



Comparison of the Criminal Offense of Murder in Kosovo, Albania and North Macedonia

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<http://dx.doi.org/10.18415/ijmmu.v10i5.4730>

Abstract

This paper aims to compare the criminal offense of murder in the Republic of Kosovo, Albania and North Macedonia. Murder occurs when one person kills another person. A homicide requires only a willful act or omission that causes the death of another, and thus a homicide may result from accidental, negligent, or negligent acts even if there is no intent to cause harm. To achieve the purpose of the work, the analysis method, descriptive method, comparative method, as well as deductive and inductive methods are used in the work. The work will contribute to young researchers from the criminal field to obtain additional information regarding the comparison of the criminal offense of murder in Kosovo, Albania and North Macedonia.

Keywords: *Murder; Comparison; Criminal Code of Kosovo; Criminal Legislation of Albania; Criminal Code of Macedonia*

1. Introduction

By committing the criminal offense of murder, the perpetrator goes against the prohibitive norm (Maloku & Maloku 2019:22), every murder is a very serious criminal offense, because a person is deprived of his life (Gabela & Maloku, 2022,2023) . Murder as a criminal offense is one of the most serious types of criminality, therefore both in the past and now it occupies the central place in the field of criminal sciences and legislation.

Because it is a very serious criminal act, the murder attracts the attention not only of state bodies but also of the general public and even many researchers. Murder as a phenomenon during different periods has come as a result of many social and economic factors with special emphasis on numerous property and legal disputes.

Killing can be divided into many overlapping legal categories, such as murder, manslaughter, justifiable homicide, assassination, killing in war (either following the laws of war or as a war crime), euthanasia, and the death penalty, depending on the circumstances. of death. These different types of murder are often treated very differently in human societies; some are considered crimes, while others are permitted or even mandated by the legal system. The authors Jasarevic and Maloku (2021) in their book

Criminology (the etiology and phenomenology of criminality) elaborate extremely well the etiological and phenomenological factors of murders. Also the authors Jasarevic and Maloku (2021) in their book *The Law of Criminal Procedure I and II* analyze the pre-criminal and criminal procedural steps in relation to the criminal offense of murder, Murders and suicides in the sociological aspect were analyzed by professors Shabani and Maloku (2019) in their book *sociology*, while in terms of social pathology they were also analyzed by the same author Shabani and Maloku (2019) in their book *Selected topics from social pathology*. The objectives of the paper are to evaluate (Maloku, 216:285) the comparison of the criminal offense of murder in Kosovo, Albania and North Macedonia from the legal point of view. The paper gives a brief summary of the criminal law aspect, namely the material law aspect. (Maloku, 2020:21)

2. Methodology

The significance of this paper lies in the importance of the problem it deals with, that is, the importance of the very nature of the topic (Maloku et al., 2022:141). This study is based on the use of multiple research methods. The special scientific methods used in this paper are mainly the method of analysis and synthesis, which will be particularly useful when researching the theoretical views of local and foreign authors, (Maloku, 2021:53) who have studied and analyzed the issue of murders. Also, for the explanation and comparison of the criminal offense of murder in Kosovo, Albania and North Macedonia from the legal point of view, inductive, deductive and research methods were also used.

The historical method - was used to reflect the criminal offense of murder based on the canon of Lekë Dukagjini as a normative act, which prevailed mainly in Albanian-speaking territories. Descriptive method - the description of the normative acts of the current state presented in these three states was made. Statistical method - the reflection of the murders discussed in several years in Kosovo, Albania and Macedonia was made.

In the comparative method, these legislations have been compared with each other regarding the way and the struggle that these states apply for the prevention of murders.

3. Results and Discussion

3.1. History of Murder as a Criminal Offense

3.1.1. The Canon of Lekë Dukagjini

By canon, not necessarily only blood feud, murder. The Canon of the Albanian Mountains, or the Canon of Lekë Dukagjini, was the only one among the other Balkan states, which functions as a parallel right, even overriding the laws of the Ottoman Empire, the Shariat and the laws of other later conquerors.

