

PROTECTION OF THE DEFENDANT'S RIGHT TO FAIR TRIAL EVALUATED TROUGH THE EXPLANATORY PARTS OF THE COURT'S BAIL DECISIONS

Abstract

Explanatory part of the court's decisions could be considered as one of the most important parts of these formal court's acts where the court provides sufficient justification for its deliberation. Usually this explanatory part provides exact reasons which should support the court's rationale and they should be based upon the facts that were submitted before the court. Through these parts of the court decisions in most of the cases we can examine, particularly trough the higher court instances, weather one criminal procedure or a specific part of it was fair and significantly protected basic human rights.

The focal point of this article is whether this abovementioned general conclusion is obeyed by the courts while reaching theirs formal decisions, in particularly trough the implementation of the bail. The most recent ECtHR judgments lead to quite opposite conclusion. Therefore, in this article the author examines the explanatory parts of the bail decisions deliberated by the largest court in Macedonia – Skopje 1 Basic Court, in a period of the last ten years.

Author's conclusions are in concordance with the ECtHR jurisprudence where he states that the Basic Court Skopje 1, in most of the cases, while deliberating the implementation of the bail lacks sufficient information and does not address proper attention to the specific personal characteristics of the defendant while deliberating the implementation of the bail. At least it does not include these arguments within the explanatory part of its decisions. Furthermore, from this analysis it can be concluded that judges do not properly evaluate the potential risk factors which could have essential importance to the proper court's bail decision.

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At the end the author provides specific recommendations for improvement of the court performance which is essential for protection of the defendant's right to fair trial.

Key words: bail, court reasoning, right to fair trial

1. Introduction

Court decisions for determining the bail are part of the formal court's decisions through which the courts are exercising their jurisprudence. These decisions, as others formal court decisions, are consisted of three parts: introductory part, dispositive and explanatory part². Despite the fact that we cannot state whether one of these part has greater importance than the other, it is obvious that the formal decision's parts do not produce same effect or significance in court practice for the parties in the criminal trial. While for the defendants the most important part of these decisions is the dispositive, for the court, defense attorney or the prosecutor the explanatory part may bear eve greater significance. This is due to the fact that trough this explanatory part the court's rationale is given. Furthermore we can conclude that the explanatory part serves as a justification of the court's dispositive. For these reasons, explanatory part of the formal court's decision can be considered as one of the most important part of the court's decision for the parties in order to exercise their procedural rights during the subsequent stages of the criminal procedure. Through these parts of the court decisions in most of the cases parties examine, particularly trough the higher court instances, whether one criminal procedure or a specific part of it was fair or whether defendant's human rights were jeopardized.

Through the explanatory part of the court's decision parties can decide whether the court has taken into consideration some fact or upon which factual basis the court has deliberated in the certain situation. Therefore the court's decisions explanatory part should be precise, short, clear and undisputed in correlation with the dispositive of the court's decision.

² See: N. Matovski, G. Buzarovska and G. Kalajdziev, *Kazneno procesno pravo*, 2-nd Edition, 2011, pp. 169.

Considering the fact that the explanatory part of the court's decisions provides grounds for justification of the courts performance in a specific case, these parts of the formal court's decisions can also serve for additional purpose. This purpose is scientific evaluation of the court's jurisprudence. Through the evaluation of the explanatory parts of court's decisions we can even determine how the process of court deliberation is performed. This means that we can evaluate whether the court has sufficient evidence while deliberating in a specific case, who is the main provider of these evidences, whether the court is "biased" by the evidences provided by some of the parties, and finally, whether the criminal procedure was fair and just.

The reasons for this article can be also found in the recent developments of the ECtHR, where this court has reached judgment against Republic of Macedonia³, where *in concreto* has declared that in a specific case that Macedonian court failed to provide sufficient grounds for supporting its detention decision. Furthermore in this specific case, ECtHR has found that Macedonian court failed to scrutinize the reasons for extending the detention or at least failed to state its reasons into the explanatory part of its detention decision.

