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**THE LEGAL NATURE OF PRECAUTIONARY MEASURES
AND THE CONSEQUENCES OF THEIR NON-
COMPLIANCE IN THE CONTEXT OF PROTECTING
VICTIMS OF VIOLENT CRIME AND THE RIGHTS OF
THE DEFENDANT**

ABSTRACT

In this paper, the authors, using the normative and teleological method, analyze existing legal solutions regarding the content and duration of precautionary measures before and during criminal proceedings, as well as the possibility of their imposition and duration after a (non-)final court verdict, with an emphasis on specific cases of victim protection through the application of precautionary measures, either as a substitute for pre-trial detention or by applying independent precautionary measures, especially when criminal proceedings last for a more extended period of time. Also, in the context of the level of violation of precautionary measures, various legal consequences are analyzed, which are reflected not only in the replacement of the imposed precautionary measure with a procedural instrument, pre-trial detention, but also in the conduct of new criminal proceedings for the (new) criminal offense of non-execution of a court decision under Art. 311, para. 3 of the Criminal Code, which can potentially articulate the constitutional principle of equality of citizens before the law due to different sanctions for non-compliance with substantively the same measures, as well as the principle of fairness in the context of trial within a reasonable time when the "responsibility" for the expiration of the maximum terms of pre-trial

detention is "shifted" to the defendant, while, essentially, the responsibility for trial within a reasonable time lies with the court.

Keywords: *precautionary measures, pre-trial detention, criminal proceedings, enforceability of judgment, protection of victims' rights*

1. INTRODUCTION

The right to personal liberty was postulated in 1215 in the Great Charter (Magna Carta), and to this day, it has been proclaimed in numerous international and regional documents.¹ Although it is not absolute because it can be derogated under certain conditions, it is "a true and proper object of protection of the state and its legal order."² The inviolability of personal liberty is a constitutional postulate, and no one may be deprived of or restricted in their freedom except when this is determined by law, which the court decides.³ Therefore, the Constitution itself justifies the restriction of fundamental human rights and freedoms, in two cases, in particular when there is a probability that a person has committed a certain criminal offense and when there is a danger that, by exercising their fundamental rights and freedoms, they would jeopardize the initiation or goal of criminal proceedings.⁴ The commission of criminal offenses, especially severe ones, results in the deprivation or restriction of liberty, whereby the state, as the holder of the monopoly of physical coercion, exercises its repressive role. Since after the commission of a criminal offense, and due to the defendant's escape risk, collusion⁵ or iteration risk⁶, circumstances may arise that make it challenging to conduct criminal proceedings against the defendant, as well as the execution of the criminal sanction after the proceedings have been legally concluded, it is necessary to ensure the defendant's presence. To ensure the defendant's presence

¹ The right to freedom was proclaimed by a series of international documents such as the Universal Declaration of Human Rights from 1948, the International Covenant on Civil and Political Rights (ICCPR) from 1966, and regional human rights documents such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) from 1950, the Charter of the European Union on Fundamental Rights (CFR) from 2000, the African Charter on Human and Peoples' Rights from 1981, etc.

² Đurđević, Z.; Tripalo, D. *Trajanje pritvora u svjetlu međunarodnih standarda te domaćeg prava i prakse*, Hrvatski ljetopis za kazneno pravo i praksu, vol. 13, no. 2, 2006, Zagreb, p. 553.

³ Art. 22 of the Constitution, Official Gazette, No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

⁴ Cf. Krapac, D. *Kazneno procesno pravo*, Prva knjiga: Institucije, Narodne novine, Zagreb, 2020, p. 355.

⁵ Lat. *collusio* (secret/deceptive understanding) - the risk of obstructing criminal proceedings by destroying evidence or influencing witnesses.

⁶ Lat. *iteratio* (the action or a process of iterating or repeating) - risk of reoffending.

before and during criminal proceedings, the Criminal Procedure Act (hereinafter: CPA)⁷ in Chapter IX. regulates "Measures to ensure the presence of the defendant and other precautionary measures," which *per se* represent more or less severe interference with the fundamental right of citizens to personal freedom. Measures to ensure the defendant's presence in the proceedings are regulated according to the severity of the interference with individual rights and concerning the goal sought to be achieved by their application. For the above reason, the legislator grades them from the lightest to the most severe measure and includes a summons to the defendant (Art. 96 of the CPA), compulsory appearance (Art. 97 of the CPA), precautionary measures (Art. 98-101 of the CPA), bail (Art. 102-105 of the CPA), arrest (Art. 106-111 of the CPA), detention (Art. 112-118 of the CPA), home detention (Art. 119-121 of the CPA), and pre-trial detention (Art. 122-144 of the CPA). As evident, precautionary measures are measures of medium intensity of interference with an individual's freedom, which is reflected in the restrictions of certain contents of rights in order to prevent specific dangers to the course of criminal proceedings. Over the past decades, the legislator has gradually expanded the catalog of precautionary measures, which include various bans and restrictions – from prohibition on movement and contact with certain persons to seizure of documents or removal from home – to ensure the smooth flow of criminal proceedings and protect victims.⁸ Therefore, the legislator has envisaged a wide range of measures that ensure the presence of the defendant not only before and during criminal proceedings but also after their conclusion, and that does not deprive the defendant's freedom but only restricts it "to the extent necessary for the smooth conduct of criminal proceedings."⁹ Although there is scholarly debate as to whether some of these measures are punishments in themselves,¹⁰ it is

⁷ Criminal Procedure Act, Official Gazette, No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24.

⁸ Precautionary measures include 1) prohibition to leave a residence; 2) prohibition to visit a certain place or territory; 3) obligation of the defendant to call periodically a certain person or authority; 4) prohibition to approach a certain person; 5) prohibition to establish or maintain contacts with a certain person; 6) prohibition to engage in a certain business activity; 7) temporary seizure of passport or other document which serves to cross the state border; 8) temporary seizure of a license to drive a motor vehicle, which have been incorporated into Croatian criminal procedure legislation since 1997. The 2013 amendment added two more precautionary measures, namely the 9) prohibition on stalking or harassing the victim or another person and 10) removal from the home (Official Gazette, No. 145/2013), while the 2020 amendment added another precautionary measure of 11) prohibition of Internet access (Official Gazette, No. 126/2019). Art. 98, para. 2, of the CPA.

⁹ See Tuntevski, N. *Eligibility of precautionary measures from the influence of basic principles of criminal procedure - advantages and disadvantages of the security measures related to the detention*, Knowledge - International Journal, vol. 20, no. 2, 2017, p. 827.

¹⁰ See Kos, D. *Istražni zatvor krajnja mjera prisutnosti okrivljenika, a ne kazna*, 2014, <http://www.vsrh.hr/easyweb.asp?pcpid=386>; Cesare Beccaria also stated that preventive detention of the defendant (pre-trial detention) is considered, admittedly, a punishment but

indisputable that they serve multiple purposes in the criminal proceeding. Precautionary measures, as an alternative to pre-trial detention, correlate with the same substantive legal assumptions and aim to achieve the purpose of pre-trial detention without applying this most severe measure of deprivation of liberty, and are manifested by restrictions on certain content of the law to prevent specific dangers to the course of criminal proceedings. Although they are conditioned by the existence of pre-trial detention reasons from Art. 123 of the CPA, their duration exceeds the duration of pre-trial detention, given that the legislator postulated their independent existence after the expiry of the pre-trial detention terms if the circumstances justifying the imposition of pre-trial detention still exist, which imposes the independence of this criminal procedure institute. Recent amendments to the CPA (Official Gazette, No. 36/24) did not affect the alternative character and catalog of precautionary measures. Still, concerning specific categories of victims, as a novelty, mandatory consideration of "the results of the individual assessment of the needs of the victim and the victims' closely related person and the needs of the victim's protection" was incorporated when deciding to impose a precautionary measure as a milder form of criminal law repression against the defendant instead of pre-trial detention.

