



The resolution of criminal case through temporary suspension of proceedings: Kosovo Context

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Abstract

Temporary suspension of procedure represents one of the criminal case resolution instruments without having the need to conduct a main trial. In this case, the solution lies in the possibility of terminating criminal proceedings. This instrument in Kosovo although having a relatively long tradition, it results to have marked an advancement in application precisely after 2013, when entered into force also the Criminal Procedure Code of the Republic of Kosovo. As such it may be applicable in cases of commission of light criminal offences punishable by fine or imprisonment up to three years, always by taking into account the nature, circumstances and character of criminal offence and perpetrator, and when the perpetrator undertakes to behave as instructed by the state prosecutor and shall fulfill certain obligations reducing or eliminating the harmful circumstances of criminal offence. The advantages of applying this instrument are numerous and diverse, but mostly refer to increase of criminal-procedural effectiveness. This criminal case resolution instrument in Kosovo Basic Prosecutions work practice results to have been applicable relatively in rare cases. Causes of this situation should be sought in the lack of experience and professionalism concerning its application by Kosovo prosecutors.

Keywords: Criminal Procedure, Criminal Proceedings, Suspension, Prosecutor, Defendant, Victim

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1. Introduction

Temporary suspension of criminal proceedings as a criminal case resolution instrument outside of the main trial has a great criminal-legal, criminal-procedural and criminal policy importance. Through this instrument Kosovo legislator aimed at increasing Prosecutions work effectiveness in addressing and resolution of criminal cases. This instrument shall be used by the State Prosecutions only when it comes to commission of light criminal offences punishable by fine or imprisonment up to three years, when this is allowed by criminal offence nature, the circumstances under which was committed and the character of criminal offence and perpetrator, as well as when the defendant undertakes to behave as instructed by the state prosecutor and shall fulfill particular obligations reducing or eliminating the harmful circumstances of criminal offence. By ruling on temporary suspension of criminal procedure the defendant may be charged the obligation to compensate the inflicted damage, to pay contributions to a public or humanitarian institution or performing work in the general interest. The importance of this criminal case resolution instrument consists on the fact that through this instrument is affected in reducing criminal cases number arising in prosecution, also shall be made cuts to public money expenses dedicated to State Prosecutions work, the society shall be protected from the commission of criminal offences as well as is affected in educating perpetrators of crimes with a sense of repenting, apology and compensation of damage, and victims in order to enhance the cooperation level with criminal procedure bodies. As it shall be seen below, Kosovo prosecutions, despite of their advantages, during the period of time 2013-2016 have applied this criminal case resolution instrument relatively in rare cases. In these terms, is required a concrete commitment of respective institutional spectrum to find aspects of prosecutors motivations in order to use this legal instrument more often in the future in their practical work.

2. Meaning and characteristics of temporary suspension of criminal proceedings institute

Within the reform movements having involved the criminal justice system throughout the world, an important place undoubtedly takes also the promotion and application of new institutes. In these terms, in criminal-procedural aspect alternative procedures are very significant through which is aimed the facilitation and reduction of criminal procedural bodies work (Hajdari, 2013). Implementation of alternative procedures by the Criminal Procedure Code of the Republic of Kosovo (Articles: 230-, 233, The Criminal Procedure Code) is granted to the competent state prosecutor. Therefore, from the state prosecutor is required to use alternative procedures in cases when such procedures are linked to his duties and competences (Law No. 03/L-057), as well as when this is evaluated to be in terms of public interest protection, when this serves to procedural efficiency and consideration of human rights at criminal proceedings and when this is consistent with legal solutions by means of which is regulated the plea agreement issue (Hajdari, 2016a).

Consequently, temporary suspension of criminal proceedings represents a kind of alternative procedure in itself, through which the state prosecutor aims to avoid conviction of light criminal offence perpetrator. In these cases, "the state prosecutor although considers based on data presented in criminal report may be filed

an indictment, he shall be oriented to resolve a criminal case without conducting the main trial (Ejup et al., 2013).

