

## Criminal Justice Treatment Rights of the Defendant during the Criminal Process. Implementation of Legal Norms in Favor of the Defendant

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Doi:10.5901/mjss.2013.v4n9p766

### Abstract

*In criminal process the defendant is one of the main subjects of law. Deprivation of liberty places the individual in a situation extremely vulnerable. It is important that the deprivation of liberty to be more limited and strictly follow the procedure defined in international documents and national legislation. The right not to be deprived arbitrarily of their liberty is a fundamental right and is expressed in all documents for human rights. Personal freedom is closely related with the concept of human dignity and it is a prerequisite for enjoying freedom and other human rights. Albanian legislation, provides a number of legal provisions which guarantee the defendant a due process. Through these legal norms, the defendant is placed in the same position with the other party in the process, respectively the prosecutor. It is important implementation in practice of legal norms that guarantee the rights of the defendant in a criminal process. The fact is that there is no supervisory authority to monitor how realistically and effectively these provisions are enforced in favor of the defendants, and the courts. In this case, monitoring will have a direct impact on criminal process and can serve as protection from maladministration of justice. This study will be based on a detailed survey, using descriptive scientific research methods, analyzing the Albanian legal framework, improvements that need to be made in the borrowing of successful instruments from foreign countries.*

**Keywords:** *the defendant, the criminal process, the monitoring authority, the rights of the defendant, the legal framework.*

### 1. Introduction

The defendant is the main subject in the penal case to whom all the procedural penal actions are taken. Penal procedure was born in a certain historic period, as a request and need of the society to fight criminality. Side by side with the penal procedure, its main subjects came up as well, without which it cannot be conceived, that are the prosecutor and the defendant.

The functions and interests they both represent are controversy, however one thing is sure: "The State doesn't develop the penal procedure to harm the individual, but to fight criminality".

Given the defendant is a subject that was born at the same time with the penal procedure and before the prosecutor as a representative of state interests would appear as a procedural subject, it is understandable that he is in the center of penal procedure, without whom this proceeding cannot be conceived.

One of the basic principles of the state of right is the respect of individual's liberties and rights. In this context, approaching the penal legislation with international acts paying a considerable space to the rights of the defendant, our lawmakers have made great efforts to guarantee a most just and fair legal process.

Code of Penal Procedures of the Republic of Albania is a penal procedural code, which is an act of major importance, serving to guarantee the protection of interests of the defendant in the penal proceeding. On the other side, the Penal Code, is a major source of right, it is material penal law that sanctions the position of the defendant in the framework of the rights and obligations during the penal proceeding. Several human rights and liberties, provided by the Constitution of the Republic of Albania as well the European Convention of Human Rights, are materialized in the dispositions of those codes. **Hoe** and **how much** these rights are guaranteed in the Albanian Penal Right and Procedural

Right, specifically the Penal Code and the Procedural Code, is what made me work on the article.

Despite the fact that the defendant's rights in a penal process are expressively defined in the legislation, various problematics are faced in practice when it comes to respect them.

Monitoring the respect of human rights of the defendant, reflexion of procedural actions performed towards the defendant in every phase of investigation and judgment, is a necessary legal need, first for the people involved in the phenomenon of the implementation and respect of those rights (judges and prosecutors, Judiciary Police, psychologists, educators, lawyers, etc.), and second for the doctrine in this field itself. To be in the European levels and standards, respecting the integrity and personality of the defendant is required as priority, by guaranteeing him the rights acknowledged by the law of penal procedure. The Methodology of study will respond to the reaching the objectives of this research. Methods to be used in this article will be: **documentary analysis, collection of qualitative data, analysis of data and comparative study.**

