continuity depends on the persistence of the initial conditions that justified their imposition.

In this view, judicial control is mainly formal, focusing on the legality of the initial measure and the absence of changes that would render it unjustified, without engaging in a detailed reassessment of evidentiary elements or proportionality considerations.

In support of this approach, case law of the Galați Tribunal emphasizes the preventive function of precautionary measures, holding that such measures remain justified as long as the original conditions that warranted their imposition have not changed<sup>13</sup>. This interpretation highlights the need to avoid excessive judicial interference that could undermine the effectiveness of the measure during ongoing criminal proceedings.

The presence of these two jurisprudential orientations demonstrates a lack of full uniformity in judicial practice regarding the intensity of review, with direct implications for the predictability and coherence of judicial protection in this field.

### 3.4. The proportionality assessment

Another aspect in which judicial practice reveals differences in approach concerns the manner in which courts assess the proportionality of precautionary measures in relation to the estimated damage in the case.

According to Article 249 of the Romanian Code of Criminal Procedure, precautionary measures are intended to ensure the repair of damages or the execution of a criminal fine, which presupposes an implicit correlation between the value of the seized assets and the extent of the damage. Consequently, the periodic review provided for by Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure should also include an assessment of proportionality. However, case law shows divergent approaches in this respect.

In a first line of case law, courts carry out an effective and concrete analysis of the value ratio between the seized assets and the estimated prejudice. In this approach, judges

<sup>12</sup> Alba Iulia Court of Appeal, Criminal Division, Decision no. 10/2026, available on [www.rejust.ro](http://www.rejust.ro).

<sup>13</sup> Galați Tribunal, Criminal Division, Ruling of 21 February 2025, available on [www.rejust.ro](http://www.rejust.ro) (RJ g8474g8d4).

explicitly verify whether the value of the assets subject to seizure exceeds the amount of the damage and whether the measure remains justified in light of its purpose.

For example, the Cluj Tribunal held that even where the value of immovable assets subject to seizure may exceed the alleged prejudice, the restriction on property rights remains proportionate as long as it serves the objective of securing the recovery of the damage<sup>14</sup>. Similarly, the Bucharest District Tribunal analysed the impact of partial payments made by the defendant, finding that the remaining unpaid obligations justified the maintenance of the precautionary measure as proportionate to the remaining damage<sup>15</sup>. Likewise, the Iași Tribunal held that the value of the seized assets was reasonably correlated with the estimated damage, confirming compliance with the proportionality requirement under Article 1 of Protocol No. 1 to the ECHR<sup>16</sup>.

In contrast, in other cases, courts maintain precautionary measures without conducting a detailed comparative analysis between the value of the seized assets and the alleged damage. In such situations, judicial reasoning is limited to a general verification of legality and necessity, without an explicit and detailed proportionality assessment. For instance, the Sector 3 District Court of Bucharest upheld the measure despite allegations of disproportionality, without a structured analysis of the value ratio<sup>17</sup>. Similarly, the Constanța District Court maintained the seizure measure based on a general assessment of its legality and purpose, without a detailed examination of proportionality<sup>18</sup>.

This inconsistency in judicial reasoning highlights a broader structural issue in the application of proportionality review, namely the absence of a stable methodological framework capable of ensuring uniform assessment across cases involving precautionary measures. As a result, proportionality tends to oscillate between a strict evidentiary comparison of values and a more abstract legality-based reasoning, which may affect the predictability of judicial outcomes in this field.

This divergence in judicial practice demonstrates the lack of a uniform standard in assessing proportionality in precautionary measures, with direct implications for the consistency and predictability of judicial protection in this field.

### 3.5. The duration of precautionary measures in the proportionality analysis

Another aspect highlighting differences in judicial practice concerns the relevance of the duration of precautionary measures within the review carried out under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure. Although the Code does not establish a maximum duration for such measures, their provisional nature and the obligation of periodic review implicitly require an assessment of proportionality in light of the passage of time. In principle, the maintenance of a precautionary measure over an extended period must be justified by a current and concrete necessity, assessed in relation to the purpose pursued.

