The new tax and investigation (criminal) amnesty in Albania – Some legal and economic considerations in comparison with the Italian case

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Abstract

The Albanian Government intends to undertake a comprehensive tax and criminal amnesty, which is totally different from the two previous ones, which were not only partial and not truly tax amnesties but lacked the criminal component.

This paper tries to shed light on key economic, financial and legal inconsistencies and pitfalls such draft law contains in the proposed form. Notwithstanding its good intentions, going down to practical and legal grounds, the amnesty that is being proposed constitutes in itself a very complex and difficult decision, for the very twilight landscape it depicts. Also, as the legal analysis shows, the proposed fiscal and criminal amnesty creates open conflicts with other organic laws (Criminal Code and Civil Code) and the respective legal framework that regulates the aspects of prevention and money laundering and the financing of terrorism. Furthermore, using a comparative analysis with the Italian fiscal and penal amnesty, it results that in case of the Albanian draft law on the (fiscal & criminal) amnesty, the inconsistency between the entities to which the voluntary declaration can be applied, the general exemption from criminal liability in case of declaration of assets, regardless of the source of their creation, leaves clear space for abuse and leaves a path for this procedure to return to fertile territory for money laundering.

We conclude that, despite the fact that undertaking of a fiscal and criminal amnesty should not be considered a taboo in itself, a successful fiscal and criminal amnesty should be based on an in-depth analysis of the market's needs, it must avoid conflicts with the existing legal framework in Albania, and respect the constitutional principles and the concepts of guaranteeing the rule of law and the fight for the prevention of crime and forms of laundering the products of criminal activity.

***Keywords**: tax & investigation amnesty, moral hazard, fiscal policy, fiscal discipline.*

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I. Introduction

Tax amnesty can be defined as a limited – time, ore one-time offer, addressed to specified groups of taxpayers by public authorities, who ask for a reduced payment in exchange for the remission of previous tax obligations (including interests and penalties), at the same time granting immunity from legal action (Baer & La Borgne, 2008). Also, tax amnesty is a lever and mechanism used by governments, as part of their fiscal policy that allows individuals and companies to declare and pay hidden income, or to settle outstanding liabilities, without being subject to any investigation or criminal penalty for bringing to light previous tax evasion (Meka,2020).

One of key considerations, the governments put in front of their tax amnesty implementation, is the purpose of reducing the tax & income gap in the in the mid and long-run, promote tax compliance and fiscal discipline, as well as ensuring additional revenue for government coffers. Moreover, tax amnesty may help to "reset" the system (i.e. reorganize the piling up of tax liability) before a tax reform (Angeli et al. 2023). But on the other side, tax amnesties would, unavoidably, cause substantial moral hazard for regular taxpayers or law-abiding citizens, and therefore undermine not only the credibility of tax systems and government authority, but also fair competition and long-term fiscal discipline. As (Meka 2020) puts it, tax amnesties remain therefore a controversial and disputable mechanism, and inevitably, their main objective is to temporarily increase budget revenues.

But even this "positive" outcome and objective of the amnesty is not completely plausible. As (Stella 1989), puts it, an important issue to note at the outset is the problematic nature of measuring the true yield from an amnesty. It is not equal to the revenue collected during the time the amnesty is in effect. To the extent amnesties reduce current penalty rates relative to future ones, they bring forward in time revenue that would have been collected in any event. Furthermore, as (Alm & Malézieux, 2021) stressed out, tax amnesty has unambiguously negative impacts on tax compliance. On the other hand, Leonard & Zeckhauser (1986) say that a tax amnesty makes future adherence to the tax code more likely by removing the need to conceal past sins.

Notwithstanding the drawbacks, the tax and investigation amnesty may have, most economists who conduct thorough studies of tax amnesty programs eventually find tax amnesty a legitimate means of economic policy (Deak, 2009).

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II. Literature review

Tax amnesty programs have a long history and remain as popular as ever, across both countries and states. Policymakers often view such programs as an efficient tool that produces both short- and medium-term benefits (Baer & Le Borgne, 2008). As Adams (1993) prescribes, the first documented tax amnesty, dating from over two millennia ago, is found on the Rosetta Stone (200 B.C.) in Egypt (it provided for the release from prison of tax evader.

Governments have periodically turned to tax amnesties, as a mechanism used in the frame of their fiscal programs, or partly to activate more capital in the national economy and establishing the fiscal rule to a new higher level (Meka, 2021). In this regard, and according to their interests and objectives, they may consider one of the key types of amnesty, applied throughout the world, or any combination of them. Çetin Gerger (2012) adds that granting tax amnesties may ground on several reasons, and they can be classified as political, financial, administrative, and technical.

With regard to the types of amnesties, the government may apply, Franzoni (1996) identifies three ways for regulating and types of tax amnesties:

- **Return amnesty –** allowing taxpayers to adjust their tax returns and pay a reduced penalty on the due amount, without preventing subsequent audit and control activities from tax authorities,
- **Investigation amnesty** – offering immunity from administrative actions in change for the payment of a determined amount (amnesty fee),
- **Prosecution amnesty –** granting a total or partial reduction of penalties to already identified tax evaders in the aim of simplifying procedures and putting an end to judicial proceedings before tax authorities.

Despite the type of amnesty, the government may consider implementing according to its economic and political objectives, they do not guarantee any successful tax compliance in the future. Legeida et.al (2003) note that tax amnesties grant a perfect opportunity to taxpayers to declare officially their incomes, stocks, real estate, cultural values, etc. and thus, ensure their property rights. OECD (2015) notes, voluntary disclosure schemes or programs are opportunities offered by tax administrations to allow previously noncompliant taxpayers to correct their tax affairs under specified terms.

