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RRUGA E LEGJISLACIONIT PENAL SHQIPTAR DREJT BASHKIMIT EVROPIAN DHE ROLI I SISTEMIT TË DREJTËSISË PENALE NË PARANDALIMIN E KRIMINALITETIT

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Përmbledhje

Qëllimi kryesor i këtij dokumenti është prezantimi i modelit të legjislacionit penal shqiptar, hartimi apo bërja - e ligjeve duke respektuar dhe zbatuar disa standarde kyçe; disa kërkesa të nevojshme që ndikojnë në përmirësimin e legjislacionit tonë penal, strategjitë e ndryshme të parandalimit, dhe rolin e sistemit shqiptar të drejtësisë penale në parandalimin e krimit dhe viktimizimit, në mënyrë që të konsolidohen me ligjet e BE-së dhe marrëveshjet ligjore ndërkombëtare kundër kriminalitetit i cili ka si qëllim kryesor përshtatjen e legjislacionit penal shqiptar me ligjet e BE-së; organizma që sigurojnë cilësi të së drejtës penale shqiptare, sipas modeleve të përshtatshme të vendeve demokratike evropiane. Gjatë dekadës së fundit në Shqipëri kanë qenë ndryshime pozitive në aspektin legjislativ. Miratohen, ndryshohen dhe ratifikohen shumë ligje të cilat janë pjesë e konventave të legjislacionit shqiptar dhe marrëveshjeve ndërkombëtare, megjithatë ka akoma më shumë punë për të bërë përpara. Duhet pranuar se pavarësisht rezultateve pozitive të arritura, në reformat ligjore në Shqipëri u vëzhguan veprime të pastuduara mirë, nxitojnë për ndryshime të shpeshta të të njëjtave dispozite penale, duke arritur në më shumë se gjysmën e Kodit Penal. Kjo ka ngritur për diskutim përgatitjen e një Kodi të ri Penal. Mund të themi se metodat e studimit të kriminalitetit japin rezultate të mira, të cilat i shërbejnë politikës kriminale dhe përcaktojnë orientimet që ligjvënësit në bërjen e së drejtës penale. Për të rritur luftën kundër kriminalitetit është e domosdoshme zbatimi i rikomisimit të autoriteteve të drejtësisë. Në kontekstin e integritetit të Shqipërisë, qasja e Legjislacionit Penal Shqiptar me standardet evropiane është një proces historik, politik, ligjor dhe social që kërkon angazhim serioz dhe krijues.

Fjalë çelës: *Legjislacioni penal shqiptar, Bashkimi Evropian, marrëveshjet ndërkombëtare, organizmat, reformat ligjore, parandalimi i kriminalitetit, drejtësia penale.*

ALBANIAN CRIMINAL LEGISLATION PATH TOWARDS THE EUROPEAN UNION AND THE ROLE OF THE CRIMINAL JUSTICE SYSTEM IN THE PREVENTION OF CRIMINALITY

Abstract

The main purpose of this paper is to present the Albanian criminal legislation model, drafting or making - laws by respecting and implementing several key standards; some necessary requirements that impact on improving of our criminal legislation, various prevention strategies, and the role of the Albanian criminal justice system in the prevention of crime and victimization, in order to be consolidated with EU laws and International legal agreements against criminality which has as main purpose the adaptation of Albanian Criminal legislation with the EU laws; organisms that provide quality of Albanian criminal law, according to appropriate models of democratic European countries. During the last decade in Albania have been positive changes in legislative aspect. Are approved, amended and ratified many laws which are part of the albanian legislation conventions and international agreements, however there is still more work to do ahead. Must admit that despite the positive results achieved, in legal reforms in Albania were observed actions unstudied good, hurry for frequent changes of the same penal dispositions, reaching more than half of the Penal Code. This has raised for discussion the preparation of a new Penal Code. We can say that methods of study of criminality give good results, which serve criminal policy and define the orientations legislators in making criminal law. To increase the fight against criminality is necessary the implementation of the recommendation of justice authorities. In the context of integration of Albania, the approach of Albanian Criminal Legislation with European standards is a historical, political, legal and social process that requires serious and creative commitment.

