

Legal Procedure in Cases of Detention and Arrest Authors Involved in Offenses

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Abstract

Some form of restriction of liberty is arrest, detention and his accompanying to the police. Procedural and operational actions to limit the application of the freedom of a person suspected as the perpetrator of a criminal offense provided by law. Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms, in Article 5 provides the right of liberty and security of a person. Albanian State has ratified this Convention and implemented it in its internal criminal and procedural law. Thus, the Criminal Procedure Code in particular its articles provide clear cases of arrest and detention of the suspect as the author of committing a crime, and legal procedures that should be performed by an officer of the judicial police in such cases. Also the code interprets the flagrant state and defines the criteria that must exist for the arrest of a person in the commission, or stops him.

Keywords: Legal procedure, offenses, criminal acts, arrest, detention

1. Introduction

The European Convention on Human Rights contains the fundamental democratic principles of criminal proceedings, which guarantee the legitimate rights of persons, subject to this proceeding. In Article 5 of the Convention, is declared the right to liberty and security, and are defined as cases of deprivation of liberty, the conditions that must exist for deprivation of liberty, the rights of persons deprived of liberty to be informed regarding the arrest, the right to complain and to be compensated in case of unjust imprisonment. In accordance with Article 5 of the Convention, the Constitution of the Republic of Albania and the Code of Criminal Procedure, are defined cases, terms, and conditions that must exist for removal and restriction of liberty.

2. Restriction of Freedom under the Constitution of Albania

Article According to the Constitution¹, Freedom of a person may not be limited, except in the following cases:

- a) when he is punished with imprisonment by a competent court;
- b) for failure to comply with the lawful orders of the court or with an obligation set by law;
- c) when there are reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission;
- d) for the supervision of a minor for purposes of education or for escorting him to a competent organ;
- e) when a person is the carrier of a contagious disease, mentally incompetent and dangerous to society;
- f) for illegal entry at state borders or in cases of deportation or extradition.

Similarly, Article 28 of the Constitution establishes the rights of persons deprived of their liberty and obligations of prosecution authorities for their implementation

¹ See: Article 27 of the Constitution of Albania

3. Restriction of Freedom under the Code of Criminal Procedure

In accordance with the Articles 27 and 28 of the Constitution, in Articles 227-250 of the Code of Criminal Procedure provides for general rules for determining the personal security measures (including detention in jail and at home) and in articles 251-259 in flagrante arrest and detention cases, their implementation and judicial police duties when performing these actions.

"Detention in jail"² is a coercive measure by which the defendant under the command of the court is caught and sent immediately to the cells at the police station in the country where the offense was committed or the defendant was caught, to be available for the proceeding. Trial custody can be long when ordering to ensure the authenticity of the receipt or proof: Article 245 letter "d" Code of Criminal Procedure and without a date in other cases. Its duration may not exceed the limits specified in article 263 of Criminal Procedure Code. The time spent in detention is counted to determine the sentence in custody reported one day equal to 1 day and a half of imprisonment.

"Home detention"³ is a coercive measure by which the court orders the defendant not to leave the place where he resides, treated or kept in assistance such as hospitals, asylums, orphanages, etc. Home detention partially restricts the right of the accused to communicate with any person, allowing only communication with his family or other people who live with it. Keeping the defendant with security measures (with or without police) determined in any particular case, based on the circumstances surrounding the case and the defendant. Implementation of this measure is controlled by the prosecutor and the judicial police. Duration of home arrest can not be greater than that provided by Article 263 of the Criminal Procedure Code. Time spent in home detention is counted by determining the sentence in the report: 1 day house arrest equal to one day of imprisonment. As the personal security measure of detention on remand, should the conditions specified in Article 228 of the Penal Procedure Code, which are:

1. No one may be subjected to personal remand orders unless there is a reasonable suspicion against him, based on evidence.
2. No remand order may be enforced where there are grounds of exculpation or cessation of the criminal offence.
3. Personal remand orders are issued when:
 - a) There are important reasons which put into danger obtaining or truthfulness of evidence;
 - b) Defendant has absconded or there is a danger that he may abscond;
 - c) Due to the circumstances of the act and defendant's personality there is a danger that he may commit serious crimes or other similar criminal offences, with the one he is being prosecuted.