<sup>14</sup> Cluj Tribunal, Criminal Division, Ruling no. 1/2024, available on [www.rejust.ro](http://www.rejust.ro).

<sup>15</sup> Bucharest Tribunal, Criminal Division II, Ruling of 09 June 2023, available on [www.rejust.ro](http://www.rejust.ro) (RJ 4e3486d57).

<sup>16</sup> Iași Tribunal, Criminal Division, Ruling of 20 February 2025, available on [www.rejust.ro](http://www.rejust.ro) (RJ ee56de268).

<sup>17</sup> Sector 3 District Court of Bucharest, Ruling of 11 February 2026, available on [www.rejust.ro](http://www.rejust.ro) (RJ 73e927798).

<sup>18</sup> Constanța District Court, Ruling no. 661/2025, available on [www.rejust.ro](http://www.rejust.ro).

In a first line of case law, courts consider the duration of the measure as an autonomous element within the proportionality test, holding that the passage of a significant period of time requires a rigorous reassessment of both the necessity and the continued justification of the interference with property rights.

Thus, in a ruling of 10 November 2021, the Sibiu Tribunal held that approximately ten years had passed since the imposition of the seizure measure, which required a renewed proportionality analysis in relation to the current value of the seized assets and justified the ordering of a judicial expert assessment in this regard<sup>19</sup>. The duration of the measure was therefore considered the triggering factor for a more in-depth review of the interference.

Similarly, in a Ruling of 5 December 2023, the Bistrița-Năsăud Tribunal examined the duration of the precautionary measure and found that it had not exceeded reasonable limits, thus confirming its continued proportionality<sup>20</sup>.

According to this approach, the passage of time is not merely a contextual element, but a relevant criterion in assessing whether the measure continues to correspond to its intended purpose and whether the interference with property rights remains proportionate.

In a second line of case law, the duration of the precautionary measure is not treated as an autonomous criterion of proportionality, but rather as a contextual element. Courts in this orientation consider that the passage of time alone cannot justify lifting or modifying the measure, provided that the initial conditions that justified its imposition still exist.

Thus, in a ruling of 14 December 2023, the Alba Iulia Court of Appeal held that the duration of the measure does not automatically affect its legality, especially where the original grounds for imposing it remain valid<sup>21</sup>. Similarly, in a ruling of 21 January 2026, the Dâmbovița Tribunal stated that the length of the proceedings is justified by the complexity of the case and does not, in itself, render the measure disproportionate<sup>22</sup>.

In this view, the duration of the measure is subordinated to the general assessment of legality and necessity, without constituting a decisive factor in the proportionality analysis.

The coexistence of these approaches reveals a non-uniform judicial practice regarding the relevance of time in the proportionality assessment of precautionary measures, with direct consequences for the predictability of judicial control and the protection of property rights.

This divergence becomes particularly significant in relation to long-standing precautionary measures, where the persistence of the interference over time may progressively alter the balance between the public interest and the individual right to property, potentially leading to a situation in which an initially justified measure no longer satisfies the requirements of proportionality.

### **3.6. The relevance of procedural phase changes in calculating the review period**

Within judicial practice, the moment of referral to court is sometimes treated as an autonomous reference point in determining the review period under Article 250<sup>2</sup> of the

<sup>19</sup> Sibiu Tribunal, Criminal Division, Ruling of 10 November 2021, available on [www.rejust.ro](http://www.rejust.ro) (g845d43d3).

<sup>20</sup> Bistrița-Năsăud Tribunal, Criminal Division, Ruling no. 157/2023, available on [www.rejust.ro](http://www.rejust.ro).

<sup>21</sup> Alba Iulia Court of Appeal, Criminal Division, Ruling no. 325/2023, available on [www.rejust.ro](http://www.rejust.ro).

<sup>22</sup> Dâmbovița Tribunal, Criminal Division, Ruling of 21 January 2026, available on [www.rejust.ro](http://www.rejust.ro) (RJ 46934g458).

