

Full professor Božidar BANOVIĆ, PhD

Faculty of Security Studies, Belgrade

Associate professor Dragana ČVOROVIĆ, PhD

University of Criminal Investigation and Police Studies, Belgrade

Associate professor Vince VARI, PhD

University of Public Service, Faculty of Law, Department of Criminal Procedure, Hungary

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Detention in the criminal procedure legislation of Serbia and experiences of the public prosecutor's office for organized crime - (non) compliance with European standards?

Abstract: *Freedom as one of the key values in a democratic society is limited by the contemporary needs of protecting the individual from arbitrariness and illegality, regardless of the sphere of social life in which the individual exists. This freedom, in our case freedom of movement, is determined by legal boundaries, both from the aspect of the national framework and international standards. Namely, present-day states set the realization of human rights as one of the main goals, but also the possibility of restrictions due to necessity in a democratic society and with a restrictive approach to the basis of legal restrictions, in this case restrictions on the right to freedom and security of person. In accordance with that, the paper critically analyses the adequacy of positive legal norms that regulate detention in Serbia and research was conducted in the Prosecutor's Office for Organized Crime. In the conducted research, for the purpose of collecting primary data, a specially designed instrument was used - a survey questionnaire consisting of 7 questions. The aim of the research is to consider the adequacy of the legal norm and the efficiency of its application when it comes to the measure of detention, but also to identify problems in practice*

when determining the said measure. The results of the research indicate that the reform of the measure of detention is necessary, not only from the aspect of the national framework, but also the degree of harmonization with contemporary comparative criminal procedure legislation and European standards of deprivation of liberty.

Keywords: *detention, efficiency, organized crime, European standards, Serbia*

Introductory considerations

The right to freedom of movement represents one of the fundamental human rights, which in some states has been raised to the rank of a constitutional principle, as is the case in Serbia. In accordance with the stated regarding the importance of the international standard, but also the genesis of standardization of the right to liberty and security of the person, we can conclude that the issue of legality of deprivation of liberty is not just an issue to be dealt with by one state, but an assessment of democracy, realization of the postulates of the rule of law, and the rule of law in general in a contemporary criminal procedure. However, the provision of the right to liberty and security of the person is not only a reflection of a contemporary society, but - observing from the aspect of historical genesis - the right to freedom and security of the individual appears with the first proclamations of fundamental rights, indicating its importance and necessity which will ensure its full realization. The right to liberty and security of the person means liberty understood in the classical, physical sense, freedom of movement, whereas security, although not separated autonomously in relation to freedom, is an aspect of the prohibition of arbitrary deprivation of liberty. In addition to an adequate normative framework, it is necessary to ensure consistency of the national framework with the international one, both through adequate implementation of ratified international documents, amendments and adoption of new legal texts, but also through provision of adequate mechanisms for improving the position of international standard limits through strategic frameworks.

The right to liberty is already provided for in the Universal Declaration of Human Rights,¹ and after that, the process of active standardiza-

1 Adopted and promulgated by United Nations General Assembly Resolution 217A (III) of 10 December 1948

tion of this right and the duty to respect it at the global level continued with other international documents.

In accordance with ratified international documents, but also documents belonging to soft law, Serbia has adequately implemented the international legal standard of the right to liberty and security of the person and through the reformed normative framework it has successfully responded to the requirements set in the European Convention (hereinafter: EC).²

