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CRIMINAL PROCEDURE AGAINST JUVENILES

ABSTRACT

In this work we discussed the notion and meaning of the term juvenile in a criminal procedure, characteristics of the criminal procedure against juveniles such as urgency in completing procedural actions, the principle of the best interest for the juveniles and other principles. Next, the provisional arrest, police detention and detention on remand applied against the juveniles, when can they be applied and how these measure can be applied. Particular attention is provided to the composition of the trial panel; stages of the criminal procedure against juveniles, preparatory procedure, role and competences of the prosecutor during the preparatory procedure, procedural actions undertaken by the prosecutor as well as measures that may be imposed by the prosecutor. Also, the diversion measures were discussed and their types; the stage of the main trial when evidence is administered and decision is taken on the criminal matter decision is rendered on imposing an educational measure or a sentence for juveniles as well as the procedure according to legal remedies and the mediation procedure.

Keywords: juvenile, criminal offence, criminal procedure, prosecutor, judge, educational measure, sentence for juveniles.

Introduction

Dealing with juveniles in separate criminal proceedings has started only recently and consequently it has started being applied alongside scientific advancements, first of all referring to advancements in pedagogy, psychology, sociology, penology etc.

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First tendencies to sever proceedings for juveniles from standard criminal proceedings date from the end of the XIXth century and beginning of the XXth century.

During this period a large number of measure was being applied, which were mainly focused on the level of less severe punishment.[275]

Next, the issue started being investigated in more detail regarding not only more adequate measures and sanctions for juveniles but also to displace the procedure as a whole foreseeing a completely separate procedure for juveniles.

Republic of Kosovo, in connection with regulation of criminal proceedings against juveniles, has approved the Juvenile Justice Code (JJC), which regulates measures, sanctions, procedures as well as execution of measures and criminal sanctions against juveniles.

The other legal infrastructure which deals with issues regarding measures, procedure etc. For juveniles such as Criminal Code of Kosovo, Criminal Procedure Code and the Law on Execution of Criminal Sanctions may apply under the condition that they do not clash with the JJC provisions.

Characteristics of the criminal procedure against juveniles

The Juvenile Justice Code makes the difference between terms child, which includes persons under the age of 18 years. A minor is a person between the age of 14 and 18 years, which is also the boundary of the criminal liability, which means that criminally liable are children from this age, but not those under 14 years of age.

Further, a young minor is a person between the age of 14 and 16 years, which means that against this category adequate measure may be imposed, but not sanctions.

A minor adult is a person between the age of 16 (sixteen) and 18 (eighteen) years, an important category because against them, apart from measures, sanctions may be imposed, too.

Also, the laws in force include the category of young adults, which means persons between the age of 18 (eighteen) and 21 (twenty-one) years. In principle, court proceedings may not be conducted against an adult who has reached the age of 21 years for a criminal offence committed as a juvenile under the age of 16 years, but, proceedings may be conducted against him for a criminal offence committed as juvenile under the age of 16 years if this criminal offence is punishable by more than 5 years of imprisonment. Meanwhile, in court proceedings conducted against an adult for a criminal offence committed as a juvenile who has reached the age of 16 years, the court may impose either a measure or a sanction, considering also the time lapsed since commission of the criminal offence.

[275] Criminal Procedure Law, Rexhep Murati & Ejup Sahiti

Persons who have reached the age of 18 years are considered adults. In criminal proceedings implemented against a young adult who has not reached the age of 21 years for a criminal offence committed as a young adult, the court may impose a measure or sanction for juveniles if he assesses that the aim that would be achieved by imprisonment would also be achieved by a measure or sanction for juveniles, but, also by taking the opinion of an expert regarding the psychological development of the young adult and his best interests, the measure or the sanction may last until this person reached the age of 23 years.

The procedure against juveniles, as mentioned above, has several characteristics which make it different from the criminal procedure against adults. Some of the most important specifics are:

- Urgency of the procedure, since institutions dealing with implementation of the procedure against juveniles shall act within the shortest timeframe possible. In this respect, the Juvenile Justice Code, has foreseen shorter deadlines in comparison to those applicable against other adult perpetrators.
- A juvenile may not be tried in absentia and he shall be accompanied by his parent during all stages of the criminal proceedings;
- Defense during proceedings against a juvenile is mandatory starting from the first questioning, in cases when the procedure is conducted for a criminal offence for which a sentence up to 3 years of imprisonment is foreseen or from the time when a ruling on initiation of preparatory procedure is received for a criminal offence for which a more lenient punishment is foreseen, if a judge for juveniles considers that a juvenile needs a defense counsel or adequate defense;
- If a juvenile, or his legal representative and other persons legally obliged to defend a juvenile, do not engage a defense counsel, one is appointed ex officio the organ in front of which criminal proceedings are being conducted;
- Statutory limitation for execution of punishments by imprisonment for juveniles is shorter.
- The best interest of a child is the main principle, which characterises the procedure against juveniles, and which is Constitutional category determined by article 50, para. 4 of the Constitution of the Republic of Kosovo.

Considering the above, actions undertaken by the state organs conducting criminal proceedings against a juvenile as a suspect shall bear in mind that the best interests of the child shall be prevailing considerations.[276]

[276] Convention on the Rights of a the Child, article 40
Juvenile Justice Code, art. 10

Provisional arrest, police detention and detention on remand

The procedure against a juvenile, regarding these measures in particular, shall be conducted with urgency and there deadlines foreseen which are different from those applied with adults. These are foreseen by the JJC, which is in harmony also with international instruments which deal with the rights of the child, first of all the Convention of the Right of the Child.
These measures may be ordered against a juvenile only as a last measure and for a shortest time possible.

A juvenile may be detained or arrested provisionally for no longer than 24 hours and after this he should be released in absence of a legal decision for detention on remand.

Detention on remand as a measure against a juvenile may be ordered in accordance with provisions of the CPC and only if other alternative measures would not be sufficient in securing his presence and prevention of recidivism and also ensuring successful conduction of the criminal proceedings.

A judge reviews other alternative measures, such as placing a child in a shelter, transfer to another family etc. and in the ruling imposing detention on remand reasons should be provided as to insufficiency of the alternative measures.

Detention on remand as a measure against a juvenile may be imposed by a Juveniles Judge for a maximum period of 30 days and this may be extended by a Juvenile Panel for a further 60 days.

Juvenile Panel shall, within 30 days, review the ruling on imposing detention on remand in a session where present shall be the juvenile, prosecutor and the defense counsel.

Detention on remand against a juvenile under no circumstances can be longer than 12 months and he should be held in an educational-correctional institution, if the Juvenile Judge considers this to be in the best interest of the juvenile.

While the juvenile is held under detention on remand, adequate social, educational, psychological, medical assistance is provided to him as needed.

Composition of the Juvenile Panel

A Juvenile Panel in the court of the first and second instance, except for panels of the Supreme Court Panels, shall be composed of a Juvenile Judge and two lay judges. The Juvenile Judge shall always be the presiding judge of the panel.
A Juvenile Panel in the Supreme Court of Kosovo shall be composed of three judges, including at least one juvenile judge. When a Juvenile Panel of the Supreme Court adjudicates at a main trial, it shall be composed of two juvenile judges and three lay judges[277].

[277] Composition of the Juvenile Panel according to the JJC

Stages of the criminal proceedings against juveniles

Criminal proceedings against juveniles are regulated by the Juvenile Justice Code. Essential principles that shall be respected during conduction of the criminal proceedings against juveniles deal with the welfare of a juvenile due to young age and psychological development and in order for the criminal proceedings against him not to have a negative impact or to have the least of consequences on his personality.
Therefore, humane treatment of a juvenile during all stages of the criminal proceedings is the main requirement for those executing, and others participating in, the criminal proceedings against juveniles.

This principle shall prevail also in cases when diversion and educational measures are applied, whereas deprivation of liberty is the last resort, by limiting it to the shortest time possible.

If an imprisonment sentence is imposed on a juvenile, than education, psychological assistance and other support is ensured for a juvenile depending on his needs in order for a juvenile to rehabilitate.

A juvenile shall be provided with a defense counsel when in front of any organs conducting the criminal proceedings.

During the criminal proceedings, a juvenile shall be given the opportunity to express himself freely, this obliges the organ conducting the criminal proceedings to inform a juvenile of his rights guaranteed by law and proceedings shall not continue until it is ensured that a juvenile has understood these rights.

When deprived of his liberty a juvenile shall be kept separate from adults if it is judged that this serves his best interests.

The juvenile's right to privacy and not to be exposed to public during proceedings is a right which shall be applied by all organs and other persons participating in proceedings against a juvenile.

Preparatory procedure

Role and competences of a prosecutor

The state Prosecutor, in cases when he receives information, proposal by an injured party, or a criminal report that a juvenile has committed a criminal offence or a juvenile is a victim of a criminal offence, acts speedily and without delays by applying provisions of the JJC and provisions of the CPCRK as appropriate.

The State Prosecutor's competences in criminal proceedings against juveniles, same as in proceedings against adults, is finding and prosecuting perpetrators of criminal offences which are prosecuted ex officio or based on a proposal.

If grounded suspicion exists that a criminal offence has been committed by a perpetrator under 14 years of age, criminal proceedings are not initiated, and if they have been initiated due to unawareness of the juvenile's age, proceedings are immediately terminated upon realisation of his age and the Guardianship Authority and Correctional Services shall be notified of the case by the prosecutor. Then, the Guardianship Authority undertakes further actions, in accordance with the Law on Social and Family Services for treating perpetrators of criminal offences under the age of 14 years, based on its programmes.

The State Prosecutor starting from the principle of the best interests for a juvenile, the principle that reaction shall be proportionate to the circumstances of the criminal offence perpetrator and the principle of reasonability, based on article 56 of the JJC, may initiate the preparatory proceedings even if the grounded suspicion exists that a juvenile has committed the criminal offence punishable with imprisonment of less than three (3) years or a fine. In this case, the prosecutor thinks that it would not be appropriate to conduct criminal proceedings against a juvenile because of the nature of the criminal offence, circumstances under which this offence was committed, absence of severe damage or consequences for an injured party, considering the past conduct of a juvenile as well as his personal characteristics. Also, in cases when against a juvenile a sentence or measure is being executed, prosecutor may decide not to initiate preparatory proceedings for a criminal offence committed by a juvenile, if considering the gravity of this criminal offence, as well as the sentence or measure being executed, conduction of a procedure or imposition of a sentence or measure for this criminal offence would not serve any objective.

