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Practical Problems of Distinguishing Bribery from Crimes against Property

The fight against corruption is a global and one of the most pressing problems for countries. Bribery is the most serious corruption crime according to Georgian criminal law. However, corruption, in addition to bribery, can be committed by using the official position, involving crimes against property, such as "misappropriation or embezzlement" and "fraud". In Georgian judicial practice, it is often problematic to distinguish bribery from the mentioned crimes against property. This article is dedicated to demonstrating the significant gaps in the decisions of judicial and investigative bodies in this regard. It proposes ways to solve the problem of differentiating these crimes from each other, ensuring accurate legal classification of the act.

Key words: *corruption, bribery, crime against property, use of official position, qualification.*

1. Introduction

Corruption (corrumpo) is a Latin word that literally means to ruin, spoil, destroy, tempt, pervert, bribe, distort, and falsify[1]. Corruption is one of the most pressing and problematic issues in the world. According to the preamble of the European Convention, "Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.[2]" The destructive effect of corruption on the state is also indicated by the words of the then UN Secretary General Kofi Annan in the Foreword of the UN (United Nations) Convention against Corruption, who compares corruption to an insidious plague.[3] Georgia, along with other international documents, is a signatory party of these two crucial conventions, and since the civilized countries of the world agreed on the destructive effects of corruption and the Western nations began to actively fight against corruption, Georgia, after gaining independence in 1991, established a internal legal framework and implemented international legislation. In addition to incorporating pertinent articles into the Criminal Code, Georgia enacted the Law of Georgia on Conflict of Interest and Corruption in Public Service on October 17, 1997. It was amended on November 30, 2022, and

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1 The National Parliamentary Library of Georgia, Digital Encyclopedic Dictionary <http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=3657> [14.03.2023]

2 Cited: the Preamble of Criminal Law Convention on Corruption (Council of Europe; Done at Strasbourg, 1999).

3 Foreword of United Nations Convention against Corruption, New York, 2004. <https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> [15.03.2023].

renamed the "Law of Georgia on the Fight against Corruption."[4] This law provided a definition of what constitutes a corruption offense. Furthermore, since 2005, Georgia has periodically approved national anti-corruption strategies and their implementation plans. These initiatives aim to effectively combat corruption[5]. The reforms undertaken in recent decades have brought Georgia closer to EU integration, which in itself imposed more obligations concerning the effective fight against corruption. Pursuant to the Association Agreement between Georgia and the European Union, Georgia is obligated to implement vital international standards to combat corruption, both in the public and private sectors.[6] It is well recognized that corruption can manifest in various forms, including within public service and private sector.

As rightly pointed out, "„Corruption" is a word whose many meanings, even if only law and government are considered, range from simple bribery to arrangements with profound implications for constitutional and even international law"[7]. Therefore, corruption is not merely a domestic concern, it is also a pressing international problem. Truly corruption does not mean only bribery.Corruption, according to Article 3 of the Law of Georgia "On the Fight against Corruption," is defined as "the use of one's position or related opportunities by a person to receive property or other benefits prohibited by law, as well as transferring or assisting in the receipt and legalization of such benefits." Consequently, the crime of corruption can be committed both by taking a bribe by a public official in the execution of their official duties (as stipulated by Article 338 of the Criminal Code, in the private sector – by Article 221 of the Criminal Code), as well as misappropriation or embezzlement of state or private property by using the official position (as defined in Article 182, Part 2, subsection "d" of the Criminal Code). The crime of "Misappropriation or embezzlement" outlined in Article 182 of the Criminal Code of Georgia (to denote this crime in English, the word "Embezzlement" is used mainly, sometimes – "Misappropriation") is regarded as a corruption offense in international agreements and the above-mentioned UN Convention against Corruption, in Articles 17 and 22, obliges parties to criminalize "Embezzlement" in both public and private sectors. "A general definition of corruption is the use of public office for private gain. This includes bribery and extortion, which necessarily involve at least two parties, and other types of malfeasance that a public official can carry out alone, including fraud and embezzlement"[8]. As mentioned, bribery requires a second party in addition to a public official, and a corruption crime such as embezzlement or fraud can be carried out by a public official alone without a second party. It is also possible to commit a corruption crime by using one's official position, by fraudulently acquiring the property of the state or a private person, which (provided by subsection "a" of part 3 of Article 180 of the Criminal Code).

