
Critical Review of Decision on Detention and Rights of the Detained Person

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Abstract

By detention, in the pre-investigation procedure, one person is deprived of his liberty, which results in limited freedom of movement of that person, with the simultaneous establishment of other restrictions on the detained person. An arrested person, as well as a suspect, can be detained. These persons are detained on the basis of a decision on detention, which is announced, made and served by the public prosecutor, or upon his approval by the police. According to this decision, the detention of a person can last for a maximum of 48 hours. Bearing in mind that this formal act restricts the detained person's proclaimed right to freedom for the purpose of unhindered conduct of criminal proceedings, while freedom of movement is one of the basic human rights in a democratic society, this clearly shows the importance of the legal treatment of the authorities in the pre-investigation procedure towards the detained person, as and the legality of the detention decision itself. In order for the detention of a person to be justified, it must be legal in both material and procedural terms. Otherwise, there would be a legal basis for the detained person to claim damages, due to the arbitrary detention made against him by the authorities. This article points out the formal-legal determinations of the decision on detention, and the rights of adult persons who have been detained for a hearing, with the aim of pointing out some perceived shortcomings after conducting research and analyzing data from the decision on detention and proposing some legal improvements.

Keywords: detention, police, public prosecutor, arrested person, suspect

Critical Review of Decision on Detention and Rights of the Detained Person

A minor cannot be detained in accordance with Article 61 of the Law on Juvenile Offenders and Criminal Protection of Juveniles (Narodna skupština Republike Srbije [Narodna skupština], 2005). However, a minor can be detained in accordance with the Law on Police (Narodna skupština, 2016). Adults can be detained like minors, in accordance with the Law on Police, but also in accordance with the Law on Road Traffic Safety (Narodna skupština, 2009), the Law on Misdemeanors (Narodna skupština, 2013) and the Criminal Procedure Code (hereinafter text: CPC) (Narodna skupština, 2011).

Pursuant to the CPC, persons found at the scene of a criminal offence may be detained if those persons could provide information important for the proceedings and if it is likely that their interrogation will not be possible later or would be affected with considerable delay or other difficulties (Narodna skupština, 2011, art. 290). This detention can last up to 6 hours. As Bejatović (2016, p. 387) points out, "here we are dealing with the questioning of presumptive witnesses". No formal act is not necessary for this retention. Detention of an arrested person or a suspect is possible in the pre-investigation procedure that precedes the regular criminal procedure. Detention of these persons is also possible in the summary criminal procedure prescribed for criminal offences for which the main penalty is a fine or imprisonment of up to 8 years if there is a certain degree of suspicion that these persons have committed a criminal offence. On the basis of the above stated, it follows that "a person can be deprived of his liberty, and he has not yet been placed into custody" (Dimitrijević, 1972, p. 233).

The public prosecutor's decision to detain an arrested or suspected person is a restriction of the right to freedom of movement. According to the Constitution of the Republic of Serbia, "everyone has the right to freely move and live in the Republic of Serbia, to leave it and to return to it" (Narodna skupština, 2006, art. 39 para. 1). Freedom of movement can be limited by law if it is necessary for the conduct of criminal proceedings, but the public prosecutor is obliged, from the time of informing the person that detention is being applied, to take into account the essence of the right that is being restricted, the importance of the purpose of the restriction, the

nature and scope of the restriction, the relationship of the restriction with the purpose of the restriction and whether there is a way to achieve the purpose of the restriction with a narrower restriction of the right (2006, art. 20 para. 3).

