

# The Criminal Legal Framework for Drug Trafficking in Kosovo: A Comparative Analysis with Albania, North Macedonia and Montenegro

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**Abstract:** *The rising number of drug users in Kosovo and worldwide underscores the growing prevalence of narcocriminality in contemporary society. This is a concerning fact, as the increase of such negative phenomena threatens the economy, the security of various countries, and the health and lives of certain groups of citizens, particularly young people and children. The number of narcotics victims is rising daily, with many coming from these vulnerable groups. National legislators in Kosovo and neighboring states, including Albania, North Macedonia, and Montenegro, have addressed and sanctioned this criminal activity through legal frameworks, forming the focus of this study. To have a better picture on the regulation of drug trafficking, done in these Balkan peninsula countries, a professional analysis, comparison and legal interpretation has been done. The author of this paper before and during the comparison, has taken into account the specifics of these Balkan states, which of course have influenced the finding of differences on one side and also similarities in regulating drug trafficking on the other. Their specifics lie in the fact that Kosovo, which emerged as a state from the former Yugoslavia, was under UN administration from 1999 until it declared independence in 2008. As a result, its penal legislation was influenced by the laws of Western European countries during its development. On the other hand, Albania, as a state that during the second half of the last century had suffered from communist dictatorship, of course, in the first decades of this century it has put out of use legislation of communist nature by adopting new pro-European legislation. While North Macedonia and Montenegro, as successor states of the former Yugoslavia, have largely maintained the legal framework of the former state, regulating drug trafficking in a manner similar to previous laws.*

**Keywords:** Drug trafficking, criminal law, Kosovo, Western Balkans, narcotics

## 1. Introduction

This paper focuses on the phenomenon of drug trafficking, a criminal activity encompassing the purchase, cultivation, production, possession, transportation, import, and export of narcotics, for the purpose of offering for sale, mediation or unauthorized sale of them. This phenomenon has an extremely close connection to the phenomenon of drug addiction, each supporting and sustaining the other's existence and mutual growth.

Unfortunately, their growth has become a significant concern both globally and nationally in the 21st century. Drug trafficking has become one of the most lucrative forms of organized crime in today's world, resulting in a significant increase in the number of drug addicts.

According to the United Nations Office for Drugs and Crime (UNODC), in 2022, nearly 292 million people aged between 15 and 64 worldwide have used some type of illegal narcotic substance (in the last 12 months), compared to 2011, when there were 240 million. This is an increase of 21.6%.<sup>1</sup> While in Kosovo, it is estimated that approximately 40,000 people are drug users, with growing concern over the steady increase in this number, particularly among children under 18.

The volume and dynamics of the growth of these two phenomena, as well as the dangers posed on the one hand by drug trafficking for the security and economy of society and the phenomenon of drug addiction on the other hand for the life and health of children and young people, have been

determinative of addressing of this problem in this study. In order to prevent and combat drug trafficking, both Kosovo and regional states such as Albania, North Macedonia and Montenegro have defined various criminal offences of narcotics into their criminal codes, as well as have foreseen various criminal sanctions for their offenders.

The comparison and interpretation of narcotics offences in the criminal codes of these States will be done in this paper, with the aim of finding and highlighting the differences and similarities between them.

## 2. Criminal Offenses with Narcotics in the Criminal Code of Kosovo (the CCK)

The CCK<sup>2</sup> addresses narcotics-related criminal offenses in a dedicated chapter, Chapter XXIII is titled 'Criminal Offences of Narcotics.' This chapter outlines and defines the actions through which persons commit criminal offences related to narcotics.

There is no doubt that one of the most widespread offenses of this nature is the 'Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues', which is defined in paragraph 1 of Article 267 of the CCK, according to which a person commits such criminal offence when without authorization buys or possesses for the purpose of sale or distribution, or offers for sale substances or preparations which have been declared by law as narcotics, psychotropic substances or analogue substances. For committing such a criminal offense, the CCK

<sup>1</sup> UNODC: *World Drug Report 2024, Key Findings and Conclusions*, pg. 44

<sup>2</sup> The Criminal Code of the Republic of Kosovo (CCK) entered into force on 14 January 2019.

determines the possibility of a fine and imprisonment from two (2) to eight (8) years.<sup>3</sup> It means that, only 'buying and possessing narcotics' despite the fact that it may be with 'purposes of sale or distribution' is less punishable (2-8 years imprisonment). Whereas the act by which without authorization distributes, sells, transports, delivers, intermediates, sends or transits substances or preparations which have been declared by law as narcotics, psychotropic substances or analogue substances, for the purpose of distribution, sale or offering for sale, shall be punishable by a fine and imprisonment of two (2) to twelve (12) years.

Another issue related to narcotics regulated by the CCK is the introduction and extraction without authorization across state borders. Thus, according to paragraph 3 of Article 267, this criminal offence is committed by a person who without authorization imports or exports substances or preparations which have been declared by law as narcotics.

