

**A. ORYNBEKOV** Master of Law, Senior Researcher at the Research Institute of Economic and Legal Research

**Y. ABIYEV** Master of Law, Senior Lecturer of the Department of General Legal and Special Disciplines

**N. YELEUBEKOVA** Master of Law, Lecturer of the Department of General Legal and Special Disciplines

*Karaganda University of Kazpotrebsoyuz, Republic of Kazakhstan*

## **PROBLEMS OF QUALIFICATION OF RECEIVING A BRIBE BY EXTORTION UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN**

**Annotation.** This article discusses the theoretical issues of qualification of receiving a bribe by extortion, provided for in paragraph 1 of Part 3 of Article 366 of the Criminal Code of the Republic of Kazakhstan dated July 3, 2014. A number of authors involved in the study of this problem in Kazakhstan are indicated. Based on the unresolved problems, the authors put forward a proposal aimed at improving the national anti-corruption and criminal legislation.

**Keywords:** anti-corruption, receiving a bribe, extortion of a bribe, corruption criminal offenses

**Problem statement.** In accordance with the plan for the implementation of five institutional reforms, the leader of our nation N.A. Nazarbayev adopted the "Plan of the Nation – 100 steps", which is a program document for all citizens of Kazakhstan, which shows the directions (steps) for the radical transformation of our society and state in the modern period. To date, there are unknown methods in

pedagogy and management that would guarantee that a civil servant would be an ideal official.

Unlike developed countries with a low level of corruption (Denmark, New Zealand, Finland, Sweden, Switzerland, Singapore, etc.), the Kazakh elite and ordinary citizens did not realize that corruption is a global evil that harms not only all levels of public authorities, but also significantly reduces the pace of economic and social development. The zero tolerance attitude towards corruption has not been formed, which reduces the effectiveness of measures to counteract this destructive phenomenon.

Today, in the mass consciousness, corruption is perceived extremely simplistically, as a two-way process of a paid exchange. However, the essence of corruption consists in the defeat of the established rules of communication in all spheres of human relations, violating not only the constitutional foundations of the state structure, but also destabilizing the system of market relations. As a result, it is the moral education of the individual that begins to play a major role in combating corruption and the neutralization of legal nihilism in society becomes a key factor in increasing the effectiveness of the state's anti-corruption policy.

For example, the Chairman of the Anti-Corruption Agency of the Republic of Kazakhstan informed the Head of State about the implementation of anti-corruption initiatives and the progress of the country in the Corruption Perception Index (Transparency International). According to the Chairman of the Agency, thanks to the consistently carried out political modernization and anti-corruption reforms, Kazakhstan scored 38 points in this rating in 2020 for the first time, which allowed it to move higher by 19 positions and take 94th place. Kassym-Jomart Tokayev positively assessed the economic effect of the Agency's work on compensation for damage and prevention of irrational expenses, amounting to 95.6 billion tenge, and also noted a decrease in corruption crimes by 5%. The Head of State focused on the need for high-quality implementation of anti-corruption innovations and continued modernization of industry legislation in accordance with OECD and GRECO standards, including on the issue of introducing liability for non-compliance of

officials' expenses with their incomes. The President instructed the Agency to continue preventive and preventive work in constructive interaction with civil society, emphasizing the importance of unshakable observance of the principle of inevitability of punishment [1].

The solution of strategic tasks for further economic growth, improving the welfare of the people, and the realization of the ambitious task of becoming one of the thirty most competitive countries in the world requires the speedy adoption of new systemic measures based on the modernization of the anti-corruption policy of the state and increasing the role of civil society institutions in its implementation, which would minimize corruption manifestations as much as possible. In this regard, December 26, 2014 The Decree of the President of the Republic of Kazakhstan No. 986 approved the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025, and also adopted the laws of the Republic of Kazakhstan: "On Combating Corruption" dated November 18, 2015 and "On Public Service" dated November 23, 2015, etc.

Considering that a number of corruption risks are associated with the fact that the existing institutions of a democratic society are being replaced by their imitation, it is advisable to develop new anti-corruption legislation regulating lobbying, identification of beneficial owners of assets and legal protection of applicants from corruption, and it is also necessary to join the Council of Europe Convention on Civil Liability for Corruption by implementing appropriate amendments to the anti-corruption and criminal legislation of our country.

