

A criminological overview on Albanian criminal law and aspects of corruption during World War II

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Abstract

Main subject of this manuscript will be the historical development of the Albanian legislation, judicial and legal system in the period of 1939-1945, period which in Albania continues to present a vital part of the cultural and political landscape of the twenty-first century. Some of the issues addressed in this paper are:

Historical developments that dictate and guide the development of criminal norms, legal and judicial system in the period of 1939-1945, National Anti-Fascist Liberation Council as the primary body that made laws during this period, Special Military Court, prison system, etc.

Legal and judicial system during the period of 1939-1945 was created and acted under the influence of aggressive invaders' policies and in accordance with the interests of the Anti-Fascist National Liberation War. The latter protected the people's struggle against foreign invaders, but at the same time reflected the extremist policy of the Communist Party in the aspect of defining political crimes, often succeeded by harsh and unfair sentences. However, other criminal rates of a political character contributed to the important fight against criminality. Prison system was characterized by corruption in terms of the way they operated. After putting in place the regime of the National Liberation Forces, military courts were the only functional courts for several months. Practically, the authorities felt that all litigation had some military importance, so they were under the jurisdiction of military courts.

For a reliable and complete view on the development of Albanian Criminal Law, as well as the judicial and legal system in the period of 1939 -1945, the work in this paper was carried out based on different historical documents as well as materials.

Keywords: pro-fascist crime rate(s), fascist crime rate(s), corruption, political crimes, special military court.

Introduction

Main topic of this manuscript is the development of Albanian legislation in the period of 1939-1945. The reason for choosing particularly this period is because Albania, even in the beginning of the new millennium, continues to be affected by events and issues of this period which coincides with World War II. "To understand Albanians in the year 2000 and onwards, one should find important to discover who they were during the period of 1939-1945," writes Professor Bernd Fischer in one of his books. In this manner, he wishes to highlight the importance of the creation of the image of Albanians.

This manuscript aims to address criminal law through detection, analysis, comparison and explanation in a scientific manner, but also by going beyond the Albanian judicial and legal system and by considering the influence of historical circumstances of the time.

Legal and judicial system

April 7, 1939 marks the occupation of Albania by fascist Italy. In cities and in other occupied areas, the Albanian Criminal (Penal) Code of 1928 was formally in power. In addition to it, there were specific criminal laws, for the protection of the interests of squatter fascists and their collaborators (Elezi, 1998, 57). Criminal Code of 1928 was oriented by the Italian Criminal Code of 1889, which was one of the most modern ones in Europe. This Code divides fault in tort and offense, hence it is established on the character of punishable acts, systematizing and classifying them rationally, by assigning different faults based on scientific criteria. The main innovations of the Italian Criminal Code would include: benefits as the suspension of a sentence, suspended sentence, judicial admonition, voluntary payments of fines, etc., accepted by different countries at the time.¹ Among the main punishments prescribed by the Criminal Code of 1928 were: death penalty, life imprisonment, serious imprisonment, imprisonment, deportation, heavy fines, stopping by duty offices for offenses, lighter sentences, lighter fines, suspension of a profession or a skill.

Other laws and decrees were created for specific offenses against the fascist occupation, mainly to confront the resistance movement that did not take much time to appear. On June 2, 1939 two decrees were introduced: one for the arrest and deportation of individuals noted as dangerous to public safety, and the other one reporting and surrendering of weapons. On January 29, 1940 a decree on crimes against "personality of the state" was introduced, which struck crimes against the Albanian and Italian administration (Puto, 2009, 653). These laws differed in their severity but were dominated by heavy sentences, imprisonment and death penalties. Their aim was the defeat of any resistance against the fascist invaders. These repressive measures taken by the invaders themselves failed the suppression of the Albanian people's struggle against fascism which culminated with the liberation of the country.

The first elements of the new Albanian Criminal Law appeared with the creation of war bodies by partisans, in accordance with the needs and the spirit of the Anti-Fascist National Liberation War. Among main sources of Criminal Law in this period were: Resolution of the Conference of Peza (16 September 1942), the Statute of the National Liberation Movement and the National Liberation Council Regulation (Elezi, 1998, 55-56).

According to Law no. 61 dated May 17, 1945, the applicable laws are:

- Statutes, laws, decrees, orders and regulations of the Albanian authorities in force before April 7, 1939 which are not contrary to the laws, declarations and democratic principles of the current regime, including Albania Criminal (Penal) Code of 1928;
- Laws, decrees, orders and regulations promulgated by the current regime (Fischer, 2012, 74). Of those who belong to the criminal sphere and who stand out are: "The creation of the Commission on War Crimes"², "Prohibition of the export of precious

¹ Ministry of Internal Affairs, 1938, 120.

² Law no 8/1944; Official Gazette no 1/1944.

metals",³ "Forfeiture of the property of political prisoners",⁴ "Creation of the Special Court for major war criminals"⁵, "Confiscation of properties of Italian and German entities in Albania", "Functioning and organization of military courts"⁶, etc.

