

Issues of qualification of the crime of Intermediation in Bribery

Sunnatov Vohid Tashmurodovich,

Doctor of Philosophy (PhD) in Law of Tashkent State University of Law,
ORCID: 0000-0001-7084-555X; E-mail: sunnatovv@mail.ru

Abstract: There are a number of cases that should be paid attention to in the qualification of bribery crimes. In this case, the issue of the subject matter of the crime is particularly noteworthy. In order to carry out justice, it is necessary to correctly qualify the relevant crime in accordance with the specific content of the criminal law and the actual circumstances of the crime. From this point of view, the correct qualification is one of the guarantees of justice in corruption-related criminal cases without deviating from the law. Only if the crime is properly qualified, the sentence issued in the criminal case can be a legal sentence that represents the assessment given on behalf of the state to the crime committed and to the person of the convicted person.

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In order to carry out justice, it is necessary to correctly qualify the relevant crime in accordance with the specific content of the criminal law and the actual circumstances of the crime. From this point of view, the correct qualification is one of the guarantees of justice in corruption-related criminal cases without deviating from the law. Only if the crime is properly qualified, the sentence issued in the criminal case can be a legal sentence that represents the assessment given on behalf of the state to the crime committed and to the person of the convicted person.

There are a number of circumstances that should be taken into account when qualifying bribery crimes. In this case, the issue of the subject matter of the crime is particularly noteworthy.

Most of the investigated crimes, including bribery, are included in the category of crimes. Any benefit of a proprietary nature, including ownership rights and actions with proprietary value, for example, writing a work for free for a fee, repairing a car for free, building a country yard without paying for the work performed, etc., can be an object of bribery in the broadest sense. Money, bonds, savings accounts written in the name or bearer of the bribe taker, other securities, jewelry made of precious metals and stones, valuable industrial goods, sometimes food and alcohol are the usual bribe objects.

If the objects removed from the free circulation of citizens - cutting weapons, drugs, pornographic items were given as a bribe or received by an official, the actions

of the guilty persons should be additionally described according to the set of crimes in accordance with the relevant articles of the Criminal Code.

Corruption crimes are mainly committed personally or through intermediaries for selfish or other interests aimed at obtaining property benefits and, above all, benefits of a property nature. That is, the subjective side of all corruption crimes is characterized by the presence of the right intention, and most crimes by the presence of malice or other interests. Although the law does not directly indicate the existence of greed or other interest as a mandatory sign for all elements of bribery, it follows from a logical interpretation of the provisions of Articles 210-212 of the Criminal Code.

Corruption crimes are committed out of malice or other interests directly indicated in the dispositions of the following articles: Article 209 of the Civil Code - professional fraud; Article 380 of the Criminal Code - abuse of power, deviation from the powers of the authorities or inaction of the authorities. If any act within the scope of these crimes is not committed for selfishness or other interests, such actions, even if they are committed by an official, cannot be considered corruption crimes and cannot be taken into account in statistics.

Subjects of fraud (Article 209) and bribery (Article 210) crimes constitute the main, "traditional" group of subjects of corruption crimes. Although officials are not considered the subjects of the crimes of giving bribes and mediation in receiving bribes, due to the presence of all important signs of corruption in their actions, these subjects should also be included in the list of subjects of corruption crimes (except for the classified mediation committed using official authority).

Thus, most of the norms of the General and Special parts of the Criminal Code of the Republic of Uzbekistan are, so to speak, "ready to serve" in the fight against corruption crimes. At the same time, it would be appropriate if the articles on corruption were combined in a separate chapter of the Special Part. The implementation of this idea, in our opinion, will increase the efficiency of the activities of law enforcement agencies to identify corruption crimes, competently investigate them and review them in courts, direct scientific forces to search for effective ways to find criminological, criminal-legal and criminal-procedural solutions to the problems of fighting corruption.

In addition, in various articles of the Criminal Law, different terms are used to express the position of an official arising from the position he holds: position of office (Articles 167, 1862, 1863, 247, 251, 252, 271 of the Criminal Code), service position (Articles 125, 135, 202, 210, 211, 213, 2441, 2782, 2783, 301), service position (JK 182, 1861) was used.

As long as the subject of this sign, which is intended as an aggravating circumstance, is only an official or a responsible official, he has an official position

and abuses it in the commission of a crime. Therefore, it is appropriate to replace the terms "service position" and "service position" in the text of Articles 135, 182, 1861, 202, 210, 211, 2441, 301 of the Civil Code with "professional position".

It is important to reach an agreement in receiving or giving a bribe in the crime of brokering bribery. Accordingly, reaching an agreement on receiving or giving a bribe means various activities aimed at receiving or giving a bribe. Another form of intermediation in receiving and giving bribes is characterized by the direct receipt of bribes on behalf of interested parties.

Taking into account that the person who acts on the instructions of the recipient or giver of the bribe and directly gives the bribe is an intermediary, it is necessary to distinguish mediation in receiving and giving bribes from receiving and giving bribes.

