



Mammadova V.Ya.♦

Mammadov V.G.♦

DOI: 10.25108/2304-1730-1749.iolr.2017.52.215-259

Definition of the concept of corruption and corrupted actions in legal scientific and documentary sources

Abstract: The article is devoted to analysis of the definition of corruption and corrupted actions. The authors review various approaches in describing this term of corruption in different historical periods. A number of international legal documents related to the fight against corruption are referenced. The article also describes some parts of the legislation of the Republic of Azerbaijan and other states in this regard.

Keywords: corruption; corruption crime; organized crime; abuse of power; bribery.

The problem of corruption is one of the most acute problems of our time, from the solution of which depends the further development of the world community in the new century. In today's world, many scientists tend to view corruption as one of the manifestations of organized crime and a rapidly developing socially dangerous epidemic that can lead to stagnant phenomena and breaking of possibilities for political, social, economic, social, cultural development of states. The high probability of the spread of corruption manifestations necessitates determination of this concept.

♦ **Mammadova Vafa Yaqubali qyzy** – Law Ph.D. student at Institute of Law and Human Rights, National Academy of Sciences of Azerbaijan (Azerbaijan). E-mail: vafa_mammadova12@mail.ru

♦ **Mammadov Vugar Gurban oglu** – Doctor of Medicine, Professor, Head of Azerbaijan Unit, International Network of UNESCO Chair on Bioethics (Haifa), deputy Chairman of National UNESCO Bioethics Committee at National Academy of Sciences of Azerbaijan (Azerbaijan). E-mail: vumammadov@yahoo.com



In many legal and international legal instruments, corruption is defined as "abuse of power in exchange for benefit" [3, p.2]. At the same time, there are other definitions of corruption, reflecting the peculiarities of the approach of various scientific schools. The term "corruption" comes from the Latin words - "corrumpere" ("corrupt"), "corruptio" ("damage", "decay", "venality"). As a result, an independent legal term was formed, which presupposed the activities of several (at least two) individuals whose purpose is to "spoil", "damage" normal course of the judicial process or the process of management of business. This concept was introduced into widespread use only in the late 80-ies of the XX century. Instead, the terms "bribery", "abuse of office", "loosening", etc. were used before [14, p.452]. Corruption, as a social and legal phenomenon, is usually understood as the venality of officials [30, p. 215]. Having the Latin origin, the term "corruption" can mean: 1) seduction, bribery; 2) damage, decay; 3) perversion, vicissitudes (of opinions); 4) frustration, crankiness, poor health [7, p. 115]. In general, the term has the same meaning in the Roman, Germanic and Slavic languages. In Russian, corruption is referred to bribery, corruption of officials, politicians [26, p. 314].

Despite the fact that this term began to be widely used by the end of the 20th century, for the first time in the legal literature the term "corruption" was introduced into the legal conceptual apparatus by A.Ya. Estrinin in the work published in 1913 under the title "Bribery". The simplest definition of corruption is the bribery and venality of government officers, officials, as well as public and political figures in general [33, p. 45]. There are other definitions of this concept, in particular, corruption is understood as a phenomenon that has affected the state and public administrative apparatus, manifested in the disintegration of power, the deliberate illegal use of his official position by an official for personal gain, for personal enrichment. At the same time, three types of corruption are distinguished: occupancy with the use of official position by another's property through its seizure contrary to the will of the owner; use of official position in the performance of



other acts of mercenary nature, not related to the acquisition of another's property and the "classic" form of corruption - taking of a bribe. B.V. Volzhenkin refers to smuggling and speculation as the second type of corruption, in addition to abuse of power or official position [4, p.10].

M. Yu. Tikhomirov proposes to consider corruption as a criminal activity in the sphere of politics or public administration, use by officials of the rights granted to them and power authorities for the purpose of personal enrichment. In his opinion, the most typical manifestations of corruption are the following actions:

- bribery of officials and public and political figures;
- bribery for the legal or illegal provision of benefits or advantages,
- protectionism - promotion of employees on the basis of kinship, community, personal loyalty and friendship [14, p. 262].

G.I. Halperin considered the "bribery, abuse of official position for mercenary purposes, etc. crimes" [5, p. 41] as concrete manifestations of corruption but the issue of which crimes, in addition to the named formulations, are covered by the notion of "corruption", still remains open.

