

APPLICATION OF THE LAW AND PREVENTION OF ECONOMIC CRIME IN KOSOVO

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Abstract: The issue, which we will be treated economic criminality and its features. Economic criminality, as a shaft theme, will be analyzed in several respects. In this paper of doctoral degree will be treated the economic criminality, which in the criminal code of Kosovo is defined as a criminal offense against the economy. Some of the criminal offenses against the economy will be analyzed along with their general and specific characteristics and will also be treated the penalties foreseen for these criminal offenses. Especially will be treated thee factors and causes that influence the occurrence of this criminality separately. Economic criminality has a degrading effect on the contemporary social system and regulation of the state. This kind of criminality as such as it is, poses a threat to Kosovo's stability and international stability, so the limits of the extent of economic criminality, we can say, there are not the country's borders. In Kosovo, economic criminality continues to be a very present and very negative phenomenon that is trying to emulate the development and consolidation of the state of Kosovo. The damage that comes as a result of economic criminality is far greater than any expense incurred for combating and preventing this phenomenon. Economic criminality is a dangerous phenomenon for society, as this kind of criminality is affecting the economic system and the economic and social relations of the country. Since the title of this issue is "The Forms and Causes of Economic Crime in Kosovo for the Period 2008-2011", so for the purpose of recognizing the presence and presence of this kind of criminality in Kosovo will be presented a criminal offense economic crime for the period from 2008 to 2017. In continuance there will be treated the procedural aspect and the role of the competent bodies for prosecuting, preventing and combating economic criminality such as the police, the prosecution and the court.

Keywords: Economic Crime, preventing and combating, Kosovo.

1. ECONOMIC CRIMINAL NOTION AND JURISDICTION – CRIMINALITY

1. 1. The notion of economic criminality

By economic crime we mean all those acts and illegal acts of natural and legal persons who are encouraged in business and economic activity. Determining and defining economic criminality is quite complex, both inside and outside the country. Concerning the phenomenon and spread of economic criminality in the contemporary world, many scientific institutions are held, gatherings and symposia of associations and international associations that deal with this criminal phenomenon. With the issues of economic criminality and its dissemination, was dealt the Fifth United Nations Congress on Prevention of Criminality and the Treatment of Delinquents in Geneva in 1975.⁹¹ With economic criminality we mean the intention to commit a crime and also within these frameworks, a perpetrator of this type of crime, hopes to escape as a result of various legal gaps. This crime can seriously damage citizens, enterprises and, in general, the field of state activity. This notorious phenomenon has been present in earlier times, but less pronounced and investigated compared to what it is nowadays. Economic criminality today has become a global preoccupation.⁹² The author of the book "The Basics of Economic Crimes", Dr. Mersida Suceka, regarding the notion of economic criminality, among other things, says that there are different views that vary depending on the country, but it is often the case that there are differences between the authors in the same place⁹³. Economic criminality is a criminal law category.

The notion of economic criminality is not clearly defined either in criminal law or in practice, where the views of the authors are more or less distinct from each other.

While a group of authors argue that acts of economic criminality are those of physical and legal persons that cause social harm and undermine new social and economic policies; the other group argues that the criminal offense of economic criminality is a characteristic attack on the organization and functioning of the economic

⁹¹ Ragip Halili, Kriminologjia, Prishtinë, 2011, fq. 195.

⁹² Hans Jorgen dhe Goran Skogh, "New perspectives on economic crime", 2004. Fq. 47.

⁹³ Mersida Sućeska, Bazat e kriminalitetit ekonomik, Prishtinë, 2006, fq. 14

system; while the third group of authors start from the incriminating attacks on the economic system in general, those of the fourth group consider that the essence of criminal offenses of economic crime has to do with the damages caused to property during the conduct of economic activities⁹⁴. One of the most reasonable and more concrete meanings for economic criminality is one that was given at the joint session of the Supreme Courts of Federal Units with the Federal Court of the former Yugoslavia. The starting point for this position was the proposal of the Supreme Court of Vojvodina, stating that the notion of economic criminality should be sought and found in its assignment, such as: attack, risk, or damage to social property by entities that are functionally linked and socially owned status, and whether it is only from them or in interaction with persons who are not functionally and in the view of their status linked to socially owned property. Given and taking into account this proposal, at this hearing unanimously, this notion of economic criminality was confirmed and approved⁹⁵:

- Economic criminality is an attack on socially owned property, by committing a criminal offense to the detriment or benefit of the unified work organization of any other organization or community, body or other legal entity civil-society, by the person who is in working relationship in that organization or another organization of united work, or community, organ, other civil-legal person who is presented in the capacity of the perpetrator or co-perpetrator when performing the offense in co-operation with the external person⁹⁶.
- Economic criminality in the narrow sense represents any other criminal act committed to the detriment of social property. From the first part of this notion it is seen that economic criminality was taken in a narrow sense and included all criminal activities to the detriment of social property, carried out by persons who were in a functional or statutory relationship with social property, or by persons who did not enjoy such a report on socially owned property, but only if they performed in interaction with the persons who enjoyed such a report. Only this kind of criminality, according to them, could be called "pure" economic criminality⁹⁷.

