Department of Human Rights and Communities

Legal System Monitoring Section

THE USE OF DETENTION IN CRIMINAL PROCEEDINGS IN KOSOVO: COMPREHENSIVE REVIEW AND ANALYSIS OF RESIDUAL CONCERNS

– Part II –

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EXECUTIVE SUMMARY

This report analyses the reasoning of rulings to impose detention issued by Kosovo courts. It comes as a supplement to and should be read in conjunction with the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) Report on "*The Use of Detention in Criminal Proceedings in Kosovo: Comprehensive Review and Analysis of Residual Concerns (Part I)*."[1] Similar to the latter, the present report is based on direct monitoring and analysis of 125 cases involving detention on remand proceedings before the Kosovo municipal and district courts, over a nine-month period.[2] The report scrutinizes the international standards and the practice in Kosovo with regards to the reasoning of court rulings on initial detention on remand, extension of detention and house detention, as well as the use of alternative measures to detention. Through its direct monitoring of detention proceedings and corresponding court documents, the OSCE has found that the vast majority of rulings to impose detention issued by Kosovo courts still contain insufficient reasoning, and thus fall short of international standards and legal requirements.

Both international and domestic law require that the detention should be ordered by courts only when it is strictly necessary, and through rulings containing relevant and sufficient reasoning. Despite such clear legal requirements, detention in Kosovo continues to be frequently ordered when the facts of the case arguably do not warrant such a restrictive measure, and most court rulings ordering detention contain only scant and abstract reasoning. Such use of detention in criminal proceedings violates defendants' right to liberty, a right which is "in the first rank of the fundamental rights that protect the physical security of an individual".[3]

Thus, despite being well protected in the international and domestic law, the right to liberty in Kosovo is still insufficiently safeguarded in practice. The OSCE therefore reiterates that institutional actors involved in detention proceedings, in particular public prosecutors and judges, should more vigilantly safeguard the right to liberty, and should resort to detention on remand only when strictly necessary, and in full conformity with the requirements of the law.

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1 The report is available at the OSCE web page: http://www.osce.org/documents/mik/2009/12/41722_en.pdf.

2 The main reporting period is 1 January to 30 September 2008, but the report also analyses cases and situations which occurred after this period in so far as they raise questions of law sufficiently important, or particularly serious human rights concerns.

3 See, *inter alia*, *Musuc v. Moldova*, European Court of Human Rights (ECtHR) Judgment of 6 November 2007, paragraph 37.

I. INTRODUCTION

The OSCE has reported in the past on inadequate reasoning of rulings imposing detention on remand.[4] In its previous reports it has noted with concern the poor justification of rulings on detention, both initial and on extension, despite clear legal provisions requiring full reasoning.

The European Court of Human Rights (ECtHR) has repeatedly stated that "[j]ustification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities."[5] Rulings on detention must not necessarily be very lengthy; succinct reasoning may suffice, as long as it contains relevant and sufficient grounds.[6]

The requirement of well-reasoned decisions serves as a safeguard for individual freedom and aims to protect individuals from arbitrary deprivations of liberty by the authorities. The ECtHR has repeatedly stated that courts "must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release."[7] Therefore, justification for any period of detention, however brief, must be persuasively demonstrated by authorities.[8] Well-reasoned decisions also serve to demonstrate to the parties that they have been heard; they afford parties the possibility to appeal against it, as well as the possibility of having it reviewed by an appellate body; and they ultimately ensure public scrutiny over the administration of justice.[9]

In the past four years, the OSCE has seen only limited improvements in the reasoning of rulings on detention issued by courts in Kosovo. In the vast majority of monitored cases, judges in Kosovo failed to properly justify decisions imposing detention on remand, thus falling short of the legal standards set forth in the domestic law and the international human rights standards.

II. REASONING OF RULINGS TO IMPOSE DETENTION

For a comprehensive review of court rulings on detention, this chapter breaks down the analysis into several sections: a general lack of reference to facts; the "grounded suspicion" element; and the three grounds for detention (risk of flight, risk of tampering with evidence and risk of re-offending).

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4 See the OSCE Review of the Criminal Justice System (April 2003-October 2004): Crime, Detention and Punishment, (October 2004), page 32; see also the OSCE Review of the Criminal Justice System (1999-2005): Reforms and Residual Concerns (March 2006), page 52.

5 See *Belchev v. Bulgaria*, ECtHR Judgment of 8 April 2004, paragraph 82.

6 See *Nikolov v. Bulgaria*, ECtHR Judgment of 30 January 2003, paragraph 69.

7 See *Letellier v. France*, ECtHR Judgment of 26 June 1991, paragraph 35.

8 See *Belchev v. Bulgaria*, ECtHR Judgment of 8 April 2004, paragraph 82.

9 See *Suominen v. Finland*, ECtHR Judgment of 1 July 2003, paragraph 37.

A. General lack of reference to the facts

International human rights standards require courts to provide detailed and sufficient reasons for their decisions.[10] A reasoned decision must apply the law to the specific facts of the case and must not be "general or abstract."[11] The adequate reasoning of a decision to impose detention is necessary for defendants to exercise their right to challenge the lawfulness of the detention through appeal[12] or through a *habeas corpus* petition.[13]

The Provisional Criminal Procedure Code of Kosovo (PCPCK) requires that when imposing detention on remand, courts give "an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence, and the material facts under Article 281 […]."[14]

Thus, as a general rule, the law requires that courts refer to the specific facts of the case which warrant detention on remand. On the contrary, a reasoning that simply formulates reasons for detention *in abstracto* (e.g. by merely citing the relevant provisions of the code) clearly falls short of the domestic and international law requirements; such reasoning violates the defendant's right to liberty and should be overturned on appeal.

The OSCE noted that in the majority of the monitored cases, the courts provided few, if any, reasons showing the need to impose detention on remand. In many cases courts used standardized and stereotypical formulations and did not refer to the individual facts of the case, thus failing to provide an explanation of how the specific circumstances warrant the suspect's deprivation of liberty. In fact, courts very often seemed to simply rubber-stamp prosecutor's requests for detention, which usually were just as poorly reasoned.[15]

A typical reasoning to impose detention on remand is shown in the following example, involving a detention order issued by the Prishtinë/Priština district court in May 2008:[16]

> "According the assessment of the pre-trial judge, the request of the public prosecutor of Prishtinë/Priština to impose detention on remand is grounded because if at liberty, there is the risk that they could flee, obstruct the successful conduct of criminal proceedings by influencing witnesses, injured party or co-perpetrators, and the seriousness of the criminal offences, the manner and

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[10] See, for instance, *Smirnova v. Russia*, ECtHR Judgment of 24 October 2003. The court held that the applicants' detention during the investigation amounted to a violation of Article 5 ECHR, because the decisions issued by the court were "terse" and did not "describe in detail characteristics of the applicants' situation" (paragraphs 70-71).