A.S. Nikiforov notes that criminal acts of corruption include acts provided for in articles on bribery, but stresses that not all manifestations, types and forms of corruption are criminal, and also does not call excess of power and negligence among the types of corruption behavior. In his view, corruption is "the disintegration of the state apparatus, public and private services, the distortion of the functions assigned to them, and so on - as a result of bribery of their officials" [23, p.135].

Corruption can be seen in two aspects - social-philosophical (in a broad sense) and socio-legal (narrow). Narrow definition of corruption, in turn, can be criminological and criminal-legal. In criminology, corruption is a system of relations based on "unlawful and other transactions of officials at the expense of state and public interests" [10, p. 33]. The issue of corruption in criminology is



considered in the framework of studying organized crime problems, which also represents a system of relations regarding the extraction of illegal profits [24, p.304]. In order to ensure illegal activities, criminal groups need support (or at least inaction, non-interference) from officials who are involved in illegal remuneration. Such corruption is characterized by the constant connection (or merging) of government officials with the criminal world - thereby corruption in criminology differs from simple bribery, that is, from corruption in the criminal sense. According to this criminological definition of corruption, these malicious relationships can be based not only on unlawful, but also on other (apparently, legal) transactions of officials. Nevertheless, such transactions also damage state and public interests.

According to many authors, the understanding of the bribery of a person as an official, who has the ability to use his power, official powers should be in the center of the whole concept of corruption. This is the trade of an official by his authority, the ability to exercise those functions that are assigned to him by office, in terms of his official position [28, p. 24].

As mentioned earlier, bribery is the core of corruption. Social reality shows that bribery is the most dangerous type of abuse, a kind of "hidden core" of crime of officials, its prerequisite: economic crimes, crimes against justice, and constitutional rights and freedoms of citizens are committed for bribes. Bribery acts as a link between the subjects of power, both state and non-state, and persons who professionally engage in illegal activities.

Expansion of the criminal law concept of corruption by including other offenses in it, in particular against the interests of service and crimes committed by a special subject-employee using his position, but not being official, on the one hand, will mean a departure from the established tradition, on the other hand, it can introduce new and valuable in the qualification of crimes of this kind.



The scale distinguishes between corruption of the lower classes and corruption of the top. Ordinary citizens and low-ranking officials participate in corrupt acts of the lower classes. Corruption of the lower classes differs in that the size of bribes, gifts or cost of services is relatively low: from one to several hundred dollars. But the corruption of the lower classes, in comparison with the corruption of the upper classes, covers much wider sections of the population.

Top-level officials participate in corrupt acts of high-level and take bribes in the process of public procurement, appointments to high positions, and provision of various kinds of services. The difference between this type of corruption and corruption of the lower classes is that in this case the sizes of bribes, the cost of gifts and services are measured from several thousand to several million dollars. And the level of coverage of the country's population is much smaller and is estimated, maybe only a few thousand. In 1999, the Azerbaijan Foundation for Assistance to Entrepreneurship Development and Market Economy (FAEDME) conducted an expert survey on the problems of corruption in Azerbaijan [13]. The survey was conducted with the financial support of the International Center for Private Enterprise USA (Center for International Private Enterprise - CIPE). According to 54% of respondents, the funds that Azerbaijani entrepreneurs spend on bribes account for 40-70% of their incomes, 33.5% of respondents considered that these expenses make up even more than 70% of income. This situation, of course, makes any business almost unprofitable and at the same time weakens the budget.

The fight against corruption accompanied the whole history of the development of statehood. Already the extant documents of Ancient Babylon XIV century BC contain references to measures to curb abuses of officials and judges, extort royalties from royal wealthy nobles and clergymen of churches. Ancient Greek philosophers Plato and Aristotle connected corruption with politics. Modern understanding of corruption as a "robbery system on the part of officials" was



formulated in the XVI century by Niccolo Machiavelli in his famous book "The Emperor" [18, p.3]. For centuries, people vested with power and wealth boldly committed various crimes, confident of their own impunity and the ability to avoid possible punishment by bribing judges and law enforcement agencies, receiving forgiveness from the leaders of the state in exchange for money or other forms of reward.

In many countries since the last century, corruption has become a tool for managing the system. The highest authorities used and continue to use corruption as an instrument of public administration, allowing all the members of the ruling team to be controlled under the strict personal fear of the head of the system. The beginning of the 21st century was marked by an unprecedented surge of corruption scandals, including those concerning the leading persons of a number of states that exposed the internal mechanisms of corrupting state figures.

