

CONCEPT AND CRIMINOLOGICAL CHARACTERISTICS OF CORRUPTION CRIMINALITY

A. Timur Gumerov, Kazan Federal University
Nail E. Habibullin, Kazan Federal University
Alisher R. Khodzhiyev, Kazan Federal University
Nail R. Galeev, Kazan Federal University
Iskandar G. Mukhametgaliev, Kazan Federal University

ABSTRACT

The foreign researchers also call corruption a key issue facing the Russian state. And, accordingly, it is brought up the issue on the reduction of employees, abolition of legal regulation of many relationships and state supervision of many areas of activity. But it is not the case, it is the characteristics of employees, the size of their maintenance, the order of their activity and control. Maybe then the criminal cases would not be opened on the fact of corruption against the public servants, as it happened, for example, with the governor of the Sakhalin Region A. Khoroshavin.

Keywords: *criminal law, criminal procedure, criminology, anti-corruption, corruption, criminality, crime, commercial bribery, bribe, falsification.*

INTRODUCTION

The Article 1 of the Federal Law No. 273-FL "On Combating Corruption" determines the conceptual apparatus used by the Law and gives the legal definition of the term "corruption":

a) First of all corruption is the abuse of occupational status, bribery, acceptance of bribes, abuse of power, commercial bribery or other unlawful use of the official position by the individual person contrary to the legitimate interests of society and state for the purpose of benefiting in the form of money, valuables, other property or property-related services, other property rights for himself/herself and for third parties, or illegal provision of such benefits to the said person by other individual persons;

b) It is the implementation of the acts mentioned in sub-paragraph "a", on behalf of or for the benefit of a legal person.

Despite the fact that the legislator has defined the concept of corruption, the scientific debates about the configuration and nature of corruption, the economic costs of corruption in Russia, by the way, are measured in billions of dollars per year. Thus, the first half of experts suggests that corruption is a social and legal phenomenon, encompassing both immoral and illegal crimes. The second half insists on the fact that corruption is always a socially dangerous phenomenon, consisting only of the crimes. The third half of experts is based on limiting the corruption with the bribery. And the fourth half includes also the official misappropriation in the concept of corruption, that is, it does not reduce the corruption just to the bribery.

The foreign researchers also define this phenomenon as the avoidance by the politicians, employees of the state apparatus, businessmen and others of performing their official duties for the sake of personal, family or group interests in order to enrich themselves and improve their social status.

It should be noted that the term "corruption" is not used by the Russian criminal legislation. But this does not mean that the criminal law does not include the regulations on liability for this type of crime. The regulations on bribery, abuse of power (Art. 285 of the Criminal Code of the Russian Federation), forgery (Art. 292 of the Criminal Code of the Russian Federation) and other carry out namely this assignment. In our view, it is appropriate to enter the definition of "corruption" and the list of corruption crimes into the General Part of the Criminal Code of the Russian Federation, which will enable to provide a more complete statistical accounting of corruption-related crimes in our country, to trace its dynamics and will help fill gaps in the Criminal Code of the Russian Federation.

MATERIALS AND METHODS

During the study we used the general scientific (logical and historical, systemic and structural approach, analysis and synthesis, etc.) and the common scientific methods (comparative and legal, concrete-sociological, formal-logical and comparative law method). Using a variety of methods has enabled to construct the basic theoretical conclusions and offers for the statutory regulation of the analyzed legal relations.

RESULTS

For example, the legislative formulation of intent hides two incompatible regulations under its verbal expression. Within the meaning of Art. 25 of the Criminal Code of the Russian Federation, it is not necessary to conscious the illegality to recognize the act as the act committed by the wrongful intention, along with it, in accordance with Art. 289 of the Criminal Code of the Russian Federation (illegal participation in the entrepreneurial activity), the consciousness of willfulness illegality is a required component of the subjective side of this type of crime. This suggests that there is a non-compliance with the logical correctness in the current criminal legislation. The legal rules are characterized by the fragmentation nature, and sometimes there is no connection between the other articles of the Criminal Code of the Russian Federation.

