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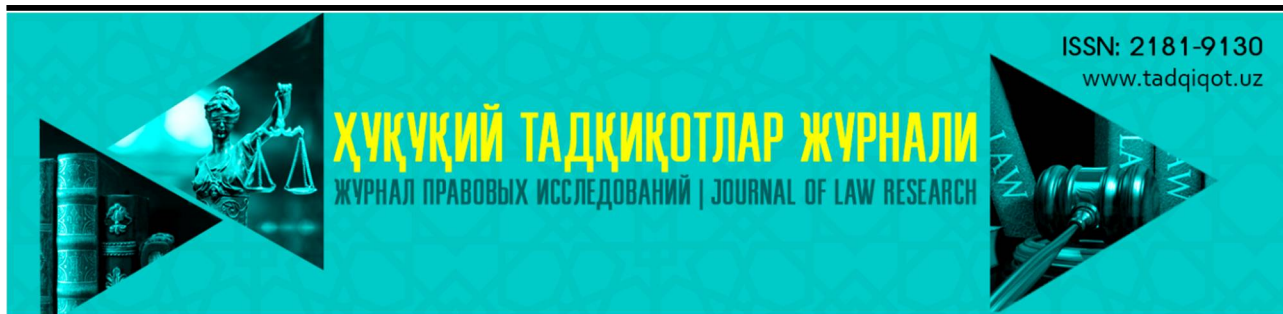
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CRIMINAL AND LEGAL CHARACTERISTICS OF RECEIVING A BRIBE IN FOREIGN LEGISLATION

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ANNOTATION

The definition and implementation of state policy in combating corruption have become critical global priorities. Adopting international standards, such as those established by the United Nations, the Organisation for Economic Co-operation and Development, and the Council of Europe, enhances national legal frameworks and fosters global cooperation. The United Nations Convention against Corruption (UNCAC) serves as a cornerstone for anti-corruption efforts, outlining measures for criminalization, prevention, and prosecution. Key provisions address bribery, abuse of power, illicit enrichment, and money laundering. By aligning domestic legislation with international norms, states strengthen their capacity to combat corruption and uphold transparency and justice worldwide.

Keywords: combating corruption, UNCAC, bribery, abuse of power, illicit enrichment, and money laundering.

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УГОЛОВНО-ПРАВОВАЯ ХАРАКТЕРИСТИКА ПОЛУЧЕНИЯ ВЗЯТКИ В ЗАРУБЕЖНОМ ЗАКОНОДАТЕЛЬСТВЕ

АННОТАЦИЯ

Определение и реализация государственной политики в области борьбы с коррупцией стали важнейшими глобальными приоритетами. Принятие международных стандартов, таких как стандарты, установленные Организацией Объединенных Наций, Организацией экономического сотрудничества и развития и Советом Европы, укрепляет национальную правовую базу и способствует глобальному сотрудничеству. Конвенция Организации

Объединенных Наций против коррупции (КПК ООН) служит краеугольным камнем усилий по борьбе с коррупцией, определяя меры по криминализации, предупреждению и судебному преследованию. Основные положения касаются взяточничества, злоупотребления властью, незаконного обогащения и отмывания денег. Приводя внутреннее законодательство в соответствие с международными нормами, государства укрепляют свой потенциал в борьбе с коррупцией и поддерживают прозрачность и правосудие во всем мире.

Ключевые слова: борьба с коррупцией, UNCAC, взяточничество, злоупотребление властью, незаконное обогащение и отмывание денег.

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ХОРИЖИЙ ҚОНУНЧИЛИКДА ПОРА ОЛИШНИНГ ЖИНОИЙ-ҲУҚУҚИЙ ТАВСИФИ

АННОТАЦИЯ

Коррупцияга қарши курашиш соҳасидаги давлат сиёсатини белгилаш ва амалга ошириш энг муҳим глобал устувор вазифаларга айланди. Бирлашган Миллатлар Ташкилоти Иқтисодий ҳамкорлик ва тараққиёт ташкилоти ва Европа Кенгаши томонидан ўрнатилган стандартлар каби халқаро стандартларни қабул қилиш миллий ҳуқуқий базани мустаҳкамлайди ва глобал ҳамкорликни ривожлантиради. Бирлашган Миллатлар Ташкилотининг Коррупцияга қарши Конвенцияси (БМТКҚК) коррупцияга қарши курашнинг асоси бўлиб хизмат қилади, жиноий жавобгарликка тортиш, олдини олиш ва жиноий жавобгарликка тортиш чораларини белгилайди. Асосий қоидалар порахўрлик, ҳокимиятни суиистеъмол қилиш, ноқонуний бойиш ва пул ювиш билан боғлиқ. Ички қонунчиликни халқаро меъёрларга мувофиқлаштириб, давлатлар коррупцияга қарши курашда ўз салоҳиятини мустаҳкамламоқда ва бутун дунё бўйлаб шаффофлик ва адолатни қўллаб-қувватламоқда.

