

# THE PRE-TRIAL CHAMBER JUDGE

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## Abstract

*The importance of this work lies in important changes in the new Code of Criminal Procedure, amendments justified by the new realities of a democratic society in which criminal procedural rules must be adapted according to the daily realities in the achievement of justice. The purpose of the paper is given by the need of approaching at a theoretically level the institution of The Pre-Trial Chamber Judge, given that so far there have not been developed any works on the subject. This paper addresses both practitioners and litigants.*

**Keywords:** *judge, Pre-Trial Chamber, legality of sending trial ordered by the prosecutor, the legality of evidence and to perform procedural acts of the criminal investigation, complaints against non-traceable solutions or not to proceed in judgment*

## 1. Introduction

For reasons of simplification and systematization of the trial, the Romanian legislator has introduced in the new Code of Criminal Procedure, art. 3, providing the principle of separation of judicial functions. Judicial body exercising the verification of the legality of the arraignment or exculpation is the Pre-Trial Chamber Judge.

In the old criminal procedure law, between 1953 and 1957, there was the institution "preparatory meeting" governed by art. 269-280 of the Criminal Procedure Code adopted in 1936, amended by the Decree no. 506 of 1953, published in Official Gazette no. 53 of 14 December 1953. Preparatory meeting held at the end of the examination phase, while in the first instance to go to trial only those cases in which evidence was necessary, sufficient and legally produced. Article 272 established the judge who was to preside over the preliminary hearing required to study previously, detailed, the case file in the

light of the above. The panel of preparatory meeting was stiffer broader than pre-chamber judge having the power to order the prosecution, to return the case for prosecution or completion or restoration of disposal and termination dismissal of criminal proceedings, if it set one of the causes that prevented the beginning or continuation of criminal proceedings. With the arraignment, the court was ruling also over taking, maintaining, replacing or revoking of preventive measures, over taking the insurance measures, over any requests made by the parties, was fixing the place of trial and summon the parties, witnesses, experts and interpreters.

In the system of the Criminal Procedure Code of 1968, in force until 31 January 2014, there wasn't a separate procedure for verifying the legality of the arraignment or exculpation, procedural acts necessary for such checks being made by the first instance judge or judge resolve the

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complaint against solutions of exculpation under art. No. 278<sup>1</sup>.

The Pre-Trial Chamber Judge is a judge at the court competent to hear the case in the first instance according to the rules of substantive, territorial and personal jurisdiction established by law, without ruling on the merits of the case, verifies the legality of the procedure carried out by bodies prosecution and the legality of this data solutions to end criminal prosecution, on concerning the arraignment or the exculpation. These verifications are made to eliminate the vicious criminal acts, to comply with the fairness of the trial and to give a thorough and legal judgment.

Functional competence of the Pre-Trial Chamber Judge is provided by art. 54 Criminal Procedure Code, he fulfils the following tasks:

- a) verifies the legality of sending trial ordered by the prosecutor;
- b) verifies the legality of evidence and conduct procedures documents by the prosecution;
- c) solves complaints against non-prosecuting or exculpating solutions;
- d) resolves other cases provided by law.

The composition of the pre-trial chamber panels is established by the Law no. 304/2004<sup>2</sup> on judicial organization, as amended and supplemented. Thus, according to art. no. 54, cases given by law in the jurisdiction of first instance of the court, the court of law and the court of appeal shall be heard by a panel of one judge, and appeals against judgments in criminal matters of Pre-Trial Chamber Judges from the courts and the courts of law

shall be resolved by a panel of one judge. Article 31 para. (1). b) shows that for the complaints lodged against the decisions of the Pre-Trial Chamber Judges in the Courts of Appeal and the Military Court of Appeal, the panel consists of one judge.

According to art. 31<sup>1</sup>, in the cases given, by law, in the jurisdiction of first instance of the High Court of Cassation and Justice, the pre-trial chamber procedure is carried out by one of the three judges who form competent tribunal to hear the case in the first instance. Appeals against the decisions of the Pre-Trial Chamber Judges at the High Court of Cassation and Justice shall be settled in full by 2 judges, as art. 31 para. (1). d) says.

The pre-trial chamber panel is composed with a registrar, the procedure being carried out, usually without the prosecutor. The Code requires obligatory participation of the prosecutor in the situations when the judge decides on preventive measures, on the provisional application of safety measures of medical nature, on taking measures to protect a witness or the resolution of the appeal falls within the competence of the Pre-Trial Chamber Judge.

