

The alternatives of imprisonment according to the Albanian Law and the ways of surveillances

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Abstract

This paper considers different alternatives to Sentence to a Term of Imprisonment listed in a chapter with the same title, in the Articles 58-64 of the Albanian Criminal Code. This approach to such subject reflects not only the reality of how the judicial system in Albania operates, but, because of the purpose and the positive changes that the implementation of these alternatives to sentence to a term of imprisonment brings, it is also a permanent requirement of the international community. In this note I have focused in three important quests: theoretical interpretations of these criminal code provisions, examples from court's practices as well as problems and challenges that might arise, and lastly, the procedures required for their implementation. Moreover, in considering the procedural challenges, the conditional sentence (Article 59), semi freedom (Article 58), house arrest (Article 59/a), community service (Article 63) and conditional release or parole (Article 64) of the Criminal Code, I have also presented my personal view on the matters. My thoughts and suggestions add to the explanation and elaboration of this subject not only from the practitioners' points of view, but they also add to the intellectual discussion among those who exchange ideas and theories on the subject. This concludes the intent and purpose of this note, which focuses on a topic that is very current today.

Keywords: the alternatives of imprisonment; probation service; semi release; the conditional sentence; parole; house arrest; community services

Introduction

A very important institute of the criminal justice in Albania there is *"The Alternatives of imprisonment"*. Those alternatives are known from the Criminal Code of Albania in the approval of New Criminal Code on the year 1995. According to the changes in the Criminal Code, we can find in our lexicon the new term *"The Probation Service"*. Is this service, as I think, the proper organ, charged in procedure from legislative to guarantee a more efficient and as soon as possible implementation adapted to the needs of prisoners and the community of imprisonment.

The Alternatives of imprisonment

In the theory and the practice of the modern criminal court, provision of a criminal conviction seen in three components taken together and let's have a look¹:

First: Referring to the punitive and coercive effect that it means that if a person perform an illegal, socially dangerous and guilty action, without doubt he will be punished for that action.

Secondly: Referring to the rehabilitative and resocialized effect of the person, that it means that the sentenced person, after performing the full sentence, have to subjected to a thorough rehabilitation, in order to live his normal life in society.

Thirdly: Referring to the preventive effect, that it means that when the decision is given it prevents the same act or other actions of sentenced persons or other citizens.

In the context of the forecasting of conviction's type, the Criminal Code of Albania has undergone continuous changing being aligned with European legislation. The very last changes in this Code there are in the Law no 10023, dated 27, November, 2008 'On some amendments to Law no 7895 dated 27, January, 1995' the Criminal Code of Republic of Albania². Besides other provisions, changed and improved, those provisions relating to Chapter VII in this Code in the Title "Alternatives to Imprisonment" like as some provisions relating to those alternatives in the Law 'Penal Decisions Execution'.

The Alternative imprisonment as a juridical institute of the Criminal Judgement there aren't some kinds of imprisonments, but there are the ways of their execution. The Criminal Code before the last changes, knew as alternative sentences only Fragmentation of imprisonment (Article 58), Suspending the execution of a sentence, the probation of the convicted (conditional sentence)(Article 59), suspension of imprisonment and compulsion to perform labor in favor of public interest (Article 63) and early release on parole (Article 64). After changes, this Criminal Code predicted as a new alternative sentence semi freedom (Article 58) which replaces fragmentation of imprisonment defining new legal terms and criteria about the ways of its application. And so on the Articles 59, 63 and 64 in Criminal Code, undergone changes in their content, despite the fact they maintained the same alternatives. Also a newly introduced in Criminal Code, a sentence alternative there was staying at home. (Article 59/a of the Code)

Refer to the content of Article 59 of the Criminal Code results that " if the court gives a penalty of up to one year, due to the obligations of the convicted at work, or at school, his qualifications or professional skills, family substantial responsibility or his needs for medical treatments or rehabilitation, may decide to execute in semi freedom".

¹ Albanian Constitution regarding the provisions of the human rights, basic freedoms and their restrictions.

