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ЮРИСТ АХБОРОТНОМАСИ
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ISSUES OF LIABILITY FOR CRIMES RELATED TO THE PROPERTY INTERESTS OF A CIVIL SERVANT IN THE CRIMINAL LAW OF SOME FOREIGN COUNTRIES

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ANNOTATION
This article provides a detailed analysis of the issues of liability for crimes related to the property interests of a civil servant in the criminal law of some foreign countries. In this work, a comparative study of the legislation of foreign countries on the analyzed crime have been provided, based on their positive aspects, well-founded proposals have been developed to improve national legislation.
Keywords: civil servant, receiving and giving payment, bribery, receiving and giving bribery, giving material payment, usury, present, gift, privilege.

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АЙРИМ ХОРИЖИЙ МАМЛАКАТЛАРНИНГ ЖИНОЯТ ҲУҚУҚИДА ДАВЛАТ ХИЗМАТЧИСИНИНГ МУЛКИЙ МАНФААТЛАРИ БИЛАН БОҒЛИҚ ЖИНОЯТЛАР УЧУН ЖАВОБГАРЛИК МАСАЛАСИ

АННОТАЦИЯ
Мазкур мақолада баъзи хорижий мамлакатларнинг жиноят ҳуқуқида давлат хизматчисининг мулкий манфаатлари билан боғлиқ жиноятлар учун жавобгарлик масаласи батафсил таҳлил қилинади. Мақолада хорижий мамлакатларнинг қонунчилигида таҳлил қилинаётган жиноятчилик бўйича қиёсий тадқиқот ўтказилиб, уларнинг ижобий томонлари асосида миллий қонунчиликни такомиллаштириш юзасидан асосланган таклифлар ишлаб чиқилганлиги келтирилган.
Калит сўзлар: давлат хизматчиси, тўловларни олиш ва бериш, порахўрлик, пора олиш ва бериш, моддий тўловларни бериш, судхўрлик, совға, имтиёз.

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ВОПРОСЫ ОТВЕТСТВЕННОСТИ ЗА ПРЕСТУПЛЕНИЯ, СВЯЗАННЫЕ С ИМУЩЕСТВЕННЫМИ ИНТЕРЕСАМИ ГОСУДАРСТВЕННОГО СЛУЖАЩЕГО, В УГОЛОВНОМ ПРАВЕ НЕКОТОРЫХ ЗАРУБЕЖНЫХ СТРАН

АННОТАЦИЯ

В данной статье проводится подробный анализ вопросов ответственности за преступления, связанные с имущественными интересами государственного служащего, в уголовном праве некоторых зарубежных стран. В работе автора проведено сравнительное исследование законодательства зарубежных стран по анализируемой проблеме, на основе их положительных сторон разработаны обоснованные предложения по совершенствованию национального законодательства.

Ключевые слова: государственный служащий, получение и дача платы, взяточничество, получение и дача взятки, дача материальной платы, ростовщичество, подарок, привилегия.

At present, the use of the method of comparison in legal research is one of the most effective methods of analysis of relevant similar laws in force in foreign countries. Given the specifics of economic and social development, the existing experience and traditions in the fight against crime in Uzbekistan, direct copying from the laws of foreign countries is ineffective. At the same time, it would not be appropriate to ignore foreign experience and foreign legislation in the fight against crime as in the recent past [1]. As the famous French lawyer Marc Ansel noted, the study of foreign experience "opens new horizons for the lawyer, allows him to better understand the law of his country, because the specifics of this law are especially pronounced in comparison with other systems. Comparisons can only arm a lawyer with ideas and evidence that cannot be obtained even with the best of knowledge" [2].

In the analysis of foreign legislation in connection with the disintegration of the Soviet Union as a result of the denunciation of the Union Treaty of 1924, it became customary for many researchers to focus primarily on the legislation of the former Soviet republics. Indeed, in this legislation, on the one hand, the similarity inherent in the legislation of the Soviet period in the solution of issues on the basis and principles of criminal liability, the scope of criminal acts, the types of penalties and measures for their commission has been preserved, on the other hand, it naturally gave rise to the peculiarities of the independence of the republics as subjects of international law. For this reason, the problem we are interested in today in the criminal law of the CIS member states is characterized by a similar duality.

