



## Criminal Acts Against Constitutional Order and Security

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### **Abstract**

Criminal offenses against the constitutional order and security in all countries and in all the criminal codes of the states occupy an important place in the special part of the Criminal Codes. Criminal offenses against the constitutional order and security also occupy an important place in the structure of the part especially in the Criminal Code of the Republic of Kosovo due to the high danger they present and the consequences they can cause, as well as for these types of criminal offenses in all codes, severe punishments are provided. Criminal offenses that endanger or damage the legal assets of a country or a state, such as: constitutional regulation, independence, territorial integrity, security, etc. represent criminal offenses against constitutional order and security. Criminal offenses against the constitutional order are understood as those acts, actions which are aimed at subverting the constitutional order through illegal actions such as murder, kidnapping, torture, armed uprising, etc. In different countries, these crimes have different designations, such as crimes against the state, against independence and constitutional order, etc. For example, in the Criminal Code of Albania in chapter V, they are designated as crimes against independence and constitutional order. While in the Criminal Code of the Republic of Kosovo are named as criminal offenses against the constitutional order and security of the Republic of Kosovo.

**Keywords:** *Constitutional Order; Independence; Security; Territorial Integrity; Criminal Code; Etc*

### **1. Introduction**

Criminal offence is the most serious form, not only of the delicate in criminal law but also of the delicate in general. In the old terminology of the law it was marked as "crime" (crimina) for which the death penalty was often also foreseen. Such works today could be defined as a grave violation of the fundamental values of law or values. (Maloku - Maloku,2021:95-96). Criminal acts in particular also criminal acts against constitutional order and security have been dealt with and analysed by authors Jasarevic and Maloku (2021a, 2021b) in their books Criminology - Etiology and Phenomenology, as well as the Right to Criminal Procedure I and II. The author Maloku (2015a,2015b,2015c,2015d,2015d), while criminality as a negative phenomenon from the sociological aspect treats authors Shabani and Maloku (2019a,2019b) Criminal acts against the constitutional order and security of the Republic of Kosovo have been dealt with in this work.

The causes of criminality were analysed by author Maloku (2016, 2018, 2019,2020) in terms of victimology and criminological. The author explains this phenomenon among sociology, biological and psychological theories, Criminal acts are dangerous works that cause great consequences such as deprivation of human life, serious bodily injury to major material damage.

In every country, respectively in each state there are criminal and committal of criminal acts which, with their action or inaction, harm or jeopardise legal goods which are protected by criminal legislation of a state, so each state has preceded in their criminal codes, criminal acts and sanctions which are foreseen for the perpetrators of criminal acts. It is a category of criminal acts which in the Criminal Code of the Republic of Kosovo are called criminal acts against the constitutional order and security of the Republic of Kosovo, but in other codes of other states they also have different names, this category of criminal acts parks an extremely high risk because these criminal acts are directed against the legal and constitutional order of a country, state organization and vital state organising bodies.

Criminal acts meet the constitutional order and security of the Republic of Kosovo are foreseen in the Criminal Code of the Republic of Kosovo (KPRK, 2019) which are:

- Attack against the constitutional order of the Republic of Kosovo (Article 114)
- Armed uprising (Article 115)
- Consent of capitulation and occupation (Article 116)
- Betrayal of the country (Article 117)
- Dangering the territorial ity of the Republic of Kosovo (Article 118)
- Murder of high representatives of the Republic of Kosovo (Article 119)
- Kidnapping of high representatives of the Republic of Kosovo (Article 120)
- Violence against high representatives of the Republic of Kosovo (Article 121)
- Threatening the constitutional order with the destruction or damage of public installation(Article 122)
- Sabotage (Article 123)
- Espionage (Article 124)
- Discovery of classified information and non-preservation of classified information (Article 125) - Heavy acts against the constitutional order and Security of the Republic of Kosovo (Article 126) - Union for counterconstitutional activities (Article 127)
- Criminal acts of terrorism (articles 128–139)

These criminal works have been deal with separately in this.

