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CRIMINAL LIABILITY FOR CORRUPTION CRIMES AND CRIMES RELATING TO CORRUPTION

Subparagraph 1 of Paragraph 1 of Article 65 of the Law of Ukraine «On Prevention of Corruption» of October 14, 2014 states that for the commission by persons specified in Paragraph 1 of Article 3 of this Law of corruption offenses may be applied criminal, disciplinary and/or civil liability, while for committing offenses related to corruption - criminal, administrative, disciplinary and/or civil liability. Hence, it can be concluded that criminal responsibility (liability) comes both for committing corruption offenses and for committing offenses related to corruption. One should proceed from the fact that the Criminal Code of Ukraine (hereinafter - the CCU) primarily operates the term «crime» and only mentions the terms «offense» (e.g., in the Note to Article 369-3) and «criminal offense» (e.g., in Paragraph 2 of Article 374), without explaining their content. Consequently, criminal corruption offenses should be understood first of all as corruption crimes, and offenses related to corruption (corruption-related offenses) are crimes related to corruption (corruption-related crimes).

The legislator gave a legal definition of corruption crimes in the Note to Article 45 «Relief from Criminal Responsibility in Connection with Actual Repentance» (Section IX «Relief from Criminal Responsibility» of the General Part of the CCU). This was due to the fact that it was in the aforesaid article for the first time in the text of the CCU that the term «corruption crimes» was mentioned (in connection with the resolution of issues concerning the relief of a person from criminal responsibility), and therefore from the position of legislative technique there was a need for its definition within the limits of the specified criminal legal norm or a note to it. For the first

time, the legislative definition of corruption crimes in the CCU appeared on the basis of the Law of Ukraine «On the National Anti-Corruption Bureau of Ukraine» of October 14, 2014. This Law supplemented Article 45 with a Note of the relevant content. However, the editorial note of the Article was soon revised by law. On the basis of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption» dated February 12, 2015, the Note to Article 45 of the CCU received a new version [1, c. 13].

At present corruption crimes in accordance with the CCU are considered crimes provided for in Articles 191, 262, 308, 312, 313, 320, 357, 410, in case they were committed through abuse of one's official position, as well as crimes provided for in Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code. In this list, it is necessary to distinguish between those crimes that are corrupt only in the case of their commission through abuse of one's official position, and those for which such a specific condition is not provided by the legislator [2, p. 136-137]. It is obvious that the legislative definition of corruption crimes is not given in the context of their broad description with the disclosure of specific features, but by listing specific articles of the Criminal Code, which establishes the responsibility for the commission of such socially dangerous encroachments. At present, a range of corruption offenses covers certain socially dangerous encroachments, the responsibility for which is provided for in 19 articles of the CCU, that is, the legislator provided an exhaustive list of those. However, in our opinion, it is too early to talk about the optimality of the list of corruption crimes. As rightly states O.K. Marin, in general, corruption crime is a crime committed by an official person who provides public services using the possibilities of his special status in order to obtain an undue advantage - and in the CCU, there are about 100 encroachments [3]. Consequently, the national legislator should review the list of corruption crimes, specify, concretize and expand it.

With regard to criminal offenses related to corruption, considering the terminology of the CCU, they should be understood as crimes related to corruption. The list of such crimes is quite broad, but it does not have clear legal boundaries. In the theoretical aspect, in this case, we are talking about so-called «conditionally corruption crimes», whose composition does not have all the signs of corruption, that is, it does not directly belong to the category of corruption crimes in accordance with the Note in Article 45 of the CCU (e.g., crimes provided for in Articles 206, 210, 211, 157-162, 184, 365, 373, 376, 376-1, 426 of this Code) [4, с. 119-121]. We believe that with the view to ensure effective realization of the provisions of the Law of Ukraine «On Prevention of Corruption», harmonization of those with the norms of the CCU, and also in accordance with the requirements of international law, it is necessary to develop and consolidate a list of crimes related to corruption. For example, such a list could be placed in Clause 2 of the Note to Article 45 of the CCU, but in this and other articles of the CCU it is necessary to specify the peculiarities of such crimes, their distinction from corruption crimes, the specifics of the consequences of their commission, etc.

In our opinion, the proposals we make will contribute to improving the state of criminal legal counteraction and prevention of various encroachments of corruption direction.

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