



Research Article

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Received: 20 February 2024 / Accepted: 29 June 2024 / Published: xx July 2024

Penal Order: A New Procedural Instrument in Criminal Justice in Albania

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DOI: <https://doi.org/10.36941/jesr-2024-0105>

Abstract

The judicial practice surrounding the application of criminal orders in Albania remains unconsolidated due to the relatively recent introduction of this trial type within the special trials section of the Code of Criminal Procedure. The 2017 amendments to criminal procedural legislation, now being implemented in judicial practice, have highlighted several challenges that require further examination. This article aims to analyze the criminal order as a new procedural institution in our criminal justice system. The discussion will cover the necessity for amendments in the Code of Criminal Procedure and the inclusion of special trials. It will also examine various aspects such as the prosecutor and court's review of criminal orders, the convicted person's right to object to the approval of these orders, the potential for other special judgments following the rejection of a criminal order request, and practical issues in the implementation of such judgments. The paper concludes with a summary of findings and recommendations pertinent to the topic.

Keywords: Common judgments, special judgments, criminal order, administrative offense.

1. Introduction

Efficiency in the criminal process is a key objective of the current criminal policies in many countries. As a developing nation focused on the approximation and harmonization of its legislation, Albania faces the challenge of identifying new procedural elements that will enhance the quality of criminal justice, particularly in terms of time efficiency and overall benefits. The amendments to the Code of Criminal Procedure in 2017 reflect this goal, particularly in Section IV, which addresses special

proceedings.

These amendments included modifications to provisions related to summary judgment and direct judgment. Additionally, new provisions were introduced for judgment through agreement and requests for the approval of penal orders. This paper will provide a detailed analysis of these changes.

Efficiency in the criminal process is a key objective of the current criminal policies in many countries. As a developing nation focused on the approximation and harmonization of its legislation, Albania faces the challenge of identifying new procedural elements that will enhance the quality of criminal justice, particularly in terms of time efficiency and overall benefits. The amendments to the Code of Criminal Procedure in 2017 reflect this goal, particularly in Section IV, which addresses special proceedings. These amendments included modifications to provisions related to summary judgment and direct judgment. Additionally, new provisions were introduced for judgment through agreement and requests for the approval of penal orders. This paper will provide a detailed analysis of these changes.

Special judgment according to the rules of the request for approval of the penal order emerged in response to a situation where criminal justice had become exceedingly difficult to fulfill its mission because the institutions for the execution of penal sentences were overcrowded by prisoners for dangerous criminal acts. Added to this situation were budgetary expenses that didn't brought effectiveness other than being a heavy burden for Albanian families. These families regularly met all financial obligations in fulfilling the functioning of a democratic state, as well as the social contract they freely and willingly entered into, influenced by the common challenge of the further development of the state. At the same time, the aim of the punishment, which reflects even more importance for a criminal process, was also considered.

The special judgment procedures for approving penal orders were introduced in response to the challenges faced by the criminal justice system, which struggled to fulfill its mission due to overcrowded penal institutions housing prisoners convicted of dangerous crimes. This situation was exacerbated by substantial budgetary expenses that provided little effectiveness and instead placed a heavy financial burden on Albanian families. These families consistently met their financial obligations to support the functioning of a democratic state and the social contract they willingly accepted, driven by the shared goal of further state development. Moreover, the reform aimed to better align the punishment's purpose with the objectives of the criminal justice process.

The Penal Order, as a special judgment, prescribes several deviations from ordinary judgment, which, due to the benefits they bring, are considered a form of compensation. This judgment reflects efficiency and responds to the current needs of the criminality in the country, benefiting both the prosecuting party and the offender of the criminal act.

Precisely because of the short life time of this judgment, in order to interpret the provisions, analyze the problems in practice and issue relevant recommendations, we will see in more detail different procedural elements of this judgment.

The Penal Order, as a special form of judgment, introduces several deviations from the ordinary judgment process. These deviations are viewed as compensatory due to the benefits they provide, enhancing efficiency and addressing the current needs of the criminal justice system in the country. This approach benefits both the prosecution and the offender.

Given the relatively recent introduction of this judgment, it is crucial to interpret its provisions, analyze practical challenges, and offer relevant recommendations. Therefore, this paper will examine the various procedural elements of the penal order in detail.

2. The Need for Changes in the Code of Criminal Procedure and the Addition of Special Trials

"The criminal process in Albania has undergone radical transformations since the Code of Criminal Procedure came into force in 1995. However, it still does not fully address the evolving nature of criminality in Albania or meet European Union standards."¹

"Both judicial practice to date and the analytical and strategic documents of the criminal justice system have highlighted the need to amend certain institutions within the Code of Criminal Procedure to incorporate the best European standards into Albanian legislation. Additionally, recent constitutional changes and subsequent laws have necessitated updates to criminal procedural law. Specifically, new regulations regarding the independence of the prosecutor in the criminal process, the creation of the Special Prosecutor's Office, the altered jurisdiction of the Supreme Court, and changes in the competence of the Court for Corruption and Organized Crime have all required new legal provisions in the Code."²

Regarding the existing special trials, the content of the analysis of the justice system states:

"The report of the number of cases resolved with ordinary trial compared to cases resolved with abbreviated trial, indicates a very high percentage of cases resolved with abbreviated trial. The Code has not set limitations for abbreviated trial concerning the severity of the criminal act and the accused. This has led to the practical application of the field of special judgments (abbreviated trial) for all categories of offenses and their offenders. The current regulation is unclear regarding its application as a procedural right for the accused or as the discretion and assessment of the court. ³ On the other hand, the Code has not followed the rhythm of Italian legislation, on which it is based, which has amended the formulations of articles for special trials ⁴

As for direct trial, it is noted that it is applied very little, despite its positive aspects characterizing it as a special judgment. This is also a consequence of the short deadline left for the prosecutor to prepare the case for trial, the ambiguity regarding the summons of the accused, whether it should be done by the prosecutor or the court, etc. ⁵

Meanwhile, another source justifying the need for changes is Recommendation No. R (87) 18 of the Committee of Ministers to member states concerning the simplification of criminal justice. The recommendation states:

"Given the increase in the number of criminal cases referred to the court, especially those carrying minor penalties, and the problems caused by the length of criminal proceedings, it is evident that delays in dealing with crimes bring criminal law into disrepute and affect the proper administration of justice. These delays can be remedied not only by allocating specific resources and optimizing their use but also by clearly defining priorities for crime policy, both in form and substance. Measures to address these issues include resorting to the principle of discretionary prosecution and making use of the following approaches when dealing with minor and mass offenses: summary procedures, out-of-court settlements by authorities competent in criminal matters and other intervening authorities as possible alternatives to prosecution, and simplified procedures."⁶

As evident, the criminal procedural legislation in Albania required changes to align with the

¹ Analysis of the Justice System in Albania, June, 2015, page 179.

² Report for Code of Criminal Procedure, Project Changes to the Code of Criminal Procedure, Vaslika Hysi, page 1.

³ Unifying decisions no. 1, dated 20.01.2011, no. 1, dated 10.03.2014 and no. 1, dated 19.06.2013 of the Supreme Court.

⁴ Look, the changes made with the law no. 479 / 1999 and with the law no. 144 / 2000 of the Italian Parliament, with which articles 441 - bis of the Code of Criminal Procedure of Italy have been changed.

⁵ Analysis of the Justice System in Albania, June 2015, page 180-181.

⁶ This Recommendation was adopted by the Committee of Ministers of the Council of Europe on 17 September 1987 and concerned simplified procedures and abbreviated procedures.

pressing needs dictated by the current circumstances. These changes encompassed enhancing the efficiency of the criminal process, addressing the prevailing state of criminality in the country, and advancing the approximation of our national legislation with that of the European Union. This alignment holds special significance, not only due to Albania's aspirations for EU membership but also in terms of ensuring the sanctioning and guaranteeing of material and procedural rights at a higher standard. Additionally, this process brings Albania closer to complying with the provisions of the European Convention on Human Rights, the standards established by the jurisprudence of the European Court of Human Rights, European justice, the *acquis communautaire* of the European Union, and the Convention for the Protection of Children's Rights. By doing so, it aims to mitigate the practical challenges encountered in the criminal justice system.

This is how the changes in the Code of Criminal Procedure in 2017 were inspired. Among numerous essential procedural modifications, updates were made to the content of Chapter IV, which deals with special trials. Prior to the 2017 amendments, the criminal procedural law only provided for two types of special trials: abbreviated trials and direct trials. However, with the enactment of Law no. 35/2017, not only were these trial types revised to address practical challenges, but two new special trials were also introduced: the Penalty Order and the Judgment upon Agreement.

The trial by agreement serves the interests of the involved parties by reducing court costs, saving time for the prosecution to focus on more serious criminal offenses, and providing significant benefits for the defendant. Similarly, the implementation of the Penalty Order, as one of the special trial types, aims not only to achieve the aforementioned objectives but also to reduce the number of inmates in correctional facilities.

3. Special Judgment on Approval of the Penalty Order

Special trials diverge from ordinary trials by deviating from standard procedures in various ways. These deviations can range from altering procedural actions to potentially infringing upon fundamental rights crucial for a fair legal process, such as maintaining the adversarial nature of the parties and properly evaluating evidence. These variances from the typical criminal trial procedure categorize such proceedings as special trials, as designated by the legislator.

In general, the analysis of these types of trials by the legislator has deemed them effective, rehabilitative, and proportionate to the practical situation faced by the parties in the criminal process. This assessment stems from the facilities and benefits offered, particularly the simplification of the process facilitated by the applicability of special judgments. This is exemplified in the trial conceived through the approval of the request for a criminal order.

*"...a special trial because the prosecutor's request undergoes court review, with the court ultimately deciding on the punishment order based on procedural rules distinct from those of ordinary trials."*⁷

*"...a procedure that grants significant discretion to the prosecutor, who functions akin to a 'quasi-judicial' entity, possessing the authority to 'decide' on the issuance of the criminal order upon ascertaining the fulfillment of the requisite conditions and criteria."*⁸

Aligned with the aforementioned, for the special judgment of approving the request for a criminal order to be applicable, three fundamental criteria must be satisfied.

Firstly, this type of special trial can only be applied in cases where the actions or omissions of the accused align with the objective aspect of criminal offenses categorized as misdemeanors by the

⁷ Electronic commentary of the School of Magistracy, last accessed on 10.10.2023 at the link: <http://komentarielektronik.magjistratura.edu.al/sq/eli/fz/2017/7905/406-a>.

