



## Some Forms of Manifestation of Official Corruption and Crimes against Official Duty in Kosovo 2011- 2012

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**Abstract:** Corruption as one of the forms of the organized crime represents one of the most dangerous phenomenon which directly attacks the society. Corruption, respectively the official corruption is present in every country of the world but in the countries that have a developed democratic system, the corruption is considered to be controlled while in developing countries (such as Kosovo is) corruption is at a very concerning level. According to the official data, the corruption in Kosovo takes place in many public institutions. Therefore, we can reach positive results in fighting and preventing this negative phenomenon only if we only if we roughen the punishment and criminal sanction policies. In addition, the paper presents that during the period 2011 – 2012, the courts in Kosovo preceded a very limited number of the cases that are related criminal offence against corruption. In addition, the courts imposed lower measures of sanctioning compared to the number of the criminal offence cases. Only a closer cooperation between the triangle Police – Prosecution – Court and the support from the citizens would enable the sustainable basis for fighting and preventing the official corruption. The paper contains theoretic, legislative and statistical information. The emphasis will be given to the official corruption and the criminal offences against official duty, the most common forms of the official corruption as well as the statistical data related to the official corruption and other criminal offences against official duty.

**Keywords:** corruption; official corruption; fighting and preventing; officials; criminal offences

### 1. Introduction

Organized Crime is considered to be one of the phenomena which endanger the social balance of a society in economic, social and political aspects. Most expressed forms of crime in the Republic of Kosovo are: smuggling of narcotics and human beings, money laundering, abuse of official duty namely official corruption etc. Corruption as a form of organized crime presents one of the most

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dangerous phenomenon which directly attacks the society. Corruption is manifested in the entire world but in countries with a tradition in the democratic system it is considered to be under control compared to countries in transition (as is our country) in which corruption is in disturbing level. Regardless of various attempts and initiatives from state institutions and civil society for reduction of corruption, the level of this negative phenomenon remains high. Marked increase in the level of official corruption, the collapse of economy, stagnation in implementation of anti-corruption system, poor implementation of administrative instruments to prevent corruption and insufficient cooperation between control bodies – auditing, security and justice bodies, resulted in an unsuccessful war against corruption on one side and a large loss of citizens' trust in public institutions on the other side.

In this paper a special emphasis will be paid to official corruption and offenses against official duty, disciplinary policy against official corruption and offenses against official duty as well as some other more common forms of official corruption, like: abuse of official duty or authority, acquisition on duty, bribery etc., as well as statistical data regarding official corruption and other crimes against official duty so that the essay shall be rich in theoretical, legal and statistical aspects. In the course of this essay we will mainly rely on the Penal Code of Kosovo, laws, decisions and various international statements, Statistical Office data, Kosovo Police, courts and other additional sources which serve for a better treatment of this negative phenomenon.

## **2. General Overview of Official Corruption and Penal Actions Against Official Duty**

Official corruption and criminal acts against official duty as a whole represent illegal actions of official persons. Official corruption namely criminal acts against official duty are directed against fair and legal functioning of public services which official personnel are obligated to perform.

The main component of these criminal acts is violation or obstruction of official duty from official persons through abuse of power and official authorizations. These criminal acts result to be dangerous because they are carried out by persons who have been entrusted with official authorizations and at the same time are obligated to fulfill these authorizations. Committing such penal actions in illegal

and immoral way from official persons' results in support and development of a bureaucracy which paves the way to administrative corruption. Such behavior violates the integrity of state and has serious effects in the loss of trust against state institutions. Starting from this, all the countries undertake adequate measures to fight and prevent this negative phenomenon by imposing disciplinary measures for perpetrators of these penal acts. Regardless of the differences that might exist among them, all the modern penal legislations foresee sanctioning of penal acts against official duty. (Salihu et al., 2014, p. 1203) Penal acts against official duty are mostly classified in: just penal acts, unjust penal acts, general penal acts and special penal acts. Just penal acts against official duty are penal acts which are committed only from official personnel, unjust penal acts against official duty can be committed not only by official personnel but also from other persons. General penal acts against official duty are committed during work and can be carried out by any official person and special penal acts against official duty can be committed only during special occasions and are carried out only by certain official personnel. (Salihu, 2014, p. 652) While essentially the main feature of these penal acts is that they are committed willingly and come as a result of willingness of official personnel or responsible persons for unlawful material gain.

