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Relationship Between Amnesty and Prosecution in Relation to Private Prosecution

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Abstract

This article deals with the legal relationship between the institution of amnesty and the prosecution initiated at the request of the accusing victim, analyzing the interaction between the public interest represented by the amnesty and the procedural autonomy of the victim in the criminal process. Amnesty, as an act of normative nature and extinguishing effect of criminal liability, directly interferes in the legal-criminal relationship, raising issues on the limits of its application in offenses that are pursued only on the basis of the will of the injured party. In a historical perspective, amnesty is presented as an institute of early origin, since Ancient Greece, where it was used as a tool for restoring social peace after political conflicts, and which with the development of the modern state took on a normative character as a competence of the legislative body, becoming an instrument of criminal policy for reconciliation and institutional stability. Through the analysis of the provisions of the Criminal Code, the Code of Criminal Procedure and the case law, the study examines whether and to what extent amnesty prevails over the will of the accusing victim to continue the criminal prosecution, as well as the procedural consequences arising from it, including the dismissal of the case and the impact on the civil rights of the injured party. The article aims to highlight the balance between the principle of legality, the active role of the victim in proceedings with private prosecution and the political-criminal function of amnesty as a tool of the state's criminal policy. In conclusion, reflections are presented on the need for a normative clarification and unified interpretation, in order to guarantee legal certainty and effective protection of the rights of the parties in the criminal process.

Keywords: Amnesty, Accusing Victim, Criminal Code, Criminal Procedure Code, Extinguishing Effect, Appeal, Criminal Liability

Introduction

The amnesty institute is one of the most important mechanisms of criminal law, through which the extinguishment of criminal responsibility for certain categories of criminal offenses, the dangerousness of which is low, or subjects, is realized. Amnesty is an act provided by Article 71 of the Criminal Code and is provided as an act of normative nature⁴ and with a general character, directly affecting the fate of criminal liability. Analyzing the amnesty acts adopted over the years, recently, it is noted that the legislator has excluded from its benefit, those criminal offenses that are initiated at the request of the accusing victim, provided by the Code of Criminal Procedure of the Republic of Albania, specifically Article 59⁵. This exception is not accidental, but is related

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⁴ Referring to the context that this act is approved by the Assembly by 3/5 of all deputies, according to Article 81 of the Constitution of the Republic of Albania.

⁵ In Article 59 of the CPC, the criminal offenses that are prosecuted at the request of the accusing victim are: Articles 90, 91 and 92 of the Criminal Code refer to offences related to damage to the health of the individual, including intentional minor injury, minor



to the nature of these proceedings, where the will of the victim is an essential condition for the initiation of criminal prosecution.

In this context, the relationship between amnesty and criminal prosecution at the request of the accusing victim presents a particular legal problem. On the one hand, there is the competence of the legislator to exercise criminal policy through "*collective pardon*"; On the other hand, there is the right of the accusing victim to activate and pursue criminal proceedings and the effective protection of her interests. The analysis of this report requires a careful interpretative approach, in order to identify the limits of amnesty intervention in proceedings initiated on the basis of private initiative and to guarantee the balance between the public interest and the procedural rights of the victim.

The impact of amnesty is not limited only to the criminal plan, but also extends in relation to the civil process, especially when the claim for damages is raised within the criminal process or as a consequence thereof. In principle, amnesty extinguishes criminal liability, but does not automatically violate the right of the victim to seek civil compensation. Civil liability, as an institute of an autonomous nature, is based on the existence of the illegal fact and the damage caused, regardless of the fate of the criminal prosecution. However, the dismissal of criminal proceedings as a result of the amnesty may affect the way of proving the fact in the civil trial, shifting the burden of proof and forcing the injured party to independently prove the elements of civil liability.

In practice, it has been observed that the courts of first instance have followed the approach of suspending the review of the civil case until the end of the criminal proceedings⁶, considering the latter as having a preliminary impact on the resolution of the civil dispute. The reason for the suspension is related to the fact that the decision-making taken during the criminal process affects the process of proving the unlawful conduct of the defendant in the civil process. This approach is in line with the provisions of Article 70 of the Code of Criminal Procedure, which sanctions the effects of the criminal decision on the civil procedure. The effects of a criminal decision on the civil process relate precisely to proving whether the criminal offense has been committed and whether it has been committed by the defendant.