In order to determine if this is only isolated case, and to evaluate the court's practice while deliberating the implementation of the detention and bail in this article we have examined the explanatory parts of the bail decisions by the largest court in Macedonia – Skopje 1 Basic Court, in a period of the last ten years.

Besides this, following chapters will evaluate the most common reasoning provided by the Basic Court Skopje 1 in the explanatory parts of the court decisions regarding the implementation of the bail. Practical solutions for improvement of the court's practice particularly for explanation of its decisions will be provided as well.

2. The context

The theoretical analysis of the court's decisions, particularly its explanatory parts have not been subject to strong academic effort in Republic of Macedonia. However, considering the ECtHR jurisprudence, and specifically the Case of Vasilkovski vs. Republic of Macedonia, we can

³ See: Vasilkovski and others vs Republic of Macedonia, available at:
[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101358#{"itemid":\["001-101358"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101358#{)

conclude that the level of interest for the court's decision's explanatory parts has been raised in the recent period in Macedonia.

However, in the European context, particularly within the Article 5 of the ECHR, we can conclude that the interest of the explanatory parts of the courts decisions is of immense importance, since in most of the cases, through these parts of the court's decisions the violations of the Article 5 of the ECHR is detected⁴.

In this fashion regarding the Macedonian case of Vasilkovski, the ECtHR has found that Macedonian court has violated defendant's right to liberty since it failed to address concrete facts and by relying essentially on the gravity of the charges and the potential penalty, the court has prolonged the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient"⁵.

Similar violations of the Article 5 of the ECHR can be found in the cases where national courts in application of detention have addressed only the severity of the crime, without providing sufficient explanation nor justification to the reasons for detention⁶. Therefore Harris, O'Boyle and Warbrick⁷ have concluded that ECtHR through several cases stated that explanatory parts of the court's decisions for determining the detention or bail should not be unrelated to the submitted evidence, nor should be abstract⁸, and finally they should not be short or stereotyped⁹.

⁴ See: Harris, O'Boyle and Warbrick, *Law of the European Convention on Human Rights*, 2-nd Ed. Oxford University Press, pp. 176.

⁵ See: Vasilkovski and others v. R. Macedonia, op.cit., para 64.

⁶ See: Caballero v. UK, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58458>, Ilijkov v. Bulgaria, available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"fulltext\":\[\"Ilijkov v. Bulgaria\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\",\"DECISIONS\"\],\"itemid\":\[\"001-59613\"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\) or Stögmüller v. Austria, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101358#{\"fulltext\":\[\"Stögmüller\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101358#{\)

⁷ See: Harris, O'Boyle and Warbrick, op. cit., pp. 177.

⁸ See: Letellier v. France, available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"fulltext\":\[\"Letellier v. France\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\",\"DECISIONS\"\],\"itemid\":\[\"001-57678\"\]},](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\) para 51.

⁹ Yagci and Sargin v. Turkey, available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"fulltext\":\[\"YAGCI & SARGIN v. TURKEY\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-57938\"\]},](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\) para 52; or Smirnova v. Russia, available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"fulltext\":\[\"Smirnova v. Russia\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-61262\"\]},](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\) para 70.

Similar arguments can be found at Macovei's¹⁰ and Leach's¹¹ conclusions, reached through the ECtHR jurisprudence, regarding the quality of the explanatory part of the court's decisions for determining the detention.

For these reasons, authors such as Campbell, strongly criticizing the uniformity¹² of the court's decisions regarding the implementation of the bail by the courts in England and in USA even suggest implementation of some type of empirically generated point scales which would support the individualization of these explanatory parts of the court's decisions.

