Research Study
on
decisions by the prosecutor's office on non-initiation and dismissal of penal proceedings
&
procedures for the execution of penal decisions

Tirana, 2014

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1. Introduction

The judicial system is an important pillar that should guarantee the protection of the fundamental rights and freedoms of citizens as well as their reinstatement in those cases when they are violated by the state or other subjects of the law. Justice reform has also been the lead word of Progress Reports of the European Commission and all international actors. The analsyis of this system is a substantial mechanism of the activity of the Albanian Helsinki Committee (AHC). Citizens' access to justice bodies and respect for the right to due legal process are two of the priorities that AHC has had under the continued focus of its activity for years. In various ways, such focus has monitored how these two leading rights are respected.

The Albanian Helsinki Committee (AHC), as a human rights organization, has had under its focus regarding the justice system the two procedural institutes of the non-initiation of penal proceedings and dismissal of penal proceedings, as well as the execution of penal decisions of imprisonment and medical and educational measures.

Because of frequent complaints addressed to AHC regarding decisions by the prosecutor's office for the non-initiation of investigations or their dismissal, AHC carried out a study of the decisions by the Tiranë and Durrës judicial district prosecutor's office and court.[1] The study showed that for a considerable number of cases under investigation, the prosecutor's office decides non-initiation or dismissal. Non-initiation cases are numerous and, according to the prosecutor's office, they take place because there are no elements of a penal offence, there is no perpetrator, are offences that should be pursued by the damaged persons in court, there is no sufficient evidence for starting a penal proceeding, etc. What we notice, as a

[1] *The research study was realized in the framework of the project "For better respect for human rights, Legal Clinic," with financial support from Swedish organization Civil Rights Defenders*

summarized result, is that in decisions on some cases, there have been no investigative actions or they have not been complete, or there has been neglect by the prosecutor to investigate different leads, etc.

According to complaints submitted by citizens, it results that there is a considerable number of penal cases, whose files have been for years without a perpetrator because their identification has not been possible. According to article 58, item 3 of the Penal Procedure Code, *"The damaged person shall have the right to submit requests to the proceeding body and request to obtain evidence. When his request is not accepted by the prosecutor, he shall have the right to file a complaint in court within days from notification."*

Nevertheless, AHC finds that the damaged persons and their heirs are not given an active role in the investigative process and further, when the case moves to court. According to the practice of Albanian courts, in spite of the broad interpretation that should be made of the law, there is an erroneous practice that does not give heirs the opportunity to oppose in court a decision by the prosecutor's office for non-initiation of investigations, thus leading to the "burial" for good of such decisions.

In spite of the above, AHC considers that the need exists for a quality revision of the Penal Procedure Code. The Ministry of Justice and decision making bodies that have revised the Code should expand their consultations with stakeholders, lawyers, judges, prosecutors, non-profit organizations, penal law researchers, etc.

All of these aspects have been included in this research report with a view to not only highlight the problems in decisions by the prosecutor's office and the court on the non-initiation and dismissal of penal proceedings and the execution of penal decisions, but also to provide recommendations on how to improve the situation.

The subject of this research study is the highlighting of problems in decisions of the prosecutor's office on non-initiation and dismissal of penal proceedings, of judicial decisions on complaints against prosecutor's office decisions, monitoring procedures for the execution of judicial decisions of imprisonment, and medical and educational measures.

The object of the study included the judicial decisions of the period 2009 – 2010 with regard to complaints against the prosecutor's office decisions for the Durrës Judicial District Court and judicial decisions for the period 2010 for the Tiranë judicial district court. With regard to the study of decisions on non-initiation and dismissal in the Tiranë prosecutor's office, we studied decisions only for four months during the period 2009 – 2010 *(we randomly chose the months November- December 2009 and year 2010);* for the Durrës prosecutor's office, we studied decisions belonging to the second half of 2009 and the first half of 2010.

The methodology involved not only the theoretical aspect but also that of implementation in practice. This research study presents the treatment of these aspects from the constitutional standpoint, from that of the procedural law, as well as the main findings emerging from the monitoring of decisions and files in the district prosecutors and courts that were monitored.

The monitored institutions were the Tiranë and Durrës judicial district courts and the respective prosecutor's offices.

The employed methodology in the prosecutor's offices and courts was realized through meetings with principals, prosecutors, judges, and the administration; we studied decisions by the prosecutor's offices, the relevant registers on notifications, the court decisions on complaints against prosecutor's offices, the relevant files in the archive on every decision and following up on what stage they arrived at; penal decisions on sentencing by imprisonment and those by medical and educational measures, registers with the notes on the reasoning for judges' decisions; logbooks of delivery of decisions by the secretary of the court to the prosecutor's offices, execution orders in the prosecutor's office, the relevant register on executions of decisions, etc.

Because of the degree of difficulty of this research study, from its methodology to the preparation of the final report, a series of experts with long experience in this area were involved together with young lawyers who studied the decisions in practice.

Thanks to the engagement of the expert Mr. Artan Hoxha, 4 types of questionnaires were prepared, by subject and by institution, which served as the guide for the preparation of the report on the main issues that were being monitored. Theoretical and practical level issues were addressed together with the questionnaires in a training program with the experts that were selected to conduct the monitoring in the field. Monitoring in the courts and prosecutor's offices was conducted by Mr. Gledian Llatja, Ms. Eva Dyrmishi, Mr. Hipokrat Biba, Mr. Skerdian Kurti, Ms. Enida Shameti and Mr. Engjell Likmeta. Under the very professional leadership of Ms. Erida Skëndaj, Program Assistant at AHC, they managed to carry out with professionalism the monitoring of all issues that were the subject of the research study.

Overall, we studied 1100 decisions on non-initiation and dismissal by the Tiranë and Durrës judicial district prosecutor's offices[2] as well as 300 judicial decisions by the Tiranë and Durrës judicial district courts.[3] The summary of reports by the experts from a statistical aspect on the concrete issues was conducted by Mr. Gledian Llatja.

Former members of the Constitutional Court Mr. Kujtim Puto and Mr. Petrit Plloçi carried out a full study of procedural institutes for the non-initiation and dismissal of penal proceedings from a constitutional aspect. Mr. Niazi Jaho, legal advisor at AHC, addressed these issues from the standpoint of the penal procedural law.

All main findings and recommendations were presented at a round table discussion on January 30, 2014. Through the professional moderation by Ms. Vjollca Meçaj, Executive Director of AHC, participants held a series of discussions. Participating in the discussion were representatives from the Prosecutor General's Office, the monitored institutions, the Ministry of Justice, the High Council of

[2] *Decisions by the Durrës prosecutor's office belong to the second half of 2009 and the first half of 2010; for the Tirana prosecutor's office, because of the high number of decisions, they belong to a 4-month period during 2009 and 2010*

[3] *Judicial decisions of the Tiranë judicial district court belong to 2010 and those for the Durrës judicial district court belong to 2009 and 2010*

Justice, international organizations, and other actors in the justice area.

Thanks to the moderation regarding the discussions by two experts of penal procedure, Mr. Arben Rakipi and Mr. Artan Hoxha, the round table reached very important conclusions and recommendations that will help improve the situation.

At the conclusion of this brief presentation on the purpose and manner in which the study was realized, we thank all the experts that contributed to the realization of this research and the writing of this research study.

We especially thank the Chief Judges of the Tiranë and Durrës judicial district courts, Mr. Fatri Islamaj and Mr. Ervin Metalla and the staff of these courts for the readiness they demonstrated not only in the access to the files and decisions but also for the information and assistance they provided in evidencing the files and relevant decisions that were the object of this study.

We would also like to thank the Tiranë and Durrës judicial district prosecutor's offices, the chairs and staff of these institutions who also gave us the necessary access and information to carry out the monitoring.

On this occasion, we also thank the Swedish organization Civil Rights Defenders for the support it gave us not only for this study but also for supporting our activity in the field of justice for a long period, with a view to improving the situation of respect for human rights, especially in the judiciary.

CHAPTER 1

CONSTITUTIONAL PRINCIPLES RELATED TO PROCEDURAL INSTITUTES FOR NON-INITIATION OF PENAL CASES AND FOR THEIR DISMISSAL, AS WELL AS FOR ESTABLISHING MEDICAL AND EDUCATIONAL MEASURES

1. Constitutional principles related to procedural institutes for non-initiation of penal cases for their dismissal

Penal offences are violations of the law that seriously infringe upon human rights and freedoms as well as other values protected by the Constitution, and have a negative impact on the conditions of living standards of individuals and also violate the bases of the state and society. Therefore, in the exercise of its functions and in acting for the interests of the entire society the purpose of the state as a political organization of the society as a whole is to ensure human rights and freedoms and to guarantee public interest.

In this context, the state has not only the right but also the obligation to ensure effective protection of human rights and freedoms, other values protected by the Constitution, ensure protection of every individual and the entire society against criminal attempts, by using legal measures that seek to target perpetrators and prevent other crimes and violations of the law.

Unless the state undertakes appropriate measures for the discovery, investigation, and punishment of perpetrators and for the prevention of crimes, trust in the power of the state and the law is destroyed and disrespect for the juridical order and different social institutions increases.

Measures established and implemented by the state for the prevention of penal offences and the reduction of criminality should be effective. The Constitution sanctions the concept of a democratic

state whereby the state is not only required to protect the person and society against crimes and other serious violations of the law but it should do so in order to not allow its bodies to abuse their competences to the detriment of innocent citizens. In this regard the sanctioning of procedural norms for the dismissal and non-initiation of penal cases has great impact. The same is true for the interpretation and implementation of these measures by the prosecutor's office and the courts.

Procedural norms that have to do with the non-initiation and dismissal of penal cases should be interpreted first and foremost in the context of the constitutional principle of the rule of law, which is a universal principle that guides the entire juridical system of the Republic of Albania.

The essence of the constitutional principle of the state of law the rule of law, while its constitutional imperative is that freedom of power is limited by law, which all entities of legal relations obey. Therefore, the constitutional principle of the rule of law should be respected both as lawmaking and in law enforcement.

On the basis of that, it results that the principle of the rule of law requires from lawmakers, among other things, that legal acts do not contain provisions that regulate relations in different ways, that legal acts are not allowed to create the impossible *(lex non agit ad impossibilia),* that the power of legal acts is valid for the future and the retroactive power of laws and other normative acts is not allowed *(lex retron non agit)*, except for when the legal act alleviates the situation of the subject of legal relations and does not harm other subjects of these legal relations.

When penal procedure relations are regulated, the constitutional principle of equality of the individual in terms of rights must be respected. In its rulings, the Constitutional Court, in more than one occasion, has deemed that in the approval of laws and in their enforcement, as well as in the administration of justice, he constitutional principle of equal rights of persons should be respected; that this constitutional principle establishes the obligation to legally evaluate homogenous facts in the same manner, and prohibits their arbitrary evaluation; that this principle consolidates the formal equality

of all persons, i.e. that no one party is discriminated or be offered privileges to the detriment of another.

The constitutional principle of the rule of law in the process of law enforcement indicates the right of the person to due legal process; that the prosecutor's office and especially the court respect the requirement of equality of persons in terms of rights, do not allow the investigation and punishment twice for the same offense *(non bis in idem)* that penal sanction *(punishment)* for legal transgressions is established before *in advance), (nulla crimen sine lege),* etc.

In this context, it should also be emphasized that the constitutional principle of the rule of law requires that jurisdictional institutions and other institutions, when applying the law, are impartial, independent, discover the objective truth, and take decisions only on the basis of the law and evidence. The engagement for the rule of law and for respect for human dignity and personality sanctioned in the preamble and article 4 of the Constitutions presupposes that every individual and the entire society should be protected against unlawful attempts against them.

In this context, when establishing the responsibility for violations of the law, the requirement of reasonability and the principle of proportionality should be respected; according to it, the undertaking of legal measures should be indispensable, that these legal measures should be appropriate for legitimate purposes and generally important, that during the implementation of the law they will not allow the confinement of the person's rights more than is essential.

In a state of law, only the law may establish what are penal offences and what is the kind of legal responsibility for such offense. Only those that are truly dangerous may be recognized, in a legislative fashion, as penal offences. In regulating relations that have to do with penal responsibility, the legislature enjoys broad discretion. It *(the legislature)* may, among others, considering the nature, degree of danger and other features of penal offences, establish differentiated legal regulations and differentiated legal responsibility for the corresponding penal offense.

Nevertheless, such discretion of the legislature is not absolute: the legislature must respect the norms and principles of the Constitution,

among others, as well as the directives of orderliness and internal harmony of the juridical system, which derive from the Constitution.

The obligation of the state that derives from the Constitution, to guarantee the life of every person and the society as a whole against criminal attempts, indicates not only the right and duty of the legislature to to determine by law what are penal offences and the sanctions for them, but also the right and duty of it (the legislature) to regulate relations related to the investigation of penal offences and their adjudication. Relations of penal procedure should be regulated by law in order to create the legal preconditions for the discovery and fast and complete investigation of penal offences, to rightly punish perpetrators, and to create the legal preconditions for the innocent to not be held penal responsible and not be punished.

As the Constitutional Court has considered, regulation by law of the penal procedure should be based on the constitutional principle of equality before the law and the court, presumption of innocence, fair and public trial, division of functions of the court from those of the prosecutor, the independent status of the latter, etc. Furthermore, bodies charged with the investigation and adjudication of penal offences should respect the rights of persons under investigation or the defendant, such as the right to address the court *(the right to access to court),* the right to fair and impartial court, independence of the judge and the court in administering justice, the obligation of the judge to suspend the adjudication of the case when addressing the Constitutional Court.

Regulation by law of the penal procedure may not create any precondition for delays in the investigation and adjudication of penal cases, nor create any precondition for participants in the penal process to abuse their procedural right to the detriment of the rights of individuals. Otherwise, constitutional obligations of the state to ensure through legal measures the security of every person and the society as a whole, as well as the implementation of the juridical order based on constitutional values, would become more difficult.

The competence of the prosecutor to not initiate or dismiss penal cases, envisioned in the Penal Procedure Code of the R.A. as an aspect of its constitutional function *(Article 148 of the Code)* is in agreement

with the principle of the rule of law. This principle presupposes that the state should undertake all measures to protect the dignity of the person, his rights and freedoms, the constitutional order, property, etc., as well as to ensure that no person shall be prosecuted and hold penal responsibility unjustly.

In order to carry out the above obligations, and especially the one that no person shall be unjustly prosecuted penally, the lawmaker has established by law the cases for the non-initiation or dismissal of penal cases. Penal prosecution includes two phases related to one another in a functional manner: phase of preliminary investigations, which consists in the conduct of investigative actions to collect evidence, to identify the perpetrator and build the charges that it contains elements of the penal offence and the adjudication phase, which consists in bringing the charges against the defense before the court and the issuance of a ruling by the court for the guilt or innocence of the accused.

With regard to the phase of preliminary investigations, two principles compete in legislations of different countries: Principle of lawfulness and the Principle of opportunity.

According to the principle of opportunity, it is up to the prosecutor to determine on what issues he should initiate a penal case and in what order or priority. According to the Penal Procedure Code of the RA, the decision making of the prosecutor as well as that of the court is led by the principle of lawfulness. This means that the prosecutor's office carries out all of its activity within competences prescribed by law. In more concrete terms, this means that the definition of legal conditions for non-initiation or dismissal of the penal case has been done by the lawmaker, *"The prosecutor shall not be allowed to decide to not initiate or dismiss a penal case beyond legal criteria. The discretion of the prosecutor only lies in the fact that he has been granted the competence to judge whether, in the concrete claims before him, these criteria are met or not."* (Decision of the Constitutional Court, No. 13, dated 21.07.2008)

Our Penal Procedure Code, while it has granted the prosecutor the competence to consider in concrete proceedings whether legal criteria are met, it has also accepted the model of obligatory penal prosecution, according to which, the prosecutor's office may not dismiss penal

prosecution itself, but shall have to ask the court to do so. Therefore, according to article 328 of the PPC, the prosecutor's office shall not initiate penal prosecution or if it has, it will have to dismiss it, among others, when it does not manage to prove that the defendant has committed the penal offence or when it results that the fact is not defined as a penal offence, etc. An opposite action would contravene with the principle of lawfulness of the activity of the prosecutor envisioned by article 4/1 and 148/3 of the Constitution and article 24/2 of the PCC.

