MEASURES OF DETENTION AS A FORM OF PERSONAL SECURITY MEASURES IN ALBANIAN LEGISLATION. RESPONSIBLE INSTITUTIONS FOR SETTING AND IMPLEM, ENTING THEM

NIKOLN HASANI

Department of Law, Faculty of Human Sciences, University "Ismail Qemali" Vlore, Albania
E-mail: nikolin.hasani@univlora.edu.al

Abstract- The aim of the punishment since its initial application has been the punishment of the offenders. The punish was supposed to cause the nearly the same damage causes by the crime. This aim become more human and tolerant with he passing of time until it changed to other penal measures. In different countries Penal Code the aim and the concept of punishment varies, but the common thing is the fact that it aims to punish the offender without causing him physical pain, humiliating, to rehabilitate him etc. One of them is the group of personal security measures. In implementing these security measures there are some important institutions that play a crucial role. The aim of this paper is to present an overview of the personal security measures according to the Albanian legislation and the role of the institutions that are part of the implementing procedures.

Keywords- measure of detention, security measures,prosecution, court, judicial police.

I. INTRODUCTION

The right of freedom and security of person is one of the most fundamental and inherent right of human rights and comes always after the right of life, because the freedom and security as both have the same value as well as life itself. Terms liberty and security must be understood as a single term, which should refer only to freedom and physical security.
Freedom of the person means freedom from arrest and detention and security of person means protection against arbitrary interference to his freedom. Limiting or deprivation of the freedoms of individuals through the security measures provided in Criminal Procedure Code , is governed by constitutional and legal principles, to respect the freedoms and rights of the person.
According to the dispositions of the Criminal Procedure Code, the security measures can be defined as procedural actions which give and limit the freedoms and the rights of individuals. The implementation of security measures, in the moment when they limit or deprivate the freedoms of individuals, follow these objectives:

1. Prevention of further criminal activity of the person who is suspected that has committed the criminal offense, the person against whom is taken the security measure.
2. To prevent the avoidance from prosecution of the supected person.
3. To guarantee the taking and the authenticity of the evidence by any hupothetical action of suspected person.
4. Toguarantee the repayment of the obligations that deriving, for the person against whom is implemented the security measure, by the settlement of the criminal offense.

II. TYPES OF PROHIBITION MEASURES

The prohibition measures are provided by article 240 of Criminal Procedure Code. They are:

a) The suspension of the exercise of a task or public service;
b) Temporary prohibition of the exercise of certain professional or business activities .

The prohibition measures are aplied to them that before the proceeding for a criminal offense have carried public task or services or that exercised professional or business activities. Usually, the criminal offense committed by them is related with the public task or service or with professional or business activity. So it may be the case of an employee of the municipality that misuse the task that is related to the granting of building permits, of a doctor who commits an criminal offense which is related to his profession, of an accountant of a private firm that forges the incomes of firm to evade taxes etc.

Article 241 "The conditions of implementation of prohibition measures" of Criminal Procedure Code:
The prohibition measures can be implemented only when is proceeded for criminal offenses, for which the law sets a punishment of imprisonment higher than a year maximum. They have temporary character and are set in the form of suspension of the exercise of a public duty or service or temporary prohibition on the exercise of professional or business activity.
Suspension of the exercise of a public duty or service- Article 242 "The suspension of the exercise of a public duty or service" of Criminal Procedure Code:

1. With the decision that set the suspension of the exercise of a public duty or service, the court temporarily prohibites the defendants,

in whole or in part, the activity related to them.
2. This measure does be implemted against the persons elected by the electoral law.

The suspension can be total or partial, so for some tasks, services or activities, or in whole for all of them. So, the urban planning officers may be deprived of the right to deal with construction permits, but is allowed to deal with the control of illegal constructions; a surgeon is deprived of the right to do operations, but is allowed to make common visits and medications etc. In the decision of assigning of the prohibition ,measure should be specified whether the suspension or prohibition is complete or partial and, in the last case, to be shown what kind of functions are suspended or prohibited.
The suspension of the exercise of a public duty or service can not be applied against ther persons elected by the electoral law, so against them who are elected in the local or central government. Here we are dealing with a legal ban.
Temporary prohibition of the exercise of certain professional or business activities – Article 243 "Temporary prohibition of the exercise of certain professional activities or business" of Criminal procedure Code:
1. With the decision that set the prohibition to the exercise of profession or certain leader dutes in legal entities, the court temporarily prohibites the defendants, in whole or in part, to exercise the activity related to them.
2. The prohibition may be complete or partial, thus for a part of the activities or in whole for all.

