



Definition of Criminal Law, Criminal Code and Criminal Legislation

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Abstract

The paper analyzes and elaborates the definition of the criminal law, the Criminal Code and criminal legislation in Kosovo. There are many definitions of criminal law, on the basis of these characteristics the criminal law of Kosovo can be defined as a system of legal norms by which criminal offenses and criminal sanctions are defined, as well as the basic conditions for the implementation of criminal sanctions against perpetrators. of criminal offences. Criminal law includes in the legal system of a country those legal norms through which certain actions are prohibited and which have certain punishments (sanctions) as a consequence. The purpose of the paper is to analyze the definition of Criminal Law, Criminal Code and Criminal Legislation in Kosovo. To achieve the goal of the paper, the descriptive method, the analysis method and the synthesis method were used. In conclusion, we find that the goal of criminal law is first of all the protection of certain legal goods such as life and property, as well as the security and integrity of the state and the basic values of social life. We hope that this paper will help young researchers in the legal field with special emphasis on the criminal field.

Keywords: *Criminal legislation; Criminal Code; Criminal Procedure Code; Criminal Offenses; Criminal Law; Criminal Sanctions*

1. Introduction

Taking into account the content of this branch of law, it appears that the subject of criminal law is the criminal offense, the perpetrator, criminal sanctions or punishments. Acts that violate, damage or annihilate the legal values of a person and a certain community, in criminal law are called criminal offenses or with a general term CRIMINALITY. Crime in the broadest sense of the word is usually found as the common description of all forms of punishable conduct. (Maloku & Maloku, 2021:60). Criminality is antisocial behavior that is in conflict with legal and moral norms of behavior. (Maloku,2019:174). Criminality has been treated from the sociological aspect by the authors Shabani and Maloku (2019a, 2019b), from the criminological aspect (Jararevic & Maloku (2021a), from the criminal procedural aspect (Jararevic & Maloku (2021b), Criminal law is one of the ways and means by which society is protected

and criminality is fought. Society fights crime because it endangers or damages the social-legal regulation, the security of the country and the most vital values of man and citizen, his life, physical and mental integrity, wealth, freedoms and rights and a range of other individual values, national and international.

Criminal law is a legal right that determines which acts are considered criminal offenses, the conditions that must be met to be considered a criminally responsible person, what type of criminal sanction should be imposed on the perpetrator of the criminal offense.

Since the criminal offense, its perpetrator and criminal sanctions are the subject of criminal law, these are rightly considered as fundamental notions and institutions of criminal law. Defining the notion of a criminal offense is one of the main tasks of criminal legislation and the science of criminal law. Thus, the determination of the notion of criminal offense, criminal responsibility and criminal sanctions are the three main issues that criminal law examines. First of all, the criminal offense is treated as a legal phenomenon. In addition to this opinion, the criminal offense is rightly considered as a social phenomenon and as a certain action or behavior, with which certain values of the society or the individual are damaged or endangered. From a social point of view, a criminal offense is human behavior (action or inaction) which is contrary to the interests of society, (Shala, Introduction to Criminal Law, 2013).

Criminal norms play a key role in preventing and fighting crime (Maloku, 2015a, 2015b, 2015c), especially in the fight against organized crime (Maloku, 2016a, 2016b, and 2018). The criminal law foresees possible punishments, but which are not practiced in all countries, including fines (money), imprisonment, corporal punishment and, as the most serious form of punishment, the death penalty.

Criminal law is defined in most countries in the criminal code and relevant laws. Part of the criminal law are first of all the norms, by means of which the prohibited actions and their specifics, the types and sizes of the punitive measures which are related to them are determined, as well as the implementation of the criminal law by the institutions and methods of their work. In relation to this aspect, of the permitted punishments, of the evaluation of the purpose of the punishment, the type and size of the legal bases as well as the classification of criminal law in the legal system, there are substantial differences between the legal systems of different countries, which are object of study of comparative legal science. (Muçi, 2007)

2. Literature Review

Author Muçi in his book "Determining the criminal sentence" (2007) says that criminal law is defined in most countries in the criminal code and relevant laws. Part of the criminal law are first of all the norms, by means of which the prohibited actions and their specifics are defined, the types and sizes of the punitive measures which are related to them, as well as the implementation of the criminal law by the institutions and ways of their work. In relation to this aspect, of the permitted punishments, of the evaluation of the purpose of the punishment, the type and size of the legal bases as well as the classification of criminal law in the legal system, there are substantial differences between the legal systems of different countries, which are object of study of comparative legal science.