In the report of the Council of the Club of Rome "The First Global Revolution" the authors believe that political power in the modern world is no longer controlled by the strength and complexity of armaments - it is determined by financial power. Currency and financial exchange speculation with the help of computerized communication strongly affected the loss of moral values, which previously provided for the cohesion of society and its members. Corruption of the supreme rulers flourishes against the background of the loss of values and the transformation of management in the world of finance. The religious faith, faith in God are lost, others lose faith in the political system and its leaders. There is a merging of political and economic power [9, p.10]. It is generally accepted that, to some extent, corruption is present in all countries of the world. Whereas earlier in Western democracies the fusion of economic and political authorities differed from the situation in the post-Soviet countries and the countries of the East, events have now begun to happen that make everyone very similar. If, for example, in the US, economic power was separated from the political and was represented by



businessmen, bankers, masters of the media and leaders of mafia groups that did not go into politics, then the election of tycoon Donald Trump in 2016 as the forty-fifth US president becomes the same personification of the splicing of financial power with the political, as is the case in the Arab, post-Soviet countries. Similar trends are observed in neighboring Turkey. The "kitchen of power" and general financial interests make it necessary to attract close relatives, friends and fellow countrymen to the ruling political team, as the principles of personal devotion become more important than devotion to state interests. Power becomes a commodity.

The motto of the Transnational Center for Combating Corruption and Transnational Crime at the American University in Washington is the phrase "Transnational crime and corruption will be the defining agenda for the politicians of the 21st century, just as World War II was for the politicians of XX, and colonialism for the XIX century." We believe that corruption really transcends national boundaries and requires a global approach because the proceeds from it after "laundering dirty money" are included in global and national financial flows, undermining state and international institutions of power and economy. The active transnational fight against corruption in the world and in individual countries unfolded in the basis of the last quarter of the 20th century, when corruption began to acquire stable features. It seriously threatened the rule of law, democracy and human rights, undermined the credibility of power, the principles of public administration, equality and social justice, hampered competition, hindered economic development and threatened the stability of democratic institutions and the moral foundations of society [32, p.205].

According to Article 1 "The Concept of Corruption" of the Law of Azerbaijan Republic No. 580 IIG of January 13, 2004 "About Fight Against Corruption", corruption in Azerbaijan is defined as follows: "Corruption is illegal receipt by officials of material and other benefits, benefits or privileges using their status, the



status of the organization they represent, official powers or possibilities, effluent from this status and powers, as well as the involvement of individuals and legal entities information officers to their side by illegal offer or promise of any transfer of the marked material and other welfares, benefits or privileges" [11]. In legal documents in other countries as well as regional and international organizations, you can see other versions of the definition of corruption. For example, in the model anti-corruption laws adopted at the XIII and XXII plenary sessions of the Interparliamentary Assembly of the CIS member states of April 3, 1999 and November 15, 2003, respectively. For example, in the 1999 Anti-Corruption Model Law, corruption (corruption offenses) is defined as "not envisioned by law personally or through intermediaries of property benefits and benefits by government officials, or by persons equated to them, using their official powers and related capabilities, as well as bribery of such persons by providing them with unlawful individuals and legal entities mentioned benefits and advantages" [21]. In another model law "On the fundamentals of anti-corruption policy legislation" of 2003, corruption is defined as "bribery (receipt or giving of a bribe), any illegal use by a person of its public status associated with obtaining benefits (property, services or benefits and / or benefits, including non-material) for themselves and for their loved ones in spite of the legitimate interests of society and the state, or illegal provision of such benefits to specified person" [22].

In Federal Law No. 273-FZ of 25 December 2008 "On Combating Corruption" of Russian Federation, corruption and corruption activities are defined in paragraph (a) as "abuse of office, giving bribery, receiving bribery, abuse of authority, commercial bribery or other unlawful use of physical person of his official position contrary to the legitimate interests of society and the state in order to obtain benefits in the form of money, valuables, other property or services of a property nature, other property rights for themselves or for third parties, or the unlawful provision of such benefit to the said person by other individuals, and in



paragraph (b) as "the commission of the acts specified in subparagraph (a) of this paragraph on behalf of or in the interests of the legal entity" [31].

