

## **Retention of ownership, control or unauthorized possession of weapons: Punitive Policy in Kosovo's Basic Courts**

**Dr. Nuredin Lutfiu**

*UBT – University for Business and Technology*

### **Abstract**

The purpose of this research paper is to show what are the sentences most often imposed by the Basic Courts and their branches in Kosovo, when issuing a judgment for the criminal offense of Retention of ownership, control or unauthorized possession of weapons, according to Article 366 of the Criminal Code of the Republic of Kosovo (CC of the Republic of Kosovo), how harmonized are the punitive policies of these courts, if the imposition of sentences in judgments issued for this criminal offense are in accordance with the general rules for punishment (Article 69 CC of the Republic of Kosovo), in proportion to the gravity of the offense and the conduct and circumstances of the perpetrator, the purpose of the sentence (Article 38 of the CC of RK) and the purpose of unifying the punitive policies initiated by the Supreme Court.

In the focus of this research paper will be the analysis of the judgments of the Basic Courts and their branches in Kosovo, through a mixed research methodology. All judgments of these courts will be analyzed, the criminal legislation that regulates this criminal offense will be reviewed in order to present a general and realistic overview of all decisions taken in relation to the criminal offense of Retention of ownership, control or unauthorized possession of weapons. Particular emphasis will be placed on the divergences observed in the justice system in relation to the sentencing of these courts.

In order to properly address this topic, 791 criminal judgments of these courts were analyzed in relation to this offense which was provided by the official website of the Court. The review of the criminal legislation in force, the reports and instructions of the Supreme Court of Kosovo and other institutions regarding the imposition of a sentence for this criminal offense has been done.

To argue, if the sentences imposed are proportionate to the law, if they coincide with the gravity and nature of this criminal offense, if they seriously violate the legality and the principle of legal certainty.

**Keywords:** Basic courts, Retention of ownership, control or unauthorized possession of weapons, punitive policy, purpose of punishment.

### **Introduction**

In the case of sentencing, for the criminal offense; Retention of ownership, control or unauthorized possession of weapons, judges of the seven basic courts and their branches, in Kosovo, impose sentences in which there are significant shortcomings in the way they approach legality, application of the principles of criminal legislation, administration of justice and are not in function of the purpose of the sentence.

In Kosovo, the seven basic courts and their branches, for the criminal offense of Retention of ownership, control or unauthorized possession of weapons, under

Article 366 of the Criminal Code of the Republic of Kosovo, when issuing judgments, there are differences substantive and divergences, so that is, there is a marked lack of a coordinating punitive policy.

In the case of sentencing, a big difference is noticed, even in the decisions of the judges of the same court. From the analysis made of all judgments issued by these courts, it is noticed that the sentences imposed for this criminal offense are close to the minimum provided for this offense, are not in line with the general rules for sentencing (Article 69 of the CCK), not in proportion to the gravity of the offense, the retention of ownership, control or unauthorized possession of weapons, the conduct and circumstances of the perpetrator, the purpose of the sentence (Article 38 of the CC of the Republic of Kosovo), as well as the purpose of unifying punitive policies launched by the Supreme Court of Kosovo.

In the analyzed judgments, it turns out that for this criminal offense, effective prison sentences are almost an exception. They are pronounced only in rare cases. Probation and fines are the most common and are all close to the minimum sentence, provided by Article 366 of the Criminal Code, for this criminal offense.

Whereas, "Within the General Departments of the seven Basic Courts and their branches, in Kosovo, the criminal offense, Retention of ownership, control or unauthorized possession of weapons",<sup>1</sup> constitutes the largest number of cases included within the chapter of 'criminal offenses of weapons', the practice of punitive policies pursued by the courts are the object of criticism, not only of non-governmental organizations that monitor the justice system but also of the heads of the judicial and prosecutorial system, who built this practice constantly criticize.<sup>2</sup> Such an approach to punitive policies raises the need to investigate the causes that lead to such a practice.

The courts are required to establish a harmonized penal policy, where judges, when imposing a sentence for this criminal offense, apply the law as defined in the Criminal Code of the Republic of Kosovo and in the Guide to Punitive Policy, issued by the Supreme Court. Do not issue divergent judgments which create uncertainty, impair the clarity and enforceability of the law and do not affect the achievement of the purpose of punitive policies. This has been confirmed by the Constitutional Court of Kosovo, in a decision, which states that, "Decisions of regular courts, in legal matters that are completely the same, the inability and unwillingness to establish a consistent case law, violates the principle of legal certainty as one of the basic principles of the rule of law".<sup>3</sup>

Based on the above, in the decisions issued by the seven basic courts of Kosovo and their branches, punitive policies for the criminal offense: Unauthorized possession, control or possession of weapons, provided in Article 366 of the Criminal Code, are not harmonized between them, not in accordance with the general rules for sentencing (Article 69 of the CC of RK), the purpose of the sentence (Article 38 of the CC of RK), the sentences are disproportionate to law, do not correspond to the gravity and nature of this criminal offense and as such seriously violate the legality and the principle of legal certainty.

## **Retention of ownership, control or unauthorized possession of weapons**

In the criminal legislation, i.e. in the Criminal Code of the Republic of Kosovo, illegal possession of weapons is provided in Article 366 of this Code, such as Retention of ownership, control or unauthorized possession of weapons. This article states: "Whoever owns it, controls or possesses a weapon in violation of the applicable law regarding such weapons, is punished with a fine of up to seven thousand five hundred euros or with imprisonment of up to five years. While in the other paragraph it is stated that: "If the criminal offense from paragraph 1 of this article includes more than four weapons or more than four hundred bullets, the perpetrator shall be punished by imprisonment of two to ten years." Whereas: "The weapon owned, controlled or possessed in contradiction of this article is confiscated".<sup>4</sup>

The owner of the weapon is considered to be the person who is its owner, who also holds it, while when it comes to control it is about weapons that are not the property of the perpetrator, but of someone else, but the perpetrator has taken on the obligation to supervise them, so he does not possess them, but only controls them, (takes care of these weapons).<sup>5</sup>

The law states that: The commission of this criminal offense is committed by any person who owns controls or possesses a weapon without a valid permit for possession of weapons by the competent body defined by the law on weapons.<sup>6</sup>

Whereas, the object of protection of this criminal offense is: violation, disorder or endangerment of public order and tranquility, life, bodily integrity and property, which may come from the unauthorized use of these weapons.

The criminal offense is considered to have been committed and the person is criminally liable when the person intentionally holds a weapon and is aware that he is doing so in violation of the law.

As a serious form of this criminal offense, is a case involving more than four weapons or more than four hundred bullets, for which the perpetrator is sentenced to two to ten years in prison.

This criminal offense is punishable by a fine or imprisonment.

Illegal possession of weapons in Kosovo society is not a new phenomenon. The connection of Kosovars with weapons is early, it continued before the war in Kosovo, when they were the object of reprisals and violence of the then regime and this connection continues today. A large arsenal of illegal weapons is in the hands of citizens and is a source of increasing crime, which is reflected in all official statistics. The fact that weapons are illegal, unregistered, out of the control of state institutions, made the crimes committed through them, detecting and identifying the perpetrators of crimes becomes very difficult for the competent authority.

In the second half of December 2018, the Government of Kosovo, respectively the Ministry of Internal Affairs had started the campaign for the legalization of small arms and light weapons, which were illegally owned by citizens. For this reason, during this period, the application of the article of the Criminal Code was suspended, i.e. the criminal offense of Retention of ownership, control or unauthorized possession of weapons, the paragraph of which provided for a fine of up to 7,500 euros or

imprisonment 2 up to 10 years in prison for illegal possession of weapons.<sup>7</sup> This campaign, which lasted nine months, until September 2019 did not yield any desired results, as during this period, in the Ministry of Internal Affairs, only 1,800 requests for equipment for permits were made, a number which is considered to be too small compared to the real number of illegal weapons, which are in the hands of citizens, could have been subject to legalization.<sup>8</sup>

### **Lack of coordinating punitive policy of the courts**

As we have emphasized in our position, expressed above, in the judgments issued by the basic courts and their branches, for this criminal offense there is a variety of decisions and substantive divergence, i.e. there is a marked lack of a coordinating punitive policy.

According to Article 366 of the Criminal Code in force, the fine provided for this criminal offense is up to 7,500 euros, while the sentence of imprisonment is 5 years, while, as a qualified aggravating circumstance, for the perpetrators of this criminal offense is provided the inclusion of a quantity large arms, more than 4 guns and more than 400 bullets and imprisonment from 2 to 10 years.

The essential purpose of the judiciary, as one of the main powers, is to guarantee the rule of law, and consequently, "to ensure the proper application of the law impartially, fairly and effectively".<sup>9</sup>

Differences in punishment for the same offenses create uncertainty and undermine the universal and fundamental guarantee of the protection of human rights. In this paper, the treatment of these inequalities and differences is done in order for judges to be aware of the need for their decisions to be in accordance with the Constitution of Kosovo, in which case the obligations arising from the relationship with international instruments would be met.

The punitive policy pursued in the cases of this criminal offense is influencing that these sentences do not achieve the purpose of the sentence, defined by the Criminal Code of the Republic of Kosovo.

From the analysis made of all judgments that were the subject of study of this research paper, it results that for this criminal offense, fines in 55% (435) of cases range from 300 - 700 euros, penalties; Probation was 28% (221) of the cases and lasted for 6-18 months, while effective imprisonment was only 3% (24) of the cases.

The law instructs the courts that "When imposing a fine, take into account the financial situation of the perpetrator and especially take into account the amount of personal income, other income, property and obligations. The court does not impose a fine in the amount that is above the possibilities of the perpetrator".<sup>10</sup>

However, when sentencing, judges are satisfied only with quoting the law, without

<sup>7</sup> *Interesim i vogël i qytetarëve për legalizimin e armëve pa leje* <https://www.evropaelire.org/a/interesim-i-vogel-per-legalizim-te-armeve/29682771.html>.

<sup>8</sup> IKD, *Paligjshmëria e Gjykimittë Armëmbajtjes pa Leje* [https://kli-ks.org/wp-content/uploads/2020/05/PALIGJS\\_HME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf](https://kli-ks.org/wp-content/uploads/2020/05/PALIGJS_HME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf)

<sup>9</sup> Consultative Council of European Judges, *Grand Charter of Judges, Basic Principles, Rule of Law and Justice*, Strasbourg, 17 November 2010.

<sup>10</sup> Criminal Code of the Republic of Kosovo, Article 69, par.5.

justifying their decision on the sentence. According to the conviction of the presiding judge, the fine, taking into account the circumstances mentioned above (unproven but only listed), is a fair punishment, in accordance with the gravity of the criminal offense and the degree of responsibility of the defendants".<sup>11</sup> Continuing, "The presiding judge also concluded that with this sentence the purpose of the sentence can be achieved, from article 38 of the CC of RK, which consists in preventing the defendant from committing criminal offenses in the future and to rehabilitate him, to prevent other persons from committing criminal offenses and to express the social judgment for the criminal offense, to raise morale and to strengthen the obligation to respect the law."<sup>12</sup>

To stop this practice, the Supreme Court instruction will assist judges in addressing this issue by providing clearly defined methods for sentencing in specific cases and providing a means of drawing similar conclusions in similar circumstances. Consistency in approach requires having a unique and consistent approach to sentencing in all cases.

When sentencing, the court's discretion should be made in principle and based on common standards - General rules for sentencing which should be applied uniformly to the facts of each case.

