

Conclusions of the summary report on the examination of the courts' jurisprudence on coercive measures restricting personal liberty

Based on section 29, subsection (1) of Act no. CLXL of 2011 on the Organisation and Administration of the Courts of Hungary, the President of the Curia decided, in December 2015, to set up a working group to examine the courts' jurisprudence on coercive measures restricting personal liberty. The working group included the retired Vice-President of the Supreme Court, a number of heads of panels and justices from the Curia, the president and the head of department of a regional appellate court, the head of department of a high court and a professor who is the head of a university department.

The examination covered the imposition, extension, termination and periodic review of coercive measures both prior and subsequent to indictment.

The data and court decisions necessary for the working group's investigation were provided by the high courts and the regional appellate courts.

The results of the working group's most important findings can be summarised as follows:

- In order to eliminate the errors of the courts' previous case-law, it is appropriate to examine in every case whether the imposition of a less severe measure might not be sufficient to achieve the desired aim. Pre-trial detention should be imposed or maintained only if the court deems that house arrest or the prohibition to leave the place of residence would not be a suitable option, similarly, house arrest should be ordered only if the prohibition to leave the place of residence was not an appropriate means to attain the desired objective.
- The assessment of whether the imposition of a less severe measure is sufficient should be carried out, in particular, subsequent to the submission of the bill of indictment and the delivery of the first instance court's on-the-merits decision.
- The legal requirement according to which the court has to make all efforts to reduce the term of the pre-trial detention as much as possible [section 136, subsection (1) of the Code of Criminal Procedure] should always be borne in mind.
- The reasoning part of court decisions should not be drafted in a mechanical fashion. The courts should take the findings of the departmental opinion referred to in the summary report into due consideration and should substantiate the ordering of coercive measures by bringing forward the specific circumstances and the applicable legal grounds that justify such measures.
- The courts should give, in each and every case, due consideration to the arguments of the accused person and his defence attorney, even if their arguments do not justify the delivery of a court decision. The courts should not only refer to such arguments, but should also give reasons for their rejection. In addition, the courts are obliged to decide on the petitions of the accused person or his defence attorney.
- The non-final imposition of an imprisonment sentence in itself does not justify, in general, the maintenance of a coercive measure after the delivery of the first instance decision, if the term of imprisonment is shorter than the length of the coercive measure, in such cases, the courts have to back their standpoint with detailed and comprehensive reasoning.
- Particular regard should be had to the provisions of section 454, subsection (1) of the Code of Criminal Procedure in criminal proceedings against juvenile offenders. The aforementioned subsection stipulates that the pre-trial detention of a juvenile offender may only be applied if this is necessary due to the gravity of the criminal offence.
- The requirement of the European Court of Human Rights according to which the court's decision, based on the risk of the accused person's absconding, to extend the length of a longer-term pre-trial detention has to be supported not only by the gravity of the criminal offence, but also by other circumstances should always be taken into account.
- The reasoning part of court decisions delivered on the basis of the prosecutor's petition has to also include the factual and legal arguments of the accused person and his defence attorney, as well as the court's standpoint on them, moreover, the court is obliged to give reasons for the rejection of the defence attorney's petition to impose a more lenient coercive measure on the accused.
- The decisions on coercive measures have to comply with both the formal and the substantive legal requirements.

The working group's report has been discussed and approved by the Criminal Department of the Curia.