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COMPARATIVE PRACTICES OF THE BALKAN COUNTRIES IN THE FIGHT AGAINST CORRUPTION

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Abstract: *This paper focuses on the individual holders of public office or duty and the numerous past and present criminal cases related to corruption and abuse of power. By analyzing the penal policies of the courts in several regions (North Macedonia, Romania, Croatia, Montenegro, and Albania), as well as the imposed sanctions and court verdicts, this paper presented the fundamental characteristics of the criminal justice system's functioning in preventing such forms of crime. Through a comparative analysis of experiences, empirical research (case study), and an overview of the situation in multiple Balkan countries, the paper, as a key result, offered a comprehensive examination of the specific offenses outlined in the legislations of the countries under investigation and presented legal solutions derived from various Balkan nations. Finally, the paper concludes that corruption is a general problem in all the investigated countries and proposes possible solutions.*

Keywords: *Rule of Law; Abuse of Authority; Political Corruption; Criminal Offenses; Final Convictions*

INTRODUCTION

International conventions serve as the foundation for a coordinated societal response against individuals involved in crimes related to abuse of power and corruption. However, the battle against corruption primarily occurs at the national level. States, driven by the need to uphold public authority and ensure adherence to the principles of the rule of law, actively oppose various forms and manifestations of corruption. To comprehensively address the criminal aspects of abuse of power, including the distortion of the rule of law, it is insufficient to limit our focus to theoretical and practical analyses of their occurrence, elements, and characteristics. It is also imperative to explore comparative law, briefly examining representative criminal acts of corruption within modern criminal justice systems. These crimes can manifest under various names, encompassing distinct contents, elements, characteristics, and penalties. Moreover, they can manifest in many forms, representing various phenomena within the realm of power exertion, including material and other abuses of authority that detrimentally impact individual and societal interests.

In theoretical terms, crimes can be categorized based on the object of protection into three main divisions: political acts, acts of corruption, and acts against the freedoms and rights of citizens. The first category involves the misuse of power by high-ranking state officials who benefit from material and legal immunity and bear political responsibility. As a result, they are expected to step down from their positions or face dismissal voluntarily. For instance, notable

examples include the cases of wiretapping political adversaries during the Watergate scandal in the United States, which ultimately resulted in the impeachment and subsequent resignation of President Nixon. In May 2019, Slovenia, the Republic of Croatia, and Austria made headlines for their acknowledgment of political interference in the media, resulting in the downfall of the Sebastian Kurz government. In North Macedonia, a notable case known as the "Big Ear" emerged in 2000, leading to the removal of a former Minister of Interior and a senior police officer in 2003.

Moreover, the revelation of illegally wiretapped conversations in 2015 exacerbated the political crisis and remained a matter of ongoing public concern. Instances of corrupt acts involving the abuse of power serve as illustrative examples where the target is the public authority itself, as perpetrators seek personal gain or benefit for themselves or others at the expense of public interests and budgetary funds for which public officials are accountable. The third form of abuse of power relates to offenses committed against fundamental freedoms and rights of citizens, such as unauthorized deprivation of liberty, exceeding police powers, and torture. In these cases, a clear, direct interpersonal relationship exists among the perpetrator, the official, and the victim, where the motive becomes less significant than violating the right to liberty itself. Such acts are often accompanied by neopatrimonialism, which serves as both a cause and a consequence contributing to the democratic deficit within society (Gjorshoski and Saliu 2018, 270).

From a scientific perspective, corrupt acts are highly relevant and have been researched extensively. Through the examination of committed crimes, it is possible to identify the most prevalent offenses. This empirical research focuses on presenting cases from the largest criminal court in the country, namely the Basic Court Skopje 1 Skopje. It entails an analysis of reported, accused, and convicted individuals holding positions of authority involved in corrupt criminal activities. Additionally, it examines the criminal policy implemented, specifically the sanctions imposed for offenses related to abuse of position, during 2012-2018. The primary objective of this research is to identify weaknesses within the system designed to safeguard against corrupt acts of abuse of authority within the framework of the rule of law.

Moreover, it aims to provide proposals for developing a new, more effective system that can prevent and repress such abuses. The research seeks tangible indicators of these acts' existence, dynamics, and structure. Furthermore, it aims to identify the underlying conditions facilitating their execution and propose new legal solutions.

MACEDONIAN CRIMINAL LEGISLATION AND CASE LAW

Amendments to the Criminal Code in 2018

In late 2018, two laws were swiftly adopted in response to requests from Members of Parliament (MPs) in the Assembly of the Republic of North Macedonia: the Law on Amnesty and the Law Amending the Criminal Code. According to Article 40 of the Criminal Code of the Republic of Macedonia, the court has the authority to either impose a penalty on the offender within the limits prescribed by law or apply a more lenient form of punishment in specific circumstances. Additionally, through the intervention outlined in paragraph 3 of Article 275 of

the Criminal Code, the lower threshold for imprisonment was reduced from five to four years, as confirmed by the Skopje Court of Appeal in 2019. Consequently, imposing a suspended sentence as an alternative punishment became possible. Analyzing the reasons for adopting the Law on Amnesty and the latest amendments to the Code, the hypothesis was confirmed that the holders of office, regardless of which political party they are supporters of, are privileged over other citizens in the country. In the "spirit" of political reconciliation, to secure a majority of votes on constitutional changes in the Assembly and the consensus on the Prespa Agreement - to avoid Greece's veto - North Macedonia became a member of NATO.

