Process of the new codification of the penal code of the Republic of Kosovo

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Introduction summary

In the wake of legislative changes that occur in Kosovo drafting of the penal code was the part of it where its implementation started on January 1st, 2013. Without having to emphasize the importance of this code the attention should be in its own content.
The new Penal Code contains a number of new solutions and that is quite natural having in mind circumstances under which the old code was released. But what are the parts of the new penal code that need to be re-evaluated and reassessed in order to have satisfactory results and where a need to change some titles and chapters is necessary.
One of the issues that can be debated comes from the previous decade when the code was adopted. There was a lack of laws in penal spheres and that is in general what the characteristic is.
In other words the change that occurred was the change in naming the penal code but not in structure and it did not qualify to be named as a code. Therefore, the entire process of codification is impossible to be done when under protectorate, because the entire stability of the country's system and the society is adamant where the final product is a code and its successful implementation.

Key Words*:* Code, codification process, new Penal Code of the Republic of Kosovo, Temporary penal code of Kosovo, Protectorate, sovereignty, judicial technique, state stability, prison with life sentences, criminal politics.

Short glance at the codification process in Kosovo

Codes, including the penal one as well are a volume corpus of "important laws where in a fundamental and systematic way the

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penal provisions are gathered[1]". Codes include the whole part of the judicial or at least the main important part of it. The final draft is the most important element of the codification process, last path in the road of building a judicial order and a proof of maturity and stability of the state[2]. Therefore stability of social and the economical nature as well as the judicial order are most important preconditions in order to achieve the successful codification in contrary there would not be any object of codification.

Codification, apart from being a process, is a judicial technical that needs to reflect internal harmony of whole judicial norms that will last far longer than the present political circumstances. Judicial circumstances, including the legal right, need to develop into a higher level: judicial notions, categories, judicial institutions and all technical mechanisms need to be more advanced since these are preconditions for creating a harmonised and systemised unity.

Creating a Penal Code in 2003 in Kosovo bearing in mind the circumstances when it was drafted not only was the necessity but it came very naturally due to the fact that it did fundamentally detach itself from the past[3]. But did we really have codes in the real meaning

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[1] Ismet Salihu, *E drejta penale - pjesa e përgjithshme* (Prishtinë: Universiteti i Prishtinës, 2005), 125.

[2] *Pravna enciklopedija,* (Beograd: Savremena administracija, 1989), s.v. "Kodifikacija".

[3] Codifications are without any doubts a result the aftermath of changes, overthrown political systems, and revolutionary changes. Without having to talk on Antic codifications, The Napoleon codification was as a result of a French Revolution. (Civil code of France 1804) followed by other codifications in Europe like a Civil Code of Austria (1811) and the last one A German Civil code (1900).

Napoleon Bonaparte on the 13th of August 1800 has hired a commission made of four members *Tronchet, Portalis, Maleville* and *Bigot de Prèameneu* to prepare a civil code and this is the way Bonaparte has created the legislative Unity in France where he selected 2 members with international practice and two others from the south of the country in order to secure unified equilibrium.

About this monumental achievement he had said: "After thirty years needs to be refined "although even after 30 years the code needed no change apart from few minor amendments.

of this process and the judicial technique and also were the economical, political, social and judicial preconditions met at that point in order to start with a codification process in its real meaning? While viewing the entire process of the penal legislation since 1999 in the aspect of meeting the condition where the fundamental change was needed this condition was met in full because the overthrow of the system did actually happen. Kosovo was liberated and based itself in this segment; Kosovo should have had a penal code and a penal procedural code. And this was achieved in 2013. But which was the penal code and penal procedural code?

First of all the trend of having a penal code was blindly and in an unbiased manner followed in order to have a legal act called "code" and not the law where under international protectorate there were no real or serious conditions to have codification. We are talking about two discrepant situations, codification and the international protectorate, which are two antagonistic subjects. Besides that it not only good, but there is a strong need to have one code (since 1999 simultaneously were implemented both a string of laws from the past the UNMIK ones and the new ones issued by the Parliament of Kosovo). Codification in it scientific meaning was not possible. Even when in 2003 the Penal Code and Penal Procedural Code was created they were not serving their purpose just because the reasons mentioned in above paragraph, but even from a technical perspective they could not be categorised as codes. Mainly because these two codes have the same structure with the laws of the past where even the judicial norms were quite identical. The changes that were made had only a cosmetic character while the new judicial institutions like: cooperative witness, protected witness, tapping, or act against the

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[*Opšta enciklopedija "Larousse"*, (Beograd: Vuk Karadžić - Interexport, 1971), s.v. "Pravo i ekonomske nauke"].

