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DISREGARD FOR DEADLINES AND EFFICIENCY OF CRIMINAL PROCEEDINGS

Introduction

"Laws are as good as the people who enforce them"

Enrico Ferri

Based on the principle of criminal procedure law, that it is a system of legal rules through which the subjects of criminal proceedings are determined and through it their relation to the criminal proceedings are regulated by undertaking procedural-criminal actions, all directed towards the objective of shedding light and resolving a criminal issue as a case and a duty of the criminal procedure law[7]. Hence based on provisions of Article 1 of the Criminal Procedure Code of Kosovo (CPCK)[8], rules are determined which guarantee that no person who is innocent will suffer punishment, while the guilty will be sentenced with a punishment or another appropriate sanction deserved, according to conditions foreseen with the Criminal Code of Kosovo (CCK) based on the prescribed legal procedure. This leads to the conclusion that criminal procedure has multiple functions.[9]

Therefore, from one side, criminal procedure is an efficient tool for the protection of society from criminals, as during the criminal procedure important issues are resolved, like:

7 Prof. dr Stanko Bejatović: Krivično procesno pravo-Opšti deo- Kultura Beograd, 1995 page 25.

8 "Official Gazette of the FSRY", no. 4/77, 14/85, 36/77, 74/87 and 3/99.

9 Dr. Đorđe Lazin: Efiksnost krivičnog postupka i zaštita sloboda i prava gradjana zagarantovana medjunarodnim paktom o gradjanskim i političkim pravima: JRK i KP 1985 page 117.

1) The that criminal act was really committed,
2) That is the criminal act was committed, who is the perpetrator of it,
3) That against the person for who it has been proven during the investigations and in the main hearing, that he the defendant has committed the crime, within the meaning of the provisions of substantive criminal law he will be sentenced with a punishment determined by law.[10]

From the other side criminal procedure is a defence tool for the rights of the citizen who is suspected of committing a criminal act.
The criminal procedure has been constructed on the bases of two tendencies. The first, the classical one, with the objective of society being defended in an effective manner from criminality, and the second, the civil one, which to the largest extent possible defends the rights of the citizen.
However, in essence these tendencies are in contradiction with one another.

It is logical that the regulation of criminal procedure should be based on reasonable compromise.

Therefore, the Criminal Procedure Code of Kosovo, to a certain extent has achieved agreement between the above mentioned tendencies because through numerous original solutions it has created original legal conditions for regulating criminal procedure and the protection of citizen's rights.

1. PRINCIPLE OF CRIMINAL PROCEDURE EFFICIENCY

The word efficiency is derived from the Latin expression *efficacilis* which means successfulness, however the efficiency of criminal procedure is a more wide and complex matter, which is conditioned by many circumstances. In theory there is not comprehensive term for the notion of criminal procedure efficiency. The aim of this paper is not the issue of defining it by giving answers on this issue but rather the presentation of basic principles of criminal procedure efficiency in the context of deadlines in criminal procedure. It is undisputed in this matter that by criminal procedure efficiency we mean

10 Dr. Vladimir Bayer: JKPP, knjiga prva, Zagreb 1960 page 4.

the swiftness of criminal procedure development, specifically its conclusion with the shortest possible time I order to arrive to the appropriate court verdict or to the appropriate verdict for its termination. The criminal procedure efficiency can be defined as the swiftness with which the subject of criminal procedure act in the context of resolving the legal – criminal event, specifically the concrete criminal case initiated by subjects authorised to initiate a criminal case in accordance with the Criminal Procedure Code. The swiftness of the criminal procedure development as one of the factors of efficiency, can be justified with justifications of the policy on crimes but only to the extent that it does not effect the legality of the criminal procedure development and the reaching of a legal and proper court decision. We should have in mind that the swiftness of the criminal procedure development and legality are two correlative elements which are were difficult to harmonise.[11]

Based on this, by efficiency of criminal procedure we mean the high level of swiftness which ensures legality in the successful development of the criminal procedure and makes the same efficient. Despite this, there is often mention of non-efficiency of criminal procedure which is anyway conditioned by the deficiencies and frequent mistakes at work and during the work of principal criminal procedure subject, which primarily are related to the disregard of legal deadlines which condition the whole procedure of its inefficiency.

