



## The Action of Criminal Law in Time, In Space and to Persons

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<http://dx.doi.org/10.47814/ijssrr.v6i2.1015>

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### **Abstract**

Criminal law is a system of law that presents sanctions or punishments against those who commit crimes. The need for criminal law and the criminal code is always present in a democratic state, for the reason that a democratic state functions in the best possible way and for that country to offer a better and safer life to its citizens the penal code must be applied. In this paper, more extensive space will be devoted to the operation of the criminal law in time, in space and to people also a more special importance will be given to extradition where it will be explained in more detail. This paper aims to inform the readers more about the aforementioned criminal laws, in order to have as much knowledge as possible about them and the activity they perform. The criminal laws that will be elaborated in this paper have a special importance in content because they are special in themselves, they are laws that must be firmly embedded in the mind so that we do not have problems and violations of legal provision. This paper is served to all those people who want to expand their knowledge on the topic which is elaborated in the paper. The main purpose of this paper is that its contents serve lawyers or criminal law researchers. After reading this paper, the readers will be better informed about the elaborated topic.

**Keywords:** *Penal Code; Penal Act; Extradition; Retroactive Law; Criminal Legislation; The Operation of Criminal Laws in Time; The Universal Principle; The Passive Principle*

### **1. Introduction**

Criminal law as a whole is a system of legal norms where with the implementation of those provisions criminal law guarantees safety, peace, justice, freedom, social stability in a given state or territory. "Criminal law is a legal right and as such it regulates matters in its field only by law. Criminal law from a legal point of view consists of the Criminal Code of the Republic of Kosovo and other criminal laws." (Shala, 2013) In criminal law we come across the principle of Legality which says that: To consider a criminal offense as a criminal offense, it must be defined by law as a criminal offense before it is committed. There is no crime without being defined by law, dhe nuk ka sansksion pa u pwrctuar me ligj. This principle was first adopted in the Criminal Code of France 1791 and 1810. This

principle is the main "root" in criminal law because criminal law and its application is based on this principle. In this paper, special importance will be given to the action of the criminal law in time, in space and against persons when it comes to the actions of the aforementioned laws, we will dwell more on their elaboration. This paper will present the right information or the need-to-know information on the aforementioned laws so that the reader can get the necessary and appropriate knowledge. The main findings of this paper should contribute to and initiate not only scientific workers, but also experts from practice, to launch a series of research projects in the future with the aim of obtaining relevant (scientific) knowledge about forecasting — scientific forecasting in the sphere of criminal law. (Maloku, Kastrati, Gabela & Maloku,2022:139)

## **2. Literature Review**

Authors Jasarevic and Maloku (2021a, 2021b), have made an extremely large contribution to criminality in general and to the fight against criminality in the criminal procedural aspect. Crime can be prevented through a regulation of the law (Maloku, 2015c) realizing international police cooperation to fight organized crime. (Maloku, 2015a). The higher the crime rate, the higher the fear of crime. (Maloku,2015b). Also the authors Shabani and Maloku (2019a), 2019b) to clarify and analyze the impact of criminalistic terrors on the increase of criminality. The content of this paper is quite broad, where a quite diverse literature was used for its preparation, books by prominent authors of criminal law were used. During the preparation of the work, the criminal legislation was used, from which the articles of the Criminal Code of the Republic of Kosovo were taken, more precisely its criminal-legal provisions. “The principle that the criminal law is applied in the territory of the country is a manifestation of the sovereignty of every state, this principle that in the criminal-legal field is named as the repressive power of the state.” (Shala, 2013, p. 160) “So that our criminal legislation can be applied even in cases where criminal offenses are committed outside the territory of Kosovo, our criminal law has adopted some principles of a general nature. These are principles: the real principle, the principle of active personality, the principle of passive personality and the universal principle”. (Saliu, 2012, p. 165)