The Code of Criminal Procedure states that "the court bases the judgment only on the facts and evidence processed at the main trial and that it is obliged to conscientiously assess this evidence one by one and in relation to the other evidence",<sup>13</sup> and on the basis of such assessment to conclude whether the concrete fact has been proved. This is not happening in court decisions, so we have big differences in sentences. In short, perpetrators of acts of equal importance committed in similar circumstances do not carry the same consequences. Such differences can, to a large extent, be encountered even within the same court. This shows that judicial policy in Kosovo is not harmonized and defendants are not being treated equally before the law.<sup>14</sup>

On the basis of this analysis, it results that the courts issue divergent judgments and are not rigorous in handling cases of illegal possession of weapons, so that the sentence imposed is not adequate to the risk posed by illegal weapons. The sentences imposed by the courts are within the limits of the minimum provided for this criminal offense and as such do not achieve the effect which is provided for the purpose of the sentence.

### **The sentences imposed are not in line with the purpose of the sentence**

Such a critique finds support in the already well-known fact that illegal weapons pose a direct threat to public life and safety and are linked to a number of other criminal offenses. Therefore, it is necessary for the law with all its force to strike the perpetrators of this criminal offense, in order to achieve the purpose of punishment as defined by our criminal legislation. Despite the fact that illegal possession of weapons, according to the legislator is considered a 'serious crime', such an approach

11 Basic Court in Gjilan, Case number: 2020: 164930, Date: 25.11.2020, Document number: 01298546.

12 Ibid.

13 Criminal Code of the Republic of Kosovo, Article 361.

14 Udhëzues për politikën ndëshkimore i Gjykatës Supreme.

is not finding support in practice, as courts during 2018 and 2019, in most cases have imposed fines and suspended sentences, and very rarely have they imposed effective imprisonment sentences, assessing gun ownership as a non-serious problem for our society.<sup>15</sup>

Protection from crime, the reaction of society in order to protect certain values against perpetrators, is done through punishments. When imposing a sentence, the court must take into account the goal which is desired to be achieved through this measure. In criminal legislation, the purpose of punishment is defined in Article 38 of the CC of Kosovo.

The sentences imposed for this criminal offense violate the legality and the principle of legal certainty.

The purposes of the sentence are: "to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate him; to prevent other persons from committing criminal offenses; compensate victims or the community for losses or damages caused by the offense; and to express the social judgment for the criminal offense, to raise the morale and to strengthen the obligation to respect the law".<sup>16</sup>

Paragraph 1 of Article 38 defines the purpose of individual prevention<sup>17</sup> of punishment which can be achieved by intimidating the perpetrator of the criminal offense, with the execution of the sentence. Based on the proponents of this theory, "this goal can be achieved by intimidating the perpetrator with the execution of the sentence."<sup>18</sup>

Other representatives, who support the view that the purpose of punishment is the rehabilitation of the perpetrator, "are of the opinion that the purpose of punishment is achieved by improving it, avoiding the negative qualities of the perpetrator," so it serves as a kind of therapy in so that in the future he does not commit criminal offenses again."<sup>19</sup>

Thus, the purpose of paragraph 1 of Article 38 is to prevent the commission of a criminal offense and to rehabilitate its perpetrator. Meanwhile, in paragraph 2 of the same article, the character of the general prevention of punishment is noticed. It states that "the usefulness of punishment does not consist in the measure taken against the criminal, but in the effects to be achieved in society."<sup>20</sup>

In this case, the court is required to take into account the purpose of general prevention, a traditional concept of punishment which emphasizes the preventive character of other individuals from committing criminal offenses, whether of a similar nature or in general.<sup>21</sup>

If we rely on the sentences imposed by the courts, it can be concluded that such sentences are not achieving the preventive effect as provided by the criminal legislation, "since from year to year, it is evident the seizure of a large number of illegal weapons by the Kosovo Police."<sup>22</sup>

15 Ibid.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 Quoted by Franjo Bačić, *Krivičnopravo*, Općidio, p. 405.

21 Udhëzues për politikën ndëshkimore i Gjykatës Supreme.

22 Paligjshmëria e Gjykimit të Armëmbajtjes pa Leje <https://kli-ks.org/wp-content/uploads/2020/05/PALIGJSHME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf>

Paragraph 3 of this article expresses the restorative character of the purpose of the sentence, the compensation of the victims.

