

## Some basic features of major penalties under the criminal code of the Republic of Kosovo

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### Abstract

Criminality in any society is a negative social and individual phenomenon with consequences for the individual in particular and society in general. Considering the severity and consequences of crime, any organized society takes measures to prevent and fight it. Such measures are of preventive and repressive character. In this plan Kosovo too, with its criminal legislation, takes measures to prevent and fight crime by defining criminal sanctions and other criminal law measures. The provision of these criminal sanctions is made by the Criminal Code of the Republic of Kosovo. A special type of criminal sanction that provides the new Criminal Code of Republic of Kosovo, which entered into force on 1.1.2013, are also major penalties, which are subject to be treated in this paper.

**Keywords:** criminal sanction, punishment, offenders, criminal offense.

### Introduction

The protection of individual and social values in an organized society, respectively in a state of law, could never have been imagined without the existence and implementation of the Criminal Code (Elezi, 2005, 126).

The Criminal Code as the legal act for regulating the basic issues from criminal fields, namely the provision of criminal acts, liability and criminal sanctions, has an important and dominant role in not only protecting social values but also individual values in society.

The Criminal Code foresees that those figures of offenses that we encounter more in practice, are more stable and recognized in the historical development of society and new figures which are dictated by life.<sup>1</sup>

The development of criminal law in Kosovo has its own way of historical development. Without any claim to treat this historical development of the criminal law in Kosovo, and criminal law institutes comprising the Criminal Code of the Republic of Kosovo, in this paper we will discuss some basic aspects of the main penalties under the Criminal Code of the Republic of Kosovo, which entered into force on 1.1.2013. The discussion will be based on changes and amendments to the new Criminal Code of the Republic of Kosovo by applying the comparative method as well as other study methods for the concrete topic.

The purpose of defining the topic consists in the treatment, in a unique manner, of the innovations that have to do with major penalties under the new Criminal Code of the Republic of Kosovo.

The entry into force of this Criminal Code in the Republic of Kosovo has great

<sup>1</sup> Code no. 04 / L-082, Criminal Code of the Republic of Kosovo.

importance in terms of institutional development as well as in terms of reforming the criminal legislation in the Republic of Kosovo, based on European legal norms and principles that have to do with the criminal field.

### **The importance of criminal sanctions and measures of mandatory treatment under the new Criminal Code of the Republic of Kosovo**

The presence of crime itself in society calls for finding and identifying measures to prevent and fight it. The period of public reaction to crime is long and in its own way has had major transformation (Halili, 2000). Besides preventive measures as basic measures of society reaction against crime, there are also repressive measures.

Repressive measures are general measures to be taken against the perpetrator after the commission of offense, by state bodies specialized in law, with the aim of combating crime. These measures have repressive character, as opposed to preventive measures and are manifested by the imposition of criminal sanctions to the perpetrators of criminal acts (Bajgora, 2001).

To prevent and combat crime in general and criminal offenses in particular, penal sanctions are of great importance and irreplaceable. The main issues of the criminal law of each country are penal sanctions. These are at the epicenter of attention of the criminal law and criminal policy. Penal sanctions are the main concern of the criminal law by the fact that in all cases where a certain person has committed a dangerous act which is illegal and defined by law as a criminal offense, it is necessary that society against the perpetrator of such to take any measure which aims to prevent the commission of the offense in the future.

In criminal law, the measures which are applied to offenders are called penal sanctions. In general, measures that are foreseen in criminal law and taken by criminal jurisprudence against the perpetrator should have the sole purpose of protecting the individual and the society in general from crime as a dangerous and harmful phenomenon (Salihu, 2005).

According to an opinion of an author a sanction in the criminal-legal sense means the implementation of compulsory measures against violators of the norms because of the committed violations of penal-legal norms (Kambovski, 2007).

According to another opinion, criminal sanctions in general and specifically "punishment" is not a goal in itself, but there are certain objectives; it serves the protection of human rights and freedoms, the protection and strengthening of social order, as well as rehabilitation of the offender and education of other citizens with the spirit of respect for legitimacy " (Muçi, 2007).

From the thoughts of these authors a conclusion can be drawn about the notion and the nature of legal penal sanctions based on punitive policy as part of the criminal policy which is realized by the application of penal sanctions.

Even with the new Criminal Code of the Republic of Kosovo in the function of fighting crime, types of penal sanctions are foreseen. According to Article 4 of the Criminal Code of the Republic of Kosovo, these penal sanctions are:

- Principal punishments;
- alternative Punishments;

- additional Punishments;
- A judicial admonition.