First: The proceeding can not assign a personal security measure, if there is a reasonable suspicion based on evidence. Reasonable doubt, is the conviction arising from certain evidence, taken under the law, be objectively verified and show that the offense has occurred and that it was committed by the person against whom the measure is required to personal security. So creating conviction in every case when asked to set a security measure, the conviction should not be set as the subjective feeling of trust, assumed, but the conviction based on evidence provided in the Code of Penal Procedure (Article 149 of the following) and taken according to the rules specified in this code.

Second: the assignment of security measures concerns the existence of a criminal offense and punishes ability. Personal security measures can not be determined if there are grounds to impunity or cessation of the offense. Causes of impunity related to irresponsibility for prosecution because of age or mental illness and the circumstances do not allow for proceedings, making a person as defendant or his sentence. Thus, it can not be assigned a personal security measures if the person has not attained 14 years of age when committing a crime and 16 offenses, when committed the offense in terms of necessary defense or extreme necessity, when the offense is committed in the exercise of a duty or right to legal, when the statute or terminated because due to the repeal of provisions, when given amnesty and in any other case provided for in law⁴.

Third: has to do with insurance needs to ensure normal operation of prosecuting authorities in their work to find out the truth and punish offenders who commit them when unleashing them:

- a) Would hinder the taking of evidence or their authenticity due to pressure, intimidation, corruption and to eliminate physical or expert witnesses to testify or not to make statements and conclusions in their favor;
- b) When the defendant is removed or there is a risk that he would leave. Removal must be confirmed by research done while the risk of removal should be argued in each case (with the actions of the defendant to

² See: Article 238 of the Criminal Procedure Code of the Republic of Albania

³ Article 237 of the Criminal Procedure Code of the Republic of Albania

⁴ See: Article 228 of the Criminal Procedure Code of the Republic of Albania

- provide documents for departure abroad, moving toward the border, hiding from his home, etc.);
- c) When there is a risk that he may commit serious crimes or of the same type with which to proceed. Even in this case, this risk must be real and grounded (i.e. the person who committed injuries, known as a person with a violent character, no criminal precedent for crimes against the person, the relationship with the victim, his family members are very tense and has threatened to murder).

There must be one necessarily needs to ensure that the court appoint a security measure. Article 230 of Penal Procedure Code establishes specific criteria for establishing that prison custody are:

- Detention in jail may be imposed only when other measures is inappropriate because of the particular vulnerability of the work and copyright. The importance of works determined by social relations hit. Thus, offenses affecting important social relationships as citizens' lives, property, rights and freedoms of the individual, morality, security, order, etc., pose a great danger to society. While the specific gravity of the defendant's intent related to the commission of the offense and the aggravating circumstances such as the conduct of the work of brawls, committing the offense of cruelty darkly, in collaboration, more than once, etc.
- Can not be placed in prison custody to a woman who is pregnant or breastfeeding, to a person who is in a particularly serious health condition or who has passed the age of 70 years or a person addicts or alcoholics, for which implement a therapeutic program in a special institution. But against these persons can be placed in prison custody, under circumstances of great importance, for crimes punishable by less than the maximum 10 years in prison.
- The child can not be detained when charged with a criminal offense.

Exclusion of these categories of persons "weak" from detention on remand is done with the purpose of protection from the harmful effects of psychological and physical isolation that can bring them in detention.

4. The Execution of the Precautionary Measures by Judicial Police

Court decisions which determine the security measures or home detention, followed by the judicial police. After the arrest decision the officers or agents of the judicial police verify the authenticity of the decision that determines the amount and authenticity of the person identity against which action is given. If there are doubts about them, officer or agents of the judicial police do not enforce it. While it is assured that the decision is correct and the identity of the person is correct, officer or agent of the judicial police performs the following actions:

- Shall deliver to the person subject to the measure the copy of the decision;
- Makes him known the right to choose a defence lawyer;
- Gives immediate notification to the defence lawyer chosen by the defendant or the one appointed;
- Keeps minutes for all of the carried on actions in duplicate recordings to figure the actions taken by him to implement the measure, date, time and place of its implementation. The minutes are sent to the court which has rendered the decision and to the prosecutor⁵.

