



Criminal Offenses Against Life and Body According to the Criminal Code of Kosovo

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Abstract

The research aims to make the definition of the criminal offense “murder” according to several different authors, the Criminal Code of the Republic of Kosovo, and the description of the most used methods of murder, motives that affect the commission of a crime, and victimization. Each person may commit a crime that is foreseen in the Criminal Code and for each crime are foreseen the circumstances on the basis of which the penalties prescribed by the Criminal Code of each country are determined. The most widespread form of criminality is the crime of murder, which has been and continues to be present in all societies and as such means the unlawful deprivation of a person from life. Violation of the legal norms of a state implies crime, while the offender in this case is called a criminal. Criminals are individuals who have committed a crime and a small minority in society, who differ from persons who commit accidental crimes, because in this case criminals commit crimes in a planned manner. The research aims to compare the sentences for the criminal offense of murder under the Criminal Code of Kosovo and the Criminal Code of Albania. I divided the paper into four chapters. In the first chapter, I presented the criminal offense of murder, its definition according to some perpetrators and the Criminal Code of Kosovo. The second chapter includes factors affecting the commission of the criminal offense of murder and statistical data from various sources. The third chapter includes victims of the crime of murder. In the fourth chapter, is described the mos used motives and methods for committing the crime of murder.

Keywords: *Murder; Suicide; Victimization; Motives of Murder; Punishments for Murder*

Introduction

Every day, a person’s fundamental right is endangered, which we might call the right to life. The term “criminal” has different definitions because each country has their own laws regarding crimes and illegal activities, which differ from other countries. It can be said that a crime is an activity that causes

harm to an individual, community, or state. Each criminal, can commit crimes as a consequence of greed, jealousy, malice or even to make a living.

There are two important terms to know, Actus reus which is the unlawful killing of any person under the protection of royal power and Mens rea which is the intent to cause death or grievous bodily harm (Jonathan, 2013).

The subject of the criminal offense “murder” can be any person who has reached the age set by law for criminal liability. As for who is considered a victim of murder, we know that human life begins from the moment a person is born, therefore the fetus or unborn children, since they are not human cannot be a victim of murder. In this case, it should be noted that although the fetus is not human, this does not mean that they are not protected by criminal law until they are born. They are simply protected from the crimes of causing abortion or harming the child. Many universal documents pay importance to human rights and freedoms such as the 1948 Universal Declaration of Freedoms and Human Rights, Article 6: Everyone has the innate right to life, which must be protected by law, and that no one can arbitrarily be deprived of life.

According to (Ismet Salihu, 2014), the right to life is a fundamental right, for this reason, anyone who deprives a person of life will be imposed a sentence of not less than 5 years imprisonment.

1. Literature Review

The authors Jasarević & Maloku (2021) in their book *The Law of Criminal Procedure* (general and special part) elaborate extremely well on the general procedure of the Criminal Procedure in 15 chapters, especially in terms of pre-criminal and criminal procedure. Moreover, the authors Jarasević & Maloku (2021) in their book *Criminology* (etiology and criminal phenomenology) elaborate on the etiological and phenomenological factors of the emergence of crime, one of them for acts against life and body.

Crimes against life and body are carried out in different forms, while they have in common an unlawful action. Thus, through the terms Mens rea raise questions that will help to have a conviction on the commission of the criminal offense of murder by a particular person, revealing whether there was an intention to kill the victim or cause grievous bodily harm (Mohammad Belayet Hossain, 2018). The circumstances that categorize the crime of murder in the first degree and in the second degree differ from state to state, so according to (Berman, 2021) in the first degree the most dangerous persons who have committed premeditated murder are sentenced, while the murders that do not involve malice in the first-degree pass in the second-degree murder group.

According to (Brookman, 2010) murder meant the murder of any person, regardless of whether the murder is legal or illegal and the latter is accepted in England and Wales 1, where unlawful killings included: negligent murder and infant murder. Among the murders that raise concern and dramaticity for people are mass murders, which are committed in public places, and in particular those that are committed in schools (Hough, 2019).

On the other hand, in some states there is also the so-called justifiable murder, whilst most states do not allow it, this act represents the use of force or even the murder in order to prevent the escape of the arrested by the police officer (Rapp, 1989).