Another act that constitutes a criminal offence of narcotics is their production and processing. Paragraph 1 of Article 268 of the CCK foresees that the criminal offence named as 'Unauthorized production and processing of narcotic drugs, psychotropic substances, analogues or narcotic drug paraphernalia, equipment or materials' is committed by a person who without authorization produces, cultivates, processes, extracts or prepares substances or preparations that have been declared as narcotics or psychotropic substances.<sup>4</sup>

The Kosovar legislator also defined as a criminal offence with narcotics the 'Unauthorized possession of narcotic drugs, psychotropic substances or analogues' (Article 269 of the CCK). Such an act is committed in cases where the person only possesses the narcotic substance, without having any other purposes related to it. The punishment for perpetrator committing this offense is the most lenient, involving a fine and imprisonment ranging from one (1) to three (3) years.<sup>5</sup> Whereas in cases where the perpetrator of this criminal act commits such an offense for the first time and possesses less than three (3) grams of narcotic substances, then he may be punished with a fine or imprisonment of up to one (1) year.<sup>6</sup>

Another narcotics criminal offense may be committed by persons who intoxicate other persons with narcotic or analogous substances without their knowledge (Article 270 of the CCK).<sup>7</sup> According to the provisions of the CCK, the highest (maximum) penalty that can be imposed on the offender of any of the narcotic offences is a sentence of 15 years imprisonment.

The punishment foreseen in paragraph 2 of Article 273 applies to offenders who organize, direct, or finance offenses under Chapter XXIII, in cases where involving significant amounts of narcotics or psychotropic substances.

Another characteristic of narcotic offences is that they can be committed even in aggravated circumstances, as a result of

which the criminals may be imposed higher sentences. Article 275 of CCK decisively defines these aggravating circumstances during the commission of criminal offences with narcotics: (1) the perpetrator acts as a member of the group; (2) the perpetrator is an official who misuses their position or authority; (3) the perpetrator uses or threatens to use violence or weapons; (4) the offense is carried out by inflicting harm or by exploiting the vulnerable victim; (5) shipment, cargo, container or vehicle planned for a humanitarian operation is used for the illicit transport of narcotics, psychotropic substances or analogue substances; (6) the person has mixed narcotic substances, psychotropic substances or analogous substances with other substances which increase the risk to health; (7) the offence is committed within the perimeter of three hundred fifty (350) meters from the school or other environment used by children; (8) the criminal offense is committed within the correctional institution; and (9) criminal offences include large quantities of narcotics, psychotropic substances or analogous substances. The offender of the criminal offense under the aforementioned aggravating circumstances may be punished with a fine and imprisonment of three (3) to fifteen (15) years.<sup>8</sup> According to the provisions of the CCK, it is determined that in cases of the committing of the aforementioned criminal offences, narcotic substances must be confiscated.

The issue of narcotics in Kosovo, except with the CCK, is also regulated by the Law on Narcotic Drugs, Psychotropic and Precursor Substances.<sup>9</sup>

### 3. Comparative Analysis of the Legal Framework for Drug Trafficking in Kosovo with some of the Western Balkans countries

Drug addicting and drug trafficking as phenomenon are present in all contemporary states, including those in the Western Balkans. Given that these sociopathological and criminal activities harm public health and pose risks to the economy and security of affected states, each state, through its legal provisions, aims to prevent and combat such criminal activities. The primary purpose of the legal provisions by which the criminal offenses of narcotics are defined is the prevention of such offences, as well as the prosecution and punishment of their perpetrators

Through such incriminations, it is intended to protect citizens, particularly by preventing young people from possessing and using narcotics, thereby protecting them from the severe health consequences caused by narcotics misuse. Provisions of such nature are also found in the penal legislation of the countries of the region starting from Albania, North Macedonia, Montenegro etc.

Each national legislation has its own specific approach to combating narcotics-related offenses. To create a

<sup>3</sup> Article 267 of the CCK.

<sup>4</sup> Ibid, Article 268

<sup>5</sup> Ibid, Article 269

<sup>6</sup> Rahman Sylejmani (2016): Youth Categories and Drugs in Kosovo (2001-2014); European Journal of Multidisciplinary Studies, Vol.1.no.2, April 2016, pg. 213

<sup>7</sup> Ibid, Article 270.

<sup>8</sup> Ibid, Article 275.

<sup>9</sup> The Law on Narcotic Drugs, Psychotropic and Precursor Substances; Law of Kosovo No. 02/L-128.

comprehensive view of this issue, an analysis of the provisions of the countries of the region will be conducted by comparing with those of Kosovo. This comparison will aim to highlight both the similarities and the differences in their legal frameworks.

### 3.1 Legal Framework on Narcotics Trafficking in Albania and its Comparison with the Criminal Code of Kosovo

Democratic changes of the 1990s in Albania resulted in the widespread of social problems such as crime, drugs, prostitution, etc. In Albania, since this period, the legislator has approved numerous amendments, with the aim of creating the most advanced legislation for the prevention and combating of criminality in general and that related to narcotics in particular.

