THE CONCEPT OF "CORRUPTION OFFENCE" IN CRIMINAL LEGISLATION OF THE CIS STATES

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Abstract. In this article, various approaches to the consolidation of notion of "corruption offence" are considered with the help of a comparative legal analysis of the content of criminal legislation of Russia and CIS member states. Researchers found that in order to achieve this goal, national legislators use the two following methods: 1) to fix the definition of "corruption offence" in criminal law; 2) to establish a closed list of such unlawful acts. By taking into account the importance of the concept under consideration in the fight against corruption, a conclusion was made about the prospect of its fixing in the criminal laws of all CIS member states.

Keywords: criminal legislation, corruption, corruption offence, criminal law, law.

1 Introduction

Currently, the legislative and executive authorities of many countries, including CIS member states, are searching for adequate means and methods to combat corruption. The same task faces sciences accompanying them, including jurisprudence. Fighting against the most dangerous official crimes, which, in essence, are concrete manifestations of corruption include corruption offences requires the application of criminal sanctions, and is brought to the fore.The success of such a struggle depends greatly on the existence of a "corruption offence" notion in a particular criminal law.Inferred from the fact that definition of the concept of corruption allows us to outline a circle of genuinely corruption offences, the efforts of many foreign jurists are directed at its development [19; 21; 22; 24; 26; 27; 30; 31]. Such studies are abundant in the Russian Federation [23; 28; 29; 32; 33] and CIS countries [20; 25].

2 Research Method

The present study has applied provisions of the dialectic, general scientific, special and particular methods. In the course of the study, private scientific methods were also used, such as: historical-legal, formal-legal, formal-logical, systemic, and comparative. The latter method, traditionally, plays the most significant role [22].

3 Results and Discussion

In the last decade, albeit slowly, the term "corruption" has been consolidated in national legislations of countries of North America, Europe and the CIS. Such "slowness" is due to the fact that the definition of this concept is absent, even in the UN Convention against Corruption in 2003 [1]. This is not surprising, since the development of a purely legal definition for such a social phenomenon as corruption is practically impossible; the reason is that its embodiment, although it is the corruption of government officials, does not exhaust this defect.

As a result, criminal laws of almost all countries contain and punish only certain manifestations of corruption (giving / receiving bribes, etc.); the amount of which depends on legal traditions, level of economic and social development of a particular country, anti-corruption sentiments in the society, etc.

Since the basis of such activity is not always a correct interpretation by law enforcers and scientists regarding what criminal acts are corrupt, it prevents development of effective measures to counter this phenomenon. Therefore, today, most legislators of the CIS countries are unanimous in the fact that there is an urgent need for legislative regulation of concept of a "corruption offence" and the definition of a "closed" list of acts of this category in national criminal laws.

It should be noted that the designated vector of legal development was predetermined by the international acts adopted by CIS member countries. Thus, the Agreement on Cooperation between Prosecutor Generals (Prosecutors) of the CIS member states in fight against corruption of April 25, 2007 [2] (hereinafter referred to as the Agreement) enshrined the basic concept of "corruption offence", its criteria, which make it possible to classify a specific crime as well as an indicative list of such acts.

In Article 2 of the Agreement, the concept of a "corruption offense" is disclosed through the illegal activities of persons recognized by the laws of the CIS member states as officials or equated to them, exercising it using their status, as well as the status of the body they represent, the official powers or opportunities arising from this status and authority if such an act contains signs of corruption. This concept contains the main criteria for classifying crimes as corruption. A subject is an official or another person in the case of bribery, the mercenary motives by which it is guided, and the

unlawful use of official powers and the opportunities they provide.

As for the list of corruption offences, it has an exhaustive, "closed" character contained in the Model Law "Fundamentals of Anti-Corruption Policy Law" for the CIS member states of November 15, 2003 No. 22-15 p [14]. Without going into details, let's say that the authors of the document combined such crimes into three relatively independent groups, as follows: "corruption offenses in the form of bribery" (Section 8, Article 8); "Other corruption offences" (clause 6, article 8); "Crimes related to corruption" (clause 7 of article 8).

In Russian Federation, with an exception of bribery, a similar grouping of crimes is included in List No. 23 of corruption-related offenses joint directives of the Prosecutor General's Office of Russia No. 853/11, Ministry of Internal Affairs of Russia No. 5 of 12/25/2018 "On the introduction of lists of articles of the Criminal Code of Russian Federation, used in the formation of statistical reporting "[18] (hereinafter - the List). Although this document does not contain the concept of "corruption offense," its authors use the concept of "crime of corruption", which, in essence, are one and the same. Without giving the latter independent definition, they disclose its content through the criteria of a corruption offense contained in Art. 2 of the Agreement, adding that such crimes are committed "only with direct intent." Considering that the List is subject to the correction from time to time [15; sixteen; 17] in the direction of increasing the number of corruption acts, the legislator is not yet ready to fix it in a separate chapter of the criminal code of Russian Federation, as has been done in a number of CIS member states. The same applies to the definition of "corruption offense."

