

## THE REFORMATION OF THE PRE-TRIAL DETENTION IN ALBANIA IN ACCORDANCE WITH THE EU STANDARDS

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**Abstract:** *This paper aims to present the achievements of the reforms undertaken during the last few years of the post-communist period in Albania to improve the standard of respect of fundamental rights and freedom of persons accused of committing criminal acts and on whom the court has imposed the security measure of remand in custody until the final decision. The paper includes an historical view about the pre-trial system in Albania during the XX century focused particularly on the years of the totalitarian regime (1945-1990). Next this paper will evoke the democratic transformations' period and the needs for the reformation of the penitentiary system from 1991 onwards. This is seen in accordance with the EU standards of respect of Human Rights and Fundamental Freedom and especially for the imprisoned persons.*

**Keywords:** *Reformation, respect of rights, detainees, alternative measures to imprisonment, international standards.*

### SUMMARY:

Based on the conducted monitoring visits in different pre-trial and detention centers in Albania, focus groups of prosecutors and judges and individual interviews with judges and prosecutors, there are some problems and concerns regarding penal procedures followed, the cases where there is an imposition of security measure of remand in custody and the respect of Human Rights in the pre-trial system in Albania. Based on statistical data and the results of research the paper will justify the use of other security measures such as alternative measures to imprisonment, for persons accused of committing penal acts. This will be presented as a functional and effective way for the prevention of criminality and decrease of recidivism rate.

The reformation of the Penal Execution Decisions Institutions has been a very important aspect of the democratization and civilization of Albanian society in the post-communist period. The first steps undertaken for the reformation of the prisons system was its transfer under the Administration of the Ministry of Justice. The transfer of prison system from Ministry of Interior to Ministry of Justice was approved by law in 1994, but the detention centers continued to be under the responsibility of the Ministry of Interior, lacking of attention, under degrading and humiliating treatment and sanitary conditions, lacking specialized personnel and lacking the necessary legal and normative acts.

In 2007, based on order number 5821/1, dated 24.01.2007 of the Ministry of Interior, and the order number 432 dated 23.01.2007 of the Ministry of Justice, they begun the implementation of the transfer of the detention centers under the responsibility of Ministry of Justice, being now a

part of the system of the institutions of the execution of penal sentences. This decision was finalized during 2007 – 2008 with the transfer of the existing institutions and establishment of the four new institutions, in Fushë Krujë, Vlorë, Durrës and Korça.

Another important step in the reformation of the detention centers is also the amendment of the Law 8328, dated 16.04.1998 according to which “The rights and the treatment of sentenced and detained persons” and the approval of the General Regulation of prisons, where are included also the new changes in the legislation and there are included also special dispositions about the security and treatment of persons that the court has given as security measure “remand in custody”.

In these legal documents are foreseen and clarified better the rights of information of remand prisoners, meetings with familiars and implementation of social and reintegration programs. Based on these documents there are no differences between prisoners and detainees. Main problems observed now are during the implementation of the legal and normative acts in practice, especially during the period of penal proceedings including here:

- the information given about the accusation of the person suspected for committing a crime;
- guaranteeing the defense, informing friends and relatives, clarifying the rights and favors foreseen in the laws about the defense of an accused person and for a correct and fair penal process.

Regarding the right of defense, many of the international acts about human Rights in general foresee the right of a legal defense for accused persons. The Albanian Procedural Code, Article 6, foresees that “the accused person has the right of self-defense or to request a lawyer”. During the discussions in focus groups with the judges about the frequency of the use of the imprisonment as the most used security measure they explained that there are many reason for this, but a reason is also the poor quality of the lawyers that are appointed. The lawyers are appointed occasionally and they lack good skills and practice in these cases. They are there only for the reason that a defense lawyer is needed by law. This poor professional capacity of lawyers may be minimized if there is a good collaboration between the Lawyers Chamber and the Court, and the defense lawyers to be chosen not based on coincidence and availability, but also professional criteria. Poor quality of the defense at the séance for deciding the security measure for an accused person is a reason that has influenced the judges many times in giving a decision in favor of the prosecutor’s charge.

