

ISSUES OF LIABILITY FOR OFFICIAL CRIMES COMMITTED BY OFFICIALS
OF COMMERCIAL ORGANIZATIONS UNDER THE CRIMINAL LEGISLATION OF
THE REPUBLIC OF UZBEKISTAN

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This article analyzes 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 examines a new interpretation of the provisions in the Criminal Code regarding the liability of this category of persons for such offenses. The article substantiates the need to implement measures aimed at preventing such liability, clarifies the concept of liability for officials of commercial organizations regarding corruption-related crimes, identifies existing problems in this area, and puts forward new proposals for their resolution.

1.Introduction

The essence of this crime is outlined in Article 192-10 of the Criminal Code of the Republic of Uzbekistan, titled "Bribery of an employee of a non-state commercial organization or other non-state organization." According to this article, the act involves—with the knowledge of its illegality—providing material assets or granting property benefits to an employee of a non-state commercial or other non-state organization in exchange for that employee performing or refraining from performing a specific action (which falls within their authority) in the interest of the person offering the bribe; if committed after the imposition of an administrative penalty for such actions, the offense is punishable by:

a fine ranging from twenty to thirty times the base calculation amount, or compulsory community service for up to two hundred and forty hours, or correctional labor for up to one year, or restriction of liberty for up to one year, or imprisonment for up to one year.

Exceeding authority refers to an action that the subject is not entitled to perform but carries out while exercising their powers, clearly going beyond the scope of those powers (for example, actions involving another person's authority; actions requiring joint execution or agreement with another person or body; actions permissible only under special circumstances; or actions that no one is authorized to perform under any circumstances). A mandatory characteristic of exceeding one's authority is clarity—interpreted as something open, absolutely obvious, and understandable to everyone—implying that the individual themselves must necessarily realize that the actions they are performing fall outside the scope of their authority.[1]

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.[2]

2. Methods

Methods including analysis, synthesis, logical deduction, empirical and historical approaches, and a systems approach were employed in writing this article. These methods were applied in accordance with standard scientific research practices and IMRAD requirements.

3. Results

In our view, the causes of abuse of power lie in specific social factors and circumstances that underpin criminality as a phenomenon and lead to unlawful conduct. The causes of crime are highly diverse. There are numerous causes for corruption in general, and for the abuse of power in particular; it is impossible to single out any one cause, as they are all closely interconnected. Identifying the causes of such unlawful phenomena is recommended for the effective combating of crimes involving officials and corruption. In our view, the conditions facilitating the abuse of power constitute the "environment" in which corruption-related offenses by officials occur. Thus, these conditions do not themselves cause the crimes; rather, they serve as a connecting link within the mechanisms that shape the causes of such offenses, acting alongside specific additional factors. The conditions facilitating the abuse of power include the extent of the damage caused, the context, the timeframe, and the location where the abuse takes place.

D.A. Smirnix identifies several causes for the abuse of power. First, the author points to economic instability resulting from recent crises—characterized by erratic inflation and a significant depreciation of the real wages of state and municipal employees. This drives officials to seek additional sources of income—often through criminal means—as a direct consequence of



misusing their administrative, economic, and organizational authority [17, pp. 180–183]. Second, D.A. Smirnix highlights another cause: the development of competitive relationships. The legislative branch, represented by deputies at various levels, uses its official authority to protect the interests of financial groups. The executive branch, represented by ministry and agency officials, abuses its official powers regarding the issuance of licenses and the oversight of entrepreneurial activities, acting contrary to the public interest. The rise of corruption is also fueled by the emergence of a class of individuals possessing vast wealth—resources that can readily be used to bribe officials. Furthermore, the author identifies complex psychological factors underlying corruption and the abuse of power.[3]

B. Bugrov highlights a number of issues when discussing the causes of crimes committed by officials—specifically the abuse of power. The complexity of combating crimes committed by individuals holding special public trust is determined by several factors: first, the specific characteristics of the individuals themselves, defined by their official positions and high levels of education; second, the nature of the socially dangerous acts committed, which are highly sophisticated and require meticulous preparation and the concealment of evidence; third, the existence of additional legal obstacles—such as legislative immunity—when verifying initial information about these crimes, which impacts the organization and tactics of both pre-investigation and formal procedural investigations; and fourth, the particularly active resistance to the investigation shown by the accused, as well as their connections with accomplices. I.B. Bugrov also notes that crimes involving official misconduct and corruption are primarily committed by individuals who possess immunity and high social status (such as judges, deputies, politicians, etc.). In the author's view, crimes committed by individuals possessing legal immunity undermine the reputation of law enforcement agencies, the judiciary, and the entire state system in the eyes of law-abiding citizens; this fosters a deeply negative attitude toward state officials and indifference toward government policy [19, pp. 20–23]. Unfortunately, many judges and deputies who commit crimes go unpunished—not to mention administrative offenses (where procedural deadlines often expire due to the difficulties involved in lifting state immunity prior to initiating administrative proceedings). In our opinion, it would be advisable to simplify the system for stripping immunity, thereby enabling the perpetrators to be held accountable as quickly as possible. Simplifying the process of criminal prosecution would allow investigative bodies to carry out all urgent investigative actions more effectively and expeditiously.

