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THE PHENOMENOLOGY AND ETIOLOGY OF CRIMINAL ACTS INVOLVING IMMIGRANT SMUGGLING IN KOSOVO

LA FENOMENOLOGÍA Y ETIOLOGÍA CRIMINAL EN LOS ACTOS QUE IMPLIQUEN INMIGRANTES DE CONTRABANDO EN KOSOVO

Dr. Azem Hajdari
Universidad Prishtina
azemh2002@yahoo.com.hk
Kosovo

RESUMEN

La situación globalizada de la migración afecta a muchos países pobres, la República de Kosovo no ha escapado a esta realidad. Otra tendencia general por la cual atraviesan los migrantes es el tráfico de personas, condición de la cual también han sufrido, y es un hecho que aunado a las diversas circunstancias de crisis políticas y de guerra, implica un gran reto el castigo o la prevención a este delito. Este es el objetivo del presente artículo, hacer una presentación y un análisis de diferentes elementos relacionando etiológica y fenomenológicamente el tratado de los crímenes involucrando el tráfico de migrantes.

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PALABRAS CLAVE: Kosovo, Corte, Actos criminales, Contrabando, Inmigrantes.

ABSTRACT

The globalized situation of the immigration affects a lot of poor countries; the Republic of Kosovo has not escape to this reality. Another general trend throughout immigration is the smuggling, condition they have also been suffering, fact that due to diverse circumstances such as political crisis and wars make a great challenge to punish or prevent this crime. This is the aim of this article, to make a presentation and an analysis of several elements relating to the phenomenological and etiological treatment of crimes involving smuggling of immigrants.

KEY WORDS: Kosovo, Court, Criminal acts, Smuggling, Immigrants.

INTRODUCTION

Smuggling of immigrants in modern society has reached disturbing levels. This criminal phenomenon is causing grave consequences. Smuggling of immigrants is determined, in particular, by economic factors. As a result, people from poorer countries tend to immigrate to more developed countries, and this situation is exploited mostly by persons who have a tendency to commit crimes and thus get involved in smuggling activities for financial benefits. However, smuggling of immigrants, in one way or another, is conditioned also by circumstances where there are aggravated political crises, including political conflicts, wars, etc. This criminal phenomenon, with all the consequences which it carries, is also present in Kosovo. Smuggling of immigrants, in fact, has become a mundane phenomenon that causes dissatisfaction amongst its citizens, especially the fact that its authors, in the majority of cases, either remain undiscovered, or are punished with minimum sentences. These criminal acts are greatly challenging and preventing the development of the rule of law. This article makes a presentation and an analysis of several elements relating to the phenomenological and etiological treatment of crimes involving smuggling of immigrants.

THE MEANING AND THE CONSTITUTING ELEMENTS OF CRIMINAL ACTS INVOLVING IMMIGRANT SMUGGLING IN KOSOVO

The Criminal Code of Kosovo considers the smuggling of immigrants as a serious offense. This Code lists such an offense in the group of criminal acts violating international law and has foreseen relatively severe penalties against it (Art. 138).

Crimes involving smuggling of immigrants, as a rule, imply the undertaking of illegal actions or inactions, through which a certain person is allowed entry into Kosovo, although he or she is not resident in the state of Kosovo, or, in the case of another country, a citizen or resident of that state. This criminal act is also accomplished through unlawful actions or inactions, which allow foreign nationals to remain in Kosovo without meeting the necessary legal requirements for such a stay. Furthermore, crimes with smuggling of immigrants, according to the provisions of the Criminal Code of Kosovo, are also accomplished through actions which involve the production, procurement, provision or possession of false travel and identification documents, which in turn facilitate the smuggling of immigrants. In all these

situations, in order for an act to be qualified as immigrant smuggling, the existence of the intent of perpetrators to directly or indirectly gain financially is required.