Thus, in the Criminal Code of Albania (CCA),<sup>10</sup> the articles that deal with the problems of cultivation, production and promotion for the sale of narcotic substances and the drug problem have been of special interest. Article 283 of the CCA clearly states the responsibility of the individual involved in the preparation, distribution and sale of narcotics. Similarly, Article 284 of this code deals with the problem of cultivating narcotic plants.<sup>11</sup>

Undoubtedly, the 2001 amendments to the CCA have introduced significant changes in the criminalization of narcotics-related offenses, and that currently these criminal offenses should be distinguished among others: Manufacturing and selling narcotics (Article 283 of the CCA); Traffic of narcotics (Article 283/a of the CCA); Facilitating the drugs intake and use (Article 283/b of the CCA); Cultivating narcotic plants (Article 284 of the CCA); Organizing and leading criminal organizations (related to narcotics - Article 284/a of the CCA); Producing and manufacturing narcotic and psychotropic substances (Article 284/c of the CCA); Illegal production, trade, and use of precursors (Article 284/ç of the CCA); Holding, producing, and transporting chemical substances (Article 285 of the CCA); Adjusting of premises for drugs use (Article 285/a of the CCA); Throwing away or getting rid of syringes (Article 285/b of the CCA); Inducing the use of drugs (Article 286 of the CCA); Illegal use of high technology (Article 286/a of the CCA).<sup>12</sup>

From the above listing of narcotics criminal offences, it is clear that, even with the provisions of the CCA, the primary focus remains on incriminating and punishing actions of individuals involved in activities such as the "Manufacturing and selling narcotics" (Article 283 of the CCA), "Traffic of narcotics" (Article 283/a of the CCA) and the "Cultivating narcotic plants" (Article 284 of the CCA).<sup>13</sup> These actions which in one way or another are also addressed and penalized under the provisions of the CCK, defined as "unauthorized acquisition, possession, distribution, and sale of narcotics, psychotropic substances, and analogous substances" (Article 267/1 of the CCK), as well as "unauthorized production and processing of narcotics, psychotropic substances, analogues, or related tools, equipment, or narcotic materials" (Article 268/1 of the CCK) and as unauthorized import or export of substances or preparations which by law are declared as narcotics (Article 267/3 of the CCK). In addition to the aforementioned criminal offenses, the CCA shares similarities with the CCK, as both codes include similar offenses, with some minor differences in language, terminology, and the severity of sentences, among other aspects. Thus, the CCA defines as criminal offense "Facilitating the drugs intake and use" (Article 283/b), whereas the CCK defines it as "Creating facilities for use of narcotics, psychotropic, or analogous substances" (Article 271). Additionally, the CCA criminalizes "Inducing the use of drugs" (Article 286), while the CCK defines it as "Intoxicating another person with narcotics or psychotropic substances" (Article 270). Furthermore, the CCA defines as the offense "Organizing and leading criminal organizations" (Article 284/a), while the CCK addresses it as "Organizing, directing, or financing the trafficking of narcotics or psychotropic substances" (Article 273). The organization is called created from the moment that the members enter into an agreement and put the tools of any kind available to the criminal activity. According to article 284/a and especially articles 333 and 334 of the code, it is not required to conduct a specific crime, provided by the articles 283 to 286/a, but must be confirmed a start of the activity of a criminal organization and its constituent structures.<sup>14</sup>

Of course, when comparing two criminal codes, it is expected that differences will emerge alongside the similarities. Thus one of the differences exists in terms of narcotic possession, while the CCA contains the criminal offense of the 'Holding, producing, and transporting chemical substances' (Article 285)<sup>15</sup>, while the CCK defines the offence as 'Unauthorized

<sup>10</sup> The Criminal Code of Albania entered into force on 01.06.1995, it was amended several times until 2024.

<sup>11</sup> Fatos Gjata (2009): *Aspekte të legjislacionit penal në fushën e lëndëve narkotike gjatë periudhës së tranzicionit në Shqipëri*, Revista Shqiptare për Studime Ligjore, Takimi IV, Instituti Alb-Shkenca, 2009 pg.3

<sup>12</sup> Myzafer Elezi & Engjellushe Elezaj (2013): *Drug Production and Trafficking in Albania*; International Journal of Social Sciences, Vol.II, No.3. 2013, available at: [http://PDF\) Drug Production and Trafficking in Albania\(PDF\)](http://PDF) Drug Production and Trafficking in Albania(PDF)

<sup>13</sup> According to Anton Bardhaj& Gledina Meckaj (2015): *Cultivation and Trafficking of Narcotics as Organized Crime in Albania: The Methods and Tools Used in Preventing this Crime: Why are these Crimes Still Matters of Great Concern?*; Academic Journal of Interdisciplinary Studies, Vol.4, No.3, December 2015, pg.380 "The cultivation of the cannabis plant in Albania has begun for the first time in 1992. About 15 cannabis farms were shown for

the first time in the south of the country, in villages close to the border with Greece. In 1993 the places with cultivated cannabis were 50 and in 1994 there are hundreds. In the absence of domestic legislation against drug production and trafficking, farmers in Konispol and in the villages of Saranda cultivated cannabis, which then was transported to Greece." Available from:

[https://www.researchgate.net/publication/287506367\\_Cultivation\\_and\\_Trafficking\\_of\\_Narcotics\\_as\\_Organized\\_Crime\\_in\\_Albania\\_The\\_Methods\\_and\\_Tools\\_Used\\_in\\_Preventing\\_this\\_Crime\\_Why\\_are\\_these\\_Crimes\\_Still\\_Matters\\_of\\_Great\\_Concern](https://www.researchgate.net/publication/287506367_Cultivation_and_Trafficking_of_Narcotics_as_Organized_Crime_in_Albania_The_Methods_and_Tools_Used_in_Preventing_this_Crime_Why_are_these_Crimes_Still_Matters_of_Great_Concern) [accessed Nov 11 2024].