Temporary suspension of procedure entails several features in itself, including:

1. Temporary suspension of criminal proceedings constitutes a kind of alternative procedure in itself through which is made possible the resolution of criminal case without conducting the main trial. In this case the state prosecutor may dismiss the criminal report and terminate criminal proceedings.
2. This institute is granted exclusively to the state prosecutor. He based on case and assessment of circumstances related to it shall decide whether to implement this type of alternative proceedings or not. Therefore, the solutions contained in the Criminal Procedure Code of the Republic of Kosovo do not recognize this authority to court.
3. This institute may be applicable only when it comes to commission of criminal offences punishable by fine or imprisonment up to three years. This means to criminal offences for which are foreseen more severe punishments shall not be applicable provisions which regulate this criminal-procedural institute (Funk, 2006).
4. Through this institute may be imposed specific obligations to the defendant. Such obligations mostly are focused on compensation of damage issue, payment of any contribution to any public or humanitarian institution or performing work in the general interest (Hajdari, 2016d).
5. Through this institute, depending on fulfillment of obligations or not by the defendant, may be granted the termination of criminal proceedings or re-commencing criminal prosecution. Exclusivity of decision-making is granted to the state prosecutor.

3. Procedure for application of temporary suspension of criminal process

Temporary suspension of procedure may be granted by the competent state prosecutor. He may suspend temporarily the criminal proceedings with the intention to terminate it only when it ascertains the fulfillment of legal conditions (for the committed criminal offence punishable by fine or imprisonment up to three years); when is provided the consent of injured party, when after analyzing and reviewing the case it concludes that the nature, circumstances and character of criminal offence and perpetrator allow such a thing; when is convinced that the defendant shall fulfill its commitments to behave according to given orders and shall fulfill certain obligations reducing or eliminating the harmful consequences of a criminal offense, including: elimination or compensation of damage; payment of a contribution to a public or humanitarian institution or funds for compensation of damage to victims of criminal offences; or performing work in the general interest. "For temporary suspension of criminal proceedings the state prosecutor shall issue a special ruling. In this ruling he should specify obligations imposed for the defendant, the time of their fulfillment and warning about the consequences of non-fulfillment (Islami et al., 2003)". After issuing the ruling on temporary suspension of criminal proceedings the state prosecutor should monitor whether the defendant fulfilled imposed obligations.

Consequently, if the defendant within a period of time not longer than 6 months fulfills obligations, a criminal report shall be dismissed or investigation shall be terminated. Therefore, if it comes to dismissal of a criminal report or termination of investigation, the injured party has no right to propose criminal prosecution. About the loss of this right the state prosecutor should notify the injured party before he gives the consent on suspension of criminal prosecution. Whereas in cases when the defendant does not eliminate respectively compensate the damage, does not make a payment on determined contribution for any public or humanitarian institution, respectively about the fund of compensation of damage to victims of crimes, or does not perform the useful job as ordered, the state prosecutor, depending on the assessment of situation, may re-commence the prosecution of a criminal offence. Despite fulfilling formal conditions, the legislator made it clear the fact that state prosecutor cannot conduct the procedure for suspending investigation, even though there is a consent given by injured party in cases of domestic violence or sexual violence (Hajdari, 2013).

4. Conditions on implementation of temporary suspension of criminal proceedings

For implementation of temporary suspension of criminal proceedings should be fulfilled conditions determined by article 230 of Criminal Procedure Code of the Republic of Kosovo. These conditions refer to:

1. Small importance of committed criminal offence. In order for a state prosecutor to be able to issue the ruling on temporary suspension of criminal proceedings, pursuant to paragraph 1 of article 230 of Criminal Procedure Code of the Republic of Kosovo is required to have been committed a criminal offence punishable by fine or imprisonment up to three years foreseen by legislator (Hajdari, 2016b).
2. Coming to conclusion that the nature, circumstances and character of criminal offence and perpetrator allow such a thing. This means it cannot be granted temporary suspension of criminal proceedings for all types of criminal offences to which is foreseen as a principal punishment fine or imprisonment up to three years. Hence, this criminal procedural institute it cannot be applicable for criminal offences of domestic violence or sexual violence, when they have been committed by intent and the perpetrator is a recidivist or does not regret for the criminal offence committed as well as does not show willingness to compensate the damage.
3. Commitment of the defendant to behave as instructed by the state prosecutor. Although the legislator does not specify it, the state prosecutor may require the defendant to apologize to victim for the criminal offence committed, to regret, to repent, to make compensation of damage etc. What kind of requirements shall be imposed (Shegani, 1999) to the defendant by state prosecutor depends on the nature of a criminal offence, circumstances of its commission, capacity of perpetrator etc.
4. Determination of the defendant's obligation in order to fulfill concrete obligations. These obligations according to the legislator are dealing with: elimination or compensation of damage, payment of any contribution to any public or humanitarian institution or funds for compensation of damage to victims of criminal offences or performing work in the general interest. What kind of obligations shall impose the state prosecutor to the defendant depends on the nature of criminal offence,

circumstances of its commission, characteristics of perpetrator, including the amount of inflicted damage, social situation of the defendant etc.

In practical terms, temporary suspension of proceedings may manifest several negative effects. These effects mainly may appear in cases when this instrument does not lead to the termination of the proceedings against the defendant. Such effects could come as a result of granting temporary suspension of procedure without fulfillment of the respective legal requirements and without studying the circumstances concerning the personality of perpetrator, and they especially reflect in the duration of procedure, de-motivation of perpetrators to cooperate with procedure bodies etc. Therefore, it is necessary for the state prosecutor to administer carefully these circumstances, before granting the implementation of this alternative procedure.

5. Authority for temporary suspension of criminal proceedings application

The competence to implement temporary suspension of criminal proceedings in the Republic of Kosovo belongs to state prosecutor (Article 14, Laë No. 03/L-225). This is a prosecutor in charge of the case concerning which has been filed a criminal report or has been filed a proposal for prosecution (Ejup et al., 2013).

By issuing the ruling on temporary suspension of criminal proceedings the competent state prosecutor, as abovementioned, should take into account these elements: nature of criminal offence (criminal offences punishable by fine or imprisonment up to three years foreseen by legislator), circumstances of its commission (to have been committed by negligence), character of criminal offence (not to be as a result of domestic violence or sexual violence), character of perpetrator (to have committed a criminal offence for the first time) his commitment to behave as instructed by state prosecutor as well as the promise to fulfill certain obligations reducing or eliminating the harmful consequences of criminal offence (for instance to compensate the damage).

By ruling on temporary suspension of criminal proceedings, as abovementioned, the state prosecutor sets a term to the defendant which cannot be longer than 6 months in order to fulfill one of these obligations: elimination or compensation of damage, payment of a contribution to a public or humanitarian institution or funds for compensation of damage to victims of crime or performing any work in the general interest (for instance cleaning public roads, city parks etc.). Consequently, if the defendant fulfills certain obligations then the state prosecutor dismisses a criminal report. Otherwise, to state prosecutor is given the possibility depending on circumstances of case to re-commence criminal prosecution or to dismiss the case (Legal criteria).

When state prosecutor re-commences criminal prosecution he has the authority to exercise all procedural actions in order to functionalize it. If the results of their application dictate to file a case at court, he shall prepare the indictment and shall submit for adjudication to a competent court. On the contrary, the state prosecutor even after re-commencing prosecution may dismiss criminal proceedings (Hajdari, 2013).

6. The importance of criminal case resolution through temporary suspension of criminal proceedings

Criminal case resolution through temporary suspension of criminal proceedings has multiple importance. Consequently, this procedural-criminal instrument manifests stretch of interest as in criminal procedure law (Criminal Procedure Code, Temporary suspension), in criminal law (Latifi et al., 2012) as well as in criminal policy (Milutinoviq, 1984). As a matter of fact, the importance of criminal case resolution through temporary suspension of criminal proceedings is dealing with the fact that through this instrument:

1. The number of courts cases would be reduced. This is due to the fact that criminal cases resolved by the state prosecutor through temporary suspension of procedure do not become subject of criminal proceedings at all. This approach has a great criminal-policy importance bearing in mind the fact in Kosovo Courts and Prosecutions wait for resolution about half million of cases, from which half of them are criminal cases. (<http://www.kpk-rks.org/raporte/222/2017-raportetv/222>).
2. It could shorten the public money expenses which in terms of conducting regular criminal proceedings would be spent for the implementation of repeated procedures in terms of witnesses and experts examination, as well as lump sum would be doubled and other expenses. Therefore, legal enforcement of this alternative procedure of criminal case resolution is estimated to be of a special importance also due to the fact that Kosovo continues to have a very limited budget. (Law No.05 / L-109).
3. It contributes towards a better protection of society from re-commission of criminal offences, based on the fact that the accused persons for the commission of criminal offences in relation to which was applicable temporary suspension of criminal proceedings in practice very rarely decide to commit again criminal offences, in comparison to persons tried by courts. This fact is proven by adjudication of criminal cases with recidivist perpetrators. Consequently, during the researching period it results only one case where a person was involved in the trial which in advance was handled through temporary suspension of procedure (Hajdari, 2010).
4. Perpetrators of criminal offences shall motivate to be educated with the feeling of repenting for the committed offence, apology and compensation of damage for the victims of crime. In fact, up to resolution of a criminal case through temporary suspension of criminal procedure may be applicable only when the defendant repents for the crime committed, apologizes to the victim and compensates the damage caused, or make payment of the specified amount in account of any public or humanitarian institution or performs work in the general interest. Such decision-making concerning criminal case seems to be indicated very effective in elimination of the vengeance feeling, which regarding several criminal offences, such is the case with criminal offences against life and body continues to be present to a considerable category of victims of these crimes. This fact is proven by criminal records of the Basic Court of Pristina, Gjilan, Mitrovica and Peja, from which results that there is no recorded any case of criminal offence commission by vengeance motives, within resolved cases through temporary suspension of procedure (Hajdari, 2016a).

5. Victims of crimes shall be motivated in cooperation with state prosecutor to raise the level of communication with perpetrators of criminal offences aiming to realize easier the compensation of inflicted damage from criminal offence. In case of temporary suspension of criminal proceedings application comes more quickly, more easily and in a manner that more satisfies criminal-procedural parties to realization of property claim (Hajdari, 2016c).

7. Several data on temporary suspension of criminal proceedings application

In order to be able to come to conclusions and addressing concrete as well as useful recommendations for the state prosecutor and other responsible authorities for combating crime to elaborate the State Prosecution work concerning the application of temporary suspension of criminal proceedings in Kosovo for the period of time including the last four years (2013-2016). We have been focused in this short period of four years based on the fact this instrument of criminal case resolution has been marked tendency of advancement after the Criminal Procedure Code of the Republic of Kosovo entered into force on January 1, 2013. Presentation of prosecution work concerning this instrument was not easy at all. This due to the fact concerning this institution work, regarding temporary suspension of criminal procedure application during the researching period the published data have been accompanied by many deficiencies. These deficiencies have been reflected also within reports which regarding the work of prosecutions publishes Kosovo Prosecutorial Council. Despite of this fact, in the following treatments, presentation of cases of criminal case resolution through temporary suspension of criminal proceedings shall be conducted based on data obtained from criminal registers of four of the seven basic courts which currently act in the territory of Kosovo, and the Basic Prosecution of Prishtina, Gjilan, Mitrovica, Peja (Criminal records, Year 2013 – 2016).

In the following, in a special table shall be presented data concerning the number of criminal cases which State Prosecution of Prishtina, Gjilan, Mitrovica and Peja have resolved through temporary suspension of criminal proceedings during the period of time 2013-2016.

Table 1. The number of criminal cases resolved through temporary suspension of criminal proceedings by State Prosecution of Prishtina, Gjilan, Mitrovica and Peja (2013-2016).

