

The Criminal Justice System in Albania

Analysis of the response of the justice system to trafficking of narcotics

EXECUTIVE SUMMARY

The main objective of this Study is to assess the penal policy pursued by the Albanian justice system in the fight organized crime during the period 2005 to 2015. Considering that the justice system is one of the main institutions involved in the fight against organized crime and corruption, it is of outmost interest and importance to analyze and assess factors and standards taken into account and applied during court proceedings against defendants charged with alleged involvement in illegal activities and involvement in organized crime. In order to have better insights into the penal policy of the justice system towards organized crime, the Study starts by reviewing a vast body of legal literature, and at a later stage examines as many as 225 court decisions of the Serious Crimes Court (hereafter referred to as “GJKR”), for the period 2005-2015. Furthermore, 10 interviews were conducted with experts of the field (criminal law attorneys, judges and prosecutors of serious crimes). The analysis was carried out based on five preselected indicators:

- I. Legal interpretations of forms of complicity and cooperation while carrying out serious criminal offenses;
- II. Duration of court proceedings and delays;
- III. Sentencing ranges;
- IV. Pre-trial detention orders;
- V. Summary trial (short trial).

The penal policy of the judicial system is closely linked to the quality of the Albanian legal system both in the material and procedural law, but it is also particularly affected by the approach of the courts. This Study reveals that there is ample room for improvement regarding the quality of the legal system both in the material and procedural law, but also with regards to the approach of the courts.

The analysis of the **Indicator of “summary trial”** which is a procedural element of court proceedings, shows that the role of the courts in analyzing and assessing evidence in this form of trial, especially following the changes made in 2017 to the Code of Criminal Procedure, is becoming more passive as it is sidelining and preventing the courts from the process of assessing the evidence presented during court proceedings of alleged serious crimes, which is a very important element in the case of giving a judgment on complex cases related to organized crime. Summary trial proceedings help the justice system relieve its workload, but this is not the case with serious crimes courts, which deal with fewer cases as compared to

other Albanian courts. Therefore, it should be up to lawmakers to assess whether the adoption of these procedures is helping the fight against organized crime or not. The Study also points out that a positive step in this direction was taken after 2017 changes in the Code of Criminal Procedure which do not allow summary trial proceedings for offences that carry life imprisonment sentences.

However, the syndrome of frequent and hasty amendments to the Criminal Code and the Code of Criminal Procedure plays a very important role in courts' interpretations. The penal policy of the courts is affected by the phenomenon of "patching together" bits and pieces of criminal legislation without any in-depth studies or without regard for any systemic reform. This is also confirmed by the analysis of the **indicator of "legal interpretation,"** which reveals discrepancies and controversies in dealing with specific forms of offenses related to organized crime, because for example: specific criminal acts and offenses related to terrorism are much better defined by the law, as compared to criminal offenses carried out in the context of a criminal organization or armed gang.

On the other hand, this Study shows that the Serious Crimes Court of first instance has adopted a wider approach in interpreting particular articles relating to specific forms of complicity in carrying out criminal acts. At the same time, the Serious Crimes Court of Appeal and the Supreme Court have adopted a narrower interpretation of the law, making it harder to prove specific aspects of collusion in carrying out trafficking of narcotics and other serious crimes, especially when it comes to organized crime.

After a study of the indicator of "legal interpretations" one may get the idea that judges of Serious Crimes Courts believe that Albanian criminal organizations lack sophistication, to the extent that they may believe its typical operative form is that of a "structured criminal group." However, in their reasoning of decisions the courts give particular importance to the organizational structure of the criminal enterprise to make a distinction between special complicity in carrying out criminal acts as opposed to minor acts of criminal cooperation, even though the law says that a sophisticated structure is not a prerequisite to meet the criteria of an "structured criminal group". If the opposite were true, a structured criminal group would be classified as a "criminal organization."

There is still some confusion regarding the interpretation of courts and respective sentences passed by them. When analyzing their reasoning, one may get the impression that the courts examine particular aspects of "structured criminal groups" as if they were criminal organizations, but when they pass sentences they refer back to the definition of structured criminal groups, even though in some cases the prosecution had expressly demanded that defendants be tried as members of criminal organizations.