<sup>14</sup> Agron Bajri (2015): *The Cooperation and Its Forms in Offenses Concerning with Narcotics Trafficking*; Mediterranean Journal of Social Science, Vol. 6 No. 1 S1 (2015): January 2015, pg. 381

<sup>15</sup> This offense is defined as "the production, possession, transportation, or distribution of basic chemical substances or any



possession of narcotics, psychotropic or analogous substances' (Article 269), for which the perpetrator may be sentenced to imprisonment one (1) to three (3) years. In contrast to the CCA, the CCK also defines a mitigated form of this criminal offense, particularly when the offender commits the crime for the first time or possesses less than three (3) grams of narcotic substances, (is foreseen sentence of imprisonment of up to one year). Another difference is that the CCA has incriminated some acts as criminal offence, which do not exist at all in the CCK. Thus, Article 284/ç of the CCA defines the criminal offense of "Illegal production, trade, and use of precursors" then Article 285/a criminalizes the "Adjusting of premises for drugs use."<sup>16</sup> Additionally, Article 285/b of the CCA addresses the criminal offense of "Throwing away or getting rid of syringes,"<sup>17</sup> and Article 286 foresees as criminal offence 'Inducing the use of drugs.'<sup>18</sup>

Furthermore, the CCA defines as a special criminal offense (Article 286/a), 'Illegal use of high technology'. The provisions of this article foresee criminal penalties for individuals who broadcast or spread advertisements or reports that promote the use of narcotics. This Article aims to prevent the mass spread of narcotics users by envisage for them the respective criminal penalties. Finally, it should be emphasized that the CCA, in regulating narcotics-related crimes, specifies in Article 284/b the possibility of providing assistance in the detection of such offenses. Under this article, a person arrested or convicted of an offense related to narcotics trafficking, or for crimes committed by a criminal organization, who cooperates and assists the prosecuting authorities in combating these offenses or, when applicable, in detecting other persons committing such crimes, shall not be punished more than half of the sentence prescribed for the offence committed by him. In special cases, when mitigating circumstances are presented in his favor, this person may be exempt from the penalty.<sup>19</sup> Whereas in Kosovo, criminal narcotics offenders (as well as defendants for other criminal offences) according to Article 230/1 of the Criminal Procedure Code of Kosovo, at any time before the indictment is stiffed, the state prosecutor and defense counsel may negotiate the terms of the written agreement on the acceptance of guilt, on the basis of which the prosecutor may recommend to the court a more lenient sentence for the offender.<sup>20</sup>

Considering the comparative aspect of the punishment of these criminal offenses, it can be said that the CCA stipulates that for the basic form of the offense of 'Manufacturing and selling narcotics' (Article 283), imprisonment ranges from five (5) to ten (10) years. However, if the offense is committed

"in cooperation or more than once," the penalty increases to imprisonment from ten to twenty years. For those involved in the "organization, management, or financing" of narcotics-related activities, the sentence of imprisonment is defined not less than fifteen years, meaning that they can be punished with capital punishments such as imprisonment of up to 35 years or even life imprisonment. Whereas according to CCK, the offender of the criminal offense "Unauthorized acquisition, possession, distribution and sale of narcotics, psychotropic and analogous substances", besides fine punishment and confiscation of narcotics, can be imposed a prison sentence of 2 to 12 years. Even for the criminal offense 'Trafficking of narcotics' (Article 283/a of the CCA) which consists of 'importing, exporting, transiting and trading narcotics, contrary to the law', the Albanian lawmaker stipulates extremely severe penalties, even for its basic form this offence, offenders can be sentenced to imprisonment of seven (7) to fifteen years. For the aggravated form of this offense (committed in cooperation or more than once) and the extremely aggravated form (involving in organization, direction, or financing of the activity), the penalties are equivalent to those stipulated in Article 283 of the CCA. Whereas under the provisions of the CCK, a person who without authorization 'exports or imports substances or preparations which have been declared by law as narcotics, psychotropic substances or analogous substances', can be punished with a fine and imprisonment of three (3) to ten (10) years. Furthermore, under the provisions of the CCA, for the basic form of the offense "Cultivating narcotic plants " (Article 284), the offender may be sentenced to imprisonment from three to seven years, while for the offenses involving the production and fabrication of narcotic and psychotropic substances (Article 284/c), the punishment ranges from five to ten years of imprisonment.

On the other hand, according to Article 268 of the CCK, the criminal offense of Unauthorized production and processing of narcotics, psychotropic substances, analogues, or the tools, equipment, or materials used in narcotics (including the cultivation of narcotics) may be sentenced to imprisonment of one (1) to ten (10) years. Even if any of the narcotics offences is committed by the person organizing, directing or financing such activity, he can be sentenced to prison terms of two (2) to ten (10) years, except if a large amount of narcotics or psychotropic substances is involved, the offender may be sentenced to imprisonment of three (3) to fifteen (15) years (Article 273 of the CCK). In addition to the organization, direction, or financing of narcotics activities, Article 275 of the CCK specifies other circumstances in which the court may impose the maximum sentence for narcotics offenses. This

other substances, equipment, or materials, knowing that they are or will be used for the illegal production or trafficking of narcotic or psychotropic substances." It is punishable by imprisonment for a term ranging from three to ten years.

<sup>16</sup> The provision of the law defines as a criminal offense "the adaptation or permitting the adaptation of a premises, apartment, motor vehicle, or any other public or private vehicle for the gathering of individuals with the purpose of consuming narcotic or psychotropic substances."

<sup>17</sup> According to this Article, a criminal offense is committed when a "syringe is thrown or abandoned in public places or areas accessible to the public, or in common areas of private premises, involving dangerous syringes or instruments used for consuming narcotic or

psychotropic substances." This offense is punishable by a fine or imprisonment for up to one year.

<sup>18</sup> This offence is defined as "Inciting others to use narcotics and psychotropic or giving to use or Injecting them to others without their knowledge and consent, is punishable by imprisonment from five to ten years. When inciting or forced injection is done to children or in penal, school or in sports institution or during any other social activity it is punishable by imprisonment not less than fifteen years.'

<sup>19</sup> Ibid.

<sup>20</sup> Article 230/1 of the Criminal Procedure Code of Kosovo, Code No. 08/L-032 14 July 2022

includes aggravated forms of criminal offenses, where the penalty can range from three (3) to fifteen (15) years of imprisonment (for example, in cases where the offender acts as a member of a criminal group, abuses the official position or authority, uses or threatens violence or weapons, or exploits a vulnerable victim etc.)

From the above comparison of the penal provisions related to the criminal offenses of narcotics, between the two penal codes, it is evident that the CCA has established a much harsher penal policy against traffickers and other narcotics offenders, than the CCK. This conclusion is further reinforced by the fact that, under the provisions of the CCA, persons involved in narcotics offenses can be subjected to severe penalties, including capital punishments such as imprisonment for up to 35 years or life imprisonment.

### 3.2 A comparative analysis of the criminal legal frameworks for narcotics trafficking in North Macedonia and Kosovo

In North Macedonia, criminal activities related to narcotics are regulated under Chapter XXI of the Criminal Code of Macedonia (CCM)<sup>21</sup>, titled "Criminal Offenses Against Human Health". Within this Chapter are two articles (215 and 216), in which certain forms of narcotics offences are defined. In North Macedonia, between 2019 and 2022, a total of 3,079 narcotics-related crimes were detected. Of these, 2,634 offenses were related to Article 215, which covers Unauthorized production and sale of narcotic drugs, psychotropic substances, and precursors.<sup>22</sup> Additionally, 435 crimes were linked to Article 216, which pertains to Enabling the use of narcotic drugs. During the same period, a total of 3,554 individuals were reported, of which 3,396 were Macedonian citizens, while 58 perpetrators were from Albania and Kosovo, with one each from Serbia and Egypt.<sup>23</sup> According to paragraph 1 of Article 215 of the Criminal Code of Macedonia (CCM), the basic form of the criminal offense related to the Unauthorized production and trade of narcotic drugs, psychotropic substances, and precursors can be committed by a person who, without authorization or for the purpose of sale, produces, processes, sells, or offers for sale, buys, stores, transfers, mediates the sale or purchase, or otherwise distributes narcotic drugs, psychotropic substances, or precursors. The CCM for the offender of such a crime prescribes a prison sentence of three (3) to ten (10) years. This crime is considered to be committed only when the offender acts with intent.<sup>24</sup>

The criminal offence of Article 215/1 of the CCM is largely similar to that of Article 267/1 of the CCK entitled Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues.

In essence, both of these articles (from the CCM and the CCK) incriminates the unauthorized actions of individuals involved in the purchase and possession of narcotics, psychotropic substances, and analogous substances according to the CCK (while the precursors according to CCM) for the purpose of selling, distributing or offering for sale. The difference between them is that, with the provisions of paragraph 1 of Article 267 of the CCK, only 'offering for sale' of such substances or preparations are incriminated, while with those of paragraph 1 of Article 215 of the CCM, other actions related to narcotics, such as 'producing, processing, selling, or offering for sale' (with CCK only offering for sale) are incriminated, then the act of "transporting, mediating in the selling or buying" as well as "releasing for trade in some other way" of such substances.

