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## Abuse of power and authority in Republic of Macedonia - form of economic crime?

Muazam Halili

*St. Climent Ohridski - Bitola, Macedonia*

*Ministry of Interior of the Republic of Macedonia - Department of Interior Tetovo*

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### **Abstract**

*The crime acts of malfeasance for abuse the power and authority provided in the Criminal Code of the Republic of Macedonia in Article 353, according to previous research is most work in the group of economic crimes, or economic crime in general. Economic crime undermines confidence in the functioning of public administration and political system. The fight against this type of crime have become a constant task for all stakeholders. Misuse of official position and authority as a deviant phenomenon can be considered in isolation, as it is present in all institutions of the system. Fighting against criminal activities with elements of abuse of power and authority in a coherent and effective manner should occupy a central place in the priorities of the institutions of the system in the fight against crime in general. As a phenomenon, is ancient evil, is that even in very beginnings of organized society. Regarding the motive of carrying out this crime can be said that there is no change in the history of the initial forms of abuse today, but criminal actions are adjusted according to socio - economic and social living conditions.*

Keywords: economic crime, abuse of power and authority, incrimination, criminal situation, prevention.

### **1. PREFACE**

Criminal phenomenon with elements of “misusing of official position and authorization” is part of economical and financial crime.

Misusing of official position and authorization, in the public has always attracted a huge attention from all kinds of criminality.

Misusing of official position and authorization is met in all institutions of the government such as health, education, cadastre, municipalities, inspection service, governmental societies, police, judiciary, and all other higher governmental organs.

The huge widespread of this criminal offense blocks the normal functionality of the state, lowers the economical growth, slow down the process of integration in the European Union.

Misusing of official position and authorization as a criminal phenomenon in the Republic of Macedonia (RM) has gone up during the period of transition especially at its first years, of this process.<sup>1</sup>

By the time this incrimination adapts itself depending on the social conditions of the state.

The executors in this criminal offence are educated and professional officers with special abilities and positions in the social and economical relations.

Having in mind that the doers of this crime are educated people who know well the law of their field, finding out these types of criminals with elements of misusing of official position and authorization is not easy at all, because they try hard to hide all the evidences of their criminal activity.

## 2. Misusing of official position and authorization as a corruption deed

The term corruption has got more definitions in its widespread usage.

If we are to analyze some of the definitions of corruption used by more authors we will suspect elements which comprise the crime act as “misusing of official position and authorization”. Same elements are met in the act 2 of the purified text of the anti-corruption law<sup>2</sup> according to which “corruptions means misusing the post, legal authorization, official duty and the post of any kind of usage, for him or others. Thus, the crime act called misusing of official position and authorization is categorized under the crimes with corruptive character and as such, according to statistical results taken from relevant institutions is the most frequent of this type of crime<sup>3</sup>. According to Babicj<sup>4</sup> even other crimes with a corruptive character in some way belong to this special type of crime especially if the crime is done by an authorized officer misusing the official post and authorization.

The negative effects which are as a result of doing this crime with corruptive elements, made many national and international institutions and organizations to pay a special attention to the occurrence of corruption.

For this aim many international regulations, conventions and deals are brought by United Nations Organization, The council of Europe and other international organs and organizations,

The member states of the council of Europe and other states signers of the Punishment convention for corruption, due to meaning for defending the society from corruption and strengthening the international corporation, because the effectiveness fight against corruption depends on the international punishment collaboration. This convention aims at consciousness and collaboration at international level in the fight against corruption.

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<sup>1</sup> More on this see the Манески, М., *Корупцијата во РМ (превентивни и казнени мерки за спречување)*, Скопје, 2005, стр.30 - 34

<sup>2</sup> *Службен весник на РМ бр. 28/02, 46/04, 126/06, 10/08, 161/08, 145/10*

<sup>3</sup> Арнаудовски, Љ., С.Тасева, С.Салиу., “Потреба од следење на судските предмети од областа на корупцијата” коалиција “Сите за правично судење” Скопје, 2007 г, стр. 10

<sup>4</sup> Бабич, М. “Злоупотреба службеног положаја или овласчења” - Основно антикорупцијско кривично дело., Модерна управа, Часопис за управно - правну теорију и праксу Република Српска април 2009 г. стр. 93.

The punishing convention for corruption of the European Council is ratified by Republic of Macedonia.<sup>5</sup>

In the last few years a number of results were achieved in the field of Law<sup>6</sup> thus Republic of Macedonia has got all the laws for stopping the corruption, but the main problem is their implementation or better said the unpreparedness of properly following the laws.

Republic of Macedonia globally is dealing with high a high level of corruption and a low level of effectiveness deterring in prevention and repression plan. This situation is present for a longer period of time. The results of the level and the effectiveness of fighting the corruption are approximately the same in scientific and professional medium and non governmental and state organ and organizations and international organizations. This is also based on the reports of European commission<sup>7</sup> for advantaging of Republic of Macedonia according to which corruption has remained widely active in many fields and continues to be a serious problem whereas the institutional frame and the taken stapes remain insufficient for resolving of this phenomenon.

In this context there are also statistics from the state bureau of republic of Macedonia, presented in the following table.