[11] *Ibidem*, at paragraph 63.

[12] See Article 283(3) Provisional Criminal Procedure Code of Kosovo (PCPCK) promulgated by UNMIK Regulation No. 2003/26, 6 July 2003, with subsequent amendments.

[13] See Article 286(2),(3) PCPCK.

[14] See Article 283(1) PCPCK. Furthermore, according to the Justice Circular 2000/27, of 19 December 2000, all decisions on detention must be based on a fully reasoned written decision detailing the grounds for detention and the evidence relied upon in support of those grounds. The pre-trial judge must also provide reasons why the measures alternative to custody are not sufficient (see Article 281(1)3 PCPCK). The PCPCK was promulgated by UNMIK Regulation No. 2003/25, 6 July 2003, and was subsequently amended.

[15] For a detailed analysis of the reasoning of public prosecutor's requests for detention, see the OSCE Report on *The Use of Detention in Criminal Proceedings in Kosovo: Comprehensive Review and Analysis of Residual Concerns (Part I)*, pages 7-10.

[16] The three defendants were suspected of falsification of documents (Article 332 of the Provisional Criminal Code of Kosovo (PCCK), attempted fraud (Article 261), and legalization of false content (Article 334).

> circumstances in which the criminal offences have been committed, defendants' personal characteristics and other circumstances, indicate the risk that they could repeat the criminal offences."[17]

The above example illustrates a clearly insufficient reasoning, which simply refers to the grounds for detention foreseen in the law without linking them to the specific facts of the case. Unfortunately, the above "reasoning" is representative of most rulings on detention issued by courts in Kosovo.

Other rulings on detention reviewed by the OSCE revealed an even more blatant lack of reasoning. The following example, from a ruling issued by the Pejë/Peć district court, illustrates the point:

> "The pre-trial judge after parties' statements evaluated the prosecutor's proposal for imposing the detention on remand and approved this proposal as grounded and justified sufficiently as foreseen in Article 281(1)1(2) items (i), (ii) PCPCK. The pre-trial judge evaluated also the application of other measures and found out that at this procedural stage the detention measure is the most adequate measure."

In this second case, the court seems to have merely rubber-stamped the prosecutor's proposal, failing to show one single reason why detention is indeed necessary.

Below follows a more detailed analysis of the elements that need to be established when deciding upon whether to impose detention on remand, as well as an assessment of how these requirements are observed in practice by prosecutors and judges in Kosovo.

B. The "grounded suspicion"

The first requisite element for the lawfulness of a detention on remand is the "grounded suspicion" that the defendant has committed a criminal offence.[18] The PCPCK expressly provides that rulings ordering detention must contain, *inter alia*, "the reasons for the grounded suspicion that the person committed a criminal offence."[19]

The concept of "grounded suspicion" employed by the PCPCK may be considered a domestic law equivalent of the concept of "reasonable suspicion" employed by the European Convention on Human Rights (ECHR) as a requirement for the lawfulness of detention. The requirement that the suspicion be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention.[20]

According to the consolidated case-law of the ECtHR, in order for an arrest on reasonable suspicion to be justified it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody.[21] Nor is it necessary that the person detained should ultimately have been charged or brought before a

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17 Unless otherwise stated, all translations in this report are unofficial.

18 See Article 281(1)1 PCPCK. Article 5(1)c of the European Convention on Human Rights and Fundamental Freedoms (ECHR) similarly links the deprivation of liberty to the "reasonable suspicion of having committed an offence".

19 See Article 283(1) PCPCK.

20 See *Cebotari v. Moldova*, ECtHR Judgment of 13 November 2007, paragraph 48.

21 See *Brogan and Others v. the United Kingdom*, ECtHR Judgment of 29 November 1988, paragraph 53.

court, since the object of detention for questioning is to further a criminal investigation by confirming or dispelling suspicions which provide the grounds for detention.[22] At the same time, "[t]he fact that a suspicion is held in good faith is insufficient. There must be facts or information which would satisfy an objective observer that the [defendant] may have committed a criminal offence. What may be regarded as reasonable will however depend upon all the circumstances."[23]

The ECtHR has also stressed that "in the absence of a reasonable suspicion, the arrest or detention of an individual must never be imposed for the purpose of making him confess or testify against others or to elicit facts or information which may serve to ground a reasonable suspicion against him."[24]

These ECtHR-set principles may serve as guidance when seeking to establish the existence of a "grounded suspicion" that a person has committed a crime, which under the PCPCK is the primary condition for the lawfulness of a suspect's detention on remand. As such, the pre-trial judge must be satisfied that the facts presented by the prosecutor support a grounded (or reasonable) suspicion that the defendant had committed a crime. The judge must then give relevant and sufficient reasons as to why detention is necessary.

In many cases, the OSCE noted that the pre-trial judge failed to make an independent assessment of the "grounded suspicion," but rather made a blank reference to the proposal of the public prosecutor, or even to the ruling to initiate investigations.

> In a case before the Pejë/Peć district court, a pre-trial judge imposed on 11 July 2008 a one-month detention on remand against a defendant suspected of attempted aggravated murder.[25] The part of the reasoning pertaining to the grounded suspicion reads as follows "the pre-trial judge […] considers that the ruling for initiating the investigations is justified sufficiently and contains sufficient evidence that justifies the grounded suspicion."

By not referring to the specific facts of the case, courts fail to convincingly show "grounded suspicion" that the defendant had committed a crime, and that "grounded suspicion" genuinely exists in that particular case. Article 281(1) of the PCPCK requires a showing of this element.

It has also been noted that some judges do not try to review the element of a grounded suspicion that the defendant had committed a criminal offence, once the indictment in the case has been confirmed. Such an approach conflicts with international human rights standards which state that the reasonable suspicion that the defendant had committed an offence is a fundamental element of the judicial control over the lawfulness of a detention, and thus must be assessed on every occasion when the lawfulness of a detention is reviewed, including the trial stage. It also raises concerns as regards to the observance of the principle of presumption of innocence, which also applies after the confirmation of the indictment, up until the moment when the verdict is delivered.

