



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 27, 2022

**A new decade
for social changes**

www.techniumscience.com

ISSN 2668-7798



9 772668 779000

The operational role and the importance of the application of criminal procedures during the investigation of the organized crime in Kosovo

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Abstract. The application of criminal procedures in the investigation of organized crime in Kosovo quests a deeper empirical study and wider research of a scientific literature than ever done before. The failure of many organized crime cases throughout the courts of Kosovo and the light and acquittal sentences are real indications that the application of criminal proceedings is not being properly conveyed in practice. The data provided through the empirical research of this paper indicate that non-compliance with criminal procedures leads to a decrease in efficiency and a significant increase in organized crime cases. Through this research we aim to identify the possible factors that affect the growth of the phenomenon of crime as well as the reflection of institutions dealing with the prevention and fight against crime. According to the observation the author suspects that the starting point of criminal proceedings regardless of the degree of probability is extremely important for the fight against crime, especially the fight against modern forms characterized by a high degree of organization, professionalism, specialization and secrecy. This paper reflects the detailed theoretical research of the scientific literature by various local and foreign authors and experts who have written about criminal procedures, research and analysis of theoretical and practical data on the meaning and importance of the implementation of criminal procedures in detecting organized crime in Kosovo are of particular importance to investigators of organized crime in the future. The effectiveness of criminal procedures in detection of organized crime in Kosovo should be closely related to criminology, criminalistics and criminal policy, the implementation of criminal procedures should in principle aim to return the basis of suspicion to the highest level of suspicion. This activity starts with the appearance of the basis of suspicion or the highest form of suspicion in the form of orientation and elimination indicators. The same activity consists of criminal control and processing. The content and strategy of these activities determine their further course, as well as condition the range of rules of criminal science in a specific case based on the provisions of the Code of Criminal Procedure, as well as other provisions of laws and bylaws. The strategy and tactics of these activities are dictated by the type of criminal offense.

Keywords. Criminal procedures, implementation of criminal procedures, criminal code, law enforcement officers, Kosovo Police, code of criminal procedure

Introduction

General criminal procedures

By Criminal Procedures one should understand the criminal investigation of the circumstances and facts that directly or indirectly indicate the existence of a crime and/or the perpetrator.

The general framework of criminal procedure on investigations is determined by substantive criminal law and it is directly related to several Code of Criminal Procedure provisions. When it comes to the police, all these actions are standardized by the CPCCK while their implementation is refined through bylaws and standard operating procedures. Kosovo Police is a public service to which is given the general right of use of force as defined by law and other bylaws. In this occasion, the police face emergent problems that frequently need immediately be resolved. The Police has been given the right by the state to detect, prove and combat crime and deviant behavior. The police are only authorized to carry out the measures and actions provided by law. In the context of criminal and security proceedings, the police itself have no right to judge an act as moral or immoral, just or unjust. It only has to determine whether a person is the perpetrator of a criminal offense, minor offense or economic offense, respectively, whether or not he acted in compliance with the law. This requires the police to disregard their personal emotions, beliefs and assessments as well as bias. The police officers themselves often act within their discretionary powers which are associated with various risks. In this occasion, police officers must respond just in time and should not exceed their powers. From the discussion above, it comes out that the police officers must enjoy the credibility of the community. Police officers are persons of a special terms, on one hand, they have their civil life, and on the other official one. Sometimes harmonizing these two lives is a difficult task. The police is a central service to the state and it greatly needs to adapt to the local community.¹ The initiation of investigations in criminal proceedings can be preceded by the initial actions of the police, so that the police, through the exercise of their powers and duties in detection of criminal offenses, and the provision of information that would serve as evidence, acts on self-initiative (ex officio) or as authorized by the prosecutor of the state.

The Criminal Procedure Code of Kosovo provides four phases of investigation, among them the criminal investigation is like a special process of information gathering within the criminal proceedings, it is one of the four most important stages of penal and criminal proceedings, the essence of investigation during criminal proceedings is detection of something new and unknown (finding of the unknown).²

The investigation of organized crime should be preceded by the implementation of criminal procedure. By the application of Criminal procedure one should understand the process of criminal investigation of factual circumstances directly or indirectly indicating the existence of a criminal offense and/or its perpetrator. Dr. Vesel Latifi emphasizes that: The fight against crime means the commitment, participation and mutual cooperation of various state and social actors. Among them the greatest responsibility of course falls on specialized state bodies: police, courts, prosecutors and bodies for the execution of criminal sanctions. Each of these bodies has its law defined duties and competencies. Their coordinated activity and a unified approach towards the necessity of building a strategy on the fight against crime are the fundamental preconditions to successfully solve their tasks³.