Unlike the criminal law of Uzbekistan, where the concept of "giving payment" is almost not used, this concept is widely used in the criminal law of the CIS countries. For example, in the 1992 Criminal Code of the Republic of Estonia, the term "giving payment" was used not only in a negative sense (in the sense of its illegality), but also in a positive sense. According to Article 279 of this Code, "Refusal to pay a statutory fee for the sale of an original work of fine art, as well as for the use of an audiovisual work and phonogram for personal use" is punishable by a criminal penalty [3].

As for the illegal aspects of receiving and giving payment, which are inherent in criminal law, the approaches to regulating them in the criminal law of the CIS member states are not the same.

First of all, it should be noted that the term "justification" is used in various forms and in the criminal codes of Kazakhstan, Ukraine, Estonia and the Republic of Belarus, which apply to various crimes. Latvian criminal law provides for criminal liability for "unauthorized acceptance of property" without the use of the term "payment" (Article 198 of the Latvian Criminal Code) [4]. At the same time, the Criminal Code provides for liability for crimes of an independent nature, such as bribery (Articles 320-323) and extortion for commercial purposes (Article 199). The term bribery does not exist in the Criminal Code of the Republic of Azerbaijan: in this Code, similar to the Criminal Code of Uzbekistan, it is sufficient to regulate such crimes as bribery (Article 299) and bribery (Articles 311-312) [5].

Secondly, in addition to the establishment of criminal liability for the usual types of crimes related to illegal receiving and giving payment (bribery, bribery for commercial purposes, bribery of participants and organizers of competitions and contests), in the Criminal Code of the Republic of Belarus - only for illegal payment by a non-official employee of the state apparatus [6], and in the Criminal Code of Ukraine - to demand illegal payment in state or public educational institutions (Article 183), medical care in state or public health institutions (Article 184) [7] provides for criminal

liability for illegally demanding payment for. In the Estonian Criminal Code, in addition to criminal liability for bribery, there is liability for corruption. The offense is defined as "making unreasonable or illegal decisions for the purpose of gaining corrupt gain or other malicious intent, or failing to take unjustified illegal actions or making legitimate decisions for such purposes, as well as failure of an official to take reasonable legal action using his official position" (Article 164.2) [3]. As part of the regulation of bribery in the Criminal Code of Tajikistan, a separate article (Article 324) provides for criminal liability for extortion [8] (it is known that the Criminal Code of Uzbekistan criminalizes a similar crime specified in Article 214). At the same time, the Criminal Code of Tajikistan criminalizes the bribery of an employee (Article 325) and uses the phrase "financial compensation". According to this article, bribery of an employee means the payment of material or property benefits to an employee of a non-official enterprise, regardless of the form of ownership, for the commission of an illegal act in the interests of the person being bribed.

In addition, the norm set by the Criminal Code on the issue under study in Moldova has its own characteristics. Article 330, entitled "Unlawful Remuneration of an Employee" and includes public authorities, other state enterprises, institutions and the liability of an employee of an organization who is not an official for the performance of actions or services that fall within the scope of his or her official powers, and for the receipt of an illegal fee or other form of property gain. In addition to bribery, the Latvian Criminal Code provides for criminal liability for usury, a less specific criminal law. According to Article 201 of the Latvian Criminal Code, usury refers to "various loans granted on the basis of obvious insolvency of the borrower and on conditions that would put him in a difficult position" [4]. The phenomenon, which is unusual in terms of the current period, is also regulated in the Criminal Code of the Republic of Belarus: where criminal speculation, i.e. speculation, is implied. In accordance with Article 256 of the Code, the disposition of the norm stipulates that the purchase of goods intended for retail sale to the population in state trade enterprises or organizations and the media in the Republic of Belarus and the imposition of administrative penalties for speculation within a ear" [6]. It is noteworthy that the Georgian legislature provided for criminal liability in the country's criminal law, along with bribery, for "receiving a gift that officials or persons equated to them are prohibited by law" (Article 340 of the Criminal Code of Georgia) [9].