In Article 4 of the Criminal Code of the Republic of Kosovo, compulsory treatment measures are also foreseen which may be imposed on a perpetrator who is not criminally responsible or is addicted to drugs or alcohol. These measures are:

- Mandatory psychiatric treatment and custody in a health care institution;
- Mandatory psychiatric treatment in freedom;
- Treatment with mandatory rehabilitation of persons addicted to drugs or alcohol.

The new Criminal Code of the Republic of Kosovo defines the conditions under which penal sanctions or compulsory treatment measures against the perpetrator could be imposed. Given that, the object of treatment in this paper are some basic legal penal matters dealing with main punishments, we will not stop treating conditions under which penal sanctions or compulsory treatment measures against the perpetrator of penal act may be imposed.

### **Purpose and types of main punishments under the new penal Code of the Republic of Kosovo**

In the criminal law of any state that claims to create an efficient system of penal sanctions against offenders, a special importance, except types of penal sanctions, is also devoted to the purpose of criminal sanctions in general and main punishments in particular.

In this regard, the Criminal Code of the Republic of Kosovo except foreseeing the types of penal sanctions and measures of mandatory treatment, it gives a particular importance to their purpose in general and the purpose of the main punishment in particular.

### **The purpose of punishment in the Criminal Code of the Republic of Kosovo**

The general purpose of penal sanctions is the protection of freedoms and human rights as well as other rights and social values guaranteed and protected by the Constitution of the Republic of Kosovo and international law (Article 1 CCRK).

Viewed from criminal legal aspect, our criminal law appropriates mixed theories about the purpose of punishment. This conclusion emerges from the provisions which refer to the purpose of punishment. The specific purpose of punishment under the Criminal Code of the Republic of Kosovo is defined in Article 41. Under the Criminal Code of the Republic of Kosovo, Article 41, the purposes of punishment are:

- To prevent the perpetrator from committing penal offenses in the future and make his rehabilitation;
- To prevent other persons from committing offenses;
- To compensate the victims or the community for losses or damages caused by the offense;
- To express social judgment for the offense, edification and strengthening obligation to respect the law.

From the provisions of Article 41 of the Criminal Code of the Republic of Kosovo,

it is clear that our right adopts special preventives, and general preventives as aims of punishment. The special preventive is expressed in point a) of article 41 in which as the aim of the punishment is foreseen "to prevent the perpetrator from committing criminal offenses in the future and make his rehabilitation". While the general preventive is defined in paragraph b) of article 41 which states "to prevent other persons from committing offenses". Besides the special and the general preventives, punishment should fulfill the social purpose to the victim or community which is expressed in point c) of Article 41 where it is stated that the aim of punishment is also "to compensate the victims or the community for losses or damages caused by the offense ". Also punishment should fulfill the aim of justice as prescribed in Article 41 in point d) in which regarding the aim of punishment it is stated "to express social judgment for the offense, edification and strengthening of the obligation to respect the law." From the provisions of Article 41 of the Criminal Code of Kosovo clear tendency results in the criminal law of Kosovo that the primary purpose of the punishment to be special preventive against perpetrators of the criminal act as well as general preventive against others based on contemporary system of criminal sanctions.

### **Main types of punishments**

Viewed from criminal legal aspect the state determines criminal policy, with which it intends to effectively fight crime. According to this criminal policy the punishment system is defined. In order to be the punishment system successful in a country, it must rely on criminological sciences achievements, especially those belonging to delinquent personality, manner of execution of sentence and efficiency of execution of sentences (Salihu, 2005). The main punishments are imposed on adult persons who are criminally responsible to the offense committed. In order to impose a sentence as a type of criminal sanction, the person must be mentally healthy, must have realized the importance of its actions and have had the ability to control his own behavior, and to have committed the offense with his fault intentionally or negligently .

According to Article 43 of the Criminal Code of the Republic of Kosovo, the types of main punishments are:

- 2.2.1. sentence of life imprisonment;
- 2.2.2. sentence of imprisonment;
- 2.2.3. fine sentence.

#### ***Life imprisonment***

Sentence with life imprisonment is an innovation in the new Criminal Code of the Republic of Kosovo for the fact that this punishment was not foreseen by the Provisional Criminal Code of Kosovo which had entered into force in 2004.

The maximum long-term punishment prescribed by the Provisional Criminal Code of Kosovo in 2004 for serious criminal offenses was up to 40 years in prison.

