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ISSUES OF THE CLASSIFICATION OF CORRUPTION CRIMES IN UKRAINE

The article deals with different approaches regarding a classification of corruption crimes in Ukraine. Based on the selection of specific classification criteria the relevant groups and types of corruption crimes are considered as well as their specificity, theoretical and practical senses are emphasized. Special attention is paid to the classification of corruption crimes for criteria of sequence of their grouping in the Art. 45 of Criminal Code of Ukraine, of objects of corruption crimes and their items, of their subjects, of investigative jurisdiction etc. This approach allows to understand the peculiarities of criminal-legal description of corruption crimes.

Key words: *corruption crimes, criteria of classification, object, item, subject, investigative jurisdiction.*

Formulation of the problem and its topicality. Issues of counteraction to corruption crimes have been a recent priority in the criminal-legal policy of Ukraine. Therefore, the activities in elaboration anti-corruption strategies, establishment of appropriate anti-corruption bodies, adopting new laws and improving the current legislation are underway. In the latter, the changes and adjustments of the national anti-corruption legislation, which are sometimes enacted basing on hasty government decisions and unreasoned steps in the rulemaking sphere, can give rise to a number of problematic issues in theoretical and applied aspects. In our view, among the key problems is the creating of a scientific classification of corruption crimes (as the most socially dangerous manifestations of corruption crimes), which will simultaneously have weighty practical significance, thus helping to comprehensively understand the characteristics of these types of misconduct. It is undoubtedly that the scientific research in this direction are urgent, as the legal literature lacks yet serious research not just into issues of classification of corruption crimes and its criteria, but also into concept, features and other characteristics of such crimes.

The analysis of researches and publications. In the national legal literature, the issues of combating corruption and corruption-related offences (crimes) were investigated by a number of famous scientists-criminalists (P. P. Andrushko, Y. O. Busol, V. O. Glushkov, O. O. Dudorov, O. M. Dzhuzha, M. I. Khavronyuk, O. M. Kostenko, V. M. Kutz, M. O. Lytvak, O. K. Marin, M. I. Melnyk, B. V. Romanyuk, V. I. Tyutyugin, O. N. Yarmysh, O. M. Yurchenko etc.), however, unfortunately, the provisions on the classification of corruption crimes have not been widely developed through the complexity of formulating relevant distinction criteria and the search of components in the appropriate classification groups. Consequently, there is every reason to activate research in this direction, as the classification helps to realize the essence of the corruption crimes and to determine their specific features.

Objective of the article. The article is aimed at the scientific development of issues of classification of corruption crimes in Ukraine, which in turn will contribute to the formation of knowledge about the peculiarities of criminal-legal characteristics of such types of socially dangerous infringements.

Presentation of the basic material. In criminal law the classification of crimes helps to solve a number of theoretical and applied tasks: to establish general and specific characteristics of the relevant socially dangerous acts; to compare them to similar infringements and to distinguish them from others; to explore positive and negative features of normative descriptions of concrete crimes; to study their nature, interrelation with other criminal phenomena; to see prospects of development of criminal liability for the committing of certain crimes and the like. We should agree with L. M. Kryvochenko that a determinative feature of scientific classification is the distribution of objects into separate classes according to their objective common and individual characteristics, their patterns and interdependence, herewith each classification is not just a mere complex of groups of the studied items, but a single whole, possessing both common features and specific functions that follow single law patterns [1, p. 15]. Furthermore, the classification,

according to S. S. Alekseev, provides the possibility when determining its criteria to identify new features and qualitative peculiarities of relevant items and phenomena [2, p. 16]. Such characteristics of the classification of crimes make it an invaluable tool of knowledge in any research study.

