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REHABILITATION AND DISCLOSURE OF INORMATION FROM CRIMINAL RECORDS

ABSTRACT

With this paper I intend to emphasize the role of the institute of rehabilitation, its place in the criminal code, beneficiaries and the manner of restitution through a comparative overview to the criminal codes of the region. The key topic of this paper will be: what exactly is the rehabilitation, its opportunities, the amnesty provided by the legal provisions of the country for persons who have justified it by their conduct after the punishment of imprisonment has been served and the expiration of the period prescribed by law, manner of restitution of right denied to them because of their conflict with the law. With this paper I intend to somehow call on the state to appoint a competent public entity in the field of judicial affairs that would deal *ex officio* with legal rehabilitation which in a sense would relieve the courts from unnecessary work and would manage to restore to a large extent confidence of citizens to justice authorities.

**Key words:** Rehabilitation, competent public entity in the field of judicial affairs, court, legal rehabilitation, expungment from the records of the convicted, application.

**Introduction**

Institute of rehabilitation of convicted persons falls within in the line of the institution that criminal justice science has not paid attention it deserves, notwithstanding that the approval or denial of the request of the convicted person affects the rights of all those who at any given period of time have been involved in capacity of defendants in any judicial matter that was concluded with criminal sanction. Also, by failing to recognize these right ex officio, certain rights are restricted when it comes to finding employment or exercising of any particular activity. There is no doubt that this institute deals with important dimensions of criminal law and sometimes also misunderstood by the relevant factors of justice. Therefore one can say that from the scientific and functional point of view this institute is marginalized and its importance only addressed from practical standpoint.

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This institute is dealt with only in descriptive terms without any claim to his of legal and functional sense.

The purpose of this paper is to have a look into the effect of this institute despite the difficulties that follow it, as well as its development in terms of prevention it achieved, because at the request of the convicted person it provides an opportunity to compare the past and positive or negative impact of punishment as well as the overall achievement of legislators goals through a rendered sentence as a sufficient measure to prevent crimes and for resocialisation of convicts.

**Purpose of the paper**

This paper shall analyze the institute of judicial and legal rehabilitation under the Criminal Code of the Republic of Kosovo, the legal provisions set forth for this institute as well as disclosure of criminal record that somehow affect the person’s a right on privacy stipulated by the International Convention on the Human Rights and Freedoms directly applied to the Criminal Code of the Republic of Kosovo. Also the ways of benefiting from this right, reasoning, while the attention will be focused on the examination of the request of a convicted person. The analysis is concerned with the legal nature of judicial rehabilitation as a penal institution which should be treated as a right of a convicted person or just an opportunity provided by the positive legislation in Kosovo. In view of the authority that decides on rehabilitation in the first instance, to the repetition of the request to materialize this right. 

In addition, it will deal with advantages of legal systems in the region, ways to regulate this institute, and a fair treatment of the person convicted by the court.

Despite that the legislation does not cease the right for application upon rejection of the request, method of application in order to materialize his/her right and the loss of that right due to an early presentation before the legal prescribed period of time in period of two years, it gives the impression among convicted persons of an arbitrary decision, distrust from this part of the population that has already suffered from “penalties” and "rewards" by non-avoiding the execution of sentence.

1. **Notion and the types of rehabilitation**

Each country regardless of what kind of government or judicial set up it has, apart from protection of its sovereignty must have foreseen also the protection of its citizens as a general task. In exchange for protection and security provided by the state, the public is required to comply with envisaged legal rules, framework of which includes refraining from criminal actions, behaviours and actions that would constitute a criminal offence, at the same time by envisaging criminal sanctions.
Constitution of the Republic of Kosovo provides the respect of human rights and freedoms to all of its citizens within its territory, citizens’ temporary abroad due to a business, temporary residence and to all of those who due to different reasons are within its territory.\textsuperscript{15} This authority is based on principles of equality before the law to all individuals and full observation of basic human rights and freedoms\textsuperscript{16}, but as we underlined above the failure to observe those human rights and freedoms envisaged in the constitution and other relevant laws is an exception from the rules that need to be sanctioned.

Criminal sanctions are expressly provided in law and no one can be found guilty for any offense which at the time of its commission was not envisaged as a criminal offense, at the same time prohibiting the retroactive application of law unless the latter is more favourable for the defendant-accused.

Almost the entire purpose of criminal sanctions is about general prevention-refraining potential perpetrators from unlawful actions. While the main purpose of their re-socialisation and rehabilitation is to return them back to society to contribute with good behaviour and in compliance with positive law. Endless labelling of this number of people and their permanent deprivation of constitutional rights does not serve the purpose of criminal sanction.

As we pointed out, the legislators’ goal is not only the liability of offenders for wrongdoing and their punishment, but general prevention means achieving the legally required goal - rehabilitation and socialization whereby the institute of legal rehabilitation can be systemized. This because it would not be fair for an individual, who in a certain period of life intentionally or negligently violated the law, to suffer his entire life the consequences of his criminal offence, (excluding serious offenses and those of punished internationally), therefore institute of legal rehabilitation is kind of satisfaction in order to say what the legislator has provided for the former convict who through his/her conduct upon serving sentence justifies it.