According to Article 44, paragraph 1 of the new Criminal Code of the Republic of Kosovo that entered into force on 1 January 2013 "The law may provide a sentence of life imprisonment for the most serious criminal offenses committed in aggravating

circumstances or offenses which have caused very serious consequences.”  
This comparative plan shows that this punishment is foreseen for some criminal acts against the constitutional order and security of the Republic of Kosovo/Chap.XIV/, eg. the offense Acceptance of capitulation of the occupation, Article 123; offense Betrayal to the country, article 124; offenses killing of the high representatives of the Republic of Kosovo, Article 126; Committing the offense of terrorist offense, Article 136; etc.<sup>2</sup>

Sentence of life imprisonment can be imposed, as well as to some of the offenses foreseen in the group of criminal offenses against humanity and values protected in the international law such as: Genocide, Article 148; Crimes against humanity, Article 149; Migrant Smuggling, Article 170; Human trafficking, Article 171; Hostage Taking, Article 175, etc.<sup>3</sup>

According to the new Criminal Code of the Republic of Kosovo, life imprisonment is also prescribed for the offense against life and body: serious murder, as provided in Article 179 of the Criminal Code. Lawmakers with the new Criminal Code provides the possibility of imposing a sentence of life imprisonment, even for a considerable number of criminal offenses when they are committed in aggravating circumstances or result in serious consequences; the death of the victim, as is the case with the following offenses: Kidnapping, Article 194; Rape, Article 230; sexual services of a trafficking victim, Article 231; Participation or organization of organized criminal groups, Article 283; predatory theft, Article 328; Robbery, Article 329; Revenge, Article 396, etc.<sup>4</sup>

Viewed from the criminal justice point of view, in order to exist a legal basis for the possibility of sentencing to life imprisonment, in these offenses it is required in peremptory manner the existence of special aggravating circumstances of committing the offense or serious consequences of the offense which is the death of one or more persons as a result of the commission of the specific criminal offense.

Given the nature and duration of the sentence of life imprisonment under paragraph 2 of Article 44 “The law cannot provide sentence of life imprisonment as the only main punishment for a particular offense.” It is characteristic that the lawmaker foresees the possibility of alternative sentencing to life imprisonment or a sentence of imprisonment, defining minimum sentence of imprisonment, depending on the offense, not less than 10 or 15 years imprisonment or life imprisonment.

We think that foreseeing alternative possibility of imposing a sentence of life imprisonment for serious offenses committed under aggravating circumstances or serious consequences has a great practical importance for the proper implementation of the new Criminal Code of the Republic of Kosovo.

The practical importance of this consist in the fact that the circumstances of the commission of criminal offenses, motives for commission, the consequences of actions, personal aspects of the perpetrators as well as other characteristics of any criminal offense, are different.

The possibility of taking into account these circumstances of any criminal offense committed, as well as the foreseeing of alternative imposing of sentence imprisonment

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<sup>2</sup> Code Nr. 04 / L-082, Criminal Code of the Republic of Kosovo.

<sup>3</sup> Code No. 04 / L-082, Criminal Code of the Republic of Kosovo, see extensively these offenses.

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or long term imprisonment, creates the court opportunity for measuring and individualizing the sentence as appropriate for the perpetrator. We also think that the foreseeing of life imprisonment sentence in practical terms will contribute to the general and the special preventives against committing serious crimes in Kosovo and beyond.

Criminal Code of the Republic of Kosovo in Article 44, paragraph 3 foresees that “life imprisonment sentence cannot be imposed on a person who at the time of the offense has not reached twenty-one (21) years or a person who at the time of the offense has had substantially diminished mental capacity.”

We think that this legal – penal solution is in accordance with the European standards of the contemporary criminal law as well as the purpose of punishment, considering the age of the perpetrator, or his essentially mental reduced skills during the commission of the offense. This creates the possibility for the court for an appropriate measuring and individualization of the sentence for the perpetrator, based on legal possibilities and the circumstances under which the crime was committed.

Having in mind the legal basis for the imposition of a life imprisonment sentence and its purpose, the Criminal Code of the Republic of Kosovo in Article 94, paragraph 3, provides that “a person sentenced to life imprisonment may be released on parole after having held forty (40) years from the sentence of imprisonment imposed. The minimum period of supervision by the probation service shall be at least five (5) years “. We think that this legal solution is adequate and based on the high degree of risk of criminal offense, the serious circumstances of the perpetration of the offense and the very serious consequences of the criminal act committed.

### ***Imprisonment***

The punishment of imprisonment is the type of the main punishment, with the deprivation of liberty, which the court imposes under legally defined conditions on the perpetrators of criminal offenses. The purpose of the punishment of imprisonment is determined in a taxative manner with the Criminal Code of the Republic of Kosovo in Article 41. Criminal offenses for which the punishment of imprisonment may be foreseen are numerous and different, depending on the object of their protection. Unlike the punishment of life imprisonment, imprisonment is foreseen for the largest number of criminal offenses.

