



Economic Criminal Acts according to Criminal Code of Republic of Kosovo

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Abstract: This article analyses the criminal offences against economy in the Criminal Code of Kosovo which are increasingly becoming an important object of study, both at national and international levels. The criminal offences against economy are in principle blanket nature offences, guiding nature, since the vast majority of such norms are further delineated in other bylaws, while the criminal code provisions provide on criminal offences, thereby guiding towards another legal or sub-legal provision. Economic and financial crimes in Kosovo are already making a remarkable increase, as proven by statistical records of state authorities. The increased rate of economic crimes is a result of many factors and circumstances present in Kosovo, which may be different from regional countries. The inefficient fight and prevention of organized crime and corruption in the period between 1999-2010 was stimulated and favoured by several specific factors that are identified and elaborated upon in this article.

Keywords: criminal offences; criminal code; economic crime; Kosovo

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1. Introduction

The Criminal Code of the Republic of Kosovo has determined the criminal offences against the economy in its chapter XXII. It includes all unlawful actions, conduct and activities of liable and legal persons directed against economic relations, the economic system and its functioning. Criminal offences against the economy represent a range of forms of criminal activity directed against the economy.

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Throughout the development of human society, or more accurately organized societies, the economy of each country has had huge importance in social, legal, political and military terms. It is due to the fact that economic relations in the areas of manufacturing, exchange, transport, distribution and consumption, have always been, currently are and will be a foundation of society in national and international levels. Economic relations directly or indirectly reflect upon many other relations and societal activities in any society. The great relevance of economy at national and international levels must be viewed from the perspective that many other spheres of life depend on the functioning of economy. Therefore, the economy of a country is the cornerstone to the development of society.

The economic order of a country reflects on the constitutional order of the country, due to the fact that the constitutional and political order of any society or state is very closely related to the economic order of such a country. This relationship is also increasingly linked with developments at the international level, thereby affecting national and international security¹. Against such circumstances, the intervention of state and international institutions on economic relations of countries is neither random nor unexpected. Although these interventions may be painful, they seem to have an effect on establishing sound economic relations and stabilizing the same (Stojanović & Perić, 2003).

Due to specific relevance of economic relations for every society and with a view of preserving and protecting such relations at national and international levels, preventive measures are taken in economic terms, but also repressive measures in criminal law. National and international economic relations are defended also through other forms of punitive law. Rapid and diverse development of economic relations in contemporary societies, a permanent demand for enhancing the regulation of such relations for better organization, proper governance and legal regulation of such relations is extended widely, while criminal law regulation is increasingly required. In contemporary criminal law science, criminal offences against the economy are increasingly gaining relevance at both national and international levels.

In the Kosovo's criminal law science, criminal offences against the economy are being paid special attention, and that is the reason for this international conference to debate and analyse such criminal offences. In current criminal legislation of European and other countries, criminal offences against the economy are paid

¹ In this regard, one could speak of the international economic order, which is conditioned by national economic orders.

special treatment. Such treatment is not random, due to the fact that criminal legislation are a strong vanguard of protecting human rights and freedoms, at the same extent as are the courts and prosecution offices, but also a strong safeguard for economic relations in any society (Cardozo, 1996).

In several criminal codes of European countries, criminal offences against the economy are regulated through a special chapter. Nevertheless, in some criminal codes in Europe and elsewhere, criminal offences against the economy are not listed within a special chapter, but distributed in several chapters of the criminal code.

In contemporary criminal legislation, criminal offences against the economy are diverse and heterogeneous. Simultaneously, such criminal offences are subject to frequent change. A result of such frequent changes is the fact that the diverse and changing life in certain states and international settings is subject to rapid change, and therefore adequate criminal protection is required for economic relations, for a proper functioning of such relations in the economic spheres of such countries.

Although in comparative criminal law there are strong differences in providing on criminal offences against the economy, there can still be an identification of common features of such criminal offences against the economy.

2. Common Features of Criminal Offences against the Economy

Criminal offences against the economy are numerous, and may be diverse in stipulation. In the criminal law theory, there is a debate whether there can be a common protected feature in such criminal offences, or can there be several groups of criminal offences against the economy. We still hold the opinion that if one considers all assaults against economic relations as such, one could provide a common denominator in the context of the general meaning of economic criminality, one would say that a common protected object in criminal offences against the economy is the economy of a state – the state itself, and its economic system.