1.1 Distinction between the function of the Prosecutor and the function of the Court

The institutes of pre-trial investigation (*by the prosecutor's office)* and protection of charges, sanctioned in the Constitution, indicate the general constitutional model of penal procedure, according to which, investigation by the prosecutor's office and the adjudication of the penal case in court are different phases of the penal process. The Penal Procedure Code has given competence to both the prosecutor's office and the court to not initiate penal cases as well as to dismiss them.

However, while the causes for non-initiation and dismissal of cases are generally the same *(the fact does not exist, elements of a penal offence are lacking, the penal offence has dismissed, the person has been sentenced before for the same offence, etc.),* it does not mean that the functions of the two bodies are also the same. The constitutional function of giving justice by the courts is different from the function of penal prosecution, exercised by the prosecutor. This division has been made clear by the Constitution. According to article 148/1 thereof, penal prosecution is exercised by the prosecutor's office while, according to article 135, judicial function is exercised by the High Court, courts of appeals, and courts of first instance. The granting of the competence for penal prosecution to the prosecutor's office means that this is the body that collects and evaluates he essential data of whether the investigation should begin, whether after investigations the penal cases should be dismissed or submitted to court, and whether it is possible, with the collected evidence, for the adjudication of the case to be conducted

fairly by the court.

By exercising penal prosecution, the Prosecutor's Office conducts investigations and brings charges on behalf of the state. The exercise of penal prosecution also indicates that the prosecutor's office has the competence to propose to the court the security measure depending on the social threat of the person and the needs of the investigation, to question witnesses and experts, to request documents, to conduct searches of the person, home, etc. Pre-trial investigation should be conducted in an objective, qualified, and impartial manner and sufficient information should be collected for the court to take a decision on the penal case. The principle of due legal process requires that conducted actions and taken decisions, not only in the court but also in the prosecutor's office, are clear and based on legal arguments.

Unlike the prosecutor's office, the court is the only body of the state that administers justice. It reviews a case prepared by the prosecutor's office on the basis of evidence presented by prosecutors and defense. It decides on the guilt of the defendant and sentences or declares him innocent. The provision of article 135 of the Constitution, according to which judicial power is exercised by the courts, from a procedural standpoint, means that a person may not be declared guilty for the commission of a penal offence, nor be given a penal sentence without a court decision taken on the basis of the law.

Article 290 of the Penal Procedure Code establishes the cases when penal proceedings may not be initiated; article 328 of it establishes the cases when the charges or case are dropped by the prosecutor; while article 387 establishes the conditions for the dismissal of the case by the court.

With regard to the constitutionality of the dismissal of penal cases by the prosecutor as well as some cases of such dismissal, the Constitutional Court of the Republic of Albania has rendered an opinion in some rulings. This court, through decision no. 14, dated 21.07.2008 has reviewed the claim by the Serious Crimes Court of Appeals that the prosecutor may not take a decision on the dismissal of the case or the charges because it is in contravention of its constitutional function, which is the exercise of penal prosecution and the representation of charges in court, on behalf of the state. According to that court, the granting of such competence to the prosecutor

violates the principle of impartiality in rendering justice, etc.

With regard to the above claims, the Constitutional Court has argued that the competence of the prosecutor to not initiate or cease the penal case *(in cases prescribed by law)* is in compliance with the principle of the rule of law, according to which, the state should take measures to protect the dignity of the person, his rights and freedoms, etc., and to ensure that no person is penally prosecuted unjustly.

The intent of the Constitution was not to establish a constitutional barrier to the obligatory exercise of penal prosecution and for the prosecutor to not have the right to dismiss it, but rather for the latter to investigate and evaluate objectively on whether the legal conditions exist for taking the case to court. Therefore, the prosecutor's office is organized and functions separated from other powers, away from potential political influences.

Neither did the Constitutional Court agree with the reasoning that the dismissal of penal cases by the prosecutor's office represents rendering of justice and as such, it should only be a function of the court. According to that court, *"in conducting penal prosecution, the prosecutor shall only collect evidence in order to prove the charges and verifies whether he is in the conditions that force him to dismiss the charge or penal case or send that case to court. It is the latter that determines the declaring of the defendant as guilty or innocent, which means that, in exercising the function of rendering justice in the penal context, it is the court that decides on the foundation of the charges brought forward by the prosecutor."*

In decision no. 5, dated 08.03.2005, the Constitutional Court of the Republic of Albania, after reviewing the constitutionality of the phrase *"… more than once…"* envisioned in article 278/4 of the Penal Code as closely related to the implementation ne bis in idem *(not twice for the same offence),* has argued in its decision that according to this principle *"…the individual may not be prosecuted and may not be adjudicated by the jurisdictions of the same state for a penal offence that he was previously declared innocent or was convicted on the basis of a final legal judicial ruling."*

According to this decision, this principle is violated *"not only when the person is sentenced again for the same offence, but also when he is penally prosecuted in a repeated manner for this offence."* Therefore, this principle is valid also for cases of protection against constraining and prohibiting

measures that are closely related to proceedings by the prosecutor's office. This is the reason why the Penal Procedure Code envisions as one of the cases of dropping charges or the case by the prosecutor also when previously *"by final decision, the defendant has been adjudicated for the same penal offence."*

1.2 The right to complain (the right to address the court)

According to standards established by the European Court of Human Rights (ECHR) and the Constitutional Court of the Republic of Albania, anyone interested has the right to address the court and object to the actions of the prosecutor, especially decisions for non-initiation or dismissal of penal cases. The provision of article 42/2 of the Constitution, according to which everyone shall have the right to address the court *(the right of access to court)* and the right to a fair trial, means that everyone should be given the opportunity to protect his rights in court against the actions of state institutions or their officials.

Control over the prosecutor's office in some states is done through the investigating judge, who is the competent body to check all preliminary investigative actions, before the case is forwarded to the court for adjudication. However, Albanian legislation has accepted control by the higher prosecutor and the court whether the interested person deems it necessary to object to the actions of the prosecutor by including those of non-initiation or dismissal of cases.

The right to address the court is a fundamental right of the individual, which means not only the right to object judicially to an act, but also the existence of a body established by law, independent and impartial, for the review of the complaint. Also, the right to address the court, seen from the standpoint of article 42/2 of the Constitution *(due legal process)* has as its purpose to guarantee parties in the process the right to protect themselves by placing them, in any case, on an equal footing before the court.

In the context of the issue under review, it should be pointed out that according to the Constitution, legal regulation should be such that participants in a penal process, who enjoy the same procedural status *(victims, persons suspected of committing a penal offence, the accused,*

the prosecutor, the defense lawyer, etc.) are treated equally.

Thus, participants in the penal process who enjoy the same procedural status should also have the same rights and obligations, on the condition that there is no differentiation of such character and degree that that unequal treatment is objectively justified. Otherwise, there would be a deviation from constitutional principles of the rule of law and the equality of persons.

Constitutional and judicial jurisprudence has moved toward expanding the cases of the individual's right to complain against actions or inaction by the prosecutor as well as any decision not to initiate or dismiss a case by the prosecutor. Thus, decision no. 5, dated 06.03.2009 of the Constitutional Court has invalidated as incompatible witht eh Constitution of the Republic of Albania part of article 329 of the penal Code that did not allow the complaint against a prosecutor's decision to dismiss a case by declaring that "the fact does not exist." In this ruling, the Constitutional Court has admitted that giving a final form to the prosecutor's decision for these cases denies the individual the right to address the court; that by addressing the court, the opportunity for checks on the prosecutor's office is created on decisions taken by him; and that the right to address the court is a an essential guarantee for respecting other fundamental freedoms of citizens.

In this ruling, the Constitutional Court analyzed this right also vis-à-vis article 17 of the Constitution that prescribes the criteria for the limitation of fundamental rights. According to the Court, "Non-subjection of the prosecutor's decision to judicial control not only infringes upon the right of the individual to address the court, but also protects no public interest, which in principle is inclined to see an increase of judicial review of public power acts than the opposite. This would therefore serve the increase of the public's confidence in justice, thus avoiding any attempt for abusive decision-making by public power bodies."

The constitutional sanctioning of the general model of penal procedure, i.e. penal cases investigated by the prosecutor's office, does not eliminate the possibility that in certain cases investigation is not carried out by the prosecutor, and/or accusations in the name of the state are not protected by him in court. The Constitution does not obstruct the sanctioning by law of such kind of penal procedure, which,

on some cases that pose a lesser social threat is, more or less, different from the general constitutional model of Penal Procedure.

Pursuant to the above constitutional principles, the Penal Procedure Code of the Republic of Albania has established more detailed procedural norms, thus creating the opportunity for individuals to address the court not only against decisions of the prosecutor to not initiate or to dismiss penal cases, but also in cases of penal offences of a lesser social threat, for which the lawmaker, according to everyone's subjective evaluation, has led to negative consequences.

According to article 59/1 of the PCC, the party injured by the penal offences of beating, injury from neglect, violation of the residence, insult, slander, intervention into private life, publication of a work on someone else's name, etc., shall have the right to present a request in court, and participate as a party in the adjudication as a party to prove the charge. The lawmaker has envisioned such a legal regulation so that for certain cases, charges are not protected by prosecutors but by private persons (their representatives) in the presence of a prosecutor. Such regulation does not create preconditions for violating the person's right for judicial defense, nor does it condition preconditions to violate the person's right for judicial defense, nor does it limit his constitutional right to address the court *(right to access to court).* This also does not mean that there is a deviation from the constitutional principle of equality of persons in their rights considering that the court conducts the preliminary evaluation of the request, analyzes the evidence provided by he parties, and decides to accept the request or not, its dismissal or declaring a party guilty or innocent on the basis of evidence presented by the injured and the defendant.

2. Constitutional principles in establishing and obtaining medical and educational measures

According to article 46 of the Penal Code, medical measures are:

a) Compulsory ambulatory medication and
b) Compulsory medication in a medical institution.

An educational measure is the placement of a minor in an education institution.

Medical measures present a special kind of penal sanctions, which first of all have a preventive character in the fight against criminality and often replace harsh punishment for irresponsible persons or persons with psychic disorders of such a degree that have reduced the perceptive or self-controlling skills for their actions.

The educational measure of placing a minor in an institution, like medical measures, is a penal sanction that has a preventive character, but educational measures have as their fundamental purpose not only the prevention of the commission by the perpetrator of other penal offense, but also their re-education for life. Minors who have committed penal offences are distinguished from adults who have manifested such behavior not so much from the types of criminal acts and behavior, than their psychic, psychophysical and sociobiological characteristics.

We may mention the following as fundamental constitutional principles in establishing, issuing, and executive medical and educational measures:

2.1 The principle of lawfulness

Derives from article 4 of the Constitution, according to which, "*The law shall represent the basis and boundaries of the activity of the state.*" The principle of lawfulness is basis of activity of all bodies and institutions, both for the sanctioning of criteria and measures in legislation, and for the issuance of sanctions against persons who have committed penal offences and in taking measures to enable the execution of such sanctions.

According to this principle, the criteria for the issuance of security measures or educational measures should be established by law and not by sub-legal acts, nor left at the discretion of the judge. The legislator should channel and issue criteria that are sufficiently safe and that would determine the degree of social threat and, therefore, the isolation of someone in an education institution. The defendant may commit a penal offence under the effect of circumstances, and not because of an illness; that's why it should be the law to also determine the diagnoses that make it indispensable to isolate someone

for compulsory medication.

The Assembly should make improvements and amendments in article 46 of the Penal Code by establishing defined criteria for the issuance of educational measures, as well as to foresee by law the effective symptomatic elements *(habits, behavior)* that determine whether the minor may commit crimes.

In terms of executive activity, the principle of lawfulness and the rule of law requires that:

- The Ministry of Health and that of Justice draft normative acts;
- They draft regulations for the treatment and guarding of persons convicted by medical measures;
- The Ministry of Health should create the appropriate premises for he placement of persons convicted by medical measures;
- The Council of Ministers should create special educational institutions, subordinate to the Ministry of Education, for the execution of judicial decisions on educational measures;
- The General Directory of Prisons should place minor convicts in a separate section for special treatment from adults and undertake measures for the timely transfer of those sentenced by medical measures from pre-trial detention rooms to the prison hospital or the special Krujë institution.

The principle of lawfulness also requires that during the time of compulsory medication or of the stay in an educational institution, convicts' rights are not confined beyond limitations prescribed by law and regulations and those measures for the limitation of their rights are essential and proportionate to the need for undertaking them. Confinement measures may only be implemented in extraordinary cases; even then, they should be prescribed and limited by law.

The principle of lawfulness presupposes the exercise of oversight, control and inspection of bodies for the activity they carry out for the execution of court decisions on medical and educational measures.

2.2 The principle of human dignity

The constitutional principle *(preamble and article 28/5 of the Constitution)* of protection of and respect for human dignity requires

that convicts, including persons on whom medical and educational measures have been issued, are treated in such a way as not to affect their human and moral personality and dignity and that the human features of every convicted person in punishment-improvement entities are respected. While an individual may have committed a penal offence and a medical or educational measure may have been taken on him, he is still not stripped of his human and moral subjectivity. He also may not be treated as if stripped of some universal natural human features, especially since contemporary modern systems accept and proclaim that the goal of the punishment is not revenge or retaliation, but rather re-education and return of the convict to society as a correct citizen.

In democratic states, care for and respect of individual's human values during their stay in punishing improving premises has been regulated by juridical acts of the highest bodies. These acts feature formulations that guarantee human treatment and respect for human personality and dignity.

2.3 The principle of presumption of innocence

The principle of presumption of innocence *(article 30 of the Constitution)* may be interpreted to a limited extent also in the case of persons on whom medical and educational measures are being sought.

The Italian Constitutional Court, by decision no. 364, dated 24.03.1988, has accepted that confinement measures may not be applied on subjects who demonstrate criminal tendencies if they have not committed penal offences. The dilemma whether these measures should be undertaken before the penal offence is committed or after has been solved by our legislation in such a way that these measures may only be taken toward those who have committed penal offences and who, at the same time, are deemed likely to repeat criminal behaviors and commit penal offences. In this way, this position places a barrier on the arbitrariness of state bodies in favor of the protection of human freedoms and rights.

CHAPTER 2

TREATMENT OF SOME LEADING PRINCIPLES OF PROCEDURAL-PENAL NOTIONS FOR THE INSTITUTES OF NON-INITIATION AND DISMISSAL OF PENAL PROCEEDINGS AND THE EXECUTION OF PENAL DECISIONS

This material handles mainly problems of a juridical nature in accordance with the Penal Procedure Code, the Penal Code, and the law on the execution of penal decisions. The purpose of this material is for a more correct understanding of procedural-penal notions of the non-initiation and dismissal of penal cases and the execution of penal decisions of imprisonment, including medical and educational measures.

As is known, also based on article 148 of the Constitution, the prosecutor's office conducts penal prosecution. The prosecutor has the right to investigate on his own; in fact, when he deems it necessary, he may initiate the case on his initiative. Most of the investigations are conducted by judicial police, although it is the prosecutor who dates the decision to initiate or not initiate penal prosecution. He exercises control over the progress of investigation, issues instructions and orders their implementation. It is worth mentioning that penal proceedings may or may not begin even with notification *(reporting)* that may be filed by others, such as citizens *(among these, injured parties),* health institutions as well as other institutions. Data for the commission of a penal offence should be verified carefully in order to conclude whether there are elements of a penal offence and whether the perpetrator is responsible or not.

2.1 Non-initiation of penal proceedings

The circumstances that do not allow the initiation of penal prosecution and that the prosecutor may decide non-initiation are:

a) When the denounced fact is not prescribed by law as a penal offence;
b) When the penal offence's statute of limitations has expired;
c) When the penal offence has been amnestied;
d) When it clearly emerges that the fact does not exist.

The first three cases are not difficult to verify. It should suffice to look at the Penal Code and the other laws to conclude whether the denounced case is prescribed as a penal offence or not. Penal offences, according to the Penal Code, are divided into crimes and penal transgressions. We should also refer to articles 66 and 71 of the Penal Code that talk about the expiry of status of limitations for penal prosecutions and amnesty.

There have been cases when the prosecutor has tied the non-initiation of penal prosecution with the non-existence of the penal offence. The Penal College of the High Court in one such case invalidated the decision of the prosecutor with the argument that in order to reach such a conclusion, the prosecutor should have initiated the case *(decision no. 65 dated 30.01.2002).* the above decision of the High Court also says that the conclusion of whether the fact exists and whether the offence has been committed by the reported persons may only be drawn after the conduct of investigations regarding the circumstances of the case.

