THE PRELIMINARY CHAMBER – MANAGEMENT OF JUSTICE AND HUMAN RIGHTS PERSPECTIVE. EVOLUTION[1]

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Abstract

The preliminary chamber procedure has been introduced by the new criminal procedure code (Law no. 135/2010). Without being entirely new in the Romanian Law, the institution of the preliminary chamber was seen both as an improvement of the administration of justice and the respect of human rights. The present study is aiming to establish to what degree the legal rules, as designed by the legislator, reach the purpose they were designed for. The research is based on the jurisprudence of the European Court of Human Rights in cases against Romania as well as against other contracting states. Also, recent national jurisprudence is being considered. Some issues, as influence of other procedure rules on the duration of the preliminary chamber procedure, the limits of the findings of the preliminary chamber judge and the compatibility of some of the procedure rules with the right to a fair trial are discussed.

Key Words: *preliminary chamber, criminal law, administration of justice, human rights, procedure.*

1. Introduction

When trying to establish the reasons why the preliminary chamber was introduced by the New Code of Criminal Procedure (NCCP) (Law no.135/2010), we firstly notice that they are mainly of managerial nature. From the law's explanatory memorandum one can deduce that this institution is aimed at creating a modern legislative framework, which will *eliminate the excessive length of proceedings before the court.* Also, it is stated that in this way the premises for a speedy judgment based on merits are laid, since the objections regarding the legality of the indictment and of the adduction of evidence can be solved during the preliminary chamber. The statement of reasons for Law no. 255/2013 for the implementation and amendment of Law no.135/2013 shows even more evidently that the purpose was to create a legal framework which would ensure that the criminal trial was faster and more efficient, and as such,

[1] The article contains the work presented at the 1st „*Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective*", held in Bucharest on November 21st 2014, and submitted for publication in the conference volume. It also refers to the decisions of the Constitutional Court on the subject, that were published after the presentation.

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much less expensive. Thus we see that the essential reason for introducing the preliminary chamber was a better management of costs in order to create a more efficient public service regarding criminal justice.

There was also a human rights perspective taken into consideration. Again, the explanatory memorandum mentions that this institution is meant to eradicate some of the deficiencies that led to decisions against Romania passed by the European Court of Human Rights for the exceeding length of the criminal trial. The same idea is reiterated in the statement of reasons of Law no. 255/2013, where it is established that a balance must be struck between the requirements for an efficient procedure, protection of basic procedural rights and the uniform way in which the principles regarding equitable proceedings during the criminal trial are respected.

Although the law refers to the preliminary chamber as a new and innovative institution, we must observe that it is not completely unprecedented in Romanian law. In 1959, an amendment to the 1936 Code of Criminal Procedure [2] introduced the "preliminary hearing". It was modified by Law no.3/1056 and then abrogated through Decree no.473/1957.

2. Reasonable length of proceedings

We have shown that one of the scopes for this provision was to guarantee the right to a reasonable length of proceedings, in accordance with Article 6 of the Convention for Human Rights. The evaluations carried out during the preliminary chamber were meant to eliminate those situations when, after proceedings before the court had been on the way for some time, the judge would find it necessary to return the file to the investigative bodies to be completed or to gather again evidence that had been unlawfully adduced. These matters, until now, were discussed during the trial, before the indictment was read. The judge would have to assess the legality of the bill of indictment, according to article 300 of the 1968 Code of Criminal Procedure. This was a strictly formal evaluation, when the judge would look only if the bill of indictment contained all the dispositions listed by the law and if it had been approved by the chief prosecutor of the prosecutor's office. This would be a separate and preliminary stage to the moment when the judge could hear objections regarding acts of criminal investigation, based on article 332 of the Code of Criminal Procedure. The outcome of both moments could be that the file was returned to the prosecution's office, but the procedure was different. The new code has brought these two separate stages of the criminal trial together, under the control of the preliminary chamber judge. This was done in hope that the risk of reopening criminal investigations would occur before the trial was ongoing. However, in many cases, the reason why these matters took so long to resolve was that even for this the judge needed to rely on evidence. During the preliminary chamber, the judge had only the possibility of making a formal evaluation of all the aspects of the criminal investigation, since it is not possible to submit evidence at this point, aspect which was observed as being against the principles of a fair trial, as it will be shown in the following passages.

