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CONTROVERSIAL ISSUES OF SUBSUMPTION OF MALFEASANCE

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The subject. The article deals with subsumption of malfeasance, judicial characterization of such white-collar crimes.
The purpose of the paper is to answer the question of admissibility of qualification of ho-mogeneous actions of a person according to two separate art. 285 and 286 of the Criminal Code of the Russian Federation.
The methodological basis of the research includes general-scientific methods (analysis and synthesis, system-structural approach) as well as academic methods (formal-legal method, method of interpretation of normative legal and judicial acts).
Results and scope of application. Within the meaning of paragraph 15 of the Resolution of Plenum of Supreme Court of the Russian Federation, it is absolutely clear that legal actions of an official, which were not caused by official necessity, must be qualified under art. 285 of the Criminal Code of the Russian Federation.
Not only legally, but even from the point of view of ordinary logic, the qualification of homogeneous actions by different criminal law norms is unacceptable.
Due to the fact that art. 286 of the Criminal Code of the Russian Federation is not a crime of corruption by its characteristics, art. 285 of the Criminal Code of the Russian Federation cannot be regarded as a special case of abuse of power.
Conclusions. This is unacceptable to qualify the homogeneous actions of a person according to two separate articles – art. 285 and 286 – of the Criminal Code of the Russian Federation. It is necessary to add the Resolution of Plenum of Russian Supreme Court from October 16, 2009, No. 19 by the provisions more specifically delimiting qualification of malfeasance crimes according to art. 285 and 286 of the Criminal Code of the Russian Federation.

1. The relevance of issues of qualification of malfeasance

Since 2007, in which the Investigative Committee under the Prosecutor's Office of the Russian Federation was established, the state is taken the obvious course to more thoroughly investigated and of crimes in the area of excess and abuse of power. During this time, a wave of excitation of resonant criminal cases went across the country. Hundreds of officials appear before the court each year - from having the minimum powers of civil servants to regional and Federal ministers, mayors of cities and provinces.

Officials have become increasingly vulnerable, which gives rise to their reluctance to take rational management solutions.

Omsk Oblast which took the federal trend of criminal law enforcement, was not an exception. Without naming specific criminal cases, it is worth noting that the courts in sentencing often do not provide answers to the questions, including on the qualification of actions of the defendants (the convicts).

It seems that this situation has a particular relevance for law enforcement because it creates a situation that violates the principle of legal certainty.

A number of researchers have repeatedly spoken of malfeasance [1- 10].

Thus, in the fair opinion of V.N. Borkov "Analysis of judicial practice shows the absence of a common approach to the definition of crimes committed in the sphere of implementation of the state and municipal contract" [11, p. 12].

A.M. Tsaliev notes that the judicial system can be an effective lever to combat corruption only in the case of improvement of legislation on corruption n GOVERNMENTAL crimes, its practical application [12, p. 57].

2. Examples of the qualification of homogeneous actions under articles 285 and 286 of the Criminal Code of the Russian Federation.

In this article it is possible to consider issues relating to e of admissible qualification homogeneous actions of the person under Articles 285 and 286 of the Criminal Code.

Briefly the plot of the accusation is as follows.

Episode number 1 (qualified by part 3 of Article 285 of the Criminal Code of the Russian Federation).

12/22/2013 Ivanov, being in the building of the Ministry, fulfilling the duties assigned to him to ensure activities related to the construction of the facility No. 1 under a state contract with the Organization, provided that the latter has outstanding advances, aware that the Organization is in difficult financial claim on the decomposition and significantly behind schedule of works on public dissent to the acting deliberately against the interests, abusing authorities gave the director the treasury established knowingly unlawful instructed not to produce with the contractor set off for work performed at the expense of previously paid the advance paid for the work and recover previously paid in advance. In violation of Art. 34, 158 of the Budget Code Ivanov prepared and signed a decree according to which the state institution should advance the Organization in the amount of 30% of the limits of budgetary obligations of 2013, offset the advance in 2014. In accordance with the instructions of Ivanov the director of public institution in the presence of receivables contractor 23/12/2013 accepted and paid for the work of the Organization.

Episode number 2 (qualified according to clause "c" part 3 of article 286 of the Criminal Code of the Russian Federation).

12/30/2013 Ivanov, being in the workplace, knowing that under the state contract for the construction of Object No. 2 money was transferred, including in the form of an advance payment, as well as about the subsidies of the federal budget, brought in 2013, clearly exceeding his authority, illegally, in violation of a government contract, with the aim of transferring brought l and of limits in 2013 in full Organization, I made a decision and signed an order changing the size of the advance and the order of set-off, on the basis of which, as well as the signature of the director of the public institution of the supplementary agreement of the Organization funds were listed, that in view of the previously mentioned funds was 42% of the limits brought in 2013, during a public contract, the amount of funding in the amount of 15%.

