

EXCEPTION OF UNCONSTITUTIONALITY

Of provisions of **Article 136 para 1 letter d** and **Article 148 para 1** Penal Procedure Code
with respect to provisions of Article 23 para 1 of Romania Constitution

Content of Articles

Article 136 para 1 letter d PPC: “*in the causes regarding offenses punishable by life imprisonment or imprisonment... against the defendant can be taken...d) the measure of pretrial arrest*”

Article 148 para 1 PPC: “*the arrest of the defendant can be decided if the conditions provided for in Article 143 are met...*”

Article 23 para 1 Constitution of Romania: “*Individual freedom and security of person are inviolable.*”

Interpretation of the procedural provisions

Both Article 136 para 1 letter d, and Article 148 para 1, are contrary to the constitutional provisions in Article 23 para 1, if they are interpreted as *against one and the same person there can be taken at the same time several measures of deprivation of liberty, consisting in the issuance of two or more arrest warrants.*

This interpretation of the procedural Articles mentioned is allowed since the **law neither makes a distinction nor forbids** the issuance of a new arrest warrant against a person subject to another arrest warrant.

Secondly, this interpretation of the Articles mentioned is **encouraged** as well by the provisions of Article 139 para 3⁽³⁾ ad Article 140⁽³⁾ para 7 of Penal Procedure Code, which stipulate that revoking an arrest warrant can be done *only if the defendant is not arrested in another cause.*

The unconstitutionality of the Article 136 para 1 let d and Article 148 para 1 PPC resides in the fact that the dispositions of Article 24 para 1 and 5 of the Constitution state the inviolability of the individual freedom as an inalienable attribute of the human being, unique and indivisible. Therefore, **the uniqueness and indivisibility of the human freedom does not allow concurrent or parallel deprivations** consisting of two or more preventive arrests of the same individual since it is enough one deprivation measure in order to exhaust the content of the individual freedom.

The intent of the constitutional provisions concerning the individual freedom is to protect the individual freedom as a fundamental and indivisible value of the human being **against any possible abuse of the authorities** who could, by taking several measures against the same person at the same time to make it impossible to exercise this right by suppressing it “in cascade” and therefore by maintaining indefinitely a state of arrest.

The procedural provisions mentioned are unconstitutional with regard to Article 23 para 5 of the Constitution in the sense that the measure of pretrial arrest of a person is limited to 30 days, which can be indeed prolonged but not supplemented by another warrant, which **would make it impossible the regaining of the normal state of freedom** after 30 days, since another warrant would come into force.

Such an unconstitutional possibility open the “appetite” of the authorities for abuse of rights, for procedural obstructions on the edge of legality, which lead to the violation of the individual freedom in a subtle but brutal way.

Conditions of admissibility of the exception of unconstitutionality

1. The exception concerns the unconstitutionality of provisions of an organic law.
2. The exception is raised at the request of a party (the defendant) before the court.
3. The legal provisions invoked were not admitted as unconstitutional by a previous decision of the Constitutional Court.
4. Solving the present exception is related to solving the appeal which will determine the legality or illegality of the warrant contested.

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