In order to confirm circumstances for a decision not to start preparatory proceedings against a juvenile, prosecutor may request from the Probation Services to conduct social inquiry, and if necessary, to invite the parent, adoptive parent or guardian of a juvenile, as well as other persons and institutions and the injured party. Even in this case, when he decides not to initiate the preparatory proceedings, he notifies the guardianship organ.

If the prosecutor does not undertake any of abovementioned actions based on article 57 of the JJC he renders a decision to initiate the preparatory procedure. The ruling determines that juvenile against whom the procedure is being conducted, description of the criminal offence which defines the elements of the criminal offence, legal qualification of the criminal offence, circumstances and facts which justify the grounded suspicion, collected evidence and information on any punishment or measure imposed in the past against the juvenile. A stamped copy of a ruling on initiation of the preparatory procedure is sent to the juvenile judge without delay, and the Centre for Social Work and the Probation Service is notified in accordance with article 8 of the JJC in order to prepare the social inquiry. During the preparatory procedure the prosecutor takes care of all the rights of the juvenile that he enjoys according to the JJC and the CPC. If a juvenile is under arrest, the prosecutor without delays files a request to impose the detention on remand measure if there are grounds for this in front of the juvenile judge, respecting the 24h deadline, otherwise, if this deadline passes and no ruling is rendered to impose detention on remand by the juvenile judge, a juvenile is immediately released. It should be noted here that the provisional arrest, police

detention and detention on remand are measures which shall be used as a last resort and only in necessary cases, when other measures to secure presence of a juvenile in a procedure are not sufficient.

During conduct of the preparatory procedure the prosecutor may suspend the investigation procedure against a juvenile and to impose a diversion measure for the criminal offence for which a fine is foreseen or an imprisonment up to three (3) years or for a criminal offence for a criminal offence committed due to negligence, for which a sentence of up to five (5) years of imprisonment is foreseen, except those which end with death as a consequence. Other conditions which require imposition of this measure are confession of guilt by a juvenile, willingness of a juvenile to reconcile with the injured party, consent by a juvenile or parent, adoptive parent or guardian on behalf of a juvenile to impose the diversity measure. If the imposed measure is not executed, the prosecutor is notified about non-completion of diversity measure obligations by a juvenile and he may decide to re-initiate prosecution of the case.

Diversity measures that may be imposed against a juvenile perpetrator are:

- Reconciliation between the juvenile and the injured party, including an apology by the juvenile to the injured party;
- Mediation between the juvenile and his or her family;
- Compensation for damage to the injured party, through mutual agreement between the injured party, the juvenile and his legal representative, in accordance with the juvenile's financial situation;
- Regular school attendance;
- Acceptance of employment or training for a profession appropriate to his or her abilities and skills;
- Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work; this measure may be imposed with the approval of the minor offender for a term ten (10) up sixty (60) hours.
- Education in traffic regulations; and
- Psychological counselling.

Also, during the preparatory procedure, the prosecutor may suspend the procedure, and may propose to parties, i.e. the juvenile and the injured party a mediation procedure, if he evaluates that this is better considering the nature of the criminal offence and the circumstances under which it was committed, the personality of the juvenile, reduction of the damage to the injured party and rehabilitation of the juvenile. Parties shall be explained the mediation principles and rules as well as legal effects which are achieved through mediation. Parties must give their consent to go to the mediation procedure. The mediation procedure shall not be longer than ninety (90) days from the day the ruling on mediation is rendered. The prosecutor is notified about the result officially and if the mediation procedure is not successful than the prosecutor continues with the procedure at the point it was suspended.

During the preparatory procedure the prosecutor may terminate the procedure at any time if based on collected evidence he finds that (article 60 of the JJC):

- There is no reasonable suspicion that the minor has committed the indicated criminal offence;
- The period of statutory limitation for criminal prosecution has expired;
- The criminal offence is covered by pardon;
- The conditions set forth in Article 56, paragraph 1 of the present Code; or
- There are other circumstances that preclude prosecution.

The prosecutor immediately informs the juvenile judge termination of the procedure, as well as the juvenile except in cases when actions in preparatory procedure were undertaken.

The preparatory procedure shall conclude within six (6) months, if it does not conclude within this timeframe the prosecutor files a request in front of a juvenile judge to continue with the preparatory procedure and the procedure may be continued in accordance with provisions of the Criminal Procedure Code of Kosovo.

The prosecutor, after conclusion of the preparatory procedure informs the defense counsel of the juvenile about his intention to conclude the procedure within fifteen (15) days, where the defense counsel has the right to file a request to obtain a new fact or evidence.

Once the preparatory procedure is concluded the prosecutor may submit a proposal in front of a juvenile panel to impose an educational measure or a sentence against the juvenile.

The proposal shall contain personal data of the juvenile, description of the criminal offence, legal qualification of the criminal offence, evidence, possible inquiry, the proposal to impose the educational measure or sentence as well as reasons why the diversity measures were not imposed.

Main trial

This stage of the criminal proceedings represents the main part in which a solution to a criminal matter is provided or where evidence is presented and at the end the criminal matter is clarified.

Once receiving a proposal from the prosecutor the juvenile judge may dismiss the proposal or transfer the case to another competent court if he finds that this is necessary.

If none of the possibilities abovementioned meets the legal conditions to be used than the juvenile judge, within 8 days of having received the proposal, schedules the main trial.

The juvenile judge may at any time during the conduct of the criminal proceedings suspend the court proceedings and impose relevant diversity measure if the juvenile confesses criminal liability, shows willingness for reconciliation with the injured party and at the end, if the juvenile or the parent, adoptive parent or guardian consent to this.

Apart from persons foreseen also by the CPC, to the main trial summonsed are the parent, adoptive parent or the guardian and representative of the Probation Service. Their absence is not an obstacle to hold a main trial session.

Provisions of the CPC on amendment and extension of the accusatory act apply also in the case of amendment or extension of the proposal even though in the procedure against juveniles the trial panel is authorised by law to render a decision based on facts and evidence presented during the session by showing that the situation regarding the proposal has change based on them.

The main trial for juveniles is always held with no public present, although the trial panel may make exceptions allowing presence of some persons who are professionals in dealing with issues of welfare, education and delinquent behaviour of juveniles.

The trial panel may order exclusion of participants in a main trial, except the prosecutor, defense counsel, representative of the guardianship authority and representative of the Probation Service. Tis may occur under extraordinary circumstances and when it is believed that this at juvenile's best interest.

The trial panel is not bound by the proposal of the prosecutor in rendering a decision regarding imposing a measure or sentence. By way of a ruling the trial panel terminates the court proceedings if we deal with reasons from the CPC (the prosecutor withdraws from prosecution, actions for which the juvenile is charged do not constitute a criminal offence, the injured party withdraws from the proposal etc.).

Educational measures are imposed by the trial panel by way of a ruling, where in its enacting clause it is stated only the order for the educational measure and other potential measure or sentence, where the juvenile is not found guilty for the criminal offence from the prosecutor's proposal.

The reasoning of the ruling contains description of the criminal offence as well as the circumstances which influenced imposing of the educational measure.

The sentence against the juvenile is imposed by the trial panel byway of a ruling which is rendered in accordance with provisions of the CPC, which includes also the measures or sentencing such as measures of mandatory treatment etc.

The ruling or the judgment for juveniles is drafted in writing within 8 days of its announcement, whereas this deadline may be extended to maximum of 15 days with the authorisation of the president of the court.

The juvenile may be ordered by the court to pay the costs of proceedings and to satisfy property claims only if it has imposed a punishment on the juvenile. If educational measures have been imposed upon the juvenile, the costs of the proceedings shall be paid from the state budget and the injured party shall be referred to civil litigation to realise property claims.

Regardless of the above, the juvenile may be ordered by the court to pay the costs of proceedings and to satisfy property claims if the same does realise financial income or owns property.

The procedure according to legal remedies

Decisions rendered by the first instance court may be appealed within eight days from the day of the receipt of the ruling or judgment. Grounds to file an appeal are the same as in the procedure for adults.

Circle of persons who may file an appeal on behalf of the juvenile is relatively wide and includes the defense counsel, prosecutor, spouse, parent, adoptive parent, a relation by blood in a direct line to any degree, brother, sister – the latter may file an appeal even against the will of the juvenile. A specific feature in this case is that the juvenile may not waive his right of appeal.

An appeal against a ruling imposing an educational measure served in an institution suspends the execution of the measure, although the court may decide to execute the measure notwithstanding an appeal if it determines that this is in the best interest of the juvenile, after hearing the opinion of the parent, adoptive parent or guardian.

The court of second instance may modify the appealed decision by imposing a more severe measure only if so requested in the appeal by the public prosecutor.

The court of second instance may impose a sentence upon a juvenile if this was not done by the court of first instance only if a hearing is held, this also applies for educational measures.

The procedure according to other remedies such as request for protection of legality, reopening of proceedings is conducted according to provisions of the CPC, which are implemented as appropriate, whereas a request for extraordinary mitigation of punishment is applied only under the condition that a sentence was imposed upon a juvenile by way of a judgment.

Mediation procedure

Mediation as an institution is foreseen by the JJC and it is a non-court procedure which is conducted in accordance with JJC provisions and the law on mediation.

There are several conditions in order for the mediation procedure to be applied, whereas the main condition is existence of reconciliation between the juvenile, as the perpetrator, and the injured party.

Lawmaker did not clearly determine the criminal offences where the mediation may be applied but it provided an orientation for circumstances which shall be considered when mediation may be utilised such as nature of the criminal offence, circumstance under which the criminal offence

was committed, the juvenile's background, the possibility of reconciliation between the juvenile and the injured party, the possibility of his rehabilitation and reintegration in the society.

In cases when there is an agreement by the parties to apply the mediation procedure this is noted in the minutes by the prosecutor or judge, depending on what stage the procedure is, he renders a ruling which appoints the mediator from a list of mediators in accordance with the Law on Mediation.

