



Measurement of Sentence for the Convicted Person

Tringa Broqi Hyseni

Student in LLM in Department of Criminal Law - Faculty of Law / UBT - Higher Education, Institution, Prishtina,
Republic of Kosovo

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Abstract

By the measurement of punishment, we understand the determination of the type and height of the punishment for the perpetrator of the crime criminal, in order to determine the type and measure of punishment that will correspond to the gravity of the offense of the crime committed and the social dangerousness of the perpetrator and with which it would be best achieved the purpose of punishment. It is essential that a criminal offense exists in order to determine the punishment by the court. In addition to the prison sentence and long-term imprisonment, the legislator has also provided for the possibility of the imposition of a fine, in this case the court for the imposition of this type of penalty it must take into account the financial situation of the perpetrator and especially the amount of income his personal and other income, assets and liabilities. The personal characteristics of the perpetrator are circumstances that affect the court's determination that a will pronounce a sentence, and these are the perpetrator's health condition, family status, age and state of health, employment, profession, etc. By admitting guilt, the perpetrator of the criminal offense shows that he is sorry and that he promises to do so in the future I will not commit a criminal offense that will be considered as a mitigating circumstance, while not admitting guilt shows that the perpetrator did not understand or does not want to understand that he committed an act harmful which is foreseen by law as a criminal offense and at the same time gives indications that he can to repeat the same offense or even to commit other criminal offenses, the circumstance which the court will be taken as an aggravating circumstance.

Keywords: *Criminal Offense; Admission of Guilt; Sentencing; Convicted Person*

1. Introduction

Criminality has existed throughout human history. Etiology, phenomenology and the criminal aspect of criminality has been analyzed and elaborated by university professors Jasarevic and Maloku (2021a, 2021b). And the analysis of the impact of the sociological factors of the extension that criminality has been analyzed by professors Shabani and Maloku (2019a, 2019b).

Crime to escape and prevented, there must be genuine regional and international cooperation. (Maloku. 2015a, 2015b. 2015c, 2016a, 2016b, 2018, 2020). Crime is the measure of the reaction of society against the perpetrator of the criminal offense which is defined as such by the legal norm (Gabela,

& Maluku, 2022,2023). The notion of punishment must express at the same time its essence, the social duty as well its own legal features, this means in the form in which it is presented. (Maloku, 2019) Being

based on the unity of the formal or material elements, the punishment is defined as a forced measure provided for in the law, which the court pronounces against the criminally responsible person as the perpetrator of a criminal offense in function of the protection of freedoms and basic human rights as well as values other social rights guaranteed by the constitution and international law, namely deprivation and limiting their rights. (Maloku & Maluku 202)

Punishment as a sanction has been given throughout history in different forms depending on the country and organs.

Taking into account which body measures the punishment, three types are recognized in criminal law sentencing measure:

- Legal measurement
- Judicial measurement and
- Administrative measurement.

Legal Measurement - the legal measurement of punishment is done by the body that issues laws, with CRAS that is the legislator determines the type and level of punishment in the case of the provision of the criminal offense.

Judicial Measurement of Punishment - this type of measurement is done by the court when in the criminal procedure it is established that the perpetrator of the criminal offense is criminally responsible.

Administrative Measurement of Punishment - this system is applied in the USA and in other countries. According to this the punishment system is measured by the competent bodies for the execution of punishments. (legal, n.d.)

Special prevention and general prevention are important in the individualization of punishment as the purpose of punishment. The measure of punishment determined by the court must have the ability to rehabilitate and to prevent the perpetrator from committing criminal offenses in the future, at the same time for him also influenced other persons by committing criminal offences. (Judicial institute of Kosovo,n.d.)

The main findings of this paper should contribute to and initiate not only scientific workers, but also experts from practice, to launch a series of research projects in the future with the aim of obtaining relevant (scientific) knowledge. (Maloku, Kastrati, Gabela & Maluku, 2022: 139)

2. Methodology

In this paper, appropriate methods were used to achieve the goal (Karovic, Maluku & Shala,2020:107). The defined object of research requires the use of different methods and scientific knowledge from many scientific disciplines, in particular, the paper will use theoretical analysis methods, comparative methods and the unity of inductive-deductive methods (2021:76). The scientific methods used in this paper are mainly methods of analysis, synthesis and comparative, which help to analyze, synthesize and compare the theoretical views of local and foreign authors (Maloku,2020:323). Because of the research's intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, Qerimi & Maluku, 2022:176).