In accordance with the European Convention on Human Rights, according to which: ", Everyone arrested or detained when there is credible reason to suspect that he has committed an offense or when there are reasonable grounds to believe that it is necessary to prevent conduct a criminal offense or be removed after its commission, shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial "6. In Article 28 of the Constitution and Article 248 of the Penal Procedure Code is defined obligation for interrogation of the arrested person, the procedure by which the court determines the conditions determining the custody and security needs: "Not later than three days from the execution of the measure the court interrogates the person subjected to jail or house arrest"⁷.

Obligation to interrogate the person against whom the court has given security measure as arrest or home detention meant to the person against whom action is scheduled to be heard in person. In the interrogation of the detainees should attend the detainee, counsel of the detainees informed by the secretariat and the prosecutor. Development of the hearing sequences without the participation of the defense requires the defendant makes abnormal development process as contrary to Article 6 of the European Convention on Human Rights and Article 33 of the Constitution. By interrogating a person the court determines if there are the conditions and criteria of arrest or home

⁵ See: Article 246 of the Criminal Procedure Code of the Republic of Albania

⁶ Article 5, paragraph 3, of the European Convention on Human Rights

⁷ See: Article 248 of the Criminal Procedure Code of the Republic of Albania

detention. Sessions are reflected in the minutes, which shall be signed by the judge and secretary supplement joining the trial if the court determines that the action has been given in accordance with the terms and insurance needs. So in this case, it is not necessary that the court takes a decision for determining extent, as it has taken a decision earlier, but only verifies whether or not conditions exist and insurance needs. If the court finds that the conditions of implementation of security measures and insurance needs do not exist or have changed, then it at the request of the parties or mainly, a decision to revoke a security measure or replace this measure with another measure providing more easy.

5. Arrest and Detention in the State of the Commission

Flagrante arrest and detention are the actions of the judicial police initiative taken against persons who commit offenses under the conditions foreseen by the Criminal Procedure Code. They are not security measures, but the actions conducted by the judicial police under certain conditions. They are carried out:

- Judicial Police, which conducts arrest and detention in the act ordered by the prosecutor or by initiative, when it is not possible to order the prosecutor to wait because of the state of emergency;
- Any person who can make arrests in flagrante crimes prosecuted mainly, for which the law provides for punishment of not less than 5 years maximum provided submit it immediately to the police court.

The arrest on the spot, besides the general criteria for designation of special security measures, requires the existence of a state of urgency and of a criminal offense from those contemplated in article 251 of the Criminal Procedure Code. According to the Criminal Procedure code is in flagrante condition:

- There is in a state of commission the one who is caught whilst committing the criminal offence (for ex: caught while stealing within the local, exchanging counterfeit banknotes);
- The one who immediately after the commission of the offence is traced by the judicial police. Even in this case the offender is first identified but not caught after leaving. For as long as tracking continues uninterrupted author (several hours to several days), the situation continues urgency;
- The injured person or other persons or the one who is caught with objects and real evidence which indicate that he has committed the criminal offence. This situation is created at the moment of capture with the exhibit during the control of a person, place or thing, regardless of when the offense was committed⁸.

In Article 251 of the Criminal Procedure Code were the criteria that must exist for the arrest in the act which established the importance of the offense:

1. The officers and the agents of the judicial police perform compulsory the arrest of anyone caught the commission of an intentional crime, committed or attempted punishable by law by imprisonment not less than five years as a maximum.
2. The officers and the agents of the judicial police have the right to arrest anyone caught in the commission of an intentional crime, committed or attempted punishable by law by imprisonment not less than two years as a maximum or of a criminal offence committed by negligence punishable by law not less than ten years as a maximum.
3. In case of the very necessity, because of the importance of the fact or dangerousness of the offender, which is motivated by a special act, the officers and agents of the judicial police have the right to arrest anyone caught in the commission, to whom is provided a punishment lower than the maximum sentence under 2 years or 10 years for offenses committed by negligence.
4. In cases provided by paragraph 1 any person is authorized to perform the arrest in the commission for crimes prosecutable ex-officio. The one who has performed the arrest must immediately send the arrested person to the judicial police who keep minutes for the surrender and gives him a copy.

So, for offenses great social risk, officers or agents of the judicial police are obliged to carry out the arrest on the spot, while the works of lesser risk have the right to arrest a person caught on the act. But, when because of the factual circumstances and gravity of the subject make it necessary, may conduct arrest on the spot even though the sanction of the law is low.

