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CRIMINAL OFFENSES AGAINST OFFICIAL DUTY WITH A FOCUS ON THE OBJECT OF THE CRIMINAL OFFENSE

ABSTRACT: The very title of the group of criminal offenses against official duty reveals their object of protection, which is the conscientious and responsible performance of official duties. However, these criminal offenses endanger various protected values, such as citizens' freedoms and rights, their physical and psychological integrity, their property, and others. In this context, the distinction between the object of the act and the defined object of protection for this group of criminal offenses becomes evident. This means that it is necessary to differentiate between the immediate object targeted by individual criminal offenses within this group, the so-called object of attack, and the established object of protection, which is the general value being safeguarded. The subject of this paper is the analysis of legal norms related to individual criminal offenses with a focus on distinguishing between the object of protection and the object of the act. In this regard, we will compare the elements of certain criminal offenses against official duty, primarily those in which the objects of the act differ, while the object of protection, according to their classification, remains the same. The aim of the paper is to determine whether the existing criminal offenses against official duty, with reference to the object of the criminal

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offense, are properly systematized within this group of criminal offenses, and to explore possible ways to address the identified shortcomings.

Keywords: *criminal offense, official duty, object of protection, object of the act, bribery.*

1. Introduction

As the basic purpose of criminal law is its protective function, it is manifested by prescribing certain behaviors as criminal offenses, criminal sanctions for those offenses, and conditions for their application (Stojanović, 2023). As such, it consists in the protection of “fundamental rights and freedoms of man and other basic individual and general values established by the constitution and international law” (Article 1, paragraph 2 of the Criminal Code of the Republic of Srpska [CC RS]). From this, the characteristics of the protective function of criminal law and the methods of its realization emerge (Babić, 2008).

In connection with this is the systematics of a special part of the criminal code, in which all punishable behaviors are categorized into groups of criminal offenses based on their similarity, primarily according to the object of protection, which is linked to the protective function, which is the fundamental function of criminal law (Stojanović, 2023). Although the term “protective object” is more commonly used in theory, we accept the view that it is more appropriate to use the term “object of protection” because this object of the criminal offense is what is being protected, not the object used to protect something else (Stojanović, 2023, p. 113). Besides the general object of protection, which provides criminal law protection to the goods encompassed by all prescribed criminal offenses, the group object of protection is also significant. It includes the goods and rights that are common to a specific group of criminal offenses. These are multiple related specific objects that form the basis for the creation of more or less homogeneous groups of criminal offenses, which is legislatively expressed through separate chapters or narrower groups within a single chapter (Babić, 2021, p. 120).

One of the specific groups of criminal offenses includes criminal offenses against official duty¹. The systematization of individual criminal offenses into

¹ In the CC RS these criminal offenses are systematized in Chapter XXV titled “Criminal Offenses Against Official Duty.” Likewise, in other criminal codes in Bosnia and Herzegovina, the aforementioned group of criminal offenses is also systematized.

this group² is directly related to the group object of protection, i.e., all criminal offenses in this group infringe upon or endanger the same protected value, which is the breach of official duty committed by public officials through the unlawful use of their official position and the powers that arise from it (Babić, Filipović, Marković, Rajić, 2005). Unlike this object of protection, which represents a certain abstract value, there is also the object of the act, which is always a material, physical object on which the act of the specific criminal offense against official duty is carried out. This refers to the specific object of attack that is directly endangered or violated, or over which the act of committing the criminal offense is undertaken (Babić, 2021; Stojanović, 2023). The object of protection and the object of the act differ in these criminal offenses, and it is important to distinguish between them for several reasons. For example, in the criminal offense of Bribery (Article 319 CC RS), the object of the act is the official action, while in the criminal offense of Embezzlement (Article 316 CC RS), the object of the act is the entrusted money, and in the criminal offense of the Violation of Human Dignity by Abuse of Official Position or Authority (Article 329 CC RS), it is the physical or psychological integrity of the person, i.e., the passive subject. At the same time, the criminal offense of Abuse of Office or Official Authority (Article 315 CC RS) represents the fundamental criminal offense for the majority of criminal offenses against official duty. It is also a general offense since a large number of criminal offenses (not only from this chapter) represent its specific forms, and it is actually a subsidiary criminal offense (Delić, 2018). Thus, these criminal offenses can be classified as general criminal offenses against official duty, which means they can be committed in the performance of any official duty (e.g., abuse of official position or authority). In contrast, specific offenses can only be committed in the performance of a particular official duty, which is why a specific official appears as the perpetrator (e.g., illegal release of a detainee). In this context, true criminal offenses against official duty can only be carried out by official or responsible persons, and only in the performance of their official duties or public authorities or in connection with them. On the other hand, false criminal