At this point, in describing the actions of an intermediary under Article 212 of the Criminal Code, it is not important whether he received a reward for his services from the bribe taker or the giver.

A person who organizes the giving or receiving of a bribe, performs various activities aimed at it, or otherwise becomes an assistant in giving or receiving a bribe and at the same time performs intermediary actions, shall be liable for participation in giving or receiving a bribe[3-5]. At this point, it is necessary to solve the question of characterizing the action of the participant based on whose interest, by whom and on whose initiative - bribe giver or receiver, taking into account what his intention is aimed at. In such cases, JK's Article 212 does not require recharacterization.

According to the instructions of the heads of the enterprise, institution, organization or their divisions, the actions of subordinates who understand the essence of these assignments and do not agree with them in advance to perform any action, but only pay bribes, should be evaluated as mediation.

Bribery mediation is a completed crime from the moment only a reasonable part of the bribe is received. In the absence of a bribe, the mediator's actions must be characterized as an attempt to commit mediation.

When an intermediary commits malicious actions in order to receive a reward for his services, his act is defined in part 3 of Article 212 of the Civil Code. It is described by item "a".

At the same time, the reasons for mediation can be different. For example, mediation can be done through kinship or friendship, as well as through threats, etc.

Characterization of mediation with bribery according to the sign of repetition (paragraph "a" of Article 212 of the Criminal Code) requires that this crime be committed at least twice, and that the person has not been convicted for any of them, and that the period of prosecution has not expired.

Giving the same bribe more than once is not considered repeated giving. If a person mediates two bribes at the same time and gives a bribe to one official for the benefit of two bribe givers, it is necessary to evaluate his act as a repetition of mediation in bribe giving.

Part 2 of the article under review provides for bribery by a dangerous recidivist or a person who has previously mediated bribery under Articles 210 and 211 of the Criminal Code ("paragraph b"), as well as committed the crime of receiving or paying a large amount of bribes ("paragraph b") if they give, these signs are also similar to the signs of taking and giving bribes according to their content (see the commentary on Article 211 of the Criminal Code).

Intermediation in bribery by a group of previously agreed officials should be described in accordance with Article 212, Part 2, Clause "v" of the Criminal Code. Intermediation of a bribe given to a group of officials acting in agreement in advance consists in the fact that the perpetrator knows that he is giving a bribe to a group of officials who have already agreed on the order of the bribe giver. Failure to identify this situation excludes the description of the intermediary's actions in accordance with the clause under review.

Intermediary in accepting and giving bribes for a fee is prohibited by JK

Article 212, part 3, item "a" should be described. It does not matter the time of payment (before, after or at the same time).

Intermediation in receiving and giving bribes in a very large amount, that is, when the amount of the bribe is five hundred times the minimum monthly salary or more, should be described according to Article 212, Part 3, Clause "b" of the Criminal Code.

When the intermediary activity in receiving and giving bribes is carried out in the interests of an organized group, this act is Article 212 of the Criminal Code Part 3 is defined according to clause "v".

Intermediary in receiving and giving bribes for the benefit of an organized group means taking a bribe from a bribe giver and giving it to an official who encourages an organized group to commit one or another socially dangerous act or helps to create conditions for their successful execution or to hide the crime committed by them. actions are understood.

From the point of view of determining the general conditions for the qualification of the crime of brokering bribery, it is important to classify the signs of its composition according to the method of their expression by law and the level of stability. Already, in most cases, in the process of qualifying the crime of mediation in bribery, the characteristics of identifying the signs of its composition are related to the same characteristics of these signs.

Another important aspect should be taken into consideration when mediating bribe giving and receiving bribes. In criminal law, giving a gift or delivering it to someone on someone's behalf (intermediary) is not regulated at all, if it does not begin to fulfill the function of a fee according to its nature and function and is not received (and not given) in connection with an existing or expected service. In this regard, one cannot agree with S.G. Kelina's opinion that five times the minimum monthly salary is the limit that allows distinguishing a gift from a bribe in all cases, because a gift differs from a bribe not only by its amount, but also functionally.[1] At the moment, based on this, the author drew the conclusion that "property fee is given to an official without prior agreement for his legal action or inaction in the service, this amount of fee will be decisive for distinguishing between gift and bribe", [1] is also quite correct. not. Because, to distinguish a gift from a bribe, not their amount and whether there is a prior agreement on their giving, but the functional function of both the gift and the illegal fee is important.[2]

In short, it is important to reach an agreement to receive or give a bribe in the crime of brokering a bribe. Accordingly, reaching an agreement on receiving or giving a bribe means various activities aimed at receiving or giving a bribe. Another form of intermediation in receiving and giving bribes is characterized by the direct receipt of bribes on behalf of interested parties.

Taking into account that the person who acts on the instructions of the recipient or giver of the bribe and directly gives the bribe is an intermediary, it is necessary to distinguish mediation in receiving and giving bribes from receiving and giving bribes.

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