In order to look at the rights of a detained person, we must first take into account who is the arrested person and who is a suspect from the perspective of the law. Thus, according to the CPC, the arrested person - a person who was deprived of his liberty by the police and taken to the public prosecutor, "because there is a reason for ordering custody prescribed in art. 211 of the CPC". A person who was deprived of his freedom by any citizen was also arrested (so-called citizen's arrest), because he was "caught while committing a criminal offence for which he is prosecuted *ex officio*" and handed over to the public prosecutor or the police (Narodna skupština, 2011, art. 291 para. 1 and art. 292). However, a suspect is a person against whom, due to the existence of reasonable basis to believe that he has committed a criminal offence, the competent state authority in the pre-investigation procedure took action prescribed by the CPC and a person against whom an investigation is being conducted (art. 2, paragraph 1 item 1). Therefore, with the detained persons there are different degrees of suspicion that they are the perpetrators of the criminal offence for which the prosecution is undertaken *ex officio*. In the case of the arrested person, there are reasonable grounds to believe that he is the perpetrator of a criminal act, while in the case of a suspect, there is only a reasonable basis to believe that he is the perpetrator of a criminal act. Stamenković (2021, p. 326) indicates that "the difference between reasonable basis to believe and reasonable grounds to believe was established even before the adoption of the CPC, but only in theory and practice."

In order for the detention decision to be legal, proper and justified, and thus to ensure that the rights and freedoms of the detained person guaranteed by the Constitution are not violated, it must meet the prescribed requirements, both formally and materially. The formal conditions for issuance of the decision on detention imply that decision contains all the mandatory formal elements prescribed by the CPC, while the material-legal conditions of the decision on detention imply that a required degree of suspicion that a detainee is the perpetrator of the criminal offence he's

charged is clearly stated and substantiated. Every unnecessary detention of any person that is not, from the point of the scope and purpose of the free movement restriction, constitutes a violation of the detained person's right to freedom. Krapac (2020, p. 373) points out that illegal behaviour of competent authorities in relation to the criminal offence of the arrested person can only represent a mistake in treatment that needs to be corrected, but which cannot prevent the initiation of criminal proceedings against a person. An illegal arrest can also be an independent basis for claiming damages.

The subject of the research is the analysis of the mandatory elements of the decision on detention, according to the positive legal definition, as well as the analysis of the provisions of the Code of Criminal Procedure, with an emphasis on some different rights of the arrested and suspected person. The aim of this article is to point out some perceived shortcomings after conducting research and analyzing data regarding retention decisions and propose some legal improvements. The methods used in this research are the normative method, which was used for the analysis of legal regulations related to this area, and the content analysis method, which was used for the analysis of the basic concepts related to the subject of the research. Also, the method of document content analysis was used to process the data from the retention decision.

Positive Legal Provisions of the Law on the Retention Decision

The public prosecutor can detain: 1) a person who was arrested by the police, 2) a person who was arrested at the scene of the commission of a crime, 3) a suspect who responded to the police's summons in order to collect information, 4) a suspect against whom the police took action in the pre-investigation procedure provided for by the CPC or 5) a suspect who was summoned by the police in the capacity of a citizen to collect information, and during the execution of this action the police assess that this person can be considered a suspect. These persons "can be exceptionally detained by the public prosecutor for questioning for a maximum of 48 hours, counting from the time of arrest or responding to the summons", according to the CPC (Narodna skupština, 2011, art. 294 paragraph 1). The public prosecutor was given the authority to detain a person deprived of liberty "so that he would not be required to act within unrealistic deadlines" (Majić, 2016, p.

37). Especially in a situation where the public prosecutor in the same case needs to hear several persons deprived of liberty on the record, as a general action of collecting the evidence. Detention of an arrested person or a suspect is not allowed for any other reason.

Therefore, the detention of an arrested or suspected person by the decision of the public prosecutor is possible only "exceptionally" and is possible only "for interrogation". Detention of a person deprived of liberty cannot be carried out only for the reason of detaining that person for up to 48 hours. Detention of a person deprived of liberty "is not a substitute for police custody, which was prescribed in art. 196 of the Criminal Procedure Act (1976), which was declared unconstitutional by the decision of the Federal Constitutional Court dated December 7, 2000" (Grubač, 2009, p. 361).