Article 1 "The concept of corruption and corruption activities" of the Law of Ukraine of 14.10.2014 No. 1700-VII "On the Prevention of Corruption" provides somewhat different from the above-described concepts of the wording of corruption and corruption: "Corruption in this Act means the activities of individuals authorized to perform the functions of the state, directed at unlawful use of the powers granted to them for obtaining material goods, services, benefits or other advantages. Corruptive actions are: a) illegal receipt by a person authorized to perform the functions of the state in connection with the performance of such functions of material goods, services, benefits or other advantages, including the acceptance or receipt of items through their acquisition at a price significantly lower than their actual cost; b) the acceptance by a person authorized to perform the functions of the state of credits or loans, the purchase of securities, real estate or other property, with the use of benefits or benefits not provided for by law. The gift received by the said persons under the circumstances specified in paragraph "a" of part two of this article, including such received without their knowledge, as well as the cost of illegally obtained services shall be recovered in the state's income." Article 2 of the same Law "Subjects of Corruption Acts and Other Offenses Related to Corruption" states that: "For corruption acts and other offenses related to corruption, the following persons who are authorized to perform the functions of the state are responsible for corruption: (a) civil servants; b) Prime Minister of Ukraine, First Vice Prime Minister, Vice Prime Ministers, Ministers; c) people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of rural, settlement, city, district in cities, district and regional councils; d) officials of local self-government; d) military officials of the Armed Forces of Ukraine and other military formations" [12].



As can be seen from the differing notions of "corruption" in the legislation of different countries, even those close to each other as the post-Soviet countries, corruption acts in different states will also differ from each other. So, proceeding from our national legislation, corruption acts in Azerbaijan can be considered as:

A) acquisition by officials of material and other benefits, advantages or privileges using their status, status of the body represented by them, official powers or opportunities arising from this status and authority;

B) involvement of these officials by individuals and legal entities on their side through an illegal offer or promise or the transfer of marked material and other benefits, advantages or privileges to them.

As mentioned above, corruption can be viewed by some authors as a philosophical, social or other category. However, we, like a number of other researchers, support the definition of it as a legal category, i.e. corruption should not be seen as a phenomenon, but as an activity of certain individuals with certain legal consequences. In this regard, we would like to invite the legislator to go deeper into the definition of corruption in Azerbaijan, and to include in it some provisions from the model CIS laws mentioned above, such as the reflection in the wording of "intermediaries", as well as "close relatives of officials, receiving these goods". If protectionism is also attributed to corruption - the promotion of employees on the basis of kinship, community, personal loyalty and friendship, it would be even better. We all remember as the National Leader of Azerbaijan, President Heydar Aliyev, being an active fighter against corruption, bribery and abuse of official positions during the Soviet Union and during the years of our country's independence headed the struggle against these phenomena and there was not one official in the country who could allow themselves to demonstrate those benefits that were earned by them and their loved ones after being appointed to public office. Protectionism was publicly blamed and it was not permissible for members of the same family, close relatives or friends to be in high administrative



positions in submission to each other. Unfortunately, protectionism in our country has become a widely observed phenomenon when many representatives of the same families and family clans occupy the highest positions in state and judicial structures, public and business organizations. Perhaps, therefore, in the interests of our statehood and protection of the fundamental rights of current and future generations of Azerbaijani citizens, the legislator should think about expanding the term "corruption" in national legislation [2].

Corruption crime is a traditional and quite common type of crime in most countries of the world. The concept of corruption crime is not identical with the notion of corruption, since the phenomenon of corruption crime is only a part of corruption in general, although the most dangerous from the point of view of public and state interests. However, analysis of the content of this type of crime is impossible without studying the essential signs of corruption.

The Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on December 17, 1978 states that these two words define a different understanding of corruption and although the concept of corruption should be determined by national law, it should be understood to encompass the commission or the non-commission of an action in the performance of duties or by reason of the duties required as a result of or to gifts, promises or incentives, or the wrongful receipt whenever there is the action or omission" [19]. In this case, corruption is understood as bribery, corruption of officials (civil servants) and their official conduct, carried out in connection with the received or the promised reward.

However, it seems correct to have a broader understanding of corruption as a social phenomenon that does not amount only to bribery. A brief and concise definition of corruption is contained in the UN reference document on the international fight against corruption: "Corruption is the abuse of public power for personal gain" [16, p.20].