## **3. Methodology**

Because of the research's intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, 2022:176). The research in this paper has the characteristics of scientific theoretical research, which is necessarily qualitative in nature. In this research, we draw on basic theoretical and methodological knowledge, standards, norms, and principles of social science methodology, but also on the expertise of basic social science disciplines, necessarily respecting the axiom of the postulated character contained and expressed in the relationship, subjectivity, and interdependence of subjects and research methods. (Qerimi, Kastrati, Maloku, Gabela and Maloku,2023:185). 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 topic that has been elaborated is based on many researches and a research method has been used which has as its purpose the most detailed research of the content of the paper so that the reader has the information articulated at the required level where some paragraphs are taken and in the publications of various books in the criminal field, there have also been citations of the materials of some of the prominent authors in the criminal field. In this paper, using comparative, theoretical methods, meta-analysis, and relying on historical data from various sources of international and national researchers (Qerimi, Maloku & Maloku. 2022:292) we manage to analyze the purpose of the work.

#### **4. Results and Discussion**

In this paper, the following topics are elaborated: Action of criminal legislation, Action of Criminal Laws in Time, Determination of the action of criminal law in time, Prohibition of retroactive action of criminal law and application of more lenient law, Action of criminal law in the territory. The action of the criminal legislation according to the territorial principle, the action of the criminal legislation of the Republic of Kosovo for crimes committed outside the territory of the Republic of Kosovo, the real principle, the principle of active personality, the principle of passive personality, the universal principle and extradition.

##### **4.1. Action of Criminal Legislation**

Criminal law is the body of law related to crime. It prohibits threatening actions that occur in society and punishes the perpetrators of criminal offenses. "The operation of criminal legislation means that it is in force and that the courts are obliged to apply it in concrete cases." (Saliu, 2012, p. 156) Each criminal law applies its scope to a certain time, certain territories and to certain persons, so based on this we have the classification of three types of operation of criminal laws: 1) the operation of the criminal law in time, 2) the operation of the criminal law in the territory and 3) the operation of the criminal law against certain persons.

###### *4.1.1. Operation of Criminal Laws in Time*

Regarding the introduction of laws or legal provisions, they enter into force 8 days after the announcement in the "Official Gazette". The draft law becomes law when it is approved by the legislative body in our country, which is the Assembly. From the announcement of the law in the official gazette and until the day of entry into force, a time limit of 8 days is foreseen, which is called *Vacatio Legis*, for the reason that citizens have the right time to become better acquainted with these criminal and legal norms but also with the justice bodies that are enforcers of the law. "Exceptions are made by the criminal law as well as other laws, for particularly reasonable reasons, may be entered within a shorter period than eight days from the day of the announcement, or on the same day it was announced". (Saliu, 2012, p. 156) Particular importance should be attached to the time limits for the entry into force of the law, since the violation of these provisions results in the imposition of criminal sanctions. Regarding the functioning of the criminal law, it operates until the moment it is repealed by the new law, precisely it operates until the moment the new law enters into force, which expressly or tacitly repeals the previous law. "Often there is a need for partial changes in the criminal law, without its repeal. This phenomenon is more noticeable in codes, which themselves continue for relatively long periods of time, while their specific parts or provisions are subject to occasional changes." (Muqi, 2012, p. 95) Expressly the criminal law and the previous law in cases where the new law foresees a special provision by which it repeals the previous one. "While the criminal law is silently repealed when the new criminal law does not contain a provision for the repeal of the previous law, but regulates the same issues in the same way or differently." (Shala, 2013, p. 25) The criminal law ceases to operate in cases where its time limit for which it was issued expires, this happens in cases where the criminal law was issued with the purpose of acting only for a certain period of time and with the passage of that period it ceases to act.

