

## **Legal Analysis of Deviation from the Scope of Authority or Career Competence According to the Criminal Law of Uzbekistan**

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**Abstract:** In this article, the author analyzes the content of doctrinal views on the legal analysis of deviation from the scope of authority or career competence according to the criminal law of Uzbekistan.

The article scientifically-theoretically analyzes theoretical and legal problems inherent in the objective and subjective sides of deviating from the scope of the authority or career competence established by Article 206 of the Criminal Code of the Republic of Uzbekistan. In this case, the signs of the objective side of this crime, its specifics are covered on the basis of the opinions of national and foreign scientists, as well as legislative analysis.

Proposals for the development of national legislation have been put forward in the analyzed issue.

**Keywords:** objective and subjective side, damage, official, socially dangerous act, judicial practice, qualification.

### **Introduction**

Criminal acts expressed by officials in the world in deviating from the sphere of authority or career competence are considered to be relevant problems that are an obstacle to ensuring the openness of state power, the role of countries in international ratings, as well as the elevation of investment attractiveness.

Based on data analysis from the international non-governmental organization Transparency International, as we see on the example of the world ranking of states, in 2022, Denmark (90), Finland (87), New Zealand (87), Norway (84) and Singapore (83) had the best results, while Somalia (12), Syria (13) and South Sudan (13) recorded the negative indicators in this regard.

In this regard, the UN Secretary-General Antonio Guterres expresses the essence of the issue itself, arguing that the world community is suffering an annual loss of US \$ 2.6 trillion due to official crimes. This situation testifies to the importance of combating crimes committed by officials in achieving the rule of law in the world.

In the world, the criminal justice and criminological aspects of deviation from the sphere of authority or career competence, the characteristics of the criminal personality, the motive of the crime, the method or means of committing a crime, research aimed at preventing these acts are gaining importance. Therefore, as a result of criminal acts expressed in deviations from the sphere of authority or career competence, the normal activities of state bodies and local self-

government bodies are traced, other crimes with a high level of social danger are much easier to commit or hide.

The fight against official crimes has become the top priority of criminal justice policy, including in the Republic of Uzbekistan. In particular, the effectiveness of the fight against such crimes is largely determined by the correct appointment of punishment, based on the nature and level of the socially dangerous act committed by the guilty official. From the fact that officials are recognized in the criminal law as belonging to the category of special entities, the issue of considering the identity of the offenders of this category is an important theoretical and acquires practical significance.

### **Materials and methods**

The doctrinal views on the objective aspects of legal analysis of deviation from the scope of authority or career competence according to the criminal law of Uzbekistan. For this, methods of scientific cognition were used, such as analysis, historical-comparative method, abstraction and comparison.

### **Results of research**

The second issue, the analysis of which is carried out in the coverage of objective signs of deviation from the scope of authority or career competence, is the objective side of this crime. In the science of criminal law, the signs of the objective side of the crime of deviating from the sphere of authority or career competence are not sufficiently researched. In Particular, M.H.Rustamboev believes that, objectively, crime is expressed in the fact that "an official commits actions that deviate from the scope of his powers established by law, causing a large amount of damage or serious damage to the rights or interests of citizens protected by law or to the public or public interest" [1].

B.J.Akhrarov notes that " the objective side of a crime can be expressed in the commission of acts deviating from the authority of an official. Common to all these cases is that an official commits acts that deviate from the rights and powers that the law has prescribed for him" [2].

A necessary sign of the objective side of deviation from the powers of power or career can be the origin of socially dangerous consequences in the form of a violation of the rights and freedoms of citizens or the interests of the state or the public, as well as a causal connection between an act and an outcome.

Hence, the objective side of deviating from the sphere of authority or career competence is characterized by 3 Important Signs:

- 1) the commission of actions that deviate from the sphere of authority or career competence-a socially dangerous act);
- 2) significant damage or serious damage to the rights or interests of citizens protected by law or to the interests of the state or the public-a socially dangerous consequence;
- 3) the existence of a causal link between a socially dangerous act and a socially dangerous consequence is a causal link.

Article 206 of the code on the first sign of the objective side of the crime of deviating from the scope of authority or career competence establishes that it is necessary to "intentionally commit acts that deviate from the scope of powers assigned to the official himself by law."

