

**Albanian criminal proceedings and the procedural position of the prosecutor and of the court in the light of the experience of the United States of America and the European Union**

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## **Abstract**

Albanian criminal procedural system is an adversarial system, oriented European criminal procedural systems. Fighting crime, its prevention, have been and are today the aim of this procedural system, seek, pursue, catch, brought to criminal liability, the authors of the various criminal acts, from individual to organized crime. Referring to the growing needs for a good fight against organized crime, have been directed investigative structure led by the Prosecutor, as the only body I prosecution in Albania, which, directs, manages, controls, judicial police in preliminary investigations. Definition in the law, of the position and the role of the Prosecutor, which conducts, checks preliminary investigations and leads the judicial police, since the happening of an offense, in urgent actions it performs, to the detentions, arrests in flagrante, house checks or seizures, where the latter are verified within 48 hours of evaluated by the prosecutor, if they are legitimate, and the role of the judge who reviews the requests during the preliminary investigation varies from country to country or continent, but seeing it in comparative terms legislation of the United States of America, where the American criminal process, is the new model, that is created in a cultural environment profoundly different from ours, that has represented for a long time and represents even today, nearly a myth, which you refer to accept the democratic principles of the criminal process. Albanian criminal proceedings will be seen in relation to the criminal prosecution of some European Union countries, in the context of approximation that we have, in our legislation and its improvement under his dynamic reform, to meet as well, with standards of the time, a democratic legislation.

Already alluded, that entire investigative process, pass into the hands of the police, to unify it completely under the Ministry of Interior, avoiding prosecution by the preliminary investigations, so that it has only representation of the charge. In connection with this opinion we think that the unification of the preliminary investigation, the judicial police and the prosecutor's removal from the control and direction of the preliminary investigation is a matter that must be seen or analyzed not only in development but also in terms of historical comparative European and American legislation, which operate in the fight against crime, homologous in these democratic countries. Referring to investigations conducted by the police, there were different models, to exercise powers of investigation in Albania. Initially, was operated by region Sheriat law or Ottoman Criminal Procedure Code was for regions occupied by Turkey and Albania's mountainous areas across the country from north to south not under Turkish rule, was applied the Albanian customary law the canon of "Lek Dukagjini" or canon of Labëria\*. During the period 1913-1928 was implemented also the Ottoman Penal Code of Criminal Procedure\*, in which the Judicial Police was determined as the investigation body and its functions and powers, as the subject of criminal proceedings that by tracing the crimes, collecting testing and delivery of the perpetrators criminal to courts. In 1924 the Ministry of Justice, called the Judicial Police, the Police of Justice and the duties of the Judicial Police (Police of Justice) and prosecutor during the preliminary investigation are arranged according the specially issued act "On initial investigation" \*. In this document, was determined the police obligation, to submit to the County Prosecutor the collected evidences.

From 1913 - 1939, in most cases, the operation of the Judicial Police, was regulated by interior normative acts of the General Prosecutor. In the period 1939-1944, the attributes of the judicial police, despite that were predicted with laws, were almost not exercised due to the invasion of the country. In the years 1945 and then, with the investigation dealt the investigating judge, the prosecution, whose activity was divided into: bodies tracing and investigation bodies, referred to Ordinance no. 2 of General Attorney\* and Article 101 of the Penal Procedure Code, 1979 Popular Republic of Albania\*. In the years 1974-1983 the preliminary investigation conducted by the Investigating Officers were unified, with the Decree of the National Assembly of the Popular Republic of Albania no. 5139 dated 01.30.1974 "On the unification of the investigation, its removal from the prosecution system and focus on the system of" Ministry of Internal Affairs ". The Police, being a structure within the institution, to that prevail hierarchical order more than law, while the Minister of Interior was the highest authority, reaching undermine the decisions taken by his subordinates, because the Directorate of Investigation, was depended directly from the Ministry of Internal Affairs, which had led to illegal actions, to abnormal development of the legal process and to the manipulation of the evidence. Here we can illustrate with a process in which an accused has been charged for broaching with a knife the car tires of the foreign diplomats in Albania. The act of technical expertise was manipulated by forensic specialists classifying the knife as a cold weapon, although did not meet the law requirements, to be considered as such. According to the above act of expertise developed by forensic experts under the Ministry of Internal Affairs at the time, the test was administered by court and the accused

pleaded guilty, based on a manipulated test. In addition to violations of the law on preliminary investigations, in this period problems arose even in the control of the investigation by the prosecution. Problems were faced due to non properly performance on checking the investigations conducted by the investigation structures of the Ministry of Internal Affairs, because of the extensive powers of the preliminary investigation bodies, now unified to an organ of state administration.

