

The Importance of Adopting a New Criminal Code in the Republic of Albania. A Summary Analysis of the Criminal Code Project _____

_____ **Bledar MUSTAFARAJ** _____

EUROPEAN UNIVERSITY OF TIRANA

Email: bledar.mustafaraj@uet.edu.al

Abstract

The objective of this paper is to evaluate and identify the deficiencies of the current Criminal Code of the Republic of Albania, as well as the necessity of drafting a new one. Albania has implemented six distinct criminal codes in less than a century, each of which is significantly different from the others. This absence of a unified scientific identity has a detrimental impact on the stability of criminal laws. The current Criminal Code is problematic in numerous ways, including its legislative technique, the formulation of numerous provisions in its special part that frequently result in overlaps or contradictions, inaccuracies in the definitions of criminal offenses, and the use of ambiguous or questionable terminology, among other issues. Its general part also falls short in addressing the core principles of criminal law. A contributing factor to the lack of harmonization is the uneven application of the terminology and principles due to a lack of social and political will. Conversely, the frequent modifications to the current Criminal Code underscore the necessity for a new code that is attuned to contemporary developments. The innovations of the Criminal Code Project, which have been developed in response to societal needs and the advancements in criminal science, are the subject of this paper. The project draws from international agreements that the Albanian government has ratified and judicial precedents, specifically those of the High Court, the Constitutional Court,

and the European Court of Human Rights. In summary, the implementation of criminal provisions and the optimization of the delivery of justice by criminal courts necessitate the adoption of a new Criminal Code in a context where the structure, formulations, and terminology employed must be precisely defined to prevent any potential issues.

Keywords: *Criminal Code, harmonization, configuration, doctrinal principles, legality, international law.*

Introduction

The Criminal Code is a law of fundamental significance in any state, as it is a direct reflection of the extent of democracy within the community. As the main legal framework for criminal justice in a democratic country that supports liberal values and the rule of law, the Criminal Code must achieve two crucial goals: first, it must protect society from criminal activity that jeopardizes the peace, harmony, and well-being of the community and its members; second, it must protect each individual from potential abuses that may arise during the application of criminal law.

From these two fundamental pillars, this paper will examine the current Criminal Code's challenges and the need for modifications to balance these two functions. The paper will also provide a non-exhaustive overview of the Criminal Code Project's innovations, which are proposed by a working group and documented on the Ministry of Justice of Albania's website.¹

Frequency and effectiveness of Criminal Code amendments

Numerous criminal codes or laws have been introduced in the Albanian state over the course of almost a century. These include the First Penal Code of 1928, Law no. 382, dated 24.12.1946, the "Law on General Penal Provisions and Decree Law on the Execution of Sentences", Law no. 599, dated 13.5.1948, the "General Part of the Penal Code", the Criminal Code of 1952, the Criminal Code of 1977, and the Criminal Code of 1995. The disparities in these legal provisions, coupled with the ambiguity inherent in the domain of criminal science, have resulted in the instability of criminal laws.

The current Criminal Code of the Republic of Albania was enacted in 1995 via law no. 7895.² Following 1990, Albania experienced substantial political, social,

¹ The Criminal Code Project can be found at: <https://www.drejtesia.gov.al>.

² The law was enacted and came into force on 1st June 1995.

and economic transformations, and the adoption of this code was deemed a pivotal event in relation to the state and its criminal legislation (Elezi, 1997). At that time, legislators had two primary objectives: a) to combat crime, which continued despite legislative efforts in the 1990s, and b) to implement a new Criminal Code as a prerequisite for Albania's membership in the Council of Europe (Elezi, 1997).

Many amendments to the Code have affected its general and specific parts over the past 30 years. Regular amendments threaten the Criminal Code's unity by undermining coherence and equilibrium. Point 2 of Article 81 of the Constitution requires that codes be adopted by a qualified majority to prevent frequent changes and uphold legal certainty, stating that legislative changes should be made only when necessary and as effective as possible. Here, effectiveness means lowering crime rates, raising awareness, and preventing crimes.

Within a year of its implementation, Law no. 8175, dated December 23, 1996, titled "On some amendments to Law no. 7895, dated January 27, 1995, Criminal Code of the Republic of Albania", amended the Criminal Code. Two Constitutional Court decisions accompanied these amendments, which were implemented without analysis or study.³ The 1997 amendment created a new transplant purchase and sale crime.⁴ The Code should have included this article from the start because abstract provisions should anticipate future events or trends in a short time.⁵ Law no. 8175/1996 was completely repealed by the subsequent Code amendment.⁶ Frequent amendments cause uncertainty about penal provisions and reinforce the Code's ease of amendment.⁷ The Criminal Code got 55 revisions, 25 new provisions, and 1 repeal in 2001. About half of the Code's provisions were amended within five years of its adoption.⁸ Two Criminal Code amendments occurred in 2003.⁹ The initial amendment was based on the Albanian state's international obligations under the UN Convention on Transnational Organized Crime, the European Convention on Corruption, and the terrorism recommendations (Elezi

³ Additionally: The Constitutional Court's Decision no. 13 from 29 May 1997 and Decision no. 58 from 5 December 1997.