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[22] See *Murray v. the United Kingdom*, ECtHR Judgment of 28 October 1994, paragraph 55.

[23] See *Fox, Campbell and Hartley v. United Kingdom*, ECtHR Judgment of 30 August 1990, paragraph 32. Notably, in this case the court held that the information contained in a police report may only "confirm that the arresting [police] officers had a genuine suspicion" that the defendant was involved in a criminal act.

[24] See *Cebotari v. Moldova*, ECtHR Judgment of 13 November 2007, paragraph 48.

[25] Article 147(11) in conjunction with Article 20 PCCK.

On a separate but related note, it was found that in some isolated occasions persons can be arrested by the police, even when there is no reasonable suspicion that they had in effect committed a crime:

> On 6 March 2008, a pupil recorded with his mobile phone the moment when the police intervened in a quarrel and arrested two persons at a school in Gjakovë/Đakovica. Police officers noticed him recording their intervention, and confiscated his mobile and took the juvenile into police custody for questioning. The prosecutor decided not to request his detention, and filed a request for a social inquiry, and later filed a ruling for the initiation of preparatory proceedings, and a proposal for announcing an educational measure on the ground that the juvenile had committed the criminal offence of unauthorised photographing and other recording pursuant to Article 171(1) of the Provisional Criminal Code of Kosovo (PCCK). On 5 August the Gjakovë/Đakovica municipal court found the juvenile guilty of that charge and applied the disciplinary educational measure of judicial admonition.

In the case described above, law enforcement and judicial authorities have gravely miss-qualified the pupil's actions. The action of recording an arrest in the street or in a public building (such as the school) does not constitute a criminal offence in Kosovo, because Article 171 PCCK, cited by both the prosecution and the court, refers only to the unauthorised recording in private premises. As such, the pupil's action of video-recording a police intervention occurring in a public space did not meet all the constitutive elements of the crime of unauthorised photographing and other recording prescribed by Article 171 PCCK. That, in turn, means that the child's initial police arrest was unlawful, because it lacked a grounded suspicion that he had committed a criminal offence.[26] For that same reason, all the other measures to which the juvenile was subjected – the confiscation of his phone by the police, his subsequent prosecution, trial, and sentencing – were equally fraught with injustice and downright unlawful.

C. The three "grounds for detention"

In addition to establishing the grounded suspicion that the defendant committed a crime, the court must also show in its ruling that there is a fear of flight, of interfering with evidence, or of repeated criminality.[27] Just one of these grounds is sufficient to warrant detention, but the court must explain why it has reasons to believe that the defendant will abscond, interfere with the evidence, or re-offend. In other words, a mere allegation is not sufficient to rebut the presumption in favour of liberty.

The OSCE, however, has noted that in the vast majority of the monitored cases courts failed to give adequate reasons as to the existence of one or more grounds for detention.

First, some detention orders do not provide reasons why one or more grounds for detention on remand exist, but merely paraphrase, repeat, or just refer to the wording of the law. The following may serve as examples:

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[26] The element of grounded suspicion that the person had committed a crime must be met in the case of police arrest just as it must be met in the case of detention on remand. See Articles 210, 211 and 212, PCPCK.

[27] Article 281(1)2 PCPCK. See also Article 5(1)c ECHR.

In a case before the Vushtrri/Vučitrn municipal court involving two defendants suspected of attacking official persons performing official duties[28] and obstructing official persons in performing official duties,[29] on 21 April 2008 the court ordered detention on remand against the defendants with the following reasoning: "Given the fact that we are dealing with criminal offences of […], the manner and the circumstances under which the criminal offence was committed, there is a risk that the latter might repeat the criminal offence, and influence on the witnesses. Based on the above stated, the panel found that the legal requirements from Article 281 paragraph 1 subparagraph 1 and 2 points 1 and 3 PCPCK for ordering the detention on remand are met."

In a case before the municipal court of Prishtinë/Priština, on 15 July 2008 a panel of judges imposed detention on remand against a defendant suspected of aggravated theft,[30] light bodily injuries[31] and damaging movable property.[32] According to the judges, there were "legal grounds to impose detention" and "circumstances which indicate that if at liberty defendant could hide and obstruct the conduct of criminal proceedings." The court gave no indication whatsoever as to what were the underlining "circumstances".

In a case before the Prishtinë/Priština district court, the prosecutor filed a request detailing the reasons why there was a grounded suspicion that the six defendants committed the crime, and why – if at liberty – they could try to abscond or influence co-perpetrators who had not yet been arrested. However, in his ruling of 24 September 2008, the pre-trial judge simply stated that detention should be imposed because "if they are at large there are circumstances that show that there is a risk of flight, that they would impede the investigation by influencing their accomplice and witnesses who have not yet been proposed in the request for detention and other persons which might be proposed as witnesses in the future during this criminal procedure. The detention was also ordered because of the gravity of this criminal case, and the circumstances in which it was committed, which are reasons to believe that if the defendants are at large they might repeat or commit similar criminal acts."

The examples cited above contain standardized, stereotypical, and ultimately inadequate reasoning. They simply re-phrase the applicable legal provisions, without explaining their direct applicability to the specific circumstances of the case. Detention may indeed have been necessary in those cases, but judges, as required by law, failed to use detailed reasoning in their explanation.

Each of the three grounds for detention prescribed by the PCPCK is analyzed below.

1. The risk of flight

[28] Article 317 PCCK.
[29] Article 316 PCCK.
[30] Article 253 PCCK.
[31] Article 153 PCCK.
[32] Article 260 PCCK.

It is understood that law enforcement authorities may often be concerned that a defendant may try to flee in order to escape criminal punishment. Indeed, the risk that the defendant will go into hiding is a frequently cited ground for detention on remand in Kosovo. For this risk to be sufficiently established, however, it needs to be supported by relevant and sufficient facts, which is not always the case in practice.

