

Analyse zum Thema von Kriminalitäten im Zusammenhang mit dem
Eigentumsinteressen eines Zivilbeamten

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Zusammenfassung: Dieser Artikel analysiert umfassend die Themen der Korruption eines Beamten, d. h. wissentlich rechtswidrige Gewährung von Vergütungen oder geldwerten Vorteilen, sowie Fragen der Erpressung von Vergütungen, d. h. der kein Beamter einer staatlichen Stelle, eines Unternehmens, einer Institution oder einer Organisation ist.

Schlüsselwörter: Korruption, Bestechung, Thema, Gerichtspraxis, Beamter, Beamter, Vermögensinteressen, Strafgesetzbuch.

Analysis of the subject of crimes related to the property interests of a civil officer

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Abstract: This article comprehensively analyzes the issues the subject of corruption of an officer, that is, knowingly illegal provision of remuneration or pecuniary benefit, as well as issues of extortion of remuneration, that is, demand to provide remuneration or pecuniary benefit by an officer, who is not an official of a state body, enterprise, institution, or organization.

Keywords: corruption, bribe, subject, judicial practice, civil servant, officer, property interests, Criminal Code.

Article 213 of the Criminal Code stipulates that material remuneration or other property interests may be the subject of bribery of a officer. According to M.H. Rustambaev, the subject of this crime is similar to the subject of bribery. Based on that, Professor M.H. Rustambaev believes that the bribery of a civil officer: “money, currency, securities, cars and any other property, food, alcohol, antiques, etc., i.e. anything of material value or property benefit (sanatorium voucher, tourist voucher), providing any paid service)” [1. p.263, 272], that is, acts related to the property interests of a civil officer, will be the subject of a crime.

According to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated September 24, 1999 No 19 “On the judicial practice of bribery”, “money, securities, material wealth, as well as services of a material nature (e.g., repair, construction, reconstruction, etc.) may be subject to bribery, with the condition that they are not returned from the the bribe-taker”[2]. It should be noted that this rule also applies to crimes related to the property interests of a civil officer.

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According to the comments to the Article 213 of the Criminal Code of Uzbekistan, “thing to bribe may consist of various material wealth (money, foreign currency, securities, food and industrial products, etc.) and free or reduced-price services to the officer. It can also be the provision of sanatorium or tourist vouchers, repair or construction work, etc.”[3].

B.D. Akhrarov has the same opinion on this issue. According to his opinion, “in the case of bribery of a officer as a subject of a crime may be material values (money, foreign currency, securities, and industrial products, etc.) and free or reduced-price services to the officer. Sanatorium and tourist vouchers, repair and other construction work, etc. will also be subject”[4].

In this regard, M.M. Kodyrov noted that the subject of bribery can be money or any property (furniture, carpets, televisions, crystals, etc.), food, alcohol, rare and collectible items (coins, stamps as well as other forms of property interests. Such benefits may include the valuation of valuables free of charge, at reduced prices, or in installments, and so on. Receipt of any other type of service free of charge, payment of other payments (free spa treatment, payment of airfare, etc.) should also be considered as a bribe”[5].

B.A. Ahmedov also states that the subject of bribery is “material values, as well as material interests”[6].

Also, R.A. Zufarov states that “in the broadest sense, any material benefits, including property rights and obligations (for example, exemption from payment of debts to the bribe-taker, the return of property to the owner for temporary use)” [7. p.29] will be the subject of a bribe.

From the above, it can be concluded that the subject of bribery of an officer can be all kinds of material values and other property interests. A similar solution is provided in Articles 213 and 214 of the Criminal Code. That is, Article 213 of the Criminal Code establishes liability for “knowingly illegal provision of remuneration or pecuniary benefit to an officer”, Article 214 defines liability for “extortion of remuneration, that is, demand to provide remuneration or pecuniary benefit by an officer”.

Experience shows that bribes are often given in cash, various valuables, industrial goods, foodstuffs, livestock and poultry. Sometimes, bribery also occurs in the form of providing an apartment, lending, extending the repayment period of a previously issued loan, doing something for free (for example, repairing a house, sewing clothes, etc.).

We found it necessary to specify the following features on the subject of crimes related to the property interests of a civil servant:

Firstly, the subject must necessarily have a property or a certain value, that is, the second party (officer) has some kind of property or other interest from him. If a civil servant is not given any property or other benefit or the civil servant does not receive such property or other benefit, this act cannot be qualified by Article 213 or 214 of the Criminal Code of Uzbekistan. M.H.Rustambaev also said that “the benefits that do not have a property character can not be the subject of a bribery” [1. p.263].

In this regard, it is worth noting the following opinion of R.A. Zufarov: “A bribe implies the enrichment of the person who receives it” [7. p.31].

