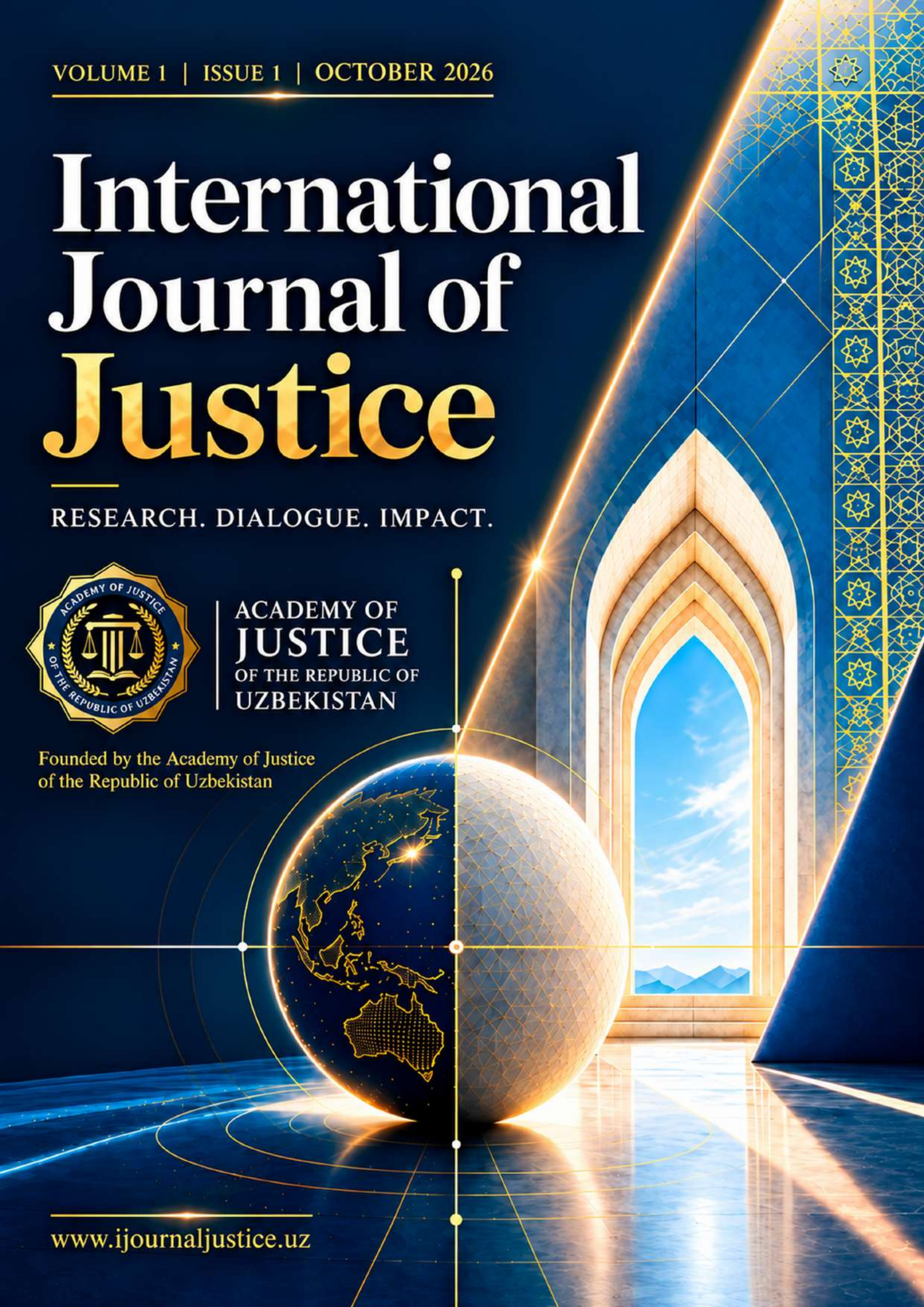
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CRIMINAL LIABILITY OF OFFICIALS OF NON-GOVERNMENTAL COMMERCIAL ORGANIZATIONS: PROBLEMS OF THEORY AND PRACTICE

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Abstract. *This article provides a scientific-theoretical and practical analysis of crimes related to the abuse of official position by officials working in non-governmental commercial organizations and the legal grounds for their liability. The study examines the specific criteria of the concept of an "official" in the non-governmental sector, in particular, the content of organizational-managerial and administrative-economic functions. It also considers the problems arising in the application of Articles 192⁹ and 192¹¹ of the Criminal Code of the Republic of Uzbekistan, the determination of the amount of damage, and the procedural features of initiating criminal proceedings. The article puts forward proposals aimed at increasing the effectiveness of combating corruption in the non-governmental sector and filling gaps in legislation.*

Keywords: *non-governmental commercial organization, official, criminal liability, abuse of authority, commercial bribery, organizational-managerial function, economic crimes.*

The circumstances contributing to the commission of crimes by employees of private security and detective firms include the following: a) criminal penetration into private security and detective agencies due to the external conditions under which the non-governmental law-enforcement sector emerged and developed; b) the inadequacy of the legislative framework regulating the activities of private security and detective firms; c) shortcomings in the efforts of law-enforcement agencies to detect, investigate, and solve crimes committed by employees of private security and detective firms; d) the latent nature of crimes in the field of security and detective activities; d) an ineffective system for screening and selecting employees for work in private detective and security firms; e) shortcomings in the training and instruction of employees of private security and detective firms.[1]