Paragraph 4, for the purpose of punishment, expresses the social judgment for the criminal offense, raising morale and strengthening the obligation to respect the law. Here we note the character of general prevention, the purpose of punishment and the intention to strengthen the moral norms of society, as the strongest dam in crime prevention.<sup>23</sup>

The analysis we make of the judgments of the basic courts and their branches in Kosovo, and the comparison with the purpose of the sentence, provided by this article (Article 39 of the CCK), and shows that their punitive policy, when imposing the sentence is not in harmony with its purpose. From the analysis of all judgments, the courts do not justify their judgments and are satisfied only with quoting the purposes of the sentences, taking for granted the fact that the imposition of a certain sentence will achieve the stated purpose. Moreover, almost all judgments regarding this part are the same and create the impression of creating a practical template, which is used in terms of reasoning of judgments regarding the purpose, type and height of the sentence.

A typical example, which can be found in almost all the reasoning of the judgment is, "These are circumstances that show that even with a milder sentence the purpose of the sentence can be achieved and the defendant can rightly be expected to he will not commit any other criminal offense in the future".<sup>24</sup>

### **Sentencing is not in line with the general rules**

The sentences imposed for this criminal offense are very low and are close to the minimum limit provided. This is because the Basic Courts and their branches in Kosovo, when imposing a sentence for this criminal offense, do not impose it in proportion to the gravity of the offense and the conduct and circumstances of the perpetrator.<sup>25</sup>

The criminal legislation has defined how the sentence is measured and has shown the way the court should act "when imposing the sentence for a criminal offense".<sup>26</sup> When sentencing, the court "must take into account the minimum and maximum sentence provided for that criminal offense"<sup>27</sup> and then must take into account other principles set out in criminal law and mitigating and aggravating circumstances related to the particular criminal offense or punishment.<sup>28</sup>

When imposing a sentence, the court takes into account: the degree of criminal responsibility; motives for committing the offense; the intensity of endangering or damaging the protected value; the circumstances in which the offense was committed; previous conduct of the perpetrator; admission of guilt and personal circumstances

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23 Commentary on the CRIMINAL CODE OF THE REPUBLIC OF KOSOVO.

24 Basic Court in Gjilan, Case number: 2020: 164930, Date: 25.11.2020, Document number: 01298546.

25 Code of Criminal Procedure, article 69 par.2.

26 Ibid.

27 Criminal Code of the Republic of Kosovo, Article 69.

28 Ibid.

of the perpetrator and his conduct after the commission of the criminal offense.<sup>29</sup> The reasons which influence the imposition of a certain sentence are related to precisely these circumstances and the courts, in almost all the reviewed cases, base their decisions on mitigating factors, without making a sufficient reasoning as to how they have reached to the sentence imposed.

The courts, in all the reviewed cases, for the personal circumstances of the defendant who took them as mitigating, did not explain on what evidence they based such a conclusion,<sup>30</sup> but only imposed the minimum sentence provided for this criminal offense. The problem is exacerbated when unreasonable mitigating circumstances are used to justify a sentence below the minimum sentence provided for that offense. An example, that the courts, in such cases are not performing their duty properly, is the non-reasoning of the decision for certain cases.

In order to avoid such a practice and to apply a lawful punitive policy, the Supreme Court, as a reference point for sentencing, in the appendix of the Guide, has set the limits of punishment. And in our case, no sentence has complied with these limits set out in the appendix to the Guide.