Detention in Serbian criminal procedure legislation and European standards

Detention as the most severe measure for ensuring the presence of the defendant in criminal proceedings, through the principles of legality and ultima ratio, sets important demands on contemporary, democratic states, the demands to apply international standards regarding the legality of restrictions, and in case of detention the right to liberty and security (Bejatović, 2010). Accordingly, the critical analysis of normative solutions and practical application of detention measures requires valid comparative theoretical explanations of a number of controversial issues related to detention in the criminal procedure legislation of Serbia, but also compliance with European standards, i.e., the standards provided by the EC. Namely, the Criminal Procedure Code of Serbia (hereinafter: CPC)³ stipulates that detention may be ordered against a person for whom there is a reasonable doubt that he or she has committed a criminal offense if: a specific person is hiding or his identity cannot be established or as an accused obviously avoids coming to the main trial or if there are other circumstances that indicate the danger of escape; there are circumstances which indicate that they will destroy, conceal, alter or falsify the evidence or traces of the criminal offense or if special circumstances indicate that they will obstruct the proceedings by influencing witnesses, accomplices or concealers; special circumstances indicate that in a short period of time he or she will repeat the criminal offense or complete

2 *European Convention on Human Rights 2003*, Official Gazette of the Serbia and Montenegro, No. 9/2003

3 *Criminal Procedure Code*, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, and 62/2021

the attempted criminal offense or commit the criminal offense he or she threatens to commit; that the criminal offense charged against them is punishable by imprisonment for a term exceeding ten years, i.e. imprisonment for a term exceeding five years for a criminal offense with elements of violence or a first-instance court sentence of five years or more, and the manner of execution or the severity of the consequences of the criminal offense have led to public disturbance which may jeopardize the unimpeded and fair conduct of criminal proceedings.⁴ In accordance with the stated conditions for determining detention and the degree of consistency with European standards, the EC stipulates that the element of legality of deprivation of liberty measures is manifested through the national and international framework, i.e., deprivation of liberty has to be in accordance with national law, both substantive and procedural, and that the above provisions are in line with the EC (Wolfrum, Deutsch, 2007; Schabas, 2015). Accordingly, it is necessary that a certain criminal offense for which there is a reasonable doubt that the person has committed, be provided by the provisions of substantive law, as well as in case of deprivation of liberty to meet procedural guarantees provided by national law for failure to comply with the obligation national law (Paulus, 2015; Mowbray, 2004). However, the determination of the international framework does not fulfil the legality of deprivation of liberty only at the national level, but it is also necessary that the provisions of national law be in accordance with the EC, which would mean that deprivation of liberty (Mijalković, Čvorović, Turanjanin, 2018) can be undertaken in accordance with national law, but if the above provisions are not harmonized with the international standard, i.e. if it is an arbitrary deprivation of liberty⁵, it is an illegal deprivation of liberty. The EC stipulates that: "Everyone has the right to liberty and security of person. No one shall be deprived of their liberty except in the following cases and in accordance with a procedure prescribed by law." The grounds relating to detention are determined as follows: "in the case of lawful arrest or deprivation

4 Article 211, paragraph 1, items 1, 2, 3, 4 of the Criminal procedure code

5 In the case of *Baranowski v. Poland* from October 2, 2007. Appl. no. 39742/05 the applicant was arrested in 1993. Following the indictment, the accused could be held in custody until trial at Polish law, without a special court decision. The Court concluded that the provisions of national law did not provide sufficient guarantees for protection against arbitrary deprivation of liberty, as it did not contain a valid basis for detention in law prescribed by law (Jakšić, 2006, p. 127).

of liberty for the purpose of being brought before a competent judicial authority on suspicion of having committed a criminal offense or when it is reasonably considered necessary to prevent the commission of a criminal offense or escape after its execution”⁶.

