



## Criminal Sanctions

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### **Abstract**

Criminal sanctions and punishments are the main issues of the criminal law of a country and this is one of the reasons for which this research was developed. The main aim of this research is to study and analyze the criminal sanctions and punishments that are applied according to the criminal legislation of the Republic of Kosovo. Regarding this research, the Penal Code, laws and various literature were analyzed. In part II of this paper, the notion, function and characteristics of criminal sanctions are discussed, in part III, the system of criminal sanctions in the criminal law of Kosovo is discussed, and in part IV, punishments and their characteristics are discussed.

**Keywords:** *Criminal Sanction; Punishments; Criminal Code of the Republic of Kosovo; The Perpetrator of Criminal Offenses; Criminality*

### **1. Introduction**

All forms of criminality are fought with preventive and repressive measures (Jararevic & Maloku, 2021a). Professors Jasarevic and Maloku (2021b) have analyzed and elaborated exceptionally well the aspect of the impact of criminal sanctions on the reduction of criminality in the third book Criminal law and procedure I and II. Sociological factors also affect the increase in criminality, regarding the impact of these factors on criminality, the authors professors Shabani and Maloku (2019a, 2019b) give us the best answer by analyzing and elaborating the sociological theory. The criminological aspect of criminality has been elaborated by Prof. Maloku (2018) for criminological theories. Criminality represents the group of all actions that endanger and/or harm basic human values (protected by law). Those fundamental values can be individual (human life, physical or bodily integrity, freedom, wealth, security, etc.), or collective - shared values (social regulation, state security/institution, economic or social system of the state, etc.) (Maloku & Maloku, 2021)

The most successful prevention and fight against criminality is thanks to a genuine regional and international commitment. (Maloku, 2015a. 2015b. 2015c. 2016a,2018b, 2019, Gabela & Maloku, 2022, 2023)

Criminal sanctions and punishments are among the main issues and at the epicenter of the criminal law of any country, since they are applied to the perpetrators of criminal offenses which also serve to protect society and fight criminality. Criminal activities are quite harmful to society as they violate the legal values of every citizen, for this reason, states use punishments against the perpetrators of criminal offenses, punishments which are provided on the basis of criminal legislation and which are foreseen to be several types of punishment depending from the committed acts, the social dangerousness of the perpetrator as well as mitigating and aggravating circumstances. The main purpose and aim of punishments is to stop further criminal activity for the commission of criminal offences. For an offense to be considered a criminal offence, it must be dangerous, illegal and punishable. However, in the case of determining the punishment, the individualization of the punishment for the various perpetrators of criminal offenses should be taken into account. Sentencing a person to prison is one of the ways that prevents the convicted person from committing other criminal offenses.

During this research we addressed several issues:

- 1) What are the types of criminal sanctions that are applied in the Republic of Kosovo and what are the characteristics of these criminal sanctions?
- 2) What are the punishments and what are their characteristics?

This paper contributes to the existing scientific literature, especially in the legal field. (Qerimi, Maloku, Maloku, 2022:289) The main findings of this paper should contribute and initiate not only scientific workers, but also experts from practice, to start a series of research projects in the future in order to obtain relevant (scientific) knowledge. (Maloku, Kastrati, Gabela, Maloku, 2022:139).

## **2. Methodology**

Because of the research intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, Qerimi, & Maloku, 2022,p. 176). The defined object of research requires the use of different methods and scientific knowledge from many scientific disciplines, in particular, the paper will use theoretical analysis methods, comparative methods and the unity of inductive-deductive methods. (Maloku, 2021:76)

Different methods were used in this research, such as:

The method of analysis, where various literatures on criminal sanctions and punishments have been researched and analyzed using this method.

The elaborative method, where we have explained the notion, function, purpose and characteristics of criminal sanctions, the types of criminal sanctions in the Republic of Kosovo, we have also explained the penalties, purpose, elements and their characteristics.