Most of the murders that take place in the world according to (Berezow, 2018) are carried out by many different methods, among which since 2016 are the murders committed by the three most common methods such as: with firearms, cutting and strangulation. Whereas, in Kosovo, the highest number of

murder crimes is committed by firearms and cutting. The most common reasons for this crime in Kosovo, is revenge and blood feud, especially the murder of woman for their dishonor, for which the Assembly of Kosovo on September 25, for the first time honored the victims that failed to protect before they were killed (Gjocaj, 2020).

2. Methodology

The study constitutes the analysis of the meaning and division of the criminal offense against life and body, the description of the methods of committing this crime, the factors that influence the commission of the crime of murder and the statistics of murder in Kosovo and Albania. The methods used in this paper are the description method by which the definition of murder and the methods of committing murder are achieved.

In similar circumstances, the induction and deduction method is also used (Maloku et al, 2021:53). The Statistical method is used to reflect victims in the Republic of Kosovo and Albania, the methods used for murder in Kosovo and around the world and the motives that affect the commission of the crime of murder. In the paper will be used comparative, theoretical methods (Maloku,2020:172), by which the distinction will be made between the sentences imposed on the perpetrators of criminal offenses, according to the Criminal Code of Kosovo and the Criminal Code of Albania.

The design is not experimental.

The paper also uses the content analysis method, as a necessary method (Maloku, 2020:323) to better elaborate the purpose of the paper. Based on the available literature, reports, contacts and personal research, the paper provides a brief summary of the criminal legal aspect, namely the material legal aspect (Maloku, 2020:21) for the criminal offense against life and body under the Criminal Code of Kosovo.

2.1. Research Questions

1. Who most often appears as a victim in murders in the Republic of Kosovo?
2. What measures does the Republic of Kosovo Criminal Code foresee against offenses against life and body?
3. What is the most affected age in victims of the murder?

3. Results and Discussion

3.1. Criminal Offense of Murder

Murder is a criminal offense against life and body, therefore it is considered as the most serious offense because it violates the most important human right, the right to life guaranteed by the Constitution and international acts (Zejneli, 2007). Today, there is no country that does not provide protection in their criminal legislation against criminal acts such as murder. Crimes against life and body take center stage in various investigations, because these crimes are considered to be among the most serious forms of attack on the most important human values. The object of protection in all criminal offenses of murder is the life of the individual, while as a subject appears any person who has reached the age set by law for criminal liability. According to the object of protection, on the basis of (Ismet Salihu, 2014, f. 470) criminal offenses against life and body are divided into the following subgroups: criminal homicide against life, criminal offenses against future life (Article 178), criminal offenses against bodily integrity, criminal offenses of endangering life or bodily integrity and criminal offenses against solidarity.

According to (Jonathan, 2013), three types of murders are known:

- **Ordinary Murders** – which are considered a basic form of murder crime and are murders that differ from privileged murders, because ordinary murders are considered those murders in which the features that characterize serious or even privileged murders are missing.
- **Serious Murders** – are murders that according to the Criminal Code of the Republic of Kosovo foresee heavier sentences, ranging from 10 years to life imprisonment (Salihu, 2014).

Serious murders according to (The Criminal Code of the RKS, 2019, P. Article 173), are arranged based on several criteria:

- According to the manner of commission – such crimes are part of the murders on the will of the person, in the cruelest way, endangering the life of one or more persons;
- According to motives – there are murders which are committed as a result of racial, national motives, for various benefits, for revenge, for religious motives, etc.
- According to the victim – this type of murder is accepted only if the murder was committed by any family member. Such murders are considered, the murder of a child, the murder of parents, any official person, etc.
- According to the consequences – this type is considered if the murder was committed with the fulfillment of the condition of endangering the life of a person intentionally and the existence of a certain dangerousness.

- **Privileged Murders** - in comparison to serious and qualified murders, due to certain circumstances, are considered as lighter forms of murder.

According to the Criminal Code of Kosovo, there are three types of privileged murders:

- **Provoked Murder** –where murder occur as a cause of various actions such as: gross slander, insult, and various ill-treatment, which push the perpetrator to put on mental effect. Murders committed in such a state are deliberately committed instantly (Salihu, 2014).
- **Negligent Murder** – this form of murder is not related to will, but only to guilt. Therefore, such murders are committed by action and inaction (failure to take action to prevent the consequence) (Zejneli, 2007, PG.27).
- **Murder of the Baby During Childbirth** – is a criminal offense, where only the mother is presented as a subject, while as a victim we have the child who was born alive. This murder is a criminal offense committed with direct or eventual intent.