Likewise, the same author Muçi (2012), in the book Criminal Law, the general part says that in Article 1 of the Criminal Code, the criminal law defines criminal offenses, punishments and other measures taken against their perpetrators, not provided neither the definition of the criminal law nor the field of social relations or institutions regulated by it. From this definition, where not enough institutes of criminal law are mentioned, the impression is created that the criminal law deals only with the special part of the Criminal Code and with the head of the general part that provides for the types of punishments and

medical and educational measures, making it narrowing the sphere of relations that are actually regulated by it.

The author Salihu in his book "Criminal Law" (2012) says that the Criminal Code is an important law in which the criminal-legal provisions are summarized in a complete and systematic way. The Penal Code is usually used for voluminous and important laws in legal and political terms, with which a branch of justice is regulated in a systematic and complete manner.

While the authors Ismet Salihu, Hilmi Zhitija, Fejzullah Hasani in the "Commentary of the Criminal Code of the Republic of Kosovo" (2012) talk about the Juvenile Justice Code of Kosovo, work for general benefit is envisaged as a type of diversity measure (Article 18) and as a type of punishment for minors (Article 31).

Work in the general interest as a type of measure of diversity for juvenile offenders and a type of punishment for juvenile and adult offenders, in the courts of Kosovo, is welcomed and relatively properly pronounced.

3. Methodology

Because of the research intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, Qerimi, & Maloku, 2022, p. 176). The scientific research in this paper, in terms of its type, will be conducted and realized as methodological research, which is basically theoretical. (Maloku, Kastrati, Gabela & Maloku, 2022:141). The defined object of research requires the use of different methods and scientific knowledge from many scientific disciplines, in particular, the paper will use theoretical analysis methods, comparative methods and the unity of inductive-deductive methods (Maloku, 2021;76). The research conducted in this thesis has the characteristics of scientific theoretical research, which is necessarily qualitative in nature. As it is theoretical research of a qualitative nature, the qualitative method of document content analysis is mainly applied as one of the methods of data collection. (Qerimi, Kastrati, Maloku, Gabela & Maloku, 2023:183)

4. Results and Discussion

We come to a result where Acts that violate, damage or annihilate the legal values of a person and a certain community, in criminal law are called criminal offenses or with a general term CRIMINALITY. The criminal procedural legislation has the duty to ensure a fair, equal legal proceeding, to protect personal freedoms and rights of interests, to help strengthen the legal order and the implementation of the Constitution and the laws of the state.

Criminal law is a legal right that determines which acts are considered criminal acts, the conditions that must be met to be considered a criminally responsible person, what type of criminal sanction should be imposed on the perpetrator of the criminal act. The criminal legislation of the Republic of Kosovo applies to every person who commits a criminal offense wholly or partially in the territory of the Republic of Kosovo. Nobody can be imposed a criminal sanction or a measure of compulsory treatment for an offense if, before its commission, it has not been defined as a criminal offense by law and no criminal sanction or measure of treatment has been foreseen for that offense.

Criminal offenses and criminal sanctions are provided only for those behaviors that violate or damage to that extent human freedoms and rights as well as other social rights and values guaranteed and protected by the Constitution of the Republic of Kosovo and international law. The protection of which could not be realized without the criminal sanctions of the rule of law.