Crimes involving smuggling of immigrants consist of several elements called constitutive elements. In fact, these elements represent the specific elements - those which concoct the physiognomy or figure of certain offenses (Ismet, 2003, pp. 184-185). Such elements, which constitute the offenses involving smuggling of immigrants, include:

1. Element of action or inaction - This element is considered to be present in every case where the perpetrator takes actions, or abstains from taking actions, in order to enable the entry of a person (at a border crossing) into Kosovo, or another state, without meeting the necessary legal requirements for such an entry, or which enable foreign nationals to remain in Kosovo without them respecting the necessary legal requirements for such a stay (i.e. through false travel or identification documents). This element is also present in the case of production, procurement, provision or possession of false travel or identification documents, which facilitate the smuggling of immigrants.
2. Element of the means - This element is considered to be present in every case where the perpetrator produces, procures, provides or possesses false travel and identification documents in order to issue them to persons who are treated as immigrants (Azem, 2008, p. 142).
3. Mental element - This element is of a subjective nature. It involves the intent of the perpetrators to commit, through action or inaction, the two above-mentioned elements in order to facilitate immigrant smuggling. Another element of such a nature, without doubt, is also the element that relates to the intent of direct or indirect material gains through the realization of such crimes (Azem, 2008, p. 142).

Finally, the fulfillment of the intent of perpetrators through inhuman treatment and exploitation of immigrants should also be considered as an inseparable part of the mental element.

DIMENSIONS AND TERRITORIAL EXTENSION

In Kosovo, the issue of criminal smuggling of immigrants during the period 2004-2008 is still very current. This prevalence is determined by the fact that such criminal acts have recorded a relatively high occurrence during the preparation of this research. Thus, in 2005 in the Kosovo courts have reached a settlement for 12 cases, while in 2007 it bumped up to 16 cases, and in 2008 26 such cases were brought before the court. During the period between January 2004 and December 2008, a total of 67 cases of this nature were heard in the courts, or an average of 13.4 annually. 22 of them have been solved, while 45 cases remain in procedure. Out of the resolved cases, 19 have resulted in the conviction of 35 persons. These people were sentenced on average 1 year and 2 months with imprisonment. The criminal smuggling of immigrants, henceforth, will be treated on the basis of final verdicts.

The data provided here must be taken with reservation. This is because these types of criminal acts, for many reasons, always involve perpetrators and victims who remain undiscovered and untreated.

The data used show that the offenses of smuggling immigrants during the research period were present in all the regions of Kosovo. However, such data show that the perpetrators of these criminal acts, to the greatest extent, come from the Gjilan region, which leads with 13 perpetrators, then comes the region of Prishtina with 11, Mitrovica with 5, Peja with 4 and Prizren with 3 perpetrators.

Based on these data, it is evident that the number of criminal acts involving smuggling of immigrants during the period 2004-2008 is relatively high. This, in my opinion, comes as a result of the fact that the research period was full of problems of the socio-political and economic nature and of the functioning of the justice system in the country. Of course, another serious factor for the presence of this kind of crime rate in the country is the fact that Kosovo is a country with a large population of young people who have been facing the immigration problem for more than four decades. As a result, young people, being frustrated by the lack of prospects in the country due to unemployment and poverty, but also due to the fact that most of the Kosovo victims have many of their relatives living abroad, due to the lack or difficulty of legal ways to go abroad, have expressed willingness to realize their wishes through illegal channels of migration. Some of these circumstances, in my opinion, have determined the territorial extent of this type of criminality in the country. It is clear that in order to shed better light upon the factors that influenced the introduction of such criminal acts during this period requires a more detailed study, not only in terms of criminology, but also in the broader socio-political terms.

KOSOVO, A COUNTRY OF ORIGIN, TRANSIT AND DESTINATION FOR VICTIMS OF CRIMES WITH SMUGGLED IMMIGRANTS

The research period, which is characterized by the presence of a deep economic crisis, by a system which has shared powers that are exercised in a dysfunctional way, which continues to exist with many problems (the Interim Administration of the United Nations, the local institutions and the recently arrived EULEX Mission), by the lack of a properly functioning justice system, the great impact of the politics towards the creation of a “puppet” administration, the blackmailing of certain political figures and public administration heads, the placement of people in higher positions who are professionally unprepared to face the challenges that life brings in the three branches of power, etc., are just some of the factors that have created the suitable environment for the emergence of negative phenomena in Kosovo that involve criminal behavior of all kinds, including the criminal acts of immigrant smuggling (Azame, 2006, pp. 228-232).

These and other factors are considered as very appropriate, in terms of the phenomenon that is the subject of this article, to awarded Kosovo the status of a territory that favors smuggling of immigrants, be it in terms of origin from which a large number of victims and perpetrators originate, or in terms of transit and destination of smuggled victims.