Key words: *Albanian Criminal legislation, European Union, international agreements, organisms, legal reforms, prevention of criminality, criminal justice.*

Introduction

In the criminal law of the Republic of Albania stand duties that are defined in the Criminal Code: “The criminal legislation of the Republic of Albania is in charge of protecting the state and the completeness of its territory, human dignity, rights and freedoms, constitutional order, property, environment, coexistence and understanding of Albanians with national minorities and religious coexistence of offenses, as well as their prevention “¹

These tasks derive from the Constitution of the Republic of Albania (Articles 3 and 4, 15, 18, 20, 21 and following). Systemizing tasks of the Criminal Code can be divided into three main categories: 1. Indisputable protection of the important values of human (life, health, dignity, rights, freedoms), the society and the state; 2. coexistence and understanding of Albanians with national minorities and religious coexistence; 3. Prevention of crime. The fact that the Criminal Code defines duties, is positive because it shows the main trends in the criminal legislation of the rule of law, which is being built and strengthened in Albania. Another contributing factor is that the whole legal reform in the Criminal Code as changes throughout the years 2001 - 2017 and ahead are based on the Constitution, international legal acts, the recommendations on criminal issues of the Committee of Ministers of the Council of Europe that evidence positive steps towards the integration of our criminal legislation to European standards . The validity of a legal system is a combination of three elements: legislation,

1 Elezi, I. Kaçupi, Haxhia S., M. Commentary of the Criminal Code (the General), Tirana, 2015, p. 18.

case law and custom. If the law is the first, then its implementation should be guided by court practice and the interpretation of criminal law.

Theoretical Aspects

Effectiveness of criminal law for combating crime is in the development process and strengthening and which is realized through legal reforms for the improvement of legislation and the criminal justice system to implement it in practice. The criminal legislation includes the general and special part. The principles of the general part of the Criminal Code and its institutes are the basis for the implementation of the special part of the Criminal Code. It must be admitted that despite the positive results achieved in the legal reforms during the years 2001 - 2017, actions not well studied, acceleration for frequent changes of the criminal provisions etc., have been observed, reaching more than half of the Criminal Code. This opened for discussion the preparation of a new Criminal Code.² In contemporary legal literature is supported the view that the implementation of legal reforms are very important as a demand for unification with international law in some direction which are: 1. lawmaking with changes and additions 2. compliance and proper application of its criminal justice system, 3. legal, doctrinal and judicial interpretation 4. awareness of the community in respecting criminal law. In the view of other authors, the implementation of criminal policy is done in two directions: in making the criminal law and its implementation.

Methodology of draft laws

In criminal legal literature admitted that criminal policy finds its expression primarily in the development of criminal law. Of course, here bear in mind primarily the Criminal Code, without denying other specific laws that contain legal criminal - norms. The Constitutional Court of the Republic of Albania, in its decision no. 1, dated 20.1.2011. stated that: “the distribution of criminal offenses in different laws, as well as frequent changes in criminal law do not serve the legal stability of the country as an important condition for the functioning of the rule of law”.³ In case of frequent changes in legislation that aren't studied well, we may face in what is called “legal uncertainty”, in where the competent authorities have the power or ability to provide in any case the application of laws despite the uncertainties that exist in them. In making laws are clearly intertwined components of the criminal policy, criminology and criminal law, for a high quality criminal code. In this direction have contributed in particular, textbooks on criminality as well as the publications and studies of foreign authors who have written about the Albanian legislation, making their criticisms as well.⁴

In the drafting of the criminal law, some key standards must be followed and applied: first, studies of criminological analysis of the crime situation, structure, its dynamics, causes and criminogenic factors. Without criminology analysis criminal law would be abstract, could not realistically reflect the principles of criminalization, decriminalization, depenalization in their historical development. Methods of criminological study produce effective results which serve to determine the criminal policy guidelines that will give the legislator the possibility for making the changes in criminal law as well for any legal reform in the criminal field, in order to concentrate principles and contents of criminal policy.

Quality of criminal law

Quality of criminal law is a basic requirement for having a correct implementation of the provisions but is also a demand settle by European Union. Quality of criminal law, means a satisfactory level of legal technique, harmonization of various articles of the criminal law, criminal law harmonization

2 Elezi, I. History of criminal law, SHBLU, Tirana, 2010, p. 216 -218.

3 Decision of the Constitutional Court of the Republic of Albania, no. 1, dated 20.1.2011.

4 Hysi, V, Criminology, Tirana 2010; Halili, R, Criminology, Pristina 2012.

with other legal acts of various branches of law to ensure a strong foundation for the criminalization and decriminalization. As much as perfect the text of the law, the less leads to difficulties in implementing it in practice.