Secondly, according to Article 81 of the Civil Code of the Republic of Uzbekistan, the objects of civil law are divided into material and intangible benefits. In our view, in crimes involving the property interests of a civil servant, the subject may have not only a material but also an intangible character. Most importantly, in the eyes of a civil servant, the remuneration must have some value. In fact, this idea began to be reflected in the recent legislation of our country. In particular, Article 3 of the “Anti-corruption Law”[8] defines the concept of corruption as the unlawful use of a person's personal interests from his career or service position or in the interests of other persons for the purpose of obtaining material or intangible benefits, as well as the unlawful presentation of such benefits. In addition, this idea has been formally adopted in international instruments in accordance with the United Nations Convention against Corruption (New York, October 31, 2003) [9] “property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

According to the legislation of Uzbekistan, material benefits may include: property (real and immovable); items (private and type-specific, divisible and indivisible, consumable and non-consumable, basic and belonging, complex items); income and revenues from raw materials; animals (e.g., livestock, poultry); money (currency); currency values (foreign currency; securities in foreign currency – stock assets; payment documents in foreign currency (checks, promissory notes, letters of credit, etc.); precious metals - gold, silver, platinum and platinum group metals in any form and condition; natural gemstones); securities.

The Civil Code of the Republic of Uzbekistan includes intangible benefits: 1) the results of intellectual activity; 2) service and trade secret; 3) personal non-property rights and other intangible benefits; 4) protection of honor, dignity and business reputation.

It should be noted that only two of the above may be the subject of a crime related to the property interests of a civil servant. Considering that the other two are directly related to the person, that he does not exist apart from the person, it is illogical to look at him as an object.

Firstly, according to the second part of Article 97 of the Civil Code of the Republic of Uzbekistan, the results of intellectual activity and specific means, which are the object of exclusive law, can be used by third parties with the permission of the right holder. It appears that the transfer of such a right to another person has some value for the other person. For this reason, it can be considered a criminal offense.

Secondly, service and trade secrets should also be considered as the subject of a crime. Indeed, information related to a service or trade secret may also be provided in exchange for a particular service. It is known that Article 162 of the Criminal Code provides for liability for the disclosure of information that is considered a state secret, military secret, as well as information that is considered a service secret. If the information that is considered the secret of this service is given as a fee to the officer

provided for in articles 213 and 214 of Criminal Code by a person entrusted with this information or who is aware of the service or professional activity, the Act shall be qualified as a total of crimes under Articles 213 (214) and 162 of Criminal Code of Uzbekistan.

However, it should be noted that any intangible benefits are not considered to be the subject of bribery of a servant. In assessing them as a subject, it is necessary to take into account the level of social danger of the act, the degree of danger of the consequences that may arise as a result of the act. For example, as noted by M.H. Rustambaev, in accepting bribes “positive description, recommendation, review of the article, etc.” [1. p.263] cannot be considered as a subject of bribery. As R.A. Zufarov rightly points out, such actions can lead to disciplinary action, and in the presence of signs of abuse of office, can lead to criminal liability under Article 205 of the Criminal Code [7. p.33].

Also, forcing a subordinate woman to have sex at the risk of performing or failing to perform actions in the service for which she is interested is a ground for liability for forcing a woman to have sex under Article 121 of the Criminal Code.

Thirdly, the subject of the crime can be transferred not only on the basis of property rights, but also on the basis of the right of use and possession. For example, R.A. Zufarov noted that according to the power of attorney, a car given to an official for a certain period of time (and for crimes under Articles 213 and 214, a non-official civil servant - the author), as well as an apartment or field rented for temporary residence the yard also constitutes a bribe [7. p.30]. This situation also applies to the bribing an officer. In this case, the apartment or yard is given to the officer not based on property rights, but on the basis of the right of use and possession for a certain period.

Fourthly, the valuables given or given to the employee may be personal property or may not belong to the person who misappropriated the employee on the basis of property rights. If the property transferred as the subject of the crime belongs to the state or the public and the civil servant knowingly does so, the participants in this relationship are also guilty of crimes related to the property interests of the civil servant and looting of other people’s property.

Fifthly, the subject of a crime related to the property interests of a civil servant can be conditionally classified as follows:

1) tangible or intangible payment (for example, the transfer of money, currency valuables and other items or property, the right to property, the secrecy of services);

2) property services or works (free petrol, repair or acceptance of the apartment);

3) other property benefits (deferral of debt repayment, preferential payment for goods, installments, provision of valuables free of charge, at reduced prices or access to such benefits, etc.);

4) other benefits of a property nature (unreasonable possession of a useful job, a fake diploma, employment records, free meals for an employee in an expensive restaurant, etc.).

As noted above, Articles 213 and 214 of the Criminal Code provide for material values and property interests as the subject of a crime. Although it is concluded from the content of the disposition that property services, works and other benefits of such a nature are not directly mentioned and intangible remuneration is not provided at all.

It should be noted that “property interest” is a very broad concept, which in fact includes the payment of material or intangible benefits, property services or works, as well as other benefits of a property nature. From this point of view, in the disposition of the first part of Article 213 the terms “provision of remuneration or pecuniary benefit” and in the disposition of the first part of Article 214 “demand to provide remuneration or pecuniary benefit” are grammatically and substantively misused. After all, even if we say from the point of view of the rule of legal technique, the text of the law should be clear and understandable in content, in accordance with the rules of language and speech structure.

