KOMITETI SHQIPTAR I HELSINKIT
ALBANIAN HELSINKI COMMITTEE

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Executive Summary of the Research Report

"PRE-TRIAL DETENTION IN ALBANIA"

(ON INTERNATIONAL STANDARDS AND CHALLENGES OF OUR JUSTICE SYSTEM)

Pursuant to its mission, the Albanian Helsinki Committee (AHC) presents this research study, which analyzes the problems related to the limitation of liberty of persons suspected of committing criminal offenses and the assignment of personal security measures in the country, with special focus on "arrest in prison" or pre-trial detention.

In presenting the issues in this research study, AHC first looked at an analysis of international acts, jurisprudence of the European Court of Human Rights, the findings and data reflected for our country in reports of international organizations and local institutions for the last four years (2016 – 2019), such as the Committee for the Prevention of Torture, the U.S. Department of State, the European Commission, the Ministry of Justice, the General Prosecutor, People's Advocate, the General Directory of Prisons, etc. In a summarized manner, the analysis indicates:

1. The extended use of arrest in prison (pre-trial detention) is often a symptom that the system of criminal justice does not function, which may lead to lack of protection of rights of detainees. That may cause their inhuman and degrading treatment as a result of poor infrastructure conditions in part of our institutions in the prison syste and as a result of limited capacities for accommodating these citizens, creating in many cases disturbing overcrowding.

2. Monitoring conducted in the past decade by the Albanian Helsinki Committee and the People's Advocate highlight violations of the fundamental rights and freedoms of citizens who have been detained, arrested in flagrance, and in pre-trial detention in the prison system, such as physical or psychological maltreatment at the moments of flagrant arrests, detention, accompaniment, or questioning by police bodies (in some cases in the absence of a lawyer), lack of knowledge of legal guarantees, surpassing of legal deadlines for the detention/arrest in flagrance until their inspection by the court, inhuman treatment in police premises or in pre-trial detention rooms, sleeping on the ground or in rooms that have many more people than allowed capacity, creating disturbing overcrowding, etc.

3. When international standards and our domestic legislation (Criminal Procedure Code) are not respected, there is also a very high cost for the state budget, aside from leading to violations of fundamental human rights and freedoms. The daily cost of expenses for maintaining a detainee in our penitentiary system during 2019 was 2,910 leks. The total financial cost in the state budget, for the accommodation of detained persons in our country for 2019 was at high levels, namely 2.29 billion leks.

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4. On January 1, 2019, our prison system had accommodated a total of 5580 citizens. The ratio of those convicted and those in pre-trial detention accommodated in this system, as of the same date, was very narrow. Precisely, 2268 people or 40.6% are detained citizens or individuals and 3033 or 54.3% are convicted citizens or idnividuals. During the 12 months of 2019, the prison system had 3864 new admissions. Of that figure, 3258 individuals or 84.3% of the total number consisted of detained persons.

5. Referring to data in the annual reports of the General Prosecutor on the state of criminality in the country for 2018 and 2019, we find that a more lenient criminal policy was pursued toward juveniles in conflict with the law (indicted), including the policy pursued for security measures requested by the prosecutor for this category. This is pursuant to the Juvenile Criminal Justice Code, which entered into force on January 1, 2018. The application of the security measure of arrest in prison for juveniles for 2018 was at 5.18, at a slightly lower level than in 2019 (6%).

6. The Albanian Helsinki Committee considers that the recommendations of the Assembly to the General Prosecution Office to harshen criminal policy vis-à-vis security measures do not take into consideration international standards for human rights and freedoms, which encourage that the "arrest in prison" security measure should be applied as a last resort and in exclusive cases.

7. Referring to data in the annual statistical book of the Ministry of Justice, it appears that during 2016, 39% of those indicted received the security measure of "arrest in prison;" during 2017 (for the same year or carried over from previous years), 37% of those indicted received the security measure of "arrest in prison," and in 2018, there was a more considerable decrease in the number of those indicted with this security measeure, at 28.9%. These data include the indicted individuals whose criminal cases were carried over in the following year. Although there is a considerable decrease in the number of those in pre-trial detention in 2018, we still find that "arrest in prison" is the measure mostly applied compared to other measures of personal security by our courts.

8. AHC's monitoring through the years in the prison system highlight that part of detained individuals belong to vulnerable groups, which face numerous difficulties of a social-economic nature and are mainly represented in their hearings for security measures as well as in the criminal process by a lawyer assigned by the state. A part of these individuals were in pre-trial detention for criminal offenses that do not pose a social threat.

