

THE PRESENCE OF OFFICIAL CORRUPTION AS THE OBSTACLE TOWARDS EU INTEGRATION OF KOSOVO

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Abstract

Like every criminal act that is of social dangerousness, criminal offenses of official corruption have the features of social dangerousness. Criminal offenses of official corruption are of high dangerousness level, based on the fact that we have to deal with the unlawful acts whose perpetrators are parts of state organs, including, apart from administrative organs, judicial organs whereas these criminal offenses take part in the group of criminal offenses of corruption against the official duties. In Kosovo courts, a considerable number of cases is being judged against the official corruption or which are corruption motivated. Essential element of this crime is the violation of the official duties by the officials through the criminal deeds---by misusing official position or official authorizations regarding the official duties. All executive organs, as well the judicial ones are being engaged within their authorizations to prevent or to judge corruption as big evil within a society, but the question if the state organs are being successful on combating corruption is appropriately raised in both: prevention and trials, which actually are the main duties of these organs.

Keywords: misuse, use, corruption, prevention, trial.

JEL Classification: K14, K33

1. Introduction

Kosovo Criminal Code³ (further in the text) from article 414 up to article 430 regulates 17 criminal offenses of official corruption, as follows: misuse of position or official authority, misuse and the fraud on public procurement, misuses of official information, conflict of interest, misappropriation in office, fraud in office, un-authorized use of property, accepting bribes, giving bribes, giving bribes to foreign officials, trading influence, unlawful promulgation of court decisions, disclosing official secrets, falsification of official documents, unlawful collection of disbursement, Unlawful appropriation of property during a search or execution of a court decision, and Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations.

By their unlawful acts and deeds officials while exercising their official duties that as consequences have the not regular functioning of public services, it results that with such acts they consume or committ criminal acts against the official duties.

Thus, if viewed and analysed the naming of these criminal offenses it results that the essential element of these criminal offenses is violence of official duties done by officials through unlawful use of position and the public authorisation which enjoyed in exercising their official duties.

It is obvious that when the presence of corruption is high in the state apparatus, the trust of citizens in the state and its organs in an inevitable way falls down or loses extremely. In order to save or to turn back the confidence of citizens on state organs, states undertake adequate measures on hindering and eliminating all forms of misuse of the official duties or misuese on exercising the official duties or misusing the public authorisations. Apart of many measures of preventing character, there are foreseen many preventive measures and other forms of responsibility of officials where the criminal responsibility belong to, as well. In this direction all modern world legislations sanction and foresee the criminal acts against the official duties.

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³ Kosovo Criminal Code nr. 06/-074, Gazette (GZRK) nr.2 e dt. 14.01.2019. Prishtinë.

2. Criminal legal overview of criminal offenses of official corruption and the criminal offenses against official duties

Many theorists of the field of judicial-penal law consider that with these criminal acts we cannot talk about a unique defended object but we talk about multiple defended object. Apart of the fact that with these criminal offenses there are threatened various individual values. From the nature and from the meaning of these criminal offenses it results that their primary defended object is their free exercise, their rightful and aware of the official authorities. Such definition of the defended object of such criminal acts is not limited only with the legal activities of the state administration, as are: social, cultural, administrative, health bank services and financial businesses, international trade, etc.

Duties respectively responsibilities of an official of the state administration⁴ obliges that person to be cautious while exercising his authorisations and in this regard we should take into the consideration the fact that criminal acts stand in the heavy violation of the position or authorisation during the exercise of the official duties.

By analysing criminal acts against official duties, as mentioned above without underestimating other criminal acts of this nature, it results that criminal act against official duties or official authority is of special importance because it within itself involves legal acts which should have been undertaken by an official within its authority or acts which should not have been undertaken and which are not in accordance with his legal authority.

Thus Kosovo Criminal Code foresees as follows: intentionally or knowingly violating a law relating to the official's office, duties or employment; intentionally failing to perform any mandatory duty as required by law; accepting any gift, fee or advantage of any kind as a result of the performance of an official duty unless the acceptance of the gift, fee or advantage is permitted by law; misusing government property, services, personnel, or any other thing of value belonging to the government that has come into the official's custody or possession by virtue of the official's office or employment; intentionally subjecting another person to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or intentionally denying or impeding another in the exercise or enjoyment of any legal right, privilege, power, or immunity⁵.