3. Research of the Macedonian explanatory part of the court's decisions for implementation of the bail

This part of the article uses data from a broader research performed by the author while writing his PhD thesis¹³. In that research a broader analysis of the court decisions for ordering the bail in the criminal procedures that were ongoing in front of the Basic Court Skopje 1 has been performed. That author has elaborated 254 court decisions in the period of thirteen years, starting from 2010 until 2013, delivered by the Criminal Council¹⁴ of this Court. The rationale for analyzing only the decisions by the Basic Court Skopje 1 rests strictly upon the fact that Basic Court Skopje 1 in Skopje is the largest court and most burdened with cases in Republic of Macedonia. In front of this court approximately one third of all criminal cases in Republic of Macedonia in the first instance are judged. The author did not make any sampling of the court's decisions, but has worked on the entire population, due to the fact that these decisions in the basic Court Skopje 1 in Skopje are not frequent. This leads to the conclusion that bail as a measure is

¹⁰ See: M. Macovei, *The right to liberty and security of the person. A guide to the implementation of Article 5 of the European Convention on Human Rights* (2002), available at: [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05\(2004\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-05(2004).pdf)

¹¹ See: P. Leach, *Taking a Case to the European Court of Human Rights*, 2-nd Edition, Oxford University Press, 2005, pp. 235 – 237.

¹² See: E. Campbell, 'Police Narrativity in the Risk Societies', *British Journal of Criminology*, 2003, vol. 44, (695-714), pp. 703-704.

¹³ See: B. Misoski, *Bail as a Measure for Effective Conveyance of the Criminal Procedure*, unpublished PhD thesis, Faculty of Law "Iustinianus Primus" in Skopje, Macedonia.

¹⁴ Criminal Council, under the provisions of the Macedonian Criminal Procedure Code (Official Gazette of Republic of Macedonia No. 150/2010) is council consisted of three professional judges that are deciding during the criminal procedures in most of the cases upon the appeal of the decisions made by the judge during the investigative phase, concerning the protection of the defendant's human rights.

not properly addressed, nor effectuated by the Macedonian court authorities. Having this in mind we consider that analysis of these decisions can provide conclusions that are representative and relevant for the entire Macedonian criminal justice system.

While performing the analysis of the explanatory parts of these bail decisions, the author considered not only the court decisions where the court has allowed the bail, but has also considered court decisions where the bail was denied or where the request was rejected. The negative decisions were included because the idea of the analysis is to evaluate the court's rationale behind the decision for implementing or not implementing the bail in the criminal procedure. Furthermore to also determine what were the most decisive factors that had influenced the specific court decision regarding the bail in concrete cases.

Through the analysis we have detected several problems which might be considered as problematic with regards to the explanatory part of the court's bail decisions. The first one is the lack of data, second problem is the fact that judges do not provide sufficient arguments for support of the decision and final problem is where the argumentation does not follow or support the rationale of the court's decision. We will address more to these issues in the following lines of this article.

3.1. Insufficient data

The analysis shows that the judges from the Basic Court Skopje 1 while deliberating for the implementation of the bail did not have sufficient data for proper decision making process. Even if the court had enough data for this deliberation it has not properly addressed them into the explanatory part of the court decision as sufficient factual support of its decision.

Particularly obvious were the cases where the Court has denied the bail to the defendants who were usually foreigners or who had additional passports from some other state besides Republic of Macedonia. In these cases, the Court's explanation for not granting the bail was stated only in one line that there were sufficient evidences for absconding of the defendant due to the possession of foreign passport. It is needless to say that these arguments are insufficient to justify the risk of absconding of the defendant resting solely upon this one and only argument. In addition, we can find a case from the ECtHR, where the court considered that the bail can be granted even to a person who possess a valid license for piloting a plane, and who was during the criminal trial

frequently leaving the state, only if he is present in front of the court during the scheduled hearings¹⁵. A practice similar to this is evident in the UK. In cases when the possession of the foreign passport is the sole risk of absconding of the defendant, the courts should not use detention as absolute measure, but should consider granting bail, complementing it together with some specific measure which should provide seizure of the passport and/or ban of leaving the state or electronic monitoring for example¹⁶.

The problem with insufficient data was evident not only in the cases where the defendant was holding foreign passport, but also in the cases when the defendant was Macedonian national as well.