Therefore, the civil court considers criminal decision-making as having a preliminary effect for establishing the criminal legal fact, avoiding the risk of contradictory decisions. However, when the criminal proceedings end with a break due to amnesty, there is no criminal decision on the merits of the case, which restores the full burden of proof to the civil process⁷ and puts the court in front of the need to independently assess the existence of the illegal fact and its authorship.

injury and serious injury by negligence. Article 112, first paragraph, provides for the violation of the apartment, thus protecting the integrity and privacy of the residence. In the framework of the protection of personal dignity and reputation, Articles 119, 119/b, 120, 121 and 122 deal with insult, dissemination of personal secrets, unfair interference in private life and defamation. Regarding family relations and the interests of children, Articles 125 and 127 provide for the non-provision of means of subsistence and the unfair taking of the child. Article 254, on the other hand, deals with the violation of the inviolability of the dwelling.

⁶ Article 297, Code of Civil Procedure of the Republic of Albania, the Court decides to suspend the trial when: a) the case cannot be resolved before another criminal, civil or administrative case is resolved; b) it is required by both parties; c) one of the parties dies or the legal person dies; d) one of the parties does not have or has subsequently lost the legal capacity to act as a party and it is deemed necessary to appoint a legal representative; d) is expressly provided for in the law. dh) one of the parties submits a request for resolution of the case through mediation and the court deems it reasonable. During the suspension, no procedural actions can be performed.

⁷ Law no. 33/2024 "On granting amnesty", provides that amnesty does not affect the rights of the person in civil proceedings.

History of the inclusion of amnesty in the Albanian criminal legislation.

The amnesty institute has a long and complicated history in Albanian legislation, reflecting changes in criminal policies and socio-political developments of the country. Since the post-World War II period, amnesty has been used as an instrument of criminal justice policy to ease the burden on the judicial system, improve social harmony, and consolidate public order.

Prior to 1995, amnesties in Albania were not provided for within the Criminal Code, but were used as special legal measures – usually as executive decisions or special laws for historical, social or transitional cases. These amnesties are mainly related to the post-communist period-, including: The first laws on amnesty and rehabilitation after the dictatorship (including amnesty for former political persecuted) adopted as early as the '90s (such historical documents exist but usually not as part of the Criminal Code). (These acts exist historically, but are not part of the Criminal Code until later amendments.)

The First Law adopted in Albania that provides for amnesty for former convicts and politically persecuted after the fall of the communist regime was Law No. 7514 dated 30.9.1991 "On the innocence, amnesty and rehabilitation of former convicts and politically persecuted".⁸ This law states that the following persons are innocent and are called not convicted for moral, political, social and economic effects:

- All Albanian citizens who fled from Albania during the war or after the liberation until May 8, 1990 due to political beliefs or activity are innocent, with the exception of those who have committed acts of terror or diversion with serious consequences⁹.
- Amnesty is granted to those convicted of defamation and insult against the highest organs of the state and the Party, as well as those who have violated decrees no. 7459, dated 22.1.1991 and no. 7408, dated 31.7.1990, with the exception of those who have committed acts of terror or diversion with serious consequences¹⁰.
- All those convicted of crimes against the state and for not reporting or supporting these crimes are amnestied, except for those who have committed acts of terror or diversion with serious consequences¹¹.

The 1991 law was amended and supplemented in the following years, reflecting developments in the legal policy for the rehabilitation of former political convicts. Among the changes that this law has undergone is the one with Law no. 7772, dated 7.12.1993 "On some amendments to the law no. 7514, dated 30.9.1991, "on the innocence, amnesty and rehabilitation of former convicts and politically persecuted persons", amended by law no. 7660, dated 14.1.1993, and law no. 7719, dated 8.6.1993".

Since 1995, in the Criminal Code of the Republic of Albania, **amnesty is regulated by Article 71**, which has not been affected by any amendment to date. Currently, this article contains two paragraphs, which clearly define the legal bases for granting criminal amnesty. According to **the letter "ë" of point 1 of Article 81 of the Constitution**, the amnesty law must be approved by a majority of **3/5 of the deputies**, which translates into **a minimum of 84 votes**.