⁸ Legal analysis of the implementation in practice of new changes in the Code of Criminal Procedure, Center for Integrated Legal Services and Practices, Save the Children and Antigona Media Cultural Center, Gjirokaštër, February 2019, page 26.

Criminal Code of the Republic of Albania. The application of this trial solely to these criminal offenses results from a delicate balance between the inherent risks associated with criminal offenses as a whole and the justifiable deviations permitted through the special trial for approving a request for a criminal order.

Upon closer examination of the misdemeanors sanctioned in the Penal Code, it becomes evident that substantive criminal law encompasses approximately 100 misdemeanors. Consequently, the prosecution body can utilize this type of judgment to determine punishment for approximately 100 criminal offenses.

Secondly, for the criminal order to be applicable, the prosecutor's office must ascertain that the purpose of the sanction can be achieved without resorting to a prison sentence, which is the most severe punishment prescribed for offenders of criminal offenses. This criterion essentially extends from the first, as both hinge on the low dangerousness of the offense and the offender, as reflected by the misdemeanor categorization and the nature of the offense committed, respectively. Careful evaluation of this criterion by the prosecutor is imperative, as an incorrect assessment could lead to the recurrence of criminal offenses by the convicted individual and the infringement of other legal relations safeguarded by substantive criminal law.

Thirdly, this type of special judgment must be employed by the prosecutor within three months from the registration of the accused individual's name on the investigative records. These criteria incentivize prompt action by the prosecutor within the stipulated timeframe, provided that the trial can and should proceed in accordance with the procedural rules of the criminal order. It is noteworthy that the commencement of the time limit coincides with the registration of the accused individual's name, as knowledge of the defendant is essential for determining whether the purpose of the sanction can be achieved without resorting to imprisonment.

Following this, in meeting the aforementioned criteria, the prosecutor issues a reasoned criminal order to determine the punishment and requests the court's approval. The justification provided by the prosecutor holds significant importance, as mandated by the provision itself, which stipulates that,

"...the prosecutor issues a reasoned criminal order for setting the sentence and requests the court's approval..."⁹.

The absence of such justification jeopardizes the court's approval of the request for the criminal order.

Moreover, the role of the prosecutor in this type of special trial is of great importance, given their authority to determine the punishment, a responsibility typically reserved for the court in ordinary trials. However, despite this provision, the prosecutor's determination of punishment remains contingent upon the court's approval or rejection of their request for the approval of the criminal order.

According to the provisions of the Code of Criminal Procedure¹⁰, the content of the criminal order allows the prosecutor to impose one or more supplementary punishments, which are assessed based on their potential to aid in the rehabilitation of the offender. These supplementary punishments include, among others, fines, prohibition from exercising public functions, confiscation of the means used to commit the offense and the proceeds thereof, driving bans, forfeiture of decorations or honorary titles, prohibition from engaging in certain activities or professions, loss of managerial responsibilities in legal entities, restrictions on residency within certain administrative units, expulsion from the territory, obligation to publish the court decision, and loss of parental

⁹ Paragraph 1, of Article 406/a, of the Code of Criminal Procedure.

¹⁰ The second paragraph of Article 406/a of the Code of Criminal Procedure.

responsibilities.¹¹

Depending on the financial situation of the defendant, the prosecutor may order that the fine be paid in installments, while also establishing deadlines for their payment. This provision aims to ensure the enforcement of the sentence in accordance with the economic capabilities of the offender, thereby preventing non-compliance due to financial constraints.

In order to effectively implement this provision and ensure the efficiency of this trial, the prosecutor must meticulously investigate the defendant's ability to pay. Failure to conduct thorough investigations in this regard may result in the failure of this special trial, necessitating the continuation of the trial according to the procedures of ordinary trials. This interpretation is supported by Article 34 of the Penal Code, which stipulates that:

"the court imposes a fine after examining the person's ability to pay. The determination of the ability to pay takes into account the individual's personal and financial circumstances, as well as other relevant factors."

Given that the prosecutor, in this type of trial, assumes the role traditionally held by the court in determining the punishment, adherence to this provision is essential.

Subsequently, the legislator has stipulated that the fine imposed should not exceed half of the maximum penalty specified in the Penal Code. It's important to clarify that this limitation doesn't pertain to the penalties outlined in the misdemeanor provisions of the Penal Code, but rather to the fine specifications delineated in Article 34 of the Penal Code. According to this article,

"fines entail the payment of a sum of money to the state within legally defined limits. Fines are imposed on individuals who commit either crimes or misdemeanors. For individuals convicted of crimes, fines range from 100,000 to 10 million ALL, while for those committing criminal misdemeanors, fines range from 50,000 to 3 million ALL."

Therefore, the punishment determined by the prosecutor should not exceed the amount of 1.5 million ALL.

At the conclusion of the investigations, the prosecutor submits the request for approval of the criminal order to the court's secretariat, along with the acts of the preliminary investigation. Subsequently, the request for approval of the criminal order is served to the defendant. It is then the responsibility of the court to thoroughly evaluate the prosecutor's request for the approval of the criminal order.

"This provision serves as a procedural safeguard aimed at preventing potential abuses by prosecutors in the application of this new mechanism. Furthermore, the court retains the authority to reject the request for the approval of the criminal order for reasons outlined in Article 406/c CCP."¹²

Moreover, the provision mandates that the prosecutor's criminal order, being a decision made without prior consultation with the defendant, must be formally served to the defendant. This ensures the defendant's ability to exercise other procedural rights, including the right to challenge the court's decision to approve the criminal order, and subsequently, the right to prepare a defense, among others.

