



## The Detection and Evidence of Abuses in the Field of Real Estate Turnover in Kosovo

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**Abstract:** The aim of this paper is to point out the detection and evidence of abuses in the field of real estate turnover in Kosovo. Compared with other forms of abuses determined by other branches of law, this form constitutes a pillar linked with the civil law rules. In particular, the detection and evidence of abuses in this field has a crucial role as a consequence that is directly linked with the human rights, budget of the state and rule of law aim. This article uses several methods in concluding the facts and proposals like comparative and empiric method.

**Keywords:** Criminality; organized crime; abuse; real estate; expertise; falsification; official duty; money laundering; corruption; court; lawyer; notary; cadastre; etc.

### 1. Introduction

The detection and evidence of any crime is difficult and troublesome unless scientific, professional, methods and tactics apply. Although abuse in the field of real estate turnover, as part of organized crime, has special difficulties in detection and argumentation, the crimes of this field in various forms interlaced the corruptive activity. Abuse in the field of real estate turnover is one of the most serious forms of criminality, and as such it is manifested during the creation of contractual relations of sale, rent, real estate changes, etc. This form of criminality is characteristic for all states where is present general criminality and in particular economic criminality is. The structure of criminality varies with each crime, depending on the way, time, place of performance and consequences. For this reason it is necessary to adapt measures, actions and methods of detection and

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combat the type and form of crime. Thus, abuse in the sphere of real estate turnover, as a special form of crime, requires special legal, criminological, criminological and crime-fighting treatment of this type of crime. Except other sciences, criminology and criminological tactics in particular, in the area of detection of criminality during the real estate turnover, plays a special role when it is known that this form of criminality is widespread in countries where it is not yet there is stability of the legal system; where there are political crises and economic difficulties; where political, economic and social transition lasts far more than usually; where there is a high degree of corruption and organized crime; where have been applied wrong and failed strategies of the privatization process - the transformation of public property into private property; where certain criminal groups have been structured in institutional life (political, economic and social), etc.

## **2. Criminal Activities in Discovering and Evidencing of Abuse in the Field in Real Estate Turnover**

### **2.1. Impact of Criminological Factors on the Appearance of this Type of Criminality**

Criminality is a companion to human society. The study of criminal phenomenology shows that criminality does not have the same spread in different ages and in different areas and places. Criminality is more present in certain social categories, and so on. There are several causes that can be internal or external in committing a crime. Prevention of criminality requires knowledge of the causes of its appearance. Factors affecting criminality are diverse and of different nature. They do not act disconnected from each other, but mutually interconnected. Although organized crime is a complex phenomenon and world-wide concern for a long time, abuses in the field of real estate turnover are a special form of organized crime influenced and conditioned by special social and criminogenic factors.

Presenting of this particular form of criminality, is influenced by a large number of criminological factors, such as: war and war circumstances, the socio-economic crisis, political crises, the transition of Kosovo society, difficult housing conditions, migration, public communication tools - mass media, low level of awareness expressed in the form of desire for "overnight" enrichment, etc (Beka, 2007): Abuses in the circulation field of immovable property in Kosova, p. 194, Prishtina)

All of these factors can influence in the destabilization of the overall security

situation and in the ineffectiveness of the prosecution bodies, which makes it difficult to combat and prevent this kind of criminality. Therefore, tactical and criminal measures should be applied to this type of criminality as to: corruption in general, and in particular in the field of real estate turnover; falsification of real estate ownership documents; money laundering benefited from this type of property criminality; the adoption of unlawful court judgments by which one is entitled to the right of ownership over an real estate, etc. (Beka, 2015) (Organized crime in urbanism and real estate circulation, p. 47, Prishtina).