Father Gjeçovi writes: "The canon was gathered like grains of wheat, in an environment of great poverty. The canon has served as a law, a way of life of the Albanian people, it has been our legal tradition, which reflects us as Albanians and our nobility as a nation".

The sources of customary law among Albanians are: the Canon of Skënderbeu, the Canon of Malsija e Madhe, the Canon of Labëria, the Canon of Lekë Dukagjini (CLD). In this paper I will deal with the penal code in the Lekë Dukagjini Canon (CLD), the most popular canon among Albanians.

3.1.1.1. Criminal Code in "Canon"

Criminal law in the Canon was a mixture of public criminal law and self-jurisdiction. According to this common law the natural person himself was capable of holding justice. In the person, a distinction was made between the person itself and the additional parts.

Due to this difference, Albanian customary law protected the following goods:

- a. Body goods
- b. Of the soul.

The additional part of a person included:

- a. Actions and
- b. Reports.
- c. The benefits of the body

3.1.1.2. Murder and Blood Feud

About blood feud in the Albanian tribes, "a historiography of a 'category' in itself was formed around the history of blood feud.

The nature of blood feuds was that everyone had the right to blood feud for killing a relative. The canon distinguished between revenge and blood feud. A special group of people were excluded from blood feuds; such as women, children, the priest, the elderly and the sick, as well as the mentally ill.

Manslaughter was not pursued with a rifle. The author, however, had to remain hidden for a long time, as it was said in the Canon, as "the blood is hot", and until the matter was thoroughly examined and clarified.

After the execution of a blood feud, the perpetrator (hand) had to inform both the public and the victim's family that he had committed the blood feud. In the case of a murder or blood feud, it was forbidden to practice massacre on the body of the murdered. If someone, by any means, added more post-mortem wounds to the victim's body, the perpetrator was charged with double murder, meaning that he was responsible for not just one murder, but two.

If the author, without right, exercises blood feud (for someone else), his house will burn and collapse, all his movable property, such as furniture, grain and livestock were confiscated. He had to leave his property, and the region where he lived, with his whole family, and also pay a penalty.

3.1.1.3 Mediation and Pledge

The mediator was the person who intervenes "to separate evil words", that is, to soften the tension, as a consequence of a disagreement, which could lead to revenge, murder and other offensive developments.

To ask for allegiance, the murderer, after committing the act, would take a friend to the victim's family, and thus ask for a few days off (alliance). During the period of allegiance, no revenge was allowed.

The canon recognized two types of faiths: 24 hours and 30 days. If the house of the murdered person gave a 24-hour pledge, the undertaker participated in the burial ceremony, even though he himself had killed him. This trust did not last more than 24 hours. The village could take care of issuing a bese of 30 days for the perpetrator and his family. If the house of the murdered person did not trust the village about the perpetrator's family, then the perpetrator and the family members had to remain locked up; there was a kind of house arrest, house prison.

3.1.1.4. Judiciary

Albanian customary law did not recognize a court in the sense of the courts we have today. The canon of old age was considered as a court. The elders were the first of the brothers or the heads of the

tribes. Without their participation, any decision or action was invalid. Elders were also called men with "a talent for wisdom" and "who are kings among judges and elders". The eldership canon was composed of ordinary people, regardless of their social status, their origin or other differences. They became "judges of the people" only by their ability to quickly understand the circumstances and as judges to interpret them with reason and to decide according to the rules of the Canon.

3.1.1.5. Types of Trials

Albanian customary law recognized two types of eldership canons.

The elders in the village "according to the brothers of the tribe" were considered as little elders, who made decisions on small disputes. Serious matters, which harmed the honor of the entire village and tribe, were judged by the "Elders of the village and the leaders of the Flag". In order for a decision to be made, the elders and the leaders of the flag had to "have with them the Elders and Elders of the village", in which the culprit was found.

3.1.1.6. The Voice of the People in Court

If a judgment of the elders did not satisfy the people, or they happened to be wrong, the people had the right not to follow their decision. In such a case, the chiefs and elders were forced to deal with the matter again.