The research, aiming at treatment of the points mentioned in the sections above, will be divided in the part of research where our system of right will be treated from the viewpoint of rights of people under investigation (the defendant), in the view of historic and social factors, bringing to light the improvements made in our penal legislation. The method of analysis will be used in this part, by means of which changes in legislation that have brought about the improvement of the position of the defendant in the penal process will be brought to light, by using the respective literature of domestic authors. Apart from this, to the function of this method used, will be the interpretation of legal provisions that throw light on the juridical-penal definitions of this phenomenon. It will be made understood through this analysis that improvement of position of the defendant makes up the starting point for later development and further improvement of the Code of Penal Procedures, making it more contemporary and efficient. In this research, special treatment will be given to the specific right of the defendant, way of their juridical treatment, placement of these provisions in the center of analysis of a penal process. The juridical-penal treatment of the defendant's rights from the current Albanian legislation in this field, seen in the light of international acts, namely the European Convention of Human Rights, will also be analyzed in this part. Given the juridical-penal treatment of the defendant or person under investigation by our internal legislation, will be analyzed in this part, and comparison will be made with international acts in this area to reach this goal, the comparative research is functional. By using this method the important conclusion will be aimed to reach why it is necessary for Albania to have monitoring authorities for the rights of defendant or the person under investigation. Part of research – the part of conclusions and recommendations, that will include in a summarizing way the observations and conclusions.

## 2. Analysis of the rights of the defendant in Albania

Treatment of defendant's rights in the penal process requires that the context of those rights and their field of implementation, is well known.

Recently an increase of criminality is noticed in Albania and side by side with this phenomenon disrespect of rights of people under procedure is noticed as well. This phenomenon has been revealed in our country not as a new phenomenon but as widespread and stimulated by certain social-economic factors.

Rigorous respect of defendant's rights during the penal process requires special attention in our country, at a time when the penal and penal procedural legislation try to get close to the international norms active in this field. Albanian society, in the actual stage of development, open to other more developed societies and to the phenomena that the latter reflect on it, has begun to be conscious regarding the category of rights and obligations belonging to them. It's important that in a penal process the defendant enjoys the principle of parity of weapons, as in a superficial overview it looks like the defendant is alone against the state, often looking like the court and the prosecution are supporting each other. Precisely these superficial viewpoints create a confusing situation and in a way deteriorate the position of the defendant in a penal process. The Subjects participating in a penal process should take into consideration the terminology related to the rights of the people under investigation, the context those rights are born in.

## 3. Historic Development of defendant's Rights in the Albanian Penal and Procedural Right

The history of penal right beginnings in Albania is related to the creation of the Albanian independent state and the government of Vlora in 1912. Initially the Osman Penal Code of 1858 modified in 1909 has been in use. In its beginnings the Government of Vlora has written various laws on the organization of justice in Albania. *As to the system of penal law in Albania, in the full sense of the word, it can only be spoken after the approval of the Statutes of Lushnja (1920) and the*

*extended statutes of Lushnja (1922) and on, until 1939.*<sup>1</sup>

On the coming of Ahmet Zog in power, during the years 1920 – 1928 various laws of penal right were decreed. At the same time, the Albanian habit right (Canons), were active especially in the mountainous areas of the country. Albanian Penal Code, that was set up after the Italian Penal Code (1889), came to force on 01.06.1928. This Penal Code marked the detachment of the Albanian penal code from the Osman influence and orientation towards the European penal code. One of its democratic principles is the principle of legitimacy, according to which *“there is no conviction without law”* (*Nullum crimen, nulla poena sine lege*), which in itself makes up protection of human rights. During 1939 – 1944 Albania was conquered by foreigners, to the function of which also served the penal right. In the period 1945 – 1990 the power of proletarian dictatorship and the class fight were ruling in Albania, where the Penal Right and the Penal Code as part of it, served the party – state. The Penal Code of 1952 had provisions protecting the principle of legitimacy, but in this code, same as in the other penal laws of that time, we cannot talk about protection of human rights and liberties.

