

## **CORRUPTION AND FRAUD AS FORMS OF ECONOMIC CRIME AND AS AN IMPEDIMENT TO ECONOMIC DEVELOPMENT IN KOSOVO**

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### **ABSTRACT**

Besides the criminal acts against the economy that pose an obstacle to the economic development of Kosovo, there are other forms among through which economic crimes appear such as: offenses of corruption and fraud to which they are not immune either countries with rapid economic development, even less Kosovo, state with fragile democracy and rule of law. Corruption as a criminal offense is incriminated in Kosovo criminal legislation, Penal Code in power since 2013. This form of criminality appears through some offenses such as: acquisition the duty", "fraud on duty" and offenses "unreasonable accepting and providing gifts". These offenses are incriminated in the group of offenses against official corruption and offenses against official duty. Corruption as a phenomenon has its origins from ancient times, it has been constantly developed and perfected throughout history and it is present in large part in present days also. Pronounced characteristic of the appearance of corruption and fraud are especially in transition countries such as Kosovo. This phenomenon is present in all segments of the local and central government. In practice there are a very few persons, which have been convicted for these type categories of offenses. Obstacle to the development of the country besides the corruption, undoubtedly represent offenses of fraud, foreseen in the group of offenses against the property. These acts are expressed through criminal offenses: blackmail, usury, fraud and scams related subventions from the European Community funds. In practice, a large group of offenses against the economy are committed through fraud such as: "Causing false bankruptcy", "fraud in bankruptcy proceedings", "fraud on creditors or debtors damage," fraud on the exchange of securities "etc. My determination in this paper is to analyze this issue and legal criminal defense that Kosovo criminal legislation has given, to the citizens and economy, causes and their appearance, detection and treatment of these offenses, and the penalties. There is no doubt that this group of criminal acts, cause loss of public revenue, bring damage to the national and international economy, create illegal material benefits, seriously impair the development and democracy, create informal economy, harming legal competition, raises prices and as a result of all this create suitable environment for organized crime. Finally, in this paper i will analyze the measures and penalties that Kosovo's criminal legislation provides for perpetrators of these offenses.

**Keywords:** Corruption, fraud, criminal law, criminal offenses, economic crimes.

### **INTRODUCTION: CORRUPTION AS A FORM OF ECONOMIC CRIME**

Economic crime phenomenon today is present in all countries of the world, especially in countries that emerged from the war and spend a period of transition. The crime form which has taken burst especially after the war in Kosovo is corruption. It obviously complicates normal economic activity, but also poses a great risk for political and economic system in general.

Corruption as a phenomenon has its origins from the early times, which has constantly spread and grown at all times, while nowadays it has affected almost all segments government either central or local. Corruption means violation of legal provisions by public officials in order to illegally benefit the assets or other benefits. posing a serious threat to the state, economy and administration in general ( Dr. Sc. Veton G. Vula, organized crime, published by the European College "Dukagjini", Pristina, 2013, p. 206). For alighting of the phenomenon and causes of corruption, today say each day are organized national and international conferences, debates, scientific and professional gatherings of experts in different fields of economy, legal, criminological etc. One of this kind was held in The Hague in the Netherlands, where the participants in this international interstate conference on economic crime, were more states prosecutors, customs officials, police officers, experts in the field of economy, Professors etc., where, the key issue was how to combat the activities of organized crime networks in these areas:

- Violation of intellectual property rights,
- Piracy of products and
- Falsification of goods that have not met the standards and that can cause potential problems for public health and safety (TAIEX funded Economic Crimes Conferences, The Hague, October 14 to 16, 2013, the participating States: Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Macedonia, Georgia, Israel, Kosovo, Moldova, Montenegro, Morocco, Russia, Serbia, Tunisia, Turkey, Ukraine).

