

**AMNESTY AS A SPECIFIC MANNER OF EXTINGUISHING PENALTIES WITH A  
SPECIAL FOCUS IN ITS ADDRESSING MANNER ACCORDING TO THE LAW  
NO.04/L-209 ON AMNESTY OF KOSOVO**

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**ABSTRACT**

Amnesty is one of the manners of extinguishing penalties, respectively the creation of legal situations which impede the criminal prosecution as well as imposition and application of punishments against perpetrators of criminal offences. Amnesty is addressed by law. This Law as any other law is issued by state parliament. In fact through amnesty unassigned persons listed by name are granted exemption from complete or partial prosecution, exemption from the execution of a punishment, the substitution of punishment with a less severe punishment or a suspended sentence or the expunging of punishment, respectively shall be abrogated certain consequences of the punishment. Amnesty is an old institution of criminal law. It is known in Roman and Middle Ages Law. Also contemporary criminal laws recognize amnesty as a criminal-law tool which precludes the imposition of punishment, or the imposed punishment shall be abrogated as whole or partially. In Kosovo the amnesty issue has been regulated by Law on Amnesty which entered into force on July 26, 2013. Amnesty manifests a range of characteristics and its existence and granting is determined by numerous reasons. For granting amnesty is conducted a special procedure. Such procedure shall be initiated according to official duty (*ex-officio*) and by the initiative (request) of the convicted person, the perpetrator of the criminal offence, state prosecutor and other persons which may file a complaint against the judicial decision. Concerning this institution, proceedings concrete actions have been granted also to Probation Service. Amnesty shall be granted for all criminal offences despite of their gravity. In this short scientific paper is dealt with the meaning, characteristics, importance and the procedure of amnesty implementation, as well as some of the other basic issues of theory-practice nature referring to this criminal-law institution. By preparing this article I have used historical-legal, comparative, dogmatic, statistical methods etc.

**Keywords:** The Assembly, Probation service, Court, Amnesty, convicted person.

**INTRODUCTION**

Amnesty represents an institution of criminal law through which penalties are extinguished. This institution is addressed by a special law through which indefinite persons listed by name are released from criminal prosecution, shall be granted exemption from complete or partial exemption from the execution of a punishment, the substitution of punishment with a less severe punishment or a suspended sentence or the expunging of punishment. Through amnesty shall be followed political and social changes in the criminal field, it is influenced in the good behavior of convicted persons, shall be performed certain humanitarian repercussions and is expressed state and political wisdom. Amnesty is determined by a range of general characteristics, but depending on the country and moment that is granted it shall be

characterized by numerous specific features. Of course, regarding this institution often is necessary to make concrete exemptions. Amnesty shall be granted for all kinds of criminal offences despite their gravity. Habitually the amnesty includes criminal offences committed until one day prior to its announcement, excluding cases when the Law on Amnesty provides otherwise. By amnesty may be included certain criminal offences, the particular punishment, respectively its degree, or both at the same time. For granting amnesty duly is conducted a special procedure. In the Kosovo case it is specified in a notice required to make by Kosovo Probation Service on the situation of persons who are serving the sentence for the court who tried them in the first instance, which had to render a special decision for application of amnesty on them. Whereas in relation with criminal prosecution has been foreseen that the competent prosecutor shall make a decision on every concrete case in order to reject criminal reports or to terminate investigations. According to data made public by the Law on Amnesty of Kosovo in 2013 had benefited 1174 prisoners and 1467 which were in the procedure of criminal prosecution (investigation, filing an indictment).