4.1 Criminal legislation

- ***Criminal legislation in Kosovo before the First World War.*** In the territory of Kosovo, in the Republic of Albania and in other ethnic Albanian countries, no legal monuments of the period before the First World War have been preserved, on the basis of which we could create a complete image of the character of criminal law of that time. In the XV century, Kosovo, Albania, other ethnic Albanian countries and almost all other Balkan states were conquered by the Ottoman Empire, which ruled these countries for almost five centuries. In this period in Kosovo, in Albania and in other ethnic Albanian countries, the customary law was applied to the greatest extent, within which the customary criminal law was also applied. The types of punishments according to the canon of Lekë Dukagjini were: **1) blood feud; 2) death penalty; 3) deportation; 4) burning the house; 5) destruction of property; 6) cutting down trees and leaving land barren; 7) fines.**
- ***Criminal legislation in Kosovo between the two World Wars (1918 – 1941).*** After the overthrow of the Ottoman Empire, Albania declared independence in 1912, and, in the meantime, was internationally recognized in its current borders. Kosovo and other ethnic Albanian territories were occupied and placed under the sovereignty of the Kingdom of Serbs, Croats and Slovenes, a state established in 1918. In 1921, the Special Law on the Protection of State Security and Order was approved, which, due to the severity and draconian punishments that were foreseen and implemented, was otherwise known as the infamous law for the protection of the state. After the approval of these laws, work began on the preparation of the Criminal Code, which would operate throughout the territory of the Kingdom of Yugoslavia. The Criminal Code of the Kingdom of Yugoslavia was approved in 1929 to enter into force on January 1, 1930. For that time, this Penal Code was evaluated as a modern code. However, towards the Albanians of Kosovo, today's Macedonia and other Albanian countries that came under the jurisdiction of this state, the Penal Code was greatly misused.
- ***Criminal legislation in Kosovo after the Second World War.*** After the end of the war, Kosovo again remained under the sovereignty of Serbia and Yugoslavia, so that even in Kosovo, as well as in other countries of socialist Yugoslavia, the penal legislation of this state acted. Since issuing a complete criminal code required a long-term commitment, it was decided to issue only the general part at first. Thus, on December 4, 1947, the Penal Code was issued - the general part and entered into force on February 12, 1948. (Ismet Salihu, Hilmi Zhitija, Fejzullah Hasani, 2014).

The word criminal legislation means all criminal laws, i.e. the criminal code, as well as the entire system of criminal laws and provisions.

The criminal legislation of the Republic of Kosovo applies to every person who commits an offense.

The criminal legislation of the Republic of Kosovo applies to any person who commits a criminal offense from articles 136-145 of this code outside the territory of the Republic of Kosovo, where such offense represents a total or partial risk to the security of the Republic of Kosovo or its population.

The criminal legislation of the Republic of Kosovo applies to any foreign person if:

- 1.1** Such a person has committed a criminal offense outside the territory of the Republic of Kosovo against a citizen of Kosovo, even when such a criminal offense is not mentioned in Article 115 of this Code.
- 1.2** this criminal offense is also punishable in the country where it was committed; and
- 1.3** the perpetrator was found in the territory of Kosovo or was transferred to Kosovo.

The operation of criminal legislation means that it is in force and the courts are obliged to apply it in concrete cases.

Every criminal law operates in:

- certain time
- certain territory and;
- to certain persons.

Criminal legislation is a norm or set of criminal-legal norms that define criminal offenses, the bases of criminal responsibility, institutes, punishments and other sanctions of a criminal nature, which are applied against guilty persons.

4.2. Law on the Execution of Criminal Sanctions

The purpose of this law is the execution of criminal sanctions and mandatory treatment measures, and the application of detention measures. The execution of criminal sanctions aims at the resocialization and reintegration of the convict into society and his preparation for life, as well as for responsible behavior. The execution of criminal sanctions also serves to protect society by preventing the commission of other criminal offenses and by restraining others from committing criminal offenses.

The main issues of criminal law in every country are criminal sanctions. Other issues, which criminal law studies as a science or regulates through criminal legislation, no matter how important they are, refer to the prerequisites for the application of sanctions or other issues related to the implementation of sanctions. Criminal sanctions are the main preoccupation of criminal law due to the fact that in all cases when a certain person commits a dangerous act, which is illegal and defined by law as a criminal act, it is necessary that society towards the perpetrator of such an act undertake any measure, which aims to prevent the commission of the criminal offense in the future. (Salihu, 2012)

The purpose of this law is the execution of criminal sanctions, misdemeanor sanctions and mandatory treatment measures. Criminal sanctions are executed in accordance with this law. According to this law, the criminal sanctions are the main punishments, alternative punishments, supplementary punishments and judicial warning. The provisions of this law apply to the execution of criminal sanctions imposed by local and foreign courts, in accordance with the Code of Criminal Procedure and international agreements.

The execution of criminal sanctions aims at the resocialization and reintegration of the convict into society and his preparation for responsible life and behavior. Execution of criminal sanctions.

it also serves the protection of society preventing the commission of other criminal offenses and restraining others from committing criminal offences.

