



**Republika e Kosovës**  
**Republika Kosova-Republic of Kosovo**  
**Qeveria-Vlada-Government**

*Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice*

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**CONCEPT DOCUMENT ON SUSPENSION AND TERMINATION OF  
EMPLOYMENT RELATIONSHIPS OF PUBLIC OFFICIALS**

Chapter 1: Introduction

**The Concept document relating to the suspension or dismissal of public officials accused or convicted of a criminal offense of Corruption is part of the Government's Work Plan for 2017, the part of the Ministry of Justice and part of the high Level Dialogue Kosovo – EU on key priorities , Agenda on European Reforms (ERA), and consequently this is related to the National Program for the Implementation of the SAA (National Plan for the Implementation of the Stabilization and Association Agreement for 2017), in which it is mentioned the drafting of the Concept document on amending the legislation in force to ensure the mandatory suspension and / or dismissal of public officials accused and convicted of corruption.**

This issue is a priority since it coincides with the objectives of the Government, the rule of law and the rule of law as one of the strategic priorities of the Government for 2017, as one of the biggest challenges for Kosovo is the rule of law sector with a number of issues repeated such as judicial independence, corruption, etc.

For immediate and mid-term priorities in this area, Kosovo should focus on: 1. Reviewing and approving legislation by making mandatory suspension and / or dismissal of public officials, respectively accused and convicted for corruption.

This issue is also related to the criteria, respectively the indicators set for the Public Administration Reform Process (PAR), which is set as a precondition and a commitment of the institutions for receiving funds from the European Union, the process in which they are involved MEI, MPA, MoJ, KPC, KJC, and others.

Therefore, the implementation of priority actions will help implement SAA and advance Kosovo on its path towards European integration.

## Chapter 2: Description and definition of main issue / problem

Present, we do not have a consolidated policy regarding the suspension of public officials implicated in corruption offenses and misuse of official position or authority. The non-existence of a concrete legal basis causes such a situation where public officials against whom an indictment has been filed or who have been convicted of abuse of office or official authority continue to exercise their public functions even further. Thus the exercise of the function by these officials is considered unlegitimate on the part of the public and a sense of legal insecurity is created. This affects the loss of public confidence in institutions and the discouragement of corruption reporting

In practice, cases are also identified where accused or convicted public officials not only continue to pursue the duty, but they are also advanced in duty. The problem in itself is the continuation of the exercise of the function of the public official after the receive a final decision by which he is found guilty, a phenomenon that is not uncommon in practice.

### Current policy

Our Criminal Code has a special chapter devoted to official corruption and criminal offenses against official duty (Chapter XXXIV).

However, the sanctioning of perpetrators of offenses incriminated in this chapter of the Criminal Code is foreseen only after the court's final judgment, by which they are found guilty. Investigative but also judicial proceedings may be prolonged for a long period of time, causing the same officials accused of misuse of office to continue exercising their functions. Despite the fact that the Criminal Code of the Republic of Kosovo has devoted a special importance to corruptive offenses, there is no mechanism envisaged which would enable it to be prevented from proceeding at the time of claiming a public official for corruptive offenses of exercising the function he is accused of misusing

The Law on Civil Servants foresees a "preventive suspension" for civil servants against whom criminal proceedings have been initiated for the commission of a criminal offense during the exercise of their functions; who are being held in custody pending trial; when the presence of a civil servant in the office may hinder investigations (Law No. 03 / L-149 on Civil Service of the Republic of Kosovo, Article 69, paragraph 1). On the other hand, this law foresees the categories of public employees who are not part of the Civil Service, and to whom civil servant status is not applied (Article 4). More specifically, it is foreseen that elected officials in electoral positions in public administration institutions and officials appointed by elected officials in certain positions ("public officials") are not civil servants (Article 4, paragraph 2). Thus, the Law on Civil Service does not apply to public officials and as such no "preventive suspension" provided by this law does not apply to this category.

The Labor Law also provides for "temporary dismissal" for the employer to whom criminal proceedings have been initiated due to a grounded suspicion of the offense and to the employee who is in pre-trial detention (Law No. 03 / L- 212, Labor, Article 73 paragraph 1, sub-paragraphs 1 and 2). This law applies to employees and employers in public and private service in Kosovo and as such does not include public officials. However, bearing in mind that the suspension institute normed in this law as "temporary dismissal" is also foreseen for employees in the public and private service, and as mentioned above also to civil servants, the great need for normation of the suspension for public officials who exercise heavy functions which in case of misuse can lead to the violation of the country's legal order.

To ensure efficiency and professionalism in performing public functions, it is important to ensure that public officials apply their functions conscientiously by not using the task for their own benefit or in order to benefit or cause the other person to benefit or damage

## Laws and sub-legal acts

### Law on Civil Service

Law no. 03 / L-149 on Civil Service of the Republic of Kosovo, Article 69 provides "preventive suspension" for civil servants in the case of initiating criminal proceedings against them for committing a criminal offense during the exercise of their functions; in case of a pending trial; or when the presence of the civil servant in the office may hinder investigations (paragraph 1). However, this law foresees the categories of public employees who are not part of the Civil Service and to whom civil servant status does not apply. Concerning this Article 4, paragraph 2 provides that elected officials in electoral positions in public administration institutions and officials appointed by elected officials in certain positions ("public officials") are not civil servants. Thus it turns out that although the preventive / suspensive suspension is foreseen as a measure in the Law on Civil Service, the same does not apply to public officials who are not part of the Civil Service.

### Criminal Code

The Criminal Code of the Republic of Kosovo foresees the acts of official corruption and offenses against official duty such as: Misuse of official position or authority (Article 422); Misuse of official information (Article 423); Conflict of Interest (Article 424); Assumption on duty (Article 425); Fraud in Office (Article 426); Taking bribes (Article 428); Exercise of Influence (Article 431), and in turn listed in Chapter XXXIV of the Code. Sanctions foreseen for these criminal offenses as known are only taken after the final court decision and no suspensory measure is envisaged from the moment of filing an indictment against an official person. The Penal Code provides for additional penalties Prohibition of exercising functions in public administration or public service (Article 65) and Prohibition of exercising a profession, activity or duty (Article 66) related to sanctions imposed on an official person in our case if he has misused the task. These penalties are imposed by a court decision, and not by filing an indictment against an official person.

### Law on Execution of Penal Sanctions

This law, in Articles 167 and 168, foresees the execution of the above-mentioned additional penalties provided by the Criminal Code (Articles 65 and 66), where it is foreseen that when the court makes a decision to impose a punishment on the perpetrator, he / she immediately sends the judgment and all the information that the institution responsible for executing this additional punishment

### Actual expense

Expenditures category	factual expenditures in previous year	budget in this year	SHTEF for next year
Budget of the Ministry: (note each type of expenditure)			
Other Budgets: (note each type of expenditure)			
Funding from donors			
Direct Expenditures by the Ministry of Finance			

Additional assessment of current policy

## Experience in other countries

There are different practices in EU states how is regulated the termination of the exercise of duty by public officials as a result of the accusation / punishment for corruptive acts or misuse of official duty.

### Austria

Termination of employment in Austria is determined by the power of law in the event of a final punishment as follows: (deliberately committed offense)

1. A sentence of more than one year, in the case of a conditional sentence;
2. Sentence for more than six months, without condition;
3. The sentence or part of the sentence related to offenses of misuse of power(governance).

### Belgium

In Belgium the procedure for dismissal of convicted public officials consists of the following:

If a person (including public officials) has been convicted by a criminal court for a sentence of 10 to 15 years of imprisonment, the court has the obligation to declare that he loses his civil right to be a public official.

If the sentence is between 5 and 10 years, the penal court may (not necessarily) make a decision that the convicts lose the right to be public officials for 10 or 20 years.

Non-criminal courts and tribunals (of instance 1) may order dismissal of a public official, if this is foreseen in the criminal law in regarding the particular offense. This is also foreseen in corruption / bribery cases of public officials.

In these cases he will be dismissed when sentenced by a final decision, without further (administrative) proceedings.

In practice, even at the pre-trial stage, the prosecutor will inform the appropriate public service hierarchy that a judge / prosecutor is investigating an offense involving one of their officials. Superiors may initiate disciplinary proceedings and take temporary measures (the person may be suspended).

## Bulgaria

In Bulgaria the solution coincides with the German one but there are several variations.

1. If a civil servant has been convicted of a criminal offense concerning his public duties, he has been dismissed from office. Forbidding of a convicted person from continuing his / her exercise of office is usually an additional penalty for a period that cannot exceed the duration of the main sentence (mostly imprisonment) for more than 3 years. Public offices where the same are forbidden to work can be specified in the court decision. In such a case (as is usually the case) the official is considered dismissed from the day the decision comes into force and there is no need for any other action in this respect. However, if, for some reason, the punishment is not imposed, the employer is authorized and obliged to immediately terminate the employment contract against the employee - being called to the fact of incompatibility of the status 'punished' with office requirements. Since the discrepancy occurs at the moment the court decision has become enforceable, the public official can not exercise his public duties even if he has not yet formally dismissed. A legal dispute can only be developed on the conditions of dismissal - whether the salaries and social benefits are paid properly, is there any problem with the discharge procedure, etc.

2. If a civil servant has committed a crime and has not yet been convicted, he may be prohibited from exercising office as a measure within the criminal proceedings up to the final court decision. Meanwhile, regardless of whether this measure is taken or not, the institution may dismiss the official concerned based on the evidence gathered up to now (if, for example, they are sufficient to come to the conclusion of the disciplinary offense). Now, there are some issues that can cause confusion - there is a possibility that administrative dismissal becomes illegal if the mandatory procedures for it were not fully respected. In such a case there may be a complaint procedure before the working court and the court will decide independently of the criminal proceedings, if it is still underway.

## Croatia and the Netherlands

Croatia and the Netherlands generally apply more than two procedures regarding the dismissal from office of official persons. One is penal and the other is civil (labor disputes). Thus, there is

no automatic application of the penal decision on this issue and "the same issue will be reviewed by the judiciary twice", which means once in front the penal court and then before the civil or administrative court.

## Czech Republic

The legislation of the Czech Republic provides the release of the service as a result of criminal prosecution or detention, as follows:

(1) A state employee shall be relieved from performing his duties on the basis of a resolution instituting criminal proceedings for a criminal offense or a criminal offense against public order committed by negligence until the end of the criminal prosecution. A state employee will be relieved of his duties if he is detained for as long as the same is being held in custody. In this regard, the body involved in the criminal proceedings will immediately notify the civil service authority.

(2) From the day when the service is released, the employee of the state shall be entitled to be paid in the amount of 50% of his monthly salary, but not less than the minimum wage amount according to a legal act; this part of the salary will increase by 10% for each subordinate of the state employee, however, no more than up to 80% of his monthly salary. Dependence means a person to whom the employee is required to earn a living. The reduced salary amount will be returned to the public official in the event of a dismissal of the investigation or not being found guilty of it by a final decision.

Some professions in the Czech Republic have their own terms of incompatibility with the exercise of public function. Thus, for public prosecutors, provisions are provided, inter alia, that they have no objection to the exercise of the function if he or she has been convicted by a decision

the punishment for such an offense and such punishment does not foresee a prohibition on the exercise of the public prosecutor's position if the nature of the offense for which he / she has been convicted casts doubt on his credibility for the continuation of the exercise of his function. Judges also have rules with similar provisions.

## Germany

The system in Germany is quite similar to Austria. Employment ceases on the basis of the law by giving a final decision if the official is sentenced to one year or more for a penal offense committed intentionally

## France

A public official can be prosecuted at the same time and for the same facts by a disciplinary body or an administrative court, while he is prosecuted by a criminal court (for all types of criminal offenses, and more specifically for corruption within the his public position). Both procedures are independent of each other

However, in addition to the "classical" criminal sanctions, the criminal court may impose "additional sanctions" on the public official: inadmissibility or prohibition to exercise a public post. These penalties automatically lead to the dismissal of the public official, and the disciplinary or administrative body will have word over it, moreover, these additional sanctions are compulsory in the cases of corruption, causing the public official to be automatically dismissed .The prohibition to exercise a public function may be temporary or permanent. If the sanction is temporary, officials can seek their reintegration into the public institution.

