Time Limit for Preliminary Investigations and Criminal Prosecution

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Abstract

This study addresses the legal issues related to the time limits of preliminary investigations in Albanian criminal proceedings, with a particular focus on the relationship between the conclusion of investigations, notification of the defendant of their results, and the exercise of prosecution by the prosecutor. The research problem relates to the clarity of the timelines between the investigative activity for gathering evidence and the procedural actions that the prosecutor performs to formulate the indictment and bring the case to trial. The paper aims to analyze the Albanian normative framework, identify the procedural consequences of exceeding investigative deadlines, and assess whether the current regulation effectively guarantees the right to due process, legal certainty, and the right to defense in the Constitutional and Convention sense. For this purpose, legal-dogmatic, interpretative, systematic and comparative methods have been used, intertwined with the analysis of Albanian jurisprudence, the European Court of Human Rights and Italian legal doctrine. The analysis highlights the need for a clearer distinction between the deadline for completing investigative actions and the deadline for formulating the indictment and filing the request to bring the case to trial. In this context, the study proposes amendments to the Criminal Procedure Code in the following areas: setting a specific time limit for initiating criminal prosecution, and clarifying the concept of indictment, with the aim of strengthening procedural safeguards and enhancing the effectiveness of criminal proceedings.

Keywords: ***Time limit for preliminary investigations, act of completion of investigations, exercise of prosecution, notice of completion of investigations, conduct of additional investigations, principle of irrevocability of prosecution.***

1. Introduction

The right to a fair trial and to trial within a reasonable time constitutes one of the fundamental guarantees of the criminal process, provided for by Article 6 of the European Convention on Human Rights (ECHR) and Article 42 of the Constitution of the Republic of Albania. The case law of the European Court of Human Rights has emphasized that the

standard of a reasonable time extends to all stages of criminal proceedings, including the pre-trial investigation stage, which we will address in this article.

Within the framework of this standard, the Criminal Procedure Code (CPC) has provided for specific deadlines for conducting preliminary investigations, in order to guarantee the efficiency of criminal proceedings and protect the person under investigation from unreasonable obstacles that may be encountered throughout the criminal proceedings. The preliminary investigation is a procedure that takes place before the trial, in the form of a preliminary verification and investigation of a criminal case. The main purpose of conducting the preliminary investigation is to establish an evidentiary basis, which serves to determine the circumstances that need to be proven; in other words, to prepare the case for submission to the court (Hyseynov T., Ismayilov N., 2026).

However, procedural practice has highlighted a number of problems in cases where the prosecutor decides to terminate the investigations and notifies the defendant of this act, and regarding the right of the defendant to request additional investigations.

Albanian criminal procedural legislation has maintained a controversial approach to the time limits within which the prosecutor completes the preliminary investigations in the sense of collecting all the necessary evidence that he will need to conclude further to determine the final outcome of the preliminary investigations, with the time limits that the prosecutor will need to make a final decision on the fate of the criminal proceeding investigated by him.

So, we are faced with a situation that will be analyzed in this paper, where the prosecutor's activity of gathering evidence and that of concluding the investigation are intertwined with each other without establishing certain dividing lines that we believe should exist between them. In this context, the question arises as to whether the defendant's right to request further investigations will be effective if the prosecutor, with the act of concluding the investigation, has also notified the defendant of the indictment he has formulated at the end of the investigations under Article 327 of the CPC?

Another issue addressed in this paper relates to clarifying the concept of prosecution by the prosecutor. This paper highlights the lack of a definition of the concept of prosecution by the prosecution office in the CPC, the importance it carries, and the need to include this concept as a legal definition in the CPC.

Through an analysis of our criminal procedural legislation compared to the Italian criminal procedural legislation, this paper aims to present our opinion on the possibility of handling these cases in practice, offering relevant recommendations for improving the functioning of the court and the prosecution office during the preliminary investigation phase, with the aim of increasing the level of procedural guarantees that should be provided to the defendant at this stage of the criminal proceedings.

2. Methodology

This study is based on a legal-analytical approach, intertwined with the comparative legal method, with the aim of examining the normative framework governing the time limits for preliminary investigations and the exercise of prosecution in Albanian criminal proceedings. The methodology is oriented towards identifying the issues arising from the interplay between the deadline for gathering evidence and the deadline for completing the investigations, formulating the indictment, and filing the request to bring the case to trial.

The legal-dogmatic method was used to analyze the provisions of the Criminal Procedure Code, particularly Articles 323, 324, and 327, in relation to the provisions governing the prosecutor's function, the procedural status of the defendant, and the consequences of the invalidity of procedural acts. Through the interpretative and systematic method, the relationship between these provisions has been examined, in order to determine the meaning and legal effects of the conclusion of the preliminary investigations, as well as the time limits for the exercise of criminal prosecution.