In a broad sense this means the restitution the convicted person, upon meeting the conditions stipulated by law, except those rights that may be limited by special laws\textsuperscript{17}. According to this definition, a convicted person is restored with some rights that were lawfully restricted to him/her due to commission of a specific criminal offence, i.e. “Institute of rehabilitation is in fact a kind of obsession over nullified punishment”\textsuperscript{18}.

\textsuperscript{15}“.... exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders”.
Constitution of the Republic of Kosovo, Article 2.
\textsuperscript{16}Constitution of the Republic of Kosovo, Article 3, paragraph 2.
\textsuperscript{17}Elezi,I.,Kaqpi,S.,Haxhia,M.,Commentary of the Criminal Code of the Republic of Albania ,Tirana,2009,page 293-294
\textsuperscript{18}Salihu,I. Criminal Law, General part .Prishtinë 2005, pg.552
1.1. Types of rehabilitation pursuant to CCRK

Legal Rehabilitation and disclosure of information from criminal records is envisaged in Articles 102 through 105 of the Criminal Code of the Republic of Kosovo, where in details is claimed this institute is regulated.

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According to the CCRK the legal position of the convicted persons after a punishment of imprisonment has been served, subject to pardon or prescribed by statutory limitation, a convicted person shall exercise and acquire all the rights waived due to the punishment for their criminal offence, namely: “a punishment of imprisonment has been served, subject to pardon or prescribed by statutory limitation, a convicted person who has made restitution...”19, also pursuant to the rendered sentence stipulating the time of restrictions. This legal provision20 provides us with understanding that convicted person shall be a subject of restitution only after serving his sentence, being that a court reprimand, fine, suspended sentence or punishment with imprisonment, acquitted of the criminal offences the latter was prosecuted because under different circumstances it got pardoned, offered amnesty or a subject to prescribed by statutory limitation, and that the same one cannot be prosecuted for that criminal offence or to have the sentence executed: “Rehabilitation expresses the views of the society that commences from the concept that convicted people can be corrected and cannot remain forever under the status of a convicted, therefore they enjoy the same rights as other citizens”21

According to CCRK there are two types of rehabilitation foreseen for the convicted persons:

Legal Rehabilitation22
Judicial Rehabilitation23

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19Criminal Code of the Republic of Kosovo( hereinafter in this paper referred as CCRK),Article 102, paragraph.1
20"After a punishment of imprisonment has been served, subject to pardon or prescribed by statutory limitation, a convicted person who has made restitution shall exercise and acquire all the rights provided for in the Constitution and law unless otherwise provided in this Code. This Article shall also apply to a convicted person released on conditional release, Article 102 par.1 and 2 of the CCRK
22Article 103 of CCRK
23 Article 10 of CCRK
1.1.1. Legal Rehabilitation

“By legal rehabilitation, a punishment shall be expunged from the record of a first time convicted person ...” by article 103 of CCRK, after expiration of prescribed period of times envisaged by the law if the convicted person has not committed new criminal offence during that period of time.

According to this legal provision convicted person benefits from this right in a way that criminal conviction is expunged from his/her criminal record and that person is no longer considered convict whereby his rights are restored, provided that the legal prescribed period of time as envisaged pursuant to the penalty imposed, which means that competent public entity in the field of judicial affairs shall ex-officio render a decision to expunge the sentence from criminal records.

Not all convicted persons can benefit from Institute of Rehabilitation; therefore the Criminal Code provides limitation on benefits from this right. The first limitation refers to persons sentenced to fifteen years imprisonment, persons sentenced to life imprisonment, at the time of the duration of accessory punishment and measure of mandatory treatment.

Based on this competent public entity in the field of judicial affairs related to sentences rendered out of this scope shall ex officio issue a Ruling to expunge the sentence from the criminal records of convicted persons, one year after the judgment becomes final, in the case of a judicial admonition, meaning that a person is rendered with a final judgment of judicial admonition, the same shall be expunged from the record and will not be considered convicted if one year period has passed and during this period he/she committed no criminal offense.

The convicted person, who was found guilty and was sentenced with suspended sentence, will be expunged from the records of convicted one year after the verification period. The period of expungement is one (1) year from the day a punishment is served, prescribed by statutory limitation or terminated by a pardon or a change in the law, in the case of a punishment of semi-liberty.

In cases where the perpetrators of a criminal offence have been sentenced to imprisonment up to one year, a fine or punishment, accessory punishments shall be expunged from the records of convicts if three years from have passed since the date sentence was served, has settled obligation related to the payment of a fine, or the period of restriction of any of the rights imposed by an accessory punishment. Similarly shall be acted when the convicted person is sentenced to a fine and due to various reasons has failed to pay the fine, therefore it got replaced by a prison sentence. In such cases the punishment can be expunged from the record when it exceeds the period.

