Jurnalul de Studii Juridice

Journal of Legal Studies

ISSN: 1841-6195 (print); e-ISSN: 2067-8509 (electronic)

Covered in: Index Copernicus, Ideas RePeC, EconPapers, Socionet, CEEOL

THE INJURED ACCUSER'S DEMAND

Mirgen PRENÇE

Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49

Published by:

Lumen Publishing House

THE INJURED ACCUSER'S DEMAND

Mirgen PRENÇE[1]

Abstract

The article analyzes the request of the injured accuser under Albanian law. Relevance of the injured accuser's request stems from the fact that the initiation of criminal proceedings in the case of the injured accuser's request depends on the particular interest of the injured person .

Given the definition of the injured accuser's request , note that the Albanian Criminal Procedure Code does not have a definition of what is meant by the request of the injured accuser. Analyzed the conditions that must be met for acceptance of the injured accuser's request . We also analyzed the paper is a civil claim in the criminal process. Considering the fact that the Albanian Criminal Procedure Code is almost identical copies of the Italian Criminal Procedure Code, some aspects of the injured accuser's request under penal procedural legjislacionnit have compared to that of the Italian Criminal Procedure Code to see which are differences between the two legislations but also to enable more effective protection of the rights of the injured person .

The study seeks to contribute to previous searches that were made in connection with the request of the injured accuser. To obtain best results, search based on these methods: observation, comparative jurisprudential. The study may be of interest to those working in the legal field, researchers as well as other people.

Keywords:

criminal charges, civil suits, the injured person, the consent of the parties, the trial.

[1] Ph.D. Lecturer, Faculty of Law, European University of Tirana, Albania.

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

I. Introduction

The request is a procedural act by which the injured person from committing a criminal act that expresses the person who committed the criminal offense of criminally liable for the actions that he did. No request of the injured accuser cannot be made possible application of the criminal law and therefore can neither begin, nor can continue the prosecution or trial of the case.

According to the first paragraph of Article 58 of the Penal Code, the injured person and his heirs have the right to request the initiation of criminal proceedings and repair the damage. While under Article 58 second paragraph if the injured person has no ability to act his rights recognized by law, exercised through legal representatives (Gjoleka, Gjoleka, 2006). The injured person is entitled to apply to the procedure body and require the taking of evidence. If his request is not accepted by the prosecutor, he has the right to appeal in court within five days from the moment you know has taken on the request of the prosecutor reviewed .

The terminology used by the lawmaker in Article 58 paragraph 2 of the Criminal Procedure Code in connection with the case when the injured person is a minor does not follow the same line with the terminology used in the Civil Code, in connection with the case when a person has reached the age of 18 and has full capacity to act. Full capacity to act gains through marriage, the woman who has not attained the age of 18 (Article 6 of the Civil Code). A minor who has attained the age of 14, can only perform legal actions with the previous consent of his legal representative (Article 7 of the Civil Code). Terminology differs from the Family Code, if a person is deprived of the ability to act, guardian represents and administers property of the person as it administers the parent property of the minor who has not attained the age of 14. But for the case when the person is limited capacity to act, guardian gives consent and administer the property of such person as the parent gives consent and administer the property of the minor who has attained the age of 14 (Article 309 of the Family Code). Criminal Procedure Code is predicted only case when a minor has the capacity to act, without distinguishing between the full capacity to act and the limited abilities to act. Given the fact that the courts do not distinguish cases where the injured person is a minor and require as a condition of the minor only be represented by a legal representative. I think you should make the difference between full capacity and limited abilities that you be given the opportunity to minor who has attained the age of 14 to apply to the injured accuser with the consent of the legal representative for the reason that it carries legal

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

action under section 7 of the Civil Code and why not also have the right under the Criminal Procedure Code. For these reasons *de lege ferenda* propose that Article 58 paragraph 2 of the Criminal Procedure Code have across your following:

If the injured person nu has the ability to act, his rights are exercised by the legal representative. When the injured person has deftly limited, exercises his rights with the consent of the legal representative.