The investigations on 1983, with Law 6800, dated 9.06.1983 "On the investigation into Popular Republic of Albania"\*, was reorganized into a single body, reorganizing it and dividing of its internal affairs bodies. It was led by General Investigation as an organ of justice, but in reality it was not a justice body. Its chairman was elected by the National Assembly and reported to him. The investigation was controlled also by the prosecutor. If the prosecutor during the preliminary investigation, ascertained that the investigating show violations of the law, he do protest .The prosecutor send his protest to the chairman of investigation of the area and to the chairman of the General Investigation center. During the years 1983-1992 was worsened the position of prosecutor in the criminal process, being removed from management, control and conduct of investigative actions, focusing primarily on the enforcement of legislation. In these conditions, despite some changes made to increase the role of the prosecutor in the investigation, as assigned the function of prosecution and the right to conduct and control the investigations, continued his role in the criminal process, until June 1992, but still not set properly, in the level of standards, as in democratic countries. The prosecutor's constitutional position is anticipated in the Constitution, in the Criminal Procedure Code of the Republic of Albania, in the Decree "On the Judicial Police", and in laws and other acts issued to their implementation. In the following years 2009-2010, with Law 677 dated 2.11.2000 "On the organization and functioning of the Judicial Police"\*, Joint Instruction of Attorney General no. 32 dated 12.02.2003, and of the Minister of Public Order no. 405 dated 26.02.2003\*, clearly shows the position of the Prosecutor in our legal system, as the only body that makes controls and directs investigations. The Procedural position in the preliminary investigation of the judicial police, is placed under the control and direction of the prosecution, referring not only our laws and criminal procedural laws that are in force today, but also this position appears in manuals prepared for the judicial police investigative work. Comparing the Report of judicial police and prosecutor, in the Republic of Albania, with the same report in Italy according to the Italian Code of Criminal Procedure\*, we can meet similarities with ours as in the definition of the criminal procedural law and legal infrastructure, also in its application. The Italian Criminal Procedure Code has reinforced even more the functional dependence of the judicial police from the prosecutor and courts, without touching hierarchic al subordination and bureaucratic report, linking the judicial police and the executive. Actually in our country have applied this setup and criminal procedural legislation, which is equivalent with the Constitution of the Republic of Albania.

Likewise if we do refer to the report of prosecutor and the judicial police in France\*, the judicial police, after being informed of the offense , and stopping or arresting the author in the act it is obliged to immediately notify the prosecutor. If the police reached the scene before the prosecutor, it has the authority to perform certain actions of the prosecutor, but after arrival on the scene of the prosecutor all the responsibilities of management actions of the investigation exceed him .In cases where serious crimes are considered, the prosecutor undertakes independent investigations, or authorize the police to carry out additional investigative actions, as questioning people who know the offense occurred, confrontations, knowledge, expertise,

experiments, identifications, etc. The police cannot keep a person detained more than 24 hours, after this period it shall immediately notify the prosecutor. The judicial police investigative actions can devise but with the assistance of the prosecutor or by delegation from him.

In the American system of criminal proceedings, the preliminary investigation phase is carried out from the prosecutor helped by the police, despite the power of the police in the preliminary investigation. The prosecution has no coercive power in the preliminary investigation. The prosecutor should address the judge attorney the issues of fact for obtaining decisions on coercive measures, controls and seizure.

