



The Role of the Presiding Judge in the Main Trial under the Criminal Procedure Code of Kosovo

Valon BRAHIMI¹, Arton OBËRTINCA²

Abstract: When legal regulation of the criminal proceedings takes place, and also when applied in practice by the procedural authorities, there are two requirements or tendencies before the lawmakers and prosecuting authorities which are very important for the society and the individual: the requirement for the efficiency of criminal proceedings, and the request for the protection of human rights. The first tendency is to regulate the criminal proceedings through the powers given to the state bodies that act in criminal proceedings, in such a way that no perpetrator of criminal offenses is left unpunished. Whereas, the other tendency is intended to respect the human rights because, as known, according to the principle of presumption of innocence, the person is considered innocent until it is not found contrary by a court decision. In this context, it should be emphasized that the biggest burden falls on the person directing the criminal proceedings at the main trial. In order to accomplish this goal, the Criminal Procedure Code defines certain rights and obligations of the presiding judge which he/she is to put into effect at the criminal proceedings during the main trial. It is well known that the number of the presiding judge's powers in criminal proceedings is enormous, and that it is impossible to address all of them in this scientific paper. For this reason, we have decided to focus only on the role of the presiding judge at the main trial in the sense of addressing some of the rights and duties we consider to be found more often in practice, respectively in criminal proceedings at the main trial in Kosovo. In addressing this issue in this scientific paper, the following methods have been used: - historical, legal, and comparative methods.

Keywords: Administration; Presiding Judge; Court Hearing; Presiding; Examination

¹ PhD Candidate, Faculty of Law-Department of Criminal Law, University of Prishtina Hasan Prishtina, Republic of Kosovo, Address: Str. George Bush, no. 31, 10 000 Prishtinë, Republic of Kosovo, Corresponding author: valonbrahimi@outlook.com.

² Master Degree in Criminal-Law Sciences, University of Prishtina Hasan Prishtina, Prishtina, Republic of Kosovo, Address: Str. George Bush, no. 31, 10 000 Prishtinë, Republic of Kosovo, E-mail: valonbrahimi@outlook.com.

1. General Overview of the Role of the Presiding Judge at the Main Trial under the Criminal Procedure Code of Kosovo

Over the past decade, the role of the judge has changed the most. If we consider the previous codes, it is noted that the role of the judge has been transformed from a very proactive role in investigating and adjudicating the offenses in a much less active role during the proceedings, while at the same time increasing the responsibilities of the other parties to the proceedings. The new Criminal Procedure Code provides that the role of the judge is best described as a guarantor of the rights, a supervisor of the courtroom, and an adjudicator of law and facts. All of these are complementary roles in relation to the position of the court as independent and impartial, as required by Article 2 of CPCK. The judge has explicit obligations for protecting the parties' rights (Simbert, 2013, pp. 31-32). This is clearly noted during the initial hearing foreseen in Article 245, and the plea foreseen in Article 246. At the initial hearing, Article 245 (4) stipulates that the judge must ensure that the state prosecutor has fulfilled the obligation relating to the defendant regarding the disclosure of evidence. During the plea under Article 246, the judge must be satisfied that the defendant understands the indictment he is charged with, and that the defendant's right to have a defence counsel has been respected. Irrespective of whether the defence counsel objects to the evidence or not, under Article 249 (5) the judge may determine inadmissible any evidence which violates the rights guaranteed to the defendant under the Constitution. Judges have the responsibility to take decisions about life, freedom, rights, duties and property of citizens. Their independence is not prerogative or privileged in their interest but in the interest of the rule of law and those who seek and expect justice (KKGHE, Opinion 1 (2001)). 3. Worldwide, judges maintain the rule and administer the resources of their courtrooms. Pursuant to Article 64 of the Criminal Procedure Code of the Republic of Kosovo (hereinafter CPCRK), the court has the right to fine the parties who prolong the procedure under Article 64. (CPCRK, 2013, Article 16). Above all, the judge is an adjudicator of facts and law enforcer. Equality of the parties is a fundamental principle of the right to a fair trial, as set forth in Article 6 of the European Convention on Human Rights (ECHR, Article 6). The accusatory procedure and the equality of arms does not mean that the single judge or the presiding judge serve only as passive judges, since they may require additional information after the prosecutor and the defence counsel have presented their cases.