Democratic changes that took place in the beginning of '90 in Albania, and transition from a totalitarian system to a democratic system, marked a fundamental turn in the history of Albanian state and its institutions. Democratic orientation of the state required making total reforms among which the democratic conversion of the construction of state of right. For the first time, after the long period of totalitarianism, the fundamental democratic principles of the state of right, among which protection of human rights, found place in the law no.7491 on 29.04.1991 “On the major Constitutional Provisions”, and later on with the law no.7561 on 29.04.1992 /On some changes and amendments to the law no. 7491 on 29.04.1991 “On the major Constitutional Provisions”. In the framework of institutional reforms in the new Albanian democratic state, the Albanian lawmaker was obliged to make changes to the Penal Code of the Republic of Albania, something that was revealed in designing a new Penal Code that was approved by law no. 7895 on 27.01.1995. It was set up according to the contemporary models of penal codes of the democratic states, like: France, Germany, Italy, etc. and for the time it was approved, it responded somehow to the international standards. *The penal law is not static and unchangeable, on the contrary it is changed and amended depending on the social, economic and political conditions of the country and on the objective requirements of the judiciary practices.*<sup>2</sup>

The Penal Code of 1995 and the Procedural Penal Code are currently in power, but from the time they came to power until today, they have gone through numerous annexes and amendments, parts of which are related to the protection of human rights and liberties.

#### **4. Amendments to the Penal Code and the Procedural One, related to the defendant's rights, as reflection to the Constitution of the R.A.**

The current Penal Code that came to power on 01 June 1995, is an act of great political and juridical importance for the time it was approved, thus materializing the democratic principles of the society, among which also the protection of human rights and liberties.

Albania had not yet ratified the European Convention of Human Rights at the time the Penal Code was approved. Anyhow, protection of human rights and liberties found place in the Law No.7491, on 29.04.1991, “On the major Constitutional Provisions”, as well as in the Law No.7692, on 31.03.1993 “On an amendment to the Law no.7491, on 29.04.1991 / On the major Constitutional Provisions /, where the Penal Code relies on. In the articles 2 and 3 of its general part, the statement that the right “There is no sentence without law” found place (article 7 of Convention), where article 2 has been later on amended with law no.7984 on 28.7.1995, by being amended more conformity with the article 7 of the European Convention of Human Rights. Likewise, the Penal Code provided in its special part, figures of penal deeds that protect human rights as provided in this convention and will be treated further down.

One of the characteristics of this code is that its structure is constructed on the basis of a new concept in placing the ratios between the individual and the state, by giving priority the juridical-penal protection of the person, different from the previous Penal Code, where the protection of the state was first priority.

*Even though in 1995 the Penal Code and the Code of Penal Procedures were approved, the approval of Constitutio of the Republic of Albania (1998) and the need of approaching the legislation with the Constitution and the approved conventions, dictated the need for review of the existing laws, approved a long time ago, as well as the approval of numerous other new laws.*<sup>3</sup>

<sup>1</sup> Elezi, I. (2001), Vështrim i Shkurtër Historik i Drejtësisë Penale në Shqipëri dhe sfidat para saj <http://drejtjesiashqiptare.com/>, 13.30, 20.06.2013

<sup>2</sup> Elezi, I., Kaçupi, S., Haxhia, M. (1999), Komentari i Kodit Penal të Republikës së Shqipërisë, SHBLU, Tiranë, (fq. 16)

<sup>3</sup> Komiteti Shqiptar i Helsinkit, (2006), Raporti i të Drejtave të Njeriut në Shqipëri (1997 – 2003), Tiranë, (fq.78)

From this point of view, the ratification of European Convention of Human Rights by no.8137 on 31.07.1996, as well as the social, economic and political changes of the country to date, have been

followed with changes and amendments to the Penal Code, which have been numerous (in total 13 laws).

The Constitution of the Republic of Albania, the first and fundamental source of rights in Albania, the law of highest power in the hierarchy in our country (article 116), in its second part sanctions "The fundamental human rights and liberties" In its article 15 it proclaims that: "The fundamental human rights and liberties are inseparable, inalienable and inviolable and stand on the basis of all the juridical order ". While in the article 42 it sanctions that:

"Freedom, property and the rights acknowledged by Constitution and Law, cannot be violated without a lawful regular process". "For the protection of rights and liberties and own constitutional and legal interests, or in case of accusals raised against him/her, anyone enjoys the right of a fair public judgment, withing a reasonable time, by an independent and impartial court nominated by law". This constitutional provision and others following it make up the catalogue of fundamental human rights and liberties, as they are affirmed in the Constitution, and have the goal of guaranteeing the respect and protection of those right, because of the supremacy the Constitution has in the hierarchy of law. In this aspect, the state fundamental law, Constitution, guarantees "the integrity of person", which means that not only the individual enjoys those rights, but also the state takes over the obligation to really ensure them. This is why the constitution conditions the violation or limitation of those rights only through a "regular lawful process." This term in itself implies a "gigantic" right that evolves several other constitutional and legal laws that on the basis of which the existence of the "regular lawful process" itself is created and conditioned. Such are all the elements provided by the article 42/2 of the Constitution (just, public judgment within a reasonable time frame, from an independent, impartial court), article 30 (presumption of innocence), article 31 (guarantees of a penal process), article 32 (right of incrimination), article 33 (right to be heard), article 34 (right for appeal to the court decision).

Through the guarantees above, the Constitution of the Republic of Albania has affirmed international standards of the fundamental human rights and liberties, specifically of the "European Convention of Human Rights" which has become a part of the internal juridical system at the basis of Constitution (article 17/2).

The European Convention of Human Rights, as an act of constitutional power in the Republic of Albania, has found reflection and full adoption in the constitutional provisions.

From a general overview of legislation in years, it is realized that the defendant's rights have notable improvements, but there is always space for improvements. Referring to the procedural law, the defendant enjoys the right of a just and impartial trial, a provision that citizens in the quality of defendants did not enjoy in the communist system. Today, the defendants enjoy the function of defence and as a result of this they have equality of the parties in judgment. This equality takes full legal shape with the presumption of innocence for the defendant.

#### *4.1 Law no.8175 on 23.12.1996 "On some amendments to the law No.7895, on 27.01.1995 /Penal Code of the Republic of Albania"*

This was the first law that changed the Penal Code after the ratification of the European Convention of Human Rights. In this law, among others, several provisions are included, which provided fixed sentences for various penal deeds, by equalizing various authors of those deeds despite the circumstances in which they had committed those penal deeds. This made impossible the individualization of sentence, violating the principle "The right for a regular process", as provided by article 6 of the Convention. These problems brought about the intervention of the Constitutional Court of Albania with its decree no. 13, on 29.05.1997, by which those provisions were abrogated as anticonstitutional, by forcing the lawmaking organ make the respective amendments to the Penal Code. This decision was followed by law no.8733 on 24.01.2001, which made some amendments to the Penal Code.

#### *4.2 Law no.8733 on 24.01.2001 "On some amendments to the law No.7895, on 27.01.1995 /Penal Code of the Republic of Albania"*

This law played a very important role in the changes to the Penal Code, not only in addition of numerous provisions that complemented the its legal framework as regards the huma rights and liberties, but also in the direction of change, at the same time improvement of several provisions protecting those rights.

A very important amendment that Penal Code underwent from this law is the abrogation of death sentence in its article 79, as one of its major sentences.

*The Albanian Committee of Helsink has publicly pronounced itself on the abrogation of death sentence prior to its*

abrogation. It has organized an awareness campaign with positive effects even after December 1999, when the Constitutional Court considered as incompatible with the constitutional principles, with the European Convention of Human Rights and the protocol no. 6 of the European Convention those provisions where the death sentence was sanctioned.<sup>4</sup>

This amendment was made in reflection to the Protocol 6 of the Convention (28.04.1983) and the decision of the Constitutional Court of Albania no.65, on 10.12.1999. Through this law, in the general part of the Penal Code, was added:

- Article 1/a, where was ratified the principle of relying on general provisions of international penal right, as well as the international agreements ratified by the Albanian state, among which is the European Convention of Human Rights.
- Article 1/c, where it is provided the principle of Penal Code "equality before the law" and "justice in defining guiltiness" which are expressions of the principle "Right for a lawful process" provided by the Convention.

#### 4.3 Law no.9275 on 16.9.2004 "On some amendments to the law No.7895, on 27.01.1995 /Penal Code of the Republic of Albania"

What this law is worth mentioning about, is the protection of principle of stopping discrimination (equality), as we as the right for a lawful process.

