

INTERNATIONAL LEGAL CHALLENGES IN THE REFORM OF PENITENTIARY SYSTEM IN ALBANIA

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Abstract

To make an objective analysis regarding how criminal sanctions actually executed in Albania, we have to deal with many components that have to do not only with the reading of laws and regulations applicable at this stage of the procedure, but the study also adopt EU & Hague instruments.

The albanian penal sanction such as criminal code- life imprisonment and the opportunities that International Court of Hague and EU recommendation offer as an innovative escalation during a very difficult period.

It is always a matter related to critical reviews of legislation, how contemporary reality penal sanctions against persons convicted are according to the legal basis for the execution of criminal sanctions as well as relevant surveys conducted at institutions penitentiary in Albania in several circumstances.

Some reports are being monitoring the results of penitentiary system with the implementation of the suggestions of international partners; That's for a reason that the Albanian law on the punishment of life imprisonment presents serious problems in the modalities of execution of the punishment, violating the right and fundamental freedom of man, that lives in liberty, and break up the Article 3 of the ECHR, which prohibits placing under cruel punishments, inhuman and degrading. Albania in these critical points lack improvements which we hope we can bring in your sight.

Keywords: Legal sanctions, penitentiary, prohibits, critical points ,ratification .

INTRODUCTION

Of course the problems in relation to the improvement of the Criminal Code and their changes do not finish here, but the exchange of ideas and reasonable proposals, can serve to respective state bodies, after ratification of the ECHR and after the adoption of the Constitution in 1998, reform the legal system and criminal justice in that size was not only quantitative but also qualitative. These as well as other documents enabled the safe path towards well-defined standards.

This reform is still unsure if the penitentiary system works well and challenges to achieve the best are increasingly raised. These legal reforms were necessary and are evaluated positively by international institutions, because they are effective in the fight against crime. It still remain in the first plan the legal reforms made in the criminal area in 2001, 2003, 2004, the Law no. 8733, dated 24.01.2001, no. 9086, dated 19.06.2003, 9188, dated 12.02.2004 and the Law no. 9275, dated 16.09.2004. The articles in 2007 changed in 2012, changes in 2013 and the recent changes in 2015.

The formulation of Articles 245/1 to exercise undue influence on persons exercising public functions, etc. It was not the technique vindicated in minimum legal requirements.

Legal reform of 2001 was clearly formulated in Article 287 / especially dirty money laundering, while the law 9086, dated 19.06.2003 was changed.

Any addition or change in the law made as a result of the study and generalization of experience that law enforcement investigative and judicial practice, as well as the recognition of the international legal acts as the criminal legislation of democratic states. However, to argue as above, just to mention Article 28 of the particular forms of cooperation, Article 36 on confiscation of assets of committing the offense and the proceeds of crime, Article 110 / a, 114 / b, 128 / b etc. (Council of Europe, , Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners)

Albanian law on the punishment of life imprisonment presents serious problems in the modalities of execution of the punishment, violating the right and fundamental freedom of man, that lives in liberty, and break up the Article 3 of the ECHR, which prohibits placing under cruel punishments, inhuman and degrading. (Constitution of the Republic of Italy, in force since 01.01.1948,Article 27 (2))

The Republic of Albania will need as soon as possible to change its legislation concerning the category of persons sentenced to life imprisonment.

Condemned to life imprisonment, according to each individual case and referred to progress in the sentence, in view of the disappearance of the potential for recidivism and in view of correction, after the expiry of a time limit prescribed by law,they should have the right and opportunity in court jurisdiction to address the real execution of criminal sentences for the benefit of supervised freedom or conditional one. (Réglement de Procédure et de preuve de la Cour Pénale Internationale)

(Ranalli Daniela, “L’ Ergastolo nella Giurisprudenza della Corte Europea dei Diritti dell’ Uomo”, Italia, 2015 pp.1)

Two new alternatives are presented, one of which replaced the fragmented alternative sentencing, and is changing the content of the three existing alternatives (despite the fact that they were in the alternative, is the same). The way, how a state punishes those who commit crimes and how executes sentences given to them is undoubtedly indicative of its civilization.