Based on a thorough study on the provisions of the criminal laws of the above mentioned, we conclude that their content was all in function of the National Liberation War by criminalizing any conduct that posed a danger to the interests of this war.

Judicial system

The Constitution of 1939 which was recognized as a Fundamental Statute, *de jure* would decide on the constitution of the monarchy, but *de facto* would represent a military, fascist and anti-democratic dictatorship. The judges were appointed by the king and they would apply justice on his name.

"In general, Italians kept the old judicial organization of King Zog regime which included 1) the institution of judges attached to the office of each municipality; 2) Courts of the Prefectures, each accompanied by a prosecutor, as well as 3) Court of Appeal, which accepted appeals on criminal and civil matters coming from lower Courts of the Prefectures (Fischer, 2000, 73).

The judicial system intended to provide judges, who were selected by the Ministry of Justice as educated people, acting as judges, prosecutors and secretaries and popular election of judges, who served alongside an earlier prepared staff. Theoretically, this can be considered as a good solution, but from a perspective of a one-party system, which does not endure opposition or criticism, it was inevitable that selected judges would be appointed by the party and therefore could always take decisions against anyone who was not with the regime and often ignoring the facts (Fischer, 2012, 75).

Special Military Court

The National Anti-Fascist Council with the creation of the Special Military Court in Tirana, for war criminals, presented the first step of the new regime towards the organization of the judicial system. Few weeks later, on January 14, 1945, the Board introduced Law no. 41 that would determine the organization, jurisdiction and functions of the military courts throughout the country.

Law "On organization and functioning of Military Courts" is an illustration of how legislation at any time tends to respond to the needs of society in accordance with the situation. In this court were trialed all crimes against the National Liberation War of the Albanian people.

Fascist National Liberation Council organized a well-structured organization of military judicial authorities exercised by: 1) Military Court Corps 2) Military Court

³ Law no 20/1944; Official Gazette no 2/1944.

⁴ Law no 25/1944, Official Gazette no 2/1944.

⁵ Law no 26/1944; Official Gazette no 2/1944.

⁶ Law no 41/1945, Official Gazette no 3/1945.

of the Province of Military Corps and 3) Supreme Court. The latter would host trials of more important acts of war criminals and enemies of the people, criminal acts of higher officers and generals of the National Liberation Army. High Military Court was formed by the General Staff of the National Liberation Army.

General Staff with the proposition of the President of the Court would appoint Judicial Councils.

A significant role of the General Staff was the selection of the members of the Judicial Council from the ranks of individuals identified as loyal to the National Liberation War. Military Court appointed the following penalties and precautionary measures: "Harsh remarks", "Penalties" (in cash, in kind, at work), "Deportation", "Degradation" or "Dismissal", "Deducting responsibilities", "Mandatory work from one month to two years", "Mandatory (hard) work from three months to twenty years", "Complete or partial confiscation of movable and immovable property", "Imprisonment", "Death penalty".

On April 7, 1939, fascist Italy invaded Albania and acted hastily by all means for the Italianization of Albania with the purpose of turning the country into a supplementary market of Italy and a crossing bridge for its expansion in other Balkan countries. In the framework of preparations for the invasion of Albania, Mussolini had developed a careful campaign of economic and cultural aggression. He had authorized national lending, which reached about 65 million US \$ - an amount out of possibilities of Albania. He controlled the Albanian National Bank, the military program and the concessions of mineral and oil (Puto, 2009, 453).

Conclusions

A nearly six-year time period (1939-1945) reflects three different Albania's: Italian, German and Stalinist Albania, each displaying specific features of criminal legislation, judicial and legal system. With the occupation of Albania by fascist Italy in April 1939, the Criminal Code of 1928 remained only formally in force, but many other criminal pro-fascist norms were presented with the purpose of defending the interests of the invaders while being characterized by severity and aggressiveness against the resistance of the Albanian people. In this situation, on one side we see the Albanian judicial authorities trying to enforce the Criminal (Penal) Code and on the other side Military Courts of the invaders enforcing pro-fascist laws.

With the strengthening of National Anti-fascist Liberation Movement the first elements of the new Criminal Law were expressed mainly in the Resolution of the Conference of Peza, the Statute of National Liberation Movement and the Regulation of National Liberation Committees. Criminal laws of this period protected people's struggle against foreign invaders, but at the same time reflected the extremist policy of the Communist Party in the aspect of defining political crimes, often succeeded by harsh and unfair sentences. However, other criminal rates of a political character contributed to the important fight against criminality.

In light of historical and political circumstances, a considerable importance was given to the military judiciary. Military Courts were established. The prison system was characterized by a lack of discipline and occurrences of various forms of corruption.

Albanian Criminal Law took full form with the establishment of the People's Government in the entire country, after the liberation.

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