#### 4.4 Law 23, on 01.03.2012 "On some amendments to the law No.7895, on 27.01.1995 /Penal Code of the Republic of Albania"

Several penal deeds have been changed by this law, the majority of which is related to the right for a regular legal process. Thus several provisions have changed, related to the active and passive corruption foreign public officials, judge or official of the international courts, local and foreign magistrates and members of the foreign judiciary courts, in protection of the right for a regular trial. (articles 259/a, 319/a, 319/b, 319/c, etc).

## 5. Guaranteeing the defendant's rights in the general part of the Albanian Penal Code

In some provisions of the general part of Penal Code, some rights of the defendant are provided, that are protected by the European Convention of Human Rights, as general principles of penal rights on which this code relies on. In the first paragraph of article 1/a of the Penal Code it is provided:

Penal Code is based on the Constitution of the Republic of Albania, on the general principles of international penal right, as well as on the international agreements ratified by the Albanian state.<sup>5</sup>

According to this article the Constitution of the Republic of Albania makes up the basic source of the Penal Code, as well as for all the Albanian right many provisions of which have a penal character and among others defend human rights and liberties. All the juridical – penal norms of this Code are based on the main constitutional principles, among which "respecting the fundamental human rights and liberties", that is expressively provided by its article 15: "The fundamental human rights and liberties are inseparable, inalienable and inviolable and stand on the basis of all the juridical order." There are numerous other provisions in the Constitution, where the constitutional principles are provided, which are an expression of human rights and liberties, that are at the same time reflected in the Penal Code, but the legal framework of the Constitution is not the object of this research.

Saccording to article 1/a/1 of the Penal Code, among others, the source for this Code are also the general principles of international penal right, as well as the international agreements ratified by the Albanian state. Protection of human rights and liberties comprises a general principle of the international penal right. The European Convention of Human Rights, ratified by Albanian with law no.8137 on 31.07.1996, is part of the international agreements that serve as a source for Penal Code, in the view of its article 1/a/1 . This Convention is part of the internal juridical system. According to article 122 of the Constitution of the Republic of Albania.

### 5.1 Equality before the Law

<sup>4</sup> Komiteti Shqiptar i Helsinkit, (2006), Raporti i të Drejtave të Njeriut në Shqipëri (1997 – 2003), Tiranë, (fq, 40)

<sup>5</sup> Ligji nr.8733 datë 24.01.2001, Për disa shtesa dhe ndryshime në ligjin nr. 7895, datë 27.01.1995 "Kodi Penal i Republikës së Shqipërisë", neni 1

The principle of equality before the law is materialized in the article 14 "Stop to discrimination" and article 6 "Right for a lawful trial" of the European Convention of Human Rights. It is sanctioned in the article 18 of the Constitution of the Republic of Albania, at the same time pertaining through all the Penal Code. It finds expression in the first paragraph of its article 1/c, where it says: "*Penal Code is based on the constitutional principles of the state of right, equality before the law, justice in defining guiltiness and sentence, as well as humanism.*" Penal Code guarantees that law treats all the people equally, regardless of sex, race, religion, etc., as well as giving justice in the consideration of penal cases, by not allowing differentiation or discrimination of authors of penal deeds, or harmed people related to:

- Taking penal responsibility;
- Finding guilty;
- Defining sentence;
- Criteria for reward for damage caused by penal deed;
- Dismissal of penal case and sentence;
- Profiting from amnesty;

## 5.2 No sentence without Law

In the article 7 of the European Convention of Human Rights the principle "No sentence without law" is accepted. This principle, otherwise known as the "principle of lawfulness" in the theory of right, finds expression in the articles 3, 4 of Penal Code.

In the article 2 of the Penal Code it is provided that:

*No one can be sentenced penally for a deed that has not been previously expressively provided in law as a crime or penal offence.*

*No one can be sentenced at a sentence measure and type that is not provided by law.*<sup>6</sup>

This provision is a direct expression of man's right not to be sentenced without law, provided by article 7 of the Convention, on the basis of which integrity individual is guaranteed by preventing:

- Penally charging and sentencing innocent people;
- Penally charging and sentencing people for penal deeds that are not provided as such in the penal laws;
- Sentencing people penally at a certain measure and type of sentence that is not provided by law.