New Offences in the Incrimination System

The necessity for introducing a new offense of obstruction of justice arises from prominent instances that have been publicly highlighted, wherein the investigative processes of specific criminal proceedings have been impeded. From a criminal law standpoint, the activities described in paragraph 1 of Article 368 of the Criminal Code involve deliberately preventing an individual from providing a statement or inducing them to provide a false statement through various means, including the use of force, bribery, obstruction, or any other form of influence. This provision addresses situations where individuals are coerced or manipulated to either provide inaccurate statements or refrain from providing any statement (Schultz 2012, 426) - *delicta manu propria*. The statement's content should be influenced by the correct decision *thema probandi*, not the value judgment (Manzini 2019, 838). The more complex forms in paragraphs 2, 3, and 4, where the enforcement agent may be only a person affected by the duty to give a testimony, witness, expert, translator, interpreter, and in para. 5 and para. 6, the offense of coercion against a judicial employee for subjugating a judge, public prosecutor, lawyer, or another official as a victim has been sublimated.

The new offense from Article 369 of the Criminal Code pertains to revealing the identity of a threatened or protected witness, an associate of justice, or a victim who appears as a witness. Its purpose is to provide measures for effective protection or limited provision of information, ensuring non-disclosure of identity, place of residence, and adherence to safety standards for the witness, as outlined in Article 24 of the Palermo Convention.

CORRUPTION OFFENCES

Abuse of Official Position and Authority

The term *abusus* in Latin (Sajo 1998, 38) means any unlawful behavior contrary to the constitution, laws, other legal regulations, or general acts. The criminal offense of abuse of official position and authority, as outlined in Article 353 of the Criminal Code, encompasses unlawful acts committed by officials to gain personal advantages for themselves or others, resulting in harm inflicted upon another individual. This offense manifests in various forms, the basic form being an abuse of an official position driven by self-centeredness. Accordingly, it can materialize in three distinct forms: abuse of official position or authority, exceeding the limits of official authority, and failure to perform official duties.

A particularly severe manifestation of abuse occurs when a perpetrator engages in actions to obtain significant financial gain, equivalent to five times the average monthly salaries in the country at the time of the offense. In such cases, the perpetrator assumes an official position, bearing a level of responsibility comparable to that of an individual in a managerial role within a company, legal entity, institution, or other organization. The term "official" is defined in international documents and specifically outlined in Article 122 of the Criminal Code of the Republic of Macedonia. The judicial practice emphasizes the proper exercise of authority following legal regulations. For illustrative purposes, a legal position (*sententia*) from a decision rendered by the Macedonian Criminal Court can be cited:

> According to the conventional understanding, the offender of the crime assumes the role of an official, and with specific offenses, the term 'responsible' also comes into play. By combining these two transgressions, namely the act of abuse and the violation itself, the significance of promoting lawful and conscientious management of the state budget, public funds, and other government resources is heightened (KOK 59, 2018).

In the context of culpability, the presence of intent is essential. The perpetrator must be aware that they are utilizing their position or authority to seek personal or third-party benefits or inflict harm upon another individual, thereby infringing upon their rights. To exemplify this perspective, we can refer to a statement from the Decision of the Supreme Court of the Republic of (North) Macedonia, case reference KVP 234/14, dated 15th July 2016:

> Based on the court's evaluation, the evidence presented does not conclusively demonstrate that the defendants have fulfilled the subjective element of the offense in question. Specifically, the offense of Abuse of Official Position and Authority requires a deliberate act, which in this instance entails the direct intention of the perpetrator to secure personal or third-party benefits or to cause harm to another individual. The evidence presented throughout the proceedings does not establish that the defendants acted with the intent to undermine the budget of the Republic of (North) Macedonia.

Traits of Incrimination: Receiving Bribes and Benefits for Unlawful Influence

Based on their characteristics, the two offenses described below embody a form of corruption within the service, specifically involving the receipt of bribes and benefits for unlawful influence. Accepting a bribe constitutes an offense. The act of incrimination involves unlawful intervention in the execution or non-execution of official tasks, actions, income, benefits, or any other form of gain. This offense can be defined as a criminal act that entails unauthorized mediation or refraining from carrying out official duties. Since a benefit is either mediated and received or not in relation to official activities, three forms of offense are outlined: mediation in the execution of unlawful official work, mediation in the performance of illegal official work, and

mediation in the execution of illegal official work through the receipt of rewards or other benefits.

As an illustration, the case in question pertains to a comprehensive study conducted within the jurisdiction of the specialized court department responsible for adjudicating criminal offenses related to organized crime and corruption at the Basic Criminal Court Skopje 1:

> According to the relevant legal provision, specifically Article 359, paragraph 2 of the Criminal Code, the enforcement action refers to the exertion of influence in the execution of an official action that ought not to have been carried out or the failure to execute an official action that should have been undertaken. In this specific instance, there exists no dispute that the defendant, Mr. N., utilizing his genuine authority as the Prime Minister of the Republic of Macedonia, exerted influence on an official action that should not have been performed (KOK 59 2018).