All points of discussion were related to abuse and fraud made by various economic companies where corruption and fraud have its influence. From a survey conducted by the United Nations Office for Drugs and Crime in Vienna on the topic "Business, Corruption and Crime in Kosovo"

- The influence of bribery and other crimes in private enterprises as key findings from the research were concluded as follows:

- Businesses in Kosovo rank corruption as the biggest obstacle to do business,
- The rate of bribe-paying businesses in contact with public officials is 3.2,
- Businesses that has paid bribes, was paid an average of 7.7%, of bribes to the public officials,
- In Kosovo, according to the report 59.2% of bribes are paid in cash, where the average amount of bribes paid is 844 Euro,
- In half of all cases of bribery (50.1%), payment is made by the request, in explicitly manner (13.3%), or implicitly (30.3%) by the public official, or at the request of a third party (6.5%) on behalf of the official. While, in 38% of cases, it is provided by a representative of the business, without prior request.
- One of the third (34%) of all bribes paid by businesses in Kosovo, are paid before the provided services, while (31%) are paid after the services are provided.
- The purpose of payment of the bribe is intended to accelerate the procedure in percentage (28.4%), or to finalize the procedure has been given a (13.1%) (United Nations Office on Drugs and Crime, United Nations Office for Drugs and Crime, Vienna, 2013).

This research shows how corruption is present as a phenomenon and as a pathological phenomenon in society, what kind of a loss causes to the country's economy and to the economic development in general. Therefore this phenomenon, with continuously increasing proportions, requires commitment of all state structures, civil society, media, to contribute to the disclosure of unreasonable giving of gifts, in order to emancipate the society, not to practice corruption, with the purpose of rendering their affairs by public officials, with favoritisms, against the procedures and law. So corruption remains a serious threat to all political regimes especially poses a threat to the democracy. (Prof. Dr. Vesel Latifi, Fighting corruption and the seizure of material benefit earned by the criminal offense, scientific magazine "Juridica", Pristina in 2011).

### **Definition of corruption under Kosovo's Criminal Legislation**

Kosovo has incriminated the corruption as a phenomenon, in law no. 2004/34, where according to Article 2 of the law, corruption is defined as: Any violation of the duty of the officials or responsible persons in the legal entities, and every activity of initiators or beneficiaries of such behavior, directed as a response to a reward, that was directly or indirectly promised, offered, given, demanded, accepted or expected to be taken for himself or for another person ( Law Nr. 2004/34, against the corruption of the Republic of Kosovo). The law provides measures against the corruption within the scope of the strategy against corruption, especially in the field of administrative investigation of public corruption, eliminating the causes of corruption, incompatibility of holding of public positions and performing profit-making activities for the officials, restriction on the acceptance of gifts related to the performance of duty, supervision of their assets and persons related to them, and restrictions regarding contracting entities participating in public tenders, conducting business with firms where an official or a person in close relationship is involved. (Ibid Article 1). Corruption is also incriminated by the Kosovo penal code of 2012, Article 422, stating: officer, using his duty or official authority exceeds its competence, or does not fulfill his official duties in order to gain any benefit for himself or another person, or to cause damage to another person or to seriously violate the rights of another person, shall be punished with imprisonment from 6 months to 5 years (Kosovo Criminal Code of 2012, Official Gazette 19/13, Article 422). Kosovo has made positive steps regarding of foreseeing this offense with criminal legislation, also has provided an appropriate criminal sanction for this form of criminality. Also legislation has incriminated more actions that have for target the economy, although corruption can be political, administrative, etc. Given that this offense is performed continuously, and is performed by perpetrators who have extremely large benefits and without legal basis, and by the practice, this category of offenses against the economy is hardly detectable; Kosovo has created the Anti-Corruption Agency ( Law Nr. 2004/34 Anti-Corruption Agency was established in July 2006, and started working with 2007) , as prevention for combating and preventing this phenomenon. But all reports indicate that the agency has not achieved the goal, for which the legislator created it.

