

Types of security measures in Albania

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Abstract

This paper introduces personal security measures and property security measures, as conservative and preventive sequestration. Personal security measures are imposed by the court at the request of the prosecution to persons who have a reasonable suspicion based on evidence of having committed an offense and when there are reasonable doubts that the defendant can avoid investigation or may perform another criminal offense and jeopardizes the evidence. In this sense, the Albanian Criminal Procedure Code provides the types of restrictive measures:¹

Prohibition to leave the country; obligation of appearance to the judicial police; property guarantee; Arrest in prison; house arrest and temporary hospitalization in a psychiatric hospital, and prohibitive measures: suspension of the exercise of a public duty or service; temporary prohibition of the exercise of certain personal and commercial activities. Property security measures are an important tool to ensure the payment of taxes or prevent the free disposal of an object related to the offense, through lying down on the movable and immovable property of the defendant and other persons. As to the seizure, the request for the provision of property can be made by the prosecutor and civil plaintiff when he is legitimized as a civil plaintiff or the aggrieved party in the criminal process and requires indemnified for the damage that the defendant has caused.

Keywords: Personal security measures, detention, arrest, charge for appearance, judicial police, courts, and prosecutor.

Introduction

Security measures are procedural actions that restrict or limit the freedom and rights of the person against whom criminal proceedings are held (Islami, Hoxha & Panda, 2003, 83).

Article 17 of the Constitution states that: The limitation of the rights and freedoms stipulated in this constitution may be established only by law for a public interest or for the protection of the rights of others. The restriction must be proportionate to the situation that dictated it. According to the Constitution, human rights and fundamental freedoms are inviolable and stand at the basis of the entire juridical order.

According to the Constitution, the freedom of a person may be restricted only in the following cases:

- When is sentenced to imprisonment by a competent court;
- For non-compliance with the lawful orders of the court or for failure to comply with an obligation set by law;
- When there are reasonable doubts of having committed a criminal offense or to

¹ Article 232 of the Albanian Criminal Procedure Code.

- prevent committing an offense or fleeing after it was committed;
- For the supervision of a minor for education purposes or for escorting him to a competent organ;
- When the person is carrier of a contagious disease, mentally incompetent and dangerous to society;
- For illegal entry at state borders or in cases of deportation or extradition.

Security measures are divided in two main categories: personal security measures and property security measures.

According to the Code of Criminal Procedure, Article 228, the conditions for setting personal security measures are: No one may be subject to personal security measures if there is a not reasonable suspicion in his charge, based on evidence. No measures can be imposed in cases of impunity or cessation of the offense.

Personal security measures are imposed: When there are important reasons which threaten the obtaining of the evidence; the defendant has escaped or it is probable that he escapes; When due to the factual circumstances and the defendant's personality there is a possibility that he may commit serious crimes or the same crime to which is proceeded.

Criteria for determining the personal security measures stipulated in Article 229 of the Criminal Procedure Code:²

In determining the security measures the court shall consider adapting them with the level of security measure that needs to be taken in the case. Every measure must be proportionate to the importance of the fact and the punishment prescribed for the relevant offense. Continuity, repetition and the mitigating and aggravating circumstances provided in the Criminal Code shall be considered. When the defendant is a minor, the court shall consider the importance of not interrupting its education.

In Article 232 of the Code of Criminal Procedure are provided the types of austerity measures:³

- Prohibition to leave the country;
- Obligation to be presented to the judicial police;
- Personal property security;
- Detention;
- Temporary hospitalization in a psychiatric hospital.

With the decision that sets the security measure of prohibition to leave the country, the defendant is prohibited from leaving the Albanian national territory without the authorization of the judge who ordered the measure.

This decision establishes concrete measures to ensure its implementation, such as: Notice of crossing the border, the Border Police, Judicial Police, the administrative center of the village or neighborhood where the person lives, the offices that issue passports, are obliged to make relevant notes etc.

The detention and the obligation to stay in a certain country, the accused is limited of the right of free movement within the state. These are two different forms of the security measures, which are intended to limit the free movement of the person to

² Article 229 of the Albanian Criminal Procedure Code.

³ Article 232 of the Albanian Criminal Procedure Code.

whom the security measure was taken.

In the case of detention of residence, a person is prohibited stay or to visit a certain country, which may be one or more municipalities. He is free to move throughout the territory of the state, with the exception of countries in which he is prohibited.