But Baer & Le Borgne (2008) stress that experience, however, reveals that the perceived benefits of tax amnesty programs are at best overstated and often unlikely to exceed the programs' costs, which are rarely measured. Additionally, as Casengra

(2002) puts that even in terms of their short-term revenue objectives, the majority of tax amnesties have failed to fulfill the expectations of increased revenue.

Alternatively, Angelini (1986) Angelini determined that a tax amnesty can be a valuable tool for reducing the size and growth of the underground economy, when used as part of a comprehensive program of tax reform and increased tax enforcement. However, Stella (1989)[b] concluded that tax amnesties appear to increase Governmental revenue but indicated that these benefits, in the long-run. are outweighed by negative consequences. Also, Çetin Gerger (2012) affirms that the negative effects of tax amnesties on voluntary compliance are more than the positive effects. Additionally, Stella (1989)[b] recommended that tax administration should encourage voluntary compliance through its auditing and penalty mechanisms rather than resorting to tax amnesty programs.

Regarding the costs of tax amnesties, Leonard & Zeckhauser (1986) list three main long-term costs:

- The rise in the perception of unfair tax system in the honest taxpayers,
- Its encouraging the prospective tax disputes,
- The vanish of the thought that tax evasion is a false behavior.

For a tax amnesty to be successful in the long run, must, unavoidably, strive to be intertwined with other indispensable and follow-up reforms. In this way, Angeli et al. (2023) put that, empirical research and surveys highlight how tax amnesties, without additional reforms or legislative-administrative measures aimed at strengthening the tax system, will probably have a negative impact in the long run (Alm & Beck, 1993; Bernasconi & Lapecorella, 2006). The success of any tax amnesty would be conditional under certain circumstances, such as: better future tax administration and tax law enforcement.

Also, is critical for any amnesty to be perceived by the general public and businesses as a one-off event. In this regard, as Bayer et al (2015) conclude, governments should think twice before calling an amnesty as a quick fix for a budgetary shortfall, as it might increase the pressure on future budgets, since taxpayers then anticipate future amnesties.

Conclusively, Alm & Beck (1990) suggest that the case for amnesties is decidedly mixed. Amnesties may sometimes increase compliance and tax collections, especially if the amnesty makes individuals see that paying taxes is the norm and if individuals expect a future amnesty with a tougher enforcement package than the current regime. Finally, Deak (2009) does affirm that tax amnesty is not diabolic — to be successful it must be reasonable.

III. The newly proposed tax & investigation amnesty in Albania: A bumpy and hilly road

During the last decade, two fiscal (tax) amnesties have been undertaken in Albania: in 2010 and 2017, which were for the most part very similar to each other (the 2017 amnesty was broader) and were implemented in their classic format (Meka 2020). Notwithstanding the above attempts of partial and minimal forms of amnesties, the newly proposed amnesty seems to be a different story and may be clearly classified as the first truly comprehensive amnesty. Practically, for almost two years, the new tax & investigation amnesty has taken the main stage of the economic and political debate in Albania, following public discussion of the draft law on Tax and Investigation Amnesty, prepared and offered for public discussion, for entities that make a voluntary declaration of assets.

III.1. Economic considerations of the newly proposed tax & investigation amnesty in Albania

From a technical point of view, this seems to be the first real and full amnesty, a tax and investigation (criminal) one, since the two previous amnesties, in 2010 and 2017, were partial and incomplete, to be considered as a "classic amnesty". Both previous "amnesties" failed to achieve the intended results, because:

- The approved legislation was incomplete for a standard tax and investigation amnesty, as they lacked an investigation component, together with the fact that they were not approved by a qualified majority in Parliament (3/5 of the votes required, in such cases),
- The amnesty of 2010 caused an obvious moral hazard, as it followed previous legal "interventions" related to the tax obligations' waiver,
- The implementation of such amnesties by the tax administration was slow and even counterproductive,
- The tax amnesty had to be discussed first with various interest groups and accompanied by an information and awareness campaign (such a campaign was never undertaken).

Certainly, carrying out such an amnesty will definitely have its supporters and opponents, and this is for legitimate reasons. However, in principle and practice, amnesties remain a controversial and debatable mechanism.

Inevitably, their main objective is the temporary increase in budget revenues. However, this objective may not be achieved at the expected levels; moreover, it

can create confidence and nurture expectations for other fiscal amnesties in the future, jeopardizing the regular payment of fiscal obligations, after the amnesty. However, as Deak (2009) also says, fiscal amnesty is not evil – to be successful, it must be reasonable!

In parentheses, it should be emphasized that the undertaking of a fiscal and investigation amnesty should not be considered a taboo in itself, due to the very fact that world experience shows numerous cases that many states have carried out not one, but several amnesties. These countries include both developing and developed countries, such as: in Europe (Belgium, France, Ireland, Italy, Switzerland), Latin America (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Panama, Peru, Uruguay), Asia (India, Malaysia, Pakistan, Sri Lanka) and the Pacific (Australia, Indonesia, New Zealand, Philippines).

Going down to practical grounds, the amnesty that is being proposed constitutes in itself a very complex and difficult decision, for the very twilight landscape it depicts, beyond the cost and the political debate, where it will be almost impossible to reach a broad consensus for approval from the entire political spectrum, which would make it even more serious, reliable and easily applicable. Beyond that, it is necessary to shed light on some aspects that deserve a greater importance or focus of discussion.

First, this amnesty is not only addressed to Albanian immigrants who are residents outside of Albania, but to practically every natural and legal person, resident taxpayer in the Republic of Albania, as well as tax resident individuals in the Republic of Albania, regardless of their citizenship. So, in this sense, we cannot simply talk about the repatriation of Albanian immigrants' money, which relativizes the "patriotic" discourse of injecting Albanian capital into Albania. Of course, such funds will be part of this amnesty, but they will not be the only ones.