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4 Law of Georgia "On the Fight against Corruption", Legislative Herald of Georgia, 17/10/1997.

5 See for example: Decree N550 of the President of Georgia "On Approval of the National Anti-Corruption Strategy of Georgia" – 24/06/2005, (Expired -04/06/2010)/

6 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. 30.08.2014, article 17.

7 *Schroth P. W.,* Corruption and Accountability of the Civil Service in the United States. The American Journal of Comparative Law, Vol. 54, 2006, 553–579.

8 *Gray C.W., Kaufmann D.,* article Corruption and Development, Finance & Development, March 1998, 7, <https://www.imf.org/external/pubs/ft/fandd/1998/03/pdf/gray.pdf> [16/03/2023].

The topicality of the topic is the gaps in the court's decisions, when separating the mentioned crimes from each other and correctly qualifying them. In addition to the fact that the punishments corresponding to the mentioned articles are different, in general "qualification implies the exact correspondence of the norm to the action"[9] and a specific action must be qualified as a specific crime[10]. Therefore, it is crucial to accurately determine whether an individual's conduct constitutes "bribery" or a particular property-related offense. Moreover, the statute of limitations for criminal liability exemption varies. For official crimes (including those under Article 338) the statute of limitations is 15 years for both less serious and serious crimes and in the case of other less serious and serious crimes (among crimes against property) – 6 and 10 years, respectively. The task and purpose of the topic is to present relevant practical problems and propose ways to solve them.

2. Main Features of Bribery and Corruption Crimes against Property in Georgian Legislation

Bribe-taking, as mentioned, is provided for by Article 338 of the Criminal Code of Georgia, and it is the most serious crime in the chapter of official crimes, which encompasses: "*Taking or demanding by an official or a person equal thereto, directly or indirectly, of money, securities, other assets, pecuniary gain or of any other unlawful advantage, or accepting an offer or promise thereof for his/her own benefit or for the benefit of another person in order for the official or the person equal thereto to take or not to take certain actions during the exercise of his/her official powers for the benefit of the bribe-giver, or to use his/her official standing to achieve similar goals, or to exercise official patronage".* The first part of this crime is punishable by imprisonment for a term ranging from six to nine years, while the third part carries a penalty of eleven to fifteen years of imprisonment. The legal good, protected from this crime is the prestige and authority of the state government and governance, local self-government bodies, as well as their normal, legal functioning.[11]As mentioned, bribery is considered a mutual crime, necessarily requiring the presence of a bribe-giver, whose actions are separately penalized under Article 339 of the Criminal Code.

As for the misappropriation committed by using the official position, which is provided for by subsection "d" of part 2 of Article 182 of the Criminal Code, as a rule, the offender typically acts alone, without the involvement of any necessary accomplice. The perpetrator of the crime provided for in this article, is a special person in whose rightful possession or management the property is, and in the case of subsection "d" of part 2, the perpetrator of this crime may be a public official, similar to the composition of the crime of bribery. Article 182 of the Criminal Code of Georgia establishes the definition of this crime: "*Unlawful appropriation or embezzlement of another person's property or property rights provided this property or property rights were lawfully held or managed by the misappropriator or embezzler"*. For subsection "d" of part 2 of the mentioned article (embezzlement

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9 Verdict of the Supreme Court of Georgia on February 10, 2020 in case №57ა3.-19.

10 *Nachkebia G.,* The general theory of qualifying an action as a crime, ed. "Innovation", Tbilisi, 2010, 11-14 (in Georgian).