The prosecutor or judge shall beforehand notify the parties regarding mediation principles and rules, the process as well as legal effects of possible agreements achieved through this process.

The mediator appointed by a ruling shall contact the juvenile and the injured party in order to start with the mediation procedure, which shall not be longer than ninety days starting from the day of the announcement of the ruling on appointment of the mediator. The prosecutor or the juvenile judge shall be informed about the mediation results.

Mediation procedure for juveniles is free of charge for the parties and they are paid from relevant budgets, depending on which organ initiated the mediation.

The mediation procedure is over when:

- The mediation has been successfully finished;
- The deadline of ninety days has expired;
- The mediator considers that continuation of the procedure is not possible or not reasonable;
- The juvenile or the injured party declare that they want to terminate the procedure.

Based on this it is understood that the mediation may be terminated upon a will of one of the sides if they request so.
The criminal procedure shall continue if the mediation is not successful from the moment of its abolishment, whereas in case it was successful the procedure is terminated by way of a ruling and parties notified accordingly.

Also, if parties achieved an agreement for compensation of damages, this is submitted to the organ that initiated the mediation and if the same is approved that it becomes a document based on which execution may be carried out according to the law.

Also, during the pre-trial procedure the prosecutor may suspend the procedure and propose the mediation procedure to the parties, i.e. to the juvenile and the injured party, if he estimates that it is more appropriate taking into consideration the nature of the criminal act, the circumstances under which the criminal act was committed, the personality of the juvenile, the possibility of deducting damage of the injured party and rehabilitation of the juvenile.

Parties shall be explained the mediation principles and rules as well as legal effects achieved through mediation. Parties shall give their consent in undergoing the mediation procedure. The mediation

procedure shall not be longer than ninety (90) days from the day the ruling on mediation is rendered. The prosecutor is notified of the result officially and if the mediation procedure is unsuccessful the prosecutor continues with the procedure from the moment of its abolishment.

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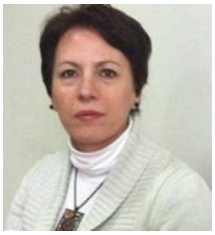

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EXCLUSION OF CRIMINAL LIABILITY

ABSTRACT

The reason of discussing the exclusion of criminal liability lies in the fact that in some cases, situations and circumstances, perpetrator of the act happens to commit a criminal offence sanctioned by law, and is acquitted of the criminal liability, is he acted under conditions foreseen by the law.

These situations include cases when the perpetrator has acted in necessary defense to protect himself or another person from a real and unprovoked attack or if acted in extreme necessity or under the influence of violence or threat caused without his fault.

This work, apart from the introduction part, in its first part deals with acts of exclusion of criminal liability and situations in which perpetrator finds himself during commission of the criminal offence; the final part of this work deals with reasons for exclusion of criminal liability according to the CCRK for these criminal offences. At the end of this work there is the conclusion where we provide our findings on exclusion of criminal liability and at the very end there is the literature consulted during this work.

Keywords:

Exclusion of criminal liability, reasons for exclusion of criminal liability, degree of danger, defense.

1. Introduction

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Exclusion of criminal liability for these criminal offences was foreseen also by previous laws of the Republic of Kosovo,

because the perpetrator is obliged to defend himself or another person from a danger posed from another person and which is a serious risk and directed directly at him or another person. This danger, apart from people, may come from animals, natural phenomena such as floods, earthquakes, fire, various explosions etc, without being provoked by the perpetrator of the criminal offence.

Criminal liability is a general element of every criminal offence. Every socially dangerous act is not considered to be a criminal offence. In order for a dangerous act to be considered a criminal offence it is necessary for it to be manifested with a high degree of risk and to be defined as a criminal offence by law.

Reasons to exclude criminal liability according to the general part of the Criminal Code of the Republic of Kosovo are foreseen by two norms through which criminal liability is excluded if certain conditions are met, and these are the necessary defense (article 12) and extreme necessity (article 13).

Reasons or circumstances that exclude criminal liability, according to the general part of the CCRK, are violence and threat (article 14), acts of minor significance (article 11) and superior orders (article 16).

2. Objectives

After reading this work, readers shall be able to:

- Understand the concept of exclusion of criminal liability,
- Define criminal liability,
- Differentiate between criminal liability and danger and
- Describe reasons which exclude the criminal liability.

3. Criminal liability

Criminal liability is a general element of every criminal offence. It represents the legal basis for defining the criminal offence and according to its nature is a feature of every offence, therefore, it is a feature of criminal offences as well.

Not every socially dangerous act is considered to be a criminal offence. In order for a dangerous act to be considered a criminal offence it is necessary for this act to be manifested with a high degree of danger and to be defined as a criminal offence by law.

4. Danger (degree of danger)

Danger to society of a criminal offence may be of different intensities. Some criminal offences are less dangerous and some of them more. Degree of danger posed to the society is determined considering:

- Manner of commission of criminal offence,
- Means by which legal goods were endangered or damaged,
- Time of commission of criminal offence,
- Location of commission of criminal offence,
- Motive for commission of criminal offence,
- His conduct in the past,
- Recidivism is present or not.

Based on degree of danger to society the gravity of criminal offence is determined, when the degree of danger is high the criminal offence is considered as more serious and vice versa, when the degree of danger is low the criminal offence is considered to be lighter.

5. Reasons to exclude criminal liability according to the general part of the Criminal Code

Reasons to exclude criminal liability are numerous and we shall mention only few:

- Necessary defense
- Extreme necessity,
- Violence,
- Threat,
- Act of minor significance,
- Superior orders etc.

6. Necessary defense

Article 12 para. 1 of the CCRK expressively stipulates that an act committed in necessary defense is not a criminal offence.

According to article 12 para. 2 of the CCRK, necessary defense is the defense necessary to avert an unlawful, real and imminent attack against himself or another person and the nature of defense is proportionate to the degree of danger posed by the attack.

The necessary defense exists e.g. when a person A attacks by knife the person B, but person B defending his life deprives person A of his life.

From this example it results that in the described situation all characteristics of the criminal offence of murder have been met, however, the murder was committed in necessary defense, it is

considered that the criminal offence does not exist, since the attacked person has the right to avert the unlawful attack.

The attack and defense must exist in order for the necessary defense to exist.

7. Attack

An attack is any action of a person directed towards damaging or endangering legal goods.

Usually an attack is committed by way of an action, but exceptionally it may be committed by omission (e.g. an emergency room doctor refuses to provide medical help to a person at risk for his life). In such cases, any person may force a doctor to carry out his duty.

Attacker must be a human being – In order for the necessary defense to exist, the attack must be undertaken by a human being.

The attack may be directed towards any goods. So, the attack may be directed towards legal goods belonging to a natural person, legal person, security or territorial integrity of Kosovo etc. However, in everyday life mostly it is the human life that is attacked, bodily integrity and property.

The attack must be unlawful – The attack is unlawful when the attacker has no legal authorisations for his activity, when his activities violate legal system of a state.

The attack must be imminent – The attack is imminent when it is expected to start at any time, when it has started and while it continues, in other words until it is over.

When the attack is expected to start – It is considered that the attack may be expected at any moment in cases when it may start there and then, immediately e.g. during a quarrel between two persons, one of them loads a handgun or pulls a knife from its holster.

When the attacked has started- The situation is clearer in cases when the attack has already started e.g. person A is running with a knife after person B and as soon as he comes close to him, he pulls a handgun and deprives him of his life, the attack here has already started, so, it is not expected to start.

The attack must be genuine- In order to consider that the necessary defense exists the attack must be genuine, to really exist.

8. Defense

Defense is any human action which damages or endangers any attacker's goods. Necessary defense exists also from the definition of this institution, necessary defense exists even in cases when the attack is averted by the third person.

The defense must be directed at the attacker- In order to consider that the necessary defense exists, action of the defense must be directed against the attacker, against the legal goods of the attacker which is necessary to avert the attack (e.g. against body, life, property etc.).

The defense is mandatory necessity to avert the attack- In order to consider a defense as necessary it must be mandatory necessary for a person to avert the attack from himself or from another person.

The defense must be proportionate to the intensity of the attack- In order for the necessary defense to be needed, it should exist in proportion between intensity of the attack and defense (in proportion with means used by the attacker, physical force of the attacker, means in possession of the attacker).

9. Exceeding the necessary defense

Exceeding necessary defense is present when defense is not proportionate with the attack, or when the defense is undertaken after the attack was averted or over.

In all cases when the attacked person exceeds the limits of necessary defense, all damage caused to the attacker are considered a criminal offence and such a person is criminally liable as for any other criminal offence.[278]

10. Extreme necessity

Article 13 para. 2 of the CCRK – Extreme necessity is a secondary circumstance which excludes criminal liability. According to the legal definition, the extreme necessity exists when an action is committed to avert an imminent and unprovoked danger from himself or another person which could have not otherwise been averted, provided that the harm created to avert the danger does not exceed the harm threatened

E.g. person A in order to save the life of a child, enters forcibly in house of person B, which is engulfed in fire, another example is when person A in order to save the life of a drowning child takes someone else's boat.

Danger and averted danger must be present in order for this institution to exist.

[278] Pursuant to the Criminal Code of the Repubic of Kosovo, General part, article 12

11. Danger

Existence of a danger is a precondition for the extreme necessity to exist. Danger is usually defined as a situation in which based on existing objective circumstances it is reasonable to presume that at any moment, there and then, legal goods of a natural or legal person may be harmed.

Danger may come even from forces of nature or natural phenomena such as**:**

- Flooding

- Earthquakes

- Severe freezes

- Landslides or avalanches

- Attacks by animals or wild animals etc.

The danger may be provoked or caused- It cannot be considered that a person acted in extreme necessity if by his fault, intentionally or out of negligence, he caused the danger, e.g. the person himself caused fire and finding himself in danger, in order to save himself, he harms another person.

Danger may be posed to any goods – In principle danger may be posed to any legal goods protected by legal system, however, in practice, danger is mostly directed to human life, body, health, freedom and property.

Danger must be genuine – Danger is considered as genuine when it exists, it is objective, if a person erroneously thinks that danger exists than we are dealing with the so called putative extreme necessity.

12. Averting danger

Averting danger is an action undertaken in order to save legal goods which are under threat.