The comparative legal method was applied through an examination of the Italian criminal procedural regulation, focusing on the moment of completion of the preliminary investigations, the exercise of criminal prosecution, and the deadline for filing the request to bring the case to trial. The comparison was made based on the legal function of the respective institutions and not only on the textual similarity of the provisions, in order to assess the possibility of adapting the Italian solutions to the Albanian criminal procedural system. This takes into account that many institutions of Albanian procedural criminal law are derived from or have broad support in the Italian legal system.

In terms of interpreting the normative framework and assessing procedural safeguards, the study also relies on the jurisprudence of the European Court of Human Rights and the Constitutional Court of the Republic of Albania, as well as on Albanian and Italian legal doctrine. These sources were used to examine the standard of reasonable time, legal certainty, the right to defense, and the constitutional role of the prosecutor in exercising criminal prosecution.

3. Discussions

3.1 Reasonable time as a constitutional standard in criminal proceedings

The starting point of this paper begins with a focus on addressing the element of *the right to be tried within a reasonable time.* The right to be tried within a reasonable time is one of the fundamental elements of due process of law (Harris, 1967) and one of the most important guarantees for the protection of the individual from excessive delays in criminal proceedings. This right, which serves the procedural guarantees provided to the investigated person/defendant during criminal proceedings brought against him, is expressly provided for in Article 6 of the European Convention on Human Rights, according to which everyone has the right to have his case heard *within a reasonable time* by an independent and impartial court (Convention for the Protection of Human Rights and Fundamental Freedoms, ETS no.5, 1950). Similarly, Article 42 of the Constitution of the Republic of Albania guarantees everyone's right to a fair and public trial *within a reasonable time* (The Constitution of the Republic of Albania, 1998).

Prima facie when referring to the notion of *the right to be tried within a reasonable time,* we initially mean that the reasonable time refers to the stage of judicial review where the defendant is tried before an independent and impartial court. In criminal proceedings, the reasonable time frame does not only include the trial phase. The judicial review phase is only an integral part of the exhaustion of the reasonable time limit for the trial of the defendant (Summers S., Trechsel S., 2006). The case law of the European Court of Human Rights has emphasized that the standard of a reasonable time frame is not only related to the judicial phase of the criminal proceedings, but to the entire criminal proceedings as a whole, starting from the moment when the person is considered a suspect or accused of a criminal offense and until the conclusion of the criminal proceedings.

In the case of *Kudła v. Poland*, the ECtHR emphasized that the duration of the proceedings should be assessed in relation to the complexity of the case, the conduct of the public authorities, and the importance of the proceedings for the person against whom the criminal prosecution is being conducted. (Kudla v. Poland [GC], 2000)

In the context of this paper, the standard for determining a reasonable time frame takes on particular importance if we refer to the preliminary investigation phase. The time limits for investigation, unlike the time limits for the trial of a criminal case, are expressly provided for in Article 323 of the CPC. The extension of the investigation period is provided for in Article 324 of the CPC. The legislator attaches particular importance to the time within which the preliminary investigation must be completed since the person under investigation at this stage faces situations and consequences in terms of the restriction of his personal, professional and social rights.

The delay in the preliminary investigations not only violates the right to due process of law, but also creates a state of ongoing legal uncertainty for the person subject to criminal proceedings (OSCE, 2006). For this reason, the procedural time limits of the investigation cannot be considered merely as rules of a technical procedural nature, but as guarantees directly related to the effective protection of the fundamental rights of the individual (Islami H., Panda I., Hoxha A., 2012). The latest legal amendments to Articles 323 and 324 of the Criminal Procedure Code (CPC) have reflected the need to conclude the investigation within a short period of time in order to effectively guarantee the investigated person's constitutional right that the criminal proceedings against him be concluded within a reasonable time.

Within the investigation deadlines and their extension under Articles 323 and 324 of the CPC, the prosecutor is obliged to carry out all investigative actions and to collect all the necessary evidence that will serve him to decide on the outcome of the investigated case. This evidence may be obtained from sources of evidence through investigative actions or may be administered on the basis of a request submitted by the investigated person until the conclusion of the investigation. The determination of the preliminary investigation within the legal deadlines provided for in Articles 323 and 324 of the CPC obliges the prosecutor to complete the investigation initiated by him without delay. Despite the existence of these time limits, procedural practice has revealed significant issues regarding their legal nature and the consequences of exceeding the investigation time limit. The issue of not fully carrying out all the necessary investigative actions due to the expiration of the investigation deadline by the prosecutor may lead to the reversal of the criminal proceeding, according to which the investigated case may be remanded once again for completion of the investigation by the preliminary hearing judge.