In order for criminological measures to have their positive effect in combating this type of criminality it is more than necessary to extend them to some public and private institutions, bodies and entities in Kosovo, such as: Courts; Kosovo Property Agency; Minister of Justice; Kosovo Cadastral Agency; Municipal Cadastral Offices in Kosovo; Anti-Corruption Agency; Financial Information Agency; Municipal Director of Urbanism; Director of Inspection at the local and central level; Director of Municipal Public Services; Minister of Environment and Spatial Planning, Minister of Economic Development, Notaries' offices; Office and law firms; Companies and agencies dealing with mediation in the field of real estate; Architects' company; Construction company; Sales company of construction material; Real Estate Development and Management Company; Public Housing Enterprise; Accounting officers which hold - supervise the financial condition of entities that directly or indirectly are related to the real estate turnover and movable property (Beka, 2015) (Organized crime in urbanism and real estate circulation, p. 47, Prishtina).

All the tactical criminological measures taken in these institutions for concrete cases represent a great help for the detection of criminal acts and their perpetrators in the field of real estate turnover. Taking into account the fact that abuses in the field of real estate turnover are carried out by people who are in different positions in society, often in high political, professional and business positions, then it is understood that combating and preventing this phenomenon is extremely difficult. Measures - actions to be undertaken by specialized bodies to combat this type of criminality are as the following:

### **2.1.1. Property - Legal Expertise**

This expertise applies to countries that are in transition and are faced with legal problems while transferring the property right of areal estate from one title to another. Through property-legal expertise in the field of real estate turnover, can be studied the history of ownership gain over a property in relation to its owner. With

this kind of expertise, principally deal the (specialized) persons with a long experience in the legal field - criminal and civil. The duty of an expert (criminalist) when he accept a case for property-legal expertise is to look at the formal side of the Contract on the real estate turnover, which means receiving a response to some concrete professional questions such as:

- Is the Contract on the real estate turnover prepared pursuant to legislation in force;
- Among which contracting parties is this contract of real estate turnover and do potential contractor has been contracted or have any criminal background;
- What is the object of the contract on the circulation of immovable property, what is the real value of such real estate on the market, which is the subject of the contract;
- Among which contracting parties has been concreted this contract of real estate turnover and do potential contractor have any criminal background;
- What is the object of the contract on the real estate turnover, what is the real value of such real estate on the market, which is the subject of the contract;
- Does such contract contain the essential elements of the contracting parties,
  - - Have there been changes to the personal records of contractors at certain time periods (change of name, surname, date of birth, place of birth, place of stay etc);
- Notes on the scope of the contract by analysing in detail the history of the acquisition of ownership of that immovable property;
- Is the price of the contract subject a real market price or is it only the fictitious price?
- What are the rights and obligations of contractors?
- What is the competence of the court in case of litigation?
- Which attorney is involved in the representation of the contracting parties during the establishment of these contractual relations and the same has ever been the subject of the investigation, trial or any disciplinary commission at the Chamber of Advocates of Kosovo;
- Which notary is drafting the notarial act for the establishment of contractual relations and the same has ever been the subject of the investigation, trial or any ethics committee at the Kosovo Chamber of Notaries;

- Who was the first holder of real estate, and was acquired the right of ownership in accordance with the legal provisions in force at the time of its acquisition;
- Such real estate is in charge of any first or second instance registered mortgage and such procedure has been conducted in accordance with the legislation in force;
- Is there any judicial dispute concerning immovable property that is subject to expertise in the concrete case;
- The real estate which is subject to criminal investigation is recorded in the public cadastral books and until now when the information on the change of owners was updated, what was the reason and in what time periods such actions were made, etc.

Upon receiving all the above mentioned questions, the criminal expert comes to an objective conclusion regarding the case.

### **2.1.2. Expertise on Re-Evaluation of the Value of Real Estate**

Considering that when assessing the value of real estate by licensed entities there may be a dose of subjectivity when evaluating, or there is evidence of non-professionalism, it is foreseen that any dissatisfied party may seek the expertise of re-evaluation of real estate (Lezhja, 2015) (Vlerësimiipasurivetëpaluajtshme, p. 9, Tirana).