3.2. Suicide

Suicide is the deliberate and violent taking of life that a person causes himself (Maloku, 2019:372). Suicide implies a sociopathological phenomenon, which being very widespread in the contemporary world, has to do with taking one's own life.

Suicide is not punished, but according to modern criminal legislation, the actions of a particular person, which help, push an individual or strengthen the decision to commit suicide, are considered as a criminal offense.

Incitement to suicide – a person's actions are meant through various ways, such as threat, blackmail, intimidation, persuasion, etc., manage to convince a person to commit suicide (Jonathan, 2013).

Assistance to suicide – is achieved through giving different advice to the person who has decided to commit suicide, about how suicide is committed, or giving certain means of committing suicide (Ismet Salihu, 2014).

3.3. Victims of Murder Crime

Victims of a criminal event are considered all persons who have suffered individual and collective injuries, including physical and psychological injuries, emotional suffering, economic loss or serious endangerment of their fundamental rights, with actions and omissions that represent violations of the Criminal Code (Maloku &Maloku, 2021:97).

According to research conducted, the highest number of victims both in Kosovo and in different countries of the world derive as a result of criminal offenses against life and body. The most frequent cases resulting in the death of the person are cases of criminal offenses of murder, suicide, serious bodily injuries, participation in beatings, etc, (Halili D. R., 2008, f. pg. 65) .

3.3.1. Motives of Victimization

In crimes against life and body, mainly in the crime of murder, the main motive of victimization in present in cases of domestic problems, disorders of marital relationships, poor relations with neighbors, society and people around. An effective role is also the aggressive, provocative or irritating behavior of the victim that can have serious consequences.

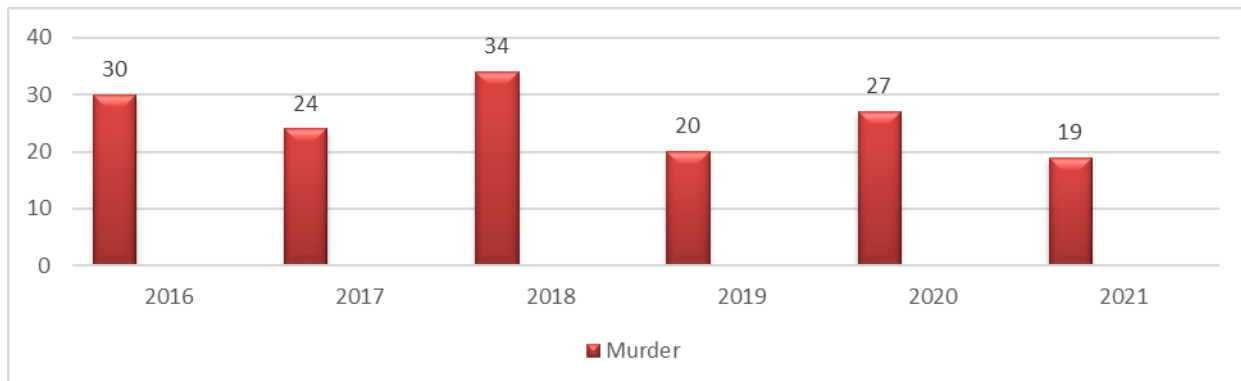
3.3.2. The Age and Gender of Murdered Victims

Murders usually occur against people who are more active in everyday life and have direct access to different people, which increases the risk of multiple opportunities for victimization. Children are categories that are much less often presented as victims, compared to adults. Therefore, the age of the victims often coincides with the age of their killers, as a result of a certain relationship with the victim.

Based on the research done, according to (Bekim Kabashi, 2021), the statistics of victims in Kosovo as a result of various murders have been determined. The year 2018 is considered one of the years with the highest number of murders since 2016 and based on information received from the Kosovo Police, for the last three years 3400 illegal weapons of various types were confiscated.