The perpetrators of criminal offences against the economy are motivated for material benefits, by misusing economic activities for oneself or another person, although they are indirectly directed against economic values. Therefore, criminal offences against the economy are committed with an intent of obtaining material benefit by unlawful action.

Diverse entities and persons may appear as criminal offenders. Some of the criminal offences against the economy may be committed by any person¹, while other criminal offences in this chapter can be committed by persons with certain qualities² - *delicta propria*. Here we have persons assigned to responsible functions in companies, persons vested with specific duties, or persons vested with special authorization, or those managing certain services in economic business within legal entities.

The largest part of criminal offences against the economy is perpetrated by responsible persons as a special category of employees in economic activities, the notion of which is clearly defined by Article 107, paragraph 2, of the Criminal Code of Kosovo.

For criminal offences against the economy, a special matter is criminal liability of legal persons. This matter is gaining in relevance, due to the fact that legal persons are increasingly more important in undertaking economic activities in any society. And since they are in possession of large material resources and great economic strength, but also a great influence in the economic sphere, and therefore violations of economic provisions by a legal person may provoke a disturbance of economic relations in society, but also cause severe harm to the most vital interests of a state.

Therefore, in criminal offences against the economy, more than any other area, there is incrimination of legal persons as subjects of a criminal offence. Precisely for this reason, there are special legal provisions required to regulate such criminal liability of legal persons³.

Criminal offences against the economy are principally committed by intent, while in the majority of cases, by direct intent. The current Criminal Code of Kosovo stipulates only one criminal offence, which may be committed by negligence, out of twenty criminal offences in the chapter Unauthorised Communication of Trade Secrets – Article 238 paragraph 4. The issue of culpability in criminal offences against the economy takes a special dimension in cases in which there is a matter

¹ Counterfeiting Stamps of Value and Securities – Article 239; Defrauding Buyers – Article 242; Counterfeit Money – Article 244; Prohibited Production – Article 247; Prohibited Trade – Article 246; Unjustified Acceptance of Gifts – 250, etc., of the Criminal Code of Kosovo.

² The Kosovo legislator provides on persons with special qualities: a responsible person in a business organization or a legal person (Irresponsible Economic Activity – Article 233; Causing Bankruptcy – Article 234; Damaging Creditors – Article 235; Misuse of Economic Authorizations – 236); a person authorized or representative of a business organization exercising economic activities and enters into contract (Entering Into Harmful Contracts – Article 237 of the Criminal Code of Kosovo).

³ Criminal Liability of legal persons in the Republic of Kosovo shall be provided upon by a special law, being proceeded for adoption with the Kosovo Assembly.

of criminal liability of legal persons. Still, legal provisions regulate the culpability of legal persons. The criminal offences against the economy are in principle blanket criminal offences – white norms – guiding norms, because the vast majority of such norms are stipulated in further secondary legislation, while the provisions in the Criminal Code provide on the criminal offence, thereby referring to other legal or sub-legal provisions.

The commission of criminal offences against the economy causes severe and concrete harm to the protected object, or certain economic relations.

Criminal offences against the economy are complex and heterogeneous criminal offences, exposed to continued change, due to a rapid pace of changing economic relations at national and international levels. Another feature of criminal offences against the economy is that sanctions against perpetrators of such criminal acts are rather harsh (Tomić, 2003, p. 56).

To illustrate, one could mention the fact that out of twenty criminal offences provided in the chapter of the Criminal Code of Kosovo, for fourteen of such criminal offences the punishment is only by imprisonment, while only for five criminal offences there are alternative punishments of fine and imprisonment. Another specific feature of economic crimes is the fact that criminal offences against the economy are committed in a concealed manner, and that persons damaged by such criminal offences at a first glance seem unknown. Precisely for this reason, the crime is reacted against only when such criminal activity is made public. The perpetrators of criminal offences against the economy in many cases remain hidden, and therefore, the “dark numbers” of such criminal offences is rather high. The criminal offences against the economy, in a way or another, are protected by state structures, because the perpetrators of such crimes against the economy have many links to various structures of state power, at all levels (Brown, 1991, pp. 530-531).

Apart from the main sentence imposed, the perpetrators of criminal offences against the economy are imposed additional sentence – confiscation of items used in committing the criminal offence, and confiscation of material benefit obtained by criminal offence.

