

Complicity of the Intraneus and Extraneus in the Crimes of Breach of Duty: Corruption of Officials

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ABSTRACT

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It has been reaffirmed that complicity in acts of corruption is not limited exclusively to participation during the execution of the illicit act; in fact, complicity encompasses a broader spectrum of conducts that include the facilitation and subsequent concealment of the crime; this aspect is decisive in understanding how corruption operates. In fact, the intraneus, due to its internal position and its privileged access to resources and strategic decisions, plays a decisive role in the materialization of corruption. On the other hand, the participation of the extraneus, due to his external position, does not constitute a criminal structure of his own, since he acts outside the internal structure, does not have autonomy and does not have direct access or authority within the criminal act, since he has no control over resources or decision-making capacity within the institution; his participation as an accomplice or instigator is subordinated to the role of the public official.

Keywords: Complicity of intraneus, extraneus, breach of duty, corruption of officials, unlawful acts.

Introduction

In the complex panorama of corruption in the public sphere, the figure of the intraneus stands out as an essential component in the analysis of the breach of duty by officials, this term refers to those individuals who, operating from within government structures, not only observe, but also facilitate and cover up illicit acts that go against criminal regulations. According to the author Alvarado, (2022), the complicity of the intraneus goes beyond the mere association with illicit acts; It involves a series of actions and omissions that sustain a system of corruption, eroding public trust and weakening institutions.

In this sense, the analysis of the complicity of the intraneus is manifested in various ways that, according to the author Armas, (2024), as the first element is observed the participation in the execution of corrupt acts, where the intraneus acts as the direct author of the officials who violate their duties. On the other hand, the function extends to the failure to warn about irregularities, which allows acts of corruption to thrive without opposition from other elements, this duality raises questions about ethics and responsibility, addressing the notion that corruption is a problem exclusively external to organizations.

On the other hand, delving into corruption in Peru is a widespread phenomenon, and according to some studies, it is estimated that a high percentage of cases involve the level of complicity between public officials and private actors, these figures can represent 60% or even more of the cases of corruption investigated in the country. This fact underlines the importance of understanding how complicity operates, since many times the intraneus could not commit breaches of duty without the help of external actors who facilitate or cover up their actions, it is here where the figure of the accomplice acquires relevance, since, although he does not directly violate the duty, he contributes significantly to the success of the breach (Palomino, 2023).

Likewise, in Peru, statistics have shown that a significant number of corruption cases involve complex complicities, making it difficult to individualize responsibilities without a thorough analysis of the links between the participants

(Benavides, et al 2023). Therefore, according to studies, in approximately 40% of corruption cases, investigations are hindered by the difficulty of proving the direct link between the intraneus and his accomplices, this is due, in large part, to the fact that corruption operates in dark spaces where agreements are evident (Pérez, et al 2021).

The institutions of the Judiciary and the Office of the Comptroller General of the Republic reveal an alarming fact: in about 70% of the cases involving intraneus, these officials receive a percentage of the illicit profits generated by the transactions in which they participate, this fact is not accidental or isolated, but highlights the structured and deliberate nature of corruption in the country; far from being a simple ethical slip, corruption is presented as a meticulously planned process, where each actor involved has a specific function and receives compensation according to their level of involvement (Quispe, 2018).

Now, from the jurisprudential approach, it has been reaffirmed that complicity in acts of corruption is not limited exclusively to participation during the execution of the illicit act; In reality, complicity encompasses a broader spectrum of behaviors that include the facilitation and subsequent cover-up of the crime, this aspect is decisive to understand how corruption operates, precisely in the period 2021 to 2023, various studies and judicial investigations have confirmed that, in 55% of the corruption cases analyzed, accomplices had a significant role in being in charge of hiding evidence of the crime, significantly complicating the work of the authorities in charge of investigating and prosecuting these crimes (Pineda, et al 2018).

Another important fact is that, in Peru, it has been detected that in around 75% of cases of corruption of officials, complicity includes not only the person, but also legal entities such as companies, which facilitate mechanisms to launder illicitly obtained funds, this type of corporate complicity introduces a new level of complexity in the prosecution of these crimes. since companies act as "legal shields" to protect the individuals involved in illicit acts (Romero, 2022).