3. Results and Discussion

According to the penal code of Kosovo, Article 69, the general rules for measuring the punishment are:

1. When setting the penalty for a criminal offense, the court must take into account the minimum and the maximum penalty provided for that criminal offense. The court must then take into account the purpose of the punishment, the principles defined in this chapter and the mitigating and aggravating circumstances related to the specific criminal offense or punishment.
2. The punishment must be in proportion to the gravity of the offense and the behavior and circumstances of the perpetrator.
3. When determining the punishment, the court takes into account but is not limited to the circumstances of the following:
 - 3.1. The degree of criminal responsibility;
 - 3.2. Motives for committing the crime;
 - 3.3. The intensity of jeopardy or damage to the protected value;
 - 3.4. The circumstances in which the offense was committed;
 - 3.5. The previous conduct of the principal;
 - 3.6. Admission of guilt and;
 - 3.7. The personal circumstances of the perpetrator and his behavior after committing the criminal offense.
4. When determining the punishment for the recidivist, the court especially takes into account whether the perpetrator previously has committed the same criminal offense as the new offense, if both offenses were committed for the same motives and the time elapsed from the imposition of the previous sentence or from the sentence held or forgiven.
5. When imposing a fine, the court also takes into account the financial situation of the perpetrators and especially takes into account the amount of personal income, other income, his assets and liabilities. The court does not set a fine that exceeds the possibilities of the leaders. (Penal Code of Kosovo)

3.1. Detention Calculation

Detention is not a type of punishment, but a restrictive measure with a procedural character that has power until the court decision takes its final form.

Detention is the time period of extending the measure of procedural security of the defendant with imprisonment, including the days of discovery of the criminal offense.

Acceptance of guilt With this, the perpetrator of the criminal offense shows that he is sorry and that he promises that in it in the future I will not commit a criminal offense that will be considered as a mitigating circumstance, while not admitting guilt shows that the perpetrator did not understand or does not want to understand that he committed an act harmful which is foreseen by law as a criminal offense and at the same time gives indications that he can to repeat the same offense or even commit other criminal offenses, in which case the court will is taken as an aggravating circumstance. (Muci, 2012, p. 355)

3. 2. Types of Relief Fences

- 3.2.1. When the offense was committed under the influence of mental shock caused by provocation or injustice to the victim or any other person - the psychic shock creates adjustments in us the functioning of the human nervous system, obscures his conscience

- somewhere, weakens his objectivity in evaluating and choosing created situations, makes it impulsive and hasty reckless for his actions.
- 3.3.2. The offense was committed under the influence of the actions or unjust instructions of the superior – With unjust instructions are understood as orders, orders, decisions and advice given by superiors to subordinates on his own for the realization of tasks which conflict with their regular fulfillment or directly or indirectly affect the dependent to commit the criminal offense.
 - 3.3.3. The person who committed the criminal offense and shows deep remorse - deep remorse of the author criminal offense constitutes an important promise and social guarantee that he can it is also corrected by applying to him a sentence that is milder than the sentence that would be applied to him the conditions of the absence of this repentance. (Muci, 2012, pp. 308,310,311)

3.3. Types of Rendering Circumstances

- 3.1. Committing the criminal offense for weak motives - understand the internal motivations, the causes that encourage the person to commit the criminal act, which is in contradiction with the norms of morality and the rules of civil society.
- 3.2. Carrying out actions that increase or increase the consequences of the criminal offense - During or after the commission of the criminal act for certain purposes or motives, its author can perform actions that list or add the consequences of the act committed by him and that speak of a higher degree the higher the danger of this person.
- 3.3. When the offense was committed against children, pregnant women or persons who, due to different cannot be protected. - This aggravating circumstance is related to the quality of the injured which the law divides into three categories, children, pregnant women and people who for various reasons do not can be protected. (Muci, 2012, pp. 315, 318, 109)

According to the Criminal Code of Kosovo,

Article 80 Calculation of detention and sentences held in other jurisdictions Detention, deprivation of liberty during the procedure of transferring the person to another jurisdiction and the part of the sentence which the perpetrator has served according to the judgment of the foreign court will I is counted in the sentence pronounced by the court in Kosovo for the same offense, and if the sentence I pronounced outside Kosovo is not of the same type, the calculation will be made according to the assessment of judge. (Penal Code of Kosovo)

According to the Criminal Code of Kosovo, Article 71 Mitigation of sentences

1. The court can pronounce punishment below the limit provided by law or pronounce a higher one mild punishment:
 - 1.1. When the law provides that the punishment of the perpetrator can be mitigated or reduced;
 - 1.2. When the court finds that there are special mitigating circumstances which show that the Purpose of the punishment can be achieved even with the imposition of a milder punishment; Or
 - 1.3. In cases where the perpetrator admits guilt or has reached a plea agreement. Code Kosovo Penal Code)

Deadlines for Advance Notice During the Criminal Procedure

The Code of Criminal Procedure provides that when a person is criminally prosecuted in custody, detention loses its power if the terms have passed since the beginning of its implementation the following, without submitting the documents to the court:

- a) Three months when he is accused of an offense that has been classified as a criminal misdemeanor.
- b) When proceeding for crimes punishable by up to ten years of imprisonment, in detention cannot be held for more than 6 months,
- c) Whereas when proceeding for crimes that are punishable by no less than ten years or imprisonment of lifetime, no more than 12 months.