The conclusion that Kosovo could be treated as a country of origin for the offenses involving smuggling of immigrants is based on the fact that during the research period the greatest number of perpetrators originated from Kosovo. The number of victims from Kosovo came second (with 27 such cases), because a considerable number of victims come from Albania (19 such), whereas in first place were victims coming from Turkey (32 such). That Kosovo has the attribute of a country of origin is best supported by the fact that during the last two decades, the

immigration of Kosovars in Western European countries, especially in Germany, Austria, Italy, France, England, Slovenia, etc., is estimated to be in the hundreds of thousands, most of who have used illegal channels to arrive in the preferred destinations.

Likewise, during the period 2004-2008, Kosovo is considered as a transit country for smuggled victims. This conclusion is based on the fact that 69 of 98 victims were caught by the border authorities in their attempt to abandon Kosovo and to escape to countries where their destination was. Kosovo, due to its geographical position and the lack of a properly consolidated justice system, but also due to problems in the security system at border checkpoints, throughout this period, has provided the appropriate ground for easy movement for those who have attempted to cross its borders.

In the end, it is considered that Kosovo, in one way or another represents a favorite destination for a certain number of victims. Statistical data used show that 13% of victims who entered Kosovo continued to stay there for several years until today. It is also a fact that, among these victims, there were those who were waiting for the first opportunity to be transferred to any of the Western European countries or beyond. The fact that Kosovo was and continues to be a favorite destination for some of the smuggled victims, is a result of the international presence here, which directly or indirectly influenced this criminal phenomenon. This can be explained by the fact that many of the victims were convinced of employment opportunities or the creation of ties with internationals, who would then be used to migrate to Western European countries, but also because of employment opportunities within the UN Administration.

FORMS OF EXPLOITING SMUGGLED VICTIMS

A victim of a criminal offense is considered a person who is harmed or threatened by criminal actions, or whose rights and interests have been violated by a criminal act (Salihu, p. 190). As a result, the victim of a criminal action involving the smuggling of immigrants is considered a person who, through actions or inactions which concoct the figure of such a criminal offense, has suffered consequences from certain criminal actions. Such consequences include the threatening or the violation of personal rights, freedoms, health and life of the immigrant. Victims have been subject to various deceitful actions. They were transferred from one country to another in different ways. Some of these ways have seriously endangered their safety and their lives. Victims, quite often, were subject to inhuman or humiliating treatment.

The results of this article show that some of the victims of criminal acts involving smuggling of immigrants were exploited in different forms. Verdicts from Kosovo district courts show that perpetrators of these criminal acts have, among other things, used the victims only for their money and other valuable items. These results show that in most of these cases, the smuggled victims had their cash and other valuable items stolen (13 such cases).

THE WAYS OF CARRYING OUT IMMIGRANT SMUGGLING

The data used show that the offenses involving smuggling of immigrants in Kosovo were committed by individual perpetrators, as well as group perpetrators, either structured or unstructured in the form of criminal organizations. As such, out of 22 cases that have been resolved in the courts, 14 cases were carried out by perpetrators

in collaboration with others, whereas only 8 cases were committed by individual perpetrators .

The criminal smuggling of immigrants in Kosovo, with respect to group perpetrators, in most cases is explained by the fact that this type of criminal act, in one way or another, belongs to the so-called complex criminality, because cooperation, in executing such a crime, is presented as an element not only of necessity but of essential importance. This facilitates the carrying out of these criminal acts because the perpetrators have divided the roles and operate in a system. This system functions in a manner that such criminal organizations, as a rule, are composed of a "Boss", the liaison persons in every country where victims go through, and persons who receive the victims, and so on, until the intent of getting the victim to the designated destination is achieved.

The sources used show that the perpetrators of such criminal acts, used various methods of persuading the victims. In this regard, the most dominant are deceit, promises for a quick and comfortable trip to Western European countries of their choice, and other forms of persuasion (advertising a prosperous and luxurious life in those countries and so on). In order to accomplish their criminal intents, the perpetrators established direct contacts with the victims, but also developed contacts with the victims' relatives, utilized neighborly and next of kin ties, etc.

It is considered that recognizing the manner of carrying out the criminal smuggling of immigrants and methods that perpetrators use to implement the recruitment of victims of these criminal acts is of great importance, as it facilitates the efforts of finding more effective measures for combating this criminal phenomenon, particularly in preventing it, while also averting the causes that determine its occurrence.