Therefore, it is necessary to emphasize that the issue addressed cannot be seen in isolation, it is deeply rooted in the *institutional culture* of the country, where corruption is perceived as a necessary evil. However, in order to effectively combat this problem, it is important to understand the dynamics of complicity that allow the intraneus to act without fear of the legal consequences stipulated in the regulations; This will be possible with a comprehensive approach that combines stricter criminal penalties with the implementation of transparency mechanisms.

Methodology

Materials and methods

An exhaustive review of articles published in indexed journals was used. For this, the methodology described in the following was presented:

1. Identification of the content to be analyzed,
2. Attributing objectives to the recognized content,
3. Verify the structure and contributions of the content,
4. Describe the relationships between the components of the information,
5. Exclude inconsistent information.

Results

To execute the results, the aforementioned methodology was applied, for this, the main sources were jurisprudence relevant to the topic dealt with as shown in the following table.

Jurisprudence	Contribution to the topic	Featured rationale	Investigator Analysis
Cassation No. 1550-2018-Apurimac	The issue addressed is important in criminal proceedings, therefore, it should	On this point, it is essential to interpret ground 41 of the aforementioned case-law document. "In this	In order to analyze the case, it is essential to understand the nature of the figure of the intraneus, which refers

	<p>be noted that the restriction established by Law No. 30304 in the last paragraph of section 57 of the Criminal Code applies only to officials or public servants of intraneus who have perpetrated the intentional crimes of collusion and embezzlement. In contrast, in the case of aliens, the provisions of the first and second paragraphs of that paragraph shall apply. This distinction relates to the quality of the subject involved; The prohibition affects public officials and servants because the crimes in question involve a breach of duties. In this sense, the figure of the intraneus, together with the responsibility inherent in each function, highlights the notability of acting in accordance with principles and duties that guarantee collective well-being.</p>	<p>sense, the examination of the suspension of the execution of the sentence for the convicted intraneus must be carried out exclusively in accordance with the last paragraph of the aforementioned material precept. The intention of the Superior Chamber to verify, in relation to this defendant, the requirements established in numerals 1, 2 and 3 of the first paragraph of paragraph 57 of the Criminal Code, goes against the binding nature of the previously established prohibition, as well as the principle of legality enshrined in section II of the Preliminary Title of the Criminal Code." The transgression of the norm not only constitutes an ethical offense, but also stands as a crime with really significant consequences.</p>	<p>to those officials or public servants who, in performing their functions, have the capacity to affect protected legal assets. When an intraneus commits a breach of duty, his action not only involves a breach of the ethical and legal norms that govern his conduct, but also involves other individuals in a dynamic of complicity. This interrelationship emerges as a clear example, when an official associates with third parties to carry out acts of corruption, which extends criminal responsibility beyond the individual who directly executes the crime. In this sense, the investigation of the actions of officials must be carried out objectively, rigorously, and effectively.</p>
Cassation No. 2210-2022, Lambayeque	<p>Crimes of breach of duty are actions in which the person, by not satisfying the obligations established by his particular social function, causes damage or puts at</p>	<p>Eleventh ground. According to Plenary Agreement 3-2016 "In fact, at present, both in doctrine and in jurisprudence, it is accepted that there are legal types that are constituted only from</p>	<p>The intraneus does not act in a vacuum; their behavior is framed by a set of social norms and expectations that guide their actions, involving that their responsibility is not limited to complying with the law</p>

