

THE SUBJECTIVE SIDE OF CRIMES RELATED TO THE PROPERTY INTEREST OF A PUBLIC SERVANT

Djalilov Furkat Zakirovich,

Independent researcher of Tashkent State University of Law

E-mail: Fbi774@mail.ru

Abstract: In this article, the issues related to the subjective side of the crimes related to the property interest of the civil servant have been disclosed in detail. In this, the main issues of the subjective side of the crime were emphasized, issues such as the intent, motive and purpose of the person guilty of crimes related to the property interest of the public servant were analyzed, as well as issues such as their impact on the qualification of the crime.

Keywords: civil servant, composition of crime, subjective aspect of crime, mental attitude, internal mental processes, sanity, bribery, right intention, motive and purpose, malice.

In criminal law, the internal mental experiences of a person in relation to the act he committed or its consequences are studied under the name “subjective side of the crime”. The subjective side of the crime is the inner formation of the socially dangerous act as a sign of the crime structure [1]. Correct and accurate evaluation of its signs is an obligation of law enforcement agencies established in the current legislation. In particular, Article 22 of the Criminal Procedure Code stipulates that the investigator, investigator, prosecutor, and court must determine whether a crime has occurred, who is guilty of it, and all related circumstances. Failure to pay enough attention to the subjective side of the crime leads to mistakes in the qualification of the act, to the person being held responsible for an act that he did not commit [2], which leads to a violation of fair sentencing [3].

According to M.H. Rustambaev, the subjective side of the crime is the mental attitude of the guilty party to the socially dangerous act committed by the guilty party, which is defined as a crime in the criminal law [4]. A similar opinion is noted by R. A. Zufarov [5], A. I. Rarog [7], V. E. Kornoukhov [6], that is, the subjective side of the crime is the mental activity of the person directly related to the commission of the crime. It constitutes the psychological content of the crime and is its internal side (compared to the objective side) [6; 7]. The correctness of these points of view is questionable, because it allows to include in the content of the subjective side of the crime only the experiences of the criminal after committing the crime. Other scientists, for example, A.S. Yakubov, R. Kabulov, mean the subjective side of the crime structure as a set of important signs [8] that describe the mental attitude of a person to the committed crime during the commission of the crime provided for in the criminal law. A similar opinion is noted by N.K. Semerнева: the subjective side of the crime is understood as the element of the crime structure that allows to create an idea about the internal mental processes taking place in the mind and will of the person committing the crime, characterized by the specific form,

motive, purpose and feelings of the crime [9]. According to other authors, in particular, scientists such as O. Rasulov, P. Bakunov, A. Otajonov, I. Sottiev, the subjective side of crime is the mental attitude of a person to his socially dangerous action or inaction and the socially dangerous consequences arising from it [10; 11; 12].

It should be noted that taking into account the implementation of a special activity of a civil servant, i.e., a very important activity in the life of the state and society – public service, in addition, based on their legal status and in order to achieve the full implementation of their official duties, certain restrictions are established. Such restrictions consist of a set of various (political, economic, organizational-administrative) factors in the form of prohibitions that determine the scope of permissible behavior in the civil servant's service activities and daily behavior. In particular, civil servants are prohibited from taking various forms of remuneration from foreign state bodies, citizens and legal entities within the scope of their service authority, from taking actions that may damage the reputation of the state body, as well as from using their right to serve for personal interests [13].

In violation of this prohibition, among other things, an official's performance of certain actions or inactions for the sake of the interests of other persons in return for payment, and the actions of citizens in such a way as to bribe public servants or to accept such a bribe (material values or property interest) create the structure of crimes.

In its turn, such an act leads to a violation of constitutional principles by a civil servant. After all, the first section of the Constitution of the Republic of Uzbekistan describes the main principles of this law, and its article 2 states that the state expresses the will of the people and serves its interests, and that state bodies and officials are responsible to society and citizens [14].

In accordance with Article 9 of the Criminal Code of the Republic of Uzbekistan, a person is liable only for socially dangerous acts that are proven guilty in accordance with the procedure established by law. Therefore, in order to correctly classify the crimes related to the property interest of the employee of the state body, the organization with the participation of the state, or the employee of the self-government body, it is necessary to correctly assess the subjective side of the crime in this category of actions.

