

Amendments in criminal legislation - Cause of the global pandemic

PhD (C.) Gloria Çarkaxhiu

*Legal Expert, General Directorate of Codification & Harmonization of Legislation,
Ministry of Justice of Albania*

Abstract

The purpose of this paper is to analyze the need for identification and the extent to which the intervention of the legislator was necessary to undertake amendment in the Criminal Code. The analysis begins with a description of the need and follow-up of its process from the initial draft to its approval by law no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended".

Through this paper I intend to analyze the extent of the intervention of the Albanian legislator, compared to what is actually provided in the criminal legislation of some other European countries, which provide sanctions for infectious diseases. Analysis of foreign legislation from the point of view of the principle of proportionality with the latest provisions adopted by the Republic of Albania in the period of pandemics and in an extraordinary and emergency situation for the protection of health and life of its citizens such as that of global pandemics.

Keywords: Criminal legislation, state of emergency, state of natural disaster, public health.

Introduction

Fundamental human rights and freedoms, due to their great importance in a democratic political system, enjoy special protection by the state, as one of its primary constitutional duties.

Criminal legislation provides for what actions or omissions that infringe on these rights and freedoms of the individual are considered punishable offenses or criminal offenses. Therefore, criminal norms, more than punitive norms, should be seen in terms of norms that guarantee the protection of important legal and social rights and relations, as in this case are human life and health, or protection of public health in general.

Adopting new criminal norms in the face of an urgent need to deal with the danger and consequences that may come from situations we never imagined we would ever find in our daily lives certainly requires extra care.

When it comes to the pandemic that has gripped the world at the end of 2019 and continues to this day, the Republic of Albania, as not a few countries in the world, responded to this pandemic from the point of view of drafting legal amendments in the Criminal Code of the Republic of Albania¹. Initially and due to the not at all normal situation and in conditions of state of emergency and emergency for the drafting of these amendments it was noticed that the content of the proposed criminal provisions presented significant constitutional problems and did not respect the principle of

¹ Law no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995," Criminal Code of the Republic of Albania ", as amended".

proportionality. Mostly the findings were in line with the concerns and remarks of many other institutions or non-profit organizations that have expressed their opinion on the first draft of the project proposals. In these preliminary consultations, it was suggested to improve the legislative technique of these new provisions, in order to clarify the legal norm, in defense of the principles guaranteed by the Constitution.

This is because a criminal norm cannot be respected and will be applied with difficulty when it has an inaccurate or unclear content. From this point of view, the clarity of the criminal norm has a guaranteeing function for fundamental human freedoms, as human rights identify essential values that are essential to the realization of human dignity.

Therefore, and throughout the legislative process in this case, the aim is only to protect the public interest and regulate social life in the country, towards the constitutional and international principles of law.

In the first draft proposed by the initiating deputies², the content of the proposed provisions was very aggressive, disproportionate and did not guarantee the purpose for which this proposal was undertaken. This disturbing situation in terms of the content of the proposed provisions brought concern not only to the public but also the reaction of the basic institutions which through consultation of the draft and during the phase of giving suggestions brought a significant improvement of it keeping exactly the principle of proportionality. In improving them throughout the parliamentary review process. An important cooperation was observed between the contributing institutions during the finalization of this draft³, making it possible to avoid moments that could have brought unnecessary delays when it comes to the health and lives of citizens.

Of course, in such important moments, where the health and life of every citizen is endangered, to contribute to the improvement of a law, when the advice for improvement is requested and accepted, shows only institutional responsibility.

An important cooperation was observed between the contributing institutions during the finalization of this draft, making it possible to avoid moments that could have brought unnecessary delays when it comes to the health and lives of citizens.

Of course, in such important moments, where the health and life of every citizen is endangered, to contribute to the improvement of a law, when the advice for improvement is requested and accepted, shows only institutional responsibility.

2. Proposed legislative drafts

During the drafting phase of this draft law, due to the urgent need and the situation created worldwide, this draft law was given a significant importance, having important contributions and in record time from all institutions that contributed to the drafting of his. To see the evolution of this draft, we will present as an illustration its development from the interventions of the main institutions that made an important contribution to the consolidation of the final draft.

² Draft proposed by a group of deputies <http://parlament.al/Files/ProjektLigje/20200409112749amendament.pdf>

³ Report of the Committee on Legal Affairs, Public Administration and Human Rights in the Assembly of the Republic of Albania: http://parlament.al/Files/ProjektLigje/202004152222592020_%2014%20Prill_%20Raport_ndryperime%20nepseenn2020202020.pdf

- The proposed initial draft provided for the following articles⁴:

Article 242/1

Disobedience to the measures of the competent state bodies during the state of emergency or the state of natural disaster⁵.

