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POST DIPLOMATIC-MASTER STUDIES

THEME:

**UNAUTHORIZED CROSSING OF THE BORDER OR BORDERLINE  
CASES TREATED IN THE BASIC COURT IN PRISTINA,  
IN 2008-2013**

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## **Introduction**

Looking at the changes that Kosovo made in changing of legislations in several phases (periods): the phase of international pre surveillance, phase of international surveillance and the phase where Kosovo is an independent state, also its geographical position with a very complex border, but also the challenges for which our state is going through to provide the EU (European Union), I have selected a topic that will be examined as a master thesis, which will reflect the advantages and disadvantages in the legal, institutional, and territorial aspects in the Republic of Kosovo.

The topic that will be discussed - studied is "Unauthorized crossing of the border or the border line in the Republic of Kosovo", which is classified as a criminal offense in the Criminal Code of Kosovo, but we will focus only on matters that are treated at the Basic Court or former Municipal Court in Pristina, in the period of 2008-2013.

Changes in legislation in short periods, exclusively surveillance by foreigners of the border after the war for several years, different concepts of legal provisions of Republic of Kosovo with neighboring countries regarding the criminal offense that we are addressing and many other phenomena have an interest in how we as students by using professional scientific knowledge under the supervision of mentor support to derive important conclusions, generally expansion and completion of legal – criminal theory.

In all countries of the region and beyond, the unauthorized crossing of the border of the state is considered as an offense. While in Kosovo, the unauthorized crossing is classified as a criminal offense in the Criminal Code in the Article 146 as "unauthorized crossing of the border or boundary".

Although in the last legislation that Kosovo had until April 6, 2004, unauthorized crossing of the border of the state is treated as a criminal offense in the Criminal Code of Kosovo on April 6, 2004 is classified as a criminal offense.

Last legislation by the Republic of Kosovo has been in force until April 6, 2004, analyzing the legislation today of the Republic of Kosovo and the countries of the region, namely the Republic of Albania and the former Yugoslav republics had led the treatment of the topic to be more attractive and interesting during the work that we have developed in our research, with interesting results which will continuously appear on the topic.

Kosovo as a state is bordered to 4 neighboring countries. The border of the Republic of Kosovo in the powers of the Basic Court of Pristina (or the Municipal Court of Pristina before 2013) is land border and through this is only bordered to the state of Serbia, while the powers of this Court also includes air border found in the international airport "AdemJashari" in Pristina.

Institutions that operate along the land and air border is classified to local (national) and foreign (international) borders. Competence for land border security in the border area with Serbia that

we are discussing today is supervised by NATO (KFOR), meanwhile the air border in terms of land security have the local institutions such as the Police of the Republic of Kosovo.

The treatment will take place in three aspects, such as: legal and criminal treatment, treatment of the practical aspect and execution of the punishment of crime "unauthorized crossing of the border or the borderline" with emphasis on the Basic Court in Prishtina, in the period of 2008-2013.

1. Criminal - legal treatment - In this thesis the theoretical and practical aspects will be discussed. The discussion of this work will be done primarily by criminal legal aspect using theoretical and professional literature of criminal justice of criminology and criminal proceedings. Then the review of the criminal literature of the countries in the region and their practices will be done in combating this phenomenon.
2. Treatment of the practical aspect - While in practical terms as the object of study of this paper will be the analysis of the treatment of individual cases of "unauthorized crossing of the border or borderline" in the territory of the Republic of Kosovo by the Basic Court in Pristina in 2008-2013. Also it includes the treatment of the practical performance by the initiation of a case in Police, then the criminal proceedings in the Prosecutor until the Court's decision.
3. Execution of the punishment - During the period that we are dealing with the offense "unauthorized crossing of the border or the borderline," we see that it mainly is the execution of the sentence carried out by the offender as he foresaw the court in most cases penalties by cash, except where the decisions of the Court are imposed with prison sentences.

## **Treatment methods of the topic**

In the methodology of addressing this issue related to "unauthorized crossing of the border or the borderline" addressed in the Basic Court of Pristina in the period of 2008 -2013, the theme will be used by scientific methods with which it will come to concrete results of the scientific research. Methods that will be used are:

- Method of research analysis
- Method of comparative observation
- Statistical method
- Descriptive method, etc.

### **2.1 Method of research analysis**

This method will be used in comparative and descriptive methods of the offense "unauthorized crossing of the border or borderline". Comparative methods will be used in the comparisons that will be made between the years 2008-2013.

### **2.2 Method of comparative observation**

Special approach in the study will be devoted to critical analysis for the treatment of crime "unauthorized crossing of the border or borderline" by the Republic of Kosovo's institutions and the countries of the region. The method of comparative observation of the direct research from the law practices concerning the criminal offense of "unauthorized crossing of the border or the borderline" under the Criminal Code of Kosovo and the new positive laws in Kosovo . On this methodological approach the key aspects of the topic will be discussed.