In accordance with the above, we can see that the extensive approach when it comes to the reasons for detention in the criminal procedure legislation of Serbia in relation to the EC is considered legitimate, given the legal, political heritage of our country and the field of free assessment, and when it comes to the relevant provisions of the CPC, we can classify them into four groups: the risk of escape, the risk of obstruction of justice, the need to prevent crime and the need to preserve public order. However, a critical analysis is required as regards the legal solution that refers to the material condition for ordering detention, and that is reasonable suspicion (Bejatović, 2014a; Škulić, 2014a). Namely, we can state that a higher degree of suspicion is required for detention than for initiating criminal proceedings (grounds for suspicion), and as an argument we can present in support of this fact is the importance of the right to freedom and security in a democratic society and the rule of law. However, viewed from the aspect of the national framework, a justified question arises as to whether this would mean that the public prosecutor (Bejatović, 2014b) in the case of a motion for detention in the investigation, would have to specifically explain the facts that would support the existence of reasonable suspicion necessary for detention, because grounds of suspicion are only required to initiate an investigation. We are of the opinion that in practice of public prosecutor's offices, no distinction is made in determining the degree of suspicion in relation to initiating criminal proceedings and ordering detention, but that in each specific case the public prosecutor's office is guided only by the reasons provided by the CPC for ordering detention. In any case, in addition to the normative elaboration and research conducted in the Prosecutor's Office for Organized Crime, this issue requires valid theoretical considerations and consideration of the views expressed by respondents during the research on this issue, as a significant factor in implementing the effectiveness of the application of this legal norm, namely the measure of detention. Also, one of the key elements of legality of deprivation of liberty, in this case detention, is the goal to be achieved by limiting the

6 Article 5, paragraph 1, item c of the EC

international standard. In accordance with the EC (Vriend, 2016; Ovey, White, 2002; Grabenwarter, 2003), it is bringing before the competent judicial authority and the determinant of judicial authority, i.e. acting on the stated basis in order to ensure the presence of the defendant in criminal proceedings and not in any other type of penalty proceedings, which, in accordance with the restrictive interpretation of the court, excludes the misdemeanour court, i.e. deprivation of liberty in misdemeanour proceedings. The determinant of the goal, i.e., bringing before the competent judicial authority, excludes lawful deprivation of liberty with some other goal, such as preventive detention, but that *eo ipso* does not mean that if criminal proceedings are not initiated or suspended or acquitted, the deprivation of liberty was illegal, but that it was necessary that such an intention existed at the time of deprivation of liberty. An example of the stated lawful deprivation of liberty, without criminal proceedings being initiated, is the measure of keeping a suspect in custody.⁷ However, this does not mean that the aim of bringing before the competent judicial authority justifies the duration of the detention measure indefinitely, without the possibility and need for review. The duration of detention is determined according to specific circumstances and it is necessary to review the decision in certain time intervals, which in accordance with the CPC, the panel is obliged to examine without the proposal of the parties and defence counsel whether there are still reasons for detention and to decide on extension or termination of detention, after the expiration of the total of thirty days until the confirmation of the indictment, and after the expiration of the total of 60 days after the confirmation of the indictment until the issuance of the first instance verdict.⁸ Also, the EC proclaims that anyone who is arrested or deprived of liberty in accordance with the item c of the EC will be brought before a judge or other official designated by law to perform judicial functions without delay and granted the right to be tried within a reasonable time or to be released pending trial.⁹ The decision to terminate detention shall be made by the court when the reasons for its determination cease to exist, but the relationship between the prosecutorial investigation in the party model of criminal proceedings and the duration of detention in