Ключевые слова: коррупцияга қарши кураш, UNCAC, порахўрлик, ҳокимиятни суиистеъмол қилиш, ноқонуний бойлик ортириш, пул ювиш.

The definition and implementation of state policy in combating corruption are becoming key tasks in modern society. An essential element of this process is the introduction and adherence to international standards based on the experience of advanced countries and the principles of universal recognition of international rights. This not only enhances the effectiveness of national legislation but also creates a more efficient system for countering corruption on a global level.

International standards established within the framework of the United Nations, the Organisation for Economic Co-operation and Development, and the Council of Europe represent universal and regional documents developed as a result of international conventions and resolutions. Among the key standards, it is important to highlight the United Nations Convention against Corruption (UNCAC) of 2003, the International Code of Conduct for Public Officials of 1996, the United Nations Convention against Transnational Organized Crime of 2000, and Resolution 55/61 (2001) on "Effective International Legal Instruments to Combat Corruption." These standards provide a crucial foundation for national efforts in combating corruption.

International standards related to the criminal prosecution of corruption, such as the UNCAC, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Council of Europe Conventions on Corruption, provide a comprehensive framework for the criminalization of corrupt practices. These conventions cover various aspects of anti-corruption measures, including cooperation in criminal matters and liability for foreign officials in international transactions. They establish clear norms and procedures for preventing, investigating,

and prosecuting individuals involved in corruption on a global scale.

It is important to note that most of the provisions established in the Council of Europe and UN Conventions on Corruption are interconnected and largely complement each other. Thus, the application of the Council of Europe's anti-corruption standards aligns harmoniously with the UN international conventions on the subject. The norms of the UNCAC and the Council of Europe Convention on Corruption serve as valuable examples for addressing issues related to the criminalization and prevention of corruption offenses.

The United Nations Convention against Corruption represents a fundamental document in the field of global anti-corruption efforts. This international instrument places significant emphasis on the criminalization of corruption offenses, making it a cornerstone of anti-corruption strategies worldwide. The UNCAC explicitly defines the obligations of states in prosecuting corruption-related crimes. Articles 15-25 of Chapter III ("Criminalization and Law Enforcement") establish legal norms for the criminalization of various corrupt practices, recognizing them as crimes and prescribing their prosecution in accordance with the law[1].

The process of criminalization implies the establishment of conditions under which the following acts are recognized as crimes:

- legalization of income by government officials (Clause 15);
- granting benefits to foreign officials and officials of international public organizations (Clause 16, Part 1);
- issuance of vouchers and certificates for property that has been unlawfully acquired or misused for dishonest purposes by a government official (Clause 17);
- legalization of income obtained through social influence (Clause 23);
- creating obstacles to fair judicial proceedings (Clause 25).

Consequently, the criminalization of the aforementioned offenses plays a fundamental role in effective global cooperation in combating corruption, and its mandatory implementation is an integral part of the global effort to fight corruption.

In turn, the UN Convention explicitly regulates the criminalization of various corruption-related offenses, within which the host state has discretionary authority. Such offenses include, for example:

- receiving bribes by government officials, officials of international public organizations, and officials of foreign states and international public organizations (Article 16, Part 2);
- abuse of authority (Article 18);
- abuse of official position (Article 19);
- discrimination in the non-commercial sector (Article 20);
- bribery in a specific sector (Article 21);
- weakening control over property in a specific sector (Article 22);
- concealment of property obtained as a result of a corruption-related offense (Article 24).

It is important to emphasize that the Convention establishes minimum standards for the criminalization of corruption-related offenses, while states have the right to consider other acts as corrupt and criminalize them beyond the scope of the specified international document[2].

The United Nations Convention against Corruption (UNCAC) has made a significant contribution to understanding and combating corruption on a global scale. It highlights two fundamental aspects of corruption-related crimes based on the subject involved: national officials and foreign public officials or officials of international public organizations. Article 15 of this international document establishes detailed regulations governing both active and passive corruption of national public officials.

According to Article 15 of the Convention, active bribery refers to the act of a national public official, either directly or through intermediaries, carrying out their official functions within a set timeframe with the intent to take action or refrain from acting in exchange for personal gain. This includes offering, granting, or promising an undue advantage. It is important to note that the Convention emphasizes the necessity of holding individuals accountable for offering or promising a bribe, underlining the harm and threat such actions pose to the global community.

