

# SUBJECTIVE SIGNS OF COMMERCIAL BRIBERY

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**Аңдатпа.** Бұл зерттеу жұмысының мақсаты коммерциялық сатып алу қылмыстарының субъективтік белгілеріне тоқталу, сонымен қатар осы қылмыстардың алдын алуға қатысты құқық шағармашылық және құқық қолдану сипатындағы іс-шаралар бойынша ұсыныстар енгізу.

**Кілт сөздер:** қылмыс, коммерциялық сатып алу, күрес, заң.

**Резюме.** Целью настоящего исследования является системная характеристика субъективных признаков преступления коммерческого подкупа, а также выработка комплекса предложений правотворческого и правоприменительного характера по совершенствованию борьбы с данным негативным социальным явлением.

**Ключевые слова:** преступление, коммерческий подкуп, борьба, закон.

**Summary.** The purpose of this study is to provide a systematic description of the subjective characteristics of the crime of commercial bribery, as well as to develop a set of proposals of a legal and law enforcement nature to improve the fight against this negative social phenomenon.

**Keywords:** crime, commercial bribery, fight, law.

Official abuses committed by persons classified as management personnel in non-State legal entities (in addition to public organizations) have only become criminalized since 1959. The process of characterizing such acts involves a number of difficulties. This is more due to the need to identify the subject of the crime in question. The essence of commercial bribery is presented in the form of a transaction, the participants of which are two parties. One of them is a person who has an interest in resolving an issue that is related to the organization, including of a non-commercial nature. The second person is the employee of such an organization, who is assigned managerial functions that allow him to solve the problem of the first.

The transaction consists in the transfer of the first person to the address of the second illegal remuneration, for which the second person will perform acts related to authority in the interests of the first person. It can be argued that this crime occurs only with the mandatory "necessary complicity" expressed in the presence of two or more perpetrators with mutual conditionality. In the person of the subject of crimes qualified under Part 1-3 of Article 253 of the Criminal Code, the alleged natural persons, aged from 16 years, may act. Such an age on the date of performance of the act is a prerequisite. If the transfer is made by a person under 16 years of age, the perpetrator will be replaced by the person who led his actions.

Having analyzed parts 4-6 of the article under study, the subject of illegal bribery may be an accused person who is aged 16 or over, exercising a management function on the basis of a commercial or other company. In view of the above, it can be said that the subject can only be a person entrusted with special management functions. The emergence of the concept of persons performing managerial functions took place not so long ago. The characteristic of this special entity is that it has certain obligations, as well as that the legal entity has such employees who, as a result of commercial bribery, must be prosecuted.

It is a prerequisite for the subject to have management responsibilities on a permanent or temporary basis. In addition, such duties may arise as a result of a person's special powers of an organizational, administrative and economic nature unrelated to the activities of the State.

On the part of the legislator, a clear division of organizations into 2 groups was carried out. The basis of classification is their organizational and legal form. On the basis of this, the qualification began to be influenced by the place where the act took place. Such a place was a special sign of the subject, allowing to separate official crimes from official ones. It is quite clear that when designating these persons as subjects of acts, the legislator took into account not the method of establishment of the legal entity and not its form of ownership, but the very essence of the management function. A person engaged in the exercise of managerial functions on the basis of the position of the legislator is the duty holder.

By their sense load, "functions" are a broader definition. Regardless of which organization performs organizational and administrative functions, their essence does not change. Do not use the following description with the following functions: It is only about the form of organization that they are found in the revenge. The following are the same as the functions of the terminology.

Based on the opinion of legislators, managers are those entities that have official duties. The composition of their acts takes into account that official and official duties are different concepts. Management functions are more characteristic of those who lead the organizations. Thus, persons who perform managerial functions are recognized. This is because responsibilities and powers have different meanings. It can be said that the content inherent in such functions performed by officials, as well as the responsibilities of managers, is similar.

