

Failure to report a crime and its problems in Albania

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Abstract

Crime being a social and economic phenomenon constitutes a serious threat to democratic values, not just one country or region, but beyond. Its prevention and detection constitutes the most important challenge dealing with the criminal investigation organs, where the underlying investigative process at any time should remain the utmost respect for human rights, particularly care to crime victims. The process of crime prevention should be more efficient, first there must be a spirit of close cooperation between police officers, prosecution authorities and community in order to guarantee the rule of security for citizens. This is due to the fact that all citizens are concerned about the safety of their family and the environment where they live. Through their individual skills they react to the actions and behaviors that affect the interests, values and legal norms prescribed (Nasufi & Yzeiri, 2004, 162). Besides civic reaction, criminal legislation provides for the rights and duties to citizens to denounce criminal acts.

Under the criminal code, every citizen is obliged to speak of a crime that is being committed or has been committed, the bodies of prosecution, court, law enforcement bodies, government or administration, otherwise the risk is connected with a sanction of a fine or imprisonment up to three years.¹ To better understand the problems of non testifying crime and discrepancy it is important to analyze the criminal Offense of non testifying crime and Characteristics of the Offense under the Albanian criminal code.

Keywords: Criminal code, Albania, Crime, sanction.

Introduction

Offense of non reporting crime is regulated in Article 300 of the Albanian Criminal Code, where, according to which:

"Failure to report criminal prosecution, in court public order bodies, government or administration, a crime that is being committed or has been committed is punishable by fine or imprisonment up to three years.

Exempt from the obligation to report ancestors and descendants, brothers and sisters, spouses, adoptive parent and the adoptee as well as persons who are obliged to maintain secrecy because of their position or profession."

The object of the offense of non reporting a crime is a juridical relationship established by the state to ensure proper functioning of the judiciary, protected by the criminal laws of criminal acts or omissions (Elezi, 2000, 516).

For a person to qualify as an active subject of the offense of non reporting crime, there should be simultaneously two criteria's:

¹ Criminal Code of the Republic of Albania, Article 300.

- Must have a correct knowledge that a criminal offense is being committed or has been committed.
- Do not report to this fact, not to make the report to the competent authorities. Same attitude was shown by the criminal panel of the Albanian Supreme Court in Decision No.651, dated 12.22.2004. According to the second paragraph of Article 300 of the Albanian Criminal Code, there is an obligation to exempt reporting of a crime for the following persons:
 - The ancestors and descendants and the offender;
 - The brothers and sisters;
 - The husband or wife;
 - The adoptive parent and adoptee;
 - The persons who are obliged to maintain secrecy because of their position or profession.

Understandably, these people find it difficult to report in criminal prosecution bodies, because of family relationships that exist in society. It is difficult to conceive that in a family relationship is thought that the father or mother can speak to children or vice versa for committing a crime or spouse to speak wife and vice versa whenever they become aware that they have committed a crime, according to forecasts made to the criminal code (Elezi 2000, 517).

Characteristics of the criminal offense of non reporting crime

Based on legal analysis of the criminal offense of crime and non testifying in court practicing about this crime, the characteristics of non testifying crime are as follows:

- ❖ This offense consists only of failing to report acts or omissions
Illicit covered by the provisions of the Criminal Code as a crime and not for criminal offenses. It is important to note that under the current penal code, the crime of non testifying consists of failure to report all crimes without exception, and not only on the complaint of some particular crimes as envisioned in the penal codes of the 1952 and 1977 in Albania. Under Article 112 of the Criminal Code of the People's Socialist Republic of Albania (Criminal Code of the People's Socialist Republic of Albania, article 112) citizens who did not denounce the crime of misappropriation of socialist property were punished with deprivation of liberty up to three years.
- ❖ District bodies on which the reporting of crimes is quite extensive. In the organs of prosecution, the prosecutor exercises criminal prosecution and represents the accusation on behalf of the state in court and judicial police. According to Article 3 of Law No. 8677, dated 2.11.2000 "On the organization and functioning of the Judicial Police", as amended.
- ❖ The subject of the criminal offense of non reprinting crime is a general subject that is any person that has reached the age of criminal responsibility and is liable. In order for an individual to swear an active subject of non reprinting crime first of all he must have a complete knowledge that it is being committed a crime or is committing a crime. It is important that the entity has a legal obligation to report a crime to the competent authorities, no matter the knowledge of the author. There should be no doubt soft full knowledge of the crime. Another feature of this provision compared with the previous codes consisting of exemption from

criminal responsibility of several persons, is mentioned in the second paragraph under the Article 300 of the Penal Code.