On the assumption of the fact that under the classification of crimes (including corruption) there should be understood their differentiation into groups (categories) depending on a particular criterion [3, p. 59]. And if we talk about the types of corruption crimes, there exist different classification approaches. In particular, discussing on classification approaches with respect to corruption crimes, O. Y. Busel asserts the following: 1) the distinction of such crimes as corruption, for the use in practice and in criminal-legal science is neither practical nor possible, while there are a number of other crimes that may have a corruption focus, but different main direct object of infringement (for example, Art. 139 of the Criminal Code of Ukraine (hereinafter – the CCU) «Failure to Render Assistance to Sick Person by Medical Worker») and, besides, we need to bear in mind that corruption crimes can be committed, except for persons who are vested with some discretionary powers and administrative functions, i.e. by special subjects, and also by individuals who have no signs of the special subjects and have only features of general subjects of crime; 2) peculiarity of the corruption crimes is that, despite some common features, they can be a component of other crimes; they may refer to crimes against foundations of national security of Ukraine, against ownership, against electoral, labour and other personal rights and freedoms of man and citizen, against justice, in the sphere of economic activity, official activity, military crimes. Some of these crimes can be recognized as unconditionally corrupt, and some – only if certain conditions of committing them are present [4, p. 119-121]. So, on the one hand, this scientist is sceptical about the phenomenon of corruption crimes, but still assumes that **the presence or lack of complete signs of corruption (depending on conditions envisaged by the law)** they can be divided into two types: unconditionally corruption and conditionally corruption crimes.

The law (Note to Art. 45 of the CCU) determines as the corruption crimes those provided for by Articles 191, 262, 308, 312, 313, 320, 357, 410 in case they were committed by abuse of official position, as well as crimes provided for by Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of the Code. Therefore, the range of corruption crimes include certain violations that are envisaged by 19 (nineteen) articles of the CCU, i.e. the legislator provided an exhaustive list of these acts. **Depending on the sequence of grouping of corruption crimes in the Note to Art. 45 of the CCU and the fact of committing or failure to commit them by means of abuse of official position** all corruption crimes can be divided into two types: a) corruption crimes committed by abuse of official position (Articles 191, 262, 308, 312, 313, 320, 357, 410 of the CCU); b) certain corruption crimes in the sphere of economic activity, against authority of agencies of state power, agencies of local self-government, and associations of citizens, as well as in the sphere of official activity and professional activity related to the provision of public services (Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of the CCU). Some scientists propose to classify all corruption crimes **following a criterion of generic objects of infringements** [5, p. 232-233]. According to this criterion, there can be distinguished corruption crimes against ownership (Art. 191 of the CCU); corruption crimes in the sphere of economic activity (Art. 210 of the CCU); corruption crimes against public security (Art. 262 of the CCU); corruption crimes in sphere of turnover of narcotic means, psychotropic substances, their analogues or precursors (Articles 308, 312, 313, 320 of the CCU); against authority of agencies of state power, agencies of local self-government, and associations of citizens (Articles 354 and 357 of the CCU); in the sphere of official activity and professional activity related to the provision of public services (Articles 364, 364-1, 365-2, 368–369-2 of the Criminal Code); against established order for performing of military service/corruption military crimes (Art. 410 of the CCU).

However, it raises concern that a legislator used a limited approach to understanding of corruption crimes, because for some reason he did not include here those crimes that can be committed «by means of use of his official position» (e.g., Paragraph 2 of Art. 149, Paragraphs 3 and 4 of Art. 157, Paragraph 4 of Art. 158, Paragraph 2 of Art. 169, Paragraph 3 of Art. 176, Paragraph 2 of Art. 189, Paragraph 2 of Art. 201, Paragraph 3 of Art. 206-2), as well as some other violations under Section XVII of the Special Part of the CCU. At that, from the theoretical and practical sides, it is possible that crimes committed «by means of use of official position»

could be committed also «by means of abuse of official position». And vice versa: to commit certain corruption crimes, the responsibility for which is provided by Section XVII of the Special Part of the CCU, is impossible without «the use of provided authority or official position» (in particular, this is stated in Articles 368, 368-3, 368-4). Moreover, just the term «use» (not «abuse») appears a key element in determining corruption (Art. 1 of the Law of Ukraine «On Prevention of Corruption» dated 14 October 2014) [6].