Disobedience to the rules, decisions and orders issued by the competent state bodies for the measures taken during the state of emergency or the state of natural disaster, constitutes a criminal offense and is punishable by a fine or imprisonment of up to six months.

The same offense, repeatedly committed, is punishable by thirty days to one year in prison.

When the act endangers the life or death of a person, he shall be punished by imprisonment of one to five years. "

Article 242/2

Violation of quarantine rules for the prevention of the spread of infectious diseases
Failure to comply with the quarantine order or violation of quarantine rules by the person carrying or not contagious infectious disease is a criminal offense and punishable by a fine and imprisonment of up to ten years.

The same act, when it has caused serious consequences for the health or life of people, is punishable by three to ten years in prison.

When the death of a person has occurred or is likely to occur, he shall be punished by imprisonment of five to fifteen years. "

- The draft approved by the Assembly was presented in the following version⁶:

Failure to implement the measures of the state authorities during the epidemic or the state of natural disaster

Failure to carry out or carry out actions contrary to the orders, decisions issued by state bodies during the epidemic or the state of natural disaster, different from those provided in the second paragraph of this article, when an administrative measure has been given before, constitutes a criminal offense and is punishable by a fine or imprisonment of up to one year.

Failure to comply with the order given by the competent authorities for quarantine, self-quarantine or isolation, or violation of the rules of quarantine, self-quarantine or isolation by the person carrying or not of the infectious disease, shall be punishable by imprisonment of two to three years.

- Meanwhile, another variant was proposed by the President of the Republic⁷:

Article 242/1

⁴ Draft proposed by a group of deputies <http://parlament.al/Files/ProjektLigje/20200409112749amendment.pdf>

⁵ Decision no. 243, dated 24.3.2020, of the Council of Ministers, "On the declaration of the state of natural disaster", as amended.

⁶ Report of the Committee on Legal Affairs, Public Administration and Human Rights in the Assembly of the Republic of Albania: http://parlament.al/Files/ProjektLigje/202004152222592020_%2014%20Prill_%20Raport_ndryshimet%20ne%20kodin%20penal_per%20seance%20plenare.pdf

⁷ On the approval of amendments in the Criminal Code <http://president.al/ep-content/uploads/2020/04/Shkrese-per-Kuvendin-Kodi-Penal.pdf>

Non-implementation of measures by state authorities during the implementation of emergency measures or the state of the epidemic

Failure to carry out or perform actions contrary to legal or sub-legal acts issued by state bodies, during the state of epidemic or during the implementation of extraordinary measures, by the person against whom an administrative measure has been previously granted and without a lawful cause, constitutes a minor criminal offense and is punishable by a fine or imprisonment of up to six months.

The same offense, when committed in the exercise of commercial activity, endangering human health, is punishable by a fine or imprisonment of up to 2 (two) years.

Failure to comply with the order given by the competent authorities for quarantine or self-isolation or violation of the rules of quarantine or isolation by the carrier, or not of the infectious disease, to which this obligation has been individually notified by the relevant health authorities, is punishable by imprisonment from two to three years.

• Final variant approved by law no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995," Criminal Code of the Republic of Albania "⁸, as amended" provides that:

Article 2

After Article 242⁹, Article 242 /a, is added with the following content:

"Article 242 / a

Failure to implement the measures of the state authorities during the state of emergency or during the state of the epidemic

Failure to perform or perform actions contrary to legal or sub-legal acts issued by state bodies, in function of the state of the epidemic or the implementation of extraordinary measures, by the person against whom an administrative measure has been previously given, constitutes a criminal offense and is punishable by fine or imprisonment of up to six months.

The same act, when committed in the exercise of commercial activity, endangering the health of people, is punishable by a fine or imprisonment of up to two years.

Failure to comply with the order given by the competent authorities for quarantine or isolation, or violation of the rules of quarantine or isolation by the person carrying or not of the infectious disease, to whom this obligation has been notified by the relevant state authorities, is punishable by imprisonment from two to three years."

Article 3

After Article 89 / a, Article 89 / b is added with the following content:

Article 89 / b

The spread of infectious diseases

Deliberate spread of infectious disease with a high risk to health, through actions or omissions by the person diagnosed as the carrier of the disease or by the person who intends to spread it, is punishable by imprisonment of two to five years.

⁸ Law no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995," Criminal Code of the Republic of Albania ", as amended" Law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended.

⁹ Law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended.

When this offense is committed through negligence, it is punishable by a fine or up to two years in prison.

This same act, when it has caused serious consequences for the health or life of people, is punishable by three to eight years in prison.

Regarding the above, Article 242 / a, is positioned in Chapter VIII, of the Criminal Code which lists "Crimes against state authority"¹⁰, and especially in Section I, "Criminal offenses against state activity committed by citizens". Positioning under Article 242, which relates to disobedience to the lawful order of the State Police, does not mean that this new added provision is necessarily related to the previous one.

The provisions that define criminal offenses in the Criminal Code have no organic connection between them, while the positioning immediately after Article 242, is related to the social legal relationship they protect. In this section, positioning in the following provisions would not be possible due to the set of specific relationships that protect the following articles and related to corrupt practices.

While Article 89 / b, was added exactly in Section III, "Criminal offenses committed intentionally against health", Chapter II, of the Criminal Code "Criminal offenses against the person". This section has been selected, not only because we are facing cases of actions or omissions that affect health and life, but because the provision adopted after consultations, already emphasizes the "will", as a necessary element of the subjective side of this criminal offense.

The answer to the question of why commercial activity should be singled out in this article is related to the intention to commit actions / omissions, which are made for profit.

The development of commercial activity, in violation of the rules established by special laws for the prevention of infectious diseases, endangers a circle many times wider subjects, while the author aims to develop commercial activity for economic gain. This constitutes what in criminal law is called an "aggravating circumstance" and must be accompanied by an increase in proportionate punishment, compared to the consumption of the criminal offense in other circumstances, by a citizen who does not break the rules established for profit. .

Regarding the concern for the third paragraph of Article 242 / a, on the non-implementation of the order given by the competent bodies for quarantine or isolation, the improvement in this provision compared to the first proposed variant lies precisely in the fact of clear definition of the subject that may be charged with criminal liability under this article.

Not every citizen, much less those who can go out, even for family reasons, are subject to it.

Subjects of this criminal offense may be those citizens who have the obligation to be quarantined or isolated, and to go to their identification, we must refer to the provisions of the special law.

Specifically in law no. 15/2016 "On the prevention and control of infections and infectious diseases"¹¹ are given the following definitions:

- "Isolation" is the isolation of suspected or possible persons to be affected by

¹⁰ Law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended.

¹¹ Law no. 15/2016 "On the prevention and control of infections and infectious diseases".

infections or infectious diseases, as well as persons infected by healthy people, to prevent the spread of infection.

- "Quarantine" is the restriction of the movements of healthy people who have been in contact with the sick or the source of infection of dangerous infectious diseases and their stay in a certain environment.

Thus, the criminal provision of paragraph 3 applies to this specific circle of entities that are either "carriers" (and have been diagnosed as such), or if "are not carriers", have had contact with patients or the source of infection and in each case they have been notified individually of the obligation to stay away from physical contact with other people.

In this case, the person previously notified of this obligation, unlike the circle of subjects of the first paragraph of the article, is already a potential carrier of an increased risk of infecting other persons and is fully aware (and notified) for this.

3. Predictions in the Criminal Codes of some EU countries on infectious diseases Denmark¹²

Article 192

1. A person who contrary to the provisions of the law, or according to the law on the prevention or control of infectious diseases, risks that such a disease reaches, or spread to the population, is punishable by imprisonment of up to 3 years.

2. If the disease is such that, according to the law, it meets the conditions for treatment by public health or at the time when the offense is committed is being treated, or if special measures have been taken by the state against the disease, the penalty is up to 6 years.

3. A person who risks a contagious disease reaching, or spreading between, domestic animals or cultivated plants, shall be punished by a fine or imprisonment of up to 2 years.

4. If such an act has been committed due to negligence, the punishment is a fine, or in aggravating circumstances, it is punishable by imprisonment of up to 6 months.

Article 252

1. A person who, for profit, or intentionally or due to negligence, inevitably endangers the life or physical ability of others, shall be punished by imprisonment of up to 8 years.

2. The same punishment shall apply to any person who intentionally endangers someone from becoming infected with a fatal or incurable disease.

3. After negotiations with the Minister of Public Health, the Ministry of Justice will determine the diseases that meet the criteria of point 2.

CROATIA¹³

Article 180 Dissemination and transmission of infectious diseases

1. Failure to comply with the regulations or orders of the competent state authority on check-ups, disinfections, disinsectizations, deratizations, quarantine of patients

¹² Criminal Code of Denmark, Articles 192 and 252.

¹³ Croatian Penal Code, Article 180 "Dissemination and transmission of infectious diseases".

or other measures to prevent and suppress infectious diseases of animals that can be taken by humans and consequently the risk of the spread of infectious disease among humans or its transmission from humans to animals is punishable.

2. Failure to implement protective measures, resulting in infection of another person with a dangerous infectious disease, is punishable by up to 3 years in prison.

3. If the actions of point 1 or 2 are committed out of negligence, the perpetrator shall be punished by imprisonment of up to 1 year.

4. If the criminal offense under point 2 of this article is related to sexually transmitted diseases, it will be prosecuted at the request of the injured party, unless the offense is committed against a child.

SLOVAKIA¹⁴

The spread of a disease dangerous to humans

Article 163

1. A person who intentionally causes or increases the risk of developing or spreading a dangerous infectious disease is punishable by 1 to 5 years in prison.

2. The perpetrator shall be punished by imprisonment of 3 to 8 years if, for the offense of point 1, there are aggravating circumstances.

3. The perpetrator shall be punished by imprisonment of 4 to 10 years if he causes the offense in point 1 and

a) causes severe bodily injury or death, or

b) under a crisis situation.

Article 164

1. A person who, due to negligence, causes or increases the risk of developing or spreading a dangerous infectious disease, shall be punished by imprisonment of up to 3 years.

2. The perpetrator shall be punished by imprisonment of 1 to 5 years if he commits the offense under point 1

a) in aggravating circumstances;

b) causes serious bodily injury or death.

SLOVENIA¹⁵

Article 177 Dissemination of infectious diseases

1. Whoever violates the regulations or orders by which the competent authority has ordered medical examination, disinfection, quarantine or other measures to suppress or prevent infectious diseases in humans, resulting in the spread of infectious disease, shall be punished by a fine or imprisonment 1 year.

2. The same penalty shall be imposed on anyone who violates regulations or orders by which the competent authority has ordered measures to be taken to suppress and prevent infectious diseases in animals, thereby spreading to humans.

3. Whoever commits the offenses in points 1 and 2 due to negligence, shall be punished

¹⁴ Slovak Penal Code, Dissemination of a Dangerous Disease to Humans Articles 163 and 164.

¹⁵ Criminal Code of Slovenia, Article 177, "Dissemination of Infectious Diseases".

by a fine or imprisonment of up to 6 months.

4. If the offenses of points 1, 2 or 3 of this Article result in the death of one or more persons, the perpetrator shall be punished by imprisonment of up to 8 years for offenses under points 1 and 2, and up to 5 years for offenses under point 3.

HUNGARY¹⁶

Violation of Epidemic Control Regulations

Article 361

Sentenced to imprisonment, the person who:

- a) violates the rules of quarantine, epidemiological surveillance or control ordered to prevent the importation or spread of a disease that is subject to quarantine obligation;
- b) violates the rules of quarantine, epidemiological surveillance or control ordered at the time of the outbreak of an illness;
- c) violates the measures taken by the plant health authority or the epidemiological measures taken to prevent the spread - within or beyond the border - of infectious diseases of animals or pesticides harmful to vegetation, or their extinction.

ESTONIA¹⁷

Criminal offenses related to infectious diseases

Article 192 Causing the threat of the spread of infectious diseases or infectious diseases in animals

1. Violation of the rules for the control of infectious diseases and infectious diseases in animals, if it poses a threat to the spread of a particularly dangerous disease, is punishable by a fine or up to 1 year in prison.
2. The same action, if caused by negligence, is punishable by a fine.
3. If the action according to subsection 1 or 2 of this section is performed by a legal entity, it is punished with a fine.

Article 193 Causing the spread of infectious disease or infectious disease in animals

1. Violation of the rules for the control of infectious diseases and infectious diseases in animals, if it causes the spread of a particularly dangerous disease, is punishable by a fine or up to 3 years in prison.
2. The same act, if caused by negligence, is punishable by a fine or up to 1 year of imprisonment.
3. If the action according to subsection 1 or 2 of this section is performed by a legal entity, it is punished with a fine.

LATVIA¹⁸

Article 133.1 Infection with a dangerous agent of infectious diseases

A person who knowingly infects another person with a dangerous agent of an infectious disease, resulting in serious damage to health or death, is punishable by

¹⁶ Hungarian Penal Code, Article 361 "Violation of epidemic control regulations".