This is also reflected in the Criminal Procedure Code. For example, under Article 329 (4), the trial panel shall have the authority to collect evidence that it considers

necessary for the fair and complete determination of the case, if the evidence proposed by the parties is inadequate. Furthermore, if the accused person testifies, under Article 346 (7), the trial panel has the right to ask questions after the parties have finished, in order to address gaps, ambiguities or contradictions. (CPCRK, Article 346, 7).

Although the role of the judge has not changed dramatically as it had changed in 2004 when UNMIK issued the Provisional Criminal Procedure Code of Kosovo, its role is more focused on protecting the rights of parties within the court, giving the parties the opportunity to present their arguments before the court, prior to the court seeking evidence, and in the administration of the courtroom within the time limits set forth in the Criminal Procedure Code. Consequently, the role of the presiding judge at the main trial, in judicial practice, is realized through the application of certain powers, namely the exercise of some of the rights and obligations foreseen by the provisions of the Criminal Procedure Code which shall be addressed below.

2. The Role of the Presiding Judge in the Exercise of Rights in the Main Trial

2.1. Directing the Main Trial

The criminal proceedings are quite complex, and a very sensitive process whose effectiveness depends on how effective the fight against criminality is. The development of the criminal proceedings also determines whether the perpetrators will be sentenced or not. It must be emphasized that all stages of criminal proceedings have their importance, whereas the main trial constitutes the most important stage of criminal proceedings.

Given the importance of the main trial, it is considered that the role of the presiding judge in the conduct of the main trial is of great importance. Presiding and directing the main trial also implies a series of authorizations of the presiding judge foreseen by the Criminal Procedure Code of Kosovo, such as: keeping the order in the main trial, taking decisions on the parties' motions (if the trial panel does not decide on them), maintaining the procedural discipline, determining the order of the presentation of evidence, stopping answers to inadmissible questions, giving the parties the floor for their closing statements, etc. (Sahiti, Murati & Elshani, 2013, p. 762).

Therefore, the role of the presiding judge at the direction of the main trial is very important for the fact that it carries out major responsibilities as emphasized above, and because “the complex nature of the main trial requires long preparation, a thorough study of the case and a well-drafted plan by the single judge or the presiding judge” (Hajdari, 2013, p. 60). This proves the fact that this right of the presiding judge automatically vests upon him highly important and complex tasks which he must perform with great precision if he wants the main trial to carry out its obligation to reveal the crime, to detect the crime perpetrators, to sentence them, to assure and protect the rights of all parties in criminal proceedings, and in particular in the main trial.

2. Examination of Defendant

The examination of defendant by the presiding judge is in the function of clarifying his statement. Thus, the presiding judge examines the defendant in order to clarify potential ambiguities. Such clarifications help him and the trial panel to be more objective during the trial, without risking his impartiality in the main trial. After the examination has been completed, the single trial judge or presiding trial judge shall ask the accused whether he or she has anything to add in his or her defense.

If the accused elaborates upon his or her defense, he or she may again be examined. (CPCRK, Article 348-346, par. 8). If, after the question of the presiding judge, the defendant elaborates on his own defense, even though the CPCRK does not explicitly specify, it can be assumed that by saying “may again be examined” means that he/she may be examined by everyone, starting from the main defence counsel up to the presiding judge or its members. Therefore, even during the examination of the defendant, the role of the presiding judge is substantial due to the fact that the presiding judge’s ability to ask questions, the time of posing them, and the creation of belief on his sincerity in relation to the defendant is the key to finding the truth in a concrete criminal matter.

3. Examination of Witness

Just as during the examination of the defendant, the role of the presiding judge is of great importance, or rather essential during the examination of the witness, too. The subject of witness testimony is always the facts that he has observed with personal perception or heard from other persons (Sijerçiq-Çoliq & Halilovic, 2007, p. 157). Although the CPCRK does not explain this very clearly, “members of a panel may pose questions to any witness or expert witness” (CPCRK, Article 299, par. 2).

