

Arrest in flagrante delicto as a measure restricting the Right to Freedom

PhD (C.) Majlinda Andrea

Judge at the Supreme Court of the Republic of Albania

Abstract

Arrest in flagrante delicto is one of the cases in which the international and national legal framework allows the restriction of the right to freedom. Currently, the individual and his fundamental rights are in the focus of human society. Some of them are absolute and some others have a relative character. The right to freedom, notwithstanding its importance, is a right of relative character but with cases of its restriction exhaustively defined.

The protection of this right is extended both in horizontal perspective versus the actions of other persons, providing a legal-criminal defense and in vertical context, in the face of repressive power of the state, which adopted the most significant position in the case of someone's arrest or detention. The latter constitute an indicator of an incomparable relation between the force of state power and a person's vulnerability.

The exact meaning of arrest in flagrante delicto and its application only in the conditions and criteria set out by the criminal procedural legislation prevents arbitrary restriction of the right to freedom. A key importance in the analysis of this institute is attached to ECtHR jurisprudence that is consolidated and detailed in addressing the right to freedom. The respect and application of standards affirmed by this court on part of the state institutions directly affects the consolidation of rule of law.

The criminal procedural legislation has consented to the general principle according to which "only the judge has the power to apply a security measure restricting personal liberty, a measure that has continuous effects over time, although such measures have a specific maximum duration". According to this approach, the arrest in flagrante delicto is qualified due to its character, as a temporary measure applied in situations of emergency when the procedure for security measure cannot be effectively applied. As already known, it is linked with the power of judicial police to take, in extraordinary, emergent, indispensable and compulsory cases provided by law, a provisional restrictive measure against an individual's freedom, without prejudicing the need for a guarantee by the judicial authority.

Keywords: arrest, *fundamental human rights*, freedom, flagrante, jurisprudence.

Full Text: [PDF](#)



This work is licensed under [Creative Commons Attribution 3.0 License](#).

Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

Copyright © IIPCCCL-International Institute for Private, Commercial and Competition law