

International and Constitutional Aspects of Deadlines during the Criminal Procedure in Kosovo

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Abstract

Legal deadlines or limits in criminal proceedings are very important. Setting these boundaries and respecting them made all people equal, equal to, state bodies and institutions. For this reason, in terms of the importance of setting deadlines and their respect in this paper, international agreements and instruments that are enforceable in Kosovo will be dealt with, and how they deal with the issue related to certain deadlines and the time factor. Here in this paper are treated the general aspects of time limits, as an inevitable matter of all those who deal with criminal justice. Here is also dealt with the Constitution of Kosovo as the highest legal act, and its treatment is based on respect for the best principles for respecting human rights and freedoms. The issue of their deadlines and their obligation to be respected by law enforcement officers, which are set out in the Constitution, has been addressed.

The paper will have descriptive and interpretative features of the provisions of these international institutions and the Constitution of Kosovo as a basis for setting deadlines and their implementation during criminal proceedings in Kosovo.

At the end of the paper we will come up with some conclusions, which necessarily condition certain recommendations, without having to mention them. With whatever work is going to be done, it still remains to be completed in the present and in the future.

Key words: Kosovo, International, Constitution, Criminal Procedure Code, Deadline.

I. INTRODUCTION

Because human rights and freedoms are guaranteed by the constitution, it is for this very reason that it has determined that international agreements and instruments are directly applicable in the Republic of Kosovo.

Their applicability goes so far that in case of dilemmas-legal conflicts to the provisions of laws and other acts of Kosovo's public institutions, international agreements and instruments have priority.

The Constitution lists some international agreements and instruments that apply to the Republic of Kosovo:

- "(1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Framework Convention of the Council of Europe for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination against Women;
- (7) Convention on the Rights of the Child;
- (8) The Convention against Torture and Other Cruel, Inhuman, and Degrading”¹

Therefore, it is necessary that at least describing the deadlines for the judicial process in these agreements and international institutions be presented.

In this paper, only those agreements and institutions will be submitted which relate to the deadlines in court proceedings.

¹ Constitution of Republic of Kosovo, Prishtinë, 2008, art. 22.

The Constitution of the Republic of Kosovo has in itself incorporated the best principles concerning full respect for human rights and fundamental freedoms.

In its basic provisions, it is stipulated that the purpose of the Republic of Kosovo is to govern democratically.

Democracy itself includes the full respect of the law through the independent and just work of its own legislative, executive and judicial institutions.

The CRC in Article 3 par. 2 speaks of the principles of equality before the law of all individuals and of rights that are internationally recognized.

For a fair legal process, the CRC attaches importance to the deadlines and their respect that without their respect we will not have respect for human rights and freedoms.

The CRC obliges that *"Everyone has the right to fair and impartial public scrutiny of decisions on rights and obligations or any criminal charge filed against him / her within a reasonable time..."*². All the constitutions of the democratic world have their expectations of having such a system that does not overwhelm the processes and the burden falls on the state.³

² Ibid, art. 31, p.2.

³ "The Court has emphasized that Article 42 of the Constitution and Article 6 of the ECHR establishes the obligation to organize the country's legal system in such a way that the courts meet the requirements of the standards for a legal order process, including that of the trial within a reasonable time. In this regard, the courts have a duty to ensure that all subjects participating in the proceedings behave in such a way as to avoid any unnecessary delay "(see: Decision No. 76 of the Constitutional Court of the Republic of Albania, dated 4.12.2017, <http://qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20220/VEN%20DIM%20I%20GJK%20nr.%2076,%20date%204.12.2017.pdf>, accessed on date 15.01 .2018).

II. INTERNATIONAL INSTRUMENTS RELATING TO DEFINITION AND IMPLEMENTATION OF DEADLINES

2.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), in its entirety, does not directly mention any legal remedy related to the trial.

But it is understood indirectly, precisely because one of the fundamental human rights, as defined in this decree, is also the right to a fair trial.⁴

Fair judgment in itself incorporates the determination of deadlines for undertaking certain actions, and their respect. Only in this way can we say that we are dealing with fair trial.

2.2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECPHRFFP) stipulates that "*Everyone arrested must be informed within a short time and in a language that he understands for the reasons of arrest and in relation to any charges against him*"⁵.

