

## **Criminality in Urbanism and Real Estate Circulation in Kosovo and Human Rights**

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### **Abstract:**

*The 20<sup>th</sup> Century can be considered as a century where human rights began to be acknowledged as common human values. This century witnessed several incremental violations of human rights. The most pronounced phenomenon of infringing human rights is criminality. More specifically, organized crime violates and harms human rights in the political, economic and social fields.*

*Economic, social and cultural rights are integral part of the list of the Universal Declaration of Human Rights. International pact for economic, social and cultural rights is mandatory for all contractual parties, which have established a control system, which consists of report publications with measures taken by the parties. Nevertheless, despite well-established legislation in this field, the International Convention adopted by the General Assembly of UN for combating the crime, there is no indicator, which shows that organized crime is decreasing. Therefore, studying, treating and researching this field, in general it contributes to combating crime, and in particular combating the crime in urbanism and real estate circulation.*

**Key words:** criminality, urbanism, real estate circulation, Kosovo, Human Rights.

### **1. The Volume and structure of criminality in urbanism and real estate circulation in Kosovo<sup>1</sup>**

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<sup>1</sup> For more see: Beka, A., "Organized Crime in Urbanism and Real Estate Circulation", Pristina, 2015, f. 185-2013.

In order to present the organized crime in urbanism and real estate circulation in Kosovo, in the period 1992-2004, I will present data obtained from the records of the district courts of Kosovo by comparing them with various abuses in the field of circulation of real estate in Kosovo. First of all, it should be noted that the statistical situation, with a thorough analysis, shows the progress of these crimes.

For the period from 1992 to 2004, 75 persons<sup>2</sup> were charged for committing offenses that contain elements of misuse in the area of real estate circulation in Kosovo, and no case is linked to organized crime in the field of urbanism and the flow of real estate.

Year	Abuses in the field of real estate circulation	Number of Criminal charges	Organized crime in urbanism and real estate circulation
1992	1.33	1	0
1993	2.66	2	0
1994	1.33	1	0
1995	4.00	3	0
1996	6.66	5	0
1997	9.33	7	0
1998	2.66	2	0
1999	0	0	0
Year	Abuses in the field of real estate circulation	Number of Criminal charges	Organized crime in urbanism and real estate circulation
2000	6.66	5	0
2001	12.00	9	0
2002	17.33	13	0
2003	14.66	11	0
2004	21.33	16	0
Total	100	75	0

Thus, the number of persons against whom criminal charges have been filed for abuses in the field of real estate circulation in years, is as follows:

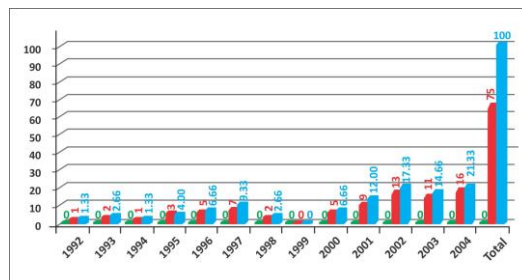
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<sup>2</sup> Beka, A., as cited above, f. 169-170.

In 1992, 1 criminal charge was filed or 1.33% of the total; In 1993, 2 criminal charges were filed or 2.66% of the total; in 1994, 1 criminal charge was filed, or 1.33% of the total; In 1995, 3 criminal charges were filed or 4.00% of the total; in 1996, 5 criminal charges were filed or 6.66% of the total; In 1997, 7 criminal charges were filed of 9.33% of the total; In 1998, 2 criminal charges were filed or 2.66% of the total; In 1999 there was no criminal charge filed; In 2000, 5 criminal charges were filed or 6.66% of the total; In 2001, 9 criminal charges were filed or 12.00% of the total; In 2002, 13 criminal charges were filed or 17.33% of the total; In 2003, 11 criminal charges were filed or 14.66% of the total; In 2004, 6 criminal charges were filed or 21.33% of the total.

From the statistics presented above we can clearly see that in the period from 1992 to 2004 there is a continuous increase in the number of persons against whom criminal charges have been filed by the judicial institutions of Kosovo. Indictments against persons involved in acts of unlawful abuses in the field of real estate circulation. Nonetheless, we do not have any criminal charge against organized crime in the field of urbanism and real estate circulation, because of the *dark number*, which consists of significant numbers that leads to zero charges.

