

The impact of foreign expressions in Criminal Code and Criminal Procedure Code of the Republic of Kosovo

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Abstract

Globalisation is defined as economical, political, social and cultural process and the effect of it is has the impact in the whole world or all inclusive. From this definition it derives that this process is multi dimensional that has included the whole of the globe from the physical point of view it has had a comprehensive impact in almost all spheres of life and societies. As such it is considered as un avoidable.

With all the positive's that globalisation brings and have to do with economical development

There is a downfall side of it that can be called as negative sides and have negative consequences. As a result of it , the trends of those who oppose it in diametrical manner has grown giving us to types the one who are for it , and the one who oppose it by all means.

It is true that globalisation changes relationships, not only political but economical social and cultural as well. In this manner globalisation manifests itself in linguistic and cultural sphere.

This is more than obvious in Albanian space and where this impact is clearly visible.

In Penal and procedural science in Kosovo this impact is doubled: while in Penal code of Kosovo the impact is more in language and is manifested in particular terms mainly English ones in Procedural code this impact has been in the substance of the procedural penal code itself.

Time is a witness that usage of foreign terms in Albanian language most of the time is a necessity and the only salvation is borrowing up the foreign terms .And this mus go on until the proper term in Albanian language is found or created and this will be left to the linguists first of all the one who study the penal sphere to invent and create that must be in Albanian and are meaningful and correspond with the meaning of the foreign word or expression without leaving any doubts in this very delicate field .

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Entry

Definitions of globalisations are diverse. Thus, according to *Oxford Dictionary*, “globalisation is process, by which businesses or other organizations develop international influence or start operating on an international scale”.¹ A general definition defines as “a process which involves the causes, course and consequences of international integration and cross-cultural activities and non-human beings”,² however, defined in the simplest way, “globalization is a process of interaction cross-cultural exchange and transformation”.³ In this sense, globalization is a process from which exchanges of views on the world, products, ideas and other aspects of culture; globalization refers to processes that promote worldwide in national and cultural exchanges. Taken as a whole, some authors identify only the globalization of markets, trade comprehensiveness and consequently the financial,⁴ while the rest of the authors, globalization, in addition to “trade without borders”, identify the categories of other non-financial such as culture, science, language, religion, migration, politics, values, norms, ideology, etc.⁵

¹ Oxford Dictionaries, <http://oxforddictionaries.com/definition/english/globalization>

² Dr. Nayef R.F. Al-Rodhan, *Definitions of Globalization: A Comprehensive Overview and a Proposed Definition* (Geneva: Centre for Security Policy, 2006), 5.

³ Vilashini Cooppan, “World Literature and Global Theory: Comparative Literature for the New Millennium”, *Symploke*, Vol. 9, Issue 1-2, 2001, 15-43, 15.

⁴ Al-Rodhan, *vep. E cit.*, 16. (Cited Alan Deadroff, “Glossary of International Economics”, University of Michigan, 2001).

⁵ *Ibid.*, 10 and 17. (Cited Mike Featherstone, *Undoing Culture, Globalization, Postmodernism and Identity*, (London: Sage, 1995), 6-7, H.J.J.G. Beerkens, “Global Opportunities and Institutional Embeddedness, Higher Education Consortia in Europe and Southeast Asia”, *University of Twente*, 2004 dhe

Language Trends in the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo

The same globalisation trend has included Kosovo as well, so as the Albanian Language. Excluding science of IT (Information and Technology) the trends of using the foreign words mostly English are present almost in every our communications. Expressions like: president, implementation, transparency, resource, draft, procuring, revision, integration, tender, immediate, asset, abuse, according, etc. are rooted so deep in our language, that not that we have “forgotten” that they are not our words, but even when using a computer they appear as our (Albanian) words.

This trend is manifested in Penal Code as well so as in Procedural Code of the Republic of Kosovo. Under these circumstances it has become difficult that these codes perform and function for why is released. Therefore under these circumstances, difficult situations may arise, unclear situations, and this may result in failing to combat criminality.