MEANS OF EXECUTION AND METHODS USED

The sources used confirm the fact that the perpetrators, while carrying out the criminal smuggling of immigrants, used different means and methods to execute their plans. Thus, as means of implementation they use all means of road transport (cars, buses, trucks, etc.), airplanes and trains. Depending on the means used, certain roads in Kosovo were also used to provide exit and entry of victims in Kosovo. Thus, about 66% of the cases used vehicle routes, rail roads and other ground paths, while 34% air routes. When talking about the ground routes, it is important to note that this includes the roads connecting Kosovo to all its surrounding neighbors, namely Serbia, Macedonia, Montenegro and Albania. Some such borders points were controlled and others not. Mainly the victims who did not have travel documents entered Kosovo through unchecked points, but those who had travel documents, be they authentic or false, entered Kosovo through controlled border point. The information that a relatively large number of victims entered Kosovo by airplanes can be explained by the fact that Kosovo currently has no visa regime for citizens of other states. On the other hand, the information that entry into Kosovo was achieved through its borders with Macedonia, Serbia, Albania and Montenegro can be explained by the rough geographical position that Kosovo has in relation to the countries in question, which often favors illegal crossings. In the end, it is worth emphasizing the fact that smugglers used the same means of transport while smuggling, or attempting to smuggle, the victims out of Kosovo, as they did coming in. Whereas concerning the

roads used, depending on the country of destination, in most cases the path was different from the point of entry (Azem, p. 165).

SOME PERSONAL CHARACTERISTICS OF PERPETRATORS AND OF VICTIMS

Crimes involving the smuggling of immigrants would be best and comprehensively explained only when the fundamental personal characteristics of perpetrators and of victims, among other things, are studied. Therefore, the next part of this article will deal with some of these characteristics.

AGE

Age is a significant feature of the criminal phenomenon that has a particular weight in explaining the criminal behavior (Ragip, 2000, p. 120). The data used show that the perpetrators and victims of criminal acts involving smuggling of immigrants in Kosovo belong to different age groups. The results of this article prove that the perpetrators of such acts, in most cases, were adults. "Thus, according to data used, out of the 36 perpetrators of smuggling immigrants that have been studied, 28 of them were aged from 18-40 years. The data, during the research, showed that the victims of such criminal acts were also people of different ages but the prevailing age was between 18 to 40 years. Thus, out of 98 victims identified from the final court verdicts, 47 of them belonging to this age group. The reason why the largest number of perpetrators and victims belong to the younger generations must be considered within the context of the difficult economic circumstances and the general lack of perspective in which such persons find themselves. This participation must undoubtedly be related to the fact that it is the dominant part of the general population of Kosovo.

GENDER

The gender, similar to age, presents an important feature of the criminal phenomenon, which plays a role in the treatment of criminal behavior (Azem, 2002, p. 155). The data used show that the perpetrators of criminal smuggling of immigrants are mostly men. Thus, according to the data, out of these 36 perpetrators who have been studied, 35 of them are men, while only one was a woman.

The phenomenon, that mostly men are involved in carrying out these criminal acts, can be explained by the fact that they, in the Kosovo society, are expected to provide for the family. This sometimes results in men putting themselves in situations where they commit criminal acts.

The data used show that the victims of these criminal acts also belong to both genders. Here too, in relation to gender, the male victims are the dominant group. Thus, out of 98 victims, 79 were men and 19 were women.

The fact why there are more men as victims of such criminal acts must be considered in connection with the mentality that prevails in the society where the victims come from. This concerns mainly the mentalities where men are still considered as the pillar of the family. They carry the responsibility of ensuring the existence of their family, and thus have the burden to cope with difficulties, even to the extent of becoming a victim of such criminal acts.

LEVEL OF EDUCATION

The low level of education is considered to be an important factor that has influenced the phenomenon of criminal smuggling of immigrants. Thus, according to the data used, the perpetrators, especially the victims of these criminal acts, to the greatest extent were persons with low levels of education. Thus, out of the 36 perpetrators who were studied, 21 of them had completed only a few years of primary school, while 14 of them had only finished high school. The almost exact situation is also manifested in relation to the victims. Thus, out of 98 identified victims, 53 of them had completed only a few years of primary school, or had finished primary school in general, while 38 of them had completed high school. Only 7 victims had a higher education". These circumstances demonstrate that the educational level, intertwined with other causes, has been one of the most important factors to have an affect on the criminal acts committed.

