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SMUGGLING OF GOODS

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The criminal offense of smuggling of goods in the Republic of Kosovo is a subject of fundamental importance for the economic and social development of this country and as such will be treated in this paper from the theoretical and practical aspect. According to the data presented in this paper, although in official statistics the smuggling of goods is relatively little presented, it is a worrying phenomenon because smuggling of goods damages the budget of the state by hundreds of millions of Euros each year. This damage becomes even more worrier because of the fact that the Kosovo's revenues depend mostly from customs and taxes. Kosovo is facing many challenges and problems in the fight against criminality, especially the economic one. This paper presents a set of ideas on how the performance of criminal justice system in the fight against the phenomenon of smuggling of goods. For the preparation of this paper, legal, comparative, descriptive, survey and statistical methods were used.

Key words: *Smuggling, goods, customs, criminal offense, perpetrators*

1. INTRODUCTION

Smuggling of goods is part of the criminal offenses against the economy. These criminal offenses, during the research period 2015 - 2017, were conducted from individual perpetrators or from group perpetrators. This offense may only be committed intentionally and with the aim of realizing an unlawful profit gain. For the commission of the criminal offense of smuggling of goods, the Kosovar lawmakers have foreseen a fine of up to ten years of imprisonment. This criminal offense can be committed in a number of ways, and it manifests numerous individual and social consequences. These consequences are reflected in the damage to the state budget, loyol competition in the market, and the wellbeing of the people among others.

The results of this paper suggest that during the period 2015 – 2017, 222 criminal reports were filed, 152 indictments were filed and 44 persons were convicted. This discrepancy between these figures lies in the fact that in the procedure of treating

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this criminal offense a considerable number of criminal reports and indictments were dismissed. Object of smuggling were mainly ordinary goods (milk and its products, meat and its products, clothing, etc.), but also goods the export and import of which is prohibited, restricted or for which a special permission of the competent authorities is required. A successful fight against these criminal offenses requires raising the level of responsibility, professionalism and blocking external interventions in the work of the system of criminal justice.

2. MEANING OF SMUGGLING OF GOODS

Smuggling of goods, as a special criminal offense in most of the modern states, including Kosovo, is foreseen in the criminal codes as well as in the customs laws (codes)³. In the Republic of Kosovo, this criminal offense in the Criminal Code is addressed in the fifteenth chapter, which includes offenses against the economy.

Different authors define in different ways the smuggling of goods. According to some Italian authors, the term smuggling of goods means a kind of customs offense which affects the income interests, respectively a violation of financial laws, more specifically, of the mandatory tax rates for foreign goods, though not, and inflows or outflows in / and from the same national territory, as are all deceptive behaviors related to domestic consumption tasks as well as state monopolies. According to them, the notion of smuggling refers to tax evasion of consumption, production and monopolies. However, it is acknowledged that recently this trend was extended also to some currency offenses because any irregular action or currency entry, i.e. debt instruments (monetary smuggling) always involve fraud and other foreign currency assets, similar amounts to those of currency which are practiced to avoid a restrictive provision or restrictive norm at the borders (Contrabbando, 2018).

According to the American approach, smuggling of goods constitutes an illegal transport through national or national borders of goods or persons, customs-prohibited liability and by law namely a secret transport of goods, by violating the law and regulations (American Eyclopedia, 2005). For example, someone may smuggle drugs, unstamped cigarettes, weapons or other goods which are prohibited by law. Alternatively, one can smuggle legitimate goods by taking them to prohibited areas (such as in prisons) or by not being subject to applicable rules, as in the case of non-payment of a tax / tariff (EBS, 2009).

Consequently, with the smuggling of goods we should mean the legal violations, respectively the legal norms with which are regulated the obligations for foreign goods⁴, including the ban of the entry and exit of those goods in and from the

³ See: Customs Code of the Republic of Albania (Articles 270-279), Law no. 102/201, as amended by law no. 32/2015, dated 02.04.2015, Available at: http://www.vertic.org/media/National%20Legislation/Albania/AL_Customs_Code.pdf;

Customs Code of the Republic of Moldova, Available at: <https://wipo.lex.wipo.int/en/text/427112>.

⁴ V. sul punto C. De Vincendintis, Voce *Contrabbando doganale in Novissimo Digesto italiano*, Vol. IV, Utet Torino, 1959, pg.430.

customs territory of the country, as well as of all misleading behavior linked to domestic consumption obligations, or to state monopolies (Hyseni, 2014, pg.56).