The magnitude of the benefit holds no significance in establishing the existence of the act, as evidenced by a precedent from another case (KOK 16, 2015). The perpetrator of this offense can be any official, requiring intent, and the imposition of a security measure is obligatory, as outlined in Article 110 of the Criminal Code. Furthermore, according to Tupanceski (2015, 66), any benefit and gain from the offense must be confiscated. It is worth noting that the public has extensively commented that the announced sale of the vehicle never materialized, yet it continues to be utilized by the government.

Judicial Practice

The initial case under scrutiny is the definitive Decision KOK 59/17 dated 23.05.2018 (Court of Appeals Skopje, No. 23, 2018), which involves the following criminal offenses: Receiving a benefit for unlawful influence as stipulated in Article 359, paragraph 2, and the abuse of official position and authority under paragraph 5 of Article 353 of the Criminal Code (Constitutional Court of the Republic of Macedonia, No. 138, 2007). The selection of this case for examination stems from both its scientific relevance, as it serves as an illustrative example of the misuse of power by individuals holding high political positions, and its significance within the judicial practice due to its foundation on an indictment issued by the Special Public Prosecutor's Office, established by the Law on Public Prosecution to handle offenses associated with and arising from the illegal interception of communications. Within the verdict's explanation, the factual context is established by using unlawfully intercepted conversations and other substantial evidence, encompassing a meticulous depiction of the actions encompassing elements of the offense. In this regard, it is noteworthy to highlight a relevant statement from the Macedonian Criminal Court:

> The court places significant emphasis on the privileged position of holding a public office, particularly that of the Prime Minister of the Republic of Macedonia, highlighting the honor and obligation accompanying such a role. It sternly asserts that no individual, especially those in public office and, most importantly, the Prime Minister, should

> underestimate or belittle the citizens, as was done by the accused, Mr. N. G. In a manner deemed unlawful, he acquired a 'Mercedes S 600 Guard' luxury vehicle for himself, failing to inform the citizens about it and even going as far as keeping it undisclosed until after the local elections.

The entire course of the criminal proceedings garnered significant public attention, with the media providing detailed coverage of each trial. As for the outcome of the proceedings, public opinions were divided. Some perceived it as a political vendetta, while others acknowledged the authenticity of the illegally wiretapped evidence while raising concerns about potential manipulation or tampering. On the other hand, some individuals believed that justice was indeed served. In this context, the court reasserted its independence and autonomy within a democratic state governed by the principles of the rule of law. It upheld the values of ensuring the rule of law, non-selective justice, conducting efficient and impartial trials, safeguarding defendants' human rights, and adhering to legal principles (Naskovska 2020, 141).

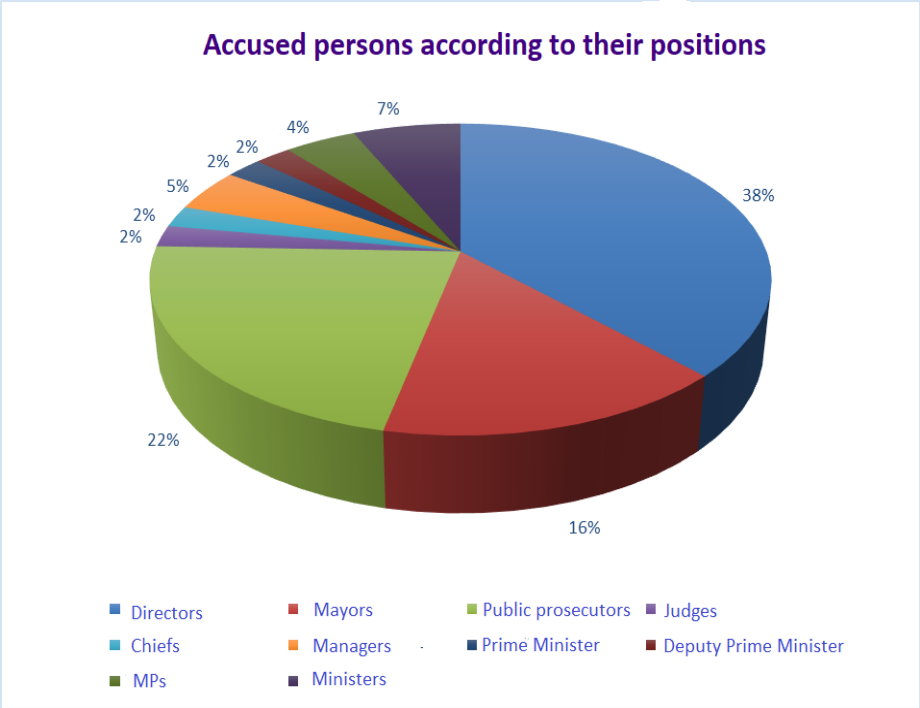
The second case pertains to the Supreme Court of the Republic of Macedonia's Decision, specifically KVP 234/14 dated 15.07.2016, which addresses the abuse of official position and authority under Article 353, paragraph 3 of the Criminal Code. The individuals implicated in this case include the former Minister of Defense (MoD), the Chief of the General Staff of the National Army of the Republic of Macedonia, and other employees of the Ministry of Defense. The legal analysis was conducted due to the annulment of the initial verdict, K No. 694/10 dated 01.07.2013, and the subsequent appellate Decision from the Court of Appeals Skopje, No. 181/14 dated 30.06.2014. Following the retrial, the decision's official execution of the imprisonment sentence was postponed. Ultimately, the Final Decision, K No. 1978/16 dated 22.11.2019, rejected the case due to the expiration of the statute of limitations. According to the lower courts, the defendants violated the public procurement procedure within the Ministry of Defense (MoD) by acquiring an excessive number of spare parts without genuine necessity. In the Decision issued by the Court of Appeals Skopje, No. 181/14, dated 30.06.2014, the initial verdict imposing a three-year prison sentence on VB was reduced to two years. As previously mentioned in the description of the offense under Article 353 of the Criminal Code, the legal standpoint pertains to the absence of specified subjective intent and the potential uncertainty surrounding the harm caused to the national budget, which "simultaneously casts doubt on their criminal responsibility." The Supreme Court offers legal guidance regarding the exclusion of criminal liability, affirming that "not only is the presence of intent in the defendants questionable, but also whether the budget of the Republic of Macedonia was harmed, given the undeniable fact that the purchased spare parts are properly stored, in functional condition, and possess intrinsic value, which implies that they can still be sold or exchanged today" (Supreme Court No. 118/2016).