The existence of organizational and administrative functions is recognized for each employee of the organization performing activities of an economic nature, having a number of subordinate persons, conducting their activities. Taking into account that organizational and administrative powers arise for persons with subordinates, it can be stated that the subjects of the act can be heads of companies, their deputies, heads of separate departments and divisions. Administrative duties the head of the organization, his deputies, the chief accountant, the auditor, financially-responsible persons, etc. can possess. Administrative values - eto paepropilation and maintenance with material values, organization of their accounting and control, inclusion of dogotopov with dpugimi organisations, etc. [1, page 3-4]

The correctness of the separation of these duties from the function of a professional nature is of particular importance. This indicates that persons who perform a professional or technical function within the organization cannot be the subjects of the offence. Such specialists are not connected with the execution of organizational and administrative directions and administrative and economic management. Having employees have the right to perform acts of legal importance cannot indicate that they are fulfilling these duties. Those workers who carry out medical care, educational activities and other duties of a professional nature cannot be recognized as subjects of acts against official interests. They can become responsible only when they are charged with a wide range of responsibilities related to organizational direction and administrative and economic management by virtue of their position.

They are inherent in chief doctors, deans and their deputies. Do not treat the persons which are carrying out administrative functions - ordinary workers (workers, drivers, waiters, bartenders, secretaries, editors of publishing houses, etc.). Situation does not change also in the presence of the contract on execution of material responsibility. Thus, it is possible to be switched off with a stop toom or a hapdepobshchikoom, no ot etogo oy are not turned on by the faces, which spit out uppaalenical functions, because they do not have to be covered by the property. It is not possible for all the children to be exposed to the radiation of the child in the form of parts 4-6 of article 253 of the Criminal Code. When involving a person in criminal measures, it is necessary to establish his or her powers and the level of their relevance to the duties of an organizational and administrative nature.

It is necessary to understand which of them were abused. This can be established on the basis of the acts by which the person was given such competence. The fact that these functions are performed constantly by the subject indicates that they are direct to him and he himself holds a

certain position. The list of these obligations should be specified in the documents of a constituent nature, which are mandatory for the company. The continuity of execution indicates that the employee has a full-time position in which he or she is employed for a certain time or indefinite period. Those who perform management functions temporarily are employees of substitute managers, due to their leave, illness and other factors. They are not approved for the new post, but only replace the temporarily vacant unit.

The execution of management functions can be based on special powers. In this case, they are not of a one-time nature related to the performance of certain work. Such powers shall be executed in writing. In some cases, a sufficient oral order from a person entitled to do so. For example, in a convoy, one of the drivers will be the organizer of the work of all drivers. It establishes the responsibilities inherent in heads of units. You can describe such authorizations based on their characteristics:

- their execution is carried out without replacement of posts;

- the existence of special powers is established on the basis of a legal act (law, order, power of attorney);

- these powers are ad hoc and short-term.

The legal literature contains a list of permissible grounds by which an oral order is recognized as a method of imputing special powers. I believe that such a method is permissible only in those situations that involve the need to immediately attribute to the person such powers, which may be related to the occurrence of exceptional events

It should not be forgotten that the documentation of credentials should be carried out within a short time frame. After examining the scope of the powers specified in the document on the attribution of them to a person, it can be concluded whether he or she can act as a subject of the act. The practice shows that in most companies, especially non-governmental companies, the rules on case management are rarely observed, which is reflected in the absence of orders and other legally significant documents. Their absence does not make it possible to establish the real scope of responsibilities of persons. Certain difficulties also arise during the establishment of the status of the employee, for whom management functionality is periodically assigned.

The post-post functions are taken by A.N.Agybais, the post-post functions are taken, the post-post functions are taken by the post-post are taken, the post-post functions are taken out by the post-post are not taken out by the post-post, Therefore receiving, even illegal (for example, besides cash desk of the organization), remunerations for teaching is not crime against the interests of service in commercial and other organizations, a for the exposed assessment - contains signs of receiving commercial bribery.

It should be noted that it concerns not only ordinary teachers: the rector of higher education institution, when directs it, undoubtedly, carries out administrative functions, but ceases to be the manager when reads lectures [2, page 97]. The category of persons considered should and may be classified as managers, provided that their receipt of bribery is subject to the performance of their functions. If bribery is not related to the exercise of such powers, it cannot be qualified under the article under study. More detailed consideration should be given to the issue of the recognition of medical professionals as subjects of the act. These include those of its employees who are in the status of heads of the institutions concerned. Special functions are assigned to the category of employees in question by law.

Provided that the holder has the right to take legally significant actions, which are expressed in legal consequences, it can be said that he has such functional capacity, which is recognized as managerial and subject to appropriate qualification. It should be noted that in the event of a specific case, the investigator and the court must determine the legal grounds on which he performs certain functions. Persons exercising managerial functions on the basis of the organizations from which the proposal to achieve the desired action was made against the subordinate by obtaining property benefits are subject to liability under the article of the Criminal Code under study, as the executor.

