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## Misuse of Official Position

What is this?

Making a decision or performing an act that gives an advantage to the decision-maker, to a person close to him or her, or to a third person. Misuse of official position can take many forms, such as using public resources, abusing trust, etc.

According to the explanatory memorandum to the Anti-Corruption Act, **corruptive use of official position** presupposes that the official is competent to perform a certain kind of act, but they either omit to perform their duty, go beyond their competence, or use it in breach of the rules of discretion.

Corruptive use of a public resource is the use of a material or another resource, intended for the performance of a public function, by an official in breach of duty, for the benefit of the official him or herself or a third person, if this brings an unequal or unreasonable advantage to the official or third person from the point of view of public interest. An example of such misuse is the use of an official car for personal needs or even for earning accessory income; or the use of a subordinate to take care of personal affairs, etc. According to the explanatory memorandum to the Anti-Corruption Act, corruptive use of public resources should not include the use of a public resource for the benefit of an official or a third person to the extent that the use of an official's resource for free for public interest is normally and reasonably expected. Therefore, the use of a resource of an authority for personal needs (e.g., writing a personal letter with an authority's pen) in itself is not corruptive use.

Embezzlement, abuse of trust, and fraud can take very different forms. If committed by an official, it often constitutes corruption. For instance, it is not corruption if a street trader who sells watches sells the buyer a replica watch instead of an expensive brand watch, or if a real estate agent defrauds elderly people of their homes. Embezzlement and fraud by an official can take the form of unlawful orders to subordinates, failure to submit certain data, making illegal transactions, etc. By means of accounting, it is possible to create and use false invoices or other accounting documents containing false information. It is also possible to omit to register certain transactions, etc. Therefore, such breach of accounting rules in



Here is an example:

itself is not exactly corruption, while it can serve to prepare for or cover up corruption. Another example of fraud can be a case where the candidates in a public procurement are not treated equally and one candidate is provided preferential conditions, or a public procurement is not organised where it should be done.

Examples

A customs official confiscates a pirated product to start using it him or herself.

A construction adviser prepares a permit for the use of a building for his or her neighbour, although the building does not meet the requirements.

The use of an official car for personal needs or for earning accessory income.

Using a subordinate for taking care of personal affairs.

A school accountant embezzles money from a public school and spends it in a casino.

A mayor signs a secret agreement with a bank under which the mayor solely guarantees a loan on behalf of the city government. The loan is not repaid and tax money is used for covering the loan.

Punishment:

Punishment

**Anti-Corruption Act § 17**

Punishment: a fine up to 300 fine units

**Penal Code §201(2)3**

Punishment: a fine or imprisonment

**Penal Code §209(2)1-1**

Punishment: imprisonment

**Allikas URL:** <https://www.korruptsioon.ee/en/forms-corruption/misuse-official-position>