Second, the large mass of regular immigrants will have little or no reason and "undeclared" wealth to declare, since the vast majority are citizens who do not belong to the wealthy class or affluent society, but even if they have idle funds, they have invested them or they are already investing in a variety of investment alternatives in the world, which are much more profitable and flexible than those in Albania.

Third, the amnesty legal framework seems to favor only public finances, since in addition to direct revenues from the budget (as result of special tax payments), it also favors investments in government securities and instruments. Moreover, in relation to other investors, who have been regular in the repayment of state tax obligations, these persons are given an obvious advantage in taxation, so the risk of moral hazard is enormous.

Fourth, the amnesty does not foresee, or establish, incentive mechanisms to direct these funds or (financial) assets towards productive private investments in

the economy, or in sectors that need to be supported by investments from Albanian entrepreneurs.

Fifth, the international and supranational institutions are hesitant to the Albanian Government's Tax & Investigation Amnesty. As Lvovsky (2022) stressed, in the situation of pro-long existence of a large informal economy, limited enforcement experience, and continued public tolerance of getting things done in informal ways, fiscal amnesty could be a catalyzing step towards a solution. However, Albania faces huge challenges in guaranteeing the elimination of any continuation of informal activities, tax evasion and other forms of non-compliance. Also, according to IMF and EU Delegation in Tirana, the new draft of the law does not contain any provisions to check whether the funds have come from tax evasion or more severe crimes such as drug cultivation or human trafficking. Specifically, EU delegation in Tirana expressed concerns that the draft would weaken controls against money laundering, causing worry for the EU and member states.

As per above, it would be advisable for the amnesty to establish several mandatory mechanisms and requirements, for a part of these funds, to be invested in projects in agriculture, livestock and agroindustry, investments in financial securities of public corporations, which should be mandatory quoted on the Albanian Securities Exchange, vocational schools, etc. In this way, the amnesty would be transformed into an efficient and practical lever, to direct the funds towards the real and sustainable development of the national economy, and not only towards real estate, which simply increase the value of their owners' wealth over time, but not the welfare of the general public in Albania.

Sixth, while the special tax rates are considered reasonable, the application of a 30% tax on legal funds, which are withdrawn before the 5-year term from the date of their deposit, seems to favor the state budget again and not the overall national economy. Based on the demands that certain non-residents may have in Albania for the return of funds to the countries of origin, there is a risk that the funds will leave Albania, paying only the government "tax", but without affecting the economic development, thus removing one of the important components out of the proposed amnesty.

Of course, the amnesties do not have an essential goal of economic development, but:

- the creation of short-term income for the state budget,
- reducing the administrative costs of tax administration,
- the establishment and implementation of a more rigorous fiscal discipline, after its implementation and the increase in the voluntary payment of tax obligations.

However, we do think that channeling these funds towards the real development of the national economy should be the main goal for a successful implementation of such amnesty, which for the time and conditions it is undertaken, could be used not simply to fill the government coffers in the short term, but to make the financial contribution of subjects that are being amnestied, more responsive and related to the fate of the national economy.

Undoubtedly, the challenge, in this case, is greater and more complex, but such chances to the national economy are quite rare and they should be used strategically and not on the ambulatory needs and requests of the government. What the national economy really needs is a thorough therapy and not an emergency treatment, and such an amnesty, if properly designed and implemented, may be a helpful mechanism for this purpose!

III.2. Legal considerations of the newly proposed tax & investigation amnesty in Albania – Comparisons with the Italian case.

III.2.1. Analytical elements of the tax & investigation amnesty

Currently, as above mentioned, the Albanian Government is working on a draft law on the amnesty of a dual investigation (criminal) and fiscal nature. The draft law itself, unlike what was implemented in previous years, takes upon itself the regulation of fiscal positions, not only in terms of the tax framework, but also in the repatriation of capital, which is created in other territories, outside the Republic of Albania, both in form of regular and illegal one, possibly arising from various criminal offenses provided by the legislation in force.

In this sense, the economic – criminal difficulty presented by this draft law is several-fold. Below we will analyze the most sensitive parts of the draft law and their consequences in the criminal framework, which thus directly affects the economic framework explained above.

III.2.2. The proposed legal framework for the " Tax & Investigation Ambivalent Amnesty" in Albania.

The draft law (Tax & Investigation amnesty) of 2022, which is under the approval phase for 2023, names the amnesty as: "Fiscal and Criminal Amnesty of Subjects Who Make a Voluntary Declaration of Assets". From the linguistic meaning used, three elements are noticeable:

a) fiscal amnesty,
b) criminal amnesty,
c) voluntary declaration of assets.

So, this draft law seeks to offer a protective connotation to everyone who has undeclared assets, regardless of the social position s/he holds, "whether a natural person or a legal entity", if they declare their physical assets and/or income that are not part of the regulated system and/or fiscal obligations according to this draft law, will be amnestied. This means that they will be "discharged from criminal liability" in relation to criminal legal consequences provided by the legislation in force, where the only condition that remains is that of paying a percentage fee in the form of mandatory taxation, according to the typology of the property being declared.

The spirit of the draft law is that anyone who keeps money outside the regulated or known economic system, can "legalize" income and/or real estate or movable property, registrable according to the provisions of Civil Code, regardless of the form through which such an income or this property is obtained.