² These are the following criminal offenses in the CC RS: Abuse of Office or Official Authority (Art. 315), Embezzlement (Art. 316), Fraud in Office (Art. 317), Unauthorized Use of Official Property (Art. 318), Acceptance of Bribes (Art. 319), Bribery (Art. 320), Trading in Influence (Art. 321), Unconscionable Work in the Service (Art. 322), Disclosure of Official Secrets (Art. 323), Improper Use of Budget Funds (Art. 324), Illegal Granting of Benefits to Economic Entities (Art. 325), Illegal Collection and Disbursement (Art. 326), Illegal Release of a Detainee (Art. 327), Forcing Out Statements (Art. 328), Violation of Human Dignity through Abuse of Office or Official Authority (Art. 329), Illegal Appropriation of Items During a Search or Execution of an Order (Art. 330).

offenses, unlike true ones, can be committed not only by official persons but also by any other individual who commits the act outside the scope of their official duties or in connection with the performance of such duties (e.g., giving a bribe or trading in influence) (Babić, 2008; Bajičić, 2023).

This is the subject of this paper. Specifically, we start from the position that the accurate and clear determination of the object of the criminal offense is of particular importance for the interpretation and application of criminal law. This becomes even more evident when clarifying ambiguous questions that arise in distinguishing between individual criminal offenses, not only within the same group of criminal offenses but also among other criminal offenses. Furthermore, this issue is important for the legal qualification of incriminated behavior, as well as later when determining the sentence for the perpetrator of the specific criminal offense (Babić, 2021). In this regard, we will conduct a legal analysis of the group of criminal offenses against official duty in Criminal Code of the Republic of Srpska and then establish the differences in the object of the act among the individual criminal offenses in this chapter of the law. Finally, we will determine the appropriate recommendations to address the identified dilemmas and enable the adequate application of the prescribed legal norms within these criminal offenses.

2. Object of protection of criminal offenses against official duty

Unlike criminal offenses against state authorities, where criminal legal protection is provided for their proper, efficient, timely, uninterrupted, and lawful functioning in the exercise of state power from all persons who threaten or violate them, “in the case of criminal offenses against official duty, criminal legal protection is provided for the official duty that is threatened or violated by its bearers, namely official or responsible persons” (Bajičić, 2023, p. 282). As the state apparatus tends to strengthen continuously, it leads to an increase in the number of services and persons working in them over time, with some services and authorities exercising public powers not only in the interest of the entire state and society but also in their own interest. This consequently leads to the abuse of entrusted authority for personal gain (see: Kregar, 2004; Jovašević, 2019). As such, criminal offenses against official duty represent various forms and types of abuse of official position and public authority in the performance of official duty committed by official or responsible persons as bearers of these authorities (Radovanović, Đorđević, 1975 cited in Simović, Jovašević & Simović, 2019, p. 112). Most often, these involve the actions of official or responsible persons in the performance of their official duties, not

in the interest and for the needs of the service they perform but for some other interest, intending to gain some benefit for themselves or another natural or legal person, or to cause some harm to others or to severely violate the rights of others (Jovašević, 2005, p. 9; Jovašević, 2011, p. 462). Due to the degree of social danger, the severity of the offense, and the material and other harm they cause not only to individuals and institutions but also to society, these offenses are categorized into a separate chapter. Additionally, these criminal offenses lead to a weakening of citizens' trust in the existing system and the functioning not only of the authorities but also of the entire legal order and the efficiency of the rule of law (Mišić, 2006). Therefore, lawful, quality, efficient, and purposeful actions of official and responsible persons in state authorities and legal entities in performing the entrusted public powers and official duties represent the foundation and guarantee not only for the functioning of public services and state authorities in general but also for the protection of certain human rights and freedoms (Simović et al., 2019, p. 112).

