



Measures to Ensure the Presence of the Defendant in Criminal Procedure with Special Empty Detention

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Abstract

Fundamental human rights and freedoms are inalienable and underlie the entire legal order and are guaranteed by various international acts and the highest domestic legal acts. With the commission of a criminal offense, the prosecuting authorities in order to establish a certain factual situation and to establish the relevant legal facts, are obliged to prosecute a certain number of subjects and procedural parties, including the suspect. Therefore, in order to successfully conduct criminal proceedings, it is necessary to ensure the presence of certain persons. Their presence in the panel procedure is achieved by describing the obligation to respond to the invitation of the criminal procedure body. In order to ensure the presence of the defendant in criminal proceedings, there are measures which, in addition to preventing further criminal activity of the perpetrator, also aim to prevent him from avoiding further proceedings. From the above we can give a notion of these measures “which are procedural actions that remove or restrict the freedoms and rights of the person against whom criminal proceedings are conducted. Measures to ensure the accuracy of the defendant are not criminal sanctions. With these measures, efforts are made for successful development of the criminal procedure, but also the achievement of other goals such as: detention of perpetrators of criminal offenses and bringing them to justice, smooth development of criminal proceedings and undertaking criminal procedural actions, execution of the imposed criminal-legal sanction, obstruction of new criminal acts, provision of argumentative material or safety of people. Measures to ensure the presence of the defendant can be applied at all stages of criminal proceedings. The court must take into account the legal conditions laid down for concrete measures and ensure that it does not apply a heavier measure when a milder measure is sufficient. These measures are removed as soon as the causes that caused them cease, or are replaced by other more lenient measures when the conditions are created for this. In this paper will be treated detention on remand as the main issue, which as a measure to ensure the presence of the defendant in the proceedings is considered as one of the most serious measures provided by the legislator to ensure the presence of the defendant in criminal proceedings.

Keywords: *Detention; Restriction of Human Rights; Legal Basis; Bail; Diversion; House Arrest*

Introduction

Criminality is a negative social phenomenon, which has been accompanying every society throughout all stages of its development. (Maloku, 2015, 2016). The very dynamic increase of crime (Maloku, 2015: 119) must be countered by fighting and preventing it. Therefore, in order to combat this negative phenomenon, criminal proceedings had to be conducted against the perpetrators of criminal offenses. It often happens that the prosecuting authorities face a problem due to the absence of the defendants in criminal proceedings. Therefore, this paper analyzes the measures to ensure the presence of the defendant in criminal proceedings with special emphasis on detention.

Deprivation of liberty is one of the most sensitive issues in criminal proceedings, as it is a matter of deprivation of liberty before the guilt of the defendant is proven. Therefore, the provisions relating to deprivation of liberty should be interpreted by the police, the state prosecutor and the courts based on the principles relating to the defendant's right to liberty and security which determine the presumption in favor of stay at liberty. In order for the entire criminal procedure to be more efficient and in order to collect the necessary evidence which proves the guilt or innocence of the defendant, forensic science and consequently the legislator with the provisions of the KCCP has provided measures for ensuring the presence of the defendant in criminal proceedings. The purpose of measures to ensure the presence of the defendant is to restrict the freedom of the defendant during the criminal proceedings to the extent that corresponds to: The gravity of the offense, the personal characteristics of the defendant, the manner of commission of the offense and other circumstances which criminal offense was committed. The court at the time of ordering such measures against the defendant must take into account the principle of legality (ie that the imposition of those measures are not contrary to legal provisions), then the principle of graduality and the principle of proportionality (meaning that the measures imposed on the defendant to ensure his presence in the proceedings should not only be in accordance with the provisions of the KCCP but it should be proportionate to the gravity of the criminal offense, the intent of the perpetrator, the manner of committing a criminal offense, etc.) The paper examines the legal-criminal treatment of detention as a measure for the presence of the defendant in the procedure and presents the characteristics of this measure starting from the determination of detention, the duration of detention to the application of temporary measures such as house arrest, police detention and notification of the rights belonging to the defendant in the procedure.