###### *4.1.2. Determination of the Operation of the Criminal Law in Time*

Determining the action of the criminal law in time is one of the most important actions in the field of criminal law because it depends on which criminal law will be applied to the individual who committed the criminal offense. In case the individual committed a criminal offense at the time when a criminal law was in force, and the individual is judged by the judicial bodies at the time when the previous law ceased to operate, exactly when the new criminal law is in force in its place, then these not rare cases in criminal law are regulated in principle and by the constitution, in which it is emphasized

that: “Penalties are determined based on the law that was in force at the time the criminal offense was committed, with the exception of offenses for which the later applicable law is more favorable to the offender.”. (Kushtetuta e Republikës së Kosovës, 2008) Relying on these principle provisions, the Criminal Code of the Republic of Kosovo has regulated the issue of the operation of the criminal law in time, this provision is regulated by the Criminal Code of the Republic of Kosovo as follows “The law that was in force at the time the criminal offense was committed applies to the perpetrator”. (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 3)

#### *4.1.3. Prohibition of Retroactivity of Criminal Law and Implementation of a More Lenient Law*

With the provisions of the Criminal Code, in the field of criminal law, progress has been made towards the principle of prohibiting the retroactive action of the criminal law, but with these provisions of the Criminal Code, the possibility of retroactive action of the criminal law is also allowed, but the retroactive law is applied in cases where the law that was issued after the commission of the criminal offense is in favor of the perpetrator of the criminal offense. “In case the law in force changes before the announcement of the final decision, then the law that is more favorable applies to the leader.”. (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 3) The law that foresees a new criminal offense cannot have retroactive effect or a more severe punishment than the law that was in force at the time of the commission of the criminal offense. Regarding the implementation of the mildest law against the individual who has committed a criminal offense, the legal provision of the Criminal Code of the Republic of Kosovo is as follows.: “If the new law does not punish the offense, but the perpetrator has been sentenced by a final judgment in accordance with the previous law, the criminal sanction does not begin to be executed or is terminated if it has begun.”. (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 3)

#### **4.2. The Operation of the Criminal Law in the Territory**

Each state has its own laws, which are approved by that state and of course apply in that state's territory. The Criminal Code of Kosovo and other criminal-legal laws apply throughout the territory of the Republic of Kosovo. The principle that the law or the penal code is applied in the territory of the country is a manifestation of the sovereignty of every state, this principle which in the criminal-legal field is named as the repressive power of the state. The operation of the criminal law in the territory means that that law is applied to all individuals who commit a criminal offense in that territory of that country where they will be sanctioned by the same legislation of that country. “The issue of the action or implementation of criminal legislation in the territory, to the greatest extent, is of an international character, today every state with its own criminal laws decides on the expansion of the limits of the legal-criminal power.”. (Saliu, 2012, p. 161) Taking into account that this is a more complicated issue and therefore the possibility of conflicts between states is great, but each state adheres to certain general principles in the regulation of criminal legislation, which has significantly helped to reduce conflicts. “With the criminal-legal provisions provided in Article 114 to Article 117 of the KPRK, five principles have been adopted, which at the same time are also applied in most of the criminal laws of other contemporary states” (Shala, 2013, p. 29) These principles are:

- o Territorial principle,
- o The real principle,
- o The principle of active personality,
- o The principle of passive personality and
- o Universal principle.