The object of protection is the official duty, which represents a significant social value upon whose lawful functioning the achievement of certain rights and freedoms of individuals, who enjoy criminal legal protection, depends on. This pertains to the duties of official or responsible persons in the state and other bodies (enterprises, institutions, other entities) that exercise public authority. The rights and freedoms protected through the safeguarding of official duties depend on the form of the committed criminal offense, but they most often include rights related to property or property interests, rights to freedom of decision-making, rights to personal dignity, and similar rights (Bajičić, 2023). Even though these rights and freedoms are already protected through criminal offenses from other chapters, their protection here differs due to the specificity of the act of commission, the manner of commission, the characteristics of the perpetrator, and the consequences. This creates certain problems in determining the object of protection of these offenses, and therefore some authors argue that it is not possible to speak of a unified object of criminal legal protection in these cases, but rather only of a multiple object of protection (Sržentić, et al., 1995, p. 850 cited in Jovašević, 2019, p. 41; Babić, et al., 2005, p. 707). Namely, these criminal acts incriminate the unauthorized or unlawful performance of official duties or the unlawful use of official or public authority. "However, the goal of the perpetrators of these acts is not to unlawfully use or perform public or official authority, nor to unlawfully use their official position, but to achieve some other unauthorized illegal goal through their actions" (Jovašević & Ikanović, 2012, pp. 350–352), which is to obtain some benefit (of a property or non-property nature) for

the perpetrator or another physical or legal person, or to cause damage (of a property or non-property nature) to another physical or legal person, or to violate the rights of another person (Jovašević, 2019, p. 41). However, in the case of these offenses, the criminal legal protection is primarily focused on ensuring the correctness, purposefulness, timeliness, efficiency, and legality of the work of state bodies exercising public authority to preserve citizens' trust in the legal order and the rule of law. This is, therefore, a matter of the general interest of society as a whole and every citizen that state and other public interest services function correctly and legally, as only in this way do they fulfill their social function (Babić, et al., 2005). In contrast to these criminal acts, other criminal offenses, even when committed by official or responsible persons, are classified into different groups of criminal acts because their primary object of protection is some other value³ (Babić, et al., 2005).

Furthermore, the violation of citizens' rights or other individual values that can be endangered by the abuse of the aforementioned services represents further consequences of the violation of this primary value. The protection object defined in this way is not limited solely to the lawful conduct of classical state administration but encompasses all public services such as social, cultural, educational, and healthcare services, as well as banking and financial services, the trade of goods and services, international economic transactions, and generally any services that exercise public powers. Therefore, in relation to criminal offenses against official duty, one can speak of multiple objects of criminal protection. The immediate object pertains to the criminal protection of state administration, public authority, public powers, lawful operation of the state apparatus, and the proper and lawful performance of official duties

³ For example, the criminal offense of Facilitating the Conclusion of an Unauthorized Marriage (Article 182 of the CC RS) is classified among the group of criminal offenses against marriage and family. Other offenses include Illegal Actions in Business Operations (Article 248 of the CC RS), Abuse of Position by a Responsible Person (Article 249 of the CC RS), Abuse in Public Procurement Procedures (Article 250 of the CC RS), Failure to Pay Withholding Taxes (Article 265 of the CC RS), Improper Allocation of Corporate Funds (Article 267 of the CC RS), and Issuing Securities without Coverage (Article 276 of the CC RS), which are all grouped as criminal offenses against the economy and payment transactions. Additionally, Non-Execution of a Court Decision (Article 341 of the CC RS) falls under the group of criminal offenses against the judiciary; Forgery and Destruction of Official Documents (Article 349 of the CC RS) is categorized as a criminal offense against legal transactions; Non-Execution of Decisions on Environmental Protection Measures (Article 386 of the CC RS) is classified under environmental crimes; Creating Danger by Improper Execution of Construction Works (Article 395 of the CC RS) falls under criminal offenses against public safety; and Negligent Supervision of Public Traffic (Article 405 of the CC RS) is categorized among criminal offenses against public transportation.

and other duties carried out within the framework of public powers. Although the categorization of these offenses into a separate group of criminal offenses against official duty is based on this defined object of protection, these offenses also infringe upon or threaten certain human rights and freedoms, the criminal protection of which is achieved indirectly through the immediate protection of official duty. Indeed, these criminal acts involve the unlawful or illegal performance of official duties or the unlawful use of public or official powers. However, the aim of the perpetrators of these acts is not to unlawfully use or perform public or official powers or to unlawfully utilize official positions, but rather to achieve some other unlawful objective through their actions. This objective specifically relates to certain human rights and freedoms that are endangered or violated through the unlawful use or execution of public or official powers or through the unlawful use of official positions.