In the determination of his civil rights and obligation or of any criminal indictment against him, every person has a right to a fair and open process within a reasonable period of time in an independent and impartial court, established according to law. [12]

2. DEADLINES IN CRIMINAL PROCEDURE

2.1. Meaning and objectives of deadlines in criminal procedure

With the objective of implementing criminal procedure in an appropriate manner and swiftly, it is necessary to respect as accurately as possible the

11 O. Cvijovič: Uticaj medjusobnih odnosa glavnih procesnih subjekata na efikasnost krivičnog postupka JRK i KP 1995 page 70.

12 Article 6 paragraph 1, European Convention on Human Rights

legal regulations related to the deadline for undertaking specific criminal procedure actions.

With regard to deadlines in criminal procedure the Criminal Procedure Code of Kosovo determines the necessary time for undertaking certain procedural actions in two ways, initially by defining this by determining the generally expressed norm of *"without delay"* (Article 199 § 3 of the CPCK).

In this regard the Procedural Code determines also if the criminal report through which the criminal procedure is initiated, was submitted to the police or to a prosecutor without authority, the same should be accepted and without delay submitted to the prosecutor with authority, (Article 254 § 2 of the CPCK), while the person deprived of his freedom should without delay be presented to the preliminary procedure judge to decide of the detention, (Article 213 § 1 of the CPCK), and afterwards the person is informed of his rights on the immediate assistance of a defence attorney after his arrest in accordance to his wish, (Article 281 § 1 of the CPCK), and that the preliminary procedure judge, specifically the court can set the detention period or free the suspected person from detention, (Article 212 § 1, 2 of the CPCK), or from the arrest and holding by the police authorised by the prosecutor, (Article 306 par. 2 of CPCK), and also after receiving the indictment, the judge confirming the indictment verifies if the indictment has been prepared in accordance with Article 305, (Article 392 par. 1 of the CPCK) and if the same can be confirmed or not, then the issuing of the verdict, (Article 395 § 1 of the CPCK), and the phase of writing the verdict within the legally determined deadline.

The necessary time for undertaking procedural actions is regulated also with the general expression like ***"without delay"*** (Article 211 CPCK), therefore the police can deprive the suspected person of his freedom when there are reasons for holding him based on Article 281, par. 1 of the CPCK, but that they are obliged to bring him without delay before the preliminary procedure judge so that he can decide on his detention, or Article 409 § 1 of the CPCK, when the materials of the case according to the appeal reach the court of the second instance, the reporting judge forwards the case file to the prosecutor with authority, who reviews it and without delay gives his opinion and returns it to the court for a decision to be reached.

The time required for undertaking procedural actions, determines the accurate time related to the deadline within which the procedural actions need to be undertaken. The deadlines determined are foreseen according to different procedural situation which range from 6, 24 and 48 hours; 3, 8 15 days; 1, 2, 3, 5 and 6 months and 1, 2 or 3 years, therefore deadlines are calculated in hours, days, months and years.

The Criminal Procedure Code does not determine the meaning of deadlines. However, in the theory of criminal procedure law we encounter different definitions related to deadlines.

The deadline is a time period set, within which a procedural – criminal action should, can or is allowed to be undertaken[13] and in accordance to all the elements, especially to rights and obligations, this definition is more complete. Some other definitions do not include all the elements of defining a deadline, specifically criminal procedure deadlines.