### **2.1. Brief Historical Overview of Corruption**

Historically the term "Corruption" has been used very early, while the etymology of the word corruption originates from the Latin word "*corrumpere*" which is the association of words destroy, ruin, remove, remove someone from the right path, deviate to the wrong path, etc. This term consists in interconnection of words *correi* which means some participants and the word *rrumpere* which means to break, shatter, cut off etc., and as a result the term *corrumpere* was formed which means participation of two or more persons in committing an illegal action. (Lacaj et al., 1980, pp. 110, 463) In the Albanian dictionary there are a dozen of words which define corruption as: bribery, violation of law, push someone to act contrary to their duty in order to obtain a service etc. So, corruption is a very broad concept with many meanings. (Albanian Science Academy, Dictionary of modern Albanian language, 2002, p. 605) If we go back in history we face corruption as a criminal phenomenon in times when society was divided into classes, but the format and means vary from the modern day corruption. Considering corruption as a form of organized crime started in modern times because we face a more advanced economical – social development. Corruption as a negative phenomenon was also considered in the Hamurabi Code in Babilonia, respectively in the part of

normative text. (Ismaili, 2001, p. 12) Historically, in a peripheral sense, even some Albanian custom sources have contributed to the issue of corruption.

Based on sources of customary law of Albanians, respectively Kanuni i Lekë Dukagjinit and Kanuni i Skënderbeut, there is a very small number of penal norms which are related to the nature of corruption. E.g. in Kanuni of Lekë Dukagjini the introduction mostly discusses legal issues where the Sultan of Turkey is mentioned, who for his personal and national interests does corruption and the third section discusses the inviolability of the Church property, where in one aspect a form of corruption is discussed because it strongly prohibits abuse of the church property, respectively collective wealth for personal or individual gain. (Gjeçovi, 1999, p. XXVI, XXVII) While in Kanuni i Skënderbeut the form and method of corruption is presented in Part VII, Art. VII, Article 3461 and 3462. (Ilia, 1999, p. 216) Generally our kanuns forbid any kind of corruption where national or social property is damaged. In years corruption rate has increased in national and international level, and referring to this, many government and nongovernment institutions have compiled a number of laws and brochures which serve for public awareness in preventing and fighting official corruption. In national aspect we have codes from penal law, penal procedures and a dozen of laws and decrees which have had and still have the purpose to prevent and fight any form of corruption, like: The Law Against Corruption<sup>1</sup>, the Law on the Declaration of Assets, Background and Controlling Assets of Senior Public Officials and Declaration, Background and Controlling Gifts for all Official Personnel<sup>2</sup> etc., while in international aspect we have: the Protocol for Protection of Financial Interests of European Communities 1996.<sup>3</sup>, the Second Protocol of the Convention for Protection of Financial Interest of European Community 1997<sup>4</sup>, European Commission Penal Convention of Corruption No. 173, 1999.<sup>5</sup> United Nations Convention against Corruption 58/4, 2003.<sup>6</sup>

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<sup>1</sup> See (Law no. 2004/34 against corruption, 2007).

<sup>2</sup> See (Law no. 04/l-050 on declaration, origin and property control of senior public officials and declaration, origin and control of gifts for all senior public officials, 2011), the Law for Anti-Corruption Agency; See (Law no. 03/L- 159 for Anti-corruption Agency, 2010), the Law for Access to Official Documents; See (Law no. 03/L-215 for access on official documents, 2010).

<sup>3</sup> See (Protocol To The Convention On The Protection Of The European Communities' Financial Interests, 1996).

<sup>4</sup> See (Second Additional Protocol To The Convention On The Protection Of The European Communities' Financial Interests, 1997).

<sup>5</sup> See (Criminal Law Convention On Corruption, 1999).

<sup>6</sup> See (United Nations Convention Against Corruption, 2003).