Table nr. 1

This table shows the reported defendants and sentenced perpetrators for KD “misusing of official position and authorization” article 353 from Criminal Code of the Republic of Macedonia during the period 2002-2012 year.<sup>8</sup>

Period	2002-2012	reported defendants	prosecuted defendants	sentenced defendants
Total		8315	2284	889

According to the results of this chart during the period 2002-2012 the total number of reported defendants for committing offenses from the field misusing of official position and authorization is 8315 people, from which 2284 were given prosecutors act and only 889 were sentenced from the total number which gives room to doubt that juridical organs did not play their role according to the law and norms.

In this context we show also the report of the American Ambassador Pol Wolers who in October 2014 during a debate on the behalf of presentation of the annual report of Macedonian Centre for inter collaboration accented that in 2013 the anticorruption commission detected 228 cases in the

<sup>5</sup> *Службен весник на РМ* бр.32/99

<sup>6</sup> Маневски М., “ Конфискација на имот и имотна корист” , Судска практика 2007 - 2012, Скопје, 2013

<sup>7</sup> The European Commission is one of the EU institutions , which among other activities , each year starting from 2002 , for all Western Balkan countries report on the progress of these countries towards meeting the criteria for EU

<sup>8</sup> Data are taken from statistical publications of the State Statistical Office of Macedonia , [www.stat.gov.mk](http://www.stat.gov.mk)

fight against corruption, from which only 7 were reported as defendants and non of them were sentenced.<sup>9</sup>

The empirical cases are many from the near future in R.M. for the unseen robbery on social and governmental property, on the level of operation-police cooperation, most of these cases are proved and many of them exposed on media but almost non of them didn't get sentenced<sup>10</sup>.

Thus, in R.M. the biggest robbery on the social capital happened during the privatization of the social capital. Although there were problems in other states too, but crime and corruption didn't show themselves like in Macedonia. If we are to compare the planned 2.5 billion Euro from the social capital only 9.6 million or 38% were collected.<sup>11</sup> "The transitional shock" that the economy of Macedonia endured was very hard which resulted in highly negative rates of movement of home capital(GDP). All this was as a result of many factors, before all the crime behavior of many people responsible for the process of privatization, judges, general directors, managers, and others.

The highest number of misusing of official position and authorization in the last years are met during the process of undergoing public procurement. The frequent occurrence of crime with elements misusing of official position and authorization in the sphere of public procurement in R.M. happened during the period 1998-2014. This law was changed many times in order to stop and minimize the corruptive behavior with elements of misuse in this field.

The negative effects of misusing of official position and authorization are manifolds especially on the budget of the state. This can be proved with the statistical taken from the ministry of inner affairs of R.M. during the period 2002-2012 presented on the table.

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<sup>9</sup> Дневен весник, *Вест, број 4297*, 15 октомври 2014 година, стр.3

<sup>10</sup> Лабович, М. и Николовски, М., "Организиран криминал и корупција-најнови теоретски димензи, практични консенвенкци и методика на истражување", Факултет за безбедност – Скопје, 2010, стр. 46

<sup>11</sup> Цуклески Г, Николоска С, ,, Економска криминалистика График Мак Принт ,, Скопје 2008 г, стр.69

Table nr.2 Gives the material damage done by offense misusing of official position and authorization during 2002-2012.<sup>12</sup>

Misusing of official position and authorization	Material damage <sup>13</sup>
2002	7660 million denars
2003	4,7 billion denars
2004	2,2 billion denars
2005	1,4 billion denars
2006	803 million denars
2007	1,6 billion denars
2008	2,3 billion denars
2009	863 million denars
2010	3 billion denars
2011	937 million denars
2012	1,9 billion denars

These results show only one offense with corruptive character taken from the ministry of inner affairs. If we are to collect other offenses with corruptive character the material damage would be much bigger. On the state level of R.M. this number is much higher if we would take into account the statistics from other institutions which fight against this crime such as public prosecutor, financial policy, custom office etc.

### 3. CONCLUSION

Misusing of official position and authorization as crime subject is a topic for analysis in many scientific research. This shows that the science which deals with phenomenon continually seeks answers, or things for finding practical solutions for stopping this type of crime. Misusing of official position and authorization continually gets enlarged and that's way this phenomenon needs to be studied temporally. This type of crime appears in branches of government starting from bottom to top. As a part of economical crime which comprises corruptive elements has deep effect on normal functioning of the government, slows the economic development, deforms the reputation of the governmental institutions, authority weakens the trust of citizens on institutions and the system.

The presence and the complexity of this negative phenomenon, methods of acting, consequences of the same requires to continue with investigations on this phenomenon, whose results may help to the R.M. with such activities to position itself in this fight against this kind of crime and in this context fulfilling the part of Copenhagen political criteria for entrance in EU.

<sup>12</sup> The data are taken from the official website of the Ministry of Interior of the Republic of Macedonia , [www.mvr.gov.mk](http://www.mvr.gov.mk), while some are provided with an internal letter br.21.2-2018 from 28.06.2013 years , the Department for Criminal – intelligence analysis in Bureau public Security Ministry of Interior of the Republic of Macedonia

<sup>13</sup> Currently the official average exchange rate from denar to euro is 61.69 denars = 1 Euro

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