⁴ Law 8204, enacted April 10, 1997, supplements the Criminal Code, and the second amendment was passed in 1997.

⁵ In this case, the Code's second amendment, which includes a special provision, was adopted within two years.

⁶ On 15.01.1998, law no. 8279 amended and added to law no. 7895, dated 27.01.1995, "Criminal Code of the Republic of Albania". Law 8175/1996, "On some amendments to law no. 7895, dated 27.01.1995 "Criminal Code of the Republic of Albania," was fully annulled.

⁷ In particular, this law amended Code articles 109, 114, 278, and 297. New articles 170/a on "illegal employment," 181/a on "failure to perform duties by tax authorities," 283/a on "drug trafficking," 284/a on "organization and management of criminal organizations," and 284/b on "assistance in the detection of crimes" were added.

⁸ The special part of the Code criminalized and penalized offenses against individuals, property, trafficking, and narcotics, while Article 74 redefined crimes against humanity.

⁹ Law number 9017, dated March 6, 2003, amending law number 7895, dated January 27, 1995, "Criminal Code of the Republic of Albania," has been approved, as has law number 9086, dated June 19, 2003, including certain additions and amendments.

& Elezi, 2010). The second law was enacted to enhance the first, which lacked sufficient detail due to the expedited drafting process. Tougher penalties were the answer in 2004 for effectively fighting organized crime in Albania.¹⁰ In 2007, the general part of the Criminal Code was reformed, eliminating paragraph 2, point 1, of Article 28, which defined criminal organizations.¹¹ Article 28 redefined “terrorist organization”. Article 86 was amended to align criminal law with the UN Convention against Torture framework (Elezi & Elezi, 2010).¹² The 2008 Criminal Code revisions prioritized alternative punishment, computer system and data protection, and practical regulations.¹³ General provisions of the Criminal Code were significantly amended in 2012.¹⁴ As a result, 74 Criminal Code provisions were amended and added to quickly,¹⁵ especially after the 2013 reform changed the minimum and maximum sentencing ranges.¹⁶ The 2014 amendments mainly addressed issues pertaining to construction, with only minor effects on a few articles of the Criminal Code.¹⁷ Law 135/2015 added 8 new provisions and 16 articles to the Criminal Code, redefining “more severe increased punishment” and modifying or adding smuggling provisions.¹⁸ Paragraph 2 of Article 55, enacted by Law no. 135 in 2015, was repealed one year later.¹⁹ Two amendments to the criminal law, Law no. 36/2017 and Law no. 89/2017, focused on electoral crimes. The legislative trend increases penalties for all criminal offenses.²⁰ In 2019 and 2020, Law no. 35/2020 significantly reformed the Albanian Criminal Code.²¹ The Albanian government undertook these legislative changes to implement the GREVIO Committee’s recommendations on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

¹⁰ Additions and amendments to the Criminal Code were made with the entry into force of Law No. 9188, dated 12.02.2004, and Law no. 9275, dated 16.9.2004.

¹¹ Also, Law no. 9686, dated 27.02.2007.

¹² “Compendium of International Legal Acts,” released in Tirana in 2006, documents the 2004 Council of Europe Convention against Torture.

¹³ Law no. 9859, dated 21.1.2008, and law no. 10023, dated 27.11.2008, are approved as additions and amendments to law no. 7895, dated 27.1.1995, ‘Criminal Code of the Republic of Albania.’

¹⁴ Law no. 23/2012 ‘On certain additions and amendments to Law no. 7895, dated 27.1.1995, Criminal Code of the Republic of Albania,’ has come into effect.

¹⁵ To conclude, the 2013 legal reform changed 35 Criminal Code articles and added 14 new ones.

¹⁶ Law no. 144/2013 ‘On certain additions and amendments to Law no. 7895, dated 27.1.1995, Criminal Code of the Republic of Albania,’ has come into effect.

¹⁷ Law no. 98/2014 and Law no. 176/2014 updated the legal framework.

¹⁸ Moreover: https://www.parlament.al/Files/ProjektLigje/kodi_penal_i_fundit.pdf. Accessed on 28 October 2025.

¹⁹ Law no. 82/2016 has been enacted.

²⁰ This law revised articles 325 (from 3 months to 3 years, now 1 year to 5 years), 327 (for “violation of the secrecy of voting”), and 327/a (from a criminal misdemeanor to a criminal offense punishable by 6 months to 3 years). Articles 328, 328/a, 329, 330, 330/a, and 332 had their penalties raised similarly to article 327/a.