The same process happened after the creation of an Albanian State in 1912 where as a result of the collapse of Ottoman Empire the codification in civil, penal areas was needed.

In the period of 1928-1939 there was a need pro approval of important laws as: civil code, merchant code, penal code or penal procedural code and these marked the parting with Ottoman period of rule.

environment and similar ones are the product of time we live in and had to be part of it. Even the "chapter system " as a part of penal deeds is identical. The 2003 Penal Code of Kosovo is only a summary of judicial norms including the norms of the Penal Law of 1977 and was systemised in Federal Penal Law and Serbia's same Law at that time. While changing a few parts the same was done with the Penal Procedural Code of Kosovo. Therefore, these two codes are only a copy of the existing laws from the past although the whole decade we were promoting that we have crafted the Penal Code and Penal Procedural Code. The factor that did not help in the road to codification was the rule of the international protectorate.

That objectively made it impossible not only the codification but also "handing" us the whole and many chapters of the code that were interpreted in our language was not only the obstacle but made the whole codification become a difficult or even impossible process.

Codification reflects sustainability and unity and developed judicial condition is their synonymy. The best proof of this we can find in developed countries where it can be found that from the time their codes were in function none of those countries has added any code for more than 100 years. A need for change although always present was only evident where there was a need to expand, but never to add or to start a new codification process. In favour of this finding are Codes of: Norway (1902)[4], Finland (1889)[5], Denmark (1886)[6],

[4] Norwegian Ministry of Justice – Legislation Department, 2006. Det kongelige justis – og politidepartement, Act of 22 May 1902 No. 10 *The General Civil Penal Code,* with subsequent amendments, the latest made by Act of 21 December 2005 No. 131, http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf (accessed May 28, 2013).

[5] Ministry of Justice, Finland, The Criminal Code of Finland, (39/1889, amendments up to 940/2008 included), http://www.finlex.fi/pdf/saadkaan/E8890039.PDF and http://wings.buffalo.edu/law/bele/finnish.htm (accessed May 28, 2013).

[6] Kingdom of Denmark since 1683 has codified criminal, while modern criminal code was enacted in 1866,
http://law-journals-books.vlex.com/vid/denmark-51759163 (accessed May 28, 2013).

Belgium (1867)[7], Island (1940)[8], France (1810)[9], Luxemburg (1879)[10], Netherlands (1881)[11], Swiss (1937)[12], Australia (1899)[13], Japan

[7] Work around the issue of the Criminal Code of the Kingdom of Belgium has started since 1849, where it took about 20 years to realize the codification of criminal field, in 1867, http://legislationline.org/documents/section/criminal-codes (accessed May 28, 2013). Also, http://legislationline.org/documents/action/popup/id/16036/preview (accessed May 28, 2013).

[8] *General Penal Code*, Act No. 19 of 12 February 1940, http://www.wipo.int/wipolex/en/text.jsp?file_id=190913 (accessed May 28, 2013).

[9] In fact, the first criminal codification of France was conducted in 1791, which was very clear definitions, to the judges had very little room for interpretation. The principles of this code were incorporated in the Criminal Code Napoleon, which in 1810 replaced this code. Government & Politics, The Napoleon series, France: Penal Code of 1810, http://www.napoleon-series.org/research/government/france/ penalcode/c_penalcode.html (accessed May 28, 2013).

[10] Ministère de la Justice – Luxembourg, Code Pénal - En vigueur dans le grand-duché de Luxembourg, annote d'âpres, La Jurisprudence Luxembourgeoise, Législation: Jusqu'au 10 Novembre, 2010, http://www.legilux.public.lu/leg/ textescoordonnes/codes/code_penal/index.html (accessed May 28, 2013).

[11] Although the first criminal code of the Netherlands was issued in 1809, and was amended in the future, so about 80 years later, the new penal code issued Dutch, http://legislationline.org/documents/section/criminal-codes (accessed May 28, 2013).

[12] The Swiss Criminal Codification began implementation in early 1893, drafted by Carl Stooss. However, the original version was created on December 21, 1937. The same has to be applied after the 1938 referendum. Swiss Legislation, Swiss Penal Code of 21 December 1937 (Status as of 1 January 2013), http://www.admin.ch/ch/e/rs/311_0/index.html (accessed May 28, 2013).