After the criminal order is filed in court and the defendant is notified of its contents, the provisions outlined in paragraphs 2 and subsequent paragraphs of Article 327 of this Code do not apply. Specifically, procedural actions such as notifying the defendant and their legal counsel, as well

¹¹ Article 30 of the Criminal Code.

¹² Electronic commentary of the School of Magistracy, last accessed on 10.10.2023 at the link: <http://komentariielektro.nik.magjistratura.edu.al/sq/eli/fz/2017/7905/406-a>.

as the victim or their heirs upon the completion of preliminary investigations, which in this case are essentially fulfilled by notifying the order, presenting arguments and documents by the defendant, requesting additional investigations, making statements, or conducting interrogations, are not applicable due to the specific manner in which this type of special trial is organized.

In support of the above, we also bring to attention the comment,

"The fourth paragraph of Article 406/a of the Code of Criminal Procedure has provided that the rules provided for in the Criminal Procedure Code regarding the announcements made by the prosecutor at the end of preliminary investigations for the defendant, his defender, as well as the victim or her heirs, when their identity and residence result from the proceedings, do not apply in cases of application of the provisions of Article 406/a of the Code of Criminal Procedure. This provision is understandable since the criminal order itself is not imposed on the basis of a court decision taken in a hearing where the parties are heard. Also, the judicial economy, which is one of the main goals of the criminal order, dictates that cases with low risk are resolved quickly and without unnecessary delays. Moreover, the approval of the criminal order can only be opposed by the defendant according to the provisions of Article 406/ç CCP."¹³

4. Review of the Criminal Order by the Court

As previously interpreted and reasoned, special trials diverge from the norms of ordinary trials by involving deviations in rights and procedural actions both during the investigative and judicial phases. Specifically, in trials conducted under the rules of the criminal order, these deviations occur predominantly during the judicial phase. Here, the request for approval of the order undergoes examination, resulting in one of two main decisions: approval or rejection.

4.1 Approval of the request for the criminal order

Regarding the case when the court approves the request for a criminal order, five essential elements must be considered.

First, the court is required to examine the request without the presence of the parties within 10 days from the filing of the request for the approval of the criminal order. This provision ensures that the trial concludes swiftly, leaving no room for additional investigative actions initiated either by the court itself or by other parties involved in the criminal process.

Secondly, the decision on the approval of the criminal order is succinctly explained and must include the following elements:

- a. *The general information of the defendant;*
- b. *A presentation of the facts and a legal description of the criminal offense;*
- c. *The sources of evidence and the facts they support;*
- d. *The amount of the fine, the modalities of its execution, and any supplementary punishment determined;*
- e. *The defendant's right to challenge the court's decision, along with the deadline for such a challenge;*
- f. *Provisions regarding material evidence and items related to the criminal offense;*
- g. *The date and the judge's signature."¹⁴*

Thus, the content of the decision to approve the criminal order contains the essential elements found in other decisions issued at the conclusion of a standard trial.

At this point, the reasoning of the decision is of particular importance, as it derives from multiple sources of justice, notably the Constitution of the Republic of Albania and the jurisprudence

¹³ Electronic commentary of the School of Magistracy, last accessed on 10.10.2023 at the link: <http://komentarielektronik.magjistratura.edu.al/sq/eli/fz/2017/7905/406-a>.

¹⁴ Paragraph 1, article 406/b, Albanian Criminal Procedure Code <https://qbz.gov.al/>.

of the Constitutional Court. Specifically, Articles 142 and 146 of the Constitution stipulate that "Court decisions must be reasoned." The necessity of justifying decisions arises from the principle that a decision lacking stated reasons is arbitrary and, therefore, cannot be considered legal.

Furthermore, the Constitutional Court has underscored the importance of reasoning in judicial decisions in various rulings, notably in Decision No. 33/2005. In this decision, it states:

"The European Court of Human Rights, referring to the fair process guaranteed in Article 6 of the European Convention on Human Rights, has emphasized that states have considerable freedom in selecting appropriate means to ensure their legal system complies with the requirements of Article 6 of the Convention."¹⁵

However, national courts must indicate with sufficient clarity the reasons on which their decision is based.

From the above, it is evident that court decisions must be logical, well-structured, and clear in content. Each decision must be considered as a cohesive whole, with all constituent parts closely interconnected.

Further, in Decision No. 20, dated April 13, 2012, the Constitutional Court states:

"A very important element of the right to be heard by the court is the justification of judicial, criminal, or civil decisions, as a guarantee for the legal process. The function of a reasoned decision is to show the parties that they have been heard, and to give them the opportunity to challenge it."¹⁶

In the assessment of the Constitutional Court,

"...it is not enough that the reasoning is formally present in the graphic and structural sense, as this would make it purely fictitious. The reasoning must necessarily meet the minimum legal criteria defined and not have such serious flaws that violate the standard of a reasoned judicial decision."¹⁷

The justification of court decisions is not only a legal obligation for the court but also a guarantee for the claimant to access a higher court. Knowledge of the content and reasoning of the court decision gives the claimant the opportunity to prepare the appeal in the correct form, knowing what they aim to overturn with the appeal. Consequently, this level of reasoning should also be reflected in the decision to approve the request for the criminal order presented by the Prosecutor.