²¹ Law no. 44/2019 amended 16 Criminal Code provisions and added 15 new ones.

The committee's report arrived in December 2017.²² In this context, article 130/a of the Criminal Code increased penalties. In addition, articles 242/a and 89/b were added, covering the non-implementation of state authority measures during emergencies or epidemics and infectious disease transmission, respectively. Recent revisions include Law no. 43/2021, which addresses criminal penalties for corruption and tender equality violations.

The Criminal Code has been modified greatly, affecting both its general and special parts. These changes have been made at different times and for different reasons, reflecting its legal values, criminal policy, and legislator ideology. Due to frequent interventions, judicial practice, and Albanian society's needs, the current Criminal Code is no longer comprehensive.

In many ways, the Criminal Code's legislative method is flawed. Over 250 additions and amendments to the Criminal Code have been made, often to update the same law or align it with EU and other international treaties. Some provisions from international legal instruments or foreign criminal codes are incompatible with the Criminal Code and our nation's unique circumstances, preventing their use. Overall, the Criminal Code needs more attention due to formal errors, unclear legal language, incompleteness, and an unsatisfactory framework (Pittaro, 2008). One author found that the Albanian Criminal Code's concept of criminal liability "displays both light and shadow, indicating modernization in the forms of guilt and rehabilitation, while on the other hand, stringent social protection measures dominate for those acting under the influence of drugs, overlooking the fundamental principle of guilt 2006 (Manna, 2006).

The Criminal Code's efficacy and efficiency should also be considered in light of the Constitutional Court's decisions, which invalidated several articles after they were amended. It appears that the Code's amendments were poorly considered. The proposed laws' reports highlight a lack of concrete arguments supporting Code amendments. Even though the Republic of Albania has international obligations that prompted the amendments, it is still necessary to analyze the proportionality and appropriateness of the punitive measures for the current social context. No thorough analysis and hasty approval of Code amendment laws forced the Constitutional Court to act. This court has made several decisions on the compatibility of the Criminal Code in certain cases with the Constitution of the Republic of Albania (see Article 116, which outlines the hierarchy of legal norms).²³

²² Moreover: <https://www.parlament.al/dokumentacioni/aktet/75aecbd2-6e1c-4f0c-b3e7-a3da52544535>. Accessed on 29 October 2025.

²³ Additionally, the Constitutional Court's decisions no. 13, dated 29.05.1997, 46, dated 28.08.1997, 58, dated 05.12.1997, and 65, dated 09.12.1999 (which found the death penalty provisions of the Criminal Code of the Republic of Albania incompatible with the Constitution), 11, dated 01.04.2008, 19, dated 01.06.2011, 9, dated 26.02.2016, and 47, dated 27.6.2012.

Key challenges posed by Criminal Code provisions

Criminal Code framework and substance flaws

Despite the current Criminal Code's revisions, it still lacks a number of important institutes, primarily because there has not been enough research done to identify the needs and then recommend suitable approaches or ideas for the overall framework of the Criminal Code. Criminal offense, the time and place of the criminal offense's commission, continuous and sustained criminal offenses, legal error and factual error, the commission of a criminal offense through omission, the accountability of co-perpetrators in a collaboratively committed criminal offense, the function of the indirect executor, etc. are some of the institutes that have been partially discussed through the procedures of the Constitutional Court and the High Court but are not covered by the current Code.

Decriminalization and criminalization inadequacies

Despite the modifications, the current Criminal Code still lists crimes (like criminal misdemeanors) for which Albanian courts have not imposed a sentence in a long time, or crimes whose definitions do not reflect the evolution of social relations, especially when it comes to illegality and social danger (Stratenwerth, 2014). The Code covers a variety of criminal offenses that may be decriminalized within this framework, while also permitting the criminalization of new behaviors based on their significance and the threats they pose.

Criminal Code phrasing and configuration

Many sections of the Criminal Code are difficult to comprehend due to the lengthy, intricate sentences that render the text difficult to read in its entirety. There is a noticeable lack of continuity and logical coherence in some articles, particularly those that describe the structure of criminal punishment. Articles 110/a, 114/b, and 128/a on illegal trafficking; articles 164/a, 164/b, and 245/1 on both active and passive corruption; article 221 on insurrection; articles 230 through 230/c on terrorism; article 245/1 concerning the illegal influence over public officials; and article 287 on the laundering of proceeds from criminal activities are among the provisions that are articulated more like commentaries than as concise, clear statements that conform to legislative drafting practices. Additionally, the provisions on various criminal offenses, including murder, property destruction, smuggling, forgery, and terrorism, present challenges due to the unwarranted

fragmentation of certain articles with a shared objective. Because of the Code's frequently ambiguous terminology, law enforcement has varying opinions about what constitutes "damage," "other damages," "consequences," and "serious consequences."