3.1.1.7. Evidence (Evidence)

Albanian customary law, according to the procedures in the Canon, recognized the following testimonies (evidence): the statement of the defendant, the word of honor, the person who showed someone's work, e.g. for a secret theft or murder, oaths, jury or betaries, witnesses, experts, following traces, guarantors and flagrante.

3.1.1.8. Types of Punishments

According to the Canon, punishment was understood as "an evil, which from the legal power belongs to someone for the fault of the person". The types of punishments in Albanian customary law were: death penalty, removal from the tribe with members and property, burning and destruction of the house, destruction of land and cutting of trees, punishment with live cattle, monetary punishment, and getaway. Burning alive a woman, a widow or a girl who was unclean. (Zani i Malesis, 2019).

3.2. The Criminal Offense of Murder

3.2.1. Criminal Code of Kosovo (CODE NO. 06/L-074)

In the general sense, the law defines the crime of murder as the deprivation of another person's life. According to the Criminal Code of the Republic of Kosovo, the following types of murder are foreseen: the criminal offense of murder, aggravated murder, murder committed in a state of mental affect, manslaughter, killing a baby during birth and the criminal offense of incitement to murder and giving of assisted suicide. All these criminal acts committed result in the deprivation of a person's life. However, they are distinguished by the way, the will, the motive and the quality of the victims. (Criminal Code of the Republic of Kosovo)

3.2.1.1. Serious Murder, Article 173 of the KPRK

Criminal offenses of aggravated murder contain the same elements as criminal offenses of murder. However, taking into account the quality of the victims, the manner and motives, these crimes are classified as crimes of aggravated murder.

Thus, Article 173 of the KPRK, for this criminal offense, provides a prison sentence of at least 10 years or life imprisonment.

It is considered a serious murder when the perpetrator takes the life: the child, the woman whom he knows is pregnant, takes the life of the family member, in a cruel or cunning way, when he takes the life of a person and intentionally endangers the life of one person or several persons, with the purpose of obtaining financial benefit, with the purpose of committing or concealing any other criminal offense or to prevent the person from giving evidence or providing information in any way to the police or in criminal proceedings, for due to unscrupulous revenge or from low motives, including revenge for giving testimony or providing in any other way information for the police or criminal procedure, the official person during the performance of the duty or in connection with the official duty, deprives the person of his life other for racial, national or religious motives, intentionally commits 2 or more murders.

The criminal offense of aggravated murder is committed intentionally and any person can be the perpetrator.

3.2.1.2. Murder Committed in a State of Mental Affect by Article 174 of the KPRK

The criminal offense of murder in a state of mental affect is a lighter form of the criminal offense of murder.

In this criminal offense, the elements of the criminal offense of murder from Article 172 of the KPRK must be fulfilled, but in order to include some other elements, that the perpetrator was mentally affected, put him in a state of strong mental shock through no fault of his own. caused by assault, serious insult by the murdered person.

In order for this criminal offense to exist, the attack or serious insult must not be provoked by the perpetrator, because then we are not dealing with the criminal offense of murder under mental influence.

On the other hand, the person killed must be the person who attacked or seriously insulted the perpetrator, and not any other person.

The perpetrator of the criminal offense of manslaughter can be sentenced to imprisonment from 1 year to 10 years.

3.2.1.3. Manslaughter, Article 175 of the KPRK

The criminal offense of manslaughter exists in cases where the perpetrator was aware that by undertaking the action he could cause the death of a person. But it is easily maintained that until the consequences will not come or will prevent its occurrence. This type of carelessness is otherwise called conscious carelessness. However, in practice, it happens that murders occur due to negligence and unconscious negligence, where the perpetrator was not aware that his action could cause the forbidden consequence - murder. But considering the circumstances in which it was caused, he was obliged to be aware of the possibility of the forbidden consequence.

This criminal offense must be distinguished from other criminal offenses, where as a consequence there is the death of a person due to negligence, e.g. in the criminal offenses of endangering public traffic, causing general danger, etc., the perpetrator of this criminal offense can be sentenced to imprisonment from 6 months to 5 years.