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24 Article 103 of CCRK
25 Salihu, I., Criminal Law, General part, Prishtinë 2005, pg. 554
26 Article 520 par.1 of the Criminal Procedure Code (hereinafter in this text CPCRK)
27 Salihu, I., Criminal Law, specific part, Prishtinë 2005, page 554
28 Article 103, par.3 and 4
29 Article 520 of the CPCRK
30 Neni 103 par.2 pika 2.1 i KPRK-së
31 When a convicted person is sentenced with a fine and in order not to cause damage to the household, he/she required to enable him/her the payment in instalments, the sentence will be expunged from the records of convicted three years after the convicted person has paid last instalment of a fine.
prescribed by law for expungement from the day when he/she has served a prison sentence. When convicted person is sentenced one to three years imprisonment, the period of legal rehabilitation and waverings of the restriction of rights as a consequence of the sentence, is reached five years from the date of the sentence, eight years from the date of serving sentence for the sentences rendered from three to five years in imprisonment, ten years when was sentenced to imprisonment from five to ten years, fifteen years from the date of the sentence of ten to fifteen years imprisonment.\(^{32}\) Thus, we can note from the legal provisions that the time period when is possible to be expunged from records depends on the length of the sentence that coincides with the endangerment of the society and the criminal offence.

Legal Rehabilitation does not preclude the execution of accessory punishment. Namely in addition to the principal penalty a convicted person is also imposed through restrictive measure for a specific period of time, in such cases rehabilitation does not stop the execution of punishment. This penalty will be expunged after verification period is over pursuant to the duration of the punishment. In cases where the same person was imposed more sanctions, penalties may be expunged in the same time only and it if the conditions to expunge each of them are met. By acknowledging rehabilitation, the rights of the third parties, on which the sentence was grounded, shall not be denied or restricted.\(^{33}\)

It is noteworthy to underline that the law has envisaged criminal liability of legal persons, initiation and cessation of legal consequences for the latter by stipulating the legal deadline related to the restitution of those rights restricted as a consequence of criminal offences that “may be foreseen not longer than five (5) years, starting from the day when the judgment becomes final”\(^{34}\).

In order to restore within the prescribed periods of time the restricted rights of legal persons that were imposed as consequence of criminal offences, the procedure is set in motion at the request of the legal person, the court shall consider the conduct of the punished legal person, whether the compensation of the damage caused was implemented and the material benefit from the criminal offence was returned as well as other circumstances that are related to the reasonability of the cessation of legal consequences of the punishment.\(^{35}\)

1.1.2. The competent public entity on legal rehabilitation in Kosovo

First of all this depends on who keeps the records on convictions. It is a very common question in Kosovo, but is the one that has not been answered in any paper so far. It means that no one has seriously dealt with this circumstance up to date. The difficulty is created from the very expression used in the Article 520, paragraph 1 of the CPCRK which reads: “…the competent public entity in

\(^{32}\)Article 103 par. 2 item 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7 of the CCRK

\(^{33}\)Commentary of the Provisional Criminal Code of Kosovo, Prishtina, 2012.page .190

\(^{34}\)Article 16 paragraph.2 on the liability of legal persons for criminal offences

\(^{35}\)Article16 par.2 and 4 of the Law on the Liability of Legal Persons for Criminal Offences.
"the field of judicial affairs ...” shall render a ruling expunging the conviction ex officio after exceeding deadline set forth in the law under specific circumstances. The Article 421 of the CPCRK confirms that that it is not the judicial body that deals ex-officio with expungement of convictions but it is the administrative authority due to the following provision “Procedure for expungement of conviction when the administrative body fails to act”. Moreover, the text of the Article 520 paragraph 1 in Serbian Language speaks about public entity in judiciary matters, same as the text in English. Nevertheless all citizens of Kosovo know that the certificate for no conviction is acquired at the police who although keep recordings of convictions in Kosovo, so far have never issued any decision ex-officio; hence the citizens have always been forced to address the court for such document.

The conviction that it is not the judicial entity that acts ex-officio is strengthened by the legislation and the case law of other countries. For example the Criminal Procedure Law of the German Federal Republic, determines Common Register of the Prosecution actions, which is managed by the Federal Directorate of Judiciary.36 The Croatian Legislation which is harmonized with European Union Legislation clearer in this regard because in addition to the Criminal Procedure Law has also promulgated a specific law: the Law on the Legal Consequences adjudications, record on convictions and rehabilitation. The Article 3 of this law stipulates that the record on convictions shall be kept keep and administered by the Ministry competent for the judiciary, while Article 7 notes that the final judgments shall be sent to them by courts, prison records on served sentences, the special services for execution of the community service work and also the courts regarding the date of payment of the fine37

There is no doubt that the legislator (CPCRK) has thought about the administrative body that would deal with judiciary matters which in form of expression includes the Ministry of Justice in Kosovo. Nevertheless it did not complete, conclude the legislation in order to compel the Courts to send final judgments to this ministry, prisons to inform about the execution of sentences, conditional releases, the probation service of Kosovo about the conclusion of the conditional releases and the work for community services, in order to keep general records about convictions and to be able to ex-officio expunge the sentences. Citizens should not be forced in this manner to face unnecessary procedures in front of the courts.

It should be emphasized that this issue is strictly regulated in the countries of the region, Montenegro, Serbia, Bosnia and Herzegovina etc. Therefore, the task of Kosovo Legislature remains to clarify this issue with legal norm so that citizens would have easy access to the freedoms and rights guaranteed by the Constitution, because difficulties in acquiring of those data is an obstacle to their employment or reaching their other rights.