An Analysis of Official Statistical Data on Criminal Offenses

Based on the comprehensive review of statistical data on official offenses within the largest Criminal Court (CC) from 01.01.2012 to 31.12.2018, 31 cases were processed involving 55 individuals holding public office. Among the 31 cases, 22 (67%) were related to criminal offenses

under Article 353 of the CC. The remaining cases covered a range of offenses, including a single instance of negligent work in the service (Article 353 of the Criminal Code), criminal association (Article 394 of the Criminal Code), accepting a bribe (Article 357 of the Criminal Code), receiving a reward for illegal influence (Article 359 of the CC), receiving a bribe in connection with the offense of receiving a reward for illegal influence (Article 357 of the Criminal Code in conjunction with Article 359 of the Criminal Code), and one case involving Article 353 of the CC in connection with Article 359 of the CC. A case involving the forging of an official document (Article 361 of the Criminal Code) was also identified. In contrast, other cases included violence-related charges (Article 386 of the CC) and did not apply to election fraud (Article 165 of the CC). Of 31 cases, 20 were resolved, 65% or 2/3 of the total received.

Furthermore, there are 11 pending cases involving 19 individuals holding public office, with 9 of these cases being charges under Article 353 of the CC. Concerning the sentences imposed for the criminal offenses of abuse of official position and authority, suspended sentences were given to 5 individuals, while 2 received imprisonment sentences. The data collected by the largest Criminal Court about persons holding public office reveals that their records are monitored based on their respective roles. During the period from 01.01.2012 to 31.12.2018, it is evident that the majority of these individuals (17 in total) served as directors, followed by 10 prosecutors, 7 mayors, 3 ministers, 2 MPs, one judge, one chief, two managers, one prime minister, and one deputy prime minister (Graph 1).



Graph 1: Accused Person According to their Positions
(Source: Authors' depiction)

COMPARATIVE MODELS

Widespread discontent with the prevailing permanent penal corrections and the struggle to effectively address organized crime's menace has necessitated penal legislation reforms across numerous countries. Various models have been devised to introduce specialized laws aimed at combating organized crime, with efforts focused on finding solutions within the scope of general criminal legislation. Additionally, a combined approach has been proposed, encompassing innovations in criminal legislation and implementing special laws targeting issues such as corruption, money laundering, and more.

Romania

The Constitution of Romania, which draws inspiration from the Constitution of the Fifth French Republic, was ratified through a national referendum on December 8, 1991. In 2003, significant amendments were introduced to the constitution to align with the European legal framework and establish a clear separation of powers among the legislative, executive, and judicial branches. Romania operates under a pluralistic political system and functions as a semi-presidential republic. Having been a member of the European Union for over a decade, Romania has also become a part of NATO.

Romanian Criminal Law

Within the Romanian Criminal Code, various provisions address anti-corruption offenses. Notably, if individuals report cases of active bribery to law enforcement authorities, they may be eligible for sentence reduction or mitigation. Additionally, the law protects associates and witnesses involved in judicial proceedings (Labovic 2006, 230).

In May 2000, the Law on Prevention, Detection, and Punishment of Corruption (also known as the Law on Prevention, Detection, and Punishment of Acts of Corruption) was enacted. This law established a specialized anti-corruption body, the National Department for Combating Corruption and Organized Crime, which operates within the Office of the Attorney General and is affiliated with the Supreme Court of Justice. The department maintains a centralized database containing information on all institutions and financial experts under the jurisdiction of specialized prosecutors. Furthermore, the National Money Laundering Prevention and Control Service has the legal authority to monitor transactions exceeding 10,000 Euros and take immediate action to halt such transactions within 24 hours, possibly extending the timeframe to up to 3 days. However, if this measure is prolonged, the service must compensate for damages (Labovic 2006, 230).