3.2.1.4. Killing the Baby during Birth, Article 176 of the KPRK

By infanticide during birth, we mean the act when a mother kills her baby during birth or immediately after birth, as long as the disorder caused by the birth of the baby is present in that mother

(Maloku, 2019:395). Killing the baby during birth is a privileged form of murder. This criminal offense can only be committed by the mother, during the birth period or after birth.

The condition for this criminal offense to exist is that the child is alive and the mother commits the murder while the disorder caused by childbirth continues.

This offense is committed by action or inaction. The action is carried out, e.g. when the mother, due to disorders during birth, smothers the child with her hands, or by inaction, when she does not feed the child, leaves it cold for a while, etc.

According to Article 176 of the KPRK, the perpetrator of this criminal offense is sentenced to 3 months to 3 years in prison.

In cases where the mother, after passing the birth disorders, deprives the baby to be released from the obligation to keep it, then in her actions we are dealing with the criminal offense of intentional murder.

3.2.1.5. Pushing to Commit Suicide and Assisting in Murder, Article 177 of the KPRK

This criminal offense is committed in two ways; one by pushing the other to commit suicide and the second way by helping them to commit suicide, for which the law on paragraph 1 provides for a prison sentence of 1 to 5 years.

But if the push or assistance for suicide is done to a minor or a person whose ability to understand the gravity of his act or to control his behavior has been substantially reduced, par. 2 of the same article provides for a prison sentence of 1 to 10 years.

However, if the criminal offense of pushing or assisting suicide is committed against a person who has not reached the age of 14, then the perpetrator is punished as for murder under Article 172 of the KPRK, i.e. at least 5 years to 25 years of imprisonment.

In paragraph 4 of this article, it is foreseen that anyone who cruelly or inhumanly treats another person, who is in a position of dependence and thereby induces the perpetrator to commit suicide, is punished with imprisonment from 6 months to 5 years.

Whereas in paragraph 5 it is foreseen who will commit criminal offenses from paragraph 1 to 4 of this article and only attempted suicide can the sentence be reduced. The perpetrator of this criminal offense can be any person who commits suicide by pushing or by giving help to a certain person.

Even this criminal offense can remain in the attempt, when the victim, even though he has undertaken all the actions for suicide, has remained alive, for various reasons, e.g. he was given medical help, etc. (Criminal Code of the Republic of Kosovo)

3.3. The Criminal Legislation of Albania

Chapter II. Criminal Offense Against the Person. Crimes against life. Section of crimes against life committed with intent

3.3.1. Article 76 Intentional Murder

Intentional murder is punishable by imprisonment from ten to twenty years.

3.3.2. Article 77 Intentional Murder in Connection With Another Crime

(Amended by Law No. 8733, dated 24.1.2001, Article 9)

Intentional murder, which precedes, accompanies, conceals or follows another crime, is punishable by imprisonment for not less than twenty years.

3.3.3. Article 78 Premeditated Murder

(Amended by Law No. 8733, dated 24.1.2001, Article 10; addition to the second paragraph by Law No. 9686, dated 26.2.2007, Article 7)

Premeditated murder is punishable by imprisonment from fifteen to twenty-five years.

Murder committed for interest, revenge or blood feud is punishable by imprisonment of not less than twenty years or life imprisonment, as well as a fine from five hundred thousand ALL to three million ALL.

3.3.4. Article 79 Murder in other Qualifying Circumstances

(Amended by law no. 8733, dated 24.1.2001, article 11; letter "c" amended by law no. 9275, dated 16.9.2004, article 9)

Manslaughter committed:

- a) Towards minors;
- b) To the person with physical or mental deficiencies, seriously ill or pregnant, when the qualities of are visible or known to the victim;
- c) To the deputy, judge, prosecutor, lawyer, police, military, other public officials, during the duty or because of it, when the qualities of the victim are visible or known;
- d) To the accuser, the witness, the injured party or other litigants;
- e) More than once;
- f) Against two or more persons;
- g) In such a way that it causes special suffering to the victim;
- h) In a dangerous manner for the lives of many persons, shall be punished with imprisonment of not less than twenty years or life imprisonment.