It should be noted that certain crimes that do not fall into the category of corruption crimes, already in its general composition can be committed by an official, whereas, in the disposition of articles providing for liability for such infringements, the legislator does not point to either «abuse» or «use» of official position, but also classifies them in the category of criminal offences of the corruption nature, with the view to the provisions of Paragraph 5 of Art. 216 of the Criminal Procedural Code of Ukraine (hereinafter – the CPCU), since the competence of their investigation belongs to the National Anti-Corruption Bureau of Ukraine (hereinafter – the NACBU). In particular, these are the crimes provided by Art. 210 «Inappropriate Use of Budget Funds, Expenditure Budget or Loans from the Budget Without Established Budgetary Allocations or from Their Excess» and Art. 211 «Publication of Normative-Legal or Administrative Acts Changing Revenues and Expenditures of Budget Contrary to Procedure Established by Law» of the CCU). Even such resonant crime, as a decree of judge(s) of judgment, decision, ruling, or decree known to be unjust (Art. 375 of the CCU), including when it was committed by a judge (judges) from mercenary motives (with aggravating circumstances) is not considered a corruption crime.

In our opinion a disputable issue is also when the legislator refers to the category of corruption crimes the acts that can be committed by negligence. An example is the act referred to in Art. 320 «Violation of Established Rules for Turnover of Narcotic Means, Psychotropic Substances, Analogues Thereof, or Precursors» of the CCU. But the term «corruption» (as a fundamental component in the definition of «criminal offence», given the provisions of Art. 1 of the Law of Ukraine «On Prevention of Corruption») envisages relevant purpose, and therefore a sole intent in the act of the guilty person.

Differentiating **with respect to the subjects,** corruption crimes can be divided into those that are committed by: a) officials of legal entities of the public law (e.g., Art. 364 of the CCU); b) officials of legal entities of the private law (e.g., Art. 364-1 of the CCU); c) persons who are not civil servants, public officials of local self-government, but exercising professional activities related to the provision of public services (e.g., Art. 365-2 of the CCU); d) employees of any enterprise, institution or organization who are not officials, or persons who work for such enterprise, institution or organization (e.g., Paragraphs 3 and 4 of Art. 354 of the CCU); e) general subjects (e.g., Paragraphs 1 and 2 of Articles 354 or 369 of the CCU); f) military official (e.g., Art. 410 of the CCU) etc.

Differentiating **according to the criterion of investigative jurisdiction** referred to in Art. 216 of the CPCU, there can be distinguished the following types of corruption acts: those the pre-trial investigation of which is within jurisdiction of investigators of authorities of the National Police; those the pre-trial investigation of which is within jurisdiction by investigators of authorities of the security agencies; those the pre-trial investigation of which is within jurisdiction by investigators of the State Bureau of Investigations; those the pre-trial investigation of which is within jurisdiction by detectives of the NACBU [7].

Basing on the title of the main anti-corruption body of the country – the National Anti-Corruption Bureau of Ukraine, it should have to investigate in the first place criminal corruption violations, i.e. corruption crimes referred to in the Note to Art. 45 of the CCU. However, the list of criminal offences included into direct jurisdiction of the NACBU detectives, taking into account the provisions of Paragraph 5 of Art. 216 «Jurisdiction» of the CPCU does not match the list of corruption crimes referred to in the Note to Art. 45 of the CCU which is an antinomy. Therefore, all crimes, within jurisdiction of the NACBU detectives can be divided into the following types, **depending on the vector of threats (challenges):**

– ***those, caused by external threats*** – crimes under Articles 191, 206-2, 209, 210, 211, 354 (in respect of employees of legal entities of public law), 364, 368, 368-2, 369, 369-2, 410 of the CCU (i.e., crimes stipulated for by twelve articles of the CCU, referred to in Subparagraph 1 Paragraph 5 of Art. 216 of the CPCU), if there is at least one of the statutory conditions, in particular:

1) the crime is committed by:

President of Ukraine whose powers are terminated, member of Parliament of Ukraine, Prime Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, First Deputy and Deputy Minister, Chairman of the National Bank of Ukraine, his First Deputy and Deputy, member of the Board of the National Bank of Ukraine, Secretary of the National Security and Defense Council of Ukraine, his First Deputy and Deputy;

civil servant, whose position falls into first and second categories, by person, the position of whom is equal to first and second categories of civil service;

deputy of the Verkhovna Rada of the Autonomous Republic of Crimea, deputy of regional council, city council of Kyiv and Sevastopil, official of local self-government authority, the position of whom falls into first and second categories of civil service;

judge of the Constitutional Court of Ukraine, judge of the court of general jurisdiction, people's assessor or juror (in the process of performing these functions), chairman, members, disciplinary inspectors of the High Qualifications Commission of Judges of Ukraine, chairman, deputy chairman, secretary of the section of the High Council of Justice, another member of the High Council of Justice;