#### *4.2.1. The Functioning of Criminal Legislation According to the Territorial Principle*

The territorial principle of the operation of the criminal legislation in force of the Republic of Kosovo in the territory as well as in the criminal legislation of other states is a fundamental principle, while the other principles are of a complementary nature. “The principle of territoriality is the most important principle and is most often encountered in the field of determining the action of criminal law in space. The territorial principle determines jurisdiction by referring to the place where the criminal offense was committed”. (Jola, 2012, p. 42) The action of criminal legislation which according to the territorial principle results from the sovereignty of each state to exercise its repressive power and criminal jurisdiction in its territory, so that the courts of the country judge and punish the author of the criminal offense. In order to apply the territorial principle, it must be proven that X criminal offense was committed in the territory of the country or a state. The territorial principle of the operation of criminal legislation is also provided by the KPRK, which states that: “The criminal legislation of the Republic of Kosovo applies to any person who commits a criminal offense wholly or partially in the territory of the Republic of Kosovo.” (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 107) The criminal legislation of Kosovo applies or is applied to any person who commits a criminal offense regardless of the vehicle where the offense was committed and KPRK emphasizes that: “The criminal legislation of the Republic of Kosovo applies to any person who commits a criminal offense in any means of air or water transport that is registered in the Republic of Kosovo, from the place where the means of air or water transport is located at the time of the criminal offense.” (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 107) According to the territorial principle, the operation of Kosovo's criminal laws is primary in relation to foreign criminal legislation, which means that our criminal legislation would be applied to the perpetrators of criminal offenses in Kosovo even if the perpetrators of the criminal offenses were punished in the state another also and when the perpetrator has served the sentence that was imposed on him for the same crime, in this case we have the exception of the rule “ne bis in dem” (cannot be punished twice for the same crime). Well, by means of the law we have a kind of softening of this harsh principle, “Respectively, according to the Criminal Code and according to international conventions, if the punished person has served the sentence abroad, the sentence served for the same offense will be calculated by our court in the sentence imposed”. (Saliu, 2012, p. 163) In the event that a large number of foreigners such as workers, workers of non-governmental organizations, businessmen, tourists, sportsmen, etc., for most cases of committing criminal offenses by these persons, especially when the person who committed the criminal offense and the victim are foreigners, citizens of the same country, it is more reasonable for these persons to be tried and serve the sentence. In such or similar cases, our criminal legislation has foreseen the possibility that the criminal prosecution of the foreigner is entrusted to the foreign state, but it should be noted that it is a condition that that state also acts like this with the citizens of the Republic of Kosovo. “for the possibility of excluding the principle of territoriality in such cases, mutual reciprocity is required between our country and the respective state”. (Saliu, 2012, p. 164) This matter is regulated by the Law on International Cooperation in Criminal Matters-31.08.2011. “A special exception from the territorial principle of our legislation is provided for persons who exercise functions of special importance. Members of Parliament, the President of Kosovo and members of the Government. Exceptions to this principle are also persons who enjoy immunity according to international acts, for example, heads of state” (Maloku, 2022)

#### *4.2.2. The Action of the Criminal Legislation of the Republic of Kosovo for the Offenses Committed Outside the Territory of the Republic of Kosovo*

“In order to be able to apply our criminal legislation even in cases where criminal offenses are committed outside the territory of Kosovo, our criminal law has acquired some principles of a general nature. These are: the real principle, the principle of active personality, the principle of passive personality and the universal principle”. (Saliu, 2012, p. 165)

#### 4.2.3. *The Real Principle*

The real principle means the operation of the criminal law of a state for criminal offenses committed outside its territory. According to our criminal legislation, the real principle means that it works only in cases where criminal offenses are committed outside the territory of Kosovo, but this principle is only applied in cases where our citizens or our country are endangered or damaged by legal goods which are protected by law. In the code of the Republic of Kosovo, the real or protective principle is provided as follows: "The criminal legislation of the Republic of Kosovo applies to any person who commits the following criminal offenses outside the territory of the Republic of Kosovo:

- The criminal offenses provided for in the articles 148-153, 157-160, 164, 165, 166-169, 171, 173-175, 238, 241, 273-280, 293, 294, 302-304, 336 dhe 337 të këtij Kodi; and
- Criminal offenses which, based on the international agreement which binds the Republic of Kosovo, must be prosecuted even though they were committed abroad". (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. 108)

