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PENAL DECISIONS' EXECUTION IN ALBANIA

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Abstract

The execution of a penal decision means, implementation of the commandments that contain the final decision, according to law has immediate execution, aiming the rehabilitation of the convicted persons, the restoration of the rights of the persons unjustly prosecuted the legal rights of the vulnerable subjects, and affecting in the prevention of the criminal offenses. The execution order is the procedural act, based on it the prosecutor starts the procedure of execution of the penal decision. According to the national legislation, the execution order contains the penal decision which should be executed, the identity of the defendant, its location, type and size of the main sentence that will be effectively served, the type of additional penalty and its application criteria, civil liability in the criminal process, and bodies that will execute or supervise its execution. This paper will describe some of the ways of the penal decisions execution in Albania, the execution of the decisions that have not become final, the execution of the final decisions, the alternative imprisonment decisions under the Criminal Code, as well as the role of prosecutor in the execution of the court decisions, and the tasks of the State Police in the execution process.

Keywords: sentence, execution, order execution, imprisonment, alternative

1. Introduction

In the post-communist Albania, the Criminal Code has undergone constant changes in law. It provides that persons who have committed crimes are the key sentences: life imprisonment, imprisonment, and a fine. As for persons who have committed criminal offenses such penalties are main imprisonment, and a fine.¹ Criminal Code also provides additional penalties². For the persons who have committed crimes or offenses, with the main sentence, may be given one or several of the following additional penalties, as follows:

¹ Criminal Code of the Republic of Albania, Chapter V - Penalties, Article 29 - Penalties key.

² Article 30 - Additional penalties (Amended paragraph 2, of Law no. 9086, dated 19.6.2003, Article 3), (1 point Amended by Law no. 9275, dated 16.09.2004, Article 3).

- Prohibition of the right to exercise public functions.
- Confiscation of assets of the offense and the proceeds of crime.
- Prohibition on driving.
- Removing decorations, honorary titles.
- Deprivation of the right to practice a profession or skill.
- Deprivation of the right to exercise leadership by legal duties.
- Prohibition to stay in one or more administrative units.
- Extraction from the territory.
- Obligation to appear to the court.

The court, in exceptional cases, when the delivery of the main sentences is assessed inappropriate, and the law provides imprisonment up to three years, or other minor sentences for the committed offense, may decide only additional punishment. According to the Albanian legislation, bodies that execute the final penal decision are Courts, Prosecution Office, State Police, Probation Service, the General Directorate of Prisons, and the Bailiff Service. As follow we will examine the specific tasks of some institutions in the field of the penal decision execution.

1.1. The Execution of the penal decisions that have not become final:

This form of execution is related to the immediate execution of a court decision, even though it's not become final yet³. Are executed by the court's order, immediately after the decision is issued:

- Penal decisions that contain innocence, exclusion of the defendant from the punishment, dismissal of the judgment under paragraph 2 of Article 462 of the Criminal Procedure Code, as well as is found unlawful the arrest or detention, and ordered the immediate release, except when there is a security measure in custody, for another reason.
- Penal decisions proceedings against a person in custody, which is awarded a penalty equal or less than the time of detention, or other minor punishment, is ordered immediate release, unless there is a security measure in custody for another reason.
- Penal decisions that contain imprisonment and approval of the prosecutor's request for the arrest security measure.
- Penal decisions that contain sequestration as a provisional measure when given a confiscation sentence.

For immediate execution the Court provides to the relevant body the written Order, and within three days sends the penal decision.

³ Law no. 8331, dated 21.4.1998 "On the execution of criminal judgments", Article 21 - Immediate execution

1.2. The Execution of the final penal decisions:

The Execution of the final decisions, issued by the courts, is based in the country's Constitution, according to which: "State bodies are obliged to execute judicial decisions".⁴

According to the Albanian legislation, decisions by imprisonment, which has taken the final decision, are sent immediately to the prosecutor from the court, or are withdrawn from him to be executed. When the decision of the court doesn't define, and the prosecutor notice that is the place to serve the sentence in a high security prison, then he present a request to the court that issued the decision. When the convicted has been detained in custody in the execution order is specified time served and the remainder to be served under the criteria of section 57 of the Criminal Code. When the convicted has to serve more than one sentence, the prosecutor submits request for joining the court sentences. On the basis of the court decision and the requirements of the law "On the rights and treatment of prisoners", the prosecutor determines the type of institution where the convicted will serve his punishment and through the General Directorate of Prisons institution specifies the concrete place. When the court has not found and the prosecutor has indications that the convicted person is to be placed in special institutions, he orders a medical examination of the prisoner and acts according to the results.⁵ On the basis of the court decision and actions according to the law⁶, the prosecutor shall issue an execution order and sends it to the Police Station where is the permanent residence or temporary residence of the convicted person. For the military convicted persons, the order is sent to the military police station near the area where the convicted person has been member or where it is located. When the convicted person is under custody, the order is sent to the institution where he is held.