A distinction should be made between the case when the fact is not prescribed as a penal offence and the case when the fact does not exist. In the first case, the penal case may not be initiated, while in the second, investigations should be conducted.

According to article 12 of the Penal Code, there is no penal responsibility if the person committed the penal offence at a time when he had not turned 14 years of age; for penal transgressions, there is no

penal responsibility if the person had not turned 16 years of age. In both these cases, if they have been reported, the prosecutor should not initiate penal prosecution. The need arises to first verify the age of the person. If irresponsibility is related to the mental state of the person and this is established before the initiation of penal proceedings, again the prosecutor should not initiate it.

The initiation of the penal case is not allowed if it results from the charge that it has to do with an offence that is followed only with the complaint of the injured and no complaint has been submitted thereon. Article 284 of the Penal Procedure Code prescribes which are the offences followed with the complaint of the injured. Penal proceedings may not begin also in the cases prescribed by article 290 of the PPC; as such we may mention: the person has passed away, is irresponsible, has not reached the age, etc., as well as in all other cases prescribed by laws *(article 290, item 1, letter "e").*

This group included the persons who enjoyed immunity; however, by law no. 88, 2012 "On some changes to law no. 8417, dated 21.10.1998, the Constitution of the RA," article 73 that talks about immunity has undergone some changes. Also changed were articles 126 and 137 of the Penal Procedure when circumstances exist that do not allow the initiation of proceedings, the prosecutor takes an argued decision to not initiate proceedings.

It is worth mentioning that this decision should be argued because this gives the opportunity to the party that brought charges or presented a complaint to submit a complaint to court within 5 days. The prosecutor is obliged to make them aware of this decision immediately, referring precisely to the contents of the reasoning. It is worth mentioning that after changes to article 73 of the Constitution, the member of parliament may not be arrested or be deprived of his liberty in any form, and no control may be run on him or his residence, without authorization by the Assembly. This means that no authorization shall be required when the decision has been taken to initiate a penal case.

According to articles 126 and 137 of the Constitution *(amended in 2012),* the same course of action is pursued for members of the Constitutional Court and the High Court.

During the monitoring, we have encountered also cases when not only decisions for non-initiation of penal case have not been argued convincingly, but even in the case when some investigative actions were conducted *(albeit insufficient),* instead of deciding to dismiss the case, the decision was taken for non-initiation of the penal case. We may mention the case of death in hospital of convict Sh.K., in which, although investigative decisions had been taken, the Tirana judicial district prosecutor's office decided non-initation of penal proceedings. And, when the relatives of the deceased opposed the prosecutor's office decision at the Tirana Judicial District Court, the latter decided to not legitimize it based on article 291 ç2.

2.2 Dismissal of the penal case

Not every initiated case goes to court. There are instances when the case may be dropped or suspended *(when the perpetrator may not be found or when the perpetrator suffers from a serious illness)*. Nevertheless, the dismissal of the case may be done when the investigation has been comprehensive and all possible evidence has been collected and secured. The dismissal of the case may be decided on the basis of article 328 of the Penal Procedure Code.

Cases when the prosecutor has the right to decide to dismiss the case

If it emerges during investigations that the fact does not exist *(this conclusion may be reached only if relevant investigations have been conducted)*, the decision must be taken to dismiss the case and, as a result, drop the charges that may have been brought against the defendant. Practice has proven that such cases are rare. It only happens in those cases when the penal case has been initiated on the basis of a fake denunciation that may have been filed for a wide variety of motives. Due to lack of the fact, the case may also be dismissed even in cases when the Penal Code does not prescribe the claimed penal offence or when it results during investigations that the offence is not prescribed.

The case should be dismissed even if it has begun when the injured

has not filed a complaint or has given up on the complaint. However, in this instance, one needs to keep in mind the cases when investigations only begin upon request of the injured party. Therefore, we should refer to article 284 and 295 of the PPC that prescribes penal offences that are only pursued through complaint by the injured party, who has the right to give up at any phase of the proceedings. In such cases, the prosecutor or the judicial police officer shall keep the relevant process-verbal that is to be signed by the stating person (i.e. the one who pressed the charges or his representative).

The investigation is also dismissed when it results that the person who has been indicted has not reached the age of penal responsibility or has committed the offence due to his mental state. Both in the first and the second cases, there must be evidence that prove this, such as: birth certificate, reports by specialized medical commissions, etc. The prosecutor should decide the dismissal of the case when it results that the penal offence has been committed in the circumstances of necessary defense prescribed by article 19 of the PC. In practice, we encounter many cases when it results that the defendant has not committed the penal offence, or when during investigations, it is not proven that he committed it. In both these cases, the case should be dropped because in the first case, his innocence has been proven; in the second, any suspicion should be interpreted in favor of the defendant. It is our opinion that the sensation of cases in some instances is influenced by the dragging out of cases, failure to obtain evidence on time, the weakening or disappearance of such evidence.

As mentioned above, the prosecutor should base the dismissal of the case on definitions made in article 328 of the PPC. The decision should be argued and should be communicated to the injured and the defendant. A complaint may be filed with the judicial district court.

Article 239 of the PPC said that notification shall not be made when the fact did not exist. However, the Constitutional Court, by decision no. 5, dated 6.03.2009, invalidated this exemption prescribed by article 239 of the PPC. The Constitutional Court has stated that the citizen must have access to court, that the decision to dismiss the case by the

prosecutor does not represent delivery of justice as this is a competence of the court only. As a result, the injured and the defendant should have the right to complain to court even in the cases when the dismissal of the case is done with the motivation that the fact does not exist, or when it is suspicious.

Although article 239 of the PPC only talks about the injured party and the defendant, every person or institution that files a complaint must have the right to complain *(press charges, denounce);* for instance, the High State Audit, etc. It is within the competence of the court that reviews the complaint to determine on whether the decision of dismissal taken by the prosecutor was founded or not.

2.3 Execution of penal decisions.

This is a very important moment. The execution of penal decisions not according to law may be accompanied by harmful repercussions. We will mainly concentrate on sentences by imprisonment prescribed by article 33 of the PC. Both the sentencing by imprisonment and the sentencing by life imprisonment are executed in institutions that are specifically assigned for this purpose, while the rules for serving prison sentences, the rights and duties of the convicts are established by law.

Legislation has especially specified that sentencing by imprisonment of minors should be carried out in special premises, i.e. not together with adults, while women should serve prison sentences in special institutions, i.e. not in the same institutions as men.

It is worth mentioning that the execution of penal decisions is regulated by special law. Practice has proven that prosecutors at the court of first instance sometimes do not rigorously apply the requirements of article 463 of the PPC whereby they are tasked to take measures for the execution of the decision and, accordingly, to demand the conduct of special actions by the prosecutor of another district. In all cases, requirement of item 4 of article 463 of the PPC shall be abided by which obliges the prosecutor to notify in writing the court that issued the decision immediately when the execution of the decision has begun.

- **Actions of the prosecutor for the execution of an imprisonment sentence.**

The prosecutor should issue the execution order, which should contain the generalities of the convict, the text of the decision as well as necessary provisions for execution. If the convict is in pre-trial detention, the order shall be submitted to the state body that administers prisons and the interested person is notified; when the convict is not in detention his imprisonment is ordered. The same actions are undertaken for cases of executions of decisions for the compulsory isolation in medical and education institution. Pursuant to article 465 of the PPC, the prosecutor should keep in mind the calculation of pre-trial detention. Article 465 stipulates that in establishing the time of sentencing by imprisonment, the prosecutor shall calculate the pre-trial detention period for the same penal offence or another penal offence, the period of imprisonment served for another penal offence, when the relevant sentence has been revoked, or when for the penal offence an amnesty or pardon has been awarded. Following the above calculations, the prosecutor shall issue the order that is communicated to the convict and his defense attorney.

There have been cases when, because of the unjust implementation of the above article (or because of erroneous calculations), the convict has filed a complaint to the court. If conflicts arise with regard to the execution of the decision (violation of the law, lack of clarity, etc.), the court that issued the decision shall have competence for the review of these complaints. When decisions have been issued by different courts, the court that issued the decision that became final shall have competence. Pursuant to the law "ON the rights and treatment of persons sentenced to imprisonment," the competent court for the review of complaints by persons sentenced to imprisonment shall be the court in whose territory the institution is located. Decision no. 320, dated 09.05.2002 of the Penal College of the High Court addresses this issue.

The PC prescribes both medical and educational measures. Medical measures are: a) compulsory outpatient medication and b) compulsory medication in a health institution; the educational measure is the

placement of the minor in an education institution. Depending on the case, these measures are issued by the court and are also revoked by the court when the circumstances that necessitated their issuance are no more. The prosecutor, according to the law on the execution of penal decisions, is obliged to take all measures for the execution of the decision according to the court's orders. In fact, the prosecutor also has to check the regularity of the execution, intervene with competent bodies and, if needed, with adjudication for the reinstatement of the law. Imprisonment decisions, the moment they become final, are sent by the court to the prosecutor who shall carry out the actions mentioned above.

If the court has not found that the convict should be placed in a special institution, according to the notification of the prosecutor who submits to the court the relevant data, the court shall order a medical checkup and the placement in a special institution. The prosecutor is also sent, for execution, also the decision of half liberty and the execution of the decision ordering a stay at home.

- **With regard to the execution of medical measures**

Medical measures for compulsory medication are executed in specialized medical institutions according to definitions made by the Ministry of Health, upon request by the prosecutor, while medical measures for compulsory outpatient medication are executed in the medical institutions of the place of residence of the person. If there are obstacles by the person, the prosecutor orders the forced execution of the order by the State Police.

- **Execution of educational measures**

This measure is executed in special institutions for the education of minors, sent voluntarily by the parent or custodian, upon execution order of the prosecutor. As is known in Albania, to date, there is no such institution and this makes execution difficult.

CHAPTER 3

SOME FINDINGS OF THE STUDY OF DECISIONS BY THE PROSECUTOR'S OFFICE AND THE JUDICIAL DISTRICT COURT ON THE DISMISSAL AND NON-INITIATION OF PENAL PROCEEDINGS

The Albanian Helsinki Committee, as an organization whose focus is on respect for and protection of human rights, has undertaken this research study to look at how the main principles of penal procedure and relevant provisions have been implemented in practice.

Monitoring the work of the prosecutor's office with regard to followed procedures and deadlines has been one of the leading goals of our work, always in respect of the rights of persons who come into contact with justice bodies.

The two institutes that we have tried to follow, non-initiation and dismissal of penal proceedings, are of great importance.

Based also on the large number of decisions by the Prosecutor's Office in one year on the non-initiation and dismissal of penal proceedings, it is of great interest to look at what instances the Prosecutor's Office mostly decides with non-initiation or dismissal and in what instances the acts are submitted to court.

Based also on the numerous complaints received by AHC or the cases of strategic litigation that we have sent to court, their object has to do with claims of arbitrary decisions by the prosecutor's office on non-initiation or dismissal of cases.

An issue of concern is also the procedure followed for the execution of judicial penal decisions for imprisonment as well as for medical and educational measures.

Therefore, AHC undertook a research into the Prosecutor's Offices of the Tiranë and Durrës judicial districts as well as the respective

judicial district courts. The issues that were the target of research in the monitored Prosecutor's Offices were: non-initiation of penal proceedings, dismissal of penal proceedings, procedures for the execution of penal decisions of imprisonment. The target of research in the monitored courts were issues of objections to decisions of prosecutor's office to dismiss penal proceedings, as well as deadlines and procedures followed for the execution of judicial sentences of imprisonment and of medical and educational measures. A predetermined methodology was used for the research, accompanied by relevant questionnaires that are explained in greater detail in the beginning of this research.

3.1 Keeping relevant documentation regarding decisions of the prosecutor's office in the Tirana and Durrës Prosecutor's Offices

It resulted from the monitoring that with regard to the archive and secretary's offices, dossiers were kept by year and in a chronological order for the Prosecutor's Office. The physical premises leave to be desired in the Durrës and Tiranë Prosecutor's Offices due to limited space and humidity.

The verification showed that decisions for dismissal and non-initiation were not listed in special summaries, by year, but rather were kept in separate files, in the Durrës Prosecutor's Office. None of the prosecutor's offices, neither the Tiranë judicial district one nor the Durrës one, had a database during the monitoring period; work was done manually, which often leads to maintaining inaccurate statistics.

In the judicial district courts of Tiranë and Durrës, the archive was in limited space, which made it difficult to physically study the files in the relevant premises. The monitoring showed that files and registers were kept in a chronological order; however, an electronic database of them was missing. As in the prosecutor's institutions, the extraction of information that was the target of the research from files and registers was done manually since there was no database and information was not kept electronically.

Offices did not have an airing system. The small space of the archive premises in both Courts, compared to the volume of files, led to files

being kept in an unorganized manner and without a chronological order. Many files were left on the ground because of the lack of space as well as of shelves, which may lead to their damage. The archive had no data about the absence of certain files, which did not appear to be kept in the first instance court because they had been appealed to higher instances of the judiciary.

Unlike the prosecutor's offices of judicial districts, since the Tiranë judicial district court has a website, a lot of data could be found easily, thus making the work of the administration easier.

Of the four monitored institutions, the availability of senior officials and the administration was high; they made available judicial files, registers, and the requested data.

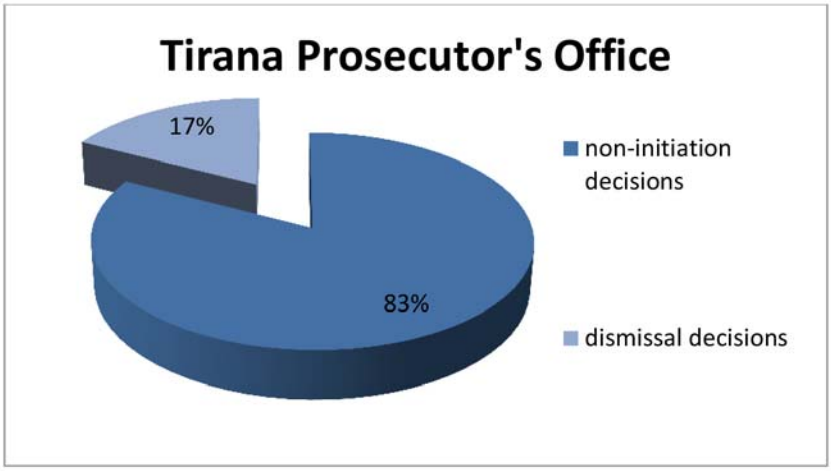
3.2 Quantitative data on studied decisions

Although in both the Tiranë and the Durrës judicial district court the number of decisions of non-initiation and dismissal is high, the focus of our research work lasted for a short period of time. This was done in order to highlight different problems that may derive from the law, from internal procedures, and from their implementation in practice.

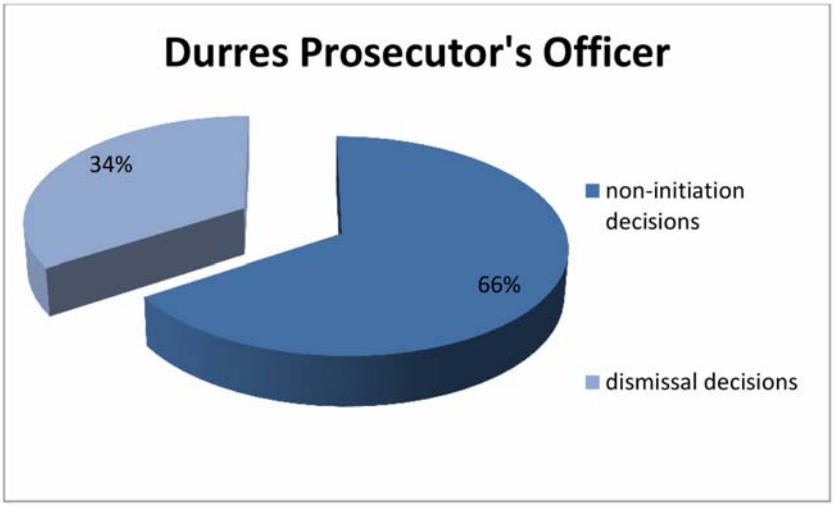
In the Tiranë judicial district Prosecutor's Office, we monitored a two-month period of 2009 and 2010, a total of 557 files with non-initiation decisions and 117 files with dismissal decisions. In the Durrës judicial district court, we monitored files belonging to the period July 2009 – June 2010, a total of 331 files with non-initiation decisions and 172 dismissal decisions.