II. The right to make a request for initiation of criminal proceedings

The right to make the requests for initiation of criminal proceedings is personal. The right may be made personally or by a representative. Legal person can apply to that legal perqaqeuesit. If the injured person lacks capacity to act, the request may present legal representative (parent or guardian).

If the injured person is not able to act, under section 59 CPC, the request must be submitted in the name of the person directly harmed by the offense and not on behalf of someone else. Another person can protect the interests of the injured person, but with the proviso that should not be presented as an injured party.

There is a legal provision to predict the onset of the issue mainly by the prosecutor if the legal representative does not request for initiation of criminal proceedings under Article 59 of the CPC and Article 282 of the CPC or even if it makes the withdraw request. In these cases, the juvenile is vulnerable to criminal procedural law. For this reason it is necessary for improvement in the Criminal Procedure Code to have the opportunity to start prosecution proceedings mainly in case the legal representative does not apply for the beginning of criminal proceedings.

According to Article 284, paragraph 1 of the CPC, in the case of offenses for which the law provides that it is necessary to request the injured party, it should not become a fixed term because there is such a term explicitly sanctioned, but one only term that should be kept in mind is the statutory limitation on offense.

According to Article 66 paragraph 1, letter d) of the Criminal Code, the limitation period is 3 years offense for the offense providing for imprisonment up to 2 years, but the limitation period is two years for the fine according to Article 66, paragraph 1 letter d) of CPC, without any

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

important size of the fine. The limitation period begins to run from the moment the crime was committed.

A person injured by the criminal acts referred to in Articles 90, 91, 92, 112 first paragraph, 119, 119 / b, 120, 121, 122, 125, 127, 148, 149 and 254 of the Criminal Code has the right to present petition with the court and hove a party to the trial to prove the charges and to seek compensation for damage. When are committed offenses mentioned above, the prosecutor takes part in the trial and punishment can ask the person who is accused or his innocence. If the aggrieved plaintiff or his designee defender did not appear at the hearings without good cause, the court decided to dismiss the case (Article 59 of the Code of Criminal Procedure).

For the offenses referred to in Articles 89, paragraph 1, 102, 105, 106, 130, 239, 240, 241, 243, 264, 275, 318 of the Penal Code, the prosecution begins only with the complaint of the injured, who may withdraw it at any stage of the proceedings. The complaint filed by the injured person to The Prosecutor or the police court by a declaration or by another person with special attorney, where the expressed willingness to commence proceedings in relation to a fact by law as a criminal offense. When the complaint is oral, a record held for this purpose and signed by the person injured or his representative. He who takes the appeal verifies the identity of the victim and sends prosecutor acts. But for the cases provided for in Article 59, the complaint filed in court (Article 284 of the Code of Criminal Procedure).

There are some differences between the remedies provided in Section 59 of the Criminal Procedure Code and Article 284 of the Criminal Procedure Code. On appeal provided for in section 284 of the Criminal Procedure Code, the injured person may make a complaint in the body require the administration procedure and evidence. If his request is not taken into consideration, he has the right to appeal within 5 days from the moment of notification (Article 58 Code of Criminal Procedure). But for the offenses provided for in Article 59 of the Criminal Procedure Code, the aggrieved party must present evidence to the court itself. Appeal for cases provided for in section 284 of the Code of Criminal Procedure does not appear in court. Criminal offenses can be implemented in public places and the body procedure cannot be indifferent but should build links with the injured person and must be wondering whether to appeal. If the injured person says that it wants to appeal in this case the situation we find ourselves before the waiver of appeal, provided for in section 285 of the Criminal Procedure Code.

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

In Article 60 of the Code of Criminal Procedure is anticipated that the country where the application filed by the injured accuser, who is in the court sekreatrine. If the application of the injured accuser does not meet the conditions prescribed in law it is invalid. The application must meet these conditions to be valid:

a) personal data of the person injured;
b) personal data of the person charged;
c) the name and surname and representatives of attorney;
d) Match the reasons justifying the request;
e) the signature of the person injured or representatives.

