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The ***International Journal on Responsibility*** (IJR) is an international, peer-reviewed, interdisciplinary forum for theoretical, practical, and methodological explorations into the various and complex issues of responsibility, animated by the question, "Who or what is responsible to do what for whom?" IJR is a broad-ranging journal that incorporates insights from the full range of academic and practical inquiry from the humanities and the social and natural sciences related to addressing the diverse aspects of responsibility.

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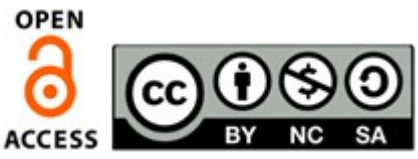

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The Editorial Board believes that, owing to the nature of this Special Issue, it is unnecessary and undesirable to heavily edit the papers to ensure absolute conformity with American Standard English.

Special Issue Editorial Board

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Introduction to the Special Issue on Responsibility in the Balkans: Justice, Media and Arts.

This *Special Issue* of the *International Journal on Responsibility* contributes to understanding the responsibilities of a state-building process in the context of Western Balkan countries from many points of view and from different social, political, and even pedagogical points of view. The goal of the *International Journal on Responsibility* is to examine and explore responsibility from multi-disciplinary perspectives. The papers in this *Special Issue* were selected from over 70 papers presented at the international ***Conference on State-Building of the Western Balkan Countries: Justice, Media and Arts*** hosted by the University of Haxhi Zeka, Pejë-Kosovo, November 2018. The papers were selected and peer-reviewed by a committee of experts who attended the conference. The selections in this *Special Issue* highlight some of the complex issues facing the transition from violence to politics and range from themes in international and criminal law to teaching music and art.

Considering the recent violent and bloody history of many Western Balkan countries, responsibility for conceptualizing, constructing, and maintaining the rule of law in those countries is one of the fundamental challenges of state-building process in this region—from the formal constitutional and national legal and normative aspects to implementation of laws, rules and norms. Due to the involvement and support of the western countries such rules have already addressed the responsibility of building the rule of law in theory, meaning that constitutional rules have already anticipated such principles and mechanisms to ensure the implementation of such norms and institutions. But deep questions remain.

Understanding and reforming criminal justice institutions and mechanisms in the aftermath of mass atrocity along with and the implementation of policies that promote the use of politics rather than violence in daily life proves to be one of the most challenging tasks in the state-building process of Western Balkan countries. Questions such as accountability range in different contexts. For example, do we use the same institutional mechanisms when dealing with war crimes and mass atrocities that we might use to deal with criminal offenses committed by females and for questions of responsibility when dealing with crimes committed by persons with mental disorders?

Western Balkan countries as developing countries are having difficulties in implementing the principle of the rule of law. For example, economic development is dependent on the functioning of the judicial mechanisms and other market surveillance mechanisms that are established in compliance with

European and international good practice. Competition and free-market mechanisms and legislation in sensitive sectors, from the macro sectors of banks and insurance companies to the micro sectors of gas stations and pharmacies, play an important role in this regard since these norms and laws have been damaged and need reconstitution. The economies in transition such as those in the Balkans are facing many challenges for preventing abusive competition and corruption.

The concept of responsibility in (re)building the rule of law is daunting and it covers not only justice and economic aspects, but also such aspects of daily life as education in music and the arts. Education in music and art itself proved to play an important role the in state-building process in terms of education of younger generations but also in terms of building a positive symbolic image of the newly established states through successful works of art at national and international levels. At first glance, it may appear that something such as teaching music is secondary to the challenges of state-building; however, it is precisely that all institutions of civil society are important and make important contributions to the state-building process. Therefore, the full range of state and civic institutions have a responsibility to contribute to the future of maintaining governance and society.

All the papers presented in this *Special Issue* contribute to understanding the contours of responsibility in the state-building processes from various dimensions — such as defining and implementing justice, economic development, and protection of competition as well as the role of artists in the process of building the state of law in the Western Balkan countries. While focusing on Kosovo as a recovering region and emerging state as a specific case study, this issue presents papers that represent both local and general issues of the building of state and civic principles, mechanisms, and institutions.

This *Special Issue* is an example of the goal of the *IJR* to include contributions from all forms of human inquiry and practice.

Terry Beitzel, Editor-in-Chief

Gjylbehare Murati, Prof.Ass.Dr. & Dean of Law Faculty, University of Haxhi Zeka, Pejë-Kosovo

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International Criminal Responsibility in Kosovo: Establishment of the International Criminal Court –de lege lata, de lege ferenda

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Abstract

The Special Court of Kosovo (Kosovo Specialist Chambers and Specialist Prosecutor's Office), with headquarters in The Hague, presents one of the biggest problems Kosovo has faced since the declaration of independence. This topic has been treated very little in scientific terms, while much is made of it in the media, which call it harmful to Kosovo, and even opine that it is a racist court since it will initially judge only KLA (Kosovo Liberation Army) members for alleged war crimes in Kosovo.

The Special Court of Kosovo is presented as a sui generis case in the practice of international courts, the creation of which was preceded by a host of conditions and circumstances such as the failure of the UNMIK and EULEX missions of law enforcement and especially the right and timely trial of war crimes, the failure of local institutions to act as a sovereign and to create an efficient justice system and in particular their failure to establish a local court for the adjudication of alleged war crimes. Carla Del Ponte's autobiographical book "The Hunt: Me and War Criminals" crowns this idea with the Report of the Parliamentary Assembly of Council of Europe (Doc 12462).

Key words: *Special Court, war crimes, sui generis, hybrid, unbiased justice.*

1. Introduction

The Special Court of Kosovo after great international pressure has been established by the Assembly of the Republic of Kosovo following the amendment of the Constitution of Kosovo (amendment No. 24) as well as the adoption of the Law on Specialist Chambers and the Specialist Prosecutor's Office, Law No. 05 / L-053 (Sheremeti, F., 2017), with the mandate to adjudicate the alleged crimes committed during the period from 1 January 1998 to 31 December 2000, related to the allegations presented in the Report of the Parliamentary Assembly of

Council of Europe Doc.12462 (Law No. 05 / L-053, 2015, art. 1 par. 2), known to us by the name of Dick Marty.

The Special Court of Kosovo based in The Hague consists of the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeals, the Specialist Chamber of the Supreme Court and the Specialist Chamber of the Constitutional Court (Law, No.05/L-053, 2015, art.24).

Within this paper, a chronological review of the conditions and circumstances that led to the creation of the Special Court as a *sui generis* case in the practice of international courts will be made. Realistically, Dick Marty's famous human trafficking report and Carla Del Ponte's book *The Hunt: Me and War Criminals* were not determinative for the establishment of this Court, which was also conditioned by the failures of UNMIK and EULEX's missions, of law enforcement, as well as the failure of Kosovo's institutions to form a local war crimes tribunal, as were formed in Croatia, Bosnia and Herzegovina, and Serbia.

In addition, it is about the scope of the Special Court *de lege lata* (as it is) in accordance with the Law on Kosovo Specialist Chambers and the Specialist Prosecutor's Office, as well as with the Rules of Procedure and Evidence. This section will discuss alleged crimes that are expected to be judged by this court, its temporal, territorial and personal jurisdiction, as well as its relationship with the courts in Kosovo (concurrent jurisdiction).

And at the end of this paper will be an authorial search for the Special Court of Kosovo *de lege ferenda* (as it should be). Within this section, the authors will express their opinion on how this Court could have been established and could have functioned within the territory of Kosovo. The authors have made efforts to explain how this Court could have been formed in Kosovo and why it should have had hybrid (mixed), international and local composition at all instances of the process.

2. Conditions and Circumstances that Preceded the Idea of Creating a Special Court of Kosovo

The war crimes trial is the most difficult task of the judiciary of the Kosovo because these crimes are extremely complicated to investigate. It is estimated that the results achieved with regard to the detection of war crimes against the civilian population, which were carried out in Kosovo during 1998-1999, remain small because a large part of those crimes remain unregistered. "This has been the case for many reasons, primarily related to the circumstances in which these crimes were committed, the family circumstances of the victims, especially in cases of rape, disappearance of evidence by the perpetrators, how these crimes were committed, and in addition to all these circumstances, the negligence of the competent organs, be it local or international, is likely to be added to the non-evidencing of war crimes as a circumstance" (Latifi, V., 2011, p.348-349).

In Kosovo after 1999, several cases of war crimes were investigated by international investigators of ICTY, UNMIK Civilian Police (CIVPOL) and recently by EULEX investigators (OSCE, 2010, p.8).

After the war and until 2014, prosecution and adjudication of war crimes in Kosovo was an exclusive competence of UNMIK and then of EULEX. Even in cases when the prosecution and the Kosovo courts have initiated criminal proceedings for war crimes, UNMIK and EULEX have had the right to take it from the locals and to judge the particular case (Salihu, I., 2016, p. 389).

It is estimated that these two Rule of Law Missions have failed in war crimes trials suspected to have occurred in Kosovo. Among the most common problems that have followed the work of these two missions, which may have affected their failure to properly prosecute war crimes, are delays in dealing with cases, including delays in the investigation phase, prosecution phase, delays in the scheduling of court hearings after the indictment has become final, the stage of the trial, the stage of the complaint, and the lack of witnesses or even defendants during the trial (OSCE, 2010, p.14-15).

An additional problem that has greatly influenced the lengthening of war crimes trials is the removal of international judges from Kosovo when considering a case, due to their engagement with short-term contracts (OSCE, 2010, p. 21). Removal of judges before the trial ends has resulted in the same court proceedings being prosecuted for years, because in our criminal procedure, when the composition of the trial panel changes, according to the rule of adjudication, the adjournment begins again (Sahiti, E., Murati, R. and Elshani, R., 2014, p.776).

To prosecute alleged war crimes in Kosovo, apart from UNMIK and EULEX, local institutions also failed. Responsible institutions in Kosovo have had to act as sovereigns and pay special attention to war crimes trials and for this, among other things, they should create a specialized chamber within the Kosovo judicial system to deal exclusively with only the trial of alleged war crimes, as was created by Croatia, Bosnia and Herzegovina, and Serbia.

Apart from the failures of UNMIK, EULEX and local institutions for the right and timely trial of war crimes in Kosovo, another factor that has led to the creation of the Special Court of Kosovo is the autobiographical book by Carla del Ponte *La caccia: Io e i criminali di guerra* published in April 2008, a book that had great echo. The element that raised most attention to this book was the suspicions that Del Ponte raised about the trafficking in human organs, which according to her were made by the leaders of the Kosovo Liberation Army (Mahmuti, B., 2015, p. 446, citing Del Ponte, C., 2008, p.457).

The former ICTY prosecutor in this book emphasizes, among other things, that "she got information from journalists way back in 1999 about 300 Serbs who were kidnapped in Kosovo and Metohia and then taken to Albania. At first the prisoners were placed in the camps in Kukes and Tropya in Albania's north, and later surgeons hired by Albanians removed their vitally important organs in field conditions. The Albanian village of Burel was also mentioned, where in a "yellow house" the prisoners were operated on after which their organs were delivered to

Italy, and further on, to major West European medical centres" (Guskova, E., 2008).

After the publication of this book, on April 15, 2008, the Russian Parliamentary Assembly member of the Council of Europe, Konstantin Kosachev, submitted a resolution proposal on "Inhumane treatment of people and illicit trafficking in human organs" (Parliamentary Assembly, Doc.11574, 2008). It was signed by 17 members of the Parliamentary Assembly of the Council of Europe (Mahmuti, B., p. 386-387), and the same aroused great interest, especially within the Committee on Legal Affairs and Human Rights of the Council of Europe. Dick Marty was therefore appointed to draft a report on this issue (Mahmuti, B., 2015, p. 457).

Dick Marty on December 12, 2010 submitted to the Parliamentary Assembly of the Council of Europe a draft report on " Inhumane treatment of people and illicit trafficking in human organs in Kosovo". This report on 16 December was unanimously adopted by the Parliamentary Assembly, and on 7 January 2011 it was handed over to the same in the form of a Resolution (Parliamentary Assembly, Doc.12462, 2011). On January 25, 2011, the Parliamentary Assembly approved it, thus giving the power of the resolution known as Resolution 1782 on "Investigation of allegations of inhuman treatment of persons and illicit trafficking of human organs in Kosovo" (Parliamentary Assembly, Res.1782, 2011).

Dick Marty's Report is seen as the main catalyst for international pressure on Kosovo to establish the Special Court and, therefore, in order to understand why it holds such an epithet, in the continuation of this paper, some of its paragraphs will be elaborated, limited to those which cite crimes allegedly committed as well as suspects for committing these crimes.

In this report, members of the KLA, with particular emphasis on the "Drenica Group", members of which are referred as members of a terrorist and criminal organization, are accused of murder, kidnapping, imprisonment and mistreatment of civilians of various communities living in Kosovo, as well as arms smuggling, drug trafficking, cigarettes and oil trafficking, prostitution, trafficking in human beings and human organs sale (Parliamentary Assembly Report, Doc.12462, 2010, par. 66,71 (footnote 29), 134,159 and 167).

Based on the Resolution 1782 on "Investigation of allegations of inhuman treatment of persons and illicit trafficking of human organs in Kosovo", in September 2011, the EU set up a Special Investigative Task Force which had a duty to investigate whether it had occurred indeed the crimes presented in Dick Marty's Report (Salihu, I., 2016, p.390).

After three years of investigations, chief investigative officer of the Special Investigative Task Force, Clint Williamson, at a conference in Brussels on July 29, 2014, announced the results of the investigation stating that TFHS found convincing evidence against several former senior officials of the KLA and that the indictment against these individuals for serious violations of international humanitarian law would be very reasonable and that they were ready to file

indictments as soon as an appropriate judicial mechanism was established that would secure a fully independent, unbiased and safe trial (Mahmuti, B., 2015, p.500).

3. Special Court of Kosovo - de lege lata

In April 2014, there was a paper exchange between the former President of the Republic of Kosovo, Atifete Jahjaga, and the High Representative for Foreign Affairs and Security, Catherine Ashton. A month later the agreement was ratified by the Kosovo Assembly (Kosovo Law on Ratification of "exchange of letters", 2014). Meaning, this exchange of letters was treated as an international agreement, which among other things included the obligation of the Republic of Kosovo to establish Specialist Chambers and the Specialist Prosecutor's Office within the Kosovo Judicial System (Sheremeti.F., 2017).

In order to enable the establishment of these specialist chambers, in August 2015 Amendment No. 24 was added to the Constitution of Kosovo, by the Assembly of Kosovo, and then Law No. 05 / L-053 was approved, which thereby created and functions in these specialist chambers (Salihu. I., 2016, pp.391-392), and which is the only element that perhaps gives a little local character to this Court.

Nearly a year after the adoption of the Law on Specialist Chambers and the Specialist Prosecutor's Office, respectively in February 2016, Kosovo and the Netherlands signed the host country agreement. With this agreement it was decided that the headquarters of the Specialist Chambers and the Specialist Prosecutor's Office should be in The Hague (Agreement between the Kingdom of the Netherlands and the Republic of Kosovo, 2016), but according to Article 3 paragraph 6 of the Law No. 05 / L-053 the headquarters of this Court will be in Kosovo as well and can also be in another country in exceptional cases and in the interests of justice.

The Special Court of Kosovo based on Article 24 of Law No. 05 / L-053 consists of the Chambers (including the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeals and the Specialist Chamber of the Supreme Court as well as that of the Constitutional Court), the Administrative Office and the Specialist Prosecutor's Office. It follows that the Specialist Chambers are an integral part of any level of the court system in Kosovo, meaning that the Basic Court, the Court of Appeal and the Supreme Court each individually will have a special room which will only deal with the war crimes trial. Within this court will also function a specialist chamber of the Constitutional Court, which will only deal with constitutional referrals regarding the Specialist Chambers and the Specialist Prosecutor's Office (Law No.05/L-53, article 3).

According to article 25 of Law No.05/L-053, for the processing of cases, the Chambers will have this composition of judges: Individual judges who, as necessary, perform the functions of pre-trial judge, a three-judge panel and a reserve judge at the Basic Court Chamber, while the Appeals Chamber Court, The

Supreme Court and the Constitutional Court, each separately, shall consist of panels of three judges.

All Special Court judges, prosecutors, investigators (police) and other accompanying and administrative staff will be international. The only Albanian element there will be the accused, who if proven to be guilty of imprisonment will suffer in one of the receiving states (Hajdari, A., 2017, p.15).

According to Article 28 of Law No. 05 / L-053, the evaluation and selection of candidates for the appointment of judges for the international register as well as the recommendation for the appointment of the President and Vice-President of the Specialist Chambers is made by an independent selection panel consisting of three members, all international. Once this panel has prepared the list of names of the most appropriate candidates, it presents this list to the Appointing Authority (Head of EU Common Security and Defence Policy Mission) in the form of a recommendation for the appointment of judges to the International Judges Register. Based on the list received, the Appointing Authority appoints people from the list as Special Court judges. According to the recommendation of the selection panel, the Appointing Authority also appoints the President and Vice-President of the Specialist Chambers from the ranks of the Special Chamber's judges (Law No.05/L-053, art. 32 par.1).

In the Special Court there is also the Administrative Office which is responsible for the administration and service of the Specialist Chambers. Within this office there are also the Office for Victims' Participation, the Office of Defense, the Office for Protection and Support of Witnesses, the Office of the Ombudsman, as well as the Court officials who have the authority to exercise the competences given to the Kosovo Police under the laws of Kosovo and always in accordance with the Law of the Special Court (Law No.05/L-053, article 34).

Based on article 3 of Law No. 05 / L-053, the Special Court of Kosovo in exercising its responsibilities shall be based on the Constitution of Kosovo, the Law on Specialist Chambers and the Specialist Prosecutor's Office, which, as lex specialis (as a special law), excludes the application of all the general laws which regulate this area, based on the general principle lex specialis derogat legi generali (Salihu, I., 2008, p.361), will be judged by this Court on the basis of other provisions of the laws of Kosovo (including the Criminal Law of the Socialist Autonomous Province of Kosovo 1977, the Criminal Law of the former Yugoslavia and UNMIK regulations, which regulated issues in the criminal field and which were in force at the time of the commission of suspected criminal offenses), on the basis of customary international law the provisions of which, as defined in Article 19, paragraph 2 of the Kosovo Constitution, have the supremacy in relation to local laws and international human rights law that define the standards of criminal justice and which include the 8 International Conventions to which the Constitution of Kosovo Article 22 gave priority in case of conflict with local laws (Salihu, I., 2016, p. 399).

Chapter III of the Law on Specialist Chambers and the Specialist Prosecutor's Office defines the subject jurisdiction, territorial, time, personal and simultaneous jurisdiction of the Special Court of Kosovo.

The Special Court of Kosovo has wide scope jurisdiction that extends to several types of criminal offenses. In accordance with Article 6 of Law No. 05 / L-053, the Special Court of Kosovo has the authority to adjudicate the offenses specified in the Dick Marty Report, crimes against humanity, war crimes and other crimes envisaged by Kosovo's laws applicable at the time when it is suspected that these crimes were committed which are related to the Report of the Parliamentary Assembly of the Council of Europe and the offenses provided for in chapter XXXII articles 384-386, 388, 390-407, chapter XXXIII articles 409-411, 415, 417, 419, 421, and Chapter XXXIV, Articles 423-424 of the Criminal Code of Kosovo 2012, when they relate to official procedures and their officials.

