REMOVAL OF LIBERTY OF THE PERSON BEFORE FILING OF INDICTMENT ACCORDING TO CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF KOSOVO

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Abstract
In all democratic countries the liberty and security of every person is secured and protected by the constitution and local laws and international conventions.

Only in the cases provided by law, the man maybe deprived of liberty, but during there movable of liberty the person is entitled to all rights in accordance with domestic and international legislation.

When a person is caught in act of the criminal offense, the police and any other person is authorized to arrest temporarily, but if the arrest is made by a person, the arrested person should immediately be submitted to the police.

The State Prosecutor is competent to assess whether there is a need that temporary detention of the person to extend and if he assess to assign the detention, within 24 hours the case should be field to pre-trial judge.

In case of the arrest, the person should be informed of there a sons for the arrest, and he has the right to request from the police to inform his family, he is entitled to have the defense council at once a defense council and to consult with the defense council confidentially, he has the right to a medical examination too.

The police and state prosecutor in the case of temporary arrest of the person shall keep records, which indicate the time and place of arrest, reason for arrest, criminal offense which is suspected of having committed person, a notice on the rights of detainees, and other rights arrested enjoys under the law.

Key words: *liberty, security, arrest, defense ccouncil, the rights*

1. General Principles

No person may be arrested, if there are not prior conditions or legal bases for arrest, in the contrary the right of the defendant, about liberty and security is provided by the Presumption of liberty in the favor of the defendant of remaining in liberty.

The detention as a measure for provision of the presence of the person during criminal procedure that stands to valid legal deadlines provided by the low in force, this means that the detention cannot be provided without deadline.

The right and personal liberty for each and single person is guaranteed with International Conventions[1], The Constitution of Republic of Kosovo[2] and Criminal Procedure Code of Republic of Kosovo [3] (CPCRK), exceptionally the deprivation of liberty can be only used in the cases provided by law.

The detention is the most aggravated measure to provide the presence of the defendant in criminal procedure, it is provided in this way but the execution of the measure means limitation of the person's liberty. The defendant is limited from one of the basic human rights- freedom of movement, the right which guaranteed by the local and international[4] right.

[1] Article 5 i European Convention for the Protection of Human Rights and Fundamental Freedoms
[2] Article 29 i Constitution of the Republic of Kosovo
[3] Article 12 CPCRK
[4] Dr.Sc. Azem Hajdari, Criminal Procedure Law, Prishtinë, 2006, fq. 176.

A person can be detained only in the cases when the court orders should be executed which is in compliance with law, when the detention has the international to accompany the detainee before the court under suspicion that he/she has committed criminal offence or not to repeat it, or detained to prevent from a contagious disease is mentally ill, alcoholic, drug addicts or vagrants; When arrested in order to prevent its unauthorized entry into the country or if against the person is being conducted the deportation or extradition procedure.

2. Provisional arrest and police detention

Police and every other person is authorized without a court order, to temporarily arrest the person who is caught in the commission of a criminal offense prosecuted ex officio, or is under investigation for the crime committed. If the person's arrest is not done by the police, the arrested person should be immediately submitted to police[5]. No one maybe deprived of his liberty exceptionally in the following cases:

- Arrest is made in accordance with Section 162 of the CPCRK;
- There is a court order to arrest a person;
- There is a warrant received through Interpol or other diplomatic route
- Arrest was authorized on the basis of suspicion that the defendant committed the criminal offense prosecuted ex officio, or other conditions are met legal[6] requirements
- Deprivation of liberty is short and in accordance with legal provisions[7], or the right of the police to stop a person up to a maximum of six hours;

Despite legal provisions regarding the bodies entitled to arrest a person, the body in question or state prosecutor, is obliged if they assess that a detention should be imposed within 48 the defendant should be send before the Pre-trial judge

3. The arrest during investigation stage

In the case when the state prosecutor considers that the investigation should be applied to a potential perpetrator of the offense, upon the state prosecutor's authorization the police detains the suspected person, only if there is a grounded suspicion whether that have committed a criminal offense prosecuted ex officio, and there is a reason to believe that: there is a danger of flight or escape; that the arrested person will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices. Then if there is in the question seriousness of criminal offence, personal characteristics of the suspect, previous characteristics etc,,, the environment and conditions in which he lives or other personal circumstances that indicate a risk that the suspect was likely to repeat criminal offense, may terminate attempted criminal offense or commit a criminal offense for which he was threatened to commit[8].