The possibility of detention, the duration of detention, the reason for detention, the content of the decision on detention, the persons who can make a decision on detention, the deadline for issuing and delivery of the decision on detention, the legal remedy against the decision on detention, the jurisdiction for decision-making and the time for making a decision on the declared legal remedy, and the rights of detained persons are positively-legally determined in art. 294 of the CPC. This "legal determination is important for the reason that the detention of a person deprived of liberty would not turn into covert police custody" (Brkić, 2010, p. 42).

Bearing in mind that the public prosecutor can detain an arrested person for questioning for a maximum of 48 hours from the date of arrest and that the arrested person has the right to be brought before the competent pre-trial judge within 48 hours, it follows that there is a discrepancy in the CPC's norms because the public prosecutor must interrogate the arrested person on the record within 48 hours of the arrest, and the arrested person must also be handed over to the competent pre-trial judge within 48 hours. If this was not to happen, the arrested person would have to be released. We refer to the above because it must be borne in mind that the questioning of detained persons on the record before the public prosecutor, in some complex criminal cases, lasted for 4 hours, not counting the time required for reading the criminal charge, and not counting the time required to conduct a confidential conversation between the detained person and the defence counsel.

The decision on retention is made in the form of a decision. According to the CPC, the detention decision is made and served by the public prosecutor or upon his approval by the police, immediately or within 2 hours from when the suspect was informed that he was detained (Narodna skupština, 2011, art. 294, para. 2). This further means that a person can be detained on the basis of an oral announcement by the public prosecutor or, upon his approval, by the police, and that a written decision be made and delivered to the detained person in the next 2 hours, counting from the time of the announcement. The police do not have the original authority to independently decide to detain a person deprived of their liberty. However, the police have the authority to make and deliver a decision on detention, but only after the public prosecutor decides to allow that. It means that the police conditionally issue and deliver a decision on detention to a person deprived of liberty. Škulić (2017, p. 250) indicates that this is not an adequate legal solution, because there is no logic that one body makes a decision and that another body practically only "draws up" a decision that formally manifests such a decision.

In the decision on detention in accordance with the CPC, the following must be stated: 1) the criminal offence for which the suspect is charged, 2) reasonable grounds for suspicion, 3) day and time of deprivation of liberty or response to the summons and 4) time of detention (Narodna skupština, 2011, art. 294 para. 2). Therefore, the legislator has expressly prescribed the content of the detention decision, and it must contain all four mandatory elements. The decision on detention must also contain the reason for the detention, that is, that the detention is carried out "for the purpose of questioning". The detention decision "must have reasoned grounds for detention, because the police arrest from art. 291 para.1 of the CPC is possible only if there are reasons for ordering custody from art. 211 of the Civil Code" (Ilić, et al., 2018, p. 769).

Rights of the Detained Person

First, the arrested person "has rights from art. 69 para. 1 of the CPC and they must be read to the arrested person" by the police, already during the arrest (Narodna skupština, 2011, art. 291 para. 2). Also, the public prosecutor has the obligation to "advise the arrested about the rights from

art. 69 para. 1 of the CPC, to enable him to inform the defence counsel directly or through family members or a third party whose identity must be revealed to the public prosecutor in his presence, with the use of a telephone or other electronic message transmitter, and if necessary, help him find a defence attorney. (2011, art. 293 para. 1). The public prosecutor can *ex officio* order a medical examination of the arrested person. A medical examination can also be requested by "the arrested person, his defence counsel, a member of the arrested person's family or a person with whom the arrested person lives in a cohabitation or a permanent union of life", according to the CPC (2011, art. 293 para. 5).