In this case, a reasonable question arises whether it should be the fact that for the origin of liability in this crime, a person commits not one, but several actions, that is, actions. It should be noted that this definition given by law, that is, "committing acts", does not represent a "defect" of the legislative technique, but rather a separate way of broadly interpreting the content of the term "action" [3]. According to experts, a simple type of deviation from the scope of authority or career competence is usually constituted by repeated criminal acts [4].

In our view, the literal interpretation of the concept of actions that the legislator used in the plural should not be appropriate here, since the limit of criminal liability leads to an unreasonable narrowing. It is clear in itself that any action that deviates from the competence of an official is socially dangerous if it has led to a significant violation of the rights of at least one person. A literal interpretation of the text of Article 206 of the JK raises different cases of interpretation applying the law, different views in the qualification of a single action by this article. We believe that it is necessary to eliminate this ambiguity in the law, in which the word "actions" in the law should be replaced with the word "action". Because, the analysis of judicial practice shows that deviations from the scope of authority or career authority can also occur when an act is committed alone (e.g., involving the use of violence).

Analysis shows that one aspect of qualifying issues of deviations from the scope of authority or career powers that are still a matter of controversy is the question of whether this act can be carried out through inaction. According to A.I.Marsev, deviations from the sphere of authority or career competence are committed only by way of action [5].

A similar point of view is put forward by many scientists, including Otajonov, Khaydarov: deviation from the sphere of authority or career competence occurs only through active action [6].

But it is noted by most scientists that this crime can also be committed through inaction [7].

In Particular, K.A.Grekov noted that the authority of the career is of a double nature – the right of an official and his obligation. This is a violation of the basis or form of the implementation of the right granted to a person, as well as the non-fulfillment of the obligation imposed on an official, allows you to evaluate this act as a deviation from the scope of career competence [8].

But it is also impossible to agree with the opinion that the act being analyzed can be committed by inaction. First, a special responsibility is established in Article 207 of the Criminal Code on the non-fulfillment or due fulfillment of their duties due to the fact that their official reacts to their duties in a state of indifference or unscrupulous attitude (a cold look at the position). Secondly, the term "deviation" means "going out", which always refers to the active action of an individual. For this reason, we can conclude that this crime is committed only through active action.

The next important issue is to clarify in what forms this crime is committed in practice. Because the Criminal Code establishes the general norm that "an official intentionally commits actions that deviate from the scope of powers assigned to him by law", such issues as its forms and how it is implemented in practice are not reflected in the law. That is, the disposition of the first part of Article 206 of the JC does not provide for specific types of unlawful conduct of an official. This issue was clarified in the Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 11 of April 17, 1998 "On certain issues arising in the judicial practice of criminal cases in the field of Economics".

In particular, paragraph 28 of this decision lists the following main manifestations of deviation from the scope of career competence:

- 1) the commission of actions by an official within the scope of the competence of another person;
- 2) the commission of actions that can be carried out by an official only if there are special circumstances specified in the law or in the legislation under the law;
- 3) individual commission by an official of an action within the competence of a collegial body;
- 4) to be committed by an official of an action for which no one and under no circumstances is entitled to carry out, etc [9].

The commission of actions by an official that fall within the scope of another person's competence is understood as the commission of actions by an official that, while their superior or status is equal, are in the competence of another official.

By means of the commission of actions that can be carried out by an official only if there are special circumstances specified in the law or under the law, it is understood that the implementation of the action belongs to this official, but the right to carry it out is granted only on the circumstances established in the law or in the legislative act, in which the official committed the corresponding actions, although the circumstances established in the law or in the legislative act did not arise.

As an example, according to Article 26 of the law "On weapons", individuals who have the right to maintain and carry a service weapon can apply a weapon to protect their life and health, the life and health of other citizens, and property in the case of necessary defense or final necessity [10].

Before the use of a service weapon, this should be warned in such a way that the person against whom the weapon is being used is clearly expressed. That is, the use of a service weapon, in addition to these circumstances provided for by law, is a deviation from the scope of authority.

The form of individual Commission of a crime by an official of an act within the competence of a collegial body is also one of the common acts in practice. According to the regulation on interdepartmental collegial bodies approved by the decree of the Cabinet of ministers No. 948 of November 22, 2018, the collegial body provides for interagency cooperation in the performance of tasks and functions assigned to competent state bodies and organizations, as well as it is a consultative body that operates on the basis of a permanent or temporary community that supports this body and organizations in organizational-practical, methodological, scientific and other ways. Collegial bodies can be organized on a Republican and territorial scale, depending on their territorial belonging, and according to their form – as collegial bodies of a commission, council, committee, working group and other appearance. The form of collegial bodies and its working body are determined in the documents on the organization of collegial bodies based on the nature of the tasks assigned to these bodies [11].