¹⁷ Estonian Penal Code, Criminal Offenses Related to Infectious Diseases Articles 192 "Causing Threats of Infectious Diseases or Infectious Diseases in Animals" and 193 "Causing the Outbreak of Infectious Diseases or Infectious Diseases in Animals"..

¹⁸ Latvian Penal Code, Article 133.1 "Infection with a dangerous agent of infectious diseases".

imprisonment for up to 5 years, or temporary deprivation of liberty, or community service, or a fine.

LITHUANIA¹⁹

Article 277 Violation of the Regulations on the Control of Epidemics or Adhesive Diseases

1. A person who violates the rules of legal acts governing health care, or regulations for the control of the prevention of infectious diseases, resulting in the spread of the disease or causing an epidemic, is punishable by a fine, or imprisonment of up to 3 years.

2. A person who, after being informed by a medical institution, of the disease and has been warned of the protective measures to be taken in communication with others, exposes another person to the risk of becoming infected with a dangerous infectious disease, is considered to have committed a criminal offense and is punishable by community service, fine, or deprivation of liberty.

3. The person who performs the actions due to negligence is responsible according to this article.

4. Legal persons are responsible for actions contrary to point 1 of this article.

MALTA²⁰

Article 244.A Transmission of diseases

(1) A person who, knowing that he suffers, or has been affected by a disease according to point (3), in any way intentionally, transmits this disease to another person who does not suffer, or has not been affected, by She was sentenced to 4 to 9 years in prison. If the other person dies as a result of this illness, the perpetrator is punished under Article 211 (1)²¹.

(2) If such an illness is transmitted due to negligence, negligence or non-compliance with the rules by the person who knew or should have known that he is suffering or affected, the person shall be punished by imprisonment of up to 6 months or a fine of up to 2329 euros. If the other person dies as a result of the illness, the perpetrator is punished according to article 225²².

(3) The Minister responsible for justice determines the diseases for which this article applies.

Conclusions

Following the above analysis we can see that the drafting of this draft law was precisely the need for the emergency created due to the state of natural disaster throughout the Republic of Albania due to the new coronavirus (COVID-19)²³ that brought the

¹⁹ Lithuanian Penal Code, Article 277 "Violation of the Regulations on the Control of Epidemics or Adhesive Diseases".

²⁰ Malta Penal Code, Article 244.A "Disease Transmission".

²¹ Premeditated murder, life imprisonment.

²² Murder by negligence, imprisonment of up to 4 years or a fine of up to 11,646 euros.

²³ Decision no. 243, dated 24.3.2020, of the Council of Ministers, "On the declaration of the state of natural disaster", as amended.

need to improve the new rate, bringing it closer to the standards that other European countries have long applied. It is clear from the analysis of the legislation of some European Union countries, the law approved by no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995," Criminal Code of the Republic of Albania", as amended" is a variant that most closely resembles the model of Denmark. However, there are still concerns to be raised about how these new provisions will be put into practice by law enforcement institutions, such as prosecutors and judges. Not every situation or circumstance can find detailed regulation in the provisions of the Criminal Code. But any aspect related to the field of activity that is protected by the Criminal Code is regulated in the secondary legislation or bylaws which clearly and in detail define the rights and obligations of citizens or state bodies, the violation of which constitutes a criminal offense under the Code. Criminal, of course, will need to be drafted guidelines that will guide law enforcement institutions such as the State Police, prosecutors and judges to apply the new provisions of the Criminal Code, based on clear technical criteria and applicable legal and sub-legal acts.

References

- Law no. 35/2020 "On some additions and amendments to the law no. 7895, dated 27.1.1995". Criminal Code of the Republic of Albania ", as amended".
- Law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania", as amended.
- Law no. 15/2016 "To prevent and fight infections and infectious diseases".
- Law no. 7905, dated 21.3.1995, "Code of Criminal Procedure of the Republic of Albania", as amended.
- Report of the Committee on Legal Affairs, Public Administration and Human Rights in the Assembly of the Republic of Albania
- Danish Penal Code
- Croatian Criminal Code
- Criminal Code of Slovenia
- Slovak Penal Code
- Hungarian Penal Code
- Latvian Criminal Code
- Estonian Penal Code
- Lithuanian Penal Code
- Malta Criminal Code
- Decision no. 243, dated 24.3.2020, of the Council of Ministers, "On the declaration of the state of natural disaster", as amended.