In relation to this, the consequences of these criminal acts manifest as concrete and abstract. The concrete consequence is represented by a violation consisting of obtaining unlawful benefits, causing harm to another, or violating the rights of another person. It boils down to achieving benefits (of a property or non-property nature) for oneself or another physical or legal person or causing harm (of a property or non-property nature) to another physical or legal person or violating the rights of another person. The abstract consequence consists of endangerment and manifests in the form of creating a concrete, close, immediate, and real danger, specifically in threatening the proper, quality, timely, efficient, and lawful performance of official duties and public powers. The commission of these criminal acts creates a danger to the service or other public authority. Here, the danger is real, immediate, and close to the protected social good or value – official duty. As a consequence of these criminal acts, there may also be violations of laws, other regulations, or general acts, or the issuance of some illegal act or the undertaking of unlawful procedures. In the case of some offenses, particularly their basic forms, the consequence is not encompassed by the essence of the criminal act. These are formal or action-based criminal offenses that do not contain a consequence and are considered completed upon the performance of the act of perpetration.

3. Object of action of individual criminal offenses

Starting from the position that a group protective object contains objects of protection for individual criminal offenses, it would then mean that the object of protection for a group of criminal offenses simultaneously represents the object of protection for each criminal offense (Petrović & Jovašević, 2005, p. 119), which

we consider indisputable. At the same time, the object of action depends on the form of the individual criminal offense being committed. This can be an official authorization, but also money, securities, movable property, psychological and physical integrity of individuals, etc. Official powers arise from official duties and include all actions entrusted to an official by law for the purpose of performing their official duties. Commission of these criminal offenses depends on the form of manifestation of each specific form of the criminal offense, and accordingly, it is manifested in the exploitation, exceeding, or non-performance of official duties, unlawful appropriation, deception, unauthorized service, demanding or receiving or accepting promises of gifts or other benefits, offering or promising gifts or other benefits, conscious violation of laws or regulations, or neglecting due oversight, unauthorized disclosure of official secrets, inappropriate use of certain resources, unlawful granting of certain benefits, unlawful collection and payment, unlawfully releasing a detainee, extorting testimony from certain individuals, violating human dignity, and unlawfully appropriating things. The mentioned perpetration actions are merely means or methods to achieve some other illegal goal, generally or in a simpler, more successful, or timely manner (Stojanović & Perić, 2000). An important characteristic of the perpetration actions of these criminal offenses is that they are undertaken in the performance of official duties or in connection with the performance of official duties. The perpetrator, in most of these criminal offenses, is an official⁴ or responsible person⁵, or a foreign

⁴ An official is an elected or appointed official in the legislative, executive, and judicial authorities, local self-government units, and in other bodies and public institutions or services that perform certain administrative, professional, and other tasks within the rights and duties of the authority that established them; a judge of the constitutional court, a judge, a prosecutor, an ombudsman; a person who permanently or occasionally performs official duties in the mentioned public bodies or institutions, a notary, an executor, and an arbitrator, an authorized person in a company or in another legal entity entrusted by law or other regulation enacted based on law or a concluded arbitration agreement to perform public authorities, and who performs a specific duty within those authorities, as well as any other person who performs a specific official duty based on the authorization from the law or another regulation enacted based on law, and a person who has been factually entrusted with the performance of certain official duties (Article 123, paragraph 1, item 3 CC RS).

⁵ A responsible person in a legal entity is considered to be an individual who, based on law, regulations, or authorization, performs certain management, supervisory, or other tasks related to the activities of the legal entity, as well as an individual to whom the performance of these tasks has been factually entrusted. A responsible person is also considered to be an official when it comes to criminal offenses where a responsible person is designated as the perpetrator, and which are not prescribed in this code under the section on criminal offenses against official duties, that is, as criminal offenses of an official (Article 123, paragraph 1, item 6 CC RS).