² Albanian Criminal Code Chapter VII regarding the incarceration.

The convicted person serving the sentence in semi freedom, is obliged to return in prison in the period time that the court left to him. If the convicted does not fulfill his obligations, refer to this article, applies the article 62 of the Code.

Interpreting in the literal, logic and the teleologic meaning in the same time, results that this alternative sentence may apply by the court in less than a penalty of up to one year, but with the provision that decision of this alternative sentence related to obligations that the legislative has nominated provision within. Such obligations that related to:

- Work
- Education
- Qualification or professional skills
- Family substantial responsibility
- Needs for medical treatments or rehabilitation

In every case is the court obligation, that in application of this alternative sentence, must interpret the concrete obligations in the case of object judicial review. Also the court is obligated to determine the period of sentence time and the convicted person serving a sentence in semi-freedom is forced to return to prison after committing duties outside the prison within a period specified by the court., in the contrary the legislative has predicted the sanctions in the Article 62 of this Code.

The Probation Service according to the Articles 35,36 of decision of the Council of Ministers No 302 dated 25 March 2009, realizes the overseeing of execution of sentence in semi freedom.³

- The Article 59 of the Criminal Code in its content predicts that:

Because the person of little dangerousness, age, medical or mental circumstances, the life conditions and the needs especially those that related with the family, education or work, circumstances under which the criminal act was committed and his behavior after criminal act, the court gives the sentence to 5 years imprisonment, may order the convicted to keep contact with the Probation Service and puts him in probation, suspending the execution of sentence on the condition that the person does not perform another criminal offense during the period of his suspension.

The court order the convicted to fulfill one or more obligations, predicted on Article 60 of Criminal Code.

Probation extends from eighteen months to five years.

³ Regulation of the Probation Service Article 35 - 36.

If, during the term of probation, the convicted doesn't keep contact with Probation Service or he doesn't fulfill the obligation predicted in Article No 60, as the court orders him, the court decide the replace of the first sentence with another one, extends surveillance, within the probating period or shall revoke the suspending decision.

By this legal provision results that the application of the alternative of suspended execution of the imprisonment and the putting on probation, must apply from the court only for the sentence to 5 years imprisonment, if the defendant is of little dangerousness and because of the elements of the competition, nomination in the provision. We can mention such as;

- The defendant age
- his mental health or medical circumstances
- lifestyle and needs, particularly those households,, education or work

So on the court in application of this alternative of the sentence must keep on sight two other legal conditions:

- The circumstances in which the crime act is committed and the behavior of the defendant after criminal act.

In different from the same alternative sentences, before the changes, this provision provides detailed legal conditions where this alternative sentences may apply. Unchanged provision provided only three conditions, the little dangerousness of the person, the circumstances in which the crime act is committed and the sentence to 5 years imprisonment. The extending of probation mained unchangeable which varies from 18 months to 5 years, but due to the creation of the Probation Service Institute, this provision provide the obligation of the convicted to the Probation Service as good as sanctions in the cases of offenders. It's the same when the legislative provides in this legal provision for sentences to 5 years, considering there not the sentences given by court, but the rest of the sentence after legal benefit of sentence reductions.

The current judicial practice relating this alternative sentence was diverse, but it should be noted that the decisions given before remained on paper because a really body of probation surveillances was missing. The question needs to discuss is just the fact of the judicial status of the convicted during the probation or after the end of the probation ?

Now after the creation of Probation Service Institute, the surveillance of execution of that sentence, is realized by the Probate Service according to the Articles 37-44 of the Decision of the Council of Ministers No 302 dated 25 March 2009. Is this the reason that the Probation Service to designate and develop a daily individual program for execution of the court decision, where is suspended execution of the imprisonment and the putting on probation. One of the Probation Service duty is encourage and

support of the convicted put in probate, to fulfill the obligations of the court decision. Also this Service verifies and keep contact with the prosecutor about the regulation of fulfillment of the obligations.⁴

In connection with the third alternative to imprisonment, staying home, provided on Article no 59/a of the Criminal Code, refer to the content of this provision, as well as its interpreter, concluded that such an alternative may apply for the sentences to 2 years or when this is the rest part of imprisonment, from a decision for a period longer imprisonment, but with a condition to exist one of the circumstances nominated in this provision.