## **2.2. Corruption as a Form of Organized Crime**

With the term corruption we understand “any abuse of power or any other action of official personnel, person in charge or other persons with the purpose of achieving an advantage or unlawful benefit for him or another person”.<sup>1</sup> (Crime in general and organized crime in particular are two components which are steadily growing. The prevention strategy is facing a number of challenges. Every step in this direction must be adapted to social changes, crime factors and its new phenomenology. (Kambovski, 2006, p. 63) Within the organized crime we can also distinguish corruption as one of the most present forms in society. Corruption within itself includes a complicated character which is present in the entire world.

Regarding the organized crime and corruption, we say that there is a close and complementary link between the two. Corruption has cooperation with many different activities of organized criminal groups and corruption in large enables performing of many forms of organized crime and at the same time prefers many actions of different criminal groups or criminal organization. (Gashi, 2014, pp. 49-50) Corruption is manifested in all aspects of life; it stretches in many activities of political parties, in central and local governments, in governmental and nongovernmental institutions, in nationalized and private economies. When trying to understand and define corruption it is simple and complicated at the same time. Corruption in itself contains the unification of law and morality; the struggle for existence with criminal activity aiming enrichment, desire of officials for a better life etc. (Gjonca, 2004, p. 9) Corruption cannot be viewed and analyzed separately from the organized crime. The fact that organized crime is the greatest threat for a political and economic balance of every country there are consequences both in national and international level. (Latifi, 2008, p. 244)

## **3. The Most Common Forms of Official Corruption and Penal Acts Against Official Duty**

Classification of official corruption and penal acts against official duty has been included in 19<sup>th</sup> century penal legislation. A more intensive processing of these penal acts in theoretical aspect has started from this period of time. (Salihu et al., 2014, p. 1203)

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<sup>1</sup> See (Law no. 03/L- 159 for Anti-corruption Agency, 2010, p. 1).

Corruption from its nature is multidimensional but lately the most common type of corruption is official corruption and penal acts against official duty. The phenomenon of abusing official duty and especially corruption present a serious threat for society as a whole. Illegal actions of authorized personnel from various institutions affect directly the loss of confidence in state institutions.

The most common forms of official corruption are: abuse of position or official authority, acquisition, fraud, bribery taking, bribery offering, disclosure of secrets, failure to report or false report of wealth, income, gifts, material gains or financial obligations etc.

### **3.1. Abuse of Position or Official Authority (article 422)**

Abuse of official position or authority is part of a group of official rights penal acts. Within this penal act, official personnel use possibilities regarding his official duty or authority by damaging and violating seriously the rights of other person. (Salihu et al., 2014, p. 1209) Excess of power in the exercise of official duty, use of official authority, failure of performance at work for certain purposes are some of the other points which consist on abuse of official duty and authority in one side and damaging another person directly or indirectly on the other side.

Abuse of official position or authority has been envisaged in the Penal Code of Kosovo, article 422, paragraph 1 where it says that “An official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not execute his or her official duties with the intent to acquire any benefit for himself or another person or to cause damage to 215 another person or to seriously violates the rights of another person, shall be punished by imprisonment of six (6) months to five (5) years.” (Article 422, paragraph 1) From its initial format, this penal action is achieved through three types of actions: “by taking advantage of his or her official authority”, “exceeding the limits of his or her authorizations” and “not executing his or her official duties”. Based on the first format, the essential element of this type of action is when official person executes his or her official duties and responsibilities but the intent of these actions is to acquire personal benefit in illegal ways. As a second form is exceeding the limit of his or her authorizations and in this case the official person takes actions in accordance with the law but which are not within his or her authorization but are a competency of another person. And finally, failure to execute his or her official duty or failure to complete his or her official duty comes under consideration when an official person fails to execute his or her official