37 Law on Legal Consequences, records on convictions and rehabilitation, NN 143/12, 7 December 2012.Zagreb.
1.2. Judicial Rehabilitation

The judicial rehabilitation is a complementation of the legal rehabilitation and is set in motion upon the request of the convicted person which is dealt also through a Ruling same as with the legal rehabilitation with a distinction that on this request it is the court that decides and not the competent public entity in the field of judicial affairs.

Judicial rehabilitation suffices if the half of the foreseen legal deadline for expungement of the convicted person has passed as set forth in the Article 103, paragraph 2 and the person convicted during this period of time has not committed a new criminal offense. Characteristic of judicial rehabilitation is that the court is not obliged to decide *ex-officio* to expunge the convicted person from the record of convicted when exceeding the half of the legal limit for expungement as it was envisaged for legal rehabilitation. In this procedure the request of the convict is indispensable.

Such request is indispensable also when the convicted person meets the legal terms to be expunged from the records, and a competent public entity in the field of judicial affairs has not taken any decision because the procedure to recognize this right can be initiated with the court only based on the application filed by the convicted person, his/her defence counsel or by an authorized representative.

Under this provision the court renders a ruling expunging the records of the convicted on the panel session upon the application of the convicted that has finished half of the legal deadline stipulated by Article 103 of CCRK. The Court is not obliged to grant the request of the defendant, but waiving of these restrictions is an alternative that can be recognized, which means the jurisdiction of the court after evaluating the nature of the offense and other circumstances that are important for adequacy of expunging the conviction from the record, to decide whether to approve or reject such a request made by a convicted person.

The legal provisions of the Article 103, paragraph 1 and 2 of the CCRK also apply to the judicial rehabilitation.

The Law on the liability of legal persons for criminal offences regulates the cessation of legal consequences dealing with restitution of the rights restricted as result of a criminal action, which is set in motion upon the application by the legal person to which the court decides "after three (3) years have passed from the date conviction or prescribed by the statutory limitations....", "that application is not necessary to be approved by the court but it is an alternative that provides the

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39Article 104 of the CCRK
40The competent public entity for judicial related matters, it is not explicitly defined by the code of criminal procedure, such a thing really should be the responsibility of the police which deals with the identification of criminal suspects and should be clearly regulated. In the post-war period the competent public entity for judicial related matters never rendered any Ruling to expunge from the criminal records persons convicted ex-officio, which not only does violate the right of convicted persons but also burdens the court with unnecessary tasks , a task that someone else would have done it ex-officio before the due date.
41 Article 16 par. 3 of the Law on the liability of legal persons for criminal offences
law as a legal person in his request has justified his conduct, has fulfilled the obligations set by 
criminal sanction, have compensated and returned benefit from the criminal proceeds.

2. Content and disclosure of information from criminal record

The criminal record of a person contains personal information for the perpetrator, the data on the 
sentence, judicial admonition, measure of mandatory treatment or release the offender from 
punishment imposed, changes to the data on convictions that were entered in the criminal record, 
data on sentences served and on expungement of erroneous convictions. The criminal record is 
confidential and can be accessed only the authority that keeps it and the same may be 
communicated or made known only to the court, prosecution and police authorities in charge for 
the enforcement of criminal sanctions, the competent authorities participating in the procedure of 
pardoning or expunge of evidence and only for sentences that are not expunged. This information 
can be disclosed to police, prosecutors and judges when against the person who is expunged from 
the record there are ongoing criminal proceedings, but the convicted person at his request may be 
given these data if he needs them, except in certain cases provided by law.

Viewed from this provision it appears that authorities to be notified of a criminal record of a person 
convicted are only the police, prosecutors and courts. Consequently, other bodies should not be 
informed except by reasoned application may be disclosed to public bodies if accessory 
punishments or measures of mandatory treatment are still in force at the time of application.

Practice in our country seems to show the opposite in relation to disclosure of information from 
criminal record. For example when a person applies for a job, visa or something similar he/she is 
required to present a document that is not under investigation and as not prosecuted for any 
offense. I consider that in these cases the principle of presumption of innocence is directly 
violated because if against the same person there is an ongoing criminal proceeding and he is 
 denied request by violating the principle that "no one can be considered guilty until his guilt is not 
found guilty by the final judgment". In many cases, in order for authorities not to be accused for 
violations of the rights of citizens who had any interest in recognition of any of their rights, for 
business travel, family reunion, or similar position but the same were required to sign the document 
that would allow those authorities the right to require proof of criminal record from the police, 
prosecution and courts. In a way, interested citizens have fallen before a necessary choice because 
if one does not sign one will automatically be eliminated from the competition, even though the 
security of the state or it citizens was not put in question by an application such as provided by 

