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## Official Corruption - in Especially Abuse of Position or Official Authority in Kosovo

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## Abstract

Abuse of official position or authority is the commission of an illegal act committed in an official capacity that violates the performance of official duties. Officials who abuse their power are often corrupt. Misappropriation, abuse of trust, and fraud can take many forms. If carried out by an official, it often constitutes corruption. Abuse of power consists of using an official's authority to resolve issues that conflict with the interests of the service. Usually, for such "services," an official receives a certain reward for himself or another person. Abuse of duty means using powers related to the position held contrary to the interests of the service. In our country, as well as in other countries of the world, the phenomenon of abuse of office and corruption continues to be one of the main concerns, for which we need a strategy and laws aimed at preventing and combating this phenomenon. Our whole society is a victim when public officials violate the trust given to them.

**Keywords:** Corruption; Crime; Fraud; Abuse of Office; Prevention

#### Introduction

Corruption means any violation of the duty of official or responsible persons in legal entities and any activity by the initiators or beneficiaries of this behavior directed in response to a reward that is directly or indirectly promised, offered, given, requested, accepted, or expected to to be taken for oneself or another person (Article 2 of the Anti-Corruption Law). The most common forms of corruption are bribery, blackmail, and trade-in information such as state, economic and military secrets. (Maloku, 2021: 168) Corruption can be exercised through direct corrupt payments of public officials and in the form of "indirect bribery." E.g., the promise of employment, the provision of a commission for the conclusion of a business contract, i.e., the contracting of government work to friends or family members, etc. Corruption is a severe social and political problem in individual states and the world at large. Maloku & Maloku, 2021: 58.

Volume 5, Issue 8 August, 2022

A simple definition of abuse of official position or authority is the misuse of a position to take unfair advantage of individuals, organizations, or other parties. Abuse of power is often described in different ways, such as economic crime, organized crime, crime at work, public corruption, organized crime, and governmental and corporate deviance. The common element of these crimes is fraud. Abuse of duty means using powers related to the position held contrary to the interests of the service. Although such acts have been carried out since the earliest history, recent technological and social changes have created a more favorable climate for them. (Autcher, Katz, & Graham)

In addition to the direct use of power to accomplish duty, there are often personal motives for exercising power. Motives for interpersonal abuse of power include greater control, so members of the organization seek greater control by manipulating the structure of the organization/workplace. Other motives for abuse of power include:

- The desire for personal service.
- The achievement of personal and/or organizational goals.
- Expressions of loyalty and obedience.
- The punishment/favoritism of selected individuals.

It is clear that these motives do not exclude each other. They present various reasons a manager may abuse power to pursue their interests. (Vredenburgh & Brender, 1998).

In many cases, career abuse is combined with other crimes: theft, smuggling, anti-justice, customs, tax, and other crimes. The role of law enforcement agencies in combating career abuse is growing. One of the main directions of such a war is crime prevention. Such a situation would be why it is necessary to increase the effectiveness of punishment and crime prevention significantly.

Based on the publication of the non-governmental organization (TransparencyInternational, 2021), abuse and misuse of power or authority in the performance of work can occur both with external stakeholders and within the staff. The effects can be detrimental to morale and employment relationships.

According to this organization, the characteristic features of the abuse of power and official position are:

- They deliberately use their competence, official authority, and the prestige of the government body in which they work.
- Have an ego motive, other personal interest, or the interest of third parties.
- They harm the rights and freedoms of individuals or national interests.
- Use the necessary formal connections with other persons born because of the position.
- Influence other people's professional activities
- Receive financial, property, or other rewards.

On the other hand, based on this publication, typical situations of abuse of power or official position are:

- Illegal assistance in appointing a person to a certain position
- Illegal interference in the activities of government bodies, local self-government bodies, or officials.
- Illegal granting of benefits for natural or legal persons during the preparation of drafts, publication of regulatory acts, decision-making, etc.
- Misuse of funds
- Illegal exemption of persons from paying taxes, and fees (Mandatory payment)
- Creation of surplus goods or other material values for their subsequent possession.