duties for which it has obligations or such action is done with delay, and in this case the expected goal or appropriate legal effects could not be reached. So, this penal act is performed with or without action. (Salihu, 2014, pp. 653-654) Kosovo Institutions, respectively the Police of Kosovo with Prosecution's order are continuously taking action in fighting and prevention of official duty or authority abuse. (*“Directorate for Investigation of Economic Crimes and Corruption, precisely the sector for investigation of corruption In Pristina, today (5.3.2014) has conducted a police operation resulting in arrest of one person with initials S.A., female, citizen of Macedonia, with suspicion that she has conducted a penal act “abuse of official position or authority”. She was responsible for reception of documents coming to AKP and while abusing her official position she exceeded her authority and authorization by hiding a judgment which she did not hand over to responsible persons within AKP and as a result the deadline for filing of complaints within 60 (sixty) days has passed and this judgment was in force. As a result of this action, the person who was the claimant of the abovementioned judgment, has achieved to transfer a public property of 36 hectares into his name, thus causing huge financial damage to the budget of Kosovo. During the course of investigation it has been proved that the abovementioned suspect has signed and stamped the receipt of judgment, actions which are sufficient proves that the suspect has committed a penal act. All police actions related to this case have been performed in consultation with and under authorization of prosecutor and suspect was sent to custody for 48 hours”.* www.kosovopolice.com) Kosovo Courts are trying to influence the lowering of this penal act through imposing disciplinary measures, although with a lower intensity. (*“The accused A.B. has been declared guilty because of the penal act abuse of official position during elections from article 214 of Penal Code of the Republic of Kosovo (PCRK). The panel at the Department of Heavy Crimes of the Basic Court in Gjilan, based on the request of Basic Prosecution in Gjilan, in penal case against the accused A.B. has imposed a jail sentence in duration of 6 (six) months. The panel, headed by the judge Hasan Sadikuka, declared the accused as guilty, who on date 01.12.2013 around 13:00 o'clock in Elementary School “Hysen Terpeza”, village Terpeza of the Municipality of Vitija, during election runoff process for mayor of Vitija was appointed an election commissioner and abused position, duty and official authority during election. The time spent on detention and house arrest will be taken into account for the accused A.B. and parties have a right to appeal within the legal deadline.”* www.telegrafi.com)

### **3.2. Acquisition in office (Article 425)**

Acquisition in office, respectively abuse, means cash, wealth or material acquisition from a person who is authorized by his office or official position. This penal act fits within the penal acts against official duty and as such is defined by abuse of official position or authority:

1. An official person, who, with the intent to obtain an unlawful material benefit for himself, herself or another person, appropriates property entrusted to him or her because of his or her duty or position shall be punished by a fine and imprisonment of six (6) months to five (5) years.

2. When the offense provided for in paragraph 1 of this Article results in a material benefit or loss exceeding five thousand (5,000) EUR, the perpetrator shall be punished by a fine and imprisonment of one (1) to eight (8) years.

3. When the offense provided for in paragraph 1 of this Article results in a material benefit or loss exceeding fifty thousand (50,000) EUR, the perpetrator shall be punished by a fine and imprisonment of three (3) to twelve (12) years. (Article 425 of KPC)

According to paragraph 1 of this article, the main essence of this work lies in acquisition of wealth in illegal way, although based on description and professional responsibility of the work, these have been entrusted by public body. Disregard of professional ethics in this case is followed by a fine or jail, depending on the weight of the act committed. While in paragraph 2 and 3 there is a differentiation of the penal act which results with acquisition of more than 5.000 euro and above 50.000 euro, and the lowest sentence for both is 1 and 3 years and the highest sentence is 8 and 12 years. (Article 425 of KPC)

### **3.3. Fraud in Office (article 426)**

The penal act fraud in office is a special way of fraud which is carried out by official personnel or responsible persons, by bringing benefit to himself or another person in illegal way, like: submitting false accounts, misguiding an authorized person to execute a payment which is against the law or bank rules. From its nature, penal action of fraud in office is similar to fraud. (Salihu et al., 2014, p. 1233)

Fraud in office as a penal act is included in article 426 of the KPC, where based on this article fraud in office is done by:

1. An official person who, with the intent to obtain unlawful material benefit for himself, herself or another person, by presenting a false statement of an account or in any other way deceives an authorized person into making an unlawful disbursement shall be punished by a fine and imprisonment of six (6) months to five (5) years;



