

A GENERAL VIEW OF ALTERNATIVE SENTENCES IN ALBANIA

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Abstract

Since 1995 when it entered into force, the Penal Code has changed constantly, but recent changes made by Law no.10023, date 27.11.2008 "On some amendments to Law No. 7895, dated 27.1.1995 " The Penal Code of the Republic of Albania " , as amended, along with other provisions were adjusted and changed provisions related to Chapter VII of this code entitled " Alternatives of Sentencing with Prison" and the law "On executing important penal decisions." Through the Penal Code of the Republic of Albania there is a special chapter on alternative given to the person who did the criminal act, also the human character of the sentence. Usually these alternative sentence of imprisonment are awarded by the Court which estimates that the author's social dangerousness is small, and when the court considers that the implementation of such measures is achieved with the best of intentions of the sentence. Sentencing alternatives are not specific types of penalties available but are a way of their execution. In this case, the court first determines the amount of punishment against the offender, and if it sees that he meets the relevant conditions, it decided to implement one of the alternatives to punishment .

In modern theory and practice, criminal conviction offense, has some features in order to fulfill the goals aimed. Firstly, any person who commits an offense will be punished for it, with a corresponding penalty law violation that he has done. For some, prison is inevitable, in order to ensure the protection of society and public safety. Penal punishment aims to achieve rehabilitation of the author of the offense, and to prevent him(her) from committing further criminal acts, as well as for other persons in society safety. The aim of punishment is to prevent the dangerous activity of the author, and to improve his/her education and positive educational impact to other people who may be contingent on committing offenses in the future. The damage caused from the author to the victim can " be repaired " and so the crime can be reduced by turning again the person in the community but in this case rehabilitated.

The law changes give more space in the practical application of alternatives to imprisonment. It should be emphasized that these alternative punishment is only applied to the person if the court before the sentence given, which should definitely be imprisonment up to a certain extent.

Keywords: Alternative sentence, probation, imprisonment, conditions, criminal, prosecutor, court

1.Probation

For the first time is defined by law the creation of a new institution called the probation service. In Article 31/7 of Law no. 10024, date 27.11.2008 "On some amendments and additions to Law no. 8331, date 21.04.1998 "On the execution of penal decisions" states that the probation service functions as a state authority reporting to the Ministry of Justice which submits to the court and prosecutor information and reports, assists in the execution of the sentence alternatives on prison convicts and helps to overcome various difficulties for his/her social reintegration.

2.Semi-freedom

In recent changes made to the Penal Code was introduced a new alternative called "Semi-freedom" (Article 58) which replaced the previous alternative of "*fragmentation of the imprisonment sentence*". This alternative sentence is applied to a person only if the court gives a penalty of up to one year. To provide this alternative, the Court should find that the inmate has serious family, medical, educational, professional or social circumstances.

Severe family circumstances may exist when such person has had a family disaster and when he has no other family type of help except himself. He may have serious health circumstances when the medical report certifies that he suffers from a serious illness. If while serving a sentence in prison, the person would lose the professional skills then the court may apply to him the semi-freedom. When serving a sentence prompts reactions from society or the person may lose the reputation he has, then we can consider these circumstances as social.

In each case the court may apply this alternative when the above conditions exist, as even when it is convinced that the purpose of punishment can be achieved through the application of this alternative. Convicted person serving a sentence in semi-freedom is forced to return to prison after committing duties outside the prison within a period specified by the court.

What this new provision does not provide is the maximum time within which alternative should be executed.

Unlike the previous article which explicitly provides that the execution of fragmented sentence should not pass three years, regardless that the person suffers two or three days a week in prison.

2.1 Semi-freedom Revocation

The Penal Code also provides possibilities for the revocation of alternative in case the person who has benefited from Semi-freedom does not comply with the obligations set out in the decisions of the court. In such a case the person will suffer the rest of his sentence in prison.

Based on changes made to Article 29 of the Law "On the execution of criminal judgments" provides that after receiving the decision, the court sends it to the prosecutor for execution . On the basis of the court's commandments, prison administration and Probation Service, in cooperation, define concrete institution of suffering the punishment for convicts, according to the country where he must fulfill his obligations. The Probation Service is required to designate a daily program to be implemented by the sentenced person during the time that he would be outside the penitentiary institution.

3.Suspended Sentences

The court may decide to suspend execution of the sentence imposed for the offense for which is predicted the sentence to 5 years imprisonment, and puts the convicts in probation. In this case, provided in Article 59 of the Penal Code, we have to do with " suspension of execution of sentence of imprisonment to the convicts and put on probation " for a period of time determined by the court in its decision on the condition that the person does not perform another criminal offense during the period of his suspension. Even the suspension of execution of sentence is not a special kind of punishment but is an alternative to imprisonment. Suffering effectively the punishment is not necessary in every case for the realization of its goals, and on this principle is precisely based the alternative sentence. Until recently this has been the most common alternative implemented by the Albanian courts in practice .

The suspension of the sentence is imposed by the court when it deems that the degree of social danger and the author's offense is such as to it is not necessary the application of sentence of imprisonment. So, for the application of the suspension of the sentence should be seen primarily social dangerousness of the offender and the offense and his concrete actions. As less social dangerousness is shown by the author, so the court will be inclined to apply this alternative. If the actions would not show social dangerousness and the author will be keeping a correct attitude and repentant before and after the commission of the offense, and courts have concluded

that the application of suspension of execution, the goal of the sentence is best achieved with the sentence, then you can apply the suspension of execution of sentence of imprisonment. The suspension of the sentence has to do with a punishment in itself and should aim to achieve those goals of the conviction.

The conditions that the court considers about the alternative sentences are : less riskiness of the person, age, or mental health conditions, lifestyle and needs especially those related to family, school or work, the circumstances of commission of the offense as well as behavioral after the commission of the offense. In the application for suspension of sentence should be taken into account mitigation of the circumstances of the commission of offense, the circumstances of the crime, the attitude of the convicted after committing the offense, the person showing remorse, his personal features, psychic distress etc. .

In any case to be decided suspension of execution of sentence of imprisonment, that person should be sentenced to 5 years imprisonment. The prisoner is put to the test during this period, you must maintain contact with the probation service. Time during which the court may place the person on probation ranging from eighteen months to five years. With the changes made was intended as a condition that the prisoner does not commit another criminal offense. The previous provisions predicted that during the period of the test the person should not commit another criminal offense as serious or severe.

The prosecutor has the right to seek revocation of suspension when it determines that the actions in conflict with the decision, or the prisoner fulfills the requirements imposed in the decision (Article 30 of the Law "On the execution of criminal judgments").

4. What conditions should meet the prisoner at the time of the test ?

Article 60 of the Penal Code , as amended states:

" Obligations of the convicts put on probation "

The prisoner who is tested, may be compelled by the court to meet one or more of the following obligations :

a) To practice a professional activity or to receive an education or professional training ;

b) Using the salary and other income or property to fulfill financial obligations.

c) Repair the civil damage caused ;

d) Be banned from driving certain vehicles ;

e) To not practice professional activities which are related to the offense;

f) To not go in certain places ;

- g) To not frequent the bars that serve alcoholic beverages ;
- h) To enable staying in his apartment at certain timetables;
- i) To not be accompanied with specific persons , mostly convicted or associates of the offense ;
- j) To not possess , keep or use weapons ;
- k) To get medical help or rehabilitation in a health institution or submission in a treatment program , medical or rehabilitation ;
- l) To give up from using alcohol or drugs .

The court has the right to decide at this time the duties of the convict on probation. When defining these obligations, the court must take into consideration the age of the convicted person, his mental health, lifestyle and needs, particularly those households, the education or work, the motives that pushed the person to commit the offense, his position after its commission, and other circumstances which may influence the placement and supervision of their duties.

From the character of obligations that the court may take towards the person during the probation like *the practice of a professional activity or education, to pay family obligations and to the people that has caused the damage, the prohibition of visiting certain places or associating with certain people, stopping to run vehicles or to keep and use guns, not fellowship with certain people, etc.*, show that the application of these measures gives the opportunity to the person's rehabilitation and reintegration as to engage once again in society and to influence positively in its progress.

If the court decides to take the convicts on probation, it shall send the decision to the prosecutor and the penitentiary institution. The prisoner who is put on probation must report periodically to the probation service, and shall periodically inform the local authorities of the State Police.

While the right of the court to impose liability on a person to put in evidence that the provisions of Article 61 of the Penal Code as: *maintaining contact with the Probation Service, to take into account the consent of the probation service to change the place of work and residence or continued for trips within the country and constantly inform probation for his employment ,etc* this is done so that the convicted person always to be on supervision, ensuring that the court's decision can be executed.

In taking measures against the prisoners put to probation, Article 60 does not pose any restriction, so the court may take one or more of such measures, depending on the personality of the convict, his age, occupation, family status, its economic, a work that is carried out etc., which the person put on probation is required to implement. These charges put by the court have educational and preventive character, for example, if the person has committed a violation of the traffic code, then the court prohibits running vehicles. When while carrying the offense he has been associated with

certain people then the court forbids to associate with them, etc.. When a person is not responding the family obligations, the court compels to pay alimony etc..