7 Article 294 of the CPC

8 Article 216, paragraph 3 of the CPC

9 Article 5, paragraph 3 of the EC

the investigation is considered justified from the aspect of fair trial (Summers, 2007) and the right to liberty and security of a person. Namely, analysing the right to a fair trial and the equal position of parties in criminal proceedings (Škulić, 2014b) through equality of arms and bringing before the competent judicial authority without delay, and the length of detention, given that detention in the investigation is proposed by the public prosecutor (Čvorović, 2015), but that the public prosecutor is an entity that presents evidence, which are some of the conditions for ordering or terminating detention, a justified question arises as to the possibility of violating the right to a fair trial and the right to liberty and security of person. Accordingly, the question justifiably arises as to whether, if detention is ordered due to the possibility of influencing witnesses,¹⁰ it shall be revoked when the last witness is examined by the public prosecutor, and there is not another basis for its extension; whether there is a danger of evidentiary obstruction by the public prosecutor and detention (Škulić, 2019) lasting longer than it should. We are of the opinion that the answer in the mentioned case could be affirmative, which would lead to a violation of Article 5 paragraph 3 of the EC, because the European Court considers that any delay in criminal proceedings without a justified reason, while keeping a person in detention without considering alternative measures to detention is a violation of this article.¹¹ Namely, when it comes to determining alternative measures to detention, the position of the European Court regarding the reasons for determining bail, i.e., the obligatory termination of detention, is in the case of flight risk. In contrast, the CPC of Serbia proclaims several grounds for bail,¹² which in accordance with the interpretation of the position of the European Court (Amatrudo, William-Blake, 2015; Leach, 2006; Greer, 2006) would indicate the obligation to terminate detention only in the above case, while other grounds for determining bail would be of an optional nature. Traditionally, the Serbian CPC recognizes bail as an alternative to detention when a person needs to be detained or is already in detention because his or her identity is hidden or cannot be established, or he or she apparently avoids appearing at the main trial as a defendant, or if there are other circumstances that indicate the danger of

10 Article 211, paragraph 1, item 2 of the CPC

11 *Dervisi v. Croatia*, No. 67341/10, Judgment of ECHR of the Court on Merits and Just Satisfaction, 25.9.2012

12 Article 202 of the CPC

a flight risk.¹³ The new CPC expands the list of grounds for detention where it is possible to replace detention with bail. However, the legal change requires a critical review and a deeper theoretical analysis. The legislator stipulates that bail may be an alternative to detention if detention is ordered for a criminal offense punishable by imprisonment for more than ten years, or imprisonment for more than five years for a criminal offense with elements of violence or if he or she is sentenced to five years in prison or more by a first instance court decision, and the manner of execution and severity of the consequences of the criminal offense have disturbed the public in a way that may jeopardize the unimpeded and fair conduct of criminal proceedings.¹⁴ We consider illogical the legal provision by which bail replaces detention in the event of a "public disturbance". Does that mean that if detention is replaced by bail under the stated condition, the public will no longer be disturbed? Also, the general condition for the application of bail is the promise of the defendant that he or she will not hide and that he or she will not leave their residence without the approval of the court.¹⁵ The stated condition is typical for determining bail in the case when detention is ordered due to the flight risk, otherwise there is no connection between the defendant's promise not to hide and the stated grounds for bail (Banović, 2019). Also, when determining the amount of bail, the court takes, among other things, the degree of flight risk, which is primarily related to the traditional grounds for determining bail, and that is the danger of escape.

Also, when it comes to the aforementioned grounds for ordering detention, i.e., the flight risk, it is necessary to note that when it comes to the actions of the Prosecutor's Office for Organized Crime, often the grounds for determining detention in accordance with the gravity of the criminal offence are the ones stipulated in Article 211 paragraph 1 point 4 of the CPC,¹⁶ although, given the international character of organized crime offenses, the reason "flight risk" would have complete legal and

13 Article 211, paragraph 1, item 4 of the CPC

14 Article 211, paragraph 1, item 4 of the CPC

15 Article 202, paragraph 1 of the CPC

16 Detention ordered for a criminal offense punishable by imprisonment for a term exceeding ten years, i.e., a sentence of more than five years for a criminal offense with elements of violence or if the first instance court sentenced him or her to five years or more, and the manner of execution of criminal offenses have led to public disturbance which may jeopardize the unimpeded and fair conduct of criminal proceedings

political justification. Also, when it comes to the stipulated reason for ordering detention for the most serious crimes, the term "public disturbance" is poorly formulated in legal and technical sense; it is extremely undemocratic in nature, for how is it up to the court to estimate that public disturbance has occurred and that it may lead to unimpeded and fair conduct of criminal proceedings? It is especially important to mention that the recent court practice, in addition to disturbing the domestic public, also uses the term "disturbing the world public", which is even more indefinite. The stated legal imprecision can lead to inadequate application of the legal norm, i.e., abuse of the norm, which in the end can result in inefficiency of the criminal procedure and violation of the international standard of the right to liberty and security of the person.