It should also be noted that while the situations in which the legislature uses the phrase "giving payment" or "receiving payment" in the regulation are obvious, the material factor dominates the descriptions given to it in terms of content. As a rule, this is expressed in the form of "material blessings or property benefits", "material remuneration, property benefits or services", "material wealth", "money, securities or other property", "right to property". In this case, the legislature of the Republic of Estonia used the concept of remuneration without disclosing its content (while defining the concept of bribery, noting its material nature), Reflecting the content of illegal payments in the Criminal Code of Ukraine in Article 354 ("Illegal remuneration of an employee of a state enterprise, institution or organization"), Ukraine did not dwell on this issue in the subsequent regulation of crimes related to illegal payment, including bribery. The Belarusian legislature has defined illegal giving and receiving payment as illegal bribery for the purpose of commercial bribery (Article 252), bribery of participants and organizers of professional sports competitions and spectator trade competitions (Article 253) and interpreted as the receipt (provision) of property or services of a property nature in the following places, it was used in the form of "material wealth and property benefits" in determining criminal liability for unlawful remuneration of a civil servant (Article 433).

In comparison with the criminal law of Uzbekistan, there are other terms in the criminal law of the CIS countries, which reflect the criminal aspects of illegal payment (receipt). It is filled with terms such as "bribery" (giving, receiving, appropriating, mediating, extorting, provocation), "corruption" (including bribery for commercial purposes), "self-interest", "extortion" (Latvian, Azerbaijani Criminal Code), "uncontrolled income (profit)" (Criminal Code of Tajikistan), "sale" (Criminal Code of Ukraine) which are widely used in the criminal law of these countries. At the same time, the concept of "self-interest" is used not only in the description of intentions, interests, but also in the description of goals, as in the Criminal Code of Uzbekistan (for example, in the Criminal Code of Estonia, Latvia). The specificity of the use of this concept is also manifested in the fact that it sometimes describes the intentions, interests, which act as one of the aggravating features of the crime of looting another's property. At the same time, the foreign legislature stipulates that this crime may be committed under the influence of factors other than malicious intent allows us to conclude that (for example, the Criminal Code of Azerbaijan Article 326). In Ukraine, the focus is not on the motive, but on the purpose of committing the crime of illegal extortion. For example, in a number of criminal offenses

provided for in the Criminal Code of Ukraine, there is an aggravating circumstance for "aggression for the purpose of robbery" (262, 308 Article 313). At the same time, the construction of aggression as an independent crime, enshrined in Article 187 of the Criminal Code, states that "the purpose is to seize another's property".

Article 235 of the Criminal Code of Ukraine provides for liability for the remuneration of a public servant, including an auditor, notary, expert, appraiser, arbitrator or other person engaged in professional activities related to public service, as well as an independent mediator or labor arbitrator in collective labor disputes. liability for offering, presenting, transferring such benefit in order to perform or not to act in accordance with the powers granted to him in favor of the person who offers, provides, transfers illegal benefits or a third party. In the third part of this article, an auditor, notary, expert, appraiser, arbitrator or other person engaged in professional activities related to the public service, as well as an independent mediator or a labor arbitrator hearing collective labor disputes, using his powers to offer illegal benefits liability for the performance of actions in favor of the person giving, giving or receiving such benefits for inaction.

It should be noted that the Criminal Code of Ukraine, in contrast to the norms established by the Criminal Code of our country, provides for special liability not only for the issuance and receipt of illegal payments, but also for offering and accepting such offers. In our country, if there are sufficient grounds, such a case is considered an assassination attempt.

It is also necessary to consider the issue of illegal payment and remuneration of non-official employees of the Criminal Code of Armenia. In particular, Article 311^1 of the Criminal Code of Armenia provides for liability for unlawful payment of a public servant who is not an official. In the first part, it is illegal for a non-official public servant to receive money, property, property rights, securities or any privileges of an unofficial public servant personally or through an intermediary for one or another person whether or not the payer or the person he represents performs such an action or assists in the execution or non-performance of such action using his authority, or is responsible for sponsoring or neglecting the service, the second part provides for the liability of a public servant who is not an official to knowingly receive an unlawful act or omission in favor of the person giving such a right or the person he represents.

