

# PROBLEMS OF QUALIFICATION OF CORRUPTION CRIMES COMMITTED IN THE FIELD OF PUBLIC PROCUREMENT

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## Abstract

This scientific article analyzes the problems of qualification of corruption crimes committed in the field of public procurement. The author initially divides the legal methods of combating corruption into two groups - preventive and punitive measures. The article lists the subjects of corruption crimes, including officials, employees of regulatory bodies, civil servants and others is characterized by direct intent and malicious interests. The author lists the main stages of the public procurement process and analyzes the crimes that can be committed at each stage. In particular, bribery, abuse of office, fraud and other crimes were considered. The article classifies corruption crimes into four groups: 1) directly directed against public service; 2) directed against an additional object; 3) directed against an optional object; 4) crimes directed against a similar object. In the article, the author analyzes in detail the objective, subjective and subject of corruption crimes. The final part lists the main features of corruption crimes in the field of public procurement and emphasizes the need to improve law enforcement practice.

**Keywords:** public procurement, corruption, qualification of crime, official, bribery, abuse of power, object of crime, subject of crime, objective side of crime, subjective side of crime.

## Introduction

The fight against corruption in the field of public procurement is not only a problem of criminal law, but also a general legal, social and political problem [1]. Legal methods for preventing, detecting and eliminating corruption are an integral part of the fight against corruption, and they can be divided into two large groups. The first group includes preventive measures aimed at potential corruption and its institutional conditions, and the second group includes punitive measures aimed at combating external manifestations of already existing corruption and clearly corrupt officials (for example, punishment for bribery).

Broad discretionary powers of officials and civil servants in the field of public procurement are rightly recognized as one of the factors determining the prevalence of corruption[2].

The object of the crime in the field of public procurement as a result of a criminal offense is the social relations protected by criminal law against the state power [3], the interests of the civil service and specific features within the framework of crimes against the service in the field of public procurement in local self-government bodies will have.



The interpretation of social relations as connections between people serves as the basis for studying the composition of the object of crimes. Axiological and functional approaches (recognition of goods or their value) developed by scientists to determine the object of crime, although it seems logical that social relations can be interpreted axiologically, may not be fully applicable for the purposes of this study. Procurement to meet state and municipal needs has a clear public law nature, and the criminal impact on the mechanism of their implementation cannot be considered through the categories of cost or profit.

Of particular importance in establishing the signs of corruption crimes committed in the field of public procurement, contrary to the interests of state power, public service and the interests of the provision of services in local self-government bodies, are as follows:

- officials - representatives of the customer;
- officials of supervisory bodies (if they take measures to conceal the traces of the crime by actions committed on the basis of compensation for damage, if they decide that there are no cases of violation of the law when drawing up a court decision, crimes related to corruption may be the subject of a contract);
- state or municipal employees who do not have the characteristics of an official and do not belong to the persons specified in this article.
- officials of legal entities
- participants in purchases carried out to meet state needs;
- officials of organizations executing the state defense order.

A feature that unites them is the presence of a legal opportunity to use their official position (powers or other opportunities arising from their official position) in the process of public procurement.

The subjective side of corruption-related crimes committed against the interests of public authorities, public service and local self-government in the field of public procurement is mainly characterized by direct intent and malicious interest. The consequences of committing crimes with a material component of guilt can be both direct and indirect intent.

To characterize the objective side of these crimes, it is appropriate to use the main stages of public procurement. Since the objective side is a legal sign of a crime and is sufficient to describe the external side of the act, this approach allows for the most detailed study of criminal behavior and its individual changes corresponding to the stages of public procurement.

Taking into account the objective side of the crime (its action or inaction), socially dangerous consequences, the cause-and-effect relationship between them, as well as such features as the time, place and method of committing the crime, it can be concluded that the stages and stages of public procurement play a crucial role in the commission of a crime.