## **3. Results and Discussion**

### **3.1. The Notion and Function of Criminal Sanctions**

Criminal sanctions mean all measures implemented in criminal law against persons (perpetrators) of criminal offences. The measures that are foreseen in the criminal law and that are taken against the perpetrators of criminal offenses, are intended to protect the individual and the society from criminality. (Salihu, 2012) Criminal sanctions are not imposed at the will of the perpetrator, they are related to the limitation of some rights of the perpetrator who had them until the moment of committing the criminal offense. The purpose of imposing criminal sanctions on persons who commit criminal offenses is not vindictive, but the improvement of those persons. Regarding the imposition and implementation of

criminal sanctions in the Republic of Kosovo, there have been advances in two directions, in the eradication of the vindictive character and in guaranteeing the right to life by prohibiting death sentences. (<https://www.avokatura.com/sq/Blog/Kuptimi-dhe-p%C3%ABrkufizimi-i-Sanksionit-penal>). Article 5 of the law on the execution of criminal sanctions provides that the purpose of the execution of criminal sanctions is the reintegration and socialization of the convicted person in society as well as his preparation for responsible life and behavior. The execution of criminal sanctions also serves to protect society by preventing the commission of other criminal offenses and by restraining others from committing criminal offenses. (08/L-132, 2022)

In Article 5 of the Criminal Code, it is foreseen that with the execution of the criminal sanction, the perpetrators of the criminal offense may have their rights limited only to the extent that corresponds to the nature or content of the sanction or measure and only in the manner in which compliance is ensured of his or her human dignity, in accordance with the constitution and legislation in force. (06/L-074, 2019)

Also, the Constitution of the Republic of Kosovo in Article 34 provides that no one can be tried more than once for the same criminal offense. (Kushtetuta, 2008)

### 3.1.1. Basic Characteristics of Criminal Sanctions

Criminal sanctions have the following characteristics: 1) by means of criminal sanctions, society protects the most important values of the individual and the social community from criminality, 2) criminal sanctions can only be imposed on perpetrators of criminal offenses, 3) against perpetrators of criminal offenses, only that criminal sanction may be imposed which is foreseen by law at the time of the commission of the criminal offense, 4) criminal sanctions can only be imposed by the court based on the procedure established by law, 5) by means of criminal sanctions, the perpetrators of criminal offenses are deprived or limited of their freedoms and rights. (Salihu, 2012)

### 3.2. The System of Criminal Sanctions in the Criminal Law of Kosovo

Adopting the pluralistic system of criminal sanctions, Kosovo in Article 4 of the Criminal Code of the Republic of Kosovo foresees the following types of criminal sanctions: 1) main punishments, 2) alternative punishments, 3) supplementary punishments and 4) judicial warning. (06/L-074, 2019)

**The Main Punishments** are imposed on adults, who are criminally responsible for the criminal offense committed, that is, the person must be mentally sound and have committed the criminal offense through his own fault (intentionally or negligently). (Salihu, 2012) Article 40 of the Criminal Code of the Republic of Kosovo foresees three types of main punishments: life imprisonment, imprisonment and fine. (06/L-074, 2019)

**Alternative Punishments** are the result of a progressive trend in contemporary criminal law and represent an important qualitative reform in the concept and system of criminal sanctions. They are pre-criminal sanctions whose purpose is to be imposed instead of imprisonment only in the cases provided for by law. (Salihu, 2012) Article 46 of the Criminal Code of the Republic of Kosovo provides for conditional punishment, half-freedom and community service order as alternative punishments. (06/L-074, 2019)

**Complementary Punishments** have a secondary character and they complete the main punishments. When the court finds that the purpose of the punishment cannot be achieved by imposing the main penalty, then it also pronounces one of the supplementary penalties. (Salihu, 2012) Article 59 of the Criminal Code of the Republic of Kosovo foresees several types of punishments as supplementary punishments: the removal of the right to be elected, the order for compensation of loss or damage, the prohibition of exercising functions in the public administration or public service, the prohibition of the exercise of the profession, activity or duty, the prohibition of driving a vehicle, the obtaining of a driving

license, the order for the publication of the judgment and the deportation of the foreigner from the territory of the Republic of Kosovo. (06/L-074, 2019)