It is a duty that a person arrested or detained in the circumstances provided for in paragraph 1 / c of Article 5 must be immediately sent to a judge.

An arrested person has the right to be tried within a reasonable time while in custody or to be released on trial.

The Convention envisages in detail how to deal with persons deprived of their liberty, arrested persons.

⁴ Universal Declaration of Human Rights, Geneva, 1948, n.10. URL: <http://www.unmikonline.org/regulations/unmikgazette/03albanian/Ahri/AUniversalDeclarationHumanRightsfinal.pdf>, accessed on March 20, 2015.

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, 1950, Article 5, para.2; URL: http://www.pp.gov.al/eeb/ekstra29_2008_789.pdf, accessed on March 20, 2015.

According to the Convention, every arrested person has the right to appeal, to appeal to the competent court, and the court must decide as soon as possible on the legality of the deprivation of liberty and his imprisonment. The European Court of Justice in relation to the right to freedom and security, Article 5, paragraphs 1 and 6, paragraph 4, states that national courts must be inclined to presume that the presumption of innocence prevails in addition to the presumption of being at liberty. She states that "in cases when a decision is to be made, a speedy decision is required that determines the legality of detention, as the defendant should fully benefit from the principle of the presumption of innocence. *The Court criticized the excessive time taken by the courts to consider the request for release as well as the delays caused by the lower-level courts*"⁶.

If it is estimated that detention is unlawful, the court must immediately be released by court order. This is because the court is the one who values legality and shares justice.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6, The Right Judgment, provides the human right for a fair trial and in a reasonable time.

So this provision is incorporated in our constitution, a reasonable deadline, and this legal provision is applied to the work of the constitutional courts of each country, but also of the European Court of Justice.

ECPHRFFP also sets out additional obligations arising from the legal deadlines that relate to the case when a person is charged.

This has to do with the right to information in the shortest possible time as to the nature of the indictment and the cause of the charge.

⁶The AIRE, The Case of the European Court of Human Rights in respect of Albania up to the end of 2015 / AIRE Center, European Court of Human Rights Law on Albania by the end of 2015, Page 8; <https://sudovi.me/podaci/vrhs/dokumenta/2578.pdf>, accessed on 11.05.2016.

Likewise, here too we have to do with giving the deadline sufficient or appropriate for the accused to prepare for his defense.⁷

2.3. The International Covenant on Civil and Political Rights and its Protocols

The International Covenant on Civil and Political Rights and its Protocols (ICCPRP), in different states is also called the International Covenant on Civil and Political Rights.⁸

Article 9 stipulates that any person arrested immediately upon arrest must be informed of the reasons for the arrest.

Likewise, the deadline also applies to the notification of a charge filed against a particular person.

Similarly, there are deadlines pertaining to the appearance of the detainees before the judges, or as before "*any other officer authorized by law for the exercise of judicial functions*" the reasonable time.

This convention, regarding the adjudication of the case, sets the legal deadline within which the procedure should be conducted, and within the reasonable time if the person is arrested or the possibility of being released in freedom until judgment is made.

The ICCPRP states that the right to appeal against those decisions for deprivation of liberty is up to the decisions regarding the deprivation of persons.

The deadline for dealing with the complaint by the competent court is defined by the expression "*without delay*".⁹

⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, 1950, Article 5, par.3, a), b) (http://www.pp.gov.al/web/ekstra29_2008_789.pdf, accessed on March 20, 2015.

⁸International Covenant on Civil and Political Rights and its Protocols, 1976, (<http://www.unmikonline.org/regulations/unmikgazette/03albanian/Ahri/ACovenantCivilPoliticalRights.pdf>, accessed on March 20, 2015.

⁹ Ibid., p.9.

2.4. Council of Europe Framework Convention for the Protection of National Minorities

The Council of Europe's Framework Convention for the Protection of National Minorities (CEFCPNM) is therefore envisaged to be incorporated into our Constitution because the issue of national minorities in Kosovo has been delicate.

This delicacy has been especially in the first postwar period of 1999, and in the case of declaration of independence in 2008, Kosovo had to prove that it is committed to the protection of human rights, in particular the rights of minorities.