Unless incompatibility attracted the facts set out in art. 64 para. (1) Criminal Procedure Code we find that he is incompatible to judge in the pre-trial chamber the person who served, in the same case, as the prosecution or served as a judge of the rights and freedoms. The Code provides, however, in the Article 3 para. (3) and Art. 346 para. (7), that the Pre-Trial Chamber Judge is incompatible with the function of law in case<sup>3</sup>, unless he has

<sup>1</sup> Law no. 135/2010 on the Code of Criminal Procedure, published in the Official No. 486 of 15 July 2010 and amended by O.U.G. No. 3/2014 and Law no. 255/2013.

<sup>2</sup> Law no. 304/2004 was published in the Official No. 827 of 13 September 2005.

<sup>3</sup> Prior to the amendment of the Code of Criminal Procedure Law. 255/2013, art. 64 para. (4) provides that "The Judge of Rights and Freedoms and the Pre-Trial Chamber Judge cannot participate in the same case, the judgment on the merits or remedies." Article 3. (3) show that the same criminal conduct, exercising judicial disposition of fundamental human rights and freedoms is compatible with the Legality reference of sending or not sending to court.

resolved the complaint against non-prosecuting or exculpating solutions, ruling under art. 341 para. (7) point 2 letter c). Moreover, as a rule, the Pre-Trial Chamber Judge begins performing the function of law in question, according to art. 346 para. (7). However, the Pre-Trial Chamber Judge is incompatible to resolve the appeal brought against the decision given by himself, as shown in the art. 64 para. (6). Instead, he is compatible to conduct the pre-trial chamber works again when case gets back to court after it returned at the prosecutor because he, under art. 346 para. (3), failed to adjudicate.

Abstention or recusal of a Pre-Trial Chamber Judge shall be settled by a Pre-Trial Chamber Judge from the same court, in accordance with art. 68 para. (1), but the panel in front of which the objection was made with the participation of the challenged judge, decides on preventive measures.

The Pre-Trial Chamber Judge operates during trial, at his onset, being notified by the prosecutor who ordered the prosecution by indictment. He shall operate outside the trial phase, when hearing the complaint against filing solution or waiver of prosecution, arranged by order or indictment. The Pre-Trial Chamber Judge can be approached by the administration of the detention in order to establish termination of law and the immediately release of the person remanded, by the specialist doctor to raise the measure obliging the defendant to medical treatment or by the doctor physician to commission an expert forensic psychiatric hospital care to raise interim measure. At the request of the civil party may take measures in order to repair the damage caused by the offense and the enforcement of the legal costs.

These ways of investing a court judge are the primary modes by which the Pre-Trial Chamber Judge is being seised, but he can be seised also on derived paths through

the controller to the jurisdiction or competence. The Criminal Procedure Code contains conflicting provisions on the transferring of the case during the Pre-Trial Chamber procedure, art. 72 para. (1), following the completion brought by Law no. 255/2013, which provides that in the course of the pre-trial chamber no one can apply for resettlement. Instead, art. 75 para. (2) and (3) show that the displacement can be ordered in this proceeding, these inconsistencies will be rectified at the next change.

Although the Pre-Trial Chamber Judge is starting the judgment, the court is not seised by him through his decision, but by the indictment issued by the prosecutor. As an exception, the court judge is seised with the conclusion of the Pre-Trial Chamber Judge when he, addressing the complaint against filing solutions or waiver of prosecution, according to art. 341 para. (7) point 2 letter c) Criminal Procedure Code, admits the complaint, dissolves the solution and starts the trial on the facts and persons in the criminal investigation has been made criminal action when administered legally sufficient evidence to prosecute case.

The Pre-Trial Chamber Judge is solving, not judging. He does not rule on the merits, the power to decide on penal action only returning to the court. He cannot move, extend or extinguish the criminal action or civil action cannot solve.

