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Abuse of Duty in Albanian Criminal Law and Its Relationship with Corruption: A Legal-Doctrinal and Practical Analysis

PhD (C.) Ilma Bici

University "Aleksander Moisiu", Albania

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Abstract

This article examines the offense of abuse of duty under Article 248 of the Albanian Criminal Code and its complex relationship with corruption offenses within the Albanian criminal justice system. Using a legal-doctrinal and practical analysis, the study explores the constituent elements of abuse of duty, the institutions responsible for its prosecution - including the Special Structure Against Corruption and Organized Crime (SPAK) and the National Bureau of Investigation (BKH) - and the evolving jurisprudence of the High Court of the Republic of Albania. The analysis shows that abuse of duty is treated in Albanian doctrine and practice as a broad, elastic offense that functions as a residual and complementary provision relative to more specific corruption offenses, a characteristic that has produced flexibility in prosecution but also interpretive inconsistency regarding the harmful consequence, causal link, and the boundary between criminal and administrative liability. The article concludes that legislative refinement of Article 248, greater unification of judicial practice, and continued institutional strengthening are needed to ensure legal certainty and to align Albanian practice more closely with European standards on the rule of law and the foreseeability of criminal law.

Keywords: Abuse of duty; Corruption; Albanian criminal law; Article 248; SPAK; rule of law.

1. Introduction

The fight against corruption and abuse of public office constitutes one of the main priorities of the contemporary Albanian criminal justice system, particularly in the context of the European integration process. Public administration, as the bearer of the exercise of state power in the service of the public interest, requires a high level of integrity, transparency, and accountability. Within this framework, abuse of duty presents itself as one of the most important figures among criminal offenses against duty and state authority, aiming to protect the regular functioning of public administration and citizens' trust in state institutions.

In Albanian criminal law, abuse of duty is provided for in Article 248 of the Criminal Code, which sanctions the unlawful acts or omissions of persons who exercise public functions and who, through the abuse of their competencies, cause harmful consequences to the public interest or to the rights of individuals. This criminal institution has been a continuous subject of discussion both in legal doctrine and in judicial practice, owing to its broad nature and the often unclear boundaries with corruption offenses.

The importance of this study lies in the fact that abuse of duty constitutes one of the most frequently applied offenses in Albanian criminal practice, while at the same time being one of the most problematic in terms of legal interpretation. In many cases, the difficulty lies in distinguishing between criminal liability and disciplinary administrative violations, which has not infrequently resulted in non-uniformity in judicial practice and ambiguity in the legal qualification of specific acts.

In this context, this article aims to analyze in depth the legal concept of abuse of duty, its constituent elements, its relationship with corruption offenses, as well as the main challenges encountered in investigative and judicial practice. Particular attention is devoted to the role of special institutions such as the SPAK and the National Bureau of Investigation (BKH), which have brought about significant changes in the manner of criminal prosecution of corruption offenses and abuse of duty.

1.1 General Context of Abuse of duty

Abuse of duty is a classic figure of criminal law closely linked to the concept of abuse of public power. It implies the deviation of the exercise of state competencies from their lawful purpose, in such a way that the public interest or the rights of individuals are infringed. (Republic of Albania, 1995a). This concept is also widely recognized in other European legal systems, where it is often treated as “abuse of duty” or “misuse of official powers” (United Nations Office on Drugs and Crime, 2016).

In criminal law doctrine, abuse of duty is considered an offense with a special subject, since it can only be committed by persons who hold a public function and exercise state competencies (Bozheku, 2016). This distinguishes it from general criminal offenses, giving it a specific character directly linked to public trust and the functioning of the rule of law (United Nations, 2003).

In the Albanian system, this criminal figure has evolved considerably, particularly following the justice reform and the establishment of new institutions for the investigation and prosecution of corruption and organized crime (European Commission, 2023). The increase in cases investigated for abuse of duty has also brought about the need for a clearer and more unified interpretation of the elements of this offense (Council of Europe – GRECO, 2012–2023).