In this context, careful compliance with the investigation deadline guarantees the investigatee legal certainty that the investigation initiated against him will be completed within the statutory deadline. The general principle of legal certainty is inherent in every Western legal system and manifests itself in various forms in the case law of the Court of Justice and the General Court of the European Union (Meerbeeck, 2016). In its case law, the ECtHR has emphasized that the duration of criminal proceedings does not have only a procedural impact, but directly affects the private,

professional, and social life of the individual (Kart v. Turkey, 2009).

In this context, there is a need to analyze the notion of the time limit for preliminary investigations, the connection and interdependence of these time limits with other actions that the prosecutor must perform after the completion of the process of obtaining and collecting evidence, which, when assessed from this perspective, do not merely constitute procedural mechanisms that must be respected by the judicial authorities, but constitutional guarantees directly related to the individual's right *to be tried within a reasonable time*. This very issue constitutes one of the main topics to be addressed later in this paper.

3.2 Time limits for preliminary investigation in Albanian criminal procedural legislation

The preliminary investigation constitutes the initial phase of criminal proceedings, during which the prosecution authority carries out the necessary procedural actions by gathering evidence, to verify the existence or non-existence of the criminal offense, the consequences resulting from it, the identification of the perpetrator of the criminal offense, the identification of the specific legal provision that defines the perpetrator's act as a specific criminal offense, and the determination of the legal basis for initiating the criminal prosecution. Given that during this phase the person under investigation faces the legal and personal consequences of the criminal proceedings, the criminal procedural legislation has provided for specific time limits for the conduct and completion of preliminary investigations, in order to guarantee the standard of trial within a reasonable time and to avoid delays in the proceedings (Elezi, 2014).

In Albanian criminal procedural legislation, the time limits for the preliminary investigation are provided for in Articles 323 and 324 of the Criminal Procedure Code. Through these provisions, the legislator has aimed to set time limits on the investigation, its extension, the exercise of prosecution in cases provided for by law by the prosecutor, and to strengthen control over the duration of investigations, in order to protect the rights of the person under investigation and ensure procedural efficiency.

3.3 Deadline for completion of investigations and their extension

Preliminary investigations shall commence and conclude within the deadlines clearly set out in Article 323, paragraph 2, of the CPC. The deadline for the completion of investigations is three months from the date on which the name of the person to whom the criminal offense is attributed was entered in the register of notification of criminal offenses at the prosecution office that initiated the investigations for all criminal offenses, except for criminal offenses investigated by the Special Prosecution Office and provided for in Article 75/a, letters “a” and “b” of the CPC. In the latter case, the investigations must be completed by the Special Prosecution Office within a period of six months.

The prosecutor must complete the investigations within the deadlines provided for in Article 323, paragraph two, of the CPC. Within the investigative time limit clearly defined in Article 323 of the CPC, the prosecutor is obliged to complete all investigative actions, including taking evidence, drafting all procedural acts necessary for the initiated investigation, and examining all requests that may be submitted by the investigated person, the victim, and other parties in the criminal proceedings. The investigation must be thorough and completed within the investigation period.

If the investigations have not been completed within the aforementioned deadlines, the prosecutor conducting the investigations of the criminal case may extend the investigations without specifying any specific legal reason for their extension. The extension of the investigations by the prosecutor is a lawful investigative action provided for as such by Article 324 of the Criminal Procedure Code. Pursuant to Article 324, paragraph one of the CPC, the prosecutor may extend the investigations for a period of up to three months for the prosecution offices investigating all criminal offenses and six months for the Special Prosecution Office.

Further extensions of the investigations provided for in Article 324, paragraph two, of the CPC, each for a period not exceeding three months, may be made by the prosecutor investigating the case only when two legal circumstances that have been present throughout the investigation are established. These circumstances refer to the case of complex investigations or the case of objective impossibility to complete them within the extended deadline. These circumstances justifying the extension of the investigations must be reflected in the prosecutor's decision to extend the investigation period. In any case, the further extension of the investigations shall be carried out for a period not exceeding 3 months.

The maximum duration of the investigation provided for in Article 324, paragraph two, of the Criminal Procedure Code is two years. For maximum investigation periods of up to two years, the extension is made by decision of the prosecutor investigating the criminal case. Beyond the 2-year term, in cases of charges of organized crime and crimes tried by a panel of judges, the investigation term may be extended only with the approval of the General Prosecutor or the

Head of the Special Prosecution Office by up to 1 year, for each extension not exceeding three months, without prejudice to the terms of the duration of pre-trial detention.

