

U.D.C. : 343. 35 (477)

Titarenko Alex

Candidate of Law science (PhD),

The Head of the Research Department of Dnepropetrovsk State University of Interior

CRIMINAL LEGAL POLITIC OF UKRAINE IN SPHERE OF CORRUPTION COUNTERACTION: PROBLEMS AND PERSPECTIVES

Annotation

This article shows the essence and the main directions of the state policy by forming the criminal legal struggle measures against corruption. The analysis of the late changes of criminal legislation is given. The attention is paid to the problematic aspects of criminalization of actions in the sphere of service activity in juridical persons of private law and professional activity, connected with rendering of public services.

Formation of the jural state, strengthening of law and order require improvement and efficiency of work of all public authorities, whose main function is prevention of crime and corruption. Implementation of it depends on the efficiency of formed and embodied penal policy in this sphere, the essence of which is in most cases added up to improvement of penal measures of influence on corruption. This work is carried out by the legislator from the mid 90's and continues today. Thus, the appropriate laws and regulations are passed, changes and additions are made, international anti-corruption acts are ratified, etc.

It should be noted that the importance of this work is that the UN Convention against Corruption from 29 September, 2003, Council of Europe Criminal Law Convention on Corruption from November 4, 1998, About corruption in the context of civil law from September 9, 1999, and other legal acts are being ratified into national legislation. In particular, during the years 2006-2009 a number of laws that take into account the regulations of these acts was

developed and adopted by Verkhovna Rada of Ukraine: "About the main preventions and resistance corruption" from 11.06.2009 № 1506-VI, «On liability of legal persons for committing corruption offenses" from 11.06.2009 № 1507-VI and "On alteration in some legislative acts of Ukraine concerning liability for corruption offenses" of 11.06.2009 № 1508-VI [1 -3].

Despite the general positive orientation of these legislative acts, the results of their study indicate that they contain certain differences and shortcomings that will not contribute to the realization of specified tasks and activities since their consummation, from January, 1., 2010 [4]. The scientific and practical interest have the innovations, which are introduced by the Law of Ukraine "On Alterations to the Certain Legislative Acts of Ukraine regarding liability for corruption" (hereinafter - the Law) from 11.06.2009 № 1508, in the punitive legislation of Ukraine.

There was no doubt that this law is of great public importance and reflects the "anxiety" of the state by the seriousness of problems caused by corruption.

The study of the Act's regulations, conclusions of the Chief Scientific Expert Department (2006), Chief Legal Office of Verkhovna Rada of Ukraine (2008), the Supreme Court of Ukraine (2006) suggests that it has a number of significant observations that have a negative influence on the struggle with corruption in our country starting from 01.01.2010.

In future we offer to pay attention only on some problematic aspects of the changes to the Criminal Code of Ukraine (hereinafter - CC of Ukraine).

The supplement of the CC of Ukraine by the new section VII-A "Crime in the sphere of service activity in legal persons of private law and professional activity related to the rendering of public services" changes the structure and terminology of the Special Section of the CC of Ukraine that affects the practice of applying its regulations. So the new section foresees the criminal liability for the following actions: Articles 235-1, 235-2 "Abuse of power", 235-3 "Abuse of power by persons who provide public services", 235-4 "Commercial Bribery", 235-5 "Corruption of the person providing public services". Partly the data of these articles are similar to the articles 201-204 of the Criminal Code of Russian Federation (hereinafter - the RF CC) [5], although it has its own peculiarities. For example, for commercial bribery according to the CC of Ukraine from 01.01.2010 not only officials of legal person will be the subjects of criminal liability (that has long been foreseen by the CC of RF) but also auditors, notaries, experts, appraisers, arbitrators.

Adding to the Criminal Code of Ukraine of special regulations (articles 2351, 2352, 2354), which establish the responsibility of officials of the legal person for the crime, in most cases is already foreseen by the articles 364, 365

and 368 of the Criminal Code of Ukraine, and therefore is not justified by the legislator.