5.Staying at home

Another alternative is the one with the new title "Staying at home" provided by Article 59/a of the Penal Code. In this case, this alternative favors certain categories of people, such as pregnant women or mothers with children under age of 10 who live with, people in serious health conditions that require constant care from health service outside the prison, people over 60 years who are healthily incapable, young people under 21 years with documented study needs, work or family responsibilities. Even in this case, this alternative can be given if the court decides that convict is punished with imprisonment up to two years. In the case of *staying at home*, the person convicted shall not get out of the house, except when authorized by the court to leave as long as the need to meets their basic needs for living or engages in working activities. In this case the court determines that the measures must perform Probation.

When there are no conditions for which it is given this alternative or if the sentenced person leaves the place of residence without the authorization of the court or violates the obligations set out in the decision, then the court shall revoke the person staying at home and sends the convict to suffer the rest of the sentence in prison.

As concerning with the execution of this decision as well as in semi-freedom case, the court's decision exceeds to the prosecutor in charge of supervision of execution if convicted and is in prison, then he sends the decision to the Prison's office. Supervision of prisoners during the stay at home, is made by the Probation Service in cooperation with the police of the residence zone of the convicted person, local authorities and social services. For a better fulfill the daily needs of prisoners, Probation Service, provides information and assistance necessary for convicts from medical institutions, social assistance and NGOs.

Probation Service should play an active role in the implementation of this alternative, especially when we are dealing with the changing conditions in which the person lives or when he cannot fulfill the obligations imposed. In this case, the Probation Service should immediately notify the prosecutor of any such changes. After the verification of the facts and circumstances / conditions, the probation service informs the prosecutor and proposes the change of the conditions imposed on inmates.

6.Court ordered community service

One of the alternatives that has had important changes is the one provided in Article 63 of the Penal Code. The Court may also decide to suspend the execution and imprisonment sentence, when fixed a penalty of one year in prison but in a case such as it may decide to replace this sentence with a public interest work. Work performed in the public interest with the consent of the prisoners, who performs a certain number of hours of unpaid work in the community interest. Work in the public interest is what from its character and content is in the public interest e.g. , in maintenance , green , utilities, construction , etc. . Work in the public interest is not given if the person does not want to carry it. Therefore, the court cannot decide against that person convicted. This work in the public interest is given when the riskiness of the person and the offense is scarce, and when the concrete conditions of the commission of the offense the court deems it is going to achieve the purpose of punishment. This work in the public interest for a given time from 40 to 240 hours and must be completed within a period of 6 months.

It is the court that decides the number of working hours and duties of prisoners to maintain contact with the probation service. The probation service defines the type of work that will be done, where it will be carried out, and days where work will be done in the public interest, taking into consideration the efficient employment of the convict or his family obligations. It Cannot be subject to public interest work those people who under the Labor Code are not allowed to work, i.e., men who have reached the age of 65, women 60 years old and minors under 16 years. Also it cannot be applied to the invalids of the first and second group.

When the court decides to grant this alternative decision it sends the relevant decision for execution. Probation, keeping in mind the skills and vocational training to the person convicted, designs and develops a program for performing work in the public interest.

Before performing work in the public interest the Probation Service in cooperation with the subject at which the work will be done, make known to the person convicted the safety rules at work. Probation Service provides a list of institutions / public or private companies to which work can be done in the public interest. The prisoner is bound to maintain contact with the probation service. When the sentenced person does not maintain contact with the probation service or does not fulfill the obligation set, immediately the probation service informs the court.

When the prisoner does not work on a regular basis, the entity to whom the work is performed in the public interest immediately notifies the probation service. Failure to work on a regular basis is for example late

presentation at work, truancy at work or disregard of rules for the execution and performance at work.

For health reasons, family or other exceptional circumstances, the person sentenced to probation presents a request for suspension of the execution of an order for the public interest. Probation Service verifies the change of the situation and reports it to the court. The court within 5 days from receiving the request for suspension of the decision, gives the order for execution of work with public interest and immediately sends it to the probation service. While the court gives the decision on the request, the obligation to perform public interest work is suspended. The court in defines the time period of the suspension.

7.The suspension of the decision to work in public interest

The execution of the decision to work in public interest may be suspended due to:

- a. Sudden illness of the convicted person, which requires medical treatment and prevents it from carrying out the work activity;
- b. Death of a family member, which requires the convicted person to act as guardian for the other members of the family and keeps it for the performance of work;
- c. Other emergency circumstances which require the continuous presence of the prisoners and prevent him to perform the work.