Deficiencies in aligning criminal penalties with the seriousness of criminal offenses

In general, the criminal sanctions associated with the existing provisions of the Criminal Code are inconsistent with the specific stipulations of each provision. This does not suggest that the system of penalties should not be established on the basis of a stable and logical structure. Punitive measures should be customized to the specifics of the provision, the object affected, the resulting consequences, or other factors that are taken into account as a whole. Within the current Criminal Code, this presents serious difficulties. It is true that the Constitutional Court, in decision no. 55/2015, asserts that the legislator has the discretion to determine penalties. However, this discretion is restricted by the purpose for which the Code is enacted and the principles that guide its drafting, ensuring that the penalty for each criminal offense is proportional and appropriate for the specific offense, thus serving to prevent rather than intensify the sanction.

Obligations of the Albanian state in relation to international law

Albania is required to apply the international law that is binding on it in line with Article 5 of its Constitution. Under Law no. 43/2016 "On International Agreements in the Republic of Albania," international criminal acts to which Albania is a party are binding in this regard so long as they impose obligations and liabilities on the member or participating states. Albania must also align its domestic laws with the EU *acquis communautaire* after signing the Stabilization and Association Agreement. Furthermore, the current Criminal Code's deficiencies are frequently exposed by reports from international organizations regarding the extent to which the Albanian state implements international acts.

Criminal Code provisions incorporating Constitutional Court and High Court decisions

Many High Court and Constitutional Court decisions have correctly interpreted the Criminal Code, preventing inconsistent lower court decisions and ensuring legal certainty. The large number of decisions issued by these courts over the years shows the challenges in practice and the shortcomings of the Criminal Code. Lack of thorough analysis during Criminal Code drafting and frequent amendments

directly correlates with Albanian courts' decision-making. As the Criminal Code adds ambiguities, the courts' workload must increase to control practice and preserve constitutionality and legality. Conclusively, the current Criminal Code is incongruous with the decisions of the Constitutional Court.

According to the Constitutional Court's decision no. 47, dated 26.7.2012, the Assembly enacted Law no. 144/2013, which made all the necessary changes to the special part of the Criminal Code, eliminating the possibility of two primary penalties for distinct criminal offenses. Neither the Constitutional Court nor the legislature have considered the "payment of a fine" system in Article 54 of the Criminal Code.²⁴ This provision has been rendered obsolete in the Albanian criminal justice system due to the Constitutional Court's decision and the interpretation of Law no. 144/2013, which no longer allows the court to impose a fine and a prison sentence for criminal offenses.

Given the Constitutional Court's decisions, the Criminal Code must be amended to include all criminal provisions (Pittaro, 2006) present in external sectoral legislation.²⁵ In decision 23 dated June 8, 2011, the Constitutional Court states that laws requiring a qualified majority must follow the same procedural standards. The Court rules that the Assembly cannot use a 'simple majority' to enact or amend a law that requires a 'qualified majority' because it would minimize its significance.²⁶ This perspective ignores criminal offenses enacted outside the Criminal Code before the Constitution and Constitutional Court's decision.²⁷ It also ignores that criminal legislation includes the Criminal Code (Muçi, 2020) and supplementary laws that define criminal offenses, with the general provisions of this Code applying to other offenses recognized by specific laws.²⁸

On July 25, 2013, the Constitutional Court stated in decision no. 38: Ordinary jurisdiction courts have the full authority, under the Criminal Code, to impose imprisonment as the main penalty in all matters involving the two primary sanctions delineated in the special part of the Criminal Code and to supplement it with a fine when Article 34, paragraphs five and six, are met.²⁹ According to the Constitutional Court, Article 34, paragraphs five and six, fines are ancillary punishments. This court ruling is absent from the supplementary penalties in Article 30 of the Criminal Code,³⁰ and it violates the principle of legality in the

²⁴ See Article 54 of the Criminal Code, which states: "Concerns criminal contraventions for which, besides the fine, an imprisonment sentence is also imposed, the court, upon the request of the perpetrator of the criminal contravention, may admit that the latter pays an amount of money to the benefit of the state budget, equal to half of the maximum fine provided for criminal contraventions in the General Part of this Code."

²⁵ See Law 23/2012 "On some additions and amendments to the Criminal Code."

²⁶ See 2012 Constitutional Court Decision no. 38.

²⁷ See Article 122, point "2" of the Albanian Constitution.

²⁸ Albanian Criminal Code articles 1/a and 72.

²⁹ Source: Constitutional Court Decision no. 38, § 17.

³⁰ Article 30 of the Criminal Code specifically enumerates the following ancillary punishments: 1.

criminal domain, as outlined in Article 29 of the Constitution and Article 2 of the Criminal Code, which gives the legislative body exclusive authority to establish criminal norms (Antolisei, 2003; Caraccioli, 2005; Fiandaca & Musco, 2024; Marini, 1993; Marini, 1978; Esposito, 1961; Romano, 2004; Vinciguerra, 2009; Manzini, 1926).