[13] Australia's penal code was drafted by Sir Samuel Griffith, in the state Queensland, which are involved in criminal court precedents (common law) and criminal acts by various laws. Parliament of Australia, History of Criminal Law,
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/Crimlaw/Historycriminallaw (accessed May 28, 2013).

(1907)[14], etc., that even today are still valid although amended due to modern circumstances.

The code by all means must contain, apart from its judicial field that it contains, the entire summary of judicial norms that are characterised by sustainability and implacability in a particular territory as well as the charts of the content that explain how is the content organised in hierarchy of the system of judicial norms and the index that enables a quick search of particular norms that one requires within particular code[15]. The Penal and Procedural Code of Kosovo do not have these parts. Even that the codification is a summary of a high volume of "important laws where in an explicit and systematic ways are summarised in the penal-judicial dispositions", it is well known fact that along with this process the other UNMIK regulations were drafted and implemented, most of them in penal field, despite the Kosovo's Codes. This is another proof that the processes of codification were not over despite the fact that the two codes were in place. How anachronistic was the whole process shows the naming of the Codes as "temporary" that implies what word itself means and shows non-sustainability, non-stability in other words its is fragile. Circumstances in relation to the codification process are contrary of this temporary situation, since we have drafted two but only "temporary" Codes. Being temporary it means they can be in compliance with laws or other judicial acts, but never comply with being a Code. The Code and the "temporary" are opposite to each other by all means! Completing the codification process, drafting a code and implementing it could be everything but being temporary or

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[14] Penal Code of Japan, (Act No.45 of 1907), http://www.cas.go.jp/jp/seisaku/ hourei/data/PC.pdf (accessed May 28, 2013).

[15] *Pravna enciklopedija,* (Beograd: Savremena administracija, 1989), s.v. "Kodifikacija" and s.v. "Zakonik".

As for Tellingly Albanian Kingdom Civil Code, 1929, which in addition to arranging the four books under whose titles are provided, chapters and sections, contains the "Index", "List" and "Error correction", the "Provisions concerning the interpretation and application of law generally" and "Table". (Kodi Civil 1929 – Mbretnia Shqiptare, Ministria e Drejtësisë (Tiranë: Papirus, 2010).

short-lived process is a synonymy to a long sustainable legal life. Apart from being temporary the codes had another characteristic and had to do with norms they were compiled and that was that the codes were complied in three languages: Albanian, Serbian and English; all being authentically the same, and in case of any misunderstanding or conflict between them the English version would prevail[16]. This is an extra argument that the conditions for compiling a new codification process in Kosovo were not at the best or should I say they were poor.

"Modern" history of the codification process in penal field in Kosovo

However, after the declaration of Independence of Kosovo, once more during the decade, different and more favourable conditions arise compared to those in 1999 where the country was under international protectorate. This new factor was needed for replenishment of the codification process. But being well aware of that main cause, its unification of the whole or entire state territory in a unified code, this can leave a question mark on the whole process where the judicial technique was not used as a basic precondition in order to complete the process of codification.

While not considering all these factors and while eliminating all of them we return to the new Penal Code and Penal Procedural Code of January 2013. Both of these two codes are "new" 'because they invalidate the "old" ones. And this happens only within 10 years while in the above-mentioned countries these codes are few decades or hundred years old. The process of codification in these countries has finished once the confirmation of economic political and judicial stability was comprehended, and thus these codes needed amendments due to the evolution and present circumstances. These codes were never invalidated with bringing new ones!

[16] Article 356 of the Provisional Criminal Code and Article 556 of the Provisional Criminal Procedure Code.

New Penal Code of the Republic of Kosovo

Right from the start the norm of this code "fundaments and boundaries of the penal sanctions "(article 1/1), there was a prediction "Judicial- penal violence" judicial norms of the article 34 and 35 of Penal Code are "criminal association" and "Agreement to commit penal act" (was predicted in Penal Law of RSFJ, but was abolished in Provisional Penal Code of 2003). Uncertainty lies in their content where the core of it is "agreement" to commit a penal act where the difference between these two is incentive to commit a penal act and "preparations for acting upon it" ("Criminal association") and also "undertaking any important action" and is an "important preparation step in" ("Agreement to undertake penal act"). These kinds of definitions are not dignified for a summary of penal-judicial norms and also when the same one was named a Penal Code. According to article 35 this has not to do with "preparation acts" but "important act towards committing a penal offence" respectively. "Important preparatory act" is left to Judicial Practise with an aim that in the future the difference between these two acts, which is the not the preparatory act but is a step to a preparatory action towards it, should be found. Since we ended up in this kind of situation we found ourselves with a new Judicial-penal institution that needs to be analysed and interpreted. Also, this norm needs to be précised according to penal acts because "the agreement to commit a penal act is too broad a notion. Penal act continuously needs to be specified, and respectively the punishment for that particular act and the punishment[17] must be severe.

