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Definition, typology and socio-legal nature of corruption offenses

This article is considering socio-economic reasons of corruptive criminal offenses in Kazakhstan. The authors analyze the origin of the concept of corruption in the etymological sense. At the same time, the authors give an original explanation of the reasons that caused the rapid growth of corruption offenses in the post-Soviet region, which in its scale plays a destructive role in the development of economic relations, attracting foreign investment and developing institutions of civil society. The authors made an attempt to classify the socio-economic, legal and political causes of corruption offenses on the basis of analysis of the development of public institutions, relations, scientific works of a number of independent researchers. Also, an attempt is made to draw parallels between the former union republics, where corruption phenomena have manifested themselves in different ways. The authors note superficiality and nomenclatural nature of studies conducted in the post-soviet space, results of which in most cases cannot correlate with actual state of affairs. Periodicity of combating corruption, strong influence on the campaign against crime, including against corruption, have a negative impact on other spheres of public life, also on making decision by government.

Keywords: corruption, bribe, bribery, criminal law, criminal liability, history of corruption, corruption relations, the law on corruption, definition of corruption, typology of corruption, social and legal nature of corruption.

Corruption as a social and legal phenomenon is a much more complex structured phenomenon, which, unfortunately, as the history of the development of the independence of our republic has shown, we were not ready in the inceptive, initial states.

Certain historical preconditions at the dawn of independence could be an important indicator of the peculiar predisposition of the power structures of the young state to corruption phenomena. As is known, practically the entire sphere of society's activity in the period of the Soviet state was built on the creation of conditions for an artificial shortage. The deficit concerned not only material goods, but also in the last decade of the existence of the Soviet state, it clearly captured and the sphere of non-material goods, generating a special caste close to the governance structures of society and the state, which meant that a large mass of power was concentrated in the hands of a certain layer of society.

The scarcity in respect of material goods more affected the interests of «ordinary citizens», who sometimes did not have access to simple things and food. All this accumulated and in a certain period of time reached its apogee.

The attainment of independence, the acquisition of powers to distribute a huge array of material goods, independence in making important decisions without regard for the so-called «Center» and much more became the criminal factor that predetermined the future range of development of state-power relations within the Republic of Kazakhstan.

In our view, the natural response to the above-mentioned life styles was the desire of the bulk of the population to «accumulate» material, and in some levels, social relations, intangible benefits and opportunities. «Accumulation» of such assets in many respects was carried out by illegal measures - illegal taking over, «stitchization», corrupt schemes for diverting budget funds, deception, abuse. This is typical for a group of people deprived of power, which as in the biological process of the development of a living organism is still transmitted from generation to generation of civil servants.

In this regard, «ordinary» philistines, not deprived of power, tried to keep up with «life». In the public minds of the majority of the population, a stable picture of corruption has been formed, which in certain spheres of the life of society should be recognized not as «criminal», but as measures that can somehow facilitate the existence of society itself, its individuals. By resorting to corruption schemes when solving certain «difficulties», a simple philistine seeks primarily to ease his own and «third parties» fate.

This consumer attitude to public goods was formed mainly because of the shortage of access to material goods that existed for a long time. A person who has been deprived for a long time or restricted in access to certain material goods in private (not in public, state) property as the opportunities for obtaining them «suffer» to some extent the psychology of «difficult childhood».

In addition, corruption phenomena in fact are a brake on the development of economic relations. «According to the International Monetary Fund, because of corruption, the world's GDP annually loses about 2 %, which is equivalent to 1.5-2 trillion dollars. If we make a similar calculation for Kazakhstan, the annual potential losses are about 3.8 billion dollars» [1].

In terms of fighting corruption as a social phenomenon, there is also a mixed picture. In the legal system of the Republic of Kazakhstan, not one hundred regulatory acts regulating the activities of state bodies for fighting, but more recently anti-corruption, have been registered. However, the success of such activities is influenced by a huge number of factors, most of which depend on «political will» or «political conjuncture». The fight against corruption is conducted selectively, with respect to a select group of persons (financial, political, managerial and other groups). The registered statistical reporting on corruption cases can not play a representative role. It is known that corruption offenses are among the most latent types of crime.

With the adoption of the new Criminal Code of the Republic of Kazakhstan, in an article providing for responsibility for bribery, a novel was introduced on the types of punishment in the form of a fine, which now amounts to a multiple of the bribe amount (from twenty to eighty, depending on the degree of public danger of the crime). This made it possible, at least somehow, to benefit from such a largely «imaginary» fight against corruption. In particular, the lion's share of the amount of fines for the year 2017 appointed in accordance with the criminal procedure, is the fines imposed for corruption crimes. Almost immediately after the introduction of innovation in the form of determining the amount of fines in Kazakhstan, a special record was set - on February 13, 2015, the specialized inter-district criminal court of Astana appointed the former head of the Agency for Regulation of Natural Monopolies Murat Ospanov a fine of 1 billion 101 million 60 thousand tenge, which was thirty times the size of the bribe he received.