2. The role of the prosecutor in the execution of court decisions:

Legal framework, the Constitution, the Penal Code, Criminal Procedure Code, the Law "On the execution of the penal decisions," the law "On the rights and treatment of prisoners" and other legal acts and regulations in this key area, have brought development and continuous improvement, both in the criminal justice system in general, and in this important stage of the proceedings, the approach with accepted international laws and standards of the modern system of detention, responding to the dynamic needs and demands increasing for changes and reformatations in the system of the penal decision execution, and detention in Albania.

- *The actions of the prosecutor*⁷. The prosecutor of the Court of First Instance which has given the decision, take actions to execute the decision. He makes the request to the competent court and interferes during the entire process of the execution. The prosecutor decisions, within thirty days, are informed to the advocate appointed by the person, or if there is not such, that given by the prosecutor. When necessary, the prosecutor may request specific actions from another district attorney. While the execution begins, the prosecutor notifies the court that issued the decision.

⁴ The Albanian Constitution, Article 142, under which judicial decisions should be reasoned.

⁵ Law no. 8331, dated 21.4.1998 "On the execution of criminal judgments", amended by Law no. 10024 dated 27.11.2008, Article 22 - Preliminary actions of the prosecutor.

⁶ Ibid.

⁷ Code of Criminal Procedure, Article 463 - the prosecutor's actions

- *The execution of imprisonment*⁸. To execute a sentence of imprisonment, the prosecutor issues the written order. The execution's order contains prisoners' generalities, enacting the decision and dispositions necessary for execution. When the prisoner is detained, the order is sent to the state body that manages prisons and notified to the interested, and when the prisoner is not detained, orders his detention. In the same manner in the case of enforcing the mandatory closure to a medical or educational institution.
- *The execution of the security measures ordered by the court*⁹. Security measures ordered by the court, are executed by the prosecutor at the court that issued the decision.
- *Execution of the fine penalties*¹⁰. Decisions containing the fine are executed by the bailiff office. When is confirmed the impossibility of receiving a fine or part of it, the prosecutor make a request to the court, that issued the decision to do the conversion of it. With the defendant request, the court may postpone the conversion up to six months. This period is not calculated in the terms of limitation. The decision of the conversion could be filed, which suspends its execution.
- *Execution of additional Punishments*¹¹. For the execution of additional punishments, the prosecutor sends the briefed sentence to the police and judicial authorities, and other stakeholders.
- *Execution of several sentences*¹². When the same person is convicted with some decisions for different criminal offenses, the prosecutor at the court that issued the final decision requires the court to determine the sentence to be executed, while respecting the rate of the sentences joining. The request of the prosecutor is notified to the convicted and his lawyer.

Focusing on the criminal conviction, I would like to emphasize that the sentence should be put in execution is a form of state coercion, given the final decision against persons guilty of having committed a criminal offense. At the core of its analysis, it can be said that the execution of court decisions is one of the important links to the criminal justice system that finalizes the contribute of all stakeholders of the system, to achieve these goals:

- Give justice;
- To avoid the categories of convicted persons to have the possibility of continuing criminal activity;
- To strengthen community safety and security, as well;
- To reeducate and reintegrate convicted persons into society.

⁸ Article 464 - The execution of imprisonment

⁹ Article 466 - Execution of security measures ordered by the court

¹⁰ Article 467 - Execution of the penalties

¹¹ Article 468 - Execution of additional Punishments

¹² Article 469 - Execution of several sentences

There would be no sense for the criminal prosecution that execute the prosecutor, in the preliminary investigations and during the judgment in the court, as well as the court's decision in all instances to give justice, if the final judicial decisions will not be executed, but remaining in the drawers of the authorities which are in charge to carry out the execution, the bailiff's office, or the State Police. Meanwhile the convicted persons to life imprisonment for committing serious crimes could move freely, creating uncertainty for the community.