3. THE PERPETRATORS OF SMUGGLING WITH GOODS

The perpetrator of the criminal offense is considered the person who has committed the offense. "Such persons are considered the people who directly carry out the act of commitment, but also are considered the people who by their actions impede or assist in the commission of the offense as well as the organizers of the criminal association" (Salihu, 2008, pg.189). The perpetrator of the criminal offense of smuggling of goods may be any person who has the age for criminal responsibility and who is accountable (ie, when the person is aware for the importance and consequences of the offense and is able to control his / her behaviour) (Shala, 2013, pg.91), who without proper permission avoids customs control and crosses the borderline by carrying goods inside or outside the state territory, whether those goods are in free circulation or whether the goods are for export or imports and which are prohibited, restricted or require special permission from the competent body.⁵ The smuggled goods may be of domestic or foreign origin. Smuggling of goods is carried out by a person who, in the case of border crossing, avoids goods from customs control by not informing the customs worker of the goods to be customized, by hiding or not hiding the goods, by asking the customs officer or not whether there is a good on which the custom tariff should be applied and whether or not he has looked at it or not (Salihu, Zhitija, & Hasani, 2014, pg. 879).

The perpetrating action of this act is defined in an alternative way. It consists in the carriage of goods and the avoidance of customs control of goods, by exceeding the prescribed borderline (entered inside or exported abroad). "This criminal offense is considered to have been committed in the case where one of these acts has been taken, the carriage of goods inside or beyond the border line or the avoidance of their customs control" (Salihu, 2009, 329). It results that for the existence of this criminal offense is required that the person to carried out two or more carriage of goods from one state to another.

4. CRIMINAL RESPONSIBILITY FOR COMMITTING THE SMUGGLING OF GOODS

In criminal law, a person is considered criminally responsible if at the time of the commission of the criminal offense possessed certain psychic qualities and if at him has existed a certain psychic relationship against the offense that he has committed. In other words, a person is considered criminally responsible if at the time of the

⁵ See article 317 of Code no. 04/I-082 Criminal Code of the Republic of Kosovo. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>. Last last accessed on 30. 12. 2018.

commission of the criminal offense he was responsible and guilty. Hence, a person is considered responsible when he/she possesses such mental qualities or attributes that make him/her able to understand the importance of the offense and to control his / her own behaviors. "So, the perpetrator of the offense is considered guilty when against the offense there was such relationship which makes it possible to charge him/her the offense, respectively when the offense is considered to be his/her own, ie when the offense was committed intentionally or from neglected actions"⁶.

Therefore, criminally responsible for committing the criminal offense of smuggling of goods is considered any person who at the time of commission of the offense was liable and guilty. When we are at guiltiness, it is worth mentioning the fact that "the smuggling of goods is carried out only in the case of direct way and in order to obtain material benefits, although the purpose is not explicitly mentioned as an indispensable element of the figure of this criminal offense, but which in itself is implied. In any case, motives and purpose have no any kind of importance for the effects of the legal qualification of this offense" (Elezi, 1999, pg.175). As a result, the criminal offense of smuggling of goods can not be carried out by negligence or even by any chance.

5. CRIMINAL SANCTIONS FOR COMMITTING THE SMUGGLING OF GOODS

Criminal codes (laws) have also foreseen the possibility of imposing criminal sanctions. This rule, without exception, also refers to the perpetrators of the criminal offense of smuggling of goods. Research works argue that for perpetrators of these criminal offenses, contemporary states have foreseen predominantly the possibility of imposing a sentence of imprisonment, but also of a fine. Some codes (laws), the acts of committing this criminal offense, have incremented under one article, while some other codes (laws) in some articles. Thus, the Criminal Code of the Republic of Albania, in Articles 171 to 179 for the perpetrators of criminal offenses of the smuggling of goods has foreseen fines and imprisonment of up to ten years⁷. The Criminal Code of the Republic of Croatia in Articles 256-257 for the perpetrators of these offenses has foreseen the imprisonment of up to ten years⁸. The Criminal Code of the Republic of Kosovo for the commission of a criminal offense of smuggling of goods provided for in Article 317 provided fine and imprisonment of up to ten years.

As it turns out, in these states, but also in other countries, the commission of the criminal offense of smuggling of goods is threatened with severe penalties. Such

⁶ Hall I, *Studies in jurisprudence an criminal theory* 271-72 (1958); Perkins, *Criminal law* 663-71 (1957); Snyder, *An introduction to criminal justice* 138-49 (-95-3)-, quoted according to: Orvill C. *Criminal responsibility*, pg. 205, Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1802&context=dlj>. Last last accessed on 30. 12. 2018.

⁷ Criminal Code of Albania, Law no. 7895, date 27.01.1995. Available at: <http://qbz.gov.al/Kode/Kodi%20Penal-2017.pdf>. Last accessed on 30.12.2018.

⁸ Criminal Code of Croatia, Law no. 71-05-03/1-11-2. Available at: <http://www.mvpep.hr/files/file/dokumentiprevodjenje/zakoni/kazneni-zakon-nn-125-11-eng.pdf>. Last accessed on 30.12.2018.

convictions as foreseen by lawmakers of contemporary states are considered to be fully in line with the consequences of these criminal offenses. Although the threat of penalties that are considered to be severe for commission of a criminal offense of smuggling of goods already exists within the legislative policy of almost all countries in the world.

The punishment policies that courts implement in their practical work seem to be relatively soft. This has to do at least in Kosovo. Thus, out of the 44 studied judgments issued by the Basic Courts of Kosovo against the perpetrators of the criminal offense of smuggling of goods, the implemented punishment policy results to be relatively soft. This is because the average sentence of imprisonment imposed in these cases is 2 or 4 years⁹. I consider that in the circumstances when this type of offense marks persistent growth tendencies, and when the consequences that it causes to the state budget (which in essence depends on customs and taxes) are really great, Kosovo courts have to implement a much tougher punishment policy. On the contrary, when imposing short-term sentences of imprisonment, it would be preferable to practice fine penalties because it would thus affect the filling and consolidation of the state budget.

6. WAYS OF COMMITTING SMUGGLING OF GOODS

Criminal offense of smuggling of goods is carried out in several ways. These ways of committing this criminal offense may manifest different classifications, including but not limited to: a) the way of the transfer of goods, b) manner of carrying out the transfer of goods, c) specifics of the carried goods, d) the number of perpetrators and e) the border zones (points) in which the smuggling of goods is committed.

According to the first criterion of the smuggling of goods can be done in two ways:

1. Carrying goods across the borderline and avoiding customs control.

“This way of committing the criminal offense of smuggling of goods is accomplished through the undertaking of these two concrete actions: a) transfer of goods across the borderline and b) avoidance of customs control, which actions must be cumulatively fulfilled for the commission of this criminal offense. Otherwise, if one of these actions is missing there does not exist this way of committing the criminal offense of smuggling of goods. As a result, this way of committing this offense exists only when there is transfer of goods across the border of the Republic of Kosovo and there is an avoidance of customs control” (Salihu, Zhitija, Hasani, 2014, pg. 878).

2. Avoiding customs control and carrying the goods beyond the borderline.-

“This way of committing the criminal offense of smuggling goods is contrary

⁹ See judgments of Basic Court of Prishtina, Gjilan, Peja, Prinen, Mitrovica and Ferizaj. Available at: <http://www.gjyqesori-rks.org/sq/courts/decision/list/4>. Last accessed on 30.12.2018.

to the previous way of carrying it out. In this case, the perpetrator, by avoiding customs control, carries the goods beyond the borderline. Even in the case of this way of committing a criminal offense of smuggling of goods the actions that make it (avoidance of customs control and transfer of goods beyond the border line) must be cumulatively fulfilled for the existence of this criminal offense” (Salihu, Zhitija, Hasani, 2014, pg. 878-879). “On the contrary, this way of committing this criminal offense does not exist.

According to the second criterion, the criminal offense of smuggling of goods can be carried out in three ways:

1. **By hiding the goods from the customs officer.** This way of committing a criminal offense of smuggling of goods is committed by undertaking the actions through which the smuggler hides the particular goods from the customs officer when crossing the border, by inserting it into existing spaces that are specific or specially built spaces in vehicles for the purpose of smuggling goods, or covering it with special covers, or declaring lesser quantity of goods than is actually intended to be entered inside the country or is taken out of the country.
2. **By corrupting the Customs Officer,** This way of committing the criminal offense of smuggling of goods is carried out by undertakings prohibited acts by which the perpetrator of this offense carries the transfer of goods within or outside the country, giving bribe to the official customs. “According to data from Kosovo Customs due to allegations of corruption only in 2014 were treated 42 customs officers” (Kosovo Customes, Annual Report 2014, pg.18)
3. **By using force or serious threat or weapon or dangerous tool against the customs officer.** This way of committing a criminal offense of smuggling of goods is carried out with the use of force, serious threat or weapons or dangerous tools against the customs officer, who faces a real danger to his or her life and health or to any of his/her relatives and as such is forced to abstain from the obligation coming from his/her workplace.