Analysis of the latest research and publications. The works of A.N. Agybaev [2-3], E.O. Alaukhanov [4], M.A. Arystanbekov [5, pp.20-23], I.Sh. Borchashvili [6], R.S. Ibragimov [7], E.V. Kurbatov [8], M.S. Narikbaev [9], M.O. Nukenov [10], D.K. Nurpeisov [11], M.A. Sarsembayev [12, p.25], S.M. Rakhmetov [13-16], etc.

A sufficient number of dissertations have been defended on the problem of combating corruption and bribery in the last decade in Kazakhstan, to which the following works should be referred: S.Z. Abdrakhmanov [17]; R.M. Abdrashev [18];

S.S. Akylbekov [19]; E.S. Kemali [20]; Ch.D. Kenzhetaev [21]; E.V. Kurbatov [22]; A.B. Skakov [23, p.434]; M.O. Nukenov [24]; E.Z. Turgumbayev [25] and others.

The listed works provide for criminal-legal and criminological problems of combating corruption, methods of disclosure and investigation of bribery, as well as other corruption and other crimes against the interests of the civil service and public administration, which were considered on the basis of outdated criminal legislation in force before January 1, 2015. In this regard, when studying the issues of combating corruption, especially bribery, as well as its prevention, the main emphasis in this article is placed on the results obtained by the above authors and taking into account the provisions of the current criminal and anti-corruption legislation.

**Highlighting previously unsolved parts of a common problem.** Despite the wide range of organizational, legal and economic mechanisms for combating corruption created in Kazakhstan, unresolved problems remain in the implementation of the state's anti-corruption policy. Insufficient development of an effective set of anti-corruption measures complicates the implementation of the state policy of countering corruption-related offenses in all spheres of society, which is an important and urgent task of our state that requires attention and support from all participants in anti-corruption activities.

At the same time, the implementation of these directions faces a number of the following systemic problems:

- 1) imperfection of anti-corruption legislation;
- 2) imitation of anti-corruption activities at the level of state authorities and local self-government bodies;
- 3) inefficient mechanism of interaction between civil society institutions and public authorities;
- 4) adoption of laws restricting the activities of public associations;
- 5) lack of motivation among citizens and subjective political consciousness regarding the fight against corruption;
- 6) limited financial resources for the implementation of anti-corruption projects.

Taking into account the above, in order to increase the effectiveness of combating corruption and bribery in our state, state authorities and local governments, in close cooperation with representatives of business, education, science, public organizations and the civil society alliance, need to focus on solving the following tasks:

1) eliminate gaps between the anti-corruption legislation being developed and its practical application in state and local government bodies;

2) eliminate discrepancies in the legal and judicial systems when interpreting the norms of the criminal law, which will reduce the possibility of evading responsibility of both those who received a bribe and those who gave it, including through anti-corruption expertise of regulatory legal acts (RLA);

3) to develop the institute of anti-corruption expertise of the RLA, as well as to form special structures (profile commissions) that, based on appeals and their own checks, will confirm/refute the fact of a conflict of interest (giving-receiving a bribe);

4) introduce uniform, not departmental, statistics of corruption-related offenses, as well as public lists of civil servants caught in corruption offenses, involved in a conflict of interests and disqualified on this basis. Based on verified knowledge of the laws, it is necessary to form a holistic picture of all corruption manifestations in Kazakhstan, as well as to make expert assessments of the effectiveness of the anti-corruption system;

5) to work out quick and unavoidable mechanisms for the confiscation of property from both civil servants and their relatives in the case of proven corruption offenses, to consider the legal possibilities of applying to all convicted corrupt officials a ban on probation, amnesty and parole, the statute of limitations for criminal prosecution, as well as a lifetime ban on the right to hold positions in public service [26];

6) to develop anti-corruption mechanisms and tools in the context of the activation of public-private partnership;

7) to activate the influence of the media at all levels in the field of combating corruption, to ensure their participation in the dissemination of anti-corruption

propaganda (posters, social advertising, methodological recommendations, cases from practice, etc.);

8) to form an anti-corruption culture in society with the active participation of civil society institutions;

9) to intensify work with educational organizations in the direction not only of developing, adapting and distributing methodological tools on the facts of bribery, but also on conducting scientific research and activities in the field of combating corruption;

10) develop and implement anti-corruption standards in the education system to ensure the existence of a unified system of prohibitions, restrictions and requirements that ensure the prevention of bribery in educational organizations;

11) to explore the possibilities and ensure the high-quality implementation of international standards, regulations and other anti-corruption practices in all spheres of society's development into Kazakhstan's investigative and judicial practice;

12) to carry out on an ongoing basis the training of competent personnel who could apply measures of public anti-corruption control, possessing the necessary human qualities, authority and professionalism.