3.3.5.. Article 80 Provision of Conditions and Material Means to Commit Murder

Shall be sentenced to imprisonment for up to five years.

3.3.6. Article 81 Killing the Baby

Killing the baby intentionally committed by the mother, immediately after birth, constitutes a criminal offense and is punishable by a fine or imprisonment of up to two years.

3.3.7. Article 82 Murder Committed in a State of Strong Mental Shock

Intentional murder committed in a state of momentary strong mental shock caused by violence or serious insult to the victim is punishable by imprisonment for up to eight years.

3.3.8. Article 83 Murder Committed by Crossing the Limits of the Necessary Protection

Murder committed in the conditions of crossing the limits of the necessary protection is punishable by imprisonment of up to seven years.

3.3.9. Article 85 Manslaughter

Manslaughter committed by negligence is punishable by a fine or imprisonment of up to five years. (Penal Code of the Republic of Albania, 2011)

3.4. The Criminal Code of the Republic of North Macedonia

3.4.1. Murder Article 123

1. Anyone who deprives another of life is punished with at least five years of imprisonment.
2. Anyone who:
 - a. Cruelly or treacherously deprives another of life,
 - b. Takes another person's life by committing domestic violence,
 - c. Takes the life of another and thereby endangers the life of another person with premeditation,
 - d. Deprives another of life for personal interests, for committing or covering up another crime, for merciless revenge, for hatred or for other low motives,
 - e. Deprives another of life by order,
 - f. Deprives another of life for the purpose of extracting an organ, tissue or cells for transplantation;
 - g. Deprives a woman of life, but being aware of her pregnancy or the fact that she is a minor and
 - h. Takes the life of a judge, public prosecutor or lawyer during the performance of the function, namely the duty or the official or military person, while they are exercising public or state security activities, or on duty to maintain public order, arrest the offender. of a crime, or custody of an arrested person.
3. With imprisonment of at least ten years or life imprisonment shall be punished the one who premeditatedly deprives the life of two or more persons, who have not been tried before, unless they are such offenses from article 9 paragraph (3) , article 10. paragraph (3) and articles 124, 125 and 127.

3.4.2. Murder for Noble Motives Article 124

Anyone who kills another for noble motives is sentenced to imprisonment from six months to five years.

3.4.3. Manslaughter Article 125

Anyone who causes the death of another person by committing manslaughter, brought against his will in a state of strong irritation by assault or by serious insults or as a result of domestic violence by the murdered person, shall be punished with imprisonment from one to in five years.

3.4.4. Manslaughter Article 126

Anyone who negligently causes the death of another person is sentenced to imprisonment from six months to five years.

3.4.5. Killing a Child at Birth Article 127

1. The mother who will cause the death of her child during birth or immediately after birth, in a state of mental disorder caused by birth, shall be sentenced to imprisonment from three months to three years.
2. The attempt is punishable.

3.4.6. Incitement to Suicide and Assistance in Suicide Article 128

1. Anyone who pushes another to commit suicide or assists another in committing suicide by being executed shall be sentenced to imprisonment from three months to three years
2. If the offense from paragraph 1 is committed against a minor who has reached the age of 14 or against a person who is in a significant state of reduced responsibility, the perpetrator is sentenced to imprisonment of one to ten years.
3. If the offense from paragraph 1 is committed against a minor who has not yet reached 14 years of age, or against an irresponsible person, the perpetrator will be punished according to Article 123.
4. Anyone who acts in a cruel and inhumane manner towards another person in a subordinate or dependent position and who, because of such action, commits suicide, which can be attributed to the negligence of the perpetrator, shall be sentenced to imprisonment of six months up to five years.
5. If due to the crimes from paragraphs 1 to 4, only suicide attempt was made, the court can punish the perpetrator of the criminal offense more lightly. (Criminal Code of the Republic of Macedonia, n.d.)