1. Literature Review

The authors Jararevic & Maloku (2021) have written extremely much about the measures for ensuring the presence of the defendant in criminal proceedings with special emphasis on detention, in their book Criminal Procedure I and II, (general and special part), as well as a Extraordinary contributions related to juvenile criminal status and responsibility have been made by the authors (Karovic et al, 2020) in their paper Juvenile Criminal Law in Bosnia and Herzegovina With Reference to the Criminal Legal Position and Responsibility of Juveniles .

Since criminal proceedings are conducted with the participation of many procedural subjects, then a series of actions must be taken to ensure the presence of the defendant in criminal proceedings. Such measures are of various nature and in terms of severity regarding their application we have softer and tougher measures starting from the call which is considered as the mildest measure and at the same time the most applicable measure, because in In all cases when criminal proceedings take place, it is the obligation of the competent authorities to summon the defendant or send him a regular summons so that he is notified of the offense with which he is charged and is also notified of the time and place of the hearing, whether initial or even court hearing. We also have measures to ensure the presence of the

defendant and the successful conduct of criminal proceedings (measures directed at the defendant) and measures to provide the necessary items for criminal proceedings. As I mentioned, there are various measures to ensure the presence of the defendant, among them: summons, arrest warrant, the defendant's promise not to leave the residence, prohibition to approach the place or a certain person, appearance at the police station, bail, house arrest, diversion and detention on remand (Criminal Procedure Code of the Republic of Kosovo, no. 04 / L-123, Article 173). All procedural activity is oriented towards the fair and complete verification of the relevant facts, which aims to achieve the purpose of the criminal procedure defined by Article 1 of the CPC. It should be noted, however, that while some procedural actions serve to directly establish the important facts through which the factual situation is ascertained, the undertaking of some other actions is not intended to directly establish the relevant facts, but to create conditions for establishing the relevant facts. Therefore, in the group of procedural actions that pave the way, or create the conditions for undertaking procedural actions that prove the relevant facts, are measures to ensure the presence of the defendant in criminal proceedings. The measures in question are not sanctions (although after the imposition of imprisonment, detention and house arrest should be counted in the sentence imposed), but measures that serve to carry out criminal proceedings. Criminal proceedings are conducted with the participation of many procedural entities. The CPC envisages several measures to ensure their presence. Such measures are of different nature and primarily relate to the summoning of the procedural subject, but against some subjects other measures may be taken up to the restriction of freedom to the defendant. (Sahiti et al, 2014). The legislator has foreseen that the court, when deciding which of the measures it will apply to ensure the presence of the defendant in criminal proceedings, must take into account the conditions set for the application of the most severe measure when it is sufficient to achieve the goal. implementation of the milder measure (paragraph 2 of Article 173 of the CPC). In this context, paragraph 3 of the same article defines the obligation for the procedural body to terminate the application of the measure at the moment when the reasons that have conditioned its implementation cease, ie to replace the imposed measure with a milder measure (Hajdari, 2014) The terminological dictionary of victimology by Prof. Maloku (2019) helps tremendously in the field of victimology, criminology but also in the field of criminal and criminal procedure in terms of terms for the protection of victims.

It should also be noted that a great contribution in this field has been given by the authors Maloku & Maloku (2021) with the dictionary of criminal legal terminology for journalists. This dictionary has helped users to better understand this criminal terminology and criminal procedure.

2. Methodology

The work of this study will be based on literature research by local and foreign authors and experts, collection and analysis of data related to the role of measures to ensure the presence of the defendant in the detention procedure. In particular, we will research and analyze the reports received regarding the role of measures for detention on remand in accordance with the legal provisions of the Criminal Procedure Code of the Republic of Kosovo. In this paper, using comparative, theoretical and meta-analysis methods (Maloku, 2020: 170) we will analyze the views of some authors. The paper provides a brief summary of the criminal legal aspect, respectively the material legal aspect (Maloku, 2020: 21) and procedural. Regarding the practical part of the study, the way or approach of obtaining data will be done through known methods such as: research or observation method and descriptive methods.