Verifying the legality of sending trial ordered by the prosecutor, the Pre-Trial Chamber Judge examines the formal conditions of the indictment, the jurisdiction of the body that drafted a complaint, and if it was started the prosecution for the accused person. On the legality of evidence, he verifies whether the samples were taken during the trial, after the prosecution, whether the principle of loyalty of evidence was respected or whether they have complied with the provisions concerning

mandatory legal assistance of the accused or the suspect. In relation to the lawfulness of procedural documents by the prosecution, he takes into account the compliance of the competence of the criminal investigation and the conditions of the form of procedural documents. The Pre-Trial Chamber Judge decides preliminary issues raised by both the prosecutor and the parties and the issues that he raised in the motion.

Following these verifications, the Pre-Trial Chamber Judge gives the following solutions:

- returns the case to the prosecution if the indictment is issued irregularly, and no irregularity has been remedied by the prosecutor in the term that was given for this purpose, if the irregularity attracts the impossibility to establish the boundaries of the object or judgment or if excluded all evidence gathered during the investigation or prosecutor himself sought restitution case or does not respond within the time limit to remedy irregularities act of referral.

- opens the trial, in all other cases in which he found irregularities document instituting ruled one or more samples taken or sanctioned by absolute nullity relative or criminal acts carried out in violation of the law.

Exercising the verification of legality of the exculpation, according to art. 341 para. (6) Criminal Procedure Code, in cases where it was not ordered the initiation of criminal proceedings, the Pre-Trial Chamber Judge may order one of the following solutions:

- a) dismisses the complaint, as late or inadmissible or, as applicable, as unfounded;

- b) admits the complaint, appeal and send dissolved solution, sends the case to the prosecutor motivated to start or complete the prosecution or, as applicable, to bring criminal action and full prosecution;

- c) admits the complaint and under the law of the solution changes the classification

appeal, if this does not create a situation worse for the person who made the complaint.

In cases in which it was ordered the initiation of criminal proceedings, the Pre-Trial Chamber Judge, in accordance with art. 341 para. (7) Criminal Procedure Code:

- 1) Rejects the complaint as late or inadmissible;

- 2) Verifies the legality of evidence and criminal prosecution, exclude evidence unlawfully taken or, where appropriate, sanctioned by nullity criminal acts carried out in violation of the law and:

- a) dismisses the complaint as unfounded;

- b) admits the complaint, appeal and sends dissolved solution before the prosecutor motivated to complete prosecution ;

- c) admits the complaint, dissolves the solution and starts the trial on the facts and persons in the criminal investigation was set in motion proceedings, when given sufficient legal evidence, sending the file to the random distribution;

- d) allows the complaint and under the law of the solution changes the classification appeal, if this does not create a situation worse for the person who made the complaint.

The Pre-Trial Chamber Judge also holds adjacent merits following activities:

- 1. Settles abstention or recusal Registrar participating in the pre-trial chamber procedure (art. 68 par. (4));

- 2. Automatically or on the notification of the prosecutor orders witness protection measures referred to in art. 127, if the state of danger arose during the pre-trial chamber procedure (art. 126 par. (7));

- 3. Takes preventive measures of judicial review, judicial review on bail , house arrest and arrest (art. 203 par. (2) and (3)) and issues the warrant;

4. Verifies, by default, the legality and validity of the preventive measure taken against the defendant prosecuted by indictment (art. 207 par. (2));

5. Automatically, verifies periodically, but not later than 30 days that remain grounds for the preventive arrest and house arrest (art. 207 par. (6));

6. Revokes remand and release the defendant, if not arrested in another case (art. 207 par. (5));

7. Decides over a preventive measure to replace judicial or judicial review on bail with house arrest or detention, if the duration of the measure, the defendant breached in bad faith his obligations or there is a reasonable suspicion he intentionally committed a new crime for which he was the initiation of criminal proceedings against him (art. 215 para. (7) and art. 217 para. (9)). In some cases, has to replace house arrest with detention (art. 221 para. (11));

8. Decides on imposing new obligations on the defendant who is serving a preventive measure judicial or replacement or termination of the initial ordered (art. 215 par. (9)). May order during house arrest defendant to permanently wear an electronic surveillance (art. 221 para. (3));

9. At the motivated request of the accused under house arrest, he permits him to leave his estate to be able to present in some places (art. 221 par. (6));

10. Can order the provisional medical treatment of the defendant, if in case provided by art. 109 para. (1) of the Criminal Code (art. 245 par. (1)) and the lifting of the measure;