According to the third criterion, the criminal offense of smuggling of goods can be performed in three ways:

1. **Smuggling of goods for which is prohibited their export or import.** This way of committing a criminal offense of smuggling of goods is carried out with the enterprises of prohibited actions through which is done the export or import of goods dangerous for life and health people as well as for the general security. “The epithets of such goods are such goods as poisonous substances, infected plants and animals, narcotics - drugs, weapons of all kinds, scrap wood, aluminum, lead, tin, precious metal etc” (Elezi, op. Cit, pg. 174).
2. **Smuggling of goods for which is limited their export or import.** This way of committing a criminal offense of smuggling of goods is carried out by undertakings illegal actions by which the export or import of goods is

limited . Such kind of goods includes vehicles, tobacco, coffee, alcoholic beverages, etc.

- 3. Smuggling of goods the export or import of which requires special permission from the competent body.** This way of committing the criminal offense of smuggling of goods is carried out with enterprises of illegal acts by which the export or import of goods is done without the permission issued by the competent body (Gallo, 2001, pg. 165). “This way of committing a criminal offense of smuggling of goods is considered to exist when the perpetrator sells brain matter seized without permission” (Elezi, op. Cit, pg. 176).

According to the fourth criterion, the offense of smuggling of goods can be performed in two ways:

- 1. Smuggling of goods by individual perpetrators.** This mode of committing a criminal offense of smuggling of goods is carried out by individual perpetrators who carry goods inside or outside of the country, avoiding customs control, whether they are ordinary goods or whether they are goods for which their export or import is prohibited or restricted or require special permission from the competent body.
- 2. Smuggling of goods by group perpetrators.** This way of committing a criminal offense of smuggling of goods is contrary to the preliminary way of performing it, because in this case the offense is committed by perpetrators organized into groups. Even in these cases it is about the transfer of goods within the country or outside the country by avoiding customs control, whether they are ordinary goods or goods whose export and importation is prohibited or restricted or require special permission from the competent authority . This way of committing this criminal offense is considered to be worse, compared to cases when the perpetrator is individual, because here is usually accumulate a bigger criminal energy.

According to the fifth criterion the criminal offense of smuggling of goods can be performed in two ways:

- 1. Smuggling of goods through the official customs points.** This way of committing a criminal offense of smuggling of goods is carried out by placing the goods that are smuggled within the country or outside the country through official customs points, either by avoiding customs control, hiding the goods, corrupting the customs officer, or by using force, threat or weapon or dangerous tool against the customs officer, or using other means to carry the smuggled goods. A typical way of smuggling of goods in Kosovo is done through the Customs Point in Bernjak (north of Kosovo). In one of the cases, the Main Officer of the Customs ordered all of the Customs Officials to enter the facility, where the electricity was stopped temporarily until dozens of heavy vehicles filled with oil passed without being subjected to any customs control (Interview with I. L, 2013).

- 2. Smuggling of goods outside of the official customs points.** This way of committing a criminal offense of smuggling of goods is carried out by placing goods that are smuggled within the country or outside of the country, outside the official customs points. It is worth mentioning the fact that this is a frequent way of smuggling goods, because the borderline of Kosovo is to a large extent difficult to monitor. In this way, goods are smuggled on a long borderline that exists between Kosovo and Serbia and among Kosovo and other countries.

It is worth mentioning that objects of smuggling are all kinds of goods, including goods that are free for circulation (milk and its products, meat and its products, clothing, etc.), goods which are prohibited for circulation (weapons, ammunition, drugs, etc.), goods whose circulation is limited (tobacco, alcohol, coffee etc.) and goods whose export and import requires special permits (eg, oil), among others. "According to the data of 2006, in Kosovo there were evidenced 5,000 cases of economic crime, many of which related to smuggling of goods" (CARPO, 2006, pg. 110). It is also worth mentioning that all these ways of committing the criminal offense of smuggling of goods manifest their presence in a state where there are problems of rule of law, such as is the case of Kosovo.

