Limitation of criminal prosecution and execution of sentence

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Abstract

The institute of statute of limitations is one of the most important in criminal law, which provides for the termination of criminal prosecution, sentences and their non-execution, after a certain period of time, either from the time of committing a criminal offense (statute of limitations) of criminal prosecution) either from the time of the decision of the final form of the sentence and its non-execution (statute of limitations for the execution of the sentence). Like any other criminal legislation, the criminal legislation of Albania has paid attention to this institute.
The Criminal Code of the Republic of Albania, in its article 66 has provided that criminal prosecutions can not be carried out when from the commission of the criminal offense until the moment of taking the person as a defendant, some certain deadlines have passed.
In this paper we will present the importance of the statute of limitations, as well as the analysis of concrete cases of its implementation in court practice.
The methodology used in this paper is the legal analysis of statute of limitations, focused on the practical analysis of court decisions on the statute of limitations for criminal prosecution and statute of limitations for the execution of the sentence.

Keywords: statute of limitations, criminal prosecution, criminal code, execution, criminal proceedings, court.

1. Theoretical overview of the institute of prescription

The institution of prescription is one of the most important criminal law, through which it is provided that criminal prosecution can not be carried out and the execution of a criminal sentence, after a certain period of time, either from the time of committing a criminal offense (statute of limitations for criminal prosecution) either from the time of the final sentence decision and its non-execution (statute of limitations for execution of the sentence).
In the analysis of the legal concept "Iuspuniendi", we clarify that this concept is related to the legal situation that arises between the state and the perpetrator of a criminal offense. Iuspuniendi is a Latin legal term used to refer to the sanctioning power of the state, meaning the exclusive right of the state to punish a person for committing a criminal offense.
The expression is always used to refer to the state in front of the citizens. For this reason, although it may be that other organizations or institutions, or in other situations, have the right to punish or sanction (employer and employee, or father and son), iuspuniendi is not applicable to them.
However, despite the fact that according to "Iuspuniendi", the state is recognized the exclusive right to punish, certainly this right of the state to punish, in the context of a

democratic state, is not conceived as an absolute right.
Precisely the institute of prescription of criminal prosecution and that of execution of criminal sentence, realize the time limitation of the exercise of the right of the state to punish.
From the criminal-political point of view, the restriction or otherwise extinction of the state's right to punishment can be seen as respect for the "law of forgetfulness" or society's acceptance of the fact that due to the passage of time, the punishment fails to realize the intentions that the criminal-legal doctrine imposes on the sentence itself. It must be acknowledged that time plays a very important role in this regard, which means that its passage directly affects many aspects related to punishment.
On the one hand it affects the situations towards the subjects of the criminal offense by changing the relations between the perpetrator of the criminal offense and the victim. On the other hand, time brings significant changes in the socio-political life of the country, causing the social danger of some criminal offenses to be completely lost or significantly reduced. Significant changes due to the passage of time also occur in the subjective situation of the perpetrator of the criminal offense, who may have gone through life processes that have had a positive impact on his re-education and which would make it completely useless to start prosecution or execution of a sentence given to him long ago. Also, the passage of time negatively affects the ability of the state to guarantee a fair legal process because, after a relatively long time, it would practically be very difficult for the state to conduct a trial outside the influence of prejudice.
This in conditions when the traces of the criminal offense, material evidence and other elements of evidence would have disappeared or it would have been impossible to establish conviction beyond any reasonable doubt as to the veracity of the evidence taken long ago because the witnesses may have dead or no longer able to testify after forgetting the event and other circumstances like these.
But we must not leave aside another factor that makes it necessary to limit in time the right of the state to punish. This factor appears in democratic states which generally aim at achieving some important objectives, which are essentially social-humanitarian objectives. This objective causes democratic states to express various forms of a social pardon will which lead to a reduction in the number of criminal offenses in prosecution and of convicts who must serve their sentences. The state expresses this will directly through the institutes of amnesty and pardon, but a form of manifestation of this will indirectly is the institution of prescription of criminal prosecution and execution of the sentence.
Although from a doctrinal point of view various scholars have tried to treat the institute of prescription on quite rational grounds, it should not be left without mentioning that from a point of view this institute can even be considered to be contrary to the interests of the public. This point of view is related to the weak point that the institute presents, because through the time limitation of the state right to punish, on the other hand, the interests of the victim of the criminal offense are closely affected.
For this reason this institute has always been the focus of the legislator in many democratic countries. This has been achieved through the foresight of other institutes, which improve the idea of state power against lawbreakers even after a relatively long time.