¹ Modly, D. (2007). *Teoritë bashkëkohore kriminalistike*. Sarajevë/Pristinë: Kolegji, AAB. pp.157-158.

² Për më shumë Korajlic, N. (2012). *Istrazivanje krivičnih djela*. Sarajevo: Pravni Fakultet. 2012, pp. 21.

³ Latifi, V. (2014). *Kriminalistika- zbulimi dhe te provuarit e krimi*. Prishtinë: Fakulteti Juridik, Prishtinë., pp. 27-28.

Literature Review

In the review of literature related to criminal procedures and their application in practice, it was found that various authors have discussed on the role and importance of criminal procedures and have published numerous papers and scientific books. For the purposes of this research we will mention and quote few of them.

Authors Latifi & Beka⁴, in their book "Murders, organized crime, terrorism", among others, they emphasize: (...) the legal basis of criminal proceedings is built on complex scientific bases: the Code of Criminal Procedure, data from logic, psychology and judicial investigations, and lining through their development, based on the provisions of this law and studying the generalization of investigation and judicial experience, processes specific tactical methods. Criminal procedures are intended to improve the effect of investigative and judicial proceedings, to enrich them and to give the best results. Their implementation depends on the assessment of the prosecution bodies, on the circumstances of the specific occasions in which the investigative and judicial activity takes place related between them and the others.

Whereas, the author Begeja⁵, in his book *Criminology*, states that: the legal basis of criminal proceedings is criminal law and the law on criminal procedure. There is an organic connection between the Criminal Code, the Code of Criminal Procedure and criminal procedures. This connection derives from the fact that detecting, investigating, prosecuting and preventing crime is a complex activity and this process faces procedural and criminal problems.

Autori Modly⁶ (2007) extraordinarily well elaborates the criminal procedures, where among others he elaborates the structure of the investigation in a narrower sense by researching the criminal offense system, the application of informal (operational) and formal procedural investigative actions. Among other things, he emphasizes that the research of problems within the criminal procedure is a de facto definition of a preliminary differential criminal diagnosis (de facto prognosis), the so-called theory on crime.

The scholar Korajlić⁷ in his book "Istraživanje krivičnih djela", when analyzing the procedures he stipulates that: "Criminal procedure consists of separated methodological tasks": (1) determining (decision, surveillance and forming) of the problem (*state the problem*); (2) setting the previous and assisting versions (*ad hoc hypothesis*) (*from the hypothesis*); (3) their review and design, verifying through experiment or observance (*observe and experiment*); (4) conclusions from the version (*from conclusions*); 5. Practical implementation of the produced solutions. He also points out that criminal proceedings always begin with a form of suspicion and end with the truth. The initial or basic form of doubt is the "basis of doubt." The main part of the criminal procedure is the assessment of the situation. Situation in the true sense is the placement of someone or something within the structure of an environment or location. Any conscious decision made by a criminal officer should be preceded by an assessment of the situation. This basically means turning information and data into deliberate and law-based decisions. The assessment of the situation is a precondition without which criminal officer can not and should not make any decisions regarding investigations. In such situations, it is a process of thinking in which, depending on the possibilities, the criminologists are required to take precise action in accordance with the situation, the tasks set and the regulations in force. The extension of the assessment depends on the volume of information and data available (data fund) and the complexity of the situation and tasks. Misjudgment is often the result of premature

⁴ Latifi, V., & Beka, A. (2013). *Vrasjet krimi i organizuar dhe terrorizmi*. Pristinë: Kolegji, "Juridica". pp. 35-36.

⁵ Begeja, S. (1999). *Kriminalistika*. Tiranë: Fakulteti Juridik, Tiranë. pp. 20-21.

⁶ Modly, ibid,

⁷ Korajljic, N. (2012). *Istrazivanje krivicnih djela*. Sarajevo: Pravni fakultet Univerziteta u Sarajevo.

decisions leading to manipulation and even prejudice. In criminal practice, the situation of a criminal offense, the situation of criminal traces, the criminal situation, etc. are most often assessed points.

Criminologist Maloku⁸, in the paper International police cooperation in the fight against organized crime, very well elaborates the procedural cooperation through the International Criminal Police Organization INTERPOL in the prevention and fight against transnational organized crime. Among other things, he emphasizes that: organized crime has traditionally been a national legal and procedural problem for all countries, regardless if they are economically well developed or not.