So, the maximum duration of investigations not for all criminal offenses but only for a certain category of crimes provided for in Article 324, paragraph two, of the CPC, including the act of approval by the General Prosecutor or the Head of the Special Prosecution Office, is 3 years.

Beyond these deadlines, the prosecutor cannot obtain any further evidence. Referring to Article 324, paragraph four of the CPC, the evidence obtained by the prosecutor after the expiration of the investigation period, including its extension, cannot be used. According to this legal obligation, the prosecutor must act with due care and diligence during the investigation in terms of collecting evidence. The prosecutor is prohibited from delaying investigations with regard to obtaining evidence beyond the investigation deadline.

The legislator has provided for short deadlines for the completion of the preliminary investigation and for reaching a resolution at its conclusion (Miha, 2024). The preliminary investigation phase for the collection of evidence and other data that serve the criminal proceeding shall be completed within the investigation time limits or within the extended investigation time limits pursuant to Articles 323 and 324 of the CPC (Parlament A. , 1995).

3.3.1 Legal changes to the time limits for preliminary investigations

The changes that took place in the CPC with Law No. 35/2017 have brought innovations also in terms of setting the investigation period, its extension, as well as the actions that the prosecution office must take at the end of the investigations. At this point, the legislator intended, with these amendments, to regulate, to some extent, the prosecutor's actions regarding the investigation and its conclusion within a reasonable legal timeframe. Articles 324 and 327 of the CPC underwent substantial amendments to improve the effectiveness of the prosecution's activities at the preliminary investigation stage.

Law No. 35/2017 amended the content of paragraph four of Article 324 of the CPC which provides for the case of inadmissibility of evidence when it is obtained by the prosecutor outside the investigation period. Before the amendments, Article 324, paragraph four of the CPC stipulated that investigative actions carried out after the expiration of the time limit could not be used.

"Investigative actions" as a term used by the law before its amendments had created some problems in terms of the application of this legal provision in specific cases. In some cases, the courts included under the term "investigative actions" not only the actions that ensured the collection and obtaining of evidence by the prosecutor, but also other actions related to the drafting and notification of procedural acts formulated by the prosecutor, such as the indictment notification act, the act of concluding the investigation, or even the request to bring the case to trial. In this sense, in some cases, if the courts found that the procedural act of notifying the indictment, the conclusion of the investigation, or the request to send the case to trial had been drafted by the prosecutor after the expiration of the investigation period, then for these acts they declared their invalidity as part of the "investigative actions" carried out by the prosecutor after the expiration of the investigation period in support of Article 324, paragraph four, of the CPC.

To clarify the consequences resulting from the expiration of the investigation deadlines, the legislator, by Law No. 35/2017 amended the content of Article 324, paragraph four of the CPC, specifying that "evidence obtained after the expiration of the investigation period cannot be used". Through this significant change, the legal situation and the consequences that may arise as a result of the expiration of the investigation deadlines have been clarified. With the new legal changes, only evidence obtained after the investigation deadlines have expired cannot be used in court proceedings. This solution implies that procedural acts drafted by the prosecutor after the expiration of the investigation period, such as the request to send the case to court, are not automatically invalid acts if the prosecutor has not drafted these acts within the investigation period.

As mentioned above, Article 327 of the CPC, which provides for the actions of the judicial police and the prosecutor upon the conclusion of the investigation, underwent some important changes directly related to the conclusion of the investigation. Article 327, paragraph six of the CPC stipulates that, upon completion of the investigation, the prosecutor (Albania, 2017)1 shall decide to dismiss the criminal case or the indictment in cases where the law authorizes the prosecutor to take such action, or shall request the court to dismiss the criminal case or the indictment, or shall request the court to refer the case to trial.

We must pay special attention to this provision, as it is important for the outcome of the preliminary investigations.

[1] *The investigations shall be completed within the time limits provided for in Articles 323 and 324 of the Criminal Procedure Code*

3.4 Conclusion of preliminary investigations

Article 327, paragraph six, of the CPC provides for the completion of all investigative and procedural actions to be carried out by the prosecutor, including the drafting by the prosecutor of the request to refer the case to court, the drafting of the request to dismiss the case, or the drafting of the decision to dismiss the case in the cases provided for in Article 328, paragraph one, of the CPC (Albania, 2017). Therefore, according to this provision, the prosecutor must complete all his investigative actions within the investigation deadline, whether in terms of obtaining evidence or in terms of drafting procedural acts that conclude the preliminary investigation phase.