Based on Article 26 of the Law of the Republic of Uzbekistan NoORQ-684 dated 22.04.2021 "On Public Procurement", the following stages of public procurement can be distinguished:

- planning of public procurement;
- procurement procedures;
- conclusion and performance of the contract;
- monitoring of public procurement.

In accordance with the decrees and decisions of the President of the Republic of Uzbekistan, projects included in the Investment Program of the Republic of Uzbekistan and other state



programs are implemented in an accelerated manner (simultaneous design, procurement and construction work). ) on the terms of "commissioning" an increase is allowed.

An analysis of the state of corruption crimes in the field of public procurement shows that it is these persons who commit most of the corruption crimes against the interests of the service. It seems necessary to focus attention on the problems of analysis and qualification of these crimes in articles 205, 209, 210 and 211 of the Criminal Code of the Republic of Uzbekistan.

A bribe can be received by the official representative of the customer both in the form of a bribe and in the form of gratitude (reward) for certain official actions in the interests of the supplier's (contractor's) organization; both for the commission of an action (inaction) by an official using his powers, and for assistance in the commission of an action (inaction) in the interests of the bribe-giver, for general patronage or collusion in the service; for both legal and illegal actions (inaction). In this sense, bribery in the field of public procurement is no different from bribery in other areas of activity.

The peculiarity of bribery in the field of public procurement is that at different stages of procurement, officials - representatives of the customer have different powers, which they use to act (inaction) in their own interests. In most cases, as can be seen from judicial practice, there are cases of bribery for illegal actions related to violations of the current legislation in the field of public procurement, which is another feature of bribery in this area. In cases of receiving a bribe for illegal actions (inaction), it becomes necessary to give a criminal legal assessment of the actions (inaction) of an official in exchange for a bribe. Ignoring the need to qualify the actions of an official taking into account his criminal behavior as a whole leads to a violation of the principle of justice.

Let us consider the features of bribery by the customer's official at different stages of public procurement, taking into account his powers.

The procurement planning stage includes the preparation, approval and maintenance of procurement schedules. The tables are compiled by the client's officials, and they can receive bribes for the following illegal actions (inaction):

- Unfair determination of the purchase price;
- violation of the requirements of the law on mandatory public discussion;
- ignoring the requirements of the law on the regulation of the purchase price, its quality and consumer characteristics;
- justification of the need to purchase such goods, works, services that the client does not need;
- conclusion of a promising contract with a single supplier.

The characteristic of crimes in the analyzed sphere is that such acts are always an agreement between an official acting on behalf of the state and a person interested in his specific behavior. The increased public risk of relevant corrupt behavior is associated not only with the fact that an official or employee is guided by his personal, often malicious, and not official interests in the implementation of public procurement. It consists in the ability of third organizations and individuals to arbitrarily shape the behavior of the specified entity depending only on the established price and its own interests. V.V. Luneev clearly states that "Corruption is not only hidden, but also has the nature of a commission agreement. As a rule, this does not lead to complaints, since the perpetrators benefit from the illegal transaction"[4]. → Career and official



offenses of corrupt behavior or reduced to crimes, makes it completely inappropriate to single them out as an independent category.

The entire complex of corruption-related crimes is proposed to be divided into the following group.

The first group includes corruption-related crimes that encroach on the legitimate interests and reputation of the public service (the main part of corruption-related crimes) - embezzlement or misappropriation committed by abuse of office. (Paragraph "d" of Part 2 of Article 167 of the Criminal Code); fraud committed with the use of official position (paragraph "c" of part three of Article 168 of the Criminal Code); bribery in trade (Article 1929 of the Criminal Code); bribery of an employee of a non-state commercial organization or other non-governmental organization (Article 19210 of the Criminal Code); abuse of power or authority (Article 205 of the Criminal Code); career fraud (Article 209 of the Criminal Code); bribery (Article 210 of the Criminal Code); bribery (Article 211 of the Criminal Code); mediation in bribery (Article 212 of the Criminal Code); giving a bribe to an employee of a state body, an organization with state participation or a self-government body (Article 213 of the Criminal Code); an employee of a state body, an organization with state participation or an employee of a citizens' self-government body illegally obtains material values or has a property interest (Article 214 of the Criminal Code); legalization of proceeds from criminal activity (Article 243 of the Criminal Code); abuse by military officials (superior or other official) of their powers beyond the scope of their powers or inaction of the authorities (Article 301 of the Criminal Code).