The ECtHR has held that for this reason to be credible, domestic courts must explain why there is a danger of absconding, and not simply order detention in "an identical, not to say stereotyped, form of words, without in any way explaining why there was a danger of absconding" or why this danger could not have been countered by alternatives to detention measures.[33] The judge must therefore carefully assess other factors, such as the personal situation and the personality of the defendant, and his or her ties to the territory through family, or employment.[34]

The risk of flight cannot be established by the mere fact that a suspect does not have a fixed residence,[35] nor does it arise simply from being possible or easy for someone to cross the frontier.[36] The latter argument is in fact a rather frequently-encountered reasoning in detention-related documents in Kosovo, with prosecutors and judges often citing "the porous nature of Kosovo's borders," "the insufficiently controlled border in the north," the fact that "Kosovo borders are liberalized and can be crossed with a single valid document," or even that "Kosovo's borders are particularly open and easy to cross during the summer tourist season," as justifications for there existing a risk of flight. Such reasoning, in itself, is insufficient.[37] As the ECtHR has held:

> "[T]he danger of an accused absconding does not result just because it is possible or easy for him to cross the frontier (in any event, it would have been sufficient for that purpose to ask [the defendant] to surrender his passport): there must be a whole set of circumstances, particularly, the heavy sentence to be expected or the accused particular distaste of detention, or the lack of well-established ties in the country, which give reason to suppose that the consequences and hazards of flight will seem to him to be a lesser evil than continued imprisonment."[38]

The ECtHR has also held that the seriousness of the criminal offence (and the gravity of the expected punishment) can be of relevance in substantiating the risk of flight, but only together with other elements and not on its own.[39] Therefore, it would be incorrect to establish the risk of flight based only on the fact that the defendant may face a hefty sentence if convicted. However, such inadequate reasoning has been noted in many rulings on detention on remand, as the following caption illustrates:

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[33] See *Yagci and Sargin v. Turkey*, ECtHR Judgment of 9 June 1995, paragraph 52.

[34] See *Tomasi v. France*, ECtHR Judgment of 27 August 1992, paragraph 98: "the danger of escaping cannot be gauged solely on the basis of the severity of the sentence risked; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of escaping or make it appear so slight that it cannot justify detention pending trial".

[35] See *Sulaoja v. Estonia*, ECtHR Judgment of 15 February 2005, paragraph 64.

[36] See *Stögmüller v. Austria*, ECtHR Judgment of 10 November 1969, paragraph 15.

[37] The "porous nature" of borders and boundaries in Kosovo is a well-known problem, but it should arguably be addressed through increased patrols and surveillance, rather than be used as a ready excuse for detaining any suspect.

[38] See *Stögmüller v. Austria*, ECtHR Judgment of 10 November 1969, paragraph 15.

[39] See *Muller v. France*, ECtHR Judgment of 17 March 1997, paragraph 43.

> In a case involving a defendant suspected of misappropriation in office,[40] the Mitrovicë/Mitrovica district court on 8 May 2009 adopted a ruling ordering defendant's detention on remand for one month. In the reasoning part of the ruling, the pre-trial judge stated *inter alia* that "the legal requirement for ordering detention on remand pursuant to point (i) subparagraph 2 and 1 of Article 281 PCPCK stands, because in the opinion of the pre-trial judge the sole fact that the defendant is charged with a very serious criminal offence punishable with imprisonment sentence up to 10 years, indicates the fear that if he is not detained he will abscond or hide and consequently will obstruct the normal course of these proceedings, especially now when he understood the seriousness of the crime with which he is charged. In the deep conviction of the court and considering the fact provided by the defence that the defendant does not have relatives in Serbia or elsewhere, so he has no place to escape, the court considers that this is not a circumstance that removes the fear from absconding. At contrary, the defendant may hide or escape anywhere in order to escape the criminal prosecution. Therefore, the requirements for ordering detention on remand pursuant to the above mentioned point are fulfilled."

As noted earlier, the risk of flight cannot be gauged solely based on the risk of the severity of the punishment. The gravity of the punishment is relevant but insufficient in and of itself to establish the risk of a defendant fleeing, and in order to properly justify a detention on this ground other relevant elements should also be adduced by the court.

ECtHR case-law indicates that the risk of flight can be reasonably established by pointing to such factors as prior cases in which the defendant had tried to avoid criminal proceedings by fleeing the country;[41] or where an extradition had been required to proceed with proceedings;[42] defendant's "particular distaste for detention;"[43] specific indications of plans to flee;[44] as well as "the character of the person involved, his moral, his assets, his links with the State in which he is being prosecuted and his international contacts."[45] This list is not exhaustive; other similarly relevant factors (and especially combinations thereof) could be adduced to show that the risk of flight is real in the specific circumstances of the case.

On the other hand, factors that could point to a low or non-existent risk of flight include the defendant's particular family condition;[46] the amount of property that the defendant would leave behind in case of flight, and past evidence of his or her reliability when released;[47] and a serious illness which the defendant may suffer from.[48]

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40 Article 340 PCCK.

41 See *Cesky v. the Czech Republic*, ECtHR Judgment of 6 June 2000, paragraph 79.

42 See *Punzelt v. the Czech Republic*, ECtHR Judgment of 25 April 2000, paragraphs 87-88.

43 See *Stögmüller v. Austria*, ECtHR Judgment of 10 November 1969, paragraph 15.

44 Such as the transfer of funds to another country and a visit abroad to establish particular connections (see *Matznetter v. Austria,* ECtHR Judgment of 10 November 1969), or entrusting of a large amount of money to an acquaintance, the purchase of a car with another person's identity card, and the obtaining of a false passport (see *Cesky v. the Czech Republic,* ECtHR Judgment of 6 June 2000).

45 See *W v. Switzerland*, ECtHR Judgment of 26 January 1993, paragraph 33, citing *Neumeister v. Austria*, paragraph 10; see also *Barfuss v. the Czech Republic*, ECtHR Judgment of 1 August 2000; and *Punzelt v. the Czech Republic,* ECtHR Judgment of 25 April 2000.

46 See *Letellier v. France,* ECtHR Judgment of 26 June 1991. The applicant there was a mother of minor children.

47 See *W v. Switzerland*, ECtHR Judgment of 26 January 1993.

48 See *Matznetter v. Austria,* ECtHR Judgment of 10 November 1969.

In each and every case, prosecutors and judges should consider any of the above-mentioned factors, if applicable, and make an overall assessment as to whether or not there is a the risk of flight.

Also, where the danger of flight is the only ground for detention on remand, courts should always assess whether a less restrictive measure (including bail, seizure of the defendant's travel documents, perhaps coupled with an obligation to regularly report to the police) would be sufficient to prevent the defendant from absconding.

2. The risk of tampering with evidence

Nearly every criminal investigation involves hearing witnesses, along with collection of other evidence. Thus, every case has a theoretical possibility that the defendant will obstruct the investigations – and yet it cannot be assumed in every case that the defendant will in fact do so. The risk of tampering with evidence, like all other grounds for detention on remand, must be properly reasoned, with reference to the specific facts that it warrants.

