

Several criminal, phenomenological and etiological features of criminal offences of counterfeiting money in Kosovo

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Abstract: *The Republic of Kosovo is making efforts as a young state to strengthen rule of law and efficiently combat criminality in general, and specifically organized crime, as a condition for its journey towards European integration perspectives.*

For a normal functioning of the economic system, the safety and protection of controlled circulation of money are of vital importance. In this direction, the state takes actions and measures to ensure that manufacturing and emissions of banknotes and bonds are undertaken by competent authorities, such as the Central Bank, and render impossible the counterfeiting of money. In Kosovo, money counterfeiting is not widely studied. Consequently, there are no recent research papers over the time when these offences have marked rather high records. This circumstance, and especially the fact that these offences are rather frequent in Kosovo, made me enter the research of this type of criminality.

Apart from principles and rules stipulated by special laws of the field of economy, protection of the economic system is also helped by the Criminal Code, which incriminates the act of counterfeit money as a criminal offence against the economic system, thereby ensuring general prevention of potential offenders, and repressive measures against confirmed offenders. Protection of economic and monetary systems is also provided upon by numerous international acts.

The paper is permeated by conclusions, analysis and independent recommendations, which I believe will contribute de lege ferrenda

to criminal policies in preventing and combating this type of crime. In researching the criminal offences of counterfeiting money, I have used the method of historical materialism, dogmatic law method, statistical methods, surveys and interviews, and studies of individual cases.

From the research of this type of crime, I have concluded that these criminal offences are a serious type of crime, which may result in major individual, family and social consequences. Nevertheless, these crimes are found in all societies, including Kosovo.

Key words: *Counterfeit money, manufacturing, modification, circulation, and offenders.*

I. SEVERAL CRIMINAL LAW FEATURES OF THE CRIMINAL OFFENCE OF COUNTERFEITING MONEY

1. The notion of the criminal offence of counterfeiting money

Money has an indispensable role in economic circulation. It is a means of payment for goods, services, savings and others. The money makes the world go around today¹. Consequently, the economy is the foundation of any human society, since it ensures its material existence. Through the economy and money as means of circulation, the society obtains goods, commodities and services for its livelihood.

For this reason, counterfeiting or modification of money, and putting such money into circulation as genuine, is hazardous, and may cause large social and economic damages, and therefore, money counterfeiting has been stipulated as a distinct criminal offence since the state started manufacturing money².

The Criminal Code of Kosovo defines money as the metallic and paper currency that by law is in circulation in Kosovo or another jurisdiction³. Therefore, counterfeiting money is considered to be a criminal offence only if counterfeit money is put in circulation as means of payment⁴. In economy and practice,

¹ Marrs J. Who rules the world (*Kush e sundon botën?*), Tiranë, 2000, page 89.

² Salihu I. Criminal Law, Special Part (*E drejta penale, pjesa e posaçme*), Prishtina, 2009, page 322.

³ See Article 107 (7) of the Criminal Code of Kosovo – CCK, Prishtina, 2004.

⁴ Salihu I. Criminal Law, Special Part (*E drejta penale, pjesa e posaçme*), Prishtina, 2009, page 323.

there is a general difference between types of money, namely the *paper currency* is known as *banknote* and the metallic currency is known as *coin*.

Counterfeiting money is a classic criminal offence, since it is stipulated in all criminal laws of the world. Counterfeiting money is a criminal offence against the economy, and is usually sorted under the chapter of the same name or similar name. Counterfeiting money consists in illegal actions or failures to act, committed with intent, which harm and violate the rules set to ensure normal activity of circulation of money and the monetary system in general⁵. Live otherwise cannot be imagined without money as means of payment, and therefore, its manufacturing and circulation is an exclusive competency of the state, while its use is based upon its confidence and validity⁶.

The CCK sorts the counterfeit money in the *Chapter of criminal offences against the economy*, and stipulates rather severe punishments against it. With a view of protecting the monetary system and preventing money counterfeiting, criminal laws also incriminate the circulation, procurement and failure to report on such criminal offences to the competent authorities of criminal prosecution.

To prove the existence of the criminal offence, it is required that the offender commits the offence with a view of putting in circulation the counterfeit money as genuine, while the amount of money is not relevant in terms of criminal law, a single banknote suffices.

Obviously, the amount of counterfeit money is taken into account as a circumstance in weighing the sentence. The intent of putting into circulation the counterfeit money is a constituting element of this criminal offence, and must be proven in any case. It will exist even if the offender did not intend to put such money himself/herself into circulation, but through a third party, and in cases when the offender could not put such money into circulation, because they were found and confiscated, et cetera⁷.

According to Article 244, paragraph 1 of the CCK, Whoever produces counterfeit money with the intent to distribute it as genuine, or alters genuine money with the intent to distribute it or distributes such counterfeit money shall be punished by imprisonment of one to ten years.

The action of perpetration is determined alternatively and may be undertaken in three forms: *by producing counterfeit money, altering genuine money, or by distributing counterfeit money as genuine*. In this sense, the term *produce* means the manufacturing or creation of counterfeit money.

⁵ See and compare: Elezi I. Criminal law in the Republic of Albania (*E drejta penale e Republikës së Shqipërisë*), Tirana 2002, page 242.

⁶ Salihu I. Criminal Law, Special Part (*E drejta penale, pjesa e posaçme*), Prishtina, 2009, page 322.

⁷ *Ibid*, page 323-324.

Counterfeit money is considered to be a banknote which is rather similar to genuine money, otherwise the criminal offence may not exist. The term *altering* means a physical intervention into genuine money, thereby modifying elements and marks determining its value. The expression *put into circulation* means the action by which the counterfeit money is put into economic circulation in various manners, such as purchasing items, paying debts, giving loans, etc.⁸.