National Anti-Corruption and Organized Crime Department Cases

From 2013 to 2018, Laura Kovesi served as the main prosecutor in Romania. She made accusations against former ministers, media moguls, judges, prosecutors, and assistants to former President Traian Basescu, a former tourism minister, and a current parliamentarian, with

allegations of close ties to the incumbent Prime Minister Viktor Ponte. According to the annual 2017 report of the Special Prosecutor's Office of Romania, approximately 1,000 officials, including three ministers, six lawmakers, and a former parliament speaker, have faced corruption charges in court. The Directorate has initiated prosecutions against a total of 713 officials, which includes 28 mayors, 38 directors of public institutions, and one senator. The report highlighted the prevalence of corruption in Romania, such as hospital directors accepting millions of Euros in bribes and increased abuses of EU funds. In February 2018, Justice Minister Toder demanded the removal of prosecutor Kovesi, citing the alleged exceeding of her powers and the damage caused to the country's international reputation. The minister's request sparked significant public outcry, leading to thousands of protesters taking to the streets and an online petition signed by 108,000 citizens, all expressing their opposition to the perceived abuse of power. In April 2018, President Klaus Iohannis refused to remove Kovesi from her position. However, the Constitutional Court ultimately enforced her dismissal, and on July 9, 2018, President Iohannis signed a decree officially removing Kovesi from her role as Chief Prosecutor (Pravdiko 2018). The High Judicial Council deemed that her removal was not necessary or justified.

Croatia

The Republic of Croatia, which declared its independence in 1991, is constitutionally established as a parliamentary democracy and oriented towards a market-based economy. It holds membership in numerous international organizations and is a member of NATO. In June 2013, Croatia became a full member of the European Union.

Criminal Code of the Republic of Croatia

The Criminal Code of the Republic of Croatia (CCRC) encompasses criminal offenses related to the abuse of official position, including offenses against official duty. Individuals designated as enforcement agents are regarded as officials, responsible for carrying out their specialized duties and exercising their authority. Individuals who engage in illegal actions that compromise integrity, promote corruption, or hinder the functioning of public services are also considered officials. The CCRC defines offenses such as abuse of official position and authority, abuse of exercise of state power, illegal mediation, accepting bribes, and giving bribes. It is worth noting that the legal definition of the offense of abuse of official position and authority under Article 337 of the CCRC corresponds entirely to the description of this offense outlined in Article 353 of the Criminal Code of the Republic of North Macedonia. Article 338 of the Criminal Code provides a legal definition for the offense of abuse in the performance of duties of state power. This offense is committed by officials or individuals holding positions of responsibility within the state government, local self-government units, and administrations, as well as those individuals within legal entities owned or predominantly owned by the Republic of Croatia or local self-government units. These individuals, aiming to obtain personal financial gain or benefit the private activities of themselves or their family members, exploit their positions or authorities in bidding, giving, taking over, or negotiating works. Perpetrators of this offense can face imprisonment ranging from six months to five years (CCRC, Article 338).

Case Law on Abuse of Power in the Republic of Croatia

Multiple lawsuits were initiated against the former prime minister of Croatia. The court in Zagreb has found the former Prime Minister, I. S., guilty in the "Planinska" case and sentenced him to four and a half years of imprisonment for accepting a bribe of 2.2 million EUR. Since the sentence falls below the threshold of five years, the former prime minister will remain free until the verdict becomes final. However, he must reimburse the budget with two million Euros within 15 days of the verdict's enforcement.

Upon leaving the court, I. S. firmly asserted that the recent and previous verdicts relied solely on false testimonies. He stated: "There is no evidence against me, except for the false witnesses presented by USKOK (Office for Suppression of Corruption and Organized Crime). I firmly believe the evidence and facts we presented during the closing statements hold more weight". I. S. expressed his hope that the higher courts would reach a different decision. In addition to I. S., the court found MM and S. F. guilty as well. S. F. received a one-year prison sentence, which was substituted with community service. M. M. also faced a guilty verdict. This verdict follows a four-year-long trial. While I. S. vehemently denied the allegations and refuted USKOK's claims of illegal monetary gains from the resale of apartments on Planinska Street in Zagreb, the second defendant, S. F., pleaded guilty. During the investigation, S. F. confirmed that the building was sold at a higher price, and he handed over 2.2 million Euros in cash to I. S. at his residence in 2009.

In criminal jurisprudence, notable significance lies in the judgments rendered by the Supreme Court of the Republic of Croatia and the County Courts. These rulings specifically pertain to cases involving executive and local government officials charged with criminal offenses related to their official duties, particularly the abuse of power during the exercise of state authority, as stipulated in Article 338 of the Criminal Code (Criminal Code of the Republic of Croatia, Article 338).

Montenegro

Montenegro is a democratic state, emphasizing ecological values and social justice as cornerstones of an independent republic. Notably, what sets Montenegro apart from other countries in the region is its distinction as the first to adopt the Euro as its official currency. Montenegro is classified as a developed country according to the Human Development Index. It holds membership in various international organizations, including the UN, OSCE, and Council of Europe. Montenegro has also applied for EU membership and officially became a member of NATO on 5 June 2017.