The ECtHR has held that although the risk of influencing witnesses or co-defendants may be genuine at the outset of the detention, it may gradually diminish, or even disappear altogether.[49] Also, after the investigations stage has been completed, the risk of collusion between suspects and witnesses should normally be deemed to have disappeared.[50]

Statistically, the risk of tampering with evidence (and in particular of influencing witnesses) appears to be the most commonly invoked ground for detention on remand in Kosovo.[51] However, in most decisions analyzed by the OSCE, courts simply mentioned the fact that some witnesses were yet to be heard, as a factor substantiating the risk of tampering with evidence.

> In a case before the Kaçanik/Kačanik municipal court, on 27 March 2008 a judge ordered detention on remand for 15 days against a defendant suspected of fraud[52] and unjustified acceptance of gifts.[53] The court gave the following reasons for its decision: "Taking into consideration the request of the municipal public prosecutor in Ferizaj/Uroševac to order the detention on remand and the fact that 4 witnesses should be heard, on the other hand if the defendant will be at freedom he will influence them, the court therefore approved the request of the municipal public prosecutor in Ferizaj/Uroševac, while rejecting the proposal of the defendant and his defence counsel to order the measure of house detention." The decision made no reference to the facts of the case.
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> In a case before the Pejë/Peć district court, on 11 July 2008 a pre-trial judge imposed detention against a defendant suspected of attempted murder[54] and unauthorized possession or use of weapons,[55] with the following reasoning: "After parties'

[49] See *Tomasi v. France*, ECtHR Judgment, 27 August 1992, paragraphs 92-95.
[50] See *Kemmache v. France,* ECtHR Judgment of 27 November 1991, paragraph 54. See also *Muller v. France*, ECtHR Judgment of 17 March 1997, paragraph 40.
[51] This assessment is based on the OSCE's direct monitoring and analysis of 125 cases involving detention on remand proceedings before the Kosovo municipal and district courts.
[52] Article 261 PCCK.
[53] Article 250 PCCK.
[54] Articles 146 and 20 PCCK.
[55] Article 328 PCCK.

> declarations [the court] evaluated that the prosecutor's proposal is grounded and justified sufficiently [...]. The pre-trial judge justifies the legal ground pursuant to item (ii) of the above stated provision with the fact that if the defendant is free he might influence the witnesses and obstruct the normal development of criminal proceedings."

In cases like the ones above, prosecutors and judges may indeed be concerned that there is a real risk that the defendant, if left at liberty, will obstruct the normal course of investigations by attempting to influence witnesses. Nevertheless, to base a detention on this ground, authorities cannot just rely on such concerns *in abstracto*, but should show that there exist concrete factual circumstances pointing to the risk of tampering with evidence or suborning witnesses.[56] For instance, the ECtHR has stated that the risk of interfering with the course of justice can be justified in particular in some extremely complex cases,[57] or in cases where the defendant may have personal connections with many of the witnesses.[58]

It should also be borne in mind that detention ordered on such grounds should in principle be terminated as soon as the evidence for which detention was ordered has been taken or secured.[59] The need to hold a defendant in detention on the ground of preventing his influence on the course of justice may likely disappear once all evidence is collected and investigations are completed. Judges in Kosovo sometimes fail to consider this rationale.

> In a case before the Prizren district court involving charges of causing general danger[60] and fraudulent evasion of duty,[61] on 27 June 2008 a three-judge panel examined the prosecutor's motion for detention, contained in the filed indictment, and imposed two additional months of detention on remand with the following reasoning: "The criminal panel […] found that there is reasonable suspicion that the accused committed the criminal offences […]. On the other hand, the detention measure matches the danger of the criminal offence pursuant to the indictment of municipal public prosecutor in Prizren, thus there is a belief that the grounded suspicion that the accused may influence witnesses or may repeat the criminal offence at the trial stage hence the fulfilment of conditions from Article 281 paragraph 1 subparagraph 1 and 2 point (ii) and (iii) PCPCK." Of note, the prosecutor's proposal for detention included in the indictment was a mere paraphrasing of the law.

Courts should rely on the risk of influencing witnesses or obstructing justice only when there exist specific circumstances supporting such fears. Every time that this ground for detention is invoked, it must be corroborated with specific facts, and not simply assumed in an abstract manner.

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[56] See *Trzaska v. Poland,* ECtHR Judgment of 11 July 2000, paragraphs 63-66. See also the joint United States Office and OSCE report of November 2007, *Witness Security and Protection in Kosovo: Assessment and Recommendations*.

[57] See *Wemhoff v. the Federal Republic of Germany*, ECtHR Judgment of 27 June 1968, paragraph 17.

[58] See *Contrada v. Italy*, ECtHR Judgment of 24 August 1998, paragraph 61. See also *W. v. Switzerland,* cited above.

[59] See Article 281(2) PCPCK.

[60] Article 291 PCCK.

[61] Article 92(b) Customs Code of Kosovo, promulgated by UNMIK Regulation No. 2004/1, 30 January 2004.

3. The risk of re-offending

The danger that a defendant may repeat a criminal offence, complete an attempted offence or commit an offence which he or she has threatened to commit is yet another ground on which detention on remand can be contemplated.[62] It is interesting to note, however, that some human rights experts argue that this ground of detention – the risk of re-offending, i.e., repeating a criminal offence – is not easily reconcilable with the presumption of innocence in so far as it implies that the defendant had already committed a criminal offence.[63]

As regards to the risk of relapse into crime, the ECtHR has found that the danger must be a plausible one and the measure appropriate, in light of the circumstances of the case and in particular the past history and personality of the person concerned.[64] At the same time, the risk of re-offending cannot be established simply by reference to unspecified antecedents[65] or prior convictions for offences which are not comparable in their nature or degree of seriousness.[66]

The OSCE observed numerous cases where the court simply stated that there is a risk of repetition of the offence, but without giving convincing reasons justifying this fear if giving reasons at all.

> In a case before the Prizren district court, on 6 June 2008 a pre-trial judge imposed detention on remand against two defendants suspected of causing general danger[67] and fraudulent evasion of duty,[68] based on, *inter alia*, the risk of re-offending.[69] Commendably, both the prosecutor and the pre-trial judge adequately justified the risk of re-offending with reference to one defendant's prior conviction for a similar offence. At the same time, the pre-trial judge failed to adduce any reasons whatsoever for the detention of the second defendant.