The following data illustrates the above-mentioned claims<sup>3</sup>:



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<sup>3</sup> Beka, A., as cited above, p. 171-172.

Legend:

- Abuses in the field of real estate circulation
- The number of criminal charges
- Organized Crime in urbanism and real estate circulation

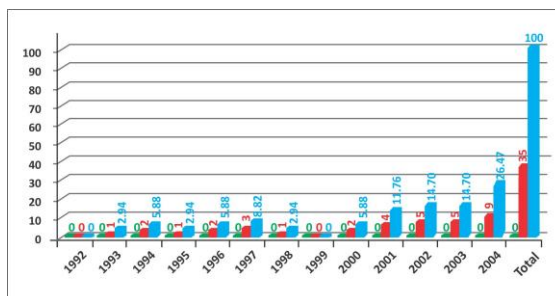
## 2. Structure of the defendants

From 1992 to 2004, for criminal acts with elements of abuse with real estate circulation in Kosovo, 35 persons have been charged and none of them has been related with organized crime in urbanism and real estate circulation, because of the high degree of the *dark numbers*.

Therefore, the number persons accused for criminal acts with elements of abuse in the field of urbanism and real estate circulation, through years, is as follows:

In 1992 there were no defendants; In 1993 only one criminal charge was filed or 2.49% of the total; In 1994, 2 charges were filed or 5.88% of the total; In 1995, 1 charge was filed or 2.94% from the total; In 1996, 2 charges were filed or 5.88% of the total; In 1997, 3 charges were filed or 8.82% of the total; In 1998, 1 charge was filed or 2.94% of the total; In 1999, there was no charge filed, or 0% of the total; In 2000, 2 charges were filed or 5.88% of the total; In 2001, 4 charges were filed or 11.76% of the total; In 2002, 5 charges were filed or 14.76% of the total; In 2003, 5 charges were filed or 14.70% of the total; In 2004, 9 charges were filed or 26.47% of the total.

The following data illustrates the above-mentioned claims:



Legend:

- The abuses in the field of real estate circulation.
- The number of the defendants.
- Organized crime in the field of urbanism and real estate circulation.

From the above-presented statistics it is clear that the year 2004 is the one with the highest number of persons charged with criminal offenses with elements of abuse in the field of real estate circulation in Kosovo, with a total of 9 persons accused or 26.47% of the total number of defendants, but in the respective year, we do not have anyone accused of organized crime in the field of urbanism and real estate circulation. However, 1992 and 1999 were years with the lowest number of defendants (0%).

### 3. Structure of the inmates

From 1992 to 2004, 26 persons<sup>4</sup> have been convicted for criminal charges for abusing with real estate circulation in Kosovo, and none of them were related with organized crime in urbanism in real estate circulation, because of the high *dark numbers*.

Year	Abuses in the field of real estate circulation	The number of convicted	Organized crime in the field of urbanism and real estate circulation
1992	0	0	0
1993	3.84	1	0
1994	0	0	0
1995	3.84	1	0
1996	7.69	2	0
1997	7.69	2	0
1998	3.84	1	0
1999	0	0	0
2000	3.84	1	0
2001	7.69	2	0

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<sup>4</sup> Data gathered from judicial registries and from court documents in Kosovo, for years 1992-2004.

2002	11.53	3	0
2003	19.23	5	0
2004	30.76	8	0
Total	<b>100</b>	<b>26</b>	<b>0</b>

Subsequently, the number of persons convicted for criminal offenses regarding the abuse with real estate circulation, throughout years, is as follows: In 1992, there was no one convicted; In 1993, 1 person was convicted or 3.84% of the total; In 1994, no one was convicted; In 1995, 1 person was convicted or 3.84% of the total; In 1996, 2 persons were convicted or 7.69% of the total; In 1997, 2 persons were convicted or 7.69% of the total; in 1998, 1 person was convicted or 3.84% of the total; In 1999 no one was convicted; In 2000, 1 person was convicted or 3.84% of the total; In 2001, 2 persons were convicted or 7.69% of the total; In 2002, 3 persons were convicted or 11.53% of the total; In 2003, 5 persons were convicted or 19.23% of the total; In 2004, 8 persons were convicted or 30.76% of the total. From the presented data we conclude that from 75 criminal charges, 35 of them were accused, whereas 26 of them were convicted for abusing with real estate circulation in Kosovo and none of them was convicted for organized crime in the field of urbanism and real estate circulation. This shows that *dark numbers* are significantly high.