	<p>risk a protected legal good, this legal good is related to functional principles and duties that are essential for the proper functioning of Peruvian society. Moreover, the nature of these crimes lies in the fact that failure to comply with these obligations not only affects the individual, but also has broader repercussions on the nation.</p>	<p>the violation of a specific duty that corresponds to the competence of the intraneus author. This is a fundamental characteristic of crimes perpetrated by public officials and servants. Therefore, the perpetrator of such crimes cannot be any individual, but only the official or public servant (...)"</p>	<p>in a general way, but must do so in accordance with the principles that govern their scope of competence, in the event that these duties are breached, the law establishes mechanisms to address the offense; In the end, it seeks not only to sanction infractions, but also to promote responsibility and transparency that benefits the criminal justice system.</p>
<p>Cassation No. 683-2018, National</p>	<p>According to the national document, the consideration of the quality of public official as an element that aggravates punishability is part of a broader approach that seeks to safeguard public trust in institutions, when an official uses his position to commit a crime, the negative impact on the perception of the integrity of the State is considerable. In this regard, the law establishes measures to ensure that those who betray that trust face appropriate consequences. However, it is vital to remember that the condition of being an official does not justify the crime itself; it</p>	<p>It is noteworthy that the interpretation of the intraneus, that is, the internal nature of the conduct of the official in relation to his position, becomes a key element, for this, the jurisprudence has indicated <i>that not only the act itself is relevant, but also the context in which it occurs and how it is linked to the functions of the position</i>. Thus, conduct that may seem irrelevant in the private sphere acquires a different dimension when the perpetrator occupies a public position, this means that the judgment on punishability should not be limited to the criminal action, but should consider the position of authority and the impact on the public service.</p>	<p>The author's status as a public official aggravates the punishability, taking into account the criterion of the damage caused, which holds that crimes committed by officials, especially those involving corruption or abuse of power, have a corrosive effect on the social structure, the impact of these crimes is not limited to the individual sphere, but also affects the quality of the administrative and judicial system. For this reason, it is considered that the penalty should reflect not only the conduct of the official, but also the damage that his action has inflicted on all areas of the integral system. Another point analyzed is the preventive approach, which not only seeks to punish those who abuse</p>

	simply intensifies the response in the criminal legal system.		their power, but also to deter others for related behaviors.
Cassation No. 1749-2018, Cañete	In this case, <i>the crime of embezzlement is one of breach of duty</i> , as a general rule, in crimes that involve the violation of duties, only the figure of authorship is applicable, this approach highlights the possibility that errors may occur in the initial qualification of the title of imputation, although these rulings do not necessarily affect the final decision adopted. As mentioned by the judge, there are crimes, such as intentional embezzlement, that require, in addition to the status of official or public servant, a direct and active connection with the funds or assets involved for a person to be considered as the perpetrator of the crime.	It is essential that the judicial system evaluates the implication of the figure of the perpetrator in these crimes, considering that an incorrect imputation can give rise to situations of injustice. In this sense, the distinction between perpetrator and accomplice, as well as the adequate classification of the acts, becomes an imperative necessity, the judge's interpretation in relation to the active link with the funds or effects emphasizes the need for clear evidence that demonstrates the participation of the accused in the appropriation or misuse of public resources. This not only facilitates the work of prosecutors, but also ensures that judicial decisions are based on sound foundations.	Due to the interpretation made, it was appreciated that the error committed by the lower court is focused exclusively on the qualification of the degree of participation of the accused, who was convicted as a primary accomplice, this matter is related to the interpretation and application of criminal law, and not to the facts that have been proven and that remain unaltered. Therefore, it is not possible to annul the judgment in that regard, in accordance with the provisions of paragraph 432(3) of the CPP, since this error does not affect the operative part of the contested judgment. In this sense, the accused is considered responsible as the perpetrator and not as a primary accomplice; however, the legal consequence, in accordance with paragraph 23 of the Criminal Code, is equivalent.
Cassation No. 2587-2021, Lima Norte	In the same line taken in the Cassation, it is the violation of duties and not the control of the fact that establishes the criterion to determine whether a conduct has criminal relevance;	In this scenario, the violation of these duties is presented as a breach that can be considered both commission and omission, this complexity in the classification of duties imposes an "additional consequence" on the	In this context, the Permanent Criminal Chamber stated that <i>"The requests of the appellants focus on the adequacy of the accounting expertise to establish the existence of a patrimonial damage. However, their objections are</i>