This conclusion is based upon the fact that in many of the analyzed decisions the Court does not address at all or pays insufficient attention to the facts related to the defendant's personality and his/hers social milieu. This detected problem raises even more concerns, since the court is authorized and can *ex officio* by itself collect all necessary data for its decision making process. This means that if the court needs some relevant data for determination of the implementation of the bail, can provide the data, through a formal request submitted to the holder of that specific data. Holder of that data, on the other hand, is obliged to provide the specific data to the court.

Some of the arguments which can be regarded as concessive can rest upon the fact that the procedure regarding the determination of bail is urgent, and not in every case the court has sufficient time to wait for the other institutions to provide him some specific data. One of the reasons can also be found in the fact that Macedonian criminal justice system lacks a specific state body that serves the data to the courts regarding the personal characteristics of the defendant, similar to the US bodies that provide the pre-sentence reports¹⁷ to the courts.

¹⁵ See: Stögmüller v. Austria, op.cit.

¹⁶ See: A. Hucklesby, 'Police Bail and the Use of Conditions', *Criminology and Criminal Justice*, 2001, Vol. 1, (441-463), pp. 451.

¹⁷ See: S. Walker, *Taming the System, The Control of Discretion in Criminal Justice, 1950-1990*, Oxford University Press, 1993. pp. 79; or for UK experience see: M. D. Schlager, D. J. Simourd., 'Validity of the Level of Service Inventory – Revised (LSI-R) Among African American and Hispanic Male Offenders', *Criminal Justice and Behavior*, Vol. 34, 2007, (545-554), pp. 547-550.

Therefore, we can conclude that explanatory parts of the court's bail decisions are short, stereotypic and imprecise, and in most of the cases the courts simply repeats the wording from the legal provisions into the explanatory part of the decision.

Furthermore from the observed court decisions we can conclude that in most of the cases they miss very important facts regarding the defendants. An example is the omission of Personal Identification Number (PIN) of the defendant from the bail decisions, which make these decisions imprecise, particularly in regard with the defendant's identity. In addition through PIN the court could easily establish the defendant's right age and would void the practice of determining the age of defendant in the explanatory parts of the decisions simply with words as "*young*" or "*middle-aged*" or "*old*". This is important because the defendant's age is often one of the factors that are important to determine the defendant's "criminal" profession and career.

These arguments are closely related to the defendant's previous conviction history, since it is not the same to have "young" or "middle-aged" offender who had previously been convicted several times. By having exact facts the court could easily determine whether is dealing with a hard criminal, or with a criminal who had committed a crime several years ago unrelated to the present offence.

Besides the information regarding the defendant's personal data, we deem that the courts in most of the cases, while deliberating the implementation of the bail, do not have proper information with regards to the defendant's personal family status, nor his personal financial status.

This conclusion is based upon the wording of the explanatory parts of the court's bail decisions where it was stated: "*marital status - father of two underage children*". As it is stated this fact seems irrelevant, even though in some cases it could be of the utmost relevance, such as cases of domestic violence or cases of child molestation or child rape or pornography.

The data regarding the employment record can lead to similar conclusion. This data was address by the court only with the following words: "*unemployed*", "*employed in private entity*" or "*employed in public entity*", without taking into consideration the duration, the attitude towards work responsibilities or the relation of the work responsibilities with the committed crime.

Regarding the financial status, we can conclude that within the analyzed explanatory parts of the court's bail decisions, besides the eventual time spent in detention¹⁸ courts only state that: *“submitted amount of the bail does not eliminate the risk of absconding of the defendant if he/she is to be left un-incarcerated by the court”*.

Through this type of justification within the explanatory parts of the court's bail decisions we cannot determine at all what were the real reasons why the court have considered the amount of the bail as insufficient nor what was the problem of the submitted financial guarantee. We also cannot conclude why the court thought that the submitted financial guarantee cannot eliminate the risk of absconding of the defendant, and on the other hand we do not know what is considered by the court to be the sufficient financial guarantee.

In addition, in the analyzed decisions we could not establish the quality of the financial guarantee at the request for bail, nor could we find any information which would point out that the court or the prosecutor had undertaken comprehensive financial inquiry regarding the real assets of the defendant and/or the person who is submitting the guarantee for the defendants.