In fact, this solution creates problems in implementation. There are quite a few cases in practice where the prosecutor drafts the request to send the case to court and notifies the defendant after the end of the investigation deadlines. As mentioned above, such an action taken by the prosecutor after the completion of the investigation exceeds the provision of Article 327, paragraph six of the CPC, as the act of sending the case to court must also be drafted by the prosecutor at the conclusion of the investigation and not after its completion. In our opinion, this approach is more appropriate in terms of the quality of the investigation and the guarantees that must be provided to the person under investigation. To put it more clearly, the request to bring the case to trial would be better drafted after the completion of the investigations and not at the conclusion of the investigations, and for the drafting of this request, the prosecutor should be legally assigned a time limit that should be part of the overall investigation period. The proposal for a new solution is supported by several arguments.

More specifically, pursuant to Article 327, paragraph two of the CPC, the prosecutor shall notify the defendant and his defense counsel of the conclusion of the preliminary investigation. The notice contains, among other things, the description of the criminal offense, the time and place of the commission of the criminal offense, the legal classification, the filing of the documents with the registry and the right to be informed and obtain copies of the investigative documents (Duraj, 2021). In the notice pursuant to Article 327, paragraph two, of the CPC, the person under investigation has already acquired the status of defendant since the notice on the conclusion of the investigation is addressed to the defendant. He is familiar with the criminal fact under investigation, with the elements of the criminal offense such as the time and place of its commission, as well as with the legal qualification. At the end of the investigations, i.e., not after their completion, the prosecutor must submit to the court a request to bring the case to trial.

All these actions render ineffective the request that the defendant may file for conducting additional investigations under Article 327, paragraph four, of the Criminal Procedure Code after being acquainted with the act of completion of investigations. With the act of conclusion of the investigation pursuant to Article 327, paragraph two, of the Criminal Procedure Code, the prosecutor has formed his conviction regarding the results of the concluded investigation, and consequently, it is difficult for him to subsequently change this conviction based on a request that the defendant may submit at the end of the investigation for the performance of certain additional investigative actions in the interest of his defense.

At this point, it would be useful and more effective for the deadlines of investigations related mainly to the collection of evidence and the performance of other investigative actions to be separated from the deadlines that the prosecutor would need to assess, formulate, draft and notify the indictment and the request to send the case to trial. Separating the deadline for the conclusion of the investigation from the new deadline that the prosecutor will need to formulate the indictment and draft the request to bring the case to trial benefits all parties involved in the criminal proceeding.

By separating these deadlines, the prosecutor will not have to make his assessment on the results of the investigation in the act of formulating the indictment and the request to send the case to trial, before he examines the defendant's request to carry out additional investigative actions. Only after conducting additional investigative actions at the request of the defendant, will the prosecutor have a clearer picture of the totality of the evidence gathered during the investigation, thus concluding the preliminary investigation phase in terms of the comprehensive collection of evidence. Once all the necessary evidence has been gathered, the prosecutor will have the proper opportunity to objectively assess the connections and contradictions that may arise from the analysis of their content. In this way, after the completion of the investigations, in the indictment and the motion to send the case to trial, the prosecutor has the opportunity to integrate into their content the results of the additional investigative actions carried out at the request of the defendant. The charge takes its full form and becomes a coherent, clear, and understandable charge.

By separating the deadline for the completion of the investigation from the deadline for drafting the indictment and the request to bring the case to trial, the defendant will be practically and effectively guaranteed his rights, such as the right to be tried within a reasonable time, the right to be informed in detail about the criminal offense for which he is being investigated and the grounds for the indictment, and the right to seek and present evidence that serves the defense.

This proposed separation helps the defendant in terms of avoiding delays and setbacks that the criminal proceedings may suffer at the preliminary hearing stage or at the trial stage. As mentioned above, the formulation of the indictment and the request to bring the case to trial at the end of the investigation period renders the defendant's request to seek additional investigative actions ineffective. The prosecutor has already formed his conviction on the results of the investigation after he has drafted the final indictment under Article 34 of the CPC. Any subsequent request made by the defendant for further investigations would not be effective as it would be difficult for the prosecutor to change his position, which has already been formalized in the drafting of the official indictment.

At this point, the defendant will submit the request for additional investigations to the preliminary hearing judge, and if the judge deems his request justified, then, pursuant to Article 332/ç of the Criminal Procedure Code, he will order the prosecutor to complete the investigations by returning the criminal proceedings for further action. The preliminary hearing judge may assess whether the evidentiary material and sources of evidence, collected by the prosecutor during the preliminary investigations, are sufficient and appropriate, and whether further investigations are necessary (Prifti, 2025). This situation directly harms the interests of the defendant as it violates his right to a fair trial within a reasonable time.