The Special Court of Kosovo has jurisdiction over these crimes against humanity: murder, extinction, slavery, expulsion, imprisonment or other serious restrictions of physical freedom, torture, sexual assault, slavery, forced prostitution, violent pregnancy and any other form of sexual, racial, ethnic or religious violence, forced disappearance of persons and other non-human actions (Law No.05/L-053, article 13).

Article 14 of Law No. 05 / L-053, counts all war crimes that will be tried by this Court that have occurred at the time of its jurisdiction. Under this war crimes article, we mean: serious violations of the Geneva Conventions of 12 August 1949, other serious violations of the laws and customs applicable to international armed conflicts, in the event of an armed conflict, which is not of international character. With war crimes under this article, we also understand the serious violations of Article 3, common to the four Geneva Conventions of 12 August 1949, and other serious violations of the laws and customs applicable to armed conflicts that are not of an international character, which are presented in a taxable manner in this article.

In accordance with article 7 of Law No. 05 / L-053 the time jurisdiction (*ratione temporis*) of the Special Court of Kosovo extends to criminal offenses falling under its jurisdiction that occurred between January 1, 1998 and December 31, 2000. Based on how the events in Kosovo occurred, it can be noticed that the jurisdiction of this Court extends to three periods of time: the pre-war, war and post-war periods.

This court has territorial jurisdiction over criminal offenses falling within its subject jurisdiction that have started or have been committed in Kosovo (Law No.05/L-053, article 8). Such a way of determining the territorial jurisdiction of this Court has created opportunities for different interpretations. “Legally, this means that the territorial jurisdiction of the Special Court does not extend only to the territory of Kosovo, because with the word "initiated" can also include crimes that may have started in Kosovo and may have continued or even ended in another state” (Sheremeti, F., 2017).

In some cases, the quality of the perpetrator of a criminal offense is also important for determining competence, in such situations it is about personal jurisdiction (ratione personae) (Sahiti, E. and Murati, R., 2013, p.147). Based on Article 9 of Law No. 05 / L-053, the Special Court "has jurisdiction over persons of citizenship of Kosovo / FYR or people who have committed crimes within its jurisdiction against persons with Kosovar / FYR citizenship wherever those crimes are committed". Based on this section of the Law on Specialist Chambers and the Specialist Prosecutor's Office it results that the Special Court has jurisdiction only on natural persons who during the period from 1 January 1998 to 31 December 2000 were citizens of the former Yugoslav Republic or the current Kosovo (Miftari, F., 2016).

It is precisely the personal jurisdiction of this court which at first glance makes it mono-ethnic, because one could infer that this court will initially judge only persons with ethnic Albanian origin who are suspected of having committed crimes falling into its subject matter competence. However, Article 9 of this Law creates space for different interpretations creating the possibility for the Special Court to charge and try also other people suspected of committing crimes which are included in its subject matter and territorial competence, regardless of which ethnicity they belong to, being satisfied by the fact that in the period covered by its time jurisdiction, they have had Yugoslav nationality or have committed crimes against people of Yugoslav nationality or current Kosovo citizenship.

The Special Court of Kosovo within its jurisdiction has superiority over all courts of Kosovo, the supremacy which gives this Court and the Special Prosecutor the right to order the transfer of proceedings in their jurisdiction from all courts (except the Constitutional Court) and Kosovo Prosecutions at any stage of the investigation and trial.

Based on article 10 of Law No.05/L-053, the state prosecutor or the court are obliged to act upon such order and to send to the Specialist Chambers all documents pertaining to the subject matter, because the order of this Court for transfer is final and binding.

4. The Special Court of Kosovo de lege ferenda

The second section of this paper analysed the jurisdiction of the Special Court, *de lege lata* in accordance with the provisions of the Specialist Chambers and the Specialist Prosecutor's Office.

While analysing each of the provisions of this law separately, especially those that regulate the subject matter, territorial and personal jurisdiction of the Special Court, it has been noted that the content of these provisions, in a few cases, contradicts the one proclaiming the highest emphasis on human rights whether domestic or international.

Article 7 of the Universal Declaration of Human Rights states: "All are equal before the law ...". The same is guaranteed by the Constitution of the

Republic of Kosovo, in its Article 24, which states that "all are equal before the law, no one can be discriminated on the grounds of race, colour, gender, language, religion, national or social origin ...". The Law on the Special Court in its Article 9 is incompatible with these two acts. As stated in the second section of this paper, the personal jurisdiction of the Special Court is defined and thus: "... under the applicable criminal laws that were in effect between January 1, 1998 and 31 December 2000, Specialist Chambers have jurisdiction over Kosovar / FYR citizens or people committing crimes under their jurisdiction against persons with Kosovar / FYR citizens wherever those crimes have been committed". This article formulated in this way makes this court at first sight mono-ethnic, because based on this article one could infer that within its subject matter and territorial jurisdiction this court will judge exclusively Albanians, namely members of the Kosovo Liberation Army. It is this article which, among other things, has encouraged us to take an authorial view regarding the scope and competences of the Special Court of Kosovo *de lege ferenda* (as it should be).

If UNMIK and EULEX were to perform their duties properly, paying particular attention to war crimes trials that occurred in Kosovo, if local institutions and other responsible mechanisms were to behave as sovereign and to assume their responsibilities, without waiting for all the most important jobs for our country to be done by internationals and following the example of Serbia, Croatia and Bosnia and Herzegovina would create a separate court which acting within the territory of Kosovo would only deal with the war crimes trial and judge all those suspected of committing those crimes without distinction of ethnic belonging, if Carla Del Ponte's claims in her book were to be treated seriously and especially those of Dick Marty presented in the report which is known to us by his name, if the leaders of institutions in Kosovo would respond to these allegations with facts and evidence proving the contrary, this Special Court of Kosovo in a foreign land maybe would not be created at all. One was not created nor required to be created for Serbia, Croatia or Bosnia and Herzegovina .

As a result of these and many other failures, the Special Court of Kosovo after great international pressure was founded and cannot be undone, but this Court would probably be acceptable, like anything else that came from the internationals, and it would not encourage much debate and dissatisfaction, if it were to be established to operate within the territory of Kosovo and to judge *all* those suspected of having committed crimes falling under its jurisdiction subject, regardless of their national affiliation.

Following this authorial survey on the scope and competences of the Special Court we will try to formulate some of the articles of the Law on Specialist Chambers and the Specialist Prosecutor's Office as they should be.

Based on the time of committing the offense (*tempore criminis*) and the place of committing the offense (*locus delicti commissi*), the article through which the personal jurisdiction of the Special Court of Kosovo would be assigned would have to be formulated in this way: Specialist Chambers have jurisdiction over all persons suspected of having committed any of the crimes within their jurisdiction

during the period 1 January 1998 and 31 December 2000, which have started or have been committed in Kosovo.

Based on the time and place of commission of criminal offense, the Special Court of Kosovo should judge all those people suspected of having committed crimes falling within its jurisdiction, including Serbs, whose crimes (as alleged even by Dick Marty) are well-known and documented (Marty's Report, par. 30).

Since the Special Court is said to be a Kosovo court, then judges, prosecutors, administration offices and other staff should also be from Kosovo, but since this Court is founded with international initiative and under great international pressure, its composition should have been mixed in all instances of the process and in this way: Specialist Chamber should have consisted of local and international judges. Local judges would be appointed by the President of the Republic of Kosovo with the proposal of the Kosovo Judicial Council, while International Judges would be selected according to the procedures foreseen by the Law No. 05 / L-053, which are described in the second section of this paper.

Regarding the composition of the chambers, each body and panel should consist of Kosovo and international judges, in this way the body/ panel in the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeal and that of the Specialist Chamber of the Supreme Court as well as that of the Constitutional Court would consist of three judges, one of whom should be local and two international. The Specialist Prosecutor's Office, the Administrator's Office and within it the Office for the Support and Protection of Witnesses, the Office for the Protection of Victims and the Ombudsman's Office, should all have had such hybrid composition.

Perhaps only by having such a composition, even though it was founded after great international pressure, even though it is headquartered in a foreign country, even though convicted persons from it will be serving a sentence in a third country, even though it will act on the basis of the Law on Specialist Chambers and Specialist Prosecutor's Office as a *lex specialis*, it could be called a Kosovo court and would be acceptable and would not encourage debate and dissatisfaction.

5. Conclusion

Some conclusions have been drawn during the process of working on this paper by studying and analysing existing scientific literature, the Law on Specialist Chambers and Specialist Prosecutor's Office, the Rules of Procedure and Evidence, as well as other domestic and international laws.

Analysing the conditions and circumstances that preceded the idea for the establishment of the Kosovo Special Court, it was concluded that failures by UNMIK and EULEX to fulfil their missions in the field of the rule of law, and particularly failures of local institutions to act as sovereign and to create a local

war crimes chamber or court, were key factors that created room for the establishment of this court. Carla Del Ponte's autobiographical book with co-author Chuck Sudetic, "*The Hunt: Me and War Criminals*," was also added to these failures. The idea of the establishment of this Court was crowned with Dick Marty's Report "*Inhumane treatment of persons and illicit trafficking of human organs in Kosovo*" Doc.12462, which rightly holds the epithet of being the main catalyst for the creation of this Court. From our study of the Law on Specialist Chambers and Specialist Prosecutor's Office, with particular emphasis on the articles that determine the subject matter, territorial, time, personal and simultaneous jurisdiction of this court, it is concluded that the Special Court as such is only formally of Kosovo, because it is completely independent of Kosovo's institutions and is actually presented as a parallel system to the local courts.

Analysing its subject jurisdiction, it has turned out that the Special Court of Kosovo, as a local court in a foreign territory, will pay special attention to the trial of crimes mentioned in Marty's Report, including the suspicion of trafficking with human organs.

During the elaboration of Article 9 of Law No. 05 / L-053, which defines the personal jurisdiction of the Special Court of Kosovo, it was considered that this Court at first sight appears to be mono-ethnic because it initially appears to share justice in a selective manner by judging only one warring party. But by analysing the content of this article it is concluded that from the Special Court all those suspected of having committed crimes within its jurisdiction and not just KLA members can be judged.

In analysing the provisions of Law No. 05-L / 053 it is concluded that in a few cases this law conflicts with the highest domestic and international human rights acts.

Given the fact that this court as a local one will punish the persons responsible for the offenses falling within its subject matter competence and will send them to serve the sentence of imprisonment in a foreign state expressing readiness for it, as well as the fact that the conditions of imprisonment are regulated by the law of the State executing the imprisonment sentence under the supervision of the Specialist Chambers, it is concluded that convicts from the Special Court of Kosovo in host countries will be treated as foreigners, even though they have been convicted by a local court.

The imprisonment of convicts by this Court in a third country may lead to isolation, discrimination and other difficulties as to the adaptation of convicted persons from this Court to the penitentiary institutions, such as difficulties in providing health services or even food and similar services, all because of language. This conclusion is based on the fact that with the European Prison Rules (Council of Europe: Committee of Ministers, Rec (2006) 2, 2006) which should in principle be implemented in the receiving states of convicts, no specific rules on the provision of health services or other services to foreign convicts are envisaged. So with these rules it is not foreseen the possibility that the health

service or other foreign convicted services be offered in the language that he understands.

In the last section of this paper it is concluded that the Special Court of Kosovo, even though it was created after great international pressure, to be called Kosovo's, and to be perhaps acceptable, should at least have hybrid (mixed) international and local content.

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Responsibility in Building the Rule of Law: Kosovo Challenges

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Abstract

The principle of the rule of law is one of the most important and essential principles for any state and for democratic society. Its fullest realization in everyday life is the best guarantee for the development of democracy and the recognition and enforcement of citizens' fundamental rights and freedoms. To this end, the general principles of the rule of law today occupy a special place and are fixed explicitly in contemporary constitutions and democratic legislation. The well-known countries of Western democracies have long established a rich and valuable legacy in this regard.

When exploring the contours and details about establishing the rule of law in the Republic of Kosovo, we must bear in mind that Kosovo has gone through a sad and bloody history until its declaration as a state in 2008. Kosovo independence on 17 February 2008, and its international recognition, poses the immediate need to build a rule of law and democratic state with European values. The Kosovo Constitution reifies concrete efforts and steps to sanction the general principles of the rule of law, which are the core of democracy. This fact is best illustrated in the preamble and constitutional provisions where "the independence of the state and the entirety of its territory, the freedoms and human rights, the rights of communities and their members, social justice, constitutional order, pluralism, religious coexistence, as well as the citizenship state element instead of the national one, are the basis of this state, which has the duty to respect and protect them." In building the rule of law, the Republic of Kosovo has been exploring the experience of other democratic countries, and in particular, the European Union member states. This article aims to introduce the rule of law in the context of Kosovo by identifying the achievements, responsibilities and challenges that the Republic of Kosovo faces in this regard. Through the breakdown of the definition of the rule of law in the context of the existing constitutional-legal system of the Republic of Kosovo, it turns out that the Republic of Kosovo, despite satisfactory achievements, should be engaged more and more strongly in building a functioning, democratic and legal system by addressing also the remaining economic and social challenges as well as additional legislative challenges in term of quality of law.

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Key words: *rule of law, principles of rule of law, constitution, constitutionality.*

1. Introduction

The concept of the rule of law is quite complex and multidimensional. It includes in itself the set of legal-political principles that ensure the rule of law in society. Michal Pietrzak recognized the following principles as pillars of the rule of law: constitutionalism, nation sovereignty, separation of powers, independence of judges, self-government of local authorities, constitutional nature of the guarantees of citizens' rights and freedoms, the responsibility of authorities for any action and in particular for violation of the law (Kruk, 2006, p. 75). The rule of law implies the superiority of the law over citizens and the state itself, as its authors.

The term and concept of the "rule of law" was compiled by German law theorists Laband and Jelinek (Gozzi, 2007, p.247). Albert Dicey had a great deal of influence on the definition of the term "rule of law," where according to him, the term included at least three concepts: 1) supremacy of the law; 2) equality of all persons before the law; and 3) the principles of creating and protecting the rights of individuals (Dicey, 1885 & Loughlin, 2018). But the concept of the rule of law, with the development of the state itself, has later evolved and gained wider content. In legal and political theory, the terms "the rule of law principle," "state of law" and recently "rule of law" are all used (Krygier, 2015). In the broad sense, the rule of law means the establishment of all the bodies of power, as well as anyone bearing public authorizations and of every individual under the constitution and law, respectively subordination to the legal order (Hughes, 2015). In contemporary jurisprudence, the term "rule of law" in the most general sense, means the state in which the functioning and manifestation of state power has legal forms, which define the boundaries of the action of the state power (Kurteshi, 2015., p.105). The principle of rule of law in contemporary democratic countries is of multiple importance. It gives the understanding of the system in which state power, in particular the executive and administrative power, is limited to its own legal norms (constitution and law), in which way the non-violation of fundamental human and citizen freedoms and rights is guaranteed. The purpose of the rule of law consists in affirming and ensuring human legal security, the equality of all before the law, and the effective protection of all their freedoms and rights through independent and impartial courts (Hughes, 2015).

What is evident is that many concepts of the rule of law place particular emphasis on legal security, predictability and resolution on determining the norms held in society, and on the dependable character of their administration by the state (Jeremy, 2008). According to Kruk (2006, p. 75), the rule of law implies building a foundation for the future constitution and the political system. When it comes to constitutionalism in the context of Kosovo, as it will be elaborated below in this paper, we can freely say that it is inspired by the doctrine and

practice of democratic states, especially from the German concept of the rule of law "Rechtsstaat", due to the fact that the Constitution of the Republic of Kosovo has been completely drafted in cooperation with representatives of Western countries present in the country.

The purpose of the paper is to analyse the content of the rule of law definition in the context of Kosovo by analysing the provisions of the Constitution of the Republic of Kosovo and analysing very broadly the practical application of the "rule of law". This analysis provides a general presentation of how much this principle is incorporated in the Kosovo legal order, how much it reflects on its constitution, and how much this principle is being implemented in Kosovo. It turns out that this principle is theoretically well incorporated into the text of the Constitution of the Republic of Kosovo and its implementation in practice has been implemented in some respects but there are still challenges that follow its implementation.

2. Methodology

To validate the hypothesis raised in this paper and to answer the research questions, the methods used are qualitative and descriptive. Such methods enabled the use of various scientific and professional sources, including university textbooks, papers and scientific articles, analysis of constitutional and legislative acts, and in particular the constitutional system of the Republic of Kosovo.

3. Rule of Law or Rule of Law in the Context of Kosovo

3.1. Historical aspect of the autonomy of Kosovo

In order to understand problems of Kosovo regarding the implementation of the rule of law principle, one must first clarify some historical circumstances and try to analyse the inclusion of this principle in the legislation of the Republic of Kosovo and its observance at least throughout the last ten years after the declaration of independence.

Political history is only one side of the history of the Albanian people (Hadri, 199., p.60). Kosovo, for centuries, represented an autonomous political, legal and territorial collectivity that was distinguished by a majority ethnic Albanian population. Throughout history, Kosovo has been an autonomous territorial entity (Rrahimi, 1969, p.12). During the Ottoman Empire, Albania had four vilayets (provinces) where Vilayet of Kosovo was one of them stretching over a surface of 32,900 km^2 (Pirraku, 2000., p.135). Thus, Kosovo, as a separate administrative-legal unit, was constituted by Turkish regulation of 1868, within the Ottoman Empire (Rrahimi, 1969, p.12). Kosovo exercised this legal-administrative status until the beginning of the Balkan Wars 1912-1913. Albanians (of Kosovo) expected the beginning of the First Balkan War as the

ultimate opportunity to get liberated and gain independence from the Ottoman Empire. However, as a result of the Balkan wars, Kosovo was occupied by Serbia, namely the Serbo-Croatian-Slovenian Kingdom. During the Second World War the autonomy of Kosovo was emphasized by the fact that Albanians were treated as a nation, and Kosovo ended the war as a nation and as a unit organized in military and legal terms (Bujan Conference Resolution, 1944). The constitutional-juridical position of Kosovo in the period of the former Yugoslavia is defined as an autonomous political-territorial unit and constitutive element of federalism (SFRY Constitution, 1974). According to the Kosovo Constitution of 1974, Kosovo was defined as an autonomous political-territorial unit and as a constitutive element of Yugoslav federalism. According to the Constitution, Kosovo had its own territorial boundaries, which had the capacity of state borders (the Constitution of the SAP of Kosovo of 1974; Youth for Human Rights, 2017).

The Balkan Revolutions launched in 1989 aimed at overthrowing the half-century communist practice (Castellan, 1991, p.496) as a Cold War legacy. Western Europeans did not clearly perceive the Balkan conflict and at this point they joined the Balkan protagonists, who in turn did not define Europe well (Rupnik, 2004., p. 17). The Yugoslav Federation disintegration started the destruction of the constitutional concept of the position of Kosovo in 1990, with secession and international recognition of federal units as well as the beginning of the bloody war on the territory of former Yugoslavia, characterized by the disintegration of the Yugoslav state and the creation of new sovereign and independent states.

The period 1990-1999 for Kosovo is known as the period of classical occupation of Kosovo by Serbia. The war of the Albanian people of Kosovo expressed through the KLA strongly proved the determination for freedom and independence of Kosovo. And, precisely on 24 March 1999, NATO started air strikes over Serbia, which lasted 78 days and ended with the capitulation of Serbia and the freedom of Kosovo (Campbell, 2000., pp. 159-181). The UN Security Council, on 10 June 1999, adopted Resolution 1244, with which it formally placed Kosovo under United Nations administration (Resolution 1244, 1999). This international administration was of an interim character and aimed at creating decent democratic conditions for resolution of the final status of Kosovo (Resolution 1244, 1999). On 17 February 2008, the Kosovo Assembly declared Kosovo an independent state (Declaration of Independence of Kosovo, 2008) and on 9 April 2008, solemnly approved the Constitution. The 2008 Constitution, which should be evaluated in full compliance with European democratic standards, opened the road of building a democratic society and a rule of law in the Republic of Kosovo. For this purpose, the following section will analyse the inclusion of the rule of law or the rule of law principle into the provisions of the 2008 Constitution of Kosovo.

3.2. Constitution of the Republic of Kosovo

The content of the rule of law definition is decisive for the content of a constitution as a road for building the rule of law in a country. This section of the paper will present the content of the rule of law principle in the context of Kosovo based on the content of the Constitution of the Republic of Kosovo. From a straightforward point of view of the text of the Constitution of the Republic of Kosovo, it is clear that this constitution complies with the demands of contemporary science of constitutional law, despite the special remarks that may be made to any of its formulations.

Exploring the experience of other parliamentary countries also applies to a key problem, such as the relationship between different powers, from which the form of governance is defined, in our case the republic type. The parliamentary character of the Republic of Kosovo is explicitly provided in Article 1, as well as in Article 4 of the Constitution, but rather than the formal definition of the type of republic, it is important to have a clear and fair definition of the division of powers, their relationship, and the competencies that these powers have. From this rapport that the Constitution sets out, the parliamentary character of the Republic of Kosovo is also unequivocal, as the Government and the Parliament are bound by a trust relationship, while the President is a constitutional body separated from the Government. According to the Constitution of Kosovo *"The President is the head of state and represents the unity of the people of the Republic of Kosovo"* (Constitution of the Republic of Kosovo, Article 83). The constitution has democratically solved the issue of the independence of the judiciary power. According to Article 4 of the Constitution *"Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution."* Judicial power is unique, independent, fair and impartial and provides equal access to the courts. Guaranteeing fundamental human rights and freedoms with constitutional norms are a special guarantee for building the rule of law in the Republic of Kosovo. In the Constitution, fundamental human rights and freedoms are defined in Chapter II, which deals with the general principles of these human rights and freedoms. A separate chapter, namely Chapter III, is devoted to the rights of communities and their members. According to the Constitution, residents belonging to a national or ethnic, linguistic or religious group, traditionally present in the Republic of Kosovo, will have special rights as set forth in the Constitution. The establishment and functioning of the Constitutional Court is an important and positive factor in building a sustainable and functional democracy, and in particular towards building the rule of law in the Republic of Kosovo. The Constitutional Court as a guarantee for the consolidation of the democratic state and rule of law, is a mechanism for the protection of the Constitution and constitutionality and being a constitutional category, it "guarantees respect for the Constitution and makes its final interpretation" (Constitution of the Republic of Kosovo, Article 113).

3.3. Rule of law

The concepts of French jurist and renowned political scientist Maurice Duverger remind us that in a democracy, legal norms must first have a special structure and content that define the rule of law (Duverger, 1986, p. 421). According to the same author, the rule of law is determined by a structure that opposes the "absolutist" state, which some also call "a despotic state." The rule of law is considered as the means by which the system of democratic values penetrates into legal mechanisms. If it ceases to be a state of human rights, it becomes a state of injustice, despite the presence of the hierarchy of norms and related procedures, because such a state contradicts the system of values that created it (Burdeau, 1963, p. 328).

The principle of the rule of law in contemporary democratic countries is of multiple importances. It means the system in which state power, in particular the executive and administrative power, is limited to its own legal norms, in which way it guarantees the non-violation of the fundamental human rights and freedoms (Kurteshi, 2004., p.106). Americans obey the law, not only because it is their own work, but because it may be changed if harmful. Tocqueville considers that law is respected because it is a self-imposed evil in the first place, and an evil of transient duration in the second (Tocqueville, 2002, p. 88). The principle of the rule of law is undoubtedly one of the most important and essential principles for any state and democratic society (Zaganjori, 2002, p.70). Its full realization in everyday life is the best guarantee for the development of democracy and the recognition and enforcement of citizens' fundamental human rights and freedoms (Robaj, 2007, p.70). For this, the general principles of the rule of law nowadays take a special place and are explicitly fixed in contemporary democratic constitutions and legislation. The general principles of the rule of law are these:

a) free and democratic elections;

b) exercise of power by majority;

c) respect for the opposition;

d) constitutionalism;

e) guarantee of human rights and fundamental freedoms;

f) independence of the judiciary;

g) and, separation and mutual control of powers, etc.

(Omari, 2002, p.51).

For the implementation of all these principles that are reflected in the text of the Constitution of the Republic of Kosovo and the implementation of the entire content of the Constitution, the Constitutional Court of the Republic of Kosovo is meant to give a great contribution. However, the following section will attempt to

clarify in very broad context how much this Court and other institutions in the Republic of Kosovo have achieved to contribute in this regard and in particular to the building of the rule of law.

3.3. Efforts to build the rule of law

When talking about establishing the rule of law in the Republic of Kosovo, we must bear in mind that Kosovo, like the other countries of the former SFRY, emerged from a regime in which the notion of rule of law was denied, and that Kosovo for nine years (1990-1999) was under the classical occupation of Serbia, where this form of Serbian regime was considered a police and despotic state.

Placing Kosovo under UN international administration (UN Resolution 1244) was aimed at building the first democratic institutions and preparing Kosovo for its political and legal status. Building the rule of law in Kosovo is an essential element of the democratic transition that Kosovo started after its placement under international administration (Bajrami, 2005, p.53). As elaborated above, the Constitution of the Republic of Kosovo has fully incorporated the principles and characteristics of the rule of law. This is in fact well seen in the preamble and constitutional provisions. Constitutionality is a key element of the rule of law. The supremacy of the constitution over all other normative acts is a postulate of the rule of law (Saliu, 2004, p.137). To guarantee the supremacy of the constitution, an important tool is the existence of constitutional justice, which makes it possible to realize the requirement for the state to be subject to the highest norms. As stated above, the mechanism for protection of constitution and constitutionality is the Constitutional Court, which is a constitutional category. This is illustrated by the fact that "*the Constitutional Court guarantees respect for the Constitution and makes its final interpretation"* (Constitution, Article 113, par. 1). Kosovo during the 10-year period (2008-2018) as an independent state has made institutional efforts for the purpose of building and establishing the general principles of the rule of law. Thus, it has organized and held several parliamentary and local elections that have been evaluated by the OSCE as democratic; the transfer of power from the outgoing government to the winning government has been repeatedly done peacefully; constitutionality has been expressed through the decisions of the Constitutional Court, which in most cases have increased hope for the functioning of the rule of law; human rights and fundamental freedoms have also been dealt with by the Ombudsperson and local and international NGOs for the protection of these rights, which has influenced their affirmation; the judiciary as an independent constitutional power, even though criticized by the EU and other international mechanisms for political and corrupt interference, has yielded some tangible results that add optimism for the future of an independent and functional judiciary; the gradual integration of the Serb minority in the Kosovo institutions, etc. (European Commission, 2016; 2018, p.3).

Governance and the rule of law, on the one hand, and sovereignty and territorial integrity, on the other hand, were the priorities of the Western countries

in 2008 which aimed to maintain public order in Kosovo in order to solve the causes of its fragility, strengthen stability in the Balkans and protect the internal security of the EU (Capussela, 2015, p.158). The EU and its member states also had the interest and means to substantially improve governance in Kosovo. Enlargement and security policies of the EU come across in the Balkans. In varying degrees, the region presents three of the five risks identified by the European security strategy: regional conflicts, state failure and organized crime (Capussela, 2015, p. 173), Schmitt (2012, p.281). It is considered that ethnic homogenization so far is being accompanied by the unification of political thought (Schmitt, 2012, p.281). However, in Kosovo, strenuous, long-lasting effort has been extended in building a true rule of law. In 2002, a UN report said that out of 200 world countries, only 82 can be called fully democratic. These states include 57% of the world population (Kval-Mellbye-Tranoy, 2006, p.17; Human Development Report 2002, pp.2,10). Considering these statistics, it can be said that Kosovo has also made considerable progress in building the rule of law in view of its short history. However, the full implementation of the rule of law principle or the building of a sustainable state of law requires continuous efforts from Kosovo institutions in order to address remaining challenges, most of which are identified in the following section of the present paper.

4. Challenges in building the rule of law in Kosovo

Counting all the remaining challenges in building fully the rule of law in Kosovo is impossible because of space considerations. They can be perceived, classified or distinguished in different ways. This section of the paper identifies only the main challenges that present better the complexity of building the rule of law. As elaborated above, the 2008 Constitution of Kosovo has realized its political mission as it has established a good foundation for building the state and state institutions, has demonstrated its functionality, and has established the foundations of the rule of law. However, despite the constitutional and social achievements, the constitutional system and order has been stalling and facing many constitutional challenges. First, even after a decade, the Constitution has failed to extend to the entire territory of Kosovo, especially in the north of the country, where there have been blockades and obstructions by Serbia through the Serbian community. Second, one of the challenges of this Constitution is the full integration of the Serb minority in the institutional and social life of Kosovo. This is also due to the misuse of constitutional rights of the Serb community, especially the abuse of double voting, which has been an element in blocking decision-making for the establishment of some constitutional institutions such as the Kosovo Army (Express, 2018, Klan Kosova, 2018). Third, the fight against organized crime and corruption is a challenge in itself for the state of Kosovo, which has often been blamed for lack of efficiency (European Commission, 2018, pp.3-4). Fourth, the most important challenges are: the termination of political

influence in public enterprises and state agencies; termination of political influence in public information media, and in particular on national television; termination of political influence, and making fundamental reforms in the justice system; termination of political influence in employment, especially in the state administration; termination of political influence in procurement, etc. (European Commission, 2016). When discussing these challenges, the factors that influence mostly the establishment of the rule of law both positively and negatively are historical factors discussed above, economic and social factors, and the quality of legislation. These factors that are strengthening or weakening of the rule of law will be analysed in much broader context.

4.1. Economic development as an important factor for the rule of law

As in the case of other countries, also in the case of the Republic of Kosovo, we should mention the economy of the country as an important factor in building the rule of law and we cannot ignore the positive or negative impact of economic transformation in public life. Measuring the impact of this factor through the application of the rule of law principle is difficult, but all property alienation processes, including the privatization of public property (not minor, but in a bad condition), have been made through decision-making considered by civil society as decisions taken under the risk of corruption, public property misuse, and other negative phenomena (Mustafa, et al., 2008). As estimated by Kruk (2006, p. 14) for privatization in Poland, this way of economic transformation can effect the destruction of society, enrichment and impoverishment, material inequality and inequality of opportunities, and unemployment. Limited public finances in Kosovo with an annual budget of over 2 billion euros (Law on Budget of the Republic of Kosovo, 2018), in spite of these phenomena, certainly cause great social dissatisfaction expressing the social demands of citizens. Therefore, a process of inefficient privatization, not implemented in compliance with applicable law as the rule of law requires, certainly has not only negative effects on the economy of the country but also on the rule of law. Unfortunately, economic development is lacking, and unemployment is quite high in Kosovo.

4.2. Society in transformation and the rule of law

Lack of development or weak civil society is another factor that has an impact on and constrains the rule of law. Although civil society is not strong enough and cannot convince citizens that they can have a major impact on the conduct of public policies (European Commission, 2018, p.9), it is important for full functioning of the rule of law. Low turnout of Kosovo citizens in the polls (Central Election Commission, 2018), a very limited number of social initiatives and a very weak sense of belonging and common interest still characterize Kosovo society. Such actions often have a greater impact in this regard because the joint action of civil society mobilizes society to a large extent. Such

mobilization has the power to create counter arguments opposing those put forth by those in power. Indeed, civil society organisations well organised at the national level concentrate more or less solely on political developments, while grassroots civil society organisations are missing in many areas of Kosovo and are very weak in those areas where they do exist in big cities of Kosovo.

4.3. Quality of Kosovo legislation

Another factor that has an impact on building the rule of law in Kosovo is the quality of Kosovo legislation in force. As in other countries, the quality of Kosovo legislation is not related to the exercise of power by one or another political faction, but it constitutes one of the conditions of the rule of law (Kruk, 2006, p.86). As stated by the Science of Laws Institute (2018), the purpose of democratic governments is to ensure the human rights and freedoms of citizens within the rule of law; and to achieve this goal, they should create high standard quality laws that promote democracy and solve social problems with minimum burden on citizens. High-quality laws have the following characteristics and should be:

1. sustainable and serve the interests of democracy;
2. simply formulated, concise and comprehensible;
3. accessible, adopted without procedural violations;
4. There should be no retrospective action, be published in advance, provide legal certainty, comply with the entire legal system while respecting human rights and not causing adverse side effects to citizens' interests

   (Science of laws Institute, 2018; Kruk, 2006, p. 86).

If the legislation of a country does not have these characteristics or does not meet these requirements, citizens' human rights and freedoms are considered to be weak, while economic and social development ostensibly stagnate. In these cases, independent constitutional institutions act to preserve the law by eliminating the legal process causing the erroneous law, deriving from legislation that lacks the abovementioned characteristics. The effect of such legislation is extremely damaging because it loses the trust of citizens who are living in the rule of law (Kruk, 2006, p.87). Legislation in harmony with the abovementioned features would be the ideal law. How well states have been able to draft such quality legislation is an issue that continues to challenge even countries that are members of the Organization for Economic Co-operation and Development (OECD) and have been making efforts for years to improve their legislative practices, but which again result in dissatisfaction (OECD, 1994, p. 7). Similar efforts have been made by the Republic of Kosovo for twenty years following the end of the war and for ten years as an independent state. Of course, this short period of

independence and efforts to put in place the rule of law, have affected the building of the rule of law by bringing some good results but also challenges that will follow the country for a long while in terms of quality legislation.

Kosovo, administered for years by the United Nations Mission in Kosovo (UNMIK), has managed to eliminate the discriminatory laws adopted and implemented by institutions of the former Yugoslavia, by issuing new regulations through UNMIK authorities together with the Kosovo Provisional Institutions of Self-Government (UNMIK, 2018) at that time, as well as through the institutions of the Republic of Kosovo since 2008, following the declaration of independence. All legislative acts are drafted with the help of international experts and on the basis of international practices of democratic countries. Since 2002, Kosovo has voluntarily drafted its legislation in line with the European Union legislation. Kosovo continues today to enact laws in line with EU legislation based on the Stabilization and Association Agreement already signed with the European Union, which entered into force in 2016 (SAA between the EU and Kosovo, 2015). In spite of the discretion that the Republic of Kosovo has to set deadlines and ensure the approximation of its legislation to that of the European Union (apart from the areas required by the SAA), numerous legal acts are in full harmony with European Union legislation, e.g. legislation in the field of the environment (Ministry of Environment and Spatial Planning, 2016). Countries apply full harmonization or a "copy and paste" method of adopting legal provisions from EU legislation when they are very close to joining the EU. This way of harmonization is not always positive since it turns into un-implementable legislation because of financial cost because it requires the establishment of certain institutional mechanisms or due to cultural and traditional ideals and practices. These and other reasons result in failure to implement that legislation and imposes frequent amendments and changes. In this way, the sustainability of legislation is questioned. However, Kosovo has succeeded in drafting legislation that serves considerably the interests of democracy, especially legislation pertaining to civil and political rights, in particular the rights of minorities, considered to be the most advanced legislation in the region and beyond (RTV Dukagjini, 2018, Zymberi, 2017, Klan Kosova, 2018).

Regarding the characteristic of being simply formulated, succinct and understandable, Kosovo institutions with the assistance of international experts have managed to establish the legal basis for the standards of drafting legislative acts through the Administrative Instruction (Administrative Instruction on Standards of drafting of normative acts, 2013; Kajtazi, B., 2016). Currently, the Government of the Republic of Kosovo has issued for that purpose also the Better Regulation Strategy 2014-2020 (Kosovo Government, 2014). Based on the guiding documents of the Kosovo Government, the drafting of Kosovo legislation should be in accordance with the principle of the prohibition of the retrospective power of legal provisions (Kajtazi, B., 2016, p.645). Moreover, for the very few cases that have been brought before the Constitutional Court for non-compliance with legal procedures while issuing legal acts, the court decided that the

procedures were not violated, e.g. Government Decision on Raising Salaries in 2018 (Kosovo Law Institute, 2018).

The requirement for legal acts to be published in advance in order to provide legal certainty, is a requirement that is fully respected by the Government of the Republic of Kosovo, the Assembly of the Republic of Kosovo, and the Constitutional Court as they publish on their web sites official legal acts, including draft legal acts (OPM Documents, 2018, Laws of the Assembly, 2018, Decisions of CCK). Regarding line ministries, municipal assemblies and regulatory authorities, it is worth pointing out that there have been improvements in this direction and the trend is positive (State Portal of the Republic of Kosovo, 2018). Of particular importance is the Law on Access to Public Documents that enables all citizens of the Republic of Kosovo to seek access to any official document that is relevant to their rights and to be informed about decisions of public interest (Law on Access to Public Documents, 2010).

The Constitution of the Republic of Kosovo in its Article 3 provides that public authorities should exercise their power based on the principle of equality before the law and fully respecting human rights and freedoms as guaranteed by international legal acts (2008). Article 21 of the Kosovo Constitution provides that fundamental human rights and freedoms are the basis of the legal order in the Republic of Kosovo, while Article 22 guarantees the direct implementation of international conventions on fundamental human rights and freedoms in the Republic of Kosovo (2008).

Furthermore, the Republic of Kosovo has also established an institutional mechanism that will handle implementation and respect of human rights legislation, including the establishment of the Ombudsperson institution, and human rights offices in line ministries and municipalities (Draft Strategy and Action Plan for the Protection of Human Rights in the Republic of Kosovo, 2013). Therefore, the Constitution of the Republic of Kosovo, followed by many other laws, including the Law on Protection against Discrimination (2015), and the institutional mechanism for human rights as well as other (judicial) mechanisms, create the possibility for Kosovo legislation to be compatible with the entire legal system in order to respect human rights and not cause adverse side effects to citizens' interests. For certain laws that require a harmonization among them due to incompatibilities between them, which incompatibility is caused due to the involvement of many international experts coming from different legal schools (Kuçi, H., 2011), the Office of the Prime Minister of the Republic of Kosovo did establish a separate Commission to eliminate these incompatibilities (Anon).

5. Conclusion

The building and functioning of the rule of law in the Republic of Kosovo is of special importance and is a significant positive factor in the difficult process of

breaking away from the past and having the orientation toward building a democratic and multi-ethnic society. Although the Republic of Kosovo is the youngest state in Europe and has emerged from a bloody and devastating war, it has managed to consolidate and build genuine democratic institutions during the transition and state-creation period, building the image and the confidence of a relatively modern state with European values.

However, it should be borne in mind that the existence of a constitutional and legal framework is just a prerequisite for the rule of law. Equally important is the functioning of various controlling mechanisms for the implementation of constitutional and legal norms, and in particular the creation of a new mentality both in public officials and in citizens which is expressed in a conscious attitude to the needs of implementation of these norms, and in a reaction, by legal and democratic means, to their violation by anyone.

The Republic of Kosovo needs to continue its efforts in further building a fully functioning, sustainable and democratic state. The Republic of Kosovo, in its efforts to build the rule of law, continues to face many remaining challenges, such as: full integration of the Serb minority in the institutional and social life of Kosovo; full exercise of state sovereignty; the fight against organized crime and corruption; termination of political influence in public enterprises and state agencies; termination of political influence in the media, with particular emphasis on public television; termination of political influence in the justice system, employment, procurement and etc. In addition, the quality of applicable laws in Kosovo continues to be endangered by the negative effects of incompatibilities between them. Indeed, these challenges are also an obstacle to economic development and advancement of Kosovo towards European Union doors.

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Irresponsible Persons: The Imposition and Execution of Mandatory Treatment Measures in the Criminal Procedure of Kosovo

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Abstract

According to the Code of Criminal Procedures of Kosovo, the treatment of irresponsible persons is carried out in a special criminal procedure only with regard to the determination of innocence, respectively irresponsibility and the imposition of compulsory psychiatric treatment, while further treatment is transferred to the competent court for the abolition of legality action and then begins with the execution of the measure imposed within the psychiatric institution.

In comparative criminal law, security measures are mainly part of the criminal sanction system, but there are also exceptions. The treatment of irresponsible persons in Kosovo's criminal legislation was built based on the criminal models of Western and US states by applying sui generis medical measures instead of classical sanctions. As for the difference between sentences and security measures, in the theory of contemporary criminal law, there are different opinions.

This paper first describes the mandatory treatment measures under the Criminal Code of Kosovo, along with the special procedure conducted in the criminal court for imposing mandatory treatment measures for persons with mental disorders. The suite explains how these measures are executed. Finally, this paper draws valuable conclusions and recommendations on criminal science.

Key words: *irresponsibility, mental disorder, special procedure, psychiatric treatment, probation service.*

1. Introduction

The phenomenon of criminality by persons with mental disorders is also present in Kosovo. This phenomenon deserves the multidisciplinary approach of this study, both of the factors that determine it, as well as of the measures of treatment

of such persons during the ante delictum and post delictum periods. The purpose of undertaking preventive measures is to prevent criminal activity of persons with mental disorders. Kosovo has not yet completed reforms of its legal infrastructure for mental health nor updated its penitentiary institutions. Until such reforms are complete we will face poor functioning of the system of enforcing mandatory treatment measures: compulsory psychiatric treatment and custody in a health institution, and compulsory psychiatric treatment at liberty. Given the current state of the problem and the difficulties of executing these measures, it is reasonable to attempt to address this problem.

Criminology distinguishes between criminal offenses committed by normal persons and criminal offenses committed by persons with mental disabilities. People with mental disorders have their own special world that is in contrast to the real world and when these two worlds collide, criminal activity can result. However, this does not always happen and therefore does not mean that the person's ill health is necessarily a factor of criminal behavior. Persons with mental disorders when appearing as perpetrators of criminal offenses are not subject to criminal liability (they are considered as irresponsible persons) or are subject to reduced liability and certain preventive measures are imposed, measures of mandatory treatment which are pronounced by the court in criminal proceedings.

Contemporary medical and criminal law practice are still developing different and controversial opinions with regard to perpetrators of criminal offenses who have mental disorders. Thus, in criminal legal science, antagonisms have attained such a degree that as a result, two types of treatment have emerged: a criminal model and a medical model (Ukaj. M., 2015, p. 338).

Proponents of the criminal model think that the treatment of perpetrators with mental disorders should remain within criminal law, since only within it can criminal law prevent and combat criminality in general and psychopathological criminality in particular (Ibid.).

On the other hand, supporters of the medical model think that the treatment of persons with mental disorders must pass from criminal law to medical law because the medical right gives them more rights and security, both in terms of healing, as well as in terms of humane treatment, always in line with contemporary standards for the respect and protection of basic human rights (Ibid.).

The following discusses measures of treatment for irresponsible persons according to the Kosovo Criminal Code of 2012.

2. Measures of treatment for irresponsible persons

There are three categories of people with mental disorders who deal with material criminal law and the right to criminal proceedings. The first category deals with irresponsible persons, the second category concerns persons with substantially reduced capabilities and the third category concerns *actiones liberae in causa* (Kosovo Criminal Code, 2013, art. 87, 88). For these three categories, the law provides for the imposition of medical measures and penalties. Mandatory

treatment measures under the Kosovo Criminal Code of 2013, Articles 87 and 88, are:

a) compulsory psychiatric treatment,

b) compulsory treatment for persons with mental disabilities, and

c) compulsory treatment for alcohol and drug addicts

On one hand, the treatment of irresponsible perpetrators in Kosovo's criminal legislation was built on the models of the Criminal Codes of Western Europe countries and US, applying *sui generis* medical measures. On the other hand, in criminal codes of some other European countries, (Macedonian Criminal Code - 2004, Serbian Criminal Code - 2005, Montenegro Criminal Code – 2003, etc.), these measures are called security measures or rehabilitation measures. In the territories of the former Yugoslavia, such as Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia such measures are called security measures (Salihu, I., 2012, p. 518-519) . Measures to deal with irresponsible perpetrators have some important functions. First they protect society from danger, because irresponsible perpetrators, rather than being sent to jail, are sent to psychiatric institutions for the purpose of recovery. This also serves for the prevention of criminality, to a large extent via the psychiatry service which performs treatment on the one hand, and on the other makes efforts to avoid the dangerous conditions of the perpetrator with mental disorders.

According to Kosovo's criminal legislation, mandatory treatment measures are imposed on irresponsible perpetrators and are considered as medical measures that serve to cure the perpetrator and avoid the risk of any criminal offense or recidivism. However, for the Court, prior to imposing mandatory psychiatric treatment measures in a health institution, four conditions must be met beforehand:

- that the criminal offense has been ascertained in criminal proceedings;
- that the offense was committed by an irresponsible perpetrator;
- that the court finds releasing the perpetrator to be risky, and
- in order to avoid risk, the perpetrator must be sent to a health institution. (Salihu, I., 2012, p. 519-520).

Articles 87 and 88 of the Criminal Code of Kosovo state that the actions of determining the measure of compulsory psychiatric treatment of a perpetrator who is mentally irresponsible or who has reduced mental capacity shall be determined in a special way by law (Criminal Code of Kosovo, 2012). Therefore, mandatory treatment measures, according to criminal law and the criminal law of Kosovo, are governed by special regulations. For instance, compulsory medication measures are imposed for the treatment of drug or alcohol addicts.

Medical measures are of an overriding character, they are imposed by the court without a fixed term and unlike punishment, medical measures have no other legal consequences. (Elezi, I., Kaçupi, S. and Haxhia, M.R., 2005, p. 54). In fact, medical measures under the Albanian Penal Code have a preventative, rather than a retributive character and are considered to be special penal sanctions (Ukaj, B., 2006, pp. 282).

Compulsory treatment measures are outside the criminal sanction system. Against irresponsible persons, no punishment can be imposed, nor any other type of criminalization, but psychiatric treatment measures can be imposed, which have two functions: the first to diminish the risk that such persons will commit the offense again, while the second, by applying a measure of medication, aims to humanize criminal law. Criminal sanctions can only be imposed on somewhat accountable perpetrators, along with compulsory psychiatric treatment measures. Measures of compulsory treatment in Kosovo's criminal law are not criminal sanctions but are treated as special measures or *sui generis* of a medical character, reserved for irresponsible perpetrators and those addicted to drugs and alcohol.

Under the Criminal Code of Kosovo, the treatment of irresponsible persons is carried out in a special criminal case only with regard to the determination of innocence, respectively irresponsibility and the imposition of compulsory psychiatric treatment, following which the case is immediately transferred to the competent court for removal of the police force, and then execution of the measure imposed is begun in a psychiatric institution (Kosovo Criminal Code, 2012).

2.1. The measure of compulsory psychiatric treatment at a health institution

Mandatory treatment of irresponsible perpetrators in institutions for psychiatric healing, as mentioned earlier, is primarily aimed at curing perpetrators and avoiding the risk they pose to society and themselves.

This measure is imposed by the court in a special criminal procedure and is executed in special psychiatric institutions. The report and opinion determined by the psychiatrist expert on the perpetrator's risk for the court provides a sufficient base for imposing mandatory psychiatric treatment in an institution, regardless of the degree of danger, because this is not properly defined in the Criminal Code. The risk assessment of the irresponsible perpetrator consists of the risk of repeating the offense.

The Court will impose compulsory psychiatric treatment if it finds that the perpetrator has committed a criminal offense punishable by at least three years in a state of mental disability or impaired mental capacity, and there is a serious risk that the perpetrator will commit a criminal offense involving a violent act or causing bodily injury to another person, and mandatory psychiatric treatment with custody is necessary to avoid such danger (Salihu, I., 2012, p. 521).

The Criminal Code has provisions referring to the procedure of imposing mandatory treatment measures, according to which the proposal is submitted by the state prosecutor following the opinion received from psychiatric expertise. This measure, according to the Kosovo Criminal Code, is pronounced after the trial has been held by the court in a special procedure.

The measure of compulsory psychiatric treatment with detention is executed in the health care institution located in the permanent residence or in the defendant's place of residence but if such an institution is not available, than in a nearby institution or in the place where criminal proceedings have been enforced. The Crminal Code of Kosovo also foresees the obligation to monitor the execution of the measure of compulsory psychiatric treatment by the court and the competent body for health.

It is worth pointing out that the Criminal Code of Kosovo does not define decisively what is a public institution responsible for health, because such a special institution in Kosovo still does not exist. Therefore, lawmakers have left the possibility open, alluding to the fact that an institution for dealing with irresponsible perpetrators in Kosovo will be established in the near future, which has not happened until today.

Pursuant to the Criminal Code of Kosovo, the health care institution is obliged to report to the court once every six months on the state of health and the achievements made in the health of the person on whom the measure was imposed. On the other hand, the court that issued the first instance decision after the report of the medical institution is obliged to consider the possibilities of continuing the measure of compulsory treatment or its termination.

The following section discusses the measure of compulsory psychiatric treatment at liberty for irresponsible persons.

2.2. The measure of compulsory psychiatric treatment at liberty

The measure of compulsory psychiatric treatment at liberty is considered to be a milder measure that can be imposed on irresponsible perpetrators, compared to compulsory psychiatric treatment in an institution. The reasons why this measure is considered milder is that, according to an expert's assessment (Kosovo Procedural Code, 2012, Art, 508), treatment can be done in ambulatory conditions, and at the same time, given the level of mental disorder, the perpetrator is not considered dangerous for the society and for himself.

The treatment time is not limited and entails continuous correspondence of the psychiatric institution with the court, so the perpetrator is in under permanent observation of the doctor and the court. (Ibid.).

The Criminal Code provides the rationale for the imposition of compulsory psychiatric treatment at liberty. Provisions provide that the court imposes the measure of compulsory psychiatric treatment in freedom to a perpetrator who has committed a criminal offense in a state of mental disability or mental impairment, if:

- there is a serious risk that the perpetrator will commit an offense involving a violent act or causing bodily injury to another person; and
- compulsory psychiatric treatment is necessary to avoid this risk.

Regarding the imposition of mandatory psychiatric treatment in freedom, the same provisions apply as to the imposition of compulsory psychiatric treatment in an institution. The execution of mandatory psychiatric treatment in freedom is carried out at a health care institution, where it is determined that the irresponsible persons will appear for a treatment, which is a timeline measure, imposed by the Court. This measure will last as long as necessary and for this reason, the court and the health care institution are in continuous correspondence.

The duration of compulsory psychiatric treatment in freedom depends on the success achieved with the treatment of the person on whom this measure is imposed.

In judicial practice in Kosovo (conversation with judges), is discovered that there are major problems regarding the execution of psychiatric measures for irresponsible perpetrators. The reason lies in the fact that Kosovo does not yet have specialized institutions for this purpose.

2.3. The measure of treatment on alcoholics and drug addicts

The category of compulsory psychiatric treatment of drug and alcohol-related perpetrators is separate from compulsory treatment of perpetrators with mental disorders, because these people are considered to suffer from socio-pathological problems. Measures against them can be executed in an institution or at liberty, depending on the danger they pose for society and themselves, and the risk of repetition of the offense.

The Criminal Code of Kosovo has provided for treatment of alcoholics and those addicted to narcotics. Thus, according to Article 91, paragraph 1, of the above mentioned Code; the court may impose compulsory rehabilitation in a health institution on any person who has committed a criminal offense under the influence of drugs or alcohol, if the court has pronounced the punishment, the court's notice or the perpetrator has been released from the punishment, and the court finds that the perpetrator was motivated to commit the offense by alcohol or drug addiction, and the likelihood of the perpetrator's successful treatment. The time spent in the health institution is calculated on the amount of the punishment.

In addition to the mulct sentence, judicial remark or the release from punishment, the court may decide, with the consent of the convicted, that such a treatment can be executed at liberty. If the perpetrator, without a reasonable cause, is not subject to the treatment at liberty or arbitrarily abandons treatment, the court may order that the treatment be executed at a health facility. While the measure is pronounced in addition to a prison sentence, it may last until the sentence is served, but if the measure is imposed in addition to a fine, a judicial

remedy or a punishment, the treatment can not last more than two years, giving the opportunity for the judge to review the execution of this measure every two months in order to assess its possible extension.

3. Imposing Mandatory Treatment Measures

Pursuant to Article 512 of the Code of Criminal Procedure of Kosovo, the state prosecutor proposes to impose the measure of compulsory psychiatric treatment, before the opening of the main trial. It foresees that the court impose the measure of compulsory psychiatric treatment if the defendant has committed a criminal offense in a state of mental disability and if there are reasons for such a measure, as provided for in the Criminal Code - Articles 88 and 89.

If the evidence presented at the main trial demonstrates that the defendant has committed a criminal offense in a state of mental disability, the state prosecutor changes the indictment during the main trial and submits a proposal for the court to impose a measure of compulsory psychiatric treatment if there are reasons for the pronouncement of such measure. The measure of compulsory psychiatric treatment is pronounced after the court hearing by the court which is competent to adjudicate the case at first instance under Article 513 of the Code of Criminal Procedure. In addition to the persons who should be summoned to the main trial, experts and psychiatrists from the health care institution who are entrusted with conducting the psychiatric examination of the accused's mental capacity should be summoned. The defendant's spouse and his parents or adoptive parents are notified of the judicial review. Upon completion of the procedure for the imposition of mandatory psychiatric treatment, its execution is regulated by the Law on Execution of Criminal Sanctions in Kosovo 2013.

The court is obliged to verify the perpetrator's mental condition at any time during the proceedings, including the time during the main trial, if there is a suspicion that the defendant is in a state of mental disability or was in a state of impaired mental capacity at the time of committing an offense.

The court *ex officio* or on the motion of the state prosecutor or defense counsel may appoint an expert to conduct the psychiatric examination of the defendant to ascertain whether:

- at the time the offense was committed the defendant was in a state of mental disability or mental impairment, or
- the defendant is incapable of facing judgment;

According to Article 508 of the Code of Criminal Procedure, the purpose of psychiatric expertise is to determine the degree of accountability of persons under criminal liability when there are data suggesting psychological illness. The expert should evaluate the psychic condition of the perpetrators at the time of committing criminal offenses (a moment directly related to accountability from the criminal justice point of view) and at the time of the evaluation, as well as the

state of those mentally ill during detention. The importance of the opinion of the psychiatric expert also lies in the fact that on its basis the court determines the type of medical measures for persons who are considered irresponsible for the offenses they have committed and for those who become ill after the commission of the crimes or during detention or imprisonment. The psychiatric expert has a duty to evaluate the psychic ability, i.e. the psychological condition of the perpetrator of the criminal offense in relation to the act committed.

The expert also has a duty to determine the nature, type and degree of illness or psychological disorder, to determine how much this psychic condition of the perpetrator has caused the irresponsibility or reduction of the criminal responsibility of the perpetrator at the time of the commission of the offense, and to assess the degree of risk that this person presents to society (Kosovo Procedural Code, 2012, Art, 508).

The reason for imposing compulsory psychiatric treatment with detention lies in the fact that such persons pose a risk to the district where they live and to themselves because their psychic condition prevents them from understanding the importance of actions and of controlling the their own actions. The humanization of criminal law in terms of the treatment of a perpetrator is also reflected in the determination of compulsory psychiatric treatment measures as special measures that may be imposed on a particular category of perpetrators.

Undoubtedly, Article 87 paragraph 1 of the Criminal Code of Kosovo is of special importance because it clearly stipulates that perpetrators with mental disorders must be treated with humanity respecting their dignity as human beings in accordance with applicable international standards, being limited depending on need and circumstances. Thus, Article 87 para. 2 of the Code, stipulates that for perpetrators with mental disorders, international standards must apply to the highest possible degree.

4. Execution of compulsory treatment measures

The contemporary status of irresponsible perpetrator was inaugurated after the French Revolution in 1879 as a result of the development of psychiatry science, with the subsequent introduction of this legal institution into the French Criminal Code of 1810, where Article 64 of the Code states , "There is no crime or delinquency when the defendant has been in a state of madness at the time of committing" (Grozdanić, V., 1988, p. 50.). This wording was later accepted by the Criminal Code of Turkey, Belgium, Monaco, Luxembourg, etc. (Ibid.).

The origin of the advancement of the position and treatment of delinquents with mental disorders, respectively irresponsible perpetrators, dates from the last decade of the last century (Ibid.). This new development in the field of criminal law has been influenced by the development of psychiatric science and a rising level of respect for international human rights conventions. Today, modern states have made quality and very important reforms as a result of the integration and

standardization of criminal legislation. In this context, it is worth pointing out a very important issue in the development of legal psychiatry of late: the change away from the concept of criminal responsibility, shifting towards the concept of dangerousness of the irresponsible perpetrator (Ibid.). Therefore, the assessment of the perpetrator's peril of the criminal offense in the future presents the greatest challenge for legal psychiatric experts. Significant steps in this direction have been marked by member states of the European Union, as well as other European countries in transition, which aim to integrate (Ibid.).

From the earliest times, it was practiced that delinquents with mental disorders as perpetrators were sent to psychiatric hospitals. During the 18th century, irresponsible perpetrators were placed in special asylums, and in the 19th century compulsory commitment to psychiatric hospitals for indefinite periods began to be enforced, as a result of which there is a large spread of psychiatric hospitals providing services throughout Europe. The first act regulating the issue of irresponsible perpetrators in the United Kingdom was released in the early 19th century following a case when a person with a mental disorder attempted to kill King George III (Salize, H.J. and Dreßig, H., 2005, p. 9-11).

Thus, in 1815 a specialized detachment facility was opened, which over time was over-crowded, which has resulted in a great debate today among psychiatric experts. These special wards providing minimal treatment by specialized teams that also performed the surveillance role, were walled and had no communication with the outside world. Treatment programs in psychiatric institutions for irresponsible perpetrators have undergone continuous reforms, especially in the 1980s, which have led to the reintegration of some such persons into society, and in addition provide greater public security, avoiding the risk of repetition of criminal actions (Ibid.).