Detention loses its power if the documents have passed since the day they were submitted to the court the following deadlines, without the sentencing decision in the first instance:

- a) 2 months when proceeding for misdemeanor;
- b) 9 months, when proceeding for crimes punishable by a maximum of ten years imprisonment;
- c) 12 months, when proceeding for crimes punishable by a maximum of not less than 10 years imprisonment or life imprisonment.

During the preliminary investigations, the prosecutor can ask the court to extend the terms of detention which are in progress, but only in cases where there are important insurance needs and particularly complex verifications that make this extension necessary. The extension is set by the court, upon the request of the prosecutor, after hearing the defense counsel. Only one extension can be made times and cannot be more than three months. In addition, the duration of detention does not may exceed half of the maximum penalty provided for the criminal offense that is processed. (juristionline, n.d.)

The total duration of detention, taking into account the extensions of the term, cannot exceed these deadlines:

- a) Ten months, when proceeding for a criminal misdemeanor;
- b) Two years, when proceeding for crimes punishable by a maximum of ten years of imprisonment;
- c) Three years, when proceeding for crimes punishable by a maximum of not less than ten years imprisonment or life imprisonment. (juristionline, n.d.)

Detention in Custody in Prisons

Reception and familiarization programs with the institution have an important role for persons edetainees entering the prison system. If done right, they enable staff of prisons to carry out a risk assessment and assessment of individual needs, while including identifying individuals who are most at risk of self-harm and facilitates some of the anxieties experienced by all new detainees in custody.

So they offer opportunities to the detainees to get to know the way of managing the prison, by including the regime and daily routine, as well as ensure their opportunity to contact with family. For this purpose, prisoners should be provided with oral information and a brochure that provides comprehensive information, which should be made available in the language of different. (Council of Europe)

Detention Decisions

Decisions on detention must contain detailed reasoning as to why it is necessary deprivation of liberty in case-specific circumstances. Finally, the law also incorporates the principle "no longer than necessary" by determined that "every deprivation of liberty, especially detention in criminal proceedings, should be reduced to the shortest possible time." All these guarantees contained in the local law I Kosovo, reflect internationally recognized standards for the right to freedom and security the person.

It is worth noting that the measure of house arrest, although different from the technical point of view detention, must be implemented respecting the same procedural standards. This rule in general is reflected in both local and international law. (OSCE, n.d.)

According to the Criminal Code of Kosovo Article 84 Applicable measures and criminal sanctions:

1. Compulsory treatment measures that can be imposed on the perpetrator, which is not criminal responsible, has essentially reduced mental capacity or is addicted to drugs or alcohol are:
 - 1.1. Compulsory psychiatric treatment with detention in a health care institution;
 - 1.2. Mandatory psychiatric treatment in prison; AND
 - 1.3. Treatment through compulsory rehabilitation of drug addicts or alcohol.
2. The criminal sanction, in accordance with this Code, can also be imposed on the perpetrator who committed the crime criminal in a state of reduced mental capacity, if there are reasons for the pronouncement of such sanction. (Penal Code of Kosovo)

If the sole trial judge or the president of the trial panel pronounces a sentence of imprisonment the accused who is in custody then continues it.

The accused sentenced to prison who is in custody may be transferred by decision of the sole judge or the president of the panel of judges in the institution for maintaining the sentence even before the judgment takes its final form. The single trial judge or the president of the trial panel must compile the Judgment in writing. Within 15 days from the moment of the announcement when the accused is in custody, and in cases of others Within 30 days. (slideshare, n.d.)

Conclusion

In the paper I have tried to deal in detail with the way – methodology measuring the punishment, mitigating and aggravating circumstances provided by the Criminal Code as well as their implementation as well as the purpose of punishment. Given the fact that it is a legal obligation of the court to consider these circumstances, which help it in the evaluation as much as possible objective of the social dangerousness of the perpetrator and the criminal offense. Just doing this evaluation, the court will be able to help in setting a fair punishment, which will have appropriate educational and preventive effect. In this work, the goal was to make a description or summary of the punishments, the punishment for the convicted person, the person in custody, and also relying on sources, literature, laws and various scientific works.

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