Practically, the article 2, point 1, letter a), prescribes: This law is intended to enable the legalization of undeclared assets, registered or not, in whole or in part, the revaluation of financial statements, as well as tax collection according to the provisions of this law, by way of guaranteeing transparent procedures". In this sense, the draft law extends the power of protection against legal consequences, by setting out in Article 2, point 1, letter d), that: "This law aims to guarantee the non-initiation of administrative procedures and criminal proceedings against these entities, by relevant institutions, regarding these assets".

III.2.2.1. The exceptional aspect of entities, subject to the "Tax & Criminal Amnesty"

In order avoid possible legal conflicts between the existing legal framework and functions of the amnesty, the Article 7 stipulates that such amnesty ***will not be applied to subjects***[3] who are characterized by certain features, as well as their family

[3] The draft Law: "On fiscal and criminal amnesty of entities that make a voluntary declaration of assets", **Article 7** – *Excluded entities*. The following subjects are excluded from the application of this law:
1. Entities that have the legal obligation to declare assets, pursuant to the Law No.9049, dated 10.4.2003: "On declaration and control of assets, financial obligations of elected officials and some public servants", as amended, as well as the persons included in their family certificate, on the date of entry into force of this law, as follows:
a) The President of Republic of Albania, members of the Assembly, the Prime Minister, the Deputy Prime Minister, ministers and deputy ministers,
b) The judge of the Constitutional Court, the Chairman of the High State Audit, the General Prosecutor, the People's Advocate, the member of the Central Election Commission, the member of the High Judicial Council, the member of the High Council of Prosecution, the High Inspector of Justice and the inspectors of the High Inspectorate of Justice, the General Inspector of the High Inspectorate of Declaration and Control of Assets and Conflict of Interest,
c) Senior and mid-level management officials, according to the legislation in force for civil servants, with the exception of local self-government bodies,
ç) Prefects, heads of district councils and mayors,
d) Directors of directorates and commanders of the Armed Forces, in the Ministry of Defense and in the State Information Service,

members. In principle, the subjective exclusion seems to be correct and fair, but on the other hand, the relationship with subjects, to which such (draft) law extends its effects, raises doubts about its legitimacy.

In the context of high officials who have the obligation to declare assets, it is obviously understood that the pre-criminal situations regulated earlier than assuming the management function may be such as to have severed the civil relationship (determining the family relationship through of the family status certificate), before assuming the management function, thus avoiding the effects of Article 7. In this sense, any illegal transfer of properties or the organization of property purchases by entities that are no longer in the public official's family certificate, as they were removed from it before the high official took office, which has the obligation to declare assets, causes a "bypassing" of the excluding system, specified in the draft law, thus offering possible benefits through the legalization of income and assets that originate from illegal sources and often resulting from

dh) Prosecutors, judges, the General Director of the State Judicial Bailiff Service and heads of enforcement offices, within the jurisdiction of each first instance judicial district,

e) Heads of independent public institutions and members of regulatory bodies,

ë) The director and deputy director of the State Police, the general directors of the State Police, the directors of the directorates in General Directorate of the State Police, directors of local directorates of the State Police, the head, investigators and officers of the Judiciary Police of the National Bureau of the Investigation, civil judicial officers in special courts against corruption and organized crime and the administrative staff of the Special Prosecutor›s Office;

f) The General Director, deputy general directors, directors of directorates, in the center and districts' offices of the General Tax Directorate, the General Customs Directorate and the General Directorate of Prevention of Money Laundering,

g) Managers of all levels of property restitution and compensation, privatization and property registration structures,

gj) Officials, who are elected and appointed by the Assembly, the President of the Republic, the Prime Minister, ministers or persons equal to them,

h) The Bank of Albania's Governor, deputy governor and members of its supervisory council,

i) Heads of public institutions under central institutions at district level,

j) Administrators of joint-stock companies with over 50% state capital participation and with more than 50 employees,

k) The member of the revaluation institution (Independent Qualification Commission, Special Appeals Board and Public Commissioners), the General Secretary, the economic and legal advisors, as well as persons related to them, according to Law No.84/2016: "For the transitional reassessment of judges and prosecutors in the Republic of Albania".

2. Subjects, which have been holders of positions or functions, according to the definition prescribed by point 1 of this article, as well as persons in their family, as of 01.01.2022.

3. Subjects of the Law No.10192, dated 3.12.2009: "On preventing and combating organized crime and trafficking through preventive measures against property", as amended.

4. The declared persons and persons for whom the declared procedure has started, in accordance with the provisions of the Law No.157/2013: "On measures against the financing of terrorism", as amended.

5. Subjects for whom criminal proceedings have been initiated, for tax and customs evasion.

6. Subjects that have been verified in accordance with the provisions of Council of Ministers' normative act No.1, dated 31.1.2020: "On preventive measures, in the framework of strengthening the fight against terrorism, organized crime, serious crimes and consolidation of the order and public safety", approved by the Law No.18/2020.

criminal offenses, such as: corruption or abuse of office (the latter are not always evidenced by judicial bodies).

Also, in the Draft Law, it is noted that the primary purpose is regulating the positions of those subjects who *de facto* hold both cash and have avoided the system by means of false fiscal declarations or a total lack of income declarations, or otherwise possess, through false ownership titles, placed in the name of figureheads, assets that come from illegal sources. Thus, the analysis of the draft law reveals that the objective is to legalize dirty money, by legitimizing money laundering in a pure form.

By combining the Articles 5, 9 and 13[4] of the draft law, it is clear that the subjects to whom this draft law is addressed have, as a common denominator, wealth sources that have not been declared or could not be declared, as they came from illegal activities. The effect of the amnesty in this sense affects a wide range of subjects, who may also be the ultimate beneficiaries of assets, the so-called "figureheads" who are not the real owners of assets but are simply possessors or fictitious owners, on behalf of entities excluded by the Article 7.