In the short term as possible, and no later than six hours, to the arrested person's the state prosecutor issues a decision in writing on the reasons of his detention, which includes the name and surname of the arrested person, exact place, date and time of arrest, criminal offense for which he was arrested and legal basis or reason for arrest. If the state prosecutor considers that against the arrested person there is a reason appoint the detention, within 24 hours should file the request for detention on remand to the

[5] Article 162 of Code no.04/L-082 CCRK in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 19 dated 13.07.2012
[6] Article 164 of Code no.04/L-123 CCPRK in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012
[7] Article 72 of Code no.04/L-123 of Procedure Criminal of Republic of Kosovo, in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012
[8] Article 164 of Code no.04/L-123 CCPRK in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012

pre-trial judge, whilst the pre-trial judge within 48 from the moment of the arrest of the suspected person, is obliged to decide regarding the prosecutor's request for appointment of the detention. During the detention hearing, the suspect necessarily has the right to be represented by a lawyer at the expense of public money, if not hired a lawyer of his choice, while the lawyer is entitled to have a look at case files so to be better prepared to represent the interests of the suspect. In considering the request of the state prosecutor for detention, trial judge must consider the possibility that the suspects to appoint any other measure softer, such as house arrest, bail, or appearance at the police station.

If the pre-trial judge appoints the detention upon the ruling on detention, each party has the right that within 24 from the moment of filed ruling, to file the appeal to, the court of appeal, but the appeal does not suspend the ruling on detention on remand, while connected to the appeal the court of appeal decides within 48 hours of the presentation of the appeal.

4. Request for provision appointment of the measure to ensure the presence of the defendant

When the state prosecutor deems necessary to provide the measure of detention against the defendant in order to ensure his presence, he addresses to the pre-trial judge with a request for detention.

The request for detention on remand includes: name and surname of the arrested person; place, exact date and time of arrest, the criminal offence offense description of all evidence that justifies the grounded suspicion that the suspect have committed criminal offence[9].

Also, the state prosecutoron the request for detention should describe all the reasons why he requests the detention, if the detention is not granted, the state prosecutor should prove with evidence against the suspect that there is a risk of flight or escape;that the arrested person will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices, also the questionof criminal offence seriousness of the criminal offence, the way or the circumstances in which the crime was committed, the personal characteristics of the suspect, his previous behavior, the environment and conditions in which he lives or other personal circumstances that indicate a risk that the suspect was likely to repeat criminal offense, may terminate attempted criminal offense or commit a criminal offense for which he was threatened tocommit. The state prosecutor on his request for detention against the suspects, among other things should justify the fact that detention is necessary and reasonable, justifying with another other fact that other alternative measures for securing the presence of the presence of the suspects during criminal proceedings, are insufficient. In case that the state prosecutor fails to prove with evidence that there is a grounded suspicion that the suspect has committed the alleged criminal offense, then orders the immediate release of the suspect. When the state prosecutor fails to justify with evidence the detention on remand is necessary, that the pre- trial judge provides any other measure to ensure the presence of the suspects during criminal proceedings, and that such as house arrest, bail or attendance at the police station. Also if the state prosecutes or fails to prove with evidence against the suspect that the legal base exists for any other alternative measure, so excluding the detention in such circumstances the pre-trial judge orders immediate release of as aspect.

5. Right of Arrested Person

A soon as an suspected person arrested he has the right on immediate aid of the defense council (Lawyer) of his choice, and when the arrested person did not engage the defense council or anybody else did not provide the defense council then the court would assign ex officio a defense council with public expenses.

[9]Article 165 of Code no.04/L-123 of Procedure Criminal of Republic of Kosovo, in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012

An arrested person is entitled that in to confidential way, whether or florin writing to consult with his advocate, whereas the communications of the arrested person with defense council counsel maybe observed, but not to be heard by a police officer.If the arrested person is suspected of terrorism or organized crime and there are grounds to believe that the defense counsel chosen by the arrested person is involved in the commission of the criminal offence or will obstruct the conduct of the investigation, the pretrial judge may, upon the application of the state prosecutor, order that alternative defense counsel be appointed to represent the arrested person. An arrested person has the right to be informed about the reasons for the arrest, in a language that he or she understands, to remain silent and not to answer any questions, except to give information about his or her identity, to be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police, to receive the assistance of defense counsel and to have defense counsel provided if he or she cannot afford to pay for legal assistance, to notify or require the police to notify a family member or another appropriate person of his or her choice about the arrest, and to receive a medical examination and medical treatment, including dentist, surgery and psychiatric treatment[12].If an arrested person has foreign citizenship he has the right to inform verbally an embassy, liaison office, or diplomatic mission shall have the right to visit and to talk without supervision to detainees on remand who are nationals of their country. Representatives of competent international organizations shall have the same right to visit and talk to detainees on remand who are refugee. When an arrested person has not reached the age of eighteen (18) years, the police shall notify the parent or legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work. When an arrested person displays signs of mental disorder or disability, the police shall notify a person nominated by the arrested person and the Centre for Social Work about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. In relation to the arrest the police are obliged to notify the family of the arrested person or member of family. There shall be no delay if the arrested person is under eighteen (18) years of age or displays signs of mental disorder or disability. In such cases the police is obliged to inform without delay-immediately.