Such reassessment should be done by another independent entity rather than the one who has assessed it in the first instance. The re-evaluation expert should be of long experience in the field of real estate appraisals. His opinion should in principle be decisive, although this remains in the jurisdiction of the court who judges as the last instance.

Applying the criminological tactics in such cases we find it much easier to conclude whether we have elements of a criminal offense to evaluate real estate or not. In order to reach an objective truth in the concrete case, the criminal expert should receive some relevant answers, such as:

- Assessing the value of the immovable property from who is made, by which physical or legal entity;
- Has the evaluator ever been convicted of criminal offenses related to the profession in the field of his activity as an immovable property appraiser;
- What “potential criminal background” the assessor has or may have;

- Is there any kind of interest between the appraiser and the parties in the disputed case;
- Is there any conflict of interest between the appraiser and the assessor (this happens primarily when the order is made by legal entities - economically having large financial turnover and holding monopoly on the market);
- Is there any element of a corrupt relationship between the appraiser and the real estate appraiser;
- Are there cases when the real estate appraiser and the expropriation of real estate are in conflict of interest since both entities are Kosovo government institutions, while it is legally known that in such cases, the appraiser should be completely independent of the subject conducts expropriation, and such a situation is tolerated for years in Kosovo<sup>1</sup> and no action has yet been taken to put an end to this type of conflict of interest.

### **2.1.3. Declarations of Real Estate**

This kind of declaration applies principally to persons who are in high public and political positions. These declarations are provided to the Anti-Corruption Agency, which keeps records on the property of such persons and such declarations under the laws in force are public.<sup>2</sup> In order to identify whether these persons have illegally created the capital, the criminal expert should look to get some relevant answers to this problem:

- Who are these people and in what public or political positions they are;
- Which has been their professional and vital journey until they have reached such public and political positions;
- How much such persons have paid monthly in the period when they have not been in public and political positions and how much they have the salary since the day they received such posts;
- Do such persons have alternative financial resources (from whom they have, how they have created - realized, what value –quantity are, etc.);

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<sup>1</sup> There are a concrete case in Kosovo, where real estate valuation and expropriation are performed by entities that are part of the same state institutions. These actions represent pure conflict of interest.

<sup>2</sup> Because of the high level of criminality in some transition countries, it is not reasonable for this information to be disclosed to the entire public, when it is known that in this way the identification of the subjects and the degree of financial strength facilitated by different criminals, possesses this category of persons, including other members of his family. Therefore, for access to such information (without limitations), a special “restricted” information procedure should be established.

- How much is the declared value of their real estate in the Anti-Corruption Agency (see the proper information in: [www.akk-ks.org](http://www.akk-ks.org)) and how much is the present real value of this property (according to market prices). I base this in the fact that in Kosovo there is a noticeable disproportion between the declared value and the real value of the movable and immovable property owned by the declared.

For this issue criminologist expert must work closely with trustworthy experts and professionals from the field of valuing the value of movable and immovable items. Through criminal tactics it is also possible to identify the concealed real estate of public, of political and criminal persons who have transferred real estate on behalf of and ownership of third persons for the purpose of “losing track” of this property were used “dirty” money by criminal activities (“public” tenders, corrupt actions and other criminal activities).

#### **2.1.4. Application of Survey Method and Interview with Citizens**

Criminology experts applying criminological tactics through their associates manage to get their opinion on the phenomenon of abuses in the area of real estate. In this way, it is possible to create a clear picture of the category of people dealing with this type of criminality and at the same time create a climate of trust between citizens and their elected people, i.e., people in public and political positions and institutions that prevent and fighting crime in general.

#### **2.1.5. Exchange of Information**

The exchange of relevant information between important institutions and between citizens and institutions, and especially the intelligence services dealing with prevention and combating the phenomenon of criminality in the field of real estate, is of vital importance for the prevention and combating of this kind of criminality.