[2] The amendment was brought by Decree no.503/1953.

Even the preliminary chamber may give rise to situations that may take a longer amount of time to resolve. A series of objections can and must be raised at this point. For example, the preliminary chamber judge has to establish its competence before being able to proceed with any other objections or assessments. This step is essential since once settled, the competence also extends to the trial phase[3]. The court might find it is not competent and send the file to another court, which would have to start the notifications established by articles 344 and 345 all over again. Also, the interlocutory judgment can be contested. The maximum time limit for this phase, of 60 days, has only the nature of a recommendation, and there is no sanction prescribed if the provision is breached.

3. The right to an impartial tribunal

From the perspective of the right to an impartial tribunal, we notice that, currently, the preliminary chamber is considered to be a distinct stage during the proceedings[4]. This follows from the provisions of article 3 of the New Code of Criminal Procedure (NCCP), which establishes the judicial functions and the fact that these are separated. During the preliminary chamber the judge verifies the legality of the act of indictment. Assessing the grounds for indictment is specific, however, to the trial phase[5]. Although, according to the dispositions of Law no. 255/2013, an exception from the rules of incompatibility regarding the exercise of more judicial functions during the same trial was established, since the function of assessing the grounds for indictment has been declared compatible with the trial function. According to this law, the judge deciding in the preliminary chamber was also the one to analyze the merits. Initially, the NCCP stated that the task of deciding upon the rights and freedoms of the accused person during criminal investigations and of assessing the legality of the decisions for indictment or non-indictment were compatible among themselves, but not with the trial function. The changes made through Law no.255/2013 were mainly owing to reasons relating to the right to a fair trial. It was considered that it is in the interest of justice if the preliminary chamber and the trial phase were to be carried out by the same judge. We agreed with this argument. The preliminary chamber judge is not limited to checking the legality of the bill of indictment, but also of the adduction of the evidence gathered and of the acts of criminal investigation. By excluding or not evidence and acts of criminal investigation, the preliminary chamber judge would actually be establishing the elements that another judge would have to use in the process of deliberation and on which he must build his reasoning. It is very possible that when analyzing the file further in depth, the trial judge might have a different vision of the evidence, but would be restricted by what another has already decided to be useful or not[6]. This point of view was also embraced later by the

[3] L.F., Uşvat, *Este camera preliminară o fază distinct a procesului penal,* in "Dreptul" no.3/2014, p. 93.

[4] For a detailed approach: M. Udroiu, preface to *Codul de procedură penală (Legea nr. 135/2010),* C.H.Beck, 2010, Bucharest, p. IV and L.F., Uşvat, *op.cit.,* pp. 91-104.

[5] *Ibidem,* p. 94.

[6] Our opinion as presented at the 1st „*Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective*", on November 21st 2014, before the issuing of the reasoning of the decisions of the Constitutional Court.

Constitutional Court in the Decision no. 552/2015[7]. A second argument brought by the Law no. 255/2013 was that the compatibility led to the efficiency of the judicial public service. It had been noticed that the initial incompatibility between the preliminary chamber and the trial meant that judges were given a greater number of files. By having just one judge to manage the case in the first instance, the workload of the judges was reduced[8].

From the provisions of the NCCP it results that the function of verifying the legality of the indictment appears as a *sui generis* institution, which is not part of the phase of criminal investigations, nor of the trial phase[9]. There were many discussions in doctrine when the "preliminary sitting" was introduced in the old code of criminal procedure, the question raised being whether the court, at this point, was to decide to commence the trial only if it found that there was sufficient evidence for the indictment. If the judge were to make any appreciations regarding whether or not the trial should commence, that would mean an evaluation of the evidence, even when balancing between evidence in favor or against guilt, and an assessment of its truthfulness[10]. Is that possible at this stage, or is the role of the judge merely of an administrative nature, the lack of a public and adversarial proceeding being an impediment for the assessment of evidence?

Both the courts and part of the doctrine considered that any assessment of the suspect's guilt is prohibited during the preliminary hearing, so this is why the supreme court reached the conclusion that the same judge can take part in the preliminary hearing and the trial, seeing as it could not be said that during that first phase he had given a judgment based on merits. There were, however, those who expressed the view that it would be hard to imagine that a judge who during the preliminary hearing examines, even formally, the conditions for indictment, would not form an opinion regarding guilt, because one cannot pronounce upon the grounds for prosecution without being convinced of the guilt of the accused[11].