Failure to report a crime of special subjects

Under section 300 of the penal code, in which is enshrined the offense of non testifying crime it is shown that the subject of non testifying crime, is any person who has reached the age of criminal responsibility is responsible and it is aware that a crime is being committed or has been committed if it does not report it to authorities. While we refer to criminal procedural law, this law for a certain category of persons provides a special obligation to denounce the offenses for which they are informed of their activity. Under Article 281 of the Criminal Procedure Code, the obligation of public officials to denounce offenses, when, while on duty or because of position or service, they become aware of a criminal offense prosecuted ex officio. This provision imposes additional obligations on persons with the quality of a civil public, precisely because of the special reports that they have with the state and for that part of their activities which are in the office, separate from other citizens or from their activity reports out of office.

Another category of people who have the obligation to make charges for committing a crime is medical personnel, (Code of Criminal Procedure, Article 282) during the intervention or while providing medical assistance,

Failure to report a crime by medical personnel

The medical staff has the obligation to report a crime of which they are aware in the exercise of their profession based on the Albanian penal code. The same attitude with regard to the obligation of the medical staff to report on a crime has had the Italian penal system. Under the Italian criminal code, the healthcare professionals are determined to report any crime, happening in their presence or everyone who has helped or has acted in the exercise of the profession of health care based on Article 361 of the Italian Penal Code. The sanction that follows is a fine of up to € 516. Unlike the Italian penal code, the current Albanian penal code does not provide any obligation to report or to refer a crime from a medical professional. This provision, in its second paragraph, excludes the category of persons who are obliged to maintain secrecy because of their position or profession.

There is a conflict of interest that may arise between the obligation of professional secrecy and the obligation to report of a crime, by CEDM (Code of Ethics and Medical Deontology approved on 11.11.2011). Code of Ethics and Medical Deontology, has defined where the information constitutes a trade secret. According to CEDM, the wish of the patient obliges the doctor to keep a secret that is trusted during his work. The professional secret holds even after the death of the patient, except when it poses a risk to the health and lives of others. The doctor is permitted to uncover the secrets of the patient only in two cases:

- When the hidden data endanger the patient's life;
- When these medical records are required by a statutory body.

Under Article 282 of the Code of Criminal Procedure, the medical staff is required to make the report to the prosecutor or at the judicial police officers within 48 hours of giving assistance. Article 300 of the penal code regulates the conditions that must be respected by the medical staff:

- *Not all the medical staff has the obligation to denounce, this obligation has only that part of the medical staff that has been charged by a special law such an obligation;*
- *Obtaining aware of the criminal offense is the result of giving assistance or performing a specific intervention;*
- *Crimes for which it has knowledge of what is mainly followed;*
- *Time within which to make charges for committing a crime is within 48 hours upon an intervention or of provision of assistance;*

In order to clarify the situation, it should be taken into consideration the fact of the conditions of a crime, if this information is received in the exercise of a profession as a doctor or outside the terms of exercising this profession. If a doctor is aware outside the terms of the exercise of a profession for a crime that has been committed or is being committed, he will be in the capacity of general subject that is bound to make charges compensation under the first paragraph of Article 300 of the penal code, and the procedure established by Article 283 of the criminal procedure code.

Failure to report a crime by a public officer

The term "public administration" is a relatively new term entered into use after the adoption of the Constitution in 1998 which shows the evolution of the conceptual administration of a state apparatus that is designed to implement the will of the State that belongs to the executive (Cani 2007, 233). While under the Convention of United Nations against Corruption, the term "public servant" shall mean any person holding a legislative, executive, administration or judiciary, any person exercising a public function, including a public agency or public enterprise or performing a public service by determining the law of the state party, Albanian criminal law does not provide a definition about what would be considered "public service". For this reason, whenever a need arises, jurisprudence refers to the doctrine (Greco 2009, 14). Under the current Albanian legislation, with public service in terms of criminal law, should be understood any activity regulated by legal norms that are engaged in one of the powers, namely the legislative, executive or judicial, delivered by the entities which lack this kind of power. Article 300/2 of the Penal Code sanctions the exemption from criminal responsibility of non testifying crime, the persons who are obliged to maintain secrecy because of their position or profession. This obligation is also enshrined in the code of administrative procedure in which it is sanctioned, concretely:

"Every public official and every person who participates or is called to participate in an administrative procedure, is obliged not to divulge information that has been revealed during the administrative procedure when they constitute a state secret."

In this sense, article 281 of the Criminal Procedure Code refers to the cases, in which a public officer is the subject of special offense of non reporting a crime:

- A person who is obliged to make a denunciation must be a public official;
- The public official should be informed about the offense while on duty because of his functions or services;
- Work does not matter if it is a crime or offense;
- The work must be followed by those who mainly do not appeal;

Conclusions

This article showed the cases of the failure to report a crime and its problems in Albania through a comparative method. Albania is following the integration in the EU and especially with the *acquis*.

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