A possible solution to this situation could be the ongoing reform of the Macedonian court system, where the Automated Court Management Information System (ACMIS) could serve this information to the judge, but only if this System is properly fed with information regarding the defendant from the beginning of the criminal process or if this system is interconnected with the other systems or databases that exist within the state institutions in Republic of Macedonia (such as databases of Ministry of Interior, State Revenue Office, State Land Registry, State Credit Bureau, etc.).

3.2. Insufficient arguments for support of the court bail decision

¹⁸ In very few of the decisions the court has addressed the time spent in detention as a reason of implementation of the bail. This could lead to the conclusion the time spent in detention is not significant factor for the court while determining the bail. Regarding the time spent in detention see the research performed by: G. Buzarovska, V. Uzunov, 'Detention in Macedonia, Legal Aspects, Practical Implementation and Cost of the Detention', *Proceedings in Honor of prof. Vladimir Mitkov*, Faculty of Law "Iustinianus Primus", Skopje, 2010, (323-350), pp. 339-341.

Taking into consideration the arguments that are supporting the bail decisions we can conclude that in cases where the court has some relevant data with regards to the determination of the bail, within the explanatory part of these decisions the data is not adequately referenced.

This is particularly the case when previous conviction is mentioned in the court's decision. The analyzed decisions pointed that previous conviction, when it was known to the court, was only addressed with the following words in the explanatory part of the decisions: *"against the same person the court had already conveyed another criminal procedure where this person was sentenced to.../released from trial/not found guilty"*.

Through this type of argumentation we can conclude that the court in fact did not take into consideration the previous conviction, since it did not state how this previous conviction influences the court decision.

Similar situation can be observed with regards to the justification of the court decision written within the explanatory part of the court's bail decision. In most of the cases the court has used these words: *"the court has deliberated in such manner taking into the consideration the type of the perpetrated crime, how these crimes were committed, severity of these crimes and legally proscribed sentence, such as the risk to the community from these crimes"*.

It is needless to note that this type of words do not support, nor justify the court's decision. These words are simply empty phrases. We can conclude that within these decisions court did not provide any additional explanation why they had reached its decision, nor what were the decisive factors that court has considered. In addition to this we would just remind to the jurisprudence of the ECtHR where this court has stated that the severity of the crime or public interest is not sufficient reason for determining the detention, nor the bail¹⁹. This means that the court can and should take these facts into consideration, but into the explanatory parts of the decision must state what the immense risk to the society was, when this risk was most visible, or why this specific type of crime can harm the defendant or the society if the defendant is not released from detention. This is due to that fact that severity of the crime and risk to the society can often have bilateral

¹⁹ See for example: Becciev v. Moldova, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70434>, or Letellier v. France, op. cit.

influence. Sometimes these factors can support the idea for detention and other times they can be the most important factors which should drive the court towards the decision of the bail.

In addition the severity of the crime and the time spent in detention can be also treated dually. Time spent in detention can be considered as stimulating risk factor for the absconding of the defendant if the inevitability of the long prison sentence becomes obvious during the trial. On the other hand, severity of the crime and the time spent in prison can be also seen as stimulating factor for appearance at the court by the defendant. The second situation can occur when it is obvious to the defendant that the court would determine lesser sentence closer to the time spent in detention, and absconding in these cases would just jeopardize this treatment for the defendant by the court²⁰.

For the above stated reasons it is essential that these factors must be treated seriously by the court while providing their justification. In contrary, we might easily reach the conclusion that the court is biased, and do not respect the defendant's human rights, particularly right to liberty and right to fair trial.

Similar if not identical conclusions can be brought when the court decides to apply the bail with the following words as justification: *"the court thinks that the submitted asset represents sufficient guarantee to: prevent the risk of absconding of the defendant, severity of the crime or the risk to the society"*.

3.3. Argumentation does not follow or support the rationale of the court's decision

The analysis of the more recent bail decisions uncovers a new practice where the court is trying to increase the quality of the explanatory part of the court's bail decisions. Probably this is due to the fact Macedonia was warned by the ECtHR in the case of Vasilkovski²¹ and others, so now judges pay more attention regarding the justification of their decisions.