As per above, the distinguishing characteristics are that those subjects are not said to be tax residents, as far as Albanian citizens are concerned, so they can live outside the territory of Albania and live illegally in the countries where they have emigrated and bring money to Albania without having to declare their source. Likewise, even foreign entities, whether they are physical or legal entities, is quite enough, should they have tax residence in Albania. This wide range of individuals increases the possibility of money laundering in Albania exponentially, not only by individuals connected to the Albanian underworld who live inside and outside the territory, but also provide opportunities to representatives of foreign criminal organizations, whereas their citizens, may simply register a NUIS[5] in Albania,

[4] Article 5, point 1: "Subjects of this law are individuals who are citizens of the Republic of Albania, regardless of whether they are tax residents or not in the Republic of Albania, natural and legal persons, the taxpayer who is resident in the Republic of Albania, as well as individuals who are tax residents in the Republic of Albania, regardless of their citizenship".
Article 9: "The subjects of this law may voluntarily declare the assets and elements of the financial statements that they have not been declared before or have been declared in a value smaller than what they should have declared, regardless of whether the assets, in whole or partially, are not registered with competent authorities, or they are located or not in the territory of the Republic of Albania".
Article 13: "The subjects of this law may voluntarily declare and legalize the source of income used for the creation of movable or immovable property that is needed or has been registered in public registers/ sources that were not previously declared.
Assets according to the definition of point 1, which can be declared to the Unit, through the submission of the voluntary declaration form, are:
a) assets with undeclared sources, registered in public registers,
b) assets with undeclared resources, but which are under registration process,
c) assets with undeclared resources, for which sales' contracts have been concluded, but have not been submitted for registration according to the relevant legislation".

[5] Unique Identification Number (NUIS) at the National Business Center.

either as natural persons or as legal persons, and the source of their income, or purchased but unregistered assets, will be legalized.

In the criminal sense, this draft law creates a paradox of organic interdependence, as it *de jure* and *de facto* suspends both the application of Article 287 of the Criminal Code, which punishes the laundering of the proceeds of a criminal offense or criminal activities, as well as the Law No.9917, dated 19.5.2008: "On the Prevention of Money Laundering and the Financing of Terrorism", as amended, where the Article 1 of it prescribes that: "This law aims to prevent the laundering of money and products originating from criminal offenses, as well as preventing the financing of terrorism". In case of the draft law, given that its spirit consists in legalizing income, be it in cash or in the form of investment in immovable or movable assets, leaving it in the hands of entities that have an interest according to this draft law to declare the source of income, undoubtfully hinders the functions of prevention and the fight against crime, provided by the criminal legislation in force[6].

Under a normative comparison, we are faced with an open conflict and an impossible implementation of such form of amnesty since, on one hand, the draft amnesty law excludes the criminal punishment for anyone who declares an income up to EUR 2 million, and on the other hand, we have the punishment for anyone who hides the source of income (etc.), as stipulated in the Criminal Code, Article 287, point 1[7].

[6] See Article 3, of the Law. No.9917, dated 19.5.2008: "On the Prevention of Money Laundering and the Financing of Terrorism".

[7] Albanian Criminal Code – ***Article 287*** - *Laundering the Proceeds of Criminal Offence or Criminal Activity*
Laundering of the proceeds of a criminal offence or criminal activity, through:
a) Exchange or transfer of property, for purposes of concealing or disguising its illicit origin, knowing that such property is a proceed of a criminal offence or activity;
b) Concealing or disguising the real nature, source, location, disposition, relocation, ownership or rights in relation to the property, knowing that such property is a proceed of a criminal offence or activity;
c) Obtaining ownership, possession or use of property, knowing at the time of its acquisition, that such property is a proceed of a criminal offence or activity; ç) Conducting financial operations or fragmented transactions to avoid reporting, according to the legislation on the prevention of money laundering;
d) Investing money or items in economic or financial activities, knowing that they are proceeds of a criminal offence or activity;
dh) Advising, assisting, inciting or making a public call for the commission of any of the offences defined above; shall be punished by imprisonment of five to ten years.
Where that offence has been committed in the exercise of a professional activity, in complicity, or more than once, it shall be punished by imprisonment of seven to fifteen years. Where that offence has caused grave consequences, it shall be punished by imprisonment of no less than fifteen years. The provisions of this Article shall apply where:
a) The criminal offence, the proceeds of which are laundered, has been committed by a person who cannot be prosecuted as a defendant or who cannot be punished;
b) Criminal prosecution for the offence the proceeds of which are laundered, has reached the statute of limitations or has been amnestied;
c) The person who performs laundering of the proceeds is the same person who committed the offence, from which the proceeds have derived;

As it may be noticed, the criminal amnesty overturns the entire penal structure, provided by the Article 287 of the Criminal Code. Particularly, the concept of amnesty, as referred in Article 287, point 2, letter b) of the Criminal Code, does not exempt anyone from punishment for laundering the proceeds of a criminal offense, thus contradicting what is provided in case of the draft law, where the latter, by allowing subjects to voluntarily declare an income worth up to EUR 2 million[8], or legalizing any real estate acquired with one of the forms provided by the Civil Code, but invested with undeclared sources, which may also be the produce of the criminal activity (tacit tax reference of excluded criminal offences), makes the draft law to *de jure* legitimize money laundering in Albania, thus neutralizing any effect of the Law No.9917, dated 19.5.2008: "On the Prevention of Money Laundering and Financing of Terrorism".