We can mention such as the convicted is:

- pregnant woman or mother with a child under 10 years that lives with her
- when a father with parental responsibility to a child under 10 years old that lives with him, when his mother is dead or is unable to care to him.
- when is in hard health condition and needs for continuous care or medical treatment out prison
- when is 60 years old and unable in health condition
- when is young under 21 years old and has documented his needs for medical treatment, for education, work or household

Only in these cases the court can apply such an alternative sentence, deciding the suffering of the punishment staying at convicted home, another home or in a care of the public health center. In its decision the court determines about the alternative sentences the measures that should be taken by the Probation Service and the obligations of the convicted under this alternative sentence, in case of failure of these obligations by the convicted he has to front with sanctions provided on Article No 62 of this Code. If the will were standing strict legal wording of the provision, it results that the giving of this alternative sentence is not apply only in the cases when the person eventually sentenced to two years in prison, but in the sentences execution phase too, enough for a request of the person who is serving a sentence and the rest of his sentence is less than 2 years and when other competing legal conditions are present.

There are opinions that provisions can be applied only when the court gives its final decision from 1 to 2 years prison, or upon 2 years prison but, by deduction detention remains less than 2 years and not after the decision is given, arguing the fact that this provision is provided in the Chapter VII and titled "alternatives to imprisonments". Nevertheless concluded that the entry into force of this provision in the court where there is an institution of execution of criminal decisions, there are a lot of cases in process where to the convicted have left less than 2 years to prison. Noted that the

⁴ Regulation of the Probation Service Article 37 - 44.

formulated requirements are not in conformity with the legal provision for solving this problem, I think of that should engage the Legal Advice Office in institutions. There are many cases when a simple illness of the mother is considered by the applicant due to the mother is unable to care for the minor child, which constitutes a cause of discussion regarding interpretation of this criterion.

The cause which may be object to discuss is the fact if such judgments will be made by a judge or by three judges, when the judgment foundation is made with three judges, while the request is made in the execution phase.

In the cases when the court accepts for application of the Article no 59/a of Criminal Code than the court allows the execution of the sentence not at the Institution of execution of criminal decisions but at convicted home, or in another home or in the healthy care of public center in surveillances of the probation Service. This Service presented to the court detailed reports about diverse needs of health character, professional, family, educational etc. of the convicted, completion of the (needs) may require its removal from residence. In these cases, after referral to the facts from the convicted and Probation Service the court determines about the measures that should be taken by the Probation Service.

In connection with the fourth alternative to imprisonment suspension of imprisonment and compulsion to perform labor in favor of public interest provided by the Article No 63 of the Criminal Code, referring to the content of this provision results that: The court may suspend the imprisonment sentence if the latter is less than one year, and replace it with the compulsion to perform labor in favor of the public interest, if the person and the circumstances under which the criminal act was committed are of little danger

Labor in favor of the public interest extends from forty to two hundred and forty hours and consists of compelling the convicted to perform unpaid labor in favor of the public interest or to the benefit of an organization as nominated in the court verdict. The compulsion may not be ruled if the convicted refuses the suspension during the court hearing. Labor in favor of the public interest is performed within a six-month term. In its sentence the court determines the working hours, as well as the days of week when the labor will be performed. After the labor is accomplished, the sentence is considered non-existent. This kind of suspension is enforced according to the rules defined in Article 62 of this Code.

According to the interpretation of that provision consists that this alternative sentence may apply:

- for the sentences less than 1 year prison as well as two other legal elements compete
- the circumstances under which the criminal act was committed
- the little danger of the person

Performing work in the public interest which is derived as a result of a substituting of the sentence of imprisonment, performed free of charge. The feature of this alternative punishment lies in the fact that the application of this necessarily requires the consent of the person to perform a job in the public interest or to the benefit of an organization Labor in favor of the public interest extends from 40 hours to 240 hours, is performed within a six-month term.