This paper, using a normative and teleological method, analyzes *de lege lata* legal solutions regarding the content and duration of precautionary measures as an alternative to pre-trial detention, before and during criminal proceedings, and the possibility of their imposition and duration after a (non-)final court verdict, with an emphasis on specific cases of protection of victims of violence. Also, in the context of the level of violation of precautionary measures, various legal consequences are analyzed, which are reflected not only in the replacement of the imposed precautionary measure with a procedural legal instrument, pre-trial detention, but also in the conduct of new criminal proceedings for the (new) criminal offense of non-execution of a court decision under Art. 311. para. 3. of the Criminal Code (hereinafter: CC),¹¹ which can potentially articulate the constitutional principle of equality of citizens before the law due to different sanctions for non-compliance with substantively the same measures, but also the principle of fairness in the context of trials within a reasonable time when the "responsibility" for the expiration of the longest terms of pre-trial detention is "shifted" to the defendant, against whom it is possible to apply independent precautionary measures even after the expiration of the longest terms of pre-trial detention under Art. 133 of the CPA.

one that, unlike all other punishments, is a necessary condition for establishing guilt. Beccaria, C. (1984). O zločinima i kaznama, chap. XXIX.

¹¹ Criminal Code, Official Gazette, No 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024.

2. LEGAL NATURE OF PRECAUTIONARY MEASURES

The legal basis for standardizing precautionary measures as a procedural institute stems from the constitutional principle of proportionality, which requires that any restriction of freedom or rights must be proportionate to the nature of the need for the restriction in each individual case,¹² i.e., that it does not exceed the strictly necessary measure.¹³ Apart from the proportionality of its application, precautionary measures are also characterized by a temporary character and a preventive nature.¹⁴ Therefore, in the case where there are pre-trial detention circumstances (Art. 123 of the CPA) due to which pre-trial detention is possible or has already been ordered, the court and the state attorney, taking into account the results of the individual assessment of the needs of the victim and those close to the victim and the need to protect the victim, will, if a precautionary measure can achieve the same purpose, order the application of one or more such measures in a reasoned ruling (Art. 98, para. 1 of the CPA). In doing so, the defendant will be warned that in the case of failure to comply with the imposed measure, it will be replaced by pre-trial detention. Thus, precautionary measures are considered milder measures applied in criminal proceedings to ensure the purpose of applying pre-trial detention;¹⁵ that is, they are legal measures "applied as milder alternatives to pre-trial detention"¹⁶ that "are still effective in preventing danger."¹⁷ Precautionary measures consist of restricting certain rights and freedoms of the defendant rather than depriving them, which is evident from the nature of the rights they relate to.¹⁸ They represent restrictions on certain contents of rights to prevent specific dangers for the course of criminal proceedings and are manifested by the inability to establish and maintain (potentially dangerous) social contacts,¹⁹ perform (business) activities,²⁰ or freedom of movement,²¹ and visit certain places. The escape risk, collusion (the risk of disrupting the course of criminal

¹² Art. 16, para. 2, of the Constitution.

¹³ Krapac, *op. cit.* note 4, p. 358.

¹⁴ Cf. Andrescu, A. *The incidence of the principle of proportionality in the case of precautionary measures ordered in the Romanian criminal process*, Lex ET Scientia International Journal, vol. 31, no. 1, 2024, p. 153.

¹⁵ Supreme Court of the Republic of Croatia, II Kž 506/2020-4 of December 7, 2020.

¹⁶ County Court in Bjelovar, Kž 493/2024-4 of November 14, 2024.

¹⁷ Supreme Court of the Republic of Croatia, II Kž 29/2018-4 of January 26, 2018.

¹⁸ Cf. Pavišić, B. *Komentar Zakona o kaznenom postupku s priložima*, Templar-book, Šmrika, 2015, str. 152.

¹⁹ Prohibition of approaching a certain person, prohibition of establishing or maintaining contact with a certain person, prohibition of stalking or harassing the victim or another person, removal from the home, prohibition of Internet access.

²⁰ Prohibition to engage in a certain business activity.

²¹ Prohibition of leaving a residence, obligation of the defendant to call periodically a certain person or authority; temporary seizure of passport or other document which serves to cross the state border; temporary seizure of a license to drive a motor vehicle.

proceedings), or iteration risk (the risk of re-committing criminal offenses) can be successfully eliminated by precautionary measures that contain a minimum of social caution that can successfully fulfill the purpose of applying the basis for pre-trial detention under Art. 123 of the CPA.²² Case law states that precautionary measures are used to eliminate the risk of reoffending criminal offenses, to ensure the defendant's presence during the proceedings,²³ or to prevent his escape.²⁴ Some court decisions state that precautionary measures can be applied in criminal proceedings to ensure the safety of the victim or the public²⁵ or the safety of other persons.²⁶ As independent measures, precautionary measures are applied in criminal proceedings to protect the victim²⁷ "when pre-trial detention is no longer possible," whereby "the court is obliged to assess the existence of a well-founded suspicion that the accused has committed a criminal offense."²⁸

Precautionary measures may not entail the restriction of a defendant's right to his own home and to unimpeded connections with members of his household, spouse or common-law partner, parents, children, adopted child, or adoptive parent unless the criminal proceedings are conducted for a criminal offense committed to the detriment of one of these persons.²⁹ In addition, precautionary measures may not restrain the right of a defendant to unimpeded communication with his defense counsel.³⁰ The Supreme Court of the Republic of Croatia stated that by imposing a precautionary measure prohibiting the defendant from leaving the residence at the address in S., provided that he does not leave the area of the City of S., the defendant "is not prevented from establishing contact with his defense counsel, since, in addition to the possibility of his defense counsel coming to him from S. to S., he has at his disposal other means and forms of communication that are more frequently used in this modern era than direct physical contact."³¹

²² Decisions of the Supreme Court of the Republic of Croatia, II Kž 522/2020-4 of December 21, 2020; II Kž 506/2020-4 of December 7, 2020; II Kž 45/2019-4 of February 8, 2019.

²³ Decisions of the Supreme Court of the Republic of Croatia, VSRH II Kž 506/2020-4 of December 7, 2020; II Kž 456/2020-4 of November 2, 2020; II Kž 439/2020-4 of October 23, 2020; II Kž 78/2020-4 of February 21, 2020; II Kž 428/2019-4 of November 28, 2019; II Kž 45/2019-4 of February 8, 2019; II Kž 284/2018-7 of August 7, 2018; II Kž 18/2018-4 of January 18, 2018; II Kž 205/2016-4 of June 13, 2016; II Kž 810/2009-3 of December 16, 2009.

²⁴ Decisions of the Supreme Court of the Republic of Croatia, I Kž 513/2000-3 of August 2, 2000; II Kž 320/2018-6 of August 17, 2018; II Kž 202/2017-6 of July 7, 2017.

²⁵ Supreme Court of the Republic of Croatia, II Kž 436/2020-4 of October 15, 2020.

²⁶ Supreme Court of the Republic of Croatia, II Kž 313/2018-4 of August 2, 2018.