In this context, courts have issued lenient sentences, putting into question the penal policy of the courts. Another problem related to this approach is that the jurisprudence has made some headway regarding legal

interpretation of a structured criminal group, but the interpretation of particular aspects of criminal organization is lagging behind. This will make it difficult for courts to argue that certain criminal acts meet the criteria of workings of a criminal organization, and as a result lesser sentences will be passed in the future for crimes committed by criminal organizations, which will have a negative effect in the fight against organized crime.

Regarding the fight against trafficking of narcotics, the approaches of courts and prosecution offices seem not to match the scope of the problem Albania is facing at the moment. As shown by the analysis of indicators of **“legal interpretation,”** during the period 2005-2015 most of the criminal acts related to narcotics have received sentences for general criminal complicity not for special conspiracy as part of a criminal enterprise. Furthermore, in recent years (2013-2015), courts tend to issue sentences for individual offenses and not criminal complicity, while it is fairly established that it is very difficult to carry out trafficking of narcotics domestically and internationally without coordination and cooperation between several parties. This means that the penal policy of courts and prosecution offices needs to be updated.

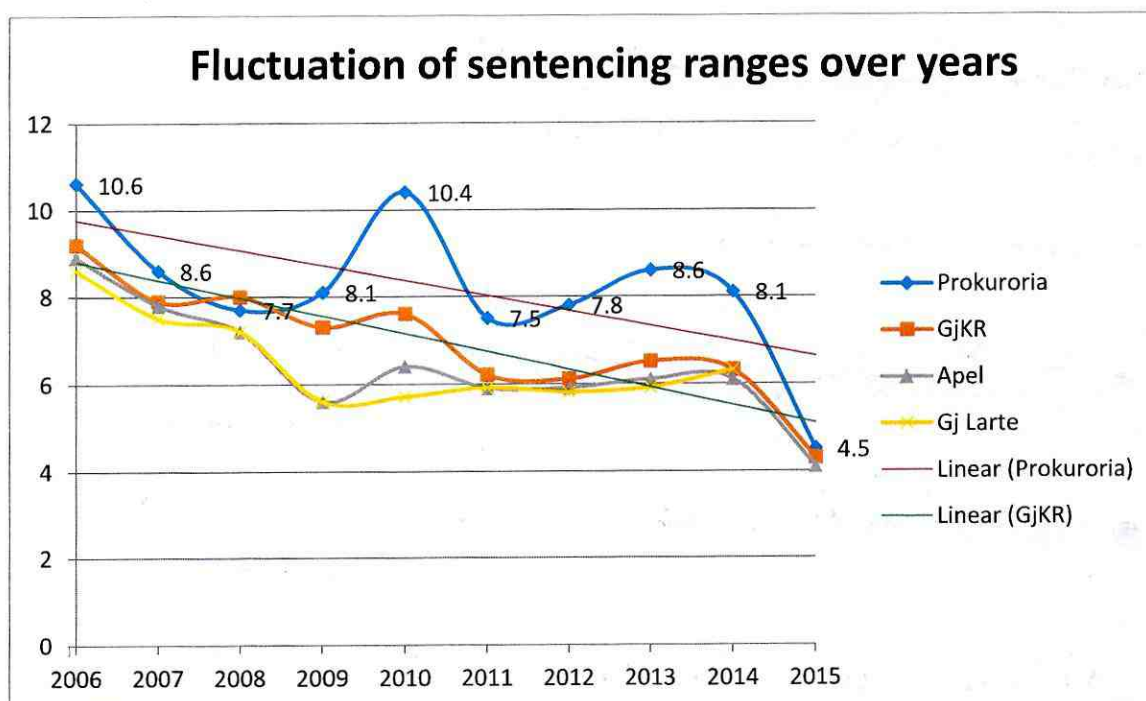
This Study analyzed and assessed the **indicator of “amount of punishment”** for offenders found guilty of serious crimes, including criminal offenses in the trafficking of narcotics, and found out that:

During the 2006-2015 period a large portion of defendants were sentenced by the Serious Crimes Court with jail terms ranging from five to 10 years, (38 percent of the total numbers of sentences passed by GJKR), while the fiscal fines are the least frequent kind of punishment (only one percent of offenders). The most severe sentence available to courts, life imprisonment, has been issued in 125 cases (five percent of defendants).