11 *Lekveishvili M., Todua N.,* in the book: *Lekveishvili M., Todua N., Mamulashvili G*., Private Part of Criminal Law, book II, Tbilsi, 2020, 390 (in Georgian).

or embezzlement through the use of official position) for the commission of this crime, a fine or imprisonment for a term of four to seven years is provided as a punishment. Along with unlawful appropriation, this article also defines embezzlement, however, in this case, the misappropriation will be subject of the discussion. In addition, it should be noted that according to Article 182 of the Criminal Code of Georgia, misappropriation and embezzlement are artificially distinguished from each other, and accordingly, the practice draws the line between them according to whose benefit the illegal acquisition of property took place (if it is for the benefit of the offender – it is considered misappropriation, while it is for the benefit of others – embezzlement). Such a reasoning is also developed in the Georgian legal literature, where it is mentioned that unlawful appropriation is manifested in the illegal possession of someone else's property for one's own benefit,[12] and it is considered that during appropriation, the offender acts with the intention to use the property for his own benefit.[13] Meanwhile, in legislations of European countries, misappropriation refers to the taking possession of property for one's own benefit, as well as for the benefit of others, and the legal classification is not affected by whose benefit it was done. For example, according to paragraph 246 of the German Criminal Code, misappropriation is provided, which implies appropriation not only for oneself, but also for someone else, a third party. In Germany, the reason for adding the involvement of a third party in appropriation, was to prevent the offender from denying to have committed misappropriation for himself in order to evade criminal liability[14].

As it turns out, the executors of Articles 182 and 338 of the Criminal Code can be identical. It is undisputed that in both cases the motive of the offender is greed, but the difference between them is that in the case of Article 338 of the Criminal Code, the official receives property or any other property rights (gets rich) from another person, for whom he performs a specific action related to his service and in the case of Article 182 of the Criminal Code, a person becomes rich not with the property transferred by a third party, but at the expense of the property of a public or private organization, which is in the lawful possession or management of the person.

As a rule, in practice, when a problem arises as to under what article should adjacent delicts be classified, first of all, it is necessary to correctly define these norms. The definition of the norm implies the clarification of its essence and purpose, so to determine what content the legislator embedded in it[15]. In addition to classical interpretation methods, there is also a comparative-legal method. The comparative-legal method is often called the fifth method of law definition[16]. Clarification of the content of the norm begins with a grammatical definition[17]. In this case, when it is not possible to distinguish between bribery and crimes against property in practice, the wrong interpretation of the norm is less of a problem. Oftentimes, such actions can not be legally classified

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12 *Lekveishvili M., Todua N., in the book: Lekveishvili M., Todua N., Mamulashvili G.,* Private part of criminal law, book I, seventh edition, Tbilisi, 2019, 521 (in Georgian).

13 *Tsulaya Z.,* Private Part of Criminal Law, (Volume II), Tbilisi, 2001, 90-91 (in Georgian).

14 *Kühl in: Lackner/Kühl,* Strafgesetzbuch: StGB Kommentar, 29. Aufl. 2018, § 246, Rn 8.

15 *Intskirveli G.,* General Theory of the State and Law, Tbilisi, 2003, 171 (in Georgian).

16 *Häberle P.*, Grundrechtsgeltung und Grundrechtsinterpretation im Vefassungsstaat Zugleich zur Rechts-vergleichung als `fünfter" Auslegungsmethod, in.: Juristische Zeitschrift, 1989, 193.

17 *Khubua G.,* Theory of Law, Tbilisi, 2003, 153 (in Georgian).

because factual circumstances and practical nuances are not established/investigated. Such a problem arises not only when distinguishing Article 338 of the Criminal Code from Article 182 of the Criminal Code, but also when distinguishing it from Article 180 of the Criminal Code – when fraud, i.e. fraudulent acquisition of property is committed using an official position. As mentioned previously, in the case of Articles 182 and 180, the criminal commits the crime of corruption alone, however, when a second party appears during the commission of these crimes, who helps the official commit the crime, then arises the problem of separating bribery from other crimes.