It should be noted that Articles 15, 16, 18, 19, 21 of the United Nations Convention against Corruption (New York, October 31, 2003) [10] used the term “proceeds of crime” instead of the above-mentioned term. However, the Convention clarifies the meaning of the term “proceeds of crime”. It is obvious that the legislation of Uzbekistan and the norms of the United Nations Convention against Corruption (New York, October 31, 2003) are not mutually compatible.

In accordance with Article 2 of the Law “On International Agreements of the Republic of Uzbekistan”, if the international agreement of the Republic of Uzbekistan [11] establishes other rules than those provided by the legislation of the Republic of Uzbekistan, the rules of the international agreement of the Republic of Uzbekistan is applying [11].

If we take into account the fact that our country is included in the United Nations Anti-corruption Convention (New York, 31 October 2003) in accordance with the law of the Republic of Uzbekistan dated July 7, 2008 on the number of LRU (Law of the Republic of Uzbekistan) – 158 [12], there is a need to make amendments to articles 213 and 214 of the Criminal Code.

Based on the above analysis, it is proposed to make the following amendments to Articles 213 and 214 of the Criminal Code of Uzbekistan:

In the disposition of the first part of Article 213: replace the words “**provision of remuneration or pecuniary benefit**” with the words “**proceeds of crime**”, i.e. **the provision benefits of a material or intangible value or service, work of a proprietary nature or other benefits or profit**”;

In the disposition of the first part of Article 214: the words “**demand to provide remuneration or pecuniary benefit**” shall be replaced by the words “**illegal claim, ie claim or acceptance of material or intangible remuneration or property, work, service or other benefits or other profit**”.

It should be acknowledged that in some cases, a civil servant may be given items that have been removed from free civil circulation or restricted to free civil circulation as a reward for his actions or omissions. For example, firearms, ammunition, explosive devices, strong or poisonous substances, radioactive materials, narcotic drugs or

psychotropic substances, and so on. In this case, the act is qualified as a total of crimes under Article 213 of the Criminal Code and Articles 247, 251, 252, 271 or 273 of the Criminal Code of Uzbekistan.

Today, there is a problem in criminal law with regard to the gift of a civil servant as a subject of bribery. In particular, “is giving a gift to a civil servant a bribe?”, if it is a bribe, “what are the conditions for considering a gift as a bribe?”, etc.

As noted in the Explanatory Dictionary of the Uzbek language, “a gift is a thing, grand, a donation, something that is tortured to receive someone's sympathy or to award their services” [13. p.542]. The Civil Code of the Republic of Uzbekistan does not regulate the legal aspects of gift giving. However, the gift, its giving and the legal consequences are determined. In particular, according to Article 502 of the Civil Code, in accordance with the gift contract, one party (donor) transfers or undertakes to transfer the property to the other party (recipient) free of charge or gives him the right (claim) of property to himself or a third party. or frees him or her from a property obligation to himself or a third party, or undertakes to release him.

At first glance, it is illogical to restrict the giving of a gift by law, to consider it a crime. However, there is a range of individuals to whom a gift (in excess of a certain amount), even if it is given as a gift, breaks the literal nature of the gift and takes on a different meaning. For this reason, in some foreign countries there is an upper limit on the amount of gifts to be given to civil servants. This amount sets the boundary between a gift and a bribe in them. This amount sets the boundary between a gift and a bribe in them. In particular, according to Article 575 of the Civil Code of the Russian Federation, the amount of gifts to be given to civil servants is limited, according to which civil servants are allowed to receive gifts not exceeding five times the minimum wage.

When talking about determining the illegality of the payment-receipt, the impossibility of obtaining it due to the special legal status of the recipient, it is appropriate to state a principled opinion. In criminal law, the giving and receiving of a gift is not regulated at all if it does not begin to perform the function of remuneration according to its nature and function and is not received (and not given) for an existing or expected service. In this regard, five times the minimum wage of S.G. Kelina is the limit that in all cases allows to separate the gift from the bribe (in this case – from the illegal fee) [14. p.701], because the amount of a gift bribe differs not only in size but also in function [15. p.203-204]. At the same time, the author argues that "the property fee is decisive for the separation of gifts and bribes only if the property fee is paid to an official for his lawful actions (inaction) without prior consent" [15. p.204], the conclusion is also less accurate.

First of all, it should be noted that in order to distinguish a gift from an illegal right (in this case - a bribe), it is not the amount of them and whether there is a prior agreement on their issuance, but the functional function of both the gift and the illegal right.

Secondly, the analysis of the legislation of the CIS countries shows that the time sequence of the establishment of norms on the order of remuneration by public and municipal servants allows to conclude that they apply only to civil servants,

because the value, for example, permission to receive a gift not exceeding five times the minimum wage provided for in Article 575 of the Civil Code of Russian Federation entered into force from 1 March 1996 and this is due to the fact that the ban on receiving gifts by officials of the municipal service, established in Article 11 of the Federal law “On the municipal service” of 1998, does not apply. A systematic analysis of this part of the current legislation also leads to the following general conclusion: **unless the gift is related to the position of public servants or the performance of their official duties, public servants are not prohibited from receiving a gift, regardless of its value.**

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