The Criminal Code of Montenegro

The adoption of the Criminal Code of Montenegro in 2003 held great significance not only in terms of criminal policy but also carried political weight. It marked a codified approach to addressing this matter in Montenegro, which had not been done since the Second World War. While a partial amendment was made in 2006, substantial and significant amendments were

introduced in 2010 through the Law on Amendments to the Criminal Code of Montenegro. These amendments brought numerous innovations and new incriminations, primarily driven by the country's commitment to international conventions (Criminal Code of Montenegro 2003).

The introduction of the category of indirect executor in the general part of the Criminal Code of Montenegro is a notable novelty. It pertains to situations where another person is coerced through force or threat. While this analogy is justified when the offense is committed under the influence of force, it becomes artificial in the case of coercion. In coercion, the possibility of decision-making is not excluded for the perpetrator, allowing the person applying coercion to be held liable as either the perpetrator of coercion or as an instigator of an act committed under duress. Regarding the institute of prolonged offense, an important aspect of case law is the existence of three necessary conditions as stipulated by the Montenegrin Criminal Code. These conditions include commissioning multiple identical or similar offenses, having the same perpetrator, and establishing a time connection. However, this does not imply that the fundamental problem concerning prolonged offenses and different actions in court practice has been fully resolved. Article 42, paragraph 2 of the Criminal Code of Montenegro narrows the application of prolonged criminal offenses by mandating the presence of identical damage as a prerequisite.

Moreover, due to offenses being predominantly directed against persons and personal rights, including property as a personal right, multiple thefts committed against different individuals are considered prolonged offenses. There may be varying interpretations and debates surrounding assessing the nature of committed acts and their potential merging, particularly in the application of paragraph 3 of Article 42 of the Criminal Code of Montenegro. This paragraph states that acts incapable of merging into a single offense may not constitute a prolonged criminal offense (Lazarevic et al. 2010, 37).

Judgment of the High Court

The verdict is directed against the accused SM, who is identified as the founder of the criminal group and the person responsible for recruiting its members, either personally or through other members of the group. Among these members are defendants R.L., M.D., S.M., SD, OI, GF, SS, AA, MD, LM, and SB, as well as the legal entities PI DOO. B, BI DOO. B, C DOO. B, and CG DOO. B. All members possessed the ability to comprehend the implications of their actions, exercise control over their behaviors, and be aware of the illegal gains involved. The operation of this criminal group was meticulously planned over an extended period, with specific rules, internal control mechanisms, and a strong sense of discipline in place. The criminal group operated in support of the business structure led by General B, where individual members held official positions within the business entities. Specific tasks and roles were assigned to certain group members, aiming to execute a wide range of offenses and exploit their positions and Municipality B's structure. Some members held positions of authority, and each member had a designated role, all of whom agreed to the criminal plan. Their actions involved abusing their official positions and engaging in fraudulent activities. The defendants, MD, BAA, GF, LM, OI, and SS, assumed positions of authority within legal entities such as PI DOO. B, BI DOO. B, C DOO. B, and GC DOO. B. They actively encouraged, facilitated, and created favorable conditions

for other defendants to perform their assigned roles to further the criminal plan. Moreover, they collaborated with defendant RL, enabling them to take official actions that were not in the best interest of their official positions. This included entering into agreements on behalf of Municipality B with other legal entities, despite those agreements being detrimental to the municipality's interests (Podgorica KV 72, 2016).

Defendant MD willingly exploited his official position by engaging in official actions that did not align with the best interests of his official duty. In particular, he initiated announcing public procurement tenders for construction works on behalf of Municipality B. Additionally, he certified both temporary and final construction situations on behalf of the municipality, thereby approving the transfer of funds from the account of Municipality B to the account of the legal entity GC DOO. from B. Similarly, defendant SM knowingly abused his official procedures and carried out official actions that were not in the best interest of Municipality B. Furthermore, defendant OI agreed to establish a legal entity within Montenegro. This entity obtained a commercial bank loan and used the funds to acquire real estate.

The remaining criminal group members willingly agreed that the money obtained should not be returned, thus deceiving multiple individuals to achieve illegal gains for themselves and the designated legal entity. They played various roles within the organization, including as assistants, instigators, and executive directors of the legal entity, participating in prolonged criminal activities and the commission of criminal offenses. Defendant SM is specifically charged under multiple articles of the Criminal Code of Montenegro, including Article 4 paragraph 2, Article 32, Article 36, Article 39, Article 42, Article 45 item 3, and Article 46 paragraph 1 item 3. The Law on Criminal Procedure states that for the prolonged criminal offense of Abuse of Official Position through incitement, as outlined in Article 416 paragraph 3 in conjunction with paragraph 1, along with Articles 24 and 49 of the CC CG, committed in an organized manner and after admitting guilt as per the final Decision KVS No. 72/16 dated 01.09.2016, which approves the agreement for admission of guilt CTs Item 1a, 1b, 1c, 1e, the prescribed sentence is imprisonment for one year (Podgorica KV 72, 2016).