**Judicial Warning is a Type of Criminal Sanction and** has a pre-criminal character. It is intended for criminal offenses that are lighter. (Salihu, 2012) Its purpose is to reprimand the perpetrator, taking into account the circumstances related to the offense and the perpetrator, and the purpose of punishment can only be achieved with a judicial warning. In this case, the perpetrator is notified that he has committed an act which is harmful and dangerous and which constitutes a criminal offense, where in case of its repetition, the court will impose a more severe criminal sanction. (06/L-074, 2019)

### 3.3. Punishments

The oldest type of criminal sanction is punishment, which was born from blood feud and composition, which were the first forms with which society reacted to the acts that were prohibited. Until the end of the XIXth century, the only type of criminal sanction was punishment. Therefore, even today, punishment is considered a necessity and a main tool in the fight against criminality. (Salihu, 2012) The notion of punishment must express at the same time its essence, its social duty and its legal features. (Petrović, 2006) Punishment is defined as a violent measure provided by law, which is pronounced by the court against the criminally responsible perpetrator of the criminal offense, with the aim of protecting certain values of citizens and society as a whole and which consists in taking or restricting freedoms and the rights of the perpetrator of the criminal offense. (Salihu, 2012)

The Criminal Code of the Republic of Kosovo in article 38 has foreseen the goals of punishment which are: 1) to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate him, 2) to prevent other persons from committing criminal offences, 3) compensate the victims or the community for the losses or damages caused by the criminal offense and 4) to express the social judgment about the criminal offense, raising morale and strengthening the obligation to respect the law. (06/L-074, 2019)

The punishment has several basic elements which are: 1) according to its content, the sentence must present a negative moral-ethical assessment towards the criminal offense and the perpetrator, 2) as a violent measure, the punishment must present an evil, which affects the person who committed the criminal offense, 3) the sentence must have the specific purpose, which is intended to be achieved by its execution, 4) the penalty must be determined by law (principle *nulla poena sine lege*), 5) punishment can be imposed only on perpetrators of criminal offenses who are criminally responsible, 6) the punishment can only be pronounced by the court according to the procedure established by law. (Salihu, 2012)

#### 3.3.1. Characteristics of Punishments

Contemporary criminal law defines certain characteristics that must be fulfilled when pronouncing and implementing punishments. These characteristics are: 1) the punishment must be personal - that is, the punishment must hit only the perpetrator of the criminal offense and not others, 2) the punishment must be humane - the punishment must not represent torture and humiliation or damage the delinquent's health, 3) the sentence must be legitimate - the sentence is pronounced by the court, 4) the punishment must hit the perpetrators of criminal offenses equally, regardless of nationality, religion, race, etc. 5) the punishment must be proportional to the gravity of the criminal offense and the degree of criminal responsibility of the perpetrator, the punishment must be divided - the punishment is divided if it can be imposed in a smaller or greater measure, 6) the sentence must be revocable - in cases where the sentence was imposed in violation of the law, it must be abrogated, 7) the sentence must be reparable. (<https://sites.google.com/site/juridikal/fusha-te-se-drejtjes/e-drejta-penale>)

## Conclusion

During the research and analysis of various literatures on criminal sanctions and punishments imposed on the perpetrators of criminal offenses, we come to the conclusion that these are among the main issues of the criminal law of a state.

Based on the conducted research, we have come to the conclusion that in the Republic of Kosovo, criminal sanctions are applied such as: main punishments, alternative punishments, supplementary punishments and judicial warning. These criminal sanctions can only be pronounced by the court on the basis of the procedure established by law, by means of which the perpetrators of criminal offenses are deprived of their freedoms and rights, where all this is done with the aim of protecting the individual and society from criminality. The purpose of these criminal sanctions is not retaliatory in nature, but its purpose is for the convict to resocialize and reintegrate into society after serving his sentence.

This approach tried to demonstrate theoretical and methodological scientific procedures, the implementation of which ensured the generation of relevant scientific data on theory and science theories, which are extremely important for the scientific study of this field. (Qerimi, Kastrati, Maloku, Gabela, & Maloku. 2023:185)

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