No. of studied decisions	Tiranë Prosecutor's Office	Durrës Prosecutor's Office
Non-initiation decisions	557	331
Dismissal decisions	117	172
Total	674	503

Table 1 – Quantitative data on studied decisions



Graphic 1. Quantitative data on studied decisions in the Tiranë judicial district Prosecutor's Office

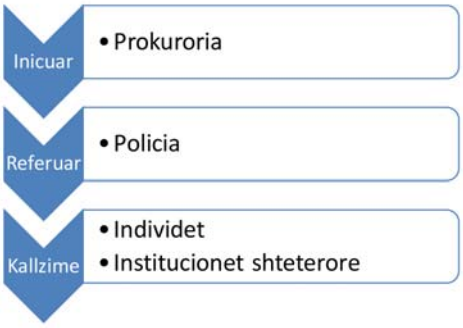


Graphic 2. Quantitative data on studied decisions in the Durrës judicial district Prosecutor's Office

3.3 Subjects that have initiated the process

The monitoring showed that some of the cases that were dismissed or decisions were taken to not initiate them, had been started through

the referral of cases by the police, charges pressed by individuals, state institutions, as well as by the prosecutor's office itself. It was of interest to us to know how much these charges are pressed by state institutions when, due to their functions and competences recognized by law, they are in contravention of different penal offences.



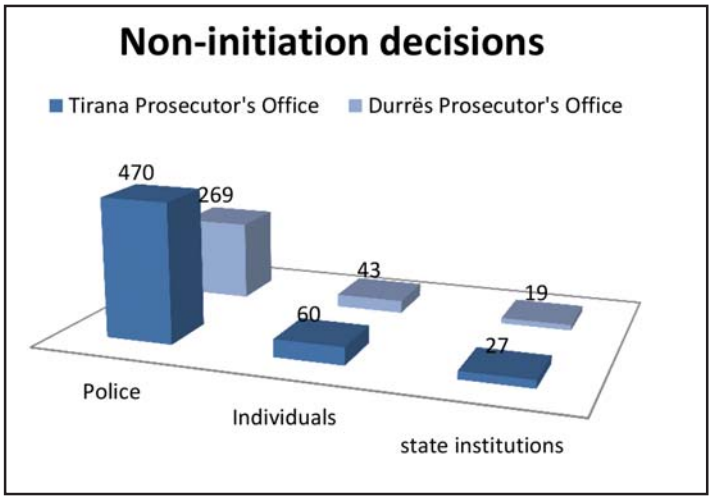
Graphic 3. subjects that initiated, referred or pressed charges for penal offences

Based on the study of non-initiation and dismissal decisions in the respective prosecutor's offices, it results that in the Durrës Prosecutor's Office, in the instances of cases of prosecutor's decisions for dismissal, 75 cases had been opened through pressed charges. Of these, 38 charges were pressed by individuals and the rest by state institutions. Police commissariats had referred 97 cases.

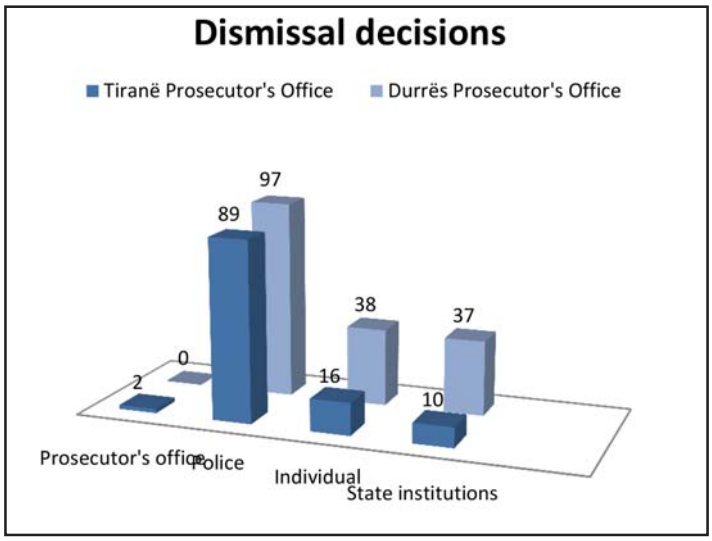
For non-initiation of penal cases, again in the Durrës prosecutor's office, it resulted that 62 cases had been opened through pressed charges, with 43 of them pressed by individuals and 19 by state institutions. Meanwhile, 269 cases had been referred by police commissariats.

In the Tirana Prosecutor's Office, in cases of decisions of dismissal, it resulted that 16 cases had been opened through charges pressed by individuals, 10 cases through charges pressed by state institutions, 2 cases had been initiated by the prosecutor's office, and 89 decisions for penal proceedings had been referred by commissariats. For cases of non-initiation, it resulted that 27 cases had been initiated through charges pressed by state institutions, 60 through charges pressed by individuals, and 470 non-initiation decisions through cases referred by police.

Cases referred by police commissariats to the respective prosecutor's offices are often in higher numbers as it resulted that in some cases, when the person had been 14 years old, individuals withdrew charges or it resulted that they were civil cases.



Graphic 4. Data on subjects that initiated the cases that ended in non-initiation decisions



Graphic 5. Data on subjects that have initiated cases that ended with dismissal decisions.

3.4 Object of cases on which dismissal or non-initiation of penal proceedings was decided

Based on the monitoring that was conducted and the study of decisions by the Tiranë and Durrës judicial districts' Prosecutor's Offices, it resulted that the object of cases of non-initiation, mostly had to do with the following penal offences: violation of traffic rules (34 decisions); crimes against life, such as threats, prescribed by article 84 of the PE (30 decisions); other intentional injuries prescribed by article 90 of the PC (21 decisions); premeditated murder (10 decisions); causing of suicide prescribed by article 99 of the PC (26 decisions); light premeditated wounding prescribed by article 89 of the PC (20 decisions).

Although less in numbers, the following penal offences were present: violation of residence prescribed by article 112 of the PC; illegal deprivation of liberty; deceit prescribed by article 143 of the PC; destruction of property according to article 150 of the PC; falsification of documents according to article 186 of the PC; obstruction of the execution of ocurt decisions prescribed by article 320 of the PC; stealing according to article 134 of the PC; illegal border crossing according to article 297 of the Penal Code, etc.

With regard to dismissal decisions, the following penal offences were mostly present: destruction of property according to article 150 of the Penal Code (10 decisions); falsification of documents according to article 186; abuse of office according to article 248 of the PC; violation of traffic rules (article 290 of the PC); fraud in insurance according to article 145 of the PC; light premeditated injury, etc.

It results in both district prosecutor's offices, and mostly in Tirana, that the object of charges pressed by citizens, including by individuals, referred by police commissariats had to do with the penal offences of robbery, deceit, and falsification.

On the other hand, penal offences for which charges were pressed by state institutions mostly had to do with stealing of electricity *(penal offences for which OSSH pressed charges),* smuggling *(penal offences for which the General Directory of Taxes pressed charges),* abuse of office *(penal offences for which the HAS pressed charges),* penal offences in the area of taxes and fees for which charges were pressed by the Tax Directories,

fraud in the field of social insurance *(penal offences for which charges were pressed by the Social Insurance Institute, etc.).*

3.5 Cases of complaint in a hierarchical order in the Prosecutor's Office

Based on our monitoring, it results that the head of the judicial district Prosecutor's Office exercises control of decisions of non-initiation and dismissal by the case prosecutor. However, in the document that we studied in the context of this monitoring, we cannot find in which cases the head of the Prosecutor's Office has decided to send the case back for reinvestigation or changed the legal qualification of the case or in cases reinvestigated by himself.

Although the Prosecutor's Offices are institutions that, besides the penal prosecution of cases, should also follow how the case proceeds, whether it is opposed in court and what the court decides as well as administrative complaints, because of the lack of an electronic database, the Prosecutor's Offices did not have accurate information about complaints, returns, etc.

For the studied period, we did not encounter any case in which parties had filed complaints with the Prosecutor General's Office *(to the extent it was possible to highlight in the files monitored for each case)* about prosecutor's decisions to dismiss the penal case or to not initiate the penal case or to not initiate penal charges. We encountered no case of the Prosecutor General's Office returning cases, identified by inspections or complaints, for reinvestigation.

The parties did not exploit the possibility of complaint to the higher prosecutor. This is a procedural possibility that is impossible to highlight if related to the lack of trust or of knowledge of the law.

Two reasons that are worth mentioning and that we have highlighted as the causes for the scarce number or absence of complaints to the GPO during the monitoring period are:

a) It is worth emphasizing that in decisions to dismiss cases or not initiate penal proceedings, only the right to a complaint to the court is reflected *(and here, the deadline is not always specified)* and not to an administrative complaint to the Prosecutor General's Office

b) Also, the lack of an established procedural deadline for a response in case of complaint by citizens to the Prosecutor General's Office, as well as the absence of a deadline by which it may reinvestigate, creates delays and the just absence of an investigation because of the unlimited time that goes by. Thus, it is possible that this very efficient complaint tool turns into an ineffective complaint tool. This would require clearer stipulation of deadlines for administrative complaint in the Penal Procedure Code (article 24ç5 of the PPC).

3.6 Notification of prosecutor's office decisions for interested persons

As envisioned in the Penal Procedure Code, both for non-initiation and for dismissal of penal proceedings, the prosecutor's office must notify the subjects prescribed by law. According to paragraph two of article 291 of the PPC, *"…The decision shall be notified immediately to those who have filed a complaint or pressed charges, who may appeal it in Court within 5 days from the day of notification…"* The same situation is found in cases of decisions for dismissal of penal proceedings prescribed by article 327 of the Penal Procedure Code.

In the Durrës Prosecutor's Office, it was difficult to highlight whether relevant subjects had been notified and when they had received notification through confirmation. In the Tiranë judicial district Prosecutor's Office, it resulted that notifications had generally been made for all decisions of non-initiation and dismissal of penal proceedings. In sporadic cases, in acts belonging to pressed charges, there is no proving documentation or traces that could prove notification. We identified 150 cases in which, because of inaccurate addresses or the change of the place of residence of the parties, the decision of non-initiation or of dismissal was not delivered to the parties (the person who pressed charges or the damaged parties. In these instances, the case began through referral of the police commissariat to the prosecutor's office.

It also resulted during the monitoring that the non-initiation decision was communicated not only to those who had pressed

charges, but also other subjects, involved in the pressed charges, in their capacity as accused or injured by the penal offence that was the subject of the pressed charges.

On the basis of article 291 of the Penal Procedure Code, as mentioned above, on cases for which the prosecutor's office has decided non-initiation, the notification of those who pressed charges or complained should be done immediately after the decision is taken. In one case of the monitored cases, in the Tiranë Prosecutor's Office decisions for non-initiation, it appears that this requirement of the procedural law was not respected for a non-initiation decision, i.e. there was no immediate notification.

Even in those cases when the Tiranë Prosecutor's Office decided to dismiss the proceedings, the same problem is encountered. In these cases, however, the procedural law does not establish a deadline for the notification of the interested parties and it is difficult to provide information about when the notification was done. Nevertheless, this fact does not violate the right of the parties to react to the dismissal decision because the objection to the decision for a dismissal of the proceedings or for non-initiation may be done at any time, following the communication of the decision, but within the deadline after which the statute of limitations expires.

3.7 Deadlines of investigation

Deadlines of investigation are very important as every investigative action conducted beyond the prescribed deadline may not be used in adjudication, as stated in decision no. 67, dated 04.02.2004, of the Penal College.

According to article 323 of the PPC, deadlines for the dismissal of the case are envisioned expressly, *"…Within 3 months from the date in which the name of person whom the penal offence is attributed to is written in the register of notification of penal offences, the prosecutor shall decide to send the case to court or to dismiss or to suspend it…"*

According to article 323 regarding the deadline of investigations, the deadline of preliminary investigations does not begin from the date of the registration of the penal offence, but from the date of the

registration of the name of the person whom the penal offence is attributed to. The name of the person is registered in the relevant register, as prescribed in *order no. 1527 of the Prosecutor General's Office, dated 24.10.2000.*

With regard to decisions regarding non-initiation, there are no specific deadlines and, in general, deadlines for the proceeding of cases according to article 323 of the PPC in cases of non-initiation and dismissal of penal proceedings have been respected. Nevertheless, during the study of decisions and the monitoring conducted in judicial district prosecutor's offices, in contacts with prosecutors, we have been told that there is an internal instruction on non-initiated cases, which sets ten days as a deadline for their conclusion.

What we have highlighted it is that in general, deadlines for proceedings in instances of non-initiation and dismissal of penal proceedings have been respected. However, it is addressed specifically below.

With regard to decisions of non-initiation within the 3-month deadline, in the Durrës judicial district Prosecutor's Office, it results that 325 non-initiation decisions were proceeded within the legal deadline (within the 3-month deadline) and 6 of them beyond that deadline.

In the Tirana Prosecutor's Office, it resulted that in 26 cases for which a non-initiation decision was taken, the legal deadline was violated and they continued beyond the 3-month deadline although we did not find requests for a postponement of investigation deadlines.

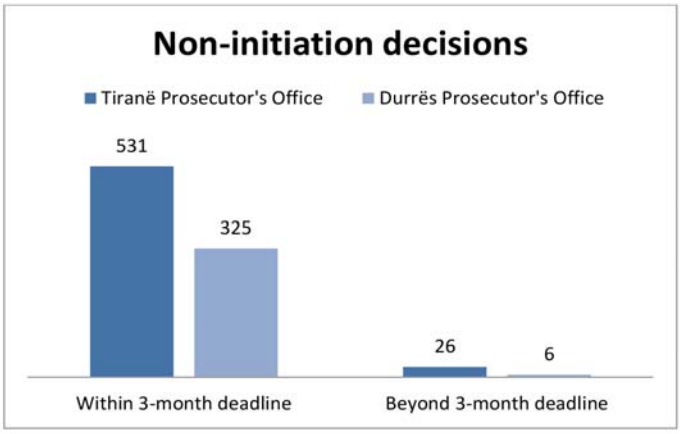
With regard to dismissal decisions, it results that in the Tirana Prosecutor's Office, in 47 dismissed cases, the set 3-month deadline was not respected, and deposited acts do not indicate any requests for a postponement of investigation deadlines. In the Durrës Prosecutor's Office, it results that relevant deadlines were not respected in 40 cases and for another number of decisions it was difficult to calculate the deadlines.

From the study of dismissal decisions, it results that in most cases, investigation in terms of total time lasted for a period of 6 to 12 months. Not all cases had postponement of investigation deadlines in their deposited acts.

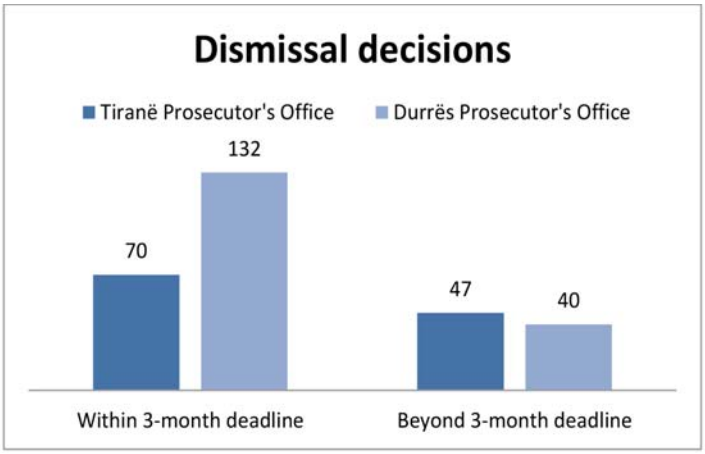
In spite of the small number of these cases of violated deadlines and procedures for their prolongation, it is our opinion that special

attention should be devoted to periodic controls; it is a procedural violation that not only violates due legal process, but also affects the realization of justice.

What we have highlighted as problematic is that in many cases, the reflection of the progress of deadlines is in the prosecutor's discretion as to which is the date of the beginning of proceedings, based on which the deadlines for the dismissal of penal proceedings are calculated.