III. THE FORMALITY OF PERSONAL MEASURES

Changes brought about by the new Code of Criminal Procedure, are two:
first, is changed fundamentally the legal regulation of old Code and the perennial practice of assigning of security measures by the prosecutor, this arrangement that not only is incompatible with the role that has prosecutor in penal proceeding as a party, but also has become a cause for serious violations of the freedoms and rights of prosecuted persons.
In new Code of Criminal Procedure , is accepted the rule generally known and enshrined in the European Convention on Human Rights, that the security measures are set by the court. The negative consequences of this regulation were not completely avoided even with changes made to the old Code in 1992, under which the defendant could appeal in court against the detention measure given by the prosecutor. The decision of the court of first instance was final.
The second, another change has to do with the moment of assignment of security measures: Demand for assignment of security measure is made when there are security needs, which means that it can be done at any stage of the proceedings or cannot be at all.

The assignment of security measure is not related to the announcement of the accusation and the interrogation of defendant. The security measures as a rule, are set before that the notification of charge ismade and intended to meet the needs of security against the person in the proceedings. Only after the implementation of them is made the notification of the charge and is proceeded by interrogation. It also comes from the Constitution, which provides that: "Everyone, who is deprived of freedom, has the right to be notified for the accusation made" or, in other words, the notice of the accusation is made after the deprivation of liberty. The opinion, according to which the security measure can be determined only after the person has taken as defendant is wrong. That the security measures can be set even without being taken as a defendant, comes out by some dispositions of the Criminal Procedure Code andconcretely:

In article 307 of Criminal Procedure Code it becomes clear that security measures can be set and implemented, without the need that the person to be taken as defendant. In this article is said: "He, who has been notified that against him are conducted investigations, has the right to be presented to the prosecutor and to make statements. Presenting itself not prevent the application of security measures". So it is clear that security measures can be set before that the person to whom is attributed the offense, to be interrogate as a defendant and his presentation does not prevent the security measure that is taken before.
In Article 245 of the Criminal Procedure Code, which refers to the decision of the judge for setting a security measure, it is said: "The decision that sets the security measure includes: the generalities of the person to whom is taken the security measure or anything else that serves to identify it and, when is possible, the its location". Cannot be more clearly that he is not a defendant but a person against whom is taken the security measure and that he not only may be not taken as defendant but also may be not known his generalities, thus in decision must be shown everything that serves to identify him.
In Article 246, which refers to the implementation of security measures, is said:
"The police officer or agent, charged with implementing of the decision of arrest, delivers to the person against who is being taken the measure, a copy of the decision ..."

In Article 248, which refers to the interrogation of the arrested person, is said: "Not later than 3 (three) days from the execution of the measure, the court interrogates the person for whom has decided the arrest in prison or in house."

The use of the word "defendant" in any disposition of the Code is explained by the fact that the person for which is set the security measure may be the defendant to, but not that, without such, may not be assigned a security measure.

Such a use of the word "defendant" is also present in procedural legislations of countries that have the rule of taking as a defendant in the end of investigations , when it is decided to send the case to court, so long after the assignment of the security measure. Until then he is called the person under investigation.

The debate over the assignment of security measures against a person, who is not taken as a defendant, was finally resolved by the decision of the United Chambers of the Supreme Court, which argued rightly that:
"When a person is deprived of freedom, in the form of detention or arrest in the act or against him is taken a personal security measure, the prosecution is not obliged that, before taking such measures or before to appear in court for the validation or assignment of measure of personal security, to take him in the quality of the defendant."

IV. THE RSPONSIBLE INSTITUTIONS FOR ASSIGMENT AND IMPLEMEN-TATION OF SICURETY MEASURES ACCORDING THE ALBANIAN LEGIS-LATION

4.1. The role of Prosecution on assignement and implementation of security measures.

Article 244 paragraph 1^1 expressly says: *"security measure are assignement on the demand of prosecutor, who represents to the competent court the reasons on which is based the demand"*.
In this disposition is expressed clearly the procedural rule that is excatly the institution of persecutor that makes the demand for the assignement of security measure, based on reasons provided by law.[2]
In decison no.4 date 24 June 2009 United Chambers of Supreme Court, have explained clearly the rules for the assignement of security measures, emphasizing:

"The Criminal Procedure Code, has provided two ways for setting of personal security measures. The firts way that it is the rule for the assignement of security measures is it that is provided precisely in article 244 e in following of this Code. According to this rule is the presecutor who after evaluating unilaterally that in charge of the person under investigation for a criminal offense, there is a suspicion based on evidence of the commission of the criminal offense makes a request the court to appoint a personal security measure, in order to guarantee security needs.