Returning to the way in which the preliminary chamber is regulated, we find that even now there are authors who believe that the condition of an impartial tribunal is not met if the same judge can decide both on the legality of the indictment and the trial itself[12]. In the case-law of the European Court of Human Rights (*Depiets v. France)*, the Court found that there is no breach of the requirement of impartiality if the judge has examined the legality of the adduction of evidence during one phase of the trial and then has to decide on guilt, since the two situations are different[13].

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[7] The reason of the decision was published in the Official Gazette of Romania, Part I, no. 707 of September 21st 2015.

[8] Both arguments are mentioned in the statement of reasons of Law no. 255/2013.

[9] V. Brutaru, 2009, *Camera preliminară, o nouă instituţie de drept procesual penal. Precedente legislative. Drept comparat,* http://www.mpublic.ro/jurisprudenta/publicatii/camera_preliminara_2009, pp. 90, last consultation at 29.11.2014.

[10] D. Roman, *Sesiunea ştiinţifică a Universităţii „Babeş Bolyai",* in" Justiţia Nouă", no. 2/1956, pp. 262, *apud* V. Brutaru, *op.cit.,* p.95.

[11] A detailed analysis of this aspect is presented in V., Brutaru, *op.cit.,* pp. 95-96, I. Nariţa, *Camera preliminară – sub spectrul neconstituţionalităţii?,* in „Dreptul", no. 5/2014, p.172-173.

[12] V., Brutaru, *op.cit.,* pp. 95-96.

[13] C., Bârsan, *Convenţia europeană a drepturilor omului*, 2nd edition, C.H. Beck Publishing House, 2010, Bucureşti, pp. 482-483.

The preliminary chamber judge can also decide to take or maintain, if necessary, pre-trial detention. In some situations, if the measure is first decided by the preliminary chamber judge, he will be also deciding whether to maintain or revoke it, as a merits judge, in another phase of the criminal trial. The same thing could happen in the original draft of the law, when the functions of deciding over the prosecuted person's freedoms and rights and that of verifying the legality of indictment were incompatible. Again, this shows in a way that the preliminary chamber has "borrowed" elements from the previous procedure that took place before the trial judge, before reading the indictment. According to the Code of Criminal Procedure of 1968, when the judge was addressed with the bill of indictment regarding an accused held in pre-trial detention, he would have to decide upon that measure with priority. But then, all this would happen in the same phase of the criminal trial. According to the new legislation, the same judge can carry out two different functions of the trial without being incompatible. In our opinion, it was for managerial reasons that two out of the four functions were considered compatible, because the workload which would have resulted had they all been kept separate would be significant and also there was the risk that smaller courts could not ensure an appropriate number of judges. In order to find out if the compatibility mentioned is in accordance with the right to an impartial tribunal, we must relate to the Decision no. 22/2008, given by The High Court of Cassation and Justice in appeal in the interest of the law. According to this decision, in case the judge that has taken the measure of pre-trial detention was the one who decides to maintain it during the investigative phase, it was evident that there was no incompatibility because the decision to institute pre-trial detention and to maintain it are taken based on the same function of deciding upon the constitutional right to freedom during *the same stage of criminal investigations and not in different phases of the trial.* As such, it is not a case of incompatibility as between the judge who analyses requests for restraining a person's rights during criminal investigations and the trial judge who has to periodically decide upon the legality and grounds of such measures during the same phase. The same decision held that many codes of criminal procedure in Europe mention the four functions, which in our legislation are now mentioned in the NCCP, but they state that these are exercised separately and independently of each other and that they can lead to situations of incompatibility. That is because in deciding upon pre-trial detention there is not a formal evaluation and the procedure is based on adversarial proceedings. It is obvious that, according to the reasoning offered by the High Court of Cassation and Justice, at least as far as the measure of pre-trial detention is concerned, the judge is incompatible to carry out any other function. The reason could only be the need to respect the right to a fair trial, because of the assessments and conclusions which each function entails. If the aforementioned decision of the High Court were to be still applicable, the preliminary chamber judge did who took or maintained pre-trial detention, could be considered incompatible to judge on merits. However, we think that the need to ensure continuity in assessing the legality of evidence and later evaluating it, in order to establish guilt, should prevail.