Since gaining independence, great changes have taken place in our country and a new society has emerged. It can be argued that this society has become an environment that is more susceptible to new market relations than it was before the Soviet and the first post-Soviet era, was able to establish goals and solutions. But just as the five fingers do not match, there are no problems in the country that can be easily handled. One of the most pressing problem is corruption. Regulatory legal acts have been adopted in Kazakhstan to solve this problem, but there is still a lot to do.

Fighting corruption is a serious problem of Kazakhstan today. It is a great social tragedy, and it is obvious that any country in the world, which is different from one another in terms of political development is deeply disturbed [2].

From the etiological point of view to the meaning of «corruption» it allows to define the Latin word «corruptio» as «bribe», «give bribes». In Roman law, there was also a concept of «corrumpere», which in general was defined as «breaking, spoiling, destroying, damage, embezzlement, bribing», and defining a wrongful act [3].

The Explained Russian Dictionary describes corruption as a bribe, a betrayal of officials and politicians.

The wise people have said that corruption has a negative impact on the prosperity of the country: «stealing leads to shame». They did not harm anyone, they did not steal someone else's.

Understanding the phenomenon of corruption from the international modern society and implementing measures against it are described in the manual «Practical Measures to Combat Corruption» on crime prevention and work with offenders prepared by the Secretariat of the United Nations Convention (Havana, August September 1990) [4; 44]. During the discussion of this document, the following features of corruption were identified:

1) Depending on the nature of this interpretation, almost all corruption offenses should be included: ethical, disciplinary, administrative and criminal offenses, as they violate the law, abusing the position of the subject who has come to corrupt practice for personal gain.

2) Restriction of the scope of activities of those who encourage civil servants to act on corruption. This can be attributed to the abuse of authority by officials, the scope of such service providers is supplemented by individuals and legal entities.

3) Misuse of the position and function as a subject of corruption offenses.

4) There are two types of the most dangerous types of corruption:

– Corruption of public or state property;

– the abuse of office by state employees in order to obtain some of their advantages in violation of the law, although there are no signs of theft [4; 44].

In 1979, the United Nations General Assembly and the Inter-Regional Seminar on Corruption (Havana 1990) gave the following comment: «Corruption is an individual or a group of individuals who use the services in their own interests, profit orientation» [4; 45].

The concept of corruption in the 1999 European Convention on criminal liability of Corruption: «Corruption is a violation of the right of public, municipal or other civil servants or employees of commercial or other organizations to illegally acquire any of their property, service or privilege, and the transfer of such property to such persons by another person, the provision of services and benefits» [5].

According to some scientists, this definition is incomplete, since the phenomenon of corruption is much broader than the concept of law.

For example, M.O. Nukenov proposes to consider the concepts of «Corruption» and «Organized crime» in combination with each other. According to him, corruption is used by organized crime as an instrument of «control» by state bodies, where state control over a crime is neutralized, and organized crime is used by the authorities to achieve their goals and promote political decision-making [6; 19].

A.S. Kalmurzaev describes corruption as «the use of any employee in favor of a mercenary» [7; 269].

In accordance with the first article of the Law of the Republic of Kazakhstan dated November 18, 2015 «On Combating Corruption»: «Corruption - unlawful use by persons occupying a responsible public office by persons authorized to perform public functions by persons equated to persons authorized to perform public functions, officials of their official (service) authorities and related opportunities for the purpose of obtaining or extracting in person or through intermediaries property (non-property military) benefits and advantages for themselves or third parties, as well as bribing these individuals by providing benefits and advantages» [8].

According to Head of our state N.A. Nazarbayev, «Corruption is a global problem, no country in the world, no political system, no political order is protected» [9; 3].

Corruption is the betrayal of social and political workers and officials, the use of their power and political, economic, military and other opportunities for personal enrichment.

According to the Kazakh lawyer A.N. Agibaev, «corruption is a crime committed by any official with the aim of obtaining illegal profits for himself and others».

Analyzing the definitions, we can draw the following conclusions:

- There are specific features of corruption;
- Corruption, first of all, is a social phenomenon;
- There is no clear understanding of corruption in international instruments;
- Various countries are trying to identify themselves as a set of anti-corruption tools in the context of modern legal traditions;
- The notion of corruption is not based on the legal definition of corruption in modern society [9; 179].

Thus, corruption is a form of illegal agreement between two parties, one of which is a person employed in the public or private service that violates his official powers, and the other is a person in whose interests to improve his material and financial situation, to benefit and avoid from responsibility.

These phenomena can occur in two ways:

- 1) Civil servant forces to bribe, reward;
- