



THE 17TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Rehabilitation According to Albanian Criminal Legislation

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Abstract: the paper deals with the models of judicial rehabilitation and legal rehabilitation. Issues related to the fact when a person meets the conditions to receive rehabilitation according to Albanian criminal legislation, but can't exercise this right because it is rejected by the office of judicial status and the case is the case will be tried by the criminal or administrative court? Will the issue related to the fact when a criminal offense is committed be analyzed as a termination of the rehabilitation term or as a denial of the right to receive rehabilitation? An important aspect is the comparison of the rehabilitation institute according to the Albanian Criminal Code and the legislation of other countries.

Keywords: rehabilitation; term; court; convicted; criminal offense

1. Introduction

Criminal law recognizes two types of rehabilitation systems: legal rehabilitation and judicial rehabilitation. Legal rehabilitation is applied independently and without the convicted person making any request, it is automatically applied after the deadlines have passed and the sentence is considered peaceful. This is also the rehabilitation implemented in Albania (Hoxha, Kaçupi & Haxhia, 2018, p.735).

Judicial rehabilitation is applied in those cases when the convicted person applies to the court and the court analyzes whether the rehabilitation conditions have been met. This type of system is called judicial rehabilitation because the court is the body that verifies whether or not the conditions for granting rehabilitation have been met and expresses a decision on this matter.

States apply in their legislation one or both forms of rehabilitation. In Albania, only legal rehabilitation is applied, while in Romania, Italy, Kosovo, both legal rehabilitation and judicial rehabilitation are applied.

Rehabilitation can also be applied in court decisions when we are facing cases of admission of guilt as well as in cases where the criminal sentence has been suspended (Marinuci & Dolcini, 2009, p.605).

2. Rehabilitation in the Comparative Plan

In the Albanian Criminal Code, there is no article that foresees the effects of probation. From the way article 69 of the Albanian Criminal Code is formulated, it gives the impression that once the conditions provided for in the Albanian Criminal Code are met, rehabilitation is possible.

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In foreign legislations, the legislators have rightly foreseen some cases in which the rehabilitation could not produce legal effects. According to the Italian Criminal Code, rehabilitation cannot be applied when security measures have been set, when the supplementary penalty of the foreigner's debt abroad has been set, when the civil penalty has not been paid (Grasso & Pandovani, 2011, p. 303).

The Romanian legislation provides almost the same thing, in Article 168 in the Romanian Criminal Code it is provided that rehabilitation cannot be applied if the convict has not paid the court costs and has not paid the civil damages.

The Romanian legislator has provided in Article 168 in the Criminal Code that rehabilitation does not produce effects on security measures, and rehabilitation should not be understood as the regaining of the function that the convict had at the time of committing the criminal offense as a result of rehabilitation, nor the awarding of the lost military rank.

The removal of the marking has the function of avoiding that the penalty is not reflected for individuals who require criminal evidence. Removing the marking is like an analogous objective of rehabilitation, eliminating the obstacles that can make it more difficult to reintegrate the convict into social life and above all into the labor market (Palmaria, 2003, p. 142).

3. Inconsistency in the Norms that Provide for Rehabilitation

There is a discrepancy between Article 69 of the Criminal Code and Article 483 of the Criminal Procedure Code and Law no. 9614, dated 21.9.2006 "On electronic certificates of judicial status", specifically Article 4 point 3, which provides that "Notes and their removal in/from the registers of judicial status are made according to the provisions of the Criminal Code and the Code of Criminal Procedure".

Article 69 of the Criminal Code has provided for the deadlines and conditions for when rehabilitation is carried out, this means that by fulfilling the criteria provided for in this article, legal rehabilitation must be applied. In reality, this does not happen because article 4 of item 3 of Law no. 9614, dated 21.9.2006 "On electronic certificates of judicial status" refers to the Code of Criminal Procedure. Article 483 of the Code of Criminal Procedure talks about the verification of the judicial situation. This article provides that:

1. Notes in the register are removed after receiving the official notification of the death of the person referred to when he turns eighty years old.

2. Are removed notes related to:

a) revoked decisions due to the review or annulment of the criminal offense;

b) decisions of acquittal or dismissal when ten years have passed from the day the decision became final;

c) sentencing decisions for misdemeanors when a fine was imposed, after ten years have passed from the day when the decision was executed;

ç) measures and sentencing decisions for criminal misdemeanors committed by minors, when they reach the age of 21."

Article 69 of the Criminal Code provides that

"They are called innocent:

- a) those who have been sentenced to imprisonment for a period of up to six months or to any other lighter punishment and who have not committed another criminal offense during two years from the day of serving the sentence;
- b) those who have been sentenced to imprisonment for a period of six months to five years and who have not committed another criminal offense during the five years from the day of serving the sentence;
- c) those who have been sentenced to imprisonment for a period of five to ten years and who have not committed another criminal offense during the seven years from the day of serving the sentence;
- ç) those who have been sentenced to imprisonment for a period of ten to twenty-five years and who have not committed another criminal offense during ten years from the day of serving the sentence”.