6. The Conditions for the Detention of the Person Suspected to Have Committed a Crime

In Article 253 of the Penal Procedure Code provides for the prohibition is suspected of a crime. Will be regarded as such

⁸ Under Article 252 of the Criminal Procedure Code of the Republic of Albania

person is suspected of a crime author, for which the law establishes a penalty of not less than 2 years at maximum risk and go. To decide custody of the suspect to a crime must exist to the following conditions:

When there are motivated grounds to think that there is a danger of escape, the prosecutor orders the detention of the person suspected to have committed a crime punishable by law by imprisonment not less than two years maximum. There are well-grounded reasons to think that there is a danger of flight.

So, unlike in flagrante arrest, detention is not related to the situation of urgency, but on suspicion of committing a crime and the escape of its author. These two necessary conditions that exist both at the same time, otherwise the ban is illegal. The ban placed on the person who actually has gone, is gone after commission and required to be prosecuted. The detention of suspects for a committed crime is given by the prosecutor. The order in each case must be in writing and the reasons due to the ban. In the second paragraph of Article 253 of the Penal Procedure Code foresees that "The judicial police perform the detention by its initiative, when it is not possible due to the situation of urgency, to wait for the order of the prosecutor." In any case detention of suspects for a crime should not be confused with the person accompanying and holding up to 12 hours in police court when he refuses to identify or give generalities or identification documents allegedly false provided for in Article 295/2 of the Penal Procedure Code.

In the case of the detention of the person is identified, but is suspected of committing a crime and leave no danger, but in case there is any doubt about the identity Association.

Prohibition to arrest and detention under specific circumstances- In some cases, due to certain circumstances not permitted to place on the spot arrest or detention. Such is the case when the action is done:

- When performing a task. Such actions can be house searches, deprivation of liberty, making the vehicle with which the offense was committed, etc., provided they are carried out by the judicial police on duty and in accordance with the law.
- In exercising a legitimate right. In many cases, actions can be performed in order to achieve a legitimate right, although the formal contain the characteristics of a criminal offense. P.sh: thief threatens a person in order to compel them to return the item acquired. The above person is not criminally responsible and therefore can not be placed in arrest or detention of his act.
- When there are grounds punish ability. Such reasons are criminal irresponsibility, committing the offense in terms of necessary defense or extreme necessity etc.

7. The Duties of the Judicial Police in Cases of Arrest or Detention

The officers and the agents of the judicial police that have made an arrest or a detention or have held the arrested on delivery, under Article 255 of the Criminal Procedure Code, are required to perform these tasks:

1. Shall immediately inform the prosecutor of the place where the arrest or the detention has taken place. The notification must be accurate and immediate order prosecutor within 48 hours to question the arrested / detained, carry out the necessary verifications and submit an application to the court;
2. They shall explain to the arrested or the detained that they are not obliged to declare anything and that they have the right to select a defence lawyer, whatever they say will be used against him at trial;
3. It is a legal obligation which must be implemented, regrettably in many cases the happens the opposite;
4. They have the right to select a defence lawyer and immediately shall notify the selected defence lawyer or the one appointed exofficio by the prosecutor;
5. The officers and agents of the judicial police shall, as quickly as possible, make the arrested or detained person available to the prosecutor in the custody, by sending the relevant minutes. When the arrested or the detained is sick or a juvenile, the prosecutor may order that he remains under survey in his dwelling house or in another surveyed place;
6. The judicial police, with the consent of the arrested or the detained must, without delay, notify the family members. When the arrested or the detained is juvenile it shall compulsorily be notified the parent or the tutor.

All actions taken by judicial police officers when conducting arrest or detention is found, reflected in the act of arrest or detention, which in addition to the above actions, includes: full of generalities arrested or detained, location, exact time the arrest or detention; work that has taken place and the relevant articles of the Criminal Procedure Code which relies on arrest or detention. A copy of the document submitted to the arrested or detained.