The Criminal Code's alignment with European Court of Human Rights jurisprudence

Although procedural, the European Court of Human Rights (ECtHR) has significantly impacted specific elements of Criminal Codes. Human rights and freedoms are protected by European Court jurisprudence, which harmonizes criminal legislation with European values and promotes criminal cooperation. Due to the European Court's influence on the Criminal Code, specific criminal legislation institutes to implement international guarantees are inevitable and irreversible. For instance, the ECtHR defines legality,³¹ the attributes and criteria that criminal law must meet, the justifications for exemption from criminal liability, the penal systems for executing sentences, the proportionality of penalties in relation to the infringement of personal liberty vis-à-vis the illegality and gravity of the criminal act, continuing criminal offenses, and the expulsion of no criminal offender. These elements are the main concerns the ECtHR has addressed in the general framework of signatory states' criminal laws.

Proposed Criminal Code innovations

Definitions and terminology employed

The general part of the draft Criminal Code suggests several principles that ought to be codified in law rather than relegated exclusively to theoretical doctrinal analysis. These include aspects such as criminal offense, continuous and sustained criminal offenses, the time and place of the commission of a criminal offense, error facti, error iuris, the commission of a criminal offense by omission, cases involving indirect executors, co-executors, and others. The draft Criminal Code presents innovations that address this deficiency by offering precise definitions,

Banning the right to exercise public functions; 2. Confiscation of instruments committing the criminal offence and criminal offence proceeds; 3. Prohibition to drive; 4. Deprivation of decorations, honorary titles; 5. Deprivation of the right to practice a profession or craft; 6. Deprivation of the right to assume leading positions at legal entities; 7. Prohibition of the right to stay in one or some administrative units; 8. Expulsion from the territory; 9. Compulsion to make public the court sentence; 10. Loss of parental responsibility.

³¹ Standard based on Engel v. Netherlands, June 8, 1976.

thereby facilitating the application and compliance with the principles of legality and legal certainty.

The definition of a criminal offense

General part of Criminal Code and systematic arrangement of institutes are based on criminal offense.³² Different Albanian Criminal Codes define criminal offenses, such as Article 3 of the 1952 and 1977 Codes.³³ The proposed Criminal Code defines criminal offenses, filling a legal gap previously filled by doctrinal interpretation.

The current Criminal Code does not regulate the classification of criminal offenses into continuous and sustained categories, which is important in Albanian jurisprudence³⁴ and academic literature. Thus, the courts have inconsistently applied this doctrinal institute. According to *Rohlena v. Czech Republic*, a continuous crime is “a series of acts connected by a singular objective and a unified criminal scheme.”³⁵ 30 Council of Europe nations³⁵ have integrated the continuous criminal offense into their domestic legislation, 14 of which have developed it into their legal practice or doctrine (including Albania), while only 3 have not acknowledged it

³² See European Court of Human Rights decisions in *Engel and Others v. Netherlands*, *Jussila v. Finland*, *Brown v. UK*, and *Žajka v. Croatia*.

³³ *A criminal offense is defined as any act or omission that is socially perilous, carried out with culpability, and stipulated by law. A socially dangerous act is one that is aimed against the socialist state, the Party of Labor of Albania, socialist property, individuals, their rights and interests, and the entire socialist social framework. An act does not constitute a criminal offense if it is mentioned in criminal law but is not socially dangerous because of its insignificant nature.*

³⁴ In Decision no. 284, dated 15 September 2000, the United Colleges of the High Court ruled that a crime is continuous if no act is an isolated incident, the defendant's actions or omissions represent the same criminal offense, and there is a cohesive criminal intent that unites the separate acts. To establish a continuous crime, the perpetrator must have anticipated the timing, means, form, and method of their crime. Continuous crime requires unified criminal intent, which shows that the defendant considered the temporal and spatial progression of actions. Said 'thought' is identified by the defendant's actions to commit the crime.