Content analysis as a necessary method will be used to study the numerous literatures, in which this problem has been addressed in various respects. This method is unavoidable in the study of normative acts (laws and international acts) (Maloku et al. 2021: 53).

3. Results and Discussion

3.1 Type of Measures and Their Purpose

Crime as a social and individual phenomenon and its causes, have always been an object of interest, since the emergence of human society (Maloku, 2016: 114). With the development of human society, various forms of crime have developed, in particular organized crime. (Maloku, 2015: 461). In order to prevent and fight this negative phenomenon throughout history, various measures and punishments have been imposed on the defendants in criminal proceedings.

Measures are the means by which the presence of the defendant in the criminal proceedings is ensured. Such measures lead to the removal or restriction of certain freedoms and rights of the person against whom criminal proceedings are conducted. They aim to enable the normal conduct of criminal proceedings but also to prevent further criminal activity of the person who committed the criminal offense, to prevent his evasion from the proceedings, his attempts to conceal or eliminate evidence and to guarantee the settlement of obligations deriving from the criminal offense (Hajdari, 214) The measures that can be used to ensure the presence of the defendant, to prevent the recurrence of the criminal offense and for the successful implementation of the criminal procedure are:

- call
- Arrest warrant
- Defendant's promise not to leave the residence
- Prohibition to offer to a certain person or place
- Reporting to the police station
- warranter
- House arrest
- Diversity and
- Detention. (Article 173, of the Criminal Procedure Code of the Republic of Kosovo)

When deciding which of the measures to apply to ensure the presence of the defendant, the court is obliged to take into account the conditions set for concrete measures and to ensure that it does not apply a heavier measure when a milder measure is sufficient. These measures are removed when the causes that caused them cease, or are replaced by other more lenient measures if the conditions for this are met. Prior to the filing of the indictment, the decisions regarding these measures are taken by the pre-trial judge, while after the filing of the indictment, the decisions are taken by the presiding judge, unless otherwise provided by this Code. The expression "milder measure to ensure the presence of the defendant" or "softer measures" for the purpose of this code means the summons, the promise of the defendant that he will not leave the place of stay, the prohibition to approach the place or person of appearance at the police station, bail, house arrest and diversion (Sahiti, 2014)

3.2. Call

The summons (Article 174 of the Criminal Procedure Code of the Republic of Kosovo) is a basic and milder measure through which the presence of the defendant in criminal proceedings is ensured. The summons is sent to the defendant by the court in accordance with Chapter XXVII, of the Code of Criminal Procedure. It is sent with a sealed letter which as a rule contains:

- The name and address of the court which sent the summons
- Name and surname of the defendant
- Determining the criminal offense for which he is charged
- Place, day, time when the defendant must appear

- Notice that he is summoned as a defendant
- Warning that in case of non-appearance an arrest warrant will be issued and brought to court by force
- The official seal and the name of the judge who issues the summons.

When the summons is sent for the first time, he should be instructed in the summons about his rights to engage counsel and that his counsel may be present during his interrogation. If the defendant is unable to respond to the summons for various health reasons then he may be questioned at the place where he is located. It is the duty of the defendant to immediately inform the court of any change of address or of the purpose of the change of residence (Article 174 of the Criminal Procedure Code of the Republic of Kosovo). The Code of Criminal Procedure does not recognize the trial in the absence of the defendant who is on the run and cannot be reached. The presence of the defendant in the proceedings is ensured through the summons. The summons is a written order sent to the defendant by the court, against which no appeal can be lodged. The summons to participate in the main trial can also be communicated to the accused orally according to Article 475 paragraph 2. The summons duly drafted and accepted creates an obligation for the defendant to respond to it and at a certain time, to appear before the court that summoned him. The summons shall be served on the defendant by the court in accordance with Chapter XXVII. The summons is sent to the defendant in sealed letter, regardless of how it is sent to him. It is a fact that, after reviewing the status of the case, a considerable number of court proceedings end with the cessation of the investigation or with a verdict of acquittal, therefore the summons in the capacity of the defendant in a way that would enable this information to third parties, without reason could damage the prestige of the defendant. The summons includes the data from paragraph 2, where, among other things, he is informed about the fact that he is summoned as a defendant and is warned that in case of non-appearance, an arrest warrant will be issued and he will be brought to court by force. When it is clear that the duly summoned defendant avoids appearing at the main trial, he or she may be remanded in custody for up to one month. (Sahiti, 2014)