This paper contributes to existing scientific literature, (Maloku, Jararevic & Maloku, 2021:52) especially in the fields of criminal law.

## **2. Methodology**

In this paper, appropriate methods were used to achieve the goal (Karovic, Maloku & Shala, 2020:107). The scientific methods used in this paper are mainly methods of analysis, synthesis and comparative, which help to analyze, synthesize and compare the theoretical views of local and foreign authors (Maloku & Maloku, 2020:323). The topic we wish to research necessitates the mental disassembly of its pieces and phenomena in order for them to be investigated independently and then connected (Maloku,Qerimi,Maloku, 2022:176). Scientific research in this work, under conditions of its kind, will be carried out and carried out as methodological research, which is essentially theoretical. (Maloku, Castrati, Gabela, Maloku 2022:141)

### **3. Results and Discussion**

#### **3.1. Criminal Acts against the Constitutional Order and Security of the Republic of Kosovo**

Criminal acts with which a country's legal goods are endangered or demonized, namely a state such as: constitutional regulation, security and privacy, territorial integrity, etc. (Salihu I. , 2014, p. 31)

Criminal acts against the constitutional order include criminal acts with which constitutional regulation, general security, territorial integrity and independence of a given country are at risk. (Gashi.A, Puka.A, Morina.I, Boričić.N, - Morina.V, 2019, p. 315)

Because of the specific function that learns to carry out the criminal acts of this chapter, as well as because of the motives of which are most commonly performed, in the theory of criminal right, these works are often emeritus political criminal acts (political crimes) (Salihu I. , 2014, p. 31) Acts of this nature are also cited as criminal acts against the state and carried out with political motives and as such are armed uprisings, Betrayal of the country, etc. (Gashi.A, Puka.A, Morina.I, Boričić.N, - Morina.V, 2019, p. 315)

The criminal acts of this chapter are distinguished among themselves for many traits, such as: action of conduct, manner and time of doing, concrete consequences etc. (Salihu I. , 2014, p. 32)

However, despite the differences, they also have some important common traits and characteristics, which are specific compared to other criminal acts. (Salihu.I, Zhitija.H, & Hasani.F, 2014, p. 362)

Criminal acts against the state are divided into two categories: behaviours that are hostile to the existence of the government itself and works that censor the regular and fair administration of public works. (Packer, 1962, p. 77)

#### **3.2. Criminal Acts Separately**

Criminal offenses against the constitutional order and security of the Republic of Kosovo are defined in Code no. 06/L-074 Criminal Code of the Republic of Kosovo-KPRK

##### **3.2.1. Attack against the Constitutional Order of the Republic of Kosovo (Article 114)**

1. Anyone with use of violence or violence attempts to change the constitutional order of the Republic of Kosovo or overthrow the highest institutions of the Republic of Kosovo is sentenced to no less than five (5) years in prison. (KPRK, 2019)
2. Anyone with the use of violence or with a canoe of violence tries to prevent the establishment of the constitutional order of the Republic of Kosovo or with the use of violence or the canoe of violence implements the foreign legal order in any part of the Republic of Kosovo, is sentenced to no less than five (5) years imprisonment. (KPRK, 2019)
3. Anyone with use of violence or violence attempts to jeopardize Kosovo's independence, sovereignty and territorial integrity, territorial wholeness and democratic character of the state are sentenced to no less than ten (10) years in prison. (KPRK, 2019)

The object of criminal-legal protection of this criminal act is the constitutional order, namely Kosovo's legal system and bodies of power, as well as the functioning of the country's constitutional order and sovereignty. The constitutional order implies the organisation of power in Kosovo, competences and institutional functioning, such as assembly, government, judicial, administrative system, etc. The attempted criminal offence is not possible, because the attempt itself is considered the work carried out, completed. (Salihu I. , 2014, pp. 34-35)