It should be noted that the CCK incriminates some of the actions mentioned above in different provisions. For example, Article 267/2 incriminates acts such as "distributing, selling, transporting, delivering, brokering, dispatching, or transiting substances." Meanwhile, Article 268/1 criminalizes actions where an individual "without authorization, produces, manufactures, cultivates, processes, extracts or prepares substances or preparations which have been declared to be narcotic drugs or psychotropic substances."<sup>25</sup>

These two criminal offenses differ between themselves, also in terms of the type and severity of the sentences, because for the criminal offense of Article 215/1 of the CCM the offender may be sentenced to imprisonment ranging from three (3) to ten (10) years while for that from Article 267/1 of the CCK the sentence of imprisonment ranges from two (2) to eight (8) years. Paragraphs 2 and 3 of Article 215 of the CCM define both the mitigated and aggravated forms of this criminal offense. According to paragraph 2, the mitigated form applies when the offense involves small quantities of narcotic drugs, psychotropic substances, or precursors. The provisions of the CCM do not specify what qualifies as a 'small quantity'. For this mitigated form of criminal offense the offender can be sentenced to imprisonment from six months to three (3) years. The CCM for the offenders of this mitigated form except for its organizer, foresees the possibility of release from the sentence in cases where the offender discovers the criminal offence or in other ways contributes to its discovery (Article 215/5 CCM).<sup>26</sup> Whereas in paragraph 3/215 of the CCM,

<sup>21</sup> The Criminal Code of Macedonia, published in the Official Gazette of the Republic of Macedonia No. 37/96, has been amended and revised multiple times.

<sup>22</sup> Svetlana Nikoloska (2023): *Criminalistics Investigation of Organized Crime with Illegal Drug Production and Trade in the Republic of North Macedonia*; Sep 26, 2023 pg.154, [https://www.academia.edu/123461995/Criminalistics\\_Investigation\\_of\\_Organized\\_Crime\\_with\\_Illegal\\_Drug\\_Production\\_and\\_Trade\\_in\\_the\\_Republic\\_of\\_North\\_Macedonia](https://www.academia.edu/123461995/Criminalistics_Investigation_of_Organized_Crime_with_Illegal_Drug_Production_and_Trade_in_the_Republic_of_North_Macedonia)

<sup>23</sup> Ibid.

<sup>24</sup> Muhamet Racaj, Arben Agushi, Arianit Racaj (2023): *Prevention and detection of crime within narcotics (drugs) in the Republic of North Macedonia*, December 2023, Journal of Liberty and

International Affairs Institute for Research and European Studies - Bitola, 9(3), December 2023, pg.526

<sup>25</sup> Article 268/1 of the CCK.

<sup>26</sup> Svetlana Nikoloska & Miodrag Labović (2023): *Criminalistics investigation of organized crime with illegal drug production and trade in the Republic of North Macedonia*; 2023, fq.149, available at;

[https://www.academia.edu/123461995/Criminalistics\\_Investigation\\_of\\_Organized\\_Crime\\_with\\_Illegal\\_Drug\\_Production\\_and\\_Trade\\_in\\_the\\_Republic\\_of\\_North\\_Macedonia](https://www.academia.edu/123461995/Criminalistics_Investigation_of_Organized_Crime_with_Illegal_Drug_Production_and_Trade_in_the_Republic_of_North_Macedonia)

highlights two circumstances that makes such an offence of aggravated form. The first is when the offense is committed by 'some persons', and the second aggravating circumstances exist when the offender 'has organized a network of masterminds or intermediaries', which serves as an aggravating factor. For aggravated forms of this act the offender may be punished with imprisonment of at least five years, i.e. up to fifteen (15) years.

The distinction of the CCM from the CCK lies in Article 215/6 of the CCM, which states that this offense can also be committed by legal entities, and in such cases, the offender may be punished with a fine.<sup>27</sup> A common feature of both criminal codes is that they stipulate the confiscation of "narcotic substances, psychotropic substances, or analogous substances, as well as the means for their production, distribution, or transportation," which are involved in the commission of the criminal offence (Article 267/5 of the KPC and Article 215/7 of the IMC).

While in Article 216 of the CCM, is defined the criminal offence of enabling the use of narcotics and precursors. According to paragraph 1 of this Article, this offence may be committed through several different acts, including (1) forcing another person to use narcotics or precursors of narcotics or; (2) offering narcotics for use by that person or another, or (3) providing premises or locations for the use of narcotics or; (4) enabling other persons in any other way to use narcotics. The person who commits such a offence may be punished by imprisonment of one (1) to five (5) years.

Paragraph 2 of Article 216 of the CCM defines the aggravated forms of the criminal offense related to enabling the use of narcotics. The aggravated form of this offence exists if: (1) the offence was committed against a minor or, (2) the possibility of the use of narcotics by certain persons, as well as (3) when the criminal offense has caused particularly serious consequences. A person who commits any of the aggravated forms of this criminal act may be sentenced to imprisonment from one (1) to ten (10) years.

Otherwise, the CCK also contains a similar criminal offence, in Article 271, which is called Facilitating acquisition or use of narcotic drugs, psychotropic substances or analogues, but which differs from that of CCM, primarily in terms of the offender, because the criminal offence from Article 271 of the CCK can only be committed by a person who administers narcotics, by virtue of their duties facilitates possession or use of narcotics in violation of the law. This criminal offence may also be committed by the manager or owner of the premises or other enclosed space used by the public, who allows or tolerates the use of narcotics. For such form of criminal offence the perpetrator may be sentenced to imprisonment of three (3) months to five (5) years.<sup>28</sup>

A narcotics offense in which the victim is another person (such as those under Article 216 of the CCM and Article 271

of the CCK) is also considered the criminal offense of Intoxicating another person with a narcotic drug or psychotropic substances (Article 270 of the CCK). For this criminal offense to exist, the intoxication of the other person with narcotics must be done without the knowledge of such person.