The article 44 says "sentence with life prison" and it can be pronounced when one has committed 18 kinds of penal acts where

[17] An arrangement for committing a penal act cannot include all penal acts without exclusion but it needs to be categorised precisely. Anyone who agrees to commit an penal cat for which he may be sentenced up to five years imprisonment Or (10) Or e need for being precise in naming those acts such as penal acts against the constitutional order and safety of the Republic of Kosovo and these are i.e. money laundering, organised crime, corruption, human trafficking, murders, arms, drugs, etc.etc.

acts against humanity and values that are protected with international law are not included, and committing almost any of them the same punishment can be given. Prior to making a decision to pronounce this kind of punishment there should have been studies conducted having the phenomenon of criminality as a subject and types of it within particular time interval. As a result of these studies there would be a need for evaluation as it is a present need for such punishment, such as life prison, for a high amount of penal acts. Lawmakers have excluded two categories from this punishment: a person that has not yet reached age of 21, as well as persons with essentially limited mental abilities. The number of females in Kosovo committing a penal offence is quite low and it would be beneficiary to follow the way the Penal Code of the Republic of Albania states. "The sentence with life in prison does not apply for women"[18]. Within the context of this punishment we must cite article 92/2 "Sentence with life in prison starts in the closed facilities of correction centre or in units of correction centres". The article predicts where does the sentence begin to be executed without bringing the details how long is the "beginning " or more precisely when does the other part start, and which one is not considered a "beginning" but the continuity of the execution of sentence with life in prison.

Article 62 - for reasonable causes as an additional punishment of revoking all honourable decorations or other scientific, army or police decorations[19] needs to be foreseen while; Article 105 – "The content and the revilement of personal dossier" is identical with the Provisional Penal Code of 2003 with the minor difference that removal of provision states "only the court, Prosecutor and Police and competent organisms no one else is entitled and has no rights to revile

[18] Article 31 penal code of the Republic of Albania- updated until October 2004 together with the Judicial Practice Published in the Official Publishing Biro October 2004, http://www.mpcs.gov.al/dpshb/images/stories/files/kodet/3.3.5._Kodi_Penal.pdf (accessed May 28, 2013).

[19] Article 30/1, p.4 and article 38 of the Criminal Code of the Republic of Albania provides for the removal of decorations, honorary titles as punishment. (Ibid).

information about his criminal past or not" (89/5). This needs to be brought back to a new Penal Code as it defends the central principle where being convicted in past must not be a relevant factor in his judicial position. This provision could be a guarantee for the citizens of Kosovo that their data of any eventual punishments remain confidential, and can be reviled only to authorise institutions mentioned above and only after the necessary legal conditions are met.

In a new Penal Code a solution is foreseen where the penal act of murder is not prescribed (Article 111/2). In order to be more precise and because of the risk to different interpretations, lawmaker should bring a more precise version if it is a murder from article 179 of the same code or other penal acts, as well as if it has death as a consequence but are not qualified as heavy crimes under the Chapter on "Penal acts against life and body" but they are called "Heavy" because the sentence could be not less than 10 or 15 years or life in prison, where this can be found numerous times in this code[20].

Another Interesting matter that awakens curiosity, not only professional, is the stripping of the Amnesty from the Penal Code where only pardoning is foreseen (Article 112). Pardoning is judicial institution in a form of an act and is brought in a form of law by President of the Government name by name, and Amnesty is a legal act brought by parliament, and there are no Individual names mentioned[21]. These are traditional and democratic institutions where they reflect a level of the democracy in the particular country. Only in non-democratic countries these judicial institutions are not

[20] Example: The offense under Article 123, 124, 126, Article 133/1, Article 136/3, Article 194/3, Article 230/5, Article 231/4, Article 232/4, Article 234/5, Article 235/5, Article 328/4, Article 329/5, Article 334/4, Article 396/2 and Article 400/4 of this code, not prescribed.