By the development of human society, various forms of crime developed as well, in particular the organized crime leading the prosecuting authorities of different countries of the world to establish bridges of cooperation with each other in order to easily combat this negative phenomenon worldwide.⁹ The criminal procedures in the investigation and detection of organized crime differ depending on the different forms of occurrence of this phenomenon. One of the most common forms of organized crime is trafficking in human beings, which is not only a crime in itself, but in most cases, it's a crime with multiple activities and multilateral organizational structures.¹⁰ The increase of violence and organized crime in many countries of the world especially those in transition phases increases the fear to violence and criminality as well. Today the fear of violence and crime is considered as a problem, which greatly affects the quality of life not only of individuals but also the wider circle we live in.¹¹

Research methodology and purpose

In preparing and research of this paper, various scientific methods are used including the method of scientific literature research that deals with criminal procedures. The quantitative method of survey through a special questionnaire where all the necessary data that are considered important on the subject of this research were collected. This survey included 60 law enforcement officers from the investigation department. The method of analysis and processing of data produced by the survey and interviews was used as well. During this research, on the theoretical aspect are analyzed many other sources and documents by the application of the method of document study, inductive and deductive methods, methods of analysis and synthesis, descriptions and classifications of criminal procedures, as well as the comparative method through which are identified similarities and differences between them.

The purpose of this research is to identify problems and obstacles appearing to law enforcement officers during the organized crime investigation, to recommend the application and enforcement of criminal procedures. Our research on scientific and practical methods, strategies or ways used by others can serve as a guidance to keep the investigation process as active as possible and to learn more about the perpetrator and the offense, they should serve as practical techniques for lead investigators to the desired success. The issue of application of procedures has its origin in the police officer - prosecutor interaction, the mutual connection of investigators-prosecutors, the duties, responsibilities that each of them has in the initial stage of

⁸ Maloku, A. (2015). Bashkëpunimi ndërkombëtar policor në luftimin e krimit të organizuar. *Regional Journal of Social Sciences Reforma*. No.2. 2015 pp. 119-127.

⁹ Maloku, A. (2015). Rregullimi ndërkombëtar ligjor për të parandaluar abuzimin e drogave dhe substancave psikotrope. *Balkan Journal of Interdisciplinary Research*. Vol. 1. No. 1. 2015. pp. 461-472.

¹⁰ Maloku, A., Maloku, E. (2020). Protection of Human Trafficking Victims and Functionalization of Institutional Mechanisms in Kosovo. *Acta Universitatis Danubius. Juridica*, 16 (1), 21-44.

¹¹ Maloku, A. (2015). Fear of Violence and Criminality in the Region of Gjilan, Kosovo. *Mediterranean Journal of Social Sciences*, 6 (2 S5), 29-36. doi: <http://doi.org/10.5901/mjss.2015.v6n2s5p29>

the investigation, as well as the advice to investigators to be as much as possible effective and motivated in their work to lead investigations towards problem solving.

The research also aims to encourage investigators in using new methodologies in crime investigation and adherence to criminal procedures in the process of investigation. Through these results we can draw recommendations on how to overcome investigators' difficulties so that the needs and requirements to increase professional quality be implemented in practice. The focus of the study is the work of the investigator himself and the methods he works through. The study aims analyzing the impact that criminal procedures have compared to traditional investigation.

Research findings and analysis

Based on the analysis of the processed results and the recommendations given by the law enforcement officers in this research, the variables displayed in the table below indicate the results of the officers' surveys related to the recommendations, measures and actions which should be undertaken by the institutions authorized for successful fight against organized crime in Kosovo.