7. CONSEQUENCES OF THE SMUGGLING OF GOODS

Criminal offenses cause many consequences which most of them are unforeseen. An exception to this rule is neither the criminal offense of smuggling of goods. In fact, the most frequent consequences caused by the commission of this criminal offense, among other things, are the following:

- 1. Damage to the state budget.** The budget of the Republic of Kosovo is very poor and in 2018 it was only 2.08 billion Euro (Law no 06 / L-020 on the Budget of the Republic of Kosovo, 2018). In this budget, customs taxes contribute with 75-80% (Ahmeti, 2017). In the situation where cases of smuggling of goods are even more frequent, it is more than certain that the level of the damage to the state budget is severe. It is suffice to mention only one case when there were arrested 16 people who through the smuggling of goods had damaged the state budget for more than 1 million Euros (KohaNet, 2018). In fact, only during 2014 is recorded tax evasions in the amount of 11.4 million Euro (KosovoCustomes, 2014, pg. 15). How much Kosovo's budget can be harmed by the smuggling of goods is enough to emphasize the cases of offenses imposed and criminal charges filed by Kosovo Customs for the years 2016 and 2017. According to this report during these years, 3,532 offenses were imposed and 135 criminal reports were charges (Kosovo Customs, 2017, pg.4). Of course, this is one side of the medal of damaging the state budget by smuggling the detected goods, while the worst part of this smuggling is what refers to the dark number of this criminality, which is evaluated even higher than the previous one.

- 2. Damage to the loyal competition in the market** - The market is considered functional when it operates on the basis of fair competition. The opposite manifests a detrimental effect on the country's economic sustainability. "Unfair competition, among other things, exists even when a subject uses directly or indirectly a trade tool that does not comply with the principles of professional integrity and damages the activity of another subject" (Zenelaj, 2015, pg.2; Maican, 2014, pg. 27) This is considered as the phenomenon of smuggling of goods because through it, loyal competition is damaged in its marrow. This is because the one entering the market without paying customs duties is in the most favorable position and can compete at lower prices than the one who pays these taxes. In this situation his offer is more acceptable to the consumer, so that he can more easily sell the goods compared to his responsible competitors. Non-loyal competition can cause the close of many businesses. Thus, according to some data in 2013, 1,516 businesses were closed (KolegjiFama, 2014, pg.8) while in ended, and in 2017, 432 businesses wew closed (ASK, 2017, pg.20).
- 3. Damages local producers.** Although Kosovo has small domestic production capacities, they suffer major damages in the case of the existance of the smuggling of goods. These producers who do not enjoy almost any kind of state protection, lose the market share in their country because they face trade competitors that sell smuggled producs at much lower prices (ASK, 2012, pg.13) , which are more acceptable in the conditions when around 45% of the population lives with just \$ 43 a month (ASK, 2007).
- 4. Jeopardizes the life and health of people as well as the overall safety are.** Smuggling of goods apart from the above mentioned consequences is also endangering human health and overall safety. Jeopardizing the people's health and general security comes as a result of the fact that more and more goods of dubious and with unknown origin, as well as dangerous goods, such as weapons, ammuniton, drugs, etc., are entering Kosovo. Thus, according to some data in Kosovo annually, over one hundred thousand of food products of suspected origins are destroyed (Krasniqi-Veseli, 2017), as well as over two thousand kilograms of drugs (IndeksOnline, 2018).

8. DATA ON SMUGGLING OF GOODS

The presentation of concrete conclusions and consistant recommendations regarding the criminal offense of smuggling goods, such as the ones that may serve the courts, other relevant institutions and society as a whole, requires that the activities of the Kosovo courts, namely the Basic Courts, to be investigated and studied for a certain period of time. In this case, the activity of these courts have been researched for a period of three years (2015 - 2017). It is considered that the treatment of the criminal offense of smuggling of goods, in terms of theoretical and

practical part, offers real chances that can be considered sufficient for the successful realization of such goals.

Presentation of the activity of the Kosovo Basic Courts regarding the criminal offense of smuggling of goods has not been an easy. This is due to the fact that regarding the work of these courts, regarding a series of data related to this criminal offense during the research period there are no published statistics. This situation has conditioned the need to include all punishment judgement (44) filed by all the basic courts of the country. Despite this fact, in the following treatment, will presented data on all criminal cases for which the Basic Courts of Kosovo for the period 2015 - 2017 have issued punishment judgement (only for the major perpetrators of the criminal offenses) and the number of punishment judgement which these courts have pronounced for committing a criminal offense of smuggling of goods.¹⁰

Table 1: Number of punishment judgments in general and punishment judgments for committing a criminal offense of smuggling of goods

Time Period	General punishment judgments	Punishment judgments for committing a criminal offense of smuggling of goods
2015 - 2017	52,938	44

According to these data, the Basic Courts of Kosovo during the period 2015 - 2017 regarding the indictment filed for committing the criminal offense of smuggling of goods, have convicted 44 persons in total. As it turns out, the number of convicted people for this criminal offense is very small, compared to the total number of perpetrators of generally convicted offenses. This situation, of course, does not really reflect the degree of presence of the criminal offense of smuggling of goods, as the dark number of this offense appears to be very large, but also because of the fact that many suspected, defendants accused during the conduct of the criminal proceedings have resulted in the dismissal of the proceedings, for reasons of prescription of criminal prosecution, lack of evidence or existence of other circumstances. In the following table will be presented the data regarding the number of persons to whom criminal charges have been filed and an indictment has been filed for committing the criminal offense of smuggling of goods.

