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ASPECTS PRONOUNCED BY THE PROSECUTOR WITH THE
CLOSING SOLUTION

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Abstract

The closing is the solution of not sending to Court ordered by a Prosecutor's judgment when it finds the existence of an impediment to the implementation of criminal action or movement of the exercise provided for in art. 16 C.P.C., regarding the criminal material verification. The closing is ordered, whether by a Decree, whether concerned was willing or not continuing to carry out criminal prosecution in relation to the suspect or whether it was or not put in motion the criminal proceedings, either by indictment, when for some of the facts there must be suing, and for another/other the closing.

There are situations when the Prosecutor who is referred to the proposal by the closing of criminal investigation, handed back the cause of the criminal investigation to continue carrying out the prosecution, when he finds that the legal conditions are not fulfilled, ordered the closing or when ordered the closing and separated the cause.

Through the act of ordering the closing, then the Prosecutor must decide lifting the measures taken to ensure that insurers sentence or fine precautionary measures relating to the maintenance and civil repairs and restoring the previous situation as regarding crime, restitution of property raised, seizing the appeal judge of preliminary chamber making the measure of special confiscation, to refer to the Judge of the Preliminary Chamber with the proposal for total or partial split-up of a registered or proposing of taking or where appropriate, confirmation, termination or replacement of safety measures..

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1. Introduction

The contents of the Closing Ordinance are those established by the provisions of art. 286, para. 2, of the Code of Criminal Procedure, depending on the laws and measures placed on the duration of the criminal, the Prosecutor must have the legal measures relating to:

- a) Precautionary Measures;
- b) Restitution of assets seized or cautioned;
- c) The Appeal Preliminary Chamber Judge's proposal for making the safety measure of special confiscation;
- d) The Appeal Preliminary Chamber Judge's proposal for the total or partial voidance of a document;
- e) The referral to the competent court according to the dispositions of the law specifically in mental health material for non-voluntary admittance arrangement;
- f) The Judicial Costs (Art 315, para. 2), plus it will make mention in the content of the closing file about the termination of the safety measure ordered, in the event that it would have taken any of these measures (Boroi & Theohari, 2014).

1.1. The precautionary measures

Regarding the precautionary measures, it must be specified that these should be maintained or raised, as appropriate ... (Volonciu, et. al., 2014, p. 795). Although, one might assume that with the solution file, will have non-disposable measures taken over the suspect or defendant or civil responsible party, depending on the purpose for which they have been applied¹, there are situations when these measures shall maintain. Thus, if measures were taken in order for the purpose of special confiscation², there are goods or values that may be subject to such measures (Volonciu, et. al., 2014, Art. 315, paragraph 1, letter c), the Prosecutor shall order by the Closing Ordinance, the judge of Preliminary Chamber referral, which will decide whether or not taking the precautionary measure in not-sending to court hypothesis, only incidentally, competent in this situation (Boroi & Theohari, 2014).

Depending on what the Preliminary Chamber Judge will order, the measures will be maintained at least until the final conclusion of the Preliminary Chamber judge.

In the situation where the measures were taken in order to enforce the judicial expenses, they can be maintained together with the value of these expenses to be determined by the Closing Ordinance, but also in the measure and limit where the suspect/defendant is obliged to pay them (Art. 275, paragraph 5).

If the precautionary measures were taken in order to guarantee the execution of repairing the damage, although the Prosecutor has no competence to solve the civil action has however the right to take such measures during criminal and, if they were taken through the Closing Ordinance the prosecutor must pronounce on the maintaining or raise them. The precautionary measures shall maintain always when taken under art. 315 paragraph 2, the thesis II of the C.P.C., in case of a pronouncement of closing

¹ In accordance with the article 249 paragraph 1 of the C.P.C., the protective measures can be taken to avoid hiding, destroying, alienation or circumvention of the tracking property that may be subject to confiscation or of extended confiscation or which can serve to guarantee the execution of the penalty of the fine or the expenses or to repair the damage caused by the offence.

² If the assurance measure was taken in view of the extended confiscation, by the closing ordinance will become available always its lifting, because it cannot be disposed but by the convicted person.

solutions, ranking them to cease operation of law if the injured does not enter action in front of the civil court within 30 days of the communication of the solution (Art. 318, paragraph 2, letter j).

2. Problem Statement

2.1. The Typologies of the sentence loan-translations can multiply according to various criteria:

If the closing is available for other causes than those provided for the provisions of art. 25 para. 5 of the C.P.C. (this would oblige the Court to leave unresolved the civil action or when closing ordering on basis stipulated by the article 16, para (1); letter a of the C.P.C.), the insurers shall maintain since the Closing Ordinance has no final in front of the Civil Court regarding the existence of the Civil Act and the person who has committed it (Volonciu, et. al., 2014, Art., 28), the injured in case of closing, can enter the civil action regardless of the instant case of the art. 16 of the C.P.C., for which it has not dispose being sued (Volonciu, et. al., 2014, p. 796).

3. Research Questions

As we showed, through a Closing solution, the Prosecutor must pronounce on the refund of the goods seized or to cautioned. Through the notion of “assets” we refer to the items raised in connection with on-site investigation³ and at the occasion of the domiciliary, personal or vehicle inquisition, but also the writes, taught, or as well as the postal items retained (Volonciu, et. al., 2014, Art. 138, paragraph 1, letter f).