It should be emphasized that during the direct examination of the witness, the suggestive questions are forbidden because a liar witness may realize what response is expected from him, while the real witness is brought to the situation of giving a wrong answer due to negligence (Sahiti, Murati & Elshani, 2013, p. 807). It is therefore clearly apparent that the purpose of examination, no matter which procedural subject or procedural party, is done for the same purpose, so that the issues are clarified in order to find out the truth and render an objective and unbiased judgment. Hence, in such sensitive situations, the role of the presiding judge during the examination is to clarify the issue that can be interpreted in ambiguity, so that such concrete ambiguities are avoided.

4. The Right of the Presiding Judge to Consider the Parties' Motions at the Main Trial

During the course of the main trial, the single trial judge or the presiding judge decide on issues pertaining to the direction of the main trial. Within his powers, Article 299, paragraph 5 of CPCRK provides for a general provision that entitles the presiding judge to decide on the parties' motions (Sahiti, Murati & Elshani, 2013, 763). "The single trial judge or presiding trial judge shall rule on the motions of the parties" (CPCRK, Article 299, paragraph 5).

The rulings of the single trial judge or presiding trial judge shall always be announced and entered in the record of the main trial with a brief explanation. (CPCRK, Article 299, paragraph 6).

The parties to the main trial may also have other different kinds of requests, e.g. a request for the removal or extension of detention, the examination of the expert witness, etc. Referring to the above, it is clearly noted that the role of the presiding judge in relation to the evaluation of the parties' motions at the main trial is decisive, due to the "common" fact that the fair or unjust decision of the presiding judge with regard to the reasonable and factual motions of the parties, affects the final outcome of a criminal case.

5. The Right of the Presiding Judge to Decide on the Extension of Detention on Remand, the Examination of the Witness, the Reconstruction of the Crime Scene and the Search of the Apartment

As pointed out in the introduction of this paper, the role of the presiding judge has changed a lot during the last decades, being mainly transformed in the function of respecting human rights and freedoms. When imposing detention on remand, the likelihood of violation of human rights and freedoms is very high. In this regard, the

presiding judge should be very vigilant and rational when assessing the facts that make it necessary or not to impose such a measure. In other words, the presiding judge, even in very sensitive cases must act logically, without emotions or impacts of any nature. There are times when the presiding judge has to decide on something and he finds it very difficult to decide what is actually right and what is not. Among the toughest moments is deciding whether to continue the detention or to refuse a request for termination of detention. Whatever the decisions, the presiding judge carries some risks in his work.

The extension of detention on remand may lead to such a situation when the person who has been extended the detention on remand, is actually found not guilty, which means that the person concerned has been violated his or her basic rights unlawfully, therefore, this situation to some extent affects the weakening of the trust in the professionalism of courts, etc.

Even the decision to release the person from detention on remand carries certain risks, and does not apply to persons who are at risk of committing the attempted criminal offense or the other criminal offense which he threatened to commit. Afterwards, it should also be taken into account the personal characteristics of the perpetrator, such as: his previous behaviour, his living environment, and so on. (CPCRK, Art. 187, par. 1, 2, 3). Therefore, when the detention on remand is terminated, the judge must establish a positive prognosis that the reasons justifying the detention on remand have ceased, otherwise the person may commit another criminal offense.

The examination of evidence, facts and statements must be based on the general legitimate logic and on the psychological judgment” (Sahiti, 2007, p. 110).

3. The Role of the Presiding Judge in Performing His/Her Duties during the Main Trial

1. Scheduling the Main Trial Hearing

The main trial is the central part of the criminal proceedings. In order for the trial to be conducted successfully and without hindrance, it is necessary for the single trial judge or the presiding judge to make certain preparations beforehand. Such preparations relate to both the schedule of the main trial and other preparatory issues, such as serving court summons to the accused person, the defence counsels, the injured parties, the witnesses, the expert witnesses, etc. If the accused person is in

detention on remand, then the single trial judge or the presiding judge shall request from the detention center and the Unit for Transport of Detainees to bring the defendant at the main trial (Hyseni, Shala, 2015, 119). Preparations for the main trial, in addition to the appointment of the day, time and venue, include numerous other actions, such as the request for appointment of a substitute judge, article, etc. (Sahiti, Murati & Elshani, 2013, pp. 741-743).