⁸ Law no. 7514, dated 30 September 1991, "On the innocence, amnesty and rehabilitation of former political convicts and persecuted persons," *Official Gazette of the Republic of Albania* (adopted on 30 September 1991).

⁹ See Article 1 of the Law

¹⁰ *ibid*

¹¹ *Ibid* article 4

Despite the importance of this institution and the broad constitutional and conventional debate¹² on the justice of using amnesty as an alternative and competitive form of exercising judicial power, it is strange that from 1995 until today, **there have been no more than two normative regulations for this institute.**

Amnesty according to the provisions of the Criminal Code of the Republic of Albania.

According to Article 71 of the Criminal Code of the Republic of Albania, amnesty is a legal act with the extinguishing effect of criminal liability and punishment. **With the act of amnesty, the competent body can completely exclude the persons involved from criminal prosecution, partially extinguish the prosecution or serving of the sentence, or replace the existing sentence with a more lenient measure.** The amnesty extends for criminal offenses committed up to one day before its proclamation, unless the relevant act provides otherwise. The purpose of the law is to alleviate the effects of criminal prosecution for certain actions, to restore the social balance and in some cases to implement a softer criminal policy, thus balancing the preventive with the rehabilitative function of criminal law.

The last law in the Republic of Albania that has been approved for granting amnesty was Law No. 33/2024 "On granting amnesty", which was approved in the Assembly and decreed by the President of the Republic of Albania in April 2024. The purpose of the legislator in drafting this law was to exclude from serving the sentence and from criminal prosecution in whole or in part, all those persons who meet the criteria according to the provisions of the law¹³.

The purpose of granting amnesty under the 2024 law is guided by some clear principles and objectives. It aims to respect **the principle of humanity**, ensuring fairer and more lenient treatment for persons who have committed low-risk criminal offenses. The granting of amnesty also aims to achieve **the purpose of punishment**, ensuring that the punishment is proportionate and effective, but without overriding the need for rehabilitation. The law focuses on **the low risk of persons who are amnestied**, including especially minors and women, and aims **at their education and rehabilitation**, as well as easier and faster integration into society. Another key objective is **to protect the public interest** by reducing the number of convicts in the penitentiary system and increasing **efficiency in the justice system**. The law also values **the protection of the best interests of the child**, making amnesty an instrument that combines the human aspect with legal and social needs.

Currently, a new draft law "On granting amnesty" **has been drafted and is expected to be approved**. As in any such law, the draft law clearly provides for the terms and categories of beneficiaries. Specifically, it defines **what is considered a "convicted person"**, i.e. the one for whom there is a **final criminal** decision-making, including the deadlines until when the criminal decision must have taken this form. The law also identifies the category of persons who **evade justice** – who are hiding, absconding or absconding – and who, although they have knowledge of the criminal proceedings, **voluntarily avoid prosecution**, the implementation of security measures or the execution of a final court decision of the sentence.

¹² Castle, Florjan. "The unconstitutionality of the amnesty." *Albanian Gazette Online*, January 13, 2026. <https://gazetashqiptare.al/2026/01/13/pakushtetutshmeriteeamnistise/>

¹³ See Article 1 of Law no. 33/2024 "On granting amnesty"

Prohibitive criteria for benefiting from amnesty and the category of criminal offenses involved

The prohibitive criteria for benefiting from the amnesty are mainly related to the nature of the criminal offense, the quality of the subject and the procedural stage of the case. In material terms, offences of high social risk, such as crimes against life and humanity, acts of serious violence, organised crime, corruption at high levels, as well as those that violate the fundamental interests of the state, are regularly excluded. Subjectively, recidivists, repeaters or evading justice are excluded, while in practice amnesty usually includes low- or medium-risk offenses, for which the sentences do not exceed a certain limit. This selective and restrictive approach shows the legislator's intention to maintain the effectiveness of the amnesty without compromising justice for offenses with higher social risk.

