

Studies and Articles



**Punitive Policy in the Field of Penal
Legislation in Robbery Cases in the Basic
Court in Gjilan – Branch in Vitia During
the Period 2013-2017**

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Abstract: Criminal offense of robbery has become a constant phenomenon in our country, as an act that violates and undermines the property values of society, which are guaranteed by international conventions, as well as with local laws. I have considered reasonable to survey, analyze and observe this issue, so we can look closely at the implementation of the punitive policy, with a special approach to detecting and prosecuting the perpetrators of the criminal offense of robbery, addressing the work done by the judiciary bodies, especially the police and prosecution office, therefore, case studying and analyzing the work of judiciary bodies contributes in recognizing the steps taken in these cases and prevent future similar cases of robbery.

Keywords: punishment; discovery; pursuit

1. Introduction

In the fight against criminality in general, but also of robbery, in particular criminal legislation is of great importance. Especially for the fact that these norms incriminate behaviors that are socially prohibited, define the terms of criminal liability, provide for criminal sanctions, and incriminate at the same time important issues.

By means of the applicable criminal legislation, the protective function they have towards the society is shown, protecting the most important, elementary values of the individual and the community. In one sentence, they protect those values or legal remedies that are necessary for the existence of society and individuals. Which means that acting in accordance with the positive criminal norms expresses a close link between the legislation and the bodies applying these norms. It is very important

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to incriminate banned criminal behavior because it is thus easier to draw attention to the citizens to be careful not to commit criminal offenses by orienting them towards beneficial social behaviors.

It is also important that incrimination norms be done in accordance with other social and moral norms, since it is easier to apply the legal provisions, find greater support in the broad masses of the society and thus also the preventive measures are greater. Because if the legal provisions are in conflict with the views of a particular society then the preventive role of these norms will be smaller.

In order to prevent the commission of criminal offenses, and in this case the criminal offense of robbery, it is important for the state to follow up the new social phenomena and relations that appear in society in order to make it easier to incriminate prohibited offenses. There is also a need for the penal legislation to be as perfect as possible and to provide broader opportunities for the efficient operation of criminal justice bodies in the fight against crime and the prevention of criminality. The need for criminal legislation to be perfect is due to the fact that criminal legislation includes all criminal laws, including Penal Code, as well as the whole system of laws and other criminal provisions, while in our country the criminal role plays a key role Penal Code and Penal Procedure Code of the Republic of Kosovo.

However, in order to prevent criminality in a society, it is necessary to envisage a broader range of criminal sanctions and broader opportunities to choose the most appropriate sanction and all this in order to re-educate and re-socialize perpetrators of criminal offenses, so that later they may be easier to return and engage in life in freedom. Reintegration or re-socialization implies the return of the convicted to the social community, their ability to live in harmony with social norms and to contribute to self-assurance for life and honest work (Halili, 2014, p. 146).

2. Some of the Forms of Implementation of Punitive Policy against Robbery in the Area of Criminal Legislation

In order to successfully combat and prevent robbery and criminality, criminal legislation plays a very important role because, at the time of adoption of legislation the state at the same time conducts punitive politics. This penal policy of penal legislation is manifested in various forms by incriminating certain behaviors, determining sanctions, imposing sentences, and regulating a number of other mechanisms.

2.1. Determination of Criminal Sanctions and their Purpose towards Robbery and their Perpetrators

Penalty policies would be more effective if penal sanctions are provided for criminal sanctions by type and limits. The lawmaker establishes the limits of criminal sanctions, setting the highest and lowest limits, which means the maximum and minimum penalties provided by law, taking into account the mitigating and aggravating circumstances, in the Penal Code of the Republic of Kosovo are defining in a general manner what circumstances the court will take into account when measuring the sentence, the lawmaker also determines the security measures and educational measures.

In our country what criminal sanctions are, are foreseen in the Penal Code of Kosovo¹. According to this code criminal sanctions are: main punishments, alternative punishments, additional penalties, judicial objection (Salihu, 2012, p. 418). Also, with the criminal legislation, the special goals of the criminal sanctions taken separately are foreseen. In this regard of particular importance are conditional sentences and judicial objections, which at the same time are counted as austerity or punishment and are imposed in cases where the offense is criminally responsible and the criminal offense is socially a little dangerous.