An important pillar of this research study is he findings and professional analysis of quantitative and qualitative data that resulted from the monitoring of 400 trial hearings during the period February – April 2017, as well as the study of 1821 court decisions to validate the arrest or detention and impose the security measure by the country's two largest courts (the Judicial District Court of Tirana and that of Durrës). AHC's monitoring was not easy and is the first of this kind in the country. The deficiencies encountered in the practice of the prosecution office and the court regarding the use of arrest in prison, although early, remain current for the justice system and require serious reflection by the actors of this system, lawyers, and other actors, including the Assembly and the Ministry of Justice. The data collected an analyzed by AHC observers and experts highlight in a summarized manner that:

1. In 2015, one year after amendments to the Criminal Code, we notice an increase in the number of detentions/arrests by police and the prosecution office for persons suspected of offenses that do not pose a high social risk, envisaged in article 137 of the Criminal Code "Stealing of electricity or telephone impulses" and article 291 "Driving irregularly" (offenses that were criminalized or harshened with the amendments that the Code underwent in 2014). For a considerable number of these citizens detained/arrested in flagrance for these offenses, the prosecution requested "arrest in prison" and the court ruled to accept the prosecution request and therefore impose that security measure.

2. The research study highlights that arrest in prison is applied considerably also for "Domestic violence," envisaged by article 130/a of the Criminal Code, for offenses of stealing of wealth, envisaged by articles 134, 135, 136, 137 of the Criminal Code, as well as criminal offenses "Production and sale of narcotics," "Trafficking of narcotics," envisaged by article 283 and 283/a of the Criminal Code.

3. Most of the problems encountered in the excessive application of the security measure "arrest in prison" have to do with the erroneous application and interpretation of criminal procedural legislation in force, as well as the poor level of knowledge of and therefore reference to the practice of the European Court of Human Rights, the Constitutional Court, and the High Court. The consequences of the erroneous implementation/interpretation of the law or shallow knowledge on it by actors of the justice system are such that they directly infringe upon fundamental human rights and freedoms.

4. Although this research study has in its focus the measures of personal security, mainly from the standpoint of the judiciary, problems related to such measures go beyond the courts, including the prosecution office and judicial police. The problems displayed by the latter two actors may be considered even more severe than those of the judiciary.

5. As a rule, trial hearings should be public, except for those cases when, for reasons envisaged by law, the court decides that the hearing is held behind closed doors. According to the Criminal Procedure Code, there is no public hearing and there is no decision on conducting a closed-door hearing. However, AHC has encountered the practice of the Tirana Judicial District Court where part of these hearings were conducted without the presence of the public, without justifying with a relevant decision the conduct of the hearing behind closed doors. However, AHC staff had access to and was able to conduct monitoring of hearing sessions in this court thanks to an agreement with the court chief.

6. The samples of hearing sessions monitored for 2015 indicated htat 56.5% of the individuals expecting a security measure had a defense lawyer and 40.2% had a lawyer assigned by the state. The same ratio between chosen lawyers and lawyers assigned by the state also appears in judicial hearings monitored for 2017 (February-April). Concretely, about 57.8% of the individuals were represented by a chosen lawyer while there is still a high number of individuals represented by an assigned lawyer, namely 39%. It is also striking that a low number of assigned lawyers participate in the trial hearings with the same prosecutors and judges, thus granting the process a mechanic character. AHC observers noticed a tendency to monopolize the scheme for the assignment of lawyers in these hearings, given that there were about 6 lawyers in all hearings.

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7. Overall, the monitored processes and the researched decisions highlight that the defense of persons in hearings about the validation of the detention/arrest and assignment of a personal security measure is of a formal character, is not of good quality, and therefore not effective. This has had a negative impact, leading to consequences also in the high levels of pre-trial detention in the country. In about half of the researched court decisions (51.8%), defense has claimed that it was not familiar with the materials of the prosecution. In 72% of the cases, the defense lawyer did not present evidence to defend the rights/interests of the detained/arrested person in these hearings. Particularly in those cases when lawyers have been assigned, it often results that they did not study the file previously, did not conduct a meeting or conversation with the person under investigation to draft/discuss about the defense strategy. This is among others also for practical reasons, given that the defense lawyers assigned by the court did not have objective possibilities to personally talk with the detained/arrested person or their family members. Such data highlight a generally non-active, ineffective, and often formal defense.

8. A phenomenon that has been randomly noticed in the researched decisions is that even in those cases when the court did not validate the "arrest in flagrance" of the person as legal, it went on to issue the "arrest in prison" security measure without deciding to release the person immediately, in contravention of article 259/4 of the CPC.[1] Also, we found cases when the court validated the "arrest in flagrance," while the facts nad evidence related to the case do not prove the existence of necessary conditions for the state of flagrance, envisaged in article 252 of the Criminal Procedure Code.

9. Judicial practice has also shown a lack of consistency in the prosecution office requests and decisions of the court on security measures for the same offenses or when the suspected perpetrators had a similar profile and posed low risk.

10. During the research study, we encountered cases when the actors of the justice system could have avoided the request for/assignment of "arrest in prison" and could have applied lighter alternatives, particularly when the perpetrators of criminal offenses were women, elderly, or sick people. The disturbing situation with overcrowding in the prison sysm and negative effects of this system, particularly among juveniles and youth, were never considered by the court.