3. The Ranking of Criminal Offences against the Property in the Criminal Code of the Republic of Kosovo

The Criminal Code of Kosovo, in its chapter XII, within the criminal offences against the economy, has ranked the following criminal offences:

1. Violating Right of Equality in Exercising Economic Activity - Article 232.
2. Irresponsible Economic Activity - Article 233.
3. Causing Bankruptcy - Article 234.
4. Damaging Creditors - Article 235.
5. Misuse of Economic Authorizations - Article 236.
6. Entering Into Harmful Contracts - Article 237.
7. Unauthorized Communication of Trade Secrets - Article 238.
8. Counterfeiting Stamps of Value and Securities - Article 239.
9. Violating Patent Rights - Article 240.
10. Unauthorized Use of Trade Name, Trademark or Design - Article 241.
11. Defrauding Buyers - Article 242.
12. Organizing Pyramid Schemes and Unlawful Gambling – Article.
13. Counterfeit Money - Article 244.
14. Manufacturing and Use of False Marks, Measures and Weights - Article 245.
15. Prohibited Trade - Article 246.
16. Prohibited Production - Article 247.
17. Issuing Uncovered or False Cheques and Abuse of Bank or Credit Cards - Article 248.
18. Tax Evasion - Article 249.
19. Unjustified Acceptance of Gifts - Article 250.
20. Unjustified Giving of Gifts - Article 251.

4. Causes of Commission of Offences against the Economy

Criminal offences against the economy are very closely related to the motive of obtaining profit and acquisition of large unlawful profits. This type of criminality is a rather serious threat to the democratic development of any society, the rule of law, property rights and human rights, but also often a threat to national security and a stable economic and social development of countries.

In a global sense, the economic criminality is a rather dynamic concept, which is increasingly adapting to the changing social circumstances. This type of criminality is more recently transforming into a multi-national or global phenomenon, rather heterogeneous, but also appearing as a rather flexible phenomenon, thereby entailing a variety of other criminal activities, such as: smuggling goods, distribution of false money, falsification of financial documents, registration and operations of fictitious companies to evade taxes and for money laundry, pirate manufacturing, cyber-crime, etc.

The assessment of revenue (income) obtained by criminal activity, or the wider phenomenon of informal economy, is rather associated with many uncertainties in all economies. The crime committed with an intent of acquiring income is not a clearly defined segment, since it involves a rather wide range of criminal activities: “traditional”, real estate crime, and all other forms of economic crimes, including tax evasion, which ultimately is a result of unregistered (criminal) economic activities.

A more recognized definition of economic criminality as part of organized crime may be found in the Council of Europe Recommendation no. 12/81, which includes more offences, including several types of fraud, the phenomenon of merging and creating cartel, avoidance of legislation in terms of taxation and financial transactions, fictitious companies, offences in stock markets and in the banking sector. Economic criminality affects a large number of persons, society and the state in general, but also negatively affecting the functioning of the national or international economy, and, causing a loss of trust and confidence in the economic system (Council of Europe, 2005, p. 16).

Stalling, inefficient and non-systematic combat of such negative phenomena in the majority of countries of the South-Eastern Europe (SEE) is increasingly affecting the loss of public confidence on the free market economy system, the operations of the judicial system, the impossibility of quality development, and the increasingly fragmented population and the impossibility of eradicating poverty in such

countries. Organized economic criminality is growing continuously in all countries of the SEE, and especially in the Republic of Kosovo, thereby expanding to various areas, and also beyond the borders through the use of legal economic activities.

The economic and financial crimes during the recent years are increasing in sophistication and in aggressiveness, but also in refinement, it is well-organized and capable of blossoming under the disguise of a lawful economic activity. Economic and financial crimes do not recognize any state or time boundary, and it is rightly defined as the most dangerous crime of modern times.

Economic and financial crimes in Kosovo are increasing in appearance, and that may be illustrated by statistical records of state authorities.

The increase in economic criminality is a result of many factors and numerous specific circumstances Kosovo has gone through, and in essence, it is different from regional countries. All these factors and specific circumstances may be viewed upon from two different time periods; a) first period, from the time of suspension of Kosovo's autonomy, and to the withdrawal of the Serbian regime from Kosovo (1989 – 1999) and b) second period, from the deployment of the UNMIK Administration (June 1999).

