

## NOTE

### On main novelties of the amendments to the Criminal Procedure Code

**(13 November 2017)**

Criminal Procedure Code of the Republic of Albania was amended by Law 35/2017, approved by the plenary session of the Assembly on 30 March 2017 and entered into force on 1 August 2017. The amendments reflect the recent Constitutional changes and the other laws adopted in the context of the Justice Reform in the criminal field, such as Law “On the organisation and functioning of the Prosecution Office”, Law “On the organisation and functioning of the institutions to combat corruption and organised crime”, “Code of Criminal Justice for Children” etc. Moreover, they aim at bringing Criminal Procedure Code in compliance with the best international standards being provided for in the international instruments, whereof the Republic of Albania is a part of or aims at acceding, such as European Convention of Human Rights, standards established by the case law of the European Court of Human Rights and the European Court of Justice, *acquis communautaire* of European Union etc. Some of the main novelties brought by these amendments and the articles where they have been introduced are the following:

- ✓ **Art. 9/a, Chapter VI, Art. 123, 128/a, 137, 138, 158, 169, 184, 279/a, 291, 340, 361 and related articles**, introduce the new concept of victims and their rights, such as the rights of the victim of the criminal offence, the rights of a minor victim, the rights of the sexually abused victim and human trafficking victim, in accordance to the respective EU Directives.
- ✓ **Art. 34/a, 34/b and related articles** - providing the rights and protection of the defendant in criminal proceedings in compliance with the EU Directives.
- ✓ **Art. 49/a** - Providing for the when mandatory defense paid by the state is obligatory in case defendant does not have one or when she/he does not have sufficient financial means.
- ✓ **Art. 361/a** - providing rules on interrogating a minor witness according to his/her age, making these provisions in line with the ones from Council of Europe on

the protection of Children against sexual exploitation and sexual abuse, EU Directives and European Court of Human Rights case law.

- ✓ **Art. 350, 351, 352, 353, 450** - reviewing provisions on trial *in absentia* in accordance to European Court of Human Rights case law.
- ✓ **Art. 34/b, 142/b, 495** - Review of the provisions on International judicial cooperation relations reflecting the conventions and international agreements ratified by Albania after the adoption of the Code of Criminal Procedure, as well as the regulation of the problems encountered in practice in the application of the provisions (Council of Europe on extradition and its additional protocols).
- ✓ **Art. 105, 115, 116, 122, 215, 221, 332/ ë and related articles-** Providing detailed regulations on documentation and audio/ audio- visual recording of all the judicial hearings, judicial actions and any other actions outside the judicial hearing. Provisions on serving notification to a victim, free defendant (for the first time), have been revised while notification of the legal entity as a defendant as well as notification of foreign person enjoying immunity have been provided.
- ✓ **Art. 36/a, 37/a, 37/b** - The institute of justice collaborator has been revised completely in order to reflect problems defined by the practice and in order to make this institute more applicable and more usable in practice.
- ✓ **Art. 133, 165/a** - The Institute on anonymous witness (witness with the hidden identity) has been established for the first time, even though only for limited offences.
- ✓ **Throughout the entire Code** - The role and position of the prosecutor in leading, controlling and conducting the criminal investigations has been straightened:
  - The conduct of preliminary investigations under the lead and control of the prosecutor.
  - Clear provisions on interceptions, sequestration and searches providing the necessary time limits for all these actions.
  - Distinction has been made between whether the interception is performed in public or in private places. It has been provided that the interception actions may be performed only by the conveyance of the equipment being installed in certain locations, being authorised and controlled by the prosecutor.
  - Control delivery has been provided as a separate action of judicial police controlled by the prosecutor, when the person is suspected of being involved in transportation of narcotic substances.

- Time limit of investigation has been extended from three months to six months for corruption offences and crimes committed by the structured criminal group, criminal organisation, terrorist organisation or armed gang (criminal offences provided for in Article 75/a, letters “a” and “b”) since the date that the name of the person to whom criminal offence is attributed to, has been written in the register of notification of criminal offences. Total time limit for prolongation (if requested and accepted by the court), beyond the period of two years for ordinary crimes may be extended up to three years under the conditions provided in the Code.
  - If the prosecutor decides to dismiss the charge for one of the reasons foreseen in the Code, before bringing the request for trial in front of the court, the defendant, victim or her heirs as well as the person having made the denunciation of complaint - may file an appeal to the Court in case some of the charges have been dismissed. Furthermore, for the purpose of transparency and control of the prosecutor, after the completion of preliminary investigations the prosecutor has to send a request to the judge of preliminary hearing for dismissal of a charge or the case. In the case the court upholds the decision of the prosecutor to dismiss the charge, the victim or her heirs have a right to file a complaint and in case the court rejects the decision of the prosecutor – the prosecutor can file an appeal.
- ✓ **Art. 201/a, 201/b** - Providing for very detailed provision on taking the DNA samples and other biological samples from the defendant and victims and their proper destruction.
- ✓ **Chapter IX** - Providing for the judge of preliminary hearing as a filter to provide accuracy, quality and sufficiency of the file before the case reaches the court of merit. Furthermore, the judge of the preliminary hearing has the obligation to check whether the prosecutor's request for sending the case to trial:
- Is complete or incomplete,
  - Is based on invalid act or unusable evidence or if there is a need to take new evidence;

Based on this evaluation the preliminary judge can accept the request for trial and send it for trial or dismiss the charges if he/she finds out that the one of the conditions as provided in the Code exists.

- ✓ **Art. 341 and 350** - The position, rights, obligations and competences of procedural parties are defined, enhancing the authority of the court in disciplining parties in criminal proceedings by imposing fines and other measures for the participants during the trial.
- ✓ **Section III and IV** - Providing for two new types of special trials (Judgment upon agreement and Penalty order) in order to reduce case load and to speed the criminal process in general. Furthermore, current regulations of the special trials (Summary trial and Direct trial) have been improved in order to prevent the abuse of these institutes.
- ✓ Improvement of regulation pertaining to the appeals.