

Features of the objective side of crimes related to forgery in office

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Abstract:

In criminal law, the sum of the objects and subjects signs is necessary to assess a socially dangerous act as a crime and they theoretically constitute the composition of the crime. When one said about objective signs, it is understood the object and objective side of the crime. The concepts of “harm” and “damage” have the different meaning. Damage is the occurrence of a consequence as a result of a crime, which is determined in exact amounts to the object of the crime, while the harm is determined by the amount of income or other benefits that the victim should have received as a result of the crime. “Serious damage” is a measurable concept, therefore it is difficult to express it in quantitative terms and it should not be considered that it consist of only material damage. Serious damage to the lawful interests, rights and freedoms of other citizens, the state or society – is damage to the inviolability of the citizen, the restriction of his freedom of movement and the occurrence of the risk of violation of other constitutional rights and freedoms, as well as the illegal restriction of the legally protected interests of the state and society, forgery of a document involves the preparation of a document that is completely forged, both in form and content, but it can also be expressed in a partial distortion of the content of the actual document, it should be noted that in the literature the term "forgery" itself is interpreted in two ways, the "intentional creation and presentation of false documents" by an official creates certain difficulties, both theoretically and practically. This is partly due to the fact that this method of forgery is not sufficiently studied in the criminal law literature, and many authors equate the issuance of forged documents with the creation of forged documents. This scientific article is written about these things.

Keywords: objective and subjective signs, forgery in office, serious damage, damage, harm, forgery

Introductions The sum of the objects and subjects signs is necessary to assess a socially dangerous act as a crime and they theoretically constitute the composition of the crime. When one said about objective signs, it is understood the object and objective side of the crime.

The second issue, which is analyzed in the coverage of the object of forgery in office, is the object of this crime. In the field of criminal law, the features of the objective aspect of the forgery in office crimes have not been studied enough detail. Including R.A.Zufarov gives such an opinion about the object of this crime: “The law introduces several types of criminal acts related to forgery in office crimes”. They include entering knowingly false information and notes to official documents, falsification or making and issuance of knowingly false documents” [1, p.269]. According to M.M.Kadirov, "forgery in office consists of objectively entering false information and records into an official document, falsifying official documents and knowingly submitting (presenting) a false document" [2, p.261]. According to M.H Rustamboev, “objectively, the crime is characterized by the fact that an official knowingly enters false information or records into official documents, falsifies documents and knowingly submitting (presenting) a false document. The occurrence of consequences such as serious damage to the rights or legally protected interests of citizens or the interests of the state or society is a necessary sign of a crime”[3, p.261]. B.Dj.Akhrarov noted that "the objectiveside of a forgery in office crimes is expressed at the phrase “forgery in office” in the name of the crime, and its diversity: it is meant the introduction of false information or records in advance into official documents; to make corrections to these documents with intetion of distorting their original content” [4, p.243].

ISSN 2521-3261 (Online)/ ISSN 2521-3253 (Print)

DOI 10.37057/2521-3261 <https://journalofresearch.info/21>

According to A.I. Rarog, the objective aspect of the crime of forgery in office is reflected in one of the following actions: 1) deliberate inclusion of false information in official documents (intellectual forgery) - the content is contrary to the truth, and in essence - implies the creation of a document that is false; 2) making corrections to official documents that distort their original content (material forgery) –involves modifying an actual document by deleting a certain portion of the data and (or) filling it with information that contradicts to the truth. As a result of this, the content of the information contained in the document is violated. Material forgery methods can include changing the document by scraping, altering, adding other numbers, adding and performing other similar actions [5].

The analysis of the characteristics of the objective aspect of the crime provided for by Article 209 of the Criminal Code of Republic of Uzbekistan, described in the legal literature, allows us to draw the following conclusions: first, although they may seem similar, but differ from each other in content; secondly, some of them also included signs of the objective side of other criminal offenses against the administrative order (Article 228 – Production, Forgery of Documents, Stamps, Seals, Blanks and Their Sale or Use).

According to M.H.Rustamboev and B.Dj.Akhrarov, the objective aspect of the forgery in office crime is manifested by the following symbols: behavior; socially dangerous consequences; a causal link between behavior and dangerous consequences [6, p.23].

Yu.I. Lyapunov, determine, that the essence of socially dangerous actions of this particular type of forgery in office crime is in the commission of falsification of official documents [7, p.55]. V.I. Dineka gives a similar definition of the objective side of the forgery office crime. In his opinion, the essence of the object of the crime forgery in office is expressed in the fact that the person violates informally the content of the official document, which establishes or rejects the legal force and which is considered as a source of regulating social relations [8, p.161].