Years	Number of cases processed for solution through temporary suspension of criminal proceedings	Number of resolved cases through temporary suspension of criminal proceedings	Number of resolved cases through other legal instruments
2013-2016	613	583	32908

According to these data during the period of time 2013-2016 to Basic Prosecution of Pristina, Gjilan, Mitrovica and Peja have been processed 613 criminal cases for resolution through temporary suspension of

criminal proceedings. From this number, abovementioned Prosecutions have resolved 583 cases through temporary suspension of criminal proceedings, whereas only 30 other cases have processed for resolution in court. This kind of decision-making abovementioned prosecutions have applied in all cases (30 of them) when the defendants did not fulfill determined obligations imposed by the ruling on temporary suspension of criminal proceedings. Data used prove that the Basic Prosecution of Pristina has applied temporary suspension of criminal proceedings in the biggest number of cases (288), whereas the Basic Court of Mitrovica has applied this instrument of criminal case resolution only in 37 cases. This fact indicates that Kosovo prosecutions prefer more criminal case resolution through other manners of their resolutions (main trial, mediation, punitive order and initial review of indictment) where results to have been resolved 32908 criminal cases. This occurs due to the fact Prosecutions during criminal case resolution prefer facing criminal procedural parties with more evidence and arguments, this circumstance it appears to come to expression more at main trial.

Bearing in mind the application advantages of this criminal cases resolution instrument, I consider that Kosovo State Prosecutions should in the future apply it more often. As it results a number of criminal cases, although they could easily be resolved through temporary suspension of criminal cases resolution, they were not resolved in this manner. For the current situation, probably influenced the fact of lack of experience, but also the lack of proper level of professionalism. Therefore, I consider that the state prosecutions in the future should organize relevant trainings which increase the level of professionalism in the work of prosecutors towards common application of this instrument, so in this way the state and criminal-procedural parties easier could manifest their interests in criminal proceedings.

As a matter of fact, also in some countries of Balkan Region temporary suspension of procedure results to be applicable to relatively low levels. Thus, in Albania this instrument is applicable about 3% to criminal cases, 3.4% in Macedonia and in Montenegro about 4% of cases (Krasniqi, 2016).

8. Conclusion

Modest results of this scientific paper led me to these conclusions:

1. Temporary suspension of criminal proceedings is a criminal-procedural instrument which enables the resolution of a criminal case without conducting the main trial. In these cases the defendant avoids the consequences of a public criminal process, which otherwise is inevitably when the criminal case is resolved through the main trial.
2. The Criminal Procedure Code of the Republic of Kosovo enabled criminal case resolution through temporary suspension of criminal proceedings, by authorizing the dismissal of criminal proceedings about criminal offences cases punishable by fine or imprisonment up to three years, always by considering the nature, circumstances and character of a criminal offence and perpetrator and when the defendant undertakes to behave as instructed by state prosecutor and shall fulfill certain obligations reducing or eliminating the harmful consequences of criminal offence.

3. Competent for dismissal of criminal proceedings through temporary suspension of proceedings is the state prosecutor working at the General Department of Basic Prosecution. He applies this criminal case resolution instrument only when it is ascertained the fulfillment of legal and factual relevant criteria. This means that state prosecutor although initiating temporary suspension of criminal proceedings is entitled not to dismiss the criminal proceedings. This approach is imposed in those cases when the defendant does not fulfill at all determined obligations by the state prosecutor.
4. Resolution of criminal case through temporary suspension of criminal proceedings manifests effects of state positive character for the defendant and the victim of crime and their families. Through this instrument is affected in reducing the number of pending court cases, there shall be a cut of public money expenses, there shall be a raise of social responsibility level, and shall be eliminated the cases of vigilantism.
5. During research of the Basic Prosecution of Pristina, Gjilan, Mitrovica and Pejawk, has been noticed that during the period of time 2013-2016 they have applied this instrument of criminal case resolution in very few cases. According to used data these prosecutions during this period of time have dismissed criminal proceedings through temporary suspension of proceedings instrument in 583 cases.
6. Kosovo Basic Prosecutions, by bearing in mind the great importance having temporary suspension of criminal proceedings, is required to apply in the future more often this criminal case resolution instrument. In this regard, is required for Kosovo prosecutors to be developed respective training programs that would motivate them toward common application of this instrument.

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