²⁰ See: Caballero v. UK, op. cit. para 18-23, or Wemhoff v. Germany, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57595>

²¹ Види: Vasilkovski and others v. Macedonia, op. cit.

This situation had led to another practice where the judges used more words in order to support their decisions, by using “strong” words, such as *“right to fair trial, trial in a reasonable time etc.”*, which unfortunately have not resulted with increase in the quality and essence of these explanatory parts of the decisions and the quality of the court’s bail decisions itself.

The following words were more frequently used in the latest decisions: *“court has deemed that the detention in this phase of the criminal procedure serves the function of the efficiency by reducing the procedural costs, aiming to eliminate the possibility of delay of the criminal procedure, and will provide the presence of the defendant, which would finally result with the overall reduction of the length of criminal trial and with that the duration of the detention”*.

The following wording was also used: *“Court has deemed that reasons for continuing of the detention are of essential importance for providing fast, efficient and effective criminal procedure, bearing in mind that the criminal procedure is at its beginning, so this way further continuation of the detention is in some way also of defendant’s interest, trough protection of his/hers right to fair trial”*.

The controversy of the above stated argumentation for further continuation of the detention is obvious at first glance. Bearing in mind the provisions of the Criminal Procedure Code it is noticeable that the court is introducing additional condition for the implementation of the detention – trough the argumentation of the court efficiency, effectiveness and right to trial in a reasonable time.

Taking into consideration existing positive criminal justice systems in Europe and in USA, this is exceptionally new and so far unknown measure for implementation of the detention during the criminal procedure. It is strange to use detention as a measure for increasing court’s efficiency. By these wording the detention is treated as “necessary evil” in order to increase the workload of the court.

Having in mind the intrusions of the defendant’s right with the implementation of the detention it is of outmost importance to use this measure with extreme caution and only if its use is necessary and in the cases when its implementation is strictly proscribed in the law.

In addition, detention should be used only in cases when the presence of the defendant cannot be provided with the less intrusive measures which are proscribed by the law, such as electronic monitoring, bail, precaution measures etc.

Furthermore, the defendant is protected with the presumption of innocence and other procedural rights that deem to restrict defendant's human rights during the criminal procedure as less as possible. This means that no matter how beneficial it is for the defendant to be present at the court's hearings in order to tell his/her side of the story, or to have his/her day at the court, this cannot be solely justified with his/her deprivation of liberty if there are no other legal grounds for detention (such as influence or jeopardizing the investigation, risk of absconding, or risk of committing a crime). This is connected to the understanding that the right of liberty is one of the most important human rights and even though it is closely related to the right to a fair trial, right to liberty cannot serve as a tool for exercising of the right to fair trial. Right to a fair trial should be considered and should serve only as a tool for eventual deprivation of liberty, and not vice versa.

For these reasons we deem that this type of wording used in the explanatory part of the court's bail decision is unacceptable practice and should be abolished as soon as possible. Therefore we think that these words used in the explanatory parts of the courts decisions do not serve nor support the justification of the court's decision.

Finally, if we want to deal with the court's efficiency and effectiveness, the Criminal Procedure Code (CPC) is providing several measures for simplification and acceleration of the criminal procedure, such as plea bargaining procedure, simplified procedure²², etc., but in no case the detention can be considered as a measure for increasing the court's efficiency and effectiveness.

For these reasons right to trial in a reasonable time according to the jurisprudence of the ECtHR is not strictly defined. In essence it is stated that the court should undertake every procedural aspects in effective time manner and without due delay, taking into consideration the

²² See: G. Buzarovska, B. Misoški, 'Comparative Analysis of the Procedures for Simplification and Acceleration of the Criminal Procedure', *Proceedings in Honor of prof. Panta Marina*, Faculty of Law "Iustinianus Primus", Skopje, 2007, (205-222), pp. 206-207.

complexity of the criminal case. However, this does not mean that right to liberty can be jeopardized for reaching the above mentioned standards.