The counterfeiting of money can be done by any person (*delicta communia*), the offence is committed by action (*delicta commisiva*) but also by omission (*delicta ommisiva*) when the person receives or holds in possession such money, despite the knowledge of their counterfeit status, and fails to report the case to the competent authorities⁹. The same person can commit all three forms of this offence, by counterfeiting, altering and/or distribute the counterfeit money. In such cases, when the same person commits all forms of the offence with the same object (*money*), it is considered that such person has only distributed the money, since this form already consumes the two other forms of committing this criminal offence¹⁰.

The object of this criminal offence is paper or metallic money, domestic or foreign, which is valid in economic circulation, while for the criminal offence, the number of times the money is put into circulation is irrelevant¹¹.

The paragraph 2 of this Article provides on a specific form of committing this offence in cases when a person procures counterfeit money with a view of putting them into circulation as genuine. Procurement in this case means any form of supply of counterfeit money, such as purchase, receipt as gift, etc. Usually, organized crime groups deal in procurement of counterfeit money, only to put them into circulation in various ways. This form of criminal offence is also punishable by 1 to 10 years of imprisonment.

Paragraph 3 of the same Article provides on two lighter forms of this criminal offence, the situation in which the counterfeit money taken as genuine is put into circulation, or when the person is aware of manufacturing of counterfeit money, or circulation thereof, and does not report to authorities. In this case, the person receives money as genuine by not knowing it is counterfeit, but is made aware of the fact when distributing it.

⁸ Ibid, page 324.

⁹ See and compare: Salihu I. *Criminal Law, Special Part (E drejta penale, pjesa e posaçme)*, page 326.

¹⁰ Compare: Salihu I. *Criminal Law, General Part (E drejta penale, pjesa e përgjithshme)*, Prishtina, 2008, page 361 and *Criminal Law, Special Part (E drejta penale, pjesa e posaçme)*, page 325.

¹¹ See: Shala A. *Special part of criminal law, including court cases (Pjesa e posaçme e së drejtës penale me raste nga praktika gjyqësore)*, Gjilan, 2010, page 215.

Naturally, the possibility of conviction is stipulated with a view of binding holders of counterfeit money to report them to competent authorities, and in this case, the legislator should have provided on the possibility of replacing counterfeit money with genuine money, obviously in strict conditions, in case of seizure of money, because that would stimulate cooperation in preventing these criminal offences¹².

The omission of failing to report counterfeit money exists when the person is aware of the manufacturing, altering or distributing counterfeit money, and does not report to the competent authorities, such as the police and prosecution. This is a typical form of committing a criminal offence by omission¹³. The person commits this criminal offence at the moment when he/she sees or it comes to his/her attention that the money is counterfeit, and fails to report the case, despite the possibility of doing it. The sentence for these two forms of criminal offence is stipulated alternatively, by fine or imprisonment for one year.

In relation to counterfeiting money, the Criminal Code of Kosovo contains flaws, due to the fact that it does not provide on possibilities of cooperation, in cases when these offences are committed by criminal groups or organizations¹⁴.

2. Constituting elements of the criminal offence of counterfeiting money

Criminal offences as an action which cause numerous social consequences have their general elements, the absence of which would render the criminal offence inexistent, and further special elements which contribute to the existence of the criminal offence¹⁵. The constituting elements of the criminal offence of counterfeiting money are:

Action or omission. Criminal offences, as is widely known, may be committed by action and omission. Counterfeiting money is randomly done by action of the person manufacturing counterfeit money, altering genuine money with a view of distributing it, or just puts such money into circulation. The criminal offence is committed by omission when the person receives or possesses counterfeit money and fails to report to the competent authorities.

¹² Compare: Hajdari A. *Organized Crime (Criminaliteti i organizuar)*, Prishtinë, 2006, page 182.

¹³ Salihu I. *Criminal Law, Special Part (E drejta penale, pjesa e posaçme)* page 326.

¹⁴ Hajdari A. *Organized Crime (Criminaliteti i organizuar)*, page 182.

¹⁵ Special elements of criminal offences are also known as elements making the Elementet e posaçme (të veçanta) të veprës penale njihen edhe si elemente që e sajojnë figurën e veprës penale. Për këtë më gjerësisht, shih: Salihu I. *Criminal Law, General Part (E drejta penale, pjesa e përgjithshme)*, page 184.

Element of means. Is met in every case when the perpetrator manufactures, alters or procures counterfeit money with a view of putting them in circulation, and in cases when he/she has already put the money into circulation.

Intention. Is generally defined as the goal the perpetrator wants to achieve by committing the criminal offence. The existence of intention for the counterfeit money to reach the circulation is a constituting element of this criminal offence, and must be proven in every concrete case.

The intention exists not only when the offender intended to distribute counterfeit money, but also when he/she wanted to do that through a third person, and also when he/she intended to put into circulation the counterfeit money, but it was found out, money was confiscated, and similar situations¹⁶.

Detection of the intention of the perpetrator is of major importance in assessing the criminal liability and weighing the criminal sanction. In counterfeiting money, the intention is usually of material nature, since the offenders aim to obtain material benefit. The intention is an element of psychological and subjective nature, related to the perpetrator, which is otherwise known as the mental element (*mens rea*). It is important to state the fact that the person will be held liable for the offence only if it is proven that the person knew that the money put into circulation are counterfeit, otherwise there is no deception.

3. Counterfeiting Money Offenders

A perpetrator of the criminal offence of counterfeiting money may potentially be any person¹⁷ who is of age of criminal liability. The Criminal Code of Kosovo, similar to the majority of criminal laws of the world, sets the age limit for criminal liability at 14¹⁸. Consequently, the offence of counterfeiting money may be committed by any person taking illicit action thereby creating counterfeit money, altering genuine money with a view of putting it into circulation, or only putting them in circulation¹⁹.

¹⁶ Elezi I. *Criminal Law of the Republic of Albania (E drejta penale e Republikës së Shqipërisë)*, page 244, Salihu I. *Criminal Law, special part (E drejta penale, pjesa e posaçme)*, page 324.

¹⁷ Criminal offences that may be committed by any person are known as “*Delicta communia*”, while those committed by persons with special qualities are known as “*Delicta propria*”. For more see: Salihu I. *Criminal Law, General part (E drejta penale, pjesa e përgjithshme)*, pages 189-190, and *Criminal Law, Special part (E drejta penale, pjesa e posaçme)*, page 21.