²⁷ County Court in Bjelovar, Kž 487/2024-4 of November 7, 2024.

²⁸ County Court in Varaždin, Kžzd 74/2024-4 of August 7, 2024.

²⁹ Art. 98, para. 3, of the CPA.

³⁰ Art. 98, para. 4, of the CPA.

³¹ Supreme Court of the Republic of Croatia, II Kž 456/2020-4 of November 2, 2020.

2.1. Independent precautionary measures

Amendments to the CPA (Official Gazette, No. 126/19) introduced the legal term "independent precautionary measures" in Art. 98a. Independent precautionary measures were introduced into criminal procedure legislation when it was shown in case law that the terms of pre-trial detention for some criminal offenses are quite short for the conduct of the proceedings, and these are criminal offenses with particularly serious circumstances of commission.³² They are analogous in content to the precautionary measures from Article 98 of the CPA but are not linked to the formal assumption, i.e., the duration of the longest terms of pre-trial detention. Therefore, if in relation to the defendant, there is still a general condition from Art. 123, para. 1 of the CPA, i.e., a reasonable suspicion that he has committed the criminal offense for which he is charged, but also a special condition from Art. 123, para. 1, item 1 to 5 of the CPA for the continuation of pre-trial detention, and since the maximum duration of pre-trial detention has expired under the provisions of Art. 133 of the CPA, the court may order independent precautionary measures against the defendant.³³ However, when the first-instance court, according to Art. 98 of the CPA orders precautionary measures as independent measures, it is not bound to the pre-trial detention basis on which pre-trial detention was previously ordered or extended, "however, then the operative part of the ruling must indicate the provision of the CPA from which it is evident on which specific pre-trial detention basis from Art. 123 of the CPA the first-instance court bases its decision, and this must be explained".³⁴

3. CONDITIONS OF APPLICATION

The determination of precautionary measures is conditioned by the investigative-prison grounds (Art. 123 of the CPA), which is evident from the provision of Art. 98, para. 1 of the CPA, which states that precautionary measures may be imposed not only when pre-trial detention has been ordered, but also when there are circumstances due to which it is possible to order it, meaning even when it was not ordered before or during the proceedings. Therefore, the court may order one or more precautionary measures from Art. 98, para. 2 of the CPA with the cumulative fulfillment of two assumptions: (1) the existence of circumstances from Art. 123 of the CPA due to which it is possible to order pre-trial detention or pre-trial detention has already been ordered and (2) if a precautionary measure can

³² Rizvić, D., Burić, Z. *Izricanje istražnog zatvora i mjera opreza radi zaštite žrtava*, Priručnik za polaznike/ice, Pravosudna akademija, Zagreb, 2023, p. 48.

³³ County Court in Osijek, Kž 345/2023-2 of August 18, 2023.

³⁴ County Court in Varaždin, Kž 496/2023-4 of August 28, 2023.

achieve the same purpose. This means that a precautionary measure essentially represents a substitute for pre-trial detention, which is applied when that measure can achieve the same purpose as a milder measure compared to pre-trial detention. Therefore, to use the precautionary measure, it is necessary, first of all, to establish the existence of pre-trial detention assumptions, both general assumptions from Art. 123, para.1 of the CPA and special assumptions related to one or more legal bases prescribed by Art. 123, para. 1, items 1 to 5 of the CPA. After that, the court is obliged to evaluate whether the same purpose that would be achieved by applying the pre-trial detention measure could be successfully achieved by applying a milder measure, i.e. by one or more precautionary measures.³⁵ Namely, when choosing a precautionary measure, the court should consider the functionality of the measure and the goal it wants to achieve, and assess the adequacy and effectiveness of the applied precautionary measure. Finally, the application of precautionary measures must be properly justified,³⁶ and it is necessary to "identify and adequately evaluate all those circumstances that influence the decision on the possibility of replacing the measure of pre-trial detention, taking into account the need and expediency of applying a particular precautionary measure, their form and quantity, as well as their enforceability."³⁷

In addition to precautionary measures, which depend on the duration of pre-trial detention, the court can also impose precautionary measures as independent measures that are not bound by the pre-trial detention terms,³⁸ whereby the violation of independent precautionary measures is a new criminal offense from Art. 311 of the CC, which entails additional sanctions.³⁹ Independent precautionary measures may only be imposed if there are circumstances for imposing pre-trial detention under Art. 123 of the CPA (i.e., there is still a risk of

³⁵ Supreme Court of the Republic of Croatia, II Kž 48/2018-4 of February 5, 2018.

³⁶ Supreme Court of the Republic of Croatia, II Kž 18/2018-4 of January 18, 2018.

³⁷ Supreme Court of the Republic of Croatia, II Kž 48/2018-4 of February 5, 2018

³⁸ The Final Proposal for the Law on Amendments to the Criminal Procedure Code of 5 December 2019, p. 14, https://sabor.hr/sites/default/files/uploads/sabor/2019-12-06/134905/PZE_776.pdf (hereinafter: Proposal) states that independent precautionary measures prescribed by Art. 98a of the CPA can exist independently and are not tied to pre-trial detention periods and can be determined even after the expiry of the longest periods of pre-trial detention from Art. 133 of the CPA, and just as with precautionary measures from Art. 98 of the CPA, their determination depends on the existence of pre-trial detention reasons from Article 123 of the CPA and can be applied until the judgment becomes final and enforceable. See Turudić, I., Bujas, I., Pavelin, T. *Osmo novela Zakona o kaznenom postupku*, Informator, 2020.

³⁹ County Court in Pula-Pola, Kž 396/2023-6 of September 12, 2023.

escape or reoffending,⁴⁰ and to ensure the safety of the victim⁴¹ in the form of a prohibition on approaching, establishing, or maintaining contact with certain persons or places), and the longest terms for pre-trial detention under Art. 133 of the CPA have been expired. After bringing a non-final judgment with a suspended sentence, independent precautionary measures may not be ordered or prolonged but must be immediately vacated.⁴²

The decision to apply a precautionary measure, as mentioned, is based on the assessment of the judicial body on the need for such a measure, considering the circumstances of each case and the risk of reoffending.⁴³

4. DURATION OF PRECAUTIONARY MEASURES

According to legal provisions, precautionary measures may be ordered before and during criminal proceedings. Before the indictment is filed, precautionary measures are ordered, prolonged, and vacated by the state attorney's ruling and by the investigating judge when deciding on pre-trial detention. After the indictment is filed and until the verdict becomes final and enforceable, these measures are ordered, prolonged, and vacated by the court.⁴⁴ Precautionary measures may last as long as necessary, but the legislator nevertheless limits their duration to no longer than until the judgment becomes enforceable when it comes to precautionary measures that are determined due to the existence of circumstances that a person is on the run or there are special circumstances indicating a danger of escaping (Art. 123, para. 1, item 1 of the CPA), when special circumstances indicate a risk that person will reoffend or complete an attempted criminal offense, or perpetrate a felony he threatens to commit, for which the law foresees imprisonment for a term of five years or more (danger of repetition, Art. 123, para. 1, item 3 of the CPA) or when pre-trial detention is deemed necessary for undisturbed conducting of the proceedings due to especially grave circumstances of the offense and a sentence of long-term imprisonment is prescribed for such an offense (Art. 123, para. 1, item 4 of the CPA). Another limitation on the duration of precautionary measures is until the finality of the verdict when they are ordered

⁴⁰ County Court in Zadar, Kž 62/2023-3 of February 15, 2023; High Criminal Court of the Republic of Croatia, II Kž 247/2022-5 of June 15, 2022; County Court in Vukovar, Kž 273/2021-6 of December 15, 2021.