Averting danger must be imminent, current with existence of danger

It is considered that this condition is met in cases when action by which danger is averted is undertaken during the time that danger is present, or when it is expected, threat exists, that danger shall start at any moment.

Certain proportion must exist between the threatened harm and the harm caused

The extreme necessity exists when the harm caused is the same as, or smaller, than the threatened harm e.g. in order to save the life of a person property of another person is harmed.

13. Exceeding limits of extreme necessity

Exceeding limits of extreme necessity may also occur, same as in the case of necessary defense:

- When the harm caused is larger than the threatened harm
- When danger could have been averted by causing less harm to the legal goods of another person and
- When harm to the legal goods of another person was caused after the danger was over.

The act committed in exceeding the limits of extreme necessity is considered a criminal offence and if this exceeding of limits was intentional, the perpetrator shall be held liable for intent and if it was committed out of negligence than he shall be liable for negligence.

14. Obligation to expose to danger

There are few categories of people who because of their duties, profession or social position in a society, may not call upon the extreme necessity, but, they are obliged to expose themselves to the danger (article 13 para. 4 of the CCRK).[279]

15. Violence and threat – article 14 of the CCRK

15.1. Violence, the notion and types of violence

Violence is the use of force against another person in order to force him to undertake or fail to undertake ë an action by which features of a criminal offence are realised.

Violence may be physical or mechanical, whereas as force, violence is also considered to be use of hypnosis or other intoxicating means, in order to put another person, against his will, in an unconscious state or to render him unable to resist.

15.1.1 Violence may be absolute and compulsive

Violence is absolute in cases when a person against whom violence is used was completely depraved of any opportunity to take a decision to act or not to act, or if this person was prevented to execute his decision.

[279] According to the Criminal Code of the Republic of Kosovo, General part, article 13

E.g. person A ties up a railway staff and he cannot give a signal for a train to stop and as a result a train collision is caused with a lot of casualties and material damage.

Compulsive violence is expressed in cases when a person against whom violence is used is not absolutely depraved of the opportunity to decide, but the violence applied exerts such pressure that forces him to undertake or not undertake a certain action.

15.1.2. Threat

Threat is a declaration which makes another person know that something bad is bound to happen to him, if he does not act the way the person making the threat wishes. Threat is usually done verbally. However, it may be done in writing, or by concludent actions.

15.1.3. Criminal importance of violence and threat

In the case of absolute violence there is no criminal offence, since it does not have the essential element "Voluntary action of a person".

According to this, the person, who under the influence of the violence, undertakes an action which includes all features of a criminal offence defined by law, shall not be held criminally liable, since it shall be considered that he was only the means to commit the criminal offence. Whereas, when we deal with the compulsive violence and the threat, they shall be assessed within the necessary defense and the extreme necessity.[280]

16. Acts of minor significance

It may occur that a person commits an action, which might have all the characteristics of a criminal offence defined by the criminal law, but, because the offence involves insignificant danger to the society it is not considered a criminal offence, e.g. a person a steals a simple fork in a restaurant. Actions of person A includes all elements of the criminal offence of theft, however, since the degree of danger of this offence is insignificant, it is not considered a criminal offence.

Two conditions shall be cumulatively met in order for an act of minor significance to exist:

- The act shall be of minor significance and
- There are no harmful consequences at all, it was insignificant.

[280] According to the Criminal Code of the Republic of Kosovo, General part, article 14

Whether an act is of minor significance depend on a lot of circumstances. An orientation as to how significant a criminal offence is provided perhaps by the stance of the lawmaker manifested in the sentencing foreseen for the criminal offence.

Apart from the gravity of the offence there are other conditions that must be fulfilled in order for an act to be considered of a minor significance, and mainly they are related to:

- Means by which the criminal offence was committed,
- Circumstances under which the criminal offence was committed,
- Psychological reports on the perpetrator of the criminal offence (form of guilt, intent and motive) etc.

It is not necessary for all of these conditions to be fulfilled in each case, it is possible for only one condition to exist and the act to be treated as an act of minor significance.

The second condition, in order for a criminal offence to be considered as insignificant danger to the society it is required that a prohibited consequence is not caused, or that it is insignificant e.g. in case of the criminal offence of attempt to take somebody else's car, person A enters the car of person B and wants to go somewhere but he is prevented in doing so (he did not cause any consequences at all). [281]

17. Superior order

Persons who based on the hierarchy are in subordinate positions, are obliged to execute orders of their superiors. However, it may occur that by executing these orders a criminal offence is committed.

Pursuant to the Criminal Code of Kosovo, even when a subordinate commits a criminal offence based on an order by superior he shall be considered as criminally liable and sentenced. However, in three paragraphs of this article certain cases are foreseen when a subordinate, although committed a criminal offence, shall not be criminally liable or sentenced if:

1 The person was under legal obligation to obey such an order
2 The person did not know that the order was unlawful and
3 The order was not manifestly unlawful.

18. Self-harm

Self-harm exists in cases when a person harms legal goods, personal goods e.g. causes bodily injuries to himself or destroys his own property. Personal legal goods are e.g. life, bodily integrity, honour, authority, freedom of movement, individual property etc.

[281] Pursuant to the Criminal Code of the Republic of Kosovo, General part, article 11

In criminal law self harm does not represent a criminal offence under the condition that it does not pose a danger to the society.

A person who injures himself in order to avoid military service shall be held criminally liable, in this case it shall be considered that such a person has committed a criminal offence of avoiding military service by rendering himself disabled.

19. Conclusion

Based on the topic we conclude that:

Every socially dangerous act is not considered to be a criminal offence. For a dangerous act to be considered a criminal offence, it is necessary for this to manifest a high degree of danger and be defined a criminal offence by law.

Even though the abovementioned criminal offences are foreseen by the CCRK as criminal offences, perpetrators of the offences shall be acquitted of the criminal liability or be punished by a reduced punishment if it is proven that they have acted in necessary defense, extreme necessity, under the influence of violence or threat to avert the danger posed to them directly or to another person, danger which was imminent and unlawful.

Whenever it is confirmed that a person, at the moment of commission of the criminal offence was influenced by the perpetrator due to these reasons or abovementioned situations, he shall be acquitted of the criminal liability, or a reduced punishment shall be imposed against him.

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STATUTORY LIMITATION ON CRIMINAL PROSECUTION AND THE EXECUTION OF CRIMINAL SANCTION

ABSTRACT

Considering the importance of the criminal prosecution and criminal sanctions as some of the stages of criminal proceedings where the state, once the foreseen legal deadline has passed, loses the right to prosecute perpetrators of criminal offences and to execute criminal sanctions, this, in the criminal law is called the statutory limitation. In this work we shall discuss the statutory limitation on criminal prosecution as well as execution of criminal sanctions. Next, when does the statutory limitation of criminal prosecution commences to run, interruption and stay of the statutory limitation on criminal prosecution, absolute and relative statutory limitation on criminal prosecution, criminal offences that are not subject to statutory limitation, deadlines of statutory limitation on criminal prosecution. Also, there is a ruling on how does a statutory limitation on criminal prosecution expire. These apply also in the case of statutory limitations on criminal sanctions. Considering all the above, after reading this work the reader shall be familiar with the importance of the statutory limitation and shall be able, in practice, to apply this institution of the criminal law.

Introduction

Kosovo is day by day, as a young state, regulating the judicial system by giving a lot of importance to the legal state. However, there are still problems with statutory limitation on criminal prosecution and criminal sanctions in which case citizens lose faith in the judicial system due to inefficiency. This occurs as a consequence of Kosovar judges facing a large backlog of cases and deadlines, which is a time interval that does not stop. Also, it should be noted that the Kosovo Police must establish a Task Force for execution of court orders because their non-execution is concerning. Therefore, the institution of the statutory limitation on criminal procedure is of large importance and through this work we shall get more familiar with the statutory limitation and steps that need to be undertaken in order to avoid its expiry.

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1. Statutory limitation on criminal prosecution

Statutory limitation on criminal prosecution consists on the fact that because a deadline foreseen by the law has elapsed the criminal prosecution may not be initiated and the person cannot be imposed a punishment for the criminal offence he has committed. Therefore, statutory limitation is a legal institution where the state loses the right to apply criminal prosecution due to the statutory limitation. The criminal law recognises two types of the statutory limitation: statutory limitation on criminal prosecution and on the execution of punishments.

2. Commencement of statutory limitation on criminal prosecution

The period of statutory limitation on criminal prosecution commences on the day when the criminal offence was committed. It was decided that the day when the criminal offence was committed is the time when the statutory limitation commences. A lot of criminal codes in the world accept the theory of action and not that of a consequence. In cases of continued criminal offences and collective criminal offences the period of statutory limitation commences with the last action undertaken e.g. in a case of a criminal offence of unlawful occupation of immovable property from article 332, the statutory limitation of the criminal offence of falsification of documents commences on the day the document is used, in case of criminal offences of status the statutory limitation commences on the moment the consequence occurred, for offences in co-participation it is the moment of undertaking the action of the main offence and not the moment when the very act of co-participation was undertaken, in cases of guaranteed omissive offences with intent commencement of the statutory limitation matches with non-compliance with guaranteed obligations. [282]

Pursuant to the Criminal Code of Kosovo period of statutory limitation on criminal prosecution commences on the day when the criminal offence was committed. If a consequence that constitutes an element of a criminal offence occurs later, the statutory limitation commences to run from that time, article 107 para. 1 of the CCRK. If a criminal offence is committed against a person under the age of eighteen, the limitation period shall commence to run on the day the victim reaches the age of eighteen years, article 107 para. 2 of the CCRK.[283]

3. Tolling of statutory limitation on criminal prosecution

Tolling of statutory limitation is present when due to some circumstances foreseen by the law the criminal prosecution may not be initiated or if it has been initiated it may not continue according to the law. While those circumstances which obstruct initiation or continuation of the criminal

[282] Criminal Law, Prof.Dr. Vllado Kambovski, Skopje, 2006, pg. 1068
[283] Criminal Code of the Republic of Kosovo, No.04/L-082, fq. 46

prosecution are present, the statutory limitation does not run. This stay of the statutory limitation because of the effect of certain circumstances is called tolling of the statutory limitation. When the obstacles causing the tolling of the statutory limitation cease to exist, the statutory limitation continues to run. Subsequently, the period of the statutory limitation shall be extended for the time period of continuation of the tolling.