It is a very important the place, role, duties and responsibilities of each actor participating in the the penal decision execution phase, and the exercise of legal functions and the strengthening of the institutional partnerships, may be the only key to their success. Prosecutor¹³ is one of the actors, the quality of the promoter, at this stage and has duties and responsibilities, to set in motion the procedure of execution of penal decisions, ordering other bodies for executing the decision, and to supervise the serving of the sentence. Attorney and all other subjects, conducting penal decisions, such as court¹⁴, authorities¹⁵ responsible for enforcement, as the judicial police of the State Police, Military Police, etc, bailiff bodies, government bodies or other legal entities of public or private, are required to exercise the powers correctly, respecting the rights, honor and dignity of the person. They must notify the prosecutor, the facts and circumstances affecting the manner and timing of the execution of a penal decision¹⁶, and the initiation and completion of the execution of decisions¹⁷

The aforementioned entities charged with carrying out the execution of penal decisions, keep disciplinary liability, and penal as well, for no executing properly, or crawling the execution of a decision contrary to the law or in violation with the human rights. I must stress that the prosecutor's duties and responsibilities are particularly important at this stage. Prosecutor is obliged to:

- Take all necessary measures to enforce the judgment in accordance with the court's commandments and requirements of the law;
- Check the regularity of execution;
- Interfere with competent authorities or present request to the court;
- Restore the law and the violated right; and
- Put the perpetrators accountable to disciplinary and penal responsibility.

In the analysis of the practical activity of the responsibilities of the bodies charged with the execution of penal decisions, we should set some general underlining, such as *ignorance* and *lack of understanding* of the law properly, and the importance of this stage of the proceedings, particularly by authorities workers ordered to execute penal decisions, and the lack of functions' exercising, and the failure to enforce correctly the legal provisions by them.

¹³ See, the following sections 463 K. Pr. Criminal and Articles 9, 12, 52 and following of the law 8331datě 21.04.1998 "On the rights and treatment of prisoners", Official Gazette no. 11, 1998.

¹⁴ See, Article 462 of the K. Pr. Criminal and Article 11 of the law following 8331 of 21.4.1998 "On the execution of criminal judgments".

¹⁵ Article 29, the following 30 K. Criminal Code and Articles 16, 17, 18 and following the 8331 law.

¹⁶ Article 10.

¹⁷ Article 20.

- At the start of execution and confirmation of putting in execution,
- The supervision and execution of sentence, and compliance with the state of lawlessness; as well,
- The causes of failure to be placed before the disciplinary or penal liability.

Improved quality of work by all stakeholders, including prosecutors, strengthening their assistance and control, and training necessary to recognize, implement, and unification of the practice and supervising their execution, as well as strengthening their institutional partnership, I estimate that it would be a valid recommendation for future growth, the effectiveness of the penal decision execution, the protection of individual rights. Supervision of penal execution and imprisonment is a very important phase of the penal decision execution. Supervision, in accordance with the law and regulations, in this stage is a guarantee to respect the rights of prisoners, treating them with dignity, with human feeling and without partiality and discrimination. Focusing on the subject of this paper, I would stress that the prosecutor at the court which issued the decision¹⁸ and / or that in the territory where the institution¹⁹ is located, has the obligation to supervise directly and without warning the execution of imprisonment, enforcement of laws and regulations in the penitentiary institutions, as well as the realization and protection of the rights of detainees.

Attorney, in order to exercise his functions of controlling and supervising the execution of the imprisonment sentence uses several forms²⁰, as follows:

- Receives and reviews, information, complaints and requests of prisoners and / or their lawyer, requests from people who have visitor status, or state bodies or non-profit organizations, which have inspected the institution of penitentiary imprisonment;
- Seeks information and conducts direct verification in the facilities, equipment and facilities within and outside the institution, relating to prisoners, with the assistance of specialists from various fields;
- Receives and verifies information about facts and circumstances that affect the execution of court decisions, as well;
- Takes opinions and cooperates with the internal control of the body where the decision is executed.

To restore the violated right, the prosecutor interfere with the charged institutions of executing the imprisonment sentence, or other competent bodies, and set deadlines, and when there is no legal impediment, ordering the immediate restoration of law and the violations. The prosecutor's request must necessarily be examined by the competent authority, which should inform the outcome. The prosecutor also has the right to ask the director of the institution, the initiation of disciplinary or administrative procedure, compensation against perpetrators, the findings of irregularities and obstacles in respect of the exercise of its functions²¹ and start criminal

¹⁸ Article 52/1 of the 8331 law

¹⁹ Article 68/1 of the 8328 law

²⁰ Article 53 of Law 3831 and Article 70 of Law 8328

²¹ See Article 56 of Law 8331.

proceedings against the perpetrators themselves when violations are criminal offenses. In cases where the restoration of law or rule is violated under the jurisdiction of the court, the prosecutor files a request for review of the district court where is the penitentiary institution.

I estimate that the prosecutor overseeing the execution of penal imprisonment is not at the level of requirements that were stated above, in fulfillment of the obligations that the law imposes on the exercise of this function. I would appreciate as a recommendation that the prosecutors, more than now, should aim at improving the quality of their work in the exercise of this important function, taking a case by case basis, appropriate measures:

- To control the execution of decisions, ensuring getting aware of the start and the end of execution, as well as seeking information, documentation or check periodically, at least once a month, directly place of detention and rooms detention;
- To identify, according to criminal offenses, persons sentenced to imprisonment by court final decisions unexecuted, and periodically analyze the causes and responsibilities of the police failure to enforce them;
- To seek, in their entity bodies, disciplinary and administrative measures, for persons who violate the laws "On the execution of penal decisions" and "On the rights and treatment of the prisoners", and;
- To put people accountable before the law who commit criminal offenses in violation of the rights of detainees.