Following all the necessary preparations, the presiding judge shall, by order, schedule the date and time of the main trial (CPCRK, Article 285, par. 1). The single trial judge or the presiding judge shall schedule the date of the main trial within one (1) month from the second hearing or the last order issued under Article 254, paragraph 5 of CPCRK (CPCRK, Article 285 paragraph 2). Then he summons the defendant and his defence counsel, the witnesses, the expert witnesses, and all those needed to be in the main trial.

The accused person shall be served with the summons no less than eight (8) days before the main trial so as to have sufficient time between the service of the summons and the day of the main trial to prepare his or her defence. At the request of the accused, or at the request of the state prosecutor and with the agreement of the accused, this prescribed period of time may be shortened (CPCRK, Article 287, par. 3). “Such a way of conducting criminal proceedings requires numerous procedural rules, but due to reasonable and certain grounds, the main trial may be adjourned or even recessed” (Hajdari, p. 74).

If the presiding judge considers as important for the continuation of the main trial, he may adjourn the day of the main trial. The main trial may be adjourned on reasonable grounds, such as the absence of the prosecutor at the court hearing, the absence or leave of the defence counsel, when new evidence is needed due to the mental retardation of the accused person, the absence of a witness or the key expert witness, etc. (CPCRK, Article 285, p. 3).

2. Maintaining the Order in the Courtroom

In order to successfully complete the criminal proceedings at the main trial, it is important, or better to say it is a basic condition, to maintain order in the courtroom. In this regard, the role of the presiding judge is irreplaceable. It is the duty of the presiding judge to maintain the order in the courtroom during the main trial. Apart from maintaining order in the courtroom, his duties include a wide range of tasks, starting from maintaining order and quietness, up to respecting the deadlines and duties the parties have at the main trial.

The duty of the presiding judge is to ensure that the main trial is completed in a timely manner if circumstances enable it; to punish all those whose actions are obviously aimed at prolonging the main trial needlessly; to protect the parties in the main trial, etc. In other words, the presiding judge must exercise full control of the courtroom during the main trial. "In the course of proceedings the court may impose a fine of up to two hundred fifty (250) EUR upon a defense counsel, an authorized representative or legal representative, an injured party, or a victim advocate if his or her actions are obviously aimed at prolonging criminal proceedings.

The fine may be assessed for each occurrence of the actions aimed at prolonging the criminal proceedings under this paragraph" (CPCRK, Article 64, par. 1). Thus, the presiding judge, within his powers, may impose a fine on an unruly witness who is obliged to testify in two situations: a) if a witness who has been duly summoned fails to appear and does not justify his or her failure to appear, and the second situation that is typical for violating the order in the courtroom, that is b) when the witness leaves the place where he or she should be examined without permission or a valid reason. In both situations, the presiding judge may order that the witness be compelled to appear and may fine him up to two hundred fifty (250) EUR (Sahiti, Murati & Elshani, 2013, p. 373).

If even then the witness who is obliged to testify does not do so, the presiding judge may impose a prison sentence which shall last for as long as the witness refuses to testify or until his or her testimony becomes unnecessary, but not more than a month (CPCRK, Article 135, par. 2). Contrary to what has been highlighted above with regard to the powers of the presiding judge recognized by the Criminal Procedure Code of the Republic of Kosovo with a view to maintaining the order and extension of the main trial, the criminal procedure codes of other countries foresee different solutions. For example, the Criminal Code of the Republic of Serbia (Article 101, paragraph 2) with regard to the witness refusal to testify when obliged to do so, foresees that the presiding judge may impose him a fine, and if he still refuses to testify, the presiding judge may once again impose the same fine on him.