¹⁸ See Article 14 (2) of the CCK.

¹⁹ See: Salihu I. *Criminal Law, General part (E drejta penale, pjesa e përgjithshme)*, page 184, and Article 244 of the CCK.

Apart from the person taking direct action in commission of crime, a perpetrator of the offence may also be a person who is aware of the possession of counterfeit money, or has knowledge of manufacturing and distribution of counterfeit money, and fails to report to the competent authorities²⁰. This provision is mandatory for all persons with knowledge of cases of circulation of counterfeit money to report them to competent state authorities, as a preventive measure.

4. Criminal liability of perpetrators of criminal offence of counterfeiting money

Criminal liability²¹, together with the criminal offence, and their perpetrators, are the key institutions of material criminal law.

Criminal offences may be committed with intent and by omission²². A person is considered to be criminally liable if at the time of commission of offence is *aware* (possesses psychological qualities rendering the possibility of understanding the relevance of the offence, and control his/her conduct) and *culpable* (when there is a relation or position towards the offence which makes it possible to hold the person liable, namely when the offence is considered as own)²³.

As stated above, the person may be held liable if at the time of commission, he is over 14 years of age. Criminal offences of counterfeit money, similar to the majority of offences, are committed by intent. Intended offence is the most serious type of offence, which also includes the awareness of the person of undertaking an action which is harmful, and is incriminated as a criminal offence. Intention also includes the special goal of the perpetrator, which is usually obtaining illicit material benefit, illicit and effortless benefit.

For criminal offences committed with intent, the recognition of intent and motive of the perpetrator is of decisive importance for its prosecution²⁴. Counterfeiting money, according to solutions provided by the Criminal Code, is an offence committed by action, but also by omission. This criminal offence is committed in cases when the person is aware of manufacturing or distribution of counterfeit money, and fails to report such action to the competent authorities of criminal prosecution²⁵.

²⁰ See Article 244 (3) of the CCK.

²¹ See Article 11 of the CCK.

²² For more see Articles 11, 15 and 16 of the CCK.

²³ Salihu I. *Criminal Law, General Part (E drejta penale, pjesa e përgjithshme)*, page 277.

²⁴ Sahiti E. *Judicial Psychology (Psikologjia gjyqësore)*, Prishtinë, 2007, page 40.

²⁵ See Article 244 (3) of the CCK.

5. Criminal sanctions against offenders of counterfeit money

It is a basic principle of justice for the perpetrators of prohibited acts, especially those of criminal offences, due to the social hazard they cause, to be punished with a view of improving them, preventing them from perpetrating other offences, and protecting society from criminality.

The society combats criminality with criminal sanctions, and specifically with sentences. The purpose of a conviction sentence is to prevent the offenders from committing future criminal offences, to rehabilitate them with a view of becoming useful members of society. According to this concept, the sentence has two-fold impact, on the perpetrator (*special prevention*), and on other persons to prevent them from deviating behaviour (*general prevention*)²⁶.

The majority of criminal legislations have provided on intent, as a form of commission of criminal offence of counterfeiting money, and have stipulated severe criminal sanctions against it. In this sense, criminal sanctions differ on their basic form or severe form of offence.

For the criminal offenders of counterfeiting money, the criminal legislation has stipulated on sentences as the most severe types of criminal sanctions²⁷. Consequently, these criminal offences are punishable by imprisonment and fine.

According to Article 244 (1) of the CCK, any person that produces counterfeit money with the intent to distribute it as genuine, or alters genuine money with the intent to distribute it or distributes such counterfeit money, can be punished by imprisonment of one to ten years, depending on the form. This sentence is assessed to be rather severe, but also rational, due to the degree of social hazard of these criminal offences. Consequently, the same sentence can also be imposed on the person procuring counterfeit money.

According to paragraph 3, whoever puts into circulation counterfeit money with the knowledge that such money is counterfeit or whoever has knowledge of counterfeit money being made or put into circulation and fails to report it to competent authorities can be punished by a fine or by imprisonment of up to one year. For this type of offence, the legislator has stipulated on

²⁶ In relation with the purpose of the sentence, see Article 34 of the CCK, Salihu I. *Criminal Law, General Part (E drejta penale, pjesa e përgjithshme)*, page 438, Sahiti E. *Judicial Psychology (Psikologjia gjyqësore)*, page 141 and Halili R. *Penology – Science of Execution of Criminal Sanctions (Penologjia-shkenca mbi ekzekutimin e sanksioneve penale)*, Prishtina, 2005, page 53.

²⁷ See Article 244 of the CCK, Article 183 of the *Criminal Code of Albania*, Article 268 of the *Criminal Code of Macedonia*, Article 274 of the *Criminal Code of Croatia* and Article 223 of the *Criminal Code of Serbia*.

alternative options of sentence, fine or imprisonment, depending on circumstances of the offence, inculpatory evidence, consequences, etc. Therefore, for criminal offences of counterfeiting money, the perpetrators may be imposed imprisonment and fines. For counterfeiting money, the Kosovo Courts have generally imposed measures of court reprimand, or fines, and imprisonment has only rarely been used as a sentence.

II. SEVERAL PHENOMENOLOGICAL ASPECTS OF CRIMINAL OFFENCES OF COUNTERFEITING MONEY

The criminal offences as a legal and social phenomenon have their phenomenological specifics, which manifest in the outer world. It is said that criminality as a negative occurrence was born with human society, while the first norms that society stipulated were those of a criminal nature, with a view of protecting the society from this evil.

It is stated that the history of criminal law is history of human civilization²⁸, because in criminal law norms reflect a degree of cultural development of civilization and social relations in general²⁹. Criminality is a dynamic phenomenon changing in phenomenological and etiological terms pursuant to social development trends.

1. Manners of commission

Criminal offences are committed by taking action resulting in certain consequences and by omission in cases when the person fails to take mandatory action, such as for example failing to provide assistance, failing to report the criminal offence, etc³⁰.