The terms "offer," "offer to provide," and "promise to provide" are carefully distinguished in Article 15. An "offer" implies a readiness to provide a bribe, which is made known to the receiving party. A "promise to provide" involves a commitment to give a bribe after discussions have taken place. Additionally, the Convention does not require prior agreement with the bribe recipient, emphasizing that acts of offering or granting a bribe do not necessarily require the recipient's prior knowledge or acceptance of the bribe.

Article 15 also addresses passive corruption, which includes actions taken by a public official with the aim of obtaining personal gain within the scope of their official duties. According to the article, passive corruption is divided into accepting a bribe and soliciting a bribe. Accepting a bribe occurs when the official receives an undue advantage, directly or indirectly, without third-party mediation. Soliciting a bribe, on the other hand, involves a public official requesting or receiving an undue advantage in return for taking or refraining from taking a specific action within their official capacity.

Thus, the United Nations Convention against Corruption provides a clear and structured framework for understanding, classifying, and prosecuting various aspects of corruption-related crimes. It underscores the complexity of corruption and the need for a universal approach to combating it.

An analysis of the presented material reveals significant differences between national legislation and international norms, particularly in terms of the understanding of active and passive bribery. Unlike domestic laws, where the absence of an agreement between parties in actions such as requesting, giving, or offering a bribe may influence the legal qualification of the offense, the principles outlined in UN documents emphasize the importance of considering conditions such as promises, offers, or the transfer of undue advantages through intermediaries.

According to Article 16 of the United Nations Convention against Corruption, special attention is given to passive bribery in the context of foreign states and international organizations. This provision recognizes that officials representing these entities may engage in acts aimed at obtaining undue advantages within international activities. It is crucial to emphasize that liability for corruption may arise not only from the commission of such acts but also from their acceptance or solicitation[3].

It should be noted that the United Nations Convention against Corruption focuses exclusively on the active form of this crime. Thus, the document establishes criteria for determining the corruption-related liability of foreign states or international organizations concerning their officials who commit corrupt acts for personal gain. However, it should be emphasized that the Convention does not provide specific measures for establishing liability for bribery by these entities in cases of offering, soliciting, or accepting a bribe, or proposing, providing, or promising one[4].

When prosecuting corruption offenses, including bribery, by foreign states or international organizations, similarities in the elements of the crime can be observed. However, a distinguishing feature is the limitation on the entities that can be held accountable—only foreign states or international organizations. Additionally, successful investigations require international support. This creates additional challenges in ensuring justice and highlights the importance of international cooperation for the effective prosecution of individuals involved in bribery in an international context. [5].

According to Article 17 of the United Nations Convention Against Corruption, the issue of whether an authorized person may cause the loss or misuse of property, including public or private funds, securities, and other assets in their possession, for the purpose of personal enrichment, misappropriation, or other illegal objectives is considered. Such actions are subject to criminal liability and other legal measures, particularly when carried out within the framework of social responsibility.

To recognize acts such as the unlawful use of property for impermissible purposes, certain elements must be present. Such recognition requires that an official responsible for managing or safeguarding property engages in the aforementioned actions for personal gain or in the interest of another individual or legal entity. Additionally, intentionality must be proven in such actions. The

term "property" in this context includes various forms of assets, including public or private funds, securities, and other valuables [5].

Notably, Article 18 of the UN Convention Against Corruption addresses the issue of legal liability for the misuse of territory for harmful purposes. This provision considers two scenarios of such misuse. In the first scenario, a natural or legal person takes the initiative in such actions to obtain an unfair advantage for a public official or another individual through their public administration. The second scenario involves actions by a public official or another individual acting on behalf of or at the direction of a public official, granting unjust advantages to another public official or a person associated with public administration [4]. Both scenarios are considered within the context of Article 15 of the Convention, where both "receiving" and "providing" parties are present.

Thus, the proposed analysis elaborates on the regulatory aspects of the UN Convention against Corruption, highlighting key elements necessary for qualifying certain actions as corruption-related offenses. The importance of considering motivation, intent, and social responsibility is emphasized in the framework of criminal and legal liability for such acts.

The first of the aforementioned obligations grants benefits for personal gain based on the individual's position, provided that the decision is made in the individual's own interest. In contrast, the second obligation ensures an unfair advantage in exchange for influencing decisions made by the receiving party [8-10]. According to the interpretation of the provision presented in the article by the Organization for Economic Cooperation and Development, the person leveraging their position may not only be a public official but also a representative of a specific territory. A distinctive feature of this provision is the lack of necessity for awareness of an agreement between the "receiving" and "providing" parties, as liability arises regardless of such awareness [7].