SOCIAL STRATA

The results of this paper prove that the perpetrators and victims involved in criminal acts of smuggling immigrants belong to different socio-economic strata of the society. Thus, according to the data used, out of 36 perpetrators that have been studied, 19 of them came from the layers of the population with poor economic conditions. Likewise, out of 98 victims identified, 66 of them came from families with poor living conditions. However, the results showed that among the perpetrators and victims there were also those that had average or high living standards. These facts show that the economic and social circumstances were one of the main factors that determined the presence of these kinds of criminal acts. Therefore, since there is still a large disparity between the needs and the capacities to meet them, such as the need for better material status, the need for employment, education and other needs which can not always be fulfilled due the certain pace of development in Kosovo and of other countries from whence the perpetrators, and especially the victims, come from, causes the favorization of certain acts, among others, that of immigrant smuggling.

NATIONALITY

The nationality of the perpetrators and of the victims is an element of the criminal phenomenon that plays a special role in the treatment of certain criminal acts. The results of this article show that perpetrators and victims of criminal acts involving smuggling of immigrants belong to different national groups (Azem, p. 180). Thus, according to the data used, out of 36 studied perpetrators, 31 of them were Albanian, 3 Serbian and 2 others. Also, even among the victims, the Albanians dominated in numbers. Thus, out of 98 victims, 46 were Albanian, 32 Turks, 11 Chinese and 9 others. These data show that the perpetrators were mainly Kosovo Albanian, but who, faced with a harsh economic crisis, got frequently involved in situations where the performed this type of criminality. In fact, as will be seen below, since this type of criminal activity was occurring very frequently, performed by many perpetrators (carried out in the form of cooperation), in a structured or non-structured criminal organization, it is expected that local groups of perpetrators dominate in their country. They do not allow others from other countries taking charge of the criminal actions that bring huge profits. Naturally, they develop various forms of cooperation also with

perpetrators from other countries, since they are bound by the victim, who has been transferred from one country to another.

THE ETIOLOGY OF CRIMES WITH SMUGGLED IMMIGRANTS

The presence of criminal immigrant smuggling is influenced by multiple special and general factors. However, the following may be considered as determining factors of the occurrence of such criminal acts in Kosovo during the period of this research:

1. Economic crisis and depressions;
2. Socio-political circumstances;
3. Failure to implement existing legislation;
4. Lack of a complete legal infrastructure;
5. The functioning of State bodies;
6. The opening of borders and their poor management; and
7. Lack of experience and of professional qualification among persons authorized to combat crime.

ECONOMIC CRISIS AND DEPRESSIONS

Economic Crisis and Depressions, as a socio-economic factor, in most cases, represent circumstances that favor the occurrence of crime in a society. In fact, "it is a known and proven fact that where there is economic crisis and other problems of this nature criminality emerges in high levels" (Jani, 2000, p. 76). In such states, it is easy to find the appropriate space for appearance and promotion of numerous criminal acts (Pavicevic, 1991, p. 76), including crimes involving immigrant smuggling.

That the economic crisis exercises influence on the presence of crime in a society, this is best illustrated by the process of transformation through which socialist bloc countries have gone through. In almost every one of those countries, faced with the difficult period of transformation, each observed a tendency of increased criminal behaviors (Azem, 2006, p. 224) which included offenses of smuggled immigrants. The same situation is reflected in Kosovo as well, which is demonstrated by the results of this article.

While conducting the research on the emergence of crimes with smuggling immigrants, it was found that the greatest number of victims and perpetrators had a difficult economic situation. Thus, out of the 36 studied perpetrators, 19 of them had a poor economic situation. On the other hand, from 98 victims identified 66 of them came from families with difficult economic status. The sources used demonstrate that all the perpetrators and victims of these criminal acts come from countries that have problems of economic nature, in which the level of unemployment is very high. Such is the situation also in Kosovo (where it is estimated that more than half of the population lives in poverty, and about 18% of them in extreme poverty) (Azem, 2006, p. 224), then comes Albania, Turkey, China, etc. Consequently, the economic crisis, which causes hard social conditions in a country, is rightfully considered as a factor that directly or indirectly affects the presence of criminal smuggling of immigrants.

SOCIO-POLITICAL CIRCUMSTANCES

The socio-political circumstances present a general factor which, alongside the economic crisis, exerts favorable influence on the emergence of crime in a society.

As it is known, socio-political circumstances are deteriorated especially in time of wars and conflicts that may appear in a certain society or region. This is illustrated by the cases of war which took place among the countries of former Yugoslavia, but also in the riots of 1997 that occurred in Albania. In all these countries, criminality in general increased to mind-blowing proportions, including the offenses of smuggling immigrants (Azem, 2008, p. 134).