Table 2. The number of criminal report and filed indictments

Time Period	Number of Criminal Reports	Number of Indictments
2015 - 2017	222	152

¹⁰ For more see: Annual Reports of the Kosovo Judicial Council and Kosovo Agency of Statistics on the Work of Kosovo Courts for the period 2015 - 2017, Available at: <http://www.gjyqesori-rks.org/sq/kjc/report/list/1>, <http://ask.rks-gov.net/sq/agjencia-e-statistikave-te-kosoves/sociale/jurisprudenca>. Last accessed on 30.12.2018.

According to these data, during the period 2015 - 2017 for the commission of the criminal offense of smuggling of goods, 222 criminal reports¹¹ and 152 indictments¹² were filed. As a result, for the commission of these criminal offenses, the number of indictments is for 70 cases lower than the number of criminal charges filed. This fact proves that during the investigation period the State Prosecutor has dismissed 70 criminal charges. This has happened because of the statutory limitation of prosecution, lack of relevant evidence and other causes. On the other hand, compared with the number of punishments imposed, the number of indictments is higher for 108 cases.

The data used prove that for the commission of the criminal offense of smuggling of goods during this period, the Basic Court of Prishtina has imposed the highest number of punishment, 9 cases, whereas the Basic Court of Mitrovica imposed the lowest number of punishments, 4 cases. The cause of this situation in relation to the Basic Court of Prishtina must, however, be related to the large number of cases that this court has at work, which is conditioned by the fact that this court extends its activity to a territory in which it lives more than 1 / 3 of the population of Kosovo. Meanwhile, the cause of such a situation in relation to the Basic Court of Mitrovica should be related to the fact that this court, by the beginning of 2017, has worked with half-capacity and in inappropriate environments.

From the 44 punishment judgments imposed for the commission of the criminal offense of smuggling of goods, points the fact that the Kosovo Basic Courts, 31 were for the smuggling of common goods, 5 cases concerned prohibited goods and 8 cases were for the export and import of the goods which require special permits¹³. The data used prove that in 39 cases the smuggling had to do with the carriage of goods and the avoidance of customs control at official customs points and only in 5 cases with the introduction of goods out of the country through uncontrolled border areas. This situation condition the need to take appropriate measures to set border areas under a more advanced monitoring and coherence, use of the defective inventories that allow identification of hidden goods, increase of the level of responsibility of customs officers and the degree of responsibility their professionalism, but also the increase of the professionalism of border police, prosecutors and judges. This is due to the fact that the reference situation shows the presence of insufficient professionalism and an unsatisfactory uptake of the entirety of the bodies that conceive the criminal justice system in the country. Therefore, it is required by the institutional responsibilities to undertake concrete actions such

¹¹ For more information see the annual work reports of Kosovo Customs for the period 2015 - 2017. Available at: <https://dogana.rks-gov.net/wp-content/uploads/2018/04/Raporti-vjetor-2017-alb.pdf>. Last accessed on 30. 12. 2018.

¹² For more information see the work reports of State Prosecuto for the period 2015 – 2017. Available at: <http://www.kpk-rks.org/assets/cms/uploads/files/Statistika%20dhe%20Raporte/Raporte%20Pune/Raporti%20i%20Pun%C3%ABs%20s%C3%AB%20%20Prokurorit%20t%C3%AB%20Shtetit%2C%20janar%20-%20qershor%202017.pdf>. Last accessed on 30. 12. 2018.

¹³ For more information see the decisions of the Basic Courts of Kosovo for the period 2015 – 2017. Available at: <http://ask.rks-gov.net/media/2221/statistikat-e-tregtise-se-jashme-2012.pdf>. Last accessed on 30. 12. 2018.

as raising the performance of customs officials, border police officers, judges and prosecutors, including the need to carry out a veiting (cleaning) in the entirety of bodies that conceive the criminal justice system in place. This is because local and international public opinion prevails that Kosovo has already moved into a captured justice system.¹⁴

9. CONCLUSIONS

The results of this paper have led to the following conclusions:

The criminal offense of smuggling of goods according to official statistics does not constitute a high presence in Kosovo but is concerned about the dark number of its presence. In this respect, 44 persons have been convicted of this criminal offense during the period 2015-2017, but this number in criminal charges and indictments raised for its commission is several times smaller.