The Code stipulates that a public servant who is not an official in this case should be understood as a public servant who performs public service in accordance with the Law of Armenia on Civil Service [10]. According to Article 1 of this Law, public service is the exercise of powers, implementation of policies of state bodies and municipal bodies, development of state laws, service in the civil service and municipal bodies, as well as the work of citizens in state bodies and municipal bodies. Civil service is a type of professional activity of state bodies to implement the tasks and functions established by the legislation of Armenia, to make political decisions in this area and to determine the directions of their implementation. Service in municipal bodies is a type of professional activity of territorial self-government bodies in the implementation of the tasks and functions established by the Constitution and laws of Armenia.

Article 268 of the Criminal Code of Turkmenistan ("forfeiture") refers to the forfeiture of a person holding a managerial position in a commercial or other organization for the performance or non-performance of a possible action by his official position. the notion of illegal money, securities, other property, property services by the person is noted. Also the Article 269 of Criminal Code of Turkmenistan provides for a special liability for "unlawful remuneration", according to which a person holding a managerial position in a commercial or other organization must perform his official duties, and the person who gives such money, securities, other property, such benefits performance in favor of, as well as the use of illegal services is illegal.

The Criminal Code of the Republic of Belarus also provides for liability for unlawful payment (Article 433). According to it, an official (non-official) of a state body or other state organization, within the limits of his authority (labor obligations) for the performance of actions (inaction) or work (labor) in favor of the person providing illegal benefits, except for work specified in Belarusian legislation. receiving any other benefit is considered to be unlawful. According to Article 225 of the Criminal Code of Kyrgyzstan, an unofficial employee of a state body, enterprise, institution, organization, public association, or citizen's self-government body must use his official position or deliberately commit an illegal act in favor of a detractor. the receipt of a substantial material reward or property benefit in such a way is considered to be an unlawful payment by the employee. It should be noted that in this norm, in contrast to other countries, but as in Article 213 of the Criminal Code of Uzbekistan, this act is a crime only if it is committed in a significant amount. Article 225

of the Criminal Code of Kyrgyzstan stipulates that the acts specified in the "comment" section are considered to have been committed in large amounts if the amount of the reward or property benefit received is more than three times the minimum wage.

Article 224 of the Criminal Code of Kazakhstan also provides for liability for unlawful profiteering. According to it, an illegal reward, privilege or property in exchange for the performance or provision of work within the scope of its official duties by a person or equivalent of a state body or public organization, as well as by an employee of a non-governmental organization who does not perform managerial functions to receive a service in the form of, if this act was committed by greed, such act is considered to be illegal gain.

Taking into account the process of formation and implementation of the current policy of the Republic in the fight against crime, we now turn to the criminal law of European countries.

In the 1992 Criminal Code of France, adopted in place of the Criminal Code of 1810 (Napoleon Bonaparte Code), which set the protection of human and civil rights and freedoms as the main criterion, illegal payment is mentioned only in one place: Article 225-13 of Criminal Law provides for criminal liability for "receiving services from a person for a fee that are unpaid or inconsistent with the scope of the work being performed, abusing his or her helpless or dependent position" [11]. In this case, the illegality of remuneration, regardless of the legal status of the subject of the crime, is defined in the Criminal Code "On working and living conditions incompatible with the honor and dignity of man" as set out in Section 3. Given that the French Criminal Code also provides for criminal liability for the usual forms of illegal payment of bribes to officials (bribery, extortion), the illegality of payment is a criminal offense: in Article 225-13 it can be concluded that only one factor - the fee is determined by the incompatibility of the service rendered (work performed). this is one of the few examples of cases where the illegality of remuneration has been widely interpreted in criminal law.

In France, the phrase "pay" or "pay" is not used in other cases, but the problem we are considering is the demand for compensation (for example, Article 224-4 of the Criminal Code), bribery (Articles 434-15, 434-19, 434-21, 441-8), we tried to understand using concepts such as profit, trade, bribery. The words "gifts", "gifts", "preferences", "material funds", "sums of money (funds)", "gifts" used here make it possible to conclude that in the description given to the content of tort-taking, exactly the material factor is the leader. If we think about the scope of crimes that to one degree or another reflect the various aspects of illegal payment in the norm of law, in the French Criminal Code, first of all, the definition of "certain circumstances leading to aggravation of punishment" (Articles 132-71-132-75) does not provide for the indication that the act is related to illegal payment (in general, this is a phenomenon inherent in the criminal law of foreign countries). In our view, there are a number of notable criminal elements: "providing a woman with financial means to terminate her pregnancy" (Article 223-12); trading under the influence of persons in public service, private individuals (Articles 432-10, 432-11, 433-11), illegal profiteering (Articles 432-12). At the same time, the concept of "selfishness", which is familiar to us in the French Criminal Code, has also been used in some places, to express the purpose of committing a crime, rather than the motive. In particular, the criminal law in Article 227-12, this concept is used to describe the actions of other participants in the crime, not the actions of the perpetrator: "Encouraging the abandonment of a child who is born or about to be born for selfish purposes or through a gift, as well as for the purpose of mediating between a person who wants to adopt a child and a mother (father) who wants to abandon her child" [11].