Criminal sanctions, as the main and most frequent means of society's response to criminality, have the following basic characteristics:

- a) Through criminal sanctions, society protects the most important values of the individual and the social community from criminality.
- b) Criminal sanctions can only be imposed on perpetrators of criminal offenses.
- c) For the perpetrators of criminal offenses, only that criminal sanction may be imposed, which is foreseen by law at the time of committing the criminal offense.
- ç) Criminal sanctions can only be imposed by the court on the basis of the procedure established by law, which contains at most a guarantee for a fair verdict.
- d) By means of criminal sanctions, the perpetrators of criminal offenses are deprived or limited of their freedoms and rights, (Salihu, 2012)

Criminal sanctions are executed in a manner that ensures humane treatment and respect for the dignity of each individual. The convicted person is not subject to torture or inhuman or degrading treatment or punishment.

Criminal sanctions are executed in a completely impartial manner. No one can be discriminated on the basis of race, color, gender, language, religion, political opinions, national or social origin, connection with any community, property, economic, social status, sexual orientation, birth, disability or any other personal status in the Republic of Kosovo. (Law on the execution of criminal sanctions, 2022)

The means by which criminal law exercises legal protection from criminal offenses are criminal sanctions. Criminal sanctions are violent criminal-legal measures which are pronounced by the court in the procedure defined by law against the perpetrator of the criminal offense.

Criminal sanctions, according to article 4 paragraph 1 of the KPRK, are:

1. The main punishments;
2. Alternative penalties;
3. Complementary penalties and
4. Judicial notice. (Shala, 2013).

4.3. Penal Code

By the word Penal Code, we mean the important law in which the criminal-legal provisions are summarized in a complete and systematic way. The term "code (code, code, code) is usually used for voluminous and important laws in the legal and political aspect, with which a branch of justice is systematically and comprehensively regulated. (Salihu, 2012)

The issuance of the first Criminal Code of Kosovo, in addition to its purely criminal legal importance for the protection of basic individual, national and international values and liberties, also has great historical and political importance for the people of Kosovo. The historical importance of the issuance of the Penal Code, as in other nations, is also an indicator of the certain degree of socio-economic development and legal culture in function of the protection and advancement of individual and national values.

The political importance of the Penal Code consists in the fact that the people who draw up and apply their own Penal Code guarantee that the people have their own police, prosecution and judiciary, and govern with them. This assertion is also supported by the criminal law scientist, the German dr. Michsel Bohlander, who on the occasion of commenting on the Project of the Criminal Code of Kosovo no. 3/2002, pp. 5-7, among others, emphasized that with the approval of this Project of the Criminal Code, nothing less than independence can be an option for Kosovo. (Salihu, 2012)

The penal code is based on the Constitution of the Republic of Kosovo, on the general principles of international criminal law, as well as on international agreements ratified by the Kosovar state. Criminal offenses and criminal sanctions are provided only for those behaviors that violate or damage to that extent human freedoms and rights as well as other rights and social values guaranteed and protected by the Constitution of the Republic of Kosovo and international law. the protection of which could not be realized without criminal sanctions of the legal state. Regarding their content, the norms of the general and special part of the Criminal Code are different, this results from their different function. The general part of the Criminal Code presents a system of criminal-legal norms that define the principles of criminal law as well as the basic notions and institutions of criminal law such as criminal offenses, criminal liability, punishments and other types of criminal sanctions. necessary protection, extreme necessity. So the norms of the general part regulate the issues that are common to all criminal offenses and their

punishment. The special part of the Penal Code presents a system of criminal legal norms that define criminal offenses as well as criminal sanctions and mandatory treatment measures that can be imposed on perpetrators of such offenses. (Salihu, 2012)

The prediction of criminal offenses as well as the types of measures and the level of criminal sanctions for the perpetrators of criminal offenses are based on the necessity of the criminal legal sanction and the proportionality of the degree and nature of the danger to human freedoms and rights and social values. Criminal offenses, criminal sanctions and mandatory treatment measures are defined only by law. Nobody can be imposed a criminal sanction or a measure of compulsory treatment for an offense if before its commission it was not defined by law as a criminal offense and no criminal sanction or measure of compulsory treatment was foreseen for that offence. (The Penal Code of the Republic of Kosovo, 2019).