I. All former socialist countries have largely completed their economic transitions during the 90s, with their own ups and downs, while the Kosovo's economy went through a period of degrading processes other countries have not faced with. In the period 1989–1999, Kosovo's economy was almost entirely destroyed, not only due to occupation and war, but also due to systematic compulsory measures imposed by the Serbian rule, and the installation of organized crime in many spheres of life in Kosovo. This was the period in which what remained from Yugoslavia (including inadvertently Kosovo) an unprecedented blossoming of economic criminality came to be sponsored by the ruling party, a period in which the former authoritarian system has silently promoted organized economic crime, as a source to finance the operations of the state apparatus. This type of criminality was accepted as part of "the tactics of economic and state survival (Grubač, 2009, p. 702).

Such a dark era was suffered also by Kosovo, but was best described by then the President of the Federal Government, Momir Bulatović in his memoirs: "In the economic battle imposed upon us (this is about economic sanctions imposed by the international community), we responded with a type of economic guerrilla, cigarette smuggling over the Adriatic Sea, raised to a state-level project". In this period, there was no distinction between a criminal and a police officer, a customs

officer and a smuggler, or a state official and a member of criminal underground. It was a period in which the state was fully integrated with crime, and criminality into the state (Grubač, 2009, p. 703).

Economic and financial crime at that period was entirely normal, and often even useful for the then-Serbian state, and the population, in due time, accepted the phenomenon as entirely normal.

II. The period after June 1999 was a period of experimentation in many areas of life, thereby most severely impacting the economic relations. This period is characterized by dualism in decision-making and an entirely unprincipled economic policy, which was considerably harmful for Kosovo.

The period after the liberation of Kosovo, and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK), was largely similar to the period between 1989–1999, since this organization almost entirely failed in uprooting the structures inherited from the past and in establishing a reliable and efficient administration and rule of law, which would further combat and prevent economic crime and corruption. The UN Mission justified its failure in combating organized crime and corruption with the pressure by powerful countries to preserve “peace and stability” in Kosovo (Petersen, 2010).

The inefficient fight and prevention of organized crime and corruption in the period between 1999–2010 was stimulated and favoured by several specific factors elaborated below:

a) Delayed definition of the final status of Kosovo, and the incapacity of fully controlling of its territory, the impossibility of full and integrated management of state borders. Since 1999, due to the unresolved political status of Kosovo, the two border gates in the north, Gates 1 and 31, were almost entirely out of control of the competent customs authorities of the Kosovo state, and all due to unprincipled and inconsequent policies of UNMIK, and later also EULEX. Through these and other border entry points, there are various goods entering the Kosovo territory, mainly by smuggling, and specifically those goods with payable excise, thereby causing losses to the Kosovo budget in value of 300 million euro a year.

b) Transformation of socially-owned and state-owned property into private property, which began in 2002, with a model imposed by the Legal Office of the UNMIK, a model that was never used before in any former socialist country. The privatization process had no clear concept, or any clear procedures to be observed, and had a final purpose to engage into numerous privatization waves and transform

as many socially-owned or publicly-owned enterprises into private enterprises. From the total of 44 waves, around 500 million euro have been collected, while such funds are still kept and placed in accounts outside of Kosovo (Central Bank of The Republic of Kosovo, 2010). Since Kosovo has no rating of financial institutions, almost all funds of the privatization process are placed into foreign financial markets, at very low interest rates, while in the Kosovo market, the supply of capital is decreasing, which directly affects the interest rates for Kosovo entrepreneurs. On the other hand, a large number of socially-owned enterprises were privatized from a suspicious financing process during the period between 2002–2008, with no clear origin of finances, obviously by presenting the capital as from legal activities. In this period, money laundering, as an associated phenomenon, but also a precondition for the organized crime, was frequently not even registered, and let alone combated. Apart from direct sales of socially-owned properties, simply to highest bidders, the Kosovo Privatization Agency (KPA) have implemented other ways of property transformation, such as: commercialization of socially-owned enterprises (9), special spin-offs (18), and enterprises under the direct KPA administration. Due to the unclear operational procedures, recently we have witnessed omissions and abuses committed in the past years, and the price for such omissions and abuses from the past shall be borne by Kosovar taxpayers.

