Savchenko Andrii, *Head of the Department of Criminal Law of the National Academy of Internal Affairs, Doctor of Law, Professor*

CRIMINAL LIABILITY FOR CORRUPTION CRIMES IN THE POST-SOVIET STATES

Aimed to ensure a comprehensive understanding of the nature of corruption crimes in Ukraine and due to its geopolitical situation there occurs the need to conduct an analysis of relevant norms of criminal liability in the post-Soviet states. For Ukraine, the relevance of research in this area is caused by the similarity of language and technology of legislation (including criminal) on the one side and a number of political, economic and social factors in the aforesaid countries. This approach shall allow: first, to assess the status and trends of development of the anti-corruption laws in post-Soviet states; second, to determine the degree of compliance of such legislation with international anti-corruption standards; third, to establish the positive and negative aspects of legislative consolidation of corpora delicti for corruption crimes. Ultimately, this would contribute to finding the most effective ways of combating corruption through criminal legal means that may exist in foreign states as well as unification (harmonization) of criminal legislation.

It is known that post-Soviet states are primarily the representatives of Romano-Germanic legal family that accepted the European law. The laws are attributed key role in them and such states usually possess relevant codes. It is clear that at the moment of creation of the Model Criminal Code for the CIS member states, which has become one of the main reference points for the national criminal legislation in most post-Soviet states, an issue of liability for corruption crimes had never been described in it, at least these crimes (as well as the "corruption" or derivative concepts) had never been even mentioned [1]. The emphasis in this Code was placed on the crimes against the interests of the public service (Special Part, Chapter 32), which included: abuse of service position (Art. 301); omissions in service (Art. 302); exceeding of service authority (art. 303); illegal participation in business activities (Art. 304); taking of bribe (Art. 305); giving of bribe (Art. 306); mediation in bribery (art. 307); service forgery (Art. 308); service negligence (Art. 309).

Recently, however, the lawmakers of states that emerged in the post-Soviet space have significantly "upgraded" their criminal legal norms to meet the requirements of international and European conventions on combating corruption [2, p. 101–102], which we will touch upon in detail (Baltic states through included in the European Union community are not analyzed). The fact is that all post-Soviet states have signed and ratified the UN Convention against Corruption (2003), and most of them – the Criminal Law Convention on Corruption (1999).

Under the Criminal Code of Ukraine, corruption crimes are crimes provided for by Articles 191, 262, 308, 312, 313, 320, 357, 410, in case they were committed by abuse of official position, as well as crimes provided for by Articles 210, 354, 364, 364-1, 365-2, 368–369-2 of the present Code.

Under the Criminal Code of the Republic of Moldova corruption encroachments are recognized as follows: a) crimes against particular order of work in the public sphere (passive and active bribery, benefiting from influence, abuse of power or authority, etc.) – Chapter XV of the Special Part. It would be appropriate to note that, for example, qualified corpus delicti of active bribery, unlike in the Criminal Code of Ukraine, are associated not only with the status of an official, who is corrupted, but with the size of property, services, advantages or benefits in any form (large and especially large sizes). Qualified corpus delicti of abuse of power or official position provide for an indication in committing of such crime by a person occupying a responsible public position, and in the interests of an organized group or criminal organization, which is not part of a similar corpus delicti under the Criminal Code of Ukraine. The abuse of power or authority can be committed by a public person of any body, not just of law enforcement agency (as it is in the Criminal Code of Ukraine). In addition, under the Act of May 26, 2016, the separate liability is provided for on condition of fraudulent obtaining of finance from foreign funds and their appropriation; b) corruption offenses in the private sector – Chapter XVI of the Special Part.

The Criminal Code of the Kyrgyz Republic directly recognizes as corruption (Art. 303) the kind of office crime (Chapter 30 of the Special Part), while (criminal) corruption means intentional acts that include creating of illegal stable connection of one or more officials having authority with individuals or groups for the purpose of obtaining illegal material, any other benefits and advantages as well as the provision of these benefits and advantages for natural and legal persons, which poses a threat to the interests of society or the state. As the official misconduct, among others, is also considered such separate crimes as extortion of bribe (Art. 313) and mediation in bribery (Art. 313-2).