1.2 The Legal Concept of Abuse of duty

Abuse of duty constitutes one of the central figures of criminal law against the regular functioning of public administration. In the legal-criminal sense, it implies the unlawful exercise of public competencies by a special subject who, owing to his

functional position, has the obligation to act in accordance with the law and the public interest (Republic of Albania, 1995a). Deviation from this standard constitutes a direct infringement of the principle of legality and of citizens' trust in state institutions (United Nations, 2003).

In Albanian criminal law doctrine, abuse of duty has been treated as an offense of broad and elastic character, which has brought, as an advantage, flexibility in the prosecution of various forms of abuse of power, but has at the same time created interpretive problems in practice (Elezi et al., n.d.).

This elasticity is related to the fact that the legislator has not exhaustively defined all forms of unlawful conduct, but has used general formulas that require judicial interpretation (Council of Europe – GRECO, 2012–2023).

1.3 Doctrinal Understanding

In the doctrinal sense, abuse of duty is defined as an unlawful act or omission committed by a person who exercises a public function and who, by exceeding or failing to fulfil his legal competencies, causes harmful consequences to the public interest or to the rights of individuals (Republic of Albania, 1995a).

In Albanian legal literature, it is emphasized that the essential element of this offense is not merely the violation of the law, but the causal link between the unlawful exercise of duty and the harmful consequence that has occurred (Elezi et al., n.d.). This distinguishes abuse of duty from disciplinary or administrative violations, which may be unlawful but do not reach the level of social danger required for criminal liability (Roxin, n.d.).

In this sense, abuse of duty is regarded as a “residual” figure, which is applied when the conduct of the public official is not encompassed by more specific figures of corruption or other criminal offenses, but nevertheless seriously infringes the functioning of public administration (Council of Europe – GRECO, 2012–2023).

2. The Constituent Elements of the Offense

The offense of abuse of duty, as regulated by Article 248 of the Criminal Code of the Republic of Albania, is composed of four essential elements: the legal object, the active subject, the objective element (*actus reus*), and the subjective element (*mens rea*). The presence of all these elements is necessary for establishing criminal liability. The legal object of the offense is the regular, lawful, and impartial functioning of public administration, as well as the protection of the public interest and the rights of individuals against the abuse of state authority (Republic of Albania, 1995a). This legal object has a dual nature. On the one hand, it safeguards the legality and proper functioning of public administration. On the other hand, it protects the rights and legitimate interests of individuals who may be adversely affected by the unlawful actions or omissions of public officials (Roxin, 2010). The active subject of the offense is a special subject, as only a person performing a public function may commit the offense of abuse of duty. This includes individuals employed within the state

administration, public institutions, or any entity exercising delegated public authority (Elezi et al., 2008). Accordingly, the offense may be committed by civil servants, public officials holding political office, or any other person legally authorized to exercise public authority. The offender's status as a public official constitutes an essential legal element of the offense. Consequently, where this status is absent, the conduct cannot be qualified as abuse of duty under Article 248 of the Criminal Code (United Nations, 2003). The objective element (*actus reus*) consists of an unlawful act or omission committed by the public official in the exercise of official duties (Jescheck & Weigend, 2011). The unlawful conduct may take several forms, including exceeding the scope of legally conferred powers or competencies, failing to perform a duty where a legal obligation to act exists, exercising official powers in an arbitrary, unjust, or discriminatory manner, or violating the legal procedures governing administrative activity. In addition to the unlawful conduct, the offense requires the occurrence of a harmful consequence. Such consequences may be material or immaterial and include damage to the public interest, infringement of the rights and legitimate interests of individuals, or impairment of public confidence in state institutions (Roxin, 2010). A causal relationship between the unlawful conduct and the harmful consequence must also be established in order to satisfy the objective elements of the offense. The subjective element (*mens rea*) is characterized by intent, which may take the form of either direct intent or eventual intent (Elezi, 2008). Direct intent exists where the offender knowingly and deliberately seeks to produce the unlawful consequence, whereas eventual intent exists where the offender foresees the possibility of the prohibited consequence and nevertheless accepts its occurrence. In judicial practice, distinguishing eventual intent from negligence has proven particularly challenging and has resulted in divergent judicial interpretations (Elezi, 2008). This distinction is significant because it determines whether the conduct gives rise to criminal liability under Article 248 or merely disciplinary or administrative responsibility.