³⁵ Andorra (Article 59 of the Criminal Code), Armenia (Article 21 § 2 of the Criminal Code), Belgium (Article 65 1 of the Code), Bosnia and Herzegovina (Article 54 2 of the Criminal Code), Bulgaria (Article 26 of the Criminal Code), Croatia (Article 52 of the Criminal Code), Czech Republic (Article 89 3 of the Criminal Code), Republic of North Macedonia (Article 45 of the Criminal Code), Georgia (Article 14 of the Criminal Code), Greece (Article 98 § 1 of the Criminal Code), Hungary (Article 6/2 of the Criminal Code), Italy (Article 81 § 2 of the Criminal Code, which refers to a continuous offense and serious sensual offenses), Latvia (Article 23 of the Criminal Code), Malta (Article 18 of the Criminal Code), Republic of Moldova (Article 29 of the Criminal Code), Montenegro (Article 49 of the Criminal Code), Netherlands (Article 56 of the Criminal Code), Norway (Article 219 of the Criminal Code, particularly in relation to domestic violence), Poland (Article 12 of the Criminal Code), Portugal (Article 30/2 of the Criminal Code), Romania (Article 35 of the new Criminal Code), San Marino (Article 50 of the Criminal Code), Serbia (Article 61 of the Criminal Code), Slovakia (Article 122 § 10 of the Criminal Code), Slovenia (Article 54 1 of the Criminal Code), Spain (Article 74 of the Criminal Code), Sweden (Article 4a of Chapter 4 of the Criminal Code), Turkey (Article 43 of the Criminal Code), Ukraine (Article 32 of the Criminal Code), and the United Kingdom (Article 14.2 (2) of the Rules of Criminal Procedure 2013).

in law or judicial practice. Additionally, the ECtHR has stated that a “continuous” offense is considered a singular act, so the law’s application should be based on the criminal law in effect at the time of the final act of the offense, provided that the actions executed are also punishable under the prior law.³⁶ A continuing criminal offense is a specific type of criminal offense in the draft Criminal Code, which is closely related to its legal classification and positive law punishment.

The causal connection in criminal offenses committed through acts of omission

The draft Criminal Code delineates the omissions that result in criminal liability, establishing the basis for the obligation to act, which, in instances of omission, may give rise to criminal liability. Alongside the stipulations regarding the institute of causal connection in Article 20 of the draft Code, which broadens the scope of causal conditions, Article 21 further delineates this institute, establishing the requisite criteria for causal connection in offenses committed by omission.³⁷

Introducing additional circumstances that exclude criminal liability

In response to recent developments in practice, the draft Criminal Code proposes the incorporation of supplementary cases for exclusion from criminal liability, categorizing them under a unified heading. In this context, additional factors have been incorporated, such as the consent of the individual entitled to a right under Article 16 of the Constitution (this limitation is vital, as euthanasia may be permissible in its absence), the remorse of the offender, the minimal risk associated with the criminal act, among others. The issue of comprehending a mental condition to regulate and understand the perpetration of a criminal offense has been raised in cases of irresponsibility stemming from such conditions.

Mechanism for determining punishment in cases of attempted offenses

Proposed Criminal Code reduces attempt punishments. The legislator cannot generalize by establishing the proximity of the criminal offense’s consequence as a criterion for determining the severity of punishment; this proximity fluctuates, necessitating a corresponding variation in the measure of punishment. The

³⁶ European Court of Human Rights. (2015). *Rohlena v. Czech Republic* (Application no. 59552/08).

³⁷ “1. No individual can be considered criminally liable if there is no causal link between the omission and the resultant consequence, or the potential of its occurrence, as a direct, requisite, or sufficient condition to generate the consequence. 2. Any neglect to avert a consequence, for which the individual is accountable for preventing its occurrence, is tantamount to the perpetration of a criminal offense if the execution of the omitted action would significantly reduce the probability of the consequence occurring.”

application and interpretation of the consequence element and the rationale for the criminal offense remaining an attempt have been misapplied in multiple ways.³⁸³⁹ In addition, the judiciary has misinterpreted substantive criminal law, making its simplification and elaboration, especially regarding attempts, necessary. The criminal code's attempt provision was drafted with the above factors and practical issues in mind to ensure uniformity. The draft additionally outlines the methodology for determining penalties for criminal offenses that are in the attempt phase.

Determining criminal liability for preparatory actions is another doctrinal issue. Preparatory action penalties are generally doctrinally flawed. The position in both parts of the draft Code has been consolidated: impunity as a core principle, with criminality in explicitly delineated circumstances. Only special provisions allow partial punishment for preparation.

Categories of accomplices and the corresponding punishments

The institute of cooperation is a vital component of the general part of the Criminal Code, primarily due to the perilous nature of offenses perpetrated in this manner and the complexities that emerge when multiple individuals participate in the commission of a criminal offense. The differentiation between simple and special forms of collaboration has yielded inconsistent decisions and classifications in practice, primarily due to challenges in defining the essence of collaboration, as emphasized by the general provisions of Article 28 of the Criminal Code.

The draft Criminal Code has significantly endeavored to define particular types of collaboration and to anticipate liability regarding contributions to the commission of criminal offenses, by examining the institution of collaboration in a proportional manner. Furthermore, regarding sentencing, the same issues that emerge with attempts are also present in the notion of collaboration. The draft delineates various punitive measures for accomplices, particularly regarding accessories, taking into account the extent of each individual's involvement and their specific role in the perpetration of the criminal offense.