Whereas, according to the German Criminal Procedure Code (Article 70, paragraph 2), in cases of refusal to testify, the sentence of deprivation of liberty may not last more than six months, and so on. In order to maintain the order and conduct of the main trial, the single trial judge or presiding judge may order a personal search of persons present at the main trial (Article 301. p.1 of CPCRK). This Article directly authorizes the presiding judge to maintain the order in the main trial. The order at the trial is disturbed in different ways, such as: disturbance of peace, disobedience

to court orders, inadmissible interference when someone speaks, as well as many other prohibited acts. In addition, “the single trial judge or presiding trial judge may order that the audience present at the main trial be removed from the hearing if it is not possible to ensure by the measures for the maintenance of order provided for by CPCRK that the main trial shall be held without disturbance” (CPCRK, Article 301, par. 1). “If the accused, defense counsel, the injured party, the legal or authorized representative, the witness, the expert witness, the interpreter or some other person attending the main trial disturbs order or fails to comply with the directions of the single trial judge or presiding trial judge regarding the maintenance of order, the single trial judge or presiding trial judge shall warn him or her. If the warning is of no avail, the single trial judge or presiding trial judge may order that the accused be removed from the courtroom, while other persons may not only be removed but can also be punished by a fine of up to one thousand (1.000) EUR” (Article 302 par. 1 of CPCRK). This Article is very important because it gives the presiding judge the authority to maintain the order in the courtroom and not to allow anyone to oppose his as well as the court’s authority. The presiding judge may remove the accused person from the main trial during the whole process of evidence examination, and if he continues to obstruct the work of the court, he is dismissed again, and finally the presiding judge communicates him the judgment in the presence of the recording clerk. Even the state prosecutor may be the protagonist in violating the order in the main trial. “If a state prosecutor violates order, the single trial judge or presiding trial judge shall notify the supervisor of the state prosecutor of this, and may also suspend the main trial and ask the supervisor of that state prosecutor to appoint another state prosecutor for the case (CPCRK, Article 302, par. 4).

In cases of violating the order and obstructing the court’s work the defendant or the authorized representative may be denied by the single trial judge or presiding judge the right to defend or represent the defendant at the main trial, and if even after the punishment they still continue to violate the order, the party is required to engage another defense counsel or authorized representative. Thus, from the foregoing it can be concluded that the single trial judge or the presiding judge play the key role in the main trial. This is clearly seen by the powers the law has foreseen for them, and in fact such powers are necessary given the nature of the court’s work and the sensitivity of the criminal court proceedings that take place therein.

3. Notification of the Defendant about His/Her Rights When Examined During the Main Trial

The position of the defendant in criminal proceedings has changed significantly for the better. A very important principle of human rights is the principle of equality of the parties, which is embodied in Article VI of the European Convention on Human Rights. The accused person is a fundamental subject of criminal proceedings and, at the same time, a procedural party. The position of the party assumes an active role. (Sahiri, Murati & Elshani, 2013, p. 790).

According to paragraph 1 of Article 323 of CPCRK, the defendant in the main trial has several specific rights to the use of which he should be instructed by the single trial judge or presiding judge. The instruction from this Article must take place regardless of whether the defendant has a defense counsel or not. Paragraph 1 of Article 285 of CPCRK further addresses, inter alia, the possibility of the accused person to present facts and to propose evidence of his defense, and therefore the presiding judge must instruct the defendant (Sahiri, Murati & Elshani, 2013, p. 791). Further on, on the basis of the legal obligation under Article 332-323, paragraph 2 of CPCRK, the single trial judge or the presiding judge shall instruct the defendant on his right not to give testimony in connection with his or her case or to answer any questions; if he or she gives testimony, he or she shall not be obliged to incriminate himself or herself or his or her next of kin, nor to confess guilt; and he or she may defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice (CPCRK, Article 332, paragraph 2, items 2.1, 2.2, 2.3).

4. Administration of Evidence and Finding out the Truth

In addition to the other aspects addressed so far, the role of the presiding judge is almost crucial in the administration of evidence in the function of revealing the truth. This is because the entire criminal proceedings have a certain purpose, and that is the finding of the truth.

Article 299, par. 3 of CPC explicitly states: "It shall be the duty of the single trial judge or presiding trial judge to ensure that the case is thoroughly and fairly examined in accordance with the rules of evidence as provided for by the present Code" (CPCRK, Article 299, par. 3)

"The examination of evidence in criminal proceedings is a complicated mental operation process which, besides the knowledge on the law, it necessarily requires knowledge on the judicial psychology which deals with the study of aspects regarding the formation and manifestation of consciousness by the procedural

parties” (Sahiti, 2005, p. 154). Evidence comes from many directions, but the presiding judge must examine such evidence and, if necessary, examine the case files, read the testimony and the records at the investigation stage and at the pre-trial proceedings, to read the records of the inspection of the crime scene, and he should also rely more on the opinion of the panel members.