Particularly, the guarantees the draft law offers to the declaring entities are unconstitutional, to the extent that they affect both the equality of citizens before the law and criminal legal security in relation to punishment, as well as harming the country's social and economic balance, in particular those related to competition and the free market. Specifically, the Article 20, point 2 of the draft law, prescribes: "Beneficiary subjects according to the provisions of this law, after being issued the certificate of completion of the voluntary declaration process, benefit from the following rights:

1. Exemption from the obligation to provide information to relevant administrative institutions, regarding the time, manner of creation, holding or possession of assets declared in accordance with the provisions of this law (practically it legitimizes that income may be created by any source, even derived from the any criminal offense, contrary to the legislation in force and specifically to the Law No.9917, dated 19.5.2008: "On the Prevention of Money Laundering Money and Financing of Terrorism").
2. Preserving the secrecy, by definition of this law, in terms of legalizing the declared assets and the declaration of financial statements' elements, according to the provisions of this law (a provision that leaves room for abuse and create opportunities for the penetration of criminal organizations

ç) No criminal prosecution has been initiated, or no punishment has been imposed by a final criminal decision in relation to the criminal offence, from which the proceeds have derived;
d) The offence, the proceeds of which are laundered, has been committed by a person, regardless of his citizenship, outside of the territory of the Republic of Albania, and is also punishable both in the foreign country and Republic of Albania.
Knowledge and intent, under the first paragraph of this Article, shall be derived from objective factual circumstances".

[8] See Article 6 of the draft law: "On fiscal and criminal amnesty for subjects who make a voluntary declaration of assets: *"The property that is allowed to be declared voluntarily, according to the provisions of this law, must not exceed the maximum value of EUR 2,000,000 (two million)".*

or entities with criminal activity (regardless of whether they have been convicted or not) for the purpose of money laundering and the economic implementation of their illegal activities, using the most diverse forms of investment.)

3. Guarantee for subjects who have declared sums in cash, for non-discrimination in the future, regarding the procedures for calculating tax liabilities.
4. Exemption from following investigative and administrative procedures, within the framework of administrative punishment, in relation to assets declared according to the provisions of this law, unless otherwise provided for in this law (i.e. immunity from criminal prosecution, as the property is amnestied within the framework of this law, where the source of income creation is irrelevant and that Article 287 of the Civil Code cannot be applied, unlike the Law No.9917, dated 19.5.2008: "On the Prevention Money Laundering and Financing of Terrorism", whose effects should be expressly excluded from the application, in case the draft law is approved).
5. Exemption from criminal prosecution and criminal proceedings, within the framework of the criminal law, applicable in the Republic of Albania, for criminal offenses in the tax and customs field, from which the assets declared, under the terms and provisions of this law, originate and are directly or indirectly related (subjects who have voluntarily declared the income or registered or valued movable and immovable assets, are therefore amnestied for the part in which there is fiscal evasion or the income originating from smuggling of goods or other criminal offenses prescribed by Chapter III of the Criminal Code. In other words, the draft law affirms that the source and/or creation of income may be illegal and criminally punishable activities, referring to the tax - customs field. Notwithstanding this, the spirit of the draft law and the content of the reference articles, related to the entities and the possibility of legitimacy of undeclared assets within the value of EUR 2 million, seems to be that of giving the beneficiary entities a shield of impunity). As explained by a practical example: Subject X works in England in the so-called "Weed House". He is not detained by the competent English authorities and appears uncensored. Subject X manages to enter Albania, passing the customs of intermediate countries. He performs the voluntary declaration of the amount brought illegitimately in Albania (using the fiscal & criminal amnesty) and automatically he launders the product of criminal activity related to the crime provided by article 284 of the Criminal Code: "Cultivation of narcotic plants" and is therefore legitimized in the sense of suspending the effects of the Law No. 9917, dated 19.5.2008: "On the Prevention of Money Laundering and Financing of Terrorism".

6. Non-application of seizure or confiscation measures against voluntarily declared assets, for reasons arising from the implementation of this law. The Law No.10192, dated 3.12.2009: "On the Prevention and Punishment of Organized Crime, Trafficking and Corruption Through Preventive Measures Against Property", as well as the Law No.9917, dated 19.5.2008: "On the Prevention of Money Laundering and Financing of Terrorism" are *de jure* suspended, until the end of the amnesty process, although the Article 7, point 3 of the draft Law, defines that: "Subjects of the Law No.10192, dated 3.12. 2009, "On preventing and combating organized crime and trafficking through preventive measures against wealth", as amended, are excluded from the application of this law. But, when the effects of Article 287 of the Criminal Code are *de facto* suspended, because the draft law amnesties the effects of declaring the source of income, it is understood that the amnesty will be extended to the Law No. 9917, dated 19.5.2008: "On the Prevention of Money Laundering and the Financing of Terrorism", where in Article 1 it says: "This law aims to prevent the laundering of money and products originating from criminal offenses, as well as the prevention of financing of terrorism" as well as the Law No.10192, dated 3.12.2009: "On the Prevention and Punishment of Organized Crime, Trafficking and Corruption Through Preventive Measures Against Assets", which in Article 3, point 1, letter ç), reads: "The provisions of this law apply to the assets of persons, on whom there is a reasonable suspicion, based on evidence, of committing crimes for the purpose of obtaining illegal assets, provided for in articles 114/a and 287 of the Criminal Code".