6. The rights of an arrested Person during Detention and police interview

During the time of detention the arrested person does not stay in the same environment with convicted and detained persons, or arrested persons of different sex shall not be detained in the same room. A person detained for more than twelve (12) hours shall be provided with three meals daily. In any period of twenty-four (24) hours, an arrested person shall have the right to at least eight (8) hours of uninterrupted rest, during which he or she shall not be examined and shall not be disturbed by the police in connection with the investigation[10].

During all examinations by the police, an arrested person has the right to the presence of defense counsel. If defense counsel does not appear within two (2) hours of being informed of the arrest, the police shall arrange alternative defense counsel for him or her. Thereafter, if the alternative defense counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the state prosecutor or the police determine that further delay would seriously impair the conduct of the investigation.

There shall be short breaks in the examination of an arrested person at intervals of approximately two (2) hours. A break may be delayed if there are reasonable grounds to believe that delay would:. Involve a risk of harm to persons or serious loss of, or damage to, property; unnecessarily prolong the

[10] Article 170 of Code no.04/L-123 of Procedure Criminal of Republic of Kosovo, in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012.

person's detention or the conclusion of the examination; or otherwise prejudice the outcome of the investigation. During an examination an arrested person shall not be required to stand and shall not be denied food, water or any necessary medical attention.

7. Record of Arrest and Actions by Police

In case of the arrest on a suspect the police shall keep a written record of all actions undertaken with respect to an arrested person, including: the personal data of the arrested person, the reasons for the arrest, the criminal offence of which he or she is suspected, the authorization or notification of the state prosecutor, the place, date, and exact time of the arrest, the circumstances of the arrest, any decision of the state prosecutor regarding detention, the place of detention, the identity of the police officers and the state prosecutor concerned, oral and written notification to the arrested person of his or her rights, especially the right to defense counsel and to notification of family members or other appropriate persons[11].

The police in the records write down the fact whether the arrested person has had visible injuries and the medical help is given, or the fact that the arrested person did not have injuries and needed medical help, which means whether he had a need for medical help.

In the record also should be written whether is conducted the provisional security search of the person and a description of objects taken from the person at the time of the arrest or during detention, the exact date and time whether the person was released or sent before the pre-trial judge, or if he or she was transferred to the detention center.

The police also shall keep a written record of any examination of the arrested person, including the time of beginning and concluding the examination and the identity of the police officer who conducted the examination and any other persons present. If the defense counsel was not present, this shall be duly noted. The written records shall be signed by the appropriate police officer and countersigned by the arrested person. If the arrested person refuses to sign the written records, the police authorities shall record such refusal and any explanation and append any comments offered by the arrested person orally or in writing.

These records shall be preserved by the police for a period of ten (10) years from the time of the official end of the criminal proceedings or the person's release from detention.

Conclusions

1. During the arrest, police should respect the dignity of the detainee in maximum, by treating him/her as a person who goes in favor of the presumption of innocence.
2. The ruling for arrest, the police should undertake only when it is sure that there is a reasonable base to believe that the suspect has committed criminal offence which is prosecuted ex officio.
3. At once and without delay the police will notify the detainee of the reasons for arrest and also inform him of his rights ensured by law.
4. If the police for any reason, estimates that the arrest may be unnecessary, should be in favor of the person that he not arrested when even without the arrest of a suspect, estimates the investigation will succeed.
5. The arrest of the suspect suspects when possible should not always be carried out in the presence of the public; this is to avoid inappropriate scenes that may occur during the arrest, especially if the suspect resists the arrest

[11] Articl 172 of Code no.04/L-123 of Procedure Criminal of Republic of Kosovo, in force from 01.01.2013, Official Gazetee of Republic of Kosovo no 37 dated 28.12.2012.

6. If the police estimates or has information that the suspect is dangerous and that he may escape prosecution bodies, should undertake all preventive measures that the arrest should to be carried out without any arrest armed resistance and without causing any damage.

Bibliography

Bashkimi, Sh. (2010) Construction of Judicial Independent System in Kosovo/ Prishtina /Bashkimi, Sh. (2010) Ndërtimi i Sistemit Gjyqësor të Pavarur në Kosovë, Prishtinë.

Elezi, I. (2009) Criminal Right, special part, edition ERIK, Tirane/ Elezi, I. (2009) E drejta penale, pjesa e posaçme, Botimet ERIK, Tiranë.

Elezi, I. (2010) Criminal Right, special part edition ERIK, Tirane /Elezi, I. (2010) E drejta penale, pjesa e posaçme, Botimet ERIK, Tiranë.