#### 4.2.4. *The Principle of Active Personality*

According to the principle of active personality, our criminal legislation is applied in cases where our citizens commit criminal offenses abroad. In paragraph 4 of Article 108 of the Criminal Code of the Republic of Kosovo, it is provided as follows: "The Criminal Legislation of the Republic of Kosovo applies to any citizen of the Republic of Kosovo who commits a criminal offense outside the territory of the Republic of Kosovo and if this offense is also punishable in the country where it was committed". (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. 108) The principle of active personality is also applied in cases where the person who committed the criminal offense becomes a resident of the Republic of Kosovo. In order for the principle of active personality to be applied or to be applied, the perpetrator of the criminal offense must be found in the territory of the Republic of Kosovo or that person must be extradited from another country. The principle of independent personality is subsidiary because the criminal legislation of the Republic of Kosovo will be applied to the perpetrators only in the country where they have committed the criminal offense and the appropriate legal-criminal protection has not been exercised. Thus in article 110 of paragraph 2 of the KPRK, it is provided that the criminal procedure will not be initiated if: "In the cases provided for in Article 108 and 109 of this Code, the criminal procedure will not be initiated if:

- The perpetrator as a whole has kept the sentence imposed in another jurisdiction;
- The perpetrator in another jurisdiction has been released by a final verdict or has been released from the sentence or the sentence has been prescribed; And
- Criminal proceedings for the criminal offense committed in another jurisdiction can be initiated only at the request of the injured party and such a request has not been submitted". (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 110)

#### 4.2.5. *The Principle of Passive Personality*

According to the principle of passive personality, our criminal legislation is also applied to foreigners who outside the territory of the country commit criminal offenses against our citizens or against our country. It is called the passive principle because in the criminal aspect, citizens or our country are passive, they are victims of criminal offenses. "The principle of passive personality is subsidized, because the criminal legislation of Kosovo is applied only in cases where the appropriate legal-criminal protection has not been exercised in the foreign country." (Saliu, 2012, p. 168) The passive principle is applied in the event that the protected legal rights of our citizen are damaged by a foreign citizen in another country, then we have the application of the passive principle. The passive principle is provided for in Article 109 of the KPRK, in which it is provided as follows: "The criminal legislation of

the Republic of Kosovo applies to any foreign person if: such 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 108 of this Code;

- This criminal offense is also punishable in the country where it was committed; AND
- The author is located in the territory of Kosovo or has been transferred to Kosovo”. (KODI NR. 06/L-074 PENAL I REPUBLIKËS SË KOSOVËS, 2019, p. Neni 109)

#### 4.2.6. The Universal Principle

According to the universal principle, our criminal legislation is also applied to the foreign person who executes a criminal offense outside the territory of the country against a foreign state or a foreign person. “In order for this principle to be applied, the foreign national must be found in the territory of Kosovo or extradited”. (Saliu, 2012, p. 169) In order for this principle to be applied, the foreign national must be found in the territory of Kosovo or extradited. The application of this principle is based on the principle that it is the international obligation of every state to fight crime, not taking into account where the criminal offense was committed and whose property was damaged. “separately the meaning and importance of the universal principle consists in the solidarity between contemporary states when it comes to serious criminal offenses that violate the vital interests of the international community, in general the interests of humanity” (Saliu, 2012, p. 169)