Criminality of economic activity is a special form of criminality, which aims at benefiting material or other good, regardless of their form and value. The main features of this criminality are the dark figures, dynamics and adaptation to all economic and normative changes. Criminal offenses are committed to the detriment of legal and natural persons⁹⁸. Thus, the notion of economic criminality includes all forms of criminal activities that are directed against the national economic system and its function.

1.2. The juridical- criminal meaning of economic criminality according to the positive legislation in Kosovo

The justifications of the justice authorities to combat organized crime, including economic criminality, often relate to the lack of adequate legislation or the confusion and sufficient ambiguity of the current legislation in Kosovo. In fact, compared with other countries, particularly those in the region, Kosovo lacks specific laws that would enable an effective fight against these phenomena. Although there is a lack of chain of specific laws that would enable the fight against organized crime, however, there is a solid legislative basis for combating this phenomenon, which must be met⁹⁹. Kosovo's state institutions through the Criminal Code have made efforts to foresee criminal acts or offenses related to economic criminality¹⁰⁰. The Kosovo Criminal Code lacks many aspects. It does not specifically foresee several types of criminal offenses of economic crime. For this reason criminality is evolving every day. Although the Criminal Code of Kosovo has sanctioned the largest number of criminal acts, it is the lawmaker's duty to take care of amending and supplementing the Criminal Code as it requires the legal nature of this type of criminality, so legislation must fit the time¹⁰¹. Criminal Code of Kosovo, criminal offenses that pertain to the nature of economic criminality, are regulated in chapter XXII, where criminal offenses against the economy provide for the following: damage to creditors, misuse of authorizations in the economy, connection of a harmful contract, unauthorized disclosure of work secrets, falsification of postage stamps and securities, breach of patent right, unauthorized use of the firm, trademark or of the foreign model, the fraud of buyers, the organization of

⁹⁴ Mersida Sućeska, po aty, fq. 14.

⁹⁵ Haki Demolli, Kriminaliteti ekonomik në Kosovën e viteve të tetëdhjeta, Prishtinë, 2009, fq. 26.

⁹⁶ Po aty, fq. 27.

⁹⁷ Po aty.

⁹⁸ D. Modly, Leksiokoni kriminalistik, FSHK, Sarejevë, 1998, f. 149.

⁹⁹ www.kdi-kosova.org

¹⁰⁰ Kodi Penal i Kosovës, Prishtinë, 2004, fq. 101-108.

¹⁰¹ Dr. Ismet Salihu, Hilmi Zhitia, Fejzullah Hasani, Komentari i Kodit Penal i Republikës së Kosovë, Prishtinë, 2012, fq. 443-444.

pyramid schemes and illegal gambling, counterfeiting of money, prohibited trade, prohibited production, tax evasion, unreasonable acceptance of gifts, unreasonable gift giving.¹⁰²

2. FORMS OF ECONOMIC CRIME PRESENTATION

2.1. Forms and features of economic criminality

Economic criminality in everyday life or practice can be manifested in various forms and through various actions both within the state and outside it. In practice, the most common form of presentation of this kind of criminality, which is manifested in many areas of criminality, is thus presented in the sphere of criminal activity against the economy or society: The compilation of the false balance in private corporations, manipulation and sale the bribery of the business world, the corruption of state officials on the occasion of reaching agreements between private and state enterprises or the case of issuing certain provisions, false advertising of goods, embezzlement, spending of funds outside their destination, bypass the payment of taxes, false bankruptcy or bankruptcy, illicit competition, buyer fraud¹⁰³. All these activities are undertaken for the purpose of financial material benefits, actions that are not based on work and other allowed activities, but in misuse, fraud and suspicious transactions.¹⁰⁴ Based on the criminological literature of Prof. Dr. Ragip Halilit, economic criminality can be presented through the following forms and with manipulative actions and legal, semi-illegal and totally illegal transactions¹⁰⁵. Thus, such transactions include: establishment of fictitious firms at home or abroad, smuggling of goods such as tobacco, alcohol, or other goods in such a way by transporting them illegally or by falsely presenting them in value for the purpose the avoidance of taxation and customs clearance, the scams made by different firms, the fictitious regulation of tenders and the favoritism of various firms, pyramid schemes, the giving of money, the purchase and sale of real estate, investments money on suspicious shares, the formation of suspicious financial and financial institutions and institutions, the delays of tax obligations, corruption, money laundering, banned trade, bribe manipulation and bonds, bribing, receiving gifts or giving them gifts¹⁰⁶. This crime, with its features, is distinguished both within a state and internationally, as perpetrators or their organizations are served with various types of legal, legal and illegal manipulations and transactions. In contemporary literature, as works that are carried out, not infrequently against the economy, are counted: the establishment of firms or fictitious enterprises, which aim to conceal the tax or in various manipulative ways to present it as false¹⁰⁷.