42 Article 105 of CCRK
43 Article 105 par.1,2,3,4,5 of the CCRK.
44 Such is the extent of those cases that in order to apply for a passport a proof from the criminal offences court was 
required, even for obtaining a driving license such evidence was required for a period of more than ten years, and 
apart from material damage caused citizens it also interfered with their guaranteed rights.
Whereas, when it comes to criminal records of legal persons it should be noted that legal persons can be held liable according to the law on liability of legal persons for criminal offenses, and the provisions of the Criminal Code of Kosovo and Criminal Procedure Code of Kosovo shall apply mutatis mutandis unless otherwise provided by law, if the conditions for liability of legal person under this Law are met and same criminal sanctions that may be imposed against him/her are sentences, suspended sentences, security measures, whereas sentences that may be imposed are in fines and termination of the legal person. Moreover, criminal records are kept also against legal persons that were imposed any of criminal sanctions provided by law on liability of legal persons for criminal offences, this record is kept with the first instance court under which jurisdiction the seat of the legal person falls, it’s the representative or a branch of a foreign legal person, containing all the data for legal persons and for the offense committed, as well as potential criminal sanctions that have been imposed, the data on the person liable for commission of criminal offence for which the legal person got convicted of, data on the execution of the sentence or annulment of record on wrongful sentence.

The data regarding criminal records of legal persons may be disclosed only at the request of governmental authorities with reasonable interest and based on the law and whether the sanction or security measures will last indefinitely. These data can be disclosed to courts, prosecution and police in connection with criminal proceedings conducted against the person who had previously been convicted; to competent authorities in charge of the execution of criminal sanctions; and, to competent authorities involved in the procedure of granting pardon or expunging of sentences.

3. Legislation and practice on decision related to the application for expungement from records of convicted persons in Kosovo and in the laws of the region

3.1. Rehabilitation, legislation and practice in Kosovo

Institute of rehabilitation is set forth in CCRK provided in Article 102 and 103 which provides that rehabilitation can be instituted by the law, specifically under this provision "upon the legal rehabilitation, a punishment shall be expunged from the record of a first time convicted person as provided in paragraph 2 of this Article and such person shall not be considered convicted. This legal provision is quite confusing and in judicial practice has caused quite a dilemma when a person convicted should have been acknowledged that right and how many times a person is entitled on that right.

According to the first version, this right may be acknowledged to the convicted person only once and it by a public competent entity on judicial related matters given the time period, the opportunity

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45 Law no. 04/l-030 on liability of legal persons for criminal offences, Prishtina 2011
46 Article 3 par .2 of the Law no. 04/l-030 on liability of legal persons for criminal offences. 31 August 2011
47 Article 8 par.1 of the Law on liability of legal persons for criminal offences
48 Article 15 of LLLPCO
49 Interpretation of the criminal records of legal persons has been conducted based on the legal provisions of the Law on liability of legal persons for criminal offences Article 15 par.1,2,3,4,5,6
of undertaking research to justify expunging from the evidence. When a second time convicted person is found in such situation the public competent entity on judicial related matters shall not be bound to *ex officio* recognize this right, convicted person because did not justify it, he again violated the law, therefore I consider that in cases as such the court has the opportunity to undertake certain actions for approving or rejecting the request of the convicted person.

According to the second version: "by legal rehabilitation conviction is expunged from the record of the convicted person for the first time .." means that convicted person can be only once expunged from the criminal record for what I think it is a direct infringement towards these same persons as if they have committed a criminal offense does not mean that they are devoid of human dignity because it is not fair and humane that the convicted is only once provided with opportunity to file the request to be expunged from the record.

In these cases, the dilemma arises as how to act with those convicted who at the time of the commission of offense or criminal offenses were young and during the transition phase from juvenile to adulthood many young people are inclined to deviate from rules of normal behaviour. These young people often times come into conflict with the law after committing various criminal acts and over time many young people, especially when they are provided with special care from family and friends; they manage to integrate and return to regular life and contribute as useful people.

How to act and art the same time not to contravene the legal provisions and guaranteed human rights and freedoms-by providing a fair and due trial. Should the ex-convicts suffer a lifetime consequences for their mistakes in their youth, especially when they see clearly that they are integrated into society, have a stable family, have completed high school and want a good job, however in their rerecord still appears they have been convicted and oftentimes in practice this brings trouble in establishing working relationship!. Although the legal consequences of conviction cease upon punishment of imprisonment has been served, subject to pardon or prescribed by statutory limitation, a convicted person who has made restitution (if not otherwise provided by law) can be equipped with a clean certificate about their criminal past, and the same is requested from police records.

In these cases police requests court ruling on expungment in order to have them expunged from their records as well. Hence the convicted persons face problems because if they had more than one conviction then only one of the convictions will be expunged and the request for the other will be rejected.

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50 In this case we are not talking for juveniles but for those young who have gone through this phase which is inclined to deviation in behaviour.

51 Failure of judicial bodies to provide a fair trial and in a reasonable time constitutes violation of Article 6 of the European Convention on Human Rights, moreover failure to provide opportunity in observing rights acknowledged by law at the time of the commission of a criminal offence constitutes infringement of this principle.