We stress that under the art. 162 para. 3rd and 4th of the C.P.C. “the material sample means are kept by the prosecution or by the instant judgment on which is found the folder until the final settlement of the case”, and “objects which have no connection with the cause shall be returned to the person to whom they belong, except for those that are subject to confiscation, in accordance with the law” (Volonciu, et. al., 2014, p. 796)..

4. Purpose of the Study

The purpose of this study is to observe the According to art. 162 para. 5, of the C.P.C., objects which serve as a sample, if not subject to confiscation, under the conditions stipulated by law may be returned even before a final settlement, to the person to whom they belong, except for the case in which by this refund might hinder the understanding of the truth (Volonciu, et. al., 2014, p. 796).

Therefore, it will only refund goods that are not subject to the special person confiscation who have the legal right to possess them, the organ of the prosecution or the court that is obliged to store them until the final settlement of the case.

Regarding the bail, it is filed by the defendant for the purpose of carrying out the preventive measure of the judicial control on bail, and makes available for classifying this preventive measure to stop the law (Boroi & Theohari, 2014, Art. 241, paragraph 1, letter b) and also the Prosecutor being obliged to

³ Objects which are considered to have evidential value are taken as the samples.

check this issue by the Closing Ordinance or by indictment (Boroi & Theohari, 2014, Art. 315, paragraph 4), having the refund of the bail (Boroi & Theohari, 2014, Art. 8, paragraph 217).

The Prosecutor through the Closing solution will refer the matter to the judge of the Preliminary Chamber with the proposal for the safety measure of the special confiscation of the goods stipulated in the provisions of the art. 112, of the C.P.C. even if there were not sending to court.

Also, the Prosecutor may submit to the judge of the preliminary chamber the proposal for the total or partial annulling of a document, even if it was not committed the criminal liability of a person⁴ or that the fact does not constitute a crime, the writes noted as being false, must be suppressed to not produce more legal effects.

With regard to the layout of the non-voluntary hospitalization, there are a number of discrepancies between the special law no. 487/2002 concerning the protection of the mental sanity and of the impaired persons, republished and the code of the criminal procedure.

5. Research Methods

5.1. The basic method used in our approach, in order to achieve the desired results, will be the **descriptive method**. This involves research, systematization and classification of the material gathered. The **method of analysis and synthesis**, and the inference method, taken from the formal logic, there are other methods used by us.

6. Findings

By the provisions of art. 5, letter p. in Law no. 487/2002 republished, through the medical inpatient hospitalization without the consent of the patient or against his internment, being in psychiatric hospitals that have adequate conditions for specialty care in specific conditions (Law No. 487, 2002, Art. 55), based on a procedure which involved making an analysis by a special Commission set up within no more than 48 hours from the receipt of the proposal, after the examination of the person concerned, if this is possible.

The Commission will decide the non-voluntary admission that will be recorded in the patient's medical file that will be announced soon, and the legal or conventional representative, these being the non-voluntary admission. The decision of non-voluntary admission of the Commission will be promoted by the leadership of the medical unit within 24 hours of court in the circumscription that lies the medical unit, accompanied by the supporting documents, and by the decision of the Court's pronouncement about the non-voluntary admission decision, the patient will be examined periodically by the Commission specially created at a time that will not exceed 5 days (Law No. 487, 2002, Art. 61).

The special law stipulates that the Prosecutor has the right to refer the matter to the Special Commission (Law No. 487, 2002, Art. 56) and not to the instant judgment directly as provided for in article 315 paragraph 2, letter (e) of the C.P.C. More, contrary to the provisions of the code of the criminal procedure, the law stipulates that the special non-voluntary admission measurement ordered by the Special Commission, in the decision, the appeal court being done in order to confirm or rule out the

⁴ For example, the defendant died.

measure, providing the termination of the medical non-voluntary admission in the hospital (Law No. 487, 2002, Art. 62, paragraph 6).

7. Conclusion

7.1. In terms of the competent court to order upon the non-voluntary admission, referring to the competence provided by the special law which is different from that stipulated by the criminal procedure code (Boroi & Theohari, 2014, Art. 248, paragraph 1), we will take into account the competence of the district court from the medical unit within the Special Commission functions and has decided the non-voluntary admission (Law No. 487, 2002, Art. 61, paragraph 6).

We appreciate that the Prosecutor could not refer directly to the instant court, but imposed upon the referral by this special Commission which will depend on the availability, on the basis of check-ups done, in terms of whether or not the regulators to measure the non-voluntary admission in the hospital, and thus, to refer to the Court, if the case for confirmation of the measure.

In terms of expenditure, the Prosecutor through the closing disposal will become available only to the expenses advanced by the State, and most of the trial subjects or parties that cannot be set in the task of a person but by a court order (Boroi & Theohari, 2014, Art. 276). Thus, by the Closing Solution, the Prosecutor determines what advanced judiciary expenses by the State remain in State tasks, in other situations, what judicial advanced expenses by the State can be put in charge or of the person injured, or of the suspect/accused or both, in accordance with the provisions stipulated in art. 275 paragraph 1-5 of the C.P.C.

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