2.2. Money laundering as a form of economic criminality

Money laundering is a special form of organized crime. This criminal phenomenon is related to actions that are taken in order for the money earned from criminal transactions and activities to be disposed of and invested in legal work and activities and then used as money laundered. Money laundering is defined as a process by which illegally obtained money is presented as allegedly earned money in permitted economic transactions and is attempted to be used for legitimate purposes. Money laundering represents the process of transforming unlawful benefits from criminal activities to hide their origins and make them look like benefits that are secured through work and legitimate methods¹⁰⁸. Money laundering is a special form of organized criminality. This criminal phenomenon is related to the actions that are taken so that the money earned from criminal transactions and activities is deposited and invested in legal work and activity, and then used as money laundered. Money laundering is defined as a process by which illegally obtained money is presented as allegedly earned money in permitted economic transactions and is intended to be used for legitimate purposes. The money laundering process is divided into three phases:

The first phase involves the physical installation or transfer of money, which are earned as a result of criminal activity. The second phase involves coverage or stratification, involving either involved in complex financial transactions to lose traces and ways of earning money that are illegally collected. The third phase involves the effort and commitment that these "cleaned" money be presented as a form of new and clean, legitimate wealth and capital for the purpose of incorporating and depositing it in genuine economic and social activity¹⁰⁹. Faced with the fact that money laundering involves criminal groups and organizations, some authors attach particular importance to

¹⁰² Po aty.

¹⁰³ Mersida Suçeska, Bazat e kriminalitetit ekonomik, Prishtinë, 2006, fq. 17-20.

¹⁰⁴ Revista për çështje juridike dhe shoqërore, "E Drejta", nr1-2011, Prishtinë, 2011, fq. 7.

¹⁰⁵ Ragip Halili, Kriminologjia, Prishtinë, 2011, fq. 198-199.

¹⁰⁶ Vepër e cituar, fq.195-199.

¹⁰⁷ Vepër e cituar, fq.195-199.

¹⁰⁸ Buletini i Odës së Avokatëve të Kosovës, nr. 10/ 2010; Musa Dragusha, Penalizimi i krimeve financiare në Kosovë, fq. 33

¹⁰⁹ Ragip Halili, Kriminologji, Prishtinë, 2011, fq. 150.

financial institutions, namely the bank. In this regard it is said that in many countries there are also rules that have been applied in different banks on the guarantee of the secrecy of the depositing of money in those banks¹¹⁰. Often, bankers have not sought proof of the origin of money, especially those of newly established banks. Generally, money laundering means solving, transforming or clearing money earned through criminal activities: (most often through drug trafficking) and passing them through international borders (mostly returning to drug-producing sites) and re-deploying these money, in regular financial flows. Money laundering is a tremendous threat to the integrity of financial institutions (as best seen in Russia, where the mafia controls many of the country's major banks) Money laundering puts the economic entities that they offer in a legal way difficult is the case with Colombia).¹¹¹.

Money launderers generally do not try to make the most of the money they clean but strive to invest in activities that recycle money sooner and more quickly. Money can travel from countries with a good economic system, where higher profit rates are realized, in countries with lower profit than investment¹¹². Money laundering, as well as other unlawful activities, condition regressive income distribution and create large purchasing power of individuals under the condition of the general recession. Thus, the structure of spending is distorted, especially among the riches, and with the emergence of these wealthy people, so much social differences are growing¹¹³. The money laundering act is only made for property acquired through criminal activities. This activity involves the origin of money and, in this way, tries to lose profit trace and use it for other supposedly pure purposes. This transaction, called "money laundering", allows criminals to enjoy the fruits of their crimes. In this way, a predetermined rule is often realized: that the crime is paid, even very well¹¹⁴. Money laundering is growing in Kosovo and constitutes a dangerous and very current phenomenon, which, unfortunately, is developing without interruption and without obvious obstacles¹¹⁵. The Money Laundering Prevention Law in Kosovo, in its Article Two, provides the definition of money laundering: "Money laundering is any action aimed at masking the origin of money or other property acquired by a criminal offense, including conversion or any transfer of money derived from criminal activity to the concealment or disguise of the nature, origin, place, movement, arrangement, rights or ownership of money or other property gained from criminal activity"¹¹⁶.