However, the same issue can be reviewed twice, only if the criminal court has not imposed an additional sanction. Although these sanctions are mandatory for the corruption offense, they do not apply to other criminal offenses. In this case, the disciplinary body or administrative judge may punish the dismissal person

Because the two procedures are independent of another, the disciplinary body may impose dismissal even before the criminal court does so. But in practice, it seems that most of the time, the disciplinary or administrative body await a court decision to take their measures if necessary. During the prosecution, the public official concerned may or should be suspended from their duties

## Romania

The law on civil servant status in Romania stipulates that if a public official has been convicted and he has an additional punishment forbidding him to hold public office, his employment ceases to exist. For some serious crimes, the law imposes on additional penalties . For other offenses, a judge may apply an additional penalty if he deems it necessary.

The final decision in Romania is sufficient for dismissal. Also, for some public functions not being convicted is a legal requirement for employment.



## Chapter 3: Aims and Objectives

### The aim

The aim of this concept paper is to increase efforts to discourage and prevent corruption by suspending officials against whom corruption indictments and misuse of office or official authority are filed. It is also aimed at preventing the detriment of evidence by the accused public official as well as raising the image and trust in the institutions.

### objectives

#### specific

- Creating a legal basis
- Increasing efficiency and professionalism, accountability of public officials
- More efficient fight against corruption

### Acceptable

This issue is a priority since it coincides with the objectives of the Government, the rule of law

### Realistic

Taking in consideration the recommendations made by the various reports the objective is achievable

### **Timeframe**

The objective can be achieved by 2018.

## Chapter 4: Options

### Option 1: Status quo option (no change)

Failure to establish a legal basis would enable the continuation of the problems already identified in this concept paper. The current situation is considered to be inadequate and consequently impossible to successfully combat corruption.

Continuing the current approach of exercising the duty by accused and convicted public officials makes the efficiency, professionalism and authority of public officials in state institutions questionable.

### Option 2: Drafting a new law

The existing situation can be changed by the adoption of a separate law, which would regulate the suspension of public officials accused of corruption or misuse of official position or authority.

The purpose of this policy to suspend public officials is to establish a legal basis that would regulate approach to officials accused of corruptive acts or misuse of official position or authority. Further, the purpose of this law is to strengthen the principle of accountability, professionalism and merit in these institutions.

### Option 3: Supplementation of the Criminal Code and the Code of Criminal Procedure

The current legal gap regarding the suspension of public officials may be amended by supplementing / amending the Criminal Code and the Criminal Procedure Code by integrating the suspension as a temporary measure for official persons within the meaning of Article 120 of the Criminal Code of the Republic of Kosovo, in which the official person term is defined.

The acts for which these measures are foreseen are for criminal offenses or misuse of official position or authority, the moment or the time of the suspension shall be taken according to the relevant legislation in force when the indictment becomes final.

The purpose of supplementing / amending the Criminal Code and the Code of Criminal Procedure would be to prevent further misuse of authority by suspending these officials and at the same time not be allowed to influence the evidence, this key element to ensure prosecution successful.

This provisional measure to be determined by the Criminal Code and the Criminal Procedure Code would apply to all officials charged with the abovementioned offenses, thus enabling them to have a identical treatment and access regardless of the function or task they can exercise.

These provisions would enable the courts to temporarily suspend public officials from their position if there is a possibility that they will be punished by a final decision leading to the final removal from their positions or the presence of these public officials in the workplace could

damage the investigation, therefore, this provision in the Criminal Code and the Criminal Procedure Code could provide for the necessary legal consequences of dismissal of the public official.