It appears that many prosecutors and judges often assume the fact that if a person has allegedly committed a serious crime that means he or she may commit another offence, and thus must be detained. Such reasoning is not convincing. The risk of re-offending should be proved with specific facts like the personality of the accused, his or her past conduct and in particular any prior convictions for similar crimes.

Overall, and as has been shown in the preceding sections, there remain significant problems with the reasoning of rulings on detention in Kosovo. The need for detention is very often insufficiently established with reference to the specific facts of the case. What is more, there are cases where prosecutors do file a properly reasoned request for detention, and yet the pre-trial judge fails to at the very least to follow that reasoning.

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62 See Article 5(1)c ECHR and Article 281(1)2(iii) PCPCK.
63 See Stefan Trechsel, *Human Rights in Criminal Proceedings* (Oxford University Press 2006), page 526.
64 See *Clooth v. Belgium,* ECtHR Judgment of 12 December 1991, paragraph 40.
65 See *Muller v. France*, ECtHR Judgment of 17 March 1997, paragraph 44.
66 See *Clooth v. Belgium*, ECtHR Judgment, 12 December 1991, paragraph 40.
67 Article 291(1) PCCK.
68 Article 92(b) Customs Code of Kosovo.
69 Of note, in the same case the other invoked ground (the risk of tampering with evidence) was left completely unreasoned.

In one case involving charges of unauthorised supply, transport, production, exchange or sale of weapons[70] before the Prizren district court, the district public prosecutor commendably presented a well-reasoned request for detention which established the grounded risk of re-offending based upon defendant's repeated prior convictions for similar offences. The pre-trial judge, however, when issuing the ruling on detention, failed to provide similar relevant and sufficient reasons for detention – despite the fact that, arguably, his task was made considerably easier by the prosecutor's well-drafted request for detention.

D. Detention imposed based on improper grounds

The OSCE has also noted that pre-trial judges occasionally base their rulings on detention on grounds which are not provided by law.

In one case involving a defendant suspected of grievous bodily harm,[71] on 14 May 2008 a Prizren municipal public prosecutor filed the indictment, which also contained a request for detention. On the same day, a three judge-panel of the Prizren municipal court granted prosecutor's request and imposed a one-month detention on remand on the defendant by arguing, *inter alia*, that detention was necessary "because an indictment is filed against him."

Such a ground for ordering detention not only has no basis in the law but is also manifestly contradictory to the requirement of an effective judicial scrutiny over all prosecutorial acts affecting a person's fundamental rights.

Judges always need to independently scrutinize prosecutor's actions affecting fundamental human rights, as opposed to merely rubber-stamping them.

III. REASONING OF RULINGS TO EXTEND DETENTION

The PCPCK incorporates the ECtHR-set principle that a detention should last "no longer than necessary", by establishing that "[a]ny deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible".[72]

Accordingly, prosecutors have a duty to conduct investigations with particular diligence in cases where the defendant is in detention on remand.[73] It should be borne in mind that some of the grounds warranting detention, like the risk of influencing witnesses or otherwise obstructing justice, will likely decrease as prosecutors come to the completion of their investigations. Therefore, as the length of detention on remand increases, courts should become even more exacting in their oversight over detentions.

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[70] Article 327 PCCK.
[71] Article 154 PCCK.
[72] Article 5(3) PCPCK.
[73] Article 285(1) PCPCK provides that public prosecutors, when requesting an extension of detention, must show, *inter alia*, "that all reasonable steps are being taken to conduct the investigation speedily". Similarly, the ECtHR requires that competent authorities conduct proceedings "with special diligence" when the defendant is in detention on remand. See *Assenov a. o. v. Bulgaria*, ECtHR Judgment of 28 October 1998, paragraph 154.

The ECtHR has held that "[t]he persistence of a reasonable suspicion that the person arrested has committed an offence is a *conditio sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices", and thus a continued detention should be justified with other "relevant and sufficient" grounds.[74]

As such, when reviewing a request to extend detention on remand, courts should scrutinize the need for prolonged detention with similar or even greater thoroughness, and decisions extending detentions should meet a threshold of reasoning just as high, if not higher, than that of initial rulings on detention.

The OSCE has noted, however, that this is seldom the case. In the vast majority of analyzed cases involving extended detentions, prosecutors failed to show that there continue to exist grounds for detention and that all reasonable steps are being taken to conduct the investigation speedily.[75] For instance, prosecutors may submit that detention should be extended based on the fact that they still have to hear some witnesses, while failing at the same time to explain why those witnesses had not yet been heard during the considerable period of time that the defendant had already spent in detention. Many pre-trial judges nevertheless accept such requests and grant extensions of detention. In general, when extending detentions on remand, judges often fail to critically review the actual need to extend the detention and usually rely on the same vague expressions and repetitive formulations of the law as when initially placing a defendant in detention.

Further, requests for and rulings on the extension of detention are sometimes even more poorly reasoned than the initial requests/rulings on detention.

> In one case before the Prizren municipal court, involving charges of causing general danger,[76] two defendants had been in detention since early June 2008. Upon filing the indictment, the public prosecutor requested the extension of defendants' detention, but without providing any supporting reason whatsoever, and without showing that all steps were being taken to conduct the investigations speedily. On 27 June 2008 a three-judge panel approved the prolongation of defendants' detention for another two months, by merely paraphrasing the provisions of Article 281 PCPCK and without citing any specific, relevant and sufficient reasons to show the need for continued detention. Of note, the initial decision on detention in that same case was much better reasoned and could have served as a ready example for the three-judge panel.

Prosecutors and judges should bear in mind that a request for and ruling on extending detention should be just as well-reasoned as the initial orders, and should contain an exact reference to the specific circumstances that warrant continued detention.

IV. REASONING OF RULINGS TO APPLY HOUSE DETENTION

House detention is an alternative to pre-trial detention. Although it is a distinct measure, and less restrictive of one's liberty when compared to pre-trial detention, the measure of house detention must be applied with the observance of the same procedural safeguards as detention

[74] See *Musuc v. Moldova*, ECtHR Judgment of 6 November 2007, paragraph 39.
[75] As required by Article 285(1) PCPCK.
[76] Article 291 PCCK.

on remand, through decisions containing relevant and sufficient reasoning. This general rule is reflected both in domestic law[77] and in international human rights standards.[78]

The OSCE has noted, however, that the requests for and rulings on house detention often contain reasoning that is even poorer than the – already quite scant – reasoning of rulings ordering detention on remand. The reasons to support the imposition of the measure of house detention are almost invariably very summary and superficial, if non-existent.