Thus, the essence of the crime provided for Article 209 of the Criminal Code of Republic of Uzbekistan is in knowingly entering false information and records in official documents, falsifying documents, violating their authenticity, distorting the essence and content of the facts they confirm, or knowingly compiling and submitting false documents. Forgery combines two interrelated criminal characteristics - the nature of the act committed by the person and the way the subject itself is affected. As a sign of the object of crime, forgery, acting as an independent act, at the same time can also serve as a way of committing a crime. In this case, it does not fully cover the criminal conduct [9].

Fraud as a separate type of abuse of office combines its following general features: the accused commits the act using his official position and against the interests of the service. In the previous Criminal Code of Republic of Uzbekistan, the first of the above-mentioned features was described as “committing an act using one's official position” [10], which is why it is understood in criminal law in a narrow and broad sense.

On this issue, B.V. Zdravomislov and V.E. Melnikova have a special position. Considering that the first point of view is more correct, they say that in order to solve this issue without interruption, it is necessary to pay attention to the type of official crime. “In career fraud, – Melnikova writes, “there must be a direct link between the position held and the action taken. Exactly and only in the process of carrying out their service duties the accused can commit career fraud” [11, p.40].

Another inevitable sign of career fraud crime is that the actions take place contrary to the interests of the accused's service. The correct interpretation of this sign serves as an important criterion for distinguishing this crime from similar crimes, which are associated with the need for service.

According to L.D. Gaukhman, from the point of view of the general concept of the composition of a crime, the method of committing a crime operates in two different senses: 1) as an inevitable, including an alternative sign of the objective side of the crime; 2) as its optional feature [12, p.116].

As for the crime of career fraud, the method of its commission, according to some authors, is not considered as constitutional sign of the objective nature of the crime [13, p.182], according to some authors, on the contrary, it is considered as a constitutional sign of the objective side of the crime of career fraud [14, p.3].

It is known that the crime of forgery in office consists of intentional entry of false information and records in official documents, falsification of documents or intentional creation and submission of forged documents. This definition, given in the disposition of Article 209 of the Criminal Code, allows distinguishing several types of official fraud

The first type of criminal acts, which are united under the general concept of forgery in office and specified in the law, is knowingly entering false information and records into official documents. The essence of this method of committing a crime is determined by the fact that the official enters the information that contradicts the truth into a real document, which retains all the features and details of the real document. An official knowingly enters false information into official document drawn up by himself or by another official. M.H.Rustambaev believes that “the introduction of false information into the original document is characterized by the introduction of records that do not correspond to reality” [15, p.261].

Forgery of a document involves the preparation of a document that is completely forged, in both form and content, but it can also be expressed in a partial distortion of the content of the actual document. It should be noted that in the literature the term "forgery" itself is interpreted in two ways: in the broadest sense - as modifying the original document in any way or preparing a forged document. In this sense, the concept of “falsification” has the same meaning with the concept of “document forgery”. In the narrow sense, in accordance with the content of Article 209 of the Criminal Code of Republic of Uzbekistan it would be appropriate to understand forgery as one of the methods of career fraud.

Etymologically, the word “falsify” means to omit, abandonment, insert something, submitting something with some purpose and , the word “falsify” - to falsify something real, natural. In some literatures, the word “forgery” has been interpreted as “a crime consisting of falsification of real documents or forgery of documents” [16, p. 494]. In the word “forgery”, a negative assessment is more pronounced than in “falsification”. Although the words “forgery” and “falsification” are commonly used as synonyms in ordinary speech, they are not the same in their legal meaning. The explanatory dictionary of the Uzbek language states that "to falsify" means "to deviate from the truth", "to distort the truth". In fact, falsification is made from the word “sokht” (preparation, production from Arabic), “sokhta” (made from Arabic, artificial), “sokhtalashmok” (to lose sincerity, to be artificial, to be superficial), and when you say “forgery” it is understood “fabricating something similar for the purpose of forgery” [17, p.555-556]. Also, in the explanatory dictionary, "to falsify" means "to falsification", "to put in state of false", "changed", "not true", "fake", "to lie"[18, p.226].

According to the Uzbek Legal Encyclopedia, “forgery of documents is the preparation or falsification of official documents or the sale of such documents, which gives a certain right or release from certain obligations for the purpose of use by the forger himself or another person” [19, p.640].

