

KJI NEWSLETTER October 2006

This newsletter is published to fully inform the magistrates in Kosovo on the activities of the Kosovo Judicial Institute (KJI). This publication is distributed to judges and prosecutors throughout Kosovo. The Monthly KJI Newsletter features articles relating to issues of interest to judges and prosecutors working in Kosovo.

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PRESCRIPTION OF EXECUTION OF ACCESSORY PUNISHMENTS AND MEASURES OF COMPULSORY TREATMENT

INTRODUCTION

Prescription of criminal prosecution and prescription of execution of criminal sanctions constitutes termination of the right of state authorities to criminal prosecution of perpetrators of criminal offences and the right to execute criminal sanctions imposed through final judgment, due to the fact that the time spent is too long.

After the expiry of certain time the criminal offence and execution of criminal sanctions become mature and in this way the application of Criminal Code is suspended, and there is no procedural right either to prosecute nor execute the imposed criminal offence, only due to the effect of the time and omission or lack of action by respective bodies within the reasonable time frame.

Regarding the issue of Prescription of criminal offence and execution of criminal sanctions the

Criminal Code of Kosovo provides for conditions and time frames within which the justice authorities are obliged and authorized to act when conducting a prosecution of criminal offences, and execution of criminal sanctions. In this respect they are obliged to act *ex lege*, meaning that the will of a person subject to the prosecution or execution of judgment is not taken into consideration. They can not withdraw from the effect of terminating the prosecution and execution of criminal sanctions.

Criminal Code of Kosovo has regulated prescription of criminal offence in a special manner, by setting the deadlines which depend on the time length of the imposed measure, depending on the measure if it is long time imprisonment, imprisonment or punishment by fine irrespectively of the **amount of fine**.

PRESCRIPTION OF EXECUTION OF ACCESSORY PUNISHMENTS

When mentioning the prescription of execution of accessory punishments and measures for

compulsory treatment, the lawmaker has foreseen special deadlines which are not

influenced by the time frame of the accessory punishment imposed through a final decision.

It is notable that according to Article 54 of CPCK the accessory punishments may only be imposed joined with principal punishments and alternative punishments, but not as special punishments, except the punishment of fine which may also be imposed as principal punishment alone and also as accessory punishment joined with principal or alternative punishments.

One special thing about the provisions of Article 93 of PCKK which regulates the issue of prescription of accessory punishments and measures of compulsory treatment is that these measures, except the punishment of fine which has the same deadline of prescription as well as the cases when this punishments are imposed as principal punishments, special deadlines have been foreseen for them which don't share the fate of deadlines of the principal punishments.

There are some situations in which the principal punishment has been imposed jointly with the accessory punishments and the deadline of prescription of the principal punishment is shorter than the deadline of prescription of the accessory punishment and vice versa.

THE DEADLINE FOR OF PRESCRIPTION OF THE ACCESSORY PUNISHMENTS

An important issue that it is worthwhile to treat is the moment when the deadline of prescription of accessory punishments starts. Except the punishment of fine, seizure of an item, which start to count from the day, when the judgment for imposing them becomes final, irrespectively on what was the punishment for which the perpetrator was tried.

Pursuant to Article 93 par 2 of PCKK the deadline of prescription of accessory

Another special of the prescription of the execution of accessory punishments, with exception of the punishment of fine, is that the deadline of prescription of the accessory punishments is sometimes consistent with the deadline of the accessory punishment, but sometimes these deadlines don't match. This indicates that if an accessory punishment of prohibition to exercise functions in the public administration or public service for five years pursuant to Article 56 par 1 PCKK was imposed on a perpetrator of a criminal offence than this deadline is absolutely consistent with the deadline of prescription of this punishment, but in a case when the accessory punishment of waiving the right to be elected from Article 55 is imposed, than the deadline of prescription of this accessory punishment is longer than the deadline of the punishment which may be imposed, because such an offence can not be imposed for a period which exceeds three years.

When speaking about the prescription of accessory punishments as in Article 54 par 2 of PCKK, with exclusion of punishment of fine, pursuant to Article 93 par 2 of PCKK the deadline of prescription is five years from the day when the judgment becomes final, irrespectively of the time-length of the punishment defined in the judgment.

punishments is five years from the day when the judgment for imposing these punishments becomes final. However since the punishments foreseen in Article 54 par 2 item 2, 3, 4, 5, 6 and 9 of PCKK, according to Article 62 par 2 may be executed only after having served the imprisonment punishment than the deadline of prescription does not start from the day when the judgment becomes final, because the accessory punishment enters into force after serving the principal punishment, and the

prescription should start to count from that date and if this deadline expires the accessory punishment can not be executed. Usually the judgment for imposing accessory punishments defines that the accessory punishment shall be executed after the principal punishment is served.

It is problematic to set the date when the deadline starts to count, because if a person has been punished with five years of imprisonment and if the person is serving the sentence, but was released in the meantime as a result of mitigation of punishment or amnesty, I think that the deadline should start to count from the day when a person was released from the imprisonment punishment, not from the day of expiry of the punishment imposed through judgment this is also indicated in the provisions of Article 63 par 3 of PCCK which states in part that the execution of accessory punishment starts after serving the imprisonment punishment.

As stated above this applies only for the accessory punishments which have been imposed together with long term imprisonment not for the other punishments, such as suspended sentence and punishment of fine because in these cases the deadline of prescription starts to count from the day when the judgment becomes final.