official⁶, while in some offenses it can be anyone.⁷ When the perpetrator of certain criminal offenses is identified as only an official or responsible person, all those individuals can be perpetrators of those offenses unless the characteristics of a specific offense or a specific regulation indicate that the perpetrator can only be one of those individuals. As a perpetrator of some criminal offenses in this group (for example, disclosing official secrets), a person who has ceased to be an official may also appear⁸. These are criminal offenses committed by specific perpetrators, that is, individuals with certain personal characteristics, namely the characteristics of a domestic or foreign official or the characteristics of a responsible person. These individuals carry out their perpetration actions precisely at the time of performing official duties, exercising various authorities, or undertaking official actions in the performance or related to the performance of their duties. The form of guilt is intent, as these are criminal offenses that represent a conscious and voluntary violation of official duties or public authorities. In addition to intent on a subjective level, in most criminal offenses, there must also be an intention to obtain some benefit for oneself or another, to cause some damage to another, or to seriously violate another's rights. The existence of intent, as a subjective element

⁶ A foreign official is a member of the legislative, executive, administrative, or judicial body of a foreign state, a public official of an international organization and its bodies, a judge, and other officials of an international court, who work for compensation or without compensation while serving in the Republic of Srpska. A foreign official is considered to be an individual who is a member, official, or employee of the legislative or executive body of a foreign state, an individual who is a judge, juror, member, official, or employee of a court of a foreign state or an international court, a prosecutor, an individual who is a member, official, or employee of an international organization and its bodies, an individual who is an arbitrator in a foreign or international arbitration, as well as any other foreign individual who performs a specific official duty based on authorization from the law or other regulations enacted based on the law, as well as an individual to whom the performance of certain official duties has been factually entrusted for a foreigner in the Republic of Srpska (owners, co-owners, representatives of companies in the Republic of Srpska) (Article 123, paragraph 1, item 5 CC RS).

⁷ Namely, in a small number of criminal offenses from this group, such as embezzlement and misappropriation, in addition to the aforementioned individuals, another person to whom the objects of the criminal offense have been entrusted in service or generally in work within a government body or another legal entity can also appear as the perpetrator. Thus, for the existence of the offense, it is essential that it involves a person to whom certain objects (money, securities, or other movable property) have been "entrusted" in service or work (which they actually handle in service or in connection with the performance of official duties or work obligations).

⁸ The perpetrator of this offense does not have the status of an official at the time of undertaking the execution action, but had that status earlier when they learned the secret (data or documents that have the status of an official secret). Finally, any person who offers a gift or other benefit (or promises a gift or other benefit) to an official so that they, in the scope of their official duties, perform or refrain from performing some official action can appear as the perpetrator of the crime of bribery.

on the part of the perpetrator at the time of undertaking the perpetration action, in most cases qualifies this intent as direct intent (*dolus directus*), which is the highest and most pronounced form of guilt in criminal law (Simić & Petrović, 2002). Only in the case of committing the criminal offense of disclosing official secrets does the law allow for the possibility that the perpetrator, when undertaking the perpetration action, can act with negligence in addition to intent.

The object of the criminal offense of Abuse of Official Position or Authority (Article 315 of the Criminal Code of the Republic of Srpska) is the official authority over which the act of perpetration is undertaken in the form of its exploitation, exceeding, or non-performance. Official authorities represent specific actions of officials that arise from their official duties and include all actions entrusted to the official based on the law for the purpose of performing official duties.

The object of the criminal offense of Embezzlement (Article 316 of the CC RS) includes money, securities, or other movable items that have been entrusted to the perpetrator at work. The perpetrator has possession over the object of the act, meaning they exercise factual control over it for the purpose of performing a service or work, or in connection with the service or work⁹. An item that is available to a person in the course of performing their official duties or at work cannot be the subject of this criminal offense.¹⁰

In the case of the criminal offenses of Receiving a Bribe (Article 319 of the CC RS), Giving a Bribe (Article 320 of the CC RS), and Trading in Influence (Article 321 of the CC RS), according to the predominant view in criminal law theory, the object of the act is the gift or other benefit (Delić, 2012). However, the essence of these crimes lies in unlawful conduct during the performance of official duties. The targeted object is the official duty that the person, who has been entrusted with it by law, violates by demanding or receiving a gift or other benefit, or by accepting a promise of such, for themselves or another person in order to perform an official duty that should not be performed, or to refrain from performing an official duty that should be performed (Bajičić, 2023, p. 295). The perpetrator takes the act of perpetration directly on the official duty, which they are obligated to perform legally and properly, but does so by demanding for themselves or another person a certain

⁹ The concept of items entrusted at work should be interpreted more broadly than just those items necessary for the immediate performance of official duties or work. It also includes items that have been entrusted to the individual at work, as well as those that have arisen in connection with the service or work of the perpetrator (Stojanović & Delić, 2020, p. 320).