Criminal offences may be committed in various forms, means and methods. Court case law shows that counterfeiting money may be committed by individuals alone, but also by organized criminal groups. These offences are usually committed by undertaking action. The social hazard caused by counterfeiting money is multidimensional, while the possibilities of discovering the offences are more difficult, because the perpetrators act secretly. In most cases, these criminals do not use violence like other criminals, because when they are discovered, they hide under public opinion, they avoid the police, criminal prosecution and trials³¹.

²⁸ Ukaj B. *Sentences in the Albanian Criminal Law (Dënimet në të drejtën penale të Shqipërisë)*, Prishtinë, 2006, pages 14 and 203.

²⁹ Salihu I. *Criminal Law, General Part (E drejta penale, pjesa e përgjithshme)*, page 69.

³⁰ For more on manners of committing criminal offences, see Article 31 of the CCK.

³¹ Halili R. *Several specific terms of economic criminality in modern society (Disa veçori të kriminalitetit ekonomik në shoqërinë bashkëkohore)*, E drejta, Nr. 1-2, Prishtinë, 2002, page 25.

It is beyond discussion that economic crimes generally, and counterfeiting money specifically, due to their specifics and complexity, are most frequently committed in an organized manner. Perpetrators act in structured groups, because they are most successful when they divide roles and duties. Each person has a specific role, one person provides the means of commission, the others take part in manufacturing, the others take care of identifying the location for distributing the counterfeit money, which is ultimately the goal of the perpetrators.

2. Forms of counterfeiting money

The forms of counterfeiting money are those stipulated by the majority of criminal laws of the world. The classic forms of counterfeiting money are manufacturing of counterfeit money, altering genuine money and putting counterfeit money into circulation. These are the classic forms of this criminal offence, but they may also change or occur in new forms, adapting to social change.

3. Several personal features of counterfeit money offenders

Criminality as a negative occurrence is a concern for any world society and order, and therefore, there are major efforts ongoing to comprehend and explicate it. Counterfeit money offenders are generally similar to other offenders, but nevertheless, they have some personal features that are elaborated below.

3.1. Age of perpetrators

The age is a feature of criminal phenomenology, which provides a good starting point in comprehending the occurrence. Statistical data and case law, and also empirical criminological research, all show that criminal offences are committed by various ages³². Generally, perpetrators are dominated by adult ages, but there are many cases in which even children at an early age and minors are recruited as perpetrators. A similar situation is reflected also in criminal offences of counterfeiting money, dominated generally by younger ages, and this is thought to be a consequence of dire economic conditions and lack of prospects for such population. Also, this age is even the dominant age of the population in Kosovo.

³² Halili R. *Criminology (Criminologjia)*, Prishtinë, 2008, page 129.

3.2. Gender of perpetrators

Similar to ages, gender is an important feature of the criminal occurrence, the recognition of which helps in explicating and understanding it. Although women deal in criminality as well, it is an undeniable fact that the male gender has a larger tendency to it. This is proven by a series of studies undertaken in the Western Europe, when men dominate the percentages in all criminal offences³³.

This situation has largely changed though, since women are increasingly taking ground in criminal behaviour. The participation of women is higher in crimes against honour, deception, and murders of newborns and especially in prostitution³⁴. They are more engaged in roles of accomplices, inciters, organizers, and less as direct perpetrators. From the judicial data used, it may be derived that men perpetrate most criminal offences of counterfeiting money in Kosovo. I consider that the lower percentage of women perpetrators of the criminal offence of counterfeiting money must have its reasons in the social status of the woman in Kosovo's society. As such, the woman is less active in social activities, and therefore, has a smaller role in criminal offences.

3.3. Educational level of perpetrators

Education plays a key role in forming the human personality, thereby having a large influence on human behaviour in society, including the deviant behaviour. For a long time, it was thought that perpetration of criminal offences was work mainly for the uneducated or undereducated persons³⁵.

This stance has now changed, because perpetrators now include uneducated persons, undereducated persons, those with secondary education, but also university educated persons. Although there are different thoughts on the influence of education in negative behaviour, the fact that education influences their prevention cannot be disputed. Education enables the human to differ between the good and the bad, and to understand, cultivate and respect societal norms. In terms of influence of education in criminality, the following statement of the famous French writer Victor Hugo is often cited: "*Opening of a school means closing of a prison*"³⁶.

Based on judicial data studied, it has been concluded that criminal offences of counterfeiting money has been taken as an activity by mainly undereducated people, those with secondary education, and less by college educated people. These data show that educational circumstances have had a

³³ Compare: Halili R. *Criminology (Criminologjia)*, page 122-123.

³⁴ Compare: Halili R. *Criminology (Criminologjia)*, page 133.

³⁵ Halili R. *Criminology (Criminologjia)*, page 260.

³⁶ *Ibid.* page 260.

role in the occurrence of criminal offences of counterfeiting money. The high percentages of population with primary and secondary education in criminality are a result of dire economic and social conditions. Also, younger ages are the dominant age-groups of our population.

3.4. Profession of perpetrators

Professions are an important component of human personality development, through which we provide for our work and existence. Human civilization has given birth to many vocations, depending on dynamics of life. Professions also have an impact on criminality, especially some types of it.

Some professions facilitate the commission of criminal offences and concealing their traces. Direct professions do not make criminals, if people are not inclined to such behaviour, but they surely facilitate the commission, obviously under the influence of multiple factors. Perpetrators of economic crimes are often accountants, suppliers, and others, namely in counterfeiting documents, financial statements, etc. robberies are mainly taken by mechanics, metallic carvers, carpenters, etc³⁷.

4. Several personal features of victims of counterfeit money offence

Criminal offences harm interests of many subjects. All subjects, the interests of which are harmed or endangered by criminal offences generally, and counterfeit money specifically, are termed as victims³⁸.