### **Some criminal offenses of corruption**

Criminal offenses of corruption according to the penal legislation of Kosovo are offenses that are related to profits made by public officials in the case of performing of duties or responsibilities contrary to law, so in the case of performing of tasks, create favors for themselves or for others. Some of such crimes are:

- Burglary by abusing the duty
- Smuggling by the customs officials
- Non-performance of duties by the tax authorities
- Proposal for awards made to employees performing a public duty
- Giving of awards
- Demand and acceptance of bribe
- Receiving of award from the judge and prosecutor
- Giving of recompense and promise (Prof. Dr. Vessel Latifi, Fighting corruption and confiscation of material benefited by the criminal offense, scientific magazine "Juridica", Pristina, 2011. Pg. 10-11)

Given the fact that the Corruption is performed by the officials having legal obligation to fight it, it is very concerning fact that these offenses remain undiscovered in most cases, and caused damages if the public budget or private businesses, remain improperly realized.

Therefore many authors rightly point out that the recipient and the giver of the bribe, is considered be the greatest enemies of nations, and they deserve the most severe penalties for performed acts ( Ilir Islami, economic and financial crimes as obstacles to Kosovo, scientific magazine "Juridica", Pristina, 2011. Pg. 129). The Criminal Code of Kosovo has incriminated corruption in two ways: criminal offense "unreasonable acceptance of gifts" - Article 315, where for the perpetrator of this criminal offense is foreseen cumulative sentence by fine and imprisonment up to three years, and the offense "unreasonable giving of gifts" - Article 316, where the sentence is foreseen by a fine and imprisonment up to three years. In both cases the received and given gifts are confiscated (See Kosovo Criminal Code of 2012, Article 315 and 316). While the criminal offense of corruption is also incriminated in the Criminal Code of Albania and that: for the criminal offense of active corruption or (bribery) its provided the sentence punishable by fine and imprisonment from three months to two years. While for the offense of passive corruption (bribery) also foresees cumulative sentence of fine and with the prison sentence of six months to three years ( See Albanian Criminal Code of 1995, Sections 164 a and 164) . This offense is incriminated with modern states' criminal codes too, and penalties for this offense are higher than in Kosovo and Albania. That corruption remains a challenge for Kosovo it is concluded also in the progress report for year of 2014, where among other is stated that corruption in public procurement and tenders remain major problems. The report also considers that the anti-corruption council is dysfunctional and criticizes the lack of enforcement of anti-corruption strategy (<http://www.zeri.info/actuality/1281/> the progress – report for Kosovo-corruption tenders – the major problems). Finally i think that the corruption as a form of economic crime is related to the organized crime, and poses a serious threat to the economy of each country, especially in the countries with vulnerable function as legal state.

### **Fraud as a form of economic crime**

Given the fact that fraud appears in various forms and as phenomenon poses a threat in many spheres of life, especially to the economy and property in generally, I am determined to present in this paper knowledge, forms, analyzing scientific basis, the incrimination of this offense by law, and some of the causes of the appearance of fraud as a form of economic crime. Today no country is immune against the crime in generally and especially is not immune against fraud in

various commercial economic segments of property. This phenomenon today is very widespread as a result of professionalism and excellence of criminality (Mr. sc. Agron Beka, abuses in the field of turnover of immovable property in Kosovo, AAB Prishtina, 2007, Article 35). Kosovo Criminal Code of 2012 and has incriminated this offense in many ways in the group of offenses against property (Criminal Code of Kosovo in 2012, (official journal! 9/13), Chapter XXVII). In my opinion I think that this offense was supposed to be arranged in the group of offenses against the economy because most criminal acts carried out today by deception, are carried out in the economic field. Below we will present some offenses under this law.

### **Fraud" (Article 335)**

Anyone who through false presentation of facts or concealing facts, and in order to obtain an unlawful material benefit for himself or another person, or to cause material damage to another person, deceives or continues misleading other person, and by this encourages a person to perform or not to perform an action to the detriment of its property or the property of another person, shall be punished by fine and imprisonment of three (3) months to three (3) years.

If the offense in paragraph 1 results in unlawful material benefit or causes damage exceeding (50,000) EUR, the perpetrator shall be punished by a fine and imprisonment of three (3) to ten (10) years (Ibid 335).