Drafting the indictment and the request to bring the case to trial at the end of the investigation period and not after its completion makes the indictment and the request to bring the case to trial unstable, flexible, incomplete, and unclear. Generally, the indictment drafted by the prosecutor, which is then included in the request to bring the case to trial, does not reflect the entire historical fact investigated and the relationship the defendant has with it. The fact that the indictment does not include certain other pieces of information that could be obtained from the evidence requested by the defendant after he was informed of the indictment makes it unsound and unclear. At this point, the defendant is denied the right to be informed of all the grounds on which the charge should be based, as well as the right to present evidence in support of the defense as early as the preliminary investigation stage.

The proposed solution for separating the investigation deadlines from the deadlines the prosecutor will need to draft the final indictment and the request to bring the case to trial is also important from a practical standpoint. As mentioned in the paragraphs above, there is already an established practice of the courts with the new amendments introduced by Law No. 35/2017, that only the evidence obtained after the expiration of the investigation period is inadmissible under Article 324, paragraph four, of the CPC. Procedural acts that may be drafted by the prosecutor after the completion of the investigations, which, depending on the case, may be the act of notifying the defendant of the indictment or the act of referring the case to court, are not subject to the rules on their invalidity or inadmissibility. In this regard, the legal definition provided for in Article 327, paragraph six, of the CPC, according to which the prosecutor, at the end of the investigation, submits to the court the request to send the case to trial, does not bring any benefit to the interests of the defendant in terms of the invalidity of these acts, in cases where the request to send the case to trial is drafted by the prosecutor after the end of the investigation period.

Consequently, separating the investigation period from the deadline for drafting the request to bring the case to trial would significantly increase the quality of the investigation of the criminal case, on the one hand, and, on the other hand, would effectively guarantee the rights of the defendant as early as the preliminary investigation stage.

Such a solution is provided for in Article 407-bis of the Italian Criminal Procedure Code, which was taken as a guiding model in the drafting and subsequent amendment of our Code by Law No. 35/2017. According to the Italian approach, the investigative period in which the prosecutor is committed to initiating and completing the investigation with a view to gathering all the necessary evidence, including the evidence requested or provided by the defense of the suspect, is completely legally separate from the period within which the prosecutor must notify the defendant of the charges through the request to send the case to trial. Pursuant to Article 60 of the Italian Criminal Procedure Code, the person to whom the criminal offense is attributed in the request for referral of the case to court acquires the status of defendant. Upon filing the request for bringing the case to trial, the prosecutor, pursuant to Article 407-bis of the Italian Criminal Procedure Code, initiates the criminal prosecution. The notification of the defendant's indictment and the prosecution by the prosecutor are carried out through a single procedural act, which is the request to bring the case to trial.

The Italian criminal procedure system, at the end of the investigations and after their completion, provides a clear definition of the sequence of actions and the time frame within which the prosecutor will have to carry out these actions one after the other. Consequently, the right to exercise prosecution by the prosecutor in the Italian criminal procedure system takes on the proper meaning as a procedural action through which the prosecutor asks the court to try the defendant on the charge formulated by him in the request to bring the case to trial.

The lack of definition in the Albanian criminal procedure system of the sequence of actions to be taken by the

prosecutor at the end of the investigation, as well as the lack of a legal definition of the concept of prosecution after the completion of the investigation by the prosecutor, have created some problems in terms of the quality of the investigation and the guarantee of defense to be provided to the defendant when his case is to be heard by the court.

Therefore, addressing the concept of prosecution holds particular significance in this paper.

3.5 The right to prosecute by the prosecutor

Prosecution is an exclusive function of the prosecutor, which he exercises for all criminal offenses that, according to the law, are subject to preliminary investigation. It is sufficient to mention the case of absolute invalidity of procedural acts when the provisions related to the exercise of criminal prosecution provided for in Article 128/a, paragraph one, letter "b" of the CPC are violated, to understand the importance of addressing the notion of exercising criminal prosecution.

The prosecutor conducts the criminal prosecution based on Article 148 of the Constitution, which is also reflected in Article 24 of the Criminal Procedure Code (CPC). What is prosecution, and how is it carried out by the prosecutor? What are the hypothetical cases that could lead to the absolute invalidity of procedural acts if the provisions related to the prosecutor's right to prosecute are not complied with? These are questions to which doctrine has not provided a clear and consolidated answer due to the lack of legal references. Although the CPC provides for the absolute invalidity of procedural acts as a form of sanction when the provisions related to the prosecutor's right to prosecute are not respected, the Code itself does not define prosecution.