After comparing the CCM and CCK regarding narcotics criminal offenses, it can be concluded that the CCK addresses and regulates this issue in a much more comprehensive manner than the CCM. The CCK not only includes the two criminal offenses which exists in the CCM (with certain differences), but also criminalizes many other actions through which such offenses can be committed, which are not defined in the CCM. Such criminal offenses that exist only in CCK (are not in the CCM) are: Unauthorized possession of narcotic drugs, psychotropic substances or analogues (Article 269 of the CCK); Intoxicating another person with a narcotic drug or psychotropic substances (Article 270 of the CCK); Cultivation of opium poppy, coca bush or cannabis plants (Article 272 of the CCK); Organizing, managing or financing trafficking in narcotic drugs or psychotropic substances (Article 273 of the CCK); Conversion or transfer of property derived from offenses in this Chapter (Article 274 of the CCK), as well as some other aggravated forms of such criminal offences.

### 3.3 Legal Framework on Narcotics Trafficking in Montenegro and its Comparison with the Criminal Code of Kosovo:

The Republic of Montenegro, as a state that has derived from the former Yugoslavia, regulates the phenomenon of narcotics trafficking very similarly to that of North Macedonia. The Criminal Code of Montenegro (CCMN)<sup>29</sup>, like as CCM, addresses the issue of drug trafficking under the section on criminal offenses against human health (Chapter XXIV), with only two articles dedicated to it- Articles 300 and 301.

With the provisions of Article 300 of the CCMN, a series of actions that can be used to commit narcotics offenses are criminalized. The criminal offense defined in Article 300 is titled "Unauthorized production, possession and distribution of narcotic drugs." Its basic form may be committed by a person who without authorization, produces, processes, sells, offers for sale, purchases, holds, transfers, or facilitates the sale or purchase of narcotic drugs or plants containing such substances, or otherwise circulates them. The criminal offense defined in Article 300(1) of the CCMN is similar to that in Article 267(1) of the CCK, titled 'Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues.'

In contrast to the CCM, the Montenegrin legislator, in the second paragraph of Article 300, specifically criminalizes the smuggling of intoxicating drugs and plants containing such substances into Montenegro (within its borders). For such

<sup>27</sup> Brendan Hughes, Cécile Martel, Luis Royuela, Orsolya Varga (2014): *Drug law offences in the Western Balkan region: from definition to monitoring*, November 2014, pg.6, available at; <http://Drug law offences in the Western Balkan region meeting report.pdf>

<sup>28</sup> Article 271/2 of the CCK.

<sup>29</sup> The Criminal Code of Montenegro, enacted in 2003, supplemented and amended several times, with the latest update on March 31, 2021.



action, the perpetrator may be sentenced to imprisonment of two (2) to twelve (12) years.

While in the CCK, the issue of narcotics smuggling is regulated in a broader context, including the export outside the borders of Kosovo. Specifically, article 267/3 emphasizes that the export or import of narcotics without authorization is punishable by a fine and imprisonment ranging from three (3) to ten (10) years. Additionally, Article 300/3 of the CCMN classifies as a aggravated form of this criminal offense the commission of the offense by a person who "organizes a network of resellers or intermediaries." For the perpetrator of such crime, a prison sentence of three to fifteen years is prescribed.<sup>30</sup>

Other aggravated forms of this criminal offense, as defined in Article 300/4 of the CCMN, are also punished with a prison sentence of up to fifteen years, which is the highest penalty of the CCMN for narcotics offenses.

According to this paragraph, as aggravated forms of this criminal offense, among others, are considered: (a) selling, offering for sale, giving free of charge with the purpose of putting drugs into circulation to a minor or a mentally ill person or a person who is being recovered from addiction to intoxicating drugs; then (b) releasing into circulation intoxicating drugs mixed with a substance that can lead to serious damage to health; or (c) when the criminal offense is committed in an educational institution or in its immediate vicinity, or in an institution for criminal sanctions enforcement, in a public facility, or at a public event,, and (d) if the offense is committed by a public official, a physician, social worker, priest, teacher, or preschool teacher by virtue of their position or on who exploits a minor for the commission of that offence.<sup>31</sup>

The Montenegrin legislator, in order to provide the possibility (for the perpetrator of the offenses from article 300/1-4 of the CCMN) of repentance and cooperation with the justice bodies, foresees the release of the perpetrator from punishment in situations where he reveal the source from whom he is supplied with drugs

Another issue addressed by the CCMN is the equipment, materials, or substances intended for the production of narcotics. According to Article 300/6 of the CCMN, a criminal offense is committed by anyone who unlawfully makes, acquires, possesses, transports, or gives for use equipment, material or substances knowing they are intended for the production of narcotic drugs,

Like the criminal codes of Kosovo and North Macedonia, the CCMN also stipulates that narcotic drugs and the means for their production will be confiscated and destroyed, as it foreseen in Article 300/7 of the CCMN.