c) The public procurement system, which has been the most criticized issue in the last decade, was initially led by the UNMIK Administration pursuant to a very simple regulation, which was further supplemented by Regulation no. 2003/17 on Public Procurement. Inadequate implementation of legislation, and the lack of experience in the area, as well as the lack of transparency, have caused large financial losses to the Kosovo's budget and economy. The lack of adequate legislation and transparency have paved the way for the phenomenon of tender mania, a phenomenon largely discussed and debated, but so far, cases of punishment of offenders have only been a few. After 2008, in terms of legislation, there is an improvement, at least in strict provisions and rule of law, and amendment thereof¹.

d) Improper and inefficient management of the judicial system in Kosovo (inability to increase the number of judges and prosecutors) and improper financial remuneration of judicial stakeholders. Until the end of 2008, Kosovo had approved

¹ Law no. 2009/03-L-158 amending the Law no. 2003/17 on Public Procurement, amended by Law no. 02/L -99. By the mid-2010, the Kosovo Parliament had already approved the new Law on Public Procurement, no. 03/L-241, thereby enabling a more efficient, transparent procedure, fighting violations and eventual abuse.

122 prosecutorial positions, while in June 2010, it had only 78 prosecutors working in the prosecutorial system of Kosovo, which means 3.53 prosecutors per 100,000 population. In this case, the lack of prosecutorial personnel and adequate experience in investigating economic and financial crimes have largely inhibited the development of specialized prosecutors for investigating specific crimes related to organized crime and corruption. The recruitment process for specialized prosecutors in these areas has been rather slow, and desirable outcomes have not been visible yet. On the other hand, the EULEX, vested with executive duties in several areas, one of which is the engagement with prosecutors and judges in Kosovo in pursuing the fight against organized crime and financial crimes has brought only 20 prosecutors and 37 judges, which have dealt more in statements on “bigger fish”, which seem to be difficult to realize.

e) In the last decade, Kosovo has been facing another serious problem, that of the citizens being forced to pay very high interest rates when obtaining loans for their enterprises, due to the insufficient supply of capital. The average interest rate in micro-finance institutions is almost double, while the average interest rate on deposits was around 5%. The phenomenon of such high interest rates on loans, the highest in the region in fact, is already influencing the number of criminal offences against economy, or as explained with the “Buchholz Hypothesis”, high interest rates push people into crimes, because it decreases the value of return in the future (Buchholz, 2009, p.286). In this case, one must underline that high interest rates are not the only factor, but in case we ensure that the future is less worthy, then we are not to be surprised that in Kosovo, everybody will try to extract as much as possible from today.

It is frequently a debatable issue how to uproot or alleviate the problems caused by organized crime, and not how to uproot or remove the causes and reasons which enable the same phenomenon. Obviously the best means and prevention against economic crime and corruption would be to begin as soon as possible with the uncompromised confiscation of all assets or other material benefits derived from criminal offences of organized crime. Until the law on confiscation of such properties is not fully and finally implemented for illicit benefits or proceeds, and the people are clear that there no crime that shall be unpunished, the fight against such phenomena shall not be successful.

5. Conclusion

Criminal offences against economy are very closely related to the motive of obtaining of large illicit profits. This type of criminality is a serious threat to the development of democracy in any society, rule of law, property and human rights. But, it also threatens national security and economic and social development of a country.

Delayed and inappropriate combating of these negative phenomena in the majority of South-Eastern European countries is largely causing the loss of public trust on the functioning of the free market economy system, the operation of the judicial systems, the overall economic development, and the impossibility of eradicating poverty in those countries.

Economic and financial crimes have recently sophisticated their appearances, and have appeared more aggressively, but also in more refined and well-organized forms, and capable of developing under the disguise of legal economic activities. Economic and financial crimes in Kosovo are already marking a remarkable increase, as proven by statistical records of state authorities. The increased rate of economic crimes is a result of many factors and circumstances present in Kosovo, which may be different from regional countries.

The inefficient fight and prevention of organized crime and corruption in the period between 1999-2010 was stimulated and favoured by several specific factors, which are listed below:

- Delayed definition of the final status of Kosovo;
- Transformation of socially-owned and state-owned property into private property, by a model imposed by the Legal Office of the UNMIK Administration;
- The poor public procurement system which was initially led by UNMIK Administration pursuant to a very simple regulation;
- Inappropriate and inefficient management of the judicial system in Kosovo (inability to increase the number of judges and prosecutors), and inappropriate financial remuneration of judicial stakeholders.

The best means and prevention against economic crime and corruption would be to begin as soon as possible the uncompromised confiscation of all assets or any other material benefit derived from criminal offences of organized crime.

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