Hence, we can freely say that the issue of evidence administration at the main trial in criminal proceedings is the most complex issue for the trial panel, especially the presiding judge, for the simple reason that from the quality of evidence management depends the finding of the truth, namely the determination of guilt or innocence of the defendant. Therefore, in this regard, the presiding judge has a decisive role in deciding on the merits of the case.

5. Drawing up and Rendering the Judgment According to the Foreseen Legal Deadlines

The deadline for the announcement of the judgment is set forth in Article 366, paragraph 1. Whereas paragraph 1 of Article 369 provides for the deadline for drawing up the judgment in writing (Sahiti, Murati & Elshani, 2013, p. 860). “If after the closing statements of the parties the single trial judge or trial panel does not find a need for any further evidence, the single trial judge or presiding trial judge shall indicate that the main trial has been concluded ...” (CPCRK, Article 357, paragraph 1), then the trial panel shall withdraw in order to take a decision. CPCRK specifies that they withdraw for deliberation and voting in order to render a judgment, but it does not explain how that is done. The applicable Criminal Procedure Code, unlike the previous one, stipulates that written judgments rendered at the end of the main trial shall include the date when the judgment was drawn up. In a report released in 2012, OSCE pointed out that as a result of the lack of a written date, it was impossible to ascertain whether a judgment was drawn up within the deadline foreseen by the Code (within 15 days after the announcement that the accused is in detention on remand, and within 30 days in other cases). The application of these new provisions is essential in ensuring that the defendant’s right to a prompt trial is respected. (OSCE, 2016, p. 33)

“The judgment shall be announced by the single trial judge or presiding trial judge immediately after the court has rendered it. If the court is unable to render judgment on the day the main trial is completed, it shall postpone the announcement by a maximum of three (3) days and shall determine the time and place for the announcement of the judgment.” (CPCRK, Article 366, paragraph 1). Postponing the announcement of the judgment for three days may result in an additional three-

day detention on remand for the defendant who can be either convicted or acquitted by the judgment, however he is not sentenced to imprisonment but a measure is imposed against him instead, therefore it is considered that this Article would be better to specify that the announcement of the judgment cannot be postponed for three days, but that the judgment would be taken immediately after the end of the main trial and only in cases of absolute inability to postpone it for the next day.

The drawing up and delivery of the judgment is done in compliance with Article 369 of the Criminal Procedure Code of Kosovo (CPCRK, Article 369).

6. Informing the Dissatisfied Party of the Right to Appeal

The first instance court, despite its procedural guarantees to obtain a fair and lawful judgment, does not always achieve this goal, as the centuries-old experience of jurisprudence shows that the judgment of the first instance court often contains technical and legal errors. The most common causes that may lead to the unjust and unfair judgment are: different mistakes, erroneous examination of evidence, the revelation of unknown evidence until after the judgment has been rendered, lack of professionalism, the overloading of the court, etc. In order to avoid such mistakes, contemporary criminal proceedings consider the possibility of appealing judgments with legal remedies (Sahiti, Murati & Elshani, 2013, p. 868).

The right to legal remedies, namely the appeal of the judgment by the dissatisfied party is also foreseen with the provisions of the Constitution of the Republic of Kosovo. (Constitution of the Republic of Kosovo, Chapter II, Article 32). Such right is also foreseen under the provisions of CPCRK (CPCRK, Chapter XXI). In this regard, in accordance with Article 368, paragraph 1, after announcing the judgment, the single trial judge or presiding trial judge shall instruct the parties of their right to appeal. The instruction shall be entered into the record of the proceedings of the main trial. (CPCRK, Article 368, par. 1). In addition, the presiding judge informs the parties on the deadlines for filing an appeal against the court decisions. Therefore, it is clear that even after the judgment has been rendered, the role of the presiding judge is irreplaceable, based on the fact that the notification and clarification to the convicted person on the right to appeal, as well as the explanation regarding the deadlines for filing an appeal, in the procedural aspect, presents an important help to the convicted person in the exercise of this right, and at the same time, in the general aspect, it affects the spirit of respecting the general principles of justice and democracy in a democratic country.