### **2.3 Statistical method**

Using statistical methods the corresponding figures will be achieved, for monitoring the occurrence of addressing the topic for the purpose of statistical comparisons, in the relevant subjects discussed in the Police, the State Prosecutor and the Basic Court in Pristina.

### **1.3.4 Descriptive method**

The descriptive method in this topic will begin by describing the research in the professional literature, not neglecting the other actions and their presenting that we would take by describing it chronologically.

## **Conclusions**

The study of the topic in detail from the collection of materials, the study of various literature, penal codes of countries in the region, the study of the way of initiating cases to police,

investigation and treatment of criminal offence "unauthorized crossing of the border, ways of handling cases by state's prosecutor of the Republic of Kosovo and the outcome of cases with the decisions of the Court, brings us to the conclusion that this offence is treated differently in the legislation in force of the states in region.

The treatment is necessarily influenced by the disappearance of internal borders or loss of their importance within the European Union countries - the Schengen area. Where to note that in these areas the movement of people and goods is done with an ID.

If you look at all the countries of the region in their legislation, they almost have removed all or devalue this work by classifying it in categories of offenses or minor violations. The criminal offence that we are dealing with, in the legislations of countries in the region is not punishable with jail, but mainly it is specified in the laws of countries in the region as an act with low risk to society and it is punishable by a fine (MONEY). An exception is made when this work is done for other purposes such as: terrorism, organized crime, narcotics trafficking, human trafficking, smuggling or other offenses that have high risk. An exception is made only in the country of Macedonia where the offence that we are discussing is classified in the Criminal Code as an offence, but penalties are much milder compared to the Criminal Code of the Republic of Kosovo.

Steps towards the alignment with EU of the Republic of Kosovo has affected the Republic of Kosovo to harmonize many laws by aligning them with those of the European Union even though the offence that we are discussing has a vast difference opposed to the European Union, but also with other countries of the region. Based on the way this work is presented in the Criminal Code of Kosovo and Criminal Codes of states in the region some close to the EU membership and some are already EU members.

Institutions in Kosovo, inside we see that they differ in how they treat this offence noting the judiciary step which we can conclude that it is a few steps before the state prosecution and the police. And thus we see that convincingly the Court of Kosovo is on the side of law, human rights and in steps with other countries. After all the decisions taken for the offence of unauthorized crossing of border it has sanctioned with a fine in the period of 2008-2013, except in one case where the suspect had no means to pay the penalty and has requested to go in prison. And in this way we can conclude that our judges are in the right steps with the current issues of regional and international trends.

Seeing that many indictments filed by the state prosecution we see that all cases where foreign nationals have been involved in the territorial area of the Court of Pristina for the period of 2008-2013 have gone by fast court proceedings, and their treatment is done in the most expeditious way without delay.

Based on the analysis done for the criminal offence of unauthorized crossing of border, we see that this work is done by men and can ascertain that the performance of this work relates

primarily for economic purposes. Specifying the purposes of smuggling animals, firewood, movements of people for smuggling of different goods, movement of people for economic purposes for a better life different from other states through Kosovo to the European Union.

## **Recommendations**

We recommend to all persons who may sensationalize the issue of changes in the Criminal Code at the earliest opportunity should keep in consideration the amendment of Article 146 Unauthorized crossing of border or the borderline.

Amend of Article 146 Unauthorized crossing of border or the borderline to be done by the Criminal Code harmonized with European countries or at least in harmony with other region countries. And this crime to be provided as an offense, as it is provided in most European or regional-states.

We recommend the institutions of the country including those of the ministerial level to establish agreements for movement of freedom with all neighboring countries and thus diminish the importance of the border.

We recommend that there should be more borderlines by discouraging the citizens of our republic or neighboring countries to pass the border in places where it is not allowed to cross the border so they do not have to make long journeys to cross the border but to have it closer.

We recommend that the Republic of Kosovo should establish agreements of cooperation with all neighboring states that citizens living along the border own property in border areas (fields, mountains etc.) can cross the border anywhere for working the field , forest use or for other purposes such as education, health, etc. And not be categorized as offenders in the future for the crossing of the border by any state.

We recommend that the Republic of Kosovo should establish memorandum of understanding that the crossing of the border with all neighboring countries to be with ID in the 12 months of the year.

We recommend that the Kosovo's institutions should combat unauthorized crossing of the border by various citizens as Asian, African, etc., to do that in association and coordination with all countries of the region at all levels.

We recommend also other agencies operating at the border such as Customs, VFA, the Economy Forest to fight smuggling of goods not to do it just at the border but also focus even inside of the territory of Kosovo.