Thus, if the mentioned legal text is analysed or looked up, it results that this legal definition of criminal offense Misuse of official position or public authority includes also other criminal acts of that nature foreseen with the KPRK but which have some essential specifics or characteristics which determine existence of the criminal act of the corruption nature or the criminal acts of official corruption and official duty.

Taking into the consideration the fact of how the illegal act of a state official is manifested in report to his legal authorisations or non action of an official from state administration (even though he should have acted in accordance with his legal authorisations) it could be concluded that as a general consequence of all criminal acts against the official duties it is the regular endangerment or violation of the public power, administrative power and their organs, unlawful use and unfair use of the position or official authorisations.

3. Repressive measure undertaken of criminal interrogative organs of Kosovo on preventing and judging the criminal acts of official corruption and criminal acts against the official duties

In order to have a successful fight against corruption, the organs of criminal investigations should be more efficient, but the official statistics from Prosecutors Council of Kosovo and the Judicial Council of Kosovo as well data taken from monitoring organization, no matter of their engagement, talk about a low efficacy in the fight against the corruption.

⁴ Here it is not though only about classical persons of state administration, but it is thought for all officials from legislative, executive and judicial power.

⁵ Article 414, Kosovo Criminal Code, nr.06/-074 , Gazzette nr.2, dt. 14.01.2019. Prishtinë.

Thus according to the KCC⁶, it results that on 01.01.2020 all prosecutors of Kosovo had 267 unfinished criminal charges which derived from 2019 year with 800 suspected persons who could have committed criminal offenses of corruption nature, whereas during the period from 01.01.2020 to 30.09.2020 prosecutors had 263 criminal charges with 533 persons. During this period of time prosecutors have managed to solve 220 criminal charges with 437 persons.

Taking into the consideration the fact that fight on preventing and combating corruption were priorities of all state organs and with this also state prosecutors, it results that the state prosecutors have not showed satisfactory results on solving cases and this comes from the lack of efficacy of the organs of accusation which without any doubt stimulate the increase of corruption. When it is concluded that the efficacy of prosecutors is weak this derives from the data that the total number of 530 cases, prosecutors have managed to proceed in the courts with only 220 cases or 41% of cases and this really indicates the low efficiency. In this regard an attentions should be paid to the time and the delays caused by courts which in an unavoidable way lead towards to obsolete the prosecution - thus there are no possibilities for trials of corruption nature.

4. Effectiveness of Kosovo courts at trials of corruption cases

Statistics of Kosovo Courts Council show not satisfactory efficiency of the trials of cases of corruption. Thus in early 2020 cases from 2019 were transferred as untried cases totaling with 269 cases based on which 696 persons were accused and later on in 2020 there were accepted some 125 new cases with 221 accused persons and this results that during 2020 courts in Kosovo worked with only 394 cases of corruption covering 917 accused persons.

According to the annual statistics of Kosovo Judicial Council, it results that courts in Kosovo were working with 248,302⁷ cases of all natures. From them as untried were transferred from 2019 to 2020 year 143,728 cases whereas there were accepted 104,302 cases as new ones.

From total of 248,302 cases that were being processes in courts , within the number of 70,697 criminal cases, there were included also the cases of corruption.

From the presented statistics it comes that from the total of 70.697 criminal cases in Kosovo courts, 394⁸ of corruption nature, expressed in percentage they were 0,56% whereas in 2020 there were solved only 112 cases or 28%, in percentage. Seen from the percentage point of view it results that the number of cases “was not as big as thought” but when we take into the consideration that in the total number, there were various offenses presented included minor offenses, then it should not be created a perception that the number of corruption case was not so big, because in the cases of corruption there were included 9017 persons what for a state administration that is small as Kosovo, this number is sensitive and this creates a perception that the majority of officials their services exercise on the basis of corruption by bribes and other favours that aim on realizing corruption in other indirect ways.