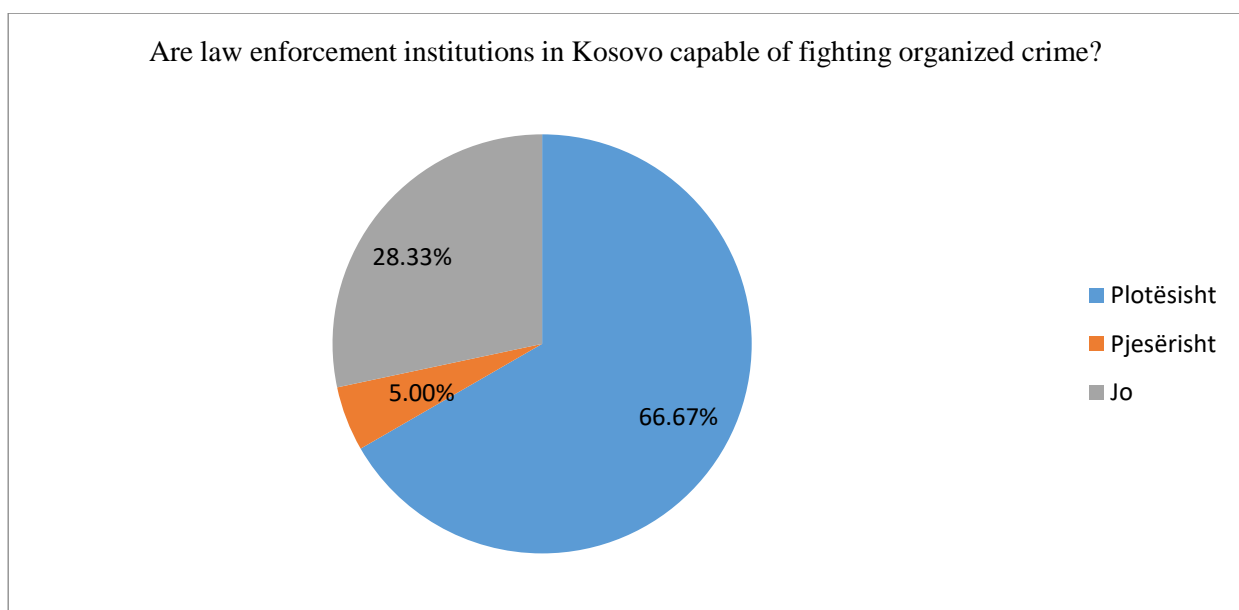
Table no: 1. Tabular presentation of the questions for law enforcement officers dealing with the fight against organized crime in Kosovo brought in five variables.

		1. Are law enforcement institutions in Kosovo capable of fighting organized crime?	2. What actions do you think should be taken by state institutions to prevent and fight organized crime?	3. To what extent has the legal infrastructure in Kosovo for the detection of organized crime been completed?	4. The phenomenon of failure to solve the cases of organized crime in Kosovo, is that as a result of the lack of timely planning or a premature and unplanned reaction in undertaking criminal actions?	5. What should be done in normative aspect in order that the Police perform its social function effectively and legally?
N	Valid	60	60	60	60	60
	Missing	0	0	0	0	0
Mean		1.77	3.85	2.03	4.10	2.65
Std. Deviation		.533	.606	.486	1.130	.732

The obtained results during the survey of law enforcement officers were analyzed through 5 study questions and their recommendations regarding the measures to be taken by authorized state bodies in Kosovo in order to successfully combat organized crime in Kosovo were taken.

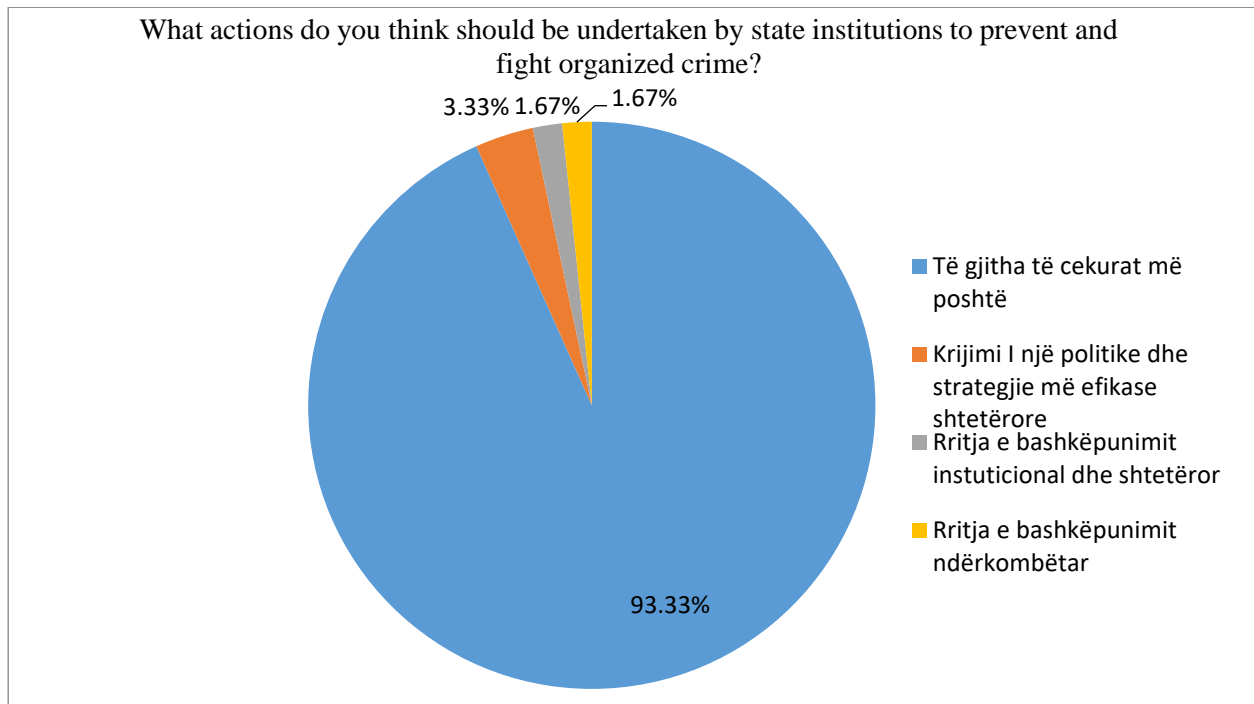
1. *Are law enforcement institutions in Kosovo capable of fighting organized crime?*