52 Article 102, par 1 and 2 of the CCRK.
It is exactly here where the violation of the principle of a fair trial and due process stipulated by the European Convention on Human Rights is put into question because as mentioned above the public competent entity for legal related matters is required to deal with it ex-officio. In practice this does not happen, whether by the negligence of the administration to take care on notifying the public competent entity for legal related matters, or failure to maintain in order the records when the legal deadline for expungment expires, or no exact definition of to whom must these data be submitted to and their obligation to report. With this institute is not dealt ex-officio at all and with or without awareness the rights of the convicted are infringed, and there are cases where when an application sets in motion the procedure it is noted that the sentence should have already been expunged for one offense, which would not contravene any current legal provision, because as such it would not be shown at all and the dilemma would not have been raised on how to act about the offence which now has reached the time for rehabilitation.

When speaking about making restitution for legal persons as a result of their offenses, it is stipulated in details as to whom this law applies, who cannot be held liable as a legal person (but only person in charge of legal person entity) and whom legal persons can call upon, without setting limitations on how many time a request may be filed and because it is not envisaged how many times can be filed, this implies a presumption in favour who may file an application whenever the need be pursuant to the prescribed periods of times provided in this law. Moreover, this law explicitly provides that the court is authorized body for the cessation of legal consequences as a result of execution of sentence upon application from a legal person.

### 3.2. The Ruling on expungment from records of convicted persons

As underlined above when dealing with judicial rehabilitation the public competent entity dealing with legal related matters renders a ruling to expunge from the records after it made necessary queries and if against that person there is no ongoing criminal procedure for a new offence before the deadline envisaged for expungment has expired.

If this is not done ex officio by the public competent entity for legal related matters, the convicted person may seek confirmation for expunging of the sentence within 30 day, and a ruling to be rendered for expunging of punishment from the records in accordance with the law. In case that even after this nothing is undertaken than the convicted person may request from the first instance court, which adjudicated his case, to render a ruling to expunge it from record. That means that after the failure of the public body in charge of making decision ex officio and failure to reply in

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53 The Law on liability of legal persons for criminal offences applies to local legal persons as well as for foreign legal persons who committed criminal offence within territory of the Republic of Kosovo, to foreign legal persons liable for commission of criminal offence abroad but in the detriment of the Republic of, its citizens or legal person abroad (vendor) who is liable for commission of criminal offences abroad. Article 4, paragraph 1 items 1.1, 1.2, 1.3 and 1.4 of the Law on liability of legal persons for criminal offences.

54 Article 3 and 4 of the Law on liability of legal persons for criminal offences.

55 We consider that the competent public entity on judicial related matters in this case is the Ministry of Justice, because the Kosovo Probation Service as a competent entity for execution of decisions is obliged to inform ministry of justice for each executed sentence and keeps records on them.
relation with the ruling within 30 days upon filing of the application by the defendant, the public competent entity loses the right to reject the request of the person convicted but is obliged to determine the expungement ex officio. Only in case these options and prescribed legal timelines are exhausted while this body has not taken any decision, then the convicted person is entitled to address the issues with court.

4. Competence and criteria for deciding on the request of the convicted person to be expunged from records pursuant to the CCRK

When dealing with judicial rehabilitation and also legal rehabilitation, competent public entity in the field of judicial affairs did not render a ruling to decide on the request of the defendant, the procedure on deciding in the court to expunge it from record of convicted persons is set in motion by request of a convicted person who addressed the court which adjudicated the matter in the first instance to recognize this right, by presenting evidence and presenting the evidence on justification of the request, even in case it contains shortcomings, the court is obliged to request them ex-officio from the authorities in charge to keep the records: the police, prosecution, courts and competent authority for execution of criminal sanctions. Upon receiving the request, the judge assigned to the case (Judge Rapporteur), first verifies the legally set deadline, whether the application submitted is in compliance with criteria provided under Article 104 in conjunction with Article 103 paragraph 2 of CCRK, and whether it is filed by an authorized person.

Mandatory criteria for deciding on the request of the convicted person are:

- To be filed by a person authorized by law;
- To have spent half the time of the limit envisaged for legal rehabilitation;
- The convicted person to have not committed another criminal offense within the legal prescribed period of time for rehabilitation;
- To have reasoned granting of request with his conduct after the court admonition, fine, probation or imprisonment and
- To have spent no less than two years from the time when his/her request was rejected to be expunged from the evidence of the convicted persons

Request is formal and it should contain the essential elements of any submissions that may be filed to the court: name and the address of the courthouse, judgment-judgments requested to be expunged, evidence from the correctional facility on the sentence or early release, evidence on payment of the fine if a fine was imposed, evidence of payment of procedural costs incurred in criminal proceedings initiated against him and the evidence for compensation of the injured party if such obligations are rendered with the judgment.

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50Article 523 par.1 of the CPCRK
If the set criteria are met, notwithstanding if the applicant has submitted all necessary documents, the judge confirms the allegations presented in the application, and collects evidence that will serve in rendering a Ruling.\textsuperscript{57}

The request submitted by an unauthorized person shall be dismissed as impermissible while the convicted person does not lose the right to file a request.\textsuperscript{58}

The panel of judges of the first instance court that has rendered judgment shall decide on the request of the convicted person upon reasoned proposal by the judge and conducting of necessary inquiries. If the convicted person meets these criteria then the court takes a decision to grant the request of the convicted person and orders the authority where he/she is recorded for the offense requested to be expunged, in order to expunge it from the records of convicted persons.