The second group includes corruption-related crimes that encroach on the interests of an additional object - violation of the legislation on the organization of elections or referendums, their conduct (Article 146 of the Criminal Code); disclosure of state secrets (Article 162 of the Criminal Code); illegal refusal, non-use or obstruction of the use of benefits and preferences (Article 1926 of the Criminal Code), etc.

As an optional (non-additional) object, the third group includes corruption-related crimes that encroach on the same interests - human trafficking (Article 135, Part 2, Paragraph "k" of the Criminal Code) with the use of official position; Violation of customs legislation (Article 182, Part 2, Clause "d") of the Criminal Code of the Russian Federation was committed with the use of official position, etc.

Corruption-related crimes infringing on the interests of an object belonging to the fourth group - making transactions contrary to the interests of the Republic of Uzbekistan (Article 175 of the Criminal Code); Violation of the procedure for checking the activities of business entities and checking financial and economic activities (Article 1922 of the Criminal Code of the Russian Federation, etc.).

Any direct object of these crimes includes not only specific characteristics of social relations, but also, to a no lesser extent, specific characteristics of harm determined in reality and protected by legal means.

Having indicated the characteristics of the main direct object, it should be noted that the social essence of this crime lies in the encroachment on the main object. In other words, the main immediate goal is to obtain the most valuable social benefit from the point of view of public interest. In addition, such an object should be of decisive importance both for the qualification of the act and for the choice of the place of a particular criminal law norm in the general system



of legislation. The direct additional object of aggression is a social relationship that does not constitute the essence of this crime, but which this crime destroys or endangers together with the main object. not only an important theoretical, but also practical significance for the qualification of an act. This meaning, first of all, consists in the fact that the qualification of an action is carried out only on the basis of the main direct object. Therefore, it is important to single out the main of all the objects violated by this crime.

According to Decision No. 19 of the Plenum of the Supreme Court of the Republic of Uzbekistan of 24.09.1999 "On judicial practice in cases of bribery", criminal liability for bribery is established only in state, cooperative, public and other institutions. enterprises, institutions and organizations. It is explained that they involve employees who perform official duties on a permanent or temporary basis. Subjects are also considered to be officials who do not have the authority to perform appropriate actions in favor of the bribe-giver, but who, in accordance with their position, can take measures to commit these actions for a bribe by another official. of this crime follows [5].

In paragraph 2 of this decision, money, securities, material values, as well as services of a property nature (for example, repair, construction, restoration work, etc.), provided that they are not returned to the bribe taker, are the subject of a bribe.

Socially dangerous consequences in the form of a significant violation of the rights and legitimate interests of citizens or organizations or the legally protected interests of society or the state are defined as an obligatory feature of the objective side of crimes with material content. Any offense in the sphere of state power, including offenses committed by officials, always violates these rights and interests in one way or another. However, whether they have been seriously violated is essentially determined by the law enforcement officer in each specific case of a criminal offence.

Another obligatory feature of the objective aspect of an offense that has a material content is the causal relationship between the official action (inaction) and the socially dangerous consequences that have occurred.

It is obvious that the legislator, if there are valid reasons, should note that the signs of the objective side of this group of crimes served as the basis not only for distinguishing criminal acts, but also in a number of cases for distinguishing them from administrative, disciplinary and civil law acts. law.

