

Problems of Understanding Subject Matter of the Offence

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Abstract: *This article devoted to analyse understanding subject matter of offence in modern jurisprudence rather than classic criminal law. Particularly, the article analysed controversial point of views on the material objects and non-material objects and person within the definition of subject matter of the offence and proposed corresponding conclusions.*

Key words: *criminal law, subject matter of the offence, victim, person, material object, bribery, murder, body, social reaction, classic criminal law, modern jurisprudence.*

Element of the object that protected by the Criminal Law which is directly affected by socially harmful act is considered as subject matter of the offence. According to classic Criminal Law subject matter of the offence is material object that influenced negatively by offender when commission of crime is made as well as the phenomenon that act made for. It should be mentioned that

although matters related to the subject matter of crime have solved in classic Criminal Law they are one of the controversial institutions of modern jurisprudence.

For instance, Tansin V.Y. divides all point of views on this regard into two category: first group of views considers subject matter of the offence as ‘legal phenomenon’ that outside of the crime object. At the same time the other one suppose that that phenomenon is similar with the object of the crime [1].

Rustamboev M.H. states that “subject matter of the crime is alive and lifeless objects that commission of crime made for or affected directly by offender due to this object [2]. The difference between those of two is that subject matter of the offence is only material objects in objective world i.e. transport, documents, flora & fauna meanwhile as an object of

crime considered social categories. If as a consequence of crime commission object of crime affected or the danger of harm came into existence the subject matter of the offence could be destroyed totally (for instance: murder CC 97, Arson CC 173) or could stay without harm (steal of object or car) or possibly could be influenced positively.

M. Fedorov describes the subject of the crime as certain objects or their totality, as well as other material objects and individuals, which are the bearers of certain social relations that directly affect the offense[3]. At the same time, he says, unlike the object of the crime, the subject of the offense is not present in all its content. In the theoretical interpretation of M.Fedorov it is worth noting that besides the persons who are the carriers of social relations, things (objects) can be recognized as such carriers.

According to V.Y. Tatci, the subject of criminal offense is that the social law protected by the criminal

law is directly exposed to criminal offense and therefore must be understood primarily as damaging appetite. V.Y. Tatci concludes that such subjects include the social relationship of the subject, subject and social relations.

From the foregoing analysis it is clear that most scholars describe the subject of crime as the material objects of the objective world, which can be understood, measured and recorded.

However, it is up to us to regard the subject as merely objects of material world. Particularly, A.Pashkovskaya commented on the subject of the crime and stated that "the subject is the material or non-material wealth of individuals" [4]. A.V. Glistin views the subject of social interaction and the subject of crime in terms of the subject of criminal offense. In his opinion, interpreting the subject of crime as merely a material thing, on the one hand, leaves the essence of the subject away from the ideological (social, political, spiritual)

relationship group, and on the other hand, submits what is relevant to other elements of the criminal elements in the subject of crime [5].

According to another author SI Ulezko, it is necessary to distinguish between the element of subject matter of the offense and the subject of social interaction as the constituent element of the object. As a matter of social relations, things in the material world (in which case it coincides with the subject of crime), and in the case of non-material social relationships, other social values (government, spiritual values) can be applied. "[6]. So, S.I. Ulezko understands that the subject matter of the criminal offense is the element that is directly damaged and primarily damaged by criminal law-protected social relationships. The subject matter of the offence in this case can be social interaction, social communication, the subject of social interaction, or almost every element of social interaction.

L. Gauchman believes that "the subject of matter of the crime is a material substance the living or lifeless object of the material world, that constitutes a crime, which directly impacts on the crime." When a person is a subject, he is called a victim, which is understood in terms of criminal law. "[7]. L. Gauxman combines the subject matter of the crime in the broad sense as e two subtypes of the subject matter of the crime - the subject matter of crime as an lifeless subject and person that understood in terms of criminal law (as a victim of crime). At the same time, the victim as a subject matter of crime should be different from the subject, as well as subject matter of the crime that created by the influence of the person. Similarly, S. Kravtsov argued: "When the subject matter of crime is widely interpreted, it totally covers the notion of a" victim "as an independent sign that described the object of the crime [8].

According to Article 82 of the Civil Code of the Republic of

Uzbekistan, all objects of civil law are subdivided into the objects that out of circulation, limited circulation and free circulation. Civil-law relations may not arise out of out of circulation items (because they are not recognized as objects of property rights). Most of these things can not be targeted in the interest of the limited persons, in which they have not to be benefited. In this regard, it is appropriate to agree with G.Kruger's opinion that "property that can not be acquired or owned by another person can not be the subject of the crime of looting the property of others" [9].

According to V. P.Revin, the following are excluded from the general civil circulation:

a) Objects and property that are considered as state property (for example, state diamond and currency reserves, historical and cultural values of nation-wide significance, etc.);

b) objects released from the general circulation due to the danger to others (eg, radioactive, toxic

substances and narcotic substances with strong effects);

c) only objects, objects and property belonging to municipal property (eg municipal budgetary funds, municipal enterprises) [10].