We can state that there are certain theoretical doubts, i.e., that the issue of detention is insufficiently elaborated in the CPC of Serbia, but a justified question arises whether the recent prosecutorial practice, when proposing detention, acts in accordance with legal provisions and whether it interprets the insufficiently regulated legal solutions in accordance with ratified international documents, primarily the EC. Namely, the efficiency in the application of the detention measure requires, in addition to the adequacy of the legal norm, its adequate application, and this research will reveal the degree of adequacy of the application of the legal norm, whether it is necessary to reform the legal text and whether Serbia successfully meets the requirements of international legal documents, which are implemented by contemporary criminal procedure legislations.

Research objectives, hypotheses and methods

The objectives of the research as regards detention in the criminal procedure legislation of Serbia are:

1. reviewing the adequacy of the normative framework of Serbia when it comes to detention;
2. identifying problems in the practical application of the detention ordered by the Prosecutor's Office for Organized Crime;
3. reviewing the degree of harmonization of the normative regulation of detention in the criminal procedure legislation of Serbia with European standards.

In accordance with the stated goals of the research, the following hypotheses were set:

H0: The Criminal Procedure Code of Serbia adequately regulates the measure of detention;

H1: It is necessary to reform the measure of detention, in terms of specifying certain terms, and this is observed from the aspect of the realization of the efficiency of criminal proceedings and harmonization with European standards and contemporary comparative criminal procedure legislation.

Sample description

During June 2022 a survey was conducted among public prosecutors in the Prosecutor's Office for Organized Crime, which was formed for the territory of Serbia. The research involved 21 public prosecutors, deputy public prosecutors, and prosecutorial associates who had work experience in ordering detention. Before the beginning of the survey, the respondents were informed about the goal and purpose of the research, that the survey is anonymous and that individual answers will not be presented, but the results obtained only on the total sample will be used.

Survey questionnaire

For the purpose of collecting primary data, a specially designed instrument was used - a survey questionnaire consisting of 7 questions. The questions referred to the attitudes of public prosecutors on the adequacy of the normative regulation of detention in the Criminal Procedure Code, the degree of proposing alternative measures to detention, the fulfilment of the conditions for a special explanation of the justification of proposing detention, etc. For the purpose of statistical processing of collected data, the statistical method at the level of descriptive statistics was applied, and for that purpose the SPSS software package was used (version 20).¹⁷

17 IBM SPSS ID: 729327.

Results

In accordance with the goals of the research and research questions, after the conducted research, the following results were obtained for the topic "Detention in the criminal procedure legislation of Serbia and experiences of the public prosecutor's office for the organized crime - (non) compliance with European standards?"

To the question: "Do you consider detention an important instrument for detecting and proving criminal offences of organized crime and its perpetrators?", the respondents answered as follows:

Table 1 - Detention as an important instrument for detecting and proving criminal offences of organized crime and its perpetrators

Response:	Yes		No	
	N	%	N	%
Number and percentage of respondents	8	38.1	13	61.9

According to the data from Table 1, we can conclude that when it comes to detention as an important instrument for detecting and proving criminal offences of organized crime and its perpetrators, 13 respondents do not consider detention an important instrument of legal policy for criminal offences of organized crime and its perpetrators, while 8 respondents expressed a positive attitude on this issue, which is not an encouraging fact. Namely, detention, in addition to achieving the key goal of standardization, which is to ensure the presence of the defendant in criminal proceedings, also contributes to the realization of other factors of criminal proceedings efficiency such as the right to evidence, trial within a reasonable time, and in accordance with the conducted research, it is obvious that a significant percentage of the stated goals were not recognized by the entities proposing the stated measure of detention.