The court that applies this alternative sentence determines the work hours and the obligation of the person to keep contact with the Probation Service because in the contrary the convicted has to front with the legal sanctions. In the other side the innovation that this provision brings, in the contrary with the unchanged provision is that the Probation Service is the competent authority which has the attribute to decide on the type of work, the place of the work and the days or weeks of the work to perform.

The surveillance of the execution of this sentence is realized from the Probation Service, in accordance with the Articles 48-55 of Decision of the Council of Ministers No 302 dated 25 March 2009. For this reason the Probation Service designates and develops a daily individual program for execution of the court decision. Also this Service verifies and keep contact with the prosecutor about the regulation and fulfillment of the obligations according to the court decision.⁵

The question needs to discuss is just the fact of the judicial status of the convicted after performing the labor in favor of public interest, sentence is considered void, the judicial status is blanked. The question for discuss is the fact that what is the judicial status in the time of the labor if the convicted consists to know about it.

In connection with the fifth alternative to imprisonment early release on parole, the Article No 64 of Criminal Code, refer to the content of this provision, its interpretation too, note that a convicted may realize on parole for the rest of his imprisonment when some legal conditions are fulfilled as:

- only for specific reasons
- if by his behavior and work tells that by the time of punishment, the purpose of his education is fulfilled, and when
- Not less than half of punishment time given for criminal transgression; not less than 2/3 of the punishment given for committing the crimes punishable by imprisonment up to 5 years; not less than ¾ of the punishment for crimes that have the punishment by imprisonment from 5 to 25 years

In the time spent in prison, the timing benefited by amnesty or forgiveness is not counted. It is not allowed to release early and on bail a recidivist convicted for

⁵ Regulation of the Probation Service Article 48 - 55.

deliberately committed crimes. Early and on bail release is revoked by the court, when the convict of a deliberately committed crime, during on bail period, perpetrates another penal act (on purpose), as much serious or more serious than the first one; in this case, the dispositions of blending the punishments could be applied.

The practice of early release on parole is rich in those courts where the Institute of Execution of the Penal Sentence is under jurisdiction. Consequently the problems when is applied the Article 64 are different and diverse. What is noticed during the practice is precisely the fact that the notion of special reasons not taken into account in very case, but it's enough to met other conditions, are you staying while literal interpretation of the provision, defined as an condition *sine qua non* (necessity) the notion specific reason, using the terms *only for specific reason*. This issue, I think, deserves a wider discussion among colleagues with the unifying goal of such practice.

The definition of "specific reason" there in not in the Criminal Code but is left the court award. It is the exclusivity of the court and of no one else to value the reason presented by the convicted, is this specific reason as mentioned on the Article No 64 of the Criminal Code, were allocated indicative and not exhaustive and some cases that are considered "specific reason". These cases are elaborated by the Albanian judicial practice to the Supreme Court Criminal Panels. The juridical practice shows that the specific reasons are not the same in every case and different convictions. Referring to the juridical practice of the High Court some specific reasons may be: *the hard economic and social situation of the convicted 's family, the hard health situation of the convicted's family and their needs for help and medical treatment; the death or disappear of family members from which the children of the convicted or other persons, left unattended.*⁶

Surveillances of the execution of this sentence realized by the Probation Service, in accordance with the Articles 56-59 of Decision of the Council of Ministers No 302 dated 25 March 2009. For this reason the Probation Service designates and develops a daily individual program for execution of the court decision. Also this Service verifies and keep contact to the prosecutor about the regulation and fulfillment of the obligations according to the court decision.⁷

Another question to discuss is the time of probation after the convicted is released. Will be this time within the margin time of probation 18 months to 5 years or will be diverse?