Mitigating and aggravating circumstances in sentencing and alternatives to imprisonment

An excessively severe sentence violates Article 3 of the European Convention on Human Rights, according to the European Court of Human Rights.⁴⁰ Incarceration

³⁸ Decision no. 129 dated 29.06.2016 of the Penal College of the High Court.

³⁹ The Lezhë Judicial District Court issued Decision 361 on July 31, 2014, the Shkodra Court of Appeal issued Decision 37 on February 2, 2015, and the High Court Penal College issued Decision 126 on June 22, 2016.

⁴⁰ European Court of Human Rights. (2013). *Vinter and Others v. the United Kingdom* (Applications Nos. 66069/09, 130/10, 3896/10).

should only be used when no other measure or sanction is appropriate for the severity of the offense,⁴¹ according to the Council of Europe, which promotes efforts to reduce the use of liberty-restricting measures and increase the adoption of alternatives.⁴² In accordance with international standards, imprisonment as a punitive measure should be strictly limited and considered an *extrema ratio* in exceptional circumstances when no other measures are viable, according to the Penal Code of the High Court's decision, no. 90, dated 4.5.2016. Instead of relying on judicial discretion, the Criminal Code Project establishes a framework for diminishing penalties in mitigating circumstances. Second, it evaluates supplementary penalties by suggesting adding them to reduce recidivism by mitigating the effects of criminal behavior and rehabilitating offenders. Thirdly, it has considered a wider range of alternatives to incarceration, particularly for minor offenses, and viewed incarceration as a last resort to be used only when necessary. Fourth, it allows special provisions to include ancillary penalties, such as the confiscation of criminal instruments and proceeds. Fifthly, it introduces competition among criminal norms and the joining of criminal offenses for punishment individualization.

Lapse of criminal prosecution

In addition to the various conditions that cease criminal liability, such as the statute of limitations for prosecution, the statute of limitations for sentence execution, and provisions for amnesty and pardon in the current Criminal Code, the proposed new code introduces the victim's death as an additional ground for the expiration of criminal liability in cases where offenses are initiated based on the victim's complaint.

Innovations related to the special part of the Criminal Code Project

The primary modifications in the special part of the draft Criminal Code pertain to the definition and interpretation of criminal offenses and the critical components of particular categories, intricately linked to the principles and institutions of the general part of the Criminal Code. This part of the draft has undergone various amendments to its chapters and criminal offenses. The subjective aspect of the offender in all criminal offenses is clearly delineated in accordance with the principle of *nullum crimen, nulla poena sine lege*. The practice of employing analogous criminal offense figures, which were formerly categorized into multiple distinct

⁴¹ Council of Europe. Recommendation no. R (99) 22 of the Committee of Ministers to member states on prison overcrowding, paragraph 1.

⁴² Ibid, para 14. When possible, non-custodial measures should be promoted as they are becoming more effective at addressing offenders in society, benefiting both the offender and the community.

groups, has been avoided. This modification streamlines the framework of criminal law and facilitates the exact implementation of individualized punishments via the notion of concurrent criminal offenses or the repeated commission of a criminal offense. Criminal offenses have been categorized into titles, headings, and sections according to the legal interests they protect. Moreover, the Project advocates for a more rational methodology in the mitigation of punishment measures and the establishment of punishment limits, consequently restricting the court's unfettered discretion, which has been a contributing factor to practical abuses.

Harmonization of Criminal Code Project with international treaties and EU directives

In accordance with Article 5 of the Constitution of Albania, Law No. 43/2016 'On International Agreements in the Republic of Albania,' and the Stabilization and Association Agreement,⁴³ the Criminal Code draft includes the Statute of the International Criminal Court, which defines crimes against international law (Xhafo, 2012). Moreover, the European Convention on Human Rights and its Additional Protocols,⁴⁴ have also been considered.⁴⁵ The UN Convention against Transnational Organized Crime and its two Additional Protocols have been assessed, especially concerning the definitions of terms such as 'organized criminal group', 'serious crime', and 'criminal structured group'.⁴⁶ The Project has been aligned with the Protocol against the Smuggling of Migrants by Land, Air, and Sea, which complements the United Nations Convention against Transnational Organized Crime to ensure the execution of effective measures for preventing and combating migrant smuggling through land, sea, and air. The Project have updated narcotic plant cultivation regulations to comply with the Single Convention on Narcotic Drugs and the UN Convention against Illicit Traffic in Narcotics. Under

⁴³ EU-Albania Stabilisation and Association Agreement, signed on June 12, 2006, took effect on April 1, 2009. Article 70 of the SAA requires Albania to progressively align its laws and future legislation with the EU acquis.

⁴⁴ Dated in Rome, the 4th of November, 1950.