To the question: "Do you often suggest ordering detention?", the respondents answered in the following way:

Table 2 - Detention and frequency of ordering

Response:	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Number and percentage of respondents	0	0	0	0	4	19	16	76.2	1	4.8

According to the data from Table 2, the largest number of respondents answered that they often proposed a measure of detention, a significantly smaller number of respondents proposed the measure occasionally, while only one respondent always did so. We can state that in accordance with the above result, in practice, the subjects proposing this measure recognized the importance of detention, which confirms the legal and political justification of the trend of increasing the number of orders of the measure of detention, which is gradually becoming a rule rather than exception.

To the question: “Do you decide on another measure to ensure the presence of the defendant in the criminal proceedings rather than on the measure of detention?”, the respondents answered as follows:

Table 3 - Detention and alternative measures to ensure the presence of the defendant in criminal proceedings

Response:	Never		Rarely		Occasionally		Often		Always		Did not respond	
	N	%	N	%	N	%	N	%	N	%	N	%
Number and percentage of respondents	0	0	5	23.8	13	61.9	1	4.8	0	0	2	9.5

According to the data from Table 3, we can see that the largest number of respondents occasionally opt for another measure to ensure the presence of the defendant in criminal proceedings rather than for detention, a significantly smaller number of respondents rarely, while one respondent often. These results require a critical attitude when it comes to the measure of detention as the ultima ratio measure to ensure the presence of the defendant in criminal proceedings, which is obviously not taken into account in practice when applying the legal norm, i.e., proposing a measure of detention. Also, it should be borne in mind that the goals of anticipating all measures to ensure the presence of the defendant are almost identical, while special emphasis should be placed on specifying and delimiting the conditions for the application of measures to ensure the presence of the defendant in criminal proceedings.

To the question: “Do you think that detention is adequately regulated by the CPC and that it allows you to adequately apply the legal norm?”, the respondents answered as follows:

Table 4 - Detention and adequacy of the normative framework

Response:	Yes, very well		Yes, but not in all provisions		No	
	N	%	N	%	N	%
Number and percentage of respondents	7	33.3	14	66.7	0	0

According to the data from Table 4, the largest number of respondents answered that detention is adequately regulated by the CPC in most provisions, not in all, while also a significant number of respondents stated that detention is very well regulated by the CPC and allows adequate application of the legal norms. In accordance with that, the stated attitudes indicate that the normative elaboration of the measure of detention is to a large extent adequate, but that reform is still necessary with the aim of more efficient application of the legal norm.

To the question: “When it comes to criminal acts of organized crime, do you decide to order detention based on the condition provided in Article 211 paragraph 1 point 4 of the CPC or based on the condition from Article 211 paragraph 1 point 1 of the CPC, in accordance with the international character of criminal offences of organized crime?”, the respondents answered as follows:

Table 5 - Detention and specifying the conditions for application of the measure

Response:	I rather decide on the condition provided in Article 211 paragraph 1 item 4 of the CPC		I rather decide on the condition provided in Article 211 paragraph 1 item 1 of the CPC		Did not respond	
	N	%	N	%	N	%
Number and percentage of respondents	0	0	16	76.2	5	23.8

According to the data from Table 5, the largest number of respondents answered that when proposing the determination of a measure of detention, they decide on the condition provided for in Article 211 paragraph 1 point 1 of the CPC, i.e., among other things, due to the flight risk, while five respondents did not answer the question or believe that everything depends on the specific case. Accordingly, we believe that ordering detention, inter alia, due to the flight risk, would be more ade-

quate in the case of organized crime, viewed from the aspect of justifying the restriction of the international standard of deprivation of liberty, given that the term public disturbance is much more difficult to elaborate and there would be a greater possibility of illegal deprivation of liberty and responsibility before the European Court.