3. The Relationship between Abuse of duty and Corruption

One of the most complex issues in contemporary Albanian criminal law is the distinction between the offense of abuse of duty and corruption offenses. In practice, these offenses frequently overlap, creating difficulties in the legal qualification of specific conduct and requiring a careful assessment of the constituent elements of each offense (Council of Europe, 1999; United Nations, 2003). Abuse of duty and corruption share several fundamental characteristics. Both offenses may be committed only by persons exercising a public function, both undermine the integrity and lawful functioning of public administration, and both erode public confidence in state institutions (Republic of Albania, 1995a). Furthermore, abuse of duty may, in certain circumstances, constitute a preliminary stage or facilitate the commission of corruption offenses. Consequently, a single course of conduct may be examined under both legal frameworks, depending on whether the additional statutory elements of corruption—such as the offering, promising, soliciting, giving, or accepting of an

undue advantage—are present (United Nations, 2003). Despite these similarities, the two offenses differ in several essential respects. The principal distinction concerns the element of an undue benefit. Corruption offenses necessarily involve the promise, offer, solicitation, acceptance, or receipt of a material or non-material advantage in exchange for the improper exercise of official functions. By contrast, abuse of duty does not require the existence of such a benefit. Criminal liability for abuse of duty arises from the unlawful exercise or omission of official duties that causes harm to the public interest or to the rights and legitimate interests of individuals, irrespective of whether the offender obtains any personal gain (Republic of Albania, 1995a). A further distinction lies in the purpose underlying the offender's conduct. Corruption offenses are inherently profit-oriented, as they are committed with the intention of obtaining or conferring an unlawful advantage. Abuse of duty, however, may occur even in the absence of any financial or personal benefit. The offense may result from the arbitrary or unlawful exercise of official powers, the misuse of legally conferred competencies, or the intentional failure to perform official duties, provided that the statutory elements of the offense are satisfied. In Albanian judicial practice, Article 248 of the Criminal Code has at times been applied as a residual provision in cases where the evidentiary threshold required to establish corruption offenses has not been met. This practice has generated considerable debate in legal doctrine because it risks obscuring the distinction between abuse of duty and corruption and may lead to inconsistent legal qualifications of similar conduct (United Nations, 2003). For this reason, both judicial practice and legal scholarship emphasize that the qualification of the offense must be based on a comprehensive assessment of all constituent elements, including the offender's intent, the existence of unlawful conduct, the occurrence of harmful consequences, the presence or absence of an undue benefit, and the causal relationship between the conduct and the resulting harm. Only such a comprehensive analysis ensures the correct application of the criminal law and preserves the distinction between abuse of duty and corruption offenses.

4. Analysis of the Provisions of the Criminal Code

4.1 Article 248 of the Criminal Code

Article 248 of the Criminal Code of the Republic of Albania constitutes the principal provision criminalizing the offense of abuse of duty committed by persons exercising public functions. The primary purpose of this provision is to protect the integrity, legality, and impartiality of public administration and to ensure that public authority is exercised in accordance with the law and in the public interest (Republic of Albania, 1995a).

The offense is committed when a public official, through an unlawful act or omission in the exercise of official duties, breaches the obligations arising from that office and thereby causes harm to the public interest or to the rights and legitimate interests of individuals (Elezi et al., n.d.). A defining characteristic of Article 248 is its broad and general formulation, which enables it to encompass a wide range of unlawful

conduct committed by public officials that does not fall within the scope of more specific criminal offenses (Bozheku, 2016).

Legal doctrine emphasizes that Article 248 performs both a guarantee function and a complementary function within the criminal justice system. It serves as a guarantee by protecting the lawful functioning of public administration and operates as a complementary provision by applying only where the conduct of a public official reaches a level of social harm that exceeds the scope of disciplinary or administrative liability (Roxin, n.d.). Consequently, the application of Article 248 requires careful judicial interpretation to prevent the excessive criminalization of administrative irregularities or errors that do not justify criminal sanctions (Council of Europe – GRECO, 2012–2023).