The problem of illegal remuneration is particularly broad and consistent in the Criminal Code of the Federal Republic of Germany, in comparison with the normative documents of a criminal nature of other foreign countries. In the Federal Republic of Germany, the term "remuneration" is widely used in the text of the criminal law, while the concept of "remuneration" is widely used in the text of the criminal law. An official or a person specially authorized to perform public duties, a judge, a judge of an arbitral tribunal shall have the same notion of unlawful remuneration under Section 21 of the Code, entitled "Official Offenses", provided for criminal liability under §-331 of the Code used consistently in this sense, even in the §335 of Code also stated in the name of ("to pay the judge of the arbitration court"). In other cases, the terminology corresponding to the characteristics of the perpetrators of the crime was used: in the exercise of the right to vote by ransom - by gifts or other benefits (§ 108 b), in the case of deputies by ransom - by the purchase or sale of votes (§ 108 e), in human trafficking - by the acquisition of property (§ 180 b), in pimps - on the use of another person for malicious purposes (§ 181 a), in aggravated murder - on intent to commit malice (§ 211), illegal collection of unforeseen fees, reduction of payments - taxes, fees or other overstatement of payments (§ 353) and so on.

Another feature of the Criminal Code of the Federal Republic of Germany. The above two options of legal regulation of the problem under consideration within the General part of the criminal law - in the absence of regulation at all or in the presence of malicious intent (interests), purpose, bribery, hiring, etc. the German legislature chose the third option: In § 46 of the Code, entitled "Principles of Punishment", it suffices to state the general parameters - "circumstances in favor of and against the offender". This takes into account, among other things: the motives and goals of the offender, the views expressed in the act, the will to commit the act, the type of commission of the crime, the guilty consequences of the act, and so on. Thus, the German legislator, without describing the above-mentioned circumstances in the German criminal law in any way, including the concept of "bias", referred to the court to solve this task, which, in our opinion, is absolutely appropriate in the German Criminal Code. Such a solution to the problem is also inherent in the criminal law of a number of other foreign countries [12; 13; 14; 15].

Compared to the criminal laws of France and Germany discussed above, the criminal law of other European countries reflects the problem we are considering even more narrowly, given that there may be inaccuracies in its translation into Uzbek (except for the Spanish Criminal Code and the Bulgarian Criminal Code). One of the reasons for this – features of the legal systems of the respective states and the low level of relevance of the fight against criminal prosecution in them. This feature is particularly specific to the Swedish and Danish criminal codes. It can also be found, albeit to a lesser extent, in the Dutch Criminal Code. Nevertheless, the criminal law of these countries also contains the crime of bribery (illegal receipt of a gift or other privilege) in all its forms; some aspects of unlawful extortion are included in the legal construction of offenses that are not inherently biased [16].

All crimes under Chapter 28 of the Danish Penal Code, entitled "Crimes of Maliciousness", have a descriptive label "for the purpose of illicit gain" [17].

The purpose of making money is also stated in the Swedish Criminal Code in the legal regulation of crimes, including Chapter 16 "On Crimes against Public Order". Chapter 20 of the Criminal Code, entitled "Abuse of official position". In Article 2, the concept of bribery is used in the sense of one of the types of illegal bribery: "An employee who receives, demands, or promises a bribe or other unlawful payment for the performance of his or her official duties must be convicted of taking a bribe" [18].The essence of illegal payment in the Bulgarian Criminal Code is clearly defined in the second part of Article 223: "Anyone who knowingly receives a fee for a product or work that does not suit him based on incorrect information" will be prosecuted. This article also provides for liability for overselling of goods or overpayment for services rendered by law [13]. While the Bulgarian criminal law defines the illegality of payment (property benefit) in a number of other cases, it is not the legal status of the person being paid, but the incompatibility of the payment with the service provided.At the end of a brief analysis of foreign legislation on illegal remuneration, we believe that it would be appropriate to dwell on the legislation of another continental country, the United States, which is known for its positive experience in combating this crime.