However due to the complexity of some mental illnesses, a person suffering from such an illness always poses a potential risk to society, and taking into account this fact, such persons are sent to health care institutions in order to avoid criminal behavior (Bačič, F. 1995, p. 417-418).

Some authors in the area of legal psychiatry consider that the professional treatment of irresponsible mental perpetrators is still in the initial phase, so there is a permanent need for ongoing research in this area. Psychiatric experts who deal with the issue of irresponsible perpetrators when it comes to expertise that should be offered to criminal and civil courts should be prepared and specialized in: assessment of irresponsible perpetrators, preparation of court reports to provide the testimony of expertise in the court, treatment of chronic mental disorders, and recognition of the law on mental health (Salize, H.J. and Dreßig, H., 2005, p. 9-11).

Significant achievements in the development of psychiatric science and the advancement of the legal position and treatment of irresponsible perpetrators have been done in Kosovo as well. Today, thanks to scientific achievements in the field of psychiatric science, irresponsible perpetrators in Kosovo are subjected to

necessary humane medical treatment respecting international standards for the protection of basic human rights.

The enforcement of mandatory psychiatric treatment measures for irresponsible perpetrators is regulated by the Law on Execution of Criminal Sanctions in Kosovo - Articles 181 to 185. Mandatory psychiatric treatment measures with detention shall be enforced in a health care institution in the residence of the defendant, or if such institution is not located in that place, in the institution closest to the place where the defendant has a permanent place of residence, which always takes into account the risk that the defendant poses to the environment. Whenever the court imposes this measure, it immediately sends the decision to the competent Probation Service and to the health care institution, correctional facility or the appropriate institution for the execution of this measure. If such a measure is imposed together with a sentence of imprisonment, the perpetrator shall first be sent to a health care institution for treatment.

If the person is at liberty, the court orders his transfer to the health care institution but if the person is in detention, the Kosovo Correctional Service staff passes him to the health care institution. The health care institution sends to the court a report on the state of health and the success of treatment of the person on whom the measure is being executed, at least once every six months and more often at the request of the court. When the health care institution responsible for mental health treatment finds that it is no longer necessary to treat the perpetrator of the offense at the healthcare institution, they immediately inform the court.

According to the official schedule or on the request of the defendant, the defense counsel of the health care institution informs the court which has imposed the measure if it finds that it is no longer necessary for the perpetrator to be treated or detained in that institution. When the measure ceases, the court may impose a measure of compulsory treatment at liberty. Once the person is released from the health care institution, the competent custody body is responsible for the person on whom the measure was taken to provide relief after release from the healthcare institution. The measure of compulsory psychiatric treatment in freedom is executed at the healthcare institution decided by the court that has imposed the measure in the first instance. The person on whom the measure is imposed is obliged to appear at the healthcare institution for treatment within the time determined by the court. When the health care institution determines that it is no longer necessary to treat the perpetrator, they immediately inform the court that has imposed the measure in the first instance. The court, ex officio or at the request of the defendant, the defense counsel, the health care institution or the competent guardianship authority, suspends the measure if it finds that it is no longer necessary to treat the perpetrator of the criminal offense (Halili, R., 2014, p. 241-243).

5. Conclusion

When people with mental disorders are offenders in Kosovo, they are treated with humanity respecting their minimal human rights though the proper institutions for treatment, post delictum, are not yet fully functional and established as they have a high budget cost. Special legal procedures are in place for perpetrators with mental disorders in Kosovo.

According to Kosovo's Criminal Procedural Code of 2012, when a perpetrator with a mental disorder commits a criminal offense, the police raises a criminal charge, followed by arrest and detention. In the case of suspicion that the perpetrator has committed a criminal offense in a state of mental disorder, the court ex officio or on the proposal of the state prosecutor or the defense counsel assigns psychiatric expertise. Once the evidence is examined, the court can declare the perpetrator irresponsible and pronounce one of the mandatory psychiatric treatment measures in a psychiatric institution or in freedom.

Upon making a final decision, the court follows the procedure of abolishing the ability to act and then begins execution of the mandatory psychiatric treatment measure. The same can be continued, depending on the success of the treatment and the risk of repeating the offense.

Execution of compulsory treatment measures in Kosovo is executed in mental health institutions, respectively at the Psychiatric Forensic Institute with headquarters in Pristina. However, the current state of treatment of persons with mental disorders in psychiatric hospitals is not satisfactory, as it is often the case that psychiatric hospitals where perpetrators with mental disorders are sent, in many cases also house other mentally ill persons who have no criminal offenses. Given this situation, perpetrators of mental disorders often collide with other mentally ill persons and cause conflicts.

On the other hand, they sometimes refuse the rules of hospitals and as a result voluntarily leave the hospitals and go back to the streets. At present, there is a situation that health institutions are unable to retain persons in compulsory treatment and they can not be found either in the hospital or in the prison, but on the street, and in this case pose a risk to society and their health.

Kosovo still needs to further improve the state of treatment of perpetrators with mental disorders, both in the legislative and professional settings. It is worth noting that there is still no unique legislation that regulates this issue.

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Development and Protection of Economic Competition in Kosovo: Case Study Gjilan Region

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Abstract

This paper investigates the development and protection of economic competition in Kosovo focusing on analyzing the level of competition in one region of Kosovo (the Gjilan region). The paper deals with legislative aspects of competition, and with sensitive sectors (banks, insurance, gas stations and pharmacies) where competition is damaged. The paper presents measures for improvement based on EU practices. Like other economies in transition, action for protection of competition in the Kosovo economy is faced with many challenges. Moreover, these challenges result from the fact that Kosovo was the last country in South Eastern Europe to start implementing principles of a free market economy, i.e. only since 1999. Through a case study, we attempt to give a realistic picture of the level of development of competition, where competition is undermined, general business knowledge about the functioning and enforcement of the law on competition protection, and concrete measures to be taken in order for competition to function based on the rules of a market economy.

Keywords: *Market economy, economic competition, monopoles, abuse of dominance position.*

Introduction

The creation of a market economy and the free operation of market mechanisms is an important objective for sustainable economic development. The realization of this objective imposes the need for decision-makers to create such economic policies adapted to adequate legislation that will impact economic growth through a competitive market on the one hand and on the other hand eliminate behavior that harms the free market. Sound competition policy and the encouragement of competitiveness among market participants have multiple positive effects on the state's economy, businesses and consumers in particular. The importance of protection and development of competition, among other things, is seen as:

- Competition should be the basis for determining the quality of goods and services provided, based on certain standards that will be offered to

consumers. Competition creates an economic environment where firms can operate freely in achieving these objectives, while consumers, in turn, benefit from the prices set on the basis of the interaction between demand and supply forces (Gavil., Kovacic, W., and Baker, J, 2002).

- Competition brings dynamism, so it ensures that businesses are under constant pressure to deliver the best possible goods and services to customers at the best possible prices. In this way it affects the improvement of the allocation of production factors and the growth of the welfare of the society (Gerber, D., 2001).
- Competition forces firms to always improve their products and promote the development of new technologies. It should eliminate as much as possible reduced choices or scarce innovations. It promotes initiatives and innovations as well as adapting new technologies.
- Competition also hampers the creation of monopolies because they have been detrimental both to the economy and to the consumer, because the latter benefit from the possibility of alternatives, quality, fair prices and new products.
- Competition affects investment growth by eliminating various barriers and thereby increasing the employment rate, ultimately
- Competition increases the economic efficiency of different entities and increasing economic growth and disciplining the management of these entities. Competition is the main driver of competitiveness among firms and leads to a country's economic growth. Inefficient firms are outbid in the market, which redistributes production resources from failed firms to more powerful competitors.

The implementation of the Law on Protection of Competition by the Institutions for Protection of Competition, other commercial laws, and the development of proper anti-trust policies promote contestation in the market and the growth of competitiveness. Such promotion is a continuous work benefiting all market players. It can be said that protection and development of competition is realized through two main pillars: Competition Law and Competition Policies. Within Competition Law are included: controlling cartels, controlling concentration and controlling abuse of dominant position. Competition policies include the economic activities of economic regulators as well as economic policies affecting competition.

Legal Aspect of Competition Control—Law on Protection of Competition

The Constitution of the Republic of Kosovo, article 10 lays down the economic system of Kosovo as a system based on a free market economy and freedom of economic activity (Constitution of the Republic of Kosovo, 2007). Free market means an economy where decisions about production and consumption are taken by individuals and private companies. Price, quantity and production methods are determined by the market. To fulfill this function the market must have competition rules and such rules must be implemented. There shall not be a free market economy where the production opportunities are kept away from companies with dominant position in market, whether they are private or public. When a company achieves a wholly dominating position in the market (to the point where demand equals the offer by this company solely), consumers are not able to play their role in setting prices, and end up losing (Asllani, G., 2016). The difference between the investigation of agreements and the dominant position from one side and concentration of companies in the other side consists by analyzing two cases: in the first case is based on: a) Past (is performed *ex post*), whereas in the second case and b) is based prognosis for the future (performed *ex ante?*).

The law on protection of competition balances control *ex ante and ex post*, by treating from one side forbidden agreements and excluding from prohibition (article 4 of Law on Protection of Completion, 2010) and abuse of the companies in dominant position (article 10 of Law on Protection of Completion, 2010) and the other side and anticipatory control of Concentrations (article 13 of Law on Protection of Completion, 2010). Secondly the law establishes a competition authority as the responsible body for law implementation (article 24 of Law on Protection of Completion, 2010). The Kosovo Competition Commission has been established by a decision of the Assembly of the Republic of Kosovo, in 2008, but in fact was active in March 2009. Presently competition in Kosovo is regulated by the Law on Protection of Competition nr.03/l-229, of October 7th 2010 (official gazette of Republic of Kosovo, 2010). This law amended the Law 2004/36. The current law sets out the opportunity of market monitoring by two methods : a) By controlling actions of enterprises, and b) By controlling the market structure (Regulation No. 1/2003, EC).

Historical Environment of Kosovo

Kosovo is situated in the middle of the South-East Europe, positioned in the center of the Balkan Peninsula. It represents an important crossroad between South Europe and Middle Europe, the Adriatic Sea and the Black Sea. Kosovo's area is 10,887 km². It is estimated that Kosovo has 1,907,592 residents and the density of the population is around 159 persons per km^2, divided in 38 Municipalities. Kosovo was placed under UNMIK administration in 1999. During

this time Kosovo was administered by the United Nations Mission and the Provisional Institutions of Self-Government, while security issues were trusted to NATO- (KFOR) troops. On 17th February 2008 Kosovo's Assembly declared the independence of Kosovo. In 2011 a general census of the population, apartments and households was undertaken, but the Statistical Office of Kosovo and come out with the final results of the census. The previous population census took place in 1981 (Kosovo Agency of Statistics, 2011).

Study Case-Region of Gjilan

This study focuses on the analysis of economic competitiveness in the Gjilan region. Similarly to the general level of development of Economic Competition in Kosovo, the Gjilan Region faces the same challenges, so by researching some of the most vulnerable sectors where competition is being affected this study attempts to give a clear picture of the level of competition development and law enforcement for the protection of competition. The Republic of Kosovo is divided into the first level of local government in seven administrative regions, which are: Pristina, Mitrovica, Gjilan, Ferizaj, Prizren, Gjakova and Peja.

Figure 1. The Kosovo map is divided into administrative units

Source: Statistical Agency of Kosovo

The District of Gjilan is one of the seven districts (the higher-level administrative divisions) of Kosovo. The district of Gjilan has a total of 6 municipalities: Gjilan, Kamenica and Vitia are larger municipalities while Ranilug, Partesh and Kllokot, with a greater percentage of Serbians, have smaller populations and territories. This research is focused in the three major municipalities, since the other

municipalities in terms of competition, market size and market impact do not have much relevance.

Figure 2. Map of Gjilan Region

Source: Statistical Agency of Kosovo

Research Methodology and Data

This paper attempts to answer its research question through comparative analysis, the use of the sample method, and primary data extracted from the questionnaire.

Research question

The research question consists in evaluating whether businesses in the Gjilan Region have difficulties doing business because of unfair competition, and how well are these businesses knowledgeable about, and able to enforce, competition protection law?

Hypotheses

The hypotheses put forward consist in that:

> H1- The enforcement of the law on protection of competition will affect the creation of fair economic competition and
>
> H0 - Does the enforcement of the law on competition protection have any significance in making the business easier and with this growing competition?

Restrictions of paper

Difficulties in providing information are problems with filling out the questionnaire, hesitation in answering the questionnaire, and difficult location, technical, and organizational conditions.

Empirical analysis

In order for the research to be more reliable and to receive objective information, a questionnaire was prepared for the sectors of: Pharmacies, Insurance Companies, Gas stations, and Banks. Relevant market research has been done by defining the geographic market (Gjilan region) and the product market. The hypotheses put forward relate to specific questions and enable the receipt of reliable replies.

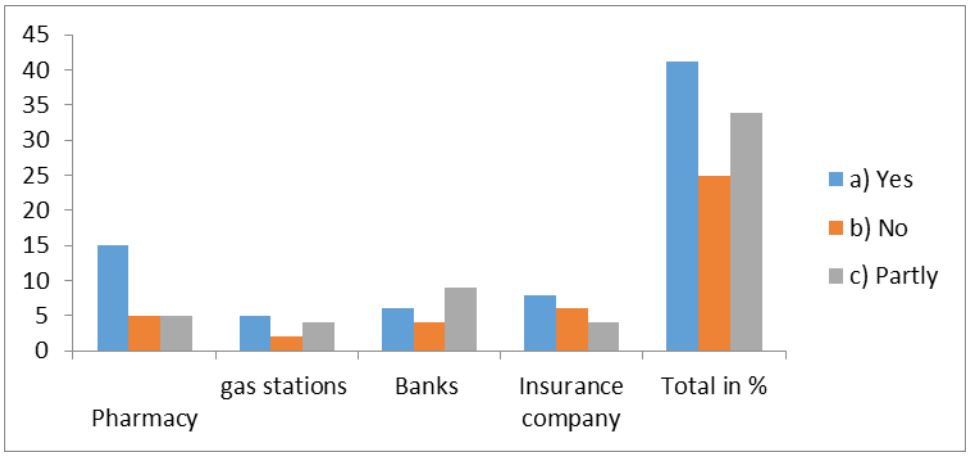
The respondents have been restricted to those with a high school diploma or higher (undergraduate studies or degree) in order to get relevant answers.

Results

From the answers given by the respondents from the questionnaire, the following findings result:

1. Are there any difficulties in doing business in the Gjilanit region?

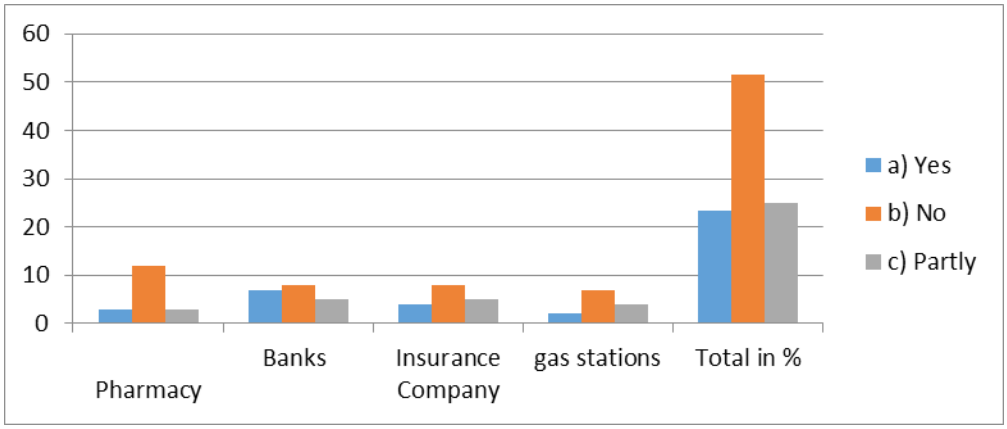
Figure 3.



Source: the data from the questionnaire

2. Does the Republic of Kosovo have sufficient legal basis for the functioning of proper competition in the field of business?

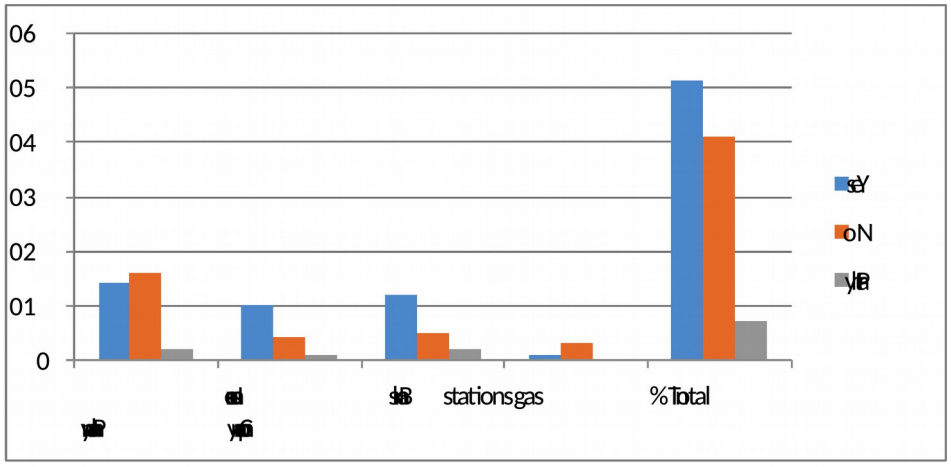
Figure 4.



Source: the data from the questionnaire

3. Are you aware that the Republic of Kosovo has the Law no. 03 / l-229 on Protection of Competition?

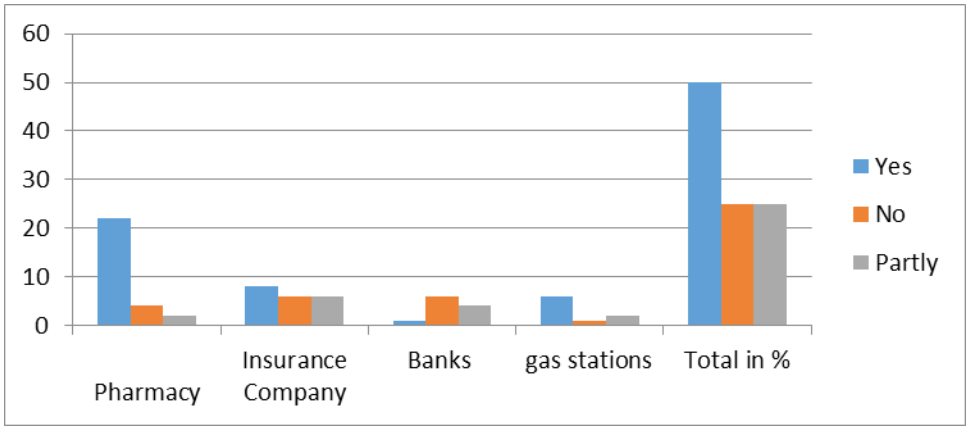
Figure 5.