Turning to the analysis described episodes that focus on the following circumstance of b:

- in both cases, the relationship between public institutions took place without the participation of the ministry, which was not a party of government contracts;

- in both cases, the orders issued by the ministry began with the words "I authorize", without using any mandatory (binding) wording to the directors of state institutions;

- as can be seen from the plot on part 3 of Art. 285 of the Criminal Code law enforcement agencies, and then the courts are not required to claim on the establishment of a mandatory attribute of the subjective side - the existence of "mercenary or other personal interest."

Analyzed plot primarily interesting for the study from the perspective of how a person who is not party to a government contract and has not issued Liabilities and-negative orders for a person performing it, performs significant or insignificant legal action.

Thus, A.V. Brilliantov quite reasonably points out that "not any actions of civil servants have a legal value and entail legal consequences. In this regard, there is a need to distinguish between legally significant and legally insignificant actions" [13, p. 9].

Unfortunately, the law enforcement practice did not properly take into account the doctrinal position, in spite of its high practical importance.

Instead, the research questions significance or insignificance actions of officials, as well as their consequences, the law enforcer is much easier to use is already being tested for criminal law instruments - Articles 285 and 286 of the Criminal Code.

It seems that in the above story line investigative body, and then at the rows incorrectly and inconsistently qualified is actually homogeneous actions and new Yves II on issuing orders to authorize advance payments on Objects No. 1 and No. 2, committed almost at the same time.

3. Analysis of interpretations of Articles 285 and 286 of the Criminal Code of the Russian Federation by the Supreme Court.

In order to study the need to refer to the interpretation of Articles 285 and 286 of the Criminal Code by the Russian Supreme Court.

According to para. 15 of the Resolution of the Plenum of the Supreme Court of 16.10.2009 No. 19 (hereinafter referred to as the Resolution) - under the official's use of his official powers contrary to the interests of the service (Article 285 Of the Criminal Code of the Russian Federation), courts should be understood as the commission of such acts, although they were directly related to the exercise by the official of his rights and duties, but were not caused by official necessity.

Thus, in the sense of para.15 of the Decree is absolutely clear that under Art. 285 CC RF qualified legal acts of an official that were not caused by official necessity.

In this significant difference Art. 285 CC RF from Art. 286 CC RF, as stated directly in para.19 of the Decree, according to which - in contrast to that provided for in Article 285 CC Russian responsibility for actions (or inaction) within its complexity contrary to interests of the service responsible for the abuse of authorities (Article 286 CC RF) occurs in the case of an official of the active de th consequence, clearly beyond its mandate, which caused a significant bunks in shenie rights and legitimate interests of citizens and organizations or legally protected inter e owls society or the state, if it was aware of an official, which acts outside the powers conferred on him. Abuse of powers may be expressed, for example, of an officer in the line of action I of affection that:

- refer to the authority of another official (superior or equal in status);

- it can only be effected under special circumstances mentioned in of a horse or regulation;

- committed by an official is one person, however, can only be made jointly or in accordance with the procedure established by law;

- no one and under no circumstances has the right to commit.

It seems that not only legally, but even from the point of view of conventional logic, the qualification of homogeneous actions by different criminal law norms is unacceptable.

4. Analysis of interpretation of Articles 285 and 286 of the Criminal Code by legal scholars.

It is worth noting that in science there is a position different from the one stated above.

Thus, P.S. Jani points out "What is the correct understanding of the data by the Plenum in the resolution of October 16, 2009, clarifications? Plenum concluded any abuse in the form of action should be considered as a special case of abuse of power as one of the forms of pr e Vyshen - the commission of acts that could be committed by an officer l and Tzom only in special circumstances specified in law or by-law, is specialized in art. 285 of the Criminal Code of the Russian Federation by singling out such a sign of the subjective side as a motive in the form of selfish or other personal interest. This means that if an official commits included in the circle of his official powers of action without prerequisites or bases to commit them (p. 15 of the Ordinance of 16 October 2009), or the same, performs duty action may be made only in special circumstances specified in the law or regulation (p. 19 of the Ordinance of 16 October 2009), and these actions involve district and socially danger mentioned in Art. 285, and depending on the presence, in the first case, or lack of, in the second motive selfish or other personal interest" [14, p. 15].

With all due respect to the coryphaeus of the science of criminal law, P.S. Jani, expressed by him the suggestion that official abuse is a special case of abuse of authority, is not indisputable.

5. Conclusions.

Summarizing, it appears that the qualification of homogeneous actions of authorities according to two separate articles of the Criminal Code is invalid. Otherwise, investigative and judicial authorities will continue to arbitrarily interpret these norms in each specific case.

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