According to this option, the proposal is for these provisions to be formulated in this way, as follows:

#### For the Criminal Code

In Article 65 a third paragraph would be added, specifically related to corruption:

3. The court shall prohibit an official person from exercising his function in public administration or public service functions for up to 10 years if the person has been convicted of any of the offenses covered in Chapter XXXIV of this Code.

Article 66 would add to a paragraph specifically related to corruption:

3. The court shall prohibit an official person from exercising a profession, independent activity, managerial or administrative duty of one (1) to (10) years, if the person has been convicted of any of the offenses in Chapter XXXIV of this Code.

#### For the Code of Criminal Procedure

##### 'Article 177a

##### Suspension of official person from duty

1. The court may suspend the defendant, who is an official person from his / her duty, if;
  - 1.1 there is a grounded suspicion that the defendant has committed a criminal offense, and
  - 1.2 the conditions under Article 187 paragraph 1 subparagraph 1.2.2 or 1.2.3 of the Code have been met.
2. The court shall decide on the measures under this Article with a reasoned decision. The ruling must contain the reasoning that stipulates that the conditions from paragraph 1 of this Article have been met and that measure is necessary.
3. The court determines in the ruling that during the suspension, the official person will not have access to the official premises of his / her office, he / she will not have the right to undertake official duty and will refrain from contact employees in his or her office.
4. The ruling shall be delivered to the defendant and his / her direct supervisor.
5. The court assigns detention on remand if the defendant does not comply with the ruling. The defendant must always be informed in advance of the consequences of non-compliance.
6. If the direct supervisor of the defendant does not take action in the execution of the ruling on the suspension, the court shall punish him by a fine as provided for in Article 444 of this Code.

7. If nothing else is provided for in this Article, the provisions of this Code regarding detention shall apply accordingly to the determination, duration and termination of the measure under this Article.

8. For the duration of the measure under this Article before the indictment is filed, the pre-trial judge decides ex officio or upon the request of the state prosecutor.

## Chapter 5: Overview of Options

Overview of Options			
Main Features	Option 1	Option 2	Option 3
The main features of the option	Non rating of suspending of public officials accused of corruption and misuse of office	Regulation of suspension of public officials through a special law	Supplementation of the Penal Code where the suspension regulation will be integrated
Characteristics of implementation - who is responsible - a government resource (which), private sector, citizens	/	MoJ, Courts, Prosecutions.	MoJ, Courts, Prosecutions.
Laws, sub-legal acts, amendments to existing laws as well as enforcement and punishments	/	The new special law	KPC and PCCK
Time limits - when the option becomes effective	/	/	/

## Chapter 6: Analysis of Options benefits

### 1. Benefits of Option 1 (status quo).

There are no eminent benefits within the continuation of the 'status quo'. As a benefit we can calculate the fact that there will be no new budget costs as a result of the procedure of establishing a legal basis for the matter in question.

### 2. Benefits of Option 2

- • Establishment of a new legal basis regarding the issue of suspension of public officials, which is currently not properly regulated
- • Increased accountability, awareness, efficiency and professionalism of public officials
- • The intensity of fighting corruption in the circles of state institutions would increase
- • It is in line with the Agenda for European Reform - ERA

### 3. Benefits of Option 3.

- The benefits of Option 3 are approximately the same as those mentioned in Option No.2.
- Equal treatment of all categories of official persons would be ensured
- Criminal Code is easier to access
- The implementation of legal provisions is much safer when these are foreseen in the Criminal Code than in other legal acts

### Negative consequences

#### 1. **1. Negative consequences of Option 1 (status quo).**

- • It may result in further misuse by public officials
- Can create the perception of a nonpunishment policy impulsive by promoting similar acts from other other officials
- It would affect the loss of public confidence in the institutions
- It would affect the discouragement of citizens for reporting corruption
- It would create unequal treatment of different categories of official persons, given that the suspension is foreseen for some categories of official persons whereas for some others it is not

#### 2. Negative consequences of option 2 (drafting a separate law).

- It does not guarantee full combat of corruption
  - There is a certain budget cost
1. 3. Negative consequences of option 3 (supplementing the Criminal Code and the Criminal Procedure Code).