The third important element is that the court cannot change the punishments set by the prosecutor in the criminal order. However, considering the financial conditions of the defendant, during the execution phase, upon the defendant's request, it can apply Article 34/8 of the Criminal Code. Under this provision, the determination of the punishment remains the responsibility of the prosecutor. In the act of approving the criminal order, the prosecutor can, if not already done, foresee the execution of the punishment, including the payment of the fine in installments. According to this provision, the court cannot act as a corrector of the prosecutor's mistake in setting the sentence by changing it.

However, to preserve the integrity of the process conducted thus far, if the prosecutor has not correctly assessed and determined the punishment, we recommend a change in this procedure. Specifically, we propose granting the judge the competence to directly correct, on the spot, the punishment and qualification of the criminal offense committed. Although this suggestion fundamentally changes the nature of this type of judgment, we believe it may enhance efficiency in the process by avoiding unnecessary procedures.

¹⁵ Decision no. 33, dated 08.12.2005 of the Constitutional Court, no. 97 of the Official Gazette.

¹⁶ Point 9 of decision no. 29, dated 22.05.2015 of the Constitutional Court.

¹⁷ Decision no. 55, dated 18.12.2012 of the Constitutional Court.

Fourthly, the decision to approve the criminal order does not cause the consequences provided by Article 70 of this Code. Specifically, the decision to approve the criminal order is not binding on the court that examines the civil consequences of the offense, except in determining whether the criminal offense was committed and if it was committed by the defendant. Moreover, the second paragraph of Article 70, which states,

"A criminal decision that incidentally resolves a fact related to a civil, administrative, or criminal case has no binding effect on any other process,"

Does not apply in this context. This is because the basis of the request is not examined by the court through an ordinary trial but only by the prosecutor during the investigative phase.

Additionally, in the decision to approve the criminal order, the court should not charge the convicted person with the payment of the costs of the proceedings. This is because the approval of the request for the criminal order is initiated by the prosecutor, and the legislator appears to have considered it a form of reward for the convict who agrees to the terms of this special trial¹⁸.

Lastly, the sentence shall not be reflected in the criminal record certificate unless the sentenced person is a recidivist. This procedural norm directly affects offenders of misdemeanors by not considering them as previously convicted. This provision is conditional on the offender not being a recidivist. The legislator has sanctioned it this way to prevent the trial according to the rules of the criminal order from becoming a special trial that could be exploited by perpetrators of criminal offenses in the future.

However, despite the aforementioned sanctions, the application of this type of judgment to rehabilitated individuals allows room for interpretation. This includes those who have previously benefited from this type of trial and, according to this provision, are not considered convicted, as well as those who, although previously judged and convicted through ordinary or special trials, have been rehabilitated under Article 69 of the Criminal Code.

We assess that there is a need for intervention in this provision to specify whether individuals who have previously been tried and rehabilitated can benefit from this special type of trial. This includes those who have been previously judged according to this special trial and those who have been judged according to the rules of ordinary or other special trials and have been rehabilitated under Article 69 of the Criminal Code.

Such clarification would avoid dual standards for different subjects of the criminal process and simultaneously reduce the number of requests for the approval of the criminal order for rehabilitated defendants, thereby ensuring that these cases proceed directly to ordinary trial.

4.2 Dismissal of the request for the approval of the criminal order

Rejecting the request for the approval of the criminal order is the responsibility of the court, which applies this action in four cases:

Dismissal of the Charge or Case: If there is a basis for dismissing the charge or case, the court decides to dismiss the case itself. This dismissal benefits the defendant by halting the criminal process for that particular offense¹⁹.

Ineligible Criminal Offenses: If the defendant is accused of a criminal offense for which the law does not permit the implementation of a criminal order of punishment, the court will dismiss the request. Specifically, considering the "criminal offense" criteria for this type of special trial, the court will dismiss the request if the offense is classified as a crime rather than a misdemeanor.

Inappropriate Penalty Measures: If the prosecutor has requested a penalty of a fine or one or

¹⁸ Article 70 of the Criminal Procedure Code.

¹⁹ Article 328 - Dismissal of the charge or case.

more inappropriate supplementary punishments, the court will dismiss the request. Based on an expanded literal interpretation, the term "inappropriate" refers to punishments beyond the minimum and maximum limits allowed by paragraph 3 of Article 406/a of the Code of Criminal Procedure and Article 34 of the Criminal Code. Specifically, this includes fines less than 25,000 ALL or more than 1.5 million ALL, as well as fines combined with additional penalties that do not fulfill the purpose of rehabilitation.

Insufficient Preliminary Investigation: If the judge determines that the case cannot be resolved based on the preliminary investigation acts attached to the request, the court will dismiss the request. This occurs when the court assesses that the offense is more complex and requires further actions to determine an appropriate sentence for rehabilitation.

Meanwhile, the court may also reject the request in cases where it determines that the case cannot be resolved based on the preliminary investigation acts attached to the request for approval. This situation arises when the court assesses that the criminal offense committed by the defendant is complex and requires further investigation to determine an appropriate sentence for the rehabilitation of the convicted individual.

Except in cases where the request for the approval of the criminal order is dismissed due to grounds for dismissal of the charge or case, leading the court to dismiss the case itself, in all other scenarios, the court decides to return the case files to the prosecutor. This decision is communicated to both the prosecutor and the defendant to facilitate their further legal actions and rights.