The first line victims are the persons receiving, in any way, counterfeit money, their families, their friends and society. Crime does not attack the victim alone, but also others related to it indirectly. The data reviewed have shown that victims of criminal offences of counterfeit money are usually various persons, especially those who have little or no knowledge on elements of counterfeiting money.

Victims of counterfeiting money are of both genders, but men seem to dominate, since they are more present in general societal activities and employment. Around 82% of the victims are Kosovo Albanians, due to their proportion of population, and the remaining were from minorities and foreigners. In typological terms, even banks, electricity utility, shops etc., have been victimized. Accepting counterfeit money for the services or goods they provided victimized these entities.

³⁷ Compare: Halili R. *Criminology (Criminologjia)*, page 252.

³⁸ For more on crime victims, see: Halili R. *Victimology (Viktimologjia)*, Prishtinë, 2007, page 8-10.

III. FACTORS INFLUENCING THE OCCURRENCE OF CRIMINAL OFFENCES OF COUNTERFEIT MONEY

There are multiple and diverse factors to criminal offences generally, and criminal offences of counterfeiting money specifically. From criminal aetiology, we know that there are many factors contributing to the occurrence of criminality, such as internal (*subjective, endogenous*) and external (*objective, exogenous*). Based on data reviewed, it may be concluded that the appearance of criminal offences of counterfeiting money is influenced by many factors (*multifactor theory*), but the most frequent ones are:

1. *Economic crisis and depressions;*
2. *Societal and political circumstances;*
3. *Non-implementation of existing legislation;*
4. *Incomplete legal infrastructure;*
5. *Activities of law enforcement authorities, and*
6. *Material interest.*

1. Economic crisis and depressions

Economic crisis and depressions are considered to be the most influential exogenous factors on the appearance of criminality. It has been proven in practice that in countries with economic crisis, criminality is present at high ratios. Many criminal groups use favourable conditions in societies with economic problems, which result into numerous consequences, such as unemployment, poverty, inflation, and generally poor livelihoods³⁹.

Economic crisis faced by most European countries, including Balkan, have had their toll on the Peninsula, and obviously extending further into our country. Kosovo, Albania and other Albanian-inhabited areas have coped with the consequences of economic crisis and depressions, maybe even more than other countries of this region. The process of societal transformation in economy and politics has been a trend of the era, but it has also given birth to higher criminality rates. Throughout the path taken by these countries in facing these crises, the increasing tendency of criminal behaviour has also been recorded⁴⁰.

Dire economic circumstances have surely had their influence on the appearance of criminal offences of counterfeiting money in Kosovo. From the samples of materials studied, it may be concluded that out of 382 cases of

³⁹ See and compare: Hajdari A. *Organized criminality (Criminaliteti i organizuar)*, page 224.

⁴⁰ *Ibid*, page 224.

counterfeit money, 160 were perpetrated by offenders of a dire economic condition.

2. Societal and political circumstances

Societal and political circumstances also have an influence on the criminality rates. Whenever societal and political circumstances in society change, criminal groups use the gaps created by the situation.

Europe has faced long-term societal crises and political turmoil, thereby favouring criminality appearance. Kosovo, as a post-conflict society, has faced and continues to face problems of various natures. The societal and cultural situation after the war was fragile, especially in the northern areas of the country, while the state administration had to cope with problems in its activity, and further the justice system was inefficient, there was a lack of professional capacities in civil service, the authority exercising system had distinct flaws and problems, while the economic development was poor and pursued by massive unemployment⁴¹.

All these circumstances created the conditions for a considerable number of people to deal in criminality, due to lack of prospect, including counterfeiting money, as an easier form of getting-rich-fast and effortless schemes.

3. Non-implementation of existing legislation

Weak implementation of applicable legislation is a potential encouraging factor of criminality in general, and counterfeiting money specifically. Impunity of criminal offenders serves only as motivation for other potential offenders. The state should be a serious organization, depending on proper functioning of its legal system, which is built upon the police, prosecution and courts.

These authorities are mandated to combat negative behaviour, and criminality at first, and thereby ensuring a safer living and working environment for all citizens. The most essential human and societal values are protected by positive criminal legislation.

Kosovo has already built its advanced legislation, although incomplete, but it is unable to implement it fully. Criminal justice has specifically been criticized for inefficiency. In fact, the judiciary has not made the top priorities of the policy-making agenda of Kosovo for ten years. As we all know, during this period, hundreds of thousands of cases are pending review and decisions, and they are only transferred from year to year. Normal conditions for work are required for the judiciary to carry on its vested activities. In this situation, an

⁴¹ Krahaso: Hajdari A. *The Fenomenology and Etiology of Criminal Acts Involving Immigrant Smuggling in Kosovo*, *Sociedad Mexicana de Criminologia*, Numero 2, Mexico, 2009, pages 7-8.

intervention is required to influence the review of criminal offences, because a large number of cases of counterfeit money filed with the courts are left pending.

In fact, implementation of criminal legislation would have a preventive impact on potential offenders. Our state has not been able to exercise control and sovereignty in roughly 30% of its territory; therefore, some degree of criminality comes from this area ruled by anarchy. These criminality-favouring circumstances have only encouraged the greater appearance of criminal offences of counterfeiting money.

4. Incomplete legal infrastructure

All countries aim to stipulate on their organization and functioning by internal legislation. Kosovo has made good steps in developing the primary legislation. The UNMIK Mission took a great role and assistance, together with experts of the Council of Europe, USAID, OSCE and others. Criminal legislation has been drafted as means of institutional combat against criminality, including the Criminal Code and the Criminal Procedure Code, Juvenile Justice Code, Law on Execution of Criminal Sanctions, Law on Courts, Anti-Corruption Law, to enumerate a few⁴². Despite this encouraging fact, there is much to be done in completing the legal framework, and then a specific challenge remains in implementing such legislation fully. In enabling a more successful combat against counterfeiting money, the punitive policy of the Criminal Code was tightened, with a view of preventing this type of crime.