**The purpose of the study.** The aim is to develop a well-founded system of effective legal measures aimed at improving the current criminal and anti-corruption legislation, to develop reasoned proposals aimed at improving the effectiveness of law enforcement practices against corruption, bribery and the development of organizational and preventive measures to prevent and prevent this negative social phenomenon.

**The main results of the study.** The most common type of specially qualified bribery is the commission of this crime by extortion of a bribe (paragraph "1" of Part 3 of Article 366 of the Criminal Code of the Republic of Kazakhstan dated July 3, 2014).

The Supreme Court of the Republic of Kazakhstan, in paragraph 11 of the regulatory decree "On the practice of considering certain corruption crimes" dated November 27, 2015 No. 8, attributed to a particularly dangerous manifestation of

corruption-related crimes cases of bribery by extortion, in order to obtain material and other benefits and advantages.

An error in establishing the presence or absence of a sign of extortion of a bribe entails serious legal consequences concerning the responsibility not only of the recipient of the bribe, but also of the bribe giver, since in accordance with Note 2 to Article 367 of the Criminal Code of the Republic of Kazakhstan, the person who gave a bribe as a result of extortion must necessarily be released from criminal liability for this crime. If a particularly qualifying sign of extortion of a bribe is mistakenly attributed to the subject of the crime who received the bribe, then there will be not only an illegal increase in the responsibility of this person, but also an illegal exemption from criminal liability of the bribe taker. On the contrary, the erroneous failure to extort a bribe will entail mitigation of the responsibility of the recipient of the bribe and illegal criminal prosecution of the person who gave the bribe.

In the regulatory resolution of the Supreme Court of the Republic of Kazakhstan "On the practice of considering certain corruption crimes" dated November 27, 2015 No. 8, extortion means a person's demand for a bribe under threat of committing actions that may harm the legitimate interests of the bribe-giver or persons represented by him, or the deliberate creation of such conditions under which he is forced to give a bribe in order to prevent harmful consequences for law-enforcement interests. According to paragraph 1) of the third part of Article 366 of the Criminal Code (receiving a bribe by extortion), the actions of the perpetrator should be qualified regardless of whether he had the opportunity to carry out the specified threat, if the person who handed over the bribe had grounds to really fear the implementation of this threat. It is also necessary to qualify the receipt of a bribe in the case when extortion with the consent or at the direction of the subject of the crime was carried out by another person who is not the recipient of the bribe.

It follows from this definition that extortion of a bribe can be committed in two ways. Firstly, the subject of the crime openly demands a bribe, threatening otherwise to commit any actions that would violate the legitimate interests of the bribe taker or not to commit a lawful action in which this person is interested. Secondly, the subject

of the crime puts the bribe-giver in such conditions under which he is forced to give a bribe.

As we can see, the fixed provisions of the highest judicial instance are in solidarity with the legislator that the illegal actions of the extortionist should be considered as criminal behavior of an ordinary bribe recipient, however complicated by a special method of receiving a bribe – by extortion.

The deliberate placing of a bribe-giver in conditions under which he is forced to give a bribe is understood as refraining from performing legal actions in the interests of the future bribe-giver. At the same time, the subject of the crime (the recipient of the bribe) deliberately delays the commission of actions for the purpose of extorting a bribe (deliberate delay in the issuance of wages, refusal to transfer to another job on far-fetched pretexts, etc.).

Extortion should be considered a deliberate violation by the subject of the crime of the legitimate interests of the future bribe taker in order to induce him to give a bribe. The objective side of receiving a bribe by extortion consists in forcing a private person (the bribe-giver) to transfer money or other material values (or property benefits).