The special case would be if the accessory punishment is imposed together with the alternative punishment of semi-liberty. It is hard to indicate when does the execution of accessory punishment start and what is the date when the prescription of accessory punishment starts the situation is like this because during the day the person conducts different every-day activities and spends one part of a day in prison. It is my view that we should treat such case as exclusion and the deadline of prescription should be calculated from the day when the judgment becomes final. And not from the moment of serving the sentence as it is the case when the accessory punishments are imposed together with imprisonment punishment. If a person was punished with semi-liberty because of commission of a criminal offence of endangering the public traffic, after the court found that a person is employed and supports the family, the court ordered that he should work during the day, whereas during the night he shall serve the sentence, but jointly with this punishment he was also imposed an accessory punishment prohibition to drive for three years, than I consider that in this case accessory punishment could be executed from the day when the judgment becomes final, irrespectively if the person is serving the semi-liberty sentence or not. This punishment although imposed as imprisonment punishment, only a part of it is executed during the day and it therefore differs from the imprisonment punishment.

PRESCRIPTION OF IMPLEMENTATION OF MEASURES FOR COMPULSORY TREATMENT

With respect to prescription of compulsory treatment, I think that the law is very clear and these measures can not be executed after the expiry of deadline of three years from the day when the judgment for imposing this measure becomes final, irrespectively if we are dealing

with a measure for compulsory treatment, with imprisonment or liberty related measure such as the ones provided for in Article 4 and 5 of Regulation no. 2004/34 on the criminal procedure which involves perpetrators with mental disorder. In cases when such a measure

is imposed jointly with the imprisonment punishment, than this measure should in principle be executed before the principal punishment and it is calculated in the imposed punishment and therefore there is no reason why

one should wait for the execution of these measures and the time of initiation of prescription deadline for these measures is very clear.

SUSPENSION AND TERMINATION OF EXECUTION OF ACCESSORY PUNISHMENTS AND MEASURES OF COMPULSORY TREATMENT

The provisions of Article 93 do not envisage the conditions for suspension and termination of the deadline of prescription in a special manner, It is my view that the provisions of Article 94

should be applied *mutatis mutandis* when speaking about the prescription of execution of accessory punishments, irrespectively of the nature and purpose of these punishments.

Forthcoming events November 2006

Practical skills training: Simulation of a trial

Target group: Civil Judges

KJI will organize a practical simulation of a trial for civil judges of Prishtina region. A problematic case from the court practice has been selected for this purpose. This case will encourage participants to discuss the problems which are related to the case and everyday court practice.

Planned date: 02 November 2006

Seminar, European Convention on Human Rights

Target group judges and prosecutors of Prizren Region

KJI will continue its trainings on the European Convention of Human rights, this time in Prizren Region. This will be a two day session which aims to give a detailed overview on the implementation of provisions of Article 5 and 6 of the Convention, with the purpose of increasing the professional knowledge of judges and prosecutors in Kosovo on the case law of the European Court of Human Rights. Eight national trainers, judges and prosecutors who

are certified by the Council of Europe will act in the capacity of trainers in this session.

Planned date: 03 and 04 November 2006.

Workshop: Protection of victims of trafficking in human beings

Target group: Judges and Prosecutors

The main purpose of this workshop is to present and analyze the problems in the court practice, especially the measures for prevention of this phenomena, protection and rights of victims in the criminal procedure etc.

Planned date: 07 November 2006

Seminar for lay judges in Gjilan region

Target group: Lay judges

Based on its mandate and within the framework of organization of trainings for lay judges in the regions of Kosovo KJI will organize a seminar for lay judges in the Gjilan region. The training will focus on the practical aspects of development of criminal and civil procedures in which the role of lay judge is significant, the

seminar will also include some aspects of the Code of Ethics.

Planned date: 09 November 2006

Practical skills training: Simulation of a trial

Target group: Prosecutors and Judges

KJI will organize a practical simulation for judges hearing criminal cases and prosecutors of Mitrovica region. A case related to the session for imposing a detention on remand has been selected for the purposes of this training. After the simulation participants will discuss the problems which are faced during their everyday work with the purpose of harmonizing the court practice.

Planned date: 15 November 2006

Seminar on Administrative law

Target group: Civil judges

The seminar will mainly focus on the administrative disputes, protection of constitutional rights and freedoms in administrative litigations, the law suit in the administrative dispute, administrative act as an object of administrative dispute. The court practice will emphasize different difficulties with the purpose of eliminating them.

Planned date: 17 November 2006

Seminar - Property law – Ownership

Target group: Civil judges

The topics which are to be treated during the seminar will mainly focus on the issues related to the issues related to the right to purchasing priority in real estates, gaining of the ownership right in real estates based on legal basis, obstruction of possession in property servitudes, gaining the property servitude based on the possession etc.

Planned date: 21 November 2006

Workshop – Interpretation and management of cases, Court management,

Target group: judges and prosecutors

KJI in cooperation with Council of Europe will organize workshop on interpretation, case management and court management. The experts in this session will be foreign lecturers who by presenting the best practices on these issues will have a possibility to convey knowledge to the participants which will help them in their everyday practice.

Planned date: 23 November 2006

Workshop – Drafting of judicial decisions

Target group: Judges and prosecutors

KJI and Council of Europe will organize this workshop which will mainly focus on the drafting of judicial decisions. This time as well the lecturers will be foreign experts. This session will mainly focus on the techniques and modern forms of drafting of judicial decisions with the purpose of enabling Kosovar judges be in the same paste as the international judiciary.

Planned date: 24 November 2006

Workshop on Code of Ethics

Target Group: Judges and Prosecutors of Prishtina Region.

Within the framework of its activities in the regions of Kosovo KJI will organize a workshop on Code of Ethics. This time the beneficiaries of this training will be judges and prosecutors from Prishtina region. The purpose of this training will be to give a detailed overview on the experience and practice. Special element of the discussion will be the independence of the judge. The training will focus on the position of the judge as individual decision maker and as a decision maker in a panel

Planned date: 30 November 2006