Historical and legal studies prove that corruption existed in society always since the administrative apparatus emerged. Charles Montesquieu wrote: "... it is already known from the experience of centuries that every person with power is inclined to abuse it, and he goes in this direction until he reaches the limit set by him" [20, p.57]. However, the size of corruption at different times and in different countries is not the same, which is determined by a number of circumstances.

Corruption is a common evil in the world. It is no accident that the strategy and practical measures to combat corruption were discussed at the Eighth (Havana, 1990) and the Ninth (Cairo, 1995) United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, numerous seminars and conferences held by the international community. For bribes, it is ensured that favorable contracts are concluded and the necessary expertise is carried out, access to state orders to "foreign" firms is hindered, and so on.

Forms of manifestation of corruption are specific types of violation of ethical and legal norms by persons authorized to perform public functions. An example of ethical violations may be the commission of an act by a public person, which, although not prohibited by law or by contract, creates the impression of possible corruption (systematic presence at banquets held by organizations whose control is the responsibility of the person; free use of services payable, providing loans to friends or acquaintances, etc.).

Corruption offenses, unlike immoral corruption offenses, are prohibited by the rules of law and provide for legal responsibility. There are four main types of corruption offenses: 1) civil torts; 2) disciplinary offenses; 3) administrative offenses; 4) crimes.

Corruption crimes are socially dangerous acts provided for by the Criminal Code, which directly infringes upon the interests of state power and public service, which are manifested in the unlawful receipt by public persons of any goods



(property, rights to it, services or benefits) or in providing the latter with such goods" [15, p.304].

The current Criminal Code of the Azerbaijan Republic (CC of the AR) provides grounds for referring to corruption such crimes as misappropriation and embezzlement committed with the use of official position, abuse of office, forgery, bribery, obstruction of lawful entrepreneurial activity, restriction of competition and a number of other crimes, committed by public servants (public persons) using their official position (in the broadest sense of the word) in mercenary, other personal or group purposes [1].

A characteristic feature of corruption crime is its highest latency. Expert assessments of specialists on the size of the detected cases of bribery in relation to their actual level range from 0.1 to 2%. The high latency of corruption crimes is explained by factors of an objective and subjective nature. In most cases of committing such crimes, there are no victims in the physical sense of the word, interested in reporting this crime and disclosing it. As a rule, all participants in a corrupt transaction benefit from it, besides all of them (for example, when giving or receiving a bribe) are subject to criminal liability in accordance with the law. Crimes are committed in secret, often in the interests of physical and confidential types of state activity. Corruption has the highest adaptive ability, is continuously changing and improving. The subjective reasons for the latency are the lack of the necessary political will and determination of the heads of state bodies in the fight against corruption, as well as the low professional level of the employees of the operational and investigative apparatus involved in this activity.

Another characteristic feature of corruption crime is its close relationship with the shadow economy and organized crime. "There is no organized crime without corruption," V.V. Pankratov argues. - In this case, it is simply impossible, it will not last for a short time, the more it will not be able to realize its long-term and lasting (branched and multi-episode) operations - will not receive benefits,



protection from controlling bodies, from competition, etc. In turn, only organized crime with its frenzied incomes ... forms a ramified corrupt network, going to the very top of power" [27, p.48]. In this case, there is a situation of direct bribery or a total bribe when representatives of organized crime, mafia structures establish close ties with state officials of various ranks, take them for maintenance, as if "buy up on the root", believing that at the right time, in the appropriate situation the corrupt representative of government and administration will act as the bribe-takers expect. According to a number of studies, organized criminal groups and the formation of 30 to 50% of criminally acquired funds spend on corrupt functionaries of the state apparatus [25, p.402].

The UN Secretary-General's report "The impact of organized crime on society as a whole" at the second session of the Committee for the Prevention of Crime and Criminal Justice of the United Nations Economic and Social Council in April 1993 noted that corruption of public officials has always been one of the preferred means of organized criminal groups, an integral part of their strategy and tactics, which was preferred over the use of open violence. Money paid as bribes are considered to be organized crime bosses as a good investment, a kind of overhead, justified from the point of view of the "case", as this greatly increases the chances of success and possible impunity, reduces or even negates the danger of finding a crime with all the losses, to which this can lead.

Corruption criminality is an integral, relatively massive aggregate of crimes that infringe upon the authority of the civil service or service of local self-government bodies, which are manifested in the unlawful acquisition of privileges by persons authorized to perform public functions, or in providing such persons with such benefits, as well as the totality of these persons themselves. Since the concept of corruption as a qualifying feature and a corruption crime in the legislation is not defined, the analysis of the essence of corruption-oriented crimes should be approached from the criminological standpoint.