An essential element of the offense is the existence of a harmful consequence that is directly attributable to the unlawful conduct of the public official. Criminal liability arises only where the prosecution establishes both the occurrence of harm and a causal relationship between the official's act or omission and the resulting consequence. In the absence of such a causal link, the requirements for criminal liability under Article 248 are not satisfied (Elezi & Kaçupi, n.d.; Republic of Albania, 1995a).

4.2 Corruption Offenses

The Albanian Criminal Code also establishes a comprehensive framework governing corruption offenses, including active and passive corruption of public officials, as well as other offenses involving the unlawful use of public office for private benefit (Republic of Albania, 1995a).

Unlike abuse of duty, corruption offenses are characterized by the existence of an exchange involving an undue advantage. A public official receives, requests, accepts, offers, or promises a material or non-material benefit in return for performing or refraining from performing an official act (United Nations, 2003). This reciprocal element distinguishes corruption from abuse of duty and significantly increases its social danger because it directly undermines the impartiality, integrity, and legitimacy of public decision-making (Elezi et al., n.d.; Organisation for Economic Co-operation and Development, n.d.).

Albanian criminal legislation has been substantially harmonized with international anti-corruption standards, particularly the Criminal Law Convention on Corruption of the Council of Europe and the recommendations issued by the Group of States against Corruption (GRECO). These international instruments require States to criminalize all significant forms of corruption and to ensure effective enforcement against abuses of public office (Council of Europe, 1999; Council of Europe – GRECO, 2012–2023).

4.3 Other Related Criminal Offenses

In addition to Article 248 and the provisions governing corruption, the Criminal Code criminalizes several other offenses designed to protect the integrity and lawful functioning of public administration. Together, these offenses form an integrated

criminal law framework aimed at preventing and punishing abuses of public office (Republic of Albania, 1995a).

These related offenses include violations of equality in public procurement procedures and public auctions, which criminalize unlawful favoritism and discrimination in the award of public contracts; offenses involving conflicts of interest, where public officials improperly allow private interests to influence official decision-making; forgery of official documents committed by public officials in the exercise of their duties; and the misappropriation or embezzlement of public funds through the unlawful use of state financial resources (Republic of Albania, 1995a).

Collectively, these criminal provisions complement Article 248 by addressing specific forms of misconduct that threaten the legality, transparency, accountability, and integrity of public administration. Their combined application establishes a comprehensive system of criminal protection against abuses committed in the exercise of public office.

5. Institutions Responsible for Criminal Prosecution

The investigation and prosecution of abuse of duty and corruption offenses in Albania involve several institutions with distinct but complementary competencies. The institutional framework consists primarily of the Special Structure Against Corruption and Organized Crime (SPAK), the National Bureau of Investigation (BKH), the prosecution offices of general jurisdiction, and the judiciary. Their coordinated operation is essential for ensuring effective criminal investigations, fair judicial proceedings, and the consistent application of criminal law.

5.1 The Special Structure Against Corruption and Organized Crime (SPAK)

The Special Structure Against Corruption and Organized Crime (SPAK) is one of the most significant institutions established under Albania's judicial reform to combat corruption and organized crime (Republic of Albania, 1998, 2016a). SPAK has exclusive jurisdiction to investigate and prosecute corruption offenses, abuse of duty, and other criminal offenses committed by senior public officials or involving organized criminal groups, as provided by law (Republic of Albania, 2016a).

The establishment of SPAK has substantially strengthened Albania's institutional capacity to combat corruption by providing a specialized and independent prosecutorial authority. Through its operational independence and specialized expertise, SPAK has contributed to increasing the number of investigations and prosecutions involving abuse of duty and corruption while promoting higher standards of criminal investigation and prosecution (Special Structure Against Corruption and Organized Crime, 2022–2024).

5.2 The National Bureau of Investigation (BKH)

The National Bureau of Investigation (BKH) functions as the specialized investigative body operating under the authority of SPAK (Republic of Albania, 1998, 2016a). Its

principal responsibilities include conducting preliminary investigations, collecting evidence, and carrying out complex investigative activities related to corruption, abuse of duty, and organized crime (Republic of Albania, 2016a).

The BKH plays a critical role in ensuring the professionalism, technical expertise, and operational independence of criminal investigations. By employing specialized investigative methods and modern forensic techniques, it has contributed to improving the quality of criminal investigations and strengthening the evidentiary basis upon which prosecutions are conducted and judicial decisions are rendered (National Bureau of Investigation, n.d.; Republic of Albania, 2016a; Special Structure Against Corruption and Organized Crime, 2022–2024).

5.3 The Prosecution Office of General Jurisdiction

The prosecution offices of general jurisdiction continue to perform a central role in prosecuting abuse of duty and corruption offenses that fall outside SPAK's statutory jurisdiction (Republic of Albania, 1998, 2016b). Prosecutors are responsible for directing criminal investigations, initiating criminal proceedings, and representing the prosecution before the courts.

One of the principal challenges facing the prosecution service is ensuring consistency in the legal qualification of criminal conduct, particularly in distinguishing administrative or disciplinary violations from criminal offenses. The proper interpretation and application of Article 248 of the Criminal Code remain essential for maintaining legal certainty and ensuring the uniform application of criminal law (Republic of Albania, 1995b).

5.4 The Role of the Courts

The judiciary performs a decisive function in interpreting and applying the criminal law governing abuse of duty and corruption offenses (Republic of Albania, 1998). Courts determine whether the statutory elements of the offense have been established by evaluating the evidence presented during criminal proceedings and assessing both the objective and subjective elements of criminal liability (Republic of Albania, 1995b).

Particularly significant is the jurisprudence of the High Court of the Republic of Albania, which has played an important role in clarifying the interpretation of Article 248 of the Criminal Code. The High Court has consistently held that criminal liability cannot be established solely on the basis of a violation of administrative procedures. Instead, the prosecution must prove all constituent elements of the offense, including the existence of unlawful conduct, a harmful consequence, the required mental element, and a causal relationship between the conduct and the resulting harm (High Court of the Republic of Albania, 2022; High Court of the Republic of Albania, n.d.). The High Court has further emphasized that the element of damage must be established through sufficient and reliable evidence presented during the proceedings. Consequently, not every breach of administrative rules constitutes abuse of duty under Article 248. This jurisprudence has significantly contributed to

distinguishing criminal liability from disciplinary and administrative responsibility and has promoted greater consistency in judicial practice (High Court of the Republic of Albania, 2022; High Court of the Republic of Albania, n.d.).

5.5 Institutional Cooperation

The effectiveness of criminal prosecution in cases involving abuse of duty and corruption depends largely on effective cooperation among SPAK, the BKH, the prosecution offices of general jurisdiction, and the courts. Coordination among these institutions facilitates comprehensive investigations, efficient prosecution, and judicial decisions based on complete and reliable evidence. Recent institutional practice, together with the jurisprudence of the High Court, reveals several important developments in the interpretation and application of Article 248 of the Criminal Code (High Court of the Republic of Albania, n.d.; Special Structure Against Corruption and Organized Crime, 2022–2024). First, judicial practice increasingly limits the criminalization of administrative irregularities by emphasizing that a mere breach of administrative procedures does not automatically constitute abuse of duty. Criminal liability arises only where all statutory elements of the offense have been established beyond the applicable legal standard (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a). Second, investigative practice has expanded the assessment of social harm by considering not only the unlawful conduct itself but also its broader impact on the functioning of public administration, public confidence in state institutions, and the protection of the public interest (Special Structure Against Corruption and Organized Crime, 2022–2024). Finally, both judicial and prosecutorial practice have contributed to a clearer distinction between abuse of duty and corruption offenses. Although the existence of an undue material or non-material benefit is not the sole distinguishing criterion, it remains one of the principal legal elements differentiating corruption offenses from abuse of duty. This distinction has enhanced consistency in the legal qualification of criminal conduct and promoted greater certainty in the application of Albanian criminal law (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a).

6. Analysis of Judicial Practice

6.1 Selection of Cases and Methodological Approach

The analysis of judicial practice concerning the offense of abuse of duty is of particular importance, as this criminal offense is characterized by a high degree of interpretive elasticity. For this reason, jurisprudence plays a decisive role in defining the boundaries between criminal liability and administrative violations (High Court of the Republic of Albania, n.d.).

In this section, the methodological approach is based on the analysis of decisions from Albanian courts at various levels, including the Court of First Instance, the Court of Appeal, and the High Court, as well as cases handled by SPAK (Special Structure Against Corruption and Organized Crime, 2022–2024). Particular attention

is given to the interpretation of the elements of Article 248 of the Criminal Code, especially in relation to the “harmful consequence” and the causal link (Republic of Albania, 1995a; High Court of the Republic of Albania, n.d.). Judicial practice has identified cases in which the distinction between administrative violations and criminal liability has required a detailed assessment of the constituent elements of the offense, thereby contributing to the further development of interpretative practice (European Commission, 2024; High Court of the Republic of Albania, n.d.).

6.2 Legal Analysis of Judicial Decisions

One characteristic of Albanian judicial practice is the interpretation of Article 248 of the Criminal Code as a provision applied in cases where the constituent elements of more specific offenses against the exercise of public functions are not fulfilled (Republic of Albania, 1995a; High Court of the Republic of Albania, n.d.). This approach has been discussed in legal doctrine, particularly regarding the limits of criminal liability and compliance with the principle of legality (OSCE Presence in Albania, n.d.-b). In part of the case law, it has been emphasized that a mere violation of administrative procedures is not sufficient to constitute the offense of abuse of duty; rather, all elements of the offense must be proven, including the harmful consequence and the causal link (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a). This standard serves as an important safeguard against the criminalization of conduct that may constitute only an administrative or disciplinary violation (Republic of Albania, 1995a, 1998). On the other hand, judicial practice shows that the assessment of the harmful consequence is not uniform, as courts have interpreted differently the significance of harm to the public interest and the breach of functional duties within the meaning of Article 248 of the Criminal Code (High Court of the Republic of Albania, n.d.).

6.3 Problems Identified in Practice

The analysis of judicial and investigative practice reveals several key problems (European Commission, 2024; Council of Europe – GRECO, 2012–2023). First, there is no fully unified standard for assessing the “harmful consequence.” In some cases, courts have accepted potential risk as sufficient, while in others they have required the existence of concrete and proven harm (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a). Second, difficulties arise in distinguishing between eventual intent and negligence, particularly in cases involving the exercise of public functions in violation of administrative procedures (Republic of Albania, 1995a). Third, the application of Article 248 as a complementary provision in relation to corruption offenses has generated debate regarding the limits of criminalization of administrative conduct (Special Structure Against Corruption and Organized Crime, 2022–2024; High Court of the Republic of Albania, n.d.). Fourth, challenges exist in the collection and evaluation of evidence in complex corruption cases, where evidence is often indirect and requires combined factual and legal interpretation (OSCE Presence in Albania, n.d.-a; European Commission, 2024).

6.4 Trends in the Interpretation of Article 248

Recent developments in Albanian jurisprudence indicate a trend toward a more cautious and restrictive interpretation of Article 248 of the Criminal Code (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a). Courts have increasingly emphasized the need for a clear causal link between the official's act or omission and the resulting consequence (Special Structure Against Corruption and Organized Crime, 2022–2024; High Court of the Republic of Albania, n.d.). Another trend is the strengthening of evidentiary standards, whereby a mere violation of administrative rules is no longer sufficient; instead, a comprehensive assessment of all elements of the offense is required, including the consequence and social danger (Republic of Albania, 1995a; High Court of the Republic of Albania, n.d.). Furthermore, the practice of SPAK has contributed to improving the professionalism of investigations and to a more structured approach to cases of abuse of duty and corruption. This has led to higher-quality case files and a clearer orientation toward evidentiary standards in court proceedings.

Nevertheless, despite these developments, judicial practice remains in a process of consolidation, particularly regarding the unification of interpretative standards for the constituent elements of the offense (European Commission, 2024; Council of Europe – GRECO, 2012–2023).