Source: the data from the questionnaire

4. Is monopoly as an economic phenomenon present in your business field?

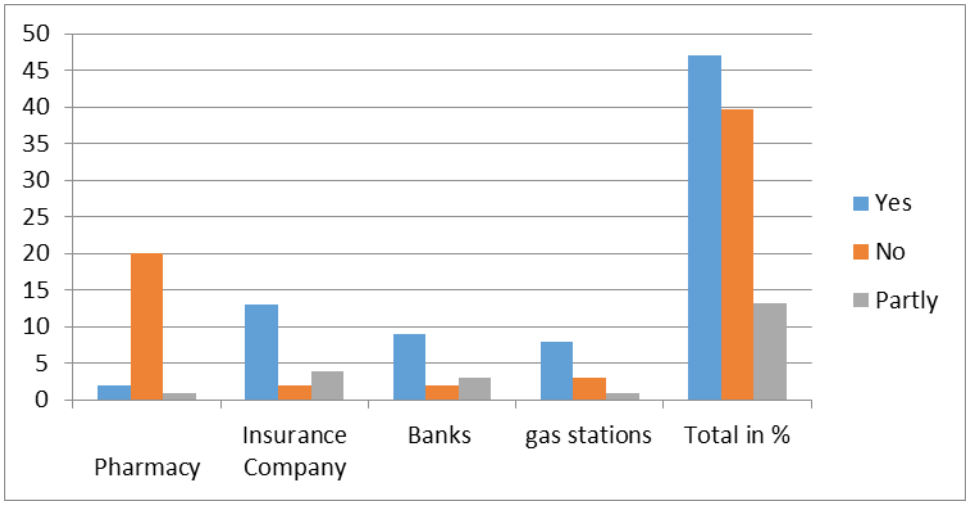
Figure 6.



Source: the data from the questionnaire

5. Are there occasions when the Competition Authority intervened in defense of genuine competition in the nature of your business?

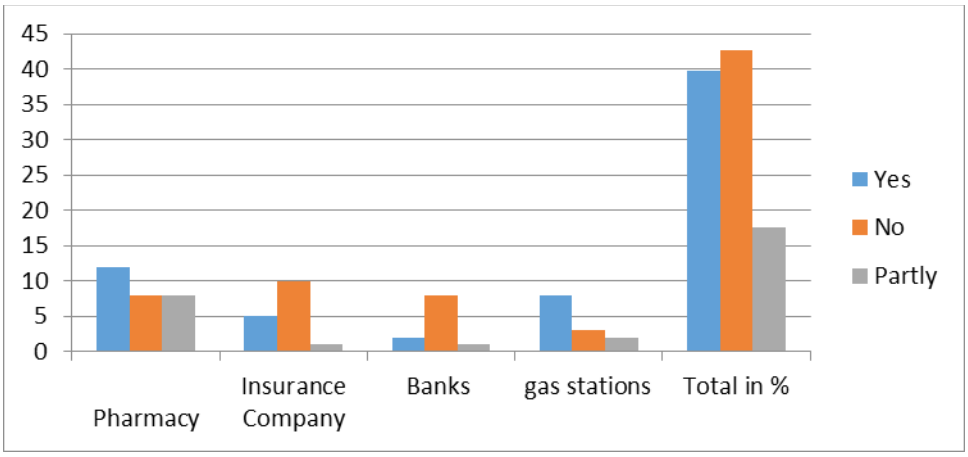
Figure 7.



Source: the data from the questionnaire

6. Do you think there are legal obstacles to making genuine competition in Kosovo?

Figure 8.



Source: the data from the questionnaire

7. In the nature of your business, are there cases when businesses have entered into agreements on unique services and prices offered to consumers?

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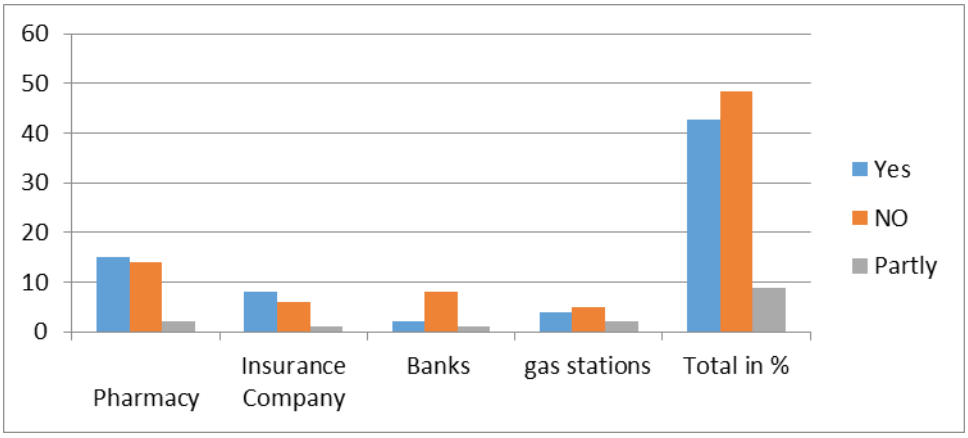
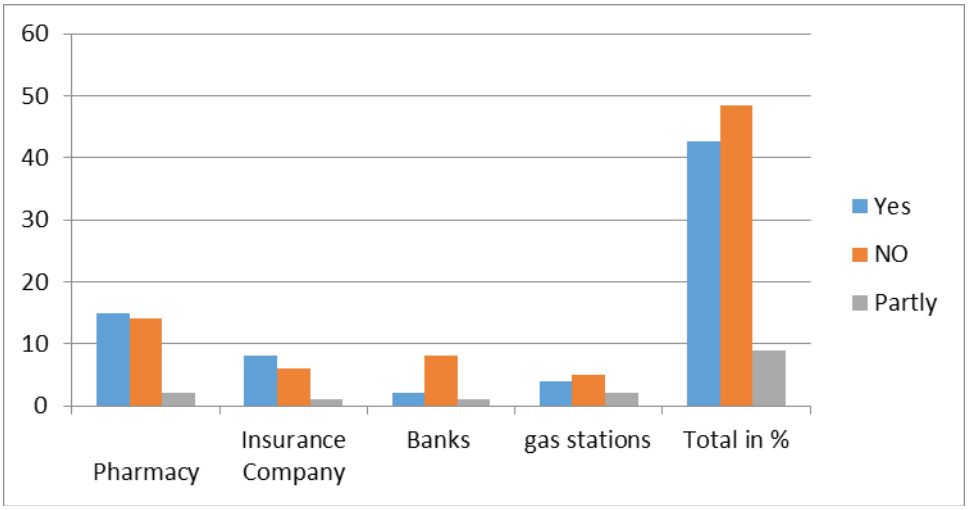
Figure 9.



Source: the data from the questionnaire

8. Do you think that the business you represent is damaged as a result of agreements prohibited between economic participants in the market?

Figure 10.



Source: the data from the questionnaire

Conclusion and Recommendation

Based on the data collected from the questionnaire and their analysis, we can draw some conclusions related to the hypotheses set out in the paper:

- The recognition and enforcement of competition law has positive effects on the growth of competition. The research shows that the regulated sectors (Bank and Pharmacy sectors) show a modest level of competition

development compared to the sectors of Insurance Companies and Petrol Stations.

- Respondents indicate that in the other surveyed sectors (Insurance Companies and Petrol Stations) these two markets need to be regulated in terms of functional laws and their implementation. Where there is insufficient knowledge to enforce the law on competition protection, there is the possibility of market damage, abuse, and other difficulties with doing business.

Finally, it is very important to have more advocacy by the Kosovo Competition Authority regarding the importance of competition, and informing people about the law on protection of competition and another administrative acts. There is a need that the authority should have regular cooperation with economic regulatory bodies with a view to creating fair competition. All these acts shall create a sustainable environment for further development of free competition and its protection, as a fundamental condition for sustainable economic development and protection of consumer health.

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Judiciary and State-Building of Kosovo: the Execution of Imprisonment for Women in the Republic of Kosovo

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Abstract

Historically it is known that criminal offenses made by females are at a lower level than criminal offenses made by males. However, regardless of gender, it is important to note that for the perpetrators of criminal offenses have also been created the legal basis, and earlier has been used also the customary law, in order to sanction these criminal offenses. But, the main problem throughout the history of mankind has been that through the execution of these sanctions is the re-socialization of those persons achieved, especially for the females, as well as the issue of the physical aspect of the place, where the females should be held, in special prisons or together with other perpetrators of criminal offenses.

When considering the penitentiary system in Kosovo, for females who in one way or another have committed a crime and been punished with a prison sentence, it is notable that from the moment they begin serving the sentence, they should be sent to a special prison for women in Kosovo, known as the Lipjan Prison, which is located around 15 kilometers from the capital of Kosovo – Pristina.

In this paper, we will try to elaborate historical aspects of the development of the prison for women during the state-building of Kosovo, then the legal basis on which the sentence is served, and we shall not neglect studying and presenting most of the aspects related to the functioning of the single prison for women during the state-building of the Republic of Kosovo.

Key words: *criminal offenses, females, jail sentence, re-socialization.*

Introduction

Shearer (1996), on Antipas Ministries, while explaining the tortures made by CIA Batalion 316 in Honduras, quoted one of the torturers, CIA Agent Jose Barrera, who said that *"They always asked to be killed. Torture is worse than death"*.

We began this paper with this quotation by Jose Barrero, to present in essence the aspect that in contemporary times, prisons are not or should not be considered as places to be tortured, but are places where those who commit a

criminal offense are held and are serving the sentence for the committed offense, but at the same time are prepared with different educational programs, for their resocialization and the unhindered return in the societies where they have lived before (Ministry of Justice, 2018). But prisons throughout history have not always had this purpose, so before we get to the main topic, we want to give some historical and cultural explanations about what the prisons were used for, and what torture is being done in prisons or correctional centers as we call them today in most democratic countries. Even though today there is tighter control of the correctional centers, torture and maltreatment of various forms is almost impossible to stop. And this depends on many aspects, ranging from the state system, laws in force, culture, society, etc., which have their impact on serving punishment for a perpetrator of a criminal offense. This is even more difficult if we are dealing with female perpetrators, where it is well known that discrimination and violation of women's rights has been one of the longest violations of freedoms and rights recognized by human history. In some societies this continues the trend of quite primitive times - unfortunately for their fates.[1] Janey (2013, p.3) states that *"We would like to believe that by discussing what has happened, we will change things. So far, we have a mental illness that needs to be addressed, starting with its roots."*

As said above in this article, different cultural practices and perceptions undoubtedly affect the meaning of legal provisions and international standards, and often their interpretation comes through the lens of a particular culture, violating the most fundamental rights of a perpetrator of a criminal offense. For example, physical punishment, or the causation of stick or wrist pain as a means of enforcing punishment, is a serious form of mistreatment, and this is still done without a trial (Daniels, 2004, pp. 20-59), as happened in many different judicial processes after the Second World War. Also, within the Islamic tradition and Sharia law, such physical punishment, and even other forms like amputation, are not only admissible, but are legalized by a number of religious courts, which apart from marriage and inheritance, also regulate other spheres of physical and spiritual life of Muslims. For example, in Nigeria's state of Zamafra, punishments such as corporal punishment, amputation, the death penalty, and imprisonment until death can be imposed under the 2000 Shari'a Criminal Code. Similarly, in

1 Many third world countries all around the world, like in Asia, Africa, South America, to this day use prisons as exclusive places for torture of prisoners, even we have had many different cases or different affairs also from the states that are considered the most democratic in the world, such as the US with the Guantanamo Prison and the tortures that have been committed there are considered to be one of the most difficult tortures for prisoners, and may even be compared to medieval and primitivism tortures. Furthermore, please see the request to close the Guantanamo Prison exclusively for the reasons stated above: http://www.closeguantanamo.org/Prisoners, last seen on 18 september, 2018, at 21:48.

Saudi Arabia, Iran, Libya and Afghanistan, religious courts, based on the principles of Shari'a law, use similar views in their decisions (Qendra Evropiane e Trajnimit dhe Hulumtimit për të Drejtat e Njeriut dhe Demokraci, 2003, p. 79).

To stop these inhumane forms of humiliation of individuals, and in reaction to the torture they can undergo in correctional facilities, the international community through its institutions has established institutional means of monitoring and controlling prisons across different countries.[2] One of the latest developments was achieved at the 57th Session of the UN General Assembly in New York in 2002, where the Optional Protocol to the UN Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment of 1984 was adopted (Kombet e Bashkuara, 2002, pp. 346-366). The protocol is designed, through regular prison visits by local and international specialized bodies, to prevent torture and other forms of mistreatment in prisons. Thus, based on the Optional Protocol, an international expert body will be established, namely the Subcommittee of the UN Committee against Torture (United Nations Human Rights – Office of the High Commissioner, 2018). The Protocol also obliges states to establish local visiting bodies. These local and international bodies will visit the prisons regularly and make recommendations for improving the treatment of prisoners and improving living conditions for persons deprived of freedom. Kosovo has also established such state mechanisms as the Inspectorate of the Ministry of Justice for Inspection in Correctional Services of the Republic of Kosovo (Ministry of Justice, 2018). Based on its legal mandate, this inspectorate has conducted inspection activities to ensure security measures in the Kosovo Correctional Service, respect of the rights of prisoners, and that re-socialization activities are done in accordance with the Law on Execution of Criminal Sanctions, the Minimum Standards for Prisoners and the European Prison Rules (Inspektorati i Ministrisë së Drejtësisë për Inspektimin e Punës në Shërbimin Korrektues të Kosovës, 2014, p.1), which has managed to have measurable results and also major challenges, according to the EU Compact Progress Report, EULEX and the Ministry of Justice (EU & EULEX & Ministry of Justice, 2015, pp. 19-21).

The focus on preventing torture and mistreatment in correctional centers is a new development within the UN system of human rights, as existing international bodies can only act once violation has occurred. Visitation of correctional centers is one of the most effective measures to prevent mistreatment in correctional centers and improve conditions in these centers. Through Optional Protocol, for the first time in the framework of an international instrument, have been established criteria and guarantees for effective and preventive visits by established local expert bodies. For this reason, this Protocol is considered a real

2 The UN and the Council of Europe are the two international organizations that have mostly dealt with issues of protection of prisoners' rights by issuing relevant international documents on which the most important principles for the protection of the rights of prisoners are established.

step towards strengthening domestic and international mechanisms against torture and inhumane and humiliating mistreatment in correctional institutions throughout the world.

However, today it is thought that preventive measures for preventing mistreatment in correctional centers are sufficient (though it is not so), for they are not fully implemented at the local level. The complete eradication of maltreatment can only become a reality when internationally recognized standards are found in independent implementation and monitoring systems at both local and international levels of all UN member states, including countries such as the Republic of Kosovo, which for political reasons is not yet part of the UN. Legislation such as the LESP, according to Prof. Rexhep Gashi will be "a modern law that will respond to modern penitentiary standards and requirements" and at the same time will enable successful "re-education and re-socialization" of convicted persons (Gashi, 2005, pp. 39-40). Moreover, the provision of rehabilitation, legal assistance, compensation, and assistance to victims of inhumane and degrading misreatment for their reintegration into social life are essential requirements for a fair and equal national order, which characterizes the developed countries in Europe and North America, and the Far East, where the rule of law implies subordination of the state apparatus to justice (Fromont, 2009, pp. 12-13).

And, being such, it can be seen that there are three main ways for effective prevention of mistreatment in correctional institutions (Qendra Evropiane e Trajnimit dhe Hulumtimit për të Drejtat e Njeriut dhe Demokraci, 2003, pp. 83-83):

1. Creating an effective legal framework and ensuring its implementation, as well as applying appropriate safeguards to prevent mistreatment - for example, providing fundamental rights guarantees (right to a lawyer, doctor, judge, etc.) and not detaining without possibility of communication being offered.
2. Establish control mechanisms, in particular local mechanisms for regular prison visitation, and provide the possibility for civil organizations to monitor and report independently.
3. Continuous training for police officers, correctional service officers, lawyers, judges, doctors, etc.

We can therefore say that each of us, through concrete actions, campaigning, lobbying for ratification of international instruments and their implementation on the local level, or writing letters and requests, can participate actively in the protection of the rights of prisoners, and in particular the rights of imprisoned females. All of us can contribute to raising awareness and increasing educational activities at home, in the district that we live, or in the regions and even at the country level, with a view to protecting the rights of prisoners. And, last but not

least, we can help victims of mistreatment get through their correctional institutions, by informing them about how their case can be addressed, or supporting them by helping them report their cases, as well as taking legal steps against the officers of the correctional service. Such mechanisms exist in most democratic countries, as well as in the Republic of Kosovo, mechanisms such as the Ombudsperson, CDHRF, KRCT, and many other organizations at the local and international level.

Correctional Centers for Women - Discrimination against Women

Before we write about the Lipjan women's correctional center, we would first like to present some elements of discrimination from the history of women, in particular discrimination and mistreatment in correctional institutions, not forgetting the development of the role of women for women's rights in human history. It is therefore important to see how women have fought for their most basic rights, even ones within penal institutions, which at very early stages seemed to be quite a ridiculous pursuit.

Females, as persons today, have weight and value, however respecting women's rights remains very controversial around the world. In modern times, women with more international documents have their rights guaranteed and their disrespect is as punishable as any other criminal offense. Women today have the right to education, work, and life pursuing their own personal wishes, and conforming to existing norms and laws, they can vote and be elected. Females have for long shown their strength, left deep traces in world history, and continues to do so today. While women may be in conflict with the law, they can not be careless of the law, and it is important that the law should apply equally to them, and above all, that punishment be within the framework of optimal conditions that must exist in correctional facilities, that in no way they be subject to any torture or discrimination while serving their sentence.

In the most ancient times of the existence of mankind that this world recognizes and accepts as such, the first gender differences were made. Even in the primitive time of society there were also initial gender differentials, which are based on physical characteristics, and which immediately degraded the role of women in the community. At that time life was difficult and the way of survival was quite severe. To survive, they needed food, food had to be provided through hunting, hunting required strength, and males were stronger. After hunting, a male was received into the circle around the fire, which provided even greater respect in society, and so the mens began to occupy their seats, leaving the women aside and sidelined. This is because females lacked physical strength, they gave birth and were unable to provide food for themselves much less for others, and all this made the woman to be left aside (Giddnes, 2006, p. 201).

So this is how the first genesis of female discrimination begins. This is the first step of society towards women's inequality. By this step, at this stage, men

felt power, were dominant and superior, thus creating a kind of dominance and arrogance over the other race - females. But to this day, although the world has begun to change—humanity is more developed and many things radically changed, evolution is seen everywhere in the world, the world has gotten another picture, and apparently everything is approaching perfection—still one thing has remained the same: "discrimination of the females is still continuing" (French, 1992, p. 163), and even the situation has worsened for a long time.

Over time, a woman was forced to marry against her wish, she had no right to birth control or abortion, and once married was considered as the husband's private property, obliged to preserve her husband's morale, to stay under the husband's regime and to make children. The only outlet she had was the education of her children. In the case of a mistake, she was scolded by her husband and family. She, as the private property of the man who possessed her, dared not disobey his orders, otherwise she would be subjected to physical violence. And this situation stayed so for a long time (Smart, 1992, p. 67).

"If by force is understood the physical force, then, of course, the female is weaker than the male. If by force is understood the moral force, then the woman immeasurably stands higher than the male"- says Mahatma Gandhi.