Romanian Code of Criminal Procedure. In this approach, the one-year term is calculated separately from the indictment stage, the change of procedural phase being considered relevant for the commencement of a new verification interval specific to the trial phase.

Thus, in a Ruling of 17 July 2024, the Bucharest Tribunal analysed the calculation of the one-year period from the moment of referral to court with the indictment, using this moment as the starting reference for judicial review<sup>23</sup>. Likewise, the Bucharest Court of Appeal confirmed that the maintenance of precautionary measures must be assessed in relation to the procedural framework established at the moment of referral to trial, including the parameters set out in the indictment.

In contrast, another line of case law considers that the change of procedural phase does not automatically reset the calculation of the review period. The obligation of verification is viewed as continuous, and the passage of time is assessed within the overall evolution of the criminal proceedings, rather than being linked to procedural “reset moments”.

In this sense, the Ilfov Tribunal has held that the time limits provided by Article 250<sup>2</sup> C. of the Romanian Code of Criminal Procedure are essentially recommendatory, emphasizing that judicial review must focus on the continued existence of the grounds for the measure and its proportionality throughout the proceedings<sup>24</sup>.

Overall, case law is not fully uniform regarding the relevance of procedural phase changes in determining the starting point of the review period. The divergence concerns not the existence of the obligation to periodically review precautionary measures, but rather the identification of the reference

moment for calculating the one-year interval, whether it is tied to distinct procedural stages or to a continuous procedural timeline.

This divergence confirms the absence of a stable interpretative framework for determining the starting point of the review period, which directly affects the predictability of judicial control over precautionary measures.

### 3.7. The provisional nature of precautionary measures

A constant element identified in the analysed case law is the affirmation of the provisional nature of precautionary measures. Thus, in a ruling of the Prahova Tribunal, the court expressly emphasised that precautionary measures are temporary and provisional in nature and cannot be maintained indefinitely, without an assessment of their purpose and proportionality in relation to the duration of the interference with the right of property. Although the court ordered the continuation of the measure, it proportionally limited it up to the amount of the remaining damage, considering that partial payment justified the adjustment of the seizure, without removing the grounds that led to its imposition<sup>25</sup>.

In a similar case, it was held that precautionary measures, by their nature, are not permanent, as they affect the very substance of the right of property, being a temporary measure of asset freezing imposed until the final resolution of the case. However, the court found that, in relation to the purpose of the measure and the

<sup>23</sup> Bucharest Tribunal, Criminal Division, Ruling of 17 July 2024, available on [www.rejust.ro](http://www.rejust.ro) (RJ 232ee5998).

<sup>24</sup> Ilfov Tribunal, Criminal Division, Ruling no. 790/2025, available on [www.rejust.ro](http://www.rejust.ro).

<sup>25</sup> Prahova Tribunal, Criminal Division, Ruling no. 108/2026, available on [www.rejust.ro](http://www.rejust.ro).

circumstances of the case, its duration had not exceeded a reasonable time<sup>26</sup>.

On the other hand, other decisions show that although the provisional nature of precautionary measures is consistently reaffirmed, it is not always used as an autonomous ground for lifting the measure. Some courts consider that the duration is justified by the complexity of the case and the nature of the accusations, finding that no unreasonable duration has been exceeded. In the same line, the Ilfov Tribunal held that the maintenance of the measure must be assessed through the persistence of the legal grounds and the necessity of securing the recovery of the damage, and not solely through the passage of time.

It follows that, although the provisional character of precautionary measures is consistently affirmed, its practical significance varies: in some decisions it operates as a real limitation on duration, while in others it is integrated into the proportionality analysis without constituting an independent reason for ending the measure.

The provisional nature of precautionary measures therefore operates not only as a theoretical principle, but also as a functional limit on their duration, requiring that their continued maintenance be justified by concrete and up-to-date procedural circumstances.

### **3.8. Solutions issued in the verification procedure**

Another analytical element emerging from the case law identified on the ReJust

platform concerns the typology of solutions issued in the verification procedure provided by Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure, namely the extent to which courts make use of the options offered by the legal text or, in practice, tend to limit themselves to maintaining the precautionary measure.