According to S. Gulyamov, the concept of "official" in Section Eight of the Criminal Code of the Republic of Uzbekistan should be amended. In this regard, it is necessary to clearly define not only persons exercising traditional management, but also persons exercising control over digital ecosystems, platforms, and crypto-assets as officials of non-governmental organizations.[2]

The general object of abuse of authority in commercial or other organizations may be defined as social relations in the economic sphere, forms of ownership, economic activity, and the normal functioning of commercial and other organizations. In defining this object, the author proceeds from the view that social relations regulating official activities have an economic meaning, because damage to the economy, even if not directly, is caused by disrupting the normal functioning of the management apparatus of participants in

economic activities, with such activity (entrepreneurship) being their principal legitimate objective.[3]

The subjective aspect of the crime, in addition to direct and indirect intent, is characterized by a specific purpose — obtaining benefits and advantages for oneself or others (relatives, close persons, business partners, etc.) or causing harm to others.

Motive is not a constructive element of the crime; therefore, it may differ depending on the commission of the crime. However, in all cases, the motive is part of the subject matter of proof in all categories of cases and must be established. Traditionally, motives characterizing abuse of authority include selfish motives and other personal interests.

Therefore, if a legal entity benefits as a result of abuse of its powers, a claim may be brought against the person who committed the crime or against the organization in whose interests the socially dangerous act was committed.

A key factor in subsequently ensuring effective compensation for damage is determining the financial condition of the defendants at the pre-trial stage in order to take urgent measures to secure the claim. On the one hand, this is because difficulties may arise at the enforcement stage due to individuals lacking the property or funds necessary to comply with a court decision, especially when substantial property damage has been caused. On the other hand, when bringing claims against legal entities, active methods may also be used to avoid enforcement of court orders through liquidation, reorganization, bankruptcy of the organization, and other means.[4]

Proving damage caused to property in criminal cases does not mean that the court will necessarily order the defendant to recover the funds. For example, claims may be rejected because the limitation period has expired. In addition, as noted above, if the damage caused to an organization by its employees is expressed in lost profits, bringing a claim is considered inappropriate due to the absence of legal grounds for recovery. In some cases, proceedings were terminated in connection with the introduction of a debt restructuring procedure for the guilty person and their declaration of insolvency (bankruptcy).

As a rule, the doctrine of criminal law does not contain a general definition of this concept, and the nature of substantial harm is disclosed through a list of types of socially dangerous consequences in which it may be expressed.

According to A. Ya. Asnis, a substantial violation of the rights and legitimate interests of citizens and organizations consists, “first, in all cases without exception, in the violation of the constitutional rights, freedoms, and interests of citizens or organizations enshrined in the Constitution of the Russian Federation; and, second, in other cases, it is determined on the basis of a subjective criterion consisting in the assessment by the victim, rather than by a law-enforcement agency, of the violation and the damage caused as substantial or insignificant.”[5]

This concerns the criminal liability of persons performing managerial functions in commercial and other organizations for abusing their powers and failing to perform, or improperly performing, their official duties, which results in a substantial violation of the rights and legitimate interests of individuals or organizations, or of the legally protected interests of society or the state. The issue of classifying the actions of such persons when they forge official documents within the scope

of their powers in connection with their official duties has also not been resolved.[6]

The rule concerning abuse of authority or official powers may be considered separate from the general rule on abuse of official position, since the concept of "official position" is broader than the concept of "official powers."

There are known cases in which the negligent attitude of persons performing managerial functions in commercial organizations, including state or municipal organizations, has resulted in multimillion-dollar damage to state or municipal property or serious violations of the rights and legitimate interests of citizens, while the guilty persons have been subjected only to disciplinary liability.

According to M. H. Rustamboyev, for acts committed in non-governmental commercial organizations that are not highly socially dangerous and where the amount of damage is not particularly large (for example, less than 30 times the Basic Calculated Value), instead of criminal liability, administrative penalties should be established by introducing a special article into the Code of Administrative Responsibility.[7]

According to B. Kh. Po'latov, under Article 192^{11} of the Criminal Code, if the damage has been caused solely to the private organization itself, it should be strengthened as a mandatory condition for initiating criminal proceedings that an application be submitted by the owner (shareholders). However, if the act causes harm to consumer rights or the environment, the mechanism for initiating proceedings by the prosecutor in a public manner should be retained.[8]

Conclusion

In conclusion, it can be stated that measures of liability for officials of non-profit organizations should be strengthened. First, with respect to officials of non-governmental organizations, instead of imprisonment, greater use should be made of penalties consisting of compensation for the damage in several multiples of its amount (an economic fine) and deprivation of the right to hold managerial positions for a certain period.

Second, under Article 192^{11} of the Criminal Code, if the damage has been caused solely to the private organization itself, the requirement that an application by the owner (shareholders) be a mandatory condition for initiating criminal proceedings should be strengthened. However, if the act causes harm to consumer rights or the environment, the mechanism for initiating proceedings by the prosecutor in a public manner should be retained.

Third, the laws "On Protection of the Rights of Joint-Stock Companies and Shareholders" and "On Limited Liability and Additional Liability Companies" should be supplemented with a provision requiring the mandatory establishment of an anti-corruption compliance system in large commercial organizations.

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