In cases where the convicted person does not meet the criteria stipulated by the law and his conduct did not justify expungment, then it shall be rejected by a Ruling, and the convict may repeat the same request only after the expiration of two years from the date of the ruling to reject his/her request became final\textsuperscript{59} in which he/she is entitled to an appeal with the Court of Appeals.\textsuperscript{60}

4.1. Competence and criteria for deciding on the request to be expunged from criminal records pursuant to the laws of the region

Almost all countries that claim to have democratic system of government inevitable have the rehabilitation institute as a human right claiming to be acknowledged to the re-socialised convicts. Through this institute the convicted persons upon serving their sentence are enabled to be expunged from criminal records in order to acquire the same rights as people without sentences, envisaging also the procedure and the competence for expungement.

The CCRK, as we underlined above, recognizes the right of legal and judicial rehabilitation by also envisaging the criteria and competence on decision.

The Criminal Code of Croatia has envisaged the rehabilitation institute under the Article 85, recognizing the legal and judicial manner of rehabilitation. Under this law, legal rehabilitation is completed by a competent authority\textsuperscript{61} (Ministry of Interior) as soon as it reaches the prescribed time limit and it does not pose any problem, because criminal records are kept electronically and the convicted person will benefit from this right as soon as they have reached legal prescribed time

\textsuperscript{57} The police is required to provide information whether the petitioner is suspected for any criminal offence that he/she is recorded in this body, the obtained information from the police to be confirmed also within the state prosecution from whom it requests opinion in relation to render a ruling upon the application (although it is not related to the opinion), thou according to the law ( Article 524 par.4 ) can request a report on conduct of the convicted person also from the institution where the person served his/her sentence however such practice is almost never practiced.

\textsuperscript{58} In such cases the convicted person is nod bond to two years prescribed period of time as when the application of the convict is rejected as ungrounded.

\textsuperscript{59}Article 523 par.6 i of the CPCRK

\textsuperscript{60} The Court of Appeals enjoys the right to confirm the Ruling rendered by Basic Court, to amend it or to send it back for reconsideration.

\textsuperscript{61}Bačić,F.,Pavlović,Š. Commentary of Criminal Code ,Zagreb, 2004,page 402
limit upon necessary research, while the judicial rehabilitation is carried on by the court at the request of the convicted person.

Even under the Criminal Law of Montenegro on rehabilitation procedure is clearly regulated and the convicted person has no problem to benefit from this right because the same is carried on automatically as soon as the prescribed period of time is met as well as upon necessary queries and researchers have needed on behaviour on the conduct of the convicted person, it is the court that decides whether the convicted person through his conduct has justified expungement from the record.

According to the Italian Criminal Code, the decision for rehabilitation lays with the court which imposed the sentence but the procedure set in motion at the request of the convicted person who when filing the application must submit to the court evidence about his place of residence, that has served sentence or paid the fine, has covered procedural expenditures of the proceedings against him/her, has compensated the victim, or evidence that he/she did not claim compensation, it will be desirable to provide the reasoning for filed application. The Court has few months to decide on the request, schedules a meeting with the applicant in where the assistance of a legal counsel hired by him/her or appointed by the court is needed, and in that meeting the decision on approval or rejection of the application is announced. If the court decides in favour for rehabilitation of the applicant, he/she will be expunged from the telematic court archives, which can be waived if the citizen within seven years commits another offense punishable by at least two years in prison.  

According to the CLY the expunging from the records of persons convicted in one year imprisonment or higher sentences was an exclusive competence of the court that decided upon the application of the convicted person on which the judge rapporteur carried necessary inquiries for conduct of the convicted person and the justification to expunge him/her form the record. The panel of the court decided on expunging from the record.

The Criminal Code of Kosovo foresaw the legal and judicial rehabilitation that could be carried out administratively or judicially. The administrative expunging from criminal records is ex-officio conducted by internal affairs body, whereas the court decides for judicial rehabilitation upon application of the convicted person.

The Provisional Criminal Code of Kosovo has placed the rehabilitation under Article 86 paragraph 2 that recognized legal and judicial rehabilitation by anticipating time period upon which the punishment would be ex-officio expunged from records of convicted persons and to the request of

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62 Av. mascia salvatore., Criminal rehabilitation-how to sanitize criminal records. Published on 20 December 2010 in www.shqiptariitalise.com
63 Article 93 par.5 of the Criminal Law of Yugoslavia, 1977
64 Criminal Procedure Law of the SFRY, article 513, 1986

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the convicted person under some limitations referring the sentences beyond 15 years or long term imprisonment\textsuperscript{66}.

5. Comparative Overview of the institute of rehabilitation with the laws of the region

Rehabilitation Institute is relatively new, first time it appeared in France after the triumph of the French Revolution,\textsuperscript{67} a date when it became an integral part of almost all criminal codes of all democratic states, serving to the socialization of persons convicted.