Courses in paragraph 2 of Article 60 of the Code of Criminal Procedure is provided notice of the person who works attributed that to the notification made to take the quality of the defendant (Islami, 2000).

According to Article 288 of the Criminal Procedure Code when necessary authorization for the initiation of criminal proceedings, the prosecutor submits the request in the body provided for in law. The application must be submitted within 30 days from the moment of writing in register of personal data of the person to whom the authorization is necessary. Criminal Procedure Code is not anticipated that any distinction between authorization is required when processing starts mainly when processing starts at the request of the injured accuser under section 59 of the Criminal Procedure Code. Given the fact that the prosecutor also participates in the trial of these offenses means that authorization must be requested from him. Constitutional Court, decision no. 39 dated 23 June 2000 has interpreted Article 37 of paragraph 2 of the Constitution , deciding that in the case of Article 59 of the Criminal Procedure Code , the authorization for the initiation of criminal proceedings for persons who have sent Parliament immunity from the court where the application was lodged and non- prosecution (Islami, Panda, Hoxha, 2006). In the decision of the Constitutional Court is presented as an argument the fact that the start of criminal proceedings is the competence of the court and must seek court authorization without needing a prosecutor's request.

III. Waiver of the right to appeal and the appeal withdrawal

Code of Criminal Procedure Article 328, paragraph 1, letter c, are anticipated when lacking criminal responsibility when the aggrieved party has not filed an appeal but the case where the aggrieved party has filed a complaint and waived appeal.

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

Initiation of criminal proceedings at the request of the victim is the exception to the rule that criminal proceedings departure and deals mainly with the possibility of criminal procedural law provides notice to the person damaged organs or not criminal proceedings for initiation of penalty that we achieved the offender. Hazard due to packet having offenses referred to in Articles 59 and 287 of the Criminal Procedure Code is left to search the start of criminal proceedings the injured party and not the prosecution. another Persian motif that is left of the damaged launch criminal proceedings has to do with the fact that publicity of criminal proceedings may awaken the suffering of the victim or conflicts arise between persons of the same social environment (Neagu, 2004). Closely related to the request of the injured, Criminal Procedure Code is provided a waiver of the right to appeal (Article 285), the withdrawal of the appeal (Article 286) and the agreement of the parties (Article 338).

In Article 285 of the CPC are anticipated conditions to be met to achieve a waiver of the right to appeal. Waiver of the right to appeal can be made in two ways: in person by the injured person or through representatives signed the statement. The law provides form (written or oral) that there must be a waiver of the right to appeal and the body in which this right is realized (prosecutor or judicial police officer). Waiver of the right to appeal cannot be done in court but only the prosecutor or judicial police officer. Waiver of the right of appeal refers to the case when it is not done yet appeal, if an appeal cannot be made under Article 285 of the CPC implemented but will be implemented withdrawal of the appeal. Not valid renouncement term or condition. Criminal procedural law permits the statement that reflects the withdrawal of the right of appeal is also lifting up the civil lawsuit

In Article 286 of the CPC is predicting a waiver of the right to appeal. Withdrawal of appeal may be made by the person injured in person or by representative with statement filed in the proceeding. The withdrawal of the appeal may be submitted to judicial police officer, prosecutor or court. Withdrawal of appeal can be performed at any stage of the proceedings, provided that this court decision not to become final. Although not provided for in section 286 of the CPC, realized that the withdrawal of the appeal trial phase should be agreed and the accused, this fact stems from the interpretation of the provision of Article 338 of the CPC "If one is injured withdraws the request and he was accused accepts , the court dismisses the case". Paragraph 3 of Article 286 of the CPC provides for the loading of person that attracts the appeal costs, unless the act of withdrawal

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

is projected to be agreement that the costs wholly or partly dependent on him against which complaint is made.

Closely related to the right of withdrawal from the appeal (art. 285 CPC), with the withdrawal of the appeal (art. 286 CPC), is the agreement of the parties (art. 388 CPC).

IV. Reconciliation of parties

Reconciliation of parties presupposes the mutual expression of the will (by the aggrieved and the accused) in order to put out the conflict between them as a result of the commission of the offense.