The analysis of the case law shows that the predominant solution is the maintenance of precautionary measures. Thus, the Mureș Tribunal held that the duration of the measure did not exceed a reasonable time, considering that this was justified by the complexity of the case and the nature of the accusations, and therefore ordered its continuation<sup>27</sup>. In the same sense, the Brașov Tribunal<sup>28</sup> maintained the precautionary measures following the referral to court by indictment, emphasizing the necessity of securing the recovery of the damage. The Onești District Court also found the legality and necessity of the measure, considering that the initial conditions that justified it continued to exist<sup>29</sup>.

On the other hand, orders for lifting or significantly modifying precautionary measures appear less frequently in the analysed jurisprudence. This indicates a certain tendency towards the preservation of the measure rather than its removal, especially where courts consider that the procedural grounds and the risk of prejudice recovery remain valid.

The analysed case law indicates a prevailing judicial tendency towards the maintenance of precautionary measures, with lifting or modification remaining exceptional and generally dependent on

<sup>26</sup> Bucharest Tribunal, Criminal Division I, Ruling of 05 October 2023, available on [www.rejust.ro](http://www.rejust.ro) (RJ 985953g85).

<sup>27</sup> Mureș Tribunal, Criminal Division, Ruling of 20 February 2025, available on [www.rejust.ro](http://www.rejust.ro) (RJ eeg7624d8).

<sup>28</sup> Brașov Tribunal, Criminal Division, Ruling of 26 February 2025, available on [www.rejust.ro](http://www.rejust.ro) (RJ 7289d3836).

<sup>29</sup> Onești District Court, Ruling no. 1032/2025, available on [www.rejust.ro](http://www.rejust.ro).

specific factual developments, which confirms a cautious but relatively restrictive approach to judicial review under Article 250<sup>2</sup>.

### **3.9. European Court of Human Rights (ECtHR) case law and the proportionality standard in the matter of precautionary measures**

Precautionary measures, by their nature, constitute interferences with the right to property and are therefore subject to the requirements of Article 1 of Protocol No. 1 to the European Convention on Human Rights. The case law of the European Court of Human Rights has consistently held that any interference must satisfy three cumulative conditions: it must be provided by law, pursue a legitimate aim in the general interest, and strike a fair balance between the general interest and the protection of individual rights, in accordance with the principle of proportionality<sup>30</sup>.

In *Raimondo v. Italy*, the Court held that seizure measures ordered in the context of criminal proceedings may be compatible with the Convention only insofar as they do not impose an excessive individual burden on the applicant. The duration of the measure, its scope, and the relationship between the value of the seized assets and the pursued aim are relevant factors in the proportionality assessment<sup>31</sup>.

Similarly, in *Forminster Enterprises Limited v. the Czech Republic*, the Court emphasised that the prolonged maintenance of a freezing order, without periodic and effective review of its necessity, may lead to a breach of Article 1 of Protocol No. 1. The Court stressed the need for continuous reassessment of whether the measure

remains justified in light of the evolving circumstances of the case<sup>32</sup>.

The Court's approach emphasises that the mere existence of criminal proceedings cannot justify the indefinite continuation of precautionary measures, as judicial control must remain effective and capable of ensuring a genuine and current proportionality assessment throughout the entire duration of the interference.

The ECtHR case law consistently reinforces the idea that proportionality must be assessed as a dynamic requirement, evolving throughout the duration of the interference, rather than at the moment of its initial imposition.

Recent case law further confirms that the mere existence of ongoing criminal proceedings does not automatically justify the indefinite maintenance of precautionary measures. A current and individualized assessment of proportionality is required throughout the entire duration of the interference.

When compared with national jurisprudence, it appears that those orientations which emphasise the duration of the measure, the relationship between the seized assets and the alleged prejudice, and the provisional nature of the measure are more closely aligned with the standards developed by the European Court of Human Rights. By contrast, approaches limited to a formal verification of the initial conditions risk reducing judicial review to a purely formal mechanism, insufficient to prevent disproportionate interferences with property rights.