In paragraph 3, three forms of carrying out this criminal act and that of a) endangering Kosovo's independence, sovereignty;b)endangering territorial integrity and c)endangering the democratic character of the state are foreseen. (Salihu I. , 2014, p. 36)

### **3.2.2. Armed Uprising (Article 115)**

1. Anyone who participates in armed uprisings, which is directed against the constitutional order, security or territorial integrity of the Republic of Kosovo, is sentenced to no less than five (5) years in prison. (KPRK, 2019)
2. The organizer of the armed uprising from paragraph 1 of this article is sentenced to no less than ten (10) years in prison. (KPRK, 2019)

Armed uprising is one of the heaviest, most dangerous types of this group of criminal acts. The uprising must be directed against the constitutional order, security of the state or territorial integrity of the Republic of Kosovës. Se when the armed uprising against the constitutional order is a matter of fact. The objective elements of this criminal act are:a)the participation of indefinite persons;b)their connection with the same purpose or same motive and c)use of violence, namely the willingness to use violence, to use weapons. (Salihu I. , 2014, pp. 38-39)

### **3.2.3. Acceptance of Capitulation and Occupation (Article 116)**

The citizen of the Republic of Kosovo who signs or accepts capitulation or approves the occupation of the Republic of Kosovo or any part of it is sentenced to prison at least ten (10) years or life imprisonment. (KPRK, 2019)

Given the nature of this criminal act, it turns out that in reality the person who is the carrier of important state functions may be vetoum. The action of conduct is alternately defined and realized in these three ways:a)when capitulation is signed;b)when capitulation is accepted or c)when the occupation of the Republic of Kosovo or any part of it is approved. (Salihu I. , 2014, p. 39)

The capitulation menas the agreement between the warring parties to stop the war or armed conflict. (Salihu I. , 2014, p. 40)

The occupation means invasion, occupation in war, armed forces of the territory of a state or part of the territory. (Salihu I. , 2014, p. 40)

### **3.2.4. Betrayal of the Country (Article 117)**

1. The citizen of the Republic of Kosovo, who in the quality of the President of the Republic, the Prime Minister or the Minister of Foreign Affairs, signs the accession of the occupation or the act of capitulation of the state is sentenced to imprisonment at least fifteen (15) years or to life imprisonment. (KPRK, 2019)
2. The citizen of the Republic of Kosovo, who in the quality of the President of state, prime minister or Minister of Foreign Affairs, signs international agreements or any act by which parts of the territory of the Republic of Kosovo are given or left under the sovereignty of any other state, are sentenced to imprisonment at least fifteen (15) years or life imprisonment. (KPRK, 2019)
- 3 Citizen of the Republic of Kosovo who, in the quality of the President of the Republic of Kosovo, prime minister or Minister of Foreign Affairs, abandons the country during wartime or state of emergency leaving the armed forces without a command system is sentenced to imprisonment of at least fifteen (15) years or life imprisonment (KPRK, 2019)

This criminal offence has been called treason against the country, by the fact that the acceptance of capitulation or occupation of the country is carried out precisely by the person who, above all, is obliged by law and morally to preserve the territorial integrity and suzerainty of the state. (Salihu I. , 2014, p. 41)

### **3.2.5. Jeopardy of the Territorial Totality of the Republic of Kosovo (Article 118)**

Anyone with use of violence or violence attempts to remove part of the territory of the Republic of Kosovo or that any part of its territory should join any other state is sentenced to no less than five (5) years in prison. (KPRK, 2019)

### **3.2.6. Murder of High Representatives of the Republic of Kosovo (Article 119)**

1. Anyone who, with the aim of endangering the constitutional order or security of the Republic of Kosovo, deprives one of the following persons of his life, is sentenced to imprisonment at least ten (10) years or life in prison:

1.1. President of the Republic of Kosovo; 1.2. Speaker of the Assembly of the Republic of Kosovo; 1.3. Prime Minister of the Republic of Kosovo; 1.4. Chairman of the Constitutional Court of the Republic of Kosovo; 1.5. Chairman of the Supreme Court of the Republic of Kosovo or 1.6. Chief Prosecutor of the State of the Republic of Kosovo. (KPRK, 2019)

For objective elements, this criminal offence is not distinguished from the criminal offence of murder, because of the subjective elements, this criminal offence is distinguished from the ordinary murder and the heavy murder by the fact that this work is carried out with the aim of endangering the constitutional order or security of the Republic of Kosovo. (Salihu I. , 2014, p. 43)

### **3.2.7. Kidnapping of High Representatives of the Republic of Kosovo (Article 120)**

Anyone who with the aim of endangering the constitutional or security order of the Republic of Kosovo abducts one or more of the persons corrected in Article 119 of this Code is sentenced to no less than five (5) years imprisonment (KPRK, 2019)

This criminal offence is distinguished from the general criminal offence of kidnapping by the subjective element, because here this work is carried out with the aim of endangering the constitutional order and security of the Republic of Kosovo and the victims of this work are only persons who hold high state and political positions. (Salihu I. , 2014, p. 44)

### **3.2.8. Violence against High Representatives of the Republic of Kosovo (Article 121)**

Anyone who with the aim of endangering the constitutional order or security of the Republic of Kosovo, with the use of violence or with a canoe of violence, prevents one or more of the persons corrected in Article 119 of this Code in the exercise of official duties or forces them to carry out or not carry out any action from the scope of their duties, sentenced to imprisonment of three (3) to ten (10) years. (KPRK, 2019)

This criminal offence can only be carried out deliberately. In addition to the will, the special purpose must exist. Anyone can commit this criminal act. (Salihu I. , 2014, p. 46)

### **3.2.9. Jeopardy of Constitutional Order with the Destruction or Damage of Public Installations And Equipment (Article 122)**

Anyone who with the aim of endangering the constitutional order or security of the Republic of Kosovo burns or in any other way destroys or damages the industrial, agricultural or other economic zone,

traffic system, telecommunications links, public water equipment, heating, gas or energy, feathens, depots, or any other building important for security, citizens' supply, economy or functioning of public services, sentenced to no less than three (3) years in prison (KPRK, 2019)

Object of action are industrial, agricultural or other economic objects, traffic system, telecommunication connections, public water equipment, heating, feathens, etc. (Salihu I. , 2014, p. 46)

### **3.2.10. Sabotage (Article 123)**

Anyone who with the aim of endangering the constitutional or security order of the Republic of Kosovo does not consciously perform the official duty or anyone who during the exercise of official duty undermines the means of production; causes destruction or damage to installations or buildings; causes destruction or damage to large quantities of products, goods or materials; or causes disruption in the production process and the value of damage or destruction exceeds fifty thousand (50,000) Euros, sentenced to no less than three (3) years imprisonment (KPRK, 2019)

### **3.2.11. Espionage (Article 124)**

1. Anyone who communicates the state secret to him or makes it accessible to the foreign state, foreign organisation or person serving them is sentenced to imprisonment of five (5) to twelve (12) years in prison. (KPRK, 2019)
2. Anyone who establishes intelligence service in the Republic of Kosovo or runs such service is sentenced to no less than ten (10) years in prison. (KPRK, 2019)
3. Anyone who enters the foreign intelligence service collects data about him or in any other way helps the work of such service, is sentenced to no less than five (5) years in prison. (KPRK, 2019)
4. Anyone who collects classified data or documents in order to communicate and surrender it to the foreign state, foreign organisation or person serving them is sentenced to imprisonment of three (3) to ten (10) years. (KPRK, 2019)
5. If the criminal activity is carried out by paragraphs 1, 2,3. or 4. Of this article has caused serious consequences for the security or economic or military power of the state, the head is sentenced to imprisonment of no less than ten (10) years. (KPRK, 2019)
6. If the criminal offence corrected in paragraph 1,2, 3. or 4. this article is carried out during wartime, the inevitable risk to war, armed conflict or the discovery of the state secret concerns the security of the Republic of Kosovo, the presidency is punishable by no less than ten (10) years in prison or life imprisonment. (KPRK, 2019)
7. For the purposes of this chapter, "state secret" means military, economic or official data or documents which are declared as information classified by law or with provisions or other decisions of the competent body issued in accordance with the law. (KPRK, 2019)