These trends are from earlier although their intensity rises, by the end of last century when the country was under International Protectorate and administration. In the beginning there were impacts from slavistic languages and later on from English. Without having to elaborate deeply on this matter, we must remind ourselves that i.e. word “*dhunim*” in Albanian came as translation from the Serb one “*silovanje*”. This word is used in 2003 Penal Code so as in the 2013 one and it refers to the same penal act “Rape.” This word that has been literally translated from Serbian, has not considered at all elements of Albanian language (“*sila*” – violence and “*silovanje*” – rape), where in Serbian this word is used exclusively for sexual rape, in Albanian can be used as a violent act without sexual meaning attached to it. A person can be violated and doesn’t have to be a sexual violence, or

Imre Szeman, “Culture and Globalization, or, The Humanities in Ruins”, *CR: The New Centennial Review*, Vol. 3, No. 2, (2003): 94].

rape, can be psychological violence physical, so as an object can be violated, as well. In English language the word “rape” is used exclusively for sexual violence against other person, and in no other contest. Where in Albanian the person who committed sexual crime is called “*dhunues*” but the same name can be attributed if he violated the object grave etc.

In the Criminal Code of the Republic of Kosovo, is a scheduled offense - Smuggling of migrants (Article 170). Term “smuggling” (Fr. *Contraband’s. Contrabando*), meaning “secret insertion or extraction of prohibited goods or valuable items across state borders using illegal ways to evade customs control, trade secret with such goods”,⁶ while, in the Criminal Code of Kosovo, this offense refers exclusively to people, because for goods there are other norms! Also, the term “migrant” does not exist in Albanian; used words are “immigrants” or “immigrants”, while migration is a phenomenon of displacement from one country to another.⁷ Further, it is envisaged offenses - assault (Article 187/1), where “anyone who intentionally use force against another person without that person's consent ...” and the offense of rape (Article 230/1) “Anyone who subjects another person to sexual act without the consent of the person ...”, while according to criminal science - Kosovo's legal to date, could not the opposite happens: the use of force (weapon, dangerous vehicle or any other object that may cause serious bodily injury or damage to health) with the consent of the subject or passive obligation to perform a sexual act, but the passive consent of the subject! Also, Article 35 is intended “significant action toward the offense”, which is defined as “an important preparatory step ...”, but that is not a preparatory action, but one more step, yet not is attempted; lies between preparation and attempt action! In such cases appear new institutes criminal - law, which come as a result of foreign influence system, and therefore fund expressions in our language, I can not afford.

Impacts on our codes, criminal and criminal – procedural are not only criminal influences from the English language. These have an

⁶ *Fjalor i shqipës së sotme*, bot. 2, s.v. “Kontrabandë.” Also, Milan Vujaklija, *Leksikon stranih reči i izraza*, bot. 3, s.v. “Kontrabanda.”

⁷ *Fjalor...*, s.v. “Migrimi.”

impact on the content, the actual impacts, which consequently manifested in Albanian terminology. This phenomenon is more pronounced in the Criminal Procedure Code, in which the underlying effects of this code, in many cases its practitioners may be hesitant and necessarily create the need for interpretation. This is because not only criminal legislative traditions in general, but also expressions of English, which belong to this area, are much richer than those in Albanian. Thus, for example kind of doubt (*Suspicion*), that the English have three levels (*Reasonable, Grounded and Well-Grounded*),⁸ entered in the Criminal Procedure Code of the Republic of Kosovo, translated as reasonable doubt, suspicion and good suspicion, which proves not only for a new terminology criminal procedural language, but also entirely new categories, which have been scientifically processed.

Another expression of this code is "Grounded cause" (article 19, section 1.10), which "must be based upon articulable evidence" and that the "Grounded cause" and "articulable evidence" are new categories, which require to be addressed in a scientific manner. Although the phrase "articulable", which refers to evidence and grounded reasons ("articulable evidence" and "Grounded cause"), is set in a very large number of provisions of the Criminal Procedure Code, the meaning of this phrase is not defined in the code except that a provision (article 19, section 1.30), which the definition remains tentative! Also, the influence of the English language the expression "serious risk", which is defined as "warranted fear ..." (Article 220, paragraph 1.1), which clearly leaves to understand that there are risks flimsy respectively, the level of seriousness of risk can be trite (risk) and higher (serious risk), but that, however, both are risks. This is because the Criminal Procedure Code provided "risk" and "serious risk", depending on the situation and context. In such situations, the theory and judicial practice remains to deal with such categories, which for a long time will remain relative. Or, the words "Authorized

⁸ The Criminal Code of Kosovo in 2003 had foreseen these types of suspicion: reasonable, serious, substantial and grounded!