Consent of the parties that lead up to the holiday criminal issue must meet the following requirements: be personal, definitive, total, of unconditional and not realized until a decision has taken final form (Mateut, 2007).

Is continuously analyzing the conditions that must be accomplished to reconciliation of the parties .

a) Reconciliation of parties is possible only in the case of offenses where necessary request for initiation of criminal proceedings by the injured person. The law obliges the court to try to reconcile the parties, but this does not mean that the agreement of the parties occurs only at the initiative of the court, but also occurs at the initiative of the parties in the process despite that the law is silent in this regard. According to Article 338 of the CPC in cases where criminal proceedings begins with the request of the victim, the court invoked the injured person and the accused person and tries to reconcile the parties. If the injured person withdraws the request for a trial court to dismiss the case. Otherwise it sets the hearing date and makes known to the parties that may be helped by the defense. If not possible reconciliation of the parties , the court passes judicial review.

CPC Article 338 says nothing about how it should be accomplished reconciliation of the parties if the injured person is a minor. I think that is realized by the legal representative based on Article 58, paragraph 2 of the CPC, which provides that the injured person who is not capable of acting exercises rights recognized by law by the legal representative.

b) Reconciliation of parties means a mutual act that occurs between the two parties. Reconciliation of parties differs from the removal of the right hand to make a complaint (Article 285 CPC) and the and withdrawal of the complaint (article 268 CPC) that are unilateral acts and coming from damaged person. No matter which of the parties took the initiative first, is

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

significant is that the parties to find common ground that lead to their reconciliation.

c) The agreement is for the personal request of the victim is personal. Reconciliation must be achieved before a court and cannot be done with special proxy. Where are charged more, reconciliation may have effects with narrow, if the injured party agrees only with some of them. To eliminate criminal responsibility for all the accused, the aggrieved party must agree to all the accused.

d) Reconciliation of parties must be complete and unconditional. This condition of reconciliation, although not listed in the law is derived from a general interpretation of Article 338 of the CPC made. Closing the report conflicted with the consent of the parties should not be performed with only side conditions or criminal or civil side only. By extinguished conflict reconciliation in terms of criminal side and the civil.

e) The consent of the parties shall be final

f) The law did not provide a deadline to phase procedure which must be accomplished reconciliation, reconciliation consequently can be implemented at any time but provided you have taken the decision not final. Reconciliation can be achieved even when the court announced its decision, but in this case must be appealed and during trial or recourse to appeal or recourse the parties may agree. The fact that Article 338 of the CPC is predicting attempt to reconcile the parties by the court does not mean that if the court attempt to reconcile the parties was reached at the beginning of the session the parties do not have the opportunity during the criminal process. Lawmakers predicted the court attempt to reconcile the parties to enable the reconciliation that can be realized as soon as possible for reasons of judicial economy but also to the normalization of relations Amongst the parties to the judicial conflict. If no attempt at reconciliation was provided by the court , reconciliation could be realized only at the initiative of the parties and the judge would have just as referee .

g) Another condition for reconciliation is that the parties agree should be expressed explicitly, not to leave room for interpretation.

V. Civil lawsuit in the criminal process

Civil lawsuits understand the criminal process requests filed by the injured person or his heirs against the defendant or civil defendant to punishment material caused by the actions of the defendant.

According to Article 61 of the CPC person who has suffered material injury from the criminal or his heirs may ndrejne civil lawsuit in

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

criminal proceedings against the defendant or civil defendant to seek the return of property and compensation for damage. Despite the Albanian Criminal Procedure Code is an almost identical copy of the Italian Criminal Procedure Code, we find no Albanian procedural legislation a provision such as that provided by Article 77, paragraph 4 of the Italian Criminal Procedure Code, (Berri, Nespola, Berri, 2010), where the prosecutor can ask repair of minor damage to, persons who are in custody, persons suffering from mental problems and you are not able to understand. We think that it comes to a negligence of legislatures that must be regulated by establishing norms appropriate to protect the interests of the persons mentioned above with dhenenien the possibility that the prosecutor may request the return of property and compensation for damage.