⁴¹ County Court in Varaždin, Kž 574/2024-4 of August 16, 2024; County Court in Pula-Pola, Kž 396/2023-6 of September 12, 2023; County Court in Osijek, Kž 345/2023-2 of August 18, 2023.

⁴² County Court in Bjelovar, Kž 360/2022-5 of December 19, 2022.

⁴³ Supreme Court of the Republic of Croatia, II Kž 810/2009-3 of December 16, 2009.

⁴⁴ Art. 98, para. 6, of the CPA.

due to the existence of special circumstances indicating that offender will destroy, hide, alter or forge items of evidence or traces of importance to the criminal proceedings or that he shall impede the criminal proceedings by influencing witnesses, expert witnesses, coprincipals or accessories after the fact (so-called collusion risk, Art. 123, para. 1, item 2 of the CPA), and if the duly summoned defendant evades appearance at the trial (Art. 123, para. 1, item 5 of the CPA).⁴⁵ When the defendant has fully complied with the precautionary measures ordered to him as an alternative to pre-trial detention due to the existence of a collusion risk,⁴⁶ and there are no longer any special circumstances that would indicate a risk that the defendant would obstruct the criminal proceedings by influencing the victim of the criminal offense, so no longer exists any legal conditions for the application of the pre-trial detention measure from Art. 123, para. 1, item 2 of the CPA, and thus, no conditions for prolonging precautionary measures on the same grounds.⁴⁷

The novelty introduced by the 2024 amendment to the CPA (Official Gazette, No. 36/24) relates to the possibility of the duration of precautionary measures until sent to serve a prison sentence, intending to fill the legal gap from the finality of the judgment until the convict begins to serve the sentence. In this way, the time when precautionary measures ceased with the finality of the judgment was bridged, given that according to Art. 55, para. 2 of the Act on the Execution of Prison Sentences,⁴⁸ the ruling on referral to serving a prison sentence was issued within eight working days from receipt of the transcript of the judgment. The period from the finality of the judgment to the issuance of the ruling on referral to serving a prison sentence has left the possibility of a legal gap in terms of preserving the objective of the criminal proceedings, so it was necessary to ensure that precautionary measures could last, following the model of the duration of pre-trial detention after the finality of the judgment, until the finality of the ruling on referral to serving a prison sentence.

The body that ordered the precautionary measure (before filing the indictment) is obliged, or the court is obliged, to review every two months the existence of the need to continue the measure and, if necessary, prolong or vacate the measure (unless the precautionary measure was ordered as a condition of bail, in which

⁴⁵ Art. 98, para. 6, of the CPA.

⁴⁶ In accordance with Art.125, Para. 1, Item 8 of the CPA, pre-trial detention ordered due to the "collusion risk," must be revoked as soon as the evidence for which security it was ordered has been collected or presented, but no later than the end of the hearing.

⁴⁷ Supreme Court of the Republic of Croatia, II Kž 406/2020-4 of October 1, 2020.

⁴⁸ Act on the Execution of Prison Sentences, Official Gazette, No. 14/21, 155/2023.

case the control is not carried out).⁴⁹ The above brings into life the verification of the necessity and proportionality of the imposed precautionary measures, which is essential from the aspect of Art. 6 of the ECHR in the context of respecting the right to a fair trial.⁵⁰ However, according to the position of the Supreme Court of the Republic of Croatia, after a non-final judgment has been rendered, there is no longer any need to review the application of the precautionary measure after two months from the date of the finality of the previous ruling on the precautionary measure. This is because precautionary measures are ordered in cases where there are circumstances from Art. 123 of the CPA due to which it is possible to order pre-trial detention or such detention has already been ordered, and the same purpose can be achieved by a precautionary measure. As soon as the circumstances from Art. 123 of the CPA cease to exist, it is necessary to vacate precautionary measures, so the provisions mentioned above clearly indicate that the application of precautionary measures is linked to the existence of circumstances for the imposition or extension of pre-trial detention.⁵¹

However, although the order of a precautionary measure is conditional on the existence of some of the circumstances that are a cumulative prerequisite for the imposition of pre-trial detention, if reasonable suspicion of the commission of a criminal offense exists even after the expiry of the pre-trial detention terms, precautionary measures may be ordered as independent measures (Art. 98a of the CPA).⁵² The reason for introducing this provision can be found in examples from case law where, after the expiry of the terms for ordering or prolonging pre-trial detention, a precautionary measure could not be imposed "because the precautionary measure is related only as an alternative to detention."⁵³ Therefore, given that precautionary measures imposed as independent measures can no

⁴⁹ However, despite the explicit legal provision, the Supreme Court of the Republic of Croatia found in two cases that the two months had been exceeded, but that this had no impact on the regularity and legality of the decision (ruling) made, given that "it is not a preclusive period, but a period of an instructive nature, so its expiration does not lead to the termination of the precautionary measure." (Supreme Court of the Republic of Croatia, II Kž 284/2018-7 of August 7, 2018. See also Supreme Court of the Republic of Croatia, II Kž 490/2017-4 of December 28, 2017). Also, the regularity and legality of the ruling to prolong precautionary measures were not affected even when it was made before the expiry of the statutory period of two months from the entry into force of the previous ruling, i.e., 12 days earlier. (High Criminal Court of the Republic of Croatia, II Kž 340/2021-5 of September 22, 2021).

⁵⁰ Lupu, S. A. *The procedure of verifying precautionary measures in criminal proceedings*, Lex ET Scientia International Journal, vol. 31, no. 2, 2024, p. 121.

⁵¹ Supreme Court of the Republic of Croatia, II Kž 206/2018-4 of May 14, 2018.

⁵² Giunio, M.A. *(Pre)velik oprez s mjerama opreza u kaznenom postupku*, Informator. No. 6566 of March 18, 2019.

⁵³ Decisions of the Supreme Court of the Republic of Croatia, Kžm 18/07-3 of April 25, 2007 and I Kž 1185/04-3 of February 2, 2005.

longer, in the case of the defendant's failure to comply, be replaced by pre-trial detention, the defendant's failure to comply with the certain precautionary measure as an independent measure constitutes a criminal offense within the existing criminal offense of non-execution of a court decision from Art. 311, para. 3 of the CC.

Precisely because of the possibility of imposing independent precautionary measures upon the expiry of the terms of pre-trial detention due to the existence of the circumstances referred to in Art. 123 of the CPA, there were no legal grounds for replacing the precautionary measures with pre-trial detention when the legally prescribed terms had expired, and a ruling should have vacated them.⁵⁴ If the court considered that there were still reasons for imposing pre-trial detention, it could have acted following Art. 98a, para. 1 of the CPA and impose on the defendant precautionary measures as independent, and not replace the existing precautionary measures, the duration of which had expired, with pre-trial detention.⁵⁵ Also, in an analogous situation, there is no legal grounds for prolonging precautionary measures for the defendant, when the legally prescribed terms have expired, given that the court, if it considered that there were still reasons for ordering pre-trial detention, could have imposed precautionary measures on the defendant as independent precautionary measures, and not extended the existing ones.⁵⁶

4.1. Duration of precautionary measures in the context of the principle of proportionality

The application of precautionary measures against the defendant has proven to be debatable in situations where criminal proceedings last for a more extended period of time. Namely, although cases of domestic violence require urgent action, the aspect of "urgency" in cases in which precautionary measures have been ordered is not assessed "as urgent" as in cases in which pre-trial detention has been ordered against the defendant, which consequently results in "the precautionary measures imposed may then represent a greater restriction of the defendant's rights and freedoms than with the application of a much shorter measure of pre-trial detention."⁵⁷ Thus, the defendant questioned the principle of proportionality, stating that it is jeopardized by the fact that the precautionary measure lasts for a year and a half, a duration which would not be justified assuming that it was replaced by pre-trial detention. However, the Supreme Court of the Republic of

⁵⁴ County Court in Slavonski Brod, Kž 211/2023-4 of July 20, 2023.