Police Officer”, “Police or Police Officer”),⁹ “Complex Crime” (“complex issue” in Albanian), “Intrinsically Unreliable” (“essentially unsupportable” in Albanian), “Notice of Corroboration” (“support the assertion” in Albanian), “Adequacy of Defense” (“Suitability of defense” in Albanian, “Implicit Jurisdiction of Courts” (“the court implied competence” in Albanian), “Diversion”, “Temporary Freezing of Assets),¹⁰ etc., which without proper concrete effect and are provided in the code with this terminology, leaving aside the fact that many of them really should be defined by giving their fundamental explanation, the explanation of which currently lacking in the Criminal Procedure Code of the Republic of Kosovo.

In terms of language and procedural criminal - criminal, but our language media in general, should be reminded that foreign phrases should not be used until we have in our language. In Albanian, “Intelligence services” are the “shërbimet sekrete”, “Impact” is “ndikim”, “Immediate task” is “detyrë e menjëhershme”, “Confidential” is “i/e fshehtë”, “Violent” is “e dhunshme”, “Access” is “qasje”, “Police interview” is “marrje në pyetje nga policia”, “Human resource management” is “menaxhimi i burimeve njerëzore”, “Investigation” is “hetim”, “The temporary freezing of assets” is “marrja e përkohshme e pasurive”, “Amendment” is “ndryshim dhe plotësim i ligjit”, “Tender” is “ofertë”, “Appearance” is “shfaqje, pamje e jashtme, paraqitje”, “President” is “kryetar/e”, “Policing” is “përcaktimi i politikave, zbatim i politikave”, “The draft of the law” is “plani, përgatitja e ligjit”, “Accord” is “marrëveshje”, “Abuse” is “keqtrajtim”, “Cooperation” is “bashkëpunim”, “Transparency”, is “dukshmëri”, “Performance” is “shfaqje, ekzekutim”, and many others.

Despite the penetration of foreign expressions, the phenomenon is happening, which is directly reflected in the written language, when without any criteria and against the rules of orthography of the Albanian language over the place used large letters, same regardless

⁹ From the definition of these terms (Article 19/1.1 and 1.32), the differences between them can not be understood!

¹⁰ Articles: 19, p. 1.2, 1.29, 1.31, Article 11, Article 38, Article 184, Article 264, etc.

of the Albanian language in the middle of the sentence used in situations very well defined. Moreover, this letter is written every word of a sentence! Such a phenomenon is a serious violation of the rules of orthography of the Albanian language. "Introduction" the uppercase is clear evidence of the impact of the written English language, where it is the rule language. And this happens even in the Code of Criminal Procedure of the Republic of Kosovo ("Code of Juvenile Justice", "Serious Crime Department", "Law Courts", "Department of Juvenile Justice", Article 21, "Panel Review of Surveillance and Investigation", Section 98, "Implementation of the Law on Execution of Criminal Sanctions against detainees", Article 202, etc.), but also in the Criminal Code of the Republic of Kosovo ("prime Minister and Minister of Foreign Affairs", Article 120/4.2, "Business Law", Article 120/7, "Election Commission", Article 215/4 and many others under section 441 and 442). And, such a phenomenon is happening with momentum not only in these two codes of Kosovo, but also almost all logs, regardless of the level and scope which include. Such a conclusion was drawn earlier by our linguists, according to which "... prevailing English elements, Albanian language being used badly mixed, with breathing pattern, and foreign vocabulary, become endangered as Canadian; language with English grammar and dictionary of American English translated to Albanian".¹¹

Have given a clue as to which English has over a million annually expression and "expand" with about 8,500 such,¹² according to one account while another, the language is enriched with over 25,000 new

¹¹ Excerpts from papers presented at the Scientific Symposium "50 years Albanological studies", held in Pristina on 18/19 December 2003 organized by the Institute Albanology occasion of the 50th anniversary of the establishment (Qemal Murati, "Gjuha shqipe sot - prirje të reja "evropianizuese", " *Sfida*, No. 4 (2004/2005): 219.