If the arrested person does not provide a defence attorney within 24 hours or declares that he does not want to hire a defence attorney, counting from the moment when he was given the opportunity to do so, the public prosecutor is obliged to question him without delay (Narodna skupština, 2011, art. 293 para. 2). It follows from the above that the public prosecutor has the obligation to interrogate the arrested person after 24 hours from the moment of the arrest if he has not hired a lawyer or declares that he does not want to hire a lawyer. This legal provision is not logical for a number of reasons, namely: 1) first, when issuing a decision on detention, the arrested person must have a lawyer, because he cannot be detained without a decision on detention, which further means that waiting for the 24-hour period to pass in order for the arrested person to declare his position about the defence counsel, he actually has a defence counsel *ex officio* (provided by the state); 2) secondly, since the defence attorney was provided by the state no later than after the lapse of 4 hours counting from the adoption of the decision on the detention of the arrested person, the question arises as to what is the role of the defence attorney in this part of the procedure; 3) thirdly, it is not logical for the public prosecutor to interrogate the arrested person without the presence of a state-provided defence attorney, bearing in mind that only a person can be arrested for whom there are grounds for ordering detained custody, which specifically means that there is a reasonable grounds to believe that the arrested person is the perpetrator of a crime for which prosecution is undertaken *ex officio*; 4) fourth, it is not logical for the public prosecutor to interrogate the arrested person without the presence of a state-provided defence attorney, because the arrestee can

be charged with a criminal offence for which a prison sentence of up to 8 years is prescribed, which certainly does not represent a minor criminal offence.

When it is a matter of mandatory defence, and the arrested person according to the CPC does not provide a defence attorney within 24 hours or declares that he does not want to hire a defence attorney, the public prosecutor will appoint him an *ex officio* defence attorney (Narodna skupština, 2011, art. 293 para. 3). And this legal provision is in dispute because the question arises: what about the already appointed *ex officio* defence attorney who was engaged to the arrested person when the detention decision was made!? That there is already an engaged state-provided defence attorney, is indirectly concluded from the legal definition in art. 294 para. 5 of the CPC, because the arrested person already had to be appointed an *ex officio* defence attorney, as he did not provide one himself within 4 hours of the issuance of the detention decision.

Immediately after the hearing, the public prosecutor will decide whether to release the arrested person or to propose to the pre-trial judge that he be detained into custody, according to the provisions of the Criminal Procedure Code (Narodna skupština, 2011, art. 293 paragraph 4). However, as a result of the above, we wonder when the public prosecutor will hear the arrested person because, after the 24-hour period, the arrestee was provided with a state-provided defence attorney. Furthermore, we ask ourselves what about the defence counsel of the arrested person who must be present at the time of the adoption of the detention decision?

Both suspects and arrested persons must be advised about the rights of art. 69 para. 1 of the CPC, namely:

- 1) the right not to declare anything, to withhold an answer to a particular question, freely present one's defence, admit or not admit guilt,
- 2) the right to defend oneself or with the professional assistance of a defence attorney in accordance with the CPC,
- 3) the right to have a defence attorney present at his interrogation,
- 4) the right to read the criminal complaint, the report of the investigation and the findings and opinion of the expert immediately before the first questioning,
- 5) the right to be instructed by the procedural body before the first questioning about the aforementioned rights,
- 6) the

right to be immediately informed in a language he understands about the reason for the arrest, 7) the right to have a confidential conversation with the defence counsel before being questioned, which is monitored only by looking and not listening, 8) the right to demand that one of his family members or another person close to him, without delay, is notified about the arrest, as well as the diplomatic and consular representative of the country of which he is a citizen, i.e. a representative of an authorized international organization of public law character, if it is a refugee or stateless person and 9) the right to demand that he be examined without delay by a doctor he freely chooses, and if he is not available, by a doctor designated by the public prosecutor or the court (Narodna skupština, 2011, art. 293, para. 1 and art. 294 para. 4).