Regarding efficiency of courts at trial of corruption cases, statistics show the following situations:

Table nr. 1

Nr. of processed criminal cases	Of corruption nature	Solved	Unsolved	P %
70,697	394	112	282	28 .

Doing a review of the efficiency of the work of courts, in trials of corruption cases, it results that Kosovo Courts, the courts of Kosovo are not efficient on preventing and combating corruption.

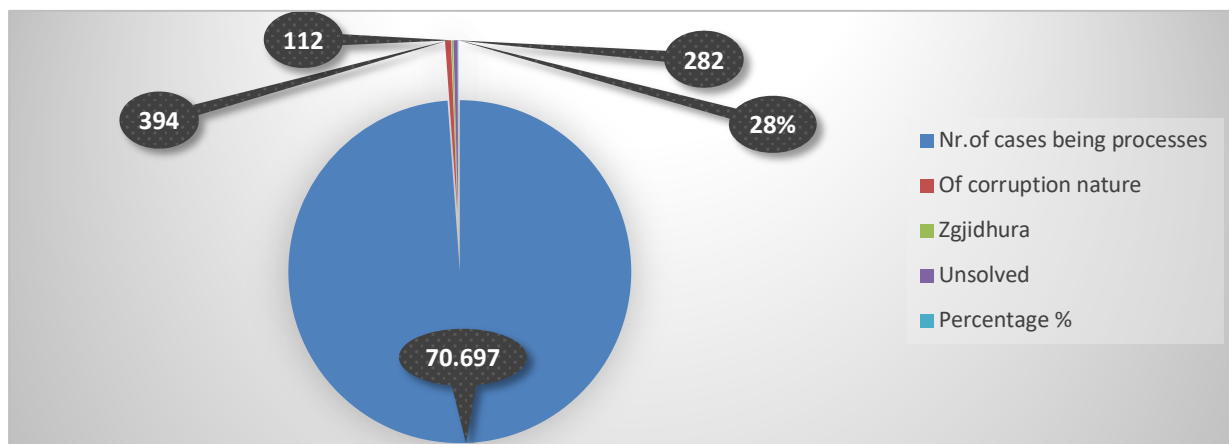
Thus, how it could be explained that courts are preventing and combating corruption when

⁶ Report of the Kosovo State Prosecutor Office, October, 2020.

⁷ Report of the Kosovo Judicial Council on the total number of cases for 2020 year.

⁸ Special report of Kosovo Judicial Council ony for cases of corruption.

from the total number of criminal cases only 112 cases are tried out of 394 that were being processed, whereas untried remain 282 cases or expressed in percentage it comes that the corruption cases were judged in total of 28%.



This shows, if the work of courts is evaluated that in solving the corruption cases, they with such low efficiency not only cannot prevent and combat corruption but they with their work can contribute corruption by this Kosovo budget and Kosovo economy are damaged at the same way as the interests of Kosovo citizens are damaged.

4.1. Punitive policies of Kosovo courts

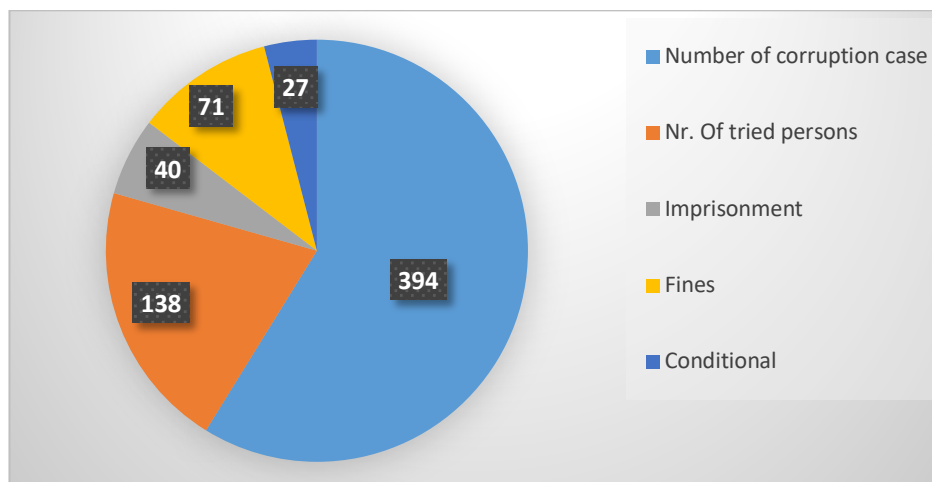
Kosovo courts apart of their low efficiency in solving the corruption cases, they did not show reasonable punitive policies when they found guilty perpetrators of this type of criminality.

