

METHODOLOGICAL AND THEORETICAL FOUNDATIONS OF THE SOCIAL PHENOMENON OF CORRUPTION

Latipov Sardor Shavkatovich,

Internal Affairs Directorate of Navoi region

Head of the Department of Internal Affairs of Zarafshan city

E-mail: sardorlatipov086@gmail.com

Annotation: This article examines in depth the methodological and theoretical approaches to the legal analysis of corruption crimes, revealing the legal nature of corruption, the level of social danger, its role in the criminal law system, as well as the importance of modern scientific methods in combating it. Practical proposals prepared based on the opinions and comments of local and foreign scientists in these analytical approaches are developed as an approach aimed at illuminating new aspects of the theoretical foundations of corruption cases.

Keywords: corruption, criminal law, legal analysis, methodology, theory, social risk, prevention, responsibility, legal reforms, anti-corruption.

As a result of social observations, corruption is manifested as a process. Its analysis may include the following meaning: it is a certain system of informal relations which replaces the formal relations in social relations between an official and the “applicant” and is based on the violation of the permissible rules of conduct.

Returning to the consideration of different approaches to the study of corruption, we note that Harvard University professor Carl Joachim Friedrich can be included in the group of thinkers who put forward the “ethical” model. He sees corruption as behavior that deviates from the dominant norms in the political sphere within the framework of the “traditional” approach and is associated with the motivation to obtain personal profit at the expense of the public. He rates corruption almost equally as a negative phenomenon, a “pathology of politics”, in which this negative phenomenon affects both public officials and institutions of power as an indispensable partner of politics. That is why the final victory over corruption serves as a utopian task, as if not ruling out that it must be strongly opposed in order to prevent the embryos that cause this disease. The political system was dissolved, and it was not destroyed [1].

J.Nai defined corruption as “behavior that deviates from the official duties of a public role under the influence of relatively private (individual, family, private) material or status goals, or violates prohibitive rules with respect to certain types”.

D. Simon and D. Eitsen continued the consideration of corruption as deviant behavior of the elites. They justify the expediency of such a study of corruption by the fact that the problem of crime in the United States is actually based on a system in which lower-class crime, the mafia, the corrupt public sector, and criminal gangs come together for profit and power. The elite actually unites with criminal elements in a desire to make a profit, essentially rejecting the functions assigned to them. This fact indicates the existence of certain social conditions that determine the commission of various crimes by individuals and organizations. In this regard, these authors draw conclusions about social interdependence.

Looking at corruption as a form of deviance allows, among other things, to analyze the manifestations of corruption not prohibited by current law, and overcomes a limited legal approach in a certain way.

At the same time, corruption as a form of deviance is based on deviating an official’s behavior from existing rules and guidelines. Mr. Johnston believes that such visions would have a number of drawbacks. In doing so, he argues that existing rules are not eternally fixed norms and can change over

time. Moreover, the change in these rules could mean not a fundamental feature of changing attitudes towards corruption, but rather an intention to justify it.

When considering corruption as a deviant form, it is worth mentioning Emil Durkheim, who did not write directly about corruption, but introduced the concept of “anomie” into socio-philosophical thought [2]. In literal translation, this means the absence or unregulated absence of norms.

This “disease” occurs at the individual transitional stages of the development of society, when one system of social and legal norms is in crisis and another is created. Over time, a failure emerges that characterizes “a state of society in which cultural values, norms, and social relations do not exist, weaken, or contradict each other” [3]. This failure is accompanied by an increase in crime, suicides, corruption. If schematic, then the process can be expressed as follows: social norms are destroyed, people lose their orientation in society, and all this contributes to the development of deviant behavior.

What is important for us here is to understand that in societies during the so-called “transition period”, when a regulatory gap arises, the best conditions arise for the development of corruption processes, the development of corruption processes often becomes an inevitable condition of society’s activities.

Max Weber was one of the first to try to abandon ethical evaluation in the study of corruption processes. “Analyzing such a phenomenon as the acquisition of state taxes, which is one of the normal functioning mechanisms of society within the framework of economic anthropology, M. Weber argues that although this is associated with the arbitrary granting of privileges to the king’s favorites, that is, to individuals with sufficient economic and financial power, such a practice has historically been necessary, contributing to the formation of a rational bureaucracy” [4].

He introduces the new term “tolerant functionary”, which is a mandatory suffocation of rational bureaucracy. Weber uses this concept to regulate the relationship between the public and private spheres, and draws conclusions about the functional importance and acceptability of corruption if it strengthens an elite position.

In other words, the emergence of such functionalities, which have enormous political and economic power in political Olympia, and which, due to the existing conditions, do not always use it for its intended purpose, will make it possible to overcome the destructive tendencies of the political elite and contribute to its consolidation.

R. Merton develops a functional approach to the study of corruption processes, highlighting a number of key functions of informal leaders:

- solving the various problems of entrepreneurs who need help in implementing separate projects: often the latter needs informal methods of protection from inconsistencies in laws, codes and regulations. At the same time, payment for these services (thanks) was funds donated as charity;
- other methods of vertical mobility have involved providing channels of social mobility for members of social groups (e.g., illegal immigrants or ethnic minorities) that are closed or difficult. In this case, loyalty is included as payment for the provision of services;
- the appearance of a permit to conduct commercial activities prohibited by law. In this case, ransom monetary donations have been accepted.

From the point of view of functionalists, the level of corruption should be determined not by the specifics of political culture, but by the stage of political or economic development. This phenomenon shows the malfunction that occurs when replacing old norms with new ones. By fulfilling its social functions, corruption should disappear. According to them, corruption is nothing more than an intermediary between citizens and the state: it harmonizes and personalizes new social relations, smoothing out relations with the administrative apparatus that is incapable of immediately responding

to social surveys [5]. In other words, the inability of a system to adequately respond to the changes taking place in society requires the lubrication of the system.

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