To the question: “When presenting evidence in the investigation, do you take into account the implementation of Article 5 paragraph 3 of the EC (bringing before the competent judicial authority without delay), when detention was ordered due to the danger of evidentiary obstruction of the defendant as a reason for ordering detention (e.g., examination of witnesses)?”, the respondents answered as follows:

Table 6 - Detention and evidentiary obstruction of the defendant

Response:	Yes		No		Did not respond	
	N	%	N	%	N	%
Number and percentage of respondents	19	90.5	1	4.8	1	4.8

According to the data from Table 6, almost all respondents answered that they take into account the implementation of Article 5 paragraph 3 of the EC (bringing before the competent judicial authority without delay), when detention was ordered due to the danger of evidentiary obstruction of the defendant, only one respondent answered negatively, while one did not state his position on the said issue. In accordance with the above data, we can conclude that the application of the legal norm takes into account the time determinant when a person is in detention, which is extremely important both from the aspect of the national framework and international standards of deprivation of liberty.

To the question: “Do you explain in the proposal for ordering detention with special facts the grounded suspicion that is necessary for ordering detention?”, the respondents answered as follows:

Table 7 - Detention and grounded suspicion as a condition for ordering detention

Response:	Never		Rarely		Occasionally		Often		Always	
	N	%	N	%	N	%	N	%	N	%
Number and percentage of respondents	0	0	0	0	0	0	0	0	21	100

According to the data from Table 7, all respondents answered that they always explain the grounded suspicion necessary for ordering detention in the proposal for ordering detention. We consider extremely important the fulfilment of the stated basis in the practical conduct of the subjects in charge of proposing detention, considering that the reasoning of the grounded suspicion is an extremely important element of the legality of deprivation of liberty.

Discussion

The conducted analysis of the subject matter, both through a theoretical approach and the research conducted in the Prosecutor's Office for Organized Crime, indicates the need to continue working on the reform of the criminal procedure legislation of Serbia, including the measure of detention. Namely, the legal norm as well as the adequacy of the application of the legal norm represent an important instrument of the efficiency of the criminal procedure and has been the subject of critical analysis by the scientific and professional public for many years. Accordingly, detention is an important instrument for realizing the efficiency of detecting, proving and prosecuting criminal offences of organized crime, and only if it is determined in accordance with legal norms and European standards, we can talk about the legality of deprivation of liberty and adequate application of the law. Otherwise, the consequences for Serbia can be significantly greater, from the possibility of abuse of the legal norm, inefficiency of criminal proceedings, to responsibility before the European Court for violating the right to liberty and security of person. Also, the conducted research showed that the majority of respondents believe that detention is adequately regulated by the CPC and enables adequate application of the legal norm, and that in the application of the legal norm regarding the grounds for determining detention provided in Article 211 paragraph 1 point 1 of the CPC and Article 211 paragraph 1 point 4 of the CPC, respondents rather decide to use the grounds provided in Article 211 paragraph 1 point 1 of the CPC.¹⁸ Also,

¹⁸ Detention ordered for a criminal offense punishable by imprisonment for a term exceeding ten years, i.e., a sentence of more than five years for a criminal offense with elements of violence or if the first instance court sentenced him or her to five years or more, and the manner of execution of criminal offenses has led to public disturbance which may jeopardize the unimpeded and fair conduct of criminal proceedings.