Let's illustrate it with an example: Subject Y has managed to bring in Albania, through land routes, a sum of EUR 1 million, and with it he purchases 10 apartments, under his name, which he does not register *de jure* in the cadaster, but only with a notarial deed, where the amount is transferred in several installments through the Notary's account or with partial liquidation, outside the notary's doors. Meanwhile, the subject has been involved in drug trafficking, but luckily or by chance, he has never been prosecuted for this criminal offense and appears to be clean or has obtained wealth through fraud, an offense for which he has not been prosecuted or is being prosecuted but no security measure has been applied to seize the real estate that may be in his name or in the name of third parties, and the benefits from the fraud have been stored outside the banking system, and the decision against him has not yet been finalized. In this case, Subject X, through the fiscal & criminal amnesty, may legitimize his position as the apartments' owner or legitimize the money, in the event that there are no security measures applied, while the criminal proceedings are in progress, without falling in the footsteps of

the Article 287 of Criminal Code, since he has not been contested for one reason or another. So, here is one of the ways to launder money legally.

III.2.2.2. The legislative procedure for eventual approval of the draft law

Based upon the fact that the draft law contains elements that conflict with the protective legal logic of the criminal - economic system, it is important to note the way in which the interdependent structure between the criminal code and the criminal amnesty is prescribed to be regulated in the draft law. Thus, the criminal amnesty, provided in the draft law, seems to be totally chaotic, in terms of normative combination.

Also, since its effects impact the Criminal Code, which is an organic law approved by 3/5, and also the Civil Code and the regularity of the procedure for acquiring ownership and other laws, the draft law of the amnesty, in order to be implemented regularly, needs to redefine its limits of application by starting from its approval with 3/5 of votes and by deliberately suspending the articles of the Criminal Code, which are affected by its implementation. The draft law cannot be approved by a simple majority, as its content affects the organic structure and the application of organic law norms, provided by article 81, point 2 of the Constitution of the Republic of Albania, which defines: "Approved by three-fifths of all members of the Assembly: d) codes; ë) amnesty laws".

In case of this draft law, the protected interests in Article 11, point 1 of the Civil Code are also affected, practically: "The economic system of the Republic of Albania is based on private and public property, as well as on the market economy and on the freedom of economic activity".

In case of this draft law, this principle of the market economy and competition[9] would disrupt the social - economic balance and would directly harm the public trust in the State, since, with the tax amnesty, the small entrepreneur, who regularly pays his financial duties, would be penalized, and therefore it would distort the economic balances, in relation to the money flow, which in turn would create an imbalance between the demand and supply, since in relation to inflation and income, even though under an inflationary situation, flooding the market with money, or by legitimizing properties resulting from criminal activity (due to exclusion from criminal liability) would create a fictitious purchasing power and would directly affect the real values and equilibrium prices in the market, especially those pertaining the real estate .

[9] Law No.9121, dated 28.7.2003: "On the Protection of Competition", Article 1 reads: "The purpose of this law is the protection of free and effective competition in the market, by defining the rules of conduct of enterprises, as well as the institutions responsible for the protection of competition and their responsibilities"

III.2.3. Fiscal (tax) amnesty in Italy

In an analogous approach, the draft law seems to have been inspired by the Italian Law No.186[10], dated 15.12. 2014, "On the provisions in the field of unearthing and return of capital held abroad, as well as strengthening the fight against fiscal evasion. Provisions in the field of money laundering". As can be seen from the name of the Italian law, the only point of contact with the Albanian draft law is that related to the return of the capital of entities which, in order to avoid taxes, have transferred their economic capital outside of Italy.

In technical terms, the Italian law of 2014 represents an interest of the Italian legislator related to the return of capital within Italy and the regulation of the position of these entities with the Italian tax authorities and the criminal offenses that are applied in the tax - customs field. Also, The United States of America has a similar approach, which, from time to time, depending on the situations and needs to return and tax companies' capital, applies the so-called "*Voluntary Disclosure*"[11]. Such a procedure in particular, assists companies, which as long as they carry out this procedure, are exempted from criminal liability, for those criminal offenses that are applied in the respective tax - customs field.

Back to the Italian case:

- **In the subjective profile**, "Repatriation of capital" applied in Italy in 2014, entering into force in 2015, exclusively provided that: "The procedure applies only to natural persons, non-profit-economic entities, simple limited liability companies and non-governmental entities with the same status as the predecessors, who have fiscal residence in the Italian territory and who have violated their obligations, regarding fiscal monitoring". So, unlike the Albanian draft law, the subjective scope of action of the 2014 Italian law is very different from the Albanian one, this is also due to the fact that the Italian fiscal system forces all citizens to declare their income, year after year, regardless of whether citizens work in the government, or private sector.
- **In the objective profile:** capital repatriation includes investments and financial activities carried out illegally or held abroad, undeclared income related to these activities (e.g. Subject X has not declared cash income, as a result of not providing invoices and with this undeclared income is a shareholder in a limited liability company in Austria, or has deposited that untaxed income, in San Marino).

[10] www.agenziaentrate.gov.it/portale/documents/20143/298650/Circolare+10E+del+13+marzo+2015_Circolare+10+del+13+marzo+2015_con_allegati.pdf/48cfaea6-def0-977d-4445-b13479e8b077 (accessed 22.03.2023)

[11] ECS Voluntary Self Disclosure Policy 2023 (justice.gov) (accessed 22.03.2023)

The investments subject to the procedure are those which the contributor has not declared in the mandatory declaration form[12]. These investments can also be in real estate located abroad, regardless of how they were purchased.

The defined time reference is related to the taxation period that is not affected by the prescription and in a quantitative sense, unlike the Albanian draft law, there is no predetermined figure, but the repatriation of capital, according to Italian legislation, is related to the legal contributing power of the entities defined in the law[13].