¹⁰ For example, a night guard who steals an item from the warehouse they are guarding commits the crime of embezzlement, not theft.

benefit or a promise of benefit in the form of a gift or some other advantage. In other words, the act of demanding or receiving a gift or other benefit, or the acceptance of such a promise in the context of this criminal offense, more closely represents a type of preparatory act that creates the conditions or assumptions for undertaking a specific act that manifests in performing an official duty that should not be executed or failing to perform an official duty that should be carried out. Demanding or receiving constitutes preparatory acts, while the gift or other benefit can be understood as a means of perpetration or the manner of committing those acts that create the conditions for undertaking the specific act of perpetration in the form of violating official duties (in this form of receiving a bribe, the perpetrator violates their official duties). Despite the fact that for the existence of the offense, it is not necessary for the official authority to be violated, as it is an act-based or formal criminal offense, which is considered completed by undertaking the act of perpetration, in this case by undertaking preparatory acts as previously stated, it does not change the fact that the object of the act is the official authority. By demanding or receiving a gift or other benefit, or accepting such a promise, the perpetrator creates the necessary assumptions, thereby jeopardizing the object of the act. If we also consider the fact that the object of the act is also referred to as the “attacked object” (what is being attacked by the act of perpetration), it certainly cannot be the gift or other benefit but rather the official authority or the official act. Considering all the above in light of the criminal offense of abuse of official position, where the act of perpetration is manifested in the exploitation, violation, or non-performance of official duty, where it clearly represents the object of the act, it can be said that the previous understanding of the object of the act is indeed correct. This interpretation can also be applied to the other two observed criminal offenses, with the exception that the perpetrator of the crime of Giving a Bribe can be any person.

The object of the criminal offense of Violation of Human Dignity by Abuse of Official Position or Authority (Article 329 of the CC RS) would be the psychological or physical integrity of the person who is grossly abused, intimidated, physically harmed, or otherwise treated by an official in the performance of their duties in a manner that offends human dignity. The systematization of this criminal offense in this part of the code raises numerous questions, primarily from the perspective of the object of protection as we have previously defined it.

4. Conclusion

The question of determining the object of a criminal offense, through the definition of the object of protection and the object of action, represents one of the important issues in criminal law. This is particularly evident in criminal offenses that can have multiple objects of protection, as well as different objects of action for individual criminal offenses. A typical example is criminal offenses against official duty, where criminal law protection is primarily provided for the lawful and responsible performance of official duties by officials or responsible persons, which is a prerequisite for the realization of other rights of citizens. Thus, the performance of official duties contrary to the aforementioned (object of protection) “attacks” various values and goods (object of action), thereby endangering individual rights and guaranteed freedoms. However, grouping criminal offenses whose object of protection is the performance of official duties into the same category of criminal offenses is not entirely fulfilled. This is because individual criminal offenses have multiple objects of protection, so the legislator decided to systematize them into different chapters of the special part of the CC RS (as mentioned in the text). At the same time, other criminal offenses that are not typical for this chapter, as they endanger the psychological or physical integrity of individuals, are systematized in the group of criminal offenses against official duty, based on the status of the perpetrators of these criminal offenses. This description can be contentious when distinguishing individual criminal offenses, not only within the same group of criminal offenses but also from other criminal offenses. The use of vague norms creates confusion both at the level of distinguishing the permissible from the prohibited and in the realm of overlapping multiple related criminal offenses, and one must keep in mind the old rule *ibi ius incertum, ibi ius nullum* (where the law is uncertain, there is no law) (Kolaković Bojović, 2014, p. 241). This can directly impact the application of the norm in judicial practice, as the burden of proof for all essential elements of the criminal offense remains in the criminal proceedings.