CEFCPNM in addition to the rights that belong to all persons, which belong to the minorities, in particular has felt it necessary for all of them:

"Undertake to guarantee the right of any person belonging to a national minority to be informed promptly, in a language that he or she understands, of the reasons for his / her arrest, and of the nature and cause of any charge against his / her, and to protect himself / herself in this language"¹⁰

The Republic of Kosovo has also issued a special law for the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo.

Thus, this law reiterates that the elementary right of minorities from the moment of arrest is to immediately be informed about the reasons of arrest in their own language. So, the deadline for notification is immediately.¹¹

2.5. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), in its Article 37 regarding the arrest, detention and imprisonment of

¹⁰ Council of Europe Framework Convention for the Protection of National Minorities, 1993, p.10, p.3. URL: <http://www.unmikonline.org/regulations/unmikgazette/03albanian/Ahri/AConventi onAlbanian.pdf>, accessed on March 21, 2015.

¹¹ Law No. 03 / L-047 on the Protection and Promotion of the Rights of Communities and Members of them in the Republic of Kosovo, 2008, Article 4, para.4.4.

children, has sanctioned that this should be done in the shortest possible time.

Regarding the appeal to such measures against children, arrest, detention or imprisonment, it is determined that the court should act urgently.

For this, the CRC, the deprivation of liberty is given the *"right to challenge the decision to abolish freedom before a court or other competent, independent and impartial authority, as well as a speedy decision on any such case"*¹².

Article 40 of the CRC sets out deadlines related to other judicial rights.

The child must immediately and directly be informed of the charges brought against him.

Its judicial issue must be addressed without delay by the courts, having priority to the integrity and dignity of the child who is a procedural subject.

III. DEFINITION OF DEADLINES AND IMPLEMENTATION THROUGH THE CONSTITUTION OF KOSOVO

3.1. Deadlines related to the deprivation of the person from liberty

3.1.1 Notification of grounds for deprivation of liberty and other rights

Article 29 of the CRK, the Freedom and Security Law, establishes the obligation that when a person is deprived of liberty, he should immediately be notified of the reasons for the deprivation.

The time limit is defined by "immediately" and this is not the time, day, but it is the moment of deprivation of liberty.

Here we can understand the moment before deprivation of liberty, namely the moment when deciding to be deprived of liberty. Likewise, the deadline for the right to be informed

¹² Convention on the Rights of the Child, 1990, Art. 37 (d).

about the other rights of the arrested person, which is guaranteed by the law, is also defined. Even in this case the deadline is "*immediately*", and these deadlines also apply to the accused.¹³

3.2. Issuance of the decision on the detention of the arrested person

The CRK obliges law enforcement, in this case the prosecution, although not decisively mentioned, in the shortest possible time "*as soon as possible*"¹⁴ to issue a written notice on the deprivation of liberty.

In this case the written notice is the ruling on the detention of the arrested person.

As will be discussed below, the Criminal Procedure Code has set the deadline of six (6) hours for the issuance of a written ruling and handover to the person deprived of liberty-arrested person.

This means legislators have the constitutional deadline "as soon as possible" in the criminal procedure code equivalent to six (6) hours.

For this reason, the European Court of Human Rights has ruled that an "arrest" or "ban" to be lawful "*must be determined not only in the domestic law but also in the text of the Convention, the general embodied in it and the purpose of the limitations allowed by Article 5 § 1*"¹⁵.

3.3. Judicial Decision on Freedom of Liability

Persons deprived of their liberty, when such deprivations are made without prior court orders, such as arrests in flagrante, arrests during criminal investigations, etc. such persons must be sent to the court.

¹³ More in Art. 30 of the CRK.

¹⁴ Ibid. Art. 29, p.2.

¹⁵ Robert KERR against the United Kingdom, The European Court of Human Rights (Third Section), Application no. 40451/98, sitting on 7 December 1999.

Their delivery to the competent court is done in order for such arrests to be decided by the court which has the role of an impartial arbitrator.

The court must decide on this matter within a time limit which can not exceed forty eight (48) hours from the moment when the person who was arrested was brought before the court. This means that from the moment when the arrested person was sent to the court, which may be within the legal time limit 96 hours from the moment of arrest.

The court is the only body that has to decide that a person deprived of liberty is to be kept further or should be released.

The issue regarding the definition of what time period should be "*immediately*" to bring the arrested before the court to decide, have views of the European Court of Human Rights.