According to the criminal law of the SFRY, rehabilitation and expungement from of \textit{ex lege} record was provided for prisoners rendered judicial admonition, released from sentence, suspended sentence, sentenced with a fine, and for him /her who within one year’s time after the judgment became final have not committed other offenses\textsuperscript{68}. For convicted persons sentenced to imprisonment up to one year imprisonment and juvenile prison, the sentence is expunged from the record when five years have elapsed from the sentence being served, the prescribed statutory limitation or pardoned and have not committed any other criminal offense. It is noteworthy to mention that pursuant to this law (Art. 93 paragraph 7) if, within the period specified for the expungement from records, the convict is imposed additional prison sentence of over three years, neither previous conviction nor the latter one shall be expunged, whereas in relation to some other sentences of the same persons they will be expunged simultaneously in case for each of them certain criteria stipulated in the law\textsuperscript{69}.

Provisional Criminal Code of Kosovo's provides the rehabilitation institute under Article 86 according to which after a punishment of imprisonment has been served, subjected to pardon or amnesty or prescribed by statutory limitation, a convicted person shall exercise and acquire all the rights provided for by law and other provisions before the commission of the offense and shall be considered as not sentenced if he/she meets the criteria stipulated by the law and by his conduct justifies expungement\textsuperscript{70}.

The Albanian Criminal Code places rehabilitation institute under Article 69, a provision that provides that “The sentencing of the following is considered null and void the sentencing of”:

\begin{itemize}
  \item a) those who are convicted with imprisonment sentences less than six months or with any other more lenient sentence, who have not committed any other criminal act for two years since the [last] day of their served sentence.
\end{itemize}

\textsuperscript{66}Ibid., fq.145-146
\textsuperscript{67}Salihi,I.,Criminal Law, general part, Prishtinë 2005, page.552
\textsuperscript{68}Article 93 of the Criminal Law of the Yugoslavia, par.1,2,3,4, of 1977
\textsuperscript{69}Article 93 par. 7 and 8 of SFRY, 1977
\textsuperscript{70}Provisional Criminal Code of Kosovo, Article 86, Prishtinë 2004
b) those who are convicted of imprisonment sentences ranging from six months up to five years and who have not committed other criminal act for five years since the [last] day of their served sentence.

c) those who are convicted of imprisonment sentences ranging from five to ten years and who have not committed any other criminal act for seven years since the [last] day of their served sentence.

d) those who are convicted of imprisonment sentences ranging from ten to twenty-five years and who have not committed any other criminal act for ten years since the [last] day of their served sentence.\(^{71}\)

Criminal Code of Republic of Albanian also provides legal and judicial rehabilitation. Judicial Rehabilitation is rendered through a court Ruling after the court finds plausible evidence that the person during the term of probation is improving, whereas regarding the legal rehabilitation, for a person to be to be considered null and void of any sentencing it suffices if the legally prescribed period has exceeded, without having any particular need for a specific court decision.\(^{72}\)

According to the Italian Criminal Law any convicted person may request the right to rehabilitation himself or through defence counsel if conditions stipulated by law which proved to be more favourable than in CCRK in relation to more lenient sentences, because according to the Italian Criminal Law one may request to be expunged from the records if three years have passed since the final judgment which is not appealable, and for those who are convicted of serious offenses or been convicted several times for various criminal offenses the request may be submitted only after the lapse of 8 or 10 years as specified by law, must have not committed criminal acts, have compensated the injured party and paid the costs of criminal proceedings initiated against him and should not be subjected to security measures.\(^{73}\)

### 6. Conclusions

Rehabilitation Institute is considered a humane option granted to persons who are convicted after committing an offense and during the prescribed vetting period have not committed any criminal offense. This is a second chance that the legislator provided for convicted persons in order to contribute primarily in self-improvement and thus to contribute to the family, surrounding and to society. By analyzing this institute it was aimed to clarify some dilemmas that arose in practice and to provide suggestions regarding decision without violating the rights of prisoners and aiming the purpose of punishment, without pretending that all subjects and points have been tackled. Recommendations lie mainly in accurate interpretation of this provision and application of more favourable law.

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\(^{71}\) Article 69 of the Criminal Code of Albania


\(^{73}\) Av. Mascia Salvatore. Criminal rehabilitation—how to sanitize criminal records. Published on 20 December 2010 in www.shqiptariiitalise.com
1. Regarding the accurate and equal implementation within entire territory of Kosovo I believe that Supreme Court should take a principle stance on this.

2. If legal provisions of Article 103 read that a person convicted may be expunged from the records one time only, then it would be more humane to act pursuant to the provision foreseen in CPCRK because its provisions are more favourable to the convicted persons because it does not envisage the word: the first time for offenses that were committed while the same law has been in force.

3. It is a matter of exigency to define who is the public competent entity for judicial related matters that would ex-officio deal with the rehabilitation, since apart from recognition of the right of convicted persons, at the same time the courts would be relieved from taking decisions in recognition of the said right which would significantly contribute in bringing back the trust in public authorities.

4. Regarding the disclosure of information from the criminal record of convicted, I think an intervention is needed in this regard so upon the expungement from records obtaining of information for expunged convictions would be more limited and with this the rehabilitation institute would lose its effect and the re-socialized persons again would be a subject of prejudices.

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