According to M.H. Rustambaev, “forgery of documents can be a complete falsification of the form and content of the document, as well as partial misrepresentation of the original documents” [20, p.261].

According to R.A. Zufarov, “entering information that does not correspond to the reality into a real document is a forgery of the document. In this case, the document will have characters and requisites that are characteristic of the actual document. Document forgery can be the preparation of a forged document in its entirety in terms of form and content, as well as partial corrections to the original document”[21, p.269].

It should be noted that among scholars and researchers, there are different interpretations of criminal law terms, such as “falsification of documents” and “knowingly entering false information and records”, the development of a single and strictly defined rule on this issue, that is, a rule that

reflects their full understanding, has not been developed yet. Interestingly, despite the high social risk and a number of problems in the classification of crimes under Articles 205-209, which are included in the chapter “Crimes against Order of Governance”, the Plenum of the Supreme Court of the Republic of Uzbekistan has not yet commented on these crimes.

Taking into account the above-mentioned points, it is worthwhile to develop a decision by the **Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice on cases of career crimes against Order of Governance”**, in which the terms "forgery of documents" and "knowingly enter fake data and records" are defined as follows:

“Forgery of documents means the preparation of an official document that serves as proof of any fact, for the purpose of using it as authentic and falsified document, or for the purpose of using it by other persons”.

“Knowingly entering false information and records should be understood as the preparation of a false document that contains information that does not correspond to the truth or the actual state of affairs in advance, as well as making various corrections to an official document that serves as proof of any fact in connection with their official duties or for the purpose of use, delete or write, change other numbers, change the date, delete the original text and write another text instead, as well as actions taken by unauthorized persons to take appropriate formalities, in particular signing and other similar corrections”.

According to G.O. Ermatov, forgery of a document can be expressed in two ways: entering false information into the document; forgery, alteration and other operations related to documents [22, p.53].

Issuance of forged documents and inclusion of false information in full or in part is equivalent to the creation of forged documents. If the falsification of documents is prepared for the purpose of robbery is made for the purpose of hiding it, in any case such actions will be classified as a total of crimes.

The concept of forgery itself is sometimes used in two meanings. According to professor G.N.Berzenkova, falsification should be understood narrowly and broadly. In a narrow sense – falsification is the preparation of a fake, while in a broad sense – the concept of falsification involves the use of forged documents. At the same time, she said that not using fake documents is not part of the forgery.

The last type of forgery in office crime – “intentional creation and presentation of false documents” by an official creates certain difficulties, both theoretically and practically. This is partly due to the fact that this method of forgery is not sufficiently studied in the criminal law literature, and many authors equate the issuance of forged documents with the creation of forged documents [23, p.316].

According to some forensic scientists, the completed composition of the crime of forgery in office crime will exist only if the forgery and the submission of the document are performed together.

In this regard, according to R.A. Zufarov believes, that “the intentional creation and issuance of forged documents is not only manifestate by the falsification of documents in office crime, but also its transfer to an interested person. In this regard, this form of forgery differs from other types, because its existence requires the commonality of both actions - the creation and submission of the document” [24, p.269].

According to M.H.Rustambaev, “the preparation and submission of false documents, which is a form of forgery in office crimes, consists not only of falsification of documents, but also of their sale to interested parties. This form of forgery differs from others in this aspect, because it requires two actions: the preparation and submission of the document”. [25, p.261].

The fact that between the words "preparation" and "present" in the Criminal Code of Uzbekistan puted a conjunction "and" means that preparation and presentation should be described as a complex form of Forgery in Office consisting of two actions. In this case, the creation and submission of forged documents, as a type of forgery in Office, involves not only the falsification of an official document, but also its transfer to another person in accordance with its function or its

submission to a state body. However, it follows from this norm that liability arises only if a person create a forged document and then presents it to someone else.

However, knowing that the document is forged and presenting it to another person or using it, it must also create a criminal element. For example, officials working in the same structure conspired to commit such a crime. In this case, the first official A. crates a forgery document, second official B. then presents it to someone. In this case, there are specific difficulties in qualifying the criminals. For this reason, in the disposition of Part 1 of Article 209 of Criminal Code of Republic of Uzbekistan, it is advisable to use the conjunction “or” instead of the conjunction “and” between the words “making” and “issuance”. Therefore, it is proposed to amend the disposition of Part 1 of Article 209 of the Criminal Code as follows.