A detained suspect must also have a lawyer as soon as the procedural authority issues a decision on detention. Thus, according to the CPC, if the suspect does not provide a chosen defence attorney within 4 hours of the issuance of the detention decision, "the public prosecutor will provide him with an ex officio defence attorney" (Narodna skupština, 2011, art. 294, para. 5). Jovančević (2015, p. 190) believes that "this decision is not in accordance with the adversarial concept that one party appoints a lawyer for the other, but that decision should have been left, by law, to the pre-trial judge."

"The suspect and his lawyer have the right to appeal against the detention decision, within 6 hours from the delivery of the decision." Therefore, the deadline for filing an appeal cannot begin to run until the detention decision is served. "The appeal does not delay the execution of the decision". The appeal is decided by the pre-trial judge within 4 hours of receiving the appeal, (Narodna skupština, 2011, art. 294, para. 3), which initiates the proceedings before the court for the control of the contested detention decision in accordance with the CPC. A restrictive interpretation of this legal provision leads to the conclusion that only the suspect has the right to appeal to the pre-trial judge against the decision on detention, while the arrested person does not have that right, so this legal provision is imprecise. The appeal filed against the detention decision can be dismissed, rejected or accepted (allowed) by the pre-trial judge. The restriction of the detainee's freedom, which, according to this decision, can last no longer than

48 hours, certainly "represents a restriction of freedom sufficient in time to merit control of the validity of such a restriction" (Todorović, 2021, p. 89). Is an appeal against a detention decision an effective legal remedy, after conducting scientific research, Todorović (2018, p. 239) concludes that "in the Republic of Serbia, there is an obvious practice that the courts routinely reject appeals against a detention decision, making the appeal to the detention decision *de facto* ineffective legal remedy."

The text of the CPC does not contain a provision on how to revoke the decision on detention if the suspect and the defence attorney do not file an appeal against the detention decision, and the public prosecutor in the meantime questions the detainee on the record and decides not to submit to the pre-trial judge a proposal to order the suspect into custody or some of the measures to ensure the presence of the accused and the smooth conduct of the criminal proceedings prescribed by the CPC. In this situation, the public prosecutor releases the detained person with a verbal announcement, which is debatable because of the equal treatment of public prosecutors towards all persons detained for questioning.

Discussion

The research we conducted on the basis of a formed sample of 20 randomly selected decisions on detention (Table 1) that were issued in the period from 2016–2022, we examined the conformity of the legal determination of the mandatory elements of the detention decision and the actual elements of this decision in practice.

From the formed sample, it is indisputably established that all twenty persons were detained by the police. This further means that the police only formally drew up the acts (decisions) on detention, while the decision on detention was made by the public prosecutor. For the three persons detained by the police, there was no public prosecutor's approval for detention. This type of detention is not allowed by the CPC, and it clearly follows that these persons have an independent basis for compensation, because their right to freedom was violated. Deprivation of a person's liberty by the state authorities, which is carried out by in a form of detention, is allowed, but it must be carried out in a procedure prescribed by the law.

All twenty persons were detained for up to 48 hours without stating the reason for the detention, that the detention was carried out “for interrogation”. Therefore, it can be concluded that in this particular case it was about police custody applied to the detained persons.

Out of a total of twenty persons detained, thirteen of them were detained as suspects from art. 289 para.1 and 2 of the CPC, whether it is a suspect who responded to a summons from the police in order to collect information, a person against whom the police took action in the pre-investigation procedure provided for by the CPC, or a person who was summoned by the police in their capacity as a citizen collection of information, during which acquired the status of a suspect. The police arrested five persons who were then detained pursuant to Art. 291 paragraph 1 of the CPC.