This is done through the function of confiscation of property, even in cases when we are in the presence of factual or legal obstacles to prosecute the perpetrator of the criminal offense, as well as through the exclusion of a category of very serious criminal offenses from the application of statute of limitations, criminal offenses, such as crimes against humanity or war crimes.
Thus, in the criminal legislation of the Republic of Albania, some criminal offenses are excluded, which are not subject to prescription, such as the criminal offenses "Intentional Murder", "Intentional Murder in connection with another crime", "Premeditated Murder" , "Murder for blood feud", "Murder in other qualifying circumstances", "Murder of public officials", "Murder of State Police employees" and "Murder due to family relations"[1].
Also, the non-enforcement of the statute of limitations for criminal prosecution is provided for the criminal offenses of war crimes and those against humanity[2].

2. Limitation of criminal prosecution and cases of court practice

The Criminal Code of the Republic of Albania, in its article 66 has provided that criminal prosecutions can not be carried out when from the commission of the criminal offense until the moment of taking the person as a defendant, have passed respectively:
- 40 years in the case of crimes punishable by life imprisonment;
- 20 years for crimes punishable by less than 10 years imprisonment or sentence
- other heavier;
- 10 years for crimes punishable by 5 to 10 years in prison;
- 5 years for crimes punishable by up to 5 years imprisonment or a fine;
- 3 years for criminal offenses punishable by up to 2 years of imprisonment;
- 2 years for criminal offenses punishable by a fine.

As is clear in Article 66 of the Criminal Code, the basic conditions that serve to calculate the statute of limitations for criminal prosecution are:
a. Time of commission of the criminal offense;
b. The moment of taking the person as a defendant.

a. Time of commission of the criminal offense
At first glance this is a clear moment and it does not seem that it can create difficulties of interpretation in practice. However, it would be appropriate to address this point as ambiguities may arise regarding the stages of the criminal offense on which the statute of limitations operates as well as the impact that the nature of the criminal offense has on the statute of limitations.

Regarding the stages of committing a criminal offense

The moment of commencement of the statute of limitations for criminal prosecution, as it follows from the construction of Article 66 of the Criminal Code, is related to

[1] Article 66, Criminal Code of the Republic of Albania.
[2] Article 67, Criminal Code of the Republic of Albania.

the "commission" of the criminal offense. By "committing" the criminal offense in this case should not be implied that the statute of limitations is an institution which extends only to those criminal offenses which have been fully consumed, ie that have passed the attempted phase. Having in mind the theoretical meaning of the institute of prescription, this kind of interpretation would contradict the very nature of this Institute, which by its nature tends to prescribe in the first place lighter criminal offenses. Thus, the narrow interpretation of the word "commission" would mean that the statute of limitations would not apply to an attempted criminal offense but only to a more serious criminal offense such as the criminal offense committed.

An important issue to be addressed regarding the concept of "commission" of the criminal offense is also that which has to do with those criminal offenses, which are considered consumed not at the moment when the perpetrator commits the act or socially inappropriate dangerous, but at the moment when from that action or inaction has come a concrete criminal consequence.

Let us analyze concretely the case of the criminal offense of "Intentionally inflicting grievous bodily harm", provided by Article 88 of the Criminal Code. The consequence of the death of the victim, provided by Article 88, paragraph 2 of the Criminal Code, may occur even after a relatively long period of time from the moment of committing the injury by the perpetrator of the criminal offense. In these cases, the moment of "committing" the criminal offense is when the objective consequence comes, the death of the victim.

This is because the criminal offense provided by Article 88, paragraph 2 of the Criminal Code is considered committed only after the occurrence of the consequence of the death of the victim, although the socially dangerous act may have occurred long before the occurrence of the consequence.

The same attitudes should be maintained in cases of similar acts, which require to be considered "committed" the arrival of a consequence. Their statute of limitations in any case will start from the moment of arrival of the consequence.