The significance of these subjects in the qualification of offenses can be proper evidence in Articles 182 and 246 of the Criminal Code of Uzbekistan. The list of most subjects of offenses that out of civil circulation and the subject of limited civil circulation referred in Article 246 of the Criminal Code and if criminal act is committed by objects mentioned in Article 246 the deem should be qualified within this article, otherwise Article 186.

Some authors consider that the subject matter of the offense of crimes against person is "man is a as a living biological entity." [11] When a person is subjected to criminal law and criminal procedural law, the law shall treat the person as a victim, not as a not the subject matter of the criminal offense. The subject matter of the

crime and the concept of the victim are different, and it is not right to replace them or mix them. The victim and the subject matter of the crime are separate independent concepts of social relations, whereas the person is the subject of social relations, but subject matter of the crime is the element of the crime. However, in some cases (for example, Article 134 of the Uzbek Criminal Code) dead body can be the subject of the offense.

From the above-mentioned, in summary, most scholars have understood that the subject matter of crime is the object of material blessings. But one thing to note is the second aspect of the issue. Unlike the crimes envisaged by some articles of the Criminal Code, the subject of crime may be non-material benefits.

Let's look at this as an example of bribery.

According to M. Kadyrov, the subject matter of the bribery is money or any property (furniture, carpets, TV sets, coffee makers, etc.), food products, alcoholic beverages, rarities

and collectibles (coins, brands) there may be property benefits. These benefits can be valuable, free of charge, at reduced prices or in remuneration.

Also, R.Zufarov notes that "in the broadest sense any material benefits, including property rights and obligations (eg exemption from debt repayment to the bribe-taker)" [13].

In summary, the subject of bribery can be all kinds of material values and other property benefits. Experience has shown that bribery often comes from cash, various valuables, industrial goods, food products, livestock and poultry. Sometimes, it is also possible to provide a bribed apartment, to lend money, to extend the loan repayment period, to carry out a free job (eg home repair, dressing, etc.).

We have found the following indications for the subject of bribery: Firstly, the subject matter of the offence must have a property value or a certain value, ie the other party (servant) should have some property

or other benefits. If the employee does not receive any property or any other benefit, his work can not be considered as a corrupt act. M. R. Rustambaev also noted that "non-property benefits can not be bribes" [14]. In this regard R. Zufarov's opinion is that "bribery envisages the richness of the person receiving it" [13].

Secondly, According to Article 81 the Civil Code of the Republic of Uzbekistan, civil rights objects are subdivided into material and non-material benefits. In our opinion, the subject of crime in bribery can not only be material, but also non-material. The most important thing is that the value given by the public servant should be of some value.

Material benefits include: property (immovable and immovable); objects (special and special, separable and unmanaged, consumed or consumed, basic and confusing materials); income and proceeds from the item; animals (eg

livestock, poultry); money (currency); currency valuables (foreign currency, securities in foreign currency - stock assets, foreign currency payment documents (checks, promissory notes, letters of credit and etc.) Precious metals - gold, silver, platinum and metals of any form and shape; precious stones); securities.

In the Civil Code of the Republic of Uzbekistan, non-material benefits include: the results of intellectual activity; service and trade secrets; personal non-property rights and other non-material benefits; honor, dignity and business reputation.

It is important to note that only two of the above mentioned are subject to bribery. The other two are inconsistent with the fact that the person is directly related to him and that he is not separated from one's personality.

According to the second part of article 97 of the Civil Code of the Republic of Uzbekistan, the results of intellectual activity and the specific

means of being the object of exclusive law may be used by third parties only with the permission of the right holder. It is understood that giving such a right to another person is of some value to another person.

Therefore, it can be viewed as a subject matter of crime.

Based on what we have just mentioned, we now reject the traditional definition of the subject matter of crime, and consider it to be understood in a new interpretation:

"The subject matter of crime is a material and some non-material benefits that are subject to crime or criminal offenses against a person who is guilty of committing an offense."

The crime must be differentiated from the weapon of crime and means of the crime. Whenever a particular subject matter is used to commit a crime, it is a weapon of crime. For example, a pistol is a weapon that can be used to kill a person. Guns will be a means of

crime if the guns are used in terms of banditry.

The money is a weapon of crime, when committing robbery and means of crime while taking part in bribery actions. The subject matter of the offense must, of course, be identified if the subject matter of the offense is included as a necessary mark of a specific crime. It affects to the qualifications of the social danger degree of some crimes. In some offenses, the crime weapon increases the degree of social danger. For example, Article 164 § 2 (a) imposes the responsibility for the abduction of weapons or other items that can be used as a weapon.

This provision is part of the crime component as a necessary mark of the qualification of the offence.

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