The criminal law recognises two types of obstacles, which may cause tolling of the statutory limitation: factual obstacles and legal obstacles.

Factual obstacles are circumstances and real situations which render it impossible initiation or continuation of the criminal prosecution, such as perpetrator of the criminal offence fleeing, address of the perpetrator is not known, occupation of a territory by an enemy, earthquake, flooding, fire and other similar circumstances which make work of the court impossible.

Legal obstacles exist in cases when a circumstance or a situation of a legal nature is present because of which criminal prosecution may not be initiated or continued, such cases are immunity of an MP, psychiatric illness of the defendant during the criminal procedure etc. In cases when the criminal offence was committed in co-perpetration, tolling of the statutory limitation may occur only against a co-perpetrator who is subject of the abovementioned circumstances or situations, whereas against the others it continues to run.[284]

4. Interruption of the statutory limitation

Interruption of the statutory limitation in our criminal code is foreseen in two cases where the statutory limitation is interrupted by every act undertaken by the competent state organ for the purpose of criminal prosecution of the perpetrators of the criminal offence, and the second case is when the perpetrator prior to expiry of the period of the statutory limitation commits another criminal offence of equal or greater gravity than the previous criminal offence.[1]

Statutory limitation is interrupted by any procedural act undertaken because of prosecution of the perpetrator of the criminal offence. The procedural act shall be undertaken against concrete persons in the capacity of the perpetrator for a concrete criminal offence; acts against unknown perpetrator or a concrete person are excluded e.g. the real perpetrator is summonsed for an informative talk at the police station, but without a reason for the talk to be concretely for the criminal offence. The act of interruption of the statutory limitation, different from the tolling, consists on the fact that for each interruption (each procedural act, or new criminal offence) the statutory limitation commences to run, so the period of the statutory limitation prior to the interruption occurring is not calculated in the statutory limitation.[2]

[286] Criminal Law, Prof.Dr. Ismet Salihu, Prishtina, 2010, pg. 561-562
[287] Criminal Law, Prof.Dr. Ismet Salihu, Prishtina, 2010, pg. 568-569
[288] Criminal Law, Prof.Dr. Vllado Kambovski, Skopje, 2006, pg. 1069

Based on the Criminal Code of the Republic of Kosovo, the statutory limitation period is interrupted by any act undertaken for the purposes of criminal prosecution of the criminal offence committed (article 107 para.5). The period of the statutory limitation is also interrupted if the perpetrator prior to expiry of the period of the statutory limitation commits another criminal offence of equal or greater gravity than the previous criminal offence (article 107 para.6), a new period of statutory limitation will commence after each interruption.

5. Absolute statutory limitation on criminal prosecution

Tolling and interruption of the statutory limitation may mean that it never actually practically expires. Due to this reason, the Criminal Code has foreseen absolute statutory limitation on criminal prosecution, which arises when twice the period of the statutory limitation required by the law has elapsed (article 107 para.8), so, e.g. if a relative statutory limitation of 2 years has been foreseen for a certain criminal offence, the absolute statutory limitation would be 4 years, or if a foreseen statutory limitation is 3 years, than the absolute statutory limitation is 6 years.[1]

6. Criminal offences not subject to statutory limitation

International crimes are not subjected to statutory limitation, criminal prosecution and execution of punishment are not subject to statutory limitation for the following criminal offences: genocide, crimes against humanity and war crimes foreseen by the CCRK, and relevant criminal offences foreseen by international conventions such as the United Nations Convention on Non-Applicability of Statutory Limitations for War Crimes and Crimes Against Humanity of 1968 as well as the European Convention of 1974.[2]

Pursuant to the Criminal Code of the Republic of Kosovo non-applicability of statutory limitation for criminal offences against international law and aggravated murder article 111 para.1 and 2, no statutory limitation shall be applicable for criminal offences of genocide, war crimes, crimes against humanity or for other criminal offences to which the statutory limitation cannot be applied under the international law, including the criminal offence of murder.

7. Periods of the statutory limitation according to the CCRK, article 106

The criminal prosecution may not be initiated after the following periods have elapsed:

- Thirty (30) years from the commission of a criminal offence punishable by lifelong imprisonment, article 106 para.1 item 1.1 of the CCRK:
- Ttwenty (20) years from the commission of a criminal offense punishable by imprisonment of more than ten (10) years, article 106 para.1 item 1.2 of the CCRK:
- Ten (10) years from the commission of a criminal offense punishable by

[289] Bar Exam Handbook, Prishtina 2009, pg. 223
[290] Criminal Law. Prof.Dr. Vllado Kambovski, Skopje, 2006, pg. 1070

imprisonment of more than five (5) years, article 106 para.1 item 1.3 of the CCRK:
- Five (5) years from the commission of a criminal offense punishable by imprisonment of more than three (3) years, article 106 para.1 item 1.4 of the CCRK:
- Three (3) years from the commission of a criminal offense punishable by
- imprisonment of more than one (1) year, article 106 para.1 item 1.5 of the CCRK; and
- Two (2) years from the commission of a criminal offense punishable by imprisonment up to one (1) year, article 106 para.1 item 1.6 of the CCRK.[3]

A sample of a Ruling on statutory limitation of the criminal prosecution:

BASIC COURT IN GJAKOVA, through its single judge X.X. and legal secretary I.I. in the criminal matter against the defendant N.N. from Gjakova because of the criminal offence of Falsification of a document from article 398 para.1 of the CCRK, according to Indictment of the Basic Prosecution Office in Gjakovë PP.nr.10/2009, dated 10.01.2019, deciding ex officio, based on article 107 para. 8 of the CCRK, and article 363 para.1 item 13 of the CPCRK, on 12.05.2014 rendered the following:

RULING

THE CHARGE IS REJECTED AND CRIMINAL PROCEEDINGS TERMINATED against defendant N.N from Gjakova because of the criminal offence of falsification of a document from article 398 para.1 of the CCRK.

- **Because of the absolute statutory limitation of criminal prosecution from article 107 para. 8 of the CCRK.**
-

  Based on article 69 of the CCRK, **the security measure is imposed – seizure of the falsified diploma**, which is the object of the criminal offence.

Reasoning

The Basic Prosecution Office in Gjakovë filed the indictment PP.no.10/2009, dated 10.01.2009, in front of this Court, against the defendant N.N. from Gjakova because of the criminal offence of Falsifying documents from article 398 para.1 of the CCRK.

After reviewing the indictment PP.no.10/2009, dated 10.01.2009, the Court arrived at the conclusion that the criminal prosecution against the defendant N.N. from Gjakova because of the criminal offence of Falsifying documents under article 398 para.1 of the CCRK is subject to absolute statutory limitation.

The criminal offence of Falsifying documents under article 398 para.1 of the CCRK, is sanctioned by fine and punishment by imprisonment of up to three (3) years.

[291] Criminal Code of the Republic of Kosovo, Nr.04/L-082, pg. 46

It is suspected that the defendant undertook actions of the criminal offence that he is charged with on 17.09.2007 when he presented this document to the public body.

The Court, by analysing actions undertaken by the defendant on 17.09.2007 and up until rendering of this Ruling, dated 12.05.2014, 6 (six) years have elapsed, came to a conclusion that the period of absolute statutory limitation on criminal prosecution against the defendant N.N. from Gjakova because of the criminal offence of Falsifying documents under article 398 para.1 of the CCRK, has expired.

Pursuant to article 107 para. 8 of the CCRK, the criminal prosecution shall be prohibited in every case when twice the period of statutory limitation has elapsed (absolute prohibition on criminal prosecution).

Decision on security measure – seizure of the falsified diploma is rendered based on article 69 of the CCRK, which is the subject of the criminal offence.

The Court, pursuant to article 107 para. 8 of the CCRK and article 363 para. 1 item 13 of the CCRK, and reasons mentioned above decided as in the enacting clause of this Ruling.

RENDERED AT THE BASIC COURT IN GJAKOVA,

P. no.23/2009, dated 12.05.2014.

Judge

X.X.

LEGAL REMEDY: Appeal may be filed against this Ruling within days from the day it was received, in front of the Court of Appeal in Prishtina, through this Court.

8. Statutory limitation on criminal sanctions

Statutory limitation on criminal sanctions consists on the fact that because of the foreseen legal deadline elapsing execution of the criminal sanction may not be undertaken and the person cannot be taken to serve the sentence or pay a fine for a criminal offence committed. Therefore, the statutory limitation is a legal institution where the state loses the right to execute a criminal sanction after a legal deadline for it has elapsed.

9. Commencement of periods of statutory limitation on the execution of punishments

The statutory limitation on execution of punishments consists on the fact that, once a period foreseen by the law elapses, the imposed punishment cannot be executed. This situation may occur if execution of the punishment has not commenced or if the execution is interrupted.

The period of the statutory limitation on execution of the punishment commences to run from the day the judgment become final, whereas if the alternative decision was revoked, than from the day the decision on revoking became final.

The statutory limitation of the execution is present for main punishments as well as for alternative and accessory punishments. However, the statutory limitation on accessory punishments is not present at the same time with main punishments or alternative punishments.

The statutory limitation on execution of punishments commences to run on the moment the judgment imposing the punishment becomes final. An exception to this rule is when the convicted person flees. In cases when the conditional punishment is revoked, the statutory limitation period commences to run on the day the convicted person fled. [285]

10. Tolling and interruption on execution of the punishments

The period of statutory limitation does not run for any time during which the execution of the punishment may not be initiated by law. Stay of the statutory limitation period may occur only by legal obstacles and not by factual ones on execution of the punishments and other sanctions and measures. Once the legal obstacles are removed the statutory limitation period continues to run from the moment of interruption, which means that the time period of occurrence of the legal obstacles is included in the period of the statutory limitation.

The period of statutory limitation is interrupted by every act undertaken by a competent authority for the purpose of executing the punishment. By an act undertaken for the purpose of executing the punishment we mean actions foreseen by the Law on Execution of Criminal Sanctions, which ensures voluntary or forced execution of the punishment such as summons or order to serve the punishment by imprisonment or order of compelling or domestic or international wanted notice. A new period of statutory limitation will commence after each interruption, this means that the time prior to action which interrupted the period of statutory limitation is not calculated in the statutory limitation period.