However, some authors who in criminal procedure law treat deadlines as a science, by deadline imply: initially the moment, day, accurate time determined when a procedural action should be undertaken or the time when the undertaking of such action should start; secondly the time distance in which the action should be undertaken or that the same is not allowed to be undertaken[14]. In the first case it refers to a session, while in the second to a deadline in the legal understanding . [15]

However, without taking into account the previous definition, from the meaning deadline we should distinguish the meaning of session (term). From many criminal procedure sessions, the Criminal Procedure Code of Kosovo, has specifically regulated the main hearing, a session called-set by the court. Abandonment of this session can have procedural repercussions which is dependant of the case foreseen by law or the decision of the court. In this regard, if parties of the determined criminal procedure have been regularly invited but have not come to the main hearing: the defendant can

13 Criminal Procedure Code of Kosovo 2004.

14 Dr. Ejup Sahiti. E drejta e Procedurës Penale, Prishtinë 2005.
Dr. Davor Krapac. Ligji i Procedurës Penale, edition IV, Zagreb 2006.

15 Dr. Dragoljub V Dimitrijević: Krivično procesno Pravo 1965 page 219.

be brought to the following session by force or even be detained (Article 341 of the CPCK); a witness or expert can also be brought by force a also be fine (Article 336 CPCK), while a private plaintiff, under certain conditions can lose the right to criminal prosecution (Article 54 of the CPCK).

The common aim of the criminal procedure, specifically the observing of deadlines and its efficiency is to achieve the most consistent application of the economisation principle and the establishment of conditions for a criminal process which is swift and as efficient as possible. However, in addition to this the aim of observing deadlines and efficiency in criminal procedure is to protect the rights of the citizen, i.e. relief from procedural situation which are tough especially for the detainee, hence detention should be set to the shortest possible time period in order for that suspected citizen detention no to be turned into a suffering of punishment.

The rules of criminal procedure regulate the procedural deadlines, specifically the deadlines of implementing all the determined criminal procedures, while criminal law regulates the substantive deadlines. Therefore, in essence these deadlines differ. While the procedural deadlines represent a set time distance within which the procedural action should, can or is allowed to be undertaken, while substantive deadlines deal with the institutions of substantive criminal law, i.e. prescription of criminal prosecution (Article 90 of the CCK), prescription of enforcement of punishments (Article 92 of the CCK) which are a basis for cessation of rights, in this case of criminal prosecution or specifically enforcement of the punishment.

2.2 Types of deadlines in criminal procedure

The classification of deadlines in criminal procedure is done according to set criteria while the most important division of deadlines is in those *legal* and *judicial.*

Legal deadlines, are deadlines, the duration of which is directly determined by law, i.e. the deadlines for filing an appeal against to verdict of the court of first instance (Article 400, par. 1 of the CPCK). According to the rule these deadlines are preclusive, which means that they cannot be extended, except for in cases specifically foreseen by law (Article 94 of the CPCK), for instance the extension of the deadline for changing the indictment (Article 306, par. 2 of the CPCK), which determines that immediately after receiving the indictment, the judge who implements the procedure for

confirming the indictment verifies if it has been written in harmony with Article 305 of the CPCK and when he evaluates it to have not been written in harmony with provisions of Article 305, he sends it back to the prosecutor to make the changes within a legal deadline of 3 days. However, this 3 day deadline in cases where there are reasonable circumstances, the judge acting on the proposal of the prosecutor can extend this deadline. While is the subsidiary plaintiff or private plaintiff, does not respect the legally set deadline, in such cases it is considered that the private –subsidiary plaintiff has withdrawn from prosecution and the criminal procedure is terminated.

Legal deadlines according to the methods of their regulation are divided into deadlines of set duration, i.e. 8 days and in deadlines of unlimited duration but which are connected to specific procedural moment (i.e. the damaged party might have a limited right to review the material of the case file under Article 80 of the CPCK), he can have a temporary limitation on reviewing the material of the case file if there are special reasons for this, which have to do with national security or something similar.