In Kosovo, the socio-political circumstances which prevailed before, during and after the war caused a deep social and economic crisis, which created the suitable grounds for the emergence of numerous factors that favor the presence of crimes. Consequently, the crime factors in Kosovo, during the period of the research, are considered to have found the proper ground for crimes to flourish. This is a result of the fact that the socio-political situation, for several consecutive years, has continued to be unstable (given also the situation in the north of the country), the administration of the state continues to operate with no less problems (especially the criminal justice system), the professional capacity of the civil service in Kosovo is still insufficient, the government system is accompanied by shortcomings in the exercise of power and problems, and the level of economic development continues to be weak, thus causing massive unemployment. To illustrate the fact of the impact that socio-political circumstances have in the presence of crime, including crimes of smuggling immigrants, it suffices to follow the number of criminal cases that have been brought before the courts in Kosovo. Thus, only the District Court of Prishtina between 2006 and 2007 has processed 1773 cases, which constitute a threefold increase in the number of cases this court has accepted job in the not too distant past. Regarding the crimes of smuggling immigrants, the year 2008 marks an increase of approximately 60% compared to previous years of the research period.

FAILURE TO IMPLEMENT EXISTING LEGISLATION

Failure to implement the legislation in force, especially in matters related to combating crime rate, is another factor which specifically influences the presence of criminal acts involving smuggling of immigrants.

The functioning of a justice system, as is known, is ensured through the provision of laws and other necessary legal acts. In this regard, the role of the judges, prosecutors and police officers is greatly valued. They have direct responsibility for the preservation of individual and social values protected by legislation. Thus, favorable conditions for the criminal smuggling of immigrants are created when the adequate legal measures are not taken by law enforcement institutions against all those who have committed criminal acts of this nature.

As is known, the system of justice, for several years in now, continues to be an object of criticism by the main actors of international politics. In this regard, it suffices to mention the document containing the 13 requirements of the Contact Group, which was submitted to the institutions of Kosovo in June 2006. This document contains the harsh criticism addressed towards the ineffective justice bodies in resolving criminal cases of different natures. Of the same nature is the OSCE report on the legal analysis of cases involving human trafficking in Kosovo (Azem, p. 135).

These criticisms, and the large number of unresolved criminal cases that continue to be transferred from one year to another, must be resolved by Kosovo institutions by increasing their commitment towards providing all available support to the courts, so that they may adequately and qualitatively exercise the powers they were entrusted. Consequently, the justice system, parallel to their responsibility towards its citizens of Kosovo to guarantee the rule of law and justice, they must also take all legal measures to guarantee the presence of state authority and the enforcement of the local legislation in the entire territory of Kosovo. Otherwise, the general current situation, is favoring the performance of crimes involving smuggling of immigrants. The fact that a considerable number of victims are smuggled through the borders in the north of Kosovo, which has been and continues to be outside the control of Kosovo and international institutions, demonstrates the imperative need of having control in the entire territory.

LACK OF A COMPREHENSIVE LEGAL INFRASTRUCTURE

A complete legal infrastructure, by which a state regulates social relations, including issues related to crime, is generally treated as a significant factor in preventing crime.

It should be emphasized that post war Kosovo marked notable results in terms of preparing the legal infrastructure necessary to combat crime. In this respect it is also worth mentioning the adoption of the Criminal Code of Kosovo, the Code of Criminal Procedure, Law on Execution of Criminal Sanctions, Criminal Code for Minors, the Law against Corruption, etc. However, despite this, in order to successfully fight the crimes involving smuggled immigrants, it is necessary to review the Criminal Code of Kosovo and to rewrite certain provisions that deal with these criminal acts. It is also of immediate importance to work on the adoption of a law, which would competently regulate the modalities of foreigners' stay in Kosovo, especially their employment here. This is necessary based on the fact that foreigners in Kosovo, in principle, do not have restrictions which they usually face in other countries in terms of their stay and employment in foreign countries. The fact that their stay and employment in Kosovo is currently unregulated has hampered the rate of identification of victims of smuggled immigrants and of perpetrators committing such criminal acts (Azem, pp. 147-148).

In this regards, it can be empirically argued that countries which have problems extending their legislative authority to cover the whole country (with adequate legislation), they are faced with a high presence of crimes. In fact, the lack of a comprehensive legal basis, without doubt, is treated as a favorable factor for the occurrence of crimes in general and crimes involving smuggling of immigrants in particular.