Volume 5, Issue 8 August, 2022

#### 1.Literature Review

One of the forms of economic crime to which special attention is paid today at the national and international levels is corruption. It is believed that there is no society without corruption and that in all socio-economic systems, developed and underdeveloped, there is a tendency for bribery. (Jasarevic & Maloku 2021: 215)

Differentiation of different types of practices emphasizes the focus of the empirical study of corruption. According to the study by (Blundo & Oliver de Sardan, 2006), distinguish seven forms of corruption: first, the "commission" paid for illegal services that include bribery for awarding government tenders or underestimation of customs declarations where the official benefits in part from illicit profits; secondly, the "collaborator" as a reward for a civil servant who has executed the duty of his official; third "to have relations with civil servants; the fourth "unjustifiable tariffs for public services" where the official obliges the user to pay for the implementation of an act related to his office; fifth, the private use of government property; finally its "appropriation," and finally, the most serious form of daily corruption, namely extortion, when public officials, usually police or army employees, demand the payment of a "fine" for a fictitious violation of regulations. And threaten to use force if the fine is not paid.

Just as there are many types of corrupt behavior, there are also many factors that contribute to corruption. Public officials, or a considerable part of them all over the globe, fail to pursue the common good and meet the moral standards expected of them. Perhaps these standards are too high given human weakness, perhaps the personal benefits of complacency are very attractive, the chances of being caught are very low, and the punishment is too lenient to be a serious obstacle. Corruption is contagious. Since no society is isolated or detached from any other, corruption crosses borders (Caiden, 2014)

Corruption as a form of crime has recently become quite widespread both nationally and internationally. Many authors emphasize that there is no society in which corruption is not present. Some authors distinguish different forms of corruption, such as corruption political, which is related to taking over the functions of political power by giving bribes, bribes during election campaigns, allocating secret budget funds, and providing secret information in order to come to power; administrative corruption related to the state administration which by openly exercising its powers violates various legal norms and rules, giving benefits and enabling others to get rich to the detriment of the general interest and other corruption The so-called judicial corruption which lies in giving and taking bribes and kickbacks to court employees, in order to prevent criminal proceedings, to issue favorable court decisions and to impose sentences and other sanctions. (Halili, 2016)

### 2. Methodology

Appropriate methods have been used in this paper can achieve the goal (Karović et al., 2020: 107). For the realization of this paper, the method of theoretical analysis has been used, analyzing official corruption as a criminal offense with all its features and forms; the descriptive method by which the general characteristics of official corruption are described, in particular, the abuse of office; comparative methods by comparing the index of perceptions of corruption and sentencing; the research method through which the collection of relevant data is allowed to generate the hypothesis that was later tested and supported. This paper will be used comparative, theoretical, and meta-analysis methods (Maloku, 2020: 170) to better elaborate the opinions of different authors both nationally and internationally,

Also used is the statistical method through which the official data will be presented for the sentences imposed for the criminal offense of abuse of office or official authority, more precisely, the statistical evidence of the court for the period 2017-2019, which are the most accurate and reliable evidence regarding this criminal phenomenon. Content analysis as a necessary method will be used to



Volume 5, Issue 8 August, 2022

study the numerous literatures in which this problem has been addressed in various respects. This method is unavoidable in the study of normative acts (laws and international acts). (Maloku et al., 2021: 53). Knowing the importance of its plot-mass phenomena, the connection with the general scientific and statistical method, and its characteristics: the systematization is provided through responsible work in the conceptualization and design of research by our staff, the relative duration, and economizing. (Maloku, 2015: 30). The table used in this paper is in word format.

### Hypothesis:

The sentencing for the period 2017-2019 is lower compared to the corruption perception index in Kosovo.