Judicial deadlines are deadlines the duration of which is set by the court, based on legal authorisation. Judicial deadlines are divided into direct and non-direct deadlines. For direct deadlines, the setting of these judicial deadlines is left to the court to decide. In these cases we are dealing with the discretional right of the judge, without any legally set limitation, during which the judge considers the circumstances of the case, i.e. the deadline within which an expert will present again his opinion-conclusion. If the date from the conclusion of the experts change substantially or when the conclusions of the experts are unclear, incomplete or in contradiction with one another or the circumstances reviewed, and in the event that there deficiencies cannot be overcome with an additional examination of experts, in these cases the expert evaluation is repeated with the same experts or other experts (Article 184 CPCK), or in relation to the deadline for filing a new indictment (Article 376, par. 2 CPCK).

On judicial deadlines in the non-direct sense of the word, the court sets a deadline within the limits set determined by law, and bases this on the set criteria along which the judge set a deadline in line with the law.[16]

16 CPCK 2004 Prishtinë, CPL of BiH 2003 Sarajevo, commentary of the CPL of Montenegro 2006 Podgorica.

According to the ***effects of the deadline*** for undertaking a procedural action, deadlines are divided into ***dilatory*** and ***peremptory.***
Dilatory deadlines are deadlines are those during which period the realisation of certain procedural activities is prohibited, which are legally allowed only after the elapsing of the set time period.

Peremptory deadlines are deadlines as part of which certain procedural actions can and are undertaken, as with the elapsing of deadline the right to undertake such action can be lost.

Deadlines differ from one another by taking into account the criminal-procedural actions for which they have been determined. In consideration of this we distinguish between *court actions, actions by parties and actions from third parties.* This difference in deadlines is interesting due to the repercussions which become apparent in the event of missing the deadlines. The consequence of missing a deadline depends on who has missed it, the court or the party. When the missing of the deadline is made by the court, in this event there are no damaging repercussions. However, if the deadline is missed by the parties, according to rules this has a preclusive effect, meaning that the specific action cannot be undertaken. For the prosecution as a party this applies in cases of the deadline for filing an appeal.

According to the **criteria of cause of consequence** which follows the missing of a deadline, deadlines are divided into *preclusive* deadlines and *instructive* deadlines.

Preclusive deadlines are deadlines the missing of which produces the consequence of losing the opportunity to undertake the criminal-procedural action, and with it is lost the right which would have been fulfilled by undertaking that action, which means that we are dealing here with deadlines which if missed will produce legal repercussions as criminal-procedural actions can no longer be undertaken. In comparison to preclusive deadlines, *instructive* deadlines are deadlines the missing of which does not result in losing the right to undertake criminal-procedural action, which means that we are dealing with deadlines that if missed they do not produce legal repercussions but only (the judge of prosecutor) has unsanctioned duties.[17]

17 Mr. V. Pjanović JRKK 1997, Rokovi u krivičnom Postupku

In the Criminal Procedure Code of Kosovo, for certain actions of the court or of the prosecutor there are instructive deadlines foreseen.

Instructive deadlines according to the CPCK have been foreseen with the expression like "immediately" (Article 210) or "without delay" (Article 221, par 1) . [18]

2.3 Calculation of deadlines in criminal procedure

Deadlines are calculated with hours, with days, with months and years (Article 95, par 1 of the CPCK).[19]

For the setting of important deadlines it is required to determine the moment of its initiation and that of its expiration. The deadline begins to elapse from the moment foreseen in accordance to the law, or from the moment determined by the court.[20]

On deadlines set in hours or days, the hour or day when the notice was served or when the event occurred which is considered as the beginning of the deadline is not calculated as part of the deadline, but rather the first following hour or day is considered as the beginning point of the deadline. A day is calculated as twenty four hours, while a month is calculated according to the calendar (Article 95, par 2 of the CPCK).