ACTIVITIES OF STATE BODIES

As a factor that exerts a special influence in the reduction or increase of crimes with smuggled immigrants is also the involvement, or lack thereof, of the police, prosecution and courts in the discovery, pursuit, arrest and punishment of the perpetrators.

The current prevailing opinion is that this influential factor is favoring the carrying out of criminal smuggling of immigrants, as a result of the weakness portrayed by the police activities in the process of discovering such criminal acts and in the process of discovering, pursuing and arresting their perpetrators. Since the

ways of conducting the criminal acts of smuggling immigrants have become more sophisticated, it is undisputable that in combating them the police require a high level of professionalism and modern technology. The Kosovo Police, with all its positive advancements recently shown in this respect, still does not have the needed capacity to cope with the challenges that it faces, especially in the field. In such conditions, it is logical to conclude that it is currently difficult for this institution to be expected to achieve the desired results on issues related to discovering and combating crime in general, including the crimes involving smuggling of immigrants. Consequently, the fact remains that an increased presence of international police is a necessary commitment, which is now part of the EULEX Mission in Kosovo.

Furthermore, the favorable conditions of conducting criminal acts involving smuggling of immigrants are also a result of the weaknesses currently observed in the functioning of the public prosecutors, especially of those prosecutor's offices that have demonstrated delays in the investigations, provided dubious and incomplete evidence and so on.

Favorable conditions for the presence of crimes with smuggled immigrants have come, without a doubt, as a result of certain weaknesses which have appeared in the courts. These weaknesses are mainly apparent when processing criminal cases which result in highly questionable verdicts that are justified under the pretext that there is insufficient evidence to prove the prosecution's claims, thus awarding the perpetrators soft sentences for committing these criminal acts, without compelling reasons.

Clearly, favorable conditions for committing criminal acts involving smuggling of immigrants can also be provided by the weaknesses found in the correctional institutions. Such weaknesses can be of different nature, but in the context of the issue raised, the main ones should be related to the development of a social reintegration process for persons who suffer punishment for committing criminal acts of this kind.

Finally, I believe that the circumstance which mostly favors the carrying out of crimes involving smuggled immigrants, in relation to the justice system, is the interaction, in any possible way, (such as corruption) of the employees of this system with criminals or organized criminal groups.

THE OPENING OF BORDERS AND THEIR IMPROPER MANAGEMENT

Generally viewed, the opening of borders represents a very important step which strongly influences the trends of economic, social, cultural and scientific development in a modern society. This contributes to the free and fast movement of people, capital, and of non-material values, thus enabling a variety of things to be available for everyone, regardless of which corner of the world they live in (Azem, p. 137-138).

However, despite the fact that the opening of borders represents an important step vital for mankind today, it is worth noting that in connection with the circulation of values, which today is made possible by opening of borders, there are a considerable number of problems which, in one way or another, favor the occurrence of crimes in general, and criminal acts of smuggled immigrants in particular. The problems related to this issue are numerous and diverse, but among the most important are: the lack of appropriate measures which will enable effective management of the borders; the lack, in many cases, of professionalism in properly managing the matters of customs and the issues of corruption in the ranks of their employees. Such problems continue to be present in Kosovo. They have opened way for suspicious persons to enter Kosovo

without any hindrance. This fact is proven by data provided by the Kosovo Police Service, which state that a considerable number of victims and perpetrators have entered Kosovo through border checkpoints, checked or unchecked, with or without travel documents. According to these data, about 25% of victims are estimated to have entered Kosovo unchecked, which confirms the fact of improper management of state borders.

Nevertheless, such problems should not serve as signals for undertaking drastic measures that would limit the opportunities of free movement of persons and of values, however, such problems must be taken as a clear message that measures should be taken which would result in the elimination of negative phenomena favoring the execution of these criminal acts, even more so today, when this criminal phenomenon is expanding at an enormous pace.

LACK OF PROFESSIONAL EXPERIENCE AND THE INABILITY OF AUTHORIZED PERSONS TO COMBAT CRIME

The experience and professional preparation of individuals, in general, is an important factor for achieving the goals that are conditioned with the exercise of certain activities. In this regard, the possession of appropriate professional skills, together with relevant experience of persons employed in the authorized institutions which are entrusted with the task of combating crime, is a key factor in reducing the number of criminal acts involving immigrant smuggling.