3.3. Arrest Warrant

An arrest warrant is a measure to ensure the presence of the defendant in criminal proceedings, which is issued *ex officio* at the request of the state prosecutor or *ex officio* by the pre-trial judge. An arrest warrant can also be issued at the request of the police when there is a reasonable suspicion that the defendant who has committed a criminal offense may flee, conceal or destroy evidence, influence witnesses, etc. The arrest warrant is issued by the pre-trial judge or the presiding judge. The arrest warrant is issued *ex officio* at the request of the state prosecutor, or in urgent circumstances at the request of the police when there is a reasonable suspicion that the defendant has committed a criminal offense may be deleted or escaped, destroyed, concealed or falsified evidence of the criminal offense, manner and the circumstances in which it was committed, the personal characteristics of the perpetrator, his previous life, etc. (Hajdari, 2014) Compulsory issuance of an arrest warrant is provided in cases when the defendant is summoned to the main trial, and does not come to the main trial, nor does he justify his absence. If the defendant justifies his absence before being arrested, the presiding judge shall suspend the arrest warrant. Unless otherwise specified in the arrest warrant, the arrest warrant shall expire at midnight on the day three hundred and sixty-fifth (365) from the day of issue.

The arrest warrant is executed by the police.

The arrest warrant is issued in writing and contains

- The name and surname of the defendant and other personal data known to the judge
- Determining the criminal offense for which he is charged by referring to the relevant provision of the CCK

- The basis on which the order is issued
- Official seal and
- Signature of the judge issuing the arrest warrant.

In the case of arrest and detention, the person must be informed of the reasons for the arrest in a language he or she understands as well as of the rights that belong to him / her:

- To be silent and not answer any questions, except giving information about his identity
- Provide free translation if you do not understand or speak the language of the police officer
- Use the assistance of a lawyer and be assigned a lawyer if he / she is not able to pay for legal aid
- To report his arrest or to ask the police to report the family member or any other person of his choice and
- Have check-ups for medical treatment, including psychiatric treatment.

If the arrested person is a foreign national, he has the right to notify or request to be notified and to communicate orally or in writing with the embassy, the liaison office or with the diplomatic mission of the state of which he is a citizen, or with the representatives of the competent international organization when he is a refugee or under the protection of an international organization (Article 167, Criminal Procedure Code of the Republic of Kosovo). A very interesting topic is also the issue of the difference or the nature of the measure of police arrest and detention. In fact, both of these measures have the character of depriving a person of liberty (factual restriction of liberty) and at first glance seem like personal security measures, because through them the arrest of the suspect and his isolation is realized. The word "arrest" means the act of apprehending a person for allegedly committing a criminal offense or by order of an authority. While "detention" includes the time of restriction of liberty of the arrested person from the moment of his arrest until his release or detention on remand by a ruling of the pre-trial judge, but this time can not be more than 48 hours. (Sahiti, 2005)