4. Discussion

We fully concur with the aforementioned causes of the abuse of power and corruption, given the vast number of individuals mired in corruption and the rarity with which they face punishment. A striking example of this is the "Oboronservis" scandal, which involved the abuse of power and bribery, resulting in the theft of billions. For some law enforcement officers, the abuse of power



is commonplace, and corruption is seen as an easy way to increase their income; many officials own businesses and launder money in offshore zones.[4]

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—namely, the attempt to secure certain benefits or advantages, whether for themselves or for others. In such instances, harm may be caused to third parties, and there may be various underlying reasons for inflicting such harm.[5]

Like all official crimes, the abuse of power is characterized by a high degree of concealment. As I.I. Karpets rightly noted, "an understanding of the crime as a phenomenon is incomplete without taking into account its hidden nature—that is, its covert, undetected aspect and the fact that information regarding it is not reported to state agencies and, consequently, is not included in statistics" [6, pp. 57–58]. According to Professor R.M. Akutayev, the specific characteristics of such hidden crime include the undetected and unregistered nature of offenses—even by the very agencies responsible for prosecuting, registering, and recording them—as well as the failure of inquiry and investigative bodies to solve (fully resolve) the crimes [1, pp. 26–27]. [6]

The motives for such actions may include improving one's own well-being or the financial standing of loved ones, enhancing the competitiveness of specific enterprises and organizations owned by or employing relatives and acquaintances, advancing one's career ambitions, and so forth. The subject of the crime in question is clearly defined and explicitly specified in the law itself: the subject is a private auditor. It should be noted that the Federal Law of the Russian Federation "On Auditing Activities" employs a different term: "individual auditor." There appears to be no need to specify the age at which a subject may be held criminally liable for crimes against the interests of service within commercial and other organizations. In practice, the possibility of engaging in auditing activities from the age of 16 is precluded, as Article 15 of the Russian Federation's Law "On Auditing Activities" mandates the possession of a qualification certificate—a credential available only to adults. Furthermore, an auditor must possess special legal capacity, which establishes the legal basis for imposing professional liability.[7]

It appears that the confusion between the concepts of an "official" and a "person performing managerial functions" stems, to some extent, from the lack of a systematic approach in legal theory.* For instance, a private school principal is classified as an "official" under administrative



law, whereas in criminal law, they are regarded as a person performing managerial functions within a commercial or other organization. Consequently, it is necessary to amend the Code on Administrative Liability to explicitly include persons performing managerial functions among the subjects liable for violations. [8]

A second aspect concerning the authority to perform organizational, managerial, and administrative functions in commercial and other organizations is defined in the organization's constituent or other documents. Thus, the powers of a manager (such as a president, commercial director, executive director, etc.) may be stipulated in the employment contract concluded with the board of directors or other authorized governing bodies of the business entity. However, at the same time, participants in a business entity (such as a general partnership) entrusted with managing the legal entity's affairs—even if they do not work within its executive body but simultaneously represent the interests of other partners (or, so to speak, serve those interests) and are capable of independently performing management functions—may commit crimes contrary to the partnership's interests through the abuse of their powers, thereby causing harm to other partners and the commercial organization as a whole. In such instances, these partners are held liable under Article 201 of the Criminal Code of the Russian Federation.

Several questions arise when distinguishing between the temporary performance of duties by a subject and their performance under specific authority. According to N. Kovaleva, the concept of "specific authority" introduces logical contradictions into the text of the criminal law. The term "special" denotes something specific intended for a particular purpose, whereas the term "special authority" refers to the right formally granted (via a regulatory or individual act) to a public representative to perform administrative-economic or organizational-managerial functions, as well as the functions of a civil servant. P. Kovaleva interprets the temporary performance of duties as the acquisition of authority for a specific period or for the duration of certain events. Judicial practice—specifically that of the highest judicial authorities—has not always interpreted these terms consistently.[9]

Conclusion

In conclusion, it is advisable to consolidate crimes involving the abuse of official authority by officials of non-state commercial organizations—specifically Article 192-9 (Commercial Bribery) and Article 192-10 (Bribery of an employee of a non-state commercial or other non-state organization)—into a separate chapter within the Criminal Code. The criminal codes of the Russian Federation, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Belarus, Moldova, and Ukraine contain a chapter titled "Crimes against the interests of service in commercial and other organizations." In the legislation of these countries, liability regarding non-state commercial organizations is established by categorizing them into distinct groups rather than treating them as a single, undifferentiated entity. Specific crimes involving the abuse of authority by notaries,



auditors, and employees of private security firms—as well as individuals certified for private detective or private security activities—are clearly defined. 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, "On Judicial Practice in Cases Involving Bribery," provides for liability only in relation to crimes involving state officials. Current legislation lacks a legal definition of the term "official of a commercial organization."

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