Postponement of the commencement of execution of sentence of imprisonment in Kosovo

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Abstract

In this manuscript we have analyzed the issue of postponement of the commencement of execution of sentence of imprisonment, using theoretical and practical sources. In this perspective the Law on Execution of Criminal Sanction (in continuation LECS), Law no. 04 / L-149, dated 29.7.2013, Law no. 03 / L-191, Regulation 2004/46, Law on Execution of Criminal Sanctions of Kosovo, Law on Execution of Criminal Sanctions in Kosovo and the Law on Execution of sentence imprisonment of Croatia, the Law on Execution of Criminal Sanctions of Montenegro have been analyzed.

Keywords: law, enforcement of criminal sanctions, the commencement of execution of the sentence, the postponement of execution of sentence.

Introduction

Penology is the science that deals with the study of the execution of criminal sanctions, while in some countries it is known as the right for the execution of criminal sanctions. The word Penology derives from the Latin - Greek words, which means: pena - punishment and logos - science, which in free translation means the science on punishment. The term penology it was used for the first time by the German author Franz Liber in 1845, defining is as a particular science discipline, which will deal with the study of the execution of punishments and other punishment sanctions undertaken by the state in fighting crime.

This meaning is not adequate, because it deals also with the treatment and study of criminal sanctions, such as punishments, security measures, supplementary punishments, educational measures which are of different types, etc. With the development and evolution of science and technology, it is observed the evolution and development of the legal framework which is a special characteristic of the work of relevant institutions in the respective countries.

Like every legal science that has gone through many stages of development, depending on the overall development of socio – economic, penology has gone through these phases as well.

Basic principles for the execution of criminal sanctions

The Criminal Code of Kosovo (on going CCRK) provides the general principles of a material nature pertaining to the enforcement of criminal sanctions and rights, fundamental freedoms enjoyed by the perpetrators of criminal acts after they commit them, but also the restrictions, the attitude towards prisoners, their treatment and the measures that can be taken against them, regulated in detail by LEPS.¹

¹ Law on Execution of Criminal Sanctions.
The general principles relating to the enforcement of criminal sanctions are:

a. The principle of legality;
b. The principle of humanism;
c. The principle of rehabilitation and re-socialization;
d. The principle of individualization.

The principle of legality

The principle of legality is one of the main principles in criminal law as well as in the execution of criminal sanctions, because without a legal basis cannot be carried adequate investigation procedures concerning the enforcement of appropriate criminal sanction. In criminal law, such treatment has two aspects:

a. The first aspect has to do with that to the perpetrator may be imposed only one sanction which is foreseen by the law, and because of his guilt, which in this particular case has been imposed by the court. This relates to the postulation "nulla poena sine lege".

b. The second aspect has to do with the situation, that to the perpetrator can be imposed only those rights, or be limited to only those rights which are provided by law, and no other right cannot be denied. So, in this case it protects the perpetrator from arbitrary state bodies, and the personal rights which are guaranteed, cannot be violated.

The principle of humanism

Criminal sanctions are the harms which affect the perpetrator, criminal sanctions deny, limit the rights that the perpetrator enjoys. Also, enforcement of criminal sanction for prisoners should have the character provided by law, not to exceed the derogatory character, disparaging, but the prisoner shall enjoy the rights and basic freedoms guaranteed by the acts and international instruments and with the Constitution and laws in force.

These premises of criminal sanctions cannot be avoided, due to the nature, content and purpose that must be achieved. Otherwise this principle is provided in CCRK, and the Code of Criminal Procedure of the Republic of Kosovo (hereinafter CPCRK), during the execution of the sentence, the prisoner shall not be subjected to different inhuman treatments, and humiliating and no other unnecessary sentence (....?), including the medical treatment ", respecting guaranteed fundamental rights. So the rights of a convicted person may be limited to the necessary extent and in accordance with the law and international standards of human rights".

The principle of rehabilitation and re-socialization

This principle essentially refers to persons who are sentenced to imprisonment, or life imprisonment, so far this has the effect that those convicted are serving a sentence to re-educate and re-socialize, hence the persons who are serving the sentence after they serve the sentence and released to be equal with other people and the treatment to have a positive effect in the tendency to commit a new criminal offense.
The principle of individualization

The principle of individualization is very important, especially during the execution of criminal sanctions, because it is interrelated to the perpetrator to whom is announced respective legal punishment. Otherwise, the individual principles of punishment are characterized by two powerful components:

a. individualism principle in criminal law;

b. the principle of individualization in the penitentiary right.

Individualism in this stage consists of an adaptation of punishment and other measures of criminal sanctions for particular persons who are punished and the circumstances that are particular to that person – commitment of criminal offense. Whereas this principle in right penitentiary corresponds as a condition for implementation of the principle of rehabilitation and re-socialization.