The list of exceptions also includes offences against the health, freedom and integrity of the person, morals, children and family, against property with aggravated elements, corruption, state authority, justice, free elections and those with terrorist purposes. This structure indicates a criminal policy that preserves the functioning of the rule of law, public trust and the protection of vulnerable categories. In essence, the prohibitive criteria for benefiting from the amnesty represent the mechanism through which the humanizing and political function of the amnesty is balanced with the obligation of the state to guarantee effective justice and protection of the public interest. The wider the list of exceptions, the more amnesty is reduced to a limited instrument with selective effect; But at the same time, this election strengthens its legitimacy on the constitutional and social level.

In this way, the analysis of the excluded categories is not just a technical issue, but a direct reflection of the criminal philosophy and the priorities of the criminal policy of the state.

Amnesty and limits on prosecution by accusing victims

The concept of the victim of a criminal offense has already been consolidated, although in fact the Code of Criminal Procedure does not provide for the definition of the term "victim of a criminal offense" in any of its provisions. Directive 2012/29/EU of Parliament and European Commission dated 25.10.2012, *"On setting minimum standards for the rights, support and protection of the victim of criminal offenses and replacing the Commission Framework Decision 2001/220/JHA"* (Directive 2012/29/EU), on which the amendment made to the CPC by [Law no. 35/2017](#). Referring to this directive, a victim of a criminal offense means: (i) an individual who has suffered a harm, including physical, mental, emotional, or economic damage, which has been directly caused by the criminal offense (*Article 2, letter (a), point (i)*); (ii) the family member of the person whose death was caused by a criminal offence and who has suffered a harm as a result of the person's death (*Article 2, letter (a), point (ii)*). So, as can be seen, the European legislator expressly refers to only natural persons with the term "victim" from a criminal offense, not mentioning legal persons.

In relation to this concept, the Criminal Panel of the Supreme Court has interpreted in the decision no . **00-2024-1995 Decision (298) dated 4.12.2024 that:**

"Notwithstanding the above, the College assesses that even though the above European directive expressly provides that only natural persons are victims of criminal offenses, as long as the Albanian legislator has not provided in any provision of the CPC the meaning of "victim" from a criminal offense, meaning as such only individuals, there is no reason to hinder legal persons, damaged by a criminal offense to seek to participate in the criminal process, exercising the rights provided by the law in the capacity of the victim of the criminal offense. On the other hand, in

such a case, her (the victim's) rights will be limited to the extent that they can be exercised by the legal person. In this context, the College, in its practice, has accepted in the concept of "victim" of the criminal offense "legal person", thus legitimizing it to file an appeal, and further recourse to the Supreme Court, in cases where the law provides for such a right.¹⁴

As a rule, the victim is not a party to the proceedings, despite participating in it, except in the case when he participates in the criminal proceedings as a civil plaintiff (Articles 61-68 of the CPC) or when he has the role of the accusing victim under Article 59 of the CPC. Although the CPC provides for the victim as a subject of the criminal process, the parties to the proceedings are only the prosecutor who exercises the criminal prosecution and represents the charge on behalf of the state and the defendant defended himself or through the counsel chosen or principally appointed, as the person against whom the criminal proceedings are conducted. In this context, the participation of the victim in the criminal proceedings, having the opportunity to exercise the rights provided for in the law, does not give him the quality of a "party" in the process. Exceptionally, the victim assumes the status of a party to the proceedings when he intervenes in the process in the capacity of a civil plaintiff, seeking compensation for the damage caused or in the case when he is in the capacity of the accusing victim, pursuing the private accusation.

The accusing victim is a procedural figure provided by Article 59 of the Code of Criminal Procedure of the Republic of Albania, which recognizes the "injured parties" from a certain category of criminal offenses the right to submit a request directly to the court and participate in the trial as a party to prove the accusation and claim damages. These offenses are provided for in Articles 90, 91, 92, 112 first paragraph, 119, 119/b, 120, 121, 122, 125, 127 and 254 of the Criminal Code of the Republic of Albania. In these cases, the prosecution is initiated on the basis of the victim's request, which takes an active role in the process. It presents the charge, proposes and presents evidence, defends its position during the judicial review and seeks both the trial of the accused, his guilty plea, and compensation for the damage caused. In the case of damages, the accusing victim has the right to file a civil lawsuit in the criminal proceedings. A civil lawsuit in criminal proceedings is the procedural means provided by Article 61 of the Criminal Code which recognizes the right of the injured by the criminal offense as well as his heirs to demand the return of property or compensation for damages. This right is exercised within a certain period of time and the legislator has provided for a deadline until the judicial review has begun. As for the Court's decision-making, either at the request of the parties but also and mainly it can decide to separate the lawsuit and try it from the civil court if it is assessed that its trial would drag out the criminal process.