Legjitimi the plaintiff in the criminal process can occur in the body of the proceeding until the judicial review has not started. This deadline cannot be extended. At the request of the parties or the court may decide largely isolating the civil suit if it hampers or delays the delivery process and its criminal civil judge (Gjoleka, Gjoleka, 2007).

Demi moral is not well known and is not sufficiently addressed by legislation , doctrine and judicial practice Albanian compared with Western European countries or other states, ex. United States of America, where protection of personality, physical integrity and we included non-pecuniary damage moral and occupies a leading place in doctrine and case law. Insufficient recognition of judicial practice is added downside of the Civil Code where non-pecuniary damage envisaged in Articles 608 and 625, and to repair the damage he has provided only the extra property (Mataj, 2007). For compensation of the damage these conditions must be met (Deliaj, Mitrushi, 2009):

a) causing damage;

b) the existence of a bull;

c) guilt;

d) causal connection .

a) Causing damage accomplished with the unlawful act or omission of the individual that violates or infringes the rights of other interests that are protected by legal order and good morals.

b) Taurus is one that stems from touching the personal interests of an individual . Taurus can be economic or non-economic.

c) Other requirements for compensation for damage is guilt. The Civil Code does not give the definition of guilt. Court refers guilty under criminal law.

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

d) Causal link is provided for in Article 609 of the Civil Code. According to Article 609 of the Civil Code, bulls should be direct and indirect result of the act or omission of a person.

It is understood that the injured person has the burden of proof (*Onus probandi incubit actori*), he has to prove that damage came as a result of the action or inaction of the accused .

The injured person may choose to repair the damage quickly, raising civil suit in the criminal process. If the process becomes difficult trial court decides the withdrawal of criminal civil lawsuit and sending its civil court to examine civil lawsuit there.

Conclusions

How to better protect the injured person from committing an offense Albanian lawmaker must make some legislative changes. Legislative changes to be made in the Albanian Criminal Procedure Code are presented in this paper. The proposed legislative changes are similar to legal norms that are outlined in the Italian Criminal Procedure Code. Italian model is more suitable for the Albanian Criminal Procedure Code in the majority of his Italian referofet Criminal Procedural Code. The proposed legislative changes.

REFERENCES:

Agim Gjoleka, Esmeralda Gjoleka, *Avokati ne procesin penal. Pjesa e pare, hetimet paraprake*, Editura Maluka, Tirane, 2006, p. 123

Agim Gjoleka, Esmeralda Gjoleka, *Avokati ne procesin penal. Pjesa e dyte, gjykimi dhe vendimet e gjykates,* Editura Maluka, Tirane, 2007, p. 41.

Gheorghiţă Mateuţ, *Tratat de procedură penală. Partea generală.* Vol.I, Editura C.H.Beck, Bucureşti, 2007, p. 712.

Giulio Berri, Antonella Nespola, Guido Berri, *Formulario del processo penale. Commentato con la giurisprudenza*. Editura Giuffrè, Milano, 2010, p. 188.

Halim Islami, *Demokratizimi i legjislacionit penal*, Editura Luarasi, Tirane, 2000, p. 144.

Halim Islami, Ilir Panda, Artan Hoxha, *Procedura penale*, Editura Morava, Tirane, 2006, p. 411.

Herjeta Deliaj, Floralba Mitrushi, *Demi ekzistencial*, Revista Shqiptare per Studime Ligjore, nr. 1/2009, p. 8.

Ion Neagu, *Drept procesual penal. Partea generala. Tratat*, Editura Global Lex,

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.

Bucureşti, 2004, p.101.

Rezarta Mataj, *Sugjerime mbi vleresimin sa me te mire te padise; Shperblimi i demit jopasuror, neni 608 dhe 625 i Kodit Civil*, Jeta Juridike, nr. 2/2007, p. 62.

PRENÇE, M. (2014). THE INJURED ACCUSER'S DEMAND. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 39-49.