For the prolonged criminal offense of fraud, as stated in Article 244 in conjunction with paragraph 1 and Article 49 of the CC CG, committed in an organized manner for the activities described in item 1, the prescribed punishment is a prison sentence of one year. Additionally, for the prolonged criminal offense of abuse of office committed in an organized manner for the four specified points, the imposed penalty is a fine of 25,000 Euros. Furthermore, for the prolonged act of fraud, as outlined in Article 244 in conjunction with paragraph 1 and Article 49 of the CC CG, committed in an organized manner for the works described in item 1, the penalty is a fine of 25,000 Euros. In addition to the fine, the defendant is sentenced to a single prison term of one year and 10 months, which will be served once the verdict becomes final. Moreover, the defendant must pay a single fine of 50,000.00 Euros to the CG budget within three months. If the fine is not paid after the verdict becomes final, it will be converted into days of imprisonment following the rules specified in the Criminal Code (Podgorica KV 72, 2016).

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Albania

Albania is a parliamentary constitutional republic and a sovereign state. Its politics operate within a framework outlined in the constitution, wherein the president serves as the head of state and the prime minister assumes the role of the head of government. The government's structure is founded upon the principles of the separation and balancing of powers among the legislative, judiciary, and executive branches. Albania has actively participated in NATO and consistently upheld its position as a stability factor while remaining a staunch ally of the United States and the European Union (EU) in the Balkan region.

The Criminal Code of Albania and Case Law on Abuse of Power

After reorganizing the judiciary and presenting the new judicial map, the criminal jurisdiction in Albania has undergone significant changes. There are thirteen first-instance courts with general jurisdiction handling criminal and civil cases. Additionally, there is the Special Court of First Instance for Corruption and Organized Crime, which specifically handles cases related to corruption, organized crime, and high-ranking officials. These high-ranking officials include the president of the republic, the speaker of the parliament, the prime minister, the ministers, the deputy ministers, the Members of Parliament (MPs), the mayors, the general attorney, the high inspector of justice, the judges of the Supreme Court and the Constitutional Court, as well as the members of the High Judicial Council and the High Prosecutorial Council. Furthermore, this court also has jurisdiction over the chairpersons of central or independent institutions defined in the constitution or law and former officials mentioned earlier (as stated in Articles 2 and 135 of the Constitution of the Republic of Albania).

In Albania, two key appellate courts handle different types of cases. The Court of Appeals for General Jurisdiction deals with appeals against decisions made by the first-instance courts with general jurisdiction in civil and criminal matters. Similarly, the Special Court of Appeals for Corruption and Organized Crime operates as an appellate court, specifically for corruption and organized crime cases. It has the same jurisdiction as the Special Court of First Instance for Corruption and Organized Crime but in the second instance. Furthermore, the Supreme Court holds authority over civil, administrative, and criminal cases regarding points of law. However, the Supreme Court changed its jurisdiction after the constitutional amendments were introduced in 2016. This shift occurred due to a lack of public trust in the Supreme Court's ability to address such matters effectively. Consequently, these specific cases were transferred to the newly established special courts.

The decision regarding the former Minister of Education is important in Albanian jurisprudence because it departs from the previous practice of the Supreme Court and presents a formalistic interpretation of *actus reus* of the offense "abuse of power". This decision has been criticized widely (Gjykata E Lartekolegji Penal 2016). Concerning the criminal case involving the ambassador from Albania to the USA, the decision outlined the following:

> The definition of the crime of abuse of official position, as stipulated in Article 248 of the Criminal Code, is objectively clear. It entails the intentional execution or omission of actions by a public official entrusted

> with specific responsibilities, whereby these actions or lack thereof deviate from the regular fulfillment of their duties (Vendim Ne Emer Te Republikes 2016).

Furthermore, in addition to the points mentioned above, these characteristics are further supported by identifying a causal connection between these illicit actions or omissions and the resulting significant consequences. It is evident that the specific act or omission, in this particular case, is deemed unlawful, as it is perpetrated by the responsible official who, by exploiting their position, engages in actions that contradict their duty. The evidence gathered during the judicial examination substantiates that the defendant F.T., from April 20, 2001, to May 31, 2005, fulfilled the role of the Ambassador of Albania to the United States. The provisions of Law No. 9095, issued on July 3, 2003, "On the Foreign Service of Albania", particularly Articles 16, 23, and 40, reveal that the ambassador is not obligated to verify or maintain documentation related to financial expenditures. Nevertheless, no evidence is available to substantiate that the defendant, apart from fulfilling the role of an ambassador, also assumed the responsibilities of the embassy's financial officer or was entrusted with such a role. As an ambassador, he holds a political position with clearly defined duties outlined in the law above. Following this law and Law No. 6942, dated 25 December 1984, "On the Administration, Storage, Documenting, and Circulation of Material and Cash", or under Article 9 of Law No. 7661, dated 19 January 1993, "On Accounting", the tasks related to expenses and the accompanying documentation have been designated for a dedicated finance staff (Vendim Ne Emer Te Republikes 2010).

Although in the trial, it has not become clear whether it is effective economic damage or actions that have damaged the interests of the state in terms of the normal functioning of the Albanian Embassy in the US, the Criminal Chamber of the High Court considers: "Between the actions of the trial and the alleged consequence there is no causal link. Because of the lack of this causal link between the defendant's actions and the established consequence, one of the elements of the criminal offense of abuse of office is missing" (Vendim Ne Emer Te Republikes 2010).