Undoubtedly, what is common to all types of receiving a bribe is, firstly, the source of the acquisition by the subject of the crime of the property value of a private person and, secondly, the mechanism of the relationship between the bribe-giver and the bribe-taker, i.e. "giving a bribe + receiving a bribe". Nevertheless, with the usual receipt of a bribe (Part 1 of Article 366 of the Criminal Code of the Republic of Kazakhstan), the criminal law pursues the criminal sale by the subject of the crime of his legal status, consisting of the rights and duties of a civil servant entrusted to him. The essence of establishing the punishability of extortion of a bribe (bribe recipient) is to protect a private person from illegal actions of a representative of state power.

In cases provided for in Part 1 of Article 366 of the Criminal Code of the Republic of Kazakhstan, the perpetrator receives a bribe for committing abuse of office ("reason"). The bribe-taker performs actions in favor of the bribe-giver, thereby violating, in the interests of the criminal law prescribing, the duty of public



service. A private person in such cases hands a bribe to the subject of the crime voluntarily. It must be assumed that a bribe in this case is, in the eyes of the bribe-giver, an illegal means of satisfying his needs or the interests of the persons represented by him.

The other should be observed when extorting a bribe. The extortionist (bribe-taker), through abuse of his official position, influences the will of the extortionist and forces the latter to transfer property values to him. A private person gives a bribe not for the commission of abuse in the service, but in order to avoid abuse by a representative of state power, i.e., although for actions in office, but in order to prevent another action, the implementation of which is threatened by the bribe recipient ("reason"). A private person here is interested in the law-compliant behavior of the subject of the crime, therefore, the property value is handed over to the extortionist forcibly, under duress, and not voluntarily. A bribe from the point of view of a private person acts as a means of protection against the "attack" of the extortionist – the subject of this crime.

Thus, firstly, extortion of a bribe is a qualifying sign of the usual composition of receiving a bribe. This is indicated by the fact that extortion of a bribe must be considered in conjunction with the giving of a bribe, and this is the specifics of the usual ("contractual") varieties of receiving a bribe. The demand to give a bribe under threat of committing actions or putting a private person in unfavorable conditions for him is, as you can see, not an independent sign, but a derivative of the behavior of the bribe-giver, which again emphasizes the "contractual" nature of the relationship between the bribe-giver and the bribe-taker. Secondly, extortion of a bribe is regarded as a circumstance that exempts the bribe-giver from criminal liability (paragraph 2 of the note to Article 367 of the Criminal Code of the Republic of Kazakhstan). This is evidenced by the sign of extortion of a bribe - the delivery of the subject of a bribe in connection with the protection of a private person only legitimate interests.

On the one hand, the subject receives a bribe through the use of blackmail, using the powers entrusted to him by the state authorities. On the other hand, a private person, clearly yielding to the threat, gives away property values in order for

the subject of the crime not to carry out the threat. But the behavior of the bribe-giver preceding the extortion of a bribe is illegal and, as one might guess, this unconditionally leads to the conclusion that the person who gave the bribe was obviously interested in the transfer of property values.

Legal experts know that a criminal case is initiated on the fact that "the subject of the crime demands the subject of a bribe." First of all, the illegal activity of the bribe-taker is taken into account. It is the criminal actions of the bribe extortionist that form the basis of the indictment. Consequently, the whole logic of constructing a system of evidence in the indictment is aimed at confirming the actions of the bribe recipient - the actions of the bribe extortionist.

A citizen (a bribe-taker), as a rule, appeals to law enforcement agencies about the abuse of the subject of a crime against him, state power, forcing him to give his own money or other property. The bribe-giver is outraged by the illegality of the actions of a representative of state power, and not the illegality of his own actions (violation of trade rules, driving drunk, etc.).

The theory of criminal law and law enforcement practice came to the conclusion that the essence of extortion of a bribe is not in the form in which the threat is clothed, but in the illegal influence of the extortionist on the will of the extortionist - in an effort to cause fear or a similar feeling in the victim and thereby incline him to behavior that brings property benefits to the guilty (bribe recipient) [27, pp. 121-123].

In conclusion, it should be emphasized that the danger of extortion of a bribe is not so much in the demand for the subject of the bribe, as in the actions by which it is supported. The culprit (the recipient of the bribe) forces the person to give a bribe, threatening to violate the rights and interests of the latter, which are protected by criminal law. Threatening to fulfill one's official duty is not extortion of a bribe.

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