the practice in the application of this measure causes controversy in the public, i.e., that the defendants are not detained as long as they should be or that the detention is quickly terminated, which is reflected in the public as the release of the defendant and insufficiently efficient work of the judiciary. In accordance with the conducted research, we can see that a detention measure is often proposed, which is justified from the aspect of the purpose of anticipating the said measure, but it raises a justified question of the ultima ratio of the character of the said measure and the possibility of violation of the right to be brought before the competent judicial authority without delay. Namely, the research has shown that when deciding on proposing detention or some other measure to ensure the presence of the accused in criminal proceedings, public prosecutors usually decide to propose detention. We believe that in practical conduct, the possibility of determining other measures to ensure the presence of the defendant should be considered first, and detention as the ultimate ratio of a measure of deprivation of liberty in the end, and that even after ordering detention, for the duration of the measure, the existence of facts in support of the justification of the extension of detention should be constantly reviewed, as well as the possibility of proposing alternative measures to ensure the presence of the accused in criminal proceedings. In this way, the standard of bringing the accused before the judiciary without delay and the legality of deprivation of liberty would be ensured. However, in order for detention and other alternative measures to ensure the presence of the accused in criminal proceedings to be realized, it is necessary to differentiate the way of specifying the conditions of their application, not only in name but also in gravity of offences, which is not the case for now. In this way, in practice, other measures would be proposed more often than the measure of detention. Also, when it comes to respecting the standard of bringing before the competent judicial authority without delay, we can see that in practice, public prosecutors respect this principle and that this is yet another indicator of the adequacy of the legal norm pertaining to detention. In addition to the stated facts of the legality of the international standard, the importance of reasoning with special facts of the existence of reasonable suspicion necessary for ordering detention was emphasized, considering that the investigation, within which detention can be ordered, is initiated on grounds for suspicion. Accordingly, the results of the research show that almost all subjects in charge of proposing detention in the Prosecutor's Office for Organized

Crime explain with special facts the reasonable suspicion that is necessary for ordering detention and for the legality of deprivation of liberty as international legal standard.

Conclusion

In accordance with the above, we can conclude that the measure of detention is adequately normatively elaborated and enables adequate application of the legal norm, but also that it is necessary to continue work on the process of reforming the criminal procedure legislation of Serbia and eliminate the observed shortcomings in standardizing the measure of detention especially when it comes to specifying and delimiting the conditions for the application of detention measure with other measures to ensure the presence of the defendant in criminal proceedings, which would contribute to a more significant use of other measures in relation to the detention measure, which is not the case now. At the same time, in that way, the standard of bringing before the competent judicial authority would be realized to a greater extent without delay. Also, it is necessary to specify and more clearly define the concept of public disturbance, which when ordering detention on that basis and insufficient reasoning can be a rather controversial basis for the legality of deprivation of liberty both from the aspect of national framework and the international standard of freedom and security of a person. If we add to the above the fact of a considerable amount of compensation that the state should pay in case of illegal deprivation of liberty, the previously presented critical review of the normative regulation of detention and the legality of deprivation of liberty becomes even more important.

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Притвор у кривичном процесном законодавству Србије и искуства тужилаштва за организовани криминал – (не)усклађеност са европским стандардима?

Апстракт: Слобода као једно од кључних вредности у демократском друштву ограничена је савременим процедурама заштите појединца од произвољности, незаконитости, без обзира у којој сфери друштвеној животи појединац егзистира. Наведена слобода, у нашем случају слобода кретања је одређена законским границама и то како посматрано са аспекта националног оквира тако и међународних стандарда. Наиме, савремене државе као један од главних циљева посматрају остварење људских права, али исто тако и могућности ограничења из разлога неопходности у демократском друштву и уз конститутивни принцип основа законитости ограничења, у овом случају ограничења права на слободу и безбедности личности. У складу са тим, у раду је критички анализирана адекватности позитивних норми које регулишу меру притвора у Србији и сprovedено је истраживање у Тужилаштву за организовани криминал у Србији. У сprovedеном истраживању, у сврху прикупљања примарних података коришћен је посебно конструисан инструмент – анкетни упитник који је био сачињен од 7 питања. Циљ истраживања је сагледавање адекватности законске норме и ефикасности њене примене када је реч о мери притвора, али и уочавања проблема у пракси приликом одређивања наведене мере. Резултати истраживања указују да је неопходна реформа мере притвора и то не само посматрано са аспекта националног оквира, већ и слична са савременим међународним кривичнопроцесним законодавствима и европским стандардима мере лишења слободе.

Кључне речи: притвор, ефикасност, организовани криминал, европски стандарди, Србија.