This principle in the penal right takes a special political-social and juridical importance, as it is placed on the basis of all the activity of justice institutions.

*Any deviation from this principle comes openly contrary to democracy which has its highest goal insurance of the fundamental human rights and liberties.*<sup>7</sup>

The principle of no sentence without law is closely related to the article 3 of Penal Code, where, at first view operation of the penal law is defined, where it is provided that:

*No one can be sentenced for a penal deed that according to the law at the time it was committed, did not make a penal deed.*

*The new law that doesn't condemn the penal deed has retrospective power. In case the person is sentenced, execution of this sentence cannot commence, and if it has already, it is dismissed.*

*When the law at the time penal deed was committed and the later coming law are different, the provisions of the law most favorable for the person committing the deed apply."*

If we analyse the content of this provision, we have to do with the principle of no-sentence without law. From this provision it becomes clear that, the main criteria determining the penal responsibility of the person, is the time when he committed the penal deed and which law was active at that time. A law has no retrospective power for a penal deed committed prior to its coming in power, consequently a person has no penal responsibility for illegal acting or non-acting before the law considering that as penal deeds, comes to power. This provision takes into consideration the application of the law favouring the authors of penal deeds.

<sup>6</sup> Ligj nr.7895 datë 27.01.1995 "Kodi Penal i Republikës së Shqipërisë", neni 6

<sup>7</sup> Elezi, I., Kaçupi, S., Haxhia, M. (1999), Komentari i Kodit Penal të R.Sh., SHBLU, Tiranë (fq.36)

## 6. Guaranteeing the defendant's rights in the Albanian Code of Penal Procedures and the problematic in concretising them.

In several provisions of the Code of Penal Procedures, various rights are provided that from importance are crucial to a regular legal process.

In the article 1 of the Code of Penal Procedures it is provided that:

*The procedural legislation intends to secure a fair, equal and regular legal trial, protect the personal liberties, legal rights and interests of the citizens, help in the strengthening of juridical order and implementation of Constitution and state laws.*<sup>8</sup>

All the juridical-penal norms of the Code are based on the main constitutional principles, as expressively provided in its article 16.

In the article 4 of the Code of Penal Procedures it is provided that:

*The defendant is presumed innocent until his guiltiness is not proved with a judiciary verdict made absolute. Any doubts about the accuse is estimated to the favor of the defendant.*

Precisely this provision makes up one of the fundamental rights of the defendant, which is reflected in the European Convention of Human Rights.

In the article 5 of the Code of Penal Procedures it is provided that:

*Freedom of man may be limited with security measures only in cases and manners provided by the law. No one can undergo torture, sentence or humiliating treatment. Human treatment and moral rehabilitation is secured for the convicts in prison.*<sup>9</sup>

In the article 6 of the Code of Penal Procedures it is provided that:

*The defendant enjoys the right for self-defence or with the assistance of defender. When he had no sufficient means defence is provided free of charge with a lawyer. The defender makes sure the defendant is guaranteed procedural rights and protectio of his legal rights.*<sup>10</sup>

As it is seen in this provision, the defendant is guaranteed defence and in this framework various problematics are faced in the context of how really this defence is secured in the cases of free defence. Precisely in the framing of this defence, measures should be taken and the efficacy of this defence be monitored.

In the article 7 of the Code of Penal Procedures it is provided that:

*Nobody can be rejudged for the same penal deed, for which he has been judged with a devisions made absolute, except the cases when rejudgment has been decided by the competent court.*<sup>11</sup>

In the article 38 of the Code of Penal Procedures it is provided that:

*The defendant, even at isolation measure of security or when he is deprived of freedom for any other reason, is interrogated in a free state....Even with the consent of the defendant, no methods or techniques can be used to influence the freedom of will or to change the capability of memory in the evaluation of facts. Prior to interrogation, it is explained to the defendant that he has the right to remain silent and that in case he remains silent, the proceeding will continue.*<sup>12</sup>

Problems have been encountered even in the application in practice of this provision, as actions have been taken with the defendants without letting them know the legal rights provided by this Code.