The first category of crimes related to the property interest of an employee of a state body, an organization with state participation, or a civil self-government body - the subjective side of bribery of an employee is characterized by the intentional form of the crime. When committing the crime provided for in Article 213 of the Criminal Code, the extortionist may act only with the right intention that appeared beforehand.

Some authors describe the content of the right intention in giving material values or providing a property interest as “the culprit himself saw that he was carrying out bribery of an official” [15]. We do not agree with this opinion, because the legislator connects the sign of eye contact only with criminal consequences, and bribery of an employee is a formal crime.

In our view, in the crime of bribery of an employee, the mental factor of intention is determined when the guilty person realizes all the objective signs of giving material values or presenting a property interest, in particular, in order for the official to commit legal (illegal) actions (omissions) for the benefit of the recipient or the persons representing his interests in return for a bribe, or for the employee to create an opportunity for other persons to commit actions (omissions) using the official position held by him, or for bribes it is expressed in the understanding that he personally or through an intermediary gives the illegal fee to the employee as an illegal fee for the general patronage of the service to the recipient or the persons representing his interests. Here, the content of the will factor of the criminal intent is determined by the intention to divert the employee for a bribe. An important criterion in the content of the criminal intent of extortion in exchange for a bribe is that he should understand that the official has no right to accept the payment from him (in addition, to demand it through extortion) according to the law.

Thus, if the extortionist in exchange for a bribe did not understand the illegal nature of the material values he was giving to the official or the property benefits provided to him and considered it legal, his actions will not contain the criminal structure provided for in Article 213 of the Criminal Code. For example, when a person gives money, he believes that he is giving it as payment for expert work or information processing, correction of documents, editing or reproduction.

The goal and motive that you try to achieve by deviating the bribery attendant in exchange for bribery can be different. The purpose of the crime under consideration, according to some scientists, is “expressed not in words in the criminal legal norm itself, but in its meaning. V.I.Dineca notes that bribery is committed for the realization of certain and well-defined intentions by the guilty: obtaining benefits, naphht sight, for the bribe taker to perform the agreed actions, etc.” [16]. In our opinion, the same case can be applied to the motive of bribery of the servant. Motives to bribe a servant can be selfishness, evasion of the law, the intention to avoid responsibility, as well as various inclinations of a personal nature.

In addition, it should be noted that the motive and purpose of bribery of an employee does not affect the qualification of the crime, but it is important from a criminological and criminal-legal point of view for the study of the crime provided for in Article 213 of the Criminal Code.

The second type of crime to be analyzed – the disposition of Article 214 of the Criminal Code, does not specify the form of the crime. However, relying on the signs described in the disposition of the first part of Article 214 of the Criminal Code and the content of Article 21 of the Criminal Code, it can be concluded that this crime is committed only with the right intention. In this regard, R.Zufarov, B.Akhravrov and U.Mirzaev conclude that “the subjective side of corruption crimes is characterized by the presence of the right intention, and most crimes are characterized by the presence of malice or other interests, and such crimes are not committed out of carelessness” [17]. In our opinion, this conclusion is reasonable.

The definition of the concept of right intention is strengthened in the third part of Article 21 of the Criminal Code, which applies only to crimes of material content,

and the acquisition of material values by a public servant or having a property interest in another form is a crime of formal content. Formal crimes, including the definition of correct intention applied to the analyzed crime, are partially valid [18], that is, “an objective sign that reflects the social danger of a criminal act is a socially dangerous act and security. Therefore, the form of guilt is determined by the nature of the mental and spiritual attitude towards this sign” [19].

The mental factor is expressed in the perception of all objective signs of receiving material values or having a property interest:

firstly, the perpetrator illegally obtains material values or property interests in order to commit legal or illegal actions (inaction) in exchange for a bribe in the interests of the perpetrator or the persons whose interests he represents, or sponsors them using his official position. The civil servant guilty of this should understand the following: 1) that the material values or property interest that he receives personally or through an intermediary is illegal; 2) that he receives material values or property interest in exchange for a bribe in order to commit legal or illegal actions (inaction) for the benefit of the transferor or the persons representing his interests; 3) such actions (inaction) of a civil servant may enter into his service powers or he may create an opportunity for such actions (inaction) according to his service position;

secondly, the perpetrator must understand what object he is attacking with his criminal actions, that is, the public servant must imagine that by accepting material values or property interests, he is encroaching on the normal functioning of public bodies, compliance with the interests of service in the public service, and social relations that ensure the obedience of the public body to the law and their reputation among citizens.