The criminal offense of smuggling of goods into Kosovo was committed in all possible ways of its manifestation. However, to a large extent it was done through the introduction of goods in Kosovo by avoiding its customs control. This is favored by the fact that the country's market is dependent on foreign goods. The commission of this criminal offense is mainly related to the export and import of goods through customs control points. This situation is manifested in 39 of the total of 44 cases for which the court of the court has issued punishment judgements.

The criminal offense of smuggling goods into Kosovo is a high-risk act because it directly damages the state budget, local competition and endangers people's lives and health. This is because the budget of Kosovo is mainly filled by customs and taxes, and because every year, by the services of the competent inspectorates, large quantities of goods with suspicious origin are forbidden to free circulate, which reach millions of dollars expressed in Euro.

In the work of the bodies that fabricate the criminal justice system in dealing with the criminal offense of smuggling of goods, in most cases, malpractice and unprofessionalism have been manifested, This has led to the fact that most of the criminal reports and indictments raised for the commission of this criminal offense should be taken during the stages of criminal proceedings, whether for prescription of criminal prosecution, lack of relevant evidence, etc. Therefore, it is imperative that state-authorized bodies take urgent measures to ensure the performance of investigative police, prosecutors and judges, so that instead of advancing the fight against this type of criminal offense.

¹⁴ Ibid.

LIST OF REFERENCES

1. Ahmeti, N. (2017, October 12). *Buxheti i varur nga Dogana dhe ATK-ja*. Retrieved from Radio Free Europe: <https://www.evropaelire.org/a/buxheti-i-varur-nga-doganat-dhe-atk/28786931.html>
2. *American Eyclopedia*. (2005). Retrieved from Encyclopedia.com: <https://www.encyclopedia.com/social-sciences-and-law/law/international-law/smuggling>
3. ASK. (2007). *Vlerësimi i varfërisë në Kosovë*. Prishtina: Agjencia e Statistikave të Kosovës. Retrieved December 7, 2018, from <http://ask.rks-gov.net/media/2724/vleresimi-i-varferise-ne-kosove-vellimi-i.pdf>
4. ASK. (2012). *Statistikat e tregtisë së jashtme*. Prishtina: Agjencia e Statistikave të Kosovës. Retrieved December 7, 2018, from <http://ask.rks-gov.net/media/2221/statistikat-e-tregtise-se-jashtme-2012.pdf>
5. ASK. (2017). *Raport statistikor mbi ndërmarrjet ekonomike në Kosovë*. Prishtina: Agjencia e Statistikave të Kosovës. Retrieved from <http://ask.rks-gov.net/media/3835/repertori-statistikor-mbi-nd%C3%ABrmarrjet-ekonomike-n%C3%AB-kosov%C3%AB-tm4-2017.pdf>
6. *Contrabbando*. (2018, September 30). Retrieved from Treccani: <http://www.treccani.it/vocabolario/contrabbando/>
7. EBS. (2009). *Your pocket guide to understanding financial terms*. Dublin: National Adult Literacy Agency.
8. Elezi, I. (1999). *E drejta penale e Republikës së Shqipërisë, Pjesa e posaçme I*. Tirana: Albin.
9. Hyseni, A. (2014). *Veprat penale në fushën e doganave, Disertacion i doktoratës i mbrojtur*. Tirana: Fakulteti i Drejtësisë të Universitetit të Tiranës. Retrieved from <http://www.doktoratura.unitir.edu.al/wp-content/uploads/2014/10/Doktoratura-Alket-Hyseni-Fakulteti-i-Drejtësisë-Departamenti-i-te-Drejtës-Penale.pdf>
10. KohaNet. (2018, August 8). *Kronikë e KTV-së rreth arrestimit të 16 personave të përfshirë në kontrabandë*. Retrieved from KohaNet: <https://www.koha.net/video/110026/kronike-e-ktv-se-rreth-arrestimit-te-16-personave-te-perfshire-ne-kontrabande/>
11. KolegjiFama. (2014). *Trendët e zhvillimit të ndërmarrjeve të vogla dhe të mesme, Raport vjetor*. Research Report, Kolegji Fama and IZHBEN-FAMA, Prishtina. Retrieved from [http://kolegjifama.eu/materialet/Instituti/Hulumtimi%206%20-Raporti%20i%20NVM-ve%20-%20DRAFT%20Final%20\(1\)%20\(1\).pdf](http://kolegjifama.eu/materialet/Instituti/Hulumtimi%206%20-Raporti%20i%20NVM-ve%20-%20DRAFT%20Final%20(1)%20(1).pdf)
12. KosovoCustoms. (2014). *Annual Report*. Prishtina: Kosovo Customs. Retrieved November 26, 2018, from <https://dogana.rks-gov.net/wp-content/uploads/2016/11/DOGANA.E.KOSOVES.2014.shqip.831898.pdf>
13. KosovoCustoms. (2017). *Annual Report*. Prishtina: Kosovo Customs. Retrieved November 26, 2018, from <https://dogana.rks-gov.net/wp-content/uploads/2018/04/Raporti-vjetor-2017-alb.pdf>