No country is spared from criminal offenses (Maloku, 2015:119), so Kosovo is also afflicted with this offense against life and body. The high level of criminality brings fear to criminality (Maloku,2020), so cooperation with each other is needed (Maloku 2015:461) in order to prevent and combat this negative phenomenon.

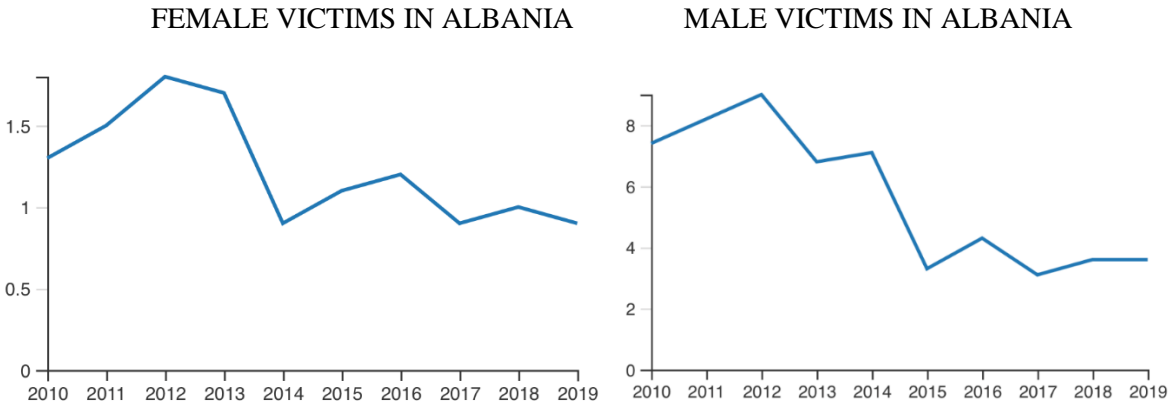
Graph no. 1: Statistics of Murders in Kosovo for the period 2016 – 2021



Sourced from : (ASK, 2021) <https://ask.rks-gov.net/sq/agjencia-e-statistikave-te-kosoves/add-news/statistikat-e-vdekjeve-2020>

While according to (Institute of Statistics of the Republic of Albania, 2019), the statistics of victims of intentional murders per 100.000 inhabitants has been determined, according to which the number of female and male victims compared to other years, have had a high increase in 2012. The most frequent victims have resulted as a result of family and marital conflicts.

Graph no. 2: Statistics of female and male victims in Albania



Sourced from; <http://www.instat.gov.al/al/search/?query=vrasjet+>

3.4. Comparison of the criminal offense “murder” according to the Criminal Code of Kosovo and the Criminal Code of Albania

Criminal offences against life and body under the Criminal Code of Kosovo are part of Chapter CVI and constitute the following offences and penalties:

- Murder - (Article 172) for which a sentence of not less than 5 years is foreseen.
- Aggravated murder – (Article 173) punishment of imprisonment not less than 10 years or life imprisonment on the basis of certain circumstances defined under the Criminal Code of Kosovo.
- Murder committed in a state of mental shock – (Article 174) foresees a sentence of imprisonment of 1 to 10 years.
- Negligent murder – (Article 175) is punishable by imprisonment from 6 months to 5 years.
- Murdering the baby during childbirth – (Article 176) the prescribed punishment is imprisonment from 3 months to 3 years.
- Incitement to suicide and assistance to suicide – (Article 177) provides for a sentence of 1 year to 5 years imprisonment, and if this criminal offense is committed against a minor the prescribed sentence is from 1 to 10 years imprisonment.
- Unlawful termination of pregnancy – (Article 178) for which the punishment from 6 months to 3 years is foreseen, while in cases where the crime is committed without the consent of the mother, the punishment of imprisonment from 1 to 8 years.
- Forced sterilization – (Article 179) punishment of imprisonment from 1 to 8 years, in cases of suffering bodily injuries from 5 to 15 years of imprisonment.
- Female genital mutilation – (Article 180) punishment of imprisonment from 6 months to 5 years, in cases of death of the victim punishment of imprisonment from 5 to 15 years.
- Threat – (Article 181) punishment with a fine or imprisonment of up to 6 months, while with the use of any dangerous means, a prison sentence of 1 to 5 years is valid.
- Harassment – (Article 182) punishment with a fine or imprisonment of up to 3 years, while if the offense is committed with the use of any dangerous means, the punishment with imprisonment from 1 to 5 years.