11. The treatment of juveniles requires special attention and evaluation, taking into consideration their special social and educational needs, which may not be effectively fulfilled in the conditions of deprivation of liberty. The assignment of the security measures "arrest in prison" for the category of juveniles and youths under 21 (jean juvenile) could be more reduced, although in some cases, the committed offenses are not viewed as light. Mainly the juveniles and youths of this age group, for whom arrest in prison has been issued, are accused of criminal offenses against wealth, sale of narcotics, or possession of guns without permission. Among the researched cases is the issuance of the security measure of "arrest in prison" for a 15-year old juvenile for "stealing" of items of little value (mainly food items and drinks).

[1] According to this provision, if the court considers that the arrest in flagrance is illegal, it should release the person immediately.

12. The security measure of "asset guarantees" (bail) has been used in very rare cases. The application of this measure or other alternatives of security might have a positive impact not only on the accused individual him/herself, but it would also serve, to a limited extent, to the depopulation of prisons and pre-trial detention facilities. This does not mean that to justify the reduction of overcrowding, the courts should not apply the arrest measure when it is necessary. However, referral to official statistics of overcrowding is one of the indicators that the court may take into consideration and evaluate the other factual circumstances and legislation requriements regarding the necessity or not of the "arrest in prison" measure.

13. In many cases, it appears that the request for security measures is based mainly on evidence collected by the judicial police and the prosecution office has not conducted any investigation or processing of police acts. The passivity of the prosecutor during preliminary investigations, particularly in obtaining evidence or drafting these procedural acts, diminishes his/her role during preliminary investigations and weakens procedural guarantees for the person who is indicted or under investigation. In many of the researched decisions, we notice htat the court does not have a proactive role in evaluating the acts brought forth by the prosecution office, but it evaluates the detention/arrest and issues security measures, in the absence of evidence that create reasonable suspicion, as has often happened in cases of criminal offenses of stealing or domestic violence.

14. It is also striking that often, the defense lawyer (whether private or assigned) does not have a proactive role and does not present evidence in these hearings but only limits him/herself to asking the court for a lighter security measure than the one requested by the prosecutor. To a certain extent, this practice may have influenced the violation of the principle of equality of arms.

15. The monitoring of hearings and the researched decisions highlight cases when the court has not had a proactive role in stating the vilation of procedural rights and freedoms of the detainee/arrestee by the police or prosecutor. We noticed irregularities in procedural actions such as "searching of residence" or "personal search." Not only should the prosecutor be rigorous in overseeing and respecting the requirements of the Criminal Procedure Code, but the court should be more demanding toward facts, should analyze and verify in the hearing the lawfulness of evidence brought forth, without sidestepping the role of defense in favor of the detainee/arrestee.

16. In some decisions of the court, the formal-legal reasoning is missing and there is no summarized analysis of evidence that the referred facts rely on. Also, we noticed judicial decisions containing copy-paste phrases (mechanic copying of past decisions), while the data on the person, offense, circumstances, and criteria for issuing the security measure are different. There are decisions in which the court only quotes the prosecution evidence but do not contain a sufficient reasoning for all the circumstances and legal criteria that exist for issuing this or that security mesure. The arguing logic in these decisions mostly coincides with the research/arguments of the prosecution office.

17. According to the Criminal Procedure Code, every two months since the application of the arrest decision, the prosecutor should inform in writing the court that issued the measure on the conducted investigations and the need for the measures. AHC's

monitoring highlighted that in 99.4% of the cases, such written information is not in the files.

18. Based on the review of decisions, we found that in most cases, alleviating circumstances did not serve the court to issue security measures that would be more favorable for the arrested persons. On the other hand, aggravating circumstances appear to be decisive for the measures, in fact such as to invalidate even the conditions and criteria established in articles 228 and 229 of the CPC. Elements such as: continuation or repetition, or aggravating circumstances, may in no case prevail over or replace the legal conditions and criteria for the issuance of security measures.

19. It is a very widespread position of courts that if the person has been convicted before (even if it is for another offence), he is automatically considered dangerous, and as such, "worthy" of the measure of arrest in prison. Thus, it results that in 76,3% (1387) of the cases, persons did not have prior convictions and in 14,4% (263) of the cases, they did have prior convictions.

20. Of the 348 responses by monitors, regarding the respect for procedures to question the arrested person, no later than three days from the application of the security measure of "arrest in prison" or "house arrest," it appears that in 90.8% (316) of the cases, the person for whom "arrest in prison" was issued was questioned by the court no later than three days from the application of the measure, while in 9.2% (31) cases, it appears the procedure was not implemented.

21. Regarding the request to revoke or replace the security measure, the analysis of 211 responses of monitors indicates that in 80.6% (170) of the cases, that revocation/replacement was requested by the indicted person, while in 17% (36) of the cases, it was the prosecutor who sought the revocation or replacement of the security measure. There was a very low number, only 2,4% of cases, of the court deciding on its own to revoke or replace the security measure, which reflects a passive approach of the court vis-à-vis the implementation of obligations envisaged in the Criminal Procedure Code for the revocation or replacement of the personal security measure.

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