### **The meaning of amnesty**

Amnesty is an act in the form of law issued by the Assembly as the highest representative body of state. Through amnesty indefinite persons listed by name are granted exemption from complete or partial exemption from the execution of a punishment, the substitution of punishment with a less severe punishment or a suspended sentence or the expunging of punishment. (Salihu, 2012, pg. 566). Amnesty shall be granted for all kinds of criminal offences despite their gravity. Consequently, through amnesty shall be specified criminal offences, whose perpetrators are released from criminal prosecution or by full or partial execution of the punishment. (Salihu, 2012, pg. 567). In fact, amnesty shall be granted also for the perpetrators of criminal offences which are convicted by particular types and degrees of punishment. For example, amnesty shall be granted to all persons punished by imprisonment up to two years, or to all persons convicted who were punished up to ten years of imprisonment, if they served 8 years of the punishment.

From the abovementioned definition it turns out that amnesty in volume terms represents a wide act due to the fact by it shall be released numerous persons from criminal prosecution or serving the sentence, respectively shall be extinguished a large number of convictions. Consequently, through amnesty the perpetrators of criminal offences shall be released fully or partially from punishments, whether they are principal or accessory penalties. (Law No.04/L-209 on Amnesty- article 2).

### **Some general characteristics of amnesty**

Amnesty as an institution of criminal law has a long history. It is appeared in Roman Law and Middle Ages Law until nowadays. Amnesty was known also by dictatorial states. As an institution amnesty expresses these so-called general features:

1. Firstly, amnesty represents an appropriate tool for monitoring political and social changes in criminal-law terms, because it may happen that due to the changing political and social circumstances several criminal offences lose that degree of social dangerousness they had in the moment of issuance of criminal law. Due to this cause the type and measure of imposed punishment is deemed to be very aggravated. Therefore, through amnesty, without changing the judgment by which is imposed this

- punishment, the imposed punishment is mitigated or abrogated as whole. (Salihu, 2012, pg. 565).
2. Amnesty influences in re-education of convicted persons, due to the fact that through amnesty they are informed they could be pardoned a part of the punishment, which affects on them to behave and deserve this act of good will and mercy of state.
  3. Amnesty represents an act that in particular cases is granted for human causes and for certain political and state interests, such are the cases when the criminal offence is committed by a person who have extraordinary merit for liberation and country building.
  4. Whereas in cases when it comes to political and state interests amnesty shall be granted if criminal prosecution, punishment, or further serving the sentence by a person or particular persons violate the state authority or relations of that state with another state, or relations of that state to international organizations for instance with United Nations Organization, European Union, Council of Europe etc. (Salihu, 2012, pg.565), and
  5. Amnesty is an expression of political and state wisdom. It is so because by this institution it becomes possible the opportunity to consider legal, social and political circumstances which dictate and justify its application.

Through amnesty the judgment is not canceled. It still remains lawful, but due to the causes abovementioned the punishment is pardoned, whether fully or partially.

### **The characteristics of amnesty referring to the Law on Amnesty of Kosovo 2013**

Besides general characteristics discussed abovementioned, amnesty in every case that is granted manifests also the so-called special features. In the following, briefly shall be discussed about some of the features which have characterized the amnesty granted through Law No. 04/L-209 on Amnesty:

1. Granting amnesty due to the political and state interests of the country. Amnesty proclaimed in Kosovo in 2013 in fact was attributed to the Serb community who were involved in the commission of certain criminal offences. The aim was to remove the feeling of fear of this community towards new developments marked in Kosovo and the integration of the north within the legislative framework of country. In Kosovo since the signing of Brussels Agreement on normalization of relations Kosovo-Serbia have occurred major changes. It was held a relatively intensive process of political and technical negotiations between Kosovo and Serbia (Hajdari, 2014, Functionality, pg.5359). As a result of these negotiations and the reached agreements Kosovo institutions have extended their authority in the customs system of the northern part of country (already operates an unified customs system), in Serbian municipalities successfully were held local and national elections (Hajdari, 2014, The functionalization, fq.1011), is made the extension of Kosovo Police authority in the north within which has been achieved to integrate the majority of Serb community, were marked positive results concerning also the freedom of movement, as well as were marked first results toward the extension of State Prosecution and Courts authority by being respected Kosovo legislative framework (Hajdari, 2014, Some of the challenges, pg.199).
2. Granting amnesty for a relatively high number of criminal offences. As it results, amnesty is granted for 62 criminal offences. These criminal offences are incriminated in the Criminal Code of the Republic of Kosovo (2013), Provisional Criminal Code of

