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Corruption in the system of organised crime

Abstract: Organized crime is usually understood as a relatively large group of stable and managed communities of criminals engaged in crime as a business and creating a system of protection from social control using such illegal means as violence, intimidation, corruption, and large-scale theft.

Corruption is one of the most destructive phenomena that are characteristic of criminal activities as an integral part of their strategy and tactics, preferred to the use of open violence.

Keywords: organised crime; corruption; patronage systems; public administration.

Corruption is a complex social phenomenon that originated in antiquity with the emergence of a first state and continues to exist in various forms and under various names in all countries of the world. Bribery, graft, embezzlement of state property, lobbying, bribe, patronage, favoritism, nepotism, protectionism, etc. - this is an incomplete list of synonyms of corruption, characterizing its types, forms and elements in different states at different stages of development.

Corruption (from the Latin *corruptio* - crush, damage, etc.) usually means bribe, corruptibility of officials, but this concept has acquired a much wider and more meaningful meaning, which has been a result of the systematic, purposeful

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work of international organizations, and first of all, United Nations (hereinafter referred to as the UN), as well as scientific research.

In 1990, the Eighth UN Congress examined the manual ‘Practical Anti-Corruption Measures’, prepared by the Secretariat, and adopted a resolution on ‘Corruption in Public Administration’, which stated that corruption problems are universal and have a detrimental effect on the economies of countries, undermining an effectiveness of government decisions, damage the state of morality, undermine citizens’ trust in the government and destroy the principle of fair and impartial justice.

The final document of the United Nations International Seminar on the fight against crime (Suzdal, USSR, October 21-25, 1991) states that “... organized crime is usually understood as a relatively large group of stable and managed communities of criminals engaged in crime as a business and creating a system of protection from social control using such illegal means as violence, intimidation, corruption, and large-scale theft”.

The report of the UN Secretary-General ‘The impact of organised criminal activity on society at large’ at the second session of the Commission on Crime Prevention and Criminal Justice of the UN ECOSOC from 13 to 23 April 1993 noted that corruption is one of the most destructive phenomena that is characteristic of criminal activities as an integral part of their strategy and tactics, preferred to the use of open violence.

In 1994, the Organization for Economic Cooperation and Development (hereinafter, OECD) adopted recommendations on combating bribery in international transactions, in February 1995, the Interdisciplinary Corruption Group was created by the Council of Europe, the Ninth UN Congress (Cairo, 1995) was discussed and approved the draft of International Code of Conduct for Public Officials, in April 1995, the UN Secretariat prepared a Reference



Document on the international fight against corruption, which defined it as an abuse of state power for receiving the benefits for personal purposes.

On November 21, 1997, the OECD, together with Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, adopted the 'Convention against Bribery', prepared by the US Department of Commerce, the State Department and the Department of Justice. This convention stipulates the obligation of the parties to bring to judicial liability for the bribery of foreign officials, under which are understood the officials from all branches of government, both appointed and elected, including performing state functions for the both a government department and a state enterprise, any official or representative of a state international organization. According to the OECD Convention, public functions include any activity carried out in the interests of the state, performance of which has been assigned by a foreign party, and a state enterprise is any enterprise, on which the government or governments can directly or indirectly have a dominant influence.

In the 'Criminal Law Convention on Corruption of the Council of Europe', adopted on November 4, 1998, the forms of corrupt behaviour include: active bribery of domestic public national officials; passive bribery of domestic public officials; bribery of members of domestic public assemblies; bribery of foreign public officials; bribery of members of foreign public assemblies; active bribery in the private sector; passive bribery in the private sector; bribery of officials of international organisations; bribery of members of international parliamentary assemblies; bribery of judges and officials of international courts; use of official position in the mercenary purposes; money laundering of proceeds from corruption offenses; account offenses; participatory acts [6].

No less interest are the provisions of Article 8 'Criminalization of Corruption' of the 'United Nations Convention against Transnational Organised Crime', adopted by the UN GA on November 15, 2000 [3].



Along with international agreements, scientific research is important to understand corruption and its place in the organised crime system, which, in our standpoint, should be the basis of international legal instruments in this area.

So, the works of Niccolo Machiavelli have a significant role in current understanding corruption. He compared it with a disease that is difficult to recognize at first, but is easier to treat, but if it is neglected, then it is easy to recognize, but difficult to cure [4, p. 119].

A century later, Thomas Hobbes in Leviathan stated: “people who boast about their wealth, bravely commit crimes in the hope that they will be able to escape punishment by corrupting state justice or to receive forgiveness for money or other forms of reward” [2, p. 229].

James Ballentine’s Law Dictionary (USA) the word ‘corrupted’ interprets in such way: “perverting the designation of state bodies for personal gain, hindering the administration of justice” [5, p. 14].

Juridical dictionary of Henry Black (USA) determines corruption like: “an act that committed with an intention to provide an advantage that is incompatible with the official duties of an official and the rights of others; an act of an official person, who unlawfully and wrongfully uses his station or status to make some benefit for himself or for another person, contrary to duty and the rights of others” [4, p. 29].