Thus, instead of undertaking a more heavy punitive policy for the cases of corruption, they issued extremely soft punishments like conditinal punishments or fine punishments. Instead of preventing corruption, courts with their soft punitive policies somehow helped flourishment of corruption.

So, during 2020 Kosovo courts issued punishments with effective prison punishments against 40 accused, then fines were issued against 71 persons whereas conditinal punishments were issued against 27 accused persons.

Data showed in table based on percentages regarding the types of punishments

Nr.corruption cases	Nr. of persons tried	Imprisonment	Fine	Conditional
394	138	40 apo 28,89 %	71 apo 51,44 %	27 apo 19,56 %



4.2. NGO opinions who monitor the work of courts

Kosovo Institute of Justice⁹, who deals with monitoring of courts on especially corruption cases shows worrying statistics regarding the fight against corruption. This NGO shows that the state prosecutors have raised 298 accusations where there are 216 persons from politics accused and within them 55 are the high profile officials, but however none of them was tried or punished with the effective imprisonment.

These findings and other analysis show a weak efficiency of the judicial system in combating official corruption and this is especially noted when we talk about the high rank state officials. This can be proved with the fact that apart of existence of corruption up to now there is not seen any final decision of sentencing any high state official with the effective imprisonment.

It should be highlighted the other fact when various officials of different positions, punishments were very soft without excluding the fact of conditional punishment and this however indicates that judges have no professional courage to change the punitive policies against cases of corruption.

In the same way NGO Drejtësia Sot¹⁰, by monitoring court hearings has found out a not satisfactory efficiency of trials of corruption cases. According to this at the beginning of 2020 there were inherited 272 corruption cases whereas there were accepted 132 new cases or during 2020 courts of Kosovo had a total of 403 corruption cases whereas out of this number courts had solved only 130 cases or expressed in percentage 32% of cases.

If we make a comparison between statistics from the Kosovo Judicial Council and those from NGOs we see that NGOs have given 10 more corruption cases. In fact this difference could be possible maybe from the reason of extracting data in different forms, but in essence there is not seen any substantial difference regarding data, since numbers are quite similar.

5. Conclusions

Administering the trial of all cases in the judicial system in Kosovo continues to be at a low level. Thus there is no efficiency on solving cases at the reasonable level.

No matter that Kosovo Judicial Council gives the priority for solving the corruption cases, the achieved results were minimal making the judicial system very weak in sense of judging corruption of cases.

It is a fact that Pandemic COVID 19 influenced on the low level on solving cases, but this should not be a justification because previous years regarding the corruption cases were of the same level.

6. Recommendations

Kosovo Judicial Council should within a very short period of time increase the number of judges, on especially corruption cases.

Kosovo Judicial Council should require more accountability from judges related to the low level of efficiency of preventing and combating corruption.

Kosovo Judicial Council in the future should increase number of professional collaborators or assistants for judges. It should look for financial possibilities so every judge can have a professional collaborator whereas judges that judge cases of corruption or cases of organised crime to have two professional collaborators.

Kosovo Judicial Council and Kosovo Prosecutorial Council should further deepen cooperation so they design joint programs which lead towards prevention and trials against corruption and organised crime cases.

Kosovo Judicial Council apart from engagement it had until now, it should in the future design

⁹ TV program, "Iustitia" dt.19.04.2021 of *Radio Evropa e Lirë dhe Betimi për Drejtësi*, published by RTK.

¹⁰ Report of monitored corruption cases in courts during 2020-February 2021.

special programs on solving old cases in that way that case become solved at a reasonable time.

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