Regarding the nature of the criminal offense

An ambiguity that may appear in practice has to do with the precise determination of the moment of commission of the criminal offense in cases where by nature the criminal offense falls into the category of continuing criminal offenses. The nature of continuing criminal offenses makes the very phase of the commission of the criminal offense not a definite moment as this phase appears classically in most criminal offenses, but a period of time which has an identifiable beginning and end. If for methodological effect the commission phase for these criminal offenses would be divided into "commencement of commission" and "termination of commission", then the commencement of commission would be the first action that makes the criminal offense consumed, while the termination of the commission will to be the last action that makes the criminal offense consumed.

Given this analytical view of the phase of perpetration of ongoing criminal offenses, then the statute of limitations for these criminal offenses would begin at the end of the period of commission, ie with the end of the last act of committing the criminal

offense, or in other words after termination of the actions that make the criminal offense continuous.

Another moment related to the precise determination of the moment from which the statute of limitations for criminal prosecution begins and related to the correct interpretation of the notion of "commission" of the criminal offense is the discussion of the circumstances of the commission of the criminal offense. The circumstances of the commission of the criminal offense have a significant impact on the measure of punishment and in some cases they also affect the creation of new limits of punishment for the same criminal offense. However, despite their role in the limits of punishment, it must be said that they have no determining power over the statute of limitations for criminal prosecution.

The influential aspect of the circumstances of the commission of the criminal offense in terms of the foreseen limits of the sentence, I think, should be treated more closely to better understand why, however, these circumstances do not affect the statute of limitations for criminal prosecution.

First, we analyze the cases of imposing a sentence below the minimum or imposing a sentence above the maximum provided by law for the specific criminal offense. Reduction of the sentence below the minimum provided by law is provided by Article 53 of the Criminal Code.

The part to be emphasized in this case regarding the statute of limitations is that the reduction below the minimum provided for in Article 53 or the addition of the punishment provided for in Article 334 of the Criminal Code should not be treated as a specific new sentence limit, with higher or lower, provided by law for the same criminal offense. In both cases we are dealing only with techniques of applying the sentence beyond the limit provided by law for a specific criminal offense. This means that although these articles allow in certain circumstances to exceed the limits of the punishment provided by law for the criminal offense, this does not mean that the criminal offense in question has limits allowed in these exceptional cases.

Therefore, for the purpose of the statute of limitations, the possibility of exceeding the allowed limits of the punishment provided for the criminal offense should not be used to calculate the statute of limitations. The only reference to these deadlines is the measure of punishment expressly provided for the criminal offense and not the possibility allowed in certain circumstances to impose a sentence beyond the limits of the punishment provided specifically for each criminal offense.

Second, among the circumstances that affect the sentence limit are those related to the provisions of the maximum sentence limit allowed for juveniles under Article 52 of the Criminal Code, or the prohibitions provided by Article 31 of the Criminal Code regarding life imprisonment to minors under the age of 18 and to women.

In these circumstances, it should be noted that, although according to Article 53 the sentence that may be imposed on a juvenile under 18 years of age may not be higher than half of the maximum sentence provided by the criminal offense, this facility provided in the imposition of a sentence does not imply a change of reference in the calculation of the statute of limitations for criminal prosecution from the maximum provided for the criminal offense to half of this maximum.

The referral will again remain the maximum sentence provided for the criminal

offense and the maximum possible sentence that may be imposed on a defendant in certain circumstances. The same conclusion applies to the case of prohibition of the application of life imprisonment provided by Article 31 of the Criminal Code.
However, although in principle the above circumstances of the commission of the criminal offense, as well as mitigating / aggravating circumstances in principle have no effect and should not be taken into account in calculating the statute of limitations for criminal prosecution, it should be noted that these circumstances have a qualitative character, so they are an integral part of the objective side of the criminal offense provided specifically in the content of the provision that provides for the criminal offense, they certainly directly affect the statute of limitations for criminal prosecution and it is understood that in this case they must be taken into account in terms of statute of limitations. The reason for this is that when the circumstance of committing the criminal offense is qualifying, it carries with it a new qualification of the criminal offense which normally implies a new maximum limit provided for that criminal offense in the presence of that qualifying circumstance.