Under the corruption crimes should be understood criminal socially dangerous act that directly infringes on the authority or the legitimate interests of the government, local authorities, state and public services, expressed in illegally obtaining from a person who has the status of an officer or employee in the state, the municipality or the person performing managerial functions in a commercial or other organization of any benefits in corporate, narrow corporate or personal interest if there is a use of an official position as an integral part of the mechanism of the crime.

The legal literature suggests attributed to corruption offenses following the CC rules: registration of illegal land transactions, bribery of participants and organizers of sports competitions and entertainment commercial competitions, abuse of power, abuse of powers private notaries and auditors, commercial bribery, abuse of office, illegal participation in entrepreneurial activity, receive and bribery, forgery, provocation of bribe or commercial payoff, if there is a selfish official use, service position or management functions as part of the mechanism of criminal behavior [29, p.120].

For example, a resident of Tovuz region, Jafar Yusifov, applied to the communications center of the "Hotline-161" of the Office for Combating Corruption under the Prosecutor General and reported that Ragim Mammadov, chairman of the Medical Social Expert Commission No. 28 of the Ministry of Labor and Social Protection, has demanded bribe in the amount of 1,000 manat to assign him a second group of disability. On the materials collected on the basis of the appeal, a criminal case was opened. The investigation found that Rahim Mammadov, having agreed in advance with the expert surgeon of the above-mentioned commission Ali Hasanov, took 1,000 manat from Jafar Yusifov in exchange for assigning him the 2nd group of disability. Regarding Rahim Mammadov and Ali Hasanov, a criminal case was initiated for their unlawful actions under Article 311.3.1 of the Criminal Code, a preventive measure was



seized in the form of arrest, and upon completion of the investigation, the criminal case was referred to the Ganja Serious Crimes Court [6].

B.V. Volzhenkin include in the number of corruption-related crimes: fraud, misappropriation and embezzlement committed through abuse of office, illegal participation in entrepreneurial activity, receiving bribes, forgery, obstruction of legitimate business, the restriction of competition and a number of other crimes committed by public officials or employees of local governments, using his official position (in a broad meaning of the word) for selfish, personal or other group purposes [4, p.34].

A.I. Dolgova does not give a full list of corruption crimes. However, in her opinion, they should include, in addition to the aforementioned crimes, bribery, unlawful receipt or disclosure of information constituting a commercial or bank secret, bribery or coercion to testify or evade testimony or improper translation, commercial bribery, obstruction of the exercise of electoral rights or the work of election commissions [8, p.666]. S.V. Maksimov not only gives an approximate list of corruption crimes, but also distinguishes three of them depending on whether the authority of the public service (public service and service in local government bodies) is the main, mandatory or additional direct object of criminal assault or its optional object: 1) the actual corruption crimes that encroach on the authority of the civil service or service in the bodies of local self-government, acting as the basis for the direct object of such encroachments (corruption crimes in the narrow sense of the concept); 2) corruption crimes that encroach on the same social value as an obligatory additional direct object (corruption crimes in the broad sense of the concept); 3) corruption crimes that infringe on the named social value as an optional (not mandatory) object [17, p.40].

Chapter 33 of the Criminal Code of Azerbaijan Republic is called "Crimes against state power, interests of state service and service in bodies of local governance" [1]. Interpretation of this name leads to the conclusion that, first, the



legislator does not use term «corruption crimes» and there is impression of some avoidance of usage of it, as in all the code nowhere «corruption» term has been used, and second, not all types of corruption crimes content are covered by articles of this chapter.

Despite the fact that the legislator did not distinguished all possible variants of corruption crimes in a separate chapter, at the same time, it seems to us, it was enough accurately to penetrate into the essence of crimes, the commission of which in principle can be connected with the exploitation of the service status. Depending on the goals and tasks facing the corrupt official, his actions can be manifested in a fairly wide range of deviant forms of behavior, including criminal punishments. Their number, in addition to the traditionally related to corruption, can amount to many kinds of different crimes. Consequently, the peculiarity of corruption crimes is, first of all, the variety of types of official or service abuses that completely or partially, temporarily or permanently hamper the realization of the legitimate rights and interests of individuals or legal entities.

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