Deadlines set in months or years expire in the last month or year, at the end of the same day of the month when the deadline began. If such a day does not exist in the last month, the deadline expires in the last day of that month (Article 95, par 3 of the CPCK).

When the last day of the deadline is on a official holiday, on a Saturday or Sunday or on another day when the competent authority does not work, the deadline passes to the following working day (Article 95, par. 4 of the CPCK).

18 CPCK.

19 CPCK 2004 Prishtinë, Dr. Ejup Sahiti, e Drejta e Procedurës Penale Prishtinë 2005, Kodi i Procedurës Penale i Shqipërisë, Krapac Davor, Kazneno Procesno Pravo II izmenjeno i dopunjeno izdanje, prva knjiga, Zagreb 2003.

20 Hoxha, Artan, Islam, Halim, Panda Ilir, Procedura Penale Tiranë 2007.

This method of calculating deadlines provides for the criminal-procedural party which has been given a deadline in hours or days a complete unit of time which has been expressed wither in hours or days. The hours or day in which the claim was filed is not calculated into the deadline but rather the first following hours or following day. On deadlines expressed in months or days, the method of calculation results in the party having a whole month or year at his disposal.

Deadlines set in hours, for the activities of state authorities, elapse without regard to working hours, holidays or the following days, because here we are dealing with urgent actions, which in criminal procedure have to be undertaken by all means. If the deadline set in hours elapses in favour of the party and passes the date of the holiday or the following day then this deadline is not extended.

When the declaration is linked to a deadline, this is considered to have been delivered within the deadline, if it has been delivered to the person authorised to receive it before the deadline has expired, (Article 92 § 2 of the CPCK).

When the declaration is sent through the mail, registered mail or through other means (telex, fax or other similar means), the date of mailing through registered mail or delivery is considered as the date of filing for the person addressed to. The sender of the declaration is considered not to have missed the deadline, when the person for whom this was intended has not received it because of a failure in the means of delivery for which the sender was not aware of (Article 94 § 3 of the CPCK)[21].

The defendant who is in detention can give a declaration which is linked to a deadline, by including this in the record of the court which is applying the procedure or by filing this at the prison-institution Head Office, which is considered as the day of filing to the authority authorised to receive it. When the submission, the filing of which is linked to the deadline, for reasons of unawareness or a clear mistake of the sender was sent to a court not authorised to received it and hence is received after the passing of the foreseen deadline, will be considered to have been submitted in time (Article 94 § 5 of the CPCK).

21 CPCK Prishtina 2004, Dr. Ejup Sahiti, e Drejta e Procedurës Penale ,Prishtinë 2005.

Filing of giving the declaration after the deadline has expired does not have a legal effect, which is in line with the principle of legality and efficiency of the criminal procedure.

2.4. Return to the previous condition - (Restitucio in integrum)

With the aim of having an efficient criminal procedure and protection of citizen's rights, the criminal procedure should be developed swiftly. For this reason in order to undertake criminal-procedural actions deadlines are foreseen, which according to the rule are short. However, as much as this is good it is also dangerous. Is the deadline is missed damaging consequences can follow for the parties in the procedure, because the missing of the deadline can be missed without it being the fault of the party, therefore the damaging consequences would be unjust. In such situations the law foresees the possibility of the deadline being missed by the party which through this has been affected, and in this regard this party can require from the court to return to the previous condition. From the other side, as much as this institutional rule is in the interest of the principle of the material truth it is also a suitable tool for the extension of the criminal procedure. In consideration of this, the return to a previous condition is not a general institutional rule but is foreseen only for instances foreseen by law, as it has been foreseen by the Criminal Procedure Code of Kosovo that return to a previous condition in certain conditions foreseen by the provisions of the CPCK are to be used by: the defendant, private plaintiff, the damaged party as a private plaintiff and the damaged party who has not been appropriately invited to the main hearing in which a verdict of acquittal was reached due to the withdrawal of the prosecutor. Therefore, for example a defendant that has missed the deadline due to justified reasons for filing an appeal against the verdict, the court will allow the return to previous conditions, in order for the appeal to be filed within a 8 (eight day period.