4.2.The role of court in assignement and imple-mentation of security measures

Article 244 paragraph 1 expressly says: *"security measure are appointed on the demand of prosecutor, who represents to the competent court the reasons on which is based the demand"*.
At the discretion of the prosecutor is only the making of the request for the appointment of a security measure, while the decision to accept this request and then appointment of the security measure, it is only at the discretion of the court. Thus only a organ as the court has the entitlements to accept and appoint a certain security measure.

Also in decision no.4 date 24 June 2009 United Chambers of Supreme Court, are expressed : "after the prosecutur has made a request to assign a security measure, the court verifies whether there are really needs of security and whether there are the conditions for the assignment of a personal security measure and verifing the factual circumstances determines the type of measure in accordance with legal criteria, with the only condition that the measure not to be more severe than what is required by the prosecutor, Article 244, paragraph 3 of the Criminal Procedure Code.
Article 245 "The Court decision", that by the name of that disposition is understood that the court is the institution charged with the right to take the decision about accepting and assigning of a particular security measure.

4.3.The role of judicial police in assignement and implementation of security measures.

Article 246 pargraph 1 expressly says: "The police agent or officer charged with the implementation of decision of arrest deliveries to the person against whom is taken the security measure, the copy of decision and recognize the right to choose a defense, notifies immediately the defense selected by the defendant or appointed and keeps a record of all performed actions. Thye record is sent to the court which has given the decision and to the persecutor.
In this disposition seems clearly the role that has judicial police as executive of security measure. After, a request is made by the prosecutor and a decision was mtaken for the assignement of a security measure by the court, enters in role the officer or agent of the judicial police, who realizes the implementation of this decision by delivering to the person against whom is being taken the measure the copy of decision and makes known the right to have a defense.

Article 251 "Arrest in flagrante" of Criminal Procedure Code, expresses that the officers and agents of judical police perform mandatory arrest of a person caught in flagrante, being met certain conditions mentioned in detail in this disposition.
In decision no.4 date 24 June 2009 United Chambers of Supreme Court, express: "The second way that

Criminal Procedure Code provides for assignement of security measure generally is through the verification of the actions with the initiative of the judicial police in case of arrest in flagrante , or detention of a person suspected of a criminal offense who has escape risk ." In this decision of United Chambers is shown the roel that has the officer and the agent of judical police, to arrest a person so to assign a security measure, if is in two situations that are the flagrante and detention.

CONCLUSIONS

In the composition of security measures are included the prohibition measures to. These measures has a character entirely specific because these security measures have to do with the performance of a particular function. According to the article 240 of Criminal Procedure Code, the prohibition measures are:

a) The suspension of the exercise of a task or public service;
b) Temporary prohibition of the exercise of certain professional or business activities .

As for other personal measures and for prohibition measures are valid the principles of proportionality and appropriateness. Article 241 of this code provides specific conditions related with prohibitive measures. According to the disposition of this article, the prohibitive measures can not be applied if the proceeding has to do with the criminal offenses for which is provided a punishment of imprisonment in a maximum lower than a year.

The decision of Supreme Court, no.3 date 27 September 2002 speaks clearly for the distincion between coercive measures and prohibitive measures. The distincion between coercive measures and prohibitive measures consists on the fact that in different from coercive measures they prohibitive can be applied not for all the criminal offenses, but only when is procceding for criminal offeneses for which the law sets the punishment of imprisonment in maximum higher than a year and the fact that the only purpose of taking of these measures is preventive.

The persecution is always the institution that asks the assignement of security measures, while the court is the institution that decides in relation to the implementation of security measure requested by the prosecutor or an easier measure, but never a measure more severe than it requested by him.

Arrest in prison, as the most severe security measure, is subject to overall terms of duration of detention, these deadlines are different for each stage of proceeding and the duration of detention of security measures, institutes of revocation and replacement of security measures, the appeal against the court decision about security measures. The arrest in flagrante or the detention of suspected, in practice is applied as the security measure of arrest in prison, it should be noted the fact that the arrest in flagrante or the detention of the suspects are specific procedural actions dictated by the specific situations and are not security measures, as long as security measures are the only ones defined in the Criminal Procedure Code of the Republic of Albania.

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