3. Practical Problems of Action Qualification

As mentioned earlier, the problem of distinguishing bribery, the crime under Article 338 of the Criminal Code from the crimes against property, arises when another, third person helps the official to commit the crime against property. Such problems in practice appear most often in the so-called "Atkat"(kickback) crimes. the so-called "Atkat" is "an amount that an official receives from a company or a person to whom he illegally or unfairly transferred budget funds by prior agreement[18]." This type of crime mainly occurs during procurement by state organizations through tender or direct methods, where the official attempts to obtain any property benefit illegally. In practice, there are often cases where crimes of this type are wrongly classified as bribery (taking a bribe, Article 338 of the Criminal Code) or commercial bribery (Article 221 of the Criminal Code). This is certainly incorrect because, from the definition of "Atkat", it can be seen that in reality, an official (in whose administration the budgetary funds of the agency are) with a prior agreement aims to illegally receive funds from a person or enterprise, which money was illegally or unfairly transferred from the budgetary funds of his own organization. In practice, is such cases, where the head of any state or other organization (for example, the head of a local municipality) signs a purchase agreement with the head of an enterprise that has previously negotiated with him for the purchase of goods or services necessary for the agency and transfers 150,000 GEL from the organization on the basis of this agreement, while for the fulfillment of this obligation 100,000 GEL was quite sufficient (this amount includes the profit of the enterprise). In addition, the head of the organization had previously agreed with the entrepreneur that after depositing the funds, the entrepreneur would return the excess amount, 50,000 GEL, to the head of the agency in the form of cash, or transfer it to a private bank account convenient for him. At such a time, the entrepreneur is also satisfied, because 100,000 GEL was completely sufficient to fulfill the obligations stipulated in the contract, and after paying the expenses, the profit from this amount remained, and the head of the agency is also satisfied, because he illegally received 50,000 GEL.

In practice, law enforcement bodies, after discovering such facts, qualify the actions of these persons as bribery, namely, taking 50,000 GEL as a bribe and giving a bribe on the part of the entrepreneur. The court also issues a verdict based on these articles, when the physical transfer of money to the official is confirmed by indisputable evidence, without having the opportunity to investigate the factual circumstances in detail, due to the principle of adversarial proceedings, if the

[18] Dictionary of Corruption <https://csogeorgia.org/ge/newsPost/27763> [17.03.2023].

defense side did not raise this issue. As a rule, it is written in the indictment that the head of the agency demanded and accepted 50,000 GEL as a bribe from the entrepreneur in exchange for giving him an advantage (which means signing a contract in his favor without a tender/competition). This classification is not correct, because the fact that the official himself illegally withdrew this amount from the property fund of the organization, and in reality in such a case, the official does not receive the money from the entrepreneur, but transferred this amount to the entrepreneur himself, in order to bring it back to him later. This 50,000 GEL is the so-called "Atkat". In this case, here is a misappropriation of funds (50,000 GEL) in his rightful possession and control by the official, using his official position, and the entrepreneur did not give this money to the official as a bribe, but he technically helped the official in misappropriating this amount. Accordingly, the entrepreneur's action should be categorized not as bribery, but as assistance in misappropriation (Article 182 of the Criminal Code). If the contract had been signed at the market price, hypothetically 100,000 GEL (where the entrepreneur should have a legal profit of 10,000 GEL as a result of the performance of the work) and not for 150,000 GEL and the official demanded that if he did not give 5,000 GEL from his profit, he would terminate the contract and he did not transfer the amounts provided for in the contract, in such a case there would be bribery, because the entrepreneur gave 5,000 GEL from his own profit, and not the amount that was extra, illegally transferred from the organization in the previous case and the goal from the beginning was that this money would be illegally owned by a public official. It is possible that, in practice, the so-called "Atkat" crime often occurs in various modifications. For instance, an official might manipulate the terms of a tender to favor a specific entrepreneur, ensuring that no other competitors can win the bid. Subsequently, under a prearranged agreement, the official deposits a significantly larger sum than required for the contract, intending to retrieve these excess funds from the entrepreneur later. In such cases, it constitutes misappropriation rather than bribery. Even though the official manipulates the tender terms to guarantee the entrepreneur's exclusive victory, the entrepreneur does not offer the money as a bribe. Instead, he assist in the misappropriation by returning the excessively transferred funds. A pertinent question arises: does it matter from whom the offer comes, from the side of the entrepreneur or from the side of the official? Of course, in such cases, it does not matter from whom the offer comes, the main thing is at whose expense the public official gets rich. This is the way to solve such a problem, although often neither law enforcement agencies nor courts go into these details, which leads to incorrect qualifications.