Finally, the last subject concerns local government officials. For illustration, we provide the following final judgment of the highest court instance:

> According to Law No. 8652, dated 31.07.2000, 'On the Organization and Functioning of Local Government' Article 32 establishes that it is within the competence of the municipal council to approve the alienation or grant the use of properties to third parties. There is no evidence that by Decision No. 62, dated 09.12.2004, the municipal council should have approved the alienation of the state plot included in the municipality's territory (Vendim Ne Emer Te Republikes 2010).

It has also not resulted that the municipal council delegated the power of alienation to the mayor, as provided by Article 32 Section N of Law No. 8652, dated 31.07.2000. Likewise, Law No. 7080, dated 27.07.1995, Article 3, provides that:

> Until the physical compensation of former owners is completed, the transfer of free plots from state property to private property shall only be

> made in the following cases: a) for the construction of dwellings, in order to free them for the former owners, as well as for the homeless, built by the Housing Entity or other persons; b) by decision of the Council of Ministers, for sale, for very important investments for the country (Vendim Ne Emer Te Republikes 2010).

The defendants have acted in violation of the aforementioned legal provisions, thereby causing harm to the lawful interests of the state concerning the proper functioning of its institutions and entities. This is further substantiated by the decision rendered by the Supreme Court of Albania, which asserts:

> Following Article 248 of the Criminal Code, several conditions must be met for a criminal offense to be classified as abuse of office. These include the intentional execution or omission of actions that deviate from the law's requirements and represent a failure on the part of an individual carrying out public functions to fulfill their duties properly. Furthermore, these actions or failures to act should result in unjust harm to the legitimate interests of the state or its citizens. It is important to note that this offense applies to individuals in positions of special authority rather than to any person fulfilling a specific duty (Vendim Ne Emer Te Republikes 2010).

The Criminal Chamber of the High Court has deemed the reasoning and interpretation provided by the Gjirokastra district court valid. This interpretation highlights that individuals participating in the mandate verification commission are not considered persons exercising public functions, as outlined in Law No. 8652, issued on 31 July 2000, titled "On Organization and Functioning of Local Government". Any detrimental consequences resulting from the activities of a body should directly stem from actions or legally binding acts carried out within the scope of their functions. The district court has appropriately concluded that the decision made by the municipal council mandates' commission does not yield consequences. Rather, it serves as a guiding decision for the municipal council in approving the mandates of its members (Vendim Ne Emer Te Republikes 2010).

CONCLUSION

Based on the case law in Montenegro, Croatia, and Albania, it can be inferred that the most prevalent offense in the region is the abuse of office and similar offenses. In the Criminal Code of Croatia, the offense of abuse in the performance of duties of state power is specifically addressed under Article 338, which was introduced as a separate provision. In our country, the accusatory model implemented in criminal procedure grants the public prosecutor's office the independent authority to decide whether to initiate an investigation. In Croatia, the court plays a significant role in scrutinizing the necessity of initiating an investigation, mainly due to the ongoing collection of evidence and the importance of judicial oversight in opening the

investigation. Moreover, the Criminal Code of Albania specifically includes a criminal offense within the category of acts against the official position.

The judicial practice in Montenegro demonstrates the efficacy of law enforcement agencies, as many court proceedings are resolved through agreements. However, following criminal procedure laws, the court can consider agreements and impose sentences such as imprisonment, fines, alternative measures, and confiscation of property and illicit gains. Additionally, the court has the power to order the seizure of assets and impose reparation obligations on defendants for their unlawfully obtained gains following the finalization of a decision.

Political corruption represents a genuine and socially detrimental phenomenon that can be examined from various perspectives, including social, economic, and legal dimensions. Its fundamental impact lies in the threat it poses to the very concept of the rule of law and the erosion of citizens' trust in the institutional framework. Political accountability is one of the most effective means to control the exercise of power.

Scientific research on corruption cases substantiates the hypothesis put forward in this paper, which asserts that not only Balkan non-EU Member States but also Balkan EU Member States witness instances where public officials, while in power, engage in misconduct to pursue personal interests at the expense of the state's public interest. Consequently, the rule of law must establish its robust defense system by incorporating independent and effective protective mechanisms.

Based on the information presented, the following conclusions can be drawn:

- Enhance parliamentary oversight over the executive branch by effectively utilizing mechanisms available to the Assembly, such as interpellations, inquiry commissions, and monitoring the implementation of laws.
- Urgently undertake the codification of criminal legislation to ensure its coherence and consistency.
- Bolster the personnel capabilities, financial autonomy, and technical infrastructure of the judiciary and other pertinent institutions to enable them to combat serious crimes, abuses, and corruption effectively.

In conclusion, the implementation of these measures will contribute to the strengthening of governance, the promotion of transparency, and the preservation of the rule of law. By implementing the suggested measures, it is anticipated that a significant impact will be made in preventing and combating the crime of abuse of power. Through adherence to legally prescribed procedures and the adoption of responsible and lawful conduct by individuals occupying public positions, the rule of law will be upheld within the institutional framework, promoting democratic values that are essential for the development of the legal system in the Republic of North Macedonia and the region.

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