The employee who consents to such actions will become an accomplice. The legal literature contains the view that both the manager and those persons who are closely related to him should be considered as the recipient of bribery. The reason for this is the fact that such a manager can

represent them in his own person. The concept of a close relative is presented in the Law of the Republic of Kazakhstan "On the action of corruption." The act was adopted 18.11.2015. Proceeding from its provisions, close relationship is available between the child and parents, adoptive parents, full and not full brothers (sisters), the grandfather (grandma), grandsons [3]. The characteristics include brother (sister), parents and children of the spouse. Illegally transferred material remuneration, as well as its receipt, is similar to the crime of giving (receiving) bribes.

Article 366 of the Criminal Code provides for the possibility of receiving bribes by authorized persons not only to meet personal needs, but also to transfer them to those whom they represent. The process of satisfying the property interest of those persons who are close to the manager implies his consent to perform a certain type of action. It follows from this context that for the manager the interests of his owners are similar to his own. It absolutely doesn't matter whether the subject of bribery will be handed over to relatives or whether it will remain with the manager. It can be assumed that close persons of the manager can become possible recipients of the subject.

The fact that the interests of the manager will be satisfied as a result of the heating of a third person cannot be relevant in the exercise of qualifications. Due to the type, the transfer of bribery can also be considered through his relatives. On the basis of this, it makes sense to supplement article 253 of the Criminal Code (parts 1, 4) with the words "persons represented by them." As a result, the scope in which criminal law was applied could be expanded. The third component of bribery is the place where the person performs his duties. This can occur in the organization itself, regardless of its form of ownership, except for those more than 50% owned by the State. Article 6 of the Constitution establishes the forms of ownership that can be used in the establishment of enterprises. This applies to public and private companies, organizations based on collective property, as well as the property of a public association. A mixed form can also be used to create an economic entity.

On the basis of article 34 of the Civil Code, legal entities act for the purpose of generating income from the activities that are the main ones for them. There may also be entities that are not aimed at obtaining it, and there is no principle for them to share net income among the persons involved. Commercial organizations can only be state enterprises, economic associations, joint-stock companies, production cooperatives. Taking into account article 102 of the Civil Code, the following provisions shall apply:

- 1) Maintenance activities;
- 2) The present invention includes the following:

It is eliminated, liquidated and peopgated by the suspension of opgana. Ophudaprno go ophodpyutiya is a substance, it is covered with ophodotchetten. A business-based property is responsible for the part equal to its property. The main document of such a sub-project is the charter, which must be approved by the founder. The main property is the property, which is a public property. Posennoia is related to the suspension of Ppositva PK or local exportnogo opgana. The instructive documentom of casennogo is ego ustav, which is used by the teacher.

Treat the commercial organizations: economic association (Article 58 of the Civil Code), joint-stock society (Article 85 of the Civil Code), production cooperative (Article 96 of the Civil Code). The legislator does not limit legal capacity of the commercial organizations only to those types of activity which bring profit. According to Paragraph 1 of Article 49 Russian Federation Group (Paragraph 1 of Article 35 of PK Group) they have the right to carry out the any kinds of activity which are not forbidden by the law. Activity of the commercial organizations can be directed also to achievement of socially useful benefits, implementation of certain social, charitable, scientific and other similar functions.

Under "other organizations" proceeding from systematic interpretation of the legislation it is necessary to understand the non-profit organizations. The non-profit organization which is not body of the state power or local self-government in compliance with Part 3 of Article 34 of the Civil Code can be created in a form of establishment, public association, joint-stock society, consumer cooperative, public fund, religious association, association of legal persons in a form

of association (union) and in other form provided by legislative acts (Article 6 of the Law of PK "O non-profit organizations").

Treat the non-profit organizations: establishment which is subdivided into state and private (articles. 9-10 Zachone PK "O noncompical opganisations") [4]. In the context of article 11 of the Convention, opganization, which is part of the project, is a social association aimed at achieving the goals established by special legislation. Parties of a political nature, trade unions, etc., act in the form of public associations. The associations are voluntary. They include the following:

- non-profit joint-stock society,
- Totpebenitskoopepapaent;

In dependence on the list of founders, an also from the sphere of activity can be created: private, corporate, public, state funds (Article 13). nekommercheskiye the organizations can voluntarily unite in religious association (Article 15), associations (unions) (Article 18). The non-profit organizations can be formed also in other organizationally-pravovoy to a form which treat: notarial chambers, boards of lawyers, torgovo-promyshlenny chambers, professional auditor organizations, cooperatives of owners of apartments (COA) and other non-profit organizations (Article 17).