The execution of a punishment shall be prohibited in every case when twice the period of statutory limitation required by law has elapsed.

Circumstances due to which a punishment shall not be executed may be of legal or factual nature. Such circumstances which warrant interruption of the statutory limitation period are e.g. prolongation of execution of the punishment based on the Law on execution of criminal sanctions, also, it is possible when the convicted person is ill, or a member of his close family dies and also when prosecution organs cannot find the convicted person.[286]

[285] Criminal Law, Prof.Dr. Ismet Salihu, Prishtina, 2010, pg. 563-564
[286] Criminal Law, Prof.Dr. Vllado Kambovski, Skopje, 2006, pg.1072-1073
[1] Criminal Law, Prof.Dr. Ismet Salihu, Prishtina, 2010, pg. 565-566

11. Absolute statutory limitation on the execution of criminal sanctions

Tolling and interruption of periods of statutory limitation on the execution of punishments produce the same effect as in the case of tolling and interruption of periods of statutory limitation on criminal prosecution. Absolute statutory limitation on the execution of punishments occurs in every case when twice the period of statutory limitation required by law has elapsed, regardless of the fact that tolling and interruption were present and regardless of the time period they continued for. In case the absolute statutory limitation period expires, the imposed sanction may not be executed. Statutory limitations on the execution of accessory punishments and measures of mandatory treatment are types of criminal sanctions, therefore, the institution of the statutory limitations is applicable in relation to them, too.

12. Statutory limitation on the execution of accessory punishments and measures of mandatory treatments

Accessory punishments same as main punishments are types of criminal sanctions, therefore the statutory limitations are applicable in relation to them, too. The institution of the statutory limitation is applicable also in cases of measures of mandatory treatment. General reasons which lead to expiry of periods of statutory limitations on accessory punishments and measures of mandatory treatments are the same as in cases of limitations on execution of main punishments. Also, under the same conditions, provisions on tolling and interruption of periods of statutory limitations on execution of accessory punishments and measures of mandatory treatments are applicable as in the case of the absolute statutory limitation. However, due to specificities of accessory punishments and measures of mandatory treatments and their objective, periods of statutory limitations could not be the same as those of statutory limitations on the execution of main punishments.

13. Criminal offences which are not subject to statutory limitation

International crimes and execution of the punishment is not subject to the statutory limitation. So, no statutory limitation shall apply to the offences of genocide, war crimes, crimes against humanity, or other criminal offences to which the statutory limitation cannot be applied under the international law.

14. Statutory limitation on the execution of punishments pursuant to CCRK article 108

The imposed punishment cannot be executed after the following periods have elapsed:

- Thirty (30) years from a sentence of life long imprisonment, article 108 para.1 item 1.1 of the CCRK;

[2] Criminal Law, Prof.Dr. Ismet Salihu, Prishtina, 2010, pg. 566

- Twenty (20) years from a sentence of imprisonment of more than ten (10) years, article 108 para.1 item 1.2 of the CCRK;
- Ten (10) years from a sentence of imprisonment of more than five (5) years, article 108 para.1 item 1.3 of the CCRK;
- Five (5) years from a sentence of imprisonment of more than three (3) years, article 108 para.1 item 1.4 of the CCRK;
- Three (3) years from a sentence of imprisonment of more than one (1) year, article 108 para.1 item 1.5 of the CCRK, and
- Two (2) years from a sentence of imprisonment up to one (1) year, article 108 para.1 item 1.6 of the CCRK.

15. Statutory limitation on the execution of accessory punishments and of measures ofmandatory treatment pursuant to the Criminal Code of the Republic of Kosovo

- The execution of other accessory punishments shall be prohibited after five (5) years from the day when the judgment imposing this punishment becomes final, article 109 para.1 of the CCRK;

- The execution of a measure of mandatory treatment shall be prohibited after three (3) years from the day when the judgment imposing this measure becomes final, article 109 para. 2 of the CCRK;

- The statutory limitations on the execution of accessory punishments and the execution of a measure of mandatory treatment shall be tolled when the person fails to comply with court orders pertaining to the accessory punishments and measure of mandatory treatment, article 108 para.3 of the CCRK.

A sample of a Ruling on expiry of the period of statutory limitation of the criminal sanction:

BASIC COURT IN GJAKOVA, with the President of the Court D.D, regarding execution of the criminal sanction against the convicted person X.X. from Gjakova because of the criminal offence of Aggravated Theft under article 327 para.1 item 1.1 of the CCRK, ex officio, on **12.05.2014**, rendered the following:

RULING

Execution of the punishment against the convicted person X.X. from Gjakova, according to matter ED.no.20/2009 of the Basic Court in Gjakova, is PROHIBITED, because of absolute statutory limitation, so, every action in relation to the execution of the punishment is interrupted.

Appeal does not stay execution of this Ruling.

Reasoning

The Basic Court in Gjakova, ex-officio, conducted the criminal proceedings ED.no.20/09 from 20.01.2009, against the convicted person X.X., with residence in Gjakova, regarding serving the sentence, sentenced pursuant to Judgment P.no.50/08, dated 25.07.2008, rendered at the Basic Court in Gjakova, was sentenced by an imprisonment sentence of 1 (one) year, with the Judgment becoming final on 15.08.2008.

The Basic Court in Gjakova, summonsed the convicted person to serve the sentence on 20.09.2008 and the convicted person did not appear in Court voluntary in order to go and serve the sentence, therefore, this Court issued an Order to forcibly send the convicted person to serve the sentence, ED.no.20/2009, dated 01.10.2009, and on 02.03.2010 we have issued a Wanted Notice ED.no.20/09, which was never executed by the Kosovo Police-police Station in Gjakova, as it results from the case files.

The convicted person, according to the abovementioned Judgment, was sentenced with an imprisonment sentence of 1 (one) year.

Based on Judgment P.no.50/08, dated 25.07.2008, which became final on 15.08.2008 and it is subject to execution from the day it was rendered, and since then until the day this Ruling is rendered 4 years have elapsed, pursuant to article 106 para.1 item 1.6 in conjunction with article 107, 108 and 110 para. 1, 2 and 6 of the CCRK, the Court considers that the period of statutory limitation on the execution of the criminal sanction has expired, since over 4 (four) years have elapsed without the imprisonment sentence of 1 (one) year being executed.

Due to the reasons abovementioned it was decided as in the enacting clause of this Ruling.

RENDERED AT THE BASIC COURT IN GJAKOVA,

ED.n.20 /2009, dated 12.05.2014.

President of the Court-judge,

D. D

LEGAL REMEDY: An appeal may be filed against this Ruling within 3 days, starting from the day this Ruling is received, to the Court of Appeals in Prishtina, through this Court.

16. Conclusion

At the end I would like to state that all of what was said here about the statutory limitation on criminal sanctions and the execution of punishments - we as a young state did not pay a lot of attention to this institution since a lot of matters are subject to statutory limitations in Courts' shelves, and this is a consequence of a lot of cases that Judges have to deal with, as well as lack of professional staff at the Kosovo Police for execution of orders, as western countries have for example. This is the reason the statutory limitation commences to run. But, starting from the fact that this kind of a topic is a very wide field, it is obvious that there is lot to be said, however, the most important parts of it are included in this work.

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CRIMINAL OFFENCES OF CORRUPTION

1. Introduction

Kosovo came out of the war with destroyed institutions. This means that corruption and criminality in Kosovo, same as in any other society, started to spread enormously, which mad general social functioning difficult. After the war Kosovo did not have legal infrastructure, institutions or proper state functioning, despite the fact that instalment of UNMIK administration made efforts to consolidate functioning of the social life, with all the evident difficulties.

The topic which we chose to discuss is "Criminal offences of corruption". In this work we have tried to treat this topic critically and as comprehensibly as possible.

At the beginning we shall talk about the meaning and the notion of the criminal offence of corruption.

Next, in this scientific research work we shall present also the characteristics of criminal offences of corruption, official corruption and criminal offences official corruption.

2. Meaning and the notion of the criminal offence of corruption

The criminal offence of corruption shall mean every violation of duty of official persons or responsible persons in legal entities and every activity of initiators or beneficiaries of such behaviour, committed in response to a directly or indirectly promised, offered, given, demanded, accepted or expected reward for oneself or some other person[287].

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* Avdulla Abedini, candidate for a prosecutor
[287] Law against Corruption No.2004/34, dated 22 April 2005

Corruption – any abuse of power or any other behaviour of official person, responsible person or other person for the purpose of achieving or obtain of an advantage for himself or for illegal profit for his/her self or any other person[288].

3. Characteristics of criminal offences of corruption are:

1. Violation of legal and ethical norms by official person.
2. Purpose of obtaining personal benefit.
3. Profit for oneself or any other person and
4. Cause of damage to an individual or society.

Senior Public Officials[289] in the Republic of Kosovo are:

President of the Republic of Kosovo, members of Presidential Cabinet, Secretary as well as Directors of Professional Departments in the Office of the President of the Republic of Kosovo; Members of Parliament, all persons selected or nominated by Assembly, Presidency, Chairperson of the Assembly as well as Cabinet of the Chairperson of the Assembly of the Republic of Kosovo; Prime Minister, Deputy Prime Minister, Ministers, Deputy Ministers, Political Advisors, Heads of Cabinets as well as all persons nominated by them; Permanent Secretaries of the Government, Managers of Agencies, which are established by law or any other act, Director, Deputy Director as well as Regional Directors of Kosovo Tax Administration, General Director and Directors of Customs Departments;

Auditors of General Audit Office as well as all internal institutional auditors;

Members of Boards of Public Enterprises, members of Regulatory Boards, of Commissions or other Agencies established by Law or any other act; Members of the Board, Director and Deputy Director of Central Banking Authority; Municipal Mayors and Deputy Mayors, Presidents,

Deputy Presidents, Advisers of Municipal Assemblies as well as all Directors of Municipal Directorates;

Members of Kosovo Judicial Council and of Kosovo Prosecutorial Council, Director of Judicial Council Secretariat, Director of Prosecutorial Council Secretariat, Judicial Auditor, Disciplinary Prosecutor; Judges and Prosecutors, Judges of Constitutional Court and Secretary of the Constitutional Court;

Directors of all departments, Heads of Public Finances and Procurement throughout all public institutions; Ambassadors, Consuls, Deputy Consuls, Secretaries of Embassies or Consulates of the Republic of Kosovo;

[288] Law on Anti-Corruption Agency No. 03/L-159, dated 29 December 2009, promulgated by decree No. DL-006-2010, on 19.01.2010.
[289] Law on Declaration, Origin and Control of Property and Gifts of Senior Public Officials No.04/L-050, dated 31 August 2011, promulgated by decree No.DL-028-2011, dated 31.08.2011.