⁵⁵ Ibid.

⁵⁶ County Court in Slavonski Brod, Kž 194/2023-4 of July 10, 2023.

⁵⁷ Cf. Rizvić, Burić, *op. cit.* note 32, p. 38.

Croatia did not consider such an objection to be well-founded, given that "Art. 98a of the CPA separates the duration of precautionary measures from the duration of pre-trial detention by stipulating that, in the case of the expiry of the terms of pre-trial detention referred to in Art. 133 of the CPA, the court may, by ruling, order precautionary measures as independent precautionary measures."⁵⁸ Since there is no obstacle to applying precautionary measures after the expiry of the terms of pre-trial detention, this cannot be considered a violation of the principle of proportionality. Nor was the principle of proportionality violated when the application of a precautionary measure was extended to the defendant, with previously determined bail and a measure of pre-trial detention, given that "the principle of proportionality, prescribed by the provision of Art. 122, para. 2 of the CPA, applies to the measure of pre-trial detention, and therefore the application of the precautionary measure to date has not violated the principle of proportionality".⁵⁹ *A contrario*, the Supreme Court of the Republic of Croatia found a significant violation of the provisions of criminal procedure when the first-instance court, in the explanation of the ruling replacing pre-trial detention with a precautionary measure, stated "that there has been a violation of the principle of proportionality, and then that there is still a risk of reoffending, but that it can be successfully prevented by applying the precautionary measure imposed, namely the obligation to report to the Z Police Station regularly."⁶⁰ The Supreme Court of the Republic of Croatia stated that "if, due to a violation of the principle of proportionality, the measure of pre-trial detention cannot be ordered or should be vacated, then the application of a milder measure that represents a substitute for pre-trial detention cannot be ordered either."⁶¹

4.2. Imposition and duration of precautionary measures after a non-final verdict

According to the position of the Supreme Court of the Republic of Croatia, "since the existence of the legal conditions from Art. 123 of the CPA is not examined after the pronouncement of a non-final verdict, the existence of which is a prerequisite for the application of precautionary measures, by appropriate application of the provision of Art. 131, para. 3 of the CPA, nor are the legal conditions for further applying precautionary measures examined after the pronouncement of a non-final verdict".⁶² Also, after the pronouncement of a non-

⁵⁸ Supreme Court of the Republic of Croatia, II Kž 110/2020-4 of March 13, 2020.

⁵⁹ Decisions of the Supreme Court of the Republic of Croatia, II Kž 285/2019-4 of August 7, 2019 and II Kž 428/2019-4 of November 28, 2019.

⁶⁰ Supreme Court of the Republic of Croatia, II Kž 129/2016-4 of April 15, 2016.

⁶¹ *Ibid.*

⁶² Supreme Court of the Republic of Croatia, II Kž 403/15-4 of November 25, 2015.

final verdict imposing a suspended sentence on the defendant, following Art. 125, par. 1, item 6 of the CPA, the possibility of ordering or prolonging pre-trial detention against the accused is eliminated, i.e., if it was ordered, it must be immediately vacated. At the same time, the above also constitutes an obstacle to ordering or prolonging any precautionary measures (including independent precautionary measures) after issuing a non-final judgment imposing a suspended sentence on the accused, i.e., if they were previously ordered, they must also be immediately vacated.⁶³

5. NOVELTIES IN RESPECT OF STRENGTHENING THE ROLE OF THE VICTIM

With the latest amendments to the CPA (Official Gazette, No. 36/24), the legislator has strengthened the position and role of the victim through nomotechnical and substantive improvements to the existing legal provisions. However, some amendments were subject to criticism by the session of the Criminal Department of the Supreme Court during the process of public debate and adoption of law because they didn't represent any improvement.⁶⁴ The recent amendments to the CPA didn't affect the alternative character and catalog of precautionary measures. Still, concerning specific categories of victims, as a novelty, mandatory consideration of "the results of the individual assessment of the needs of the victim and the victim's closely related person and the needs of the victim's protection" was incorporated when deciding to order a precautionary measure as a milder form of criminal law repression against the defendant instead of pre-trial detention. Considering specific categories of victims (victims of criminal acts of violence against women, domestic violence, and violence against closely related persons), the legislator orders the body that decides on precautionary measures, regardless of whether it orders, prolongs, or vacates them, to hear the victim before deciding the circumstances of the existence of a threat to her personal safety or the safety of her family members and closely related persons, and when making a decision on ordering, prolonging, or vacating a precautionary measure, to take into account the statement on the proposal for the application of the precautionary measure as well as the results of the individual assessment of the victim's needs.⁶⁵ Since these are urgent procedures, in order to facilitate the implementation of this new obligation, the legislator prescribes that this does not involve "interrogating" the

⁶³ County Court in Bjelovar, KŽ 360/2022-5 of December 19, 2022.

⁶⁴ See Kos, D. *Ojačavanje položaja i uloge žrtve u kaznenom postupku izmjenama zakona u 2024.*, Novine u kaznenom zakonodavstvu - 2024., Zbornik radova Opatija, May 16 – 17, 2024, p. 10.

⁶⁵ *Ibid*, p. 14.

victim within the meaning of the CPA, but rather the need to "hear" the victim, which can also be done by using information and communication technologies or in another appropriate manner.⁶⁶ Also, one of the novelties in the context of applying precautionary measures is the provision of Art. 125.a of the CPA on informing the victim about releasing a pre-trial prisoner against whom the criminal proceeding is ongoing. The victim must then be informed of the measures, if any, taken for its protection.

6. CERTAIN TYPES OF PRECAUTIONARY MEASURES – A REVIEW OF CASE LAW

Precautionary measures imposed to protect the victim in criminal proceedings, especially domestic violence and related criminal offenses, are an alternative to the measure of pre-trial detention under Art. 123, para. 1, item 3 of the CPA (iteration risk – the risk of reoffending), and are intended to prevent potentially dangerous social contact. The most commonly imposed measures are prohibiting approaching within a certain distance and measures prohibiting establishing direct or indirect contact with the victim. In addition to the above measures, the precautionary measure of removal from the home is sometimes imposed. To a somewhat lesser extent, the measure prohibiting harassment and stalking of the victim is applied, while the measure prohibiting visiting a certain place or area is rarely ordered.⁶⁷ Apart from the stated purpose of protecting the victim, precautionary measures, as seen from case law, are primarily adopted as a substitute for the pre-trial detention measure from Art. 123, para. 1, item 1 of the CPA (escape risk) in the form of prevention of leaving the place of residence. Since the paper emphasizes specific cases of victim protection through the application of precautionary measures, the following will present cases from case law in the context of only those precautionary measures ordered to protect victims (of violence).