5. Activities of the law enforcement authorities

The combat against criminality has been entrusted to competent enforcement agencies, such as the Police, public prosecutors, courts and penitentiary institutions. The performance of these agencies reflects directly onto the criminality rates. The quality of police work, as a front-line institution in the combat against criminality, is vital for the whole criminal proceeding .

Although the Kosovo Police has had remarkable results in its development and consolidation, it remains to cope with major challenges in meeting its mission. Currently, our Police force does not have sufficient capacities for a successful combat against criminality in general, and then organized crime specifically. As a result, there is a necessity of greater performance of the international police led by the European Union Rule of Law Mission (EULEX)⁴³.

⁴² For more on Kosovo legislation, and specifically criminal legislation, see website of the Official Gazette: <http://www.gazetazyrtare.rks-gov.net>.

⁴³ Compare: Hajdari A. *The Phenomenology*, page 9.

Deficiencies and flaws marking the performance of Public Prosecution offices, such as undue influence on delaying investigation, suspicious and incomplete evidence and others can only favour the criminal offence of counterfeit money. Other encouraging conditions for the offence are also the weaknesses in judicial performance, which surface in cases when they render unlawful decisions on criminal matters, under the justification of insufficient evidence to prove the allegations of the Prosecutor, or in imposing lenient sentences without any convincing reason⁴⁴.

Obviously, other problems in penitentiary institutions have their own influence on the rates of criminality. Such weaknesses may be of different natures, but in the context of the matter, the main ones are those related to successful resocialization processes in persons serving sentences for such offences⁴⁵. A very important factor in the appearance of criminal offences of counterfeiting money and economic crimes generally, in terms of judiciary, is their link with problematic and criminal groups, through corruption, omissions in return of material benefit, et cetera.

6. Material Interest

Criminal offences are usually committed with a certain motive. The individual decides to commit a criminal offence mainly under the influence of illicit cost-benefit ratio in such action⁴⁶.

The motive is a subjective category, sourcing from within and represents the goal the perpetrator wants to achieve. Several criminal offences are committed for certain reasons, such as for example the robbery which aims at acquiring foreign property, murder which stems from racial, national or religious motifs, murders with an intent of obtaining material benefit, and then murder aimed at committing or concealing another criminal offence, etc⁴⁷.

The motive is a special element of a criminal offence, which often has an impact on the qualification of offence, gravity, hazard and societal harm, weighing and imposing the criminal sanction, etc. Economic crimes are generally perpetrated with a motive of damaging interests of the other, obtaining material benefit in an easy and effortless way. In these terms, counterfeiting money is committed with a motive of distributing it as genuine, and in fact, the final goal of the perpetrator is material benefit.

⁴⁴ Outcomes of this paper show that the average imprisonment sentence for perpetrators of this criminal offence is 1 year. Apart from the harm caused by these criminal offences, the punitive policy imposed on the perpetrators has been assessed to be relatively lenient.

⁴⁵ Compare: Hajdari A. *The Phenomenology*, pp. 9-10.

⁴⁶ Sahiti E. *Judicial Psychology (Psikologjia gjyqësore)*, Prishtinë, 2007, page 32.

⁴⁷ See Articles 147 and 252 of the CCK.

Therefore, the material interest is a special criminal factor, which has a major influence on this type of criminal offences, because it has been scientifically proven that the human is a greedy being in its nature.

IV. MEASURES IN PREVENTING AND COMBATING CRIMINAL OFFENCES OF COUNTERFEITING MONEY

Criminality is a negative and dangerous societal occurrence, the successful combat against which requires a multidisciplinary approach⁴⁸. Since criminality endangers individual and common interests, and therefore the legal order stipulated by Constitution, the state is bound to take steps in protection such values⁴⁹. Measures used by the state in preventing and combating criminality are numerous and diverse. They are divided into preventive and repressive measures, which are elaborated below.

1. Preventive measures – Introductory notes

Criminality is a consistent negative phenomenon, which has followed the human society from its first social unit to this date⁵⁰. Criminality as a negative phenomenon has been and remains an indivisible part of human society. The dynamic and complex criminality phenomenon, which has pursued the human society from its establishment, may be countered only by an adequate mechanism of detection⁵¹.

As such, it violates and endangers the vital values of the individual and society, recognized and protected by criminal legislation. The main focus of human society remains in preventing and combating criminality, with a view of creating a safe environment for living and working, thereby creating a comprehensive societal perspective.

These measures are focused on a preventive plan, with a view of eliminating or extinguishing criminogenous factors, especially those of a social character and physical environment, which influence the criminality. The measures used by the state in preventing and combating criminality generally, but counterfeiting money specifically, are numerous and diverse. The following section elaborates on preventive measures, which prevent and combat criminality along with repressive measures.

⁴⁸ Sahiti E. *Judicial Psychology (Psikologjia gjyqësore)*, page 1.

⁴⁹ Sahiti E. *Proving process in criminal procedure, opportunities and difficulties (Procesi i të provuarit në procedurë penale, mundësitë dhe vështirësitë)*, E drejta, Nr. 3, Prishtinë, 1996, page 37.

⁵⁰ Hajdari A. *Juvenile criminality (Criminaliteti i të miturve)*, page 189.

⁵¹ Latifi V. *Criminalistics (Criminalistika)*, Prishtinë, 2006, page 1.

1.1. Meaning and nature of preventive measures

Preventive measures are a set of means and methods taken by the state, through its authorized bodies, used in preventing and obstructing criminality, thereby eliminating circumstances, causes and factors causing it.

Preventive measures are focused on preventing and obstructing criminality. In this sense, they are undertaken before criminal offences, therefore they are of *ante delictum* nature, since they are focused on eliminating criminogenous factors⁵². Preventive measures are numerous and diverse, depending on crime specifics, while the preventive measures to be used in this direction depend largely from the recognition of aetiology of crime⁵³.