1. Review criteria and procedures set out in the Rules of Procedure

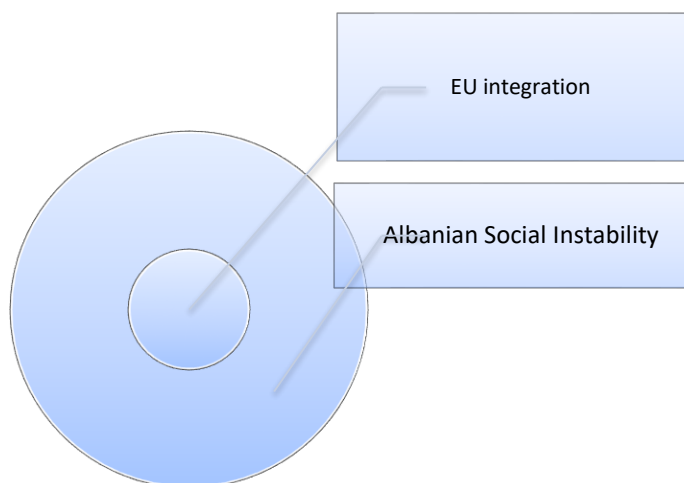
1.1 International statute ,Criminal Court in Hague

Statute of the International Criminal Court concluded in Rome on July 17, 1998 and approved by the General Assembly of the Organization of the United Nations on June 22, 2001, allows the reduction of the sentence to life imprisonment if the risk of crime and personal situations of prisoners ,they justify this reduction. Article 3 of the Statute 110 & determine when sentenced to life imprisonment committed 25 years the Court shall review the sentence to determine whether there is room to reduce it.

Review criteria and procedures set out in the Rules of Procedure. Under paragraph 4 of Article 110 of this regulation criteria should take into consideration the judicial bodies of the Chamber of

Appeal, which has jurisdiction for examining the case for sentence reduction during the execution of his dealing with:

- *taking into account the consequences that may have prematurely release of prisoners connected with the victims and their family members*
- *the behavior of prisoners, which should show real detachment from his crime*



Article 224 of the Rules of Procedure stipulates that in order to apply paragraph 5 of Article 110 of the Statute, the three judges of the Appeals Chamber review the question of reduction of the sentence every three years, unless an interval of less time is determined in a decision taken in application of Article 110 paragraph 3 of the Statute.

This article (224) also defines that, if the circumstances have changed significantly, judges can authorize a convicted person to seek a re-examination / review during the three-year period or a shorter interval of time where they will affix.

As shown, the legal instruments of international criminal law and that European consider life imprisonment not given "forever".

This sentence will have to be re examined during the execution phase and prisoners with such sanction could be given an opportunity to be released on conditional freedom.

1.2.Recommendation for individualized treatment plan of the sentence of life imprisonment

Among the basic principles and rules which relate to the treatment of this category of prisoners, Recommendation 23, we find the principle of individualization, which consists in taking into account the individual characteristics of the personality of the prisoners to keep them in mind for the adaptation individual plans of the sentence and the principle of progression, which dictates the need for individualized treatment plan of the sentence of life imprisonment or imprisonment for a long time a prisoner, be such as to provide an evolution about through the progressive penitentiary system (see para. 3 and 8 of the Recommendation)

What does this recommendation defines ?

It is as following "... *The execution of sentences that deprive prisoners of their liberty, means finding a balance between respect for order and discipline in the penitentiary institutions on the one hand and the need to offer prisoners a dignified life conditions and an active regime, a constructive preparation for their release*".

Paragraph 16 provides that criminal dangerousness and needs are not intrinsically stable characteristics and that there is room to proceed periodically with an assessment of the risks representing or not the convict. (Quenk N.L. (1993) *Beside Ourselves: Our Hidden Personality in Everyday Life*, Palo Alto, CA, Consulting Psychologists Press Books.)

Finally, paragraphs 33 and 34 are devoted to preparing for the return of prisoners into society. Under paragraph 33, to help convicts to life imprisonment or imprisonment for a long time to face the problem of transition from an imprisonment of long life in observance of laws in the midst of society (Schein, J. (1974). *Personality characteristics associated with interpreter proficiency*. *Journal of Rehabilitation of the Deaf*,3,33–43) , their release should be sufficiently prepared before taking into account:

- the need to implement specific plans dealing with pre release and post release, taking into account relevant risks and needs
- the possibility of prosecution after the release of prisoners or treatment programs in which prisoners were involved in serving a sentence of imprisonment.
- the need for cooperation of the penitentiary administration, supervisory authorities and the condition during social or medical services.

2. Some approaches from European Court of Human Rights

Denying that the only function of punishment is rehabilitation, the ECHR has at this time advocating prevention and social protection through the State's punitive power. But also referring to ;(Statut de Rome, de la Cour Pénale Internationale and Internet web "Find Law for Legal Professionals" – [http: www.caslaw.findlaw](http://www.caslaw.findlaw))

After 2008, when the Strasbourg Court has been asked again in a series of court expressed about the fact, whether life imprisonment without the possibility of parole is an inhuman and degrading treatment, violating Article 3 of the European Convention on Human Rights Human, the Court has had a gradual approach the problem. European Court of Human Rights has been asked on several occasions to consider and pronounce a decision to the Grand Chamber of compliance sentence of life imprisonment without possibility of release on parole, with the European Convention on Rights human, which in Article 3 provides: "no one can be placed under torture or penalties or inhuman and degrading treatment".