2. When the offense provided for in paragraph 1 of this Article results in a material benefit exceeding five thousand (5,000) EUR, the perpetrator shall be punished by a fine and imprisonment of one (1) to eight (8) years;

3. When the offense provided for in paragraph 1 of this Article results in a material benefit exceeding fifty thousand (50,000) EUR, the perpetrator shall be punished by a fine and imprisonment of three (3) to twelve (12) years. (Article 426)

Same as for other penal acts which have a character of official corruption, same is for fraud in office where disciplinary measures are foreseen. Based on the Code in force, if the perpetrator of this act exceeds the amount of 5.000 euros in gain, he will be sentenced from 1 to 8 years of jail, but if he exceeds the amount of 50.000 euros he will be sentenced from 3 to 12 years of jail. (Article 426)

#### **3.4. Bribe Receiving (Article 428)**

Bribe receiving is one of the most common forms of official corruption both in historical and practical aspects. Taking bribe from official personnel has direct impact in citizens' loss of trust at public institutions. This penal act is part of penal acts of official corruption and simultaneously represents a serious threat to the functioning of the state apparatus. Even if taking bribe would be done in discreet ways, it creates resentment and doubts about the functioning and performance of state bodies.

Same as other penal acts of official corruption, taking bribe has been included in the KPC, respectively article 428, which states that:

1. An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself, herself or for another person, or who accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties, shall be punished by fine and imprisonment of six (6) months to five (5) years.

2. An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting, in violation of his or her official duties, shall be punished by fine and imprisonment of three (3) to twelve (12) years.

3. When the offense under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years. (Article 428)

According to this article, paragraph 1 presents penal act of direct passive corruption and is considered to be one of the most serious forms of bribe taking and as such we face it when a person asks for or takes bribe for an official act which he was supposed to carry out or an official act which he is not responsible for. Even paragraph 2 is no different from paragraph 1 in aspects of performance, but only the way bribe is requested or given differs and in this situation we are facing a passive corruption or as we might call it otherwise, random corruption. Paragraph 3 mainly defines the amount gained from taking bribe, which is followed by a fine and jail sentence (Salihu et al., 2014, p. 1245) The penal act of taking bribe in itself contains three forms or three essential elements through which this penal act is made possible. These are: “by asking for a gift or any other benefit” or even “accepting a promise for a gift or any other benefit”. All three of these ways are deliberately carried out by an official person using his or her official powers. (Salihu, 2014, p. 665)

### **3.5. Bribe Giving (Article 429)**

Bribe receiving and bribe offering are inseparable parts of corruption. Compared to bribe receiving this penal act is carried out by unofficial personnel and mostly is committed by a third person avoiding the possibility of direct contact with official personnel. Bribe giving not only is very common but also very different from the form of its presence.

Bribe giving has been included in article 429 of KPK and is realized by:

1. Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person so that the official person acts or refrains from acting in accordance with his or her official duties, shall be punished by a fine or imprisonment of up to three (3) years.
2. Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person so that the official person acts or refrains from acting, in violation of his or her official duties, shall be punished by a fine and imprisonment of three (3) months to three (3) years.
3. When the offense under paragraph 1 of this Article results in a benefit exceeding fifteen thousand (15,000) EUR, the perpetrator shall be punished by fine and imprisonment of one (1) to eight (8) years.
4. When the perpetrator of the offense provided for in paragraph 1 or 2 of this Article gave the bribe at the request of an official person or responsible person and

reported the offense before it was discovered or before knowing that the offense was discovered, the court may waive the punishment. (Article 429)

Based on these 3 paragraphs anybody trying to commit a penal act of bribe giving, regardless of the way, is punished by a fine or imprisonment, depending on the amount of material gain from the official person, while in paragraph 4 if bribe giving has been done from an official personnel and the executioner of request has notified authorities on time, then against him or her are foreseen mitigating circumstances, respectively he or she could be set free of charges. (Article 429) One of the main elements by which penal act of bribe giving is characterized is that this penal act is committed from outsiders. In most cases it is done at the request or with the acceptance of bribe from official personnel. From the way it is performed this act is done willingly from all persons. The perpetrator of this penal act aims through promise or gift giving to achieve realization of an illegal act from an official person. (Salihu, 2014, p. 668) Even according to Kosovo Police, bribe giving is one of the most common penal acts against official duty. Wide scope of this phenomenon and the loss of citizen confidence in state institutions have brought a situation where even official personnel who are called to maintain order and security in the country, to be offered bribe to perform an illegal action.