#### **4. Punitive Policies**

From 1992-2004, 26 persons were convicted for criminal offences with elements of abuse of real estate circulation in Kosovo. They got from 1.1 month to 4 year in prison time, and none of them was convicted for organized crime in urbanism and real estate circulation.<sup>5</sup>

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<sup>5</sup> Beka, A, as cited above, p. 180-181.

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YEAR		1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Gjithsej
Prison time / Type of sentence	On parole				1		2	1		1	2	3	3	3	16
	Prison time 1.1 - 2.1 month		1			2							2		5
	Prison time 2.1 month - 4 year													5	5
%		0	3.84	0	3.84	7.69	7.69	3.84	0	3.84	7.69	11.53	19.23	30.76	100

From the data presented in the table above, we can see types of convictions for the sentenced felons that have committed criminal acts in real estate circulation, throughout years as follows: In 1992 no one convicted; In 1993 with prison time from 1.1-2 months, 1 person was convicted or 3.84% of the total; In 1994 no one was convicted; In 1995, one person was put on parole or 3.8% of the total; In 1996, 2 persons were convicted with prison time from 1.1-2 months or 7.69% of the total; In 1997, 2 persons were put on parole or 7.69% of the total; In 1998, 1 person was put on parole, or 3.8% of the total; In 1999 no one was convicted; In 2000, 1 person was put on parole or 3.84% of the total; In 2001, 2 persons were put on parole or 7.69% of the total; In 2002, 3 persons were put on parole or 11.53% of the total; In 2003, 3 persons were put on parole and 2 persons were convicted in prison time from 1.1-2.1 months or 19.23% of the total; In 2004, 5 persons were convicted in prison

time from 1.1 month- 4 years, and 3 persons were put on parole or 30.76% of the total.

From data analysis related to the severity of sentences against offenders in the area of real estate circulation in Kosovo, in the period from 1992 to 2004 (for organized crime in urbanism and real estate circulation no one was sentenced, but for other types of abuse) it is clear that the amount and type of punishment for such abuses do not correspond to the risk of this form of criminality.

## **5. Combating criminality in urbanism and real estate circulation in the Republic of Kosovo**

Preventing and combating organized crime in the field of urbanism and real estate circulation in Kosovo is its primary duty and for other countries of the region as well, which are still in transition.

A significant percentage of the young population,<sup>6</sup> unemployment reaches 45%, and the “hermetic closure” of the EU’s border because of the lack of visa liberalization, largely influence in the appearance of criminality in Kosovo. For the prevention and successful combating organized crime in the field of urbanism and real estate circulation in Kosovo, relevant institutions need to have all human, technical and technological capacities. A special role in preventing and combating organized crime in the field of urbanism and real estate circulation in Kosovo have: *Legislation, professional staff level leader in the field of legal system; technical and technological measures of surveillance, international cooperation, etc.*

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<sup>6</sup> According to the official data of the Kosovo Agency for Statistics and of the civil society, unemployment in Kosovo is around 45%; 50% of that population is less than 25 years old, whereas 70% of the population are younger than 35 years old.



## **6. The importance of the legislation for combating organized crime.**

An important role in preventing organized crime in the field of urbanism and real estate circulation have state institutions such as police, intelligence service, the judiciary, prosecution, etc. which shall perform the duties that have to comply with the law and the Constitution. It should be emphasized that combating and prevention of various forms of organized crime in Kosovo is closely linked with the legal system, as one of the most important and most exclusively in this area. For this reason, the first step in the fight against organized crime should be within the judicial system of Kosovo, because this system is not immune to certain forms of crime, especially against corruption, which unfortunately is widespread.