Even more critical explanation is the second example where the court elaborates that since the criminal procedure is at the initial phase it is in defendant's interest to be placed in detention. There is no logical explanation besides this justification of the detention, except the fact that the court does not have any evidence for imposition of the detention at this moment, or at least did not state them into the decision, and we can even consider this detention as brutal retribution to the alleged perpetrator of the crime.

Normally if we consider the other side of the medal – the court's reason for providing such justifications for imposition of the detention instead of bail, the only argument that is supporting this practice is that the courts really do not have enough resources to protect the defendant's and victim's or damaged person's rights during the criminal procedure. In addition we can conclude that courts do not receive proper resources nor information or adequate support from the other members of the criminal justice system for proper protection particularly of the defendant's human right during the criminal trial. Maybe for these reasons the courts are forced to use these strictest solutions in order to be able to implement the justice into the specific cases. However, we do not believe that there might be any substantial arguments which could support the improper implementation of the law, particularly in the cases when this implementation might be considered as violation of the defendant's right to liberty, presumption of innocence and fair trial.

4. Positive examples

During the analysis of the explanatory parts of court's bail decisions several positive examples of proper justification of the implementation either of bail either of detention were seen. These proper examples were noticed in one third of the observed decisions. In these decisions it was visible that the court has provided sufficient reasons in regard to their decision. For example, in these decisions the court has used the following wordings: *"court has determined detention since the defendant was already judged in absentia for the same crime, and did not suitably justify his absence from the previous hearing"*, or *"defendant was arrested in foreign state after he escaped from the detention in Macedonia"* or *"the amount of the bail is considered as substantive factor for providing the presence of the defendant during the criminal procedure, since it is*

consisted of total real-estate of his closer family and his brother. The court considers that since the total asset of the defendant is “frozen”, the asset provided from his closer family and friends will present deterring factor for reducing the risk of absconding of the defendant, etc.”.

These positive examples and the fact that they were not exemptions can reassure us that the criminal justice has adequate potential to properly protect human right of the defendant with additional support. However we should focus upon the bad examples in order to reduce them to minimal level, and to foster proper practice, by adequate support of the work of the judges.

5. Conclusion

As conclusion we can state that from the performed analysis we cannot be totally satisfied with the quality of the justification that the courts are providing as a support to their bail decisions within the explanatory parts of these decisions. These conclusions are in concordance with the ECtHR jurisprudence where it was stated that the Basic Court Skopje 1, while deliberating the implementation of the bail, lacks sufficient information and does not address proper attention to the specific personal characteristics of the defendant. Even in cases where it has proper information, it does not include these arguments within the explanatory part of its decisions. As a result it can be said that judges do not properly evaluate the potential risk factors which could have essential importance to the proper court's bail decision.

However, it is also noticeable that courts do not receive adequate nor enough support regarding the facts or information from the prosecutor and other relevant state bodies which are essential to have proper, just and adequately justified decision.

Therefore it is necessary to react through several measures in order to improve this court practice. The first possible measure can be institutional where state should organize or determine specific body which should serve this type of information to the court in order to make the court's decision making process independent from the parties in the criminal procedure. Although this is the best solution at the same time it is the most expensive one, so there are also possibilities to improve the court's performance, by undertaking measures that would be less burdening to the state budget.

The less burdening measure can be foreseen into proper interconnection of the ACMIS with the other state databases which are collected by the other state bodies or institutions. Finally, the last but not least important measure is the role of the court employees, who are feeding the ACMIS with proper data. These court employees must be diligent to enter each known data for the defendant into the system in order to have as much as possible profiling of the defendants which would be of great benefit for the judges while they are deliberating during the subsequent phases of the criminal procedure.

Only through these changes to the system, implementation of the bail from the first instance court's judges can be seen as just process and process which is in accordance with the protection of the defendant's human rights. Furthermore, only court's decisions with quality explanatory parts can serve as a baseline for improvement of the jurisprudence of the basic courts during the appellate phase of control of the work of the first instance courts and will provide clear ground for public scrutiny of the first instance courts.

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