- Sexual harassment – (Article 183) provides for a fine or imprisonment of up to 3 years, while in cases of use of a weapon, a sentence of imprisonment of 1 to 5 years.
- Assault – (Article 184) punishment with a fine or imprisonment up to 1 year.
- Minor bodily injury – (Article 185) punishment of imprisonment up to 3 years, as well as based on some circumstances defined under the Criminal Code of Kosovo, for this criminal offense has foreseen a sentence of 1 year to 5 years of imprisonment.
- Serious bodily injury – (Article 186) a sentence of imprisonment from 6 months to 5 years, while if the victim dies, a sentence of 5 years to 15 years is foreseen.
- Participation in beatings – (Article 187) a fine or a sentence of imprisonment of up to 3 years is foreseen.
- Non-providing of assistance – (Article 188) the prescribed punishment is the sentence of imprisonment up to 1 year, whilst if the person at risk for life dies, the sentence of 1 to 8 years of imprisonment is applied.
- Abandonment of incompetent persons – (Article 189) – for this criminal offense has foreseen a sentence of imprisonment up to 3 years.

Whereas, the Criminal Code of Albania divides the offenses against life into two sections :

1. Offenses Against Life Committed Intentionally

Intentional Murder– (Article 76) murder according to (Criminal Code of Albania, 2017, p. Article 76) is punishable by imprisonment from ten (10) to twenty (20) years of imprisonment. According to this code, intentional murders involving or concealing another crime are punishable by imprisonment of not less than twenty (20) years.

Premeditated Murder – (Article 78) for this criminal offense has prescribed a sentence of imprisonment of 15 to 25 years. Murders committed with interest and revenge are punishable by 25 years or life imprisonment.

Intentional Murder for Blood Feud - (Article 78a) such murders are punishable by imprisonment not less than 35 years or life imprisonment.

Murders of Public Officials - (Article 79a) the intentional killing of any public official as a judge, prosecutor, lawyer, MP or soldier is punishable by imprisonment not less than 30 years or life imprisonment (Criminal Code of Albania, 2017).

Murder Due to Family Relations - (Article 79c) the intentional murder of a family member, such as a spouse, close relative, etc., is punishable by imprisonment of twenty years (20) up or life imprisonment.

Murder of the Baby - (Article 81) the murder of the baby committed intentionally by the mother, immediately after birth, is punishable by imprisonment for up to five years.

2. Criminal Offenses Against Life Caused by Negligence

Murder which according to Article 85 of the Albanian legislation is punishable by a fine of up to 5 years imprisonment, whilst according to the Criminal Code of the Republic of Kosovo negligent murder is punishable by imprisonment from 6 months to 5 years (Criminal Code of Kosovo, 2019, P. Article 181).

Minor Bodily Injury- (Article 89) that has caused temporary incapacity at work for more than 9 days, is punishable by a fine or imprisonment for up to three years.

Grievous Bodily Harm – (Article 88) injury that has resulted in mutilation, disfigurement or any other permanent damage to health is punishable by imprisonment of three years to ten years imprisonment.

3.5. Statistics of Motives and Methods of Murder Around the World

According to statistics from Radford University, the motive for the murders is considered pleasure, which is a very dangerous risk because the crimes committed with pleasure do not stop. So, the more crimes they commit the more pleasure they will gain (Goodreau, 2022).