In summary, it can be said that if the goal of the official, who is the head of the organization, is to get back from the entrepreneur in the form of personal benefit the over-transferred budget Money wich was in his rightful ownership and management, this should be qualified as misappropriation by using the official position, according to Article 182, Part 2, subsection "d" of the Criminal Code of Georgia. If the money is a large amount (over 10,000 GEL), then the aggravating circumstance provided for in subsection "e" of part 3 of the same article will additionally appear. If an entrepreneur gives his personal money to an official, in exchange for giving him a certain advantage (even adjusting the tender to him, or declaring him the winner without competition, etc.) – it will be Bribe-taking and Bribe-giving.

4. Analysis of Judicial Practice

As noted, law enforcement and courts often overlook the factual nuances that are important in distinguishing between these crimes. In July 2022, in one of the criminal cases in the proceedings of the General Prosecutor's Office of Georgia, the court found an official of one of the state companies guilty of taking a particularly large bribe from an entrepreneur (the crime provided for in Article 338, Part 3, subsection "e" of the Criminal Code)[19], so that there is no discussion at all about the circumstances that could be presented, that it would be more appropriate to qualify this person's action as a crime against property. According to this verdict, one of the heads of the state enterprise, who also held the position of the head of the procurement department, in order to receive financial benefits in the form of a bribe, pre-adjusted the list of equipment to be purchased in the tender and their specifications to the enterprise negotiated with him, and as a result, this enterprise was declared the winner[20]. The court established in the judgment that the amounts to be transferred/transferred under the contract, are almost twice as high of the cost of the delivered goods (equipment). In other words, a person equal to an official, not only adjusted the terms of the tender and announced the winner of the enterprise, but based on the contract signed with him, he charged amounts much higher than the value of the goods. In this and similar subsequent tenders, the discrepancy amounted to 594,545 GEL. The judgment mentioned that the implicated official accepted a total of 215,025 GEL as a bribe from the entrepreneur within the scope of these two tenders, leading to his conviction under the aforementioned articles.

From the factual circumstances mentioned in the judgment, it appears that the culprit was one of the heads of the enterprise, who decided a number of issues, including the issue of the tender announcement, the list of products to be purchased, the prices, and who would be the winner. All this indicates that the funds of this state enterprise, which were transferred to the entrepreneur, were in his rightful ownership and management. Therefore, if the factual circumstance was established in the case that, with the efforts of the official, with a premeditated intention, the entrepreneur transferred amounts artificially higher than the price of the products provided for in the contract in order that a part of these funds would later be returned back, then the above-mentioned amount of 215,025 GEL would not constitute a bribe, but rather a so-called "Atkat" and his action would be qualified as misappropriation of a large amount of funds belonging to the organization under the rightful possession and control of the official position, a crime provided for in Article 182, part 2, subsection "d" Part 3, subsection "b" of the Criminal Code, which is punishable by imprisonment for a term of 7 to 11 years, while the article provided for in the sentence provides for imprisonment for a term of 11 to 15 years.In the scenario, that the rightful possession and management of these funds by the official, which is characteristic of misappropriation, would be disputed, then it would be more appropriate to qualify the action as fraudulent appropriation of a large amount of funds belonging to the organization by using the official position, as a group (together with the entrepreneur), the crime is provided for in Article 180 part 2, subsection "a" Part 3, subsection "a"and "b" of the Criminal Code, which provides