#### Objective side of corruption crimes

Corruption crimes	Objective side
Article 205. Abuse of power or official authority	It consists of: a) the behavior of an official in the course of the use of his official powers, contrary to the interests of the service; b) consequences in the form of violation of the rights and legitimate interests of citizens, organizations, society or the state; c) causal connection between action and consequence
Article 167. Embezzlement by misappropriation or embezzlement	Expenses of an official for purposes that do not meet the conditions for receiving budget funds
Article 1841. Violation of budget and estimate staff discipline	Expenses of an official for purposes that do not meet the conditions for receiving budget funds



Article 175. Conclusion of a transaction contrary to the interests of the Republic of Uzbekistan	Conclusion of a knowingly unprofitable transaction, including the import into the territory of the Republic of Uzbekistan of previously used, physically used, obsolete or obsolete equipment or technologies, as well as their installation and implementation, conclusion of a transaction that caused significant damage to the interests of the republic, as well as the issuance of an expert opinion or other document by an official of an authorized state body or other organization, which entailed the conclusion of such a transaction.
Article 210. Bribery	It includes: a) giving a bribe by an official in the form of money, securities, other property or property interests; b) for actions or inaction in favor of the bribe-giver or the persons represented by him/her; c) which is within the official powers of an official or can be exercised by another official as a result of the influence of the guilty person using his official powers; d) including those of the nature of universal patronage (protectionism) or agreements.
Article 209. Official forgery	Consists of intentional distortion or correction.

All the crimes under consideration included in the subject of our study were committed intentionally. In most cases, criminal liability is associated not with the occurrence of certain consequences, but with the actions themselves. On the basis of the above, it should be said that for the majority of criminal offenses classified as corruption, the employee of the internal affairs body does not have to determine the damage caused to the victim.

Indication of the subject of this area is important when determining the composition of corruption crimes committed in the public procurement system. This can be:

- 1) an official;
- 2) a state or municipal employee who is not classified by law as an official;
- 3) a person performing managerial functions in a commercial or other organization
- 4) an employee of a commercial or other organization who is not classified in legal documents as a person performing managerial functions.

According to the thesis, it is absolutely necessary and logical to include ordinary employees among the subjects of corruption, based on the above definition of the essence of corruption, it is an illegal transaction between a representative of the state or a governing body of any level. The crimes considered have their own characteristics, consisting in the commission of these acts:

a) by officials using their official powers. These crimes are characterized, firstly, by the fact that the subject has the status of an official, and secondly, by the fact that the relevant official uses his official powers to commit a crime or commits a crime related to these powers.

b) persons who are not officials, but are related to an official, for example, when transferring the powers of an official or when giving a bribe. (this can be done by any person, but, firstly, it is given to an official, and secondly, for the use by this official of his official powers in the interests of the bribe-giver);

v) in case of contradiction to the interests of the provision of the service in the state service and local self-government bodies, that is, contradicting the goals and objectives of the provision of this service and causing serious damage to its interests.



The subjective aspect of most crimes in this chapter is characterized by a deliberate form of guilt in the form of direct intent or direct and indirect intent.

As part of a number of crimes, the legislator indicated the reasons for the unlawful actions of an official as a mandatory feature of the subjective side.

Therefore, the main criminal law direction of the fight against corruption should be not the improvement of criminal legislation, but the education of the will, desire and ability of law enforcement and judicial bodies to apply it effectively and efficiently.

Summing up the above, the following conclusions can be drawn:

1. The following signs of corruption in the field of public procurement should be highlighted. Such an act: 1) is socially dangerous; 2) provided for by criminal law; 3) expressed in the illegal use of state status in the implementation of purchases for state needs; 3) if it was committed directly intentionally; 4) has a goal – profit.
2. Aims to make a profit in the process of public procurement, using the entire arsenal of opportunities provided by the status of an official.
3. Depending on the goals and objectives of the corrupt official, his actions may be subject to a wide range of deviant actions, including criminal liability.
4. With regard to the majority of criminal offenses classified as corruption, the law enforcement agency is not required to establish the damage caused to the victim, it must be focused on their prevention.

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