4. Verifying the legality and grounds for the adduction of evidence

Article 342 NCCP raises another issue regarding the fair trial. According to this text, the object of the preliminary chamber is, among other, to see whether the evidence gathered by the investigative bodies was obtained legally and that the acts they issued are lawful. Evidence that is considered during this phase to fulfill the requirements of the law cannot be excluded later on. This may contradict other provisions within the code. For example, as far as the search of premises is concerned, according to article 157 paragraph 1, it can be ordered if there is a reasonable suspicion that a person has committed an offence or that he is in possession of objects or documents that are related with the offence and it can be assumed that the search will lead to discovering and gathering evidence of that offence, to preserving the traces of the crime, or to catching the suspect or accused. Technical surveillance, as article 139 paragraph 1 states, may be ordered when there is a reasonable suspicion that one of the offences listed by paragraph two is about to, or has already been committed and the measure is proportional to the restriction of fundamental rights and freedoms, in view of the particulars of each case, the importance of the information or the evidence that can be obtained, or the seriousness of the offence. Also, article 202 of the Code states that preventive measures can be taken if there is evidence or there are sufficient indications for the reasonable suspicion that a person has committed an offence and the measures are necessary to ensure the proper conduct of the criminal proceedings. As such, it becomes clear that when adducing evidence and ordering preventive measures, one should look not only if they are legal, but also at their substance. The European Court of Human Rights establishes this in the cases *Calmanovici v. Romania* and *Dumitru Popescu v. Romania (no.2).* When referring to the procedures of intercepting communications, the Court sanctioned Romania for the lack of an *a priori* control of the authorization of interception and for the lack of an *a posteriori* control of the grounds for issuing the authorization. If the procedure has been amended as to the *a priori* control, not the same thing can be said of the subsequent control of the grounds.

Initially it was considered that during the preliminary chamber proceedings, the judge is limited only to checking if the evidence was adduced according to the existing legal provisions, since articles 280-282 of the Code establish that only if there is a cause of nullity evidence can be excluded. In the case of interceptions, for example, the preliminary chamber judge could not reassess the proportionality of the measure, even though it is listed as one of the conditions for ordering the measure. The only reason why recordings obtained this way could be excluded as evidence would be if the interlocutory judgment authorizing the interceptions was affected by a cause of nullity. Once the phase of the preliminary chamber has ended, no reasons for absolute nullity regarding the bill of indictment or the adducing of evidence during criminal investigations can be invoked. This differs greatly from the provisions of the New Code of Civil Procedure (Law no.134/2010), where according to article 178 paragraph1 absolute nullity can be invoked by any of the parties, by the judge, or the prosecutor, all throughout the proceedings, if

the law does not state otherwise. In our opinion[14], analyzing whether evidence was legally adduced cannot be reduced to mere formal conditions, but should also address the matter of grounds for deciding the recourse to a procedural measure. In the case *Bulfinski v Romania*, the state was sanctioned for not checking the applicant's allegations of entrapment, through the fact that the police had planted evidence against him. Similarly, Romania was sanctioned in the case of *Văduva v. Romania* for not allowing the applicant's request to have an expert evaluation of the recordings submitted as evidence, and also in the case of *Acatrinei v. Romania*, where the courts had not addressed the issue of the unlawfulness of the interceptions. One can imagine situations when the defendant might request for certain investigations into the fact that he had been provoked by agents of the authorities. If such an issue of lawfulness was raised during the preliminary chamber, the only moment when this is possible, it might prove necessary to produce evidence of this claim, but the provisions regulating this phase of the trail did not permit it, since, before the decision of the Constitutional Court, it was strictly a written procedure, carried out without the presence of the parties and limited to presenting arguments. The possibility to verify such claims regarding the evidence would be in accordance with the principle of establishing the truth set out by article 5 of the NCCP, which states that the judicial bodies have the obligation to ensure, based on evidence, that the truth regarding the facts and circumstances of the case, the person of the suspect or accused is established. The second part of paragraph 2 of the same article shows that dismissing or not recording, in bad faith, the evidence submitted in favor of the suspect or the accused is sanctioned. Actually, in some cases, these sanctions can never be applied.