One of the procedural problems that have arisen regarding the accusing victim pertains to the participation of the prosecution in this trial and the amnesty for the figures of the criminal offense who are prosecuted according to Article 59 of the Criminal Code. So: 1) In cases that are pursued through private criminal prosecution by the accusing victim, according to Articles 59 and 60 of the Criminal Code, the court has the obligation only to notify the prosecution, in order to participate in the trial, or is the participation of the latter mandatory, and consequently the absence from the hearing is insurmountable by the court? 2) Does the amnesty also apply to criminal offenses that are prosecuted with a private criminal charge (i.e., by the accusing victim), or only for those that are prosecuted with a public criminal charge?

¹⁴ See decisions no. 00-2023-126 (19), dated 19.01.2023; No. 00-2024-638, dated 9.4.2024; no. 00-2024-1103, dated 11.06.2024, of the Criminal Panel of the Supreme Court.

As for the first question, the provision has provided that the prosecution participates in the trial of these cases and, as the case may be, requests the conviction of the defendant or his innocence. The role of the prosecutor in such trials has a more special nature compared to other trials. This is because the criminal prosecution in the specific case for this category of criminal offenses is initiated with the will of the accusing victim. The legislator in the present case recognizes the prosecutor to participate in the process precisely because of the public interest that exists and in criminal cases with private¹⁵ charges.

However, it is very important to distinguish between the obligation to notify and the obligation to participate in processes of this nature. As mentioned above, the legislator recognizes the right of the prosecutor to participate in the process, but also the court has the obligation to notify the prosecutor about the court hearing as a condition for the validity of the process. But the absence of the prosecutor in the session, as it is an insurmountable obstacle, this is because even in such processes, despite the fact that the criminal prosecution, the defense of the accusation belong to the accusing victim, this does not deny the importance of the figure of the prosecutor who protects the public interest in the specific case by requesting, as the case may be, the innocence or guilty plea of the defendant. This stance guarantees a fair and valid process. However, even though the accusing victim exercises the prosecution instead of the prosecutor's initiative, it does not completely replace the latter.

With regard to the second question, criminal offenses that are prosecuted with private charges, according to Article 59 of the Code of Criminal Procedure of the Republic of Albania¹⁶, are initiated only on the basis of the request of the accusing victim. Without this request, criminal prosecution is not set in motion. So, in these cases, the criminal interest is closely related to the individual interest of the injured party and not to a pronounced public interest that requires the ex officio intervention of the state.

Starting from this nature, it can be argued that amnesty – as an act of political and public character, aimed at extinguishing criminal liability for reasons of general interest – should not interfere with the relationships that the legislator has left at the disposal of the victim's will. If the prosecution depends on its initiative, then the continuation or renunciation of the prosecution should also remain within the sphere of its procedural autonomy.

This approach relies on distinguishing between:

- offenses with public prosecution, where the interest of the state is primary;
- offenses with private prosecution, where the state intervenes only if the victim requests it.

This means that the criminal proceedings are conditioned by an act of the will of the injured party. Without the will of the accusing victim, the proceedings are discontinued¹⁷.

¹⁵ See Article 59/2 of the Criminal Code. 2.Shipping: The prosecutor participates in the trial of these cases and, as the case may be, requests the conviction of the defendant or his innocence.

¹⁶ Article 59, Accusing Victims.1. The person who has been harmed by the criminal offenses provided for by Articles 90, 91, 92, 112 first paragraph, 119, 119/b, 120, 121, 122, 125, 127, and 254 of the Criminal Code has the right to submit a request to the court and participate in the trial as a party to prove the charge and claim damages.2. The prosecutor participates in the trial of these cases and, as the case may be, requests the conviction of the defendant or his innocence.