1.2. Several preventive measures used in obstructing counterfeiting money

Preventive measures are directed at eliminating the circumstances, conditions and factors that affect the appearance of criminality. In the first place preventive measures are directed at eliminating the criminogenous factors of economic and social, political and psychological nature. Preventive measures are classified into two groups:

1. *Preventive measures of a general nature;*
2. *Special measures.*

General preventive measures are undertaken by the state through its authorized bodies in the field of improving and enhancing social welfare, education, culture, in creating an overall safe environment for life and work⁵⁴. Special preventive measures are special measures taken in order to prevent specific types of crime, in this case, money counterfeiting.

These measures are directed against the part of the population that is at risk of entering the paths of crime or persons who have already entered that path, in order to prevent their reintroduction in the crime⁵⁵. Preventive measures aim at humanizing and positively changing the social environment in order to prevent crime. In an inability to elaborate all preventive measures, since there are many, the following sections address the most important ones.

⁵² Krahaso: Hajdari A. *Kriminaliteti i të miturve*, faqe 191.

⁵³ Krahaso: Hysi V. *Parandalimi i kriminalitetit–drejtim kryesor për garantimin në praktikë të të drejtave të njeriut*, Drejtësia, Nr. 3–4, Tiranë, 1996, faqe 32.

⁵⁴ Krahaso: Salihu I. *Vrasjet në KSA të Kosovës*, Prishtinë, 1985, faqe 284.

⁵⁵ Hysi V. *Hyrje në kriminologji dhe penologji*, Tiranë, 2000, faqe 118-119.

1. During this research I found crisis and economic depression affected the appearance of criminal offenses of counterfeiting money, certainly without ignoring other factors. Consequently, the criminal offenses of counterfeiting money will disappear or diminish substantially when economy is revived, production expands, unemployment is lowered, welfare of the population increases, economic differences between social strata are narrowed, educational and cultural levels are improved, etc⁵⁶.
2. The results of this research indicate that the grave political and social circumstances which rule in Kosovo have led to the appearance of criminal offenses of counterfeiting money. These offenses will be eliminated or reduced when our state institutions consolidate, install a sense of individual and common responsibility, guarantee the rule of law and promote democracy.
3. In the prevention of crime, a great role is taken by the media as the fourth pillar of power. Media influence in terms of mobilizing public opinion in support of the enforcement agencies in detecting these offenses, and in educating people with pure moral feelings against them⁵⁷. The media in this regard should focus on accurately informing the public on these offenses and offenders, and other public programs associated with best practices in detection of these offenses, allocating time and publishing scientific papers, as well as raise the awareness of the public about the consequences of these and other offenses.
4. A major impact in preventing such crimes would also be imposed by a consistent implementation of the provisions of the Criminal Code, particularly the new code comes into force on 1 January 2013. Stricter penal policy and consistent implementation of criminal sanctions would also positively serve this purpose. I say this due to the fact that despite the large number of such offenses committed after the war, the courts have imposed minimal and lenient sentences. On the other hand, public information and awareness campaigns on provisions of the Penal Code and penal legislation would raise awareness on the law as an imperative of the rule of law.
5. The police can also contribute to the prevention of such crimes by accurately evidencing the cases of counterfeiting money, observing of

⁵⁶ Krahaso: Hajdari A. *Kriminaliteti i organizuar*, faqe 258-259.

⁵⁷ For more, see: Latifi V. *Criminal Policy (Politika kriminale)*, Prishtinë, 1998, pages 217-219.

the suspects and potential offenders and filing criminal reports on all cases of counterfeiting money offenses. For this purpose, the Government, through the Ministry of Internal Affairs, in coordination with the police, should organize training in the areas of prevention, detection and combating of crime.

6. In the justice system, prosecutors and courts are indispensable bodies in the prevention and combating of crime. In this sense, an imperative demand is on increasing efficiency in proceeding and resolving of criminal cases of counterfeit money. A number of criminal cases addressed to prosecutors and courts remain pending, thereby serving as encouragement for potential offenders.
7. In the course of treatment of delinquents, a role is played by penitentiary institutions, with their efficient organization and good work with convicted persons would affect the re-socialization of offenders in preventing the reoccurrence of offenses and return to the bosom of society as useful members of society.
8. Preventing and combating crime requires a multidimensional approach and cooperation between bodies. Consolidation of regional and wider cooperation, enabling exchange of positive experiences, the conclusion of treaties of cooperation in the field of crime prevention. In terms of preventing the counterfeiting of money, a positive influence would be ensured also by specializing and profiling practitioners, police and customs officers, as well as providing them with sophisticated tools work for this purpose.

From these observations, we may derive the fact that the role of preventive measures in preventing and combating crime in general, and counterfeiting of money in particular, is major. Modern states focus their combat against crime mainly on prevention, and only when they fail, they go for repressive measures. For objective and subjective reasons, these measures have not been sufficiently applied, therefore, authorities remain to pay more attention to these measures in the future.

2. Repressive measures – introductory notes

Successful prevention and combating of crime as socially harmful phenomenon has been and remains a major concern of humanity. At the same time, this issue has raised the interest of different authors. Most of them were of the opinion that effective crime fighting priority should be given to repressive measures.

Repressive measures are numerous and varied. They relate with the incrimination of criminal acts, detection and shedding light on their perpetrators, with criminal prosecution, imposing criminal sanctions and executing them⁵⁸. Such measures to combat crime in general, apply against perpetrators of economic crime and money counterfeiting in particular.

2.1. Meaning and nature of repressive measures

Repressive measures are tools and methods undertaken by the state through its authorized bodies in order to combat crime. This work is entrusted to specialized state bodies and organizations, primarily the police, public prosecutors, courts, other enforcing agencies of criminal sanctions. These are organs of repression, and the measures they take are called repressive measures⁵⁹.

Repressive measures have a coercive and violent nature, as they apply regardless of the will of the individual who entered the criminal area (area criminalis). The nature of these measures best express their denomination in particular content. These measures are applied after the commission of the offense, i.e. post delictum or post manifestum. Repressive measures provided for in criminal legislation in order to protect the vital values of the individual and society from crime.