As such, the lack of relevant experience together with lack of professional skills of authorized persons to fight crime is not only a favorable factor for criminal smuggling of immigrants, but also a source of a range of other problems related to the exercise of duties within the institutions which are entrusted with the management of justice in the country.

In the current circumstances, it can be stated that the management in the institutions of justice in Kosovo has achieved evident success in setting standards for both these issues. However, it is obvious that the results achieved may not yet be assessed as satisfactory, because the fact still remains that there is a relatively high number of crimes committed, especially those with high risk, including the crimes of smuggling immigrants, which to a large extent remain undiscovered, and a large number of criminal cases that have for years been waiting for court processing. Furthermore, this is also illustrated by the fact that all complex cases are, to this day, are selected and handled by international judges. In my opinion, when it comes to lack of experience and professionalism, part of the problem is that not enough has been to send officials to trainings and seminars outside the country that treat the modalities of application of the Criminal Code, the Code of Criminal Procedure, and so on. This concerns also the law enforcement authorities in charge of combating criminal acts of smuggling immigrants.

The Kosovo Police Service, as is generally known, was created in a time of emergency, where the majority of its officers, including the ones who now hold key positions in this service, were employed on the basis of attendance of a course which lasted a couple of weeks. Under normal circumstances, such a force does not offer any guarantee for efficiency and professionalism in exercising their duties and responsibilities of combating crime. Likewise, the appointed prosecutors and judges are the ones who have exercised such responsibilities in a system which has withered away. This even includes certain judges and prosecutors who sentenced to years in

prison intellectuals, students, and others who fought for freedoms and national rights. This is not to say that this category of people cannot contribute to building a sustainable system of justice in the country. However, in the current circumstances, it is essential that they participate in a process of trainings and professional rehabilitation before they are entrusted with duties and responsibilities again. This process would not only advance and prepare them to face current professional challenges, but would also disconnect from the mentality of the past. In this regard, there is a need to send more officials and other authorized persons to attend relevant professional schools in the western countries of Europe and of the world (Azem, pp. 137-138).

Consequently, equipping them with the appropriate experience and helping them increase the level of professional preparation, constitutes the most important factor in reducing the level of criminality, including criminal acts with smuggled immigrants.

CONCLUSION

Crimes involving the smuggling of immigrants over the period 2004-2008 have recorded a relatively high presence in Kosovo. The data used during the research show that 67 criminal cases related to criminal acts involving immigrant smuggling have been brought before the courts. Out of this number, 22 cases have been finalized with the conviction of 36 persons. However, the number of victims is much higher, which, according to data released by the final verdicts, reaches the figure of 98 persons. Nevertheless, this data should be taken with great reservation, given the fact that a number of perpetrators and victims, for many reasons, remain undiscovered and unidentified by the authorities.

The presence of these criminal acts has been affected by numerous general and specific factors. Among such factors, the most notable are the economic and socio-political circumstances, lack of a complete legal basis, failure to implement current legislation, the opening of borders without adequate management, lack of experience and professionalism in the activities of state institutions, and so on. The criminal acts mentioned here have caused grave consequences for the victims, their families and the society as a whole. Such consequences, in most cases, are of social nature, but they cause the victims psychological and other consequences as well.

The data used show that the perpetrators and the victims mainly came from groups belonging to younger generations. Thus, 28 out of 36 perpetrators were 18-40 years of age. With respect to the victims, 47 out of 98 of them were 18-40 years of age. Further, based on the results of this article, 19 of the 36 perpetrators belonged to levels of the population with poor economic conditions. On the other hand, 66 out of the 98 victims came from families with very poor economic conditions. These data argue the impact that the economy and education have had on the occurrence of these crimes, without excluding the effects of other factors as well.

The results of this article have led to the conclusion that Kosovo continues to provide, for several years to come, a suitable ground that would attribute it a country of origin of immigrant smuggling (about 55% of the population of Kosovo is under 25 years of age, and most of them live in this dream of immigration, since they find no future perspective in Kosovo), a country of transit (given its appropriate geographical position and the dysfunctional justice system) and a country of destination (there is

still an international administration present, which, for many reasons, continues to appeal the victims).

Finally, in order to wage an effective combat against these kinds of criminal acts, it is necessary to ensure a continued commitment from all institutions authorized to fight crime, to have them equipped with the modern technical devices, and encouraging cooperation among all professional teams at all levels.

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