14. Krasniqi-Veseli, L. (2017, March 26). *Në Kosovë asgjësohen mbi njëqindmijë produkte me origjinë të dyshimtë*. Retrieved from Radio Free Europe: <https://www.evropaelire.org/a/28391537.html>
15. (2018, 01 09). *Law no 06 / L-020 on the Budget of the Republic of Kosovo*. Prishtina: Assambly of the Republic of Kosovo. Retrieved October 10, 2018, from <https://mf.rks-gov.net/desk/inc/media/668E7D87-490C-4229-881B-E66CE614F4C1.pdf>
16. Maican, O. (2014). Evolution in the field of unfair competition. *Law Review*, IV(2), 24-35.
17. *Policia brenda vitit 2017 konfiskoi rreth dymijë kilogram drogë*. (2018, January 3). Retrieved from IndeksOnline: <https://indeksonline.net/policia-brenda-vitit-konfiskoi-rreth-2-mije-kg-droge-dhe-shkaterroi-17-grupe-kriminale/>
18. Salihu, I. (2008). *E drejta penale, Pjesa e përgjithshme*. Prishtina: Universiteti i Prishtinës.
19. Salihu, I. (2009). *E drejta penale, Pjesa e posaçme*. Prishtina: Universiteti i Prishtinës.
20. Salihu, I., Zhitija, H., & Hasani, F. (2014). *Kodi Penal i Republikës së Kosovës, Komentar*. Prishtina: Botimi i GIZ, Projekti për Reforma Juridike në Kosovë.
21. Shala, A. (2013). *Hyrje në të drejtën penale*. Gjilan: Kolegji “Gjilani”.
22. (2017). *Work Report of the State Prosecutor*. Prokurori i Shtetit, Zyra e Kryeprokurorit të Shtetit, Prishtina. Retrieved November 9, 2018, from <http://www.kpk-rks.org/assets/cms/uploads/files/Statistika%20dhe%20Raporte/Raporte%20Pune/Raporti%20i%20Pun%C3%ABs%20s%C3%AB%20%20Prokurorit%20t%C3%AB%20Shtetit%2C%20janar%20-%20qershor%202017.pdf>
23. Zenelaj, S. (2015). Marrëveshjet e ndaluara dhe mbrojtja e konkurrencës. *Academia. Academi*. Retrieved from http://www.academia.edu/3573499/Marrveshjet_e_Ndaluara_dhe_Mbrojtja_e_Konkurrences

KRIJUMČARANJE ROBE

Kazneno djelo krijumčarenja robe u Republici Kosovo je tema od temeljne važnosti za ekonomski i socijalni razvoj ove zemlje i kao što će biti objašnjeno u ovom radu s teorijskog i praktičnog aspekta. Prema podacima iznesenim u ovom radu, iako je u službenim statistikama krijumčarenje robe relativno malo predstavljeno, to je zabrinjavajuća pojava jer krijumčarenje robe šteti državnom proračunu za stotine milijuna eura svake godine. Ova šteta postaje još zabrinjavajuća zbog činjenice da se prihod na Kosovu uglavnom oslanjaju na carine i poreze. Kosovo se suočava s mnogim izazovima i problemima u borbi protiv kriminaliteta, posebno gospodarskog. Ovaj rad predstavlja skup ideja o tome kako djeluju kaznenopravni sustavi u borbi protiv fenomena krijumčarenja robe. Za pripremu ovog rada korištene su pravne, usporedne, opisne, anketne i statističke metode.

Cljučne riječi: *krijumčarenje, roba, carina, kazneno djelo, počinitelji*