### **3.6. Disclosure of Official Secrets (Article 433)**

Disclosure of official secrets of any kind results in failure to protect the general institutional interest by an official. All the information and documents which are qualified as “official secrets” by law of a relevant body and are disclosed willingly or by negligence are considered penal action against official duty. Disclosure of official secrets leads us towards stagnation of institutional functioning and loss of confidence by the general public.

According to Article 433 of the Penal Code of Kosovo, disclosure of official secrets is when:

1. An official person who, without authorization, communicates, sends, or in some other way makes available to another person information which constitutes an official secret or obtains such information with the intent to convey it to an unauthorized person shall be punished by imprisonment of six (6) months to three (3) years.
2. When the offense provided for in paragraph 1 of this Article is committed for personal gain or for the purpose of publishing or using the information outside of

the Republic of Kosovo, the perpetrator shall be punished by a fine and imprisonment of one (1) to ten (10) years.

3. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years. 220.

4. The provisions of this Article shall apply to a person who discloses an official secret after his or her official status has ceased.

5. For the purposes of this Article, the term “official secret” means information or documents proclaimed by law, other provisions, or by a decision by the competent authority issued on the basis of law to be an official secret and whose disclosure has caused or might cause detrimental consequences. However, the following are not official secrets:

5.1. Information or documents that pertain to grave violations of basic human rights or which the failure to disclose could endanger the constitutional order or security of the Republic of Kosovo; or, 5.2. Information and documents that are intended to conceal the perpetrator of a criminal offense punishable by imprisonment of at least five (5) years. (Article 433)

Disclosure of official secrets is one of other penal actions which is ranked as official corruption. This penal action is committed by official personnel in charge or retired personnel who previously had access to data. Official data retention is not only in the interest of institutions but also in the general interest of society, therefore is protected by law.

Kosovo Police in cooperation with prosecutor and courts is continuously undertaking measures to fight and punish this phenomenon which is endangering order and safety of the country in general. One of the cases which are worth mentioning is when an official person from Kosovo Police commits penal actions against official duty. (*“R.Xh. police sergeant at the Investigation Unit in Gjilan, has been declared guilty and sentenced to 6 months of conditional jail for penal actions “Disclosure of official secrets” and “Falsification of documents”. Sergeant R.Xh. was also accused for penal actions “Bribe taking” and “Abuse of official duty or authorization”, but these two acts have been prescribed. On 1 May 2007, R.Xh. was accused of abusing official duty with the purpose to cause material damage to another person, respectively the damaged person A.D. The judge of Municipal Court in Gjilan, Ramiz Azizi, has declared the accused police*

*sergeant R.Xh. as guilty for actions “Disclosure of official secrets” and “Penal acts”. Author, Lulja, 2012, www.gazetajnk.com)*

### **3.7. Failure to Report or False Report of Income, Gifts, Material Gain or Financial Obligations**

#### **(Article 437)**

Lately, one of the most common penal actions of official corruption is failure to report or false report of wealth, income, gifts, material gain or financial obligations. Except Article 437 of the Penal Code of Kosovo which is related to a failure to report or false report of wealth, income, gifts, material gain or financial obligations, we also have the law on declaration, origin and control of property of senior public officials and declaration, origin and control of gifts for all official personnel.<sup>1</sup>, a law which aims to control wealth of all the senior public officials and all official personnel in order to avoid all possible abuses for personal gain. For a failure to report or false report of wealth there are disciplinary actions foreseen, the aim of which is awareness and sensibilization of official personnel who, based on law, are obliged to present their wealth. For any legal violations by officials, the anti-corruption agency is obliged to address the judiciary within the legal deadline. This penal act is committed only intentionally.