This important issue is addressed in legal acts such as: *the Criminal Code of the Republic of Kosovo, the Law on Criminal Procedure of the Republic of Kosovo; informants Protection Law, Law on international judicial cooperation in criminal matters, the Law on declaration, origin and control of property and gifts to senior public officials; Law on prevention of conflict of interest in the exercise of public functions; Law on liability of legal persons for criminal acts; Witness Protection Law, the Law on state prosecution, the Law on Courts, the Law on the management of seized or confiscated; Anti-Corruption Agency Law, Law on Special Prosecution Office of the Republic of Kosovo ; Law on Kosovo Intelligence Agency, the Law on prevention of conflict of interests; anti-Corruption Law, the Law on prevention of money laundering and terrorism financing, the Law on Cadastre; Law on the Establishment of rights over real estate;<sup>7</sup> Law on mortgages; Law of Obligations, Construction Law, etc.*

The most appropriate model for combating organized crime can be the English one. In 1995, England passed the Act

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<sup>7</sup> Official Gazette of Kosovo, Nr. 2002/5, Pristina.

for benefits from crime and according to this law, if to a criminal entity would develop litigation and if he would be convicted on two charges, of which at least one shall be presented as a serious economic crime, the court has the right and duty to determine the assets which the accused gained in the past six years, asking him to give explanations when, how and where he acquired his wealth.<sup>8</sup> Such measures will probably have to implement by the government bodies in Kosovo, because the current situation in Kosovo we can conclude that we are dealing with a "recidivist criminal society".

From the above it appears that "it is about time to react swiftly and take appropriate measures and to create the conditions necessary in order to operate the rule of law and that no one is above the law".<sup>9</sup> From what was said above it appears that no relevant and contemporary legislation can successfully combat crime in general, and particularly organized crime that every day more and more takes the characteristics of "sui generis" criminality.

## **7. The role of leadership structure in combating organized criminality**

The judiciary and prosecution system in Kosovo faces criticism on the choice of the leadership, judges and prosecutors who, despite the fact that they do not meet the basic requirement provided by law, they are still appointed for judges and prosecutors.<sup>10</sup> This is best evidenced by the fact that from 01.01.2014 until 12.18.2014, Disciplinary Prosecutor's Office has received 542 complaints - complaints against judges and

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<sup>8</sup> Bejkjo, Sh., *Organized Crime and few of its aspects*, journal "The law", Pristina, 2002,

<sup>9</sup> Halili, R., *Some criminological aspects of the economic crime in the contemporary society*, Journal "The Law", Pristina, 2002, p. 17.

<sup>10</sup> In the courts of Kosovo and its prosecution system people that are under investigation for bribery, sexual harassment, organized crime, lack of professionalism and objectivity, inclusion in different political and economic projects and in other groups of interest.

prosecutors for misconduct, 434 complaints against judges and 110 complaints against prosecutors for allegations that the same have committed illegal acts, such as: *negligence in performing, failing to perform or abuse of judicial functions – and prosecution, for failing to perform judicial functions - prosecutorial independently and impartially, serious violations of the Code of ethics, conflict of interest, deliberate limitation of criminal cases as a result of negligence, the phenomenon of corruption, delays in the processing of cases, delays in the preparation of decisions, bad behavior and colleagues parties, delays in delivery of materials by the degree of before the court, the court of second instance, etc.* This office this year has opened 65 disciplinary investigations against judges and prosecutors, which in 22 cases of them are recommended to develop disciplinary proceedings to Judicial Disciplinary Commission - Prosecutorial - Kosovo Judicial Council (14 judges and 8 prosecutors).

Education and training of staff has a special importance to the legal system and should include: judges, prosecutors, police, intelligence service employees, etc. One cannot imagine an effective fight against crime in general, and especially against various forms of organized crime (prevention of money laundering, trafficking in narcotics, human trafficking, cyber crime, smuggling vehicles, weapons smuggling, etc.), without education and relevant expertise to this framework.