[21] Amnesty provides the end of prosecution process or execution of the punishment in full or partially or the punishment is replaced with milder one. Also their evidence of the punishment can be erased from the evidence book. All persons that are convicted up to 2 years or all the persons that are convicted more than 10 years, 2 years of that is taken off. (See in detail, Salihu, 569-573).

provided[22]. Apart from importance that the Amnesty is included in a new code the synchronisation of these two is necessary. In favour of this constitution is the fact that even after removing the Amnesty from the new Penal Code, in the Penal Procedural Code the amnesty is still there[23].

In chapter XVIII of Penal Code – in article 120 are provided "restrictions" that still haven't formed a full Matera. Among others i.e. the word "Police "needs to include only the Kosovo police and the EULEX one, but never the customs should be included in "police" (paragraph 8). A disposition that has to do with the territory of Republic of Kosovo needs to be amended like the rest of the world's Penal Codes where "Territory of Kosovo includes the land, space, and the water space like any other country, where the sovereignty of Kosovo is in place like diplomatic, civil or military space". Also in this judicial norm the meaning of the word "narcotic tool" is predicted (paragraph 35), but no disposition is clear in meaning like drug, or other narcotic substance and psychotropic excluding anagogic substance, which is described in article 273/4, etc.

Chapter XIV- Penal acts against constitutional order and the safety of Republic of Kosovo is changed in meaning of the penal – judicial protection that in ordinary language is called penal political acts. It is logical that among others the judicial protection is offered to the state since without the full function of the state the individual rights cannot be defended. But the protection of the state and its functioning is a political matter where the penal law has only secondary mission and

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[22] Penal codes in past in Republic of Albania, did not have in their content the institution and the word of Amnesty until 1991 where major political changes occurred where for the first time few decades ago "law for innocence, amnesty and rehabilitation of the political prisoners and sentenced ones" came through in order to bring up other laws for amnesty in1994. [Ismet Elezi, Skënder Kaçupi, Maksim Haxhia, *Komentari i Kodit penal të Republikës së Shqipërisë - Pjesa e përgjithshme* (Tiranë: GEER, 2006), 297 – 310].

[23] Article 82/1, p. 1.3, Article 158/1, p. 1.4 and 1.5, Article 363/1, p. 1.3, Article 385/1, p. 1.3, Article 420/1, p. 1.3 and Article 424/2 of the Code of Criminal Procedure of Republic of Kosovo.

relatively small caused political problems must be solved in political manner with political means and not with political law. The practice tells us that in some cases there is a danger that penal law used in politics can be misused from those in power in order to declare their opponents as political criminals[24].

In Article 185 the penal act of threat is foreseen, but without further explanation of the "threat" although threats and its kinds are mentioned in numerous dispositions in this code "manageable threat", "serious threat", "violent threat", "threat and immediate danger", "threat with the use of violence". This is also for other expressions like "Attack" (article 187) or "unavoidable violence" (article 15/2), "heavy" (articles 133/1.3 and 197/2), "unlawful" (article 168/1), "unsustainable" (article 14/1). All these need to be clarified.

In article 186 of the code the "Harassment" is as a special penal act. Being precise is one of the attributes of codification, having in mind the text in English language, it is necessary that they are translated correctly but even more they need to be adapted to Albanian language where in this case it has not happened at all[25]. In the disposition there were foreseen specific acts that qualify as harassment, but many of acts in this form are in fact threats, and that the anxiety level is a lot higher than harassment. According to article 186/1 this code in the act of "frighten from being killed" brings more emotional stress than harassment, meaning that frightening someone that harasser shall kill his child, family, or someone close to him/her, in Albanian language is qualified as threat, which cannot be harassed to death. As a consequence of this 'because of practical problems as some acts can be

[24] Lubo Bavcon, "Kritički pogled na sistem i sadržinu kaznenopravne zaštite države i njenog ustavnog poretka u SFRJ", Zborniku radova, *Misao, reč, kazna* (Beograd: Institut za kriminološka i sociološka istraživanja, 1989), 6 and 7. Also, Zoran Stojanovic, Komentar krivicnog zakonika (Beograd: Sluzbeni glasnik, 2009), 676 and 677.