## 7. Objectives of the Project

Regulation by law of the defendant's rights has been always a priority and there have been evident improvements in this area. Even in Albania the image of the defendant in the light of the main subject in a penal trial, has its background, a wide placement and reaching European standards is targeted. All the subjects participating in the penal trial should know well the internal legal framework and international acts in this field, so as to apply them in everyday's practice.

Development of an impartial and efficient legal process should be the motif to lead the work of the organs of penal procedure in their day to day activity. In order to reach this objective, it is important to know well the legal area guaranteeing the rights of the subject "defendant" or "person under investigation", not only from the legal side, but also from the juridical-penal side. From this point of view, I think that this article presents importance for the people working

<sup>8</sup> Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 1

<sup>9</sup> Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 5

<sup>10</sup> Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 6

<sup>11</sup> Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 7

<sup>12</sup> Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 38

the system of justice, judges, prosecutors, officers of Judiciary Police, lawyer who face the problem of disrespect of rights of people under investigation. Knowing the rights related to those subjects will lead to the rightest solution of cases in practice and respect of legal procedures.

In the current stage of social development of Albanian state, the problem at hand occupies its important place, while the number of people under investigation is evidently growing. Theoretical treatment of the legal framework guaranteeing the rights of the person under investigation, should be done to adapt to the new developments. To this end, the article will recommend the necessity of creation of the monitoring authority in the legal system of penal justice to monitor the respect of rights of the defendant in the penal process, possibly by giving respective suggestions.

## **8. Results and Recommendations**

To realize the defence of the defendant in the penal process or of the person under investigation suspected for a penal deed, legal instruments provided by law should be put in action. In many cases, these legal instruments are not respected, thus violating the rights belonging to this category of people. Exactly for this reason the rights of the persons under investigation should be practical and efficient so as to be applied in practice.

The system of Albanian justice has not defined who of the actors involved in procedural actions should monitor the respect of rights of person under investigation, inform him on the category of rights belonging to him as well as take required measures to guarantee the respect of those rights.

Lack of such a specific system brings about a continuity of problems as to the figures that will be dealing with the treatment of these problems laid down. Further on, another big problem faced in practice is the rigorous non-reflection of procedural actions committed with the defendant in the respective acts. Currently the Police organs in our country, having the attributes of the organ of accuse in most of the cases, obviously abuse with the arrested or detained people. This consists of the fact that these people are not informed of their rights, the cause of their detaining or arrestment and what's most important, they are interrogated several times from the police officers with keeping minutes, until they hold affirmative attitudes and at this moment the actions is revealed in the minutes. The first interrogation of those people is done without the presence of the defender until the moment of judgment of the measure of security from the court.

It becomes evident in this article, that to what extent our legislation guarantees the protection of these rights taking into consideration the international standards and the identification of specific provisions in our domestic laws that ensure the defendants' protection.

## **9. Conclusions**

The rights of people under investigation are considered and developed as an important branch of right in general; the basis of principles of this branch related to the respect of rights of this category of people, are based on many international acts widely treating these principles of right.

To make a contribution in the real respect of those rights in Albania, the treatment of problematics in the procedural plan and the juridical-penal one, present importance and leave space for detailing. In treating this subject and to this function of this goal, it is necessary to treat the efficacy of defending instruments in favor of the defendant, respect of their rights in practice, establishment of an authority to monitor their implementation. As soon as this treatment is realized in the direction of respect of rights, the rights of people under investigation should be seen in the framework of internal right of Albanian state, that in these years has ratified and made part of its right the international acts determining those rights.

I think that the legal framework guaranteeing the defendants' rights is complete. The problematic related to this legal framework are faced in their application in practice. For this reason I think that it should be closely studied the way how those legal guarantees for the defendant are realized in practice. As per above, it is concluded that the existence of a specific legal authority to monitor the respect of rights of people under investigation in Albania will guarantee the high protection of defendant's interest. The authority conducting such monitoring should be capable to apply the respective laws and standards for human rights.

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