The review of security measures given by Tirana Court in 2004 reveals that in 713 requests of the security measure of imprisonment by the prosecutor, there are 704 approved requests, almost 100 %. The same results are also seen in the next few years. During 2008 the security measure of

imprisonment is provided in 855 cases from the 883 cases that the prosecutor's office has requested.

The preamble of Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse states that these rules intend to:

- a.* set strict limits on the use of remand in custody;
- b.* encourage the use of alternative measures wherever possible;
- c.* require judicial authority for the imposition and continued use of remand in custody and alternative measures;
- d.* ensure that persons remanded in custody are held in conditions and subject to a regime appropriate to their legal status, which is based on the presumption of innocence;
- e.* require the provision of suitable facilities and appropriate management for the holding of persons remanded in custody;
- f.* ensure the establishment of effective safeguards against possible breaches of the rules.

Problems observed during the investigation and interrogation period of accused persons by prosecutors and judiciary police officers:

- Persons in remand have declared cases of the non-participation of the lawyer during the interrogation séances, especially during the arrest and they also have presented cases when the presence of the lawyer has been fictive, sometimes only to sign the papers and remand prisoners had no contacts with this lawyer on the next séances.
- The quality of the lawyers has also influenced the length of the penal processes. This problem has been discussed often in the judiciary institutions and although there have been pressures and debates between all actors, there is no solution up to now. The investigation of the website of the Tirana Court, in the period of January – June 2009, about the length of a trial, shows that 1.41% of the cases last more than 720 days, 7.38 % of the cases more that 360 days.

The study of 110 selected cases (2001 – 2009) shows that in Albania the remand in custody period (including the period from the time of arrest till the final decision) lasts 11 months and 9 days, a very long period of time compared to EU countries such as Austria (during 2008) 68 days, Belgium (1996 – 2001) 84 days, Greece (2003) 1 year, Germany (2006) for 5984 more than 6 months, France (2005) 8.7 months, Estonia (2002) 10 months.

Overcrowding of prisons, another problem of Albanian Penitentiary System, has taken the attention of the government that is investing in many directions for a gradual solution. During the half of 2008 there has been an overcrowding of 110 %, and during 2008 this figure was 129 %. There were 4777 inmates in June 2009 and the prisons' capacity is 4340 inmates. The average of European countries is between these figures, the minimum 97.8 % and the maximum 152.7 %. Greece, Spain and Hungary have the highest density rate.

The security and the treatment of persons in remand are under the supervision of the prisons' staff. The transfer of the prison system from Ministry of Interior under the Ministry of Justice has brought significant changes in the way these persons are treated, including food, hygiene, housing, reintegration programs, entertainment, education, information, family and society relations, etc. Although that the efforts of the staff have to be mentioned still more is needed in this regard and there is lot of room for improvement. There are no individual or group plans of the educational staff appointed for the personality development of the persons who care. There have been different projects from 1992, but still these plans have not been implemented. During the last few years positive efforts have been made by some penitentiary institutions to initiate classes of obligatory education as part of the educational institutions placed near the penitentiary institution.

More attention is needed for subjects who have drug problems. Special sections are needed within the prisons and specific rehabilitation programs need to be designed for these persons. The penal proceeding institutions have not taken in regard this fact, even though it is foreseen in the Albanian Criminal Procedural Code that alcoholic and toxic dependent persons who are under the treatment of therapeutic programs in special institutions cannot be placed in remand in custody, except only when it is foreseen in the Code a sentence of more than 10 years. During the last few years The National Mechanism for the Prevention of Torture has been established in Albania. This is sanctioned with the amended Law 8328, dated 16.04.1998. The monitoring visits of international organizations have reported cases of maltreatment in the police stations and detention centers. The positive changes in the last years have brought a new vision in the way prisoners are treated in penitentiary institutions based on international standards.

### **Conclusions**

As a conclusion I would like to quote the words of Nelson Mandela: "It is said that no-one truly knows a nation until one has been inside its jails. A nation should not to be judged by how it treats its highest citizens, but the lowest ones."