Today, techniques and tactics of fighting crime vary in parallel with changing techniques and tactics that are implemented by the perpetrators. Such a framework specialization leading to effective prevention and combating various forms of organized crime is most needed. Consequently, there is a need for continuous training of the leading staff for combating organized crime in the country and internationally. This paper also reflects the great importance of specialization competence framework for preventing and combating organized crime in the field of urbanism - construction and real estate

circulation and its connection with terrorism and money laundering. For this reason, the harmonization of national and international legislation that would make it possible the "removal of national borders" to investigate and collect evidence, is one of the objectives of contemporary policy against crime. Today, contemporary politics of crime fighting is more focused on strengthening the role of operational bodies and intelligence services, both nationally as well as internationally.

In Kosovo there are myriad bodies for combating organized crime, ranging from Special Prosecutor of the Republic of Kosovo, Organized Crime Directorate which operates within the Kosovo Police, Financial Intelligence Service which operates under the Ministry of Finance of the Republic of Kosovo, Kosovo Intelligence Agency, etc. However, this issue has to do with the quality of the management of these institutions, where in the priority is given to professional and intellectual courage for facing various forms of organized crime in Kosovo.

## **8. Operational measures for investigation and observation**

One of the most specific forms of criminal groups' activities is *conspiracy*. Starting from the principle that *Criminality is always one step ahead of the law*, it is rather necessary to apply secret measures of investigation, especially including: wiretapping,<sup>11</sup> reading mail etc, without infringing privacy rights. Despite this, in practice, most of the abuse happens with violation of the privacy of persons who are under investigation as a result of not defining the "red line" between private and public life. Technical and technological development in the field of telecommunications enables entities that fight against crime,

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<sup>11</sup> A person nicknamed "Blind man" from F. who was wiretapped and convicted with 18 years in prison for organized crime and trafficking 100 kg of narcotics. Same person who most of the illegally gained money did invest in real estate in several cities throughout Kosovo.

but also those who organize and carry out criminal acts, to obtain and use highly sophisticated tools. In such rivalry, electronic infrastructure that is available to criminal organizations, is more perfect than that of subjects who fight against organized crime, for effective prevention and combating of crime in general, and particularly organized crime, with criminal Procedure Code of the Republic of Kosovo, in the part that deals with the examination procedure provided certain changes, namely secret measures that can be taken by the judge at the preliminary proceedings or by the public prosecutor, such as: *Secret photographing or video surveillance of public places; Covert monitoring of conversations in public places, secret investigation, interception and recording of telephone conversations; Controlling shipments; Interception of communications in computer network; Sending controlled deliveries; Simulated purchase of an item; simulation of a corruption offense; Disclosure of financial data; Transmittal permanent bank of transactions; Photographing and recording certain situations, etc*<sup>12</sup>.

## **Conclusion**

Fighting crime in the field of urbanism and real estate circulation, as a specific field of organized crime, is an extremely important area for research. Notwithstanding the greater social interest for its detection and systematic tracking, as a negative social phenomenon that follows the processes of transition, urbanization and changes in property relations, research of its criminological features and criminal-legal aspect of violations of Human Rights, forms of presentation and the etiology, still is in the initial stage and merely declarative.

Criminality in urbanism and the circulation of real estate, as typical areas of organized crime pose particular

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<sup>12</sup> For more see: The Penal Procedure Code of the Republic of Kosovo; Law for administration of the seized wealth; law of penal responsibilities of the legal persons;

importance to preventing and combating new forms of crime, especially organized economic crime. It is a criminal phenomenon that implies a criminal activity committed by persons acting in a concerted manner, to form action groups and well connected networks among each other and that includes different types of offenses: abuse of power, corruption, falsification of documents, concealment of taxes, fraud etc. From this variety of criminal activities in the notion of crime as part of urbanism and real estate circulation itself, emerges the need of a complex approach to the detection, prevention, prosecution of these criminal activities in relation to the violation of Human Rights.

Organized criminality in the field of urbanism and real estate circulation is one of the most serious forms of crime that causes great disorder in those areas. Nevertheless, being that it is about a large amount of financial and enormous criminal profits, significant distress appear in general economic life in Kosovo, blocking the functioning of political and legal system on the principle of the rule of law, with consequences to Human Rights.