Graphic 6 Deadlines pursued by Tiranë and Durrës Prosecutor's Offices about non-initiation decisions



Graphic 7. Deadlines pursued by Tiranë and Durrës Prosecutor's Office about dismissal decisions

3.3 Main findings from the study of judicial decisions regarding petitions against prosecutor's office decisions

3.3.1 Some statistical data regarding the research

The object of research in the judicial district courts of Tiranë and Durrës were cases of requests to petition prosecutor's office decisions both for non-initiation and for dismissal of penal proceedings.

In the Tiranë judicial district court, we studied 218 judicial decisions on petitions against decisions of non-initiation and dismissal of penal proceedings. In the Durrës judicial district court, we studied 89 decisions on both issues.

In both courts, we studied a total of 136 decisions on petitions against prosecutor's office decisions for non-initiation of penal proceedings, with 88 decisions having been taken by the Tiranë judicial district court and 48 by the Durrës one. We studied 171 decisions of petitions against decisions for dismissal of penal proceedings, of which 130 were taken by the Tiranë court and 41 by the Durrës judicial district court.

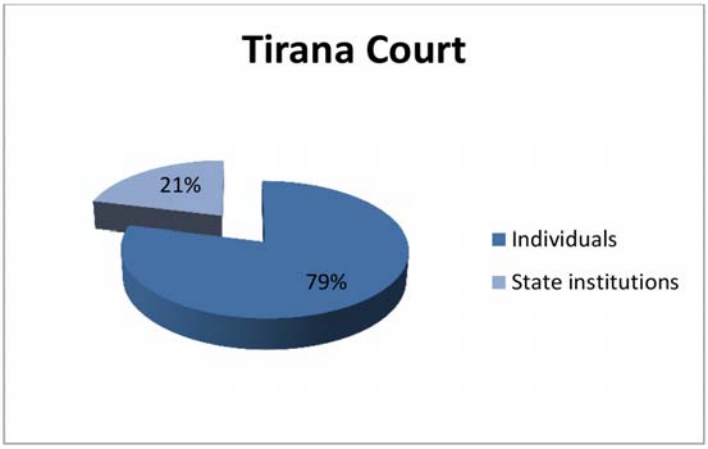
It resulted that in the Durrës judicial district court, only 2 petitions were to oppose decisions on the extension of the investigation deadline. One problem encountered during the monitoring was that in cases of extensions of investigation deadlines prescribed in article 323ç2 of the PPC, in most cases, interested parties were not notified, per article 58 of the PPC.What we noticed from the study of the entire documentation made available to us was that the judicial district court's annual review did not address these indicators.

3.3.2 Subjects that opposed decisions in the judicial district court

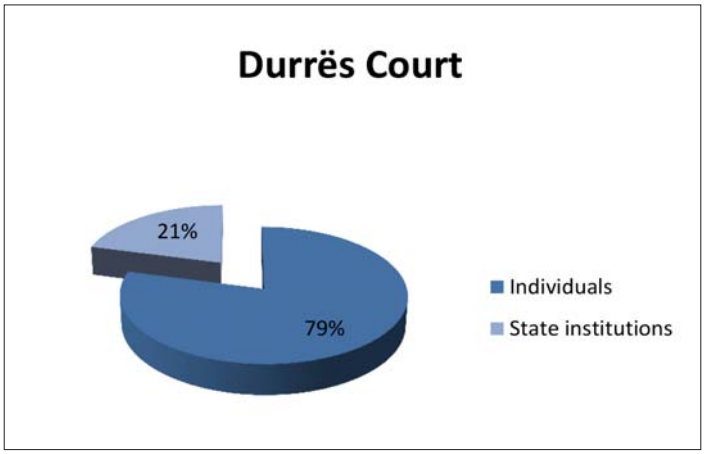
It results that individuals petitioned against 38 decisions and state institutions petitioned 10 cases in the Durrës judicial district court. In the Tiranë judicial district court, 172 petitions were filed by individuals and 46 by state institutions.

We noticed that in the Tiranë judicial district court, in most cases, most of the petitions were filed to object to dismissals rather than on

non-initiations. This is also a result of the limitation provided by the practice of the implementation of article 291ç2 of the PPC.



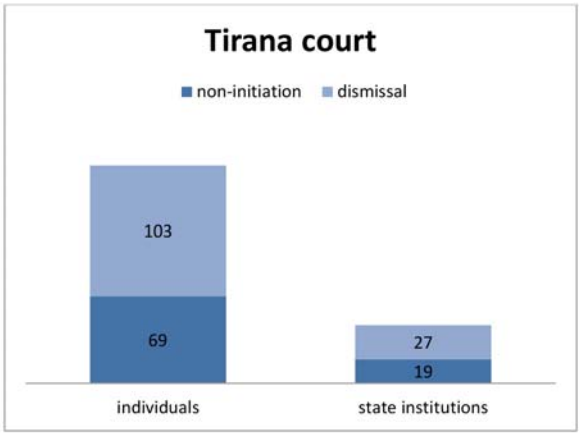
Graphic 8. Data on subjects that opposed decisions in the Tiranë Judicial District Court



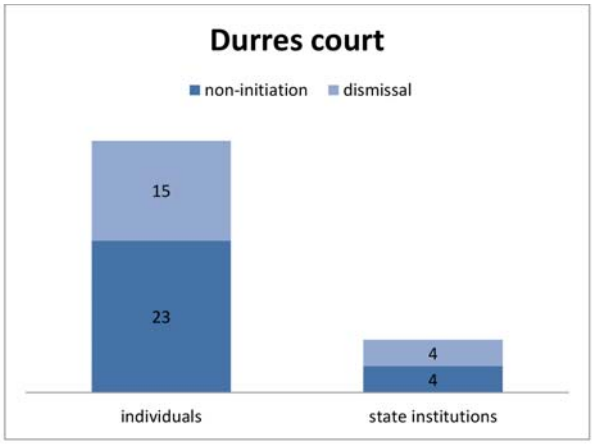
Graphic 9. Data on subjects that opposed decisions in the Durrës Judicial District Court

Based on the study of decisions in the Tiranë judicial district court, we noticed that 69 petitions were filed by individuals on non-initiations and 103 petitions were filed by individuals on dismissals; state institutions filed a scarce number of petitions, namely 19 for non-initiations and 27 for dismissals.

In the Durrës judicial district court, individuals filed 23 petitions to oppose decisions on non-initiation of penal proceedings and 15 petitions to oppose dismissal of penal proceedings. What one notices in this court too is that the number of petitions against decisions filed by state institutions is small compared to the total of requests – with 4 petitions on non-initiation and 4 on dismissals. Below is a graphic display to provide a clear picture of the subjects and their relevant petitions.



Graphic 10. Data on the number of subjects in court on requests for non-initiation and dismissal



Graphic 11. Data on the number of subjects in court on requests for non-initiation and dismissal

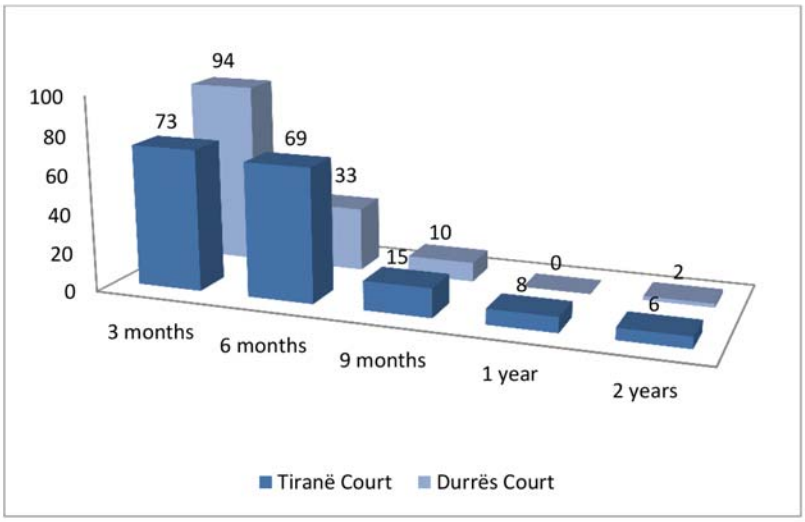
3.3.3 Length of judicial processes to oppose decisions for the non-initiation and dismissal of penal proceedings

Bases on the monitoring of cases that dealt with objections to prosecutor's office decisions to not initiate or dismiss penal proceedings, we highlighted that the time of judicial processes was excessively long. Such cases should be heard within a short and reasonable deadline so that, if the case is sent back for reinvestigation, the time that has gone by would not create problems with obtaining evidence or the conduct of different kinds of expertise.

In most instances, judicial cases at the Tiranë Court lasted on average for 3 – 9 months. In most instances, we noticed that such cases were adjudicated for 6-month periods.

In more concrete terms, 34 cases of non-initiation and 39 cases of dismissal took 3 months to be heard; 24 cases of non-initiation and 45 cases of dismissal took 6 months to be heard; 4 cases of non-initiation and 11 cases of dismissal took 9 months to be heard; and, 3 cases of non-initiation and 5 cases of dismissal took 1 year to be heard. There were even instances of such cases taking about 2 years to be heard by the court.

There is an acceleration of deadlines in the adjudication of such cases in the Durrës judicial district court compared to the Tiranë judicial district court. In most instances, cases were heard within 3 months and the average length is 3-6 months. 51 cases of non-initiation and 43 cases of dismissal were heard within 3 months; 21 cases of non-initiation and 6 cases of dismissal were heard within 6 months; 5 cases of non-initiation and 5 cases of dismissal were heard within 9 months. We did not encounter cases taking 1 year to be heard and there were two cases of dismissals that took two years to be heard.



Graphic 12. Length of judicial processes on petitions against decisions of non-initiation and dismissal of penal proceedings in the Tiranë and Durrës District Courts.

Also, as mentioned above, considering the fact that cases that deal with petitions against prosecutor's office decisions are penal requests and there is no new evidence, no summoning of witnesses, etc., which are procedural actions that lead to the prolongation of a penal process, we find that their prolongation is excessive.

The main reasons that have been highlighted are the postponement of the judicial process and the long time between hearings. It is the parties that postpone the process, mainly petitioners, with requests for postponement of adjudication. A problem remains also with the absence of prosecutors in the court hearings and no justifying request is submitted to court in such cases. This leads to the postponement of hearings beyond legal deadlines and beyond a reasonable deadline.

Based on our findings it results that there is no accelerated procedure for such requests in any of the instances of the judiciary. In fact, even in the High Court, these petitions are put on a waiting list just like other cases. We have also noticed that the prolongation of judicial processes goes beyond average deadlines. Of 95 cases addressing petitions against prosecutor's office decisions, which await

hearing by the High Court, because of recourse by the parties, until the middle of 2013, only 25 of them had been heard, while 75% of them are still on the waiting list being studied.

One problem is that if we were to factor in the time for investigations, then the deadlines of penal cases would be even longer. We hereby mention only three cases that have featured the longest time in court.

1. *Case belonging to judicial decision no. 49, dated 16.04.2010. The case addresses a petition against the prosecutor's office's decision for non-initiation of penal proceedings of 2008. The case had once been dismissed by the Tiranë judicial district court and was sent back for re-adjudication to the appeals court. The case was still in a judicial process during the monitoring period.*
2. *Case belonging to judicial decision no. 753, dated 27.04.2010. The case addressed a petition against a decision of the prosecutor's office for non-initiation of penal proceedings of 2007. The case had been sent back for re-investigation twice by the Prosecutor General's Office.*
3. *Case belonging to judicial decision no. 913, dated 21.05.2010. The case addressed a petition against the prosecutor's office for non-initiation of penal proceedings of 2006, on charges pressed in 2005, and sent back for re-adjudication by the court of appeals.*

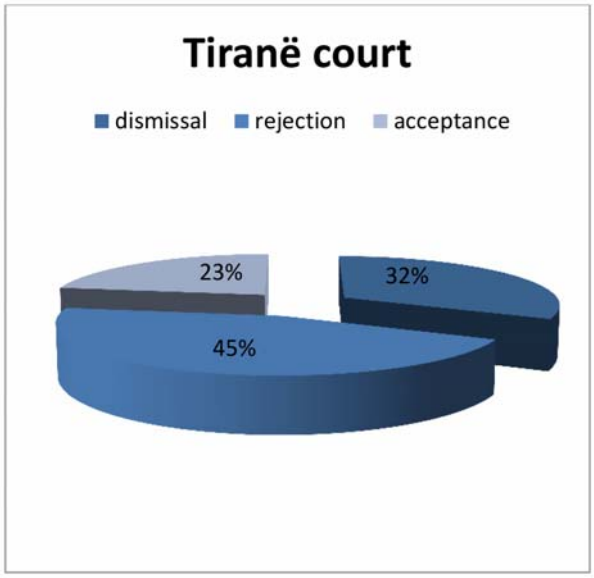
3.3.4 Text of judicial decisions

Based on the study of court decisions on petitions against decisions by the prosecutor's office, we noticed that the Tiranë judicial district court decided:

- Dismissal of the case in 32% of the cases, namely 70 decisions, with 36 decisions being for dismissal and 34 for non-initiation. The study of decisions for dismissals showed that 90% of these decisions were taken because of the failure of the petitioner to appear although he was aware. 10% of them were taken because the petitioner had given up. Of these dismissal decisions, the right to a complaint had been used in only 17 of them.
- 23% of the decisions or 49 of them showed the acceptance of

the petition to oppose the decision and ruled the return of the case to the prosecutor's office for re-investigation.

Below is a graphical display of the above:



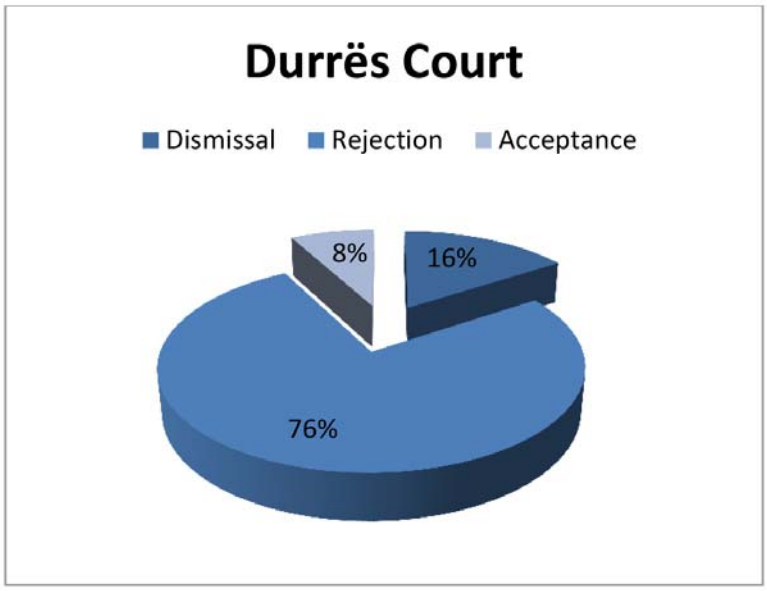
Graphic 13. Graphic display of Tiranë judicial district court decisions

The study of Durrës judicial district court decisions showed that 10 cases were dismissed for failure of the petitioner to appear and 4 cases because the petitioner had given up in the court hearing. Only 6 court decisions for dismissal had to do with petitions by state institutions against prosecutors' decisions; the request was dismissed due to their failure to appear although they had been notified.

In these cases, the court decided to dismiss the case based on article 387 of the Penal Procedure Code that says the penal prosecution should not have begun or should not have continued when dismissed.

Below is a graphic display:

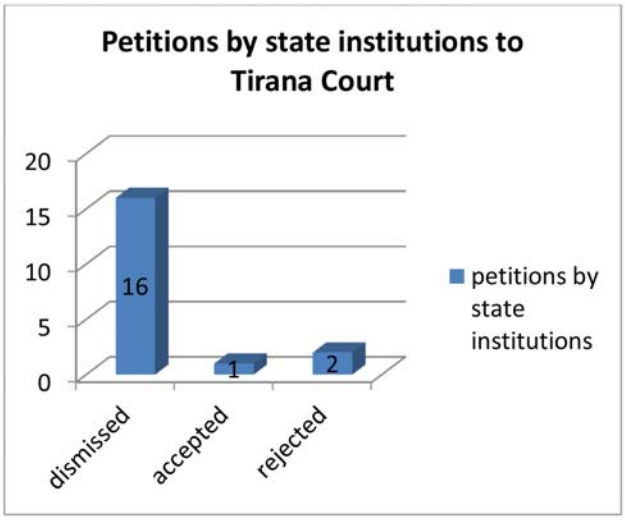
In the study, we devoted importance also to petitions filed by state institutions to oppose prosecutor's office decisions for non-initiation or dismissal of penal proceedings. This occurred in cases when institutions, pursuant to their competences, pressed charges with the prosecutor's office and then the latter decided to non-initiate or dismiss the penal proceedings.