3.4. Defendant's Promise not to Leave the Residence and Prohibition to Approach the Designated Place or Person

This measure has to do with the promise of the defendant before the court which conducts the procedure, that he will not hide and without the permission of the court he will not leave the residence. The court may request this decision from the defendant if there is a reasonable suspicion that he has committed a criminal offense and there are reasons to suspect that the defendant may hide or go to an unknown place, or leave Kosovo, during the criminal proceedings (paragraph 1). of Article 271 of the Criminal Procedure Code of the Republic of Kosovo). When giving a promise, the defendant will be warned that judicial detention may be ordered against him, if he violates this obligation. Defendant's promise is entered in the record. The defendant who made this promise may have his travel document temporarily confiscated (paragraph 1, paragraph 2 of Article 176 of the Criminal Procedure Code of the Republic of Kosovo). The court may prohibit the defendant from approaching the designated place or person under the following conditions: if there is a reasonable suspicion that the defendant has committed a criminal offense, if there are grounds for destroying, concealing, altering or falsify the evidence of the criminal offense, if the special circumstances indicate that the defendant will obstruct the course of the criminal proceedings by influencing witnesses, the injured party or other participants, or the gravity of the criminal offense, the ways or circumstances under which it was committed, characteristics personal behavior, background, environment and conditions in which the defendant lives, or some other personal circumstances indicate the risk that the defendant may repeat the criminal offense, attempt to commit the criminal offense, or commit a criminal offense by threatening to to perform it, if such prohibition may reduce the risk that the defendant will destroy the evidence of the criminal offense, influence the witness, participant and assistant of the criminal offense or repeat the criminal offense, attempt to commit the

criminal offense or commit the criminal offense of intimidation. (paragraph 1, points 1.1, 1.2 and 1.3 of Article 177 of the Code of Criminal Procedure)

3.5. Appearance at the Police Station and Bail

The court may order the defendant to appear from time to time at a specified time at the police station, in the region where the defendant resides or at the place where the defendant was present at the time of the order, if: there is a reasonable suspicion that the defendant has committed a criminal offense and has reason to suspect that the defendant will hide, go to an unknown place or leave Kosovo (paragraph 1 of Article 178 of the Criminal Procedure Code of the Republic of Kosovo). If this measure is ordered, the defendant is obliged to appear from time to time at a certain time at the police station in the district where he / she resides or at the place where the defendant was present at the time of the court decision. for this measure. The court may order detention on remand if the defendant does not comply with this measure, of which the defendant was initially informed. The court decision on detention on remand is consequently applied for the duration, extension and suspension of this measure. In addition to this measure, the court may order the temporary confiscation of the travel document.

For the bail sheet article 5. par. 3 of the ECHR, providing that release may be conditional on bail that the person will respond to the summons. Bail as a measure to ensure the presence of the defendant and the successful conduct of criminal proceedings is a substitution for detention on remand. (European Convention on Human Rights, 2010)

This measure consists in depositing a certain amount of money by the defendant or any other person on his behalf, to replace detention (Hajdari, 2013). The court may order the defendant to be released on bail or to be released on bail when:

- There is a grounded suspicion that the defendant has committed a criminal offense
- there is a suspicion that the defendant may escape (when this is the only basis for detention)
- He is not suspected of a criminal offense punishable by at least 5 years
- There is a risk that the defendant may repeat the offense, end it, or commit the offense for which he or she has been threatened
- He promises that he will not hide or leave his residence without permission and
- He promises not to repeat the criminal offense, to continue it or to commit the criminal offense for which he has been threatened. (Article 179 of the Criminal Procedure Code of the Republic of Kosovo)

Bail can be given in the form of cash, securities, valuables, or other movable property of high value which can easily be converted into cash, stored or mortgaged by the real estate of the one who gives the bail (real bail), or in the form of personal obligation of one or more persons that in case of escape of the defendant they will pay the foreseen amount of the bail (personal bail). (paragraph 2 of Article 181 of the Criminal Procedure Code of the Republic of Kosovo)

3.6. House Arrest and Diversion

House arrest is a measure to ensure the presence of the defendant in criminal proceedings, which consists in imposing an obligation on the defendant not to leave his place of residence or stay, or the public institution where he is located for treatment and care. (Hajdari 2013)

The court can order house arrest if:

- There is a grounded suspicion that the defendant has committed a criminal offense;

- There is a risk that he will be hidden when his identity cannot be verified or when there are other circumstances that indicate that there is a risk of his escape;
- There is reason to believe that the defendant will conceal, destroy or alter the evidence, influence witnesses, the injured party, etc .;
- The gravity of the offense, the circumstances of the commission, or any other circumstance indicate the risk of recurrence of the criminal offense, to commit the remaining attempted offense or the offense for which he is threatened to commit. (paragraph 1, subparagraphs 1.1 and 1.2 of Article 183 of the Criminal Procedure Code of the Republic of Kosovo)

With a ruling ordering house arrest, the court decides that the defendant must not leave:

- the premises where he has his residence or abode,
- or by the public institution for treatment or care.