#### 4.3. Extradition

Criminality as antisocial behavior which is in conflict with legal and moral norms of behavior (Maloku, 2019:174), whereas organized crime means a structured association for a given period of time (Maloku & Maloku. 2021:60) and which has the characteristics of criminal organizations (Maloku, 2016a) which saw an international cooperation in the fight against organized crime with narcotics and human trafficking (Maloku, 2016b , 2018, 2020:21-44) it is difficult to fight this negative phenomenon, this cooperation is done in different forms and one of them is extradition. “Surrender is the formal process by which one jurisdiction requests the extradition of a person who is in the requested jurisdiction and who is charged with or convicted of one or more criminal offenses against the law of the requesting jurisdiction. Extradition is required so that the person will face trial in the requesting jurisdiction or conviction for such offense or offences.” (Manual on Mutual Legal Assistance and Extradition, 2012, p. 41) Extradition is a major form of legal assistance between states in the field of criminal law and, to a significant extent, extradition enables the fight against crime on an international scale. “Extradition is the formal process of handing over an individual to another country for prosecution or punishment for crimes committed in the jurisdiction of the requesting country. It is usually enabled by a bilateral or multilateral treaty. Some states will extradite without a treaty, but those cases are rare”. (Jonathan, 2020) In order to apply the universal principle, the real principle, the principle of active personality, passive principle territorial principle of action criminal legislation is very important the mutual cooperation of the states that enables the sentence or execution of the perpetrator of the criminal offense. “In conditions where people enjoy the right of free movement from one country to another and legal and illegal migration has become a common phenomenon, there are real possibilities for perpetrators of criminal offenses or persons convicted of criminal offenses to leave their country to other countries, in order to avoid criminal responsibility or serving the sentence” (Muqi, 2012, p. 114). In the criminal code of the Republic of Kosovo, we do not come across direct norms that are dedicated to extradition, but the material and procedural issues of this institution are regulated by the Law on International Cooperation in Criminal Matters and the Code of Criminal Procedure and also by bilateral conventions or multilateral. “In accordance with international conventions, in the Republic of Kosovo the institution of extradition is regulated by constitutional provisions, the Code of Criminal Procedure and bilateral agreements. However, it is regulated in detail by the norms of the **Law on International Legal Cooperation in**

**Criminal Matters”** (Saliu, 2012, p. 172) In order to extradite the suspect or the culprit, the types of criminal offenses must be mentioned in the extradition contract, this is done in the following three ways:

**Enumeration Method** (the types of criminal offenses are mentioned)

**The Eliminary Method** (specifies the types of criminal offenses for which extradition will not be made)

**General Clause Method** (determined according to the type and mildest measure of punishment)

The conditions that must be met for extradition are as follows:

- That the offense for which extradition is requested was not committed in the territory of Kosovo against a resident of Kosovo,
- For the identity of norms to exist - The criminal offense for which extradition is requested must be foreseen as a criminal offense both by our law and by the law of the state that requires extradition.
- That the identity of the person whose delivery is requested has been verified,
- That there is sufficient evidence to support the reasonable suspicion that the foreign citizen has committed the specific criminal offense and for this there is a final judgment,
- That extradition shall not be made for a criminal offense punishable by death until such State guarantees that such a penalty shall not be imposed,
- That there is no real risk that the person whose extradition is sought will be treated or punished in an inhuman manner,
- That extradition is not carried out for political and military criminal offences,
- That the person can be punished only for the criminal offense for which he was extradited,
- That the criminal offense is not prescribed and
- That the foreign citizen, whose extradition is requested, has not yet been acquitted or finally sentenced by the local courts for the criminal offense for which the extradition is made.

## **Conclusion**

All the material that is elaborated in this paper is processed in a clear, simple and understandable way so that the reader, while reading the paper, absorbs the right and necessary information. In order to provide the reader with appropriate information, references from prominent authors in the criminal field have been used in the paper, during the content of the paper the KPRK has been mentioned, where and from which the references are taken, so that the paper has safe and reliable information. so that readers are well-informed on the subject being discussed. This work provides information on the action of the criminal law in time, in space and towards people, where the importance, function and role that they have during their activity is explained in detail in the content of the work. During the work, the principles are mentioned, which are: the principle of real, passive, active, territorial and universal personality, where they are explained in detail about their operation, where the work also contains the content of the KPRK, where the role and function they have are clearly mentioned in the Republic of Kosovo. In the last part, the subject of extradition is elaborated, where the importance of it is explained, where the conditions that must be met for the extradition to be applied are also mentioned which is very important because by means of those conditions it is determined and the "fate" of our citizens or other citizens depending on the case.



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