It is the interest of every state that some data from the military, political, security sphere, economic sphere, etc. to preserve as secrets. (Salihu I. , 2014, p. 49)

### **3.2.12. Disclosure of Qualified Information and Failure to Preserve Qualified Information (Article 125)**

Anyone who discovers or does not preserve classified information is punishable under the Information Classification and Security Verification Act (KPRK, 2019)

Classified information is considered military, economic or official data or documents declared state secret by law or with provisions or decisions of competent bodies. (Salihu I. , 2014, p. 52)

### **3.2.13. Heavy Acts against the Constitutional and Security Order of the Republic of Kosovo (Article 126)**

1. The head of criminal acts from articles 113–127 of this Code is punishable by no less than ten (10) years in prison or life imprisonment if the work is carried out: 1.1. results in the death of one or more persons; 1.2. Endangers the lives of one or more persons; 1.3. The work is conveyed with serious violence or destruction on a large scale; or 1.4. the work has jeopardised the economic and military security of the Republic of Kosovo. (KPRK, 2019)
2. If in the case of the conduct of the criminal activity by paragraph 1. Of this article the head deliberately deprived one or more persons of his life, the head is sentenced to imprisonment at least ten (10) years or life imprisonment. (KPRK, 2019)
3. Anyone who commits criminal offences from paragraph 1. of this wartime article, the inevitable risk of war, armed conflict or during the state of emergency, is punishable by imprisonment of at least ten (10) years or life in prison. (KPRK, 2019)

### **3.2.14. Union for Anti-Constitutional Activities (Article 127)**

1. Anyone who forms a group or any other union of persons for carrying out criminal acts from articles 114–127 of this Code is sentenced to the pre-sentence for that offence. (KPRK, 2019)
2. Whoever participates or becomes a member of the group or union from paragraph 1. Of this article, he is sentenced to imprisonment of one (1) to five (5) years. (KPRK, 2019)
3. Member of the group or union, who alerts the group before carrying out the criminal activity from paragraph 1. of this article, sentenced to imprisonment of up to three (3) years or may be released from sentence. (KPRK, 2019)

The union of persons with the aim of carrying out works with which the constitutional order and security of the country are endangered, is in fact the creation of criminal organisations, namely the creation of bands or various criminal groups. The creation of criminal organizations is one of the most dangerous types of preparatory actions. (Salihu I. , 2014, p. 55)

### ***Conclusion***

In all criminal acts against the constitutional order and security of the Republic of Kosovo as a common object have the constitutional regulation of the Republic of Kosovo, then the scope of criminal acts against the constitutional order and security of the Republic of Kosovo is broader than in other criminal acts. Due to the risk they present to society and the state usually sentences are higher, where in most of these criminal acts

Sentences can be no shorter than 5 (five) years and can go as far as perpetual denial. Most of these criminal acts are also carried out deliberately, except in cases where the discovery of military secret can also be done out of carelessness. In some criminal acts against the constitutional order and security of the Republic of Kosovo, for example, Acceptance of Capitulation and Occupation (Article 116); Betrayal of the country (Article 117) etc. for their nature can carry out veto some persons who are the carriers of important state functions, for example. (the president of the country) who must rather preserve the territorial integrity and sovereignty of the state. Similarly, many states at different times have been "victims" of criminal acts aimed at endangering and changing the constitutional order and overthrowing various powers through these criminal acts. Criminal acts against the constitutional order are intended to permeate the highest state bodies of a country such as the Assembly, the President, the Government, etc.

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