The public institution for treatment or care can be the medical institution where the defendant is recovering, especially the institution for mental health where the defendant stays for psychiatric examination according to Article 507 of the Code. When ordering house arrest, the court may also restrict or prohibit contact between the defendant and persons with whom he does not live or who are not dependent on the defendant. Extending the effect of house arrest even by prohibiting the contact of the defendant with the persons according to paragraph 3 of this article, in a way, connects the measure of house arrest with the measure of detention to approach a certain person (Commentary, Code of Criminal Procedure, Article 183, paragraph, 1 to 3)

Diversion is designed to give people who want to obey the law an opportunity to help themselves, rather than carry the burden of being a criminal. Such a measure is available to the pre-trial judge even when that intervention would have a positive effect.

This measure is determined by the pre-trial judge when:

- The defendant vows to make reasonable compensation to the victim of the crime,
- When the defendant promises to report regularly to the nearest police station, under the conditions set out in the order,
- When the defendant vows to attend and complete counseling, psychological treatment, education or other actions which are considered reasonable by the pre-trial judge (Article 184 paragraph 1, sub-paragraphs 1.1 to 1.3 of the Criminal Procedure Code of the Republic of Kosovo)

3.7. Detention

In many European countries, the persistent problem of overcrowding in prisons, with all its challenges, has to be attributed to a large extent to the high percentage of the 18 prison population of detainees (who are persons detained by court order, who are still awaiting trial, or have not been convicted by a final decision). Detainees in detention in particular are very often held in dilapidated and overcrowded cells, and are often subjected to ill-treatment. The conditions of detention of detainees in detention centers are completely unacceptable and can be considered inhuman and degrading. Furthermore, detainees are often subject to various types of restrictions, in particular as regards contact with the outside world, and, in some countries, some detainees are held in solitary confinement by court order, sometimes for extended periods. . For the individual, detention can have severe psychological effects. The suicide rate among detainees in detention may be several times higher than among convicted prisoners, as well as may suffer other serious consequences, such as breaking family ties, or losing a job, or accommodation. Due to the intrusive nature of detention as well as given the principle of the presumption of innocence, the basic principle is that detention should be used only as a final measure.

Detention should be imposed for the shortest possible time and should be based on a case-by-case assessment based on the risk of committing a new crime, concealing justice, manipulating witnesses or witnesses, or interfering with the work of justice. Furthermore, when assessing the proportionality of the measure, the nature and extent of the criminal offense allegedly committed by the person concerned must be taken into account (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017). The CPT calls on the prison authorities of the countries concerned to establish and implement a comprehensive regime of out-of-cell activities. The aim should be to ensure that detainees (as well as convicted prisoners) are able to spend a reasonable part of the day (eg eight or more hours) outside their cells, and engage in deliberate activities with different values (work, preferably with professional, educational, sports, leisure / organization value). The longer the detention period, the different the regime should be. All prisoners, without exception, should be provided with at least one hour of outdoor exercise per day, in suitable facilities. With regard to contact with the outside world, the CPT is of the opinion that individuals in detention should be allowed to communicate with family and other persons (correspondence, visits, telephone) in the same way as convicted prisoners. All detainees should benefit from a visit of at least one hour each week and have access to the telephone at least once a week (except for contacts with their lawyers). Furthermore, the use of modern technology (such as free internet services) can help prisoners maintain contact with their families and other persons.

Detention as a measure is the most severe restriction of freedom of movement (one of the fundamental human rights guaranteed by domestic and international law), and as a legal institute is mostly defined as:

- measure to ensure the presence of the defendant in criminal proceedings,
- measure that enables the efficiency of the criminal procedure to be achieved,
- measure by which citizens are protected from perpetrators of criminal offenses.

