

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

CORRUPTION CRIMES IN CRIMINAL LAW OF UKRAINE

Under the note to Article 45 of the Criminal Code of Ukraine (the CCU) **corruption crimes** should be 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.

At that, corruption crimes:

- first, are conventional, i.e., they are determined in provisions of international (including European) conventions;
- second, they are criminalized in the legislation of many world states, including those that emerged on the territory of the former USSR (the Kyrgyz Republic, the Republic of Moldova, etc.) and the legal systems of which appear close to the legal system of Ukraine.

All this gives grounds to assert that the definition of corruption crimes in the national criminal law is justified and viewed as a necessary step.

Along with the legislative definition of «corruption crimes» there is a need for in-depth scientific and application research. Corruption crimes should be considered as system-creating components of corruption and at the same time have the typical signs of socially dangerous acts provided for by the Criminal Code of Ukraine [1, p. 149]. So, in theory, by corruption crimes are understood those provided for exceptionally by the Criminal Code of Ukraine, socially dangerous and punishable intentional acts having signs of corruption and committed by special subjects. The list of these crimes should be expanded and clarified, while those should be recognized corruption crimes committed by «an official person by **use** of official position» (not just «by **abuse** of official position»).

There should be coordinated the national list of corruption crimes and the list of such crimes, which is provided for in international conventions (in particular, should be considered as corruption crimes those offences that are associated with legalization (laundering) of proceeds of crime, – Articles 209, 209-1, 306 of the CCU), meanwhile it is disputable whether legislator should consider as the category of corruption crimes those offences which are committed by negligence (e.g., of a crime under Article 320 «Violation of the established rules for turnover of narcotic means, psychotropic substances, analogues thereof, or precursors» of the CCU).

Committing a corruption crime entails a wide range of negative criminal-legal consequences, concerning relief from criminal responsibility, assignment of punishment, relief from punishment and serving thereof, removal of record of conviction and grounds for application to legal persons of measures of criminal legal nature.

The classification of corruption crimes suggested by the author is of theoretical and practical significance [2, p. 162–165]. In particular, all of these can be classified according to the following criteria: the presence or absence of full signs of corruption; the sequence of grouping of corruption crimes in the note to Article 45 of the CCU and committing or non-committing the crimes by abuse of official position; generic object of crimes; subjects of crimes; the presence or absence of items of crimes; the purpose and other signs of corpora delicti of the corruption crimes, or other criteria.

Important points appear the unvariability of the anti-corruption criminal legislation, abandoning of constant adjustment of its norms and protection from politically motivated influence. When creating new criminal legal provisions and improving existing acts legislator should not allow technical errors. It is necessary to cease the practice of duplication in the CCU of terms, which are important for the qualification of corruption crimes (in particular, it concerns the terms «official person» and «undue advantage»), while the High specialized court of Ukraine for civil and criminal cases should issue an appropriate resolution on the qualification of corruption crimes. In theory and practice it is vital to decide on a single approach to the interpretation of core criminal legal terms that refer to specific features of corruption crimes («significant damage», «grave consequences», «undue advantage», «bribery», «abuse», «use», «position», «offer», «promise», «receiving of an undue advantage», «giving of an undue advantage», «request to provide an undue advantage», etc), while legislator ought to preserve the norms on responsibility for corruption crimes, on condition of a conceptual reforming of the national criminal legislation in the future. It is also considered necessary to clarify the text of the translation into Ukrainian language of a number of terms contained in international conventions on combating corruption (in particular, while using such controversial and/or obsolete structures as «хабар», «хабарництво», «розкрадання», «неправомірне привласнення», «участь», «підсобник»). Hereby, there may take place a continued scientific debate about the optimality and admissibility of the official translation of the term «undue advantage».

Since the penalties for corruption crimes vary and appear not subordinate to any system, it may have a negative impact on their practical application by Ukrainian courts. Under these conditions, there is the need to develop a unified approach regarding assignment of punishment, relief from punishment and serving thereof. The revision also requires certain types of punishments for corruption crimes (in particular, those referred to in the Paragraph 2 Part 1 Article 365-2 of the CCU).

Criminal liability for corruption crimes is primarily stipulated by the specificity of respective elements and signs of their corpora delicti, qualifying

(particularly qualifying) circumstances, as well as types and limits of punishments for committing such crimes.

REFERENCES:

1. Савченко А. В. Корупційні злочини (кримінально-правова характеристика) [текст] : навч. посіб. / А. В. Савченко. – К. : «Центр учбової літератури», 2016. – 168 с.

2. Savchenko Andrii. Issues of the classification of corruption crimes in Ukraine / Andrii Savchenko // Наукові праці Національного авіаційного університету. Серія: «Юридичний вісник «Повітряне і космічне право» : зб. наук. пр. – К. : НАУ, 2015. – № 4 (37). – С. 161–166.