Kosovo, in legislative terms, has begun to take some steps to establish the legal framework, institutions and other bodies that are specialized in combating this phenomenon. One important step in combating and clearing the origin of money is the establishment of a Financial Intelligence Center, an institution which, as its core activity, has control and investigation of the origin of money. This institution is specialized and called to fight the phenomenon of money laundering. One of the most dangerous forms of economic criminality, no doubt, is money laundering.

Criminal structures of organized crime in Kosovo, as well as in other countries, are constantly trying to get their money earned through their criminal activities by introducing them into various activities, which are legal.

This very dangerous phenomenon for the functioning of the state in the transitional period of Kosovo is taking a big step because our country, which is with a very weak economy, needs financial capital for various investments to help in the economic upswing of Kosovo, so that adequate institutions do not make proper checks and checks on the origin of money, which are entering the Kosovo market. For the high degree of this phenomenon in our country we witness some investments, which are being done in Kosovo, as for example the erection of various facilities at very high cost of construction, luxury homes, apartments, hotels and the construction of shopping malls that have become commonplace in Kosovo, which are being built for a short time and by anonymous people, who make millions of investments in these types of businesses, where the origin of money is almost never known. The Council of Europe in the Progress Report also concludes that Kosovo's capacity to investigate and prosecute economic crimes remains limited. Large sums continue to be invested in Kosovo. Financial transactions from business executed in private accounts and a large number of business entities without registering business are widely widespread. Very few investigations have been carried out and no one has been prosecuted by Kosovo authorities regarding money laundering and similar crimes¹¹⁷.

¹¹⁰ Azem Hajdari, *Kriminaliteti i organizuar*, Prishtinë, 2006, fq. 173.

¹¹¹ Mersida Suçeska, *Bazat e Kriminalitetit Ekonomik*, Prishtinë, 2006, fq. 155-156.

¹¹² Po aty, fq. 155-156

¹¹³ Mersida Suçeska, *Bazat e Kriminalitetit Ekonomik*, Prishtinë 2006, fq. 155-156.

¹¹⁴ Buletini i Odës së Avokatëve të Kosovës, nr. 10/ 2010, po aty. fq. 37.

¹¹⁵ Buletini i Odës së Avokatëve të Kosovës, nr. 10/ 2010; Musa Dragusha, *Penalizimi i krimeve financiare në Kosovë*, fq. 33.

¹¹⁶ LIGJI Nr. 03/L-196, PËR PARANDALIMIN E SHPËRLARJES SË PARAVE DHE FINANCIMIT TË TËRRORIZMIT, 30 shtator 2010, Kosovë, neni 2, fq. 5.

¹¹⁷ Raporti i progresit 2010 për Kosovën, i Kshillit të Evropës, fq. 51

3. ECONOMIC CRIMINAL FACTORS

3.1. Factors of economic criminality in general

According to the criminological literature, a series of internal and external factors have been made, affecting the appearance of crime in general and the economic one in particular. Thus, according to the separation of criminogenic factors, they are divided into external factors, which directly affect the appearance of crime in society and they are the group of socio-economic factors. Economic and social factors are part of: industrialization and urbanism, migration of people and criminality of foreigners, crises, economic depressions, poverty, unemployment, difficult housing conditions and occupation¹¹⁸.

Economic and social factors, such as industrialization and urbanism, are factors of economic criminality. Industrialization as a process of rapid economic and material development, which plays a major role in the development of the accompanying society, also with the large migration of the population from rural centers to urban centers, often different cities, unable to absorbing all the interests of those newcomers in the city, is unable to solve their problems, such as housing problems, health care, employment, education, education, etc., which has stimulated the number of unemployed, poor people, and spruce people¹¹⁹.

CONCLUSION

- Economic criminality is a major problem, which is deepening and widening day by day. In recent years there is a disturbing extent in all the Balkan Peninsula countries, even in Kosovo.
- Economic criminality today is, as I have said, a phenomenon, which is the main obstacle to the development of each society in each state, creating an environment that lacks transparency and accountability. People who deal with economic criminality cause great damage, knowing, even knowingly fully solely to meet their personal, group and clan interests, thus reducing direct incomes to state institutions.
- To prevent acts of crime in general and economic in particular, the relevant institutions should increase the number of prosecutors, increase the number of judges and pay more control to the police, as well as prepare specialized bodies, who would deal with the fight and illumination of this type of crime.

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¹¹⁹ Ragip Halili, vepra e cituar, fq.241-246.