⁴⁵ The Constitutional Court issued Decision no. 65 on 09.12.1999, on the incompatibility of the death penalty provisions in the Criminal Code of Albania with the Constitution. The Court ruled that the death penalty, applicable during peacetime, as specified in articles 29/1, 31, 73, 74, 75, 77, 78, 79, 109, 141, 208, 209, 219, 221, 230, and 334 of the Criminal Code, was unconstitutional and therefore repealed.

⁴⁶ In accordance with Article 2 of the Convention, the following definitions are set forth: "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure; "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

the Council of Europe Convention on Cybercrime, the Project has implemented and improved measures to combat cybercrimes like computer forgery,⁴⁷ child pornography, and copyright violations. According to the Council of Europe Criminal Law Convention on Corruption, the Draft has strengthened provisions and made legal persons accountable for active corruption, influence peddling, and money laundering. The Project explicitly allows ancillary punishments to help confiscate criminal proceeds in accordance with the Council of Europe Conventions on the Laundering, Tracing, Seizure, and Confiscation of Criminal Proceeds. In compliance with the European Convention on the Suppression of Terrorism and its Amending Protocols, the Project guarantees that any grave act of violence not delineated by the Convention and directed at the life, person, or liberty of individuals is not classified as a political offence, related to such an act, or driven by political motivations. The Project has criminalized actions covered by the UN Convention for the Suppression of the Financing of Terrorism. The Criminal Code Project encompasses various treaties, including the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, the European Convention on the International Validity of Criminal Judgments, the European Convention on Extradition and its Additional Protocols, the European Convention on Mutual Assistance in Criminal Matters, the Convention on the Transfer of Sentenced Persons, and the International Convention for the Protection of All Persons from Enforced Disappearance. The Project integrates criminal offenses consistent with the Council of Europe Convention on preventing and combating violence against women and domestic violence and amends the statute of limitations to allow proceedings to begin once the victim turns 18. Based on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Project includes criminal offenses against children to protect them from all forms of sexual abuse and exploitation, including child prostitution and pornography.

Given the impossibility of enumerating all EU directives considered during the formulation of the Criminal Code, it is imperative to highlight that all directives containing penal provisions are integrated into this Project. These include directives concerning measures to combat fraud against the financial interests of the European Union; counter-terrorism efforts; prevention of financial system exploitation for money laundering or terrorist financing; establishment of minimum occupational health and safety standards; enhancement of worker safety and health; addressing child sexual abuse and exploitation; protection of the euro and other currencies from counterfeiting through criminal legislation; facilitation of the seizure and confiscation of criminal proceeds; prevention and combat of human trafficking while ensuring victim protection; delineation of fundamental elements of criminal offenses and penalties related to illicit

⁴⁷ Moreover, Convention Articles 7 and 8.

drug trafficking; addressing fraud and counterfeiting of non-cash payment instruments; safeguarding information systems from cyberattacks; tackling specific manifestations of racism and xenophobia; and ensuring environmental protection through criminal law.

Conclusions

The preceding discussion clearly indicates that the numerous interventions by the legislator in the current Criminal Code demonstrate its inadequate adaptation to contemporary developments in Albanian society. The current Criminal Code is inadequate in its institutions, concepts, and definitions of criminal offenses, does not align with international law, and permits significant interpretative latitude. Consequently, it is imperative to substitute it with a new code that encompasses all essential provisions to reduce the frequency of legislative interventions.

Upon examination of the Criminal Code Project, it is generally noted that it provides:

1. Structural innovations have been improved in both sections, featuring a distinct organization into titles, chapters, and sections, corresponding to the institutes of the general part and the classifications of criminal offenses in the special part.
2. Theoretical progressions. The institute of cooperation has significantly evolved in its definition, the categorization of collaborators, and the accountability of each. The institute's examination of both fictitious and material competition in criminal offenses affects the methodology for penalty determination. The punishment institute has broadened its scope to encompass ancillary punishments and measures, along with the evaluation of aggravating and mitigating circumstances, to assist the court in the individualization of punishments.
3. The need to direct judicial practice regarding the general principles and specific criminal offenses has been recognized.
4. Compliance with the legislative methodologies of international law.
5. The Draft Criminal Code incorporates the provisions of international treaties and EU law in its general and special sections, rectifying the notable shortcomings of the existing Criminal Code in this domain. New categories of criminal offenses have been established, encompassing long-recognized issues involving victims such as women and children. Moreover, there has been a significant augmentation and incorporation of offenses that jeopardize public safety, labor rights, food safety, and environmental protection.

To achieve its intended objectives, it is advisable for the Project to undergo a review of the legislative drafting guidelines. The objective of this review is to utilize consistent and suitable legal terminology throughout the Project, thereby ensuring clarity, accurate legal vocabulary usage, and proper management of sentence length and structure. In conclusion, this Project represents a significant and beneficial initiative, both in establishing comprehensive and precise legislation in criminal law and in aiding law enforcement agencies while promoting the advancement of Albanian criminal law scholarship.

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