Prosecutor General of Ukraine, his deputy, assistant Prosecutor General of Ukraine, Prosecutor of the Prosecutor General's Office of Ukraine, investigator of the Prosecutor General's office of Ukraine, head of structural subdivision of the Prosecutor General of Ukraine, Prosecutor of the Autonomous Republic of Crimea, of Kyiv and Sevastopol cities, regions;

senior officer of bodies of the State Criminal-Executive Service, bodies and subdivisions of civil protection, senior members of the National Police, officer of the customs, who possesses the special rank of state adviser of tax and customs of III grade and above, official of state tax authorities, who possesses the special rank of state adviser of tax and customs of grade III and above;

senior military officer of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Service of Ukraine, State Special Transport Service, the National Guard of Ukraine and other military formations formed according to laws of Ukraine;

head of large enterprise subject, in the statutory capital of which the share of state or communal ownership exceeds 50 percent;

2) the value of item of crime or caused harm exceeds 500 times and over the minimum wage fixed by law at the time the crime was committed (if the offence is committed by an official of government body, law enforcement body, military unit, local government body, business entity, the statutory capital of which contains the share of state or communal property);

3) the crime provided for by Art. 369, Paragraph 1 of Art. 369-2 of the CCU, committed in respect of the official specified in Paragraph 4 of Art. 18 of the CCU or in Clause 1 of this Paragraph.

In accordance with Subparagraph 2 Paragraph 5 of Art. 216 of the CPCU, the Prosecutor who supervises the pre-trial investigations conducted by NACBU detectives by issuing a decision can hand over criminal proceedings in the crimes under Paragraph 1 of this Part, to the investigative jurisdiction of the NACBU detectives, in case the relevant offence caused or could have caused grave consequences to the legally protected freedoms and interests of physical or legal entity, state or public interests as well. Under **grave consequences** there should be understood causing harm to the vital interests of society and the state, in particular to the state sovereignty, the territorial integrity of Ukraine, implementation of constitutional rights, freedoms and responsibilities of three or more people.

However, in our opinion, the legislator in the provisions of the CPCU (Subparagraphs 1 and 2 of Paragraph 5 of Art. 216) actually regulates also criminal-legal provisions, as it is absolutely clear that the legal constructions like «the amount of the item of the crime or caused harm...» or «grave consequences» are considered closer to the norms of the CCU. But if a number of articles of the CCU already contain an indication to both the relevant amounts of items of crimes and grave consequences, we question whether it is rational to duplicate these notions in the CPCU, filling the specified terms with unusual meaning? We consider it's not. We disagree with the fact that the legislator connects specific amounts of the item of crime with the minimum wage, instead of the amount of non-taxable minimum income of citizens; we are critical of the fact that the definition of «grave consequences» is, in fact, an evaluative concept which it is not just contrary to the provisions of Clause 4 of the Note to Art. 364 of the CCU which stipulates

that such consequences are solely proprietary in nature, but it requires additional interpretation of other component categories of this concept (specifically, «the vital interests of society and the state»); we are not aware of the grounds on which the criminal procedure legislation determines harm of implementation of the constitutional rights, freedoms and responsibilities of three or more people. Therefore, we believe that such novelties can hinder the work of the NACBU detectives;

– ***those caused by internal threats*** – crimes covered by Articles 354, 364-370 of the CCU, committed by a NACBU officer (except the NACBU Director, his first Deputy and Deputy), in case the crimes are revealed by internal control subdivision of the NABU (that is, crimes envisaged for by fifteen articles of the CCU, referred to in Subparagraph 4 Paragraph 5 of Art. 216 of the CPCU). The peculiarity of the subjects of crimes included in this group is that they are committed primarily by the NACBU staff – the officers or employees of this organization who are not functionary, or persons who are working in the interests of the organization;

– ***those caused by universal threats*** – crimes that belong to the investigative jurisdiction of investigators of other bodies, but by the decision of the NACBU Director, and with the approval of the Prosecutor of the Specialized Anti-Corruption Prosecutor's Office may be investigated by the NACBU detectives for the purpose of preventing, detecting, suppressing and revealing criminal offences, which are referred to in Art. 216 of the CPCU to its investigative jurisdiction (i.e. crimes referred to in Subparagraph 3 Paragraph 5 of Art. 216 of the CPCU). To this group of crimes, if there are grounds for that, there can be included any crime (e.g., voluntary manslaughter, which was committed from mercenary motives and contains corruption component, or rape, which can be committed by head against a subordinate person, if there is a corruption component) [8, p. 162].