In the Albanian Criminal Code are made some amends in the fight against criminality, however it remains to work in the future because there are many drawbacks. The fact is that the Criminal Code from 2001 to 2017 and ahead are made over 250 additions and changes aligning with EU laws and conventions and other international legal acts but also are changed several times the same provisions that clearly shows that the special part of Criminal Code represents a conglomerate of legal techniques. For example the changes made with the reform of 2004, have changed 21 articles in Criminal code with new formulations, set by the 2001 legal reform. These mechanically changed articles conformity with international legal acts haven't harmonize some articles of the Criminal Code with the concrete conditions of our country and therefore not applied in practice. This legal technique, widely used in recent years has created problems for the understanding and implementation of the provisions of the Criminal Code.

The greatest anomaly is that some provisions are formulated as a long commentaries and not concise, accurate and clear. In the Criminal Code there are numerous examples that demonstrate to us, for example. Articles for illegal trafficking (Article 110 / a, 114 / b, 128 / a) provisions for active and passive corruption (Article 164 / a, 164 / b, 245/1), Article 221 (uprising), articles on terrorism (230-230 / c), etc.). To avoid subjectivity in the interpretation of these provisions, which could lead to a violation of the principle of legality, justice, in determining guilt and punishment, individualization of punishment, etc., would be necessary that the Criminal Code be accompanied by a special dictionary terminological, which clarified the content of each term. Excessive use of difficult formulations of articles, it is totally unnecessary.

By criticism of some professors Italian: "In general, the Albanian Criminal code is not built very well, is not complete, the structure not perfect, there are shortcomings formally, a legal language not clear that requires more reflection and attention. Also is noticed a not harmonization of sanctions in relation of the dangerousness of the provisions of the Criminal Code. In many articles are given detailed, lengthy unnecessary explanation. There is a structuring completely unreasonable and lacking consistency in the content of some articles, such as enacting terms of structure as well as criminal sanctions.⁵ Opinions, analyzes and reviews have objective and theoretical value and influence to the improvement of our criminal legislation in order being consolidated as with EU laws and international legal agreements on combating crime. In the criminal system of social control, there is an inverse relationship, the more reduced are social control mechanisms, the more compressible and increased is the crime control while so strengthening the penal system".⁶

Quality assurance bodies of criminal laws

With the task of preparing the criminal laws of the highest quality, based on studies by selecting the appropriate models of democratic European countries, it has been charged by the Ministry of Justice, Department of Codification. Special role has played the Law Commission in the Parliament, as a specialized body to ensure the quality of laws, but also the Albanian Parliament as the highest legislative body, during the discussion of the draft. The participation of foreign and domestic qualified specialists, extensive discussion of projects, scientific debate, the debate in the media, etc., serves as an effective method in creating clear and precise laws, leaving no place for vague formulations.

5 Pittaro, P. *criminal Codice della Repubblica d'Albania*, 2008; Manna, A. *L'imputabilita nel Criminal Codice Albanese, alcune considerazioni*. 2008.

6 Mantovani, F. *Il problema della criminalita*, CEDAM, Padova, 2008, p. 86.

1. The role of the albanian criminal justice system in the prevention of criminality

1.1 The role of the police in crime prevention

The police is an important actor in the prevention of crime, but not the only. It has a dual position: has the duty to protect the rights of citizens from their endangerment by the actions of other persons, on the other hand the police might infringe the rights of persons that are in a criminal search or that are sentenced with imprisonment if they do not respect the international standards for their treating.⁷

By assessing the possibility of infringement of the human rights in the case of execution of liberty deprivation in accordance of the court decision, international organizations as the UN, Council of Europe and the European Union, have developed a series of minimum rules that must be respected in some cases and when it is necessary not applying deprivation of liberty taking in account age, gender or certain social position.

1.2 Prosecution and its role in the prevention of crime

The role of prosecution, in crime prevention is expressed above all in the criminal policy that should be followed by this body where a special importance have policies proceeding as (initiation of the criminal case, suspension and sending in the trial a criminal case). Policy processing depends on laws, but also by structures that work for implementing them. Here we must emphasize the creation of specialized structures for investigating and fighting new forms of crime, which are: Department of financial intelligence that deals with the prevention of money laundering under the Ministry of Finance; Department of computer crime, June 2009; Agency for the management of seized assets, system which enables the exchange of information for investigations in the field of drugs in central and local level, Office of the National Coordinator for the fight against trafficking in human beings under the Ministry of the Interior.under the Ministry of the Interior.