In conclusion, as outlined above, the dismissal of a request for the approval of a criminal order by the court serves both as a mechanism to oversee the actions and assessments of the prosecutor and as a procedural safeguard within the framework of due legal process.

It is important to note that in many countries where this institution is recognized, the judge retains the authority to reject a criminal order if it lacks sufficient evidence or if the judge deems that the case should proceed to trial. For instance, in Germany, the judge must assess the probability of conviction to accept the criminal warrant, and must reject it if the evidence in the file is insufficient to justify guilt. The judge has several options: to accept the order, reject it, and send the case to trial, or to return it to the prosecutor for further investigation or dismissal.

In some jurisdictions such as the Netherlands, Norway, Scotland, and Lithuania, the prosecutor may override the judge's decision. However, in these countries, the criminal order becomes final only if it is not opposed by the defendant or if objections are not accepted or dismissed by the court. Objections are heard before the court, which considers similar factors to those applied in Germany. Regardless of the jurisdiction, a common feature of the criminal order process is that the judge cannot alter the conditions of the criminal order imposed by the prosecutor²⁰.

5. Objection to the Court Decision

After the court reviews the request for the approval of the criminal order and issues its decision, the criminal procedural legislation guarantees the right of the defendant and persons civilly responsible for the damage caused to object to the same court. This objection must be made within ten days of being informed of the decision.

It is worth noting that this objection is allowed only when the court has decided to approve the request for the criminal order. If the request is dismissed, as mentioned above, the defendant and the persons civilly responsible for the damage cannot file a complaint. In such cases, the court may decide, without request, either to dismiss the case or to return the acts to the prosecutor.

Furthermore, the court cannot reject the request of legitimate subjects to object to the decision

²⁰ Electronic commentary of the School of Magistracy last accessed on 11.10.2023 at the link: <http://komentarielektronik.magistratura.edu.al/sq/eli/fz/2017/7905/406-a>.

approving the criminal order. In such instances, the court proceeds by setting a trial date, notifying the parties, and conducting an ordinary trial if the defendant does not request an abbreviated trial. The objection is rejected by the court only if it is made by an unauthorized person or if it is submitted outside the deadline. This procedural norm serves individuals who believe that they stand to benefit more from the criminal process than what the criminal order provides, potentially including a claim of innocence.

6. Criminal Orders to Other Special Trials

The efficiency of special trials is reflected in the implementation of these mechanisms. Considering that the trial of a case according to special rules is a procedural right guaranteed to the subjects in a criminal process, it is important to address the application of other special trials following an objection to the court's decision to approve the criminal order.

Regarding the application of the abbreviated trial after objecting to the decision to approve the criminal order, this right is guaranteed to the defendant through the provisions of both the abbreviated trial and the criminal order. Specifically, Article 403 of the Criminal Procedure Code states:

"The request for an abbreviated trial shall be submitted by the defendant or his/her defense lawyer upon special power of attorney during the preliminary hearing or the court hearing pursuant to Article 400, paragraph 3 and Article 406/ç of this Code; otherwise, it shall not be admitted." Furthermore, Article 406/ç provides that: "When the court proceeds according to paragraph 2 of this article, it sets the date of the trial and notifies the parties and their defense lawyers. The court proceeds with the ordinary trial if the defendant fails to submit the request for an abbreviated trial. In such a case, the provisions of Article 333 and following of this Code shall apply."²¹

In addition, regarding the application of the trial upon an agreement after an objection to the decision to approve the criminal order or its disapproval by the court, this right is also guaranteed to the parties. The prosecutor, the defendant, or the defendant's attorney can propose reaching an agreement on the conditions for the admission of guilt and the determination of the punishment from the moment the person is registered as attributed to the criminal offense until the judicial review has begun.

Referring to point 3 of Article 406/ç of the Code of Criminal Procedure, which states: "In this case, the provisions of Articles 333 et seq. of this Code are applied," specifically related to the preparatory actions of the court, we conclude that there is a legal space available for negotiation. This space exists from the procedural moment when the court disapproves the criminal sentencing order up until the trial begins. During this time, the parties may demonstrate a willingness to negotiate and subsequently reach a plea and sentencing agreement.

Finally, as for the application of the direct trial after the disapproval of the criminal order or opposition to its approval in court, it is important to note that although both types of trials are based on the assessment that the case can be resolved in its current state, procedurally, the direct trial is not feasible. This is because the procedural moment for the direct trial has an urgent character, coinciding with the presentation of the request for the validation of the arrest and the simultaneous trial, which must occur within forty-eight hours of the arrest.

After the disapproval of the criminal order by the court or opposition to its approval, considering that the investigative phase remains intact and the prosecutor continues to perform investigative actions, the procedural window for submitting the request for a direct trial to the court has passed. Therefore, if the trial fails according to the rules for the approval of the criminal order, the application of the direct trial becomes impossible.

²¹ Article 403 of the Criminal Procedure Code. <http://Qbz.gov.al/>.

7. Aspects of the Implementation of the Criminal Order in Practice

To better understand the implementation of the criminal order in practice, we present some official statistics related to misdemeanors committed in recent years in Albania, for which the criminal order is applied²².

