



SUMMARY
JUDICIAL PRACTICE ON REPLACING PRE-TRIAL DETENTION WITH
ALTERNATIVE MEASURES OF RESTRAINT IN ARMENIA IN THE
CONDITIONS OF COVID-19 DISEASE PANDEMIC

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Summary

Judicial Practice on Replacing Pre-trial Detention with Alternative Measures of Restraint in Armenia in the Conditions of Covid-19 Disease Pandemic

In 2020, as part of the battle against a new type of coronavirus (COVID-19), which is widespread in the world, special attention was paid to the responsibility of the state to control and prevent the spread of the disease among persons deprived of their liberty. To prevent the spread of a new type of coronavirus in penitentiaries, international bodies, such as the Council of Europe Commissioner for Human Rights, the Council of Europe Committee for the Prevention of Torture, The World Health Organization (WHO) and its Regional Office for Europe, the United Nations High Commissioner for Human Rights (UN OHCHR), the United Nations Office on Drugs and Crime (UNODC), the United Nations Joint Program on HIV / AIDS (UNAIDS), adopted recommendations to the states on the necessary strict measures to implement measures not only to protect the health of persons in penitentiaries and other places of deprivation of liberty, but also to solve the problem of overcrowding by using alternatives to deprivation of liberty.

Taking into account the prevalence of the pandemic in the Republic of Armenia, non-governmental organization "Protection of Rights without Borders" conducted a study on the practice of application of pre-trial measures of restraint by domestic courts in the context of the coronavirus pandemic, the grounds and justifications for the application of the pre-trial detention, assessment of the pandemic and risks created by it to study the role of the latter in determining the measure of restraint. In order to conduct research, publicly available decisions delivered from 16 March to 30 June 2020 were identified through the datalex.am website and analyzed, where the courts of general jurisdiction of the Republic of Armenia examined the motions to replace detention with another measure of restraint while adjudicating on criminal cases. Judicial acts refer to the judicial review of measures of restraint towards defendants in criminal cases at the trial phase in 2018-2020. In addition, the decisions on application of the measure of restraint in criminal proceedings provided by the Judicial Department of the Republic of Armenia in response to the inquiry of the organization were analyzed. The latter included the cases that were accepted for court proceedings before 2018. For this study, 129 cases in relation to 149 persons containing a decision on replacing the pre-trial detention of the defendant with another measure of restraint were selected. The decisions were examined through specially designed questionnaires, which included:

- Personal data of the defendants (gender, age, marital status, etc.);
- The court adjudicating on the criminal case and the judge;
- The motion of the Prosecutor / defense counsel to change the measure of restraint applied to the defendant;
- The Prosecutor / defense counsel's reference to the risk to the defendant related to COVID-19;
- The position of the Prosecutor/ defense counsel on the submitted motion;
- The decision of the court and its justifications, the circumstances taken into account, etc.

The study revealed the following information about the profile of the defendants. Of the 149 defendants, five were women, the remaining 144 were men. As for the age groups, 10 defendants were 18-25 years

old, 28 were 26-35 years old, 10 were 46-55 years old, and there was no mention of the age in the judicial act in relation to 81 persons.

41 defendants had minor children or children under their custody, 19 had no one under their custody, and one defendant had a sick father under his custody. The judicial act did not contain any information about the remaining 88 persons. 26 of the defendants had previously been convicted; the criminal record of three of them was expunged. 23 persons did not have a criminal record. There was no mention of the criminal record in the in the judicial acts in relation to eight persons.

As for the courts, it should be noted that the largest number of judicial acts was delivered by the Court of First Instance of Yerevan (in relation to 77 persons), the Court of First Instance of Lori Region (in relation to 22 persons), the Court of First Instance of Shirak Region (in relation to 13 persons) the Court of First Instance of Kotayq Region (in relation to 12 people), etc.

In general, the reviewed decisions were made in the following period: six decisions - in March, 91 - in April, 36 - in May, and 16 - in June.