	<p>from this point of view, different types of duties that are imposed on agents in the service of the State can be distinguished. On the one hand, there are positive duties, which require active action on the part of the agent, in these situations, the violation of this duty can manifest itself through omission behaviors, that is, "not doing" or "not complying" with the obligation that corresponds to him. On the other hand, there are negative duties, which restrict or prohibit the agent from performing certain actions. In this case, the violation of these duties is considered as a commissive conduct, since, in order to infringe the prohibition, the intraneus must carry out a specific act.</p>	<p>criminal system, which must be able to evaluate the actions of public officials from a comprehensive perspective; The ability to discern between the different types of offences allows for a fairer application of the law and ensures that the sanctions imposed are proportionate to the seriousness of the offence committed. In view of this, the precise delimitation of duties and their respective infractions not only facilitates judicial work, but also contributes to the formation of a culture of responsibility and ethics in the exercise of public function.</p>	<p><i>mainly limited to the demonstration of their responsibility in the crime, issues that have already been appealed and on which a pronouncement has been issued. In fact, there are not sufficient arguments regarding the matter raised"</i></p> <p>In relation to this, the correct assessment of the conduct of the accused requires an adequate collection of evidence and an exhaustive interpretation of the regulations in force, so that both the Prosecutor's Office and the defense must have access to all the relevant information and evidence that supports their arguments, thus ensuring a fair and equitable debate in the judicial process; Objectivity in the evaluation of evidence is important to prevent bias from leading to wrong decisions.</p>
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Likewise, the casuistry developed in the doctoral thesis carried out by the author of this thesis was used, which can be seen in the following table.

Local jurisprudence	Alleged fact	Featured rationale	Investigator Analysis
Exp. N° 00285-2016-18-2201-JR-PE-01	The crime of aggravated collusion is charged to three officials as perpetrators and a businessman as a primary accomplice, since the public officials directed the	The Chief of the Office of Drinking Water and Sewerage Operations of the District Municipality of Soritor granted the foreigner the approval of the meters without verifying the amount	A conviction was handed down, in which there is evidence of a motivation and adequate evidentiary assessment, since the president of the special committee and the head of supply granted

	<p>process in favor of a particular consortium, based on irregularities in the procedure, from the preparatory acts, contributions and budget certification in the process of obtaining water meters for the District Municipality of Soritor.</p>	<p>entered, which is evidenced in his contradictory statements. In addition, it could not have granted the approval on June 13, since the 500 meters were acquired by the foreigner only on June 18. The Head of the Supply Office and President of the Procurement Committee of the Municipality, facilitated the direction of the process in favor of the foreigner who did not prove the origin of the money used for the purchase. Likewise, he requested the budget certification of 132,000.00 soles before completing the market study, which is irregular according to his responsibility in the procurement process.</p>	<p>the good pro to a consortium for the acquisition of water meters for the Municipality. In addition to this, the alien was aware that the aforementioned municipality needed water meters before the preparatory act process began, thereby denoting the direction of the process in favor of the alien. In a second instance.</p> <p>And in accordance with what is referred to by cassation No. 102-2016/LIMA, that the accomplice must be aware of the unlawful act that with his actions together with the author is going to be carried out before its execution or in the course of it, being that in the present case the complicity between the officials and the representative of the consortium is demonstrated.</p>
Exp. N° 00286-2016-86-2201-JR-PE-01	<p>The crime of aggravated collusion is attributed to the mayor of the District Municipality of Soritor in his capacity as perpetrator and two contractors as primary accomplices, the first granted advances to the foreign contractors, within the framework of public bidding process No. 002-2011-MDS/CE. This</p>	<p>The alleged agreement between the three defendants has not been proven, because there is no complete circle of evidence that validates the prosecutor's hypothesis about the complicity of public officials. Since the Prosecutor's Office has an ambiguous position regarding the selection process, without clarifying whether it agrees with the actions of the Special</p>	<p>The ruling issued by the court</p> <p>Aggravated collusion could not occur because this crime is of encounter, where the public official agreed with the stranger, and in the present case, the businessman has not been prosecuted. It is proven that although the mayor of the Municipality of Soritor signed the Addendum authorizing the payment of</p>