Graphic 14. Graphic display of judicial decisions by the Durrës judicial district court

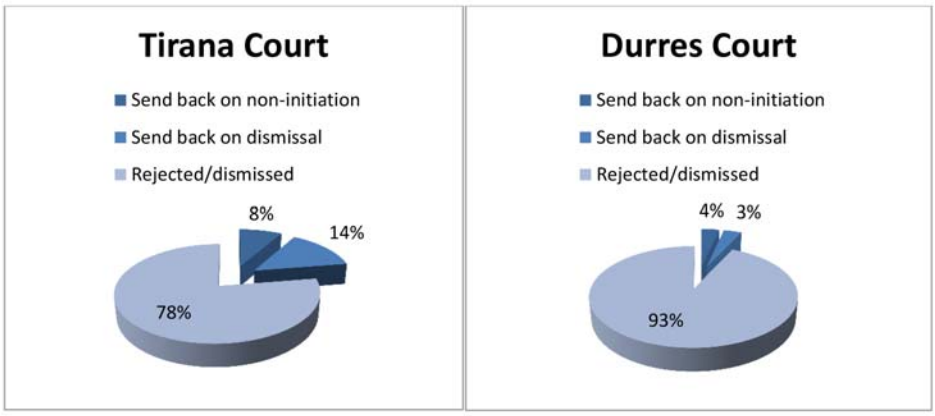
In the Tiranë judicial district court, of 19 petitions by state institutions to oppose prosecutor's office decisions in court, the latter decided on dismissal in 16 cases *(i.e. about 84% of the petitions).*

This indicates that although the institutions highlighted relevant violations, one is convinced that maybe their cases should be better highlighted and better proven to the prosecutor's office and the court.



Graphic 15. Judicial decisions on petitions filed by state institutions

With regard to cases when courts decided to accept the petition and send the case to prosecutor's office to continue investigations, a study of the decisions shows that the Tiranë judicial district court decided to send the cases back for re-investigation in 18 decisions for non-initiation of penal proceedings and in 31 decisions for dismissal of investigations.



Graphic 16.Judicial decisions on sending back decisions for non-initiation and dismissal

A review of judicial decisions in the first instance court for non-acceptance of petitions in the Court of Appeals shows that the Tiranë Court of Appeals ruled to overturn first instance court decisions and send the acts to the prosecutor's office to continue investigations in 5 decisions on non-initiation of penal proceedings and 3 decisions on dismissal of investigations.

In their entirety, first instance court decisions on the return of prosecutor's office acts to continue further investigations have been upheld by the court of appeals.

The Durrës judicial district court has sent back for investigation a total of 6 cases.

We noticed during the study that in some cases, decisions by the Tiranë judicial district court have not been argued. The court had only reflected the circumstances of the fact, how the prosecutor's office acted, what the object of the petition by the party is, and has issued a decision without providing the reasoning in less than one page; examples are *Decision no. 2, dated 15.02.2010, Decision no. 55, dated 25.01.2010, Decision no. 230, dated 18.06.2010, Decision no. 1279, dated 04.11.2010.*

In the Durrës judicial district court, only one case was highlighted as lacking legitimation, on a dismissal decision, arguing that the injured party is not the one who should oppose the prosecutor's office decision in court.

3.3.5 Complaints on judicial decisions

The study of Durrës judicial district court decisions shows that 15 decisions of this court on non-initiation of penal proceedings were appealed at the Durrës Court of Appeals. A total of 17 decisions on dismissal decisions were appealed the same court.

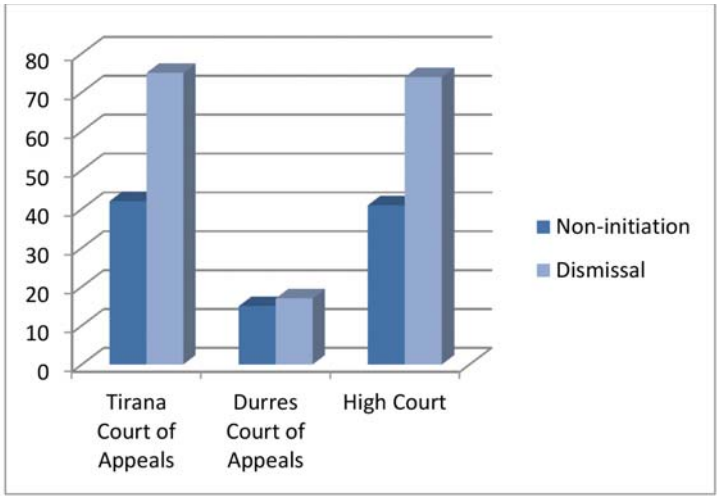
The study also went further to look at the progress of these cases in the High Court. During the monitored period, none of the Durrës Court of Appeals on non-initiation or dismissal were appealed.

The monitoring in the Tiranë judicial district court shows that first instance court decisions were appealed in all three instances. Namely, 42 decisions on opposing the prosecutor's office decision on non-

initiation were appealed in the Tiranë appeals court. For 41 decisions of the Court of Appeals for non-initiation of penal proceedings, appeals were filed with the High Court.

With regard to decision on petitions against prosecutor's office decisions of dismissal, there were 75 decisions by the Tiranë district court that were appealed to the Tiranë Court of Appeals and further appeal to the High Court was filed on 74 of them.

In other words, court decisions on petitions against prosecutor's office decisions on dismissal were appealed by 88%, while decisions on petitions against prosecutor's office decisions on non-initiation of penal proceedings were appealed by 30%.



Graphic no. 17 – Data on decisions appealed with the Tiranë and Durrës Court of Appeals and the High Court.

What appears very clear is that in all cases when the first instance court dismissed the case on petitions against prosecutor's office decisions, the court of appeals decided to overturn the dismissal decision and to send the case for re-adjudication to the first instance.

3.4 Legitimation of parties to oppose prosecutor's office decisions for non-initiation of penal proceedings – Strategic litigation case

The Albanian Helsinki Committee, being sensitive to cases of torture and maltreatment in pre-trial detention centers, prisons, and police commissariats, has undertaken to represent as a case of strategic litigation, the case of the late Sh.K. who died in the premises of the Prison Hospital Center. The prosecutor's office of the Tiranë Judicial District Court registered penal proceedings on 24.02.2011, based on a penal lawsuit by Tirana Police Commissariat No. 4 on the death of Sh.K. Although the Tirana prosecutor's office conducted a series of investigative actions on the case, at the conclusion of investigations, by decision of 13.04.2011, it decided non-initiation of penal proceedings. The brother of the victim, represented by Albanian Helsinki Committee lawyers, filed a complaint against this decision with the Tiranë Judicial District Court,[4] requesting a dismissal of the decision and the continuation of investigations.

By decision no. 956 of 20.10.2011, the Tiranë Judicial District Court ruled to reject the petition by the brother of the victim arguing it was not based on law because he was not legitimized to use the complaint right to oppose the decision of the prosecutor's office to not initiate penal proceedings.

A complaint was filed against the above court decision with the Tiranë Court of Appeals, which, by decision no. 487, dated 20.04.2012, ruled to uphold the decision of the Tiranë Judicial District Court.

The petitioner filed another complaint with the High Court,[5] which, by decision of the Counseling Chamber of 23.01.2014, decided to not accept the appeal with the argument that it does not contain any of the causes prescribed in article 432 of the Penal Procedure Code.

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[4] *The case in the Tiranë Judicial District Court and the Tiranë Appeals Court was represented by attorney Etilda Gjonaj (Saliu) and attorney Erida Skëndaj, legal representatives authorized by AHC*

[5] *The appeal was prepared through the expertise of attorney Artan Hoxha and attorney Etilda Gjonaj (Saliu), legal representatives authorized by AHC*

Although the High Court, through the counseling chamber did not accept the appeal, the case is about to be submitted to the Constitutional Court and its subject will be the violation of the principle of due legal process.

The arguments raised in the High Court, as part of the appeal filed with this court, regarding this case on appealing the prosecutor's office decision on non-initiation and to legitimize the brother of the deceased, were presented in two aspects – the procedural one and the essence one.

In our opinion, the Tiranë District Court and the Appeal Court interpreted and applied at the same time wrongly and in violation of the law articles 58, 290, 291, and 329 of the Penal Procedure Code. In their reasoning, the courts accepted that the petitioner, the brother of the late Sh.K. is not legitimized to file a complaint against the prosecutor's decision to non-initiate the penal proceeding because he is not the person who pressed charges for the penal offence. In their decision making, the courts interpreted and applied in a very narrow, literal, and through a confining interpretation the prescriptions of article 291 of the Penal Procedure Code.

This provision stipulates, "*The decision shall be shared immediately with those who pressed charges or filed a complaint, and who may appeal it in court, within five days from receipt of notification of the decisions.*"

As accepted by the two courts, it is true that in its literal interpretation, the above provision, paragraph two, establishes as legitimized subjects that can oppose the decision of non-initiation *the persons who pressed charges or filed a complaint*. Nevertheless, in their interpretation, the courts failed to give meaning to the above provision and to make it implementable.

Both courts, in the definition of the circle of legitimized persons, only interpreted narrowly article 291/2 of the PPC, without taking into consideration the stipulation of article 58 of the Penal Procedure Code, as well as the general provisions of penal proceedings. The courts forgot the lead purpose of the penal procedural law, envisioned by article 1 of the PPC, which is guaranteeing a fair process, both for the person suspected of having committed the penal offence, and the person injured by the penal offence.

With the proceedings against and the punishment of the perpetrator of the penal offence, the law seeks to ensure the security of citizens and the reinstatement of their violated rights, by conducting penal proceedings against the person who committed the penal offence. It is precisely for this reason, although it recognizes and charges a certain proceeding body to exercise penal prosecution the procedural law, in its provisions, has recognized the persons damaged by the penal offence, the opportunity to have a series of procedural rights and to be part of penal proceedings.

Thus, article 58 of the PPC, as a general provision of this law, not only sees as a subject of penal proceedings the damaged by the penal offence and his heirs, but also prescribes the procedural rights of these subjects. This provision is the very basis of all procedural rights of the person injured by the penal offence and his family members; these rights in some cases, are expressly established in the law, and other times it is the duty of the court to establish them on a case by case basis.

In the arguments presented to the High Court, we highlighted the fact that the petitioner did not press charges for the penal offence of murder of careless medication for his brother, but the referral of the penal offence meanwhile was done by the Police Commissariat no. 4 in Tirana itself. In the circumstances when the charges existed and the penal proceeding had begun, since the prosecutor's office was conducting procedural actions, charges by the petitioner or any of the family members of the deceased would be unnecessary, even worthless.

The courts, as bodies charged by law for the interpretation and application of the law and for delivering justice, have the legal obligation to interpret and apply provisions in harmony with one another and in a way that guarantees as many rights as possible for the subjects of the penal offence and not as in the case in question that these rights were narrowed and denied.

In the application of the law, the Tiranë Court, the Appeals Court, and the High Court failed in the systematic interpretation of articles 1, 58, and 291 of the PPC, although these provisions are integrally connected with one another, and even derive from one another.

Thus, the right of complaint against the prosecutor's non-initiation decision is nothing else but one of the procedural rights of the person damaged by the penal offence or his heirs, recognized and guaranteed by article 58/3 of the PPC. Had they conducted a systematic interpretation of item 3 of article 58 of the PPC and article 291/2 thereof, the courts would have arrived at the logical and legal conclusion that while the law recognizes to the person damaged by the penal offence and his heirs the right to submit requests to the prosecuting body and the right to request obtaining evidence (58/3), it would be senseless and in violation of the spirit of the law to deny them the right of complaint to a decision by the prosecuting body for non-initiation of the proceedings, which provides a solution to the proceeding itself.

In their decision making, the courts did not take into consideration the historical interpretation of the provisions, which would have showed that paragraph three of article 58 of the PPC is a provision added to the penal law with the amendments made to it by law no. 8833, dated 13.06.2002. With the addition of this paragraph, the lawmaker was seeking to add to the rights of the person damaged by the penal offence and his heirs and, in the circumstances when article 58 is a provision of a general character, all other provisions that prescribe procedural rights deriving from this law, such as article 291 of the PPC, they need to necessarily be interpreted in its spirit.

Accepting the opposite leads to an absurd juridical and factual situation, not only because the prescription of article 58 and paragraphs 1 and 3 come against article 291/2, but also because in the concrete case, it leads to the absence of someone who can petition the prosecutor's decision on non-initiation of penal proceeding. It is clear and obvious that the Police Commissariat that pressed the charges has no interest of objecting to the prosecutor's decision.

Unlike what the Tiranë Court admitted, the petitioner, as one of the heirs of the deceased, has not only an emotional stance to the situation, but also a direct and legitimate interest for the continuation of penal proceedings into the death of his brother. Whether his claims regarding this fact stand or not and whether the conditions exist for the continuation of investigative actions by the prosecutor's office is up to the court to decide, upon review of the petition against the non-

initiation decision. Accepting the opposite leads to any non-initiation decision by the prosecutor in the circumstances of initiated proceedings based on the charges pressed by an institution, as is the Police Commissariat, or on the initiation of proceedings on its own initiative (a right of the prosecutor's office), would be final and impossible to appeal as none of the persons who have an interest, and even the person damaged by the penal offence, even if he were alone, would not be legitimated in appealing the decision.

This interpretation of article 291/2 of the PPC by the two lower courts is in contravention not only of prescriptions of article 58 of the PPC, but even of the spirit of the penal procedural law and the intent of the lawmaker in the prescriptions of this law, thus violating the constitutional court of *access to court,* as a fundamental human right, guaranteed by article 42/2 of the Constitution and article 6/1 of the ECHR.

On the other hand, through their interpretation, the lower courts have created an absurd situation of inequality. In their decisions, the two lower courts have compared the subjects legitimized according to article 329 of the PPC and article 291 of the PPC, reaching the conclusion that the lawmaker differentiated the subjects that have the right to file a complaint with the prosecutor's decision in these two cases. Such interpretation is in contravention of the very prescriptions of the penal procedure law and its spirit. We note that the decision of the prosecutor to not initiate penal proceedings, as well as the dismissal decision, although they refer to different cases, they lead to the same juridical consequence, which is non-continuation of the penal proceeding.

By considering these two decisions as appealable in court, the procedural law envisioned the possibility of persons interested in the continuation of proceedings to appeal these decisions, leaving it up to the court to judge whether the prosecutor exhausted all potential procedural actions or should continue the investigation.

Consequently, admitting that article 329 and 291 of the PPC, although they lead to the same juridical situation, legitimize different subjects for a complaint against the prosecutor's decision, not only causes illogical inequality between these two subjects at a time when

the person damaged by the penal offence or his heirs are the subjects that have a direct interest in such a case, but also is in contravention of the prescriptions of article 1 of the PPC and the entire spirit of the law, which seeks to establish and guarantee equal rules.

By not legitimizing petitioner Fatos Prizreni in his request, the courts not only denied him the right to access to court, but also legitimized the illegal actions of the prosecutor, and even established a new standard: that any non-initiation decision by the prosecutor, no matter how unlawful or absurd, is untouchable and inviolable as the persons who have not pressed charges cannot appeal it. This standard, according to the lower courts needs to be applied in every case, including in the case when the prosecutor's office begins penal proceedings on its own initiative.

This erroneous conclusion would lead to the creation of two diametrically different standards for the juridical treatment of the same subject, *the person damaged by the penal offence,* for the same cause and with the same consequence. This runs against the entire corps of norms of the Penal Procedure Code and especially the right to due legal process, guaranteed by ECHR and the Constitution of the Republic of Albania.

The second argument presented through the appeal to the High Court was that, on the basis of their first conclusion, by not legitimizing the petitioner in his complaint against the prosecutor's decision, the courts did not take into consideration even his claim of non-initiation of penal proceedings because, even if his conclusions had been founded, referring to provisions of the PPC, the dismissal of proceedings should have been decided and not its non-initiation.