91 (61%) of the reviewed motions on application of non-custodial measures of restraint in relation to 149 defendants were denied and 58 (39%) were granted. The charges against the defendants were related to the following crimes: theft (32 cases), robbery (14 cases), mugging (6 cases), fraud (22 cases), embezzlement (2 cases), drug trafficking for the purpose of selling or preparing drugs, psychotropic substances, their precursors or their illegal sale (25 cases), smuggling of drugs, psychotropic substances or their precursors (5 cases), illicit trafficking in drugs or psychotropic substances (12 cases), murder (29), intentional infliction of grievous bodily harm (14 cases) , causing severe physical pain or severe mental suffering (1 case).The remaining cases were related to public safety, computer information security, crimes against public health (6 cases), crimes against public order and morale (6 cases), crimes against economic activity (3 cases), crimes against governance order (5 cases) and crimes against state service (1 case).Referring to the submitted motions, it should be noted that in its motions the defense mainly invoked the risks caused by the spread of the pandemic, the health condition of the defendants and their diseases, the need for the accused to take care of minors under their custody, decrease of the risks related to the grounds for the detention, the age of the defendants, overcrowding of penitentiaries, impossibility or difficulty attending hearings due to the pandemic, cases of confirmed COVID in penitentiaries, or simply referring to the CPT report without specifying specific cases. Nine of the defense motions contained exclusively references to the health condition of the person.

In the remaining cases, the health status of the person was considered in the context of other circumstances to assess the need to replace detention with another measure of restraint

In response to the defense's motions, the prosecution's objection mostly referred to the fact that the defense did not provide arguments that their clients were in a vulnerable group or had such health problems that being incarcerated during the pandemic could be dangerous to their health. The prosecution also argued that the isolation of persons is maintained, there are no cases of confirmed COVID in penitentiaries, the sanitary conditions are maintained, there is no overcrowding, etc. As for the CPT report, the prosecution mainly stated that it was of an advisory nature, hence that it had no absolute significance, and that in the cases in question it could not neutralize the grounds for detention.

It is noteworthy that as for May 2020 prosecutors motioned to replace detention with other measure of restraint in relation to 18 defendants based on their health condition. At the same time the study revealed that prosecutors objected to the motions to replace the measure of restraint of defendants with similar combination of diseases underlying their motions, including those with respiratory diseases.

The study revealed that in case of granted motions, the courts took into account mainly:

- 1) Defendant's being in a vulnerable group due to the health or age
- 2) Uncertainty of the term of detention as a result of delays in the appointment and holding of court hearings because of the pandemic.

In some cases, during the review of the detention, courts have considered the state of health in the light of the current legislation, without addressing the pandemic and risks posed by it, despite the fact that the defense counsel had raised concerns over that risk.

At the same time, there were 10 persons with disabilities; the court granted the motions to change the measure of restraint in relation to eight of them.

As for the age as a factor to demonstrate belonging to a vulnerable group, only in three cases the defendants were considered at risk based on age.

Analysis of the judicial acts on the denied motions revealed that:

- 1) the court denied the motion citing the existence of grounds for continued detention of the defendant;
- 2) the court did not consider the risks of coronavirus diseases sufficient ground to change detention to a non-custodial measure;
- 3) the state of emergency in the country has no effect on the examination of the case within a reasonable time.
- 4) the reasoning of the courts for denying the remaining motions mainly repeats the arguments of the prosecution.

Taking into account the findings of the study, as well as the scale of the next wave of a new type of the coronavirus disease in the Republic of Armenia, we recommend that:

The bodies conducting the investigation

- Ensure the use of detention as measure of restraint against the accused only as an exceptional measure,
- Refrain from requesting the detention of persons accused of minor and non-violent offenses.
- Ensure uniform practice in respect of motions to use and replace detention as a measure of restraint against persons with health problems.

The courts

- Act on the presumption of liberty when deciding on the application of measure of restraint against persons with an age- and sickness-related vulnerability to coronavirus disease, as well as persons charged with minor and non-violent crimes,
- Assess and substantiate the reasonable suspicion that a specific crime was committed by the accused based on specific facts and information,
- Eliminate the possibility of applying a measure of restraint on a person, exclusively based on the gravity and danger of the crime,

- Ensure the principle of justification and reasoning of decisions, when making decisions on the application of a measure of restraint against a person,
- Ensure the individuality of decisions when making a decision on the application of a measure of restraint against a person, based on the assessment of the information about the individual circumstances of the person, including health status.