b. The moment of taking the person as a defendant

While the moment of occurrence of the criminal offense constitutes the moment from which the statute of limitations begins to be calculated, the moment of taking the defendant constitutes the moment of closing the period that will be calculated for the effect of the statute of limitations. As such, this moment is a delicate moment and as such requires a special treatment in order to accurately determine the statute of limitations. This moment is delicate not only because it marks the end of the statute of limitations but because the very taking of the person as a defendant in practice has often encountered misinterpretations and not very clear attitudes. The most important ambiguity in this regard is caused by the fact that in practice there is often almost a sign of equality between the person under investigation and the defendant, not understanding the difference between these two statuses that a person under indictment has.
This sign of equality has been established by practice also under the influence of the Code of Criminal Procedure, which has stated that: *"The provisions that apply to the defendant also apply to the person under investigation, unless this Code provides otherwise. To this person are extended the rights and guarantees that are provided for the defendant"*[3].
This provision, from the way it is constructed, has the main weight in this misunderstanding of the practice as often giving the status of the defendant person becomes a routine and is not considered as a step that brings concrete change from the status of the person under investigation or the person attributed to the offense. This leads to the taking of the defendant either at the beginning of the preliminary investigation, or between them, or even near the end of this phase of criminal proceedings.
But despite the misconception of the practice for these two statuses, which he considers without any essential difference between them, in the case of statute of limitations for criminal prosecution it should be emphasized that the final calculation moment of the statute of limitations for criminal prosecution should be in any case

[3] Article 34, point 4, Criminal Procedure Code of the Republic of Albania.

the moment of taking the person as a defendant and not the moment of giving a person the status of a person under investigation.
The reason for this attitude is related to the fact that the equal sign set by the Code of Criminal Procedure between the status of the defendant and the person under investigation is relevant only when it comes to the rights and guarantees provided for the defendant. With an inverse reasoning, this means that the Code of Criminal Procedure does not equate these two statuses, when this may result in an aggravation of the procedural position of the person under investigation. Thus, since the statute of limitations for criminal prosecution has the character of a guarantee for the defendant, the equality between these two statuses in terms of rights and guarantees, according to Article 34, paragraph 4 of the Code of Criminal Procedure, should be subject only to that interpretation. according to which the guarantee for non-prosecution until the moment of obtaining the status as a defendant, should extend to the person under investigation.
From this point of view, the guarantee provided for the person in the capacity of the defendant extends effectively to the person under investigation. The opposite, ie the calculation of the statute of limitations even from the moment that a person still has the status of the person under investigation and not the defendant, with the wrong argument and abusive character of the equality of the status of the person under investigation with that of the person defendant, would constitute a misinterpretation as it does not allow the extension of the guarantee provided for the person with the status of defendant to the person under investigation.

Practical case on prescription of criminal prosecution

In a practical case, the Criminal College of the Supreme Court found that:
"..... The defendant Gj. N. was sent for trial under the charge of the criminal offense of taking bribe, provided by Article 260 of the Criminal Code, while the defendant Sh. G. under the charge of the criminal offense of forgery of documents, provided by Article 186/3 of the Criminal Code.
At the end of the trial, after receiving and analyzing the evidence, the Lezha Judicial District Court declared the defendant Gj. N., for the accusation made with the reasoning that it is not proven that he has committed the criminal offense provided by Article 260 of the Criminal Code.
The defendant Sh. G., is charged with the criminal offense of forgery of documents, provided by Article 186/3 of the Criminal Code.
Even for this defendant, the Lezhe Judicial District Court has decided not to plead guilty to the charge of forgery of documents, provided by Article 186/3 of the Criminal Code, on the grounds that the charge is unfounded in law. The Shkodra Court of Appeals, which has reviewed the case on the prosecutor's appeal, with its decision has changed the decision of the Lezhe Judicial District Court and has declared the defendant Gj. N. for the criminal offense of abuse of duty, provided by Article 248 of the Criminal Code and the defendant Sh. G. for the criminal offense of forgery of documents, provided by Article 186/3 of the Criminal Code. Contrary to what the district court accepted, it was not proven that the defendant Gj. N. to have committed the offense for which he was charged, in its decision, the appellate court argues

that the evidence was sufficient to convict the defendant, but not for the criminal offense of taking bribe but for abuse of office, provided by Article 248 and K.Penal. According to her, the defendant used his duty by falsifying the document, seriously damaging the interests of the rightful owners of the land and the activity of the state decision-making bodies. Even for the defendant Sh. G. the appellate court reasoned that it had committed the criminal offense of forgery of documents.