Another problem in the application of the Article no 64 of the Penal Code are the references, for eg. when referring to 2/3 of the sentence imposed for crimes to 5 years in prison. The issue to discuss is the term 'measure' if it refers to the measure

⁶ Decision of Supreme Court Criminal Panels

⁷ Regulation of the Probation Service Article 56 – 59.

of the sentence by the court decision or is the measure provided to offense for which the person is convicted. This is question to discuss especially when we are dealing with criteria 5 years prison sentence that is the maximum measures, the calculation will be made by 2/3 or 3/4 ?

Another problem of the practice is the time spent in jail, the timing benefited by amnesty or forgiveness is not counted or purpose of the legislators has been broader than that, and excluding any other discounts as the convicted earned working, or from court decision, etc. referring to the term” effective time of serving the sentence. “This issue also deserves a treatment of the discussion in order to move towards unification of practices or opening road to legal amendments. Another issue that could be discussed is the fact that if the courts may release on parole a person previously convicted of crimes, but at the moment of his request, is rehabilitated?!

The judicial practice, in connection with the application of alternative sentencing has been enriched. Especially the Court of Judicial District of Korca:

For the year 2012 has applied for 21 convicted the Article 64 of the Criminal Code; for 24 convicted the Article no 59 of the Criminal Code; for 9 convicted the Article no 63 of the Criminal Code;

For the year 2013 has applied for 20 convicted the Article 64 of the Criminal Code; for 1 convicted the Article no 59/a of the Criminal Code; for 68 convicted the Article no 59 of the Criminal Code; for 24 convicted the Article 63 of the Criminal Code.

About the alternative sentences as like fragmentation of imprisonment (that was before changes) found that this provision already had not judicial practice remaining simply provided on papers, than for two other new alternative sentences provided by the Articles no 58 (semifreedom) and 59/a (staying home)of the Criminal Code, must say that actually there is not a consolidated judicial practice because specifics of these provisions are special compared to other alternative sentences and that this practice is being enriched in following.

The Probation Service, the role and procedural position in the criminal process

The term “Probation Service” is used for the first time in Albania in the Law no 10023 and Law no 10024, dated 27,November,2008 On some amendments to Law no 7895 dated 27,January,1995’ the Criminal Code of Republic of Albania.’ Besides other provisions, changed and improved, those provisions relating to Chapter VII in this Code in the Title “Alternatives to Imprisonment” like as some provisions relating to those alternatives in the Law ‘Penal Decisions Execution’.⁸

- The body that surveillances the execution of the alternative sentences

⁸ Law No. 10024, dt. 27.11.2008 regarding the function of the Probation Service

- Make present information and reports to the prosecutor or to the court referred to this Law
- Help in the execution of the alternative sentences, help the convicted to overcome the difficulties and his social reintegration

This provision determined the objectives of this service, "The Probation Service helps the convictions to overcome the difficulties and his social reintegration " putting contacts with his family and social environment to nonprofit organization and individuals.

To achieve these objectives and a better realisation of the tasks assigned by law, the central government and the local units government give their help to the Probation Service to fulfill the legal obligations. The Probation Service cooperate with nonprofit organizations and Mediation service based in the detailed rules defined by the Minister of Justice.

Based on the content of Law No. 10024 dated 27, November, 2008, it's clearly that this service has to do with the supervision of the implementation of the alternative sentences. Consequently, the focus of the work of this service is precisely to criminal penalties.

The kinds of this sentences and the way of serving the sentences provided from the Criminal Code of Albania in the Chapter V, the Articles no 29-46 and in other Laws, which provides the offenses.

The Criminal Code of Albania was adopted by Law no 7895 dated 27.01.1995 and the date of entry into force on 01.05.1995 by the Law no 7962 dated 31.05.1995."For entry into force of the Law no 7895 dated 27.01.1995 of the Criminal Code of Republic of Albania".