The most significant observation to most of the changes proposed by the legislator is the non-observance of one of the main reasons of socially dangerous acts criminalization, associated with the presence of opportunities for the criminal justice system to implement the proposed criminal law prohibitions. For example, Part 1, Art. 2355 "Corruption of the person providing public services" of the Criminal Code is not very serious crime and is similar to bribe. But due to the fact that Art.369 "Bribe" of the Criminal Code belongs to the grave crimes, for its timely detection the law machinery can use the relevant investigative and searching forces and methods, and in Part 1 of Art. 2355 of the Criminal Code of Ukraine this is impossible. Immediately arises the question how the practitioners such as the Police should carry the documentation of the crime.

Also during the formation of art. 2355 of the Criminal Code of Ukraine the technique of protection of regulation forming was broken:

- indefinite size of bribery, although in Art.21222 "Bribery" of the Code on Administrative Offences of Ukraine (hereinafter - the Administrative Code) which is also introduced by the aforementioned law, the definition of bribery is fixed and its size is mentioned;

- the location in one part (Part2) without taking into account the level of public danger of liability for "acts committed repeatedly or by previous concert by the group of people or organized group" is wrong. Reasonable is allocation of actions committed by the organized group in Part 3 or 4 of the article, which foresee harsher penalties.

Also the criminalization of actions related to the responsibility for "the proposal to give

the illegal profit” (Part 1 of art. 2354, Part 1 of art. 2355 of the Criminal Code of Ukraine), “offering bribe” (Part 1 of Art. 369 of the Criminal Code of Ukraine) is unnecessary. The criminal legislation of Ukraine doesn’t foresee the criminal responsibility for offering of the commission of any illegal actions (responsibility for the “naked intent”). Thus Ukrainian legislator wants to criminalize the responsibility for bribery as one of the displays of corruption.

Concerning the criminal responsibility for bribery, in connection with the additions made by this Law in the Code on Administrative Offences of Ukraine (Articles 22121 “Getting the illegal profit” and 21222 “Bribery”) the legislator actually decriminalized bribery. For example, if the size of the bribe will not exceed 5 non-taxable minimum incomes of citizens (in 2009 - 1537.5 UAH and in 2010 - 1702.5 UAH) it will be not criminal but administrative responsibility.

Without denying the need of improvement of the criminal anti-corruption policy in Ukraine and implementation of the relevant norms of international law into national legislation, any changes should be corresponded with the modern realities and inherit the positive experience gained by law machinery in struggle against corruption. Excluding the latter the effectiveness of the implementation of penal policy in the sphere of struggle against corruption suffers a lot. It should be noted that in recent years in Ukraine not government policy in general but the policy of separate political groups influences on the formation and implementation of this policy.

Thus today in Ukraine for effective realization of penal policy it is needed to change the Law of Ukraine “On Regarding Liability for Corruption Offences” from 11.06.2009 № 1508 in the part of the appropriateness review of adding certain standards to the Criminal Code.

Literature:

1. Закон України «Про основи запобігання й протидії корупції» від 11.06.2009 № 1506-VI // Офіційний вісник України. – 2009. - №53. – Ст. 1822. – С. 15-25.

2. Закон України «Провідповідальність юридичних осіб за здійснення корупційних правопорушень» від 11.06.2009 № 1507-VI // Офіційний вісник України. – 2009. - №53. – Ст. 1823. – С. 25-31.

3. Закон України «Про внесення змін у деякі законодавчі акти України щодо відповідальності за корупційні правопорушення» від 11.06.2009 № 1508-VI // Офіційний вісник України. – 2009. - №53. – Ст. 1824. – С. 31-40.

4. *Ортинський В.Л.* Диференціація та уніфікація – два основних вектори розвитку кримінального законодавства / *В.Л. Ортинський, О.К. Марін* // «Кримінальний кодекс України 2001р.: проблеми застосування і перспективи удосконалення. Диференціація кримінальної відповідальності»: Міжнародний симпозиум 11-12 вересня 2009 року. – Львів: ЛьвДУВС, 2009. – С. 3-5.

5. Уголовный кодекс Российской Федерации // Официальный сайт Государственной Думы Российской Федерации — [Электронный ресурс] — Режим доступа : <http://www.duma.gov.ru>.