4.4. The Code of the Penal Procedure

This Code defines the rules of criminal procedure which are mandatory for the work of the courts, the state prosecutor's office and other participants in the criminal procedure provided for by this Code. This Code establishes the rules that guarantee that no innocent person will be punished, while punishment or other criminal sanction can be imposed only on the person who has committed a criminal offense under the conditions provided by the Criminal Code and other laws of Kosovo in on the basis of which the criminal offenses were foreseen according to the procedure implemented in a fair and legal manner before the competent court. Before receiving the final verdict, the freedoms and other rights of the defendant can be limited only according to the conditions defined in this Code of Criminal Procedure.

No one can be prosecuted and punished for a criminal offense if he has been acquitted or for which he has been sentenced by a final decision, namely if the criminal proceedings against him have been terminated by a final decision of the court or the indictment has been rejected by a decision of final form of the court. With the exception of cases where this Code provides otherwise, the final court decision can be changed by extraordinary legal means only in favor of the convicted person.

According to the Code of Criminal Procedure, with the exception of cases where the law in force in Kosovo or international agreements foresee a change, extradition is required to be carried out in accordance with the solutions provided by the Code of Criminal Procedure. (The Code of Criminal Procedure, 2012)

4.5. Criminal Code for Minors

In the Juvenile Justice Code of Kosovo, community service is provided as a type of diversity measure (Article 18) and as a type of punishment for minors (Article 31).

Work in the general interest as a type of measure of diversity for juvenile offenders and a type of punishment for juvenile and adult offenders, in the courts of Kosovo, is welcomed and relatively properly pronounced.

So e.g. only during the year 2008, in the entire territory of Kosovo, the sentence for community service was imposed on minors in 62 cases, while on adults in 98 cases.

(Ismet Salihu, Hilmi Zhitija, Fejzullah Hasani, 2014)

The juvenile justice system aims for the welfare of the juvenile and ensures that any response to juvenile offenders is always proportionate to the circumstances of the offender and the offence.

Juvenile offenders are given diversity measures as needed. Deprivation of liberty will only be imposed as a last resort and will be limited to the shortest possible period.

During the deprivation of liberty pronounced as a punishment, the juvenile offender is offered education, psychological assistance, and, if necessary, medical assistance to facilitate his rehabilitation.

The term "minor" means a person between the ages of fourteen (14) and eighteen (18).

If the minor is fourteen (14) years old, he is given a punitive measure, he cannot be sentenced with heavy penalties.

At any time, the juvenile judge may impose adequate measures to protect the rights and well-being of the child, including placing the child in a shelter or in an educational or similar institution, placing the child under the supervision of the guardianship body or transferring the child to another family, if it is necessary to separate the child from the environment in which he lived or to provide him with help, protection or shelter. The juvenile judge notifies the guardianship body of any measure imposed.

Every child deprived of liberty is treated humanely for the sake of the dignity of his human personality, and in that case the personal needs of his age are taken into account.

In particular, every child deprived of liberty shall be separated from adults, unless it is considered to be in the best interests of the child not to be separated, and shall enjoy the right to maintain contact with his family through correspondence and visits, except in exceptional circumstances established by law.

(Criminal Code for Minors 2018)

Conclusion

And as a conclusion of this paper, I have come to a conclusion where I see how important the Criminal Code is and what measures are imposed on persons who commit criminal offenses.

And that criminal offenses and criminal sanctions are provided only for those behaviors that violate or damage to that extent human freedoms and rights as well as other rights and social values guaranteed and protected by the Constitution of the Republic of Kosovo.

The purpose of the topic is to elaborate the term of Criminal Law and the possible punishments, but which are not practiced in all countries, are, among others, punishment with a fine (money), imprisonment, corporal punishment and as a form of the heaviest punishment is that of exekutum (death). In addition to explaining the meaning of legal norms, this scientific discipline comments on legal norms, explains legal ambiguities and social phenomena of a criminal-legal nature, gives criticisms and suggestions as well as the basic conditions for the implementation of criminal sanctions against perpetrators of criminal offenses for the purpose of protection of freedoms and basic human rights.

This paper contributes to the existing scientific literature, especially in the legal field (Qerimi, Maloku & Maloku, 2022:289).

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