After the entry into force of the new Criminal Code, was admitted as a necessity change the function of certain bodies and the establishment of several new Laws, which will also deal with the execution and surveillance of criminal evidence provided by the Criminal Code, for this reason new laws were approved. By focusing on the object of this paper, we can say that the most important laws in this field are two:

- The Law no 8331 dated 21.04.1998 "For the execution of criminal decision "
- The Law no 8328 dated 16.04.1998 " Law on the Rights and Treatment of the Prisoners "

On the Articles no 16-18 of Law No. 8331 dated 21.04.1998, which is the legislative basis for the execution of court decisions in Albania, provided that the bodies that execute these decisions are:

- Prosecutor, who is the main body that deals with the execution of the criminal decisions of all kinds

- Ministry of the Interior
- Police of State
- General Directory of Prisons
- The service-judicial execution
- Government organs and legal subjects (points 1, 4 and 6 of Article 30 of the Criminal Code)

While according to article 43 of the Penal Code, the punishment prescribed by paragraph 9 of Article 30 of the Criminal Code, implemented by the prisoner himself at his own expense.

Before the changes of the Law with the Law no 10024 dated 27 November 2008, the control of the execution of criminal decisions was realized by:

- The prosecutor in all cases
- The court directly in special cases

As is seen, the lawmaker had not provided a body to which to surveillance the implementation of alternative and help to convict rehabilitation and integration on society. The prosecutor in his work was based on the review of complaints from prisoners and their defense, reports relevant officials of the country where the prisoner was suffering punishment, specialists in different fields etc. On other hand this service should have a simple procedural principle at the code of criminal procedures which remains as obligation of legislature.⁹

This vacuum in this law for years brought major deficiencies and significant problems, not only in supervising these types of criminal sentences, or rehabilitation of convicted, but in the application of the Criminal Code provisions that provided the right of court for the giving of such sentences. These deficiencies have been present and the need to eliminate them, that was created the new Institute of the Probation Service. Actually the legal base of the Probation Service activity is:

- The Constitution
- International agreements.
- The Criminal Code and the Code of Criminal Procedure
- The law no 8331 dated 21.04.1998 “ For the execution of criminal decision “changed with the Law no 124 dated 27.11.2008¹⁰
- The Decision of the Council of Ministers No. 302 dated 25 March 2009, On Approval of the Regulation “On the Organization and Functioning of Probation and Setting Standards and Procedures for Supervision of execution of alternative”.

⁹ Criminal Procedure Code of the Republic of Albania

¹⁰ Regulation of the Probation Service Article

- Approval of the Regulation “On Probation Cooperation with NGOs and Mediation Service” were done according to the regulations approved by the Minister of Justice by Order no.6325, date. 31.07.2009.¹¹

After some changes of the Law no 10024 dated 27,November,2008 to the law no 8331 dated 21.04.1998 “ For the execution of criminal decision “ as well as new provisions that brought new legal acts, for its application, that was an important condition in the court decision, in the cases of the alternatives imprisonment is the report of the Probate Service. This Institute is obliged not only to prepare report, but to surveillance and the support of alternative sentence implementation, to help in defficulties, in order to accomplish the social integration.

Under the Law of 27.11.2009 no Dated 10024, this service was assigned to prepare the relevant report, which will evaluate the position of the prisoners to the facility and its consequences, the state judicial conduct of the convicted (prisoners) in relation to persons other, its psycho-social situation, family situation and his concrete plans that will help them reintegrate, if the court will decide release of the defendant (to convict) from prison.

For the realisation of the above tasks, the Probation Service has to realize interviewing all subjects mentioned by the prisoner in his request for released on parole, or mentioned by the prosecutor, the defendant and his defent during the investigation preliminary. Based on the conclusions reached during the interviews of the subjects mentioned above, in a report prepared by the Probation Service recommended the Court (or during the preliminary investigation and the Prosecutor) which will be the prospect of reintegration of the convicted or accused in society and as a result, which will be suitable for the obligation to be fulfilled by the defendant (the prisoner) for the obligations provided by Article 60 of the Criminal Code. This recommendation is generally directed at three aspects:

- The collaboration with the Probation Service
- The family situation or social state, if the convicted (defendant) has the support of his family in psycho emotional side and financial for the frontation of the difficulties after released.
- In the work or education field, if he has a proposal for work, or the employer offer to him,or the Education Institute offers to him optimal conditions for human and financial treatment to integrate him in society.