Graph nr.1 shows the results and the recommendations of law enforcement officers from the variable that goes: *Are law enforcement institutions in Kosovo capable of fighting organized crime?* By filling out the form, the surveyed officials present the current situation as follows: out of a total of 60 surveyed officials, 17 respondents or (28.33%) are of the opinion that law enforcement institutions in Kosovo are able to "fully fight" organized crime. Second frequency respondents 40 of them or (66.67%) think differently, they claim that Kosovo institutions fighting organized crime are "partially capable", while third frequency respondents 3rd or (5.00%) their stated that Kosovo institutions "are not capable" of fighting organized crime.



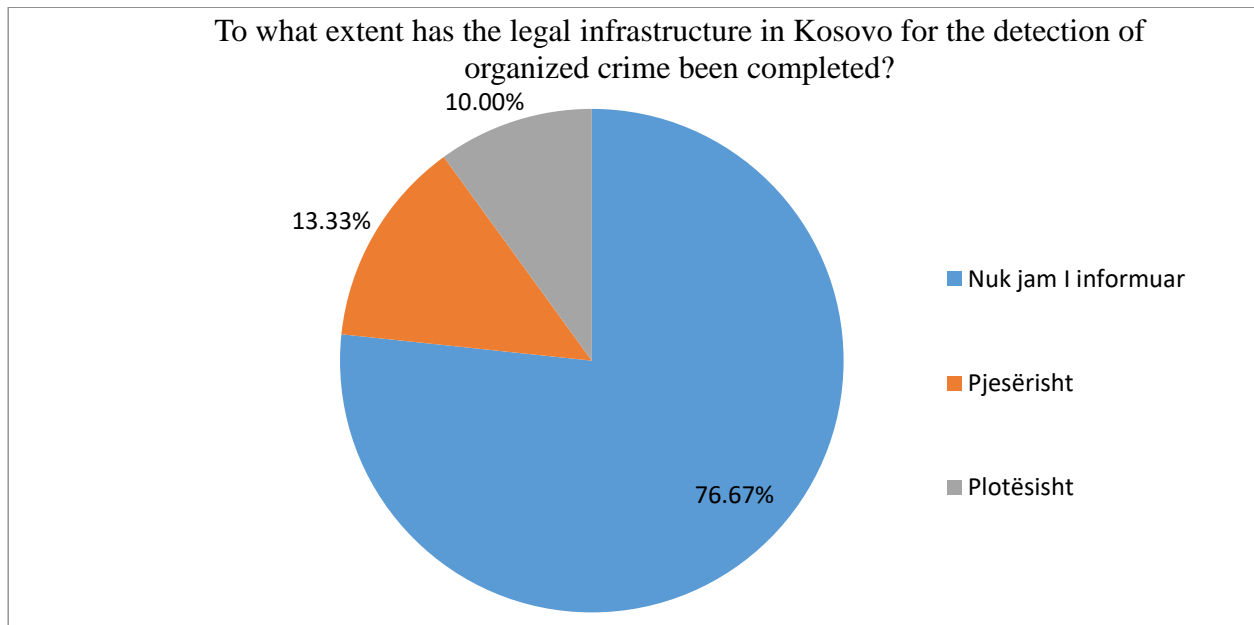
2. *What actions do you think should be taken by state institutions to prevent and fight organized crime?*

The results of the survey of law enforcement officers presented in graph no.2 contain data from the following variable: *What actions do you think should be undertaken by state institutions for the prevention and fight against organized crime?* The form was distributed to 60 officers and by its completion the following results were obtained: in the first frequency by 2 respondents surveyed, or (3.33%) gave the answer that to prevent and detect organized crime "institutional and state cooperation should increase", in the second and third frequency we have the same number of respondents from a 1 or (1.67%) with different answers. Some think that the activities that state institutions should undertake are "creating a better and more efficient state policy and strategy", while others are of the opinion that in order to prevent and detect crime, state institutions should "increase international cooperation". In the fourth frequency, we have the largest number of respondents, 56 out of a total of 60 or (93.33%) who stated that in order to better prevent and detect organized crime they should take all of the above activities.