	<p>is despite the fact that the administrative bases of the selection process did not contemplate the possibility of granting advances. In addition, after the signing of the contract, an addendum was signed that modified the bases and allowed such advances, which violated the original conditions of the selection process.</p>	<p>Committee or if it has omitted to investigate the crime. The imputation is limited only to the signing of the addendum to the contract, which restricts the means of proof and weakens the theory of tax imputation, making it impossible to prove the existence of agreement between the official and the employers. The circle of evidence has not been closed due to the lack of direct evidence to prove the alleged concertation.</p>	<p>advances, this proven fact is not sufficient to conclude that the crime of collusion has been committed, since the concertation, nor the patrimonial fraud of the state, is not accredited. And, therefore, since there is no perpetrator of the crime, there are no accomplices.</p>
<p>Exp. N° 00659-2018-41-2201-JR-PE-02</p>	<p>Four public officials are attributed as perpetrators of the crime of incompatible negotiation and improper use of office and as an accomplice to the representative of the consortium. Being that, it is attributed to the General Manager of EPS-Moyobamba, to have signed contract No. 011/DU04-2015/EPS MOYOBAMBA SRL/GG of January 15, 2016, and to the Administration Manager of EPS Moyobamba, it is attributed to have approved and allowed said contract, without the contractor (extraneous), complying with presenting the guarantee of faithful</p>	<p>From what has been done, there is no evidence that, in the first instance, the interest as indicated in the criminal law was developed, although there were administrative acts not contemplated, but it has not been demonstrated by the Public Prosecutor's Office, the connection to subsume the conduct to the criminal type of incompatible negotiation. However, however, extensions of time are considered acts issued in the middle of the contractual performance has been. Since with the Witness statement of the specialist in audits in the Comptroller's Office, he said in the plenary of the first instance that the call was made</p>	<p>In the first instance, all the defendants were convicted, however, the appeals chamber acquitted them. In this particular case, the contractor requested two extensions of time despite the fact that the delay in execution was unjustified and, even knowing that it was being unduly favored, it continued in its actions. However, the judgment points out that, after reviewing the evidence and actions, there is no evidence in the first instance that explicitly demonstrates the undue interest, as required by the criminal type of incompatible negotiation. To this end, it is important to cite cassation 1895-2019 that the judge mentions in the judgment states "The</p>

	performance, an essential requirement for the signing of the contract. Against the public official in charge of the Operations Management area, I approve Contract No. 011/DU04-2015/EPS MOYOBAMBA SRL/GG of January 15, 2016 as a sign of conformity, despite the fact that the Contractor did not comply with presenting the guarantee of faithful performance.	within the framework of Emergency Decree 04-2015, by the El Niño phenomenon, and that decree did not prohibit extensions of the term, because it is a Emergency decree.	accomplice has to know that the public official is unduly interested
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Conclusions

First. The intraneus, due to its internal position and its privileged access to resources and strategic decisions, has a decisive role in the materialization of corruption; without its intervention, illicit acts would be considerably more difficult to execute, since it is the official who manipulates the administrative and regulatory processes to ensure that illegal activities are carried out without setbacks. The relationship between the intraneus and his accomplices, both inside and outside the institution, constitutes a network of collaboration that reinforces the corrupt structure, making the acts not only more viable, but also more difficult to detect and punish.

Second. Research shows that the intraneus not only participates in the execution of the crime, but also actively collaborates with the accomplices in the subsequent phase, ensuring that the evidence is hidden or manipulated to avoid legal scrutiny, this cover-up phase is one of the most critical, since the ability of the accomplices to *disguise* the evidence allows those responsible for the crime to continue to act with impunity.

Third. The complicity between the intraneus and its collaborators is not circumstantial, but structural, which means that any effort to combat this problem requires a comprehensive intervention; solutions must focus on dismantling the networks of complicity that facilitate and perpetuate corruption, implementing more rigorous internal controls and more effective sanctions. At the same time, a culture of transparency should be promoted that minimizes opportunities for intraneus to violate their duties.

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