7. Challenges in Criminal Prosecution

7.1 The Boundary between Administrative Violation and Criminal Liability

One of the most important challenges in the criminal prosecution of abuse of duty is determining the boundary between an administrative violation and a criminal offense. (Republic of Albania, 1995a) Public administration is characterized by a series of procedural and disciplinary rules, the violation of which does not automatically constitute a criminal offense. (High Court of the Republic of Albania, n.d.; Republic of Albania, 2015) The main problem lies in determining the “threshold of criminalization”, that is, the moment when the official's conduct passes from the administrative sphere to the criminal sphere. (European Court of Human Rights, n.d.) In the absence of detailed legal criteria, this assessment is left to judicial interpretation, which may give rise to differences in decision-making practice. (European Commission, 2024; Council of Europe – GRECO, 2012–2023)

7.2 The Lack of Uniformity in the Interpretation of Judicial Practice

The absence of full unification of judicial practice constitutes one of the main challenges in the application of Article 248 of the Criminal Code. (High Court of the Republic of Albania, n.d.) Different decisions in similar cases have produced different interpretive approaches, particularly in relation to the elements of the consequence and the form of culpability.

This phenomenon affects the principle of legal certainty, which requires that the

criminal norm be foreseeable and applied in a consistent manner. (Republic of Albania, 1995a; High Court of the Republic of Albania, n.d.)

7.3 Procedural Challenges

From a procedural standpoint, the prosecution of abuse of duty and corruption offenses presents numerous difficulties, including the complexity of the investigations, the need for specialized expertise, and the length of judicial proceedings. (Republic of Albania, 1998; European Court of Human Rights, n.d.)

In many cases, the investigation requires a detailed analysis of administrative documentation, institutional decisions, and internal procedures, which renders the process technically complex and subject to high evidentiary requirements. (Special Structure Against Corruption and Organized Crime, 2022–2024)

8. Discussion

8.1 Comparison of Findings with Legal Literature

The analysis developed in the previous sections shows that abuse of duty in Albanian criminal law constitutes an offense of an open nature and relatively broad interpretation, which places it in a particular position in relation to other offenses against the exercise of duty and state authority (High Court of the Republic of Albania, n.d.; Republic of Albania, 1995a). This character is also reflected in legal literature, which treats Article 248 of the Criminal Code as a provision functioning as a “protective clause” for abusive conduct of public officials that is not covered by more specific forms of corruption (Elezi, n.d.-a).

In European criminal doctrine, particularly within the continental legal tradition, abuse of public office is regarded as a form of misuse of state authority that requires a significant threshold of social danger in order to be criminalized (Jescheck & Weigend, n.d.; Roxin, n.d.). This approach is similar to that observed in Albanian jurisprudence, where emphasis is placed on the existence of either proven harm or a serious risk to the public interest (Jescheck & Weigend, n.d.; Roxin, n.d.). Nevertheless, compared with more consolidated legal systems, a relative lack of doctrinal and jurisprudential unification is still observed in Albania regarding the boundaries of this criminal offense, particularly in relation to the concept of “harmful consequence” and evidentiary standards (High Court of the Republic of Albania, n.d.; European Court of Human Rights, n.d.).

8.2 Critical Analysis of Legislation and Practice

One of the most problematic issues in the current legal framework is the relatively broad formulation of Article 248 of the Criminal Code (Republic of Albania, 1995a). While this normative breadth provides flexibility in prosecuting various forms of abusive conduct, it simultaneously creates a risk of overly expansive interpretation of criminal liability. In the absence of more precise legal criteria distinguishing administrative violations from criminal offenses, judicial practice has developed

interpretive standards on a case-by-case basis (High Court of the Republic of Albania, n.d.). This situation is closely linked to the principle of legal certainty, which requires criminal norms to be clear, precise, and foreseeable for legal subjects (Republic of Albania, 1998; European Court of Human Rights, n.d.). On the other hand, the establishment of SPAK and the National Bureau of Investigation has contributed to increased professionalism in the investigation of corruption and abuse of duty cases, thereby improving the quality of criminal prosecution (European Commission, 2024; Council of Europe – GRECO, 2012–2023). However, even in this context, challenges of legal qualification persist, particularly at the boundary between abuse of duty and passive corruption (Special Structure Against Corruption and Organized Crime, 2022–2024; High Court of the Republic of Albania, n.d.).