> In a case with two defendants suspected of extortion[79] before the Pejë/Peć district court, the pre-trial judge rejected the prosecutor's request for detention on remand and decided to instead impose house detention against one defendant and attendance at the police station against the other. In its ruling of 4 August 2008, the court repeated the arguments of the parties, and then held that "after evaluating the statements of the parties, it was decided as in the enacting clause of this decision, hoping that with these measures the development of the procedures will not be obstructed."

> In one case involving seven defendants charged with abusing official position or authority,[80] failure to report criminal offences or perpetrators,[81] and giving bribes,[82] a Prishtinë/Priština pre-trial judge approved prosecutor's request for house arrest against two of the defendants with only the following reasoning: "A measure of house detention has been imposed pursuant to Article 278 (1) subparagraph (1) and (2) of PCPCK because if at liberty there exists the risk of flight from their residence, defendants would obstruct the successful conduct of criminal proceedings by influencing witnesses or each other, and if at liberty could repeat or commit similar criminal offences."

Such reasoning, containing no reference to the specific circumstances of the case, is clearly inadequate for the purposes of justifying the ordering of a measure of house detention, which requires that relevant and sufficient reasons be adduced to show that it is indeed necessary.

Of note, pre-trial judges may often state in their rulings that prosecutor's request for detention on remand is ungrounded, and then apply the measure of house detention on the defendant – but without any explanation as to why this particular measure is grounded and necessary.

> In one case involving charges of light bodily harm[83] before the Prizren municipal court, the prosecutor on 1 August 2008 filed a summary indictment against the suspect and requested that he be placed under detention on remand for one month. The pre-trial judge in his ruling on detention reasoned: "The request of the municipal public prosecutor is not grounded. Based on the assessment of the proposal of the Prizren municipal public prosecutor, of the defence counsel and in particular of the defendant and his guarantee that he shall

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77 Articles 278(7), 281(1) and 283(1) PCPCK, all three considered in conjunction.

78 According to ECtHR case-law, house arrest amounts to a deprivation of liberty (see *Vachev v. Bulgaria*, ECtHR Judgment of 8 July 2004, paragraph 64) and therefore a person subjected to house arrest is entitled to all the procedural guarantees enshrined in Article 5 ECHR, including that of having relevant and sufficient reasons adduced in the decision to place him/her under house detention.

79 Article 267 PCCK.

80 Article 339 PCCK.

81 Article 304 PCCK.

82 Article 344 PCCK.

83 Article 153 PCCK.

> respond to any summon of the court or of the Prizren municipal public prosecutor, the court came to the conclusion that the reasons on the basis of which the request for detention is made do not exist, i.e. if point (iii) is considered since there is no risk that the latter will repeat the offence, given his promise that he shall respond to all court summons as well as considering the seriousness of the criminal offence as this is a criminal offence punishable by up to three years imprisonment. Therefore the court, having such an assessment of preliminary circumstances, believes that the measure of house arrest shall ensure the presence of the accused at main trial."

Such reasoning is insufficient because it fails to adduce relevant and sufficient reasons to show why the measure of house detention *per se* is necessary in the case. The court's reasoning thus falls short of both domestic law and applicable international standards, which require that a ruling imposing a deprivation of liberty – to which house detention amounts – be supported by relevant and sufficient reasons.

V. USE OF ALTERNATIVE MEASURES

Detention is an afflictive measure which cannot be applied save for cases where it is necessitated by the specific circumstances of the case.

International standards prescribe that detention on remand is a measure of last resort, which can be applied only when other (more lenient) measures are insufficient.[84] According to the ECtHR, "it does not suffice that deprivation of liberty is executed in conformity with national law; it must also be necessary in the circumstances."[85] Said differently, unless detention is absolutely necessary, other measures should be applied.

Similarly, the PCPCK defines detention as the most severe measure of ensuring the presence of an accused at trial and the successful conduct of criminal proceedings. Detention cannot be invoked when a less severe measure would suffice to achieve the same purpose.[86]

The PCPCK foresees a series of non-custodial measures which also aim to ensure the presence of the defendant, to prevent re-offending and to ensure successful conduct of criminal proceedings. These alternative measures include summons, promises of the defendant not to leave his or her place of current residence, prohibitions on approaching a specific place or person, attendance at a police station and bail.[87]

The OSCE has found that approximately three quarters of the reviewed rulings on detention lacked reasoning as to why measures other than detention are inadequate.[88] Most of the

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[84] Rule 6.1 of the *United Nations Standard Minimum Rules for Non-Custodial Measures ("Tokyo Rules")* prescribes that "pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and the protection of society and the victim." See also *B. Hill. v. Spain*, UN Human Rights Committee, (2 April 1997), UN doc. GAOR, A/52/40 (Vol. II), paragraph 12.3.

[85] See *N. C. v. Italy*, ECtHR Judgment of 11 January 2001, paragraph 41.

[86] Article 268(1-2) PCPCK.

[87] Article 268(1) PCPCK.

[88] This assessment is based on the OSCE's direct monitoring and analysis of 125 cases involving detention on remand proceedings before the municipal and district courts in Kosovo from 1 January 2008 to 30 September 2008.

analyzed rulings on detention mention the inadequacy of non-custodial measures only in the passing and without any reason for such a determination, and there are also rulings which do not make any reference whatsoever to measures alternative to detention.

> In a case before the Vushtrri/Vučitrn municipal court, on 27 July 2007 a panel of three judges imposed a one-month detention on remand against a defendant suspected of light bodily harm.[89] The ruling did not address the inadequacy of other measures, and only stated that "the court considers that detention on remand will help the successful conduct of the criminal proceedings."

Detention must be applied only when it is strictly necessary, and not when it may merely "help" the conduct of criminal proceedings. Since the insufficiency of non-custodial alternative measures is a pre-condition for applying detention, it should be reasoned with reference to the specific circumstances of the case. Failure to do so may render the ruling on detention insufficiently reasoned, particularly if no specific facts are adduced to support the grounds for detention in the first place.

Given that many rulings on detention contain no elaboration whatsoever on alternatives to detention, it is often unclear whether the court in fact took into consideration the possible application of alternatives to detention, as is expressly required by Article 281(1)3 PCPCK, every time there is an the application for detention. While judges may in fact deliberate on the possibility to apply alternatives (and still decide to nevertheless order detention), there is often nothing in their written rulings to reflect such a consideration of alternatives to detention.