The imposing of imprisonment sentence is foreseen in an alternative way when the punishment of life imprisonment was foreseen. In some cases, in relation to fine sentences, the punishment of imprisonment is either alternately or cumulatively foreseen.

According to Article 45, paragraph 1 of the Criminal Code of the Republic of Kosovo, the imprisonment sentence “cannot be imposed for a period of less than thirty (30) days or more than twenty five (25) years”. The lawmaker in this case determines the minimum and maximum of the punishment of imprisonment.

According to paragraph 2 of Article 44 “the punishment of imprisonment shall be imposed in full years and months and in cases when the sentence is up to six (6) months, the punishment shall be imposed on full days”. Compared to the life imprisonment sentence, this is the easiest punishment for deprivation of liberty.

Viewed from the criminal justice aspect and in accordance with the contemporary

developments of the criminal law, the lawmaker in the Criminal Code of Kosovo has foreseen the opportunity that instead of a short-term imprisonment sentence to impose alternative punishments or fines, with which the perpetrator of the offense is not deprived of liberty.

According to Article 47 of the Criminal Code of Kosovo, which foresees the replacement of a sentence of imprisonment with a fine sentence "when the court imposes a sentence of imprisonment of up to six (6) months, the court may at the same time decide that the punishment of imprisonment be replaced by a fine, with the consent of the convicted person ". Article 48 (paragraph 1) of the Criminal Code of Kosovo provides the possibility of replacing the punishment of imprisonment with an order for a work of general good, stating that "The court, with the consent of the convicted person, may replace the sentence of imprisonment of up to six (6) months with the order for general benefits work ."

Pursuant to paragraph 2 of Article 44 of the Criminal Code of Kosovo, "if it issues an order for work of general benefits, the court orders the convicted person to perform general free work for a period of thirty (30) to two hundred and forty (240) working hours. The Probation Service decides on the type of community service to be carried out by the convicted person, specifies the particular organization for which the convicted person will perform the work of general benefit, decides on the days of the week during which the work for the general benefits needs to be performed and supervises the performance of general-benefit work " .

Paragraph 3 of Article 48 of the Criminal Code of Kosovo defines that "the work of general benefit must be performed within the time determined by the court and this time may not be longer than one (1) year" .

According to the Criminal Code of Kosovo, paragraph 4 of Article 44 foresees that "if after the appointed term of time the convicted person has not done the work of general benefit or has performed only partially such work of general benefit, the court orders the punishment with imprisonment. One day of imprisonment will be ordered for every eight (8) working hours of general benefit non-performance " .

Such a legal possibility as foreseen in the new Criminal Code of Kosovo, we think is in full agreement with the criminal policy and with the purpose of criminal punishments in contemporary criminal law.

### ***Fine punishment***

Viewed from the criminal justice aspect fine punishment is part of the types of property punishment. The perpetrator of the criminal offense is obliged to pay a sum of money for the benefit of the state within the deadline. Fine or money punishments are recognized by all criminal legislation of contemporary states. Among the main punishments, by weight, the punishment of fines in our penal system is the easiest kind of punishment (Salihu, 2005).

Fine punishment is especially convenient in cases of mild criminal offenses. It is a perpetration of this type of punishment that is often an adequate remedy for not executing a sentence of short-term imprisonment. With this punishment, contemporary criminal law aspires that the perpetrators of mild, even middle-level offenses, not to be imprinted as an imprisoned, should not be stigmatized without any need.

Also as the priority of fine punishment, it is stated that it is separated and can easily fulfill the postulates of punishment individuality and that for its execution the state does not need to allocate material means as is the case with imprisonment (Salihu, 2005).

Considering the advantages of fines, the contemporary criminal law is oriented that in all cases of criminal offenses, where it is not necessary to punish jail sentence, to impose a fine. The purpose of the fine punishment is to let the perpetrator of the criminal offense become seriously aware that he has committed an offense and at the same time for some time to hit his standard of living. In this case, the perpetrator's standard of living is very important, who is being imposed a sentence (Salihu, 2005). The Criminal Code of Kosovo in Article 46 foresees the fine punishment. According to paragraph 1 of this Article "the fine punishment may not be less than one hundred (100) European Euros. The punishment may not exceed twenty-five thousand (25,000) Euros, while for offenses related to terrorism, human trafficking, organized crime or criminal offenses committed for the purpose of obtaining material benefit, it may not exceed 500,000 Euro.