#### 3. Results and Discussion

### 3.1. Corruption in the Workplace

Misappropriation, abuse of trust, and deception can take many forms. If carried out by an official, it often constitutes corruption. Corruption persists in human societies and, like bullying, has been studied from various disciplinary perspectives, including psychology, sociology; economics; law; and political science. Evidence shows that some employees - at all levels of organizational life - continue to engage in unethical, anti-competitive, deviant, and illegal activities to achieve their goals. (Pinto, Leana, & Pil, 2008).

According to (Anand, Ashforth, & Joshi, 2004), corruption involves many forms of wrongdoing, including:

- An employee who improperly uses or attempts to improperly use the knowledge, power, or resources of their position for personal gain or the benefit of others;
- An employee acts dishonestly, unfairly, or breaches trust; or
- A member of the public influences or tries to influence an employee to use them.

Corrupt employees have been found to socialize the views of co-workers and passers-by about their corrupt actions, encouraging them to participate in or turn a blind eye to corrupt actions and misconduct that they may witness. Corrupt employees do this by punishing those who challenge them; making comparisons of themselves with others "much worse" in that workplace or elsewhere; claiming that their unethical acts are, in fact, valid for the organization and fulfill important purposes; or claiming that their highly acclaimed past, time and effort enable them to compensate for any corrupt act in which they may now be involved.

Also, any misuse of power over employment, pay, and other employment-related practices, including nepotism, is widely recognized as corruption. Any improper, dishonest or partial exercise of official roles in the workplace, especially if it involves direct monetary benefits to that person or another, including any gain in status or promotion, is widely recognized as corrupt behavior (Vickers, 2013).

Corruption can also involve influencing others to engage in dishonest, unethical, or unreliable activities. In the workplace, the inappropriate influence of those on promotion and selection committees would be an example of corruption, as such conduct reflects a deliberate intent to influence the outcome of such processes. Harassers often work with and through others in their efforts to undermine objectives, including influencing the dishonest exercise of power and breaches of trust, both through influencing members of promotion and selection committees. (Westwood & Rhodes, 2007).

Volume 5, Issue 8 August, 2022

## 3.2. Corruption in the Judicial System

According to (Paragraph 4 Article 102 of the Constitution of the Republic of Kosovo), judges, in the exercise of their function, must be independent and impartial.

But in many cases, the opposite happens where corruption in the judicial system violates the basic principle of equality before the law and deprives people of their right to a fair trial. In a corrupt judicial system, money and influence can decide which cases take precedence and which ones cease.

Corruption has a direct impact on the validity of human rights, mainly for two reasons:

- 1. First Corruption deprives societies of important resources that can be used for basic needs, such as public health, education, infrastructure, or security.
- 2.Second Corruption has direct detrimental consequences in general on the functioning of state institutions and in particular on the administration of justice. Corruption undermines public confidence in justice and weakens the capacity of judicial systems to guarantee the protection of human rights, as well as affecting the duties of judges, prosecutors, lawyers, and other legal professionals. (Sayan, 2017)

Judicial corruption is really worse because if the citizen does not trust the judges who have to decide what is right and what is wrong, then he has no faith in anything. Various tools are needed to crack down on judicial corruption. Independent investigators are needed in the first place, and precise rules regarding wiretapping, seizures, and especially infiltrating agents. But the most powerful tool remains asset verification because assets and unjustified assets must be identified. Politics should give rules and tools to judges who want to do their job honestly and accurately. But there must also be a collective consciousness because it is not individuals but conscious groups that can bring about reforms and change history.

## 3.3. Legal Regulation for Criminal Offenses Against Official Duty

Offenses against official duty present different forms and types of abuse of official position such as abuse of public authority, official authority, and corruption in various forms, which together cause great material and other damage not only to individuals and institutions but also to society as a whole. It is, therefore, in the interest of every state to stop and combat such illegal conduct of individuals and groups of individuals who intentionally or knowingly violate the law.

In our legislation, the criminal offense "Abuse of official position or authority" is provided in (Article 414 of the Criminal Code of Kosovo), where according to him, the official person, who by using the official duty or authority exceeds his competencies or does not fulfill his official duties in order to gain any benefit for himself or for the other person or to cause harm to the person another or to violate the rights of another person, is punishable by imprisonment of one (1) to eight (8) years.

