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LIABILITY OF OFFICIALS OF COMMERCIAL ORGANIZATIONS FOR CORRUPTION-RELATED CRIMES UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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Abstract: This article examines certain aspects of the liability of officials of commercial organizations for corruption-related crimes under the criminal legislation of the Republic of Uzbekistan. The author explores a new interpretation of the provisions within the Criminal Code regarding the liability of such officials for corruption-related crimes. The article concludes that measures to prevent such liability should be implemented, explains the concept of liability for corruption-related crimes among officials of commercial organizations, highlights associated issues, and offers new proposals for their resolution.Kalit so'zlar: qonunchilik, tijoratda poraxo‘rligi, korrupsiya, pul, qimmatli sovg‘alar, pora beruvchi, pora oluvchi, firibgarlik, hokimiyatni suiiste‘mol qilish.

1. Introduction.

Chapter XIII-1 of the Criminal Code of the Republic of Uzbekistan, titled "Crimes involving the obstruction of or unlawful interference with entrepreneurial activity, as well as other crimes infringing upon the rights and legitimate interests of business entities," also encompasses certain corruption-related offenses. These include Article 192-9 (commercial bribery), Article 192-10 (bribery of an employee of a non-state commercial or other non-state organization), and Article 192-11 (abuse of authority by officials of a non-state commercial or other non-state organization). [1] Let us analyze these crimes.

Commercial bribery is the unlawful transfer or receipt of money, securities, property, or services in exchange for actions (or inaction) performed in the business sphere to benefit the person offering the bribe. Unlike standard bribery, commercial bribery occurs within the private sector among employees of commercial organizations. Petty commercial bribery (Article 204.2 of the Criminal Code) is a specific type of commercial bribery; the distinction between them is determined by the monetary value of the subject matter of the crime. The elements of petty commercial bribery correspond to those of the basic offenses of receiving and transferring bribes. [2]

The objective aspect of the crime in question consists of actions involving the transfer of money, securities, or other property—or the creation of artificial conditions for the provision of property-related services—to an official or a person performing managerial functions in a commercial or other organization, without their consent (for example, attempting to provide sanatorium or tourist vouchers or travel tickets; attempting to arrange for repairs, restoration, construction, or other work, or the purchase of real estate or vehicles, etc.). [3]

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The social danger of commercial bribery manifests in the following ways: engaging in "petty corruption" leads to demands for increasingly larger payments; a corrupt official favors applicants who are aware of the corrupt schemes and believe they can utilize them. [4]

2. Methods

In writing this article, we employed methods of analysis, synthesis, logical reasoning, and empirical and historical approaches, as well as a systems approach. These methods were applied in accordance with standard scientific research practices and IMRAD requirements.

3. Results

Current legislation defines commercial bribery as the unlawful transfer of money, any other property, or similar assets from one person to another. Furthermore, the elements of commercial bribery encompass the provision of material services to another person in exchange for performing specific actions or refraining from taking action. [5]

The objective of this crime is to induce the manager to perform (or refrain from performing) actions related to their official position in the interest of the person providing the payment, thereby satisfying the latter's selfish needs and interests. [6]

The illegality of bribery stems from the legal obligation of an individual to act in good faith in the interests of the organization where they perform managerial functions. A bribe is given in exchange for disloyal conduct arising from a conflict of interest. [7]

The subject of both active and passive bribery aims to secure benefits and advantages of a material or non-material nature, with the latter utilizing their official position to do so; acts recognized as corrupt include not only the unlawful receipt or provision of such benefits and advantages but also deviations from ethical norms that are of a corrupt nature. [8]

In cases of passive bribery, a direct link is identified between the unlawful provision of money, securities, other property, and property-related services (or other property rights) and the object of the crime, leading to the conclusion that these items constitute the subject matter of the bribery. [9]

To identify the characteristics of bribery as an independent offense, the legal provisions establishing liability for it were examined. It was determined that the act of bribery comprises two distinct yet interconnected offenses: the transfer of an illicit reward and its receipt. In this context, a critical assessment is offered regarding the legislator's decision to consolidate provisions for two separate offenses—which entail varying degrees of social danger—within a single article. [10]

4.**Discussion.**

Bribery manifests in three forms:

- the primary criminal offense involving the transfer of money, securities, or other property, the provision of property-related services, or the granting of property rights (including instances where property is transferred, services rendered, or rights assigned to another individual or legal entity at the recipient's direction) in exchange for actions (or inaction) taken in the interest of the bribe-taker or others, or for securing such benefits (including promises to perform future actions in cases involving witnesses, victims, experts, specialists, or interpreters);

- a method of committing the crime as defined within the basic or aggravated elements of the offense;

- a form of incitement to crime that involves providing or promising material benefits to the persons being instigated.[11]

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The significance of the harm caused to the rights and legitimate interests of citizens or organizations, or to the interests of society or the state protected by law, must be substantiated. Failure to do so results in the termination of criminal prosecution, the return of the criminal case to the prosecutor, or an acquittal. Furthermore, a minimum threshold must be established to classify property damage as "significant," as the legislator has not defined this. [12]

The executive branch, represented by officials from ministries and agencies, abuses its official authority—specifically regarding the issuance of licenses and the oversight of entrepreneurial activities—in ways that run counter to the public interest. The rise of corruption is also fueled by the emergence of a class of individuals possessing substantial wealth—funds that can readily be used to bribe officials. Furthermore, the author identifies complex psychological factors underlying corruption and the abuse of power.[13]

The other aspect of the crime is revealed through several key points:

1. The perpetrator may perform—or refrain from performing—actions that essentially involve the exercise of managerial powers in a manner detrimental to the interests of a commercial or other organization. 2. Regarding the objective aspect, one must also consider the primary consequence: the infliction of harm upon the rights and legitimate interests of individuals or legal entities, as well as upon society or the state as a whole.