“If a Forgery in office, that is, if officials of a state body, an organization with state participation or self-governing body intentionally entering fake data and records into official documents, falsifying documents or knowingly creating or presenting false documents with mrcenary or othe motives and it causes serious damage to the rights or legally protected interests of citizens or to the interests of the state or the public”.

The generalization of the judicial-investigative practice of prosecution for the act provided for in Article 209 of the Criminal Code, the analysis of the criminal law showed that there are the following ways of committing the crime of Forgery in Office:

a) knowingly enter fake data and records into official documents. The essence of this method of committing a crime is determined by the fact that the official enters the information that contradicts the truth into a real document, which retains all the features and details of the real document. The content of such a document is completely or partially false, contradictory to the truth. The subject knowingly enters false information in an official document drawn up either by himself or by another person;

b) making corrections to official documents that distort their original content. The essence of this action is that the accused changes the document by scraping, altering, adding other numbers, adding and performing other similar actions.

Fraud is a type of deception aimed at misleading the deceived person by illegally distorting the available information. Such deception is manifested not only in the introduction of false information into the body carrying the information (active form), but also in the hiding of cases that must be disclosed in accordance with the law (passive form). In order to recognize a forgery in office as a crime, the form or content of the document must be violated in practice [26, p.92]. The presence or absence of these signs of forgery in office significantly affects the justification of the scope of criminal liability and the observance of the rule of law in law enforcement practice.

If the forgery of official documents is connected with the fact that a person evades the fulfillment of the task assigned to him in accordance with the law, it should be considered not as a way of committing a crime, but as a means used to commit another crime. An example of this can be the fact that the investigator will enter fake data into the expert opinion for the purpose of wrongful release of the defendant from criminal responsibility in exchange for a bribe [27, p.160].

The issue of determining the time of completion of the crime of Forgery in Office requires special study. This will be important in qualifying the offense at the time of its completion, as well as in determining whether the period of criminal liability has expired or not.

In this regard, M.H. Rustambaev states: “A necessary element of the objective side of the crime is the damage to the rights or legally protected interests of citizens or the state or public interest. According to its legislative structure, forgery in office has a material content. The crime will be considered completed from the moment of its occurrence by making false information or corrections to the document specified in the disposition of the article (Article 209)” [28, p.261].

According to R.A. Zufarov, “Forgery in Office is a crime committed from the moment of serious damage to the rights and legitimate interests of a citizen or the state or society” [29, p.269].

When we think about serious harm to the rights or legally protected interests of citizens or to the interests of the state or the public, we must first define the essence of the concept of “serious harm”.

It is known, that the concepts of “harm” and “damage” have the different meaning. Damage is the occurrence of a consequence as a result of a crime, which is determined in exact amounts to the object of the crime, while the harm is determined by the amount of income or other benefits that the victim should have received as a result of the crime. “Serious damage to the rights or interests of citizens, protected by law, or to the interests of the state or the public, can be expressed both in the manner of material damage or in the manner of lost benefits, and also in a different way of damage to various interests, in violation of the reputation of the authorities, in the concealment of grave crimes, etc.” [30, p.123-124].

“Serious damage” is a measurable concept, therefore it is difficult to express it in quantitative terms and it should not be considered that it consist of only material damage. At the same time, in most cases, the consequences of abuse of office are property damage, and in determining it, it is necessary to take into account the amount of material damage, the value of material objects, the possibility of property benefits, and many other factors, because their sum testifies to the seriousness of the damage done to the rights and legitimate interests of the citizen or the state or the community. The severity of the damage can be determined by the violation of the constitutional rights and freedoms of citizens, as well as the decline in the authority and credibility of the relevant bodies of state power. The severity of the damage can also be reflected in the complexity of the activities of government agencies, institutions, enterprises, public associations, etc. In determining the severity of the damage, must be taken into account the number of victims, the amount of moral, physical or property damage caused to them, the enterprise, organization, institution, etc. If the caused damage is not serious, then the criminal responsibility of the official for the abuse of his duty of service is not established, it can be limited to disciplinary responsibility for him. It should be noted that a necessary criterion for the qualification of a crime under Part 1 of Article 209 is that as a result of this act is required serious damage to the rights or legally protected interests of citizens or the state or public interest. Unless the consequence recorded as a result of the crime occurs, such an act will not be qualified by Article 209 of Criminal Code of Republic of Uzbekistan. In this regard, it is expedient, in our opinion, to quote the following opinion of G.O. Ermatov: “If an official document granting certain rights or exempting from a certain obligation is forged by an official and it is impossible to classify such an act as an official crime, and in the event that it is not possible to qualify the accused by accusing him of committing such an act (due to lack of damage or loss), the act must be qualified under Article 228 of Criminal Code of Republic of Uzbekistan. However, if it is possible for an official to qualify such an act as an official crime, it is sufficient to qualify such act as an Forgery in Office crime, without further qualification under Article 228 of the Criminal Code of the Republic of Uzbekistan” [31, p. 61-62]. Because if an official falsifies documents in connection with his / her official authority, it constitutes a composition of the official crime