If we were to refer to the reasoning by the prosecutor in his non-initiation decision, it results that he has conducted a series of procedural and investigative actions before taking that decision, such as: examination of the site of the death, examination of the corpse, obtaining and administering the person's medical file, questioning citizens, and after the conduct of these actions, he reached the conclusion that the penal offence does not exist, and thus decided non-initiation of the penal proceedings. Furthermore, the case prosecutor went even further by requesting the conduct of re-examination.

Such a conclusion of the prosecutor is in contravention of articles

290 and 291 of the PPC because article 291 is a provision that refers to article 290, establishing that non-initiation of penal proceedings shall be decided in those instances when "the circumstances exist that do not allow the initiation of proceedings." Such circumstances are established by article 290 of the PPC.

As admitted by the Penal College of the High Court in several decisions, the case of the prosecutor's decision to non-initiate refers to a juridical situation that is different from the case of a decision to dismiss (proceedings), in spite of the causes why such a conclusion is reached.

Thus, non-initiation of proceedings refers to a situation when such facts are proven that stop the initiation of penal proceedings from the very first steps. Meanwhile, the dismissal of proceedings refers to cases when the facts based on which the proceedings may not continue or should not have begun are proven during the investigation, i.e. after the prosecutor has undertaken investigative and procedural actions.

In the concrete case, it is clear that the prosecutor conducted a series of investigative actions, which means that even if his conclusion were right, he should have reached the conclusion of dismissal of the proceedings and not its non-initiation.

We mention this fact solely and simply to prove the confining position of the courts with regard ot the case in question. If they had had the will to guarantee procedural rights to the petitioner, the courts could have reviewed his claim of a prosecutor's error in his decision for non-initiation of proceedings. By finding that we are in front of the case of dismissal of proceedings, referring to the very interpretation by the courts of article 329 of the PPC, although not based on the law, the petitioner would have been a legitimized subject in the process. Otherwise, the courts sufficed to deny access to the petitioner in court as an non-legitimized person, thus stripping him of his right to complain, in violation of the law.

For the monitoring period, with regard to legitimation, the Court of Appeals sent back for investigation decisions on non-initiation of penal proceedings in a total of two cases, one for 2009 and one for 2010; there were no cases of decisions on dismissal of investigations being sent back for investigation.

CHAPTER 4

PROCEDURES AND DEADLINES FOR THE EXECUTION OF PENAL DECISIONS OF IMPRISONMENT AND MEDICAL AND EDUCATIONAL MEASURES

As mentioned in the preface to this study, the object of our monitoring and of interest for the study was also the execution of penal decisions of imprisonment, medical measures and educational measures issued by the court. The study covered not only the prosecutor's offices of the judicial districts that were the subject of monitoring, but also the Tiranë and Durrës Courts.

For the monitoring period, we studied execution orders for 300 judicial decisions of imprisonment in the Durrës judicial district prosecutor's office. In the Tirana prosecutor's office, we studied execution orders for 343 judicial decisions of imprisonment. In the Tiranë judicial district court, we studied 900 judicial decisions of imprisonment and in the Durrës judicial district court, we studied 443 such decisions.

4.1 Documentation kept in the monitored prosecutor's offices and courts

In the Durrës judicial district prosecutor's office, documentation was kept in the office of the prosecutor assigned for executions, in iron shelves, locked with a key. They were kept in good conditions. The premises were dry, without humidity, and with light. The files were kept manually and they were not available electronically. Access to documentation was conducted manually, examining every case.

In the Tiranë judicial district prosecutor's office, we noticed that

documentation we consulted and studied was kept in the office of the secretary for the execution of penal decisions and in archives. Physical conditions and security conditions were good. Files were kept chronologically, by hand. There was a database by the office of the secretary for the execution of penal decisions. The AHC monitoring group did not consult the database due to the security of data that were kept therein.

In the Durrës judicial district court, documentation was kept in the archive, which was kept in three separate premises. In spite of the dedication of the court's administrative staff to provide for effective work, the conditions of the archive did not allow for maximal productivity by the court to carry out administrative work and for monitoring by us. The files were kept in chronological order. Extraction of information that was the subject of our study from the files and registers was done manually as there was no database of the data and they were not kept electronically.

In the Tiranë judicial district court, final decisions were kept in chronological order, divided by year, namely the logbooks for delivery of files and the register of serial numbers, kept in good order and in good physical conditions. The database of the court that included electronic data regarding the chronology of trial hearings made it possible to identify the status of penal cases on the basis of legal provisions, judges adjudicating them, prosecutors, defendants, etc.; the database enabled access to penal decisions taken by the court as well as seeing whether the decision had been appealed. The space of the penal archive where relevant files were kept was small and inadequate in terms of shelves, etc. We also noticed that there was a need for organizing them by decision number, divided into years, in order to make it easier to find them.

Nevertheless, access to the system was not enough to obtain all needed information for statistical processing; therefore, we checked the relevant registers.

4.2 Quantitative data from the Court

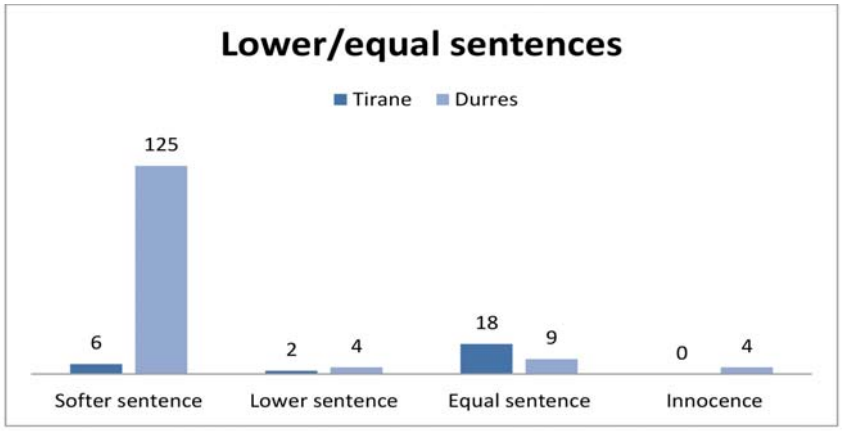
In the Tiranë judicial district court, for the period July 2009 – June 2010, we studied 900 judicial decisions of imprisonment, of which 390 belonged to the second half of 2009 and 510 to the first half of 2010.

Below is a display of the judicial decisions by the Tiranë judicial district court and what they decided on the adjudicated cases.

Description of decisions	Second half of 2009	First half of 2010
Innocence	14	25
Exclusion of adjudication	1	-
Dismissal of case	2	15
Sentencing equal to period spent in pre-trial detention	15	3
Lower sentencing than period spent in pre-trial detention	1	1
Other softer punishment	6	-
Greater sentence than period spent in pre-trial detention	351	466
Total decisions	**390**	**510**

In the Durrës judicial district court, for the studied period, there were a total of 138 decisions, of which 63 were from 2009 and 75 for 2010. Of the 63 decisions from 2009, 4 decisions were issued for equal sentence, 2 were lower, and 57 were softer. For 2010, of 75 decisions, 5 were equal to detention time, 2 lower sentences, and 68 softer sentences.

Based on the monitoring of the files, it results that in 2010, there were 4 cases in which the prosecutor requested that the defendant be declared guilty and the court declared them innocent, except for one case when the first instance court issued an innocence decision and the appeals court found the defendant guilty.



Graphic 18 . Types of lower and equal decisions issued by the Tiranë and Durrës courts

With regard to the above sentences, referring to article 21 of Law no. 8331, dated 21.4.1998 amended, "On the execution of penal decisions," immediate execution was requested. A problem remained with the cases when the court issued a lower or softer sentence after noticing lack of coordination between the court and the prosecutor's office in order for the person to be released immediately, through immediate execution of the decision.

4.3 Deadlines respected for published reasons for judicial decisions by the courts

What is often discussed for the purpose of immediate or fast execution of a decision by the prosecutor's office is immediate publication of the court's decision, in spite of the possibility to obtain the abridged decision.

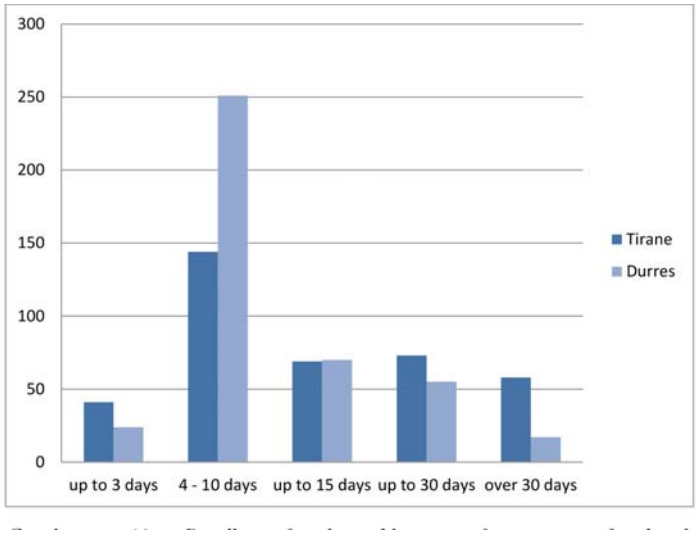
With regard to decisions by the Durrës judicial district court, it results that decisions were published within three days for 24 decisions, in 4-10 days for 251 decisions, within up to 15 days for 70 decisions, within up to 30 days for 55 decisions, and for over 30 days for 17 decisions.

The same situation appears also for those decisions of immediate execution: within 3 days from the announcement for 6 decisions, 4-10

days for 95 decisions; 55 decisions involving immediate execution were published after more than 10 days.

With regard to the Tiranë judicial district court, 41 decisions were published within 3 days, 144 decisions were published within 4-10 days, 69 decisions were published within 15 days, 73 decisions were published within up to 30 days, and 58 decisions were published for over 30 days.

A review of logbooks of the delivery of files with the published decisions showed that many of them had been delivered after the complaint deadline had expired. There were files that were delivered after over 40 days since the announcement of the decision. In one case in which the decision had become final, without being appealed, the penal judicial file had been delivered to the secretary's office after 74 days.



Graphic 19.Deadlines for the publication of reasoning of judicial decisions by the respective court

4.4 Deadlines respected for the delivery of decisions by the judicial secretary to the prosecutor's office

During the monitoring period, with regard to deadlines implemented by the court's secretary for the delivery of penal decisions to the prosecutor's office for the execution of judicial penal decisions

of the Durrës judicial district court, 327 decisions were the subject of monitoring; for 2 of these decisions, the legal deadline was not possible to calculate because of deficiencies encountered in the registers.

Namely, for 2009, there were 131 decisions, of which:

- 2 decisions immediately upon announcement of the decision,
- 24 decisions within 3 days after the announcement,
- 16 decisions within the 4-10 day deadline,
- 89 decisions appeared within a deadline of over 10 days.

For 2010:

- 139 decisions for over 10 days,
- 38 decisions within 4-10 days,
- 17 decisions within 3 days from the announcement,
- there was no decision immediately upon announcement of the decision.

With regard to the deadline implemented by the Tiranë judicial district court secretary to send the penal decision to the Tiranë judicial district prosecutor's office for the execution of final decisions, it appears as follows:

For the second half of 2009:

- 1 decision was sent immediately upon announcement of it,
- 101 decisions were sent within 3 days from the announcement,
- 79 decisions within 4 – 10 days,
- 203 decisions took more than 10 days.

For the first half of 2010:

- 158 judicial decisions within 3 days from the announcement
- 89 judicial decisions within 4 – 10 days,
- 263 judicial decisions for over 10 days.

There was great difficulty in evidencing the above data because none of the files or the register had the date of the publication of the full decision. Therefore, the date used for the publication of the decision was the date of the delivery of the judicial penal file by the secretary of the judge to the chief secretary; the date was noted in the delivery books and the logbook.

With regard to the delivery of decisions for execution by the court secretary to the prosecutor's office, the dispatch date was noted in a special protocol book; the date generally matched the date of reception

of the final decision by the chief secretary, noted at the bottom of the decision.

4.5 Execution orders of the prosecutor's office and their deadlines

The monitoring of execution orders of the Tiranë and Durrës judicial district prosecutor's offices showed that, in general, there was lack of information on execution orders in the cases of immediate execution especially in Tiranë.

We highlighted as a problem the fact that for immediate execution decisions, the prosecutor's office did not always issue the execution order immediately.

With regard to immediate execution decisions, we highlighted disrespect for the legal provision within the same day. In more than half of the decisions, it resulted that the execution order was issued after 2 to 4 days.

In the Durrës judicial district prosecutor's office, we found:

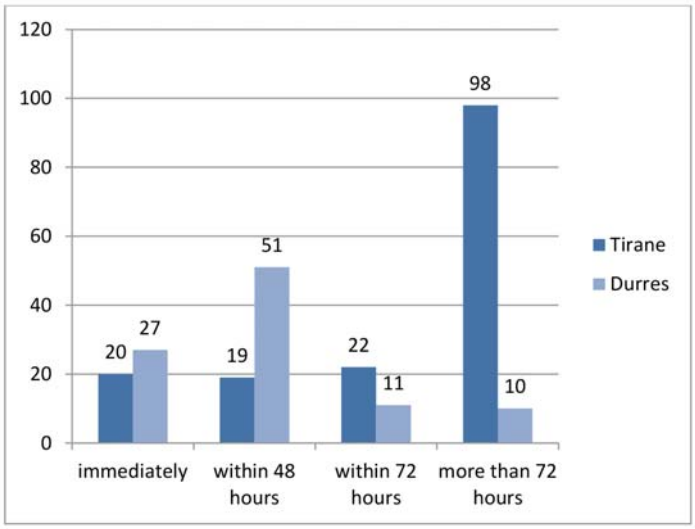
- For 2009, execution orders were issued immediately upon announcement of the decision for 5 decisions; within 3 days from the announcement of the decision for 31 cases; within 4 to 10 days from the announcement of the decision for 54 cases; up to 15 days for 14 cases, up to 30 days for 9 cases, and over 30 days for 26 cases.
- For 2010, execution orders were issued immediately upon announcement of the decision for none of the cases; within 3 days from the announcement of the decision for 19 cases; within 4 to 10 days for 18 cases; within 15 days for 3 cases; up to 30 days for 18 cases; and more than 30 days for 18 cases.

During the monitoring of relevant documentation in the Tiranë and Durrës judicial district prosecutor's offices, we paid attention also to the deadlines divided by subjects, persons with security measures and persons declared free. We did so because for persons with security measures of arrest in prison or other alternatives, delays in the issuance of execution measures have repercussions.

Deadlines followed by the Durrës judicial district prosecutor's office for the issuance of execution orders in the cases when persons were

arrested, it resulted that they were issued immediately after the decision became final in only 27 cases and for over 3 days for 10 cases.

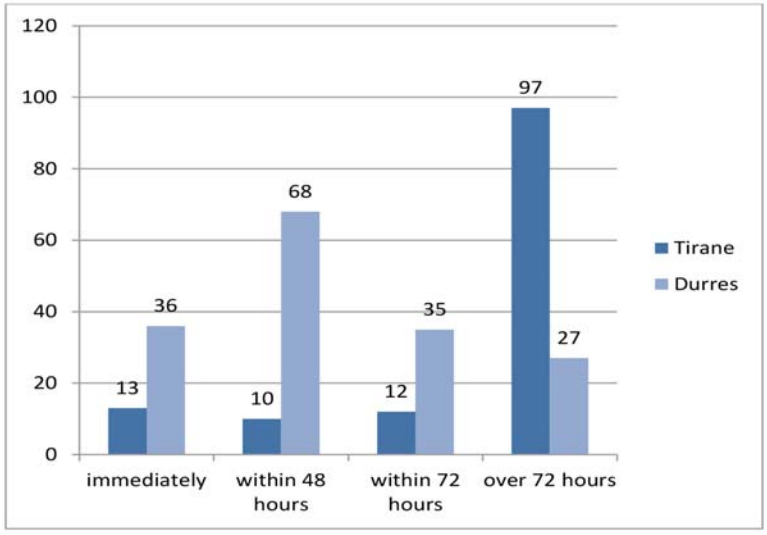
With regard to the Tiranë judicial district prosecutor's office, for the issuance of execution orders in the cases when persons were arrested, the Tiranë prosecutor's office applied deadlines that were longer than those followed by the Durrës prosecutor's office. More execution orders were issued after three days from the announcement of the decision – namely 98 – and less execution orders of immediate execution or within 48 hours.