3. A causal link exists between the act and the consequence.

The subjective aspect of this criminal act is characterized by direct intent. The perpetrator acts with a specific, defined purpose. This involves an attempt to secure certain benefits or advantages—not only for themselves but also for others. In such instances, harm may be caused to third parties. There may be various reasons for inflicting such harm.[14]

According to Professor R.M. Akutayev, the defining characteristics of hidden crime include the undetected and unregistered nature of offenses—meaning they are not identified or recorded by the agencies responsible for prosecuting and registering offenders—as well as the failure of inquiry and investigative bodies to solve (fully resolve) the crimes [15].

Benefits and advantages can be either tangible or intangible. Pursuing benefits and advantages for oneself or others should be understood as a desire to: gain material profit or avoid material costs; conceal circumstances that would preclude engaging in audit activities; hide losses or financial damage resulting from incompetent professional conduct; or seek intangible benefits—such as career advancement, favoritism, or nepotism—or the desire to embellish the true state of affairs, secure mutual assistance, ensure support, and so forth. 16]

The capacity of an individual performing managerial functions to act as a subject of the crime depends on three factors: 1) the type of organization—which must be a commercial or other entity (regardless of the form of ownership) but not a state or municipal body or institution; 2) the rights and obligations vested in the individual, consisting of the performance of administrative-economic or organizational-managerial functions; and 3) the existence of a legally established and duly formalized basis (procedure) for exercising such rights and obligations—specifically, the performance of the aforementioned functions on a permanent, temporary, or specially authorized basis. [17]

The objective aspect of the abuse of authority by private auditors may manifest in the following acts or omissions:

a) the use of one's authority in a manner contrary to professional objectives;

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b) socially dangerous consequences in the form of significant harm caused to the rights and legitimate interests of citizens, organizations, society, or the state;

c) a causal link between the perpetrator's actions and these consequences. [18]

The general object of the abuse of authority in commercial or other organizations can be defined as the social relations within the economic sphere, forms of ownership, and economic activity, as well as the normal functioning of commercial and other organizations. [19]

A distinctive feature of the abuse of authority is that this crime may be committed in the interests of organizations, primarily for the purpose of gain. The objective of combating the abuse of authority in commercial and other organizations is not only to prevent criminal activity but also to secure compensation for damages incurred through civil litigation. [20]

According to A. Ya. Asnis, the serious violation of the rights and legitimate interests of citizens and organizations is determined as follows: "firstly, in all cases without exception, it involves the violation of constitutional rights, freedoms, and interests of citizens or organizations enshrined in the Constitution of the Russian Federation; and secondly, in other instances, the severity of the violation and the damage caused is assessed based on a subjective criterion—specifically, whether the victim, rather than a law enforcement agency, deems the violation serious or insignificant." [21]

This concerns the criminal liability of individuals performing managerial functions in commercial and other organizations for the abuse of authority and for the failure—or improper performance—of their official duties, where such actions result in a serious violation of the rights and legitimate interests of individuals or organizations, or of interests protected by law belonging to society or the state. The issue of classifying the actions of such individuals in cases where they falsify official documents within the scope of their authority and in connection with their official duties also remains unresolved. [22]

Measures to combat commercial bribery are grounded in legal and ethical norms and are aimed at preventing the spread of corruption within commercial and other organizations.

One can concur with the view of T.Ya. Khabrieva, who emphasizes the necessity of adopting a comprehensive approach to the concept of "combating corruption"—an approach that entails utilizing an entire system of legal, political, economic, organizational, promotional, and other measures. [23]

The question remains as to why the legislature focuses on the moment the object of commercial bribery remains with the intermediary. There are two possible explanations for this. First, the parties might enter into such an arrangement to enhance security and avoid criminal liability; in this case, the bribe may remain with the intermediary until demanded by the ultimate recipient. [24]

The presentation of the gift is conditional upon subsequent actions benefiting the giver, or the gift is provided in return for actions already performed—where the parties had reached a prior agreement regarding these actions before they were carried out.

At the same time, given the insignificant value of the item, one must also consider its negligible impact on managerial relations—and, consequently, on the object of the crime itself. Examples of this include presenting chocolates, flowers, or trivial souvenirs to an individual performing managerial functions within a commercial organization. [25]

Conclusion.

In conclusion, it can be stated that crimes involving the abuse of official authority by officials of non-state commercial organizations (specifically Article 192-9: Commercial bribery/solicitation; and Article 192-10: Bribery/solicitation of an employee of a non-state commercial or other non-state

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organization) should be grouped into a separate chapter within the Criminal Code. The Criminal Codes of the Russian Federation, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Belarus, Moldova, and Ukraine all contain a chapter titled "Crimes Against the Interests of Service in Commercial and Other Organizations." In these jurisdictions, liability for non-state commercial organizations is established by categorizing them rather than treating them as a single, undifferentiated group. Specific criminal offenses have been defined regarding the abuse of authority by notaries, auditors, and employees of private security organizations holding private detective or private security certificates.

In the United Kingdom, the Bribery Act establishes liability for crimes committed by officials of commercial organizations. In contrast, the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated September 24, 1999, titled "On Judicial Practice in Bribery Cases," establishes liability only for crimes involving state officials. Current legislation does not provide a legal definition for the concept of an official of a commercial organization.

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