If the private claimant does not attend the main hearing despite the proper invitation, or that the invitation was not able to be delivered due to the private plaintiff not having informed the court of a change in his address or place of domicile, as he is obliged to do so, the chair of the panel of judges will consider that the damaged party has withdrawn from his legal right to a lawsuit.

The Chair of the Panel of Judges, after the filing of plea for return to a previous condition by the private plaintiff, will allow such a thing, only in cases when the private plaintiff for justifiable reasons could not attend the court session or in cases of an address or place of domicile change, and could not inform the court in time on this matter, and therefore the invitation could not be delivered. In this situation, the damaged party – the private plaintiff within an eight day deadline from the day of this legal limitation being lifted is obliged to file a plea for a return to a previous condition, specifically in a situation after the reaching of the verdict to file a plea for return to a previous condition also, within the legally foreseen deadline of eight days, during which the private plaintiff declares that he continues with the criminal prosecution. In this case a court session is set and with the verdict reached based on the new judicial review the previous verdict is annulled.

If the private plaintiff who was properly invited does not attend the newly set court session, in this event the previous verdict remains in force. The plea for a return to the previous condition can be filed within a deadline of three months, and after the passing of this deadline from the date of it being issued a plea for return to a previous condition cannot be filed as the legal deadline for this has been missed (Article 60 to 68 CPCK)[22].

An appeal against the decision that allows return to a previous condition is not allowed.

The plea for return to a previous condition according to the rule does not prohibit the enforcement of the verdict.

3. DISREGARD FOR DEADLINES AND EFFICIENCY OF THE CRIMINAL PROCEDURE

The efficiency of the criminal procedure is a complex issue, and there is no agreement even in theory on what we mean by efficiency of criminal procedure. It is undisputable that with efficiency of criminal procedure we mean the swiftness of procedure development, and that the swiftness of the criminal procedure can be justified to an extent that does not affect the

22 Articles 60 to 68 of the CPCK

legality of the criminal procedure being applied or violates the rights of the citizen. All of these actions should be regulated with provisions which should be harmonise contradictory tendencies: the efficiency of criminal procedure and the protection of citizen's rights.

The criminal procedure law of 1953 and the many revisions made latter on which have led to the harmonisation and advancement of legal provisions, when in 1967 the requirement for an increased efficiency of the judiciary was made, since then we have an increasing demand for procedural guarantees for the defendant, with a specific orientation in the periods of the following years with tendencies for this relationship to somewhat improve in favour of a better efficiency but including in it all the guarantees in favour of the defendant. [23]
From this we can derive that legal regulation affect the efficiency of criminal procedure.

For a criminal procedure to develop properly and efficiently it is necessary to foreseen an set with this aim in mind deadlines for undertaking criminal-procedural action, therefore in principle it can be said that the observing of deadlines set for undertaking criminal-procedural action have an effect in the efficiency of the criminal procedure. This is the general principle and above all it deals with legal deadlines, the duration of which is regulated by law and that these deadlines cannot be changed by the court nor the parties based on their agreement, except for when such a thing is regulated by law.

Legal provisions on deadlines, important for the protection of the rights of citizens we can slow down the procedure, i.e. when the last day of the deadline is on a official holiday, on Saturday or Sunday, or on another day when the competent authority does not work, the deadline is transferred to the end of the following working day (Article 95, par 4 CPCK), some of the provisions for the submission of letters and review of the case files, in principle letters are sent by mail. The submission can be done also through the authorised municipal authority, to the officer of the authority that has taken the decision or directly through that authority. Letter, the submission of which has to be done in person are delivered directly to the person to

23 Dr. Jovan Buturović, Najnovije izmene ZKP'a i njihov značaj za efikasnost krivičnog Postupka JRKK 1985.

whom it is addressed. The invitation for examination in the preliminary procedure is personally delivered to the defendant, before the judge of the preliminary procedure, in the session for the confirmation of the indictment and judicial review. The receiver and sender both have to sign the delivery slip with the objective of proving the delivery, and the receiver marks in the delivery slip personally the date and hours of receiving the material, which is important for initiating the calculation of the appropriate deadline (Articles 124-134 of the CPCK).