In the case of the obligation of residence, security measures force the person to stay in a certain country, thus to not leave the territory of the commune or municipality where he usually stays. This measure applies particularly to nomads, who are suspected of committing criminal offenses in different places.

When the security measure of obligation for appearance to the Judicial Police, the judge shall order the defendant to appear in a certain office of the Judicial Police on the day and time set by him, depending on the work he does and the distance of his residence by offices of the judicial police. This office has in its jurisdiction the village; neighborhood or town where the person convicted is resident. This office operates on behalf of the proceeding office.

Office of Judicial Police has the right to appoint additional rules for notification of the location of the person against whom action is taken when there are objective reasons for failure to appear at the offices of the judicial police, such as diseases, disasters, force majeure etc.

Personal property security is a security measure which aims to guarantee the appearance of the defendant in the proceeding body when required. Pursuant to Article 236 of the Criminal Procedure Code, as amended: "personal property security consists on a bank deposit of a sum of money, defined from the court, which will pass to the state, if the defendant does not appear in the proceeding body. The judge is submitted a statement signed by the defendant or another trusted person in which is declared the acceptance for deposition of the amount set by the court.

After submission of the documentation of the deposit and after hearing the prosecutor, the court orders enforcement of the decision. In case of non appearance, with a decision of the court, the deposited sum passes to the state.⁴ Trusted person is the one who takes over and guarantees a defendant's appearance in the proceeding body, agreeing to submit to the bank the amount set by the court. Such can be the parent or guardian, spouse, employer and anyone else who can be trusted because of his personality.

The assessment of this trust is made by a court after hearing the opinion of the prosecutor. A defendant who has signed the statement of a material warranty cannot claim to continue the proceeding in absence, with the participation of his defendant. Personal property security is an alternative to prison. According to Article 28 of the Constitution "The detainee has the right ... to be released on bail pursuant to law".

When failure to appear occurs during the preliminary investigation, the decision to transfer the deposited amount to the state is made by the judge at the request of the prosecutor. In practice there are cases that are required replacement of detention on prison with property guarantee and courts have acted considering the gravity of the charges and the dangerousness of the defendant.

Arrest in prison and house arrest are measures that limit freedom, isolating the defendant at home or in prison. These are more severe measures to be applied in

⁴ Article 236 of the Albanian Criminal Procedure Code.

cases where it is not possible appointment of other measures. For the imprisonment there are provided specific criteria, in order to justify and argument its appointment. According to Article 230 of the Criminal Procedure Code, specific criteria for imprisonment are:⁵

Arrest in prison may be imposed only when other measures are not applicable because of the dangerousness of the offense and of the defendant. Arrest in prison cannot be imposed against a woman who is pregnant or breastfeeding; a person who is in a state of serious health; passed the age of 70 years, or an addicted person, who has been imposed to specific therapeutic program in a special institution. In cases provided for in paragraph 2, detention may be imposed only when there are reasons of special importance for crimes punishable not less than 10 years. Minors cannot be arrested when charged with a criminal offense.

House arrest is usually applied in cases where security requests are met without the accused being necessary in prison. In practice it is more applicable to women, the sick, the elderly, etc.

House arrest is the obligation of the defendant not to leave his place or the specific place where he resides or treated. With this measure, the defendant is not completely isolated from society. It retains the right to communicate with people who live with it, but is limited or prohibited to communicate with other persons, in accordance with security needs.

There have been cases when the person sentenced with house arrest left, thus violating the obligation to stay at home. In these cases, when he is caught, the prosecutor ordered his detention and demanded the replacement of the security measure with another measure under Article 321 of the Criminal Procedure Code.

Preventive measures

Preventive measures are:

- a) Suspension of the exercise of a public duty or service;
- b) Temporary prohibition of the exercise of certain personal and commercial activities.

The conditions of implementing preventive measures

Preventive measures can only be implemented in case of a criminal offense for which the law sets a punishment of imprisonment of more than one year. Preventive measures are applied against those who performed public services exercised professional or business activities, before proceeding for an offense they committed. Usually the offense committed by them is related to the duty, service, or professional or business activity. Preventive measures can only be implemented in case of a criminal offense for which the law sets a punishment of imprisonment highest than one year. Suspension or prohibition may be complete or partial, for a part of the tasks, services or activities, or for all of them. In the decision setting the preventive measure it should be specified whether the suspension or prohibition is complete or partial, in the last case, should be indicated what kind of functions are suspended or banned.