Apart from that, the Criminal Code of the Republic of Azerbaijan and the Criminal Code of the Republic of Kazakhstan directly use the term "corruption crimes" in the titles of respective chapters of their Special Parts, although in fact under such crimes are understood abuse of power and related to those acts. Instead, the Criminal Code of the Republic of Belarus does not differ having a traditional list of crimes against the interests of the service, most of which can be regarded as corruption, but, similar to the Criminal Code of the Kyrgyz Republic, carries out a separate criminalization of mediation in bribery (Art. 432).

There is an analogy in the Criminal Code of the Russian Federation, though it singles out a kind of extraordinary bribery as "petty bribery" (Art. 291-2), which refers to taking of bribe, giving of bribe personally or indirectly through a mediator in an amount not exceeding ten thousand rubles (the note to this article provides for encouraging norm

under which a person can be exempt from criminal liability), however, such experience, in our conviction, cannot be treated as positive.

The Criminal Code of Georgia describes office crimes as crimes against the state, at that: a) the abuse of power or service position and the exceeding of power or service authority may be committed with violence or weapons, as well as insulting personal dignity of the victim; b) taking of bribe (Art. 338) is possible in "direct or indirect way", while a particular crime is considered "trading in influence" (Art. 339-1). Under the Criminal Code of the Republic of Armenia taking of bribe (Art. 311), among other things, is possible with "facilitation for the committing or non-committing of such act" or "patronage or connivance in the service", herewith in the specially qualified corpus delicti of this crime can be committed separately by judge.

Thus, we should draw the following conclusions:

1) recently in the post-Soviet states there has been observed intensifying and improving of criminal liability for corruption crimes, but the corruption or related to corruption crimes aren't directly stipulated for in all criminal laws traditionally understanding such crimes as "service" crimes (exceptions are: the Criminal Code of the Republic of Moldova, which mentions "corrupt", "corruption crimes" and "acts of corruption"; the Criminal Code of the Kyrgyz Republic, which mentions "corruption"; the Criminal Code of Ukraine, the Criminal Code of the Republic of Kazakhstan and the Criminal Code of the Azerbaijan Republic, which mention "corruption crimes/offenses");

2) despite the fact that all post-Soviet states have signed and ratified the UN Convention against Corruption, and the most of them – even the Criminal Law Convention on Corruption, there still remained outside the scope of corruption crimes in the former Soviet states such acts as "money laundering", "obstruction of justice", "financial crimes" etc.;

3) for Ukraine there will be positive foreign experience the expanding (in particular, through the criminalization of mediation regarding undue advantage or fraudulent obtaining of means from foreign funds) and clarification (in particular, through reference to passive and active bribery) of a range of corruption crimes, while the negative – the criminalization of "petty corruption" (Criminal Code of the Russian Federation) through the actual open "indulgence" to bribe-takers by the state.

List of references

1 Модельный Уголовный кодекс (с изменениями на 16 ноября 2006 года): рекомендательный законодательный акт для Содружества Независимых Государств : принят на седьмом пленарном заседании Межпарламентской Ассамблеи государств – участников Содружества Независимых Государств (постановление № 7-5 от 17 февраля 1996 года) [Електронний ресурс]. – Режим доступу до кодексу : http://docs.cntd.ru/document/901781490.

2. Савченко А. В. Кримінальна відповідальність за корупційні злочини у державах романо-германської правової сім'ї / А. В. Савченко // Реалізація державної антикорупційної політики в міжнародному вимірі [Текст] : матеріали Міжнарод. наук.-практ. конф. (Київ, 9 груд. 2016 р.) / [ред. кол. : В. В. Чернєй, С. Д. Гусарєв, С. С. Чернявський та ін.]. – Київ : Нац. акад. внутр. справ, 2016. – С. 97–103.