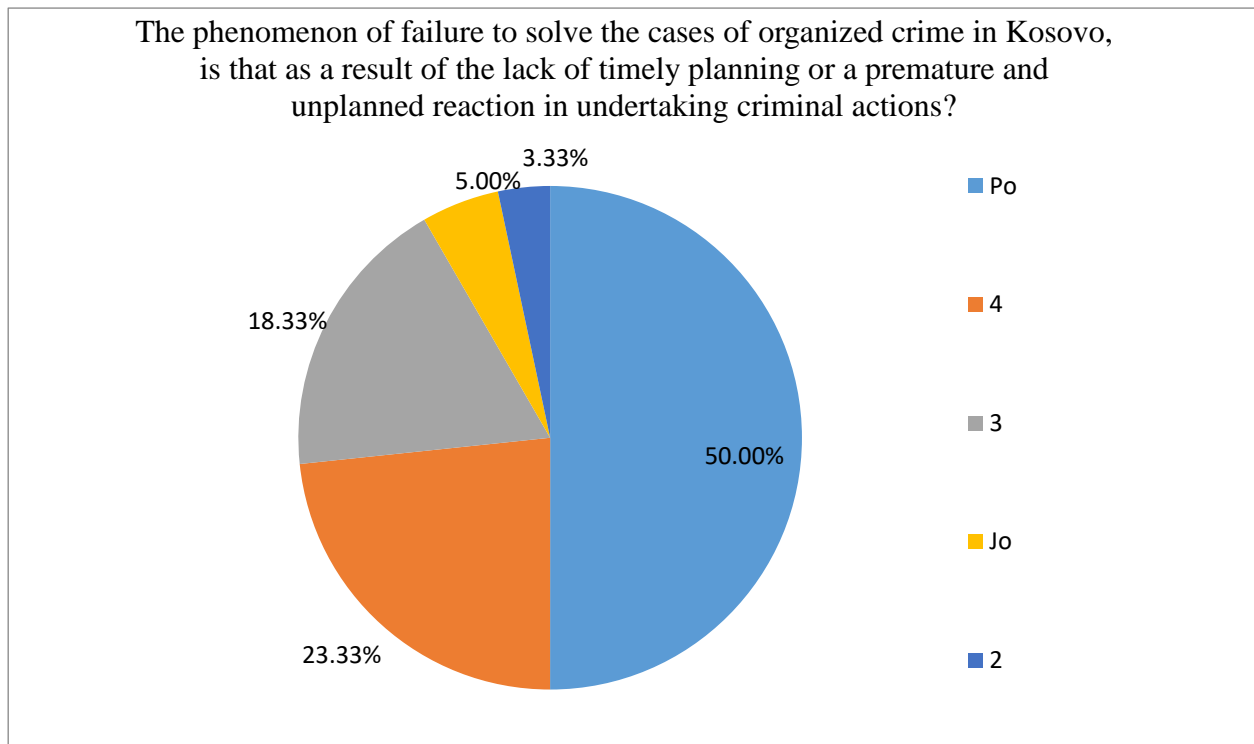
2. *To what extent has the legal infrastructure in Kosovo for the detection of organized crime been completed?*

In the chart no. 3 there are presented the results of the survey of the law enforcement officers in the following question: *To what extent has the legal infrastructure in Kosovo for the detection of organized crime been completed?* In the first frequency 6 surveyed respondents or (10.00%) of a total of 60 officers, think that the "legal infrastructure in Kosovo is totally completed". The second frequency of 46 officers or (76.67%) have a totally different opinion as they responded that the "legal infrastructure in Kosovo is partially completed", the last frequency of 8 respondents or (13.33%) stated that they were not informed on this issue.