<sup>30</sup> European Court of Human Rights, general principles under Article 1 of Protocol No. 1 to the ECHR

<sup>31</sup> ECtHR, *Raimondo v. Italy*, judgment of 22 February 1994, available on <https://hudoc.echr.coe.int/eng>.

<sup>32</sup> ECtHR, *Forminster Enterprises Limited v. the Czech Republic*, judgment of 9 October 2008, available on <https://hudoc.echr.coe.int/eng>

#### 4. Conclusions

The analysis of judicial practice concerning the verification of precautionary measures under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure reveals a legal framework that, while formally designed to ensure control over the proportionality and necessity of such measures, has generated a fragmented and non-uniform application in practice. This fragmentation affects both legal certainty and the predictability of judicial intervention in matters involving interference with the right to property.

One of the main sources of divergence lies in the legal understanding of the verification time limits. While some courts treat these time limits as binding and capable of producing legal consequences in case of non-compliance, others regard them as merely procedural benchmarks, without automatic effects on the continuation of the measure. This duality contributes to an inconsistent approach regarding the temporal limits of precautionary measures.

Another area of inconsistency concerns the starting point from which the verification period is calculated. Judicial practice oscillates between considering the initial imposition of the measure as the relevant moment and treating the most recent judicial review as a new reference point. This lack of uniformity directly influences the rhythm and predictability of judicial control.

Significant differences are also observed in the intensity of judicial review. In some cases, courts carry out a genuine reassessment of necessity and proportionality, taking into account the evolution of the case and any new circumstances. In other cases, the review remains largely formal, focusing mainly on whether the initial grounds still exist, without a deeper analysis of proportionality in concreto. This leads to different levels of

protection of property rights depending on the approach adopted.

The same variability appears in relation to proportionality analysis, particularly with regard to the relationship between the value of the seized assets and the alleged prejudice. While certain courts engage in a concrete balancing exercise, others limit themselves to a general assessment of legality and necessity, without a detailed economic comparison.

Although precautionary measures are consistently described as temporary in nature, their provisional character is interpreted differently in practice. In some cases, this principle functions as a real constraint requiring periodic justification of the measure, while in others it remains largely declarative, without producing independent legal effects on the duration of the measure.

Similarly, judicial approaches differ regarding the relevance of procedural developments for the continuation of the measure. Some courts consider that procedural evolution requires continuous reassessment, while others maintain that the existence of the initial conditions is sufficient for the measure to persist, regardless of procedural changes.

Overall, judicial practice shows a clear tendency towards maintaining precautionary measures rather than lifting or modifying them, with courts generally preferring to preserve the measure whenever the original justification has not been explicitly removed. This tendency reflects a cautious approach but also contributes to the limited use of corrective judicial solutions.

A more structured and harmonised approach, either through legislative intervention or consistent higher court guidance, would significantly enhance legal certainty and ensure a predictable and proportionate application of precautionary measures in Romanian criminal proceedings.

The judicial review of precautionary measures under Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure must be understood as an expression of the proportionality principle, requiring a continuous and dynamic assessment of the balance between the public interest pursued in criminal proceedings and the individual right to property. In this context, national courts are required to ensure that precautionary measures remain strictly necessary and proportionate throughout their entire duration, in line with the standards developed by the European Court of Human Rights. The ECtHR jurisprudence reinforces the obligation of effective and periodic judicial control, confirming that the mere existence of criminal proceedings cannot justify the indefinite maintenance of such

measures without a concrete and current proportionality assessment.

These inconsistencies highlight the need for a more coherent and stable interpretative framework capable of ensuring the uniform application of Article 250<sup>2</sup> of the Romanian Code of Criminal Procedure. Strengthening judicial guidance, whether through higher court jurisprudence or legislative clarification, would enhance legal certainty and contribute to a more predictable and effective system of judicial control over precautionary measures. Ultimately, a consistent proportionality-based approach, aligned with the standards developed by the European Court of Human Rights, is essential to safeguarding both the effectiveness of criminal proceedings and the protection of individual property rights.

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