Overall, prosecutors and pre-trial judges frequently appear to over-rely on more restrictive measures, such as detention on remand or house detention, even in cases where specific circumstances might indicate that alternatives to detention could suffice to ensure a proper conduct of criminal proceedings.

A particular problem has been identified as regards to the application of bail, as an alternative to detention. Some judges have expressed an opinion that the measure of bail, as an alternative to detention, cannot be applied in cases where the defendant is charged with a crime for which the punishment provided by law is of five or more years.

> In one case with five defendants charged with aggravated murder[90] and unlawful ownership, control, possession or use of weapons,[91] a pre-trial judge of the Prizren district court in a detention hearing held on 29 February 2008 ordered the detention on remand of three defendants and the measure of attendance at a police station for the other two defendants. In rejecting the proposal for bail filed by two defence counsel, the pre-trial judge reasoned, *inter alia*, that "Furthermore, Article 274 paragraph 2 subparagraph 2 does not allow bail for these criminal offences at all, because these criminal offences are punishable by at least five years imprisonment."

Such reasoning is both incorrect under the PCPCK and contrary to established international human rights standards. The PCPCK allows in principle for the application of bail in all cases

[89] Article 153 PCCK.
[90] Article 147 PCCK.
[91] Article 328 PCCK.

where there is a risk that the defendant may flee, irrespective of the crime of which the defendant is suspected or the punishment which he or she risks being sentenced.[92] In addition, PCPCK also allows in principle for the application of bail in cases where the sole ground for detention is a risk that the defendant may re-offend, as long as the defendant is not suspected of a criminal offence punishable by imprisonment of at least five years under the chapters exhaustively enumerated in Article 274(2)2 of the PCCK.[93]

Thus, to state that bail cannot be applied in a case involving a criminal offence punishable by at least five years of imprisonment, is an erroneous interpretation of the law. The PCPCK does allow for the application of bail in all cases (including those with crimes punishable by more than five years imprisonment) where there is only a risk of flight (and not also of re-offending). It also allows for the application of bail in cases punishable by less than five years imprisonment even if there is a risk of re-offending and that is the only ground for detention. Bail may also be applied in cases with suspected crimes punishable by more than five years imprisonment if the risk of re-offending is the only ground for detention and if those crimes do not fall under the chapters exhaustively listed in Article 274(2)2 PCPCK (for instance, the crime of torture,[94] or that of grave cases of theft in the nature of robbery,[95] are each punishable by at least five years imprisonment, and yet they do not fall under the chapters for which Article 274(2)2 PCPCK prohibits the application of bail).

The ECtHR has also held that as a general rule, with no exceptions, prohibiting bail in cases involving serious charges and which excludes *a priori* the possibility of any consideration by a judge of a person's release on bail (as was the rule stated by the pre-trial judge in the case cited above) would violate a person's right to liberty, as it would in effect remove the judicial control over detention in that respective category of cases, in violation of Article 5(3) of the ECHR.[96] Prosecutors and judges should more carefully consider the possibility of applying bail, as well as other alternatives to detention, in the course of criminal proceedings in strict conformity with the normative framework set by the PCPCK.

VI. CONCLUSION

The legal framework in Kosovo provides adequate rules on the use of detention in criminal proceedings, in full conformity with applicable international standards. Nevertheless, rulings on detention issued by courts in Kosovo very often fail to comply with these legal requirements, and detention is ordered without adducing sufficient reasons to prove it necessary in the circumstances of the specific case.

In many cases law enforcement and judicial officials appear to over-rely on detention, even in cases where specific circumstances indicate that less severe preventive measures could be sufficient. Particularly, when handling cases involving serious crimes, many judges and prosecutors seem to infer from the gravity of charges brought against a defendant that he or she may abscond, collude or re-offend, in effect shifting to the defendant the burden of proving that detention is unwarranted.

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92 Article 274(1) PCPCK.
93 Those are Chapters XIII, XIV, XV, XIX, XX, XXV, XXVII and XXVIII of the PCCK.
94 Article 165 PCCK.
95 Article 256 PCCK.
96 See *S.B.C. v. UK*, ECtHR Judgment of 19 June 2001, paragraph 22.

Such an approach is clearly incompatible with both international and domestic law. Judges, as well as public prosecutors, should in every case review the circumstances militating for and against detention, and carefully decide, with reference to legal criteria, whether or not there are sufficient relevant reasons to justify detention. Judges in particular should always start from the perspective that deprivation of liberty is a measure of last resort, and they should not only require prosecutors to put forward sufficient reasons for detention, but should also subject the reasons advanced to an independent and critical scrutiny.[97] While it is true that the rulings on detention issued by courts in Kosovo have seen gradual improvement in legal reasoning over the past few years, that progress remains rather slow. Therefore, judges and prosecutors should take further steps to improve their practice as regards the use of initial detention, extended detention, house detention, and alternatives to detention in the course of criminal proceedings.

VII. RECOMMENDATIONS

To the Kosovo Supreme Court:

- In the context of a specific case or through an explanatory legal opinion, clarify and re-emphasize that detention measures during criminal proceedings must always be ordered through rulings containing specific, relevant and sufficient reasoning.

To the public prosecutors:

- Request detention only in cases where the law and the specific circumstances of the case warrant such a restrictive measure, and only issue requests for detention which contain relevant and sufficient reasons.

To the judges:

- Order detention only when the circumstances of the case warrant such a restrictive measure.

- Provide relevant and sufficient reasons in all rulings imposing detention, in line with applicable domestic and international law.

- In particular, cite relevant evidence and specific factual circumstances which warrant detention on remand, and explain why measures alternative to detention are insufficient.

To the Kosovo Chamber of Advocates:

- Instruct defence counsel to effectively defend their clients' right to liberty by appealing against unreasoned rulings on detention.

To the Kosovo Judicial Institute:

- Continue to offer additional training to candidates for prosecutors and judges and to sitting judges and prosecutors on proper reasoning of requests for and rulings on detention.

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[97] See Monica 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* (Council of Europe Human Rights Handbook (No. 5), 2002), page 8.

- Continue to offer additional training to judges and prosecutors on the application of detention in the course of criminal proceedings.

- Alternative measures to detention in the course of criminal procedures should remain a subject for continuous legal education of judges and prosecutors.

To the Faculty of Law of the University of Prishtinë/Priština:

- Ensure that curricula adequately incorporate both domestic and international law and jurisprudence pertaining to detention and the right to liberty.