Legal deadlines the duration of which is not limited in time but is linked to a specific procedural moment, like with the right of the subsidiary plaintiff and private one to review the court record, letters and things that serve as proof (Article 61, par. 3 of the CPCK), and is however, an important procedural action which effects the efficiency of the criminal procedure.

Judicial deadlines can also slow down the criminal procedure, especially the real judicial deadlines, i.e. the deadline within which (after the rejection of the indictment by the court) the prosecutor should prepare and file a new indictment. When the plaintiff during court proceedings determines that the evidence considered indicate that the factual conditions presented in this indictment have changed, the one in the court proceedings can change the indictment verbally, and can propose for the court proceedings to be halted to allow the preparation of a new indictment. In the event of halting the court proceedings to allow the preparation of the new indictment by the plaintiff, in this case the deadline is set within which the plaintiff is obliged to present the indictment (Article 376 of the CPCK)

The prolonging of the criminal procedure is affected by the so called instructive deadlines, even though these are rules intended to make the procedure swifter. A specific risk is represented by these norms-deadlines because they are numerous and are dedicated to important and urgent procedural actions. Therefore, investigation in its nature is considered urgent and the law has not determined a deadline for it, but rather the law foresees an instructive deadline: is the investigation is not concluded with a period of six months, the public prosecutor will make a written request to the preliminary procedure judge, together with the reasons for the investigation not being concluded and requests the possibility to continue with the investigation (Article 225 of the CPCK).

After the conclusion of the investigations the prosecutor is obliged within the shortest period possible to take a decision to file the indictment act, which forwarded to the competent court for confirming the indictment, where after accepting the indictment the judge confirming the indictment, is obliged to control formally the indictment, to confirm or refuse it on some or all points of the indictment.

If the indictment does not contain all the obligatory elements, the judge responsible for confirming the indictment is obliged to reject it and return it to the prosecutor in accordance to Article 306, par. 2 of the CPCK, and through this the formal control of the indictment is conducted.

If the prosecutor does not present to the judge in time proposals or other actions or undertakes these in the procedure with considerable delay and through this procrastinates the procedure, in such situations the senior prosecutor is notified (Article 146, par 3 of the CPCK).

In order to prepare the main hearing and setting the main hearing an instructive deadline is provided which is thirty days long, after receiving the indictment, within which the panel of judges, if they do not set the main hearing, will obligate the chair of the panel to inform the president of the court on the matter on the reasons for not setting the hearing, who in turn will take measures if this is seen as necessary in order to set the main hearing (Article 319, par. 1 of the CPCK).

Instructive deadlines are foreseen also for the drafting of the written verdicts, in a regular procedure, specifically within a deadline of fifteen days when the accused is in detention, and within thirty days in other circumstances. When the verdict is not prepared within this deadline, the chair of the panel of judges informs the president of the court on the reasons for its non-preparation. In these cases the president of the court undertakes all measures necessary for the quickest possible preparation of the verdict, but not later than thirty days from the announcement of the verdict, if the accused is in detention and forty five days in all other circumstances (Article 395, par 1 of the CPCK).

A judge for minors is obliged to set a main hearing or session of the panel within a deadline of eight days, after receiving the proposal of the prosecutor

from the day of the preparatory procedure being concluded, or from the day when in the session of the panel it was decided to hold a main hearing. For any extension of this deadline the judge for minors the approval of the president of the court is necessary (Article 69, par. 1 of the KDPM of Kosovo)

Instructive are all deadlines which in themselves have general expressions *"immediately"* or *"without delay*".