6.1. Prohibition of approaching a certain person and prohibition of establishing or maintaining contact with a certain person

Measures of prohibiting approaching a certain person and establishing or maintaining contact with a certain person are "the least onerous measures in restricting the rights of the accused" but "at the same time equally effective in

⁶⁶ *Ibid.*

⁶⁷ See Rizvić, Burić, *op. cit.* note 32, p. 37.

eliminating the possibility of the accused reoffending."⁶⁸ In other words, the restrictions on the rights that the accused is obliged to submit to (refraining from communicating with the victim and prohibiting approaching the victim) are minimal, in proportion to the interests of the criminal proceedings that are thereby achieved.⁶⁹ Applying the aforementioned precautionary measures prevents direct contact between the accused and the certain person, as well as any connection between them, and thus prevents the accused from further unlawful conduct.⁷⁰ The provision of Art. 99, para. 4 of the CPA prescribes the content of the ruling ordering the precautionary measure of prohibiting approaching a certain person in such a way that in that ruling, the competent authority is obliged to determine the distance below which the accused may not approach the certain person. In the context of the precautionary measure of prohibition of establishing or maintaining contact with a certain person, according to the provisions of Art. 99, para. 5 of the CPA, the competent authority shall prohibit establishing or maintaining direct or indirect contact with a specific person. The decision to prolong or vacate the precautionary measure is based on the court's assessment of the existence of a threat to the victim's safety and other relevant circumstances of the case, as well as the victim's testimony. Namely, the provision of Art. 98, para. 3 of the CPA stipulates that when deciding to order, prolong, or vacate a precautionary measure, the victim's stance will be considered, especially concerning the fact that there is a danger to her personal safety and the safety of her family members. Thus, the court concluded that there were no longer any conditions for extending the precautionary measures, especially since the victim herself stated that she "is not afraid of the defendants, her son and daughter-in-law, that they are her only support in the world and that she wants them to return home as soon as possible".⁷¹ *A contrario*, the precautionary measures ordered for the defendant were prolonged, namely the prohibition of approaching the victim at a distance of fewer than 200 meters, the prohibition of establishing or maintaining contact with the victim, and the prohibition of stalking and harassing the victim, because according to the court's understanding, they represent a sufficient guarantee that the defendant at liberty will not commit a new criminal offense to the detriment of the victim, taking into account that the defendant and the victim live at different addresses and that the defendant has not been convicted of the same or similar criminal offenses.⁷² However, the precautionary measure of prohibiting approaching the victim, unless it was imposed at the same time as the precautionary measure of removing the

⁶⁸ High Criminal Court of the Republic of Croatia, II Kž 373/2021-5 of October 21, 2021.

⁶⁹ High Criminal Court of the Republic of Croatia, II Kž 485/2024-5 of October 30, 2024.

⁷⁰ Supreme Court of the Republic of Croatia, II Kž 313/2018-4 of August 2, 2018.

⁷¹ County Court in Varaždin, Kž 142/2024-6 of May 7, 2024.

⁷² Supreme Court of the Republic of Croatia, II Kž 153/2015-4 of April 20, 2015. See also the decision of the Supreme Court of the Republic of Croatia, II Kž 252/2015-4 of July 13, 2015.

defendant from home, is not useful if the offender and the victim have the same place of residence and live in the same household because specific precautionary measures cannot be implemented.⁷³

6.2. Removal from the home

The provision of Art. 98, para. 2, item 10 of the CPA provides the possibility of applying the precautionary measure of removal from the home, whereby the competent authority is obliged to determine, per Art. 99, para. 10 of the CPA, the address of the home from which the accused is removed. The purpose of this provision is to effectively protect the victim from further unlawful conduct by the accused who resides in the same home, at the same address as the victim, precisely by removing him from that home.⁷⁴ Therefore, to achieve the purpose of pre-trial detention, it will be sufficient to prolong the application of the precautionary measures from Art. 98, para. 2, items 3, 4, 5, and 10 of the CPA, which prevent the accused from contacting the victims and thereby repeating the criminal offense to their detriment, and given his physical separation from the victims because he has changed his place of residence.⁷⁵ The first-instant court assesses that the purpose of the measure of pre-trial detention in the specific situation can be achieved by applying precautionary measures, namely by prohibiting approaching the victim at a distance of fewer than 200 meters, by prohibiting establishing or maintaining direct or indirect contact with the victim, and by removing him from home and the address of residence, whereby the court evaluated the fact that the defendant had not previously come into conflict with the law.⁷⁶

6.3. Prohibition of stalking or harassing the victim or another person

Prohibition of stalking or harassing the victim or another person is most often imposed in addition to measures prohibition approaching a certain person and prohibition establishing or maintaining contact with a certain person as adequate for eliminating those circumstances that indicate the existence of an iteration risk (Art. 123, para. 1, item 3 of the CPA),⁷⁷ but are also "justified, efficient and, in terms of their content and scope, a sufficient substitute for the measure of pre-trial detention on the basis of the collusion risk".⁷⁸

⁷³ County Court in Varaždin, Kž 574/2024-4 of August 16, 2024.

⁷⁴ Supreme Court of the Republic of Croatia, II Kž 75/2016-4 of March 4, 2016.

⁷⁵ Supreme Court of the Republic of Croatia, II Kž 88/2020-4 of February 26, 2020.

⁷⁶ County Court in Zagreb, Kov-iz-3/2020 (Kov-6/2020) of February 5, 2020.

⁷⁷ Supreme Court of the Republic of Croatia, II Kž 75/2016-4 of March 4, 2016.

⁷⁸ Supreme Court of the Republic of Croatia, II Kž 235/2014-4 of 27 June 2014.

6.4. Prohibition to visit a certain place or territory

In the ruling ordering the precautionary measure of prohibition to visit a certain place or territory, the competent authority shall specify the place or area and the distance below which the defendant may not approach them (Art. 99, para 2 of the CPA). The ordered precautionary measures of prohibition to visit a certain place or territory and the prohibition to approach a certain person "are a disciplinary corrective for the future behavior of the defendant, who is aware that his behavior is now under certain increased scrutiny and supervision," because he is expected to refrain from visiting a specific place (the Home for the Elderly in B.) and from approaching and establishing or maintaining contact with the victims, who are employees of the facility in relation to which there is a prohibition on visiting.⁷⁹ The aforementioned measures are also "adequate for preventing the risk of reoffending."⁸⁰ When the victim's employment ends in relation to the object for which there is a prohibition on visiting, there is no longer a basis for extending the precautionary measure of the ban on visiting the object in question.⁸¹

7. LEGAL CONSEQUENCES OF VIOLATING PRECAUTIONARY MEASURES

When dealing with a violator of precautionary measures, special urgency is required, especially when the matter concerns a violation of the precautionary measure of a prohibition on approaching a certain person, a prohibition on harassing or stalking the victim or another person, and a precautionary measure of removal from the home.⁸² The legal consequences of violating precautionary measures are differentiated depending on whether they are determined as a substitute for pre-trial detention (Art. 98, para. 1 of the CPA) or as independent measures (Art. 98a, para. 1 of the CPA). Accordingly, in the first situation, the defendant will be warned that in the case of failure to carry out the ordered precautionary measure(s), they will be replaced by pre-trial detention (Art. 98, para.1 of the CPA). In contrast, if an independent precautionary measure is determined, the court will warn the defendant that non-compliance with the imposed measure is a criminal offense of non-execution of a court decision (Art. 98a, para. 1 of the CPA).