2.2. Basic Rules for the Measurement of Criminal Sanctions against Perpetrators of Robbery

In addition to the judiciary bodies such as the courts, the legislator in some way presents some sort of punitive policy as it has defined the general rules on the measurement of punishment, has determined the minimum and maximum of punishment, then the aggravating and mitigating circumstances, then the lawmaker also has foreseen the conditions and ways of mitigating the penalties, their aggravation and a number of other important issues, based on Article 73 of the KPRK, we see that when imposing a sentence, the court takes into account but is not limited to: of the criminal liability, the motives for committing the offense, the intensity of the risk or damage to the protected value, the circumstances in which the offense was committed, the conduct of the perpetrator, the guilty plea and personal circumstances of the perpetrator and his conduct after the commission offense.

¹ Penal Code of the Republic of Kosovo, Code 04 / L-082, 20.April 2012, Article 4, parag.1.

Based on the provisions of the Penal Code in our country, very severe punishments are foreseen for robbery, where Article 327 refers to the Penal Code states: “Whoever commits theft from paragraph 1 of Article 325 of the Penal Code of the Republic of Kosovo shall be punished by a fine and by imprisonment of three (3) to seven (7) years” (Article 327, parag.1).

Then anyone who commits a theft of paragraph 1 of Article 325 of this Code or paragraph 1 of this Article “Is punished by imprisonment of three (3) to ten (10) years” (Article 327, parag.2).

As can be seen, the punitive law-making policy in the area of predicting punishments for robbery is very severe, where prison sentences are foreseen for quite a long time, we have a case of up to ten (10) years imprisonment, while these punishments are in the interest of protecting the society from criminality or robbery as a growing phenomenon. Because we note that in the Provisional Penal Code sentences were slimmer compared to the Code that is now in force.

2.3. Other Forms of Criminal Penalty Implementation to Robbery in the Field of Penal Legislation

Penalty policy has to do with those cases where sentences imposed by imprisonment in a relatively long time can be replaced by some other measure such as the conditional sentence, judicial remarks, release from punishment, extraordinary sanction of punishment, conditions for bail, prescription, amnesty, forgiveness and so on.

The punitive policy against robbery in the area of criminal legislation is of great importance in the fight against and prevention of this kind of criminality. This legislative punitive policy implemented in important areas provides broad opportunities for the efficient operation of police, prosecution, court and other organs in the exercise of their basic functions, thus helping to implement them in practice the general goals of the punitive policy (Gashi, 2003, p. 91).

3. Discovery of Robbery Perpetrators

Part of the discovery phase is the so-called pre-penal procedure (Sahiti, 2016. p. 303) where at this stage of the proceedings although we do not have a clean criminal procedure, however, it consists of a series of operational actions that are carried out by the police, who in their competence have right to deal with the detection and illumination of criminal offenses, of course, always consulting with the state prosecutor. Apart from the police which plays a key role in drafting the criminal charges there are other entities that have the obligation to submit a criminal report to the prosecutor based on the work they perform but also the citizens are obliged that in the case of committing the criminal offense by means of the criminal report to the police or the prosecutor's office.

3.1. Number of Persons Denounced

In the Basic Court in Gjilan - Branch in Vitia during the period 2013-2017, persons denounced for criminal offenses of robbery have not recorded any high participation taking into account the total number of denounced for other types of offenses criminal. Based on the data presented, it appears that the persons reported for this type of criminality have recorded this participation compared to the total number of criminality only 11.03% ¹. Given the years of this period of time, a gradual drop in the participation of the denounced from year to year can be observed. The biggest denunciation of the criminal offense of robbery is in 2014 as compared to 2013 there is a big decrease of the denounced but from 2014 onwards we see that there are some minor shakings or decrease and increase in the number of denounced persons.

If we compare the participation of the denounced with that of the convicts for this type of criminality, we can see that the persons reported have markedly higher participation during this period of time than the convicted persons. In the cases of the criminal offense of robbery, the number is higher than the reports by the police, whereas until the imposition of the punishment is another phase the number is lower taking into account all the stages of the procedure until the final decision.

¹ Police Station Archive in Vitia.

3.2. Penalty and Type of Decision

The entire police activity at the stage of the pre-trial procedure ends with the criminal report, which the police hand over to the competent body in this case to the prosecution. However, based on the provisions of the Code of Penal Procedure of Kosovo in Article 78 where the criminal charges are referred by the public bodies and also in connection with Article 79 whereby the criminal charges are reported by the persons so as we see it is an obligation of all state organs, different labor organizations and citizens to report offenses that are prosecuted *ex officio* and in this case also robbery, but at the same time the lawmaker has foreseen that citizens also have the right to notify the criminal offenses that are prosecuted *ex officio* as it has been mentioned in article 79 of the Code of Penal Procedure of Kosovo.