Whereas, with the provisions of Article 301 of the CCMN is sanctioned the criminal offense 'Facilitating the use of drugs,' which offense is also defined in Article 216 of the CCM, as well as an approximate version of it in Article 271 of the CCK.

According to Article 301/1 of the CCMN, the criminal offense of 'Facilitating the use of drugs', is regulated in an entirely identical manner to that of Article 216/1 of the CCM, with the only difference being the severity of the punishment (Article 216/1 of the CCM is addressed above in the paper).<sup>32</sup>

In paragraph 2 of Article 301 of the CCMN are defined the aggravated forms of the criminal offense of 'Facilitating the use of drugs.' Under this paragraph, aggravated forms of this offense are considered, among others, if the offense has been committed: (a) against a minor, mentally ill person, person suffering from a temporary mental alienation, person with a severe mental impairment or a person undergoing drug addiction treatment; or (b) against several persons; or (c) in an educational institution or in its immediate vicinity, or in a public facility or at a public event; or (d) by a public official, physician, social worker, priest, teacher or preschool teacher by virtue of their position. The perpetrator of any of the above forms shall be punished by a prison sentence for a term from two to ten years.

It should be noted that personal use of drugs as well as possession of drugs for personal consumption is not sanctioned by the provisions of the CCMN. Additionally, within the framework of describing criminal offenses related to drug misuse, the CCMN does not categorize specific drugs.<sup>33</sup>

Given the significant similarities between the CCM and the CCMN in regulating narcotics trafficking, a similar conclusion can be drawn when comparing the CCK and the CCMN, akin to the one made in the comparison between the CCM and the CCK. After comparing the CCMN and CCK regarding narcotics criminal offenses, it can be concluded that the CCK addresses and regulates this issue in a much more comprehensive manner than the CCMN. The CCK not only encompasses the two criminal offenses found in the CCMN (with certain differences), but also criminalizes numerous other actions through which such offenses can be committed, actions that are not defined in the CCMN.

#### 4. Conclusions

After conducting a multi-dimensional study of narcotics trafficking for the purposes of this paper, using various multidisciplinary scientific methods the following conclusions were reached:

<sup>30</sup> Organization for Security and Co-operation in Europe (2004): *Report on the social and economic impact of drug trafficking in Serbia and Montenegro*; 14 April 2004, pg.21, available at: <http://Report on the social and economic impact of drug trafficking in Serbia and Montenegro | OSCE>

<sup>31</sup> Article 300/4 of the Criminal Code of Montenegro.

<sup>32</sup> For the offence Facilitating the use of drugs, according to the CCMN the person can be sentenced to imprisonment of six (6) months to five (5) years, while according to the CCM the person may be sentenced to imprisonment of one (1) to five (5) years.

<sup>33</sup> Ridvan Kajtazi (2014): *Organized crime in the field of narco-criminality as a challenge of Western Balkans Countries: a special overview of Montenegro*; Mediterranean Journal of Social Sciences 5(19), July 2014, pg.09.

- Republic of Kosovo, like most modern states, has defined and regulated the phenomenon of narcotics trafficking by dedicating a special chapter (XXIII) to this issue, titled "Criminal Offenses of Narcotics."
- After comparing the provisions of the Kosovar Criminal Code (CCK) with those of North Macedonia and Montenegro regarding narcotics-related criminal offenses, it becomes clear that the KPC addresses this issue in a much more comprehensive manner than the penal codes of the neighboring states. The KPC not only includes the criminal offenses found in the codes of North Macedonia and Montenegro (albeit with certain differences), but also criminalizes many other actions through which such offenses can be committed.
- The comparison of the Criminal Code of Kosovo and the Criminal Code of Albania regarding narcotics-related criminal offenses reveals that both Kosovo and Albania regulate this phenomenon in a comprehensive manner, demonstrating a serious approach and commitment, with numerous similarities.
- Regarding legislative punitive policy, it is evident that the CCA has established a much harsher punishment policy against traffickers and other narcotics offenders compared to the CCK, CCM, and CCMN. Under the provisions of the CCA, severe punishments, including imprisonment for up to 35 years or life imprisonment, can be imposed on narcotics traffickers.
- Each of the analyzed Criminal Codes includes specific offenses related to narcotics. The Criminal Code of Kosovo, for example, has a mitigated form of the offense titled "Unauthorized possession of narcotic drugs, psychotropic substances, or analogues," which is deemed committed when an offender commits this offense for the first time or is found in possession of less than three (3) grams of narcotic substances. The Criminal Code of Albania includes, among other offenses, "Throwing away or getting rid of syringes" and the offense of "Illegal use of high technology," both of which are defined solely in this country's criminal code. While the specific of the Criminal Code of Macedonia is that the criminal offense of narcotics can also be committed by legal entities, and in such cases, the offender may be punished with a fine.
- A common feature of all the analyzed criminal codes is that they mandate the confiscation and destruction of narcotic substances, psychotropic substances, or analogous substances, as well as the means of their production, distribution, or transportation, when these are involved in the commission of the offense.

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