It should be noted that the nature and extent of illicit remuneration in current U.S. criminal law is largely determined by the 1970 U.S. Federal Law on Control of Organized Crime. The U.S. Code of Illegal Payments, which is based on the concepts of racketeering and prohibited activities (§ 1961, 1961), is enshrined in this law. is also reflected in the regulation of give-and-take (for example, members of Congress, officials, and others receive remuneration on matters of government interest; to receive or demand payment for assistance in obtaining a position in the civil service). In doing so, the U.S. legislature is free to use the concept of remuneration and uses other terminology that is understandable to the primary addressee of criminal law, reflecting various aspects of illicit remuneration. For example, § 597 of the Legislative Code, entitled "Expenses for the Purpose of Influencing Voting," states that another person may or may not vote for or vote against any candidate or any other person, or that any amount of money may be paid to that person offer, as well as liability for receiving or demanding such money in order to exercise or waive his right to vote [19].

As we analyze U.S. criminal law, we would like to focus on two more cases.

First, concepts such as bribery, extortion, and extortion are used in U.S. criminal law not only to regulate the events they represent as independent crimes, but also to reinforce the descriptive nature of crimes that are not biased. Thus, the focus is not on the factors that led to the crime, but on the fact of its commission.

Second, U.S. criminal law, like a number of other foreign analogues we have mentioned earlier, does not specify the procedure for assessing the fact of a crime involving unlawful extortion, but in

terms of general parameters that the court must take into account in sentencing. For example, § 3553 of Chapter 227, entitled “Judgments” of Title 18, states: “In determining the exact punishment to be imposed, the court shall take into account: (1) the nature of the crime committed and the circumstances of the crime ...; (2) the necessity of imposing a sentence, provided that: (A) it reflects the gravity of the crime ... ”and so on [19].

Thus, acquaintance with the criminal law of foreign countries in terms of the extent to which the problem of illegal remuneration is reflected in it allows us to draw a number of conclusions.

First, the concept of remuneration is defined in most of the criminal laws of foreign countries. Moreover, in some cases, the event expressed by this concept is not only one of the characteristics of this or that crime, but also itself is also declared worthy of punishment under criminal law. When using other terms that reflect different aspects of illegal payment, the legislator’s focus is not on the motives of the action (inaction), but on the fact of its occurrence (bribery, extortion, etc.) in the criminal law.

Second, with some exceptions, differences in the scope of offenses related to extortion (if any) are determined not by matters of principle, but by the characteristics of the legal system of a particular state. In this regard, there are three main ways of reflecting illegal payments in criminal law:

a) by regulating illegal payment only in the norms of the Special Part (as an independent event and as one of the aggravating features of the punishment for the act committed);

b) by regulating illegal extortion both in the General part of the criminal law (as a rule, among the aggravating circumstances (punishment)) and in the Special part;

c) by regulating the illegal payment of remuneration in the norms of the Special Part and at the same time strengthening the general legal basis for the possibility of taking into account the fact of the commission of a crime related to illegal remuneration in sentencing.

Third, a systematic analysis of criminal law that directly uses the term “payment-receipt” or replaces it with other concepts allows us to point out four particularly common options in criminal law to determine its illegality:

a) by indicating that the fee is incompatible with the service (work performed);

b) by indicating that payment is not allowed in connection with the special legal status of the person being paid, determined by the place of work, position held, the nature of the services provided, etc .;

c) by indicating actions that are prohibited by law and for which a fee is charged;

g) by combining the three options mentioned above.

Fourth, from the point of view of the theory of the effectiveness of criminal law regulation, which includes taking into account the psychological effect of the perception of the criminal law prohibition on its main addressee, norms of illegal bribery, in other words, “for all possible circumstances in life” and not only in terms that are understood by experts (for example, “bribery of an official”), but also in relation to specific situations in life and the rights of ordinary citizens. the descriptive foreign experience applied to the level of consciousness is noteworthy.

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