⁷⁹ County Court in Bjelovar, Kž 427/2024-4 of October 2, 2024.

⁸⁰ *Ibid.*

⁸¹ County Court in Karlovac, Kž 155/2023-2 of April 7, 2023.

⁸² Kos, *op. cit.* note 64, p. 16.

7.1. Violation of precautionary measures as an alternative to pre-trial detention

In the context of violating precautionary measures, the legislator introduced a new provision in the X.th Amendment to the CPA that authorizes the police to arrest "a defendant for whom there are grounds for suspicion that he has acted contrary to the precautionary measure imposed on him" (Art. 107, item 4 of the CPA). However, suppose the police determine that the defendant has acted contrary to the measures ordered but does not consider it necessary to arrest him (the police are authorized to arrest but do not have this obligation).⁸³ In that case, the police will inform the court of this. Therefore, before the indictment is filed, the state attorney submits a proposal to the investigating judge to replace the precautionary measure with pre-trial detention, and after the indictment is filed, a session of the extrajudicial council is convened.⁸⁴ The investigating judge, or the council determines whether the measures have indeed been violated and whether the conditions for ordering pre-trial detention exist, and will order pre-trial detention by a special ruling.

As for the court's actions in the case of a violation of precautionary measures, it is clear that some judges, in case of even the slightest infringement of precautionary measures, immediately vacate the precautionary measures and order pre-trial detention, starting from the point of view that the defendant has been warned of the legal consequences of violating the precautionary measures that he knowingly violated.⁸⁵ Other judges, however, upon notification of a violation of precautionary measures, do not change the precautionary measures to pre-trial detention if it is a violation of "less intensity" or if it is not a "reoffending", and on council session only warn the accused that he must not do this again because otherwise, the court will order pre-trial detention.⁸⁶ Thus, there are evident cases in case law when the defendant undoubtedly violated ordered precautionary measures, but they were not replaced by pre-trial detention, even though the court found that the defendant "did not fully comply with the precautionary measures ordered to him since he violated the precautionary measure of the prohibition on establishing or maintaining any direct or indirect relationship with the victim by attempting to establish contact with her via mobile phone calls and SMS messages", while "persuading her to return to his apartment and to live together again, threatening her that he would take her life if she did not return to him and that their minor son

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Decisions of the County Court in Varaždin, Kž 674/2024-4 of September 27, 2024; Kž 445/2024-4 of June 21, 2024; Kv II 178/2024-3 of May 24, 2024; and the County Court in Sisak, Kv II 107/2024-14 of April 18, 2024.

⁸⁶ Rizvić, Burić, *op. cit.* note 32, p. 55.

would be left without parents, that she would be the culprit if that happened and that the newspapers would write about her if she did not return to him", and he also failed to comply with the precautionary measure of regularly reporting to the competent authority since "from the contents of the report II. Police station, it appears that the defendant last reported to that police station in March 2017, while during April, May, June, July, and August, no reporting by the defendant was recorded.⁸⁷ Despite this state of affairs, the first-instance court, even though it notes that the defendant partially complied with the imposed precautionary measure under Art. 98, para.2, items 4 and 5 of the CPA, concludes that there are no legal requirements for replacing the imposed precautionary measure with pre-trial detention.⁸⁸

7.2. Violation of independent precautionary measure

Violating an independent precautionary measure is a criminal offense of non-execution of a court decision from Art. 311 para. 3 of the CC, for which a prison sentence of up to two years is prescribed. In the latter case, a new criminal proceeding is initiated for a new criminal offense. Since the imposition of an independent precautionary measure is not bound by pre-trial detention terms, i.e., it is ordered upon their expiration, its violation cannot result in a substitute for pre-trial detention, but only in the commission of a new criminal offense – non-execution of a court decision, about which the defendant is expressly warned. The fact that the contact with the victim was not directly established, in a situation where the special precautionary measures did not only refer to the prohibition of approaching the victim at a distance of fewer than 100 meters, but also the prohibition of approaching the home at the address where the victim lives at a distance of fewer than 100 meters, is not relevant for the violation of precautionary measures. Given that the defendant not only passed by but also parked his vehicle in front of the victim's house, and frequently visited a restaurant less than 100 meters from the victim's home, the first-instance court found that the defendant violated independent precautionary measures, that he was aware of this, knowing that independent precautionary measures were in effect and what the consequences of violating all measures were.⁸⁹

⁸⁷ Supreme Court of the Republic of Croatia, II Kž 18/2018-4 of January 18, 2018.

⁸⁸ *Ibid.*

⁸⁹ County Court in Pula-Pola, Kž 396/2023-6 of September 12, 2023. See also the decision of County Court in Varaždin Kž 389/2023-5 of July 26, 2023.

7.2.1. Conducting new criminal proceedings for violation of an independent precautionary measure

In the context of the different legal consequences that a violation of precautionary measures produces, in particular, on the one hand, by replacing the imposed (alternative) precautionary measure with pre-trial detention, while a breach of independent precautionary measures, on the other hand, results in the conduct of new criminal proceedings for the (new) criminal offense of non-execution of a court decision under Art. 311, para. 3 of the CC, this potentially articulates the constitutional principle of equality of citizens before the law due to different sanctions for failure to comply with substantively the same measures. However, the essence of the principle of equality is not violated by these "apparently" different sanctions, since the formal assumptions for the imposition of precautionary measures under Art. 98 and 98a of the CPA are significantly different, although the material conditions for their application are the same and consist of the existence of the circumstances under Art. 123 of the CPA. Given the above, the impossibility of imposing pre-trial detention due to the expiry of the statutory terms *a priori* leads to the impossibility of imposing precautionary measures under Art. 98 of the CPA, but in that case, provided that the circumstances under Art. 123 of the CPA (still) exist, it is possible to impose precautionary measures as independent measures. The legislator has opted for the above solution because the expiry of pre-trial detention terms, which represent the concretization of the principle of proportionality, does not imply the cessation of the existence of the circumstances under Art. 123 of the CPA, eliminating which is necessary even after the expiry of the terms of pre-trial detention.⁹⁰ Consequently, "alternative" precautionary measures (Art. 98 of the CPA) can be imposed (only) when there are grounds for imposing pre-trial detention or such detention has already been ordered, i.e., within the pre-trial detention terms under Art. 133 of the CPA, while "independent" precautionary measures (Art. 98a of the CPA) can be determined after the expiration of the pre-trial detention terms from Art. 133 of the CPA, but under the circumstances that the danger still exists, that is, the reasons from Art. 123 of the CPA, for which pre-trial detention can be ordered. Considering the existing distinction, i.e., the circumstance that independent precautionary measures are ordered after the expiry of pre-trial prison terms, their violation cannot result in a substitute for pre-trial detention, but the only possible solution is that their violation constitutes the criminal offense of non-execution of a court decision, i.e., the ruling ordering the independent precautionary measure.

⁹⁰ Cf. Pleić, M., Budimilić, T. *Mjere opreza u kaznenom postupku – prijevori oko samostalne opstojnosti i trajanja te druga otvorena pitanja*, Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 28, no. 2, 2021, p. 285.