If the extraction of the product has an ophanisium, then the ophanisium is an ophanisium. If opganisia nachelena na realisation of non-sexual activity, it is related to some opganisacia. Article 253 of the Criminal Code, it should be taken into account that liability for this act occurs only in respect of those persons who are holders of certain powers, provided that they are justified by employment in a public or private organization.

Even if the organization had State status, it should not be the holder of State or municipal authority, and the level of State participation should not be higher than 50%. The concept of an employee performing his/her activities within the framework of a commercial/non-profit structure defines as such a citizen exercising, on the basis of a legislative act, a constituent document, a special provision, an employment contract, the duties assumed by his/her position.

Regardless of the status of the employee and the organization in which it works his activity has to be carried out according to the labor law. In Paragraph 19 of Article 3 the concept "administrative functions" is treated by UK much more widely, than organizationally-rasporiyaditelnye or administrative economic functions, assigning more volume circle of powers to this person. Persons who are managers in those organizations in which the state share exceeds 50% fall under a peculiar dependence on that share which the state has in its capital. Na our look, not rational is the fact that the legislator made a binding to a share of the state participation in these organizations, a component more than fifty percent. It is impossible to agree, according to us, with the legislator's position.

First, why the legislator specifies that in the authorized capital the share of the state has to be exactly more than fifty percent. In case for recognition by the subject of act that fact in what organization the person performs functions of management does not matter, criminal responsibility cannot be tied to a certain share of participation of the state in this organization.

Secondly, if the share of the state in the authorized capital of which is less than fifty percent, then under the law the person cannot be the subject of the crime provided by Article 253 UK that reduces the sphere of application of the criminal law. Considering it, it is possible to speak about inexpediency of application to managers of the words "or the organization where the state share is not higher than 50%" therefore it can be excluded. For uniform application of the criminal law, we believe that the Supreme Court of PK is obliged to issue the resolution on the basis of which those questions which arise during qualification of the acts made with violation of interest of service will be explained. Existence of such explanations

will capture also those questions which concern acts about commercial bribery.

Considering the subjective side, it can be noted that each of the sides of the act is guilty of direct intent. In addition, there is a special purpose. The wilfulness of bribery is determined on the basis that each participant has an understanding of what the illicit remuneration is for. The expression of intent is disclosed in that the commission of the said act requires mutual complicity. Manifestations of direct intent occur both when receiving remuneration and when

performing actions in which the giving person is interested. Persons are fully aware that the illegal transfer of the remuneration in question to the manager is related to the need to achieve the objective of encouraging him to commit an act available to him by virtue of his official position [5, page 32-35].

The wording of the application of part 1 of the article under study contains an understanding of intent that covers the fact that persons are aware that their actions are unlawful. Such wrongfulness is doubled. Thus, the perpetrators must have an understanding of the public danger and wrongfulness of the act, and must understand that the transfer of bribery itself is illegal. The absence of such grounds, even in the event of the actual transfer of money or property, will not be recognized as the subject of bribery and will lead to the initiation of proceedings under the relevant article. On the part of the person performing the transmission, there must be an understanding that the subject who receives it understands what the transmission is for.

In situations where there is a perception on the part of the transferor that he is legally paying for any services, his actions will not be considered bribery, which, accordingly, does not entail the responsibility of the manager. The buyer of bribery has a vested motive expressed in obtaining property benefits. The bribery also has a motive that relates to the exercise of his interest. In the absence of such motives, there is no criminal act. The intention to transfer certain property to the person being bribed, and on the part of the recipient to expect such a calculation, should occur even before the actual beginning of the crime. Such intent may arise at the time of collusion between the parties.

This conspiracy has a number of significant differences from the types of collusion that may arise between several bribery entities, which will indicate the qualification of the act as a group one based on prior conspiracy. There may be both intent and negligence on the part of the parties with regard to consequences characterized by public danger, which is related to the possible awareness of the negative consequences and their assumption, in view of the indifferent attitude. Some consequences may not be conscious or even foreseeable at all.

The transferor aims to encourage the recipient to commit the act necessary for him or her, provided that such recipient, by virtue of his or her own official authority, has a real opportunity to do so. The objective of the lyca is to radiate personal matepiial waste. The closing point is also able to see the target, no the nego can be and the target.

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