Some authors also point out that the civil servant should understand that as a result of his actions (inaction), organizational damage may occur, the interests of other citizens may be discriminated against, etc. [20]. In our opinion, this situation is not considered an inevitable sign in the content of the mental factor of intention in the formal structure of the crime of illegal acquisition of material values or property interest by a civil servant. But even so, it cannot be denied that the guilty official may realize the consequences of his actions.

When crimes of formal content are committed, “actions (inaction) that have a sign of social danger according to their objective characteristics are considered the subject of criminal intent, and the occurrence of harmful consequences is not important” [21]. As noted in the legal literature, “an act, unless it is committed under the influence of irresistible force or physical coercion, is always in accordance with the will of the person who commits it” [22]. In other words, in crimes with a formal structure, the factor of will is expressed only in the desire to commit an act or refrain from committing it, that is, such acts can be committed only with the right intention [5; 23]. In our opinion, this opinion is absolutely appropriate in relation to the structure of the analyzed crime.

The factor of will in the intention of an official to commit a crime is determined by the desire to receive material values or to have a property interest from the perpetrator or the persons representing his interests in order to perform or not

perform certain actions (inaction) related to the use of his official position in their interests. In the absence of the intention to perform or not to perform such actions (inaction) of the public servant, the fact that he received material wealth or received other benefits of a property and non-property nature cannot be qualified according to Article 214 of the Criminal Code, because in this case the will factor of intention does not exist. Such actions of a person should be qualified as fraud under Article 168 of the Criminal Code.

In addition, when a civil servant receives material valuables or has a property interest, in addition to the fact that he receives an illegal fee, the briber should understand that he is not evaluating it as, say, repayment of a debt, payment of a fine, compensation for damages, but as an illegal fee. However, it is not the fact that the public servant is being found guilty under Article 214 of the Criminal Code of Ukraine and that the persons representing his interests are paying bribes to the public servant, not knowing and wanting to do so, rather, it is the content of the mental and will factors of the public servant's intention to commit a crime that is of primary importance. If a person gives property assets to a civil servant as debt repayment, payment of a fine or duty, etc., and the civil servant accepts the wealth given to him as an illegal fee, his actions, in our opinion, should be qualified as an attempt to commit a crime under Article 214 of the Criminal Code, while the actions of a person who gives away property will not constitute a crime.

In the theory of criminal law, there are classifications of intent based on other grounds, in addition to the straight and crooked forms of intent established in Article 21 of the Criminal Code. For example, according to the time of emergence (formation), premeditated and sudden intentions are distinguished. This classification is particularly noteworthy not only from a criminological point of view, but also from a criminal-legal point of view. Analyzing the composition of the crime under investigation, we would like to note that in practice, the acquisition of material values or property interest by a public servant is often characterized by premeditated intent, that is, there are periods of criminal intent, its formation, and its implementation.

In this regard, in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in cases of bribery", "the court should determine and indicate in the judgment what actions were taken by the official for the benefit of the bribe giver and indicate in the judgment. In this case, the responsibility for bribery should be taken into account regardless of whether the bribe was given before or after the act was committed, regardless of whether the bribe was agreed in advance, regardless of whether any action was performed for the benefit of the bribe taker" [24].

The fact that the subject of the crime of illegally receiving material assets or having a property interest by a civil servant has premeditated intent to commit a crime indicates the high level of social danger of the act, also indicates that there may be a stage of preparation for the crime and participation in the crime before the direct commission of the criminal act (omission). In particular, the sign of participation in the crime aggravated by the lawmaker is "a crime committed in advance by a group of officials in collusion" (clause "v" of the third part of Article 214 of the Criminal

Code) and “a crime committed in the interests of an organized group” (Article 214 of the Criminal Code strengthened in the cases of paragraph “b” of the fourth part).