The detainee should be informed about the rights that belong to him during the duration of detention, and they are: the right to defense counsel, the use of language, the right to remain silent, the right to notify a family member or other person of his / her choice immediately after detention. he, the right to medical examination (Kodi i Procedurës Penale i Republikës së Kosovës, neni 185, paragrafi 5). Detention is ordered when there is a grounded suspicion that a person has committed a criminal offense and if one of the following conditions is met:

- There is a risk that he will be hidden, when his identity can not be verified, or when there are other circumstances that indicate that there is a risk of his escape.
- There is reason to believe that he will destroy, conceal or alter the evidence of the criminal offense, or affect the witness, the injured party, etc.
- The gravity of the offense, the circumstances in which the offense was committed, and other reasons which indicate that the defendant will repeat the offense, commit the attempted offense, or commit the offense for which he was threatened to commit.
- Other measures for securing the defendant in the panel proceedings were insufficient to ensure the presence of such a person. (Criminal Procedure Code of the Republic of Kosovo, Article 187.)

Detention is ordered by the pre-trial judge at the request of the state prosecutor after the hearing, where the detainee, the state prosecutor and the defense counsel are present.

3.8. Enforcement of Detention

The application of detention on remand means the regime applied to the detainee during his detention. He must be treated humanely and protecting his physical and mental health (Criminal Procedure Code of the Republic of Kosovo, Article 194, paragraph 1). In order to ensure the lawful and

fair implementation of detention, the detention facility collects, processes, maintains and maintains a database for detainees. This database contains data referring to the identity and personal condition of the detainee, the ruling on detention on remand, work performed during detention, detention in the detention facility and the duration, extension or removal of detention and the detainee's conduct. and disciplinary measures which are eventually imposed on him (Criminal Procedure Code of the Republic of Kosovo, Article 196) , equipment for listening to public media, publications, professional literature, etc., uninterrupted rest of 8 hours within 24 hours and at least 2 hours a day movement in the open, to perform necessary work to maintain local order and cleanliness. He may also be allowed to work in an activity that responds to physical and mental abilities within the possibilities and conditions available to the institution, payment for the work performed. (Criminal Procedure Code of the Republic of Kosovo, Article 198-199). To be visited by:

- Relative relatives - Such visits are allowed by the competent judge and they take place under the supervision of him or a person appointed by him,
- Representatives of the embassy, liaison office and diplomatic mission - When the detainee is a foreign national. In these cases the competent judge is only informed of the visit. Such visits are made without supervision,
- Koava ombudsman or his deputy - These personalities are allowed to visit without prior notice or under the supervision of a competent judge. Communication between the Ombudsperson and the detainee can only be seen by the police officer but not heard.
- They may correspond and have other contacts with persons outside detention facilities - such correspondence should be known and conducted with the knowledge and under the supervision of a competent judge. (Criminal Procedure Code of the Republic of Kosovo, Article 200)

3.9. Duration of Detention

- Duration of detention on remand According to the first ruling of the detention court, the defendant may be detained for a maximum of one month from the day of arrest. Thereafter, the defendant may be remanded in custody but only on the basis of a decision to extend detention on remand. Detention on remand may be extended only on the proposal of the public prosecutor, and the ruling on extension shall be issued by a three-judge panel. In this regard, the PCPCK sets the duration of detention on remand as follows: Prior to the filing of the indictment, detention on remand may not last longer than 4 months, if the procedure applies to a criminal offense punishable by imprisonment of less than 14 years or five years of imprisonment. , ie 8 months if the procedure is applied for a criminal offense punishable by imprisonment of at least five years of imprisonment (Code of Criminal Procedure of the Republic of Kosovo, Article 190, paragraph 2). In exceptional cases when the procedure is applied for a criminal offense punishable by at least five (5) years of imprisonment and when the case is complex, the delay of the procedure can not be attributed to the state prosecutor, except for the deadlines we have set. above, before the filing of the indictment, detention on remand may be extended for a maximum of four (4) months for a total maximum detention of twelve (12) months (Criminal Procedure Code of the Republic of Kosovo, Article 190, paragraph 3). Detention on remand may be extended only by the pre-trial judge, the single trial judge or the presiding judge upon the request of the state prosecutor, who indicates that there are grounds for detention on remand under Article 187 of the Criminal Procedure Code of the Republic of Kosovo. that the investigation has been initiated and that all reasonable steps have been taken to expedite the implementation of the investigation. The injured party or victim advocate may formally or informally request the state prosecutor to request continued detention. After the filing of the indictment and until the end of the main trial, detention on remand may be assigned, extended or removed only by a ruling of the single trial judge, the presiding judge or the trial panel at the hearing. The single trial judge or presiding