The presentation of the criminal report can be done in some written and oral terms, but there are also cases where the criminal report may be anonymous. But in any case the person who made the criminal report should be notified of the consequences of false accusation.

Analyzing the statistics obtained by the Kosovo Police, respectively from the police station in Vitia and based on judicial practice, we see that the largest number of criminal reports against robbery has been made by the police in cases when these thefts were made in business premises, in banks or even in different businesses, whereas in cases where robbery is carried out in residential homes then we see that the criminal report was made by the injured parties themselves.

Based on the statistics obtained from the archive of the Basic Prosecution in Gjilan we see that most of the indictments raised by the Basic Prosecution in Gjilan during 2013-2015 were made immediately after the criminal report was filed without conducting the investigation phase while now in 2016-2017, most of the indictments raised in cases of robbery have been made after the investigation procedure has been conducted. But at the same time we have had cases even though in smaller numbers when the denunciation has been dropped, the investigation has been stopped or even terminated. But criminal reports in 2013 were made in this proportion: 65.09% of cases were filed by internal affairs bodies or police, 25.2% by injured persons, and 9.71% by other administration body.

4. Persecution of Robbery Perpetrators

In addition to the internal affairs bodies that have the main role in presenting the criminal report in the pre-trial procedure, also in the fight against criminality, the state prosecutor's office is well-informed in the prosecution phase. All actions taken by the state prosecutor's office are intended to influence preventively the various criminal offenses. According to author Dimitrijevič, the regulation of the prosecutor's office is based on a considerable number of principles, which are closer to determining its nature and way of working (Dragolub Dimitrijevič, Criminal Procedure Law, Pristina, 1976, p. 98) our Prosecution Office is an independent body which pursues the perpetrator of an offense *ex officio*, aims to protect the constitutionality and legality.

4.1. Number of Accused Persons and Type of Decision

In the Basic Court in Gjilan – Branch in Vitia during the period 2013-2017 the participation of persons charged with the criminal offense of robbery in the total number of defendants does not have so much big changes from the total participation of convicts of this type criminality.

Based on the data obtained from statistics in the Basic Prosecution in Gjilan, we find that the criminal offense of robbery from the total number of indictments raised in which was competent the Basic Court in Gjilan - Branch in Vitia 2.28% were indictments raised in cases of robbery. But if we talk about the period 2013-2017 we see that there have been some significant changes, if we deal with the total number of raised indictments of all kinds of criminal offenses then we see that there is not any big difference since 2013 until 2017, we see that the total number of indictments does not change so much, and as to the number of indictments raised for cases of robbery we see a greater shake, since 2013 we have had a higher number of indictments raised, then follows the year 2014 in which there is a decrease of indictments raised for the criminal offense of theft, and compared to 2013 we see a halving of cases of raised indictments of robbery, while in 2015 we see a continuation in relation to 2014 since we have a nearly the same ratio, as well as in recent years respectively in the year 2016 and 2017 from the treatments we see we have some minor oscillations. In 2013, out of the total number of indictments raised, 1.12% have been raised in cases of robbery. In 2014 we have a percentage of 0.26% compared to the total number of indictments raised for all types of criminality. In 2015 we have 0.31% of the indictments raised compared to the total number of cases.

In 2016, expressed in percentage, we have 0.23% of indictments received in court for robbery compared to the total number of criminals. Meanwhile in 2017 based on the statistics obtained from the archive of Basic Prosecution in Gjilan we have a total of 0.34% of cases. However, based on the data obtained by the Basic Court in Gjilan - Branch in Vitia, we see that 75.8% of the cases were found guilty, while those who have not been found guilty or have been declared innocent have about 12.2% of cases and this is usually done by refusing the indictment by 7.00% and by terminating the criminal proceedings by 5%¹. The most frequent reason for the dismissal of the criminal proceedings was the waiver of the state prosecutor by about 46.55%, the absence of the offense by 29.2%, the exclusion of criminal responsibility by 24.25%.