Even in the German criminal procedural legislation except the risk of delay in addition to checks, inspections and seizure, and also to human rights, the prosecutor should be directed only at the request to the judge of first instance, which in this case takes the rights as the judge of the preliminary investigations. The prosecutor immediately informed for the crime during the preliminary investigation must meet the necessary inquiries to determine whether or not to exercise a criminal investigation. The prosecutor should investigate as the circumstances of the suspects charging them but also those absolving them. Referring all actions related to the individual freedoms put up under preliminary investigation, the prosecutor should be addressed to the court even for the delicacy carried by the individual. The investigation phase is almost entirely secret. The investigating judge where does still exists as in France is subject to multiple controls, as a holder of a very heterogeneous powers, fought effectively against crime. It is natural that in front of originated private prosecution, the judge's powers are always booked powers of review of constitutionality on the fundamental rights. This control of the court and the fact of non taking into account in trial as unusable proof when they were taken in violation of the law provide a great assurance as these powers where from a body hanging from the executive. Hence we are always before a regular criminal proceeding and provide a fair decision at the end of the trial court.

Even in Albania controls, seizure or arrests in the act should be sent to the court by police prosecutor within 48 hours of the Penal Procedure Code Sections 298-301 to review, validating or not them to the application of legal requirements. All claims of the parties dealing with human rights guaranteed by the constitution during the preliminary investigation are directed to judge by Article 13 of the Penal Procedure Code. The Court makes a decision on the evidence at the request of the parties, and provides decision to allow the prosecutor to use tools of the research evidence, from cases forms of scrutiny, to the interception, provided by third head of Articles 198-226 of the Penal Procedure Code and the security measures provided for by Articles 227-276 of Penal Procedure Code.

We note that criminal procedural legislation as French, Italian, German, American and Albanian have assured that under preliminary investigation in cases of suspected offenders are caught by the police and the judicial police have arrested or detained, and the prosecutor must be notified to check the compliance of meeting the criteria defined in the law on restricting the freedom of the individual, of this constitutional right of each citizen guaranteed by the Constitution, before it is considered by the court. So the legislation referred to these countries, shows that the position of the police in these countries with centuries of experience in state and legislative system, including the operation of the judicial police, is effective under the direction and control of the prosecutor, who is the governing body, control investigations, performs by himself or between the judicial police, orders to perform delegated acts.

## Law Sources

Notwithstanding the procedural systems have analogies, as in Italy, Germany, France or the United States and our procedural system is largely borrowed from the Italian criminal procedure legislation. In fact, we must mention the sources of law, judicial organization, and participant's subject position on criminal proceedings, the rules that organize the functioning of prosecution in all these countries. In the United States, as in all common systems are distinguished in legislative sources, constitution, laws and jurisprudential sources, the single decisions of the judges, particular of the higher courts.

In European countries analyzed above as a source of law are the legislative sources, the constitution and laws. In our country as a jurisprudential source are the Unifying Decisions of the Supreme Court. In the United States the prosecution in almost all countries is chosen. The prosecution in Europe and Albania is nominated and not elected, and the judges are professionals and graduate at the School of Magistrates, for all levels of the judiciary. The criminal prosecution is different according to the procedural systems that are oriented under common law system and the civil law. Their differences are at the subjects' rights in the criminal process and their relation. In the inquisitorial system or the adversarial system, the parties are on an equal position at all stages of criminal proceedings, and the court plays the role of arbitrator and declare guilt or innocence through one or more judges or through representatives of the people (jury) according to the country, based on judicial debate parties, system, under which the prosecution operates in Albania.

Throwing the opinion of changing the judicial police powers and to unify it with the Ministry of Interior, the law refers to other countries in connection with the investigation, but cannot currently apply in our country, because our procedural system is a European one and specifically, under that Italian of criminal proceedings, along with infrastructure, cannot be arranged the preliminary investigation, referring to another procedural system.

Despite the cast thoughts about the activity of subjects of criminal proceedings, the prosecution, the Court and Judicial Police, so far, have been working and work together to detect offenses, their investigation and trial in a fair law process and each has its proper place in our legal system, with its rights, obligations and powers well-defined. These are reasons that make us think that today there is no need to be redefined the role and their place in our legal system, which is unified with those in democratic countries of the EU, confirming these achievements so far. With the implementation of the Albanian criminal legislation and criminal procedural Albanian, they have build a cooperation between them, not only within the country but also with European and international range, which has already shown the effectiveness of its own.

This successful collaboration of these Entities of the proceedings, have given their result in the fight against crime in general and organized crime in particular.

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