Creating new structures as the SPAK, the Court against Organised Crime and Corruption based on the justice reform is a feature that has been undertaken recently in Albania for preventing and combating organized crime, corruption. We can say that until now, a good job has been done by Spak, but there is still work to be done, because the level of organized crime and corruption in Albania still remains a concern. Also creation of the new structures, outside the prosecution system, as the Ministry of Finance is a feature that we see in all reforms undertaken recently in Albania for preventing and combating financial crime and data collection for cleaning money. Creation of specialized agencies is a widespread phenomenon in several European countries and reflects the combination of the continental model with that anglo-saxon in the investigation of these crimes, bringing developments that need to be evaluated seriously.⁸

1.3 Judicial system and the prevention of crime

Criminal justice system, can play an effective preventive role. Today, the way of functioning of the system has been changed depending on the model chosen as: 1. model of crime control or 2. model of crime prevention. This system in Albania has undergone a reform process, especially on the way of the organization of the courts, the number of judges and budgets for the judiciary, which are an

7 Hysi, V., 2010. Criminology, crystalline - KH, Tirana; Halili, R., 2002.

8 Selih, A. (2010). The prosecution process and the changing role of the prosecutor, Council of Europe, p.106.

important element in the strengthening of democracy, respect for human rights and the state of right. Criminal justice begins to play its preventive role at the moment when the persons participating in the process went to the doors of the police, the prosecution or the court and ask to have access to their services, to be informed about the processes, the development time of the case, about the stages where is the issue they are interested in, etc. Access to justice is a problem for some layers in society, such as those in social and economic weak position, victims of trafficking, minors, some minority groups and people with different sexual orientation. It is for this reason that the Council of Europe has adopted several recommendations and resolutions regarding free legal aid.⁹ The European Convention of Human Rights treats this aspect as an element of regular judicial process.¹⁰

1.4 The criminal justice system and crime prevention

This system has a duty not only to rehabilitate the convicted person but also to prevent the recidivism. It is for this reason that the UN, COE and EU have developed minimum standards for the treatment of persons sentenced to imprisonment.¹¹ Many national and international documents sanction prohibition of torture and other inhuman and degrading treatments and define the rules for the treatment of various social groups, persons serving sentences for e.g sentence with life imprisonment. The prosecution and the judicial system can contribute to an effective preventive policy in the prison system through the implementation of alternative sentences and appropriate sentence policies for women, minors, the elderly.

1.5 The role of Probation Service in the prevention of crime

Probation service is a state body that supervises the implementation of alternative sentences, provides information and reports to the prosecutor or the court, and helps the convicted persons to overcome the difficulties for social reintegration. Appreciating the role of this service is with interest it's use in the criminal justice system. Haines scholar, expresses the opinion that this service has no significant impact on reduction in crime.¹² This mechanism aims to reduce overcrowding in prisons and to find appropriate ways to rehabilitate the person.

Discussion

Speaking of crime prevention, today more and more arises the question: criminal justice or restorative justice is more effective in preventing crime? From the studies that have been made in international practice turns out that there is no single definition of restorative justice. Nowadays it is considered as a process that aims to regulate the damage came from the offense and establishing peace between the parties in conflict.¹³

It is based on the concept of damage caused such as material, psychological or social, and focus more

9 Council of Europe. (2015). Rec 93 (1) "For effective access to law and justice for every poor person".

10 ECHR. (1953). Article 6, point. 3

11 UN Commission. (2002). Guide of the United Nations for Crime Prevention, http://www.crime-prevention-intl.org/io_old/english/features/pdf/UNCommission0254281e.doc.

12 Haines, K. (2009). Manual for employes of Probation Service, OSBE, 2009, p.22- 23.

13 Elezi, I. (2008). Prevention, criminal justice and restorative justice, the intermediate magazine, no 128, Tirana, 2008, 39-50.

on repairing this damage, stimulating and enhancing the role of the individual in resolving disputes. Currently in Albania, the concept of Restorative Justice is not unknown. As the most widespread form of it, is mediation. Mediation procedures are regulated by law (no.10385, dated 02/24/2011) “For mediation to resolve disputes”. The law provides that mediation is performed in cooperation with “probation service” which supervises the implementation of alternative sentence and helps the reintegration of the convicted person .