The negative consequences of Option 3 are approximately the same as those mentioned in Option 2.

### **Cost**

A separate Annex will include a detailed table of the financial impact of each option. This table will contain relevant information in the Financial Impact Assessment form.

### **Chapter 7: Consultation**

In order to regulate the aforementioned field, consultations have started earlier and as a result of consultations has come to the conclusion that it is necessary to regulate this field by supplementing the Criminal Code and the Criminal Procedure Code by integrating the norm of suspending public officials accused of corruptive acts and misuse of official position or authority

Consultations will be made in accordance with Article 7 (3) of the Government's Rules of Procedure, so far we have consulted with experts from different countries who have had different views, including Dr. Dr. Stefan Trunk , who has offered and presented an analysis before the working group, which among other things recommended that the internal legal framework should be complemented by a provision allowing the courts to temporarily suspend public officials from the position of if there is a possibility that they will be punished by a final decision leading to the ultimate removal from their positions or the presence of these public officials at the workplace could damage the investigations, the expert further recommends that to establish and apply a new provision in the Criminal Code which foresees the necessary legal consequences on the dismissal of the public official

Relevant ministries, prosecutors, judiciary, members of the working group, civil society organizations and international partners were also consulted

During the working group meetings there has been a lot of discussion regarding the issue of which moment to be considered the starting point for the application of the temporary suspension, the moment of initiation of the investigation or the filing of the indictment, after receiving the comments submitted by the members of the working group was considered more reasonable that this moment be the time of suspension under the relevant legislation in force when the indictment becomes final

## Chapter 8: Comparison of Options

Option 1: The status quo option is not recommended, as failure to create a legal basis would not allow an efficient fight against corruption. In addition, the continuation of this policy would further damage the image of the institutions and consequently increase the discouragement of citizens in reporting these acts. On the other hand, accused and convicted public officials would be allowed to continue with their illegal activity and moreover they would be unhindered in hiding the evidence

Option 2 (Drafting a Special Law) is likely to significantly increase the effectiveness of combating corruption by giving judicial and prosecutorial bodies an instrument to combat this phenomenon. However, the Special Law is considered not to have the same implementing power as compared to Option 3 (including suspension in Penal Code).

**Option 3 (Supplementing the Criminal Code)** related to the integration of the measure of suspension in the Criminal Code and the Code of Criminal Procedure that leads to the achievement of the goals set out in this Concept Paper. This is because the Criminal Code and Criminal Procedure Code are basic laws of a state and consequently the degree of implementation of these provisions is much higher. Equal treatment of all categories of official persons accused of corruptive offenses would be ensured, including suspension as a uniform measure for all. Also, as the Code enumerates all acts of corruption and those against official duty as well as the types of principal and alternative punishments for perpetrators, the addition of the suspension as a temporary measure would allow for a compact adjustment of the treatment of the offenses in question.

## Chapter 9: Recommendation

Option 3 is the recommended option, namely the completion of the Criminal Code and the Criminal Procedure Code, recommendation is for the Government of the Republic of Kosovo to approve the Concept Document in order to avoid the existing shortcomings as soon as possible due to the non-existence of the legal basis. In case of adoption of this Concept Document, the Ministry of Justice in coordination with relevant institutions will start the process of amending / supplementing the Criminal Code and the Criminal Procedure Code, which is in the process of

amending, adding provisions appropriate to regulate the suspension and send the same to the Government for further proceeding.

#### Chapter 10: Communication

The Ministry of Justice, in co-operation with other line ministries, KPC, KJC and other relevant institutions will be focused on providing information regarding the details of the process of completing the Criminal Code and the Criminal Procedure Code for the suspension of the suspension, whereby to take into account the proposals of various relevant stakeholders, consultations with experts in the given field, and consultations with civil society

The forms of communication will be different, starting from meetings, working groups and publications on the official website of the Ministry of Justice and other relevant institutions, communication will be active, direct and constructive.