[25] According to the article 186/4 harassment includes stalking or waiting for the person in particular place at constant based phone calls without permission, living of the messages.

qualified as harassment and threat" the sentence is based on the qualification and thus the punishment may vary.

In Article 187 the "attack" is qualified as a special penal act. According to Penal Code the penal act of attack is committed when "one person uses violent force against the other person without his willingness". A question may arise on what is an attack with permission when we are aware that until now our penal legislation has not foreseen a judicial solution for that matter. The permission of the damaged party in rare cases excludes the existence of a penal act and it happens mostly in cases with property[26] issues, but never until now (at least according to present legislative system) the attack with force, arm, or other means or object does not exclude the existence of a penal act.

In Chapter XVII – Penal acts against human rights and freedom are systemised penal acts where the subject is those two categories. No deeper analysis has been done regarding object of defence in this chapter[27]. This chapter would have been considered more fulfilled if

[26] If i.e. the owner can damage his property and that not to be constituted as penal act therefore the same can be done with the powers permission, (Ibid. 221).

[27] Having in mind that a considerable amount of penal act are systemised in in other chapters of a penal code although all these penal acts offer the protection of the human rights the question arises :why only a few penal acts are included and separated from the others and included in that chapter.

If the human rights are treated in a broad aspect we come to conclusion that the whole judicial penal code is to be used for protecting basic human rights and therefore it can be concluded that the best and elementary rights are systemised in other chapters but not in this one .apart from it the Human rights and freedoms are systemized in mutual chapter an categorised as two categories that are identical with each other and rightly so in some cases it is hard to identify the difference in this chapter. It has not been clear are directed against freedom right , or against both of them at the same time

But the way they are systemised, it is clear that the Human right are treated in a narrow way and they are taken in a same content as the freedoms .having in mind that the rights and freedoms are categories that are incorporated within each other (but not the same one) up to a point it can be justified this way of their systematisation in the same chapter but in other countries legislations this doesn't happen.

other objects were incriminated as: "Illegal placing of the spying devices"[28] and "Depriving of the freedom to express the opinion"[29]. Despite the expectation that activities having to do with organised crime should be predicted in full and have to be systemised, new Penal Code has not changed in comparison to the previous one. Although it has been predicted as a separate chapter named "Organised crime" it has only been predicted as a separate chapter – Accomplishing or the organisation of a criminal organised group (article 283).

The same shortfall, but in a different form, has to do with computer criminal which under modern circumstances needs to be treated in a separate chapter. Having in mind many possibilities for the misuse of that kind of technology there has been a rise of these kinds of activities in Kosovo as well. Apart from a single penal act (article 339) Penal Code of Kosovo needs to incriminate other activities such as damaging the computer data, damaging the computer programs, creating of the computer viruses, distribution of the viruses, computer fraud, unauthorised access in protected computer system, un authorised access in a computer or in be core of the state owned database, limiting the access to a public network, the use of the network or another person's computer for illegal purposes, computer games fraud, fraud through using the games of luck, etc.

In the Kosovo Penal Code, article 443, "the transit dispositions regarding the jurisdiction of Intelligence Agency of Kosovo," where the date when implementation starts, this agency will have the right and the jurisdiction and the competence to investigate every case that

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It is more than obvious that the lawmaker was under the influence of past terminology and under the influence of everyday's terminology where the rights and freedoms are identified as same and not treated as different categories.

[28] Article 121- Penal Code of Albania.

[29] Article 107, Penal Code of Croatia, Propisi.hr. Kazneni zakon – uredničkipročišćeni tekst, br. 110/1997 do 143/2012, http://www.poslovni-savjetnik.com/propisi/kazneni-postupak-i-kazneni-zakon-opci-dio/kazneni-zakon-urednicki-procisceni-tekst-nn-br1101 (accessed May 28, 2013).