The official person who commits the criminal offense using official duty or authority and the benefit or damage exceeds the amount of five thousand (5000) euros is punishable by a fine and imprisonment of three (3) to ten (10) years.

Abuse of official duty includes, but is not limited to: (Paragraph 3 of Article 414 of the Criminal Code of Kosovo).

- Intentionally or knowingly violating the law regarding the duties or employment of an official;
- Intentionally failing to perform any necessary task defined by law.



Volume 5, Issue 8 August, 2022

- Acceptance of gift, fee, or advantage of any kind as a result of performing an official duty, unless the acceptance of a gift, fee, or advantage is allowed by law
- Misuse of government property, services or personnel, or any other valuable item belonging to the
  government that has fallen into the care or possession of the official as a result of his duty or
  work
- Intentionally subjecting another person to ill-treatment or arrest, detention, control, taking, removal, appraisal, or encumbrance which he knows to be unlawful and intentionally preventing or obstructing another in exercising or enjoying any right, privilege, legal power, or immunity.

## 3.4. Anti-Corruption Strategy in Kosovo

According to sources obtained from Transparency International, which measures the level of corruption in different countries, Kosovo in 2017 was ranked 85th with 39 points out of a total of 180; in 2018, it was ranked 93rd with 37 points from a total of 180 states, and in 2019 it is ranked at an unfavorable position when it ranks 101st with 36 points from 180 states.

The Corruption Perceptions Index is the global most widely used corruption ranking. It measures how corrupt the public sector of each country is perceived to be, according to experts and businessmen. (TransparencyInternational, Corruption Perceptions Index, 2017-2019).

The results of the Corruption Perceptions Index for the periods 2017-2019 confirm the continued stagnation in the fight against corruption. This supports the hypothesis that corruption can be high and continues to be a challenge to institutions and society in Kosovo.

The Anti-Corruption Agency in Kosovo is an independent and specialized body for the implementation of state policies for combating and preventing corruption in Kosovo. (LigjiI Nr. 03/L-159 Për Agjencinë kundër korrupsionit, 2010) This agency has worked over the years to draft a strategy to fight and prevent corruption. In 2020, the Strategy and Action Plan against Corruption 2021-2023 was drafted, where during the drafting of this Strategy were taken into account for all the various local and international reports related to corruption and the perception of corruption in Kosovo.

The objectives of this Strategy are the Development of a "zero tolerance" approach to corruption; building integrity, accountability, and transparency in the work of public administration bodies and strengthening citizens' trust in public institutions; Improving legislation, and strengthening institutional capacity to prevent and combat corruption and raising awareness and educating the general public in the field of anti-corruption.

The general principles of the Strategy are Respect for human rights, the rule of law, political will, accountability, good governance, transparency and integrity, political neutrality, proper management of public works and public property, cooperation, inclusion, and self-assessment.

During the Development of this Strategy, the strategic sectoral strategic objectives and activities were reformed, restructured, and better analyzed in order to harmonize the inter-institutional efforts to fight corruption in all areas in Kosovo. The activities and measures envisaged for the alternatives are divided into the following sectors: Public sector; State administration and local government; Law enforcement and the judiciary, and Public Prosecution and public finance management.

The Development of the Strategy and the definition of its objectives has been done should take into account all relevant factors. This Strategy defines the concrete measures and detailed activities of the implementing agencies in the objectives and partial activities, respectively, and describes the timelines for its implementation.

Failure to act and implement the Strategy jeopardizes the functioning of the rule of law system in Kosovo of non-state intervention against harmful activity (Anti-corruption strategy 2021-2023, 2020).

