РОЗДІЛ 3
КРИМІНАЛЬНЕ ПРАВО, КРИМІНАЛЬНИЙ ПРОЦЕС, КРИМІНАЛІСТИКА ТА КРИМІНОЛОГІЯ

Сучасний етап розвитку юридичної науки харакетризується не лише оновленням наукових знань його теоретичної складової, але і розрахованість на професійне застосування наукових розробок у практичній діяльності.

Наукове пізнання сутності сучасної злочинності, яке забезпечують такі юридичні науки як кримінальне право, кримінологія, кримінальний процес і криміналістика, спрямоване на отримання об'єктивного та істинного знання стосовно об'єкта, який вивчається, і не допускає суб'єктивно-тенденційного ставлення до нього. В цьому виявляється соціальна цінність наукового знання, нагальна потреба у ньому.

Все наведене повною мірою стосується кримінально-правового та криміналістичного знання та пізнання. В сучасних умовах роль науки кимінального права і криміналістики набуває все більшої актуальності та практичної значимості.

Отже, перед науковцями стоїть важливе завдання пошуку новітніх форм і методів запобігання сучасної злочинності. Тому роздуми і міркування про перспективи розвитку науки кримінального права і криміналістики та подальшого використанн їх напрацювань – у вироблені стратегії запобігання та протидії злочинності є надзвичайно значимими, корисними і пріоритетними для сучасної юриспруденції.

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BAIL AS A MEASURE OF ENSURING PRESENCE OF THE DEFENDANT IN CRIMINAL PROCEDURE (STANDARD AND PRACTICE IN THE REPUBLIC OF SERBIA)

In the criminal procedural law of the Republic of Serbia, and thus in its criminal procedure legislation, special attention is paid to measures ensuring the presence of the defendant in criminal proceedings. One of the reasons for such treatment of this issue is the fact that the presence of the defendant in the criminal procedure is obligatory. For the purpose of practical implementation of this standard, the Criminal Procedure Code of the RS (hereinafter referred to as CPC of RS) also provides for measures to ensure the presence of the defendant

in criminal proceedings. One of the seven foreseen measures is bail (Bejatović, 2019).

Bail is a measure that represents a substitute for a measure of detention that is to be ordered or has already been ordered because of the risk of the defendant's escape. As such, bail relates to detention, and above all to the basis for detention. It represents a substitution to detention and serves as its alternative. Observed in relation to a measure of detention, the benefits of bail are numerous, which must be borne in mind when deciding on its imposition. Bail ensures the presence of the defendant and the smooth running of the proceedings, avoiding the harmful effects of the restriction of the defendant's personal freedom. At the same time, the budgetary costs of the defendant's stay in detention do not exist and, at the end of the proceedings, possible compensation for damages for unjustified deprivation of liberty is avoided. In addition, bail, as well as other measures alternative to detention, reduces the overcrowding of detention facilities, which in Serbia and not only Serbia is a chronic problem (Banović, 2019).

Although bail is a substitute for detention, whether a bail measure will replace a detention measure depends primarily on the grounds on which the detention is ordered or is to be ordered in a specific criminal matter. Only in the case of the flight risk as a basis for detention can its substitute be a bail measure. Only if this assumption is fulfilled, can a defendant who is to be detained or already in detention stay released or be released if he personally posts bail or someone else posts bail that he will not escape by the end of the proceedings and if the defendant himself, before the trial court, promises not to hide and not to leave his place of residence without the court's approval.

The bail initiative may originate from the party, counsel or the person posting the bail for the defendant. However, the court may also order bail ex officio. The decision on bail is made in a detention order or in a special decision if the defendant is already in detention, and the amount is determined according to the criteria prescribed by law (the degree of flight risk, the personal and family circumstances of the defendant and the financial status of the person depositing bail), but also by the criteria built by the case law, which admittedly is not easy to fully identify and evaluate (Đurđević, 2015).

In addition to the very broad regulatory capacity for applying the measure of bail, courts rarely use this authority in practice (Martinović & Bonačić, 2015).

When it comes to determining a measure of bail, one of the disputable questions is if the adoption of a custody decision represents an indispensable precondition for the possibility of bail. The question is based on the imprecision of the standard that treats this issue. According to some people and according to practice the current legal wording regarding this issue means that in both cases the decision on detention has already been issued and the court does not terminate the detention by determining bail, but only brings detention to the

inactive status, and if it is to be activated and when it depends on the fulfilment of the assumed obligations, i.e. what happens with the bail. Contrary to this, there is a quite justified viewpoint that the practice outlined above has no justification, because at the same time there cannot be two judgments, which essentially relate to the same procedural situation and with completely opposite content (Bejatović, 2019: 26).