According to Article 437 of the KPC, failure to report or false report of wealth, income, gifts, material gain or financial obligation is when:

1. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who fails to do so, shall be punished by a fine or by imprisonment of up to three (3) years. The offense in paragraph 1 of this Article is deemed committed when the deadline for filing the declaration has passed and no report has been filed.
2. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who falsifies or omits data or required information on the required declaration shall be punished by a fine and imprisonment of six (6) months to five (5) years.
3. The value of the non-reported or the falsely reported property, income, gifts, or other material benefits shall be confiscated. (Article 437)

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<sup>1</sup>See (Law no. 04/1-050 for declaration of wealth, origin and control of senior public officials' wealth, origin and control of gifts for all official personnel, 2011).

#### 4. Statistical Data for Official Corruption and other more Common Penal Acts against Official

##### Duty 2011-2012

All statistical data below are from cases of alleged corruption coming from institutions like Anti-corruption Agency, Kosovo Police, Customs, Tax Administration of Kosovo, Prosecutions and Courts, the aim and legal duty of which is to fight, prevent, investigate and prosecute corruption. Statistical data are based on Kosovo's Provisional Code 2003.

**Table 1. Penal charges of Anti-corruption Agency and Kosovo Police 2011–2012 according to the type of most common offenses against official duty**

TYPE OF PENAL ACTION	ACA 2011	ACA 2012	KOSOVO POLICE 2011	KOSOVO POLICE 2012	TOTAL
ABUSE OF OFFICIAL POSITION OR AUTHORITY (339)	33	46	104	81	264
ACQUISITION WHILE IN OFFICE (340)	0	1	7	7	15
FRAUD IN OFFICE (341)	1	0	0	2	3
BRIBE TAKING (343)	0	2	23	13	38
BRIBE GIVING (344)	0	1	10	26	37
EXERCISE OF INFLUENCE (345)	0	0	0	1	1
DISCLOSURE OF OFFICIAL SECRETS (347)	0	0	1	0	1
<b>TOTAL</b>					<b>359</b>

Anti-corruption Agency and Kosovo Police during 2011 and 2012 have issued a total of 359 penal charges for penal actions against official duty. According to statistical data we notice that the most common penal action during 2011-2012 turns out to be Abuse of official duty and authorization (Article 339) with a total of 264 penal charges.

**Table 2. The imposition of sentence by Kosovo courts according to the type of penal actions mentioned above 2011 – 2012.**

TYPE OF PENAL ACTIONS	Prison Sentence		Fine Sentence		Suspended Sentence		Other Sentence		Total	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
ABUSE OF OFFICIAL DUTY OR AUTHORISATION (339)	10	10	13	13	12	15	1	0	36	38
ACQUISITION WHILE IN OFFICE (340)	3	5	0	0	4	9	0	0	7	14
FRAUD IN OFFICE (341)	0	0	0	0	1	0	0	0	1	0
BRIBE TAKING (343)	5	4	3	7	3	4	0	0	11	15
BRIBE GIVING (344)	0	0	20	24	2	2	0	3	22	29
EXERCISE OF INFLUENCE (345)	0	0	1	0	1	0	0	0	2	0
DISCLOSURE OF OFFICIAL SECRETS (347)	0	0	1	0	0	1	0	0	1	1
<b>TOTAL</b>									<b>80</b>	<b>97</b>

In table 2 there are types of sentences during 2011 and 2012 from Kosovo courts. According to this data we notice a higher efficiency from the courts for resolution

of corruption cases. During these two years we have a total of 177 persons who have been sentenced with prison, fines, conditional and other sentences for carrying out penal actions against official duty.

Regarding imposing sanctions for committing penal actions, abuse of official position or authority remains the action with most sentences, a total of 10 prison sentences, 13 fines and 15 suspension sentences.