However, the status of the two detained persons from the detention decision that we have analyzed is interesting. In one detention decision, it is stated that an authorized person of the police on the basis of the CPC makes a decision on detention against a person who was arrested by the police, but at the same time, it is also a suspect from art. 289 para. 1 and 2 of the CPC. The second decision on detention is even more interesting because it states that a person is arrested by the police, but also a person arrested by a citizen from art. 292 para. 1 of the CPC, but also a person who is suspect of art. 289 paras. 1 and 2 of the CPC. Therefore, this person has all the statuses of a detained person, which is recognized by the CPC. However, when it is taken into account that in respect to the arrested person who is detained there is a reasonable ground to believe that he is the perpetrator of a criminal offence, while in respect of the suspect who is detained exists only reasonable basis to believe that he is the perpetrator of a criminal offence and that in no decision on the detention was stated nor justified required degree of doubt, this further means that all decisions on detention were legally deficient because they did not contain a legal condition for detention. Therefore, the right to a reasoned court decision, as an element of the right to a fair trial, was violated for all detained persons.

All nineteen decisions on detention contain the day and time of the beginning of detention, while one decision on detention contains only the

day of detention, while the time of detention is not known. The time of the suspect's or arrestee's detention is an important element of the decision on detention from the aspect of the detained person's right to be heard before the public prosecutor in a certain period of time, and in that part this one decision which doesn't contain the time of detention is incorrect.

All decisions on detention contain a criminal offence for which the detained person is being charged. In this part, all detention decisions were proper and legal. This further means that for these detained persons the right to defence, which also includes a right to a defence attorney, as an element of the right to a fair trial, was violated.

From the two decisions, it is established that the two detained persons did not have a defence attorney at the time of the decision on detention, nor were they provided with a defence attorney by the state after the 4-hour deadline. Upon inspection of a specific case, we determined that these persons were appointed *ex officio* defence counsel, but only after two days since the beginning of their detention. For the two detained persons, it is not possible to determine the time of delivery of the detention decision. From the analyzed sample, it is determined that the two detention decisions do not contain instruction on the legal remedy in terms of determining to which court an appeal against the detention decision can be submitted. Persons who have been detained according to these decisions are denied the right to use an effective legal remedy.

Decisions on retention KU 668/16-1 and KU 668/16-2 do not contain the time when the detained person was informed that the measure of detention was applied to him. All detention decisions contain a legal reason from Art. 211 of the CPC, although all the persons who are detained according to these decisions are not arrested persons at the same time. In the case of the three persons who were detained, the degree of suspicion that they are the perpetrators of the criminal offence for which they are charged has not been determined at all. For ten detained persons, the decision on detention states that there are reasonable grounds to believe that they are the perpetrators of a criminal act, although in the introductory part of the decision it is clearly indicated that it is a suspect from Art. 289 paras. 1 and 2 of the CPC. There is also an opposite case. Thus, in the case of the two persons who were arrested, the detention decision states that

there is only a reasonable basis to believe that they are the perpetrators of a crime. All decisions on detention that are the subject of this analysis, in the part of determining the time of the beginning of detention contain the words "that is". Thus, it is not clear whether detention is to be counted against an arrested person or a suspect, but rather, ambiguity about the choice is left between the two possibilities.

Accordingly, we believe that the decision to detain a person must contain all elements prescribed by the law so the constitutionally guaranteed rights of the detained person would not be violated. The decision on detention must not leave the possibility of choosing the status of the detained person, because the CPC clearly defines which person is considered arrested and which suspect in the pre-investigation procedure. Of particular concern is the fact that not a single decision on detention contains a reason for detaining a person for a maximum of 48 hours, even though this is an express requirement made by the legislator. Therefore, it can be indirectly concluded that it was still a case of police detention of a person for a duration of 48 hours, according to the analyzed decisions on detention, because none of the decisions stated that the person is being detained "for questioning", let alone that the person is being detained "exceptionally".