4. Conclusion

As a result of this summary and brief analysis, it is noted that the role of the presiding judge has undergone various transformations over the last decades, from the proactive to the passive role, focusing primarily on respect for human rights, respectively of the the parties to criminal proceedings. In this context, the Criminal Procedure Code has foreseen clear rules and principles on the basis of which criminal proceedings shall be conducted, and in this relation, the main trial as its main and most important stage.

For the purpose of successfully developing and completing criminal proceedings, the Criminal Procedure Code of the Republic of Kosovo has established rights and obligations for the entities part of criminal proceedings. In this context, the Kosovo lawmakers foresaw in this Code a considerable number of powers for the single trial judge or presiding judge in function of the development of criminal proceedings. These powers are foreseen in the form of rights and duties which must be applied and implemented by the presiding judge in the main trial.

Within this paper it has been ascertained that the presiding judge schedules the date of the main trial and has the exclusive right to direct the main trial. Another important task for him is the maintenance of order in the courtroom, a condition necessary for the conduct of criminal proceedings without any obstruction. With regard to the unruly participants, namely the violators of the order in the courtroom, the presiding judge has the authority to impose fines of up to 1000 Euro, whereas in the event of refusal of testimony by the witness, the presiding judge has the right to impose the deprivation of liberty for up to 1 month.

Regarding the powers of the presiding judge in relation to the defendant, the witness and the expert witness, it has been ascertained that the presiding judge has the right to examine the defendant and the witness, namely to obtain the opinion of the expert, however, he is obliged to notify, in advance, the persons in question with their rights guaranteed by the Constitution and the Criminal Procedure Code of the Republic of Kosovo. Such rights with regard to the defendants relate mainly to the right to defence at all stages of criminal proceedings, the presentation of evidence to which they argue their innocence, and then the right to appeal when the parties consider that the court decisions have unjustly violated their rights, etc.

In order to exercise his judicial duties, the single trial judge or the presiding judge must meet certain requirements, for example: to have adequate professional

preparation, to have high moral integrity, to enjoy reputation in society, to cooperate with other prosecution bodies etc., and also to have been appointed as a judge of a relevant court.

5. Bibliography

Hajdari, Azem (2013). *Criminal Procedure Law*. General part. Prishtina, p. 74.

Šijerčić-Çoliq, H. & Halilović, H. (2007). *Criminal procedural law with special reference to the criminal proceedings of Kosovo*. Translated by Croatian Mustaf Reçica & Botoi, AAB. Pristina, p. 157.

Hyseni, Bashkim & Shala, Afrim (2015). *Manual of Criminal Procedure Judges*. Pristina: Kosovo Judicial Institute (KJI) and USAID Kosovo Effective Rule of Law Program, p. 119.

Simbert, John (2013). *Guidebook on the Code of Criminal Procedure of the Republic of Kosovo*. Prishtina, pp. 31-32.

OSCE Review of the Implementation of the new Code of Criminal Procedure in Kosovo. Pristina (June 2016).

Sahiti, Ejup (2007). *Judicial Psychology*. Pristina, p.154.

Sahiti, Ejup (2005). *Criminal Procedure Law*. Prishtina, p. 74.

Sahiti, Ejup; Murati, Rexhep & Elshani, Xhevdet (2013). *Commentary on the Code of Criminal Procedure of the Republic of Kosovo*. Pristina, pp. 741-743.

Salihu, Ismet (2005). *Criminal Law*. General part. Prishtina, p. 112.

*** The International Covenant on Civil and Political Rights adopted by the General Assembly by its Resolution 2200 (XXI) of 16 December 1966.

*** The Constitution of the Republic of Kosovo (entered into force on 15 June 2008).

*** Code of Criminal Procedure of the Republic of Kosovo - (Official Gazette of the Republic of Kosovo / No. 37/28 DECEMBER 2012, PRISHTINA, article, 325, 369, 365.

*** Provisional Criminal Procedure Code of Kosovo UNMIK / RREG / 2003/26 Official Gazette 6 July 2003.