The Criminal College of the Supreme Court considers that both the decision of the Shkodra Court of Appeal and that of the Lezha Judicial District Court were taken in erroneous application of the law.

Regardless of the fact of proving or not the criminal offense for which the defendant Gj. N., the courts did not take into account the requirements of Article 66 of the Criminal Code, which deals with the statute of limitations for criminal prosecution, especially the court of appeals that found him guilty of the criminal offense of abuse of office, provided by Article 248 of the Criminal Code.

In the initial situation, after the adoption of the law on the Criminal Code, Article 248 of the Criminal Code provided for a fine or imprisonment of up to seven years, when they have brought serious consequences to the legitimate interests of citizens or the state. With law no. 9275, dated 16.09.2004, changes were made in this article as well, determining the punishment with imprisonment from 6 months to 5 years and a fine from three hundred thousand to one million ALL. Subsequently, with law no. 9668 dated 26.02.2007, changes were made again in this article, determining the sentence of imprisonment up to 7 years and a fine from three hundred thousand to one million lek.

As can be seen, for the case under review, for the effects of the statute of limitations for criminal prosecution, Article 248 of the Criminal Code must be applied, before the changes made on 26.02.2007, when the punishment is imprisonment for up to 5 years. The criminal offense for which the defendant Gj. N., as accepted by the courts, was committed in April 1999, while the beginning of the criminal case (as it emerges from the registration of criminal proceedings no. 151) was made on 28.06.2005, ie after about six years of two months.

According to Article 66 of the Criminal Code, no criminal proceedings can be instituted when, from the commission of the criminal offense until the moment of receiving the defendant, five years have passed for crimes punishable by up to 5 years imprisonment or a fine (letter c). Regardless of why the criminal proceedings were initiated against the defendant Gj. N., the appellate court, reaching the conclusion that he had committed the criminal offense of abuse of office, provided by Article 248 of the Criminal Code, with a sentence of up to 5 years imprisonment, should not have pleaded guilty and sentenced him for the effect of passing the statute of limitations. In order to make a fair decision, the Court of Appeals, in addition to Article 66 / c of the Criminal Code, had to take into account the requirements of Article 387 of the Criminal Code, according to which, when the criminal prosecution should not have started or not should continue or when the offense is extinguished, the court decides to dismiss the case stating the cause.

Pursuant to the above-mentioned requirements of the substantive and procedural law, the appellate court should not have continued the trial and sentenced the defendant Gj. N., but had to decide to dismiss the case. Declaring the convict guilty and convicted, that court has taken a decision in contradiction with the laws and being found as such, this College dismisses the criminal case.

The decision of the court of appeal for the guilty declaration and the sentence of the defendant Sh. G. for the criminal offense of forgery of documents, provided by Article 186/3 of the Criminal Code, was also taken in the wrong application of the law. The criminal offense for which he is accused and convicted, as the prosecutor admits in the court session, does not stand, as he has not falsified any data in any of the documents signed by him. The signing of acts under the name of D. D. does not constitute forgery, as he has done that action authorized by the relevant state body. Even the signing between 253 practices, of a practice falsified not by him, does not contain the elements of the criminal offense of forgery or abuse of office, so it does not constitute a criminal offense, and consequently the criminal case against Sh. G. should be dismissed, because the fact does not constitute a criminal offense.
For these reasons, the Criminal College of the Supreme Court, based on articles 66/3, 387 of the Criminal Code and articles 441 / c, 441 / a of the Criminal Code, decided to annul the decision no. 188, dated 06.12 .2006 of the Lezha Judicial District Court and decision no.142, dated 13.09.2007 of the Shkodra Court of Appeal and the dismissal of the criminal case against the defendants Gj. N. e Sh. G."[4].
The above decision deals with the case when the criminal provision has changed several times, which affects the way in which the statute of limitations for criminal prosecution will be calculated. According to the court, that term, which favors the defendant, will apply. Even if the envisaged sanction was not in force at the time of the commission of the criminal offense and at the time when the criminal prosecution started, it will be applied if it is more favorable for the defendant. The unfavorable provision in this case was in force in the interim period.