Rector, Vice-Rectors of Public University, Deans and Vice-Deans as well as Secretary of Public University and of Academic Units; General Director, Deputy Directors and Regional Directors of Kosovo Police, Head of Kosovo Police Inspectorate; Commander, Deputy Commander of the Kosovo Security Force; Director, Deputy Director and General Inspector of Kosovo Intelligence Agency; Ombudsperson as well as his/her Deputies;

Chief Inspectors of central and local level.

Foreign public official or foreign official person [290] means:

- any person holding a legislative, executive, administrative or judicial office of a foreign State, whether appointed or elected;
- any arbitrator exercising functions under the national law on arbitration of a foreign State;
- any person exercising a public function for a foreign State, including for a public agency or public enterprise;
- any official, employee or representative of a public international organization and their bodies;
- any member of international parliamentary assembly; and
- any judge, prosecutor or official of international court or tribunal which exercises its jurisdiction over the Republic of Kosovo.

4. Official corruption and criminal offences against official duty

By criminal offences against official duty foreseen by the Criminal Code of the Republic of Kosovo the normal, regular and legal execution of the official duty by persons, to whom various public and state authorisations were trusted, is protected. Authorised persons shall exercise their official duty based on the law and in the interest of efficient administration and protection of the rights of citizens.

Perpetrators of these criminal offences most often are official persons and responsible persons[291]. However, perpetrator of these criminal offences in certain cases may be any person, such as cases of criminal offence of Unauthorised Use of Property (article 427), Giving Bribes (article 430) and Disclosing Official Secrets (article 433 of the CCRK).

A joint characteristic of these criminal offences is that these offences are committed with intent. This due to the fact that official persons or responsible persons by committing these offences, consciously and willingly act unlawfully. An exception is made in the case of the criminal offence

[290] Criminal Code of the Republic of Kosovo No.04/L-82, dated 20 April 2012, entered into force on 01 January 2013, promulgated in the Official Gazette of the Republic of Kosovo based on article 80 paragraph 4 of Republic of Kosovo.
[291] Article 120 paragraph 1 of the Criminal Code of the Republic of Kosovo No.04/L-82, dated 20 April 2012 entered into force on 01 January 2013, promulgated in the Official Gazette of the Republic of Kosovo based on article 80 paragraph 4 of the Republic of Kosovo.

of Disclosing Official Secrets for which criminal liability is foreseen even if it is committed in negligence[292].

Official person[293], who by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not execute his or her official duties with the intent to acquire any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person, shall be punished by imprisonment of six (6) months to five (5) years, article 422 of the CCRK.

Corruption, as a negative phenomenon, obstructs development of the country, the rule of law, strengthening of democracy, causes loss of citizen's faith in justice and state institutions, incites citizens in committing criminal offences of corruption, increases the gap between persons with high leading positions who through corruption manage to get rich overnight, affects economic development since foreign investors do not invest in countries with high level of corruption due to insecurity.

Perpetrators of these criminal offences are first of all official and responsible persons who exercise a certain function in state bodies, in public services, other public institutions and entities, which make decisions on citizen's right and duties. They are representatives of the highest state levels, they are persons that hold high posts with authority, holders of high state and economic functions with certain authorisations, persons in responsible positions, in commercial-business and economic and customs positions, in trade of goods – trade agents, brigadiers etc. usually, perpetrators of these criminal offences are official persons.

The manner of commission of these criminal offences of corruption is by acting and only with the intent.

Criminal offences against the official duty could be criminal offences that may be committed only by official persons and criminal offences that may be committed also by persons without the capacity of official or responsible persons.

The category of criminal offences that may be committed only by official persons includes the following criminal offences:

- Abusing official position or authority
- Misusing official information
- Misappropriation in office
- Conflict of interest
- Disclosing Official Secrets
- Fraud in Office

[292] Ismet Salihu, Criminal Law (specific part), Prishtina, 2014 pg. 652.

[293] A person elected or appointed to a State body; an authorised person in a state body, business organisation or other legal person, who by law or by other provision issued in accordance with the law, exercises public authority; a person who exercises specific official duties based on authorisation provided for by law, article 120 of the CCRK.

- Accepting Bribes
- Issuing unlawful judicial decisions
- Falsifying official document
- Unlawful collection and disbursement
- Unlawful appropriation of property during a search or execution of a court decision
- Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations.

The categories of criminal offences that may be committed also by persons who are not official or responsible persons include the following criminal offences:

- Unauthorised Use of Property
- Giving Bribes,
- Trading in Influence and
- Giving Bribes to Foreign Public Official

One of the joint, essential, elements of criminal offences that may be committed also by a person not in a capacity of the official or responsible person, is the one where its perpetrator, in majority of cases, may only be the official person. However, the official persons, as the main subject of these offences, do not himself define their character in placing them in the group of criminal offences against the official duty. It was already mentioned that the essence of the criminal offences against the official duty is violation of duties and functioning of services, which implicates a wide concept of such offences, in which are included, except offences dealing with exercise of the official duty, also offences linked with their commission. It is about specific criminal offences which are not exclusively official criminal offences, but they, apart from official persons, may be committed by other persons in office or who generally work in state organs or in public services; their perpetrator may also be any (through trading in influence, giving bribes etc.).

Perpetrators of criminal offences of corruption usually are not from the ranks of classic crime world, but they are representatives of the highest levels of a state, they are people in high posts and authority, holders of high state economic functions with certain authorisations, people in responsible positions related to business and commercial world, in economy and customs services; in trading with goods – trading agents.

These criminal offences may be consumed only during exercise of the official duty and outside of this these criminal offences do not exist. Usually, perpetrators of these criminal offences most often are officials that exercise a certain function within state organs, public services, public and other institutions, which take decisions on citizen's and legal persons' rights and duties such as: granting certain permits or consents, granting of certificates, rulings, diplomas, various tax and customs obligations and other financial obligations to the state etc.

5. Criminal offences of corruption pursuant to the Criminal Code of the Republic of Kosovo

5.1 Abusing official position or authority

This criminal offence is committed by an act or omission. The offence is committed by an act when an official person undertakes acts that are within his authorities, but he uses these authorities to with the intent to acquire any benefit for himself or another person or to cause damage to another person. Another manner of commissioning of these criminal offences is also exceeding of authorities committed by an official person with the intent to acquire any benefit for himself or another person or to cause damage to another person. This criminal offence is committed by omission when official person in order to acquire benefit for himself or another person or to cause damage to another person does not perform his official duty, he does not undertake the act which according to the law he should have undertaken.

This criminal offence is committed only by direct intent.

5.2 Misusing official information

This criminal offence is committed when an official person with the intent to acquire benefit for him or another person misuses official information which he learned during execution of his official duty.

This criminal offence is committed only by direct intent.

5.3 Conflict of interest

This criminal offence is consumed in cases when there is a conflict between the public official duty and private interest of an official, when during execution of his function an official or a person close to him has a financial interest or non-financial personal, direct or indirect, that affects, or may affect the appropriate manner of execution of the public function, where he may be in situations of possible violation of principles, limitations or prohibitions and obligations, in accordance with the law.

5.4 Misappropriation in office

This criminal offence is committed when an official person with the intent to acquire unlawful benefit for him or another person during execution of his official duty misappropriates property which was entrusted to him because of his position. Perpetrator of this criminal offence is an official person to whom, because of his official position, monies or other means of value were entrusted.

This criminal offence is committed only by direct intent.

5.5 Fraud in office

This criminal offence is committed when an official person or responsible person during execution of the official duty and in relation to execution of the official duty, with the intent to acquire unlawful benefit for himself or another person, by presenting a false statement of an account or in any other way deceives an authorised person into making an unlawful disbursement.

5.6 Unauthorised use of property

This criminal offence is committed when a person, to whom, because of his duty or workplace, money, securities or other movable property has been entrusted, whereas he uses the same for himself or confers such property without authorisation on another person.

This criminal offence is committed only by direct intent.

5.7 Accepting bribes

This criminal offence is committed when an official person acquires benefit for himself or another person by executing an official duty which according to the law he must execute, or not to execute a duty which according to the law he must not execute.

5.8 Giving bribes

This criminal offence is not committed by an official person but by any person who gives a gift to an official person in order for the official person, within his legal authorisations, to execute his official duty which he is obliged to execute or not to execute his official duty which he is prohibited from executing, or when a person gives or promises to give to an official person or responsible person a gift or another benefit in order for him, within his legal authorisations, to execute an official act which is prohibited or not to execute an act which he is obliged to execute.

5.9 Giving bribes to foreign public official

The manner in which this criminal offence is committed is similar to the manner the criminal offence of Giving bribes is committed, with the difference that in this case the bribe is given to a foreign public official, who because of the immunity cannot be criminally prosecuted.

5.10 Trading in influence

Tis criminal offence may be committed by any person, who unlawfully promises, offers or requests, accept a gift in order to influence another official person in undertaking a lawful or unlawful act or to refrain from acting.

5.11 Issuing unlawful judicial decisions

The criminal offence may be committed by an act or omission. The criminal offence is committed by an act when a decision, ruling, order or other unlawful act is rendered or by undertaking other actions in violation of the law (e.g. consciously entering non-existing in the minutes of a main trial, which have essentially influenced in non- rendering of a legal decision). Meanwhile, the criminal offence is committed by an omission in cases when an obligation of a judge to undertake certain actions existed (e.g. a judge intentionally did not enter relevant facts in the minutes, on which existence or non-existence of responsibility depends by rendering an unlawful act).