**Table 3. Percentage of imposition of fines according to the type of fine from Kosovo Courts for penal actions against official duty 2011 – 2012**

TYPE OF SENTENCE	YEAR 2011	YEAR 2012
PRISON	22.5%	19.6%
FINE	47.5%	45.4%
CONDITIONAL	28.7%	31.9%
OTHER	1.2%	3%

According to percentages in table no. 3 we do not see any increase in efficiency of courts regarding the punishment of penal acts against official duty. Fines result to be the most common sentence within 2011 – 2012 with a total of 47.5% in 2011 and 45.5% in 2012 and then conditional fines 28.7% in 2011 but an increase to 31.9% in 2012, while prison sentence as one of the most serious sentences was 22.5% in 2011 and 19.6% in 2012 and finally we have other sentences which were 1.2% in 2011 and increased to 3% in 2012. According to this data we see a regression in the work of courts regarding prison sentences and conditional sentences within 2011 and 2012.

Fighting and preventing corruption represents one of the special forms in the direction towards putting social justice rails in the society. Difficult economic conditions, malfunction of justice and the lack of will to enforce and functionalize these systems have contributed in the increase of a phenomenon called corruption. In view of a successful fight against corruption it is initially the society that must be aware and every time they are witnesses of corruption cases to present their complaints to justice, written and electronic media in order to achieve the courage of citizens to fight and prevent this negative phenomenon. If corruption is not controlled in its initial stages and passes to metastasis then it becomes advanced and victory against it becomes almost impossible and this way it wins over the state transforming the entire state apparatus into a “corrupt system”.

Disciplinary politics in one side contains the strategy and institutional organizations which are under protection by law and order and on the other side aims to apply and execute penal sanctions. There are numerous factors that influence the exercise and determination of penal policy in relation to fighting crime. From its nature, penal policy has a dynamical character and at the same time is conditioned by dynamics or socio-economic relations. (Gashi, 2003, pp. 62-63)

Different countries have issued special laws in order to develop disciplinary politics against corruption. Besides imposing penalties, these laws consist in seizure and confiscation of property or other material goods which originate from corruption. Penalizing policy against corruption represents a very tough battle since in one hand it should include awareness of society in moral education, respect for law and professional ethics and on the other hand there are always people that are willing to commit acts of corruption whenever an opportunity is given to them. So, penalizing policies against corruption present a complex and disturbing world.

## **5. Conclusions**

From this brief presentation and analysis of some basic characteristics of official corruption and penal actions against official duty, it is clear that this form of criminality has a wide presence in state institutions. Official corruption and penal actions against official duty have been included in Kosovo and other international penal legislations. In the penal code of Kosovo, official corruption and penal actions against official duty have a broad description of methods and applications. But in the context of penal actions against official duty, respectively bribe giving, the position of intermediaries should be determined since in many cases this is done through intermediators and rarely directly. Official corruption is now a very common issue and important in ethical and social aspects. Corruption is also present in countries with great economic development, but its presence in transitional countries has direct impact in reduction of capacities for economic development and social welfare. Official corruption as a negative phenomenon has recently reached disturbing proportion for the society, and as such has resulted in the loss of confidence among citizens for functioning of state institutions. Official corruption, namely penal actions against official position, reflect violation of citizens to fulfill their rights in one side and contributes to personal benefits of officials on the other side.



Penal actions that are based on corruption harm citizens and cause serious consequences for national budget and as a result cause discontent and financial crisis in national level. Disciplinary policy against corruption could be successful only with a serious commitment from law enforcement and with the support of citizens. The more severe criminal penalties for delinquents are, the easier it is to fight and prevent this phenomenon. Another important tool for fighting and prevention of corruption is written and electronic media which keep public opinion informed with corruption cases. Based on official data, corruption in Kosovo administers a considerable space of state apparatus, and only with tougher sentences and disciplinary policies we could reach positive results in fighting and prevention of this negative phenomenon. This paper also pointed out that in Kosovo during 2011-2012 a small number of subjects have been reviewed for perpetrators of these acts and very low disciplinary measures have been imposed compared to the number of perpetrators of these penal actions. Only with a greater dynamics of work and tightening of fines could result in a successful fight and prevention of corruption in general. Only with a close cooperation between triangle Police-Prosecution-Court on one side and support of citizens on the other side we can talk about a real fighting and prevention of official corruption.

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