11. Takes precautionary measures, consisting of unavailability of movable or immovable property, by establishing a lien on them to avoid concealment, destruction, disposal or removal of tracking goods may be confiscated or extended confiscation or which serve the enforcement of the fine or court costs or to repair damage caused by the offense (art. 249 par. (1));

12. Requires competent organ notation mortgage on property seized (art. 253 par. (4) and (5));

13. Decides to return the things lifted from the suspect, defendant or any person who has received them in order to keep them, if they are shown to be the property of others or have been taken unjustly from its detention (art. 255 para. (1));

14. Heads obvious clerical errors in the content of procedural documents that we prepared (art. 278 par. (1));

15. Applies judicial misconduct penalty during the pre-chamber procedure (art. 284);

16. At the prosecutor notification, in case of filing, takes special security measure of forfeiture and decide on the total or partial dismantling of a document (art. 315 par. (2) letter c) and d));

17. Decides on the legality and validity of the ordinance ordering the reopening prosecution, confirming or infirming it (art. 335 par. (4));

18. Appoints a mandatory for legal person among insolvency practitioners authorized by law, where the same act or acts related to criminal action set against the legal representative of the legal person, and this has not appointed a trustee to represent (art. 491 par. (3));

19. Can take preventive measures against the legal person (art. 493);

20. Establishes unlawfulness of imprisonment, to repair the damage caused by unlawful deprivation of liberty in criminal proceedings (art. 539 par. (2));

21. Enforces rulings that ordered safety measures, precautionary measures and preventive measures (art. 553 par. (4));

22. Appoints a lawyer in cases of mandatory legal assistance provided in art. 91.

The Pre-Trial Chamber Judge operates in the in the council chamber in a closed hearing and just the resolution of the appeal

against his judgment takes place in a public procedure, as required by art. 425<sup>1</sup> par. (5).

The Pre-Trial Chamber Judge operates in the beginning phase of trial proceedings expeditiously, the law imposing a maximum period of 60 days from the date of registration of the case to the court, to determine whether proceedings can begin. If the defendant is serving a preventive measure, the Pre-Trial Chamber Judge shall submit the matter to the court at least five days before the expiration of the preventive measure, according to art. 208 para. (1) Criminal Procedure Code.

In carrying out his duties, the Pre-Trial Chamber Judge has the right to know the true identity of the undercover investigator and contributor to professional secrecy, as required by art. 149 para. (2) Criminal Procedure Code.

The Pre-Trial Chamber Judge rules by a motivated conclusion, but we consider that he resolves the jurisdiction by sentence, according to art. 370 para. (1), as it is an act by which the court is disinvesting without hearing the case.

Against a decision given by a judge in the pre-trial chamber procedure, the prosecutor and the defendant may appeal on how to handle requests and exceptions raised by them, and against the solutions given at the end of the procedure, in accordance with art.

347 of the Criminal Procedure Code. The procedure for resolving the complaint against non-prosecuting or exculpating solutions ordered by the prosecutor, the prosecutor and the defendant may appeal only against the conclusion in which the complaint is accepted, he dissolves the solution and starts the trial in the requirements of art. 341, para. (7), point 1, letter c), of how to handle exceptions on the legality of evidence and criminal prosecution, according to art. 341 para. (9). Instead, it cannot be appealed the decision through which he declined jurisdiction, the conclusion ordering a witness protection measures or the conclusion which dismissed the complaint in accordance with Art. 340 or the conclusion which admitted the complaint with the consequence of sending the case to the prosecutor.

### Conclusions:

We consider useful the work done by the Pre-Trial Chamber Judge, given the fact that it will avoid prolongation of the trial due to the illegality of acts of criminal conduct or violation of evidence during the criminal investigation, which hindered judicial investigation, leading to delays of criminal cases and violations of the right to a fair trial.

### References

- Law no. 135/2010 on the Code of Criminal Procedure, published in the Official No. 486 of 15 July 2010 and amended by O.U.G. No. 3/2014 and Law no. 255/2013
- Law no. 304/2004 that was published in the Official No. 827 of 13 September 2005
- The Code of Criminal Procedure of 17 March 1936, published in the Official No. 66 of 19 March 1936 and amended by the Decree no. 506 published in the Official No. 53 of 14 December 1953.
- The Code of Criminal Procedure of 1968 amended by the Law no. 15/1969, published in the Official No. nr. 79-79 bis of 21 June 1968.