Conclusion

It follows from the positive-legal provisions of the CPC that the decision on detention is a formal act that temporarily restricts the freedom of movement of a person when the conditions prescribed by law have been met, issued by the public prosecutor or with his approval by the police, and by which the arrestee or suspect, exceptionally, are detained for questioning before the public prosecutor for a maximum of 48 hours. The detention decision must contain mandatory elements prescribed by the CPC so it would be legally proper, and the detention of the suspect or arrested person would be legal and justified. By the detention decision can, exceptionally, be detained, for questioning, the following: 1) a person arrested by the police, 2) a person who was arrested at the scene of the commission of a crime, 3) a suspect who responded to a summons from the police to collect information, 4) a suspect against whom the police took actions in the pre-investigation procedure provided for by the CPC or 5) a suspect who was

summoned by the police in the capacity of a citizen to collect information, and during the execution of this action, the police assess that person can be considered a suspect.

The detained person must have a defence attorney as soon as the competent state authority issues a decision on detention. Professional defence of a detained person by an attorney, starting from the moment when the decision on detention was made by the public prosecutor, or, upon his approval, by the police, is important for the reason that the detained person is generally a legally ignorant party who does not have knowledge about his rights during detention. The presence of a defence attorney at this stage of the criminal proceedings is especially necessary for the reason of preparing the defence of the detained person because the detention of the person is carried out for the reason of his questions on the record before the public prosecutor because there is a certain degree of suspicion that he is the perpetrator of the criminal act.

From the formed sample that we analyzed, we determined that not a single decision contained all the mandatory elements, nor it contained reasons in respect of the existence of a necessary degree of suspicion, which means that not a single decision on detention was legal from the aspect of formal-legal and material-legal conditions that it must contain. The detention of a person suspected of being a perpetrator of a criminal offence, or of a person for whom there is a reasonable basis to believe of being a perpetrator of a criminal offence, is permitted, but the detention of that person must be carried out in a procedure prescribed by the law. Otherwise, the detained person's right to freedom will be violated. Through the conducted analysis, we determined that the detained persons, whose detention decisions we analyzed, had their right to freedom violated. In some detention decisions, we found that there is a violation of the detained person's right to defence, the right to an effective legal remedy, as well as a violation of the right to a fair trial. However, the actions of the authorities of the pre-investigation procedure towards the detained person contrary to the provisions of the CPC, as well as the announcement, issuance and delivery of decisions on detention that are not legal, constitute a violation of the rights and freedoms of the detained person guaranteed by the Constitution and create a special basis for claiming compensation for damages.

We particularly point out the proposal of the Ombudsman that "in Art. 294 para. 2 of the Code of Criminal Procedure (2011) it is necessary to prescribe that in the decision on the detention of an arrested person, as well as a suspect, the public prosecutor can exceptionally detain for questioning for a maximum of 48 hours from the time of arrest, i.e. responding to a summons, must be specified, except for the what the suspects are charged with, the basis of suspicion, the day and time of deprivation of liberty or responding to the summons and the time of detention, and the reasons for the exceptional postponement of the questioning for up to 48 hours" (Ombudsman of the Republic of Serbia, 15-32-12/2017). We point to this proposal for the reason that it was drafted and submitted to the Government of the Republic of Serbia and the National Assembly of the Republic of Serbia back in 2017, the adoption of which would achieve better protection of citizens' rights.

While writing this paper, we determined that the Code of Criminal Procedure (2011) expressly prescribes in art. 69 para. 2 the right of the arrested person that he must be handed over to the competent pre-trial judge without delay, and no later than within 48 hours, or if this does not happen, released, that art. 29 para. 2 of the Constitution of the Republic of Serbia (2006) guaranteed the right of a person deprived of liberty without a court decision to be handed over to the competent court within "48 hours" at the latest because otherwise he is released, and that art. 294 para. 2 of the Code of Criminal Procedure (2011) stipulates the public prosecutor's ability to detain an arrested person for questioning "for a maximum of 48 hours".