## 3.5. Sentences Imposed 2017-2019

The Serious Crimes Department, which operates at the headquarters of each basic court, adjudicates criminal offenses that are considered serious crimes. The types of criminal offenses which are considered serious crimes and are tried by this department are listed in Article 22 of the Code of Criminal Procedure, where in paragraph 1, subparagraph 1.77 of this article is listed the offense Abuse of official position or authority. The sentences imposed for this criminal offense in the period 2017-2019 are as follows:

With judgment It is Outstanding cases at the beginning of Outstanding cases at the end of the prescribe d Subjects accepted at work With a rejection judgment Total subjects at work It is solved differently the reporting period Total solved cases With acquittal Chapter Article Penalty with fine Other penalties Imprisonment Probation Descriptio Relative sheer n of the type of works <u>18</u> 135 321 <u>20</u> <u>17</u> <u>35</u> 0 <u>32</u> <u>12</u> 1 <u>6</u> 26 <u>15</u> <u>16</u> 2017 <u>6</u> 2 8 Abuse of 422/339 official 16 98 <u>22</u> <u>17</u> 12 12 14 266 9 <u>11</u> 0 <u>45</u> 0 XXXI 6 2018 position or 8 <u>2</u> <u>2</u> authority 14 108 250 15 12 15 2 24 14 0 6 5 93 15 2 7

Table 2. Statistics from the Basic Court Prishtina - Serious Crimes Department

Statistics obtained from the Basic Court, Prishtina - Department of Serious Crimes for the sentences imposed for the criminal offense Abuse of official position or authority in the period 2017 - 2019.

Based on the statistics obtained from the Basic Court in Prishtina, the sentences imposed for the personal offense of abuse of office or official authority are:

In 2017, the number of selected cases for the criminal offense of abuse of official duty or authority was a total of 152 cases, of which 20 persons were sentenced to imprisonment, 17 to a fine, 35 to a suspended sentence, the absolute statute of limitations was made in 6 cases, and 26 cases were resolved in another way.

In 2018, the number of solved cases for the criminal offense of abuse of duty or official authority was a total of 122 cases, of which nine persons were sentenced to imprisonment, 11 to a fine, 22 to a



Volume 5, Issue 8 August, 2022

suspended sentence, the absolute statute of limitations was made in 6 cases, and 12 cases were selected in another way.

In 2019, the number of solved cases for the criminal offense of abuse of official duty or authority was a total of 93 cases, of which 15 persons were sentenced to imprisonment, 15 to fine, 15 to probation, and the absolute statute of limitations was made in 6 cases, and 5 cases were resolved in another way.

Comparing the Index of Perceptions of Corruption in Kosovo for the years 2017-2019 and analyzing the sentencing of corruption offenses for this period of time proves that there is no compatibility and that the index of perceptions turns out to be much higher compared to the imposition of sentences.

It is important to note that there have been substantial changes in the criminal justice system and criminal legislation, which is a reflection of a more effective fight against growing corruption, organization, drugs, and other phenomenological forms of crime. (Jasarevic & Maloku, 2021: 40)

### **Conclusion**

It is concluded that the crime of abuse of office or official authority is a crime of a general nature compared to all other official crimes, and special types of official crimes are committed with the characteristics of the criminal offense of abuse of office or official authority. Corruption as a negative phenomenon in society hinders economic and social development by harming developing countries, especially those countries that have emerged from the transition where we are part. It is therefore important that all institutions, including those of law enforcement, be more coordinated and as effective as possible in the areas related to the prevention, investigation, and fight against corruption and other aspects in the field of corruption. However, regarding this negative phenomenon for our society, it is not enough for the institutions to stop the prevention and fight against corruption, but the main goal is the awareness of not giving bribes for performing any service or a problem that is presented to us. To achieve this, it is necessary to profile and train investigators, prosecutors, and judges for criminal offenses in certain areas. No country are spared from criminal offenses (Maloku, 2015: 119). Therefore, in order to beg for crime, it is more than necessary for the competent institutions of the nation-states to harmonize the legislation in accordance with the international conventions on transnational cooperation. (Maloku, 2015: 471)

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Volume 5, Issue 8 August, 2022

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