The corruption crimes include the socially dangerous acts stipulated by the criminal law, which infringe on the authority and legal interests of the service and are expressed in the illegal use of any privilege, for example, benefits, services or money by the state, municipal officials or the employees of commercial or other organization.

Firstly, it is the crimes stipulated by the criminal law, which are directly related to the bribery of corrupt officials:

- Illegal obtaining and disclosing the information constituting a commercial or banking secrecy committed by bribery (Art. 183 of the Criminal Code of the Russian Federation);
- Bribery of participants and organizers of professional sports competitions and entertainment commercial competitions (Art. 184 of the Criminal Code of the Russian Federation);
- Preventing the implementation of electoral rights or the work of election commissions linked to the bribery (Art. 141 of the Criminal Code of the Russian Federation);
- Commercial bribery (Art. 204 of the Criminal Code of the Russian Federation);
- Acceptance of bribe (Art. 290 of the Criminal Code of the Russian Federation);
- Giving bribe (Art. 291 of the Criminal Code of the Russian Federation);
- Crimes committed by persons performing the managerial functions in the commercial and other organizations (Art. 201, 204 and 184 of the Criminal Code of the Russian Federation).

In addition, the Criminal Code of the Russian Federation classifies other acts of corruption nature as the corruption-related crimes. They include: registration of illegal actions with the land plots (Art. 170 of the Criminal Code of the Russian Federation), abuse of power (Art. 201 of the Criminal Code of the Russian Federation), fraud (Art. 159 of the Criminal Code of the Russian Federation), misappropriation and embezzlement committed with the use of occupational status (para. "B", P. 159 and 160 of the Criminal Code of the Russian Federation), illegal participation in the entrepreneurial activities (Art. 169 of the Criminal Code of the Russian Federation), forgery (Art. 292 of the Criminal Code of the Russian Federation).

There is a classification given in the Order No. 3 dated December 31, 2014 "On the Enforcement of the List of Articles of the Criminal Code of the Russian Federation Used in the Preparation of Statistical Reports" adopted by the General Prosecutor Office of the Russian Federation and the Ministry of Internal Affairs of the Russian Federation. This Order has introduced the List No. 23 "Corruption Crimes". According to the List, it is distinguished 4 mandatory criteria for all the crimes of the category under consideration:

1. Link of acts with the occupation status of the subject. Deviations of his/her direct rights and duties.
2. Availability of appropriate subjects, which are marked in the Criminal Code of the Russian Federation. They include:
 - a) a public servant, who permanently, temporarily or on special authority exercises the responsibilities of public officer or performs the organizational-administrative, administrative-economic activities in the public authorities, local self-government authorities, state and municipal authorities, public corporations, as well as in the Armed Forces of the Russian Federation;
 - b) persons, who exercise the managerial functions in the commercial or other organization and act for and on behalf of the legal person, as well as in the non-profit organization, which is not a public authority, local self-government authority, state or municipal authority.
3. Availability of lucrative impulse in the subject. The act shall be related to receipt of property rights and benefits for him/her or for third parties.
4. The crime committed shall have only a direct intent.

Talking about the features of corruption crimes, it is important to highlight the originality of their subjects. On the one hand – the corrupter, that is, the individual or legal person who uses for some compensation the powers, services, status or contacts of the state or municipal employee, the person performing the managerial functions in a commercial or other organization, to achieve his/her personal, narrow group or corporate purposes. And on the other hand – the corrupt person, who is the recipient of bribe or other benefits received illegally. The corrupt person is the official, who has some authority and power, who abuses his/her occupational status in favor of the briber and receives a bribe.

Since the corruption criminality is not limited to bribery, the science concludes that the teachers, managers and other senior officials involved in the misappropriation of funds, frauds, forgery and other corrupt acts, shall be also considered as the corrupt person.

It is quite interesting the concept of "connected person" used in the UK Bribery Act. The Act defines the related person very broadly as a person (individual or legal), "which provides services for or on behalf" of the company. This may be the company's employees, agents, subsidiaries and joint venture partners.