¹⁷ See Article 59/3 of the Criminal Code. If the accusing victim or the counsel appointed by him does not appear at the hearing without

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From this dispositive nature, it can be argued that:

- criminal prosecution does not stem from the ex officio state initiative, but from individual will;
- the public interest is relative, while the private interest of the victim is determinant;
- The legislator has given the victim the power to activate and extinguish the proceedings.

From this point of view, amnesty – as an act of general character aimed at extinguishing criminal responsibility for political or social reasons – would interfere with a relationship that the legislator has placed under the control of the victim.

Likewise, for the cases of Article 59 (private accusation), where the appeal is made directly to the court by the accusing victim, the dispositive character is even more pronounced: the victim is the subject who holds the accusation and who moves the process forward.

In the context of amnesty, the procedural autonomy of the victim constitutes an essential argument: if the proceeding exists only because of her will and can cease only by her act, then the intervention of a general act that extinguishes the prosecution regardless of the victim's attitude creates a conflict between the public interest and her procedural autonomy.

CONCLUSIONS

First, the institution of amnesty, provided by Article 71 of the Criminal Code, constitutes a mechanism of normative nature and general character, through which the extinguishment of criminal liability for certain categories of offenses or subjects is realized. It represents an intervention of the legislator in criminal policy, for humanitarian, social or political purposes, directly affecting the fate of criminal prosecution.

Secondly, the exclusion from the amnesty of criminal offenses initiated at the request of the accusing victim (Article 59 of the Code of Criminal Procedure of the Republic of Albania), is related to the private nature of these offenses. These are offenses with lower social risk, which affect individual interests and where the will of the victim is an essential condition for the initiation of criminal prosecution. In this sense, the intervention of the legislator through amnesty would violate the procedural autonomy of the victim.

Thirdly, amnesty extinguishes criminal liability, but does not automatically extinguish civil liability. Civil liability retains an autonomous nature and is based on the existence of the unlawful fact and damage. However, the dismissal of criminal proceedings due to amnesty affects the civil process, as the absence of a criminal decision on the merits of the case shifts the full burden of proof to the injured party.

Issues

1. **The relationship between amnesty and victim autonomy:** The exclusion of offences prosecuted at the request or complaint of the victim raises discussions on the balance between the state's criminal policy and the procedural rights of the individual. The question that arises is whether this exception should be absolute or allow for exceptional cases.

reasonable cause, the court decides to dismiss the trial

2. **Impact on the civil process:** The dismissal of the criminal proceedings due to the amnesty creates practical difficulties in the civil process, as there is no criminal decision that has a preliminary effect on the criminal fact. This increases the burden of proof for the victim and can lead to different decisions on the same legal fact.

Recommendations

1. More detailed regulation of the relationship between amnesty and civil procedure

Although Article 7 of the current law no. 33/2024 "On granting amnesty" provides that its implementation does not violate civil rights in criminal proceedings, this provision remains at the declaratory level and does not fully regulate the consequences of discontinuing criminal proceedings due to amnesty in civil proceedings. For this reason, a normative intervention is recommended that clearly defines the procedural effects of amnesty on civil proceedings, especially regarding the standard of proof, the distribution of the burden of proof and the usability of criminal proceedings acts as means of evidence. Such an arrangement would ensure coherence between criminal and civil jurisdiction, avoid the risk of conflicting judgments, and strengthen legal certainty in judicial practice.

3. Strengthening the protection of the victim's rights: As the legislator has excluded from the benefit of amnesty criminal offenses that are prosecuted at the request or appeal of the victim, it has intended to protect its procedural autonomy and not to interfere in matters that fundamentally depend on the individual will. However, in the event that in the future the law on amnesty will also include criminal offenses that are prosecuted at the request of the victim or by appeal, mechanisms should be provided that guarantee the protection of the victim's rights. These include informing it in advance, maintaining the right to civil compensation, actively participating in the decision-making process, and clear procedural standards. This will ensure a fair balance between the public interest and individual rights, while preserving the effectiveness of the amnesty and legal certainty.

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188 *Relationship Between Amnesty and Prosecution*

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