Hence, the act within the competence of the collegial body is committed individually by an official, it is understood that the authority to carry out a certain action, to make a decision on a particular issue, is carried out individually by an official, without the decision of the relevant collegial body, belonging to the jury, Scientific Council, Commission, Council, Working Group and other similar collegial bodies.

As an example, in accordance with paragraph 3 of the regulation on the Emergency Commission of the Republic to combat the epidemic, approved by the decree of the Cabinet of Ministers No. 142 of April 12, 2000, the introduction of quarantine-restriction measures or quarantine in areas where infection occurs in the event of recording individual cases of dangerous diseases among the population and abolition is the prerogative of the Republican Emergency Commission to combat the epidemic [12]. Without the decision of this commission, it is not considered to be excluded from the scope of the authority to impose quarantine and abolish quarantine by any official.

It is understood that an act committed by an official, which is not entitled to be carried out by anyone and under no circumstances, is committed by an official of actions that are given the right to carry out to a single official or other person. As an example, no one was given the authority to torment, torment another person.

It is also noteworthy the opinion that actions that no one and never have the right to commit cannot be considered a form of the crime of deviating from the sphere of authority or career competence [13].

According to Galaxova, the point here is about one of two other forms of deviation from the sphere of authority or career competence committed in cases of aggravating punishment [14].

Papiashvili views actions that cannot be considered legitimate or considered a punitive aggravating state of the crime being studied as abuse of career authority [15].

Egorova considers "committing acts that are not allowed to anyone" to be one of the manifestations of abuse of law. In his opinion, in this case, "despite the violation of the legal basis for the performance of managerial functions, a person will continue to act within the framework of his subjective right – the right to control." [16].

It is noted that in studies devoted to the problems of responsibility for deviations from the scope of career competence, the presence of the indicated form [17] or such actions are prohibited by criminal law for any persons [18].

Analysis of the materials of criminal cases makes it possible to conclude that the use of rape, weapons or special means by an official is sometimes found to be acts that no one and never have the right to commit.

In addition to the above-mentioned forms, in practice it is observed that deviations from the sphere of authority or career competence are also carried out in the form of individual implementation of the action, which must be carried out in agreement with another official or state body, without agreement established by the official. Most scholars note this state of affairs as a separate form of deviation from the sphere of authority or career competence [19].

In this case, the authority to carry out the appropriate action will be in the official, but the realization of this authority will have to be carried out after agreement with another official or state body.

The official, on the other hand, commits an individual act without complying with the order in question. At the moment, the inevitable sign of the act in question is considered to be the occurrence of consequences in the form of a large amount of damage or serious damage to the rights or interests of citizens protected by law or to the public or public interests, one or more social values are an inevitable alternative sign of the immediate object of crime, provided for in the first part of Article 206 of CC.

In order to be considered a crime that is the end of a deviation from the competence of the authorities or career, socially dangerous consequences established in the disposition of part one of Article 206 of CC must occur, that is, a large amount of damage or serious damage to the rights or interests of citizens protected by law or to the state or public. According to some researchers, rights and damage or damage to interests reflects undesirable changes that occur in the object of the crime [20]. Currently, to describe the degree of severity of the consequences, the term "damage" is used, and in relation to "damage" – the term "serious".

In the criminal justice literature, material and intangible consequences are distinguished "depending on the superficial, material nature" of the damage to the object of aggression [21]. Property damage in the form of direct damage or a richly endowed form of profit and physical damage expressed in the murder of a person or injury to his health are recognized as material consequences. Intangible consequences are understood as moral, political, organizational damage. By organizational damage, scientists understand the activities of enterprises, organizations, the derailment of transport work, and to political damage they include weakening state power, undermining its foundations, aggravating its relations with other states [22].

When it comes to material and other damage to the crimes of office, they usually understand the violation of the constitutional rights and freedoms of citizens, the damage to the reputation of authorities, state and public organizations, the derailment of their work, the violation of public order, the concealment of serious crimes. The analysis of the materials of investigative and judicial practice shows that as a result of deviations from the sphere of authority or career

competence, serious damage is mainly caused to the constitutional rights of citizens to freedom and personal immunity.