Concerning the observation that the imposition of independent precautionary measures calls into question the principle of fairness, in the context of a trial within a reasonable time, because the "responsibility" for the expiry of the longest terms of pre-trial detention is "shifted" to the defendant, against whom it is possible to apply independent precautionary measures even after the expiry of the longest legal terms of pre-trial detention referred to in Art. 133 of the CPA, drawing attention to two circumstances is necessary. First, precautionary measures represent (only) a restriction of individual rights and freedoms, not their deprivation. Therefore, their longer duration is possible without significant consequences for the defendant's rights, which is evident from the legal formulation that "precautionary measures may last as long as there is a need for it." Second, the individual duration of precautionary measures has no impact on the (total) length of criminal proceedings since they aim at eliminating specific dangers that affect the course of criminal proceedings. It should be remembered that precautionary measures are not a "privilege" for the defendant, nor is pre-trial detention a "punishment," but both are measures to ensure the defendant's presence in proceedings for which guilt has not yet been determined.⁹¹

8. HEARING THE VICTIM IN RESPECT OF ORDERING, PROLONGING AND VACATING OF PRECAUTIONARY MEASURES

The court shall consider the victim's statements by Art. 98, para. 3 of the CPA, according to which, before issuing a ruling ordering, prolonging, or vacating a precautionary measure in the case of a criminal offense of violence against women, domestic violence, and violence against closely related persons, it shall hear the victim on the circumstances of the existence of a danger to her personal safety and consider her statement on the proposal for the application of precautionary measures. Thus, the first-instance court, acting per the aforementioned provision of Art. 98, para. 3 of the CPA, heard the victim of violence against a closely related person on the circumstances of the existence of a danger to her personal safety and considered her statement on the need for further application of precautionary measures to the defendant. The victim stated at the prosecution council session that he did not see the need for further precautionary measures, adding that he missed his father and that he believed that the duration of the pre-trial detention and precautionary measures so far had sufficiently influenced the defendant to not commit any more criminal offenses in the future.⁹² With this argument, the first instance court, with the addition of the finding that the defendant did not violate

⁹¹ Cf. Tuntevski, *op. cit.* note 9, p. 827.

⁹² County Court in Varaždin, Kžzd 104/2024-4 of November 19, 2024.

the precautionary measures and that he had not been convicted of any misdemeanor or criminal offense, determined that the defendant's risk of reoffending had ceased (Iteration risk).⁹³ Also, considering the findings above and the victim's statement that there was no longer a risk to her safety, which is why she wants the defendant to return to the home where they lived together and that the defendant had not been convicted of any criminal offense, the first instance court correctly determined that there was no longer a risk of reoffending, which is why it was justified to vacate certain precautionary measures.⁹⁴ Finally, the precautionary measures that were imposed on the defendant by the state attorney's ruling to prevent the risk of reoffending were vacated with the explanation "that there is no longer a risk of reoffending (iteration risk), which arises from the consistent statements of the defendant and the victim that the defendant complied with certain precautionary measures, that they reconciled and that the victim has forgiven everything to the defendant, who is her nephew, and wants the defendant to return to the home where they lived together, with the defendant admitting his unlawful behavior and expressing regret."⁹⁵

However, it should be emphasized that the legal norm from Art. 98, para. 3 of the CPA refers to cases when the court and the state attorney need to decide on the ordering, prolonging, or vacating of precautionary measures as milder legal measures regarding the application of the most stringent measure of procedural coercion, pre-trial detention. Therefore, this is a procedural-legal situation where the court and the state attorney have the option, or rather the choice, between pre-trial detention and precautionary measures. However, when it comes to imposing independent precautionary measures following Art. 98a of the CPA, there is no longer a legal possibility of choosing between the aforementioned procedural measures because the maximum term of pre-trial detention from Art. 133 of the CPA has expired. In such a procedural-legal situation, the court is not obliged to act under Art. 98, para. 3 of the CPA.⁹⁶

9. CONCLUSION

The right to personal liberty is inherent to every human being and enjoys special protection in all modern legal systems. However, the right to personal liberty is not absolute; it can be derogated and subject to certain limitations, especially when violating criminal law norms. The aforementioned is because the state responds

⁹³ Ibid.

⁹⁴ County Court in Varaždin, Kž 673/2024-6 of November 7, 2024.

⁹⁵ Ibid.

⁹⁶ County Court in Varaždin, Kžzd 74/2024-4 of August 7, 2024.

with a punitive reaction towards offenders when the highest legal rights (such as life, physical, and personal integrity) are violated, which is reflected in the deprivation or restriction of freedom as a fundamental human right. To effectively conduct and complete criminal proceedings, the legislator prescribes precautionary measures as alternatives to pre-trial detention, which aim to achieve the purpose of pre-trial detention without applying the most severe measure of deprivation of liberty. Although they are conditioned by the existence of pre-trial detention reasons from Art. 123 of the CPA, the duration of precautionary measures exceeds the duration of pre-trial detention, given that they can be imposed as independent measures even after the expiry of pre-trial detention terms if the circumstances justifying the imposition of pre-trial detention still exist.

It is precisely in the context of the various legal consequences that the violation of precautionary measures produces, especially by replacing the precautionary measure with pre-trial detention or conducting a new criminal proceeding for the commission of a (new) criminal offense or non-execution of a court decision from Art. 311 para. 3 of the CC may dispute the constitutional principle of equality of citizens before the law due to different sanctions for non-compliance with substantively identical measures, as well as the principle of fairness in the context of a trial within a reasonable time. However, the principle of equality is not violated by the (apparent) different sanctioning of precautionary measures that are essentially the same in content since they differ in the formal assumptions of their imposition. Namely, the precautionary measures from Art. 98 of the CPA depend on the duration of pre-trial detention terms; they are limited by the longest pre-trial detention terms. Therefore, they are considered alternative measures. On the other hand, the measures from Art. 98a of the CPA are independent precautionary measures that can exist independently and are not bound by pre-trial detention terms. Concerning the mentioned formal aspect of their application, i.e., the (un)connection to the duration of pre-trial detention terms, it is clear that the violation of precautionary measures as alternative and independent measures cannot result in the same consequences, although their determination depends on the existence of (the same) substantive legal assumptions, i.e., pre-trial detention reasons from Art. 123 of the CPA. From the above, another essential conclusion is derived, namely that the principle of proportionality is not violated if the duration of (independent) precautionary measures exceeds the terms of pre-trial detention since the legislator explicitly separates the duration of independent precautionary measures from the terms of pre-trial detention. Therefore, there is no obstacle to applying precautionary measures even after the expiry of pre-trial detention terms. Finally, in the context of the principle of fairness of trial within a reasonable time, when the "responsibility" for the expiry of the longest terms of pre-trial detention is "shifted" to the defendant who is "subject to" the application of independent precautionary measures even after the expiry of the statutory terms of pre-trial

detention from Art. 133 of the CPA, it is clear that they have no impact on the (total) duration of criminal proceedings since they are aimed at eliminating specific dangers that affect the course of criminal proceedings. The above measures aim to ensure the safety of the victim, to prevent reoffending, or to eliminate the risk of escape through a prohibition on approaching a certain person, a prohibition on establishing or maintaining contact, or other precautionary measures that ensure control over the defendant, which must be purposeful and applicable. From the above, it is derived that the precautionary measures represent (only) a restriction of certain rights and freedoms and not their deprivation; therefore, their longer duration is possible without significant consequences for the defendant's rights. In fact, their duration at no stage of the criminal proceedings is related to the gravity of the criminal offense, but the legislator prescribes that they can last as long as "there is a need," which is (however) limited by the onset of enforceability, i.e., the finality of the judgment or referral to serve a prison sentence. In doing so, the existence of a "need" for the further application of a precautionary measure is not assessed according to the overall duration of the measure, but according to the (non)existence of legal prerequisites for its application.

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