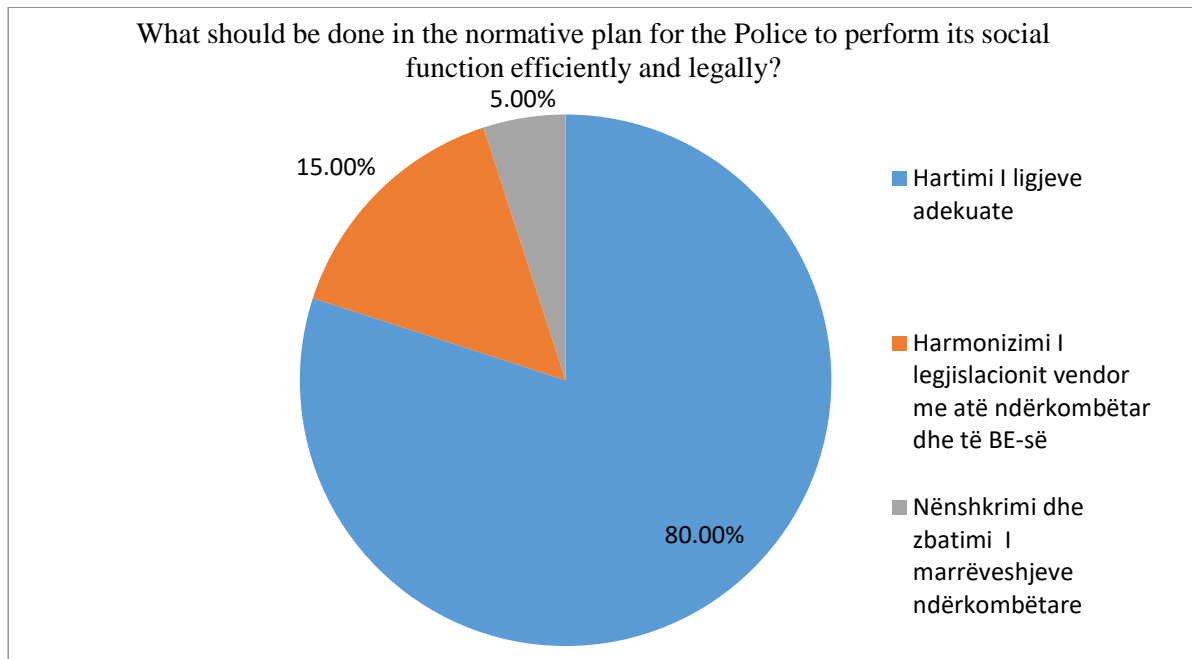
4. *The phenomenon of failure to solve the cases of organized crime in Kosovo, is that as a result of the lack of timely planning or a premature and unplanned reaction in undertaking criminal actions?*

In the chart no.4 are displayed the results and recommendations of law enforcement officers in the question indicating: *The phenomenon of failure to solve the cases of organized crime in Kosovo, is that as a result of the lack of timely planning or a premature and unplanned reaction in undertaking criminal actions?* The outcome in this variable are the following: surveying 3 respondents or (5.00%) from a total of 60 officers answer "No" and assessed that one with the mark 1. In the second frequency from 2 officers or (3.33%) assessed that with the mark 2, the third frequency 11 surveyed or (18.33%) the assessment related to the failure to solve the cases of organized crime assessed with mark 3, the fourth frequency 14 of surveyed officers or (23.33%) the lack of adequate planning and premature reaction was assessed with the mark 4, in the fifth frequency we have the highest number of surveyed officers total of 30 respondents or (50.00%) for the mentioned situation answered with "Yes" and gave mark 5. They think that the phenomenon of failure in solving the cases of organized crime in Kosovo is a result of lack of early planning and hurriedly reaction in undertaking criminal undertakings.



5. *What should be done in normative aspect in order that the Police perform its social function effectively and legally?*

Chart no.5 indicates the data of surveyed law enforcement officers in the variable and gave the following response: *What should be done in normative aspect in order that the Police perform its social function effectively and legally?* The first frequency of the 9 officers surveyed or (15.00%) from the total of 60 surveyed officers responded that the harmonizing of the national legislation with the international one and the one from EU increases the efficiency and lawfulness of police officers in Kosovo, the second frequency of 3 surveyed officers or (5.00%) recommends “signing and implementing international agreements”. In the third frequency of 48 surveyed officers or (80.00%) answered that the best option for police to conduct its functioning in most efficient and legal way is to “draft suitable laws”.



Final conclusions and recommendations

a) Conclusions

By the implementation of criminal procedures aimed at detecting organized crime, the need, importance and necessity of operational activity for detecting crimes, clarifying and providing evidence has been emphasized. By applying scientific and practical methods, investigators discover criminal offenses and their perpetrators but they also act preventively in prevention of commission of certain criminal offenses. In the context of detecting and clarifying criminal offenses during operational activities, investigators must take appropriate operational, tactical and technical actions and measures, among which likely most often are: intelligence gathering, control, surveillance, monitoring, legitimacy, inspection of vehicles, identification, checking alibis, etc. and from investigative activities we have raids and temporary confiscation of items.