[19] Verdict № 1/3631-22 of July 11, 2022 of the Criminal Affairs Board of Tbilisi City Court.
[20] Verdict № 1/3631-22 of July 11, 2022 of the Criminal Affairs Board of Tbilisi City Court, 3-4

for imprisonment for a term of 6 to 9 years. As is known, fraud, unlike misappropriation, does not need a special executor (that is, it is not necessary that the illegally acquired property was in the legitimate possession and control of the offender) and the method of acquisition is deception. Of course, if an entrepreneur and an official of a state organization (who does not have this property in legitimate ownership or control) agreed in advance to sign a contract on artificially inflated amounts, with the aim that they would jointly own (split) the excess funds transferred from the organization, through the actions of these individuals, the victim would be a legal entity – a state organization, and it would appear to be fraud.

Also, according to the judgment of the Tbilisi City Court, a main specialist of the technical supervision department of one of the municipalities was found guilty of bribery under Article 338, Part 1 of the Criminal Code[21]. According to the verdict, his role involved supervising and controlling the renovation and provision of amenities for one of the kindergartens as outlined in the state procurement contract.In addition, it is noted that the said civil servant suggested to the representative of the company producing the works that he would include the plaster-board ceiling installation works (2,330 GEL) already completed by another company in the act of delivery and acceptance (Form N2) over the works performed by his enterprise as if these works were also this company performed, in which the entrepreneur was supposed to pay him half of the value of the work allegedly performed, when the corresponding amount was deposited from the municipality based on this act. They agreed, and when the entrepreneur, on the basis of this false delivery and acceptance act deed drawn up by a specialist, was overcharged for the amount of work that he did not actually complete, he transferred half of this amount to the mentioned public official on the same day, according to the agreement[22]. It is true that the verdict states that the public official and the entrepreneur agreed and one demanded a bribe and the other gave the money as a bribe, but is this actually bribery? This question arises because this amount, which they divided, based on their own actions, illegally, was overpaid by the municipality. Misappropriation is excluded here, because it can be said that the municipal funds were not in the proper possession and management of the chief specialist of the municipality, because he had the technical function of supervising and controlling the works, which is subject to additional expertise even after the final completion of the works. Therefore, he cannot be the executor of misappropriation, but in this case it would be appropriate to qualify the official's action not by taking a bribe, but by using his official position, by fraud committed as a group, because it was on the basis of a false acceptance-handover act drawn up by them (where the volume and cost of works were artificially increased), the City Hall was deceived and transferred too much money to the entrepreneur, who was illegally owned by the employee of the municipality and the entrepreneur as a group. Accordingly, it would be correct if the action of a public official was qualified as fraud, together with an entrepreneur.

A similar problem arises when corruption crimes are committed in the private sector. As is known, “bribery” in the private sector is provided for by Article 221 of the Criminal Code of Georgia and it is called “commercial bribery” instead of “taking and giving bribes”. By their legal structures, these articles are almost similar, and the main difference is that the the executor of Article 221 is not a

[21] Verdict № 1/4929-16 of February 16, 2017 of the Criminal Affairs Board of Tbilisi City Court.

[22] Verdict № 1/4929-16 of February 16, 2017 of the Criminal Affairs Board of Tbilisi City Court's, 2

civil servant or a person equal to him, but the head of an enterprise or other organization or a person employed there.