8.3 Impact on Criminal Policy

Albanian criminal policy in the field of corruption and abuse of duty has undergone significant development over the last decade, particularly within the framework of justice reform and the European integration process. The strengthening of specialized institutions for combating corruption, as well as the increase in criminal prosecutions against public officials, reflects a clear orientation toward a more repressive criminal policy with low tolerance for corruption (European Commission, 2024). Nevertheless, an effective criminal policy requires a balance between the need to sanction abusive conduct and the guarantees of legality and legal certainty. In this framework, the application of the Criminal Code provisions, including Article 248 on abuse of duty, must be interpreted carefully and restrictively in order to avoid unnecessary expansion of criminalization in cases involving administrative errors or discretionary decision-making (Republic of Albania, 1995a). In this regard, jurisprudence and institutional practice emphasize the need for clear and foreseeable boundaries between administrative and criminal liability, in order to ensure respect for the rule of law (Council of Europe – GRECO, 2012–2023). Within this framework, criminal policy should be oriented not only toward repression but also toward prevention of corruption through increased institutional transparency, strengthened administrative oversight, and consolidation of integrity standards in public service. This approach is consistent with recommendations from European institutions and international monitoring mechanisms (European Commission, 2023).

8.4 Compliance with European Standards

At the European level, the fight against corruption and abuse of duty is regulated by several international legal instruments, including the Council of Europe's Criminal Law Convention on Corruption and the recommendations of the Group of States against Corruption (GRECO). These instruments emphasize the importance of effectively criminalizing conduct that undermines the integrity of public administration, while also requiring respect for the principles of proportionality, legality, and legal certainty (Council of Europe, 1999; Council of Europe – GRECO, 2012–2023). In this context, Albanian legislation is generally aligned with European

standards, particularly regarding the criminalization of active and passive corruption and the offense of abuse of duty. However, the main challenge remains the practical implementation of these provisions, especially concerning the uniform interpretation of criminal norms and the avoidance of divergent judicial practice (European Commission, 2024). The European Court of Human Rights (ECtHR) has consistently emphasized the importance of foreseeability in criminal law as part of the principle of legality (*nullum crimen sine lege*), requiring that individuals be able to reasonably foresee the legal consequences of their conduct (European Court of Human Rights, 1979). In this sense, an overly broad interpretation of Article 248 of the Criminal Code must be balanced against the need for normative clarity and limitation of criminal liability, so that legal certainty is not undermined (European Court of Human Rights, 1993).

9. Conclusion

From the analysis developed in this article, it follows that abuse of duty constitutes an important instrument of Albanian criminal law for protecting the integrity of public administration. Nevertheless, its broad formulation and interpretive flexibility have created considerable challenges in judicial and investigative practice. One of the main findings is the absence of a unified standard for assessing the constituent elements of this offense, particularly in relation to the harmful consequence and the causal link. Likewise, a persistent overlap between abuse of duty and corruption offenses is observed, which requires a clearer approach to legal qualification. On the basis of the above analysis, several key recommendations may be formulated: First, legislative improvement of Article 248 of the Criminal Code is needed, by more precisely defining the limiting elements of the offense, particularly in relation to administrative violations. Second, the unification of judicial practice should be strengthened through guiding decisions of the High Court, in order to guarantee legal certainty and the foreseeability of criminal law. Third, investigative standards and evidentiary analysis should be further enhanced by specialized institutions such as SPAK and the National Bureau of Investigation (BKH), to ensure accurate legal qualification of cases. Fourth, specialized training for judges and prosecutors in the field of corruption and abuse of duty should be developed, with a focus on comparative European practice. Finally, academic research in this field should be further deepened, in order to contribute to the development of a more consolidated and coherent legal doctrine.

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