As soon as moral strength began to be empowered, women raised their voices for the first time. During this time they realized they had rights, and as human beings had the right to enjoy them. After a while, came the first fractures of the male order of our societies. For the first time in the bourgeois societies of the eighteenth century, the call of women for rights became powerful. They had many reasons. First, the General Declaration of Human Rights (Gruda, 2010, pp. 22-29) on the basis of the natural law in France and the United States Constitution[3][3] initiated demands for equal rights for women and this was much better established in the time after the WWII with the Declaration American Rights and Duties (Gruda, 2010, pp. 102-108).

At this time, a woman was "liberated" to work for gain, but she still had to create a family and a private home. She was excluded from many economic and political decisions. But this time, women brought awareness to some extent of their aspirations. The first movement of women took place between 1848-1914, where a fierce struggle for political and civic rights broke out with the first feminist movements. At this time the right to vote was the primary demand that was being made, which was achieved in different places at different times (Ministry of Justice, 2018). However, it should not be forgotten that the war that has been waged to protect the rights of women, which in fact has a long history, is inspirational to all women of the world! Some thinkers and sociologists rightly say that the degree of emancipation of a human society is measured by the degree of emancipation of women (Sadikaj, 2003, p. 126), which constitutes a very important part of society. Empowerment and emancipation are values of these

3 The US Constitution and its role for human rights has been extraordinary in the history of the protection of human rights and freedoms.

societies, but also among the challenges they face, since such empowerment and emancipation must take place in all areas where women can make their contribution (Arbëri, 2016, p. 345).

Therefore today it is not debatable whether women's written rights should be fulfilled, today they are ostensibly protected from any form of discrimination or inequality, they are protected by law and have the right to appeal. In all international human rights conventions, women's rights are not excluded, and the prohibition of discrimination due to gender is a fundamental part of human rights conventions such as the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Declaration on the Elimination of Discrimination Against Women*, which preceded this Convention (Gruda, 2010, pp. 244-262). Subsequently discrimination or violence against women has been combatted with all means, one of which is the *Protection of Women from Violence under the Recommendations of the Committee of Ministers of the Council of Europe* (Konventa e Këshillit të Evropës mbi parandalimin dhe luftimin e dhunës ndaj grave dhe dhunën në familje, 2011) which document had two positive aspects, being on the one hand a convention for the protection of human rights and on the other hand a convention on criminal law (Rizvanolli-Kusari, 2013, pp. 44-45).

Even in Kosovo, these rights are regulated and protected by the Constitution and laws in accordance with the Constitution. Only a few years ago the President of Kosovo was a female. So things have moved in a positive direction, but they are still not very satisfactory. In Kosovo, the Balkans, Europe and in different countries of the world, the rights of women have evolved, today their status marks progress in the community, and today a woman is not or can not be considered as an object. These things are documented in almost every constitution, agreement, and convention.

However experiences across various cultures reveal a different picture demonstrating the opposite. Even today, cases where women are treated unequally are numerous and every day, everywhere there are violations of women's rights. We see them, hear them, experience women's sufferings, yet keep a spectator's place (Tysoe, 1992, p. 301), doing nothing. And this is even more evident when it comes to imprisoned women, far away from the public eye and the media.

We discussed the historical aspect of discrimination against women, hoping to argue that females have been consistently discriminated against, and therefore the prohibition of this discrimination should be done once and for all. Also, we tried to point out that while men who commit various offenses may be punished and sentenced, women may be punished without any trial and the punishment against them is always rude - amounting to a death penalty in different guises. Therefore, many countries have also begun creating *penal* institutions for women, leaving much to be desired as regards to living conditions and the manner of their treatment in these institutions. In reaction, many countries began creating *correctional* institutions only for women. The ranks of correctional officials, until recently all male, have begun to include females as well.

On the other hand, Kosovo does not have a long history of female prisons. At the time of the former Yugoslavia system, the Lipjan Prison, in operation since 1978 as a juvenile facility (Ministry of Justice, 2018), started in 1981 to become a prison for women as well. So we can freely say that Lipjan Prison has a relatively short history compared to other prisons in different countries. And this story would be split into two or possibly three different stages, that from 1981 until 1989, with the fall of communism and the beginning of the former Yugoslavia's collapse, then from 1990 until 1999, when the penitentiary institutions were completely under Serbian rule, and after 1999, when Kosovo begins a new era - that of freedom. It should also be noted that during the 1998-1999 period, this center was out of institutional management, as it was used by a paramilitary organization for criminal purposes against the Albanian people of Kosovo (Ministry of Justice, 2018).

In order to operate these prisons, Kosovo immediately after the war in 1999 began establishing institutions that would run prisons in Kosovo, including the Lipjan Prison. However, after the end of the 1999 war, the infrastructure of correctional institutions in Kosovo was devastated. Initially with the support of the international community and UNMIK (United Nations Mission in Kosovo), and later with investments by the Government of Kosovo, existing institutions were rebuilt and new institutions were founded. The establishment and development of Kosovo Correctional Service Institutions in the post-war period since 1999 have been part of a legal transition that the Republic of Kosovo has undergone during international administration under UN Security Council Resolution 1244. The process of reforming the Kosovo Correctional Service Institutions in the post-war period has been one of the areas, where besides effort being put into building new concepts of operation, much effort has been put into the unification of rules and procedures with international norms and standards. Now, ten years after the declaration of independence, Kosovo has pledged to pursue its path towards the European Union, which has prompted the Kosovo Correctional Institutions to develop rapidly in order to meet international standards for an EU accession and membership in other international structures.

Establishment of the Correctional Center for Women in the Republic of Kosovo

It is understandable that correctional institutions need to exist and as such they should exist for females as well, so today's democratic states have established the legal basis and on that basis have established correctional institutions for females. Like any other state institution, correctional centers are an integral part of the history of a state as a whole. Correctional Centers are a reality that belongs to any country, regardless of its economic or social-political development (Sufaj, 2000, pp. 2-10). Studies in this area are of particular importance as they relate to the well-being of society, human relations and conflict reduction, so studies in this field include a wide range of interests that are crucial to the genuine and democratic development of a society. They orient the state structures to provide a

fair solution to problems, based on more reasonable laws, democratic and humane, based on many important documents, both domestic and international, for the protection of prisoners' freedoms and rights.

Before the twentieth century, in our country, detention was only one of the forms of punishment and we can say not the main one. It is known that in our country besides the official Roman criminal law, then Byzantine, Albanian, later Ottoman, Serbian and Greek there was a customary or traditional law[4], which provided punishments under these official legal systems, such as the Ottoman, given the five century Ottoman rule in Albanian lands. But this was not very much applied in remote and mountainous areas, which did not accept foreign laws, especially the Ottoman one (Gashi, 2012, p. 29), but applied Albanian customary law. The main forms of punishment envisioned in Albanian customary law were: the death penalty, abolition from the province, burning of the house, not having the right to work the land, cutting of trees, fines in money, etc. and the tougher penalties were especially for women, most especially for loyalty issues[5]. Later, with the commencement of the functioning of correctional institutions within the various systems, the prison sentence also began to be adapted. For historical reasons of the Albanian people, the exercise of the laws has been very difficult, given that for almost 100 years they were directly threatened by their extinction, in all parts inhabited by Albanians, and especially in Kosovo and its surrounding regions (Gruda, 2016, pp. 50-100) inhabited by Albanians. The creation of Correctional Centers in Kosovo began only after the Second World War within the former Yugoslavia, but Albanian perpetrators at that time were sent to correctional centers of other parts of the former SFRY, and especially Serbia.

The framework of the creation of correctional facilities in Kosovo at that time included the Correctional Center in Lipjan for juveniles and females. This correctional center is a semi-open institution. This center is the only penitentiary institution in the Republic of Kosovo which includes several categories of prisoners such as minors needing educational measures, juvenile offenders and pre-detained juveniles as well as convicted, pre-detainee and juvenile women. Condemned juvenile males are accommodated in specific facilities or floors, while all women for lack of space are together, both adult and younger women, even though that is contary to one of the European Union's recommendations for many years, from 2009 onwards (Komisioni i Komunitetit Evropian, 2009-2010,

4 Please see: The Kanun of Lekë Dukagjini, the Kanun of Skanderbeg, the Kanun of Labëria, etc., in which canons have been found a large number of criminal norms, which related to the penalties and the manner of execution of these penalties.

5 According to the Kanun of Lekë Dukagjini, on the occasion of marriage, the girl's father handed the bullet to the groom, which in case of betrayal by his daughter he was free to kill and did not have any debt or (blood) to the family of girl, so a kind of death sentence for women without trial.

p. 14). But according to the Director of the Correctional Center in Lipjan, Heset Loku, it is important that the number of younger females in this center has never been large, most often between 1 and 2 female juveniles. This was true from 2010-2015 (Tribuna Channel TV, 2018), but the overall number is still almost always overcrowded: even according to the QKRC research in 2014 up to 6 women were accommodated in a single room (QKRMT & KRCT, 2014, p. 30).

Due to overcrowding in other correctional centers, the Correctional Center in Lipjan has another category of offenders with short sentences or near the end of their sentences, but this category is separated from other prisoners (Tribuna Channel TV, 2018). The total capacity of the Correctional Center in Lipjan is 138 seats as well as 6 seats in local or special prison sections. In addition to residential facilities, the Correctional Center in Lipjan also has 12 other accompanying facilities. According to some OSCE polls in 2009/2010, the physical conditions in the women's facility were very good, especially lighting, ventilation, furniture, decorations and the general condition. Even in this research, the management of this center points out that it deserves to be praised for its efforts to equip the facility for mothers and infants, and also because the ambulance covering both sections of women and juveniles was completely renovated in 2010 (Organizata për Siguri dhe Bashkëpunim në Evropë, 2010, p. 15).

The legal basis for the functioning of Lipjan Correctional Center

The 1999 war in Kosovo left many buildings destroyed, including Correctional Institutions in Kosovo, which have been among the most damaged institutions in terms of infrastructure and all other aspects. In this respect it is worth mentioning that the history of the penitentiary system is an inseparable part of the general history of a state, and Kosovo institutions do not make any exception (Sadiku, 2010, pp. 10-21). Initially, with the entry of KFOR forces in Kosovo, all institutions, including Detention Centers and Correctional Centers, were under the administration and management of KFOR. They initially provided the physical security of institutions and their management as well.

The Kosovo Correctional Service (KCS) was established in November 1999 by UNMIK within the framework of the first pillar of justice as a reserved responsibility of the SRSG (Security Representative of the Secretary General) and in support of local staff began work immediately in November 1999. The KCS inherited a state of dysfunctional infrastructure, but it was consolidated and became operational very soon for meeting the needs of Kosovo for detention and other sentences. KCS initially opened and operated the Detention Center in Prizren to continue with the consolidation of the infrastructure of Correctional Institutions in Dubrava, Gjilan, Lipjan, Peja, Mitrovica, and then in all other Centers of Kosovo (Ministry of Justice, 2018).

The KCS under international monitoring has continuously recruited local correctional officers to meet operational needs of this service, which under these

conditions has faced many challenges, not to overlook the aspect of its subculture of prison work (Kauffman, 1998, pp. 19-25). The KCS is built on international criteria and standards, similar to the most advanced correctional systems in Europe, as international staff have brought best practices from their states. Since its establishment, the KCS is part of the general development of the situation in post-conflict Kosovo, which has undergone various challenges and difficulties throughout the transition phase in Kosovo, challenges that continue to follow this institution even today (EU & EULEX & Ministry of Justice, 2015, pp. 19-21).

In the beginning, the legal basis for the work of the Correctional Institutions was UNMIK Regulation 1999/24, which made applicable the Law on Execution of Criminal Sanctions of 1977. Also applicable to the work of the KCS were the rules of European prisons as well as international standards that were applied directly to Kosovo Correctional Institutions. In 2001, legal infrastructure was complemented[6], by establishing a clearer basis between the Provisional Institutions of Self-Government and UNMIK, however, the development of the KCS remains under the reserved responsibility of the SRSG, under the division of the Provisional Institutions of Self-Government, through the Department of Justice's criminal management. During the period when the KCS was under reserved responsibility, the efforts of local staff continued to increase professional and managerial capacities and to prepare for the acquisition of competencies and responsibilities from internationals, who until then managed KCS.

In 2005 - by UNMIK Regulation no. 2005/53 the legal basis for establishing the Ministry of Justice was established and the initial competencies were defined and in March 2006 the Ministry of Justice started its work. At the later stage in 2006, UNMIK Regulation 2006/26, of April 27, 2006, the responsibilities of the Ministry of Justice expanded to include competencies over the Correctional Service, excluding the command of emergency situations at the Dubrava Correctional Center until the end of the UNMIK executive mission. After this phase, the KCS recruited completely new management from local staff and was independently developed by UNMIK under the leadership of the Ministry of Justice. This period of competence transfer lasted until Kosovo's Declaration of Independence in 2008 and it was of particular interest for the continuation of professional work of correctional institutions (Dreshaj, 2010, pp. 20-41).

Like the establishment of the KCS, the creation of state correctional centers is always done on the basis of a legal decision - a legal foundation that creates the initial condition for an institution to be created. This is a practice of most of today's countries, especially the democratic ones, where the rule of law functions. Kosovo is no exception to this form of institution building, given that Kosovo has issued legislation after the 1999 war in almost complete harmony

6 At this time the Kosovo Constitutional Framework was adopted, which was approved by the UN SRSG.

with the Acquis Communautaire legislation of the European Union[7], attempting to establish also legislation in harmony with most international conventions, especially those dealing with the protection of human rights and freedoms, and with the European Convention on Human Rights, which protects individuals by forcing judges to interpret the laws "as far as possible" in accordance with this Convention (Herring, 2013, pp. 43-48). For this reason and in order to regulate this area in correctional institutions, local legislation has foreseen specific provisions for the concrete regulation of correctional institutions in the Republic of Kosovo. This legal basis includes a number of local and international legal resources, which may be presented as follows:

We are starting with the highest legal act of the Republic of Kosovo, i.e the Constitution of the Republic of Kosovo (Constitution of the Republic of Kosovo, Article 21), which in Chapter II - Fundamental Rights and Freedoms states that "Fundamental human rights and freedoms are indivisible, inalienable and are the basis of the legal order of the Republic of Kosovo." Article 21 states that" No one is subjected to torture, punishment or cruel treatment, inhumane or degrading treatment."

Then the Law on Execution of Criminal Sanctions (Ligji për Ekzekutimin e Sanksioneve Penale, 2013, Article 4), which in Article 4 states that "The execution of criminal sanctions aims at the re-socialization and reintegration of the convicted into society and their preparation for life and responsible conduct" [...]. Paragraph 7 states that "convicted persons are not placed in the same part of the institution with pre-detainees", but according to the KRCT 2014 survey, in the women's unit convicted in Lipjan Prison, given the lack of space pre-detainees are put together with convicted females. Even when pre-detainees share the same room space, they have contact with other categories during outings in the outside (QKRMT & KRCT, 2014, pp. 35-36). The Ministry of Justice issued an ordinance regarding the placement of convicted persons of specific age, health category or category that endangers security. Thus, the law itself, as well as the international conventions expressly emphasize that the environments in which the convicts live have to have enough space, with the necessary natural and artificial lighting, to enable work, active and relaxed stay, and be equipped with hygienic services. Where climate conditions require, the heating of the premises must be ensured. When it is not possible to provide accommodation in individual rooms, the assignment of convicted persons to the same room should be done in such a way as to avoid conflicts and mutually negative impacts. For this purpose the age group criteria, the type of criminal offenses committed and the intellectual and psychological characteristics of convicts are used. For each convicted person, a separate bed and a suitable sleeping set are provided. Minimum quotas for the surfaces, volumes, lighting and ventilation of the prisoners' premises are set in the

7 Kosovo has adopted most of its legislation in accordance with Acquis Communautaire of the European Union.

prison regulations, according to the recommendations of the Ministry of Health (Avokati i Popullit, 2008, p. 93).

- Law on the Ombudsperson (Law on the Ombudsperson, 2010). "Officials of the Ombudsperson Institution can at any time and without any notice enter and inspect any place, where persons are deprived of their freedom and other institutions restricting freedom of movement and may be present at meetings and hearings, when such persons are involved."
- Administrative Instruction on Disciplinary Procedures and Measures for Prisoners in Correctional Institutions in the Republic of Kosovo with protocol no. 01-1608I dated 01.12.2009 (Administrative Instruction, 2009).
- Sub-legal acts deriving from the Law on Execution of Criminal Penal Sanctions (Internal Rules of Procedure of the Kosovo Correctional Service, House Rules).
- European Prison Rules (Council of Europe, 2006). It should be noted that these rules do not represent a model system and that, in practice, many European prison services pursue higher standards than those set out in the rules and others make efforts and continue to strive in this direction. Whenever there are difficulties or practical problems to be overcome in implementing these rules, the Council of Europe has the mechanism and experience available to assist with advice and results from the experience of different prison administrations within its sphere (Gruda, 2010, pp. 47-75).

These rules have repeatedly emphasized the values of human dignity, the commitment of prison administrations to humane and positive treatment, and the importance of the role of staff and effective modern ways of administration. These are set out to provide references, encouragement and guidance ready for those working at all levels of prison administration. The explanatory memorandum accompanying the rules seeks to provide the understanding, acceptance and flexibility needed to achieve the highest realistic level of implementation beyond the core standards:

- Universal Declaration of Human Rights
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (Gruda, 2010, pp. 65-83)
- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is also an important document.

Apart from the aforementioned international acts in the field of international justice, we also have so-called "soft legislation", which includes principles, guidelines, standard rules and recommendations, among which the most popular are:

- Minimum Standards for the Treatment of Prisoners, 1977 (Kombet e Bashkuara, 2005, pp. 159-178);
- United Nations Standard Minimum Rules for Juvenile Justice Administration, 1985, known as "PEKIN Rules" (Kombet e Bashkuara, 2002, pp. 450-483);
- United Nations Standard Minimum Standards for Alternative Measures (Non-Prisoners), December 14, 1990, known as the "TOKIOS Rules" (Kombet e Bashkuara, 2002, pp. 424-437);
- European Prison Rules, according to Recommendation no. 2006/2, etc.

Conclusion

The Kosovo Correctional Service after 1999, under the supervision and contribution of the international community, marks a significant breakthrough in the humanitarian field of the penitentiary system. This visible progress is affirmed by reports of many international and local stakeholders. International stakeholders helped the Kosovo Correctional Service by renovating all Correctional Centers and Detention Centers, by increasing new capacities for prisoner accommodation, by increasing staff capacities with training at home and abroad, and by raising technical and security capacities for successful work as much as possible.

During this period of international administration the legal infrastructure was established, as were sub-legal acts and standards of practical actions, all based on the most advanced international standards. In accordance with the requirements arising from the legal Infrastructure, the Kosovo Correctional Service has also established adequate institutions for the security and treatment of prisoners in accordance with the law and international standards.

With the proclamation of Kosovo's independence, new conditions and circumstances are created for the acquisition of full competences in the management of Correctional Institutions in Kosovo. In this context the legal infrastructure regulating the functioning of the Correctional Institutions has been amended. In accordance with the legislation, the bylaws and internal rules for the work of the Kosovo Correctional Service have been issued.