The lack of a definition of prosecution in the CPC has, in practice, led to ambiguity regarding its meaning and subsequent application as a legal concept and as an exclusive function that the law attributes to the prosecutor. More specifically, the jurisprudence of the Constitutional Court has addressed the notion of criminal prosecution as a legal function of the prosecutor that involves two different but functionally related stages: the pre-trial investigation stage, which consists of conducting investigative actions to clarify the event and identify the perpetrator, and the trial stage, which is represented by the defense of the prosecution before the court. In the theory of criminal procedural law, prosecution means carrying out all procedural actions provided by law in order to substantiate the charge brought by the prosecutor (Constitutional Court Republic of Albania, Decision No. 27 (Victims of Gerdeci) ,§14, 2012).

This expanded definition of the notion of prosecution may create practical problems because it would be quite difficult to identify the absolute invalidity of the procedural act or acts in which the prosecutor's right to prosecute has not been respected.

Italian doctrine has provided a clear and comprehensive treatment of the concept of prosecution, emphasizing its significance in relation to the entire criminal procedure. According to this doctrine, the prosecution is the request submitted by the prosecutor directly to the court to decide on the charge brought against the defendant.

In the ordinary judicial process, the prosecution is conducted by the prosecutor when the judge has been asked by him to decide at the preliminary hearing on the request to bring the case to trial. In special proceedings that do not provide for the preliminary hearing as a stage of the proceedings, the prosecution is conducted by the prosecutor by filing the indictment notice as a document presented to the court in each of the special proceedings (Tonini, 2016).

According to Italian doctrine, which certainly relies on the Italian CPC, drafting the request to send the case to trial is the functional and exclusive action that the prosecutor performs after having made his assessment of all the results of the investigation, because after this moment, the person under investigation acquires the status of defendant. The status of the defendant does not change until the conclusion of the criminal proceedings with the issuance of a final and definitive court decision (Parlament I. , 1988). At this point, the prosecutor incurs legal responsibility (the principle of irrevocability of prosecution) to represent the charge already brought before the court. (Corso, 2018).

The Italian doctrine in addressing the concept of prosecution relies on the legal definition that the Italian Criminal Procedure Code has given to this concept. More specifically, if we refer to the Italian CPC, the prosecution is expressly provided for in Articles 50, 60, 405, 407-bis thereof. According to these provisions, it appears that the prosecution by the prosecutor, in a criminal proceeding under the ordinary procedure of investigation and trial, begins at the moment he files before the court the request to send the case to trial. As mentioned above when discussing the conclusion of the investigation and its deadline, the request to bring the case to trial is, at the same time, the exercise of prosecution by the prosecutor in the criminal proceedings in Italy.

Prosecution is precisely defined in several provisions of the Italian Criminal Procedure Code. By drafting and submitting the indictment to the court at the preliminary hearing, the prosecutor prosecutes and, at the same time, notifies the person under investigation of the indictment. The request to bring the case to trial, pursuant to Article 60 of the Italian Criminal Procedure Code, for criminal offenses for which a preliminary hearing is provided, is the act of notifying the

indictment through which the defendant is informed of the criminal offense investigated by the prosecutor and sent to trial.

Article 407-bis of the Italian Criminal Procedure Code provides for a special time limit available to the prosecutor to prepare and file the request for the case to be brought to trial. Depending on the type and nature of the investigations, this time limit can be three or nine months and starts to be calculated from the date when the prosecution has completed the preliminary investigations with the relevant act. We believe that the legal definition of the concept of prosecution in the Albanian CPC, similar to that provided for in the Italian CPC, would be of multifaceted importance. By defining the prosecution as the act by which the prosecutor presents to the court, at the preliminary hearing, the request to send the case to trial, we give meaning to and clarify the case of absolute invalidity of the prosecution, when the provisions related to the prosecutor's right to prosecute under Article 128/a, paragraph one, letter "b" of the CPC have not been respected. More specifically, the act of bringing the case to trial must at the same time also be the act by which the prosecutor prosecutes. The request to bring the case to trial as a procedural act of prosecution by the prosecutor is absolutely invalid if it is drafted by an entity other than the prosecutor, or drafted by a prosecutor who does not meet the legal requirements to investigate or prosecute a specific case.

On the other hand, defining the commencement of prosecution as the act of bringing the case to trial will help us understand and correctly apply the limits for the beginning and end of the calculation of the statute of limitations for prosecution, as provided for in Article 66 of the Criminal Code (CC).