¹² In December 2010, Harvard University in collaboration with Google, have brought this data, derived from computer analysis of over five million digitized books. "English language has doubled in size in the last century", Richard Alleyne, Science Correspondent, *The Telegraph*, 16 December 2010.

words every year.¹³ Suffice it to mention the fact that the Oxford Dictionary contains over 600,000 words with over 3 million citations.¹⁴ How “alive” is this language, just to mention a situation, a pile of others, according to which in addition to the term “rape” or “murder”, the expressions are created, which are in connection with these terms, such as “rapee” or “murderee” to define persons who provoke rape against him respectively, of his murder, etc.¹⁵ Hence phrases translated from English, just as would cause (if not caused so far) real risk for legal security in Kosovo and beyond.

And in the end must also note the need for unification of Albanian expressions within their states. This should happen not only in criminal science, but also in the mass media. Thus, for example, while in the Criminal Code of the Republic of Albania is provided “author” of the offense, in the same code in Kosovo is “perpetrator” of the crime, or “executor” respectively “murder”, “procedural” respectively “procedural”, “inspektoriat” respectively “inspektorat”, “manaxher” respectively “menaxher” or expressions “facilitation”¹⁶, “involvement”, “target”, “include”, and many others, which are commonly used in print and on our televisions. “The purity of our language, nature and spirit, not only worsen the foreign words introduced and used to excess, but the ugly, disrupt and suffocating

¹³ Kenneth F. Kister, “Dictionaries defined”. *Library Journal*, 15/06/1992, No. 117 (11), 43.

¹⁴ *Oxford English Dictionary, The definitive records of the English language*, see <http://public.oed.com/about/free-oed/> dhe *The Oxford English Dictionary and Oxford Dictionaries Online* and <http://oxforddictionaries.com/words/the-oxford-english-dictionary>.

According to the “Vest fold University College”, the dictionaries contain: Over 300,000 words main entrance, over 600,000 word forms, about 137,000 spellings, saying, etymology about 250,000, about 577,000 cross references and over 2.5 million citations used. (See, <http://www.hive.no/reference-books/oxford-english-dictionary-article11142-2184.html>).

¹⁵ Vjosa Jonuzi – Shala, *Vepra penale e dhunimit dhe veprat tjera penale kundër integritetit seksual sipas Kodit penal të Kosovës – me komentar*, (Prishtinë: Instituti AAB-Rinvest, 2011), f. 345. [Cited by Vesna Nikolić-Ristanović, *Uticaj žrtve na pojavu kriminaliteta*, (Beograd: IRO Svetozar Marković, 1984), f. 89].

¹⁶ Facility, in English language there are several meanings. (Cited by Morton Benson, *Englesko-srbskohrvatski rečnik* (Beograd: Prosveta, 1986), bot. II, 239).

(maybe more) words and expressions other "Albanian" calculated by foreign languages, which come as more and more of the seven root especially where the fight should be mostly the roots are excreted in the sun - in our mass communication tools (in print and on television and radio), from then spreading throughout our language.¹⁷ However, this practice would need to fight, because "no language rich and pure, has no idea of the high opinions precise".¹⁸

Instead of the Conclusion

On behalf of well integrated and integration, the Albanian comes and suffers. Although it is not easy to resist this trend, the least we can do is awareness, which should actually help the state institutions. Pass a law that would protect Albanian least could stop such trends, putting editors, linguists respectively, lecturers in institutions everywhere, including appropriate sanctions in cases where the law does not apply. It would be useful to energy expended by controversy among linguists and their division into camps for changing the rules of the Albanian language set decades ago, be aimed at preserving our language, with an intensity that is tearing "swallowed up" by foreign phrases. And this happens not only in our daily communication at all levels, but also in official documents and legal acts high, such as the Criminal Code and Criminal Procedure that the Republic of Kosovo.

¹⁷ Qemal Murati, "Vërshimi i kalkeve", *Gjuha shqipe*, Instituti Albanologjik i Prishtinës, vol. 3, (1986): 36.

¹⁸ Idriz Ajeti, *Studime gjuhësore në fushë të shqipes IV*, (Prishtinë: Rilindja, 1989), 47.

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