3. Prescription of the execution of the sentence and case from the court practice

The Criminal Code of the Republic of Albania, in its article 68 has provided that the sentence decision is not executed when from the day it became final have passed:
- 20 years for the decision containing a sentence of 15 to 25 years of imprisonment;
- 10 years for the decision containing a sentence of 5 to 15 years of imprisonment;
- 5 years for decisions containing imprisonment of up to 5 years or other lighter sentences.

In this provision of the Criminal Code, the legislator has provided the deadlines, after which the decision of punishment given to a person for criminal offenses committed by him, can no longer be executed. In this case we are before the statute of limitations of the right of the competent state bodies, charged with the execution of sentencing decisions to execute these decisions.
In this section will be addressed by means of a unifying decision, the statute of limitations for the execution of the sentence.
According to the court, based on the logical interpretation of the expression used by the legislator in the provision of Article 68, there can be no extension of the statute of limitations for the execution of the sentence for any reason. This applies both in cases when the sentence has not been executed at all, and in cases when this sentence has been executed and after the convict has begun to serve the sentence, his further suffering is interrupted for any reason, as it may be also the departure of the convict

[4] Decisionno. 187, dated 15.04.2009, Criminal College of the Supreme Court.

from serving the sentence.
With unifying decision no. 7, dated 11.10.2002, with the object of non-execution of the final criminal decision, being excluded from further serving of the sentence, due to its prescription and termination, the Joint Panels of the Supreme Court, have concluded that:
"……. With decision no. 141, dated 24.7.1996 of the District Court of Elbasan, it was decided: for the criminal offense of theft by violence in cooperation and pursuant to Articles 139 and 25 and 50 / gj of the Criminal Code and 406 of the Code of Criminal Procedure was sentenced to 6 years imprisonment, starting serving the sentence from the date of arrest 17.12. 1995 ". This decision, based on the decision no. 707 dated 11.9.1996 of the Court of Appeals of Tirana, was left in force, changing only the sentence of the defendant from 6 years to 4 years of imprisonment. The decision of the court of appeal was left in force with decision no. 333 dated 4.12.1997 of the Criminal College of the Court of Cassation.
The Elbasan Prosecution Body, based on article 464/3 of the Code of Criminal Procedure, on 8.10.1996 has issued the order for the execution of criminal decision no.141. The serving of the sentence for the convict, as stated by the court in its decision, but also in the execution order of the prosecutor, started on 17.12.1995. The convict started serving his sentence in the Rehabilitation Institution 325 Tirana until 13.3.1997, the day when the further serving of the sentence was interrupted by the riots in the country. After this date, the convict did not return voluntarily for the further continuation of the criminal sentence, nor was it possible to resume the execution of the sentence, remaining without serving 2 years, 4 months and 22 days of imprisonment.
The convict in his request to the court requests the further non-execution of the sentence under Article 68 of the Criminal Code, claiming that it is statute-barred because 5 years have passed from the day the decision became final, ie from 11.9 .1996.
The Court of the Judicial District of Elbasan rejected his request and the decision was upheld by the Court of Appeal of Durres, on the grounds that the institution of remission of sentence and non-execution of criminal decisions due to statute of limitations, refers to criminal decisions, which do not are executed and not for criminal decisions that have begun to be executed.
The Criminal College of the Supreme Court with decision no. 279 dated 18.04.2002 has decided the transfer of the case to the Joint Panels of the Supreme Court for the unification of the case law.
Legal problems, which should find a legal treatment in this matter are:
When the institute of statute of limitations for the execution of the sentence is applicable:
a) only if the criminal decision has never been executed;
b) or even in cases when the decision has been executed and has not been fully fulfilled;
c) will the concept of termination and suspension of the statute of limitations for the execution of the sentence be accepted?
The Joint Panels consider that the decisions of both courts are not fair, as they do not properly address the meaning of the institution of statute of limitations provided by Article 68 of the Criminal Code.
In this conclusion, the United Colleges, although so far there has been no jurisprudence regarding this issue, reached based on the comprehensive interpretation that