Even when the conditions provided for in Article 69 of the Criminal Code are met, rehabilitation is not applied because Article 483 of the Criminal Procedure Code, which talks about the judicial record, has longer time limits for keeping records related to convictions than the rehabilitation terms that are provided in the Criminal Code.

When it comes to crimes, the records of convictions are removed from the register of legal status after the person's death, this is provided for in Article 483 of the Code of Criminal Procedure, while the longest term of rehabilitation is 10 years according to Article 69 of the Criminal Code.

The notes that are in the register of the judicial situation are reflected in the evidence of the penalty.

The discrepancy between the terms of Article 69 of the Criminal Code and Article 483 of the Code of Criminal Procedure is reflected with an example. In article 483 point 2 letter c) of the Code of Criminal Procedure it is provided that convictions for misdemeanors or fines are kept in the register for 10 years, while article 69 letter a) of the Criminal Code provides that those who have been sentenced to imprisonment for a period of up to six months or with any other lighter punishment, they have a rehabilitation period of 2 years from the serving of the sentence if they have not committed another criminal offense. However, according to Article 483 of the Code of Criminal Procedure, their data regarding the sentence will be reflected in the register for another 8 years after the rehabilitation period. At the moment when the terms of rehabilitation are fulfilled, this should also be reflected in the evidence of the penalty where the person must appear as unconvicted, whereas according to the Albanian legislation this does not happen but the person continues to appear convicted in the evidence of the penalty even when he is rehabilitated according to law.

When it comes to crimes, the notes are kept until the death of the individual, so they make rehabilitation inapplicable.

Even when the conditions provided for in Article 483 of the Code of Criminal Procedure are met, the deletion of data from the court register is not carried out automatically, this is not carried out and the data related to the conviction appear in the evidence of the penalty.

The Romanian legislator has offered a solution for these situations:

If the deletion of notes is not carried out automatically, the procedure provided by law no. 290/2004, and in such cases the interested person must make a request for the deletion of the data by filing the evidence documents. Within 20 days, the police unit will respond to the request. If the individual is dissatisfied with the request, he can move the court (Nițu, 2019, p. 15).

Such a procedure would be good to be foreseen in the Albanian legislation because the interested persons could solve the issues without going to court.

4. The Need to Change the Rehabilitation Institute

Analyzing the rehabilitation institute, we noticed that the Albanian legislator has foreseen the longest rehabilitation period of 10 years when it comes to punishments from 10 years to 25 years of imprisonment.

Looking at the institution of rehabilitation in the Albanian Criminal Code, some questions arise regarding the rehabilitation period.

What will be the term of rehabilitation for sentences higher than 25 years?

Will it be considered a prohibition from the right to be rehabilitated when the person is sentenced to imprisonment for more than 25 years?

With the changes in article 32 of the Criminal Code with Law no. 144/2013, imprisonment for crimes is given for a period of 5 days to 35 years. Meanwhile, with this law, in the provisions of the special part of the Criminal Code, the penalties are increased, as in the case of Article 79/a “Murder of public officials”, it is punished with no less than 30 years of imprisonment or life imprisonment or Article 79/b, “Murder of State Police employees”, is punishable by no less than 30 years imprisonment or life imprisonment, etc. In the event that the court would set a sentence higher than 25 years, the rehabilitation of the person would be impossible because there is no legal provision for rehabilitation for sentences over 25 years and we cannot apply the 10-year rehabilitation term because it applies to sentences from 10 years to 25 years, we must also take into account the fact that article 1/c of the Criminal Code prohibits the application of criminal law by analogy.

In the case of sentences higher than 25 years, rehabilitation will not be considered as a prohibition from this right. In this case, I have the impression that we are facing an inconsistency or a vacuum on the part of the legislator when he made changes to Article 32 of the Criminal Code, where before the changes in 2013, the prison sentence for crimes was from 5 days to 25 years, while after 2013 increased up to 35 years, while in article 69, which provides for the terms of rehabilitation, the longest sentence is provided for a period of 10 years to 25 years, while the maximum sentence has currently reached up to 35 years. If it were a prohibition regarding the non-implementation of rehabilitation for sentences over 25 years, the legislator should have provided this fact as a prohibitive condition in the provision of Article 69 of the Criminal Code as provided for in the Criminal Code of Kosovo (Shemsiu-Kadriu, 2015) where the cases in which rehabilitation is applied and the cases in which the implementation of rehabilitation is prohibited in relation to the sentence.

5. Conclusions

There is a discrepancy between Article 69 of the Albanian Criminal Code and Article 483 of the Albanian Criminal Procedure Code. The legislator should intervene and adapt the provision of the Criminal Procedure Code with the provision of the Criminal Code.

Regardless of the fact that legal rehabilitation is applied in Albania, which means that when the rehabilitation deadlines are met, the state bodies must apply it automatically, in reality this is not the case, the parties in many cases turn to the court to determine the rehabilitation.

Provision of an administrative procedure for determining rehabilitation, where the individual has the opportunity to apply to the administrative body. If the administrative body does not give him the right, then he should apply to the court.

The Albanian legislator should make changes to the rehabilitation institute provided for in the Albanian Criminal Code, including the periods of sentences over 25 years, to be in harmony with the changes in Article 32 of the Criminal Code, which provides for the period of imprisonment.

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