These dilemmas are particularly pronounced when assessing and protecting legality, because if a norm is not prescribed, clear, precise, and defined—that is, in accordance with the principles of *lex scripta*, *lex certa*, *lex previa*, and *lex stricta*—its application is hindered, which endangers the protective function of criminal law. At the same time, the question arises whether individual criminal offenses against official duty, given the object of action, have already been described by other types of criminal offenses and how a clear distinction can be made between them. As a reminder, “apparent

ideal concurrence exists when a single action fulfills the elements of two or more criminal offenses that are in such a relationship that only one criminal offense is applied. The relationship between the committed criminal offenses is primarily characterized by the fact that the unlawfulness of one criminal offense appropriately (specialty, subsidiarity, and consumption) encompasses or excludes the unlawfulness of the other(s)” (Delić, 2018, p. 143).

Therefore, it is necessary to conduct a detailed legal analysis of the criminal offenses categorized in the group of offenses against official duty, with the aim of determining whether, in terms of the object of protection and the object of action, they belong to this group of offenses. This raises complex questions regarding the complete or partial decriminalization of certain offenses from this chapter (e.g., Abuse of Official Position), while simultaneously affirming other offenses (e.g., Influence Peddling) or even incriminating new behaviors that would naturally belong to this chapter (e.g., Illicit Enrichment) (see: Kolarić, 2012; Delić, 2018).

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KRIVIČNA DELA PROTIV SLUŽBENE DUŽNOSTI S OSVRTOM NA OBJEKAT KRIVIČNOG DELA

APSTRAKT: Iz samog naziva grupe krivičnih dela protiv službene dužnosti proizilazi i njihov objekat zaštite, a to je savesno i odgovorno vršenje službene dužnosti. Međutim, ovim krivičnim delima ugrožavaju se različite zaštićene vrednosti, kao što su slobode i prava građana, njihov fizički i psihički integritet, zatim njihova imovina, i drugo. U tom kontekstu do izražaja dolazi razlikovanje objekta radnje u odnosu na definisani objekat zaštite ove grupe krivičnih dela. To znači da je potrebno razlikovati neposredni predmet koji se pojedinačnim krivičnim delima iz ove grupe

napada, tzv. predmet napada, u odnosu na postavljeni objekat zaštite, kao opštu vrednost koja se štiti. Predmet rada je analiza pravnih normi pojedinačnih krivičnih dela sa osvrtom na diferenciranje objekta zaštite i objekta radnje. U tom smislu upoređićemo bića pojedinih krivičnih dela protiv službene dužnosti, prvenstveno onih kod kojih su objekti radnje različiti, a objekat zaštite po njihovoj sistematizaciji ostaje isti. Cilj rada je da se utvrdi da li su postojeća krivična dela protiv službene dužnosti, s osvrtom na objekat krivičnog djela, ispravno sistematizovana u grupu krivičnih dela protiv službene dužnosti i koji su mogući pravci otklanjanja uočenih nedostataka.

Ključne riječi: krivično delo, službena dužnost, objekat zaštite, objekat radnje, primanje mita.

References

1. Babić, M., Filipović, Lj., Marković, I., & Rajić, Z. (2005). *Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini* [Comments on criminal/penal laws in Bosnia and Herzegovina]. Sarajevo: Savet/Veće Evrope i Evropska komisija
2. Babić, M. (2008). *Krivično pravo – opšti i posebni dio* [Criminal Law – General and Special Part]. Banja Luka: Pravni fakultet Univerziteta u Banjoj Luci
3. Babić, M. (2021). *Komentar Krivičnog zakonika Republike Srpske* [Comments Criminal Code Republic of Srpska]. Banja Luka: Grafomark
4. Bajičić, V. (2023). *Krivično pravo – posebni dio* [Criminal Law – Special Part]. Banja Luka: Fakultet za bezbjednost i zaštitu Nezavisni univerzitet Banja Luka
5. Golubović, B. (2017). Službena krivična dela – kritički osvrt na mehanizam krivičnopravne zaštite od korupcije [Criminal offences committed by authorized officials – a critical review of the mechanism of criminal law protection against corruption]. *Pravo – teorija i praksa*, 34(4-6), pp. 29–41. DOI: 10.5937/ptp1706029G
6. Delić, N. (2012). Osvrt na koruptivna krivična dela u Krivičnom zakoniku Republike Srbije [Briefly About Criminal Offences Of Corruption]. *Pravo i privreda*, 50(4-6), pp. 563–582
7. Delić, N. (2018). Krivično delo zloupotreba službenog položaja (član 359. kz) – stanje i perspektiva [The crime of abuse of position of official authority (article 359. Cc) – state and perspective]. In: Ignatović, Đ.