they "have" made of the provisions of the Criminal Code regarding the statute of limitations. In Chapter VIII of the Criminal Code, the legislator has provided a separate institute regarding the termination of criminal prosecution, sentences and their non-execution. Within the framework of this institute are included special provisions regarding the statute of limitations for criminal prosecution (Article 66 of the Criminal Code); in relation to the statute of limitations for the execution of the sentence (Article 68 of the Criminal Code) and the termination of the sentence or, as the legislator himself called it, rehabilitation (Article 69 of the Criminal Code). These provisions contain the legal regulation of this institute in three special aspects of it. Thus, the provision of Article 66 of the Criminal Code refers to the statute of limitations for criminal prosecution, which should mean the prohibition that exists by law to conduct criminal prosecution, if, from the time when the criminal offense was committed, until the moment of receipt as defendants of its author, have exceeded the deadlines provided in this provision. In the provision of article 68 of the Criminal Code, the legislator has provided the deadlines, after which the decision of punishment given to a person for criminal offenses committed by him, can no longer be executed. Whereas in the provision of article 69 of the Criminal Code are foreseen the deadlines, after which, the person convicted for criminal offenses committed by him, will be called unconvicted or, as the law itself has rehabilitated.

From what was briefly presented above, it is concluded that, in the first case (Article 66 of the Criminal Code) we are in front of the case of prescription of the right of the competent bodies of criminal prosecution; in the second case (Article 68 of the Criminal Code), we are before the statute of limitations of the right of the competent state bodies, charged with the execution of sentencing decisions to execute these decisions. Whereas, in the third case, (Article 69 of the Criminal Code) we are before the expiration of the sentence given to a person for criminal offenses committed by him, ie, before the rehabilitation of this person which results in a change of his judicial status, from condemned to unpunished.

The case under trial in the Joint Panels of the Supreme Court has to do with the second aspect of the statute of limitations, ie the statute of limitations for the execution of the sentence, provided by Article 68 of the Criminal Code.

From the content of this provision, it follows that the sentence is not executed when from the day it has become final it has passed: twenty years for the decision containing a sentence of fifteen to twenty-five years; ten years for a decision containing a sentence of five to fifteen years and five years for a decision containing a sentence of imprisonment of up to five years or other lighter sentences.

It is clear that the legislator, through this provision, has set before the competent state bodies in charge of the execution of sentencing decisions a time limit within which these bodies have the right to execute a final criminal decision. This time limit constitutes at the same time an express prohibition for these bodies, which does not allow them to execute criminal decisions beyond the deadlines set, as the case may be, in letters "a", "b" and "c" of the provision of Article 68 of the Criminal Code.

The purpose of the legislator in imposing this time limit and prohibition has been, firstly, the realization in practice of the general and specific preventive effect of the sentence in each specific case and secondly, the discipline of the process of execution

of sentence decisions in general especially in cases when the convicted person, for one reason or another avoids or hides from this process.
The right and at the same time the duty of the competent state bodies, charged with the execution of sentencing decisions, the legislator has conditioned firstly with the moment when the sentencing decision has become final and secondly, depending on the measures and types of sentencing given, with the terms (twenty, ten and five years), which are provided in the mentioned provision of the Criminal Code.
From what was presented in the above paragraph, it is concluded that the competent state bodies in charge of the execution of sentencing decisions, have the right and at the same time the duty that immediately, as soon as the sentencing decision has become final, to execute it.
They continue to have this right until the deadlines, twenty, ten and five years provided by letters "a", "b" and "c" of Article 68 of the Criminal Code, have not been met yet.
It follows that the sentence cannot be executed either before it has become final, or after the deadlines of twenty, ten and five years mentioned above have been met, and this constitutes the prohibition mentioned above.
The convict B. Ll. was convicted by decision no. 141 dated 24.07.1996 of the Court of First Instance Elbasan. The decision given by the Court of Elbasan became final on 11.09.1996, the day when the court of appeal announced its decision. The sentence given to the convict B. Ll. has been less than 5 years imprisonment.
After five years, specifically on 12.09.2001, the convict drafted and filed in the Elbasan District Court the request subject to trial, claiming that the sentencing decision against him could no longer be executed due to the fact that five years had passed from the day the decision had become final. Through the request object of the trial, the convict has requested from the court the declaration as prescribed of the sentence given against him. The convicts, in addition to Article 68 of the Criminal Code analyzed above, also base their searches on Articles 470, 471 and 480 of the Code of Criminal Procedure.
The above-mentioned procedural provisions sanction the competent court in the execution phase (Article 470 of the Criminal Code), the manner of proceeding (Article 471 of the Criminal Code) and the competencies of the court (Article 480 of the Criminal Code). According to Article 480 of the Criminal Code: "In the execution phase, the court is competent to decide on the termination of the criminal offense after the sentence, on the termination of the sentence, on additional sentences, on the confiscation and return of seized items, as well as any case provided by law ".
Contrary to what was analyzed above, the courts have unjustly rejected the request of the convict B. Ll. although five years had passed since the day the decision became final. After five years, the sentence cannot be executed (Article 68 / c of the Criminal Code). Both the court of first instance and the court of appeal were obliged to declare that the sentence given against the convict B. Ll. could no longer be executed for the fact that it was statute-barred.
From the reading of the text of the provision of Article 68 of the Criminal Code, it is clear that the legislator not only did not provide, but also did not imply that there are causes or factors that may result in the extension of the statute of limitations. by him