Instructive deadlines are legal deadlines which by missing them, specifically by not observing them, there is no legal consequence. For parties missing these deadlines only an official obligation is foreseen which is not sanctioned. Based on these reasons and many others of the objective or subjective nature, instructive deadlines are usually not observed, which directly affects the procrastination of the criminal procedure.

Disregard of deadlines is of an absolute character, and the criminal procedure last too long and is not efficient.

Instructive deadlines are in the interests of the rights of citizens which limit the duration of certain procedural actions. The disregarding of deadlines in the criminal procedure reflects negatively in the development flow of the criminal procedure.

Having in mind that all instructive deadlines are foreseen with the objective of criminal procedure efficiency and also for the protection of citizen's rights who are suspected of committing a criminal act, however such deadlines are not respected and their disregard does not produce legal repercussions, even though it would have a logical or legal basis for the disregard of deadlines in criminal procedure to be considered as a violation of law.

Deadlines in the criminal procedure are above all aimed at the efficient functioning of the criminal procedure. Some of the legal provisions on the deadlines in criminal procedure (i.e. provisions on the passing of the deadlines, on the deadlines for filing paperwork, then provisions for the extension of deadlines, of legal deadlines the duration of which is not limited in time, and similar), can slow down the efficiency of the criminal procedure.

24 CPCK, Prishtinë 2004, Pravna Enciklopedija "Savremena Administracija 1985.

Additionally, the disregard for deadlines affects the efficiency of the criminal procedure, but a specific matter in this is disregard for the so called instructive deadlines. [24]

Only an efficient criminal procedure, which entails a swift uncovering of the criminal act and its perpetrator, the undertaking of criminal prosecutions and the issuing of the criminal punishment, can serve the crime fighting effort, specifically it would be an answer to the objectives of special and general prevention.

Otherwise the procrastination and inefficiency only encourage the potential perpetrators of crimes, as with the procrastination of criminal procedure only strengthens sub-consciousness that time *(will do its bit)* is sufficient to favour especially these young improperly formed persons.

The period of transition and crises which a citizen of the state of Kosovo has gone and is going through, is providing a suitable terrain for the development and perfection of classic criminality, and new aspects of criminality.

In order to fight this occurrence which is being fought but without a proper degree of success, the necessity which faces the proper state authorities and those of the judiciary is the necessity for the criminal procedure to develop swiftly, without delay and efficiently.

The old maxim for the procrastination and fulfilment of justice says: *"How achievable is justice if the criminal procedure last for long and in that case it results in the devaluation of all that which would be achieved through efficiency, which rightly alludes to a state with rule of law".*

What can be done in the improvement and strengthening of efficiency from the quantitative and qualitative aspect, without delay, it is necessary for the author of the law to be raised to the highest level. Primary this means that law enforcement does not depend on the price and evaluation of political parties, and even less on the individual. We should ensure that All those violating the law to be held accountable, as well as those who do not apply the law, and against violators of legal norms. Further we should ensure a unified judicial practice for the whole territory of the Republic of Kosovo, when we are dealing with law enforcement in the whole territory of the state.

What can be done *immediately,* by not waiting for changes in the law and the human resources that we have (when we talk about the problems of human resource nature, primarily we refer to the overburdening of judges, the deficiency in the number of judges and prosecutors, improper conditions for the exercise of these functions, inadequate legal education or similar), it should necessarily to define as accurately as possible all the deadlines foreseen by the CPCK, especially those of the instructive nature, because most of the reasons for the procrastination of the criminal procedure is related to these deadlines.

Therefore, we need to harmonise the Law with our reality, so that it becomes applicable and is in the interest of the parties in the procedure, and would relieve it from romanticism of norms.

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