No matter how bail is deposited (by depositing cash or, for example, by mortgaging the amount of bail to the immovable property of the person who deposits it), it is always a monetary amount.

The limits of the amount of bail (its minimum and maximum) are not specified by law. The court in each particular case, having regard to all circumstances, such as the degree of flight risk, the gravity of the crime, the personal and family circumstances of the defendant, and the financial status of the person depositing bail, determines its amount and it should be such as to remove any doubt that the defendant will escape.

What happens with the bail depends on the defendant's conduct. So for example, the defendant for whom bail has been deposited will be ordered into detention if he does not arrive on a proper call and the absence is not justified or if another reason for detention arises.

Finally, in relation to this measure, it should be noted that, unlike the intention of the legislator, in an unjustifiably small number of cases practice shows that the measure of detention is replaced by the measure of bail replaced by a measure of detention (Banović, 2019: 223). Considering the advantages of the measure of bail over detention, the attitude of the expert public in the Republic of Serbia is that the measure of bail in criminal proceedings must receive much greater attention.

Bail as a measure of ensuring the presence of the defendant in criminal proceedings is one of the traditionally present measures of ensuring defendant's presence in criminal procedure legislation of the Republic of Serbia. However, in spite of the wide legal possibilities for applying the bail measure and the attitude of the expert public as regards the matter, in practice, the measure of detention is still pronounced as a rule, whereas bail stands as an exception among measures applied to ensure the presence of defendants in criminal proceedings.

References

1. Bejatović, S. Measures of ensuring the presence of the defendant in criminal proceedings – notion, ratio legis for its regulation, types, general rules of application and experiences in its application, OSCE Mission in Serbia, Belgrade, 2019.

2. Banović, B. Bail as a measure of ensuring the presence of the defendant in criminal proceedings – standard, practice and past experience in application, Zbor. «Detention and other measures to ensure the presence of the defendant in criminal proceedings'», OSCE Mission in Serbia, Belgrade 2019. Pp. 201-224.

3. Đurđević, Z. Legal nature, legal frame and the purpose of bail in criminal

proceedings. *Hrvatski ljetopis za kazneno pravo i praks.* Zagreb. Vol. 22. No. 1/2015. P. 15.

4. Martinović, I., Bonačić, M. Bail as a substitute for detention: open issues. *Hrvatski ljetopis za kazneno pravo.* Zagreb. Vol. 22. No. 2/2015. P. 419.

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THE PETTY OFFENCE OF INDECENT MISCONDUCT UNDER THE POLISH LAW OF PETTY OFFENCES (ARTICLE 140 OF THE CODE ON PETTY OFFENCES)

Pursuant to Article 140 of the Code on Petty Offences, whoever publicly commits indecent behaviour shall be punished with custody, restriction of liberty, a fine of up to PLN 1,500 or the penalty of reprimand. This petty offence is included in Chapter XVI of the Code on Petty Offences ("Petty Offences against Public Morality"). Article 140 of the Code on Petty Offences had its equivalent in the earlier codification of the substantive law of petty offences, namely Article 31 of the Law on Petty Offences of 1932, which originally had the same wording as the current Article 140 of the Code on Petty Offences. It was subsequently modified in 1946 by adding to it the conduct consisting in the public use of indecent words (currently this behaviour is penalized in Article 141 of the Code on Petty Offences).

The general object of protection under Article 140 of the Code on Petty Offences is public morality. It is not an easily defined concept. However, it can be assumed that public morality is a set of essential patterns of behaviour in various spheres of human life, approved and recommendable in a given society, shaped on the basis of history and tradition, as well as by the current socio-economic and cultural situation, the adherence to which is supposed to ensure the proper functioning of society, while failure to adhere to them by an individual implies a negative reaction from society [1, pp. 78-79]. It is therefore evident that in this case public morality is not limited only to sexually-related behaviour. Furthermore, it should be noted that public morality varies in time, in the sense that what was considered indecent in the past may no longer be considered as such. An example of this can be the judgement of the District Court in Szczecin of 3 February 2009, under which two women were acquitted of the alleged indecent misconduct by sunbathing topless at a municipal beach, and what is significant, the court, when issuing this judgement, pointed to, among other things, the issue of changing social habits [2]. Morality also appears as a protected interest under the Penal Code of 1997. (Chapter XXV -