Therefore, at the end of this article, we can conclude that in the penitentiary system of the Republic of Kosovo many prisoners' rights have been provided for, and some modern penitentiary requirements have been included. This is important and characteristic for the very core of Lipjan / Lipljan Prison as well, where convicted women are also incarcerated. But the particular thing in this

whole process is that the realization of some of these rights in penitentiary practice is not always attainable and that even in this area there are some obstacles and difficulties, which hamper the process of re-socialization and re-training of convicted persons during the serving of imprisonment.

The special feature of the penitentiary system in the Republic of Kosovo is the very legal basis for the functioning of these centers as well as the KCS itself, which is the main institution for maintaining order and discipline in the correctional centers. By contrast, prior to 1999, the correctional centers in Kosovo were seen only as centers for torture, not as centers where the resocialization of persons could be achieved and their return to society. And in that way, we can say that Lipjan Prison is a correctional center, which aims at the rehabilitation, re-education and re-socialization of convicted persons, in this case convicted women, who are serving sentences in Lipjan Prison.

For this reason, through this paper, we have also attempted to present the legal basis of the Correctional Centers in Kosovo, especially of Lipjan, arguing that this legal basis is very advanced in terms of the protection of freedoms and rights and especially in the concrete case of women prisoners.

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Music, Institutions, and Responsibilities in Kosovo

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Abstract

The goal of this paper is to present the current situation of music and art in Kosovo by highlighting relevant cultural related institutions which include music within and as a part of art.

This paper portrays the real situation of the art of music in Kosovo, and how institutions deal with the management and administration of the art of Music. In contrast to the current situation, the art of music could be administered bearing in mind the fact that by its very nature, music is something that exists objectively, that lies in everyone's feelings and it is as ancient as human history.

The art of music upholds the soul, our feelings, and the mind of every living entity. Based on this fact, this art cannot become only an object for management and administration, because one has to perform it from within, and as a mean of expression, it is enjoyed through perception of the performer's fortitude. About the goals of institutions of the art of music: to make this art controllable and discussible is not as important as through the strategies, projects, and engagement of certain people within institutions, to give a push forward so that music becomes more beneficial to us as individuals and society. Also, of a great importance is the connection and cooperation among many other necessary segments in this process. Suggestions and cooperation should become more apparent and stronger due to joint interest and purpose.

Music as an art should have its pace assisted through strategies and institutional policies, and conditions should be created as well as standards to give music its deserved status in society. Music should be present in every step of the way of every person's life, and its existence should be appropriately treated, and as such it would have great impact in the education, social and artistic, human and civilization aspect.

Key words: *Music, Institutions, Administration, Devaluation, Return to values*

1. Introduction

Given the fact that every day we face different problems of Music as an art and a profession, and often the cause of these problems is considered the negligence or lack of work of relevant institutions or even a dozen of other factors to move forward and promote real artistic values, we shall take a look at these issues, as well as to do a more detailed analysis of this issue and try to find and give explanations by finding, from the beginning, the initiation of the problem, the path, its evolution in the society and in what we call the institutions, their function, structuring, what and why they are more than necessary, etc.

At the first glance, generally taken from the opinion of certain people, we have the impression of a disliked and inert state, in particular of the administration and promotion of what we are calling a genuine art.

This issue that we will try to elaborate further in this research, is not quite simple when we always have to take into account the fact that from the outside things are seen and perceived with a different look and point of view but on the other hand (from the inside), things are not that simple. There are a number of other issues which some may consider not of any importance nor worth discussing, but if we want meaningful art to find its deserved place in society, it is necessary for all these issues to be discussed and resolved.

This research will elaborate "what is music", and explain the terms: society, institution, politics, and cultural politician. The content of this research will be presented leading to a key point where it becomes an even more effective explanation of general interest: understanding how the best connection and functionalization of society is made, the society of artists, creating interactive society-institutions relations, etc., with the aim of a beter organization and a qualitatively better artistic life.

From in-depth analysis, the focus of this research is to raise the issue of raising awareness of the arts in general and music in particular, and of the social status of the artist or musician, and of the function of relevant institutions towards building an artistic society or a better society in the broadest sense, and of the role of institutional policies for the most dignified promotion of all arts as values of common interest.

After much hesitation about this research, being driven by the belief that all of us as an artistic society should do more, and that the greatest burden goes to artists to sensitize the public to the steps of entrepreneurship in the artistic field, I believe that elaboration of such topic must include many elements and many segments of art in general and music in particular, beginning with: how and what is music, what is our approach as society towards it, and what are different views of music. The most essential goals include the preservation and cultivation of the art of music as a value of national and social interest, the promotion of such values in the society, the worthy representation of this art to different nations and also different arts and cultures, the fair channeling of this art, the establishment of sound foundations of institutions that deal with and aim for the highest levels of

achievement and offer this quality to a wider public, the promotion of cooperation and integration into European or wider international artistic structures, the role of these institutions for decision-making on public policy issues, and the interactions and relationships among society, artist, politics, and politicians.

2. What is Music?

> Music is the mediator between spiritual life and physical life
> --L. von Beethoven

It is difficult to find a somewhat definite and complete definition of music. So first of all, let us begin with this simple and a very common question.

That music is undefinable is opined not only by people from broader society, but also by many great artists and philosophers whose works, leaving deep traces in the arts and philosophy, have had impact as written documents and historical artifacts of development and civilization. One might attempt a definition of music as an art described in many professional texts and speeches, and mentioned in many books. Alternatively, one could better define music as a direct art, indeed the most direct art, and at the same time the most magical art for listeners, whom it influences by humanizing and transforming their consciousness.

Listening to music, after it has been selected and accepted by the brain, interacts with the whole being and becomes a relaxation inducing element and is often preferable to working environments. It is possible to verify scientifically its role and impact. Many health institutions in the world use music therapy as a healing method for their patients. But its special role is in the field of education, including the effects of self-restraint, sustainability, expansion of the horizon of knowledge, and raising intellectual level, not only of the person but of the society as a whole.

3. Music and society or vice versa

Fischer considered that when the artist reveals the new reality, he does not do this for himself, he does it for others, for all those who want to know in what world we live, where we come from and where we go (Fischer,2018).

Surely, there are personal initiatives on this issue, not lacking in society in general, but the right transfer and channeling of this issue cannot remain at the level of individual initiative.

The main promoters of this initiative should be relevant institutions with their development policies, and institutional leaders with their decision-making powers. Choosing strategies to achieve common goals, and the preservation, cultivation, and further development of music as an art, tradition and culture, should certainly be done by institutions and politicians within these institutions,

which somehow show the way to society confirming the principles, values and interests that will have priority.

4. Institutions

The word institution means any association, any organization, organized within state rules, whether locally or nationally, for example schools, universities, institutes, the theater, etc. So, shortly said, institution means the official purview of different social, economic, educational, and cultural fields, and so on. These areas, with a view to operating efficiency, must necessarily have interlinking and interacting relationships with each other, given the common inter-institutional and social interest. The logical question would be: How will it look and how will this work in the field of art and what is the common interest in music?

If our society needs and values good professional musicians, it will not be able to have them immediately. To engender artists of an acceptable level will take time, effort, education, cost and investment, etc., i.e. support from many dimensions. This support should be promoted by the government with its institutions and may come as a result of cooperation between government institutions and educational institutions including pre-school, special and professional music schools, and universities. That is, the creation of an artist (musician) requires many years of institutional support for mastery courses, donations for activities, trips, concerts, competitions, etc., which necessarily requires the help of economic expertise and abundant funding within this cooperative endeavor.

The need and the interest of our society for generations of musicians (artists) of a desirable professional level is obvious. For this reason, the responsibility lies not only with educational institutions, but also with inter-institutional collaborators within certain educational, cultural, and, by all means, economic sectors.

The institutional education system has the responsibility of creating the conditions for generating artists (musicians) of the highest and most complete level. For such artists, who are already willing to contribute with their art, they should create favorable working conditions, where the artists can offer real value from their areas of expertise (instrumentalists, composers, conductors, theorists, actors, directors, sculptors, painters, etc.). Only then can they contribute directly to society, endowing it with a richer and valuable tradition, culture and civilization. Cohen said that when an institution comes into being, its vocabulary of exclusivity, its attempt to create a new reality and its claim (often made as strong in non-musical ones) to represent the essence of a people nation or culture tends to obscure the complex processes of musical negotiation underlying such claims (2009).

Education, or better said, the educational system and the network of institutions that support it, enriches society with professionals that offer culture.

Hence it is necessary that cultural institutions pursue development policies for providing good conditions and work places for these artists, and not all of these artists should do similar work. Workplace planning and the placement of these artists in diverse appropriate roles in which they are proficient would contribute to keeping the flow of art at an acceptable level, and not all of these artists would end up operating in just a few segments of the profession. The art of music requires enough time and space for performance.

A certain group of artists such as essayists, musicologists, art critics, and the like, surely would be engaged in scientific work in the field of art, by contributing to a range of issues that other artists would not have the opportunity and the time to think about because their artistic scope does not match their profile as an artist.

Artists classified in this group would certainly contribute to raising awareness of the study of art, of analysis of various artistic creations, etc., by developing their activity in many institutions such as libraries, scientific institutes, or institutes for studies of artistic matters—which at the moment we do not have at all in Kosovo.

For instrumentalists, actors, or people educated for performance, their art can be developed within cultural institutions such as Philharmonic orchestras (city, youth, symphony), operas, choirs (city, women, mixed, of opera), theaters, chamber ensembles of various formations, etc. They could also act as independent performers or soloists.

A group of these professional artists sooner or later should be linked to the pedagogical side where their experiences can contribute to the educational system for the creation and training of cadres of a new generation of artists.

5. Devaluation of art as a value?!

Had we followed such a developmental process or respected such a hierarchical order, our society would not be facing the current major problems with art in general, especially with music. Such a process, with good development policies and strategies at institutions, would definitely raise art to a higher level in our society making it approximate or even equal to art in countries with the highest standards and achievement, in the most advanced European and world centers.

Therefore, what is this society, part of which we are, and why can this society not attain the level of other societies? Why this degeneration and this distaste of our society for such beautiful and precious art, when it comes to our own culture, history and tradition of which so much is written and spoken, when it is known that this very society gave us a humanist like St. Mother Theresa, a man of Albanian letters like Ismail Kadare, artists like Inva Mula and Ermonela Jaho, and kings like Agron and Teuta, brave as Skanderbeg? What happened to history and tradition, and what is happening today with art in this area of our society?

Elsie said that the culture of the Albanian population is very interesting. On one hand, it was very prosperous for centuries, making of it a gold mine for anthropologists and ethnographers. On the other hand, today, unfortunately, it is extremely poor, continuously impoverished during the time of many regimes whether in Albania or even in Kosovo (Elsie, 2001). However, now is the last time that this culture (this also applies for the art of music) can be studied and preserved and cultivated before it escapes and disappears forever. For Albanians, difficulties and deprivations have always been part of life.

We hope that the long-suffering people of Kosovo and Albania will recover, and with their traditional energy and momentum overcome the indescribable difficulties of today. I do not know if there are any who think otherwise of Elsie for what he wrote, but that this is a bitter reality, there is not a doubt. Also, Kosovo's sociologist, Gani Bobi, in his book "Cultural Paradox" writes:

> The social and cultural orientation of Albanians as a closure to and resistance of, as well as a revenge on invaders (revenge that, since it could not be realized, is embodied in themselves Albanians) is clearly seen in the popular forms and identities of their socio-cultural integration. These forms and units were "problematic" for the creation of the Albanian state between the two world wars. Although it was called an Albanian state, it was a stranger to their social and cultural orientation, unable to fulfill the many centuries of aspirations, unwilling to solve the existing problems and as such, unable to establish the socio-cultural integration of Albanians on its own " (Bobi, 1997 p. 19).

Among the key factors of the impoverishment and depreciation of our culture and of the art of music are undoubtedly the various wars and regimes we had historically over the centuries to the present day. And every war or regime brings behind many losses from every vital segment.

The goal of many wars was almost always breaking up our lands but also collapsing and assimilating us as a nation, by touching the most sensitive elements for a nation such as language, tradition, education and general culture including music.

Over the centuries we have shown that we as a nation know to preserve our high virtues and our tradition and culture. We are a nation that loves freedom with all its attributes but... every war and regime necessarily brings transformations and phenomena which we do not like even as a society. We are witnesses to these unpleasant phenomena, alluding in particular to the highly negative and harmful transformations from the last war and onwards.

By not having the opportunity to intervene in the first place, to cut them off, these negative changes come and become part of our daily life, leading to the degradation and fall of true values. The negative phenomena of the transition

period continued and are still ongoing, confronting us in our institutions, in our everyday life and in every segment of life, both existential and cultural. This is so massive that now real values are at risk of being eliminated, to leave room for corruption, misuse, personal and party interests and favors. As individuals or small groups, as long as we do not have strong institutions in the sense of lying on a good economic base, capable of radical turns, we gradually become obsessed with these extremely harmful social phenomena without the possibility of reaction.

Corruption and ineffectiveness have entered into almost every segment of life and these are becoming the greatest dangers for us. Comparitively, the consequences of these phenomena are perhaps even greater than those of the war itself. Corruption scandals, abuse, etc., today fill the press and other media centers, radio, TV, websites, etc., which in some way are either politicized or monopolized. In the art of music, we are increasingly witnessing corrupt dealing. Recording invaluable songs without any criterion by studios and recording houses, dubious in their work, uncontrolled by anyone who does not consider anything other than material benefit, also leads to abuses and the total degradation of music. So material interest and the struggle to survive economically, in these chaotic circumstances, have made right and good work lose its meaning.

A quote from the economic expert Muhamet Sadiku (in *Transition and Institutional Reforms in Kosovo*) relates to the issue of corruption, saying: "The legislative executive failure of channels to address corruption is caused by institutional factors as well as lack of information or research to identify sources of corruption practices. This situation makes it difficult to build a strategy and prevents the program to combat corruption at the national level or to integrate this effort with regional and international programs" (Sadiku, 2009 p.10).

An intellectual who once secured his income and existence from work and his professional contribution, today finds his existence fluctuating like never before. Also, a genuine music player can hardly create personal income for his own well-being.

Imagine the instrumentalist, the composer, the conductor, the actor etc., working through a several-month preparation for a show or a concert, putting out physically and emotionally, and finding that after the final performance of the work there is no other benefit other than a minimal wage (not saying offensive) and paltry applause or felicitation.

6. Return towards values

Normally, if this situation does not change and cultural institutions via their art development policies do not put pressure on higher state instances, there will hardly be cultural level development whatsoever we want. It is hard for these artists and musicians to lead us and our society, knowing how institutions are not open to policies, strategies and a long-standing vision for art management. They

will hardly stand morally unwavering for the interest of genuine art and music, while being threatened with poverty. It is difficult when for the exposition of their fine artistic work and public appearances, they face many challenges that make them feel disoriented at the very moment when only sublime feelings of the expression of their creative art should prevail, reproducing the culture, emancipation and art of a people.

Economic conditions and their unfavorable social status will render them likely to look for other ways of action such as playing music in the cafes, weddings and parties, organizing festivals and amateur concerts catering to the demands of different tastes. So, in today's conditions, it is very easy to devalue art and the artist as cultural values if institutional policies do not respond on time and do not support this category of society. Therefore, cooperation and coordination are seen as dual interests of the Institution-Society.

Guido Adler 1925 – has a saying "What art is better adapted to form an international connecting link than music? – especially instrumental music, which is in a manner an international language, an expression of the most intimate, the profoundest emotions of man " (Shreffler, 2017., p.1). Art institutions including their politicians should show society the course (direction), confirming the principles and values behind these priorities. The policy of these institutions has to deal with ways of achieving common social and institutional goals and needs.

Creating better working conditions surely would yield positive results, and would be a good incentive for creators and artists. Let's just imagine the music and the good feeling of working in a brightly-lit environment with proper acoustics, with different paintings, mosaics and decors in the workplace, good quality instruments, cleanliness and ample space, programs presented in suitable venues such as halls, salons, and exhibition galleries, improvement of material conditions etc.

Building schools from preschool to university level with artistic level parameters and also a sound reformation of the educational system in art could be more fruitful if it included a considerable number of pedagogue artists contributing, as we mentioned above, in creating professional cadres of artists.

Theaters, orchestras such as the city, youth, symphonic etc., choirs, ensembles and various formations of chamber music, ballet troupes, etc., which are capital institutions (industries) for the culture of any society can sustain a number of great in-house artists and together with them create true art of high artistic value and worthy for presentation.

Folk ensembles such as Rugova, Shota etc., have gathered in their bosom several artists who through song and dance are still cultivating the good tradition in their performances, thus influencing even the best taste of the listener. Institutions should do more towards building at least one good concert hall in each region of the country or good performing arts venues (nowadays even our headquarter does not possess one), where activities would be developed of a better quality including the opportunity to invite artists from other countries and regions to introduce their art, to become acquainted with our culture and have the

opportunity to share experiences and establish a good foundation of cooperation, recognition and respect in friendly relationships with different states and peoples.

There are a few established associations, such as the one of the pianists, Ars Kosova Foundation, stemming from initiatives by certain groups of genuine musicians, who are doing a great job in this aspect. Through their projects they discover and include new young talents through their contacts with new people in different artistic fields, etc., with the aim of preserving and cultivating the best of music.

Once in a while the artistic movement, built on the wishes of many art lovers, professional artists and a little institutional support (although insufficient) in cooperation with many other European centers, does a great job of affirming professional music not only by promoting artistic values both in the country and abroad, but also by creating opportunities for others to come from abroad and contribute by bringing diverse experiences. This mutual cooperation contributes to the recognition and the worthy representation of OUR art and artists.

To give some examples, the festivals Chopin Piano Fest, International Piano Competition organized by EPTA - "New Pianist", New International Music Festival "REMUSICA", DAM Festival, Korea Accapela International Festival, are evidence of the good professional work, strategy and vision of their leaders including Lejla Pula, Rafet Rudi, Dardan Noka, Rauf Dhomi, Vlora Baruti and others.

Institutional care for select ensembles, and these festivals, or even certain individuals and groups of professionals who are contributing to the fine values and the promotion of art as a social value to us, would only strengthen the position and status of (society-artist-institution) whereby, despite limited budgets and lack of funds (for now), and other topics that we will not deal with here, artists will be convinced that they shall find different forms of support. We must seek the most modern methods of administration for the executives of the arts institutions responsible for the institutional budget, and also the inevitable increase of that budget.

Undoubtedly, the cooperation of society with institutions and vice versa, whether through influential organizations, funding projects under certain rules, or simply formal contacts, would lead to a good opportunity for problematic issues to be addressed in depth by institutional policies, increasing the chances that final decisions are fair enough to avoid dissatisfaction and advance music and art as a value of social interest.

7. Concluding remarks:

This work recommends to us to some conclusions and goals to pursue.

- We have provided a realistic overview of the status of culture in the social and institutional spheres during a certain period of time, the postwar era from 2000-2018.

- We have highlighted various cultural issues and the intervention of institutions in addressing and processing fairly such cultural issues, in particular the musical orientation of all genres.
- We do not intend to accuse or blame society or institutions.
- We have provided some clear ideas on how various institutions could be interconnected for coordination and collaboration to overcome many issues related to music.

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