In turn, it should be noted that according to the instructions given by the Plenum of the Supreme Court of the Republic of Uzbekistan, although the conditions for receiving wealth or services were not specifically agreed in advance, but the actions of officials should be recognized as giving and receiving bribes even in cases where the participants of the crime understand that the bribe is being given in the interests of the bribe giver [24].

According to a number of authors, the inevitable sign of the subjective side of the crime under analysis – only guilt. [25; 26; 27]. In the provision of Article 214 of the Criminal Code, although the malicious motive and purpose of committing this crime is not indicated, it is considered a crime of malicious intent. In this regard, K. Abdurasulova notes that, despite the state's confidence in them, civil servants go on the path of dishonesty and destroy the reputation of the state and society in order to achieve their “greed” goals [28].

In the scientific works of many scientists, one can encounter cases of attempts to justify a similar approach to the description of the subjective side of the crime under analysis. In particular, when O. Kh. Kachmazov talks about the malicious purpose and motive of bribery (as well as the crime provided for in Article 214 of the Criminal Code - the author), the conclusion about their existence is the essence of bribery as a special type of abuse of official powers with malicious intentions and the subject of this crime indicates that it is determined by its material properties [29]. B.V. Volzhenkin tries to justify this situation by the fact that if a civil servant, while receiving illegal fees for his service actions, initially intended to spend the funds he received for the needs of the organization he manages, to use them for good purposes, then it is illegal the composition of the crime of extortion will not exist [30]. We partially agree with this opinion, because this point of view of B.V. Volzhenkin is appropriate only if the civil servant performs legal actions for a fee.

In addition, it should be noted that in addition to the above two points of view on this issue, there are other points of view, the authors of which show that the motive of malice is valid as a subjective aspect of the crime of illegal payment [31; 16].

It should be noted that the general description of the mentioned crimes in criminology is usually covered by crimes called “malice”. As noted by R.A. Zufarov, bribery, that is, knowingly accepting material rights or property benefits by an official, is also a crime committed with malicious intent [32]. According to V.V. Lunev, such intentions are classified as follows: 1) the intention to accumulate money and material wealth, greed, covetousness, greed; 2) striving for material prosperity and well-being, acquiring prestigious wealth, “not living worse than others”; 3) alcoholism, the desire to live a lavish life, and other deviant tendencies that require a large amount of material expenses; 4) falsified service interests, careerist inclinations, seeking to please a high-ranking boss, gain acquaintances and contacts necessary for promotion, and support them; 5) striving to satisfy personal

material (temporary or relatively permanent) needs, household needs for scarce items or materials, to help one's family, and other inclinations [33].

A close relative of the public servant or a person financially dependent on him, or a subject sponsored by the public servant by providing financial assistance, also receives compensation for the public servant's actions (inaction) in the service for the benefit of the briber, provided that the public servant is entitled to the above-mentioned persons for his actions. If he is not aware of what he has received, it does not constitute the crime referred to in Article 214 of the Criminal Code. Such actions of a civil servant, in the absence of malicious motive and purpose, despite the presence of other signs specified in the provisions of Article 214 of the Criminal Code, should be evaluated as abuse of official authority.

Thus, the malicious motive and purpose of the crime of illegal acquisition of material values or property interest by an employee of a state body, an organization with state participation, or a citizen's self-government body are inevitable optional features of the subjective aspect of the crime under consideration.

References:

1. Irkakhodjaev A.K., Kholikulov U.Sh. Scientific basis of qualification of crimes. Study guide. - Tashkent: TSUL, 2012. – p. 23;
2. Bakunov P. Robbery crimes committed using violence. Monograph. - Tashkent: TSUL, 2011. - p. 75;
3. Rustambaev M.H. Criminal law. General part: Textbook. - Tashkent: TSUL, 2006. - p. 166;
4. Rustambaev M.H. Course of criminal law of the Republic of Uzbekistan. T.1. General part. Doctrine of crime: Textbook. - Tashkent: ILM ZIYO, 2010. - p. 164;
5. Zufarov R.A. Criminal responsibility for bribery. - Tashkent: TSUL, 2004. - p. 66;
6. Course of criminalistics. Special part. T. 1. Methods of investigating violent and mercenary-violent crimes. / Ed. V.E.Kornoukhov. - M., 2001. - p. 70;
7. Rarog A.I. Subjective side and qualification of crimes. - M., 2001. - p. 6;
8. Criminal law. General part: Textbook. / A.S. Yakubov, R. Kabulov et al. - Tashkent: Ministry of Internal Affairs Academy of the Republic of Uzbekistan, 2009. - p. 160;
9. Criminal law. A common part. Textbook for universities / Ed. I.Ya.Kozachenko, Z.A.Neznamova. - M., 1997. - P. 181;
10. Rasulov O.Kh. Soviet criminal law. - Tashkent: Teacher, 1969. - p. 144;
11. Bakunov P. Crime of intentional grievous bodily harm: Study guide. - Tashkent: TSUL, 2008. - p. 29;
12. Qualification of crimes: Textbook. / R. Kabulov, A. Otajonov, I. Sottiev et al. - Tashkent: Ministry of Internal Affairs of the Republic of Uzbekistan, 2012. - p. 89;
13. Alimov H.R., Mahmudov A.A., Ismailov N.T. Public service in the Republic of Uzbekistan: Album of drawings. - Tashkent: Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, 2002. - p. 19;

- 14.** Salaev N.S., Husainov D.K. The fight against corruption is an important condition for ensuring legitimacy in public service. // Fight against corruption and scientific research: a collection of materials of the scientific-practical conference of intern-researchers-searchers. - Tashkent: TSUL, 2011. - p. 35;
- 15.** Svetlov A.Ya. Responsibility for malfeasance. - Kyiv, 1998. - p. 320;
- 16.** Dineka V.I. Responsibility for malfeasance under the criminal law of Russia: Textbook. - M., 1998. - p. 57;
- 17.** Zufarov R.A., Akhrarov B.J., Mirzaev U.M. Corruption. Law. Responsibility: Monograph. - Tashkent: TDYuI, 2011. - p. 168;
- 18.** Gaukhman L.D. The subjective side of the crime (comparative legal aspect): Lecture. - M., 1999. - p. 27;
- 19.** Rarog A.I. General Theory of Guilt in Criminal Law: Textbook. - M., 1980. - p. 14;
- 20.** Kachmazov O.Kh. Liability for bribery under Russian criminal law. - Vladikavkaz, 2000. - p. 107;
- 21.** Criminal law of the Russian Federation. A common part. // Ed. B.V. Zdravomyslova. - M., 1996. - p. 171;
- 22.** Questions of crime and punishment under the legislation of the USSR and other socialist countries. - M., 1985. - p. 47;
- 23.** Gaukhman L.D. Qualification of crimes: law, theory, practice. - M., 2010. - p. 153;
- 24.** Clause 3 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in cases of bribery". // Collection of decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan. 1991-2006 years. T.1. - Tashkent: Teacher, 2007. - p. 236;
- 25.** Korzhansky N.I. Qualifications of an investigator of malfeasance. - Volgograd, 1996. - p. 42;
- 26.** Commentary to the Criminal Code of the Russian Federation. // Ed. A.I. Boyko. - Rostov n / D, 1996. - P. 583;
- 27.** Russian criminal law. Special part. // Ed. M.P. Zhuravleva, S.I. Nikulina. - M., 1998. - p. 376;
- 28.** Abdurasulova Q.R., Husainov D.K. Some observations on the object of bribing a servant. // TSUL Bulletin, 2011, No. 6. - Tashkent: TSUL, 2011. - p. 159;
- 29.** Kachmazov O.Kh. Liability for bribery under Russian criminal law. - Vladikavkaz, 2000. - p. 108;
- 30.** Volzhenkin B.V. Official crimes. - M., 2000. - p. 220;
- 31.** Malinovsky I.B. Criminal law struggle against mercenary malfeasance in modern conditions: DSc thesis. - M., 1993. - p. 167;
- 32.** Comments on the Criminal Code of the Republic of Uzbekistan. / Z.G'. G'ulomov, R.A. Zufarov, R.Q. Qabulov and others. - Tashkent: Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, 1997. - p. 277;
- 33.** Luneev V.V. Criminal behavior: motivation, forecasting, prevention. - M., 1980. - p. 53;