Based on what has been presented so far, it is clear that criminal procedures are separate recognition processes, which are somewhat consistent with the research process. However, criminal research, unlike scientific research, is limited by the subject and purpose of the procedure and criminal procedure and rules. This is a quantitative limitation of the field of research. However, scientific knowledge in criminal procedure should be used in accordance with the scientific methodology - *lege artis*. We must always take care of the so-called cognitive triad of criminal procedure (1) observation, (2) thought and (3) practice.

Criminal procedures during implementation in practice must be combined with multiple criminal controls. Thus, there must be a difference between controls carried out on its own initiative by the body of procedure and those carried out at the request of another competent authority. The object of verification can be persons, objects, locations, relations, conditions, circumstances, etc. Depending on the method of enforcement, they may be public (open) and secret (conspiracy).

Completion of criminal proceedings basically occurs in two forms. The first one is when the existence of a criminal offense and the perpetrator has been proven without any doubt, and the second one is when it is impossible to continue the criminal prosecution because all

possibilities for further clarification of the factual situation have been exhausted, i.e. when not even a minimal success is expected from the continuation of the criminal procedure, because there are no chances for the perpetrator be available, when it is decided that it is not an act, or if there are any obstacles for the execution of criminal sanctions (immunity, impossibility)

b) Recommendations

Based on the scientific findings of this research through the cited literature and conducted empirical analysis, it has been concluded that in order to advance the fight and detection of organized crime in Kosovo it is necessary to make some recommendations, the implementation of which in practice would increase the efficiency of institutions for successful fight against organized crime at all stages.

Research on the factors negatively affecting the detection and suppression of organized crime in Kosovo has proven to be a very interesting and complex subject. Based on the analysis and studies we have done on this subject, it has been found that the current approach to this problem does not guarantee the possibility of achieving a complete and systematic answer to all questions and setting goals in the study of criminal proceedings on organized crime. This approach to study, enables not only the best knowledge, perception and treatment of the problem from the theoretical and practical aspect of this issue, but also from the aspect of social development and the current circumstances in Kosovo.

- The identified difficulties arising in the practice of detecting organized crime in Kosovo, require the need not only to respect penal and criminal proceedings but also the profiling of investigators, prosecutors and judges who would exclusively handle the cases of organized crime, this method of handling the problem helps increase the effectiveness and efficiency of fighting this negative phenomenon;
- It is also recommended to increase efforts in organizing special trainings for the investigation of newer forms of organized crime in Kosovo, through the design of special modules of lectures to include specific subjects from the science of forensics, in which the criminal procedures would be addressed through the application of the latest methods and tools for combating and successfully detecting organized crime in Kosovo;
- It is suggested that cooperation and mutual communication between institutions directly involved in crime prevention (police, prosecution and courts) should be increased not only within the state, but also with other police agencies and courts in the region;
- It is recommended the undertaking of the foreseen procedural actions at the time and place of the crime. The investigation and analysis of cases investigated from the experience may indicate weaknesses, obstacles and omissions of responsible officials competent to investigate and resolve organized crime cases from the initial stage of the investigation up to the final court decision;
- The advancement of professional work in the institutions of the rule of law can not be achieved only through reforms in raising professionalism and responsibility at work, but it is necessary they be completed with adequate staff, equipped and trained with the newest technology to be able to function optimally and be immune from any political and negative interference during their work;
- The lack of evidence in proving crime and its perpetrators at the court, are sufficient facts that the role and importance of application of criminal procedures is of an extremely importance, in the future it is recommended to apply criminal procedures at all stages of investigation and evidencing of crime;

➤ Planned state activities and interstate cooperation are not sufficient to successfully face organized crime and other challenges, the active participation of citizens in these activities is very important as this is the appropriate way through which we can ensure a functioning society in which the rule of law prevails.

The implementation of the above recommendations coming from the research shows that in the Republic of Kosovo there is insufficient application of criminal procedures, the application of criminal procedures is recommended to be implemented almost entirely in accordance with the scientific literature and the characteristics of what today we call criminology. Therefore, police officers and investigators should fully engage and support the application of criminal proceedings without intervention and interference by anyone. Only the implementation of so far scientific achievements enables establishing a system of cooperation which parallel operates with the legal system, state institutions as well as the citizens.

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