The intent of the judge to acquire unlawful property gain must be present in order for this criminal offence to exist.

5.12 Disclosing official secrets

this criminal offence exists when an official person or responsible person, without authorisation, communicates, sends, or in some other way makes available to another person information which constitutes an official secret or obtains such information with the intent to convey it to another unauthorised person, or when the perpetrator intends to publish or use such information outside the territory of Kosovo.

A characteristic of this criminal offence is that it may be committed by negligence and it may be committed by a person who has previously been an official person and had an obligation to guard the official secret.

5.13 Falsifying official document

This criminal offence exists when an official person, in an official document, official register or file, enters false information or fails to enter essential information or with his signature or official stamp certifies a document, official register or file which contains false data or enables the compilation of such document, register or file with false content.

There are three modalities of falsifying documents:

1. Entering false data or failing to enter important data;
2. Certifying a false document, register or file and
3. Enabling compilation of a false document, register or file with false content.

The first form of the criminal offence consists on compilation of a document, register or official file with a false content. The criminal offence is committed with entering of false information on the mentioned document or non-entering of important information. ***The second form*** of the criminal offence consists on *certifying* a document, register or official file with a false content, by placing a signature or stamp. Certification must be done by an official or responsible person, whereas in relation to existence of the offence it is not important which person compiled the false

content. ***The third form*** consists on ***enabling*** compilation of a document, register or file with a false content.

This form of the criminal offence is consumed when an official person, by his signature, or official stamp enables another person to obtain a document or register with a false content, but in this case it is required that the official person is aware that the other person shall enter false information on a such document or register. This criminal offence also exists when an official person or responsible person uses a false document, official register or file as if it were true in his business activity or who destroys, hides, damages or in any other way renders unusable the official or business document, official register or file.

Perpetrator of all forms of the criminal offence may only be an official person or responsible person.
Criminal offence may be committed only with the intent.

5.14 Unlawful collection and disbursement, the criminal offence is committed by an official person or responsible person who collects from another something that such a person is not bound to pay or collects more than such a person is bound to pay or who, in a payment or delivery pays or delivers less than what is required. So, it is about an official duty.

According to manner of the commission, the offence may present in two forms:

1. Unlawful collection and
2. Unlawful disbursement.

In the first case, an official person or responsible person collects something from another that such a person is not bound to pay or collects more than such a person owed, even though he is aware that the obligation to pay does not exist or that it does not exist as the requested sum. Therefore, the criminal offence would not be committed if an official person collects more by mistake. In the second case, an official person or responsible person, in a payment or delivery pays or delivers less than what is required.

Perpetrator of the criminal offence may be only official person or responsible person, whose scope of work includes collecting and disbursement.

The criminal offence is committed with intent.

5.15 Unlawful appropriation of property during a search or execution of a court decision

This criminal offence is committed by an official person who during a search of premises or a person or during the execution of a court decision takes movable property with the intent of obtaining an unlawful material benefit for himself or another person.

In order for the criminal offence to exist it is necessary that the property is taken during execution of mentioned legal actions by the official person.

The criminal offence may be committed only with ***direct intent***, which also includes the intent to unlawfully obtain material benefit.
Perpetrator of the criminal offence may only be an official person.

5.16. Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations, article 437

This criminal offence may be committed by any official person who although obligated to file a declaration of property pursuant to the Law on Declaration, Origin and Control of Property and Gifts of Senior Public Officials, fails to do so. This criminal offence may be committed by an omission to act in cases when property is not declared within the legal deadline, and by an act when property is falsely declared.

Within the CCRK there are another four criminal offences considered to be criminal offences with a corruptive element, and this is based on the instruction of the Chief Prosecutor, and they are:

- Facilitating the escape of persons deprived of liberty defined by article 406 of the CCRK.
- Escape of persons deprived of liberty article 405 para. 2 of the CCRK.
- Unjustified giving of gifts under article 316 of the CCRK and
- Entering into harmful contracts under article 291 para. 2 of the CCRK.

In order to prevent and fight corruption the Assembly of the Republic of Kosovo issued the Law on Anti-Corruption Agency, with competences below[294] .

- Initiates and undertakes the detection and preliminary investigation procedure of corruption, and forward criminal charges for the suspected cases of corruption in competent public prosecutor's office, if for the same case the criminal procedure has not been undertaken;
- Cooperates with local and international institutions that have as a mission fighting and preventing corruption;
- In cooperation with the Commission, Government, other Institutions and nongovernment organizations prepares Strategy against the Corruption and action plan;
- Monitors and supervises the implementation of the Strategy against Corruption and action plan;
- Supervises and prevents cases of conflict of interest and undertakes the measures as foreseen by a special Law;
- Supervises and the property of senior public officials and other persons, as required by specific Law;

[294] Article 5 para. 1 of the Law on Anti-Corruption Agency, Law No.03/L – 159, dated 29 December 2009, promulgated by decree No. DL-006-2010, dated 19 January 2010.

- Supervises the acceptance of gifts relating to the performance of official duty and undertakes measures foreseen by Law;
- Cooperates with public authorities responsible for drafting, implementation and harmonization of legislation for combating and preventing corruption;
- It is represented in international meetings that have to do with combating and preventing the corruption and takes part in the process of negotiations to conclude bilateral and multilateral agreements or the adoption of international legal instruments against corruption;
- cooperates with the competent institutions of the Republic of Kosovo for the implementation of obligations arising from international acts against the corruption and offers recommendations for their completion;
- Participates and offer advice on drafting the code of ethics in the public and private sectors;
- Provides opinions regarding the conflict of interest and supervision of gifts related to the performance of official duty;
- Offers clarification regarding the manner of declaration of wealth and other issues from the scope of the Agency;
- Collects, analyses and publishes statistical data or other data regarding the state of corruption in Kosovo;
- Cooperates with state institutions and civil society for raising public awareness about corruption;
- Reports to the Assembly once a year and to the Commission every six (6) months for the work of the Agency. The Commission may request more frequent reports from the Agency;
- Prepares and proposes the annual budget of the Agency.

The President of the Republic of Kosovo, on 15 February 2012, within her efforts to fight corruption, established the National Anti-Corruption Council.

The aim of this council is coordination of the work and activities of institutions and agencies within their competencies and scope of work in preventing and fighting corruption. Also, with an objective to fight the organised crime and corruption, the Kosovo Prosecutorial Council drafted the Strategic Plan[295], for Inter-Institutional Cooperation in the Fight against Organised Crime and Corruption 2013-2015, approved on 16 November 2012.

The Kosovo Prosecutorial Council, within its competencies and responsibilities coming from the Constitution and the Law on Kosovo Prosecutorial Council, through this strategy demonstrates its will and dedication in fighting the organised crime and corruption. While drafting this strategy the Kosovo Prosecutorial Council based itself on recommendations of the Presidency of the European Union Council, dated 8 June 2011, no.9225/4/11 REV 4. Also, the Kosovo Prosecutorial Council, while drafting this strategy, consulted, accepted, comments and recommendations from these institutions: Kosovo Police, Customs, Anti-Corruption Agency and other Agencies and institutions implementing the law in Kosovo. The aim of this Strategic Plan is improvement of the cooperation

[295] Strategic Plan for Inter-Institutional Cooperation in the Fight against Organised Crime and Corruption 2013-2015, approved on 16 November 2012.

between the prosecutorial system of Kosovo and other institutions included in the fight against the organised crime and corruption.

The Kosovo Prosecutorial Council, through this strategy, aims to achieve the following objectives:

- improved detection, investigation and successful prosecution of organised crime with special attention to trafficking in narcotics, weapons and human beings;
- improved detection, investigation and successful prosecution of corruption offences,
- improved detection, investigation and successful prosecution of money laundering offences,
- improved the identification of material benefits of criminal offences and increase confiscation of material benefits of criminal offences,
- increased prevention of organised crime, corruption and money laundering,
- improved the quality of information and statistical data about the detection, investigation and prosecution of organised crime, money laundering and corruption offences,
- increased public awareness through improving the quality of information provided to the public and media and improve cooperation with the public and media.

The Kosovo Prosecutorial Council shall appoint expert prosecutors after consultations and agreement with the Chief Prosecutor and Head of the SPRK.

The Kosovo Prosecutorial Council shall establish a database on specific criminal offences of organised crime and corruption.

According to this Strategic Plan, the Kosovo Prosecutorial Council and the Chief Prosecutor, shall cooperate and coordinate with other agencies and institutions implementing the law in Kosovo, in particular with the Kosovo Police and the Anti-Corruption Agency, in joint reporting on achievements of the fight against the organised crime and corruption.

6. Monitoring and evaluation of the strategy implementation

The aim of the monitoring and evaluation of implementation of the strategy is to follow and continually ensure execution of the objectives since the Strategic Plan is a continuous process.

A monitoring report may be submitted to The Kosovo Prosecutorial Council every six months or based on requests even more often in order to enable verification of the progress of the strategy and the action plan.

The report shall be drafted by the Performance Evaluation Unit of the Kosovo Prosecutorial Council together with expert prosecutors and the SPRK. Evaluation of the strategy implementation is done once a year by the working group of evaluators composed of representatives of institutions and agencies included in the plan, relevant expert prosecutors and the Head of the SPRK.

The Evaluation Report shall be secured and presented to the Kosovo Prosecutorial Council.

7. Conclusion

There is a lot to be said in relation to the criminal offences of corruption. However, we have tried to draft this scientific-research work reasonably and draw a conclusion for the criminal offences of corruption and corruption in general. If we compare what has been done in Kosovo about fighting criminal offences of corruption, it can be seen that a lot has to be done.

Even despite the sufficient legal basis that exists and the coordination of various institutions of Kosovo in fighting corruption, corruption is still widespread and fighting of these offenses remains a big challenge.

Corruption as a negative phenomenon obstructs development of the country, the rule of law, strengthening of democracy, causes citizens to lose faith in in justice and state organs, makes people commit criminal offences of corruption, increases the gap between people in high positions, who got rich overnight, and others, affects economic development since foreign investors do not invest in countries with high levels of corruption due to insecurity.

At the same time, the corruption phenomenon was a subject of frequent criticism by international observers of the Kosovo judicial system. Achieving higher standards in this direction must be the main objective of those implementing the law and the judicial system in general.

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