judge first hears the opinion of the state prosecutor when the proceedings have been initiated at his request and the opinion of the defendant or defense counsel. The parties have the right to appeal against the ruling. (Criminal Procedure Code of the Republic of Kosovo, Article 193-paragraph.1)

3.10. Juvenile Detention

According to the Juvenile Justice Code of Kosovo, temporary arrest, police detention and detention of a juvenile are ordered only as a last resort for as short a time as possible. Temporary arrest or detention of a juvenile may not exceed a period of 21 twenty-four (24) hours. After this period, the police release the juvenile, unless the juvenile judge orders detention. (Juvenile Justice Code of Kosovo, Articles 64 and 65). A juvenile judge may order detention on remand for a juvenile if there are reasons set forth in the provisions of the Criminal Procedure Code of Kosovo and if detention alternatives would not be sufficient to ensure the presence of the juvenile to prevent re-offending. of the offense and to ensure successful implementation of the procedure. The decision on detention on remand of a juvenile includes a reasoned explanation for the insufficiency of alternatives to detention on remand (Juvenile Justice Code of Kosovo, Article 66, paragraph 1) . maximum of thirty (30) days from the day he was arrested. Detention of a juvenile may be extended only by the juvenile panel of the competent court for an additional period of up to sixty (60) days (Kodi i Drejtësisë për të Mitur i Kosovës, Neni 66, paragrafi 2). The Juvenile Panel of the competent court shall review the detention order within thirty (30) days of receiving the decision. Such review shall take place at a hearing in the presence of the juvenile, his defense counsel and the prosecutor. (Juvenile Justice Code of Kosovo, Article 66, paragraph 3). Juveniles held in detention at the detention center are separated from adult detainees. A juvenile being held in detention on remand may be held in a correctional facility if the juvenile judge considers that this is in the best interests of the juvenile. While in detention, the juvenile is provided with social, educational, psychological, medical and physical assistance as needed and in accordance with his / her age, gender and personality. (Juvenile Justice Code of Kosovo, Article 67)

Conclusion

In the formal-legal sense and in the material-legal sense, the measures to ensure the presence of the defendant in criminal proceedings are not criminal sanctions, ie they are not punishments but only measures that apply almost throughout the criminal procedure and that restrict the freedom of the person. who is suspected of having committed one or more criminal offenses. These measures last until the legal-criminal case is decided by a final decision or until the legal conditions for such measures remain in force cease to exist. While holding measures to ensure the presence of the defendant, the defendant is not considered convicted and that he is still offered the constitutional guarantee of presumption of innocence, until the court with a final decision proves otherwise. Measures to ensure the presence of the defendant in criminal proceedings are, in essence, measures that open paths or create conditions for undertaking procedural actions through which the relevant facts relevant to the realization of the final purpose of criminal proceedings are verified. Detention on purpose differs from other measures, because in addition to the common purpose of ensuring the presence of the defendant in criminal proceedings, it has the additional purpose that the defendant does not commit another criminal offense or to complete the remaining attempted offense (so it also has a preventive character). For the successful conduct of the criminal offense procedure it is necessary to ensure the presence of certain persons. The presence of certain persons in the criminal procedure is achieved by describing the obligation to respond to the invitation of the criminal procedure body.

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