Under Article 256 of the Penal Procedure Code, the prosecutor interrogates the arrested or detained in the presence of the elected or appointed lawyer. He announces the fact arrested or detained for reasons which preceded the interrogation records showing the charge and when not to harm the investigation resources. Interrogation of arrested or

detained, the prosecutor, holds the record, which contains the date, place, persons participating in the question, the questions asked by the prosecutor and defense counsel and answers arrested or detained. Minutes signed by all participants.

8. The Request for the Evaluation of the Arrest or Detention and Examination by the

Flagrante arrest and detention are not security measures but actions with the initiative of the judicial police. They lose power when not validated within 48 hours or ordering the immediate release of the prosecutor and the judicial police. When the prosecutor finds that the arrest or detention are based on evidence and law, within 48 hours requires validation in court. Validation session held with the participation of the prosecutor and the defense necessary to elected or appointed by the court. When he is not found or is not filed, the court appoints another lawyer as a substitute. Prosecutor shows the reasons for arrest or detention. After him, the court hears the arrested or detained person and counsel, or counsel only when the arrested or detained person has refused to appear. Evidence obtained in the validation session, considered to be taken to trial. Prosecutor, together with the request for validation of arrest or detention, is the requirement for determining a measure of security. Demand for determining a measure must necessarily accompany the request for validation of arrest or detention, because as we have noted, they are not securities, but limited procedural actions within 48 hours deadline. In this sense, if the court validates the act lawful arrest or detention must necessarily assign security measure.

This obligation derives from the constitutional provisions, which in Article 28/2 state that: "The person deprived of liberty shall be sent within 48 hours before a judge, who decides his detention or release not later than 48 hours from after the reception of documents for review".

9. Conclusion - Reflections on Legal Changes Conviction for the Offense of Insult

The Albanian legislation, are declared democratic principles of criminal procedure, which guarantee the legitimate rights of persons subject to this, proceeding. In the country's Constitution and the Code of Criminal Procedure, are defined cases, conditions, and criteria that must exist for removal and restriction of liberty. In accordance with Article 5 of the European Convention on Human Rights, the right to liberty and security are also defined the rights of persons deprived of liberty to be informed of the reasons for arrest, complaining and were compensated in the event of unfair imprisonment. To limit the freedom of a person the Albanian national legislation provides three conditions that must be met for the security measure "arrest":

- The existence of a reasonable doubt, based on evidences;
- The existence of a criminal offense and punishment ability of its authors, and
- The existence of security needs for the development of the proceedings.

But according to Albanian procedural legislation, the arrest is an act performed at the initiative of persons who commit crimes. Crimes that are prosecuted primarily for whom the law provides for punishment of not less than 5 years maximum, in terms of urgency that action can be performed by any person who has the right to make arrests on the spot, provided that you submit it immediately to the police court; But, when because of the factual circumstances and gravity of the subject make it necessary, may conduct arrest on the spot even though the sanction of the law is low.

Generally, for offenses great social risk, officers or agents of the judicial police are forced to perform arrest in flagrante, while works by lesser risk have the right to arrest a person caught in the act. Stopping person, unlike arrest in flagrante, not related to the situation of urgency, but the suspicion of a crime and the escape of its author. These two necessary conditions that exist both at the same time, otherwise the ban is illegal. Detention of suspects for a crime ordered by the prosecutor, and placed the person who actually has gone, is gone after commission and required to be prosecuted.

Due to certain circumstances not permitted to place on the spot arrest or detention of a person, when the deed is done:

- When performing a task, as p.sh: deprivation of liberty by judicial police on duty and in accordance with the law;
- In exercising a legitimate right, as p.sh: thief threatens a person in order to compel them to return the item acquired;
- When there are grounds punish ability, as example: When the act in terms of necessary defense or extreme necessity, etc.

Officers and agents of the judicial police who conducted the arrest, detention or have been arrested on delivery, have a legal obligation to immediately inform the prosecutor of the place where the arrest or detention; them to announce the arrested or detained person's right His award or denial statement, choosing a lawyer and his announcement, and with the consent of the arrested or detained person without delay notify the family and the infant is necessarily informed parents or guardian.

The evaluation session is done at the special session court proceedings. The Court examines the evidence presented by the prosecutor, which indicates the reasons for arrest or detention, and hears the arrested or detained person and counsel, or counsel only when the arrested or detained person has refused to appear, and in accordance with the importance of fact and dangerousness of the defendant establishes security measure.

References

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