



## Crimes in the Field of Exercising Official Duties

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### **Abstract**

Each country contains its own laws and regulations through which it ensures the protection of freedoms and rights as well as the exercise of various activities. One of the biggest problems faced by states all over the world is the misuse of official office. And precisely for this reason, many countries have incorporated this offense as a criminal offense in their Criminal Codes in order to prevent and punish all its perpetrators. This paper was made with the aim of studying some criminal offenses that are incorporated in the Criminal Code of the Republic of Kosovo in the chapter on "Official corruption and criminal offenses against official duties" where some of them are misuse of official position or authority, misuse of official information and conflict of interest. For this research, the Criminal Code of the Republic of Kosovo, some laws and other literature have been studied and analyzed.

**Keywords:** *White Collar Crime; Criminal Code; Misuse of Official Duty; Misuse of Official Information; Conflict of Interest; Official Person*

### **1. Introduction**

White collar crime as a form of criminality is extremely widespread in the world, it dominates in the Western Balkans extremely much in the last two decades. (Jasarevic & Maloku, 2019a, 2010b). Criminality as a negative phenomenon has been elaborated and analyzed from a legal point of view (Maloku & Maloku, 2021), sociological (Shabani dhe Maloku, 2019a, 2019b), Criminology (Maloku, 2015a, 2015b, 2016a, 2016b, 2016c, 2016d, 2018) and victimology (Maloku, 2019, Gebela & Maloku, 2022, 2023).

White collar crime is a new scientific discipline which is carried out by persons with high authority, otherwise known as official persons, these are persons who exercise their profession in the political, judicial, economic or other fields. White collar crime foresees several forms of its manifestation, and one of them are crimes in the field of exercising official duties. In order to prevent and punish the commission of these crimes, many states in their legislation have provided some criminal offenses related to these crimes. These states also include the Republic of Kosovo, which has provided for these criminal offenses in its Criminal Code, namely in chapter XXXIII "Official corruption and criminal offenses against official duty".

The main purpose of this knowledge is the welfare of society as a whole, because science and scientific knowledge, together with professional (methodological) knowledge, constitute the indestructible fabric of the research process, which is a unity in both theory and practice. However, the research process must be based first and foremost on science, because science must have no limits in the cognitive sense of the word and, as such, it represents the creativity of development and not a system of outdated dogmas. The only thing that sets limits to science and its research is the current state of development of human knowledge; it is therefore our constant task to develop and add new scientific knowledge. (Qerimi, Kastrati, Maloku, Gabela & Maloku, 2023:184)

Some of the criminal offenses that we will clarify are: misuse of official position or authority, misuse of official information and conflict of interest.

Several issues have been addressed in this research:

- 1) What do we mean by crimes in the field of exercising official duties?
- 2) For what purpose are these works carried out?
- 3) What punishments are provided in the Criminal Code of the Republic of Kosovo for these crimes?

## **2. Methodology**

This study is based on the use of numerous research methods. (Maloku, Jasarevic, Maloku, 2021:53). Because of the research intricacy, numerous approaches have been modified to help each other solve the problem (Maloku, Qerimi, & Maloku, 2022, p. 176). The scientific research in this paper, in terms of its type, will be conducted and realized as methodological research, which is basically theoretical (Maloku, Kastrati, Gabela & Maloku, 2022 p. 141). The defined object of research requires the use of different methods and scientific knowledge from many scientific disciplines, in particular, the paper will use theoretical analysis methods, comparative methods and the unity of inductive-deductive methods (Maloku, 2021:76)

## **3. Results and Discussion**

### **3.1. Abuse of Official Position or Authority**

The criminal offense of abuse of official position or authorization is of a general and subsidiary character. (Salihu, 2021) The Criminal Code of the Republic of Kosovo has criminalized the misuse of official position as a criminal offense, which provides that the misuse of the official position is by the official person, who, using the official duty or authority, exceeds his powers or does not fulfill his official duties with the aim to obtain any benefit for myself or the other person or to cause harm to the other person or to violate the rights of the other person, and the punishment for this offense is a prison sentence of one (1) to eight (8) years. (06/L-074)

The rule against abuse of official position defines corruption as abuse of entrusted power for private or personal gain and prohibits employees from:

Using public functions for their own private gain, for the private gain of friends, relatives or persons with whom they are associated in a non-governmental capacity;

Endorsement of any product, service or company;

Engaging in financial transactions using non-public information, or permitting the improper use of non-public information to further private interests; and Misuse of government property or official time. (USOGE)

The basic forms of committing this criminal offense are:

**Abuse of the Official Position** - happens when the official person performs actions under the guise of his own authorizations, but does not undertake those actions in the interest of the duty, but with them brings illegal economic benefit to himself, another or the business organization or causes damage to them. This form is possible in the so-called discretionary authorizations of the official person. (Salihu, 2021)

**Exceeding the Limits of Own Powers-Authorizations** – occurs in cases where the official person undertakes actions that are permissible by law but are in the competence of another person of the same service or of a completely different service, without obtaining permission or consent from the competent official person. (Salihu, 2021)

**Non-Performance of Official Duties** – occurs in cases where the official person does not perform the official action for which he is obligated, or when he performs that action in a way that cannot achieve the goal that must be achieved. Even in this case, misuse can be carried out in order to bring illegal benefits to oneself or others or to cause harm to others. If one of the actions of committing this offense has been undertaken, but the consequence has not been caused, then this offense will remain pending. (Salihu, 2021)

### 3.2. Misuse of Official Information

The criminal offense of misuse of official information is a type of misuse of official duty, because the person has access to this information and by misusing the official duty entrusted to him, realizes material illegal benefit. (Salihu, 2021) This work is foreseen because in many countries there are cases where the official by misusing the information which has not yet been made public enables himself or another person to realize some advantage that does not belong to him, which is a material benefit and in some cases even advantage in employment or any other benefit. (Salihu, 2021)

Even the Criminal Code of the Republic of Kosovo has provided as a criminal offense the misuse of official information, where it is provided that the official who misuses the official information in order to gain for himself or for the other person any advantage that does not belong to him, is punished with a fine and imprisonment from six (6) months to five (5) years. (06/L-074) This form of criminal offense can only be committed by an official person and it can only be committed intentionally and with the purpose of benefiting from an advantage that does not belong to him. (Salihu, 2021)

### 3.3. Conflict of Interest

The Republic of Kosovo in Law no. 06/L-011 provides that the conflict of interest arises from a circumstance in which the official has a private interest that affects, may affect or appears to affect the impartial and objective performance of his official duty. (06/L-011) Conflicts of interest can occur in all spheres of public life, where the most vulnerable are local and central authorities, because they have more proximity and contact with citizens and local entrepreneurs. (ILDKPKI) Conflicts of interest can be considered common issues in the workplace. (UCF) For this reason, many countries trying to regulate this part have made different rules and regulations related to this issue. (ILDKPKI)

Even the Republic of Kosovo has the "Law on the prevention of conflict of interest in the exercise of public function", where it is clearly described that the purpose of this law is to strengthen the integrity of the public sector, to guarantee the performance of public duties in an objective, impartial and transparent in the service of the public interest through the identification, prevention, management and resolution of the conflict of interest of officials. (06/L-011) In order to punish the conflict of interest, the Republic of Kosovo has incorporated the conflict of interest into its Criminal Code as a criminal offense, which stipulates that an official who participates personally in any official matter of which he knew or should have known that he or she, any member of his or her family, or any legal entity related to him or

her, has a financial interest, shall be punished by a fine and imprisonment of up to three (3) years. (06/L-074)

Also, the law on the prevention of conflict of interest in the exercise of public function as the central authority responsible for supervision has foreseen the agency, while the authority responsible for the implementation of this law are: the direct leaders of the officials, according to the hierarchy, within an institution as well as the institutions and governing authorities under the law. (06/L-011)

## Conclusion

Seeing that white collar crimes are a new scientific discipline which is carried out by official persons and which has several forms of its manifestation, we conclude that they are one of the most problematic issues faced by states.

On the basis of this research, we come to the conclusion that the commonality of all these criminal offenses related to crimes in the field of exercising official duties is that they are all committed intentionally by official persons, whose purpose is the benefit of some material good or any other benefit for themselves or for any other person, to cause harm to other persons or to violate their rights by using their official duties and exceeding their competences.

And for all these criminal acts, the Criminal Code of the Republic of Kosovo has provided different punishments for them, starting from fines to imprisonment.

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