Attitudes are such that the term "*immediately*" according to the jurisprudence of the Human Rights Committee must be "*determined in each case separately*", and the period from the arrest of an accused and the time when he is brought before a judicial authority "*should not spend some days ... in the absence of a justification for a postponement four days before the author's behavior is brought to a legal authority*"¹⁶.

In such cases, in such cases we are dealing with human rights violations.

The Delijorgji Case against Albania, the decision of 25 April 2015, in breach of the provisions of Article 5§4 of the Convention, the European Court of Human Rights held that:

"In cases when a decision is expected, a speedy decision is required that determines the legality of detention, as the defendant should fully benefit from the principle of the presumption of innocence. The Court criticized the excessive time taken by the courts to consider the request for release

¹⁶ Professional Training No. 9, Human Rights in Justice Administration, A Human Rights Handbook for Judges, Prosecutors and Lawyers, United Nations, New York and Geneva, Pristina, 2002, p. 186).

and the delays caused by the lower courts, which had failed to enforce the Supreme Court's decision in this regard "¹⁷

3.4. Deadline for completing the case by the courts

The constitution regarding the timeline for starting and ending the judicial process has left it open, in such a way that the drafters of the law determine them, under lawful circumstances.

The deadline for initiating the trial is defined by the Constitution with the term "*a reasonable deadline*" and that each citizen has the right to a fair trial within a reasonable time.¹⁸

Regarding the deadlines related to the judicial process will be discussed following this work, in detail, as it is regulated in the Criminal Procedure Code.

IV. CONCLUSIONS

I. Some conclusions of the international agreements and instruments related to the subject of the paper::

- ✚ The Universal Declaration of Human Rights, in its entirety, does not directly mention any legal deadline related to the trial, but it is understood from the definition of Article 10 - ***Everyone has the right to a full equality of fair trial*** .
- ✚ European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, Article 5, para.2 –

¹⁷ *The jurisprudence of the European Court of Human Rights regarding Albania by the end of 2015*; Prepared by the AIRE Center in cooperation with the Office of the Albanian Government Agent before the European Court of Human Rights; AIRE Center (Advice on Individual Rights in Europe). (<http://sudovi.me/podaci/vrhs/dokumenta/2578.pdf>; accessed on June 15, 2016.

¹⁸ CRK, n.31.

Any arrested person must be informed within the shortest time and in a language that he understands, the reasons for his arrest and any charges against him.

Article 6 secures the right of man to a fair trial at a reasonable time, and this provision is incorporated in our constitution, a reasonable deadline. This legal provision is applied to the work of the constitutional courts of each country, but also of the European Court of Justice.

- ✚ The International Covenant on Civil and Political Rights and its Protocols in Article 9 stipulates that any person arrested *immediately* upon arrest must be informed of the reasons of arrest, indictment, and delivery to the designated organ, and complaints shall be dealt ***without delay***.
- ✚ Council of Europe Framework Convention for the Protection of National Minorities, Article 10 - guarantee the right of any person belonging to a national minority to be informed promptly, in a language that he or she understands, of the reasons for his arrest and about the nature and cause of any accusation against him / her and to protect himself / herself in this language ...
- ✚ Convention on the Rights of the Child, Article 37 - arrest, detention and imprisonment of children should be done in the shortest possible time, and every time we have to have a quick decision on any such case.

II. From the theoretical treatment of the timeframes related to procedural aspects of criminal proceedings, which are defined by the constitution, will present some of the main conclusions related to the subject of the paper:

- ✚ Article 3, p.2 of the CRC: *Everyone has the right to fair and impartial public scrutiny over decisions on rights and obligations or any criminal charge filed against him / her within a reasonable time ...*
- ✚ Article 24 - stipulates that all are equal before the law and that they enjoy the right to equal legal protection.

- ✚ Article 29 - establishes the obligation that when a person is deprived of liberty, he must immediately be informed of the reasons for the deprivation.

Article 29, p.2 - stipulates:

The sooner it is possible to issue a written decision on the detention of a person deprived of their liberty.

Anyone deprived of liberty without a court order shall within 48 hours be sent to a judge who decides on his or her detention on remand, not later than forty eight (48) hours from the moment when the deprived person is brought before the court.

- ✚ Article 31 - The court must start and end within a *reasonable time*.

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