in connection with the execution of the sentence.
The Court of First Instance of Elbasan and the Court of Appeal of Durres have rejected the request of the convict B. Ll. with the reasoning: "that on 13.03.1997 the serving of the sentence was terminated". This conclusion of the courts finds no support in any legal provision of criminal law. The Criminal Code and the Code of Criminal Procedure do not provide for the termination of the execution of decisions. Although the Albanian criminal legislation does not provide for the termination of the execution of the decision, the courts refer to the general principles of law and especially civil law which provides for the termination as a legal institution. Such an attitude is contrary to the principles of the Albanian Criminal Code. In Albanian criminal law it is sanctioned: "The Criminal Code is based on the constitutional principles of the rule of law, equality before the law, justice in determining guilt and punishment, as well as humanism. Enforcement of criminal law by analogy is not allowed.
As can be seen, the way of reasoning that is based on some general principles to draw the same conclusions is categorically forbidden for criminal law. For this reason, the legislator has sanctioned in the Criminal Code the principle of non-application of criminal law by analogy (Article 1 / c of the Criminal Code).
The Joint Panels of the Supreme Court came to the conclusion that even starting from the logical interpretation of the expression used by the legislator in the provision of this article which states: "The sentence decision is not executed when the day it has become final has passed… ", There can be no extension of the statute of limitations for the execution of the sentence for any reason. This applies both in cases when the sentence has not been executed at all, and in cases when this sentence has been executed and after the convict has begun to serve the sentence, his further suffering is interrupted for any reason, as it may be also the removal of the convict from serving the sentence, as happened with the convict B. Ll.
The fact that the sentence decision pertaining to this convict was executed and he, until 13.03.1997 when he left the place of serving the sentence, had served about 21 months from the given sentence, can not serve as a circumstance for to make the provision of Article 68 of the Criminal Code a different interpretation from that given to it by the United Colleges, in the previous parts of this decision.
The mere fact that the convict has served part of the sentence can not place him in a more unfavorable position in relation to any other convict, the criminal decision against which has not yet been executed. It was the duty of the competent state bodies, in charge of the execution of criminal decisions, to take the necessary measures to find and apprehend this convict and to force him to continue serving his sentence further. The same rule should be applied for this category of convicts. Based on the principle of equality before the law (Article 18 of the Constitution), the institution of statute of limitations for the execution of a sentence should apply equally to all convicts, both to those for whom the execution has not started and to those for whom the execution has not been fully fulfilled. It is unfair to benefit a person who has not served even one day in prison and not to benefit a person who has served part of his sentence. In favor of this conclusion is the fact that the purpose of the institute of statute of limitations for the execution of the sentence is the same for all citizens who have been criminally sentenced to imprisonment.

For these reasons, the Joint Panels of the Supreme Court, based on Article 442 of the Code of Criminal Procedure, have decided to annul the decision no. 114, dated 30.10.2001 of the Court of the Judicial District of Elbasan and the decision no. 280, dated 20.12 .2001 of the Court of Appeal of Durres, accepting the request of the convict B. Ll. declaring his sentence commuted"[5].

References

Criminal Code of the Republic of Albania.
Criminal Procedure Code of the Republic of Albania.
Decisionno. 187, dated 15.04.2009, CriminalCollegeof the Supreme Court.
UnifyingDecisionno. 7, dated 11.10.2002 of the JointCollegesof Supreme Court.

[5] Unifying Decisionno. 7, dated 11.10.2002 of the Joint Colleges of Supreme Court.