The criminalization of acts related to the abuse of official position is provided for in Article 19 of the Convention. According to this article, the use of an official position by a public official for personal gain or to obtain illegal advantages, even in violation of the law while performing official duties, is subject to criminal liability. This also implies that actions aimed at obtaining unlawful benefits, even if they violate the law, are subject to prosecution if carried out in the context of social responsibility.

The importance of establishing social responsibility for public officials who abuse their official position for personal gain is emphasized as a fundamental aspect of Article 15 of the Convention. This article also highlights the obligation to define liability for illicit enrichment, which implies a significant deviation of a public official's assets from their legitimate income.

Article 20 of the Convention proposes the consideration of establishing liability for illicit enrichment. According to this provision, each State Party is encouraged to establish liability for illicit enrichment in accordance with the fundamental principles of its constitution and legal system. This provision is not mandatory but grants States Parties the flexibility to determine legal liability for illicit enrichment [4].

It is important to note that Uzbekistan, upon joining the Convention, did not invoke Article 20 as an exception and did not declare any intention to alter its legal force through additional conditions or written statements [6].

The essential significance of establishing liability for corruption in relation to crimes of this nature is highly important. In cases where other methods and means of proving such crimes are absent, the application of liability for corruption serves as a final instrument in combating corruption, analyzing the issue from the perspective of its primary objective—preventing offenders from evading responsibility. This is particularly relevant in the context of effectively preventing corruption-related phenomena.

According to Article 21 of the Convention, corrupt conduct in the private sector is defined as actions by executives or employees of private organizations that violate their official duties for personal gain. This concept also includes granting unlawful advantages through personal influence or intermediaries. It is important to emphasize that the Convention recognizes corrupt conduct in the private sector not only in cases of demanding or accepting bribes from private sector representatives but also when an individual agrees to such actions, even if they are carried out through intermediaries.

Corrupt conduct in the private sector differs from corruption-related crimes involving public officials due to its focus on activities within the private sector.

According to Article 22 of the Convention, liability for illicit enrichment in the private sector encompasses actions by executives or subordinates aimed at unlawful enrichment by abusing their position in the economic, financial, or commercial sphere. Moreover, the concept of illicit enrichment covers acts of accumulating wealth through property, private funds, or other valuable material assets with the intent of achieving illegal financial gain, as well as the use of such assets for personal enrichment or the offering, provision, or acceptance of unlawful advantages by individuals engaged in such activities in the private sector.

Article 23 of the Convention addresses the criminalization of money laundering offenses involving proceeds derived from criminal activity. This provision offers various assessments of money laundering and encompasses different actions within this context:

- When proceeds obtained from criminal activity are already known, and an individual involved in these illegal activities actively assists another entity in secretly concealing and laundering these criminal proceeds or significantly violating regulatory acts within the context of unlawful activities, or participates in actions aimed at evading punishment for committed criminal acts;
- In cases where the proceeds of criminal activity are known in advance, acts of transferring, modifying characteristics, origins, ownership, movement, or rights to such financial assets, as well as the intentional concealment and confidentiality of these operations to manipulate the legal status of the funds for further use;
- When an individual purchases, possesses, or uses proceeds obtained from criminal activity with prior knowledge of their illicit origin and applies them in the commission of various offenses;
- Under this provision, the crime includes active participation, commission, or assistance in carrying out coordinated actions to become an accomplice, co-initiator, or facilitator in the execution of the specified crime. This also covers attempts to commit the offense, joint commission, provocation, incitement, and providing aid in its execution[4].

In the context of combating crime and the legalization of proceeds derived from criminal activities, Article 23 of the Convention against Corruption holds significant legal importance. The adoption of this article obligates participating states to take measures to prosecute those involved in the legalization of criminal proceeds, as well as to prevent illicit enrichment through unlawful financial flows.

Article 24 of the Convention emphasizes the importance of establishing liability for corruption-related offenses even when an individual is not a direct participant in the corrupt act itself. It is crucial to recognize that a person who contributes to the increase or preservation of their assets as a result of corrupt activities is also subject to criminal liability.

According to Article 25, threats, coercion, or inducement to commit corruption-related offenses are considered in the context of ensuring justice and combating corruption. Actions aimed at interfering with judicial processes are also subject to criminal liability. This underscores the fact that not only the commission of corruption offenses but also attempts to influence judicial proceedings are subject to criminalization.

Analyzing the above, it can be concluded that the international standards incorporated into the Convention clarify and expand the scope of criminalization of corrupt activities. They provide states with tools for effectively countering corruption and upholding justice within their national legal frameworks.

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