8.Conditional Release

Article 64 of the Penal Code provides that a person has the right to address the court and seek_bail_ if he meets certain criteria. Conditional release will be set only for specific reasons if the prisoner with his work and behavior shows that is achieved the purpose of punishment. Granting of bail depends on whether the act committed is a crime or a criminal offense and the extent of the punishment given by the court. The convicted for penal offenses must have served at least half of the sentence, for crimes sentenced to 5 years imprisonment.

For crimes which are punishable from 5 to 25 years in prison the prisoner must have suffered no less than three-quarters of the sentence. Two-thirds of the sentence must be served for the crimes to 5 years imprisonment. No conditional release shall be granted for prisoners who repeat the crimes committed intentionally. So, for people who repeat crimes are allowed to seek bail only if the crime is committed negligently.

Only if the person at the time of bail commits intentionally another crime, in this case can be revoked the bail.

Information on the behavior and work of convicts in the penitentiary institution should be taken by the administration of the prison where the

person was convicted, and the court must be convinced of the accuracy of these estimates. For repeated prisoners is not allowed application of article for bail because of the social hazard they pose to our society.

If the punished person during his punishment has benefited from amnesty or pardon, then this time will not be counted on to serve half the sentence. This is done to eliminate the possibility that the person as less as possible from the time of his sentence and be entitled to benefit from the bail. Sentence of imprisonment should therefore be an actual time that is calculated from the date of received decision.

If the person during the bail commits another offense, than the court revokes the decision for parole release and implements provisions for merger of convictions. So the remained time not suffered from the first sentence is joined to the sentence to be given from a second criminal system applying heavier penalty added or absorption system.

The application for bail may be submitted by the person convicted, but the court will always decide judging dangerousness of the offense and the person, his personality, the level of remorse, his behavior at the time of sentencing, his behavior etc..

This does not exclude the convicted to life imprisonment, although for this category bail is exceptional and applied in particular cases.

But for this category can be applied to their parole only if they have suffered at least 25 years in prison and suffering during the time that they have taken an exemplary and the court deems that the purpose of the sentence is reached for the rehabilitation of this person. So, he is now ready to return to society and become part as a normal human (Penal Code Article 65).

The person convicted to imprisonment, has the right to apply for conditional release in court of the country of execution of the sentence. The application is reviewed by a judge different from that which has given the sentence of imprisonment.

By receiving an application for bail, the director of the execution of decisions presents to the court in a copy of the file of the convicted person, and a detailed report for him/her.

The report contains the nature of the offense committed by the person convicted, the attitude of the sentenced person towards the victim or the victim's family, any previous criminal act committed by him, physical and psychological condition of the person convicted and dynamics of his behavior in the execution institution of penal decision.

The court may require the report from the probation service for family conditions and social integration origin and methods of his post-release supervision. When the court sets bail to the convicted person, sends the decision to the execution institution and probation service where the

prisoner will live after release. A person on probation must report regularly to probation service during that time and probation condition must regularly inform the local authorities of the state police.

When a person in bail changes the place where he/she lives, he shall notify in advance in order to motivate the probation service and local organs of state police.

Probation Service in cooperation with local policies pursues enforcement of parole.

When dealing with revocation of probation, the court may ask the Probation Service a report for the entire period of time the convicted person's behavior during the condition.

9.Probation Revocation

If the person to whom are applied conditions / obligations and without reasonable grounds does not meet them, then the probation service immediately informs the prosecutor. In this case, the court may decide to change the obligations imposed, to add other liabilities or to replace them with another sanction or revoke the suspension decision with start of a trial and the convicted prisoners are returned to suffering the rest of the sentence, as expressly provided in Article 62 of the Penal Code. If the failure of conditions / obligations is affected by reasonable grounds, such as illness, family adversities, etc., then the court will take into account and in this case will not decide to revoke the suspension decision.

If the prisoner during probation commits another offense, the court may alter the obligations imposed, can replace punishment given to another, or may wholly or partially revoke the suspension decision.

Also, in minor violations and when the conditions / obligations are breached for the first time, the prosecutor has the right to give a warning, which is recorded in the file of the prisoners.

So, as you can see, not fulfillment of conditions / obligations imposed by the court does not a priori send to revocation of the decision of the alternative given by the court, providing an opportunity to assess the situation of the prisoner, the circumstances that have not pushed the meet criteria / data conditions and the level of violation made.

It is estimated by the court on the basis of information that designs probation service for this reason.

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