4.2. Detention and Length of Criminal Proceedings

As the most severe measure which enables the defendant to be provided under the procedure and the normal course of the criminal proceedings is detention because it limits freedom of movement as one of the fundamental human freedoms. Not in all cases the application of detention as a measure is necessary, as we have optional and obligatory detention, but certainly detention must be assigned only for the cases provided for by law², always for the determination of this measure there must be a grounded suspicion that the person concerned has committed the criminal offense he is charged with. Based on the burden of the criminal offense of robbery, we note that in many cases the precautionary measure is set for ensuring the presence of the defendant in criminal proceedings. Of course, this measure is only determined after any of the conditions set out by law or the applicable Code have been met, and in the most frequent cases this measure is set because there is a grounded suspicion that he or she will repeat the offense, in cases where there was a fear that the accused would hide or destroy the evidence necessary to illuminate the case, will affect the witnesses, and if it were imposed what would other measures for providing the defendant in criminal proceedings apart from the detention, it would nevertheless be impossible to secure him/her during the criminal proceedings (Article 187, parag.1). While the number of persons to whom the detention was pronounced as a bulk, 93.2% were found guilty during the criminal proceedings, whereas 6.8% was the number of persons who were detained but during the procedure they were released - declared innocent.

¹ Final judgments issued by the Basic Court.

² Based on the Penal Procedure Code of Kosovo, Code 04/ L-123, Article 187, paragraphs 1, 2.

Based on the applicable Penal Procedure Code the defendant may be held in detention on remand based on the ruling of the pre-trial judge after the hearing. The detention lasts for 1 month but this time may be extended in extraordinary cases by a ruling on the extension of detention. In this court during the period 2013-2017 detention on remand in 70.6% of cases was imposed within a period of 1 month but there was also shorter deadlines such as 15 days, 20.4% of cases. With a view to combating and effectively preventing criminality in general, as well as robbery in particular, it is necessary for the judiciary bodies to act efficiently in the exercise of their functions (Gashi, 2003. p. 103).

From all that was said above, it emerges that punitive politics in the field of pursuance and prosecution of robbery is of great importance in the process of combating and preventing this type of criminality. In the pre-penal and criminal phase is part of a series of organs which, by their actions in accordance with the law, assist in detecting and prosecuting the perpetrators of robbery, then enable the successful conduct of the criminal procedure and the execution of the penal sanction and thus affect the preventive even in the successful elimination of this kind of criminality.

5. Conclusion

In this paper we have found that during the four-year period 2013-2017, this type of criminality was significantly present in the Basic Court in Gjilan - Branch in Vitia with apparent oscillations from 2013 to 2014, while in other years we can see some slight ups and downs of robbery.

Criminal legislation plays an important role in combating and preventing robbery, the importance of the norms of criminal legislation lies in the fact that they incriminate behaviors that are socially dangerous, define the conditions of criminal liability, provide for criminal sanctions, and regulate a range of issues that are related to incriminated behavior.

Through the incrimination of robbery is tried to preventively influence citizens to be reserved from the commission of these works, by orienting them in tolerable and beneficial social behavior. It is necessary that criminal legislation be as efficient and perfect as possible in order to provide broad opportunities for the efficient operation of police, prosecution, court and other bodies that play a very important role in the fight and preventing serious offenses of robbery.

In the analysis and study done, we see that the punitive law-making policy in the area of predicting punishments against robbery is quite fierce. This can be noticed in the provisions of the Penal Code of the Republic of Kosovo, where the imprisonment of up to ten years is foreseen. We consider that such a sharpening of the punitive policy compared with the previous legislation that was in force is indispensable, fair and reasonable since these acts are affecting property but also at the same time creating uncertainty for citizens.

Based on the analysis and treatment of the detection and prosecution of the perpetrators of robbery, we can conclude that the punitive politics in these important phases has a major role in the process of fighting and preventing this kind of criminality. This stems from the fact that in these phases participates a series of organs, which by their actions enable the successful development of the criminal procedure and the execution of the criminal sanction against the perpetrators of robbery. It is necessary for these bodies to act urgently when performing their duties. During our research, it has been noted that the responsible bodies have not shown much efficiency and many cases have been delayed and for this reason many of them are still underway, moving from year to year. It is important that the courts also have a legal obligation, but also in the case law that when applying the mitigating and aggravating circumstances each time in the case of justifying the decision on punishment, they should mention and justify in more detail all the circumstances than not only in special cases and only in this way the purpose of the punishment can be achieved and the work of the judiciary is justified.

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