3. State Police duties in the execution of the penal decisions:

State Police based on the order of the prosecutor, in cooperation with the Judicial Police and Military Police, carries out the voluntary execution of the sentence of imprisonment, on the contrary, acts forcibly putting the convicted available to the General Directorate of Prisons. Additional penalties provided by sections 3, 7 and 8 of Article 30 of the Criminal Code executed by the "State Police", which according to a request or on its own initiative, supports the actions of the judicial police, military police, prisons police and other relevant bodies, charged under this law, to execute the court decisions that have become final or need immediate execution²². The Constitution of the Republic of Albania, Article 142 paragraph 3 states: "State bodies to comply with judicial decisions". Such obligation, charges State Police to execute in those cases where we are dealing with final penal decisions, which provide penal punishment as imprisonment, but additional penalties provided for in Law 8331 dated 21.04.1998 "On the execution of criminal judgments. "In addition to this law procedures and other obligations are estimated bodies and provisions impose duty police, so:

a. Police carries out the execution of the final penal decision, actions which are provided in Article 16 of this Law:

- With imprisonment when tried by the courts while free;
- They are in custody, while the detention is under the Ministry of Public Order;

²² Law no. 8331, dated 21.4.1998 "On the execution of criminal judgments", Article 16 - "State Police duties" as amended by Law no. 10024 dated 27.11.2008.

- Additional punishments provided by paragraphs 3, 7 and 8 of Article 30 of the Criminal Code;
- Supports the request of other entities, or with initiative, judicial police, military police, bailiff office and other state entities.

b. Police investigate the immediate execution, provided in Article 21 of the Law "On the execution of penal decisions", which is about the penal decisions that contain innocence, dismissal of the judgment from the conviction, dismissal of the case, and when is the unlawful arrest or detention act, ordering the immediate release.

Police legal obligations associated with the execution of penal decisions are:

- Execution of mandatory imprisonment under the provisions of Article 25 of the above law. Search based on Article 247 and 504 of the Criminal Code.
- Sent to the place of detention under Article 26, after the detention to 48 hours is subject to the State Police.
- Prohibition on driving vehicle, according to Article 37 of the Law on Execution of Criminal Sentences.
- Prohibition of staying in a particular territory, under Article 38 of the law.
- Going out of the territory of the Republic of Albania.
- Execution of medical measure, Article 45 (while free, but also in custody).
- Execution of educational measure, when it is voluntary, Article 46.

4. Conclusions:

- In Albania the principle of the voluntary execution of the convicted person, is a modern standards, but doesn't work well, because of the convicted persons, which try to avoid penalty and do not appear at the time and defined institution for serving his sentence. As mentioned above, it is necessary the change of law with a view to its Article 24, the maximum duration provided for voluntary execution of the sentence, to avoid subjectivity in determining the notice period by the competent authorities.
- Regarding the execution of the sentence for minor people, it must be said that it is needed care for their treatment. Detention of minors in an educational institution is an appropriate educational measure for this category which needs to be differentiated treatment in relation to adults.
- The existing Law "On the execution of court decisions" should be changed, because it is before the adoption of the Constitution, and other specifications of competencies that should be reviewed.
- In some cases, some convictions predict fine. But the Albanian legislation also provides that, when the execution of the fine is wholly or partially impossible, with the notice of the body bailiff, prosecutor submits the request to the local court for the execution of the penalty conversion. When payment deadlines are not met the local court decides the remaining fine replacement imprisonment under the Criminal Code, and it is the duty of the police to enforce the relevant decision.

Literature:

- Constitution of the Republic of Albania.
- European Convention "On the International Validity of Criminal Judgments" (1970).
- European Convention "On the Transfer of Prisoners" (1983).
- The Criminal Code of the Republic of Albania, approved by Law no. 7895, dated 27.01.1995, as amended by Law no. 9188, dated 12.02.2004, and added to the Law no. 10023 dated 27.11.2008.
- Code of Criminal Procedure of the Republic of Albania, approved by Law no. 7905, dated 21.03.1995, as amended by Law no. 9276, dated 16.09.2004.
- Law no. 8331, dated 21.4.1998 "On the execution of criminal judgments."
- Law no. 10024, dated 27.11.2008, "On the State Police".
- Law no. 10193, dated 03.12.2009 "On jurisdictional relations with foreign authorities in criminal matters".