Commencement of execution of sentence of imprisonment

It is known that the justice authorities are interested that after the trial and after all legal remedies of appellate and court judgment with legal remedies starts the procedure of execution. This is required in order to influence to the other perpetrators of criminal offences. In penology are known following sanctions:

• special prevention;
• general prevention;
• reeducation - re socialization, and
• Isolation of the perpetrator from society-protecting and protection of society from perpetrator.

These characteristics should have a powerful effect on the perpetrator, and also must consider law enforcement and authorize to monitor the execution of the punishments. It is well known that to start the execution of a sentence of imprisonment, which may also be sentenced to life imprisonment, it is necessary for the judgment be final and enforceable. This means that from the moment when we will start the execution of a sentence of imprisonment would not exist legal obstacles and we have used all the remedies that were available.

There are 7 Basic Courts in Kosovo, such as: Prishtina, Peja, Gjakova, Prizren, Gjilan, Ferizaj and Mitrovica, which are responsible for implementing the procedure for enforcement of criminal sanctions, educational measures and compulsory enforcement measures for psychiatric treatment. The procedure of execution of sentence of imprisonment, as well as postponement of the execution of sentence of imprisonment, are regulated in these courts. The prisoner against whom the procedure of punishment has commenced goes through the procedure provided by LECS. The procedure is executed by the persons employed in Correctional Center, based on law and regulations of the correctional center.

According to the LECS, the commencement of the execution of the sentence of imprisonment begins from the time when the convicted person was given the order to report to the respective court for execution of sentence of imprisonment.

Procedure for postponement of the execution of a sentence of imprisonment

The convicted person who is in liberty according to LECP, is served with the order, while with the previous Law for execution of criminal punishment is served with
summon. Upon receipt of the order the convicted person must attend the execution of the punishment.

According to the Law on Execution of Criminal Sanctions, competent to execute criminal sanctions and mandatory treatment measures are the Basic Courts.

**Conditions for postponing the execution of a sentence of imprisonment**

LECS, there are conditions that must begin the execution of the prison sentence, and also has provided the conditions for delaying the execution of a prison sentence. All conditions are provided by Article 21 of the Law on Execution of Criminal Sanctions. Conditions that are provided in Article 21st Law on Execution of Criminal Sanctions, are shown explicitly, consisting of: special conditions, such as acute serious illness of the convicted person, the death of his spouse, child, the adopted parents, adoptive parents, but for all the reasons that would require postponing the start of the execution of the prison sentence must be filed together with submission, and preferably covered by relevant evidence, as well as general conditions.

So, in general terms, there are special conditions and general conditions. Article 19 of the Law on execution of criminal sanctions foresees reasons and duration of the postponement of the start of the execution of the prison sentence, paragraph 1 under the following paragraphs, noting that the postponement may be requested by the person convicted following reasons:

a. for health reasons, to cure serious acute illness, in which case, the interested party must submit a report on the health condition of the sick person, and this situation should be followed constantly. Depending on medical reports which will be presented to the competent court, it will go forward with the procedure.

b. for family reasons, if the female convicted person, has completed 6 month of pregnancy or has a child younger than one year, at the latest by 3 years of the child's life, - if a spouse, child, adopted child, parent or adopted parent of the convicted person has died or is suffering from a serious illness, up to 3 months from the date of commencement of execution of sentence of imprisonment, - if the wife of a convicted person has to deliver a baby within 3 months, or if it passed less than 6 months from the day when she delivered a baby and there are no other family members to help her - the postponement of the commencement of execution sentence can be not up to 6 months,

- if the spouse or any other members of collective family is a convicted person is summoned with a convicted person to serve his sentence of imprisonment or long term imprisonment or some of them who are already in prison - the latest up to 6 months.

c. for economic reasons, when the convicted person requires a postponement of the commencement of execution of the sentence, e.g. up to 3 months for the performance of agricultural or seasonal jobs that cannot be postponed, and the convicted person has no other force that would replace.

d. for contractual reasons, if the convicted person is obliged to perform the commenced works from the contract and the lack performed progress of the works will substantially damages the economic situation of the prisoner his family, the postponement of the commencement of execution of the sentence can be postponed up to 3 months.

e. For educational reasons: if the convicted person requires a postponement to complete schooling, or whether it should be subject to certain exams, which has
prepared the relevant documents, will prove that he is attending the education and the exams to take, then delay can be up to 6 months.

**Procedures for delaying the execution of a sentence of imprisonment**

LECS provides the conditions that must be met in case the postponement of execution of sentence of imprisonment. These conditions are provided in Article 20 of LECS. When the decision is made to postpone the commencement of the execution of imprisonment by the President of the Basic Court it is provided the date of appear to begin serving his sentence. President of the competent Court may issue two types of as decisions concerning the release reviewing the appeal of convicted persons. With the decision of the competent court president can approve the appeal, in the provision of the ruling are stipulated the reasons of approval or if it is refused are stipulated the reasons of refusal.