has to do with penal acts against constitutional order of Republic of Kosovo, penal act against Humanity, and values protected with international law, acts against Public health, Narcotics Penal acts, organised crime, penal acts against security of the population and their wealth and properties and penal acts regarding arms. This way of regulation of judicial system is innovative in legislative manner, because the responsibilities of the Intelligence Agency of Kosovo are predicted in Penal Code, independently done from special law about this Agency (Law nr.03/L-063), where the operation field has been foreseen (article 2 of this law). While not going too deep in analysing article 443 of Penal Code of Kosovo, this way of its organisation raises the need to harmonise the code and the law for the Agency for the fact that the code does not refer to the law for this agency. Foreseeing in general manner that the agency, "shall have controlled jurisdiction and authorisations to investigate" without foreseeing the form, the volume of cooperation with the police and the prosecution. While in the Law for the Intelligence Agency of Kosovo it is foreseen that "while performing their functions Intelligence Agency of Kosovo is convinced that there is enough ground that a person or dedicated subject has committed or is going to commit a penal act or is preparing or organising a penal act which is a threat, Intelligence Agency of Kosovo is obliged to inform General director of Kosovo Police and Public the competent prosecutor (article 25 of Intelligence Agency of Kosovo Law). Just to emphasize that the special laws and the fact that in Penal Code of Kosovo there is no chapter or norm that protects individual author rights and his intellectual property, it is because now there is a law regarding that matter in Kosovo, or even for violence in the family, and that in a code it was not treated as a special matter, but the law was brought for it and is not valid for Intelligence Agency of Kosovo. Despite special law drafted for this agency the same field is regulated with the new Penal Code of Kosovo. And there is a major failure and has to do with Article 443 of Penal Code of Kosovo where the responsibilities and the jurisdiction of Intelligence Agency of Kosovo are set, and that even there was reasonable need for the way it was done. It had to be foreseen in Penal Procedural Code.

In the end, while mentioning some of the penal acts, despite their importance, they are not included in Penal Code of Kosovo as special penal acts. Considering only regional states where developed countries are not mentioned with a long legislative tradition, the failures and shortages that have to do with the process of the codification of a penal sphere is evident where numerous penal acts were missed i.e. "Illegal exploitation of the mines", "Illegal exploitation of the land and its products", "The games with the chain reaction character", "Illegal building", "Illegal border protection", "Violation of the law in court procedure"[30]. And other penal acts without a need for inclement for penal acts that do not constitute our reality, and that for may years ahead the other developed countries have foreseen[31]. This has to do with chapter where the meanings of the used terms in the code have been explained. Starting with Paragraph 1 it is a need for the explanation of the territory of Kosovo, state border, and state line, and continue with other explanations, where there is a lack of many of them in this Code. With all shortages found, the quality of the code is the language used, where at the same time it should be clear, precise, understanding and a professional one. In this aspect it cannot be attributed to having in mind that there are not only complicated norms in linguistic and ideological aspect, but in some cases, extremely long (penal act of "Harassment" article 186).

Closing

The codes are high volume summary that include the whole judicial areas. Apart of inclusion of one or more judicial areas, codification provides more security than the laws, especially where one particular area is defined with enormous new laws brought in different time periods, from different lawmakers. As a consequence, the chances for a discrepancy between them are inevitable. And this is why the

[30] Ibid.

[31] Prohibition of cloning humans, causing suffering or illegal killing of animals, zoophile, necrophilia and many other.

codification takes place in order to avoid them. The history taught us about the existence of codes since old ages. But the condition for beginning and finishing of the processor codification is country's stability, respectively the existence of developed economical, social political, and judicial system. Without these fulfilments of these conditions the process of codification in reality cannot happen. The realisation of the codification process is a proof of stability for the state. This way, chronologically speaking, stability as a condition, as a consequence, has a process of codification. The product of it is the code and its implementation. Even despite allegations that in 2013 the area of penal field was completed, we can reach the conclusion that the process could not even start in such circumstances when Kosovo was under international protectorate. At the end of the day the necessity to start bringing up a new code in such a short period of time is the proof of these specific circumstances that were unsustainable and one after another codification sustains this fact.

In reality the codification of penal and procedural field in Kosovo in scientific meaning, even today can be contested. The objective circumstances make it, if not impossible, very hard particularly when the code could not be implemented in the whole territory of the state. However the Penal Code of Republic of Kosovo was brought in a hurry, without deep studies of some criminal occurrences in our country. Crime cannot be fought with roughening the sentences and revoking the freedom, and this time is tougher than in the previous code for certain categories of penal acts. Fighting the crime based in the concept of fear and repression has already been proven that does have affect in lowering the crime. These kinds of concepts should be abandoned, and be replaced with another ways and meanings that have to do with taking appropriate measures of preventing crime.

In a country with Judicial and democratic tradition Penal Codes are not brought every few years, but they go through the changes and amendments. It remains a hope that in the future the Penal Code and Penal Procedural Code of Republic of Kosovo should be adapted and amended without a need for new code.

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