#### **2.1.6. Creation of Special Units**

Of particular importance is that within the institutions that prevent and fight criminality, special units with criminal experts should be formed in order to prevent this kind of criminality, taking into account that the level of such abuses are at a high level. These units can be established and function as separate agencies by government bodies or as separate units within the Kosovo Police Service (for more information see the link: [www.kosovopolice.com](http://www.kosovopolice.com)).

Societies in transition have a primary obligation to create objective and subjective conditions as a necessity for preventing this kind of criminality in the sphere of real estate.

### 3. Conclusions

Detecting and fighting criminality in general is a problem in itself for the police, prosecution, courts, citizens, and society as a whole. Understandably, the prevention and combat of this phenomenon depends on society, the legal and political system of a state. It depends on the specialization and perfection of the tools and methods of cadres that fight this crime, and their political will and ethics, especially when it comes to abuses in the field of *real estate turnover*.

Combating abuses in the field of real estate turnover, as a specific area of organized crime, is a very important area for scientific research. Despite the great social interest in the systematic detection and follow-up of its perpetrators, as a negative social phenomenon that follows the transition processes, changes in property relations, the search for its tactical criminological and legal-criminal features of forms of appearance and etiology, is still in the initial and declarative stage in Kosovo.

With a methodological approach to his research as a complex criminal phenomenon in Kosovo, which became independent as a state in complex international and national circumstances, this paper presents the measures and tactical criminological actions for detecting abuses in the field of real estate turnover in Kosovo. Preventing and combating this type of abuse is not sufficiently effective, while its presence remains in the “dark number” of criminality and as such is a serious obstacle to the economic and social development of Kosovo society.

Through analysis and research of this kind of criminality in Kosovo, may come out major weaknesses in the exercise of authorizations and in the performance of the obligations of the organs and other state institutions, with competence to prevent abuses in the real estate turnover, detection of perpetrators of criminal acts and their prosecution.

The extension of this form of organized crime causes huge abuse of power, promotes the spread of corruption, falsification of documents and money laundering, which hampers the effective implementation of justice, tactical crime measures and criminal-law measures, such as confiscation and sequestration of items or assets by the court. Research shows that we are dealing with a high degree of blocking of tactical criminal activities and judicial institutions, and this is manifested in the minimum number of solved cases involving criminal offenses,



despite empirically based knowledge or evidence-based - their existence and massive reach.

#### 4. Bibliography

- Beka, A. (2007). *Abuses in the circulation field of immovable property in Kosova*. Pristina.
- Beka, A. (2015). *Organized crime in urbanism and real estate circulation*. Pristina.
- Bumci, K.; Crnic, J.; Jelcic, O.; Kacer, H.; Koncic, A.M.; Kontrec, D.; Sessa, D. & Santek, R. (2008). *Posredovanje u prometu nekretnina/ Real estate agency services*. Zagreb.
- Latifi, V. & Beka, A. (2013). *Vrasjet - Krimi i organizuar – Terrorizmi/ Murders - Organized Crime – Terrorism*. Pristina.
- Latifi, V. & Beka, A. (2017). *Taktika kriminalistike/ Criminalistic tactic*. Pristina.
- Lezhja, A. (2015). *Vlerësimi i pasurive të paluajtshme/ Real estate evaluation* Tirana.
- Majstorovic, V. (1994). *Imobilia Prirucnik/Manual of real estate*. Beograd.
- Vukaj, H. (2013). *Ecuria ligjore e pronës së paluajtshme në Shqipëri/ Legal progress of immovable property in Albania*. Tirana.
- Vukcevic, B. & Janojlic, S. (2014). *Promet nepokretnosti kroz komentare sa prilozima/ Real estate traffic through attachment comments*. Beograd.
- Ubavic, M. (1994). *Ugovori o prometu nekretnina/ Real estate contracts*. Beograd.