Gashi, R. (2011) Organized Crime ,Prishtina/ Gashi, R. (2011) Krimi i Organizuar, Prishtinë.

Gleni, M.(2008) Mc Mafia – the crime without frontiers, Prishtine/ Gleni, M.(2008) Mc Mafija -krimi pa kufi, Prishtinë.

Hajdari, A. (2003) Criminal offence with corruption nature with a special view in Kosovo/ Hajdari, A. (2003) Vepra penale me natyrë korrupsioni me një vështrim të posaçëm në Kosovë – Prishtinë.

Hajdari, A. (2006) The right of Criminal Procedure Royal University ILIRIA, Prishitne / Hajdari, A. (2006) E drejta e procedures penale, Universiteti Mbretëror ILIRIA, Prishtinë.

Hajdari, A. (2013) The right of Criminal Procedure, special part, Prishtine / Hajdari, A. (2013) E drejta e procedures penale, Pjesa e posaçme, Prishtinë.

Hajdari, A. (2013) Judicial Practice skills, Prishtine/ Hajdari, A. (2013) Shkathtësitë e praktikës gjyqësore, Prishtinë.

Hajdari, A. (2013) Basic Judicial System, Prishtine/ Hajdari, A. (2013) Bazat e Sistemit gjyqësor, Prishtinë.

Halili, R. (2010) Penology, Prishtine/ Halili, R. (2010) Penologjia, Prishtinë.

Halili, R. (2011) Criminology. Prishtine/ Halili, R. (2011) Kriminologjia, Prishtinë.

Hoxha, B. (2005) Crime and Anti –Crime, tirane/Hoxha, B. (2005) KrimidheAntikrimi, Tiranë.

Nobert, M. (2005) Niediek Balcak Mafia, Shkup/Nobert, M. (2005) Niediek – Mafija e Ballkanit, Shkup.

Mëçalla, N. (2013) Money laundering, Edition House Klean, TiraneMëçalla, N. (2013) Pastrimi i Parave, Shtëpia Botuese Klean, Tiranë.

Jean, P. (2010) Geert Cortens, Gert Vermeuel, European Criminal Right, Papirus Jean, P. (2010) Geert Cortens, GertVermeuel, E Drejta Penale Evropiane, Papirus.

Kaçupi, S. Haxhia, M. (2012) Commentary of the Criminal Code of Republic of Kosovo , Tirane, aditted by KUMI./ Kaçupi, S. Haxhia, M. (2012) Komentari Kodit Penal të Republikës së Shqipërisë, Tiranë, Botimet KUMI.

Salihu, I. (1995) The Criminal Right, general part, Law Faculty, Prishitne/ Salihu, I. (1995) E drejta penale, pjesa e përgjithshme, Fakulteti Juridik, Prishtinë.

Salihu, I. (2010) the Criminal Right, general part, Law Faculty, Prishtine/Salihu, I. (2010) E drejta penale, pjesa e përgjithshme, Fakulteti Juridik, Prishtinë.

Muçi, Sh. (2012) the Criminal Right (general part) Edditing house ”Dudaj”, Tirana/ Muçi, Sh. (2012) E drejta penale (pjesa e përgjithshme) Shtëpia Botuese ”Dudaj” Tiranë.

Shegani, A. (2005) Comparative Criminal Right, Tirane/Shegani, A. (2005) E drejta penale e krahasuar, Tiranë.

Vula, V. (2009) Cyber Criminality, Prishtine/ Vula, V. (2009) Kriminaliteti kompjuterik, Prishtinë.

Criminal Codes

Criminal Code of Kosovo/ Prishtine/ Kodi penal i Kosovës, (2003) Prishtinë.

Criminal Procedure Code of Kosovo, (2003) / Kodi i procedures penale i Kosovës, (2003) Prishtinë.

Criminal Code of Republic of Albania (no. 7895 dated 27.01.1995) Tirane/ Kodi penal i Republikës së Shqipërisë, (nr.7895 dt.27.01.1995) Tiranë.

Criminal Procedure Code of Republic of Albania (July 2007) Eddition of Public Centre , Tirane/ Kodi i Procedurës penale i Republikës së Shqipërisë (korrik 2007) Botimi Qendrës së Publikimeve Zyrtare, Tiranë.

Criminal nr.04/L-082 Code of Republic of Kosovo/ Kodionr.04/L-082 Penal i Republikës së Kosovës.

Criminal nr.04/L-123 Procedure of Republic of Kosovo/ Code of Kodi nr.04/L-123 i Procedurës penale i Republikës së Kosovës.

Code 03/L-193 of Justice for the juveniles of Republic of Kosovo/ Kodi nr.03/L-193 i Drejtësisë për të Mitur i Republikës së Kosovës.