Submission of the appeal by the convicted person means suspension of execution of the commencement of imprisonment. Depending on what else the decision is made by the president of the Basic Court continued the procedure continues. If the appeal is refused than the convicted person may file an appeal to the Court of Appeal and competent for this is the president of the Court of Appeal. Whatever the ruling issued by the President of the Court of Appeal is final and there is no space for misapplication by the convicted person, to exploit the opportunity for fling a second appeal.

A convicted person after completing the prescribed legal procedure, if he did not appear to commence execution of sentence, if a resident of Kosovo, where he has his domicile or residence the court issued the orders for bring him by force. The execution of the order is executed by police station within the jurisdiction of the competent court. If the convicted person is a citizen of another state, the court shall ensure to make an application for arrest warrant, with which will be notified Kosovo Police in all border crossing points, in cooperation with other countries that have cooperation. Convicted person to whom the order is served to commence the execution of the prison sentence, one should check in advance if it came to absolute prescription of the execution of the sentence or not. If it came to absolute prescription, then the procedure should be terminated the procedure for execution of commencement of prison punishment, in the contrary will be acted according to the law.

According to provisions of LECS, postponement of the commencement of the execution of a sentence of imprisonment the party may request to do it under extraordinary legal remedies. Upon the request of the state prosecutor it is always allowed to postponement of the commencement of execution of the prison sentence until the decision is made in compliance with appropriate legal remedy. If the prosecutor does not use this opportunity, then is carried on the procedure provided by law, whilst for violation of the right of a convicted person, it is acted in accordance with a law up to the procedure for compensation.

**The postponement of the commencement of execution of sentence of imprisonment according to the Law for the execution of a prison sentence in Croatia**

Countries in the region, the Republic of Croatia commencement of the execution of a sentence of imprisonment has arranged with the law on execution of sentence of imprisonment, which is the special law and regulates the procedure for this area. This means unlike LECP, because in this country there is a special law for the execution of the prison sentence of imprisonment.
Conditions for the commencement of execution of sentence of imprisonment, is provided for in Article 54\(^2\) of the Law on Execution of sentence provided with supplementary modalities Article 55\(^3\) of the Law on Execution of sentence, which speaks about the commencement of execution of sentence of imprisonment in the paragraph 1 states: "the convict who is summoned for military service or military exercises, initially will be sent to serve sentences before starting military service or military exercise, going to paragraph 2 and 3 while in paragraph 4 shows another circumstance where noted: "if the state is a wartime or threatens the sovereignty and territorial integrity, the convicted person will not be sent to serve sentences until the war ended", and Article 56\(^4\) Law on execution of imprisonment, provides conditions for the revocation of the ruling and the conditions for a postponement of the sentence. The law provides that the procedure for execution of sentence of the proceeds the judge of a competent court according to the law, he has all the powers to monitor the case for execution of the sentence until the end.

**Postponement of the commencement of execution of sentence of imprisonment according to the Law on Execution of Criminal Sanctions of Montenegro**

In Montenegro, there are efforts to pass the law on execution of criminal sanctions, where all the provisions regulated in the official gazette of 12/07/1994 25/99, 29/94 of 26.08.1994, 69/03 of 25.12.2003, 65/04 of 25.10.2004 are summarized in a joint law. Article 24 of the same law regulates the execution of Criminal Sanctions in Montenegro. Also the development of the proceedings is regulated In Articles 25, 26, while in Article 27 are set conditions that enable postponement of the execution of a sentence of imprisonment, in addition to Article 28, 29 and 30.

**Conclusions**

The procedure for postponement of the commencement of execution of sentence of imprisonment in the Republic of Kosovo is regulated by LECS. For the execution of court decisions is the Basic Court in the territory where the convicted person has his domicile or residence. This article analyzed this procedure and described the same procedure in Croatia and Montenegro through comparative law. It should be stated that toward this direction a lot of work should still be done by the Kosovo institutions.

**References**

Law Nr. 03 / L-191 of Penal Sanctions.
Law on Execution of Criminal Sanctions (UNMIK Regulation No.2004/46.
Code No. 04/L-82, Criminal Code of the Republic of Kosovo.
Code No. 04/L-123, Code of Criminal Procedure.
Law on Execution of Criminal Sanctions, date 01 July 1977 (applied by UNMIK Regulations No.01/1999 and 24/1999).
Law on Execution of Criminal Sanctions Law Nr. 03/L-191.
Law on Execution of Criminal Sanctions of Kosovo - Regulation 2004/46,
Law on Execution of sentence of Croatia.

\(^2\) Article 54 of the Law on Execution of imprisonment sentence of Croatia.
\(^3\) Article 55 Ibid, p. 19 and 20.
\(^4\) Article 56 Ibid, p. 20.