2.2. Several repressive measures in combating counterfeiting of money

Repressive measures in combating economic crimes and counterfeiting money are numerous and diverse. The following is an elaboration of two types of these measures:

1. *Detection and criminal prosecution policy against perpetrators of criminal offences of counterfeiting money;*
2. *Policy of imposing and applying sentences against perpetrators of criminal offences of counterfeiting money.*

⁵⁸ Compare: Milutinović M. *Criminal Policy (Politika kriminalne)*, Prishtinë, 1987, pages 178-180.

⁵⁹ Compare: Hajdari A. *Juvenile Criminality (Kriminaliteti i të miturve)*, page 205-206.

2.2.1. Detection and criminal prosecution policy against perpetrators of criminal offences of counterfeiting money

Detection and prosecution play a crucial role in preventing and combating crime, enables recognition of the exact number of crimes and reduces its obscurity. Negative phenomena and criminality can be prevented and combated successfully only if previously explored and recognized by competent state bodies, primarily the police, prosecutors and courts.

The role of the police in terms of counterfeiting money mainly consists of the following aspects: *1. The recognition of these offenses and orientation, organization, coordination and harmonization of the work on their intelligence, 2. Undertaking action in detection of criminal offenses of counterfeiting money and the detection and disclosure of their perpetrators, and 3. Ensuring collecting data on the perpetrators of the criminal offenses of counterfeiting money who commit offenses during detention*⁶⁰.

Public Prosecutors also play a significant role in the combat against counterfeiting of money. Data from the study conclude that prosecutors have prosecuted numerous cases of criminal offense of counterfeiting money, but many of them then this day have remained unfinished, some are prescribed, etc. Prosecution priority task remains in the future to increase work efficiency, prepare good cases so that the courts do not leave room for ambiguity and doubt. Effective fight against counterfeiting of money requires a multidisciplinary approach and close cooperation of actors who are mandated to fight it, first and foremost the justice system in a triangle between the police, prosecution and courts. The list of priorities in this regard is compounded with the demand for these bodies be depoliticized and ensured complete financial independence and professional staff.

2.2.2. Policy of imposing and applying sentences against perpetrators of criminal offences of counterfeiting money

Application of appropriate punitive sanctions policy plays a significant role in combating criminal offenses of counterfeiting money⁶¹. For this purpose, a dominant and irreplaceable role is played by sentences which are imposed and executed accurately⁶². The Criminal Code of Kosovo has provided on relatively harsh penalties for perpetrators of criminal offenses of counterfeiting money, but

⁶⁰ Compare: Hajdari A. *Organized Criminality (Kriminaliteti i organizuar)*, page 274-275.

⁶¹ Compare: Hajdari A. *Juvenile Criminality (Kriminaliteti i të miturve)*, Page 212.

⁶² On types of sentences and execution, see: Ukaj B. *Sentences in criminal justice in Albania (Dënimet në të drejtën penale të Shqipërisë)*, pages 211–217 and Gashi R. *Execution of imprisonment sentences in Albania (Ekzekutimi i dënimit me burgim në Shqipëri)*, Prishtinë, 2001, page 67–68.

this approach is considered reasonable as counterfeit money causes severe social harm, and it has already marked a high strong presence.

Based on the data on court judgments on money counterfeiting, Kosovo courts have set minimal sentences. For such offenses, court reprimands, fines and in rare cases lenient sentences of imprisonment have been imposed. It is well known that even when sentences are imposed, the mechanism for their execution is missing. It remains an obligation for the penitentiary bodies to increase their involvement in the execution of sentences, especially those with imprisonment. It is clear that severe sentences alone cannot guarantee the elimination of these offenses, however, it must be ensured that in cases of appointment of prison sentences, execution is efficient as well. Apart from this, state bodies mandated to fight crime, should try to eliminate or reduce the causes, circumstances and factors that cause the appearance of these offenses.

V. CONCLUSIONS

In my work in researching and studying criminal offences of counterfeiting money, I have reached the following conclusions:

- Criminal offenses of counterfeiting money, although they come from ancient times, they are more frequent in modern times due to the fact that technological opportunities and technical conditions of human life have progressed, so the possibility of fraud is greater.
- Criminal offenses of counterfeiting money are part of the so-called classic crime because they appear since the introduction of money as an option of exchange and payment for the needs of man and society.
- Criminal offenses of counterfeiting money cause numerous consequences and distortions in any society, and for this reason the Kosovo legislators have paid special attention to the forms of incrimination and sanctions for perpetrators who could be sentenced to a fine and imprisonment of up to ten years.
- Like most other criminal offenses, counterfeiting money can be performed in different ways. Commission of the offence can be by action (*direct and indirect actions*) but in certain cases even by omission, by individual offenders, but also structured criminal groups, in basic form (*common*) and heavy (*qualified*) .

- To perpetrate the criminal offenses of counterfeiting money, different means and methods are used from advanced technology and techniques, and forms of placing counterfeit money in the market as a final product by means of fraud, illegal transactions, money laundering and others.
- Criminal offenses of counterfeiting money are usually carried out with a direct intent in order to obtain illicit material benefit, in a speedy and effortless manner. The results of this study show that the commission of such offenses has mainly had this intent.
- In Kosovo, these criminal offenses have marked a high presence. Of course, these figures are relative and partial, because a number of these crimes, the perpetrators and victims remains undetected by the authorities.
- The introduction of these crimes has been affected by many different factors, especially crisis and economic depression, social and political circumstances, the non-implementation of existing legislation, the lack of a comprehensive legal infrastructure, the performance of law enforcement bodies, material interests, etc. The consequences of these criminal acts have been major for the victims and society in general, especially in economic and social terms.
- According to the studied materials, it may be derived that the perpetrators of the criminal offenses of counterfeiting money are of different ages, although dominated by young and middle ages, from 30-50 years old.
- To successfully combat counterfeiting of money and crime in general, there is a need for investment in competent authorities mandated to fight this criminal phenomenon, such as the police, the prosecutor, but also the judiciary. Also, it is necessary to continue the reform of penal legislation in conformity with social developments. Teamwork and close collaboration of our bodies in international criminal justice would contribute to successfully combat this type of crime.

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