Some criminal acts "causing false bankruptcy", "fraud in bankruptcy proceedings", "fraud on creditors or debtors damage," fraud on the exchange of securities ", are performed exactly by the deception. This offense is incriminated in the Albanian Criminal Code of 2001, within the offenses against property and in the sphere of economy (See the Criminal Code of the Republic of Albania, 2001, article 143, section II). For this offense legislator has provided high penalty of up to twenty years in prison (therein). The object of the crime by Professor Ismet Elezi are "Legal relationships established to ensure the right to private and public property, of legal or state entity and property rights, and their sanctity against fraud as well. While by the objective point of view, the crime is committed in various ways. If the benefits provided are not considered property, then there is no element of the criminal offense of fraud, but there might be a figure of another criminal offense ( Prof. Dr. Ismet Elezi Criminal Law (CC), erik publications, Tirana, 2009, p. 234).

Criminal offense of fraud has also foreseen some foreign legislation. So the Italian penal code section 640 (TRUFFE Fraud) thereof provides: Anyone trickery (trick tricks) or by fraud, pushing any one into mistake, ensures himself or to others a unfairly profit, shall be punished. While the French Criminal Code, has the offense of fraud somewhat differently, in comparison with the above codes.

Therefore in Article 313-1, is provided: Fraud is that, from the use of a false name or false quality, or by the abuse of a real quality (title), or by the use of fraudulent maneuvers of lying to a natural or legal person, and doing that by submitting funding's to his detriment or others, values or whatever good, to supply a service or perform an act that has brought charges or release from liability ([http://mobile.ikub.al/SHOOL\\_C\\_ATEGORY / TOPIC-FRAUD-911110013.aspx](http://mobile.ikub.al/SHOOL_C_ATEGORY / TOPIC-FRAUD-911110013.aspx))

**Subventions fraud "(Article 336)**

Whoever in connection with the application for obtaining the continuation or modification of the conditions for receiving a subsidy, submits to a competent authority, inaccurate or incomplete data, which is a condition for approval, continuation or modification of subsidy, or conceals such data contrary to the obligation to reveal such information to the competent authority, shall be punished by a fine or imprisonment of up to five (5) years ( See the Criminal Code of Kosovo of 2012) . If the offense in paragraph 1 or 2 of this article results in a material benefit or property damage, that exceeds the sum of twenty five thousand (25,000) EUR, the perpetrator shall be punished with imprisonment of one (1) to eight (8) years (Therein). This offense is new and has not been provided in Kosovo criminal legislation before or in the Provisional Criminal Code of Kosovo. The aim of the legislator has been to provide criminal legal protection to subsidies, as the benefit derived from Kosovo public funds, with the intention of economic stimulation. This offense is envisaged in the Criminal Code of Albania 1995 as a criminal offense in the sphere of economy. Scams in documents presented by fraudulently obtaining Subventions from the state, is punishable by a fine or imprisonment up to four years (See Albanian Criminal Code of 1995, Section 144) . How much damage brings to Kosovo's economy this offense, can be ascertained by a report from the Ministry of Agriculture, Forestry and Rural Development (MAFRD) of Kosovo, who noted that farmers often to take advantage of investment grants and subsidies from the Ministry, in the application forms they put false information, for which they are punished and entered in the black list of the ministry. Only during the period 2010-2013, the number of farmers who tried to cheat and take advantage of Subventions or grants without deserving them was 7866 farmers, while those who had the disagreement in over 50 percent of the data declared by farmers and verified by commissions, to whom have been denied the right to benefit from public funding for agriculture in the period of three years, reaches a number of 1,317 farmers ([http://prizrepress.com/economy/for 3 – years – sentenced 7866 fraudulent- farmers/](http://prizrepress.com/economy/for-3-years-sentenced-7866-fraudulent-farmers/)).