A suspect who is detained for questioning by the decision of the public prosecutor does not have this right prescribed by the current CPC. Therefore, we believe that it is necessary to amend the Code of Criminal Procedure (2011) so that the public prosecutor will be obliged to undertake the basic evidentiary action of questioning the detained person within a maximum of 48 hours, counting from the time of arrest, i.e. responding to the summons, and that in that time during the period, make: 1) a proposal for the determination of a measure prohibiting approaching, meeting or communicating with a certain person and visiting certain places, or 2) a proposal for determining a measure prohibiting leaving one's place of residence, or 3) a proposal for determining bail, or 4) a proposal for determining a measure prohibiting leaving the apartment, or 5) submit a motion for custody, and submit the case files to the

pre-trial judge, if the public prosecutor considers it necessary to take action against the detained person.

We propose the above for reasons of respect for the constitutionally guaranteed rights of a person deprived of his liberty so that he could be handed over to the competent court within "48 hours" for a hearing on the reasons for ordering detention or so that the person deprived of his liberty would know what other measure should be applied to him for securing his presence and for the smooth conduct of criminal proceedings. As stated above, we propose to make a positive legal determination, both for the arrested person and for the suspected person who, according to the decision of the public prosecutor, is exceptionally detained for questioning, because the Constitution of the Republic of Serbia (2006) guarantees this right to all persons deprived of their liberty.

As art. 293 para. 2 of the Code of Criminal Procedure (2011) stipulates that if the arrested person does not ensure the presence of a defence counsel within 24 hours from when he was given the opportunity to do so or declares that he does not want to hire a defence lawyer, the public prosecutor is obliged to question him without delay, while such a right the detained suspect was not given. Thus, the suspect does not have the right to be questioned on the record by the public prosecutor after 24 hours from the moment of detention, if the expert defence is not mandatory, as such obligation of the public prosecutor exists if it is an arrested person. This possibility must be positively legally allowed for the detained suspect, for the sake of the equality of all detained persons.

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Appendix

Table 1

An overview of the formal designations of decisions on retention with formal elements that are the subject of analysis in this paper

Number of detention decisions	Approval of the public prosecutor	Grounds for detention	Degree of doubt	Defence counsel	Instruction on legal remedy
KU 668/16 - 1	Yes	art. 289 paras. 1 and 2 of the CPC	Does not have	No	Yes
KU 668/16 - 2	Yes	art. 289 paras. 1 and 2 of the CPC	Does not have	No	Yes
KU 15/17	No	art. 289 parad.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 1487/17	Yes	art. 289 parad.1 and 2 of the CPC	Does not have	Yes	Yes
KU 3269/18	Yes	art. 291 para. 1 CPC; Art. 292 para. 1 CPC; Art. 289 paras. 1 and 2 of the CPC	Reasonable basis to believe	Yes	Yes
KU 1094/18	Yes	art . 289 para.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 230-112/19	Yes	art . 291 para.1 of the CPC	Reasonable ground to believe	Yes	Yes
KU 230-360/19; 230-359/19	Yes	art . 291 para.1 of the CPC	Reasonable ground to believe	Yes	Yes
KU 1382/19	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes

KU 120/19	No	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	No
KU 230-1082/20	Yes	art. 291 para.1 CPC; Art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 319/20	No	Art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 230-62/21	Yes	art. 291 para.1 of the CPC	Reasonable ground to believe	Yes	Yes
KU 122/21	Yes	art. 291 para.1 of the CPC	Grounds for suspicion	Yes	Yes
KU 230-756/21	Yes	art. 291 para.1 of the CPC	Reasonable basis to believe	Yes	No
KU 287/22	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 290/22	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 289/22	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 372/22	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes
KU 378/22	Yes	art. 289 paras.1 and 2 of the CPC	Reasonable ground to believe	Yes	Yes

Note. The subject of the research are decisions on detention made by the police, which list the criminal offences for which the detained persons are charged, the time of delivery of the decision and the start of detention, that is, the day and time of deprivation of liberty or responding to a summons.

Rešenje o zadržavanju i prava zadržanog lica

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Sažetak

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Ključne reči: zadržavanje, policija, javni tužilac, uhapšeni, osumnjičeni