The Criminal Code of the Republic of Azerbaijan (hereinafter - the RA Criminal Code) of December 30, 1997 [3] does not contain a definition of a corruption offense, but it includes an independent chapter "Corruption offenses and other crimes against interests of the service" (Chapter 33), including 11 criminal assaults. Therefore, the legislator has limited the notion of a corruption offense to a listing of criminal law norms grouped in a separate chapter.

The Criminal Code of the Republic of Kazakhstan dated July 16, 1997 No. 167-I (hereinafter - the Penal Code of the Republic of Kazakhstan) [9], unlike Criminal Code of the Republic of Azerbaijan, contains definition of "corruption offense" (Note 5 to Article 307 of the Penal Code of the Republic of Kazakhstan). Just like the criminal legislation of Azerbaijan, Criminal Code of the Republic of Kazakhstan establishes a separate chapter "Corruption and other crimes against interests of the civil service and public administration" (Chapter 13), including 9 compositions. However, part of corruption offenses is contained in Chapter 6 of Criminal Code of the Republic of Kazakhstan "Crimes against property" (3 compositions), Chapter 7 of Criminal Code of the Republic of Kazakhstan "Crimes in the sphere of economic activity" (4 compositions) and Chapter 16 of the Criminal Code of the Republic of Kazakhstan "War crimes" (3 compositions). In total, the Criminal Code of the Republic of Kazakhstan recognizes 19 criminal offenses as corruption offences.

Regarding definition of a "corruption offense", it is interpreted in the Note by a private transfer as "socially dangerous acts prohibited by criminal law under the threat of punishment committed by persons using their official position and (or) with the aim of obtaining benefits for themselves or third parties ".

Criminal legislation of the Kyrgyz Republic contains an approach that is not typical for other CIS member states to criminalize corruption offenses. In accordance with it, Criminal Code of the Kyrgyz Republic of October 1, 1997 (hereinafter referred to as Criminal Code of the Kyrgyz Republic) [10] provides for responsibility for "broad" list of acts of corruption from both theoretical and practical points of view. Based on the content of part 1 of Art. 303 of Criminal Code of the Kyrgyz Republic, the term "corruption offence" includes "intentional acts consisting of creating an unlawful stable connection of one or several officials who have authority over individuals or groups in order to illegally receive material, or any other benefits and advantages, and provision of these benefits to individuals and legal entities, posing a threat to the interests of society or the state".

Part 1 of Art. 303 of the Criminal Code of the Kyrgyz Republic lists the main signs of corruption offences as following: the subject is an official with authority; purpose of his actions is the illegal receipt of material, as well as any other benefits and profits, and provision of these benefits and profits to legal entities and individuals; this rule is common to the criminal offenses contained in the chapter 30 "Official crimes" (14 compositions).

Just as in criminal law of the Republic of Azerbaijan, in Criminal Code of the Republic of Moldova of April 18, 2002 (hereinafter - the Criminal Code of the Republic of Moldova) [11] the concept of corruption offense is absent. Previously, it was contained in Art. 2, which has lost the force of the law of Republic of Moldova of April 25, 2008 No. 90-XVI "on preventing corruption against it" [12]. In the current Law of May 25, 2017, No. 82 "On Integrity," it is absent [13]. At the same time, Criminal Code of the Republic of Moldova incorporates a chapter combining corruption offenses committed in the private sector (chapter 16). In addition to it, in the Special Part of Criminal Code of the Republic of Moldova there are compositions setting responsibility for other, not covered by chapter sixteen facts of corrupt behavior, as well as illegal acts related to the corruption. In total, the criminal legislation of the Republic of Moldova has 20 criminal law norms, providing for the responsibility for corruption offences.

In contrast to the above CIS member states, criminal laws of Belarus [4], Ukraine [5], Tajikistan [6], Turkmenistan [7] and Uzbekistan [8] do not contain the concept of a "corruption offense" in the same way, because they do not group such norms in separate chapters.

4 Findings

To sum it up, let us say that the concept of a "corruption offence" (in the form of a definition or listing of such acts in an independent chapter) is mainly present in the criminal laws of CIS member states, whose national legislation defines corruption in accordance with provisions of the Model Law on Combating Corruption; they include Azerbaijan, Kazakhstan, Kyrgyzstan, etc. The criminal laws of CIS member states that implement the definition of corruption do not contain such a concept; members such as Moldova, Tajikistan, Ukraine, etc.

Since national anti-corruption laws of all CIS member states contain the concept of corruption, the appearance of the definition of a corruption offense in criminal laws is a matter of time, depending on the will of the legislator, and will have a positive effect on the prospects for combating this phenomenon.

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