¹¹ Regulation of the Probation Service Article

Evaluations reports of the Probation Service, for judges and prosecutors before decision

In the Law no 10024 dated 27.11.2008 On some amendments to Law no 8331 dated 21.04.1998 "For execution of criminal decisions" on the Article no 31/6, third chapter explicitly defined" the Court asks to the Probation Service to submit a detailed report on family conditions and social integration background as well as concrete plans to enable its full reintegration after release".

This is the only case where the court provides not available or in relation of release on parole of the convicted judicial practice on this point has been to find an extension that is associated with any inquiries by subject release on parole. In terms of it probation power, I think that it is subject to the review and analysis of all the evidence, being evaluated in unity with each other and without predetermined value. However such a probation may be key evidence for the process if all the other requests are fulfill in accordance with the Law about the release on parole. The question to discuss is the fact if Probation Service has to deliver the report or it is a procedural subject that has to be present. The current practice has shown that the representatives of Probation Service are present in every process in the court being presented with the authorization of the institution. On the other hand has the practice court where probation employees who deposit probation report are treated as experts and the report is rated as expert acts. This after procedural law does not provide as part of probation Service procedural entities and on the other hand the report can be consider as a technical act.

The Probation Service has the obligation under Article 31/8 of the law cited above to submit a report to assess the social circumstances that help the body to the investigation during the investigation phase preliminary decisions, even in the final request for search penalty during the final conclusions, being presented as evidence from Prosecution. Also Article 31/9, the section's fifth law entitle Prosecution Court, gives the right to the Court or Prosecution to ask for a raport on the manner of implementation of the decision which the Court has given.

Practical difficulty has been the fact that Probation Services are not raised at all those places where there are Prisons or any Institucion of execution of criminal decisions, such determines the law, but are include their jurisdiction several judicial district court. This leads to difficulties in connection with this response time by the subject of such services to the requirements of the court, that because of the distance, the information you need to do takes a long time (after the interview and thus could lead to delays and /or delay of the trial).

Evaluations reports of the Probation Service, for judges and prosecutors after decision

The most important duty of Probation Service is Surveillance of execution of decision, which contain the alternative sentences. This is that the decisions that contains alternative sentences not be left to be implemented under the consciousness of the people, but will have surveillance bodies such as Probate Services. The law imposes these Probation Services to report, primarily prosecutor who is person or body charged with enforcement of judicial decisions, specifically Article 62 of the Penal Code provides for the way they acted when the prisoner during the test violates the terms of the obligations laid down in the decision of the court, in this case the Probate Service, reports to the Prosecutor every offender of the conditions and obligations. Then it is the prosecutor who decides according to degree offender of these conditions:

- where a violation of the light for the first time he has the right to give notice, which is written in the personal file of prisoners
- and serious violations or repeated, the prosecutor requests to the court
- In such circumstances the prosecutor, as the case may require:
 - change of obligation set
 - addition of other obligations
 - the replacement thereof with other sanctions or:
- To revoke the decision of suspension of sentence and suffering the remaining part of the sentence of imprisonment

The same legal arrangements apply even in cases where the convicted person is compulsion to perform labor in favor of the public interest, but the prisoner does not main contact with Probate Service or violates other conditions and obligations imposed by court. Predictions are the same as in cases where the alternative sentence is given as "semi freedom", "staying home", "release on parole".

From a group of various provisions of the law, determined the manner of execution of alternative, being a substantive institution that deals with the supervision or execution of these decisions. Specifically the contents of Articles 29 and 30 predict in detail, in the manner of execution of sentence "semi freedom" than the Articles 31, 31/1, 31/2 and 31/3 of the law predict in detail the procedures and the suspension of execution decision for alternative labor in favor of the public interest.