In its jurisprudence, around 1970 the Strasbourg Court has stated the compatibility of the sentence to life imprisonment with the norms of the Convention, based on the "theory multifunctional sentence" in one aspect, and the other aspect, this Court has recognized freedom

parole with the condition of gate, which constitutes the effective reintroduction of inmates to life in civil society.

- Further, in the case of Öcalan, with its finding that the gravity of the offense cannot justify cruelty and degrading treatment of prisoners, the Court approached the problem of life imprisonment without the possibility of parole closer, in response to policy offense to those states that still apparently do not find the balance between the general principle of social protection on the one hand and the principle of socialization of the perpetrator from the other side, if indeed there is a possibility for him to be re-socialized. Öcalan against Turkey” (Decision of Grand Chamber on 18 march 2014)
- “Further to the European Commission’s 2010 Opinion on Albania’s EU membership application, as the Enlargement Strategy 2013-2014 points out, there are five priorities that Albania needs to meet for the opening of accession negotiations. These key areas include, among others, the need to “take effective measures to reinforce the protection of human rights, including of Roma, and anti-discrimination policies, as well as implement property rights”. The priorities reflect the Union’s fundamental principles and values which aspiring members are required to actively adopt too. During the presentation of the new projects, the Head of the EU Delegation to Tirana, Ambassador Ettore Sequi emphasized that civil society plays a vital role in advancing human rights. (Lotierzo, Rocco, (1998.pp 34) “Ne bis in idem: l’effete tipico della Res Iudicata penale”.Rome,Italy)
- “The role of NGO’s to make the country advance towards Albania's EU accession perspective is very important, in parallel with efforts and commitments from the Government side”. Ambassador Sequi also noted the importance of close contact with vulnerable groups and between civil society organizations as being crucial.”(North, B. (1996/2000): *The development of a common framework scale of language proficiency*. PhD thesis,Thames Valley University. Reprinted 2000, New York, Peter Lang)
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Referring to the jurisprudence of this court can conclude that, according to the Strasbourg Court, the sentence of imprisonment should not remain “*forever given*”, it should not end when a person's life ends. This sentence should be reassessed during the executive proceedings by judicial or administrative authorities of the state.

The European’s policies target is the community, the language serves as the tool of the government that reflects the tension of an “ever-increasing” and harmonizing EU and the sovereignty of its Member States. As it is emphasized at Article 5 of the Treaty of Rome: “In areas other than those in which the Community has exclusive competence, the principle of subsidiary seeks to uphold the capacity to take decisions and action at Community level when the scale and effects of the proposed action mean that the objectives would be better achieved at Community level.”

CONCLUSIONS

Also, although it is not made in the evaluation constitutional existence of Article 65 of the Criminal Code, Albanian politicians should have the courage to take the legislative initiative to repeal this article and the creation of a legal framework for the respect of fundamental rights and freedoms of category the persons sentenced to life imprisonment.

The Albania Constitution did not foreseen a specific provision which determine the purpose of execution of criminal penalties as was done in Italy, Spain etc with the formulations: “*Penalties depriving liberty and security measures will be directed at social rehabilitation and re-socialization .*” or “*Punishment can not consist in treatment contrary to the sense of humanity and must aim at rehabilitating the condemned*” the abovementioned constitutional provisions, Articles 15 and 17 of the Constitution in the Republic of Albania; fully justify the conclusion according to which Article 65 of the Albanian Penal Code prohibiting the possibility for the release of prisoners to life imprisonment is in contrary to the Constitution.

Every man, even if sentenced to an extreme measure, should be returned to the personal dignity of life and in hope of freedom. The existence of this provision in the Criminal Code (Article (65), install a regime penitentiary only punitive and vindictive on the modalities of its application. This rate is in itself the break of the state of law, suspend treatment penitentiary or interrupts the performance progressive rehabilitation and social reintegration that should guide any prison sentence.

Albania remains behind developments in the field of criminal law. Today in Europe a debate, whether or not there should be criminal to life imprisonment legislation. This debate is intensifying these days in European countries with developed democracy and includes views on considerations on punishment and its purpose ! Although these kind of EU suggestion all these changes into legal Albanian system hope to bring life changes prioritizing human dignity and right!

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