Kosovo (2004), Customs and Excise Code of Kosovo, Criminal Law of SAP Kosovo (1977), and the Criminal Law of SFR Yugoslavia (1976). In the concrete case is about criminal offences against security of the country, against voting rights, economy, security of public traffic, customs system etc. By specifying the type of criminal offences for which has been granted the amnesty is aimed to open the horizons of creating a spirit of trust and tolerance between Albanian and Serb community in Kosovo. In fact through amnesty is intended to inspire Kosovo serb leadership in order to become the part of Kosovo state institutions and to give its contribution in building the country and the perspective of all citizens without any distinction.

3. The scope of amnesty in the segment of criminal prosecution and execution of punishment. Through the Law on Amnesty of Kosovo (2013) indefinite persons listed by name were granted full release from criminal prosecution and the execution of punishment for all criminal offences included in amnesty. Consequently, against perpetrators of those criminal offences it cannot be commenced at all criminal proceedings, it must be discontinued if it commenced before as well as shall be released immediately persons who are serving the sentence from the execution of punishment, regardless of the time left from its ending.
4. The scope of amnesty in a relatively long time. This time includes all perpetrators of criminal offences specified in the Law on Amnesty which they had committed before June 20, 2013. As it results, this time includes the war time period (1998 – 1999) and the post-war period up to the date abovementioned. Even in relation of time the amnesty goals turn out to be of political nature.
5. Exemptions from amnesty. According to the Law on Amnesty (article 4) the amnesty from any criminal offence mentioned in the law shall not be applicable in cases when criminal offences were committed against international actors and international security forces in Kosovo, when such criminal offences constitute serious violations of international humanitarian law and when such criminal offences resultd in grievous bodily injury or death.
6. The lack of amnesty effect in the rights of the third persons. Amnesty granted by the Law on Amnesty of Kosovo is determined in that manner does not affect the rights of the third persons, which are based upon a sentence or a judgment. Consequently, if by the imposed judgment is recognized any right to the third person (for example the right in compensation of damage), despite the fact that convicted person benefits from amnesty, the aggrieved person has all the legal mechanisms to realise its right recognized by that judgment.
7. Finality of confiscations. According to the article 9 of the Law on Amnesty of Kosovo, regardless of application of the amnesty under this law to any criminal offence, if an object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to ask for the return of that confiscated object.

### **Procedure for granting amnesty**

Concerning the amnesty of sentences the Law on Amnesty foresees special procedural rules. These rules refer to notifications on the condition of the convicted person covered by amnesty who is serving his punishment of imprisonment, decision for Granting Amnesty from execution of the punishment, decision on granting amnesty from criminal prosecution and the appeal procedure. In the following shall be discussed about each one of these rules.

## **Notifications on the condition of the convicted person subject to the amnesty**

The Law on Amnesty of Kosovo made responsible Kosovo Probation Service (article 6) to inform in a written form the court of first instance that has sentenced the convicted persons, who are serving a punishment of imprisonment covered by an amnesty, within seventy two (72) hours from the day this law comes into force. This obligation is conditioned by the fact that Kosovo legal framework made responsible this public authority for management of penitentiary institutions (Law on Execution of Criminal Sanctions of Kosovo No. 04 / L-149, Article 240). Notification should include information about the start and end dates of their execution of the punishment of imprisonment. After receiving the abovementioned data the relevant Basic Court *ex-officio* has the obligation to issue a decision for implementation of the amnesty. The court *ex officio*, seven (7) days from receiving the above mentioned notification, shall issue a decision for execution of amnesty, whereas for the convicted person who has not started the execution of the punishment, the court shall decide for execution of amnesty in term of five (5) days from the day the request was received. As it results for issuing the decision on amnesty except *ex-officio* manner the legislator has foreseen the possibility to do this also through the specific request submitted whether by the convicted person, respectively the person under investigations, his defense counsel, state prosecutor, the aggrieved party etc.

Finally, it must be emphasized the fact that legislator has regulated also the matter of addressing amnesty in cases when the convicted person is serving the sentence in another state. In these cases the paragraph 4 of the article 6 of the Law on Amnesty foresees that if a convicted person is serving his punishment in another country, the notification should be carried out through the Ministry of Justice. In such situation The Ministry of Justice of the Republic of Kosovo is required to make such information to the Ministry counterpart of the state where the convicted person is serving the sentence, while the latter would proceed the issue by appropriate recommendations to the relevant court of that state and the authority dealing with the management of penitentiary institutions.

## **Decision for Granting Amnesty from execution of the punishment**

As abovementioned, the decision for granting amnesty shall be rendered, with EULEX assistance, by the first instance court, respectively the court that has subject matter and territorial jurisdiction to adjudicate the respective issue that is addressed to it. In this case, the court having competence to adjudicate the issue is foreseen when needed to be helped by EULEX. This situation has to do with the cases of criminal offences which were tried by judges of this mission.

As abovementioned, the implementation of amnesty the competent court makes *ex-officio* or requested by the convicted person, the perpetrator of criminal offence, the State Prosecutor or the persons who according to Criminal Procedure Code may appeal against the judicial decision. Such persons are the defense counsel of the defendant, legal representative and the aggrieved party (The Criminal Procedure Code of the Republic of Kosovo-Code No. 04/L-123, Article 381). It must be emphasized the fact that when deciding in implementation of amnesty the court renders a decision by means of which determines the part of the punishment by execution of which the convicted person has been released.

## Decision on granting amnesty from criminal prosecution

According to the article 8, paragraph 1 of the Law on Amnesty, where a criminal report has been filed, an investigation initiated, or a filed indictment, the competent prosecutor shall render a decision to grant amnesty from criminal prosecution in accordance with this law. Within thirty (30) days from the entry into force of this law, the competent prosecutor shall take a decision *ex officio* in accordance with the Criminal Procedure Code of the Republic of Kosovo to dismiss the criminal reports or terminate investigation for the criminal offences provided in this law. As it turns out, in cases of amnesty from criminal prosecution is expressed the abolition. "Abolition is the most extensive form of the amnesty. This due to the fact by abolition the criminal procedure cannot be commenced. If the procedure has commenced it shall be stopped. So abolition cannot be granted at all phases of criminal proceedings, until is not rendered the final judgment (Salihu, 2012, pg. 564)."

So, the effects of the abolition are major because to the perpetrators of the criminal offences is not imposed the punishment, even the offence for which the abolition is granted cannot be taken into account in order to treat him as a recidivist, of course when he commits another criminal offence. Finally, it should be emphasized the fact that Law on Amnesty (the article 8, paragraph 3) has determined the obligation that within sixty (60) days of the entry into force of this law, any final convictions for which amnesty applies under Article 3 of this law shall be erased from the criminal records in accordance with relevant applicable law. This erase of the punishment produces the same effects just like in cases when this is done based in other relevant law.

## Appeals against decisions for Amnesty

Appeal is a legal tool through which is intended to avoid legal and factual errors which contain a judicial decision. In the specific case the appeal should aim the avoidance of possible errors that may contain a concrete decision on amnesty. Consequently, in accordance with the article 10 of the Law on Amnesty (2013) against a decision for amnesty an appeal may be initiated in the Court of Appeals within seven (7) days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal three (3) days from the day that it received the request for appeal. An appeal shall cease the execution of a decision. Duly, the Court of Appeal has the possibility to approve or reject the filed appeal. Despite this, if a convicted person due to amnesty will be completely exempted from the execution of the punishment of imprisonment, the court shall render a decision waiving the punishment of the convict, and the same shall be sent immediately to the Kosovo Correctional Service.