Homicide statistics in Kosovo from 2016 to August 2021

	Murders	Done
2016	Murder	14
	Aggravated murder	16
2017	Murder	12
	Aggravated murder	12
2018	Murder	22
	Aggravated murder	12
2019	Murder	7
	Aggravated murder	4
2020	Murder	12
	Aggravated murder	15
2021	Murder	7
	Aggravated murder	12

(Source: <https://lajmim.com/154-vrasje-ndodhen-per-me-pak-se-pese-vite-ne-kosove/>)

Statistics of murders in Albania from 2017 to 2021

Criminal acts	2017	2018	2019	2020	2021
Intentional homicide	50	51	58	52	61
Remaining attempted murders	129	114	93	114	101

(Source: <https://nacionale.com/drejttesi/ne-shqiperi-trefold-me-shume-vrasje-se-ne-kosove-keto-jane-statistikat-dhe-arsyet/>)

Statistics of murders in Macedonia

	2010	2011	2012	2013	2014	2015	2016
Murder	40	29	28	20	25	21	17

(Source: Portalb. (2017, November 9). Found at <https://portalb.mk/470772-maqedoni-shkupi-me-me-shume-vrasje-ne-6-vitet-e-fundit-statistika/>)

3.5. Comparative Analysis of the Criminal Offense of Murder.

The criminal legislations in the Albanian-speaking territories are as similar as they are different.

As for serious murder, which in the KPK of Kosovo in Article 173 is sanctioned with a prison sentence of at least 10 years up to life imprisonment, while in the Criminal Code of Albania in Article 78 for premeditated murder it is punished with imprisonment from 15-25 years, while when there are aggravating circumstances, imprisonment can be life imprisonment, while in the penal code of the Republic of North Macedonia, aggravated murder is punished with at least 10 years to life imprisonment.

Murder under mental influence is presented as a lighter form of the criminal offense, therefore, considering the strong mental shock it has caused to the author of the criminal offense, this offense in Kosovo is punished from 1-10 years, in Albania up to 8 years of imprisonment.

Manslaughter under Article 175 of the penal code of Kosovo is punishable by 6 months to 5 years of imprisonment. With the penal code of Albania, article 85, this murder is punishable by a fine or imprisonment of up to 5 years, while in the penal code of Macedonia, article 126 provides punishment from 6 months to 5 years.

Killing a baby during birth in Article 176 of the Criminal Code is punishable by 3 months to 3 years of imprisonment. The same criminal offense in Albania is punished with a fine or 2 years of imprisonment, while in Macedonia this same offense is punished with imprisonment from 3 months to 3 years.

Inducing suicide or assisting in suicide is also foreseen and sanctioned by law. Article 177 of the Criminal Code provides for imprisonment from 1 to 5 years, while if the person was a minor and has not reached the age of 14, then the perpetrator is punished with at least 5-25 years of imprisonment, while in the Republic of Macedonia in the code of its criminal law in article 128 paragraph 1 this offense is sanctioned with imprisonment from 3 months to 3 years.

Conclusion

In this paper, it is explained about the criminal offense of murder, which has been proven that the causes for which this criminal offense is committed are various. For the existence of this criminal offense, the time of committing the criminal offense, the place, the cause-motive, the method, the means used, the consequences must be proven.

When it comes to the means by which the criminal offense of murder is committed, it can be various, mechanical, weapons, poisons, electricity, vehicles, etc. The criminal offense of murder can be committed by action or inaction, with direct or eventual intention. The crime of murder can be committed by direct or indirect action. The direct method of killing is carried out when the victim is acted upon directly, while one of the indirect methods is when, for example, the victim a package or letter with explosives is sent to him, so that when he opens it, it explodes and kills the victim.

What I encountered during the realization of this work is that the criminal legislations of Kosovo, Albania and North Macedonia are very similar in terms of the level of punishments for the same criminal offences.

The study's findings might serve as a springboard for more comprehensive scientific research (Maloku, et al, 2022:173). The paper contributes to the existing scientific literature, especially in the field of criminology, moreover, it will reflect on the intention to undertake new research (Maloku, 2021:76) through which we would move to new indicators on the explanation and comparison of the criminal offense of murder in Kosovo, Albania and North Macedonia from a legal point of view.

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