4. Conclusions

From the analysis of the provisions of the Criminal Procedure Code, it appears that the prosecutor's compliance with the investigation deadlines benefits the entire criminal proceeding. The completion of the preliminary investigations within the investigative deadlines has a twofold value for the criminal proceedings. On the one hand, the right of the prosecutor as a representative of the public interest to exercise criminal prosecution on behalf of the state within the legal framework and to further represent the prosecution in the trial against the defendant is respected. On the other hand, the defendant's right to be tried within a reasonable time is respected. Through the analysis of the standards of Article 6 of the European Convention on Human Rights and Article 42 of the Constitution of the Republic of Albania, it appears that the reasonable time limit is not only related to the judicial phase of the criminal proceedings, but encompasses the entire criminal proceedings as a whole, including the investigation phase.

It is true that in some cases, the prosecutor's lack of diligence, his passive stance during the preliminary investigation phase, can lead to delays in the investigation of the criminal case. However, the prolonged duration of investigations as a phenomenon is not always caused by a lack of diligence on the part of the prosecutor. In some cases, problems may arise in practice from the way the CPC has provided for the end of preliminary investigations.

The way the CPC provides for the end of preliminary investigations results in an unjustified extension of investigation deadlines in practice. The extension may occur not because of a lack of diligence on the part of the prosecutor. The act of drafting the formal indictment under Article 327 of the Criminal Procedure Code must be notified to the defendant after the conclusion of the investigation and not at its conclusion.

The charge brought in this case at the end of the investigation is incomplete and unsustainable. The indictment will not include additional evidence that the defendant may request, which, based on their probative value, could fundamentally alter the outcome of the investigation. It is also true that the "defect of an incomplete indictment" can be further remedied by the prosecutor through the act of amending or clarifying the indictment, but these additional actions by the prosecutor come at the cost of extending the investigation deadlines. If the special cases of today become common rules of conduct for prosecutors in the future, then the problem of unjustified extension of investigation deadlines will be addressed by the defendants as a violation of their right to be tried within a reasonable time.

We believe that the legal definition of prosecution is a timely need to clarify the meaning that this legal concept carries for prosecutors, judges, defendants, their defense counsels, as well as for other parties involved in criminal proceedings. Upon the initiation of criminal prosecution, the prosecutor notifies the investigated person that he/she will be tried as a defendant before a court. Only upon the initiation of criminal prosecution, when the prosecutor files the request to bring the case to trial, the status of the defendant, which he must assume after the conclusion of the investigation, is further preserved at every stage and level of the proceedings until a final decision is rendered against him by the court, which may be a decision of dismissal, acquittal, or conviction.

On the other hand, the legal definition of prosecution will give the proper meaning to the cases of absolute invalidity due to non-compliance with the legal provisions related to the prosecutor's right to exercise the prosecution provided for in Article 128/a, paragraph one, letter "b" of the CPC.

The importance of defining the exercise of prosecution by the act of bringing the case to trial also has a positive impact on clarifying the meaning of the institute of the statute of limitations for criminal prosecution provided for in Article 66 of the CC. In this case, the legal definition of the concept of prosecution will help us to understand and correctly determine the limits of the beginning and end of the calculation of the statute of limitations for prosecution provided for in Article 66 of the CC.

5. Recommendations

The Criminal Procedure Code should explicitly provide for the exclusion from the deadline for the completion of investigations, the time required for the prosecutor to prepare the indictment and the request for referral of the case to court.

The Criminal Procedure Code must clearly stipulate that the indictment and the request to send the case to trial are drawn up and submitted to the defendant and the court after the preliminary investigation period has ended.

The Criminal Procedure Code should provide for a new time limit, distinct from the time limit for the completion of the preliminary investigations, available to the prosecutor to formulate the indictment and the request to bring the case to trial. The new deadline for drafting the indictment and the request to bring the case to trial should be part of the overall investigation deadlines and should start to be counted immediately after the end of the preliminary investigation deadline, a deadline during which the prosecutor, during the preliminary investigation, collects all the necessary evidence, including those requested by the defendant, in order to conduct a full, comprehensive, and thorough investigation of the criminal case. In this sense, paragraph 6 of Article 327 of the CPC should be included in a new legal provision after Article 327. The new wording should define the situation whereby:

> *"After the completion of the preliminary investigations provided for in Article 327 of the Criminal Procedure Code, when the prosecutor should not request the dismissal of the case or the indictment, he/she shall prosecute by filing a motion to refer the case to court."*

The Criminal Procedure Code should include a legal provision defining the concept of prosecution by the prosecutor. For this purpose, we propose that paragraph 1 of Article 34 of the CPC be reworded as follows:

> *"Assumes the status of the defendant, the person to whom the criminal offense is attributed in the indictment, through which the prosecutor initiates criminal prosecution."*

Judicial practice should be oriented towards an interpretation that guarantees the effective protection of the standard of reasonable time, legal certainty, and the right to defense in criminal proceedings.

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