According to paragraph 2 of Article 46 "in the judgment shall be set the time limit for payment of a fine. The deadline may not be shorter than fifteen (15) days or even longer than three (3) months, but in reasonable circumstances the court may allow a fine to be paid in installments for a period not exceeding two (2) years. The judgment must also specify when the installments are to be paid and it should note the possibility that installment payments will be revoked if the convicted person does not pay the installment on time.

The Kosovo Criminal Code foresees cases even when a convicted person does not want or cannot pay the fine. Paragraph 3 of Article 46 foresees "if the convicted person does not want nor cannot pay the fine, the court may replace the fine by a punishment of imprisonment. When the prison sentence is replaced by a fine, one day of imprisonment is calculated with twenty (20) Euro fines. The punishment of imprisonment may not exceed three (3) years".

According to paragraph 4 of this Article, "if the convicted person does not want or cannot pay the fine as a whole, the court shall replace the remaining of the fine by imprisonment as provided for in paragraph 3 of this Article. If the convicted person pays the remainder of the fine, the execution of the sentence is terminated".

Paragraph 5 of Article 46 of the Criminal Code of Kosovo provides that "if the convicted person does not want or cannot pay the fine, the court may instead of imposing the punishment of imprisonment replace the fine with an order for work of general benefit, with the consent of the convicted person. The order for general benefit work is calculated so that eight (8) hours of work of general benefit are calculated with a fine of twenty (20) Euros. The duration of the work of general benefits cannot exceed two hundred and forty (240) hours ". Paragraph 6 of this article provides that "a fine shall not be executed after the death of the convicted person."

As stated above for the main sentences foreseen under the Criminal Code of the Republic of Kosovo it can be concluded that the positive tendencies of criminal penalties in general and the main punishments in particular have evolved.

There is a tendency to approximate with European criminal law and European

punitive policy , although this is a long and difficult road that requires permanent reformation of the punitive politics in Kosovo based on scientific achievements and economical-social, cultural, educational conditions and other influencing factors and circumstances (Elezi, Hysi, 2006).

### **Conclusions**

The prevention and fighting of crime in an organized society is impossible without the application of criminal sanctions in general and the main punishments in particular. The criminal code as a legal act for regulating basic issues in the criminal field, namely the defining of criminal offenses, criminal responsibility and penal sanctions has a dominant role and importance in protecting not only social values but also individual values in society. In this plan, the Criminal Code of the Republic of Kosovo, which entered into force on 1 January 2013, has as well a special importance in terms of protecting social and individual goods, not only in Kosovo but also in the broader sense. From the study of the new Kosovo Criminal Code it is seen that the role and significance of the main punishments, as a type of criminal sanction, are great and irreplaceable. The providing of the punishment of life imprisonment, as an alternative punishment for imprisonment punishment, for specific categories of criminal offenses committed under aggravated circumstances or when they have resulted in grave consequences, is an innovation in the new Kosovo Criminal Code. This punishment is foreseen instead of a long-term imprisonment sentence of up to 40 years that was prior to the Kosovo CCK of the year 2004.

We think that the providing of the imprisonment sentence as the main punishment is in accordance with the socio-economic circumstances, the dynamics and types of some serious criminal offenses that continue to be committed in the Republic of Kosovo and the very high degree of danger of some perpetrators of these offenses.

We think that the other main punishment as well, such as punishment of imprisonment, as the most commonly imposed punishment, defining its minimum and maximum of up to 25 years of imprisonment for criminal offenses and conditions defined by the new Criminal Code, is in accordance with Kosovo's punitive policy and the need to achieve general and special preventive measures against perpetrators and potential persons to commit criminal offenses.

Fine sentence according to the new Criminal Code of Kosovo, as a property offense, has been designated for a considerable number of criminal offenses. We think this is positive and in accordance with the developments in contemporary European criminal law.

With the adequate provision of criminal sanctions in general and the main punishments in particular in the new Criminal Code of Kosovo, we think that the possibility of a more adequate individualization of the criminal offense for the prevention and fighting of crime in the Republic of Kosovo and beyond is created.

### **References**

- Bajgora, A. (2001). *Some Characteristics of Crime and punitive policy in Kosovo*, Pristina.  
Elezi, I. (2005). *Special Criminal Law*, Tirana.

Elezi, I. Hysi, V. (2006). Criminal Policy, Tirana.

Halili, R. (2000). Penology, Pristina.

Kambovski, V. (2007). Criminal Law, General Part.

Muçi, Sh. (2007). Criminal Law, General Part, Tirana.

Salihu, I. (2005). Criminal Law, General Part, Pristin

Code no. 04 / L-082, Criminal Code of the Republic of Kosovo.