In 2019, the Rustavi City Court found the head of one of the company's departments and his employee guilty under subsection "a" of section 4 of Article 221 of the Criminal Code, which refers to commercial bribery committed as a group[23]. According to the judgment, they were responsible for making and providing a detailed list of materials needed to repair the machinery of the enterprise. A tender was announced by their company for ongoing repair and maintenance of equipment. They, the representatives of the winning company in the tender, in order to cover the real value of the services provided within the tender (in return), demanded the transfer of 5,440 GEL stipulated in the tender contract. In particular, in exchange for the transfer of this amount, the culprits prepared a fake delivery and acceptance certificate of the completed work, where they indicated that the company participating in the tender, compared to the real one, performed works worth approximately 8,000 GEL. Instead, they took the requested 5,440 GEL[24]. In this case, the same problem that was discussed above is present. In particular, if as a result of the actions of the criminals (artificially increasing the amounts in the acts of delivery and acceptance), 8,000 GEL was transferred excessively to the enterprise performing the works, the enterprise announcing the tender was harmed and deceived by this amount and the criminals and the company carrying out the works, fraudulently took possession of this amount. That is, they did not take 5,440 GEL as a bribe, but this amount actually represents the so-called "Atkat" out of 8,000 GEL, which was illegally or unfairly transferred from the budget of the enterprise based on false documents drawn up by criminals. Accordingly, the criminals and the persons performing the works, as a group, using their official status, fraudulently took 8,000 GEL belonging to the organization, of which 5,440 GEL was received by one party in the form of so-called "Atkat",, and the rest illegally remained with the enterprise performing the works. Accordingly, the qualification of the actions of the persons convicted by the verdict would be more proper under Article 180, Part 2, Sub-Clause "A" and Part 3, "A" and "B" Sub-Clauses of the Criminal Code, which provides for a greater punishment than that specified in the verdict – commercial Bribery clause[25].

5. Conclusion

The practical problems and judicial decisions discussed in the paper clearly show that it is often not so easy to decide whether a specific corrupt act is legally classified as bribery or as a corresponding crime against property, because the perpetrator of the crime against property can also be the perpetrator of bribery (including a public official). However, it is very important to resolve this issue correctly, even based on the criminal law principle, according to which no one should be held accountable for an act that he did not commit, while the act actually committed by a person carries lesser penalties. Nor can a harsher punishment be imposed on someone than the punishment that was

[23] Verdict № 1-387-19 of September 2, 2019 of Rustavi City Court.
[24] Verdict № 1-387-19 of September 2, 2019 of Rustavi City Court, 3
[25] See Articles 180 and 221 of the Criminal Code of Georgia.

used at the time of the crime[26]. As mentioned, the crime under Article 338 of the Criminal Code – bribery – carries higher penalties than the corresponding crimes against property. In addition, as stated, the classification of an act as a crime means the exact compliance of the norm with the act, and in addition, different statutes of limitation for exemption from criminal liability apply to these articles. Since corruption is one of the important problems of the development of states, therefore, it is true that law enforcement agencies should implement strict measures and policies to fight corruption crimes, but of course, it is necessary investigate the actual circumstances and details thoroughly in order to properly qualify the act.

Finally, as a conclusion, it can be said that practicing lawyers should pay attention to the fact that the difference between bribery and crimes against property is that in the case of Article 338 of the Criminal Code, the official receives property or any other property benefit (gets rich) from another private person, in exchange for specific actions. In contrast, under Articles 182 and/or 180 of the Criminal Code, the person gets rich not with the property transferred by a third party, but at the expense of the property of the public or private organization of which he was the representative. When accepting a bribe, a person receives personal benefit at the expense of another, third party, and in the case of misappropriaton/fraud – at the expense of the employing state or private organization. In order to find out these circumstances, during the investigation, it is necessary to determine whose money the public official took possession of, was it the possession of money belonging to the state organization using his official position, or the money transferred to him from personal funds by a private person in exchange for something. It is also important, at the investigation stage, to restore as closely as possible the nuances of the agreement, which were discussed in advance by the negotiated public official and private person regarding specific amounts.

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[26] See the last sentence of Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, November 4, 1950.

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