Apart from that, we can differentiate corruption crimes following **other criteria,** in particular: **the item** of corruption crimes (item is present or absent); **the purpose** of corruption crimes (e.g., those that provide for the purpose of obtaining any undue advantage, and those that do not involve it), and **for any other signs of the bodies of corruption crimes** etc. [9, p. 166].

Conclusions. On the basis of the above statements, we should draw the following conclusions:

1. The Ukrainian legislator has used a restricted approach to understanding of corruption crimes and didn't include into the range those violations that can be committed «by means of use of official position» and some other violations under Section XVII of the Special Part of the CCU. In addition, there are offences that already in the general corpus delicti can be committed by a functionary and are classified as criminal offences of corruption nature, subject to the provisions of Paragraph 5 of Art. 216 of the CPCU. Therefore, there is viewed as pressing the expansion and clarification of the list of corruption crimes. However, there should not be considered as corruption crimes those crimes that can be committed by negligence (in particular, the act referred to in Art. 320 of the CCU).

2. Significant theoretical and practical importance has the classification of corruption crimes offered by the author of this article. In particular, all of them can be classified following the criteria: the presence or absence of absolute signs of corruption (depending on conditions provided for by law); a sequence of grouping of corruption crimes in the Note to Art. 45 of the CCU and committing or failure to commit these crimes by abuse of official position; of generic objects of infringements; of subjects; jurisdiction; of items; of purpose, and any other signs of the corpus delicti of the corruption crimes, or other criteria.

3. Not each crime, within jurisdiction of the NACBU detectives stipulated by the provisions of Art. 216 of the CPCU, falls into the group of corruption crimes referred to in the Note to Art. 45 of the CCU, which is not quite adjusted to the title of the aforesaid law enforcement agency. Considering the provisions of Paragraph 5 of Art. 216 of the CPCU, all crimes within jurisdiction of the NACBU detectives, can be divided into the following types, depending on the vector of threats (challenges): a) those, caused by external threats; b) those, caused by internal threats; b) those, caused by universal threats. However, in Art. 216 of the CPCU, the legislator tried to regulate not only the provisions of the criminal procedure law, but those of the criminal law (in particular, regarding the definition of grave consequences), herewith, his steps are rather unreasoned and non-transparent.

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А. В. Савченко

Питання класифікації корупційних злочинів в Україні

У статті досліджуються різні підходи щодо класифікації корупційних злочинів в Україні. На підставі виділення конкретних класифікаційних критеріїв розглянуто відповідні групи та види корупційних злочинів, наголошено на їх специфіці, теоретичному та практичному значенні. Особлива увага приділяється класифікації корупційних злочинів за критеріями послідовності їх групування у примітці до ст. 45 Кримінального кодексу України, об'єктів корупційних злочинів, їх предметів, суб'єктів, підслідності тощо. Такий підхід дозволяє зрозуміти особливості кримінально-правової характеристики корупційних злочинів.

Ключові слова: корупційні злочини, критерії класифікації, об'єкт, предмет, суб'єкт, підслідність.

А. В. Савченко

Вопросы классификации коррупционных преступлений в Украине

В статье исследуются различные подходы к классификации коррупционных преступлений в Украине. На основании выделения конкретных классификационных критериев рассмотрены соответствующие группы и виды коррупционных преступлений, отмечена их специфика, теоретическое и практическое значение. Особое внимание уделяется классификации коррупционных преступлений по критериям последовательности их группировки в примечании к ст. 45 Уголовного кодекса Украины, объектов коррупционных преступлений, их предметов, субъектов, подследственности и тому подобное. Такой подход позволяет понять особенности уголовно-правовой характеристики коррупционных преступлений.

Ключевые слова: коррупционные преступления, критерии классификации, объект, предмет, субъект, подследственность.