In terms of limits, studies in this paper have shown that the determinations of judges are not in line with the guidelines and that the use of mitigating circumstances is much more frequent than aggravating ones and their comparison is not made, consequently as a result other limits and from this it has resulted that the punitive policy in the judicial system of the Republic of Kosovo, in cases of criminal offenses of weapons, is less than arbitrary.<sup>31</sup>

### **General rules for mitigation and aggravation of punishment**

The criminal legislation, i.e. the Criminal Code of the Republic of Kosovo has provided that "The perpetrator of a criminal offense is sentenced to the punishment provided for the committed criminal offense, while the milder or heavier sentence may be imposed only in accordance with the conditions provided by this Code."<sup>32</sup>

The circumstances which are set for the mitigation of the sentence are clear and quite general, in accordance with the concept of the purpose of the sentence and should be assessed for each circumstance, while the aggravating circumstances are specific and clearer than the mitigating ones.

Apparently, these circumstances are giving judges greater flexibility and are influencing the "construction of divergent punitive practices."<sup>33</sup> This is then contributing "to the mismatch of sentences, the reduction of legal certainty, and the increase in criticism of the judiciary."<sup>34</sup>

In order to create a clear picture of the case under investigation, the author has

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29 Ibid.

30 Ibid.

31 Paligjshmëria e Gjykimit të Armëmbajtjes pa Leje <https://kli-ks.org/wp-content/uploads/2020/05/PALIGJSHME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf>

32 Paligjshmëria e Gjykimit të Armëmbajtjes pa Leje. <https://kli-ks.org/wp-content/uploads/2020/05/PALIGJSHME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf>

33 Udhëzuesi për politika Ndëshkimore.

34 Ibid.

analyzed 791 cases of the seven basic courts and their branches, published on their official websites.

In these judgments, the most frequent sentence in 55% of cases, i.e. 475 was imposed a fine in the amount of € 200-700, probation in 28% of cases, respectively 261 sentences of 6-18 months, while sentences of effective imprisonment only 3% in 56 cases.

Regarding the amount of the sentence, for this criminal offense, it can be seen that the most frequent sentence is my fine, which is from € 150 the lowest to € 700 the highest. Regarding the level of probation, the lowest ones start from 6 months, while the highest ones are up to 18 months. The sentence of effective imprisonment, which is imposed in 3% of cases, is from 6 months, the lowest, up to 18 months the highest. The reasons that lead to such a policy, according to the Supreme Court of Kosovo, come as a result of erroneous application of Article 70 of the Criminal Code of Kosovo. From our analysis, it results that when applying mitigating circumstances, the courts do not use the same evaluation criteria and do not show how they were proven, as is the case with the justification of the circumstances of the commission of the criminal offense.

The most common mitigating circumstances in the analyzed cases were: admission of guilt, remorse, correct behavior of the defendant, promise not to repeat the crime, the fact that the defendant has children and is the sole breadwinner of the family, that the defendant has no criminal records, the age of the defendant, whether young or old.

In most cases, these mitigating circumstances were only mentioned as such, but their reasoning as to why the court considers them as such and how they were proved is not made. Of all the cases analyzed, as mitigating circumstances, the courts have emphasized the age of the defendant, respectively old or young, but in no case have they justified how this can serve as a mitigating circumstance. This shows that the courts do not have a clearly defined age factor and do not know how to apply it, in mitigating the sentence.

Also, as a mitigating circumstance, when they stated the difficult financial situation of the defendant, they did not prove it with documents that would support this fact. A concrete example (which is repeated in most of the reviewed judgments) is as follows: "Given the nature of this criminal case and the financial situation of the defendant, the presiding judge, based on Article 451 paragraph 1 of the CPC, has decided to oblige the defendant to pay only the court lump sum in the amount of 30 € (thirty euros), within 15 (fifteen) days, from the day when this judgment becomes final".<sup>35</sup>

Similar reasons, for the personal circumstances of the defendant, that they are the breadwinners of the family and for their health condition, are found in the judgments of these courts.