An analysis of the norms of Criminal Code of Republic of Uzbekistan shows that the term “serious damage” is used in 2 cases, i.e. in Articles 209 and 251¹. When the concept of "serious harm" is defined in 10 articles.

In the criminal-legal literature distinguishes material and intangible consequences, depending on the “superficial, material nature” of the damage caused to the object of aggression [32, p.12-17]. Property damage in the form of direct damage or lost profits and physical damage expressed in the killing of a person or damage to his health are recognized as material consequences. Intangible consequences mean moral, political, organizational damage. Organizational damage is understood by scientists as the disruption of the activities of enterprises, organizations, transport, and political damage includes the weakening of state power, the destruction of its foundations, the aggravation of relations with other countries [33, p.364-365].

Material and other damage inflicted on official crimes is usually understood as a violation of the constitutional rights and freedoms of citizens, damage to the reputation of authorities, state and public organizations, disruption of their work, violation of public order, concealment of serious crimes.

Serious harm to the interests of the state or the public means that the law enforcer usually conceals a serious crime by an official. It is obvious that it is impossible to cover all the consequences of Forgery in Office in the norm, so the solution of this problem is brought to the attention of the applicant of the law, who acts on the basis of the circumstances of a particular case. In our view, when it is said about the damage to the rights and legally protected interests in the articles of Chapter XV of the Criminal Code of the Republic of Uzbekistan, it should be understood, including, the violation of constitutional rights and freedoms of man and citizen, violation of non-property interests of organizations, the public and the state, enshrined in the Constitution of the Republic of Uzbekistan, damage to the reputation of state authorities and local self-government bodies and concealing another crime by the official. It is impossible to cover all the consequences in the criminal law, therefore, in our opinion, it would be appropriate to provide a sample list of them in the relevant decision of the Plenum of the Supreme Court of the Republic of Uzbekistan.

Based on the above, taking into account the existing analogy in the Criminal Code and the analysis of the concepts of "damage" and "harm", in Article 209 of the Criminal Code it is expedient to replace the words "serious damage" to the words "serious harm".

Also, since serious harm to the rights or legally protected interests of citizens or the state or public interests is a relative concept of general importance, It would be expedient if the Section Eight of the Criminal Code entitled "Legal Meaning of Terms" provides a partial regulation of the application of Article 209 of the Criminal Code of Republic of Uzbekistan was filled with relatively clear definitions:

"serious harm to the rights or legally protected interests of citizens or to the interests of the state or the public – harm to the inviolability of the citizen, restriction of his freedom of movement and the risk of violation of other constitutional rights and freedoms, as well as illegal serious restriction of the legally protected interests of the state and society".

It is also proposed to establish liability under this article if the act provided for in Article 209 of the Criminal Code causes significant damage, and if act has no significant damage as well as have no the consequences of serious damage, it is proposed to the decriminalization and transfer to the category of administrative liability and to determine the occurrence of criminal liability only in case of recidivism of this category acts.

For this purpose, it is proposed to supplement the Code of the Republic of Uzbekistan on Administrative Liability with Article 193⁴ as follows:

193⁴ Article. Falsification of official documents by an employee or official of a state body, organization with state participation or citizens' self-government body

An employee or official of a state body, state-owned organization or citizens' self-government body will knowingly enter false information and records in official documents, falsify documents or knowingly create or submit forged documents with the mercenary or other motives, – will be punished with fine from fifty to one hundred basic calculated amount,

In addition, based on the direction of the criminal law policy going on in our country, it is advisable to apply incentive norms in case of compensation for damage caused to the guilty person.

To this end, it is proposed to include in the legislation a norm on non-application of punishment in the form of restriction of liberty and imprisonment in case of compensation for material damage caused by the act provided for in Article 209 of the Criminal Code.

It should also be noted that in cases where Forgery in Office is a method of committing other crimes, the act is qualified by a set of crimes. For example, robbery of another's property as a result of Forgery in Office should be qualified under Articles 209 and 168 of the Criminal Code.

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