To conclude, we have found that the impossibility of raising the objection of the nullity of certain procedural acts at any time during the trial, of analyzing the substance or the principle of proportionality with the intrusion in private life regarding evidence, or presenting proof in order to ascertain the legality or substance of other evidence was, in our opinion and infringement of the right to a fair trial[15].

The Constitutional Court has indirectly expressed the same point of view. In the Decision no. 641/2014[16] regarding the constitutionality of the lack of contradictoriality of the procedure of the preliminary chamber, the Constitutional Court indicated that, according to the jurisprudence of the European Court of Human Rights, both the prosecution and the defendant must be aware of all the evidence and must have the opportunity to comment upon them (the case *Rowe and Davis v. UK* was mentioned). Also, it was emphasized that according to the legal text, the defendant has no real possibility to prove the fact that a certain evidence was illegally obtained (paragraph 14 of the decision). As the lack of contradictoriality of the procedure was declared unconstitutional, we can assume that the legality of the evidence may be contested in a manner that includes the submission of evidence in this respect.

A look into comparative law highlights the fact that, in general, similar procedures are designed as a filter in order to determine if there are sufficient grounds for

[14] Our opinion as presented at the 1st „*Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective*", on November 21 2014, as stated before.

[15] *Ibidem*.

[16] The reason of the decision was published in the Official Gazette of Romania, no. 887, Part. I, of December 5 2014.

indictment, without evaluations about the legality of the adducing of evidence, with the consequence of eliminating some and the impossibility of contesting the others throughout the trial[17]. For example, paragraph 1 of section 199 of the German Code of Criminal Procedure states that the court which is competent for the main hearing shall decide whether main proceedings are to be opened or whether proceedings are to be provisionally terminated. According to section 202, before the court decides on the opening of main proceedings, it may order individual evidence to be taken to help to clear up the case. The Romanian NCCP does not have a similar provision, and it is not possible for the judge of the preliminary chamber to order further evidence. According to the NCCP, the preliminary chamber judge only assesses what has already been done during criminal investigations, but not what should be done, or was not done[18].

5. Equality of arms and adversarial procedure

There are two aspects to be considered for this topic. Besides the attributions described by article 342-348 of the NCCP, the preliminary chamber judge is also competent to solve the complaint against the prosecutor's office's resolutions deciding not to bring prosecution against the suspect, or of non-indictment, as stated by articles 340-341 of the NCCP.

This possibility of complaint was first introduced through article I point 168 of Law no.281/2003. The judgment could be appealed on points of law by the prosecutor, the person who filed the complaint, the person to which the resolution of the prosecutor's office had referred, or by any person whose legitimate interests would have been harmed.

Later on, article XVIII point 39 of Law no. 202/2010 removed the possibility of an appeal on points of law and made the judgment of the first instance court final. Seeing as Article 6, according to the case-law of the European Court of Human Rights, does not guarantee the right to have a person investigated or convicted, it could be said that the lack of a way to contest the judgment did not come into contradiction with the provisions of the Convention.

The current legal dispositions, when the prosecutor's office decides to bring criminal action against the accused, if the complaint it dismissed on merits, as time bared, or inadmissible the judgment is final. However, when the complaint is allowed, the contested decision is quashed and the court moves on to judge the offence, under the conditions specified by article 341 paragraph 7 point 2 letter c) of the NCCP. This judgment can be contested by the prosecutor and by the accused.

In our opinion, the fact that the injured party is left without the opportunity to contest a solution that can prove to be unfavorable for him, while an equally unfavorable solution can be contested by the accused is in breach of the principle of the equality of arms. This solution chosen by the legal bodies contradicts their way of thinking when the provisions connected with the rules of appeal of the Code of Criminal Procedure of 1968 were amended by article I, point 169 of Law 356/2006. Before this law, the injured party, the civil party and the party responsible for civil damages could only file an appeal or an

[17] V., Brutaru, *op.cit*., pp. 98-99.
[18] I., Nariţa, *op.cit.*, p. 180.

appeal on points of law on the civil limb of the trial. Law no. 356/2006 offered the same parties also the possibility to contest the criminal limb of the judgment. This was done specifically in order to respect the aforementioned principle.