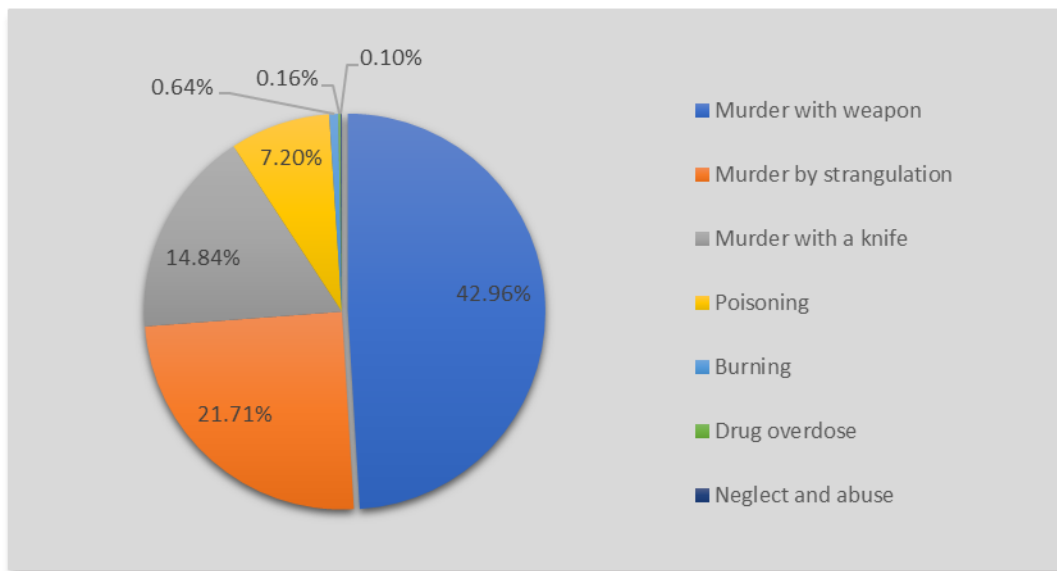
TABELA 1: Motives for committing the criminal offense of murder

MOTIVES	WORLD	USA
1. PLEASURE	36.86 %	31.76 %
2. FINANCIAL GAIN	29.59 %	30.14 %
3. ANGER	16.38 %	18.07 %
4. OTHER MOTIVES	8.06 %	9.81 %
5. AVOIDANCE OF ARREST	1.15 %	1.39 %
6. HALLUCINATIONS	0.59 %	0.66 %
7. ATTENTION	0.49 %	0.50 %

Source from: <https://www.safehome.org/resources/crime-statistics-by-state/>

Based on the researches conducted, the statistics of the most used methods for murder were also determined. Among them, the most frequent were gun murders, while the least used method was neglect and abuse (Harris, 2018).

Graph no. 3: The most common murder methods used worldwide



Sourced from: <https://www.safehome.org/resources/crime-statistics-by-state/>

Among the most preferred methods for murder on the basis of obtained statistics is murder with a gun, strangle and with a knife.

Whereas, in Kosovo, murders most often occur as a result of revenge, blood feud, clashes, family, marital conflicts and often by negligence.

3.6. Objective and Subjective Factors Influencing the Crime of Murder

In the appearance of the crime of murder very great influence have also external criminogenic factors. These external factors constitute the social circumstances that influence criminal behavior. According to many criminologists, among the factors with great impact should be emphasized: poor economic conditions, housing, education, poverty, low employment opportunities, etc. (Halili R. , 2008, f. 241).

Poverty is one of the main factors that drive individuals into criminal behavior for the purpose of certain monetary gain, not thinking about the further consequences.

Unemployment – is another factor that arises as a consequence of the impossibility of employment and brings about a lack of income for survival. This encourages the designated person to achieve an easier path of personal gain for survival through criminal behavior.

Difficult housing conditions – other than presenting a problem in housing settlements, these poor conditions in settlements also cause psychological problems in accepting reality. As a result of this, the migration of young people arises as a result of emotional depression, and failure to realize these can affect the occurrence of criminal behavior (Zejneli, 2018, f. 131).

The subjective factors that influence the crime of murder are: emotions, personality, character, habits, motives and some other pathologies, etc.

4. Conclusion

Because of the lack of knowledge about the names of crimes, people often confuse the two terms as murder and negligent murder, because the important thing in these two terms of crimes is the purpose of causing the consequence and not the intention. Therefore, the conclusion can be drawn that each person must have knowledge of crimes and special features that make them distinct from other persons, so that through these doubts individuals can move away from possible consequences or even take certain measures. Therefore, for the perpetrators of the crime of murder, the circumstances in which they find themselves and live can influence the decisions on the commission of these certain crimes. Based on researches done, in different countries of the world especially in the US, the number of murder crimes is increasing, this is probably due to the high number population. Whereas, in Kosovo, we first remember war crimes, in the interior of which there were many Serbian criminals who had committed multiple murders.

Therefore, both the Republic of Kosovo and all other countries, through their laws, apply penalties against criminals for the purpose of their non-proliferation.

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