In general, the Court of Serious Crimes adopted a harsher penal policy when it started functioning, and that policy got softer with the passing of years. For example, prison sentences of 10-25 years were more frequently passed by the court during the first two years of its existence, reaching a peak in 2008, but since then such severe sentences have been passed in fewer cases.

There has also been a sharp reduction in the number of life imprisonment sentences, as the court did not issue a single life sentence during 2015. On the other hand, the number of sentences of 5 to 10 years imprisonment have increased on a year by year basis. Alongside this trend, the data show that there has also been an increase in the number of sentences of 2 to 5 years in prison. However, the passing of softer sentences by the court, up to two years in jail, has seen the sharpest increase of them all.

Chart: Average jail sentences handed to defendants, jail time asked by prosecutors and court sentences (all three levels), in court decisions analyzed for the purpose of this study.



Lines: Prosecution (blue), GJKR (orange), Appellate Court (gray) Supreme Court (yellow)

Some 97 percent of the defendants accused of offenses related to narcotics were found guilty in the court of first instance. The majority of them were sentenced to two to five years in jail (56.2 percent of offenders). This amount of jail time is practically half the sentence prescribed by the article 283/a/ 2 of the Criminal Code on trafficking of narcotics” (10-20 years in prison), which was the provision most often applied by prosecutors and courts during the period 2006 – 2015.

Unlike previous years, more recently in 2014 and 2015, almost all the cases of drug trafficking that were taken into consideration for the purpose of this study (random selection) involve general complicity or no elements of collusion at all. Failure to identify elements of specific forms of conspiracy (criminal organization / structured criminal group) or complicity according to article 283/a/2, has resulted in lesser sentences for offenders.

A study of court decisions involving defendants charged with drug trafficking revealed that most of the defendants in court cases during the 2013-2015 period were persons in economic hardship, students, unemployed, and without prior criminal convictions. They mostly played secondary roles in the illegal enterprise (transporter, driver), while no charges were levied nor investigations launched against organizers, financiers, or buyers of drug shipments.

This study found that there is a tendency to almost always issue the measure of exception of “pre-trial detention.” Defendants accused of criminal offenses committed in collaboration with others are always

given a **precautionary measure of “pre-trial detention.”** Even though it may be understandable the urge to keep defendants in jail, considering the gravity of offenses they may have carried out and how dangerous they may be, the reasoning of the court for issuing these security measures of “pre-trial detention” is often not well-thought enough to justify and confirm the application of this measure of exception. It is necessary to provide more specific data on particular circumstances and reasons that may justify depriving defendants of their freedom, instead of using standard phrases with reference to procedural provisions or paraphrasing them. On the other hand, arguments provided by defense attorneys in opposing the passing of a pre-trial detention order, are usually weak and superficial and should be better prepared.

Many of the criminal offenses carried out by members of a structured criminal group, such as “Trafficking of narcotics in cooperation, or more than one time,” involve proceedings with more than one defendant, while postponements of court sessions cause further delays in completing court cases. **The average duration of court proceedings** for trafficking of narcotics in cooperation with others in courts of first instance is roughly 333 days. Over recent years there have been fewer postponements of court hearings, but they still happen. One of the main reasons of long dragging court procedures is often the failure of defense attorneys to attend court hearings, frequent firing and hiring of lawyers by defendants, failure of prosecutors to attend or their requests for special hearings to present additional evidence or to prepare for final deliberations, failure of justices to show up, nonappearance of witnesses or problems in making sure that they are in attendance.

The findings of this study show that the role of criminal justice and Albanian courts in the fight against organized crime in general and trafficking of narcotics in particular, needs to be reviewed and analyzed further. Even though shortcomings in the criminal law framework are important factors that undermine the fight against organized crime, the law gives courts enough leeway to upgrade the fight against organized crime and trafficking of narcotics, in particular through the application of their “power” of legal interpretation and giving of sentences. However, the findings of this study indicate that the justice system has allowed room and opportunity to the organized crime to avoid just punishment.

Authors

Fabian Zhilla

Besfort Lamallari

Nita Shala