Article 31/4 of the way surveillance provides alternative sentencing "staying at home", Article 31/5 for suspension of execution of sentence of imprisonment and probation, while Article 31/6 of the law provides a legal way for executions rules of decision "the release on parole".

Completion before time of the imprisonment's alternatives

Article 31/11 of Law No. 10024 dated 27.11.2008 On some amendments to Law no 8331 dated 21.04.1998 "For execution of criminal decisions" in the second and third chapter provides an exceptional case completion before time of the imprisonment's alternatives. Under these provisions, may apply in the court a request the object of such when:

- The convicted has executed more than half of the period in prison
- The convicted is in low risks of committing further offenses, public order or third parties

Such request may be present in court by prosecutor, which certify that the convicted has fulfilled the obligations and that is value no more necessary to in order to further implement them, to achieve the purpose of alternative sentencing.

This request shall contain:

- the convicted criminal precedents
- To describe the dynamic behavior of the convict
- The progress achieved during the execution of the sentence

As well as the reasons that justify the submission of such a request despite the fact that it is the prosecutor who is the subject of procedures, which deals with the execution of court decisions, and making a request to the object completion before time of the imprisonment's alternatives, the only authority, after an objective assessment of the facts, circumstances and evidence in each case is the court.. There is not yet any judicial practice in connection with such application This is for the reason that the surveillance of the alternative sentences is in the very beginning of its work and some judicial structures are missing. This practice may be considered in the future.

The offense of the obligations imposed by the court..The warning of the presecutor

Article 62/3 of the Criminal Code provides for the right of the prosecutor to give warning to the convicts who recorded in the personal file, for light violation and for the first time the conditions or obligations. This obviously, after information that the prosecutor would be taken by the probation service, on the other hand in the fourth paragraph of this provision provides for the right of the prosecutor to present to the court the finds the offense of the obligations, by the convict, are serious or repeated. With his request prosecutor depending on the size of the type of violation or non-fulfillment of obligations by the convicted may ask the court:

- change of obligations set
- increase in other obligeions

- replacements with other sanctions
- revoke the sentence of suspension of sentence and serving the remainder of his sentence in prison

Rules for reviewing such requests are provided in detail in Article 31/10 of the Law No. 10024 dated 27.11.2008. According to this provision of law, the court, in examining the alternative sentence revocation, suspension may suspend its execution and to order that the convicted person be placed in a criminal institution. Considering of such a request is made within 7 days from its filling and subjects to the general rules of review and appeal, the court may decide to change or revoke the partial or complete alternative sentencing.

The judicial practices regarding review of such claims is in the initial stages, as needs for the reports of Probation Service on the offense of the obligations by the convict, who subsequently investigated, prosecutor, and so on court. Until now we had only alternative decision revoking the suspended sentence, the condition at the time of the person convicted consumed another criminal offense, which under previous legal provisions have been as serious or more serious. In such cases, after the revocation of the decisions are implemented rules of the coupling sentences. The mode is the consolidation of the judicial practices according to review these requirements even for other alternative sentences.¹²

Bibliography

1. Constitution of the Republic of Albania
2. Criminal Code of the Republic of Albania
3. Criminal Procedure Code of the Republic of Albania
4. Law No.10024, date. 27.11.2008 *"On some additions and amendments"* to Law No.8331, dated 21.4.1998 *"On execution of criminal decisions"*.
5. Council of Ministers Decision no.302, date 25.03.2009 *"On Approval of the Regulation " On the Organization and Functioning of Probation and Setting Standards and Procedures for Supervision of execution of alternative "*
6. Regulations approved by the Minister of Justice by Order No.6325, date 31.07.2009 *"On approval of the Regulation "On Probation Cooperation with NPOs and Mediation Service"*.
7. Law No. 8328, dated 16 April 1998 *"On the rights and treatment of detainees"*
8. The Probation Service Manual, O.S.C.E
9. Judicial Practice, (Decision of Supreme Court Penal college, Courts of appel and District Courts).

¹² The Probation Service Manual, O.S.C.E