This phenomenon is shows very well how great risk represents this form of economic crime, so much more full and adequate the criminal legislation and its implementation in practice and prevention against these offenses, guarantees successful fight against fraud as the crime phenomenon directed against property and economy. An offense that is related to this category of offenses is also:

**Fraud related to the receipt of funds from the European Community" (Article 337)**

Anyone who intentionally uses or presents false statements or inaccurate or incomplete documents, and as a result of this action illegally accepts or receives funds, from the overall budget of the European Community or by managed budget or on behalf of the European Community, shall be punished with imprisonment of one (1) to five (5) years (See the Criminal Code of Kosovo of 2012) This offense is new in Kosovo legislation and for the first time was provided in the penal code of 2012, and in my opinion: the reason of Criminal legal defense has been, to be protected the European Community budget, from the false appearance beneficiaries with inaccurate data who achieve to illegally benefit funding's from the European Community budget. Protection to it has been given from the Convention for the Protection of the Financial Interests of the European Communities which entered into force on November 17, 2002. Convention had temporarily dampened debate on the competencies of the communities in the area of criminal law.

Once it was confirmed that the criminal law is the field that depends on member states, on December. the 18<sup>th</sup> 1995, the council decided to issue regulations for the protection of the financial interests of the European Communities (Council Regulation (EC, Euratom) NO.2988 / 95 of 18 January 1995 on the Protection of the European Communities Financial interests [http://europa.eu/legislation\\_summaries/fight\\_against\\_fraud/protecting-european\\_communitys\\_financial\\_interests/I33018\\_en.htm](http://europa.eu/legislation_summaries/fight_against_fraud/protecting-european_communitys_financial_interests/I33018_en.htm)). Convention Community fraud defines as: deception that threatens the community interests of the states. The Convention provides that any deliberate action regarding fraud in expenditure and revenue such as:

- Filing of false inaccurate or incomplete statements or documents, aimed to get the funding's, coming from the general or administered budget by the European Community.
- Failure to provide information by dispelling a specific obligation, which has the same effect.
- Use of funds for purposes other than that for which it was given.
- Exposure or use of inaccurate or incomplete forged documents, that have for effect the illegal reducing of sources of income, of general or administered budget of the European Community, for their own account.
- Failure of giving of information, countering in this way the specific obligation, which has the same effect.
- Acquisition of an advantage lawfully established, that has the same effect ( Jean Pardel, Geert Corstens and Gert Vermeulen, *European Criminal Law*, Issue papyrus Tirana, 2009, p. 628-629)

From this definition it is clear that Community fraud is excluded from any offense that is not intended to harm the Community budget. By the Convention there is no community fraud, unless there was no intention, so if the perpetrator did not know that the paper that he presented is forged, or even if he was negligent, person should have known that the document is forged normally, so even in this case too, there is no fraud in support of Article 1 of the Convention. Convention has not foreseen anything about potential mistakes. From the existing data it is clear that the Convention is not being applied, but deception as a phenomenon, all Member States, has provided it in their national legislation.

## CONCLUSION

This paper has treated the criminal offense of corruption and fraud as forms of economic crime, extremely complex that cause to Kosovo's economy but also other countries, economic and political harm. Special treatment is made to the form of appearance of the referred criminal acts, detection, the importance given in terms of legal - criminal defense, foreseen penalties, and obstacles that bring to the economy and wealth in general, provided in Kosovo criminal legislation and beyond.

Corruption and fraud pose most complex form of organized crime, for the fact of growth and expansion in all segments of the government and non-detection of it in time. Damage that offense of corruption brings, is not just in the economic sphere but also the political one. Results shown in combating this phenomenon are largely symbolic, because in practice there are very few cases where the perpetrators are tried, and material benefit earned by criminal offense, was

seized from them. Kosovo has a full criminal legislation to combat corruption and fraud, but there are obstacles to its implementation in practice. Obstacles in the first place are: lack of political will to fight corruption, then the negligence and inability of the judiciary bodies to deal with this form of crime. This form of economic crime requires a much greater commitment of all institutions are authorized to fight corruption, then seeks to draft a strategy and make deep reforms in justice, and establish specialized agencies for this form of criminality. A great contribution can play civil society and media. Also society should be aware that it should not create favors illegally giving bribes to public officials. Considering the fact that against this phenomenon of criminality, no country is immune, this situation requires coordination and consolidation of state institutions in combating and preventing corruption and fraud.

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