When solving the complaint against the prosecutor's decisions not to bring prosecution against the suspect, before the preliminary chamber judge there was no adversarial procedure or equality of arms, according to the legal text. The procedure described by article 314 did not offer the author of the complaint the chance to know and respond to the prosecutor's claims, or to those of the other parties involved, since the documents were not notified and neither the parties, nor the prosecutor were present for a hearing. In the case of *Dombo Beheer B.V. v. The Netherlands,* the Court states that *as regards litigation involving opposing private interests, "equality of arms" implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent; it is left to the national authorities to ensure in each individual case that the requirements of a "fair hearing" are met.*

The lack of adversarial procedures and the inequality between the parties appeared to be characteristics of the preliminary chamber in every situation in the view of the legislator, except when deciding upon preventive measures. This is the reason why in Decision no. 641/2014[19], the Constitutional Court held that the provisions of article 344 paragraph 4, article 345 paragraph 1, article 346 paragraph 1, article 347 paragraph 3 in connection with the previous articles of the NCCP are unconstitutional. For the same reasons, article 341 paragraphs 2 and 5 are also unconstitutional[20]. Through the Decision no. 599/2014[21], paragraph 5 of article 341 has also been declared unconstitutional. This decision also mentioned the impossibility of the injured party to contest the rejection of its complaint, but it was decided that this legal text is not against the constitutional provisions, as the contestation possibilities are determined by law.

6. Public hearings

The requirements of a fair trial are met when it comes to preventive measures. As the High Court of Cassation and Justice recently found, in Decision no.4/2014 given in appeal in the interest of the law, the lack of publicity when deciding upon the measure of pre-trial detention and when hearing the contestation against this decision does not exclude or limit any procedural guarantees, but protects the accused and the investigations from negative exposure; the accused benefits from all the legal possibilities and the procedure contains sufficient guarantees for a fair trial: adversarial proceedings,

[19] The reason of the decision was presented in the Official gazette of Romania, Part I, no. 887 of December 5th 2014.

[20] Our opinion as presented at the 1st „*Annual International Conference on Law and Administrative Justice from an Interdisciplinary Perspective*", on November 21st 2014.

[21] The reason of the decision was presented in the Official gazette of Romania, Part I, no. 886 of December 5th 2014. The press release on http://www.ccr.ro/files/statements/Comunicat_presa_12_noiembrie _2014.pdf only mentioned the findings of incompatibility with the Constitution of article 344 paragraph 4, article 345 paragraph 1 and article 346 paragraph 1. Later, the reasoning of the decision also mentioned article 341 paragraph 5.

the presence of the lawyer and the accused, access to the file, hearing the accused and notification of the judgment.

Not the same thing can be said for assessing competence, the legality of the indictment, the legality of the adduction of evidence, of the way in which acts of criminal investigations were carried out. Regarding this last situation, in the eventuality that the complaint is dismissed, the judgment is final. However, the European Court of Human Rights shows, in the case *Koottummel v. Austria*, that if a case is settled in first and last instance by one jurisdiction, the lack of public debates before it represents an infringement to the right to a fair trial[22]. It was also stated that there must be exceptional circumstances that justify dispensing such a hearing (*Eriksson v. Sweden).*

7. Conclusions

In order for the preliminary chamber to reach the goal of improving the management of justice without impairing on the right to a fair trial, its attributions should be limited to conclude if there are sufficient grounds for indictment, without evaluations about the legality of the adducing of evidence. This would lighten the burden of criminal courts, leading also to a better cost management. The present dispositions do not even establish such a competence for the preliminary chamber judge. We think that lowering the costs is a goal that may be attained easier by dismissing cases that obviously have no merit, without distinguishing between the case of a complaint or an act of indictment.

It need not necessarily be a public procedure, but it would have to be one ensuring the other conditions of a fair trial: adversarial proceedings, equality of arms, the presence of the lawyer and the accused, access to the file, hearing the accused and notification of the judgment.

As far as the problem of pre-trial detention, we consider that the same judge should not exercise two different functions, in order to ensure the right to an impartial tribunal and that at the stage of the preliminary chamber, it should still be the judge deciding upon the freedoms and rights of the accused that should analyze the need to take or extend the detention.

[22] C., Bârsan, *op.cit.,* pp. 519.