Graphic no. 20 – Graphic display for the issuance of execution orders according to the above deadlines for persons given security measures

In the Durrës prosecutor's office, regarding the issuance of execution orders in cases when persons were not arrested, it resulted that in most cases, the deadline of 48 hours from the announcement of the decision was respected for 49 cases; however, there were also cases of execution orders issued after more than three days, as well as those immediately after the decision became final (32 decisions).

The Tiranë prosecutor's office issued execution orders after over three days in 97 cases and less of them immediately, thus featuring a visible difference from the Durrës judicial district prosecutor's office.



Graphic 21. Graphic display regarding the issuance of execution orders according to the above deadlines, for persons adjudicated at large, without a security measure

With regard to the content of execution orders of the prosecutor's office, we found that in general, they were complete and accurate, with clear descriptions of the penal decision being executed, the identity of the convict, his location, the type and extent of the main sentence to be served, the type of complementary sentence and the criteria for its implementation, the civil obligation, bodies that will execute or oversee execution. For cases when persons were in pre-trial detention with measures of arrest in prison, their served time has been calculated and factored in and the remainder of the sentence they need to serve. Execution orders establish the place of execution of decisions; for cases of persons who had been in pre-trial detention, the location thereof was specified as well as the location for serving the remainder of the sentence.

The monitoring showed that for every kind of sentence, main or complementary, a separate execution order was issued, i.e. only on the execution of that kind of sentence.

When the convict was in pre-trial detention facilities, the execution order was sent to detention authorities for execution. If the convict was at large, the execution order was sent to the police bodies that had the obligation to execute the order. When the convict was arrested, the arrest warrant was issued and then the order for transfer to the IEPD where the sentence would be served.

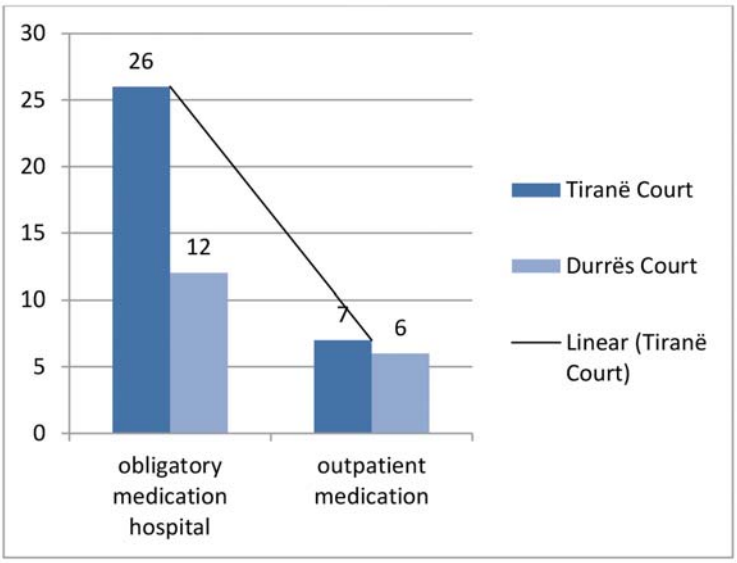
In both the Tiranë and the Durrës judicial district prosecutor's office, execution orders during the monitoring period were all executed by force; no orders appeared to have been executed voluntarily.

With regard to the notification of persons about the execution of the decision, in almost every case, the 30-day deadline was respected. During the monitoring, we found only one case of a person who was a minor and the notification of the parents was not done, found in the Durrës judicial district prosecutor's office.[6] In every case, the execution order register and the execution order issued by the prosecutor's order clearly showed the notification of parties by the prosecutor's office as well as procedures followed for notification.

4.6 Execution of medical and educational measures

Special attention was paid in this monitoring to medical and educational measured issued by judicial decision as well as to how the prosecutor's office carried out their execution.

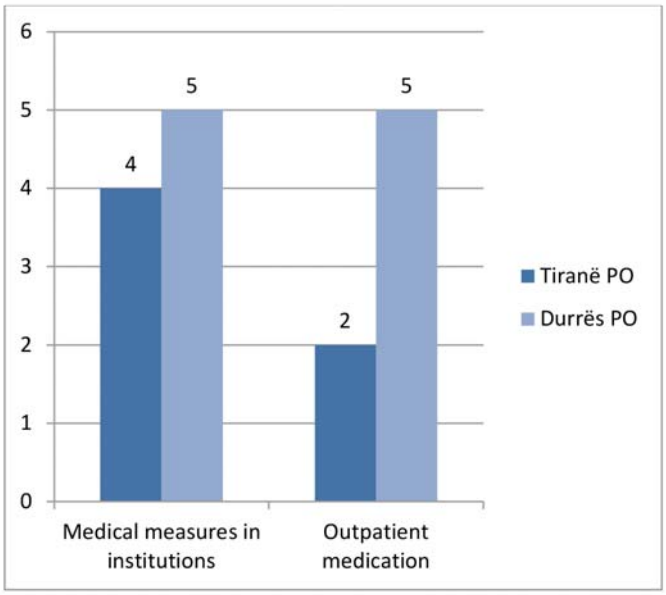
The Tiranë and Durrës judicial district courts, during the monitoring period, issued 38 decisions for medical measures of obligatory medication in a medical institution and 13 medical measures of outpatient care medication. Article 46 of the Penal Code specifies that medical measures may be issued by the court for irresponsible persons who have committed penal offences, by obligatory medication in a medical institution or outpatient medication.



Graphic 22. Judicial decisions on medical measures by obligatory and outpatient medication

For the monitoring period, in its decisions on obligatory measures, the court erroneously specified the location where the medical measure would be executed in about 40% of the medical decisions, specifying the penitentiary institution as one such location, namely the Prison Hospital Center and IEPD Zahari Krujë. For the rest of the decisions, it only specified that the execution should be carried out in a medical or psychiatric institution.

During the monitoring period, the Durrës prosecutor's office issued execution orders for 10 court decisions by medical measures, of which 5 were obligatory outpatient medication and 5 cases were obligatory medication in a psychiatric institution. The Tiranë prosecutor's office issued execution orders for 6 judicial decisions of medical measures, 4 for obligatory medication in institutions and 2 for obligatory outpatient medication.



Graphic 23. Graphic display of the execution orders of medical measures of obligatory and outpatient medication, issued by the Tiranë and Durrës prosecutor's offices

With regard to execution orders on decisions for medical measures, during the monitoring period, they specify the location for the execution of the measure, namely obligatory outpatient medication and medication in a psychiatric institution. In most cases, execution orders on court decisions for obligatory medical measures refer as an institution for the execution of the decision one of the penitentiary institutions, such as IEPD Zahari Krujë or the Prison Hospital Center.

Through numerous letters to state institutions, AHC has raised and addressed the execution of obligatory medical measures in a medical institution; however, to date, it has not been able to find a solution. Persons who were issued medical measures are still kept unjustly in penitentiary institutions and this represents a serious violation of human rights.

The monitoring showed only one decision by the Tiranë judicial district court that decided the implementation of the educational measure in an educational institution, pursuant to article 46 of the

Penal Code and that of the Penal Procedure Code, still without specifying where it would be executed, also because of the lack of such an institution.

5. Conclusions and Recommendations

Below are some of the most important conclusions emerging for this study regarding each of the addressed issues and the relevant recommendations. They are the result not only of the study and the experts who participated in this study, but also of the round table of discussions held on January 30 2014, thanks to the contribution of experts Mr. Arben Rakipi and Mr. Artan Hoxha through their active moderation.

I. With regard to keeping and administering documentation in the monitored institutions

We recommend:

- The creation of appropriate spaces in all monitored institutions for preserving and keeping relevant documentation, in adequate physical and technical conditions, and by securing needed materials, such as shelves, etc.

- The creation of an electronic database for statistical data; as appears from the study, data is kept manually, although the situation appears better in the Tiranë judicial district court.

- With regard to the administration of files, we suggest to all monitored institutions to devote special attention to improving it not only in terms of material infrastructure, but also in terms of organization with regard to indexing, registration of files in special registers, etc.

- Databases were kept manually in the relevant judicial district

prosecutor's offices and this led to derived statistics not being accurate. Therefore, we recommend that measures be taken to establish electronic databases in order to better evidence work, preserve the archive, and extract statistics.

II. With regard to decisions of "Dismissal" and "Non-initiation" of penal proceedings by the prosecutor's office

Conclusions

- It resulted during the study that the penal offences for which there were most prosecutor's office decisions for non-initiation of penal proceedings were crimes against life, against the person's liberty, against property, abuse of office, document fraud.
- We also found that about 75% of the decisions were non-initiation decisions and there were less dismissal decisions.
- We found that in spite of competences that legislation in force recognizes to different state institutions to press charges with the prosecutor's office, he studied cases showed that charges by state institutions were only pressed in 8% of the cases.
- We found that in most of the prosecutor's office decisions on non-initiation investigative actions were conducted on which, pursuant to the decision of the Penal College of the High Court, a decision on non-initiation should not have been taken.
- Although few in number, we encountered court decisions for which there was no reasoning. Likewise, we found decisions that, in spite of the number of pages, remain poor and not argued in their reasoning.
- The study showed that those damaged by the penal offences were not informed about the steps and procedures followed by the prosecutor's office for the progress of investigations.
- Lawmaking activity could pay attention to the deadlines regarding procedures in the case of non-initiation or dismissal of penal cases.
- Another aspect that should receive special attention is the

obligation of the parties – the prosecutor, the accused, and the damaged – to respect judicial procedures, conditioned by their presence or non-presence in the adjudication, related to the validity of judicial procedural actions in cases of this nature.

- We highlighted that the parties did not exploit the opportunity for a complaint to the highest prosecutor, which is a procedural possibility that cannot be found if related to the lack of trust or knowledge of the law.
- In none of the monitored cases in the Tiranë prosecutor's office for decisions of non-initiation, the requirement of the procedural law, that of immediate notification, was not respected. Even in cases when the Tiranë prosecutor's office decided on dismissal, we encountered the same problem. The difference was that in these cases, the procedural law does not specify a deadline for the notification of interested parties and it is difficult to provide information on when notification was done.
- With regard to decisions of non-initiation, there are no specific deadlines and, in general, the deadlines for the proceedings of the case were respected according to article 323 of the PPC, on cases of non-initiation and dismissal of penal proceedings.
- The study of dismissal decisions showed that in most cases, investigations in total lasted for a period of 6 – 12 months. This was not accompanied in all cases with deposited requests for a prolongation of investigations.
- Based on the studied data, it results that in the Tiranë and the Durrës judicial district courts, prosecutor's decisions were appealed in only 21% of the cases by the state institutions that pressed charges for issues falling within their competences.
- It results that the time taken for judicial processes in cases of appeals against prosecutor's office decisions is too long, considering that in some cases, some last even up to two years.

Recommendations

- We recommend ot the Prosecutor General's Office to take relevant measures for the conduct of further investigations with regard to cases investigated by district prosecutor offices, especially in those instances when cases involve crimes against life or other penal offences, in order to avoid abusive decisions on non-initiation of penal decisions.

- We recommend to the Prosecutor General's Office to conduct regular thematic inspections in order to review prosecutor's office decisions on "Non-initiation of penal proceedings" and decisions on "dismissal of investigations."

- We recommend that the Prosecutor General's Office should monitor district prosecutor's offices or, through internal instructions, make possible the implementation of the decision of the Penal College of the High Court, which specifies expressly that when investigative actions are conducted, the prosecutor's office may not decide for non-initiation of penal proceedings.

- We would encourage the Council of Ministers to oversee subordinate institutions in order for them to exercise their functions, according to law, in terms of pressed charges and cases referred to the prosecutor's office when they encounter violations of the law, which represents a penal offence.

- We recommend that heads of Courts and the High Council of Justice to overseen judicial decisions in order for these to be announced and reasoned within legal deadlines.

- In the framework of Justice Reform, we recommend the revision of the Penal Procedure Code in order to improve the institutes that have to do with the conditions for non-initiation and dismissal of the penal case, in order to determine the subjects

that have a right to appeal the prosecutor's office decision on non-initiation in court, from the standpoint of article 58 of the Penal Procedure Code.

- We suggest that the Penal Procedure Code include the deadlines for filing complaints *(article 24ç5 of the PPC)* on decisions of the prosecutor's office, by the Prosecutor General's Office, and for the correct stipulation of cases when the Prosecutor's Office decision is appealed in Court and the Prosecutor General's Office as a higher hierarchical body in order to prevent double complaints.

- We recommend to the Prosecutor General's Office and the heads of judicial district prosecutor's offices to pay greater attention to the procedural rights of persons damaged by penal offences, the creation of opportunities to be fully aware of any procedural activity, as well as reacting to those when they are deemed as being in violation of the substance and procedural law. By being aware of the process, continually, the person damaged by a penal offence may realize at any time, without any limitation his own constitutional rights related to representation, defense, and access to court, etc.

- We recommend that the Prosecutor General's Office as well as heads of district prosecutor's offices undertake regular thematic inspections inorder to make administrative complaint more effective, given the low number thereof.

- We recommend that the Penal Procedure Code envision the relevant deadline for notification about decisions of the prosecutor's office on dismissal of penal proceedings.

- We recommend that it is specified in the Penal Procedure Code what deadlines of proceedings are pursued by the prosecutor's office on cases of non-initiation and dismissal of penal proceedings; in order to avoid the long deadlines of penal

proceedings, we recommend that higher level prosecutors conduct continuous controls.

- We recommend that state institutions that exercise their competences by exhausting the tool of administrative and judicial complaint by appealing decisions of the prosecutor's office on non-initiation or dismissal of penal proceedings; it is also necessary to review the evidencing of violations and evidence that is presented to the prosecutor's office.

- We recommend to the High Council of Justice to carry out controls with regard to the length of judicial processes on appeals against prosecutor's office decisions given the specifics of these cases and which the court may decide to send back for further investigations by the prosecutor's office.

- We recommend that cases presented to the High Court on appeals against prosecutor's decisions are not put on the waiting list like all other cases but rather that they are given priority because if they are sent back late for further investigations, the practical realization of such investigations may become difficult given the long time that would have passed by.

III. With regard to the execution of penal judicial decisions

Conclusions

- Failure to publicize judicial decisions within legal deadlines lead especially to delays in the issuance of execution orders by the prosecutor's office, thus leading often to serious violations of human rights.
- In more than half the monitored decisions requiring immediate execution, execution orders were issued by the prosecutor's office by a two to four days of delay.
- In cases when persons had been given security measure, the Tiranë judicial district prosecutor's office took longer than the

Durrës judicial district prosecutor's office, with most cases taking more than 3 days.

- The situation of the execution of judicial decisions of medical measures in a psychiatric institution, prescribed by article 46 of the Penal Code, is still being implemented in violation of the law, although it has been a continued concern since 1997. This category of persons, in violation of the law, are placed in penitentiary institutions such as the Prison Hospital Center or and the Zahari Institution in Krujë.
- At present, 130 persons with medical measures of obligatory hospitalization in a psychiatric institution are placed in this system.
- The study of judicial decisions and execution orders by the prosecutor's office showed that mostly prosecutors and less so judges decided one of the penitentiary institutions where these persons would be placed. The placement of these persons in penitentiary institutions also violates their right to appropriate health care service and also leads to artificial overcrowding in penitentiary institutions.

Recommendations

- Judicial decisions should be published within a short deadline and execution orders by the prosecutor's office should be issued immediately so that human rights are not violated. The High Council of Justice and the Prosecutor General's Office should conduct inspections and controls with regard to respect for deadlines.

- Immediate measures should be taken to establish a special institution for the execution of judicial decisions that issue obligatory medication measures in a hospital institution.

- A group should be established with representatives from the Ministry of Justice and the Ministry of Health as well as the

Prosecutor General's Office to resolve this situation.

- The Prosecutor General's Office should take measures that, until a special institution for this category of persons is established, measures of obligatory medication in other psychiatric institutions, outside the penitentiary system are executed.

- We recommend that the High Council of Justice, through the thematic inspections it conducts, to undertake measures on those judges who violate legislation in force and who determine in the decision where the person ordered for obligatory medical measures will be placed.

- Measures be taken for the establishment of an institution for the execution of educational measures for minors who are the perpetrators of penal offences.