As an aggravating circumstance, for this criminal offense, the courts emphasize only the intensity of endangerment or damage to the protected value, emphasizing that the risk and damage caused is of small value and the court "did not find any particularly aggravating circumstances, therefore the accused sentence as in the enacting clause of this judgment, with the conviction that the sentence imposed corresponds to the degree of social danger of the criminal offense for which he was found guilty, as well

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<sup>35</sup> Basic Court in Gjilan, Case number: 2020: 164930, Date: 25.11.2020, Document number: 01298546.

as the degree of criminal responsibility of the accused, and that with the sentence imposed against him, the purpose of the punishment foreseen by article 38 of the CC of RK will be achieved".<sup>36</sup>

## Conclusion

From the analysis of all judgments of the basic courts and their branches, in Kosovo, for the criminal offense of Retention of ownership, control or unauthorized possession of weapons, from Article 366 of the CC of RK, it appears that their decisions differ and have substantive divergences and we do not have a coordinating punitive policy. The sentences imposed are close to the minimum provided by law. As such, they are not in accordance with the general rules for punishment (Article 69 CC of the Republic of Kosovo) and the purpose of the punishment provided in Article 38 CC of the Republic of Kosovo. The most frequent punishment, imposed by the courts, for this criminal offense is the fine, in 55% of cases and at the limit of the minimum provided by law. Probation, probation is imposed in 28% of cases and is within the prescribed minimum, while the sentence of effective imprisonment is provided only in 5% of cases.

From the analysis of these judgments, criminal legislation and case study related to this offense, it results that the sentences imposed by the basic courts and their branches are not in accordance with the general rules for sentencing. The sentences imposed are not in proportion to the gravity of the offense, the conduct of the perpetrator. They fail to fulfill the purpose of the sentence provided in the criminal legislation. Inequality before the law is manifested through inequality or differences in sentences and the results of the sentence are not proven and justified in terms of the manner and place of commission of the offense. Each court creates its own approach based on what is written in the law, and the result is a non-uniform approach and the creation of non-coordinating punitive policies.

This comes as a result of inadequate assessment of mitigating and aggravating circumstances, quantitative underestimation and weighing of each circumstance present, in accordance with the sentencing table presented in the appendix to the Penal Policy Guide.

## References

Books and other studies of institutions

I. Salihu 2009 E Drejta Penale Pjesa e Posaçme, Prishtinë.

Instituti i Kosovës për Drejtësi, Paligjshmëria e Gjykimit të Armëmbajtjes pa Leje

<https://kli-ks.org/wp-content/uploads/2020/05/PALIGJSHME%CC%88RIA-E-GJYKIMIT-TE%CC%88-ARME%CC%88MBAJTJES-PA-LEJE-IKD-18.05.2020.pdf>

Instituti i Kosovës për Drejtësi, Politikat e dënimeve në Kosovë

<https://kli-ks.org/wp-content/uploads/2019/11/Politika-ndeshkimore-ALB-FINAL-2.pdf>

Interesim i vogël i qytetarëve për legalizimin e armëve pa leje

<https://www.evropaelire.org/a/interesim-i-vogel-per-legalizim-te-armeve/29682771.html>

Supreme Court of the Republic of Kosovo 2018 Udhëzuesi për politika Ndëshkimore, Prishtinë

<sup>36</sup> Basic Court in Prishtina, Case number: 2020: 186167, Date: 16.02.2021, Document number: 01514083.

Criminal law of Kosovo

CODE No. 04 / L-123 OF CRIMINAL PROCEDURE.

CODE NO. 06 / L-074 CRIMINAL CODE OF THE REPUBLIC OF KOSOVO.

Commentary on the CRIMINAL CODE OF THE REPUBLIC OF KOSOVO.

LAW no. 05 / L -022 FOR WEAPONS.

Consultative Council of European Judges, Grand Charter of Judges, Basic Principles, Rule of Law and Justice, Strasbourg, 17 November 2010.

Court decisions

Basic Court in Gjilan, Case number: 2020: 164930, Date: 25.11.2020, Document number: 01298546.

Basic Court in Prishtina, Case number: 2020: 186167, Date: 16.02.2021, Document number: 01514083.

Judgment, Prishtina, 20 July 2012, no.Ref. : AGJ 285/12, Case no. KI 04/12, Applicant EsatKelmendi (par.26).