- (ured.), *Kaznena reakcija u Srbiji VIII deo* [*Punishment Reaction in Serbia*] (pp. 123–149). Beograd: Pravni fakultet Univerziteta u Beogradu
8. Jovašević, D. (2003). *Komentar Krivičnog zakona Republike Srbije – sa sudskom praksom* [*Commentary on the Criminal Code of the Republic of Serbia – with case law*]. Beograd: Nomos
 9. Jovašević, D. (2005). *Zloupotreba službenog položaja i korupcija* [*Abuse of official position and corruption*]. Beograd: Nomos
 10. Jovašević, D. (2011). *Leksikon krivičnog prava* [*Lexicon of Criminal Law*]. Beograd: Službeni glasnik
 11. Jovašević, D., Mitrović, Lj., & Ikanović, V. (2017). *Krivično pravo Republike Srpske – Posebni deo* [*Criminal Law Republic of Srpska – Special Part*]. Banja Luka: Univerzitet Apeiron
 12. Jovašević, D. (2019). Zloupotreba službenog položaja – opšte krivično delo korupcije [Abuse Of The Official Position – General Criminal Act Of Corruption]. In: Kostić, J. & Stevanović, A. (ured.), *Finansijski kriminalitet i korupcija* [*Financial crime and corruption*] (pp. 37–50). Beograd: Insitut za uporedno pravo i Instiut za kriminološka i sociološka istraživanja
 13. Kolaković Bojović, M. (2014). Zloupotreba položaja odgovornog lica: de lege lata et de lege ferenda [Obuse Of Office By Responsible Officer: de lege lata et de lege ferenda]. In: Korn, L. (ured.), *Prestup i kazna – de lege lata et de lege ferenda* [*Crime and Punishment – de lege lata et de lege ferenda*] (pp. 237–246). Beograd: Insitut za kriminološka i sociološka istraživanja
 14. Kolarić, D. (2012). Krivično delo zloupotrebe službenog položaja [Misconduct In Office]. *Nauka, bezbednost, policija*, 17(2), pp. 39–52
 15. Kregar, J. (2004). Korporacijski kriminal i nove mjere suzbijanja korupcije [Corporate crime and new measures for fighting corruption], *Revizija*, 11(3), pp. 3–19
 16. Krivični zakonik Republike Srpske [Criminal Code of Republic of Srpska], *Službeni glasnik Republike Srpske*, br. 64/17, 104/18 – odluka US, 15/21, 89/21, 73/23 i *Službeni glasnik BiH*, br. 9/24 – odluka US BiH
 17. Petrović, B., & Jovašević, D (2005). *Krivično-Kazneno pravo Bosne i Hercegovine – opšti dio* [*Criminal Procedural Law – General Part*], Sarajevo: Pravni fakultet Univerziteta u Sarajevu
 18. Radovanović, M., & Đorđević, M. (1975). *Krivično pravo – posebni dio* [*Criminal Law – Special Part*]. Beograd: Savremena administracija
 19. Simović, M., Jovašević, D., & Simović, V. (2019). Zloupotreba službenog položaja i ovlašćenja u pravu Republike Srpske [Abuse of Official Posion

- and Authorities in the Law of Republika Srpska]. *Godišnjak Fakulteta pravnih nauka*, 9(9), pp. 112–126. DOI: 10.7251/GFP1909112S
20. Simić, I., & Petrović, M. (2002). *Krivični zakon Republike Srbije – praktična primena* [*Criminal Code of the Republic of Serbia – practical application*], Beograd: Službeni glasnik
 21. Srzentić, N. et al. (1995). *Komentar Krivičnog zakona Republike Srbije* [*Comments Criminal Code of the Republic of Serbia*]. Beograd: Savremena administracija
 22. Stojanović, Z., & Perić, O. (2000). *Krivično pravo – posebni deo* [*Criminal Law – Special Part*]. Beograd: Službeni glasnik
 23. Stojanović, Z., & Delić, N. (2020). *Krivično pravo – posebni deo* [*Criminal Law – Special Part*]. Beograd: Pravni fakultet Univerziteta u Beogradu
 24. Stojanović, Z. (2023). *Krivično pravo – opšti deo* [*Criminal Law – General Part*]. Beograd: Dosije