For example, in 69% of the materials of criminal cases studied, the legal rights and interests of citizens were found to be severely damaged, while the proportion of crimes to deviate from the sphere of authority or career competence, which caused serious damage to the public and state interests, amounted to 21%.

All these rights in the disposition of the first part of Article 206 of CC and the concept of harm or harm to interests is correctly applied, it makes it possible to come to the conclusion that.

When it comes to causing serious harm to the state or public interest, the person applying the law usually understands the concealment of a serious crime by an official. In our view, the concealment of any crime is desirable if it is included in the consequences of deviation from the sphere of authority or career competence.

Analysis of the materials of criminal cases shows that a large amount of damage in the manner of property damage was inflicted on citizens in 17% of the cases studied, and on organizations and the state – in 8%. A large amount of damage is understood to be a loss of three hundred to five hundred times the amount of the base calculation according to the CC.

The third inevitable sign of the objective side of the crime of deviating from the sphere of authority or career competence is the causal link between the act and the consequences that have occurred.

In accordance with the theory of "necessary attachment" adopted in the science of criminal law, the causal attachment applied to the crime under study with a deviation from the scope of the authority of one's own power or career, which is evident to the official, is in the rights of citizens or in the interests guarded by law, or in the public or it is characterized as an objective connection between a large amount of damage or serious damage.

In this case, the actions of an official are committed before any of these consequences, are the main factor in a large amount of damage or serious damage to rights and interests, and the criminal result that occurs is recognized as a necessary, natural consequence of these actions [23].

In the scientific literature, different approaches to determining the causal link in the general composition of official crimes have also been put forward. Lisov, who believed that direct (direct and closest) communication was inherent in them, also assumed that indirect causal connection was possible, in which the consequences could be caused by the actions of other individuals.

In his opinion, in this case, this connection "develops in one direction with a causal connection" and "separates the consequences with actions from each other only one link of the causal connection" [24].

According to Ter-Akopyan, the considered element of the objective side of the crimes of General Authority is characterized by the following characteristics [25]:

- with the fact that the connection between the allowed violations and the consequences occurred has an indirect nature;
- with the complexity of existing communications, in which the same violation can cause various consequences, and, on the contrary, a concrete consequence can be the result of colorful, but related offenses; with the normative nature of the cause, it is determined by the fact that only an act that violates a certain rule of the legal norm can cause a crime [26];
- with the limitation of acts that can be valid as a cause of consequences [27].

## Conclusion

It is clear in itself that it is impossible to clarify in the norm the content of all the consequences of the crime of deviating from the sphere of authority or career competence, due to which the solution of this issue is brought to the attention of the law-maker, who acts based on the circumstances of a particular case. In our eyes, the articles of Chapter XV of the CC say harm to rights and interests protected by law, including violation of the constitutional rights and freedoms of Man and citizen; it should be understood that organizations, public and state violate the interests of the nomulky enshrined in the Constitution of the Republic of Uzbekistan; undermine the reputation of state authorities and local self-government bodies; that an official hides another crime.

The content of all consequences cannot be covered in the criminal law, due to which it would be desirable, in our opinion, if their sample list was given in the appropriate decision of the plenum of the Supreme Court of the Republic of Uzbekistan.

It should be noted that from the content of Article 206 of the CC, it is difficult to understand in what forms the act can be carried out. The established general norms are causing cases of their different interpretation in practice.

In the decision of the plenum of the Supreme Court of the Republic of Uzbekistan dated April 17, 1998 No. 11 "On certain issues arising in the judicial practice of criminal cases in the field of Economics", the forms of implementation of the Act were considered, but their content was not disclosed.

We consider the elimination of such ambiguity in legislation, including the fact that article 206 of the CEC clearly defines in what forms the exit from the sphere of authority or career competence is carried out, as well as the content of each form of committing an act, in practice, we believe that an explanation should be given by the plenum of the Supreme Court of the Republic of Uzbekistan on the conditions of its application.

To this end, we propose to accept the disposition of the first part of Article 206 of the CC in a new wording and accept the Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "on certain issues arising in the judicial practice of criminal cases related to deviations from the scope of authority or career competence".

As a conclusion, it can be said that the inclusion of the above-mentioned proposals in the legislation helps to correctly understand the objective side of the crime of deviation from the scope of authority or career competence, the forms of implementation, in turn, to correctly qualify such a category of crimes, in which this crime is distinguished from crimes of similar content.

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