Other American scientist in an area of criminal law R. Perkins notes: “Word ‘corruption’ refers to unscrupulousness and dishonesty, and when it is found in criminal law, it means immoral or largely improper actions. Wrongful execution of a post is the corrupted behaviour of an official during the performance of his/her official duties or when he/she acts under the guise of administration of the post” [5, p. 14].

American researchers of the problem of corruption E. Benfield, M. Johnston, J. Nye, I. Kerry, P. Miles and S. Coleman define it as the evasion of politicians, government officials, businessmen, and other persons from fulfilling their official



duties and public functions for the sake of personal, family or group interests in order to enrich and enhance their social status [5, p. 14].

It should be especially noted the work of M. Johnston 'The Political Consequences of Corruption', where are distinguished four main types of corruption: bribes in commerce, patronage systems, friendship and nepotism, 'crisis corruption' [5, p. 14].

In opinion of M. Johnston, corruption in commerce is associated with the black market, illegal operations, tax evasion, and falsification of accounting reports. Illegal transactions in the market begin with claims from sellers and officials about paying bribes for selling illegally manufactured products, expanding an assortment, inflating a quality of the goods and refer to the large barter transactions. Market corruption is very stable since the competition of suppliers and an opportunity of repeating of transactions create stable prices and exchange conditions, although consumers, naturally, are dissatisfied with the high cost [5, p. 14].

The author believes that the patronage system appears, as a rule, when illegal transactions are concentrated in the hands of a limited number of persons or organizations. The centralized systems of income and obligations cover various links, including patronage from bosses based on compatriot, party, relative and other principles. Centralized control over the needs of population is forced many residents to fulfill certain political obligations. In turn, this can be used for organized political actions, for example, for carrying out election campaigns in favor of this or that political party.

Sometimes, patronage systems 'plan' the corruption and in accordance with the wishes or instructions of local or central authorities they manipulate with public opinion and behaviour. Methods of influence of patronage systems on the population are different, ranging from the distribution of gifts and products to the provision of work and the conclusion of lucrative contracts in exchange for



returnable 'gratitude', i.e. hidden bribes. Persons, who control the patronage systems, tend to monopolize power, even to establish control over the government.

According to M. Johnston, friendship and nepotism lead to such facts as big concessions in concluding transactions, assigning relatives to key positions, preferential purchases of personal property, access to hard currency, etc. Control of these areas of business creates prerequisites for using them for corruption. The distribution of such benefits is carried out among a small group of elites and their families, who are expected to receive a big return in the form of bribes and other 'gratitude'. Corruption in the family circle does not have such scope like bribes in commerce and patronage systems.

The term 'crisis corruption' is used by M. Johnston in the sense that many businessmen work in emergency conditions, in conditions of risk, when not only goods become the subject of sale, but also the decisions of official bodies that can lead to major political shifts or changes in a country.

In addition, the experts distinguish the following specific forms of corruption: subornation of political and trade union leaders, as well as foreign officials; illegal donations for political purposes; falsification of accounts under contracts with state institutions, reporting on expenses and costs, data on production volume, labour productivity and financial position of companies; fraud and other illegal manipulations with shares of companies; illegal fixed price agreements; tax evasion of corporations; bribes to agents-purchasers of the goods; dishonest advertising, sale of poor-quality and faulty goods, harmful products, counterfeit and useless medicines; non-compliance with safety regulation at work; theft, including the tools and raw materials, fraud and other mercenary abuses committed by workers and employees; data juggling and false reporting of exit to work and delays; mercenary violations of postal rules; crimes related to the illegal use of computers; violation of environmental regulations [7, p. 19-30].



The UN Secretary General Report 'Influence of organised crime activity on a society at large' especially notes that corruption of public officials has always been one of the preferable means of the organised criminal groups, the component of their strategy and tactics, which has always been preferred to using of open violence. Violence can lead to undesirable consequences and attract unnecessary attention of public thereby having caused a backlash from society. These methods are especially inherent to 'thin' forms of organised criminal activity. Therefore money paid as bribe is considered to be by bosses of organised crime as a good investing. This greatly increases the chances of success and possible impunity, and at the same time reduces or even negates the risk of detecting a crime with all the losses it may lead to [8].

According to V.S. Ovchinskiyi, corruption is widespread in number of countries. This problem is aggravated by behaviour, which often looks like mutual favors in the framework of daily activities, which are considered like having no importance and are perceived as a natural phenomenon. In many societies, these so-called favors are considered to be the only way to carry out commercial activities and eliminate unnecessary delays or obstacles when dealing with government institutions. In essence, corruption becomes an integral part of a national culture; therefore people using such methods can be surprised if they are told that what they are doing is dishonest and unethical [5, p. 16].

As it noted in the UN Report, corruption of the officials of judicial system creates a particular threat to all states. Given the crucial role of law enforcement bodies in maintaining law and order, police corruption is pernicious. Dangerous type of crime is corruption of judges and government officials, given a role of the judiciary in the legal system. Faced with corruption of police officials, legal authorities and state institutions, the public begins to show deep distrust, fear and unwillingness to cooperate with the authorities. This causes serious damage to the structures of society in view of weakening of the wish of its members to support



traditional social structures. In other words, widespread corruption leads to the cynical and opportunistic position of those who see that corrupt practice of public officials go hand in hand with impunity of criminals [8].

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