



Permissible Adaptation of the Transgression PhD Contestant Lydian Qurush

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ABSTRACT

The current Code of Criminal Procedure in Albania characterizes the procedural connections between elements on the whole phases of the criminal procedure. This code centers, bury alia, on the assurance and regard of law and insurance of the privileges of the litigant in criminal procedures. It ought to be noticed that the Code of Criminal Procedure gives, entomb alia, for the chance of the court to change, in its last judgment, the permissible capability of the transgression recently characterized by the indictment, in the definition of the charge brought to preliminary. This activity ought to be went with for certain procedural ensures which ought to give the respondent genuine chances to adequately practice the privilege to guard. An extraordinary accentuation in this paper will be given to the examination on the choice of the court to change the lawful capability of the transgression, especially found corresponding to the privileges of the respondent. This paper will likewise investigate the attributes of the change to the lawful capability of the transgression which will be shown with the act of the European Court of Human Rights. Taking everything into account the paper will express a few ends which are the result of the examination of the principle and statute of the courts alluded to in this paper.

KEYWORDS

Change of permissible capability, the litigant, the court, new charges, objection (request), fanciful (invented) rivalry of criminal transgressions.

INTRODUCTION

The fourth part of the second section of the Albanian Code of Criminal Procedure specifies the arrangements identified with New charges in criminal procedures. These arrangements

control uncommon permissible circumstances that incorporate the directing of the procedures by the indictment during the conference, where the litigant is brought to preliminary for the

important charge. Ordinarily the indictment, on the finish of the starter examination on the charge of an individual suspected to have submitted an transgression, authoritatively advise him the important charge for the particular transgression satisfactorily researched and submits in the court the application for the preliminary of the litigant on the charge for which he has been now educated on culmination of the examination. During the preliminary cycle the litigant presents the accessible contentions and confirmations for his procedural situation comparable to the charge. This cycle, also called the legal discussion, helps the court, in the finish of the preliminary, to precisely decide the legitimacy of the charge dependent on the proof introduced in the preliminary and in the amalgamation of this interaction to report the last judgment. The previously mentioned rule perceives a few exemptions. It might happen that the reality portrayed by the examiner in the charge, show up distinctively during the preliminary or, a proof of another transgression or another reality might be introduced during the preliminary, which isn't referenced in the application for preliminary and, the respondent isn't ready for this new circumstance made. Being in the new conditions, where the indictment changes its situation comparable to the examined charge and the reality brought to preliminary, the privileges of a viable assurance in the court ought to be ensured to the litigant to confront the progressions of the arraignment demeanor (Skënderaj, 2014). Alluding to the above case the circumstance is lawfully clear. In case of the difference in the charge or correspondence of another charge in the preliminary, the litigant has the privilege to look for in the court a sufficient time span to set himself up viably to submit his guard.

Permissible Adaptation of the Transgression

Article 375 of Albanian Code of Criminal Procedure qualifies the court for give, in its last judgment, the criminal truth discovered during the preliminary a permissible capability not the same as that which was indicated in the charge brought against the litigant in preliminary. We can say that albeit in a limited nature, the permissible capability of the reality found in the preliminary by the Court in its last judgment it is a statement of the latin guideline *jura novit curia* 1. With the change to the lawful capability of the transgression by the court we will comprehend the specific lawful meaning of the solid figure of the criminal transgression, specified by the criminal law, perpetrated by the respondent with his demonstrations or exclusions. So the lawful capability of the transgression relates near the demonstrations or oversights committed by the individual which are given by the criminal law as fundamental components of the criminal transgression. For this situation the court confronting the criminal actuality should decide the particular criminal arrangement that would apply to the culprit. This court activity identifies with the activity of the correct that it needs to decently characterize the permissible capability of the criminal transgression confirmed during the preliminary of the criminal case.

We can say in a primer evaluation that in the previously mentioned model, as indicated by the Albanian Criminal Code, we are arranged before a nonexistent rivalry of transgressions, as the use of criminal arrangements can be talked about against the creator for Intentional homicide of a Police Officer of Public Order and Intentional homicide of the resident who unintentionally was close by, or the utilization of criminal arrangement of Intentional homicide of at least two people. Among these two permissible other options, the Court ought to eventually choose which of the criminal

arrangements ought to be actualized. On the off chance that the arraignment, in the plan of the charge against the culprit has picked some unacceptable use of criminal arrangement, the court than, in its last judgment, should change the lawful capability of the transgression recently made wrongly by the investigator. Accordingly, alluding to the criminal teaching nonexistent (imaginary) rivalry of criminal transgressions we can say that this organization of criminal law fills in as a permissible explanation that legitimizes the requirement for the intercession of the court in lawful readaptation of the transgression brought to preliminary before the indictment. In this manner, the permissible arrangement of the lawful capability change of the transgression by the court is vital, as an outflow of the usage of the standard of permissibleness and reasonableness in choosing the culpability of the creator and his sentence.

CONCLUSION

The point of this paper was to recognize the attributes and substance of Article 375 of the Code of Criminal Procedure. In this paper we attempted to diagram the adaptable idea of this procedural arrangement. It might result, in a fundamental evaluation, that taking in thought the manner in which this procedural arrangement is planned, it abuses the privilege of the respondent to protection, when he is educated toward the finish of the preliminary upon the declaration of the last court judgment on the altered permissible capability that court has made to the transgression for which he has been attempted. Notwithstanding, a legal cycle doesn't end with the last judgment given by the Court of First Instance. Alluding to the criminal procedural framework, upon the declaration of conclusive judgment of the court, the litigant is perceived and is ensured the option to request the last judgment, bury alia, because of reasons identified with the renaming of the

transgression in the Court of Appeal. In this specific circumstance, the Albanian law gives the respondent the likelihood to introduce his protection under the steady gaze of the Court of Appeal inside a sensible time limit and alongside the allure the litigant has the privilege to introduce the limitless proof, which in his appreciation, could serve him to accomplish a successful safeguard. Subsequently we can say that the proportion between the difference in the lawful capability of the transgression and the activity of a viable protection can't be evaluated independently from its segments. To start with, is was the Court which has the activity of changing the lawful capability of the transgression, when there are permissible cases that it should roll out this improvement, at that point, the activity is moved to the respondent, who is ensured the option to practice compelling guard in the Court of Appeal and the option to advance the renaming of the transgression for which he is educated in the last judgment given by the Court of First Instance.

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