## Some data for the number of amnestied persons in Kosovo

As noted above, by the Law on Amnesty (2013) were specified 62 criminal offences for which the legislator has granted amnesty for their perpetrators. Even though complete data concerning the number of amnestied persons were not made public, the available data prove for a relatively large number of the convicted persons, or which were under criminal prosecution who benefited from this law. In the following, in a special table shall be presented the data regarding the number of the convicted persons and who were under the criminal prosecution which benefited from the Law on Amnesty (2013).

Number of convicted persons who benefited from amnesty	Number of persons amnestied from criminal prosecution
1174	1467

According to these data by the Kosovo Law on Amnesty 2013 benefited 1174 convicted persons and 1467 persons which were at different phases of criminal prosecution. These data prove that from amnesty have benefited 369 convicted persons by Prishtina Basic Court, 284 persons by Ferizaj Basic Court, 164 persons by Gjakova Basic Court, 140 persons by Peja Basic Court, 97 persons by Prizren Basic Court, 61 persons by Gjilan Basic Court and 59 persons by Mitrovica Basic Court. According to these data in 904 cases from amnesty have benefited the convicted persons for criminal offences of unauthorized possession of weapons, whereas in only 270 cases the convicted persons for other criminal offences included in amnesty (Statistics of Kosovo Judicial Council, Zhurnal- News Agency, [www.zhurnal.al/content/?id-14117472645](http://www.zhurnal.al/content/?id-14117472645), Law on amnesty of Serbs, Albanians benefit more). Concerning the number of persons who benefited from criminal prosecution, observed this in the context of committed criminal offence, there is a lack of specific data. This fact made impossible to elaborate this issue regarding this aspect.

Although seeing in terms of available statistics are Albanians who dominate as beneficiaries of the amnesty granted in 2013, in essence the reality may be totally different. This due to the fact that determination of the exact number of persons who benefited from Kosovo Law on Amnesty, is probably impossible. This is so because in most of the cases it is considered that benefit from amnesty is extended for uninitiated cases related to the involved persons in the commission of criminal offence included in the amnesty belonging to Serb community, and which mostly live in the northern of country, in a part of territory where there are still problems concerning the extension of Kosovo central power authority.

## CONCLUSION

During the preparation of this scientific work I have come to these conclusions:

1. Amnesty is an institution of criminal law by which unassigned persons listed by name are granted exemption from complete or partial exemption from the execution of a punishment, the substitution of punishment with a less severe punishment or a suspended sentence or the expunging of punishment.
2. Amnesty represents an appropriate tool for monitoring political and social changes in criminal-law terms. Amnesty affects to the convicted persons during the serving sentence to behave. Amnesty represents an act that in certain cases is granted for human causes and for political and state particular interests and it is an expression of state and political wisdom.
3. Amnesty is determined by general and special characteristics. As special features of amnesty shall be considered: granting amnesty for a large number of criminal offence, its extension concerning criminal prosecution and the execution of the punishment, the inclusiveness of a long time at amnesty, exemptions from amnesty, the finality of confiscations etc.
4. Concerning amnesty the Law foresees special procedure rules. According to these rules in order to proceed the matter of amnesty it is required to make an announcement by Kosovo Correctional Service for the situation of persons who are serving the sentence and which are subject to amnesty, the submission of requests for application of amnesty by parties and other authorized persons, the decision-making

of relevant basic court for implementation of amnesty from execution of the punishment, the decision-making of competent prosecutor for implementation of amnesty from criminal prosecution, the possible involvement of Ministry of Justice on reasons when the convicted persons are serving the sentence in another state and filing possible appeals against decisions on amnesty.

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