Table 1: For the year 2018²³, 2019²⁴, 2020²⁵ and 2021²⁶ it turns out that

District Court	The number of criminal offenses for 2018	The number of criminal offenses for 2019	The number of criminal offenses for 2020	The number of criminal offenses for 2021
Berat	107	119	78	97
Dibër	66	47	32	50
Durrës	201	155	130	255
Elbasan	266	211	161	205
Fier	190	84	84	134
Gjirokastrë	126	145	262	108
Kavajë	50	38	28	45
Korçë	66	239	155	155
Krujë	79	105	68	69
Kukës	33	188	152	188
Kurbin	47	50	37	43
Lezhë	62	73	69	81
Lushnjë	72	78	60	64
Mat	12	15	19	21
Përmet	8	19	18	10
Pogradec	36	99	62	79
Pukë	5	25	25	26
Sarandë	41	196	135	116
Shkodër	333	384	287	217
Tiranë	914	897	738	653
Tropojë	10	29	14	16
Vlorë	291	175	85	102
Krimet e rënda/GJPKKKO	41	0	-	16
Gjithsej	3056	8160	2699	2750

From the overall analysis of the above data, we observe a decreasing trend in the commission of criminal misdemeanors. However, what is more valuable in this paper is to understand how many of these misdemeanors are subject to the special rules of the criminal order. To do this, we will refer to

²² Point 15, article 6, law no. 8678, dated 14.05.2001 "On the organization and functioning of the Ministry of Justice", as amended, which stipulates that: "The Ministry of Justice exercises its activity in the fields of: ...15. Analyzes statistical data and publishes the statistical yearbook in the field of justice. The governing bodies of the justice system forward to the Ministry of Justice the required statistical data, with the aim of publishing the statistical yearbook, according to the provisions of the special laws. The format of the statistical yearbook and the periodicity of information transmission are approved by order of the Minister of Justice".

²³ Ministry of Justice, Statistical Yearbook 2018, page 21, last accessed on 14.10.2023 at the link: <https://drejtesia.gov.al/wp-content/uploads/2019/07/Vjetari-Statistikor-2018-PDF.pdf>.

²⁴ Ministry of Justice, Statistical Yearbook 2019, page 21, last accessed on 14.10.2023 at the link: <https://www.drejtesia.gov.al/wp-content/uploads/2020/07/VJETARI-STATISTIKOR-2019.pdf>.

²⁵ Ministry of Justice, Statistical Yearbook 2020, page 24, last accessed on 14.10.2023 at the link: <https://www.drejtesia.gov.al/wp-content/uploads/2022/01/Vjetari-2020-i-plote-per-publikim-1.pdf>.

²⁶ Ministry of Justice, Statistical Yearbook 2021, page 22, last accessed on 14.10.2023 at the link: <https://www.drejtesia.gov.al/wp-content/uploads/2022/06/REPUBLIKA-E-SHQIP%C3%8BRIS%C3%8B-Vjetari-Statistikor-2021-pdf.pdf>.

the data from the Court of First Instance of the General Jurisdiction of Tirana.

At the Court of First Instance of the General Jurisdiction of Tirana:

- for 2018, out of 914 criminal misdemeanors in total, 75 criminal orders were approved;
- for 2019, out of 897 criminal misdemeanors in total, 26 criminal orders were approved;
- for 2020, out of 738 criminal misdemeanors in total, 38 criminal orders were approved;
- for the year 2021, out of 653 criminal misdemeanors in total, 14 criminal orders were approved.

It is clearly observed that the number of criminal misdemeanors tried according to the rules of the criminal order is very low compared to those tried under the rules of ordinary trial. The figures indicate that this special trial has not yet been consolidated as an established practice and is not widely considered an efficient alternative by prosecutors or the court.

Considering the factors contributing to the low application rates of this type of trial—such as its discretionary application by the prosecutor, the court's rejection of the request for the approval of the criminal order, and the defendant's opposition when the court approves it—it is necessary to implement measures to increase its applicability and practical use.

To this end, we recommend conducting training sessions aimed at sensitizing prosecutors and judges to accept and adopt this special judgment in both mindset and practice. Furthermore, it is crucial to amend the Code of Criminal Procedure to allow the approval of the criminal order to be left to the competence of the prosecutor, with the provision that the defendant has the right to challenge this act in court if they do not agree.

Meanwhile, it is important to bring attention to a sample of court decisions on the rejection of the criminal order, with the following reasoning:

"The prosecutor's office has not investigated the economic conditions/ability to pay of the defendant for the payment of this fine, and the deadline within which this fine must be paid, whether it will be in installments or not, has not been determined. All these duties must be performed by the Prosecutor's Office, since according to Article 406/b/2 of the Criminal Code, the Court has no right to change the punishments assigned by the prosecutor in the criminal order. In the absence of an investigation by the prosecutor into the solvency of the defendant D.Ç in the acts presented to the Court, we may have an ineffective implementation of this order."

"Similarly, when the connection of the criminal act with the defendant N. Gj is not proven, the Court, based on Article 406/c, point 1, letter 'c' and point 2 of the Penal Code, considers that the case subject to trial cannot be resolved based on these acts. Therefore, it is obliged to reject the approval of the Criminal Order related to criminal proceeding No. 8591 of the year 2021, with the defendant N. Gj for the commission of the criminal offense 'Disobedience to the order of the police officer of public order,' provided for in Article 242 of the Criminal Code."