⁵ Article 276 of the Albanian Criminal Procedure Code.

Property security measures

Property security measures are an important means to ensure payment of taxes or prevent the free disposal of an object related to the criminal offense, by laying down on movable and immovable property of the defendant or other persons. Conservative sequestration is set on movable and immovable property of the defendants, with the exception of items and amounts that cannot be seized according to the law. It is set to the extent to guarantee the payment of expenses of the proceedings, property damage of state and claimant and fee to appoint this kind of punishment.

The request for sequestration is made by the prosecutor and in cases when the aggrieved party is a civil plaintiff; it is done by him. Prosecutor requests when is necessary to guarantee the payment of expenses of the proceedings, the fine and the damages suffered the state property, but the seizure set on his request is valid for civil plaintiff, then the seized property can be used for indemnifying the civil plaintiff.⁶ The request of the prosecutor, the damaged accuser or the civil plaintiff is submitted to the court competent for the case. It can be done in every state in the first instance trial, but after the decision at first instance, it can be done before the acts are sent to the court of appeal. The request for conservative sequestration is examined in the session on the participation of the prosecutor, civil plaintiff and defendant, and the defendant or his defense lawyer. When the defendant or civil plaintiff offers appropriate tool for ensuring legal obligation, the court does not apply sequestering or revokes it and sets the mode of execution of the obligation. When the offer is proposed along with the appeal request, the court revokes sequestering if the guarantee is in proportion to the value of items seized.⁷ Forced execution of the sequestered property is done in the manner provided by the Code of Civil Procedure. From revenue of the sale of property seized and those tools offered to guarantee the obligation, are paid in order, amounts belonging the civil plaintiff for damages and court costs, penalties of a fine, the costs of the proceedings and any other amounts in favor of the state.⁸

Preventive sequestration

Preventive sequestration is on the item relating to the offense when it is proved that his free disposal may aggravate or extend the consequences of crime or facilitate the commission of other offenses. Preventive sequestration is ordered by the court at the request of the prosecutor and can be repealed when the conditions that dictated the need of ordering it have changed. When given a sentence, the items seized are confiscated, as a rule otherwise they must be returned to the person that belong, except when they served as a means for committing the offense; or are its products or benefits, which are sequestered. In exceptional cases the seized items may not be returned if the court decides to hold the seizure to guarantee the loan, i.e. obligations that their owner may have against others. The court's decision to accept or reject the conservative or preventive seizure may be appealed to the Court of Appeal by the

⁶ Article 270 of the Albanian Criminal Procedure Code.

⁷ Article 272 of the Albanian Criminal Procedure Code.

⁸ Article 273 of the Albanian Criminal Procedure Code.

interested parties. Such are the participants in the proceeding and any person who claims the right of ownership of the seized items. The appeal shall be submitted to the court that issued the decision within 10 days after the decision or from the day the person concerned has been informed of the seizure. The appeal does not suspend the implementation of the measure. Court of Appeal considers the appeal within 15 days from receipt of the acts and decides case by case, to amend or repeal the decision appealed. When this deadline is not respected, the decision to impose seizure loses power.

Conclusions

At the end of this paper we conclude that security measures are imposed by the court against people who have reasonable doubts of reasonable based on evidence of having committed an offense where the law provides the punishment of imprisonment. In the daily judicial practice although the law has contemplated different measures against alleged perpetrators of criminal acts in most cases detention in prison was decided. On the other hand, property related security measures are an important means to ensure payment of taxes or prevent the free disposal of a thing that relates to the offense. The conservative sequestration is decided in the cases of movable and immovable property of the defendant, with the exception of items and amounts that cannot be seized under the law. This measure is put to the extent of guaranteed payment of expenses of the proceedings, property damage suffered by the state or for the fine and the possibility of setting this kind of punishment. Preventive sequestration is ordered by the court with the request of the prosecutor and can be removed when the conditions that dictated it have changed. In special cases the seized items may not be returned if the court decides to hold the sequestration for the loan guarantee, ie obligations that the owner may have against others.

References

Constitution of the Republic of Albania.
Criminal Procedure Code.