Restorative Justice is often posited as a cheaper, more effective alternative than the imprisonment, but it has the shortcoming of relying almost solely on the permission and participation of the victims. This report aims to discover and analyse possible barriers to victim in the commitment in Restorative Justice with a view for making recommendations on how to remove or alleviate these. By results of a study in London, it was discovered that although popular media represents a usually negative view of Restorative Justice, the majority of victims and offenders in studies felt positively about it. The statistics also showed that Restorative Justice is in a good light when considering recidivism. Overall, there is general view that Restorative Justice can be good for both victims and offenders in certain situations, but can also be damaging, if it is not applied properly.¹⁴ In such conditions must be overcome challenges and when are the conditions restorative justice should be given the right place.

As Russian bombs rain down on Ukraine, there is a huge focus on the ‘oligarchs’ and business figures close to Vladimir Putin who have profited from the corrupt underpinnings of Russia’s political economy.

Conclusions

Approximation of penal legislation with that of the European Union related to the completion of several key conditions:

1. The drafting of laws or the preparation of legal reforms of the justice system should be guided by the science of criminal law and new sciences of criminal policy, criminology, penology, and exploiting the assistance of scientific institutions of the justice of democratic countries.
2. Fighting manifestations of corruption, organised crime within the justice system and outside it. Ensuring the implementation of justice and the effective protection of human rights and freedoms. Referring to this condition, the concept of freedom was discussed up and down, its narrowing down to individuality or its subjugation to a collective, especially in the context of the war in Ukraine and the conflict in Palestine, as well as kleptocracy system here in Albania. Referring to Russia’s war against Ukraine, there is a huge focus on the ‘oligarchs’ and business figures close to Vladimir Putin who have profited from the corrupt underpinnings of Russia’s political economy. Russia was dubbed a kleptocracy by American political scientist Karen Dawisha in her 2014 book *Putin’s Kleptocracy: Who Owns Russia?*

But what exactly is a kleptocracy and in what ways is the term appropriate for Russia?

Definition of a kleptocracy

Most explanations of kleptocracy – derived from the Greek for ‘thief’ and ‘rule’ – stress the aspect of ‘grand corruption’ whereby high-level political power is abused to enable a network of ruling elites to steal public funds for their own private gain using public institutions. Kleptocracy is therefore a system based on virtually unlimited grand corruption coupled with, in the words of American academic Andrew Wedeman, ‘near-total impunity for those authorized to loot by the thief-in-chief’ – namely the head of state. We can argue about how far the freedom of individual should go, and this has been

14 Grief, E. (2007). *Restorative Justice: How it Works*, Jessica Kingsley, London, p. 33.

done in political philosophy and religious for centuries. I think we need to have the courage to embrace freedom. This is neither an empty phrase nor selfishness. The path of freedom is in middle, in compromise. Fear is the wrong counsellor for a democracy. There are also many challenges forward for Albania about the transformation processes needed, to integrate in EU. I think the secret of happiness is freedom, and the secret of freedom is courage. So let's be brave to embrace and protect the freedom.

4. Developing the doctrine of criminal law, criminology and criminal policy as pillars of the rule of law.

5. The recommendations made in scientific seminars and conferences, in textbooks and scientific articles by domestic authors as well as foreign authors.

6. Criminal law protects the rights of fundamental freedoms, strengthens the rule of law, increases people's trust towards the judiciary and the justice system as a whole and reach European standards by responding to the requests for Albania's integration into the European Union. Consolidation of approximation of criminal legislation and the science of criminal law with European standards is a political, legal and social necessity. This requires a continued growth of the professional qualifications of judges, prosecutors, lawyers and jurists of the justice system to ensure the proper implementation of law, strengthening the rule of law and development of democracy.

7. Regional and international cooperation is a European criminal policy orientation towards the prevention of criminality. This collaboration is dictated more and more today because of organized crime, organized economic, financial crime and increasing threat.

8. Thanks to the ratification of conventions and agreements in the field of criminality, it is necessary for the Albanian police and prosecution to develop a wider network of cooperation between the counterpart institutions of the countries and governments of the European Union in the fight against it. The challenge for criminal justice is the prevention of victimization and victim rehabilitation. What is recommended is that in all cases, should be respected the interest of the victim. In practice of our country it is not applied properly protection of the victim and her family members.

9. In cases of serious crimes, victims and families are seriously threatened. To avoid unpleasant consequences even dangerous for the victim, the legislation of each country should predict measures for the protection of the victim. Today is paid more attention to public opinion participation as well as victims, in drafting of preventive criminal policies and their implementation.

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