"Based on Article 406/c(ç) of the Penal Code, the Court finds that there are circumstances that do not allow the approval of the Prosecution's request for the approval of the criminal order in cases where, from the accumulated evidence, the case cannot be resolved correctly. During the investigations, neither the defendant nor the victim was asked if there were other people present at the scene. Additionally, the persons present were not questioned about the conflict between the citizen S. K and the defendant. The victim was not informed that both criminal offenses under investigation are misdemeanors, and the victim's will regarding the complaint must be reconfirmed. Moreover, in this case, since we are dealing with two criminal misdemeanors, and the legislator (Article 406/a of the Penal Code) has stipulated that when the defendant is accused of a criminal misdemeanor, the prosecutor issues a criminal order. In this particular case, the defendant is accused of two criminal misdemeanors. Considering the risk posed by the defendant and the circumstances of the event, the prosecutor should not apply a criminal order in this case."

As noted, the most frequent reasons given by the court for rejecting a criminal order are:

When the prosecutor has not investigated the financial ability of the defendant to pay the fee, leading to a disproportionate punishment.

When the criminal act cannot be resolved based on the available evidence.

When the defendant has committed not one, but two criminal misdemeanors, indicating that the person is dangerous and requiring the prosecutor to carefully consider whether applying a criminal order is appropriate.

At this point, aiming to enhance the effectiveness of this special judgment and increase the application of this type of trial, it is important to consider the possibility of legal changes. Specifically, in cases of refusal to approve the criminal order, the right of appeal should be foreseen. This would aim to conclude the case with an enforceable and final decision, at least until the court of appeal.

8. Conclusions and Recommendations

At the end of this paper, we conclude that the special trial according to the rules of the criminal order is a trial that serves the purpose of its initial provision, since for a total of 100 criminal offenses it is possible to avoid judicial review, as well as imprisonment for their authors. However, in practice, in reference to the data obtained from the Court of First Instance of the General Jurisdiction of Tirana, its application is minimal compared to the total number of criminal offenses judged by this court. Consequently, we recommend the realization of continuous trainings with focus on raising the awareness of prosecutors and judges in the system, in order to accept this special judgment in their mindset and practice.

Meanwhile, we estimate that the legislator should define more precisely as a prohibitive criteria on the re-application of the criminal order for individuals who were previously treated according to this type of trial and were rehabilitated and those who were previously treated according to the rules of ordinary trial or another trial special and have been rehabilitated according to Article 69 of the Criminal Code. This recommendation comes in support of the idea that the criminal order should be seen in the eyes of the general public as an institution that does not favor crime and mainly recidivists. Also, this clarification avoids interpretations with two standards of different subjects of the criminal process and at the same time reduces the number of requests for the approval of the criminal order in court with rehabilitated defendants, proceeding directly to the appropriate trial.

In a prospective view, in case of revision of the provisions of the special trial of the criminal order, in cases where the court finds that the prosecutor has not correctly assessed and determined the punishment and has not made a correct legal qualification of the criminal offense, the addition of a provision that in such cases the court corrects the sentence directly, on the spot, a suggestion which fundamentally changes this type of judgment, but which can reflect efficiency in the process, as it makes it possible not to lose the process carried out up to now.

Also, a possible change in the Code of Criminal Procedure is leaving the approval of the criminal order to the Prosecutor exclusively. In this case, if the defendant does not agree, then the right to appeal to the court should be provided. This change would avoid the court rejecting the unjustified criminal order.

Finally, aiming for the efficiency of this trial, the possibility of legal changes should also be considered in cases of refusal to approve the criminal order, to provide the right of appeal, in order to end the case with an *res judicata* decision, at least up to the appeals court.

At the conclusion of this paper, we affirm that the special trial under the rules of the criminal order fulfills its intended purpose by potentially averting judicial proceedings and imprisonment for individuals accused of up to 100 specified criminal offenses. However, based on data from the Court of First Instance of the General Jurisdiction of Tirana, its application remains minimal compared to the total number of criminal cases adjudicated by this court. Therefore, we recommend continuous training programs aimed at enhancing the understanding and acceptance of this special judgment among prosecutors and judges within the system.

Furthermore, we propose that the legislature define more precise prohibitive criteria regarding the re-application of the criminal order. Specifically, this should apply to individuals previously treated under this trial type and successfully rehabilitated, as well as those previously handled under

ordinary trial rules or other special trials and rehabilitated per Article 69 of the Criminal Code. This recommendation aims to underscore that the criminal order should not be perceived as leniency toward crime, especially among repeat offenders. Clarity in these criteria would mitigate dual standards in the criminal justice process and reduce unnecessary requests for approval of the criminal order in cases involving rehabilitated defendants, directing them straight to the appropriate trial.

Looking ahead, if the provisions governing the special trial of the criminal order are revised, we suggest adding a provision enabling courts to correct sentencing immediately in cases where the prosecutor has incorrectly assessed punishment or misqualified the offense. While this proposal would significantly alter current practices, it could enhance process efficiency by preserving the progress made in ongoing cases. Additionally, contemplating a change in the Code of Criminal Procedure to grant sole approval authority of the criminal order to the Prosecutor merits consideration. Under such a change, defendants who disagree could retain the right to appeal to the court, potentially preventing unjustified rejections by the court. Finally, to enhance the efficiency of this trial, the option of legal amendments should be explored to allow for appeals in cases where the criminal order is not approved. This would facilitate definitive resolutions through *res judicata* decisions, at least up to the appellate court level.

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