The subjects of corruption crimes constitute in their aggregate a particular corruption network that includes three components:

1. Group of government and non-government officials, which provide certain privileges and benefits, and cover the corruptors in making different decisions for a fee;
2. Financial, commercial structures, which sell the privileges and benefits resulting from the corruption acts and which turn them into an additional income;
3. Corruption criminality advocacy group, which includes the officers of law enforcement and supervisory bodies.

CONCLUSIONS

There is a kind of mechanism, one of the main features, which characterizes the corruption crimes as a wrongful act and represents a performance of one of the following acts:

- Bilateral transaction, in which one party - the person in the public or other service (corrupt person), illegally "sells" his/her official powers or services based on the prestige of his/her position and its associated potential, to the individual or legal persons, and the other party (corruptor), acting as the "buyer", purchases a permissibility to use the state or other power structure in his/her favor.
- Adventurous, dynamic bribery of officials by the individual or legal persons, often carried out with a strong psychological effect on them, pressure and subsequent kind of "bribe landing";
- Extortion of bribe or additional remuneration for the implementation (or non-implementation) of legal or illegal actions by public officer from the individual or legal persons.
- We should agree with the position of M. Johnston about the fact that society simply accepts it as the most viable way to achieve the desired result, although the corruption can be gradually eradicated.

According to the data of the Ministry of Internal Affairs of Russia for January - June 2014, the structure of corruption crimes is as follows: misappropriation or embezzlement of non-owned property - sixty percent; abuse of power or its excess - thirteen per cent; forgery - ten percent; acceptance of bribes - five percent; giving bribes - three and a half percent; other crimes - eight and a half percent (registration of illegal land transactions, commercial bribery, obstruction of legitimate business activities, illegal participation in the entrepreneurial activity).

Corruption is a social phenomenon (citizen survey has showed that about thirty-eight percent of individuals, which solve their everyday problems, and eighty-two percent of businessmen become the corruptors), thus it is necessary to consider that it mostly develops on the basis of the existing state and municipal structures.

The study of the distribution of corruption flows at different levels of government has shown that leadership in this regard is taken by the municipal level, which holds three-quarters of the market of corrupt services. Twenty percent of this market accounts for regional and five per cent - for the federal levels of government. And the corruptive nature of bureaucracy structure is evidenced by the corrupted officials, which are held liable: forty percent are government officials at various levels; twenty-five percent - law enforcement officers; about twelve percent - employees, working in the credit and financial system; nine percent - employees of control authorities; between three and four percent - customs officers; one percent - deputies; seven - eight percent - other persons.

The corruption network covers all areas of life. The education, banking transactions, external economic activity and health care are especially widely permeated by corruption. It is especially dangerous that the corrupt activities sneaks in such political processes as elections to the legislature bodies, implementation of personnel changes in the public and municipal authorities, activities of these bodies and, accordingly, government decision-making. This is already acknowledged by the heads of the supreme public authorities.

What are the preconditions of corruption crimes? In accordance with the idea of Gary Becker, deciding on the direction of his/her activities, the person comes from four factors. Firstly, he/she take into account his/her abilities; secondly, moral values and limitations inherent in his/her upbringing and family; thirdly, limitations imposed by the environment structure; fourthly, from a desire to maximize his/her benefits.

SUMMARY

Thus, the corruption criminality is a single, relatively massive set of crimes that infringes on the authority of the public service or service in the local self-government authorities, expressed in the commission of corrupt transactions initiated by the corruptors or the corrupt persons, entailing a criminal liability. The corruption criminality has been forming together with the community, and the root origin of such social phenomena as corruption, in our opinion, was laid as early as in a primitive society. The basis of corruption criminality is bribery. It is possible to measure this type of criminality by the number of corrupt transactions, including registered corruption crimes, and by the number of participants. But there is a difficulty, as the corruption criminality is latent, and this is due to the fact that it is often a bilateral "confidential agreement", in the exposure of which neither one of the parties is interested.

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