In the fiscal aspect, the repatriation of capital presumes their taxation and exemption from criminal liability, exclusively for those criminal offenses in the respective field (fiscal - customs) predetermined by the legislator. In case criminal offense of laundering the criminal proceeds, the exclusion of the legislator was carried out exclusively in relation to the effects produced, as a result of the violation of criminal offenses, defined in a tax manner in the law, where the laundering of the criminal proceeds is a consequence of the non-declaration of income, false statements (not in accordance with reality), fiscal evasion, and tax avoidance. With the so-called "*Voluntary Disclosure*", the Italian legislator introduced for the first time the figure of the criminal offense of "Self-recycling", where the criminal offense is related to those cases when the author of the initial criminal offense is only him/her and, eventually, the collaborators who have the exclusivity of carrying out the cleaning of the criminal product. In other words, in the fiscal & criminal amnesty carried out in 2014 in Italy, the legislator took care to discipline, in a criminal sense, those consequences of illegal actions carried out by subjects who committed criminal offenses and they self-launder[14] the product by transferring economic activities (social quotas, money and/or other goods of illegal origin), in order to prevent the identification of the author of the referent criminal offense.

So, in terms of the Italian fiscal system, the law of "repatriation of capital" relates exclusively to those incomes or investments made outside Italy, which have not been taxed by the Italian tax authorities.

In the criminal sense, the cause-and-effect relationship is realized in the exclusion of criminal responsibility only for criminal offenses of self-laundering[15] of the criminal product that is directly related to the criminal offenses legally defined and listed by the legislator, for which the "exemption from criminal responsibility" applies.

[12] www.commercialisti.it/documents/20182/323701/2014_11_20_documento+commissioni+senato+giustizia-finanze+-+scudo+fiscale+e+autoriciclaggio.pdf (accessed 26.03.2023)

[13] Rientro di capitali con Collaborazione Volontaria "Voluntary Disclosure" - FISCOeTASSE.com (accessed 26.03.2023)

[14] Article 648 – 1 of Italian Criminal Code - www.brocardi.it/codice-penale/libro-secondo/titolo-xiii/capo-ii/art648ter1.html (accessed 26.03.2023)

[15] www.altalex.com/documents/altalexpedia/2017/10/24/autoriciclaggio (accessed 26.03.2023)

In case of the Albanian draft law, the inconsistency between the entities to which the voluntary declaration can be applied, the general exemption from criminal liability in case of declaration of assets, regardless of the source of their creation, leaves clear space for abuse and leaves a path for this procedure to return to fertile territory for money laundering.

Compared to Italy, the framework of the Albanian draft law is unclear and contradicts other laws, thus leaving room for the infiltration of the criminal element in Albania and the laundering of criminal products, thus allowing, on the one hand, the state to fill its coffers through by taxing these capitals, but on the other hand, citizens bear the consequences of reduced purchasing power, the concentration of significant amounts of money in fewer hands or the legalization of more profitable properties with resources not necessarily required to be declared.

IV. Conclusions and Recommendations

1. The proposed fiscal and criminal amnesty displays certain important pitfalls of financial and economic nature, which makes it discriminatory to certain stakeholders, within the Albanian economy and society.
2. It is intended to ensure a temporary increase in the income entering the government coffers but does not focus on channeling these funds towards the real development of the national economy. The implementation of such amnesty does not address the key objective of a comprehensive amnesty, by making the financial contribution of subjects, that are being amnestied, more responsive and related to the fate of the national economy.
3. Drafting a law that guarantees fiscal and criminal amnesty must take into consideration the actual Albanian economic and social conditions, where there is a clear imbalance between those who pay, those who do not pay and those who are unable to pay their own fiscal obligations.
4. The preparation of a law on fiscal amnesty and criminal consequences related to specific offenses in the economic-customs field should be specifically articulated and clarified, clearly determining:
   - criminal offenses that are excluded, as a result of the application of the fiscal amnesty,
   - the time period affecting the amnestied parts, taking into account the prescription of tax - customs obligations,
   - the categories of subjects to which the amnesty is applied, criminal precedents, their typology, in case of final decisions, of potentially amnestiable subjects, inside and outside Albania.
5. Carrying out an amnesty with a dual character, both criminal and fiscal, without precisely clarifying the positions of the stakeholders in the market

conditions, would be destructive for the market economy and its delicate balances, as it would disrupt all economic theories related to with the supply and demand, inflation, and purchasing power.

6. The criminal amnesty appears as an economic undertaking that legitimizes money laundering, fruits of illegal activities, a fact that would undermine Albania's credibility in relation to its economic stability and the European integration process.
7. The criminal amnesty and the legalization of real estate purchased through economic instruments that originate from illegal activities (of a nature other than pure fiscal ones), although in principle it tries to exclude them, by having no clear prohibition framework and the regulation of such a possibility, produces the risk of a money laundering undertaking, which may be clearly present and measurable.
8. The draft law on fiscal amnesty should be based on an in-depth analysis of the market's needs, in order to reduce the burden of obligations for entrepreneurs, or natural persons, who are obliged to declare income, as a result of exercising vital activities, with the exception prescribed by Article 7 of the draft law in concern.
9. The draft law on fiscal and criminal amnesty creates open conflicts with other organic laws and the legal framework that regulates the aspects of prevention and money laundering and the financing of terrorism. In such conditions, this draft law jeopardizes its efficient implementation in practice.
10. Also, the limit of amount of money entering the economic system must be in accordance with the Law No.9917, dated 19.5.2008 "On the Prevention of Money Laundering and Financing of Terrorism"; therefore it must not be determined without a preliminary market research and objective data on the amount of money in circulation, or the value of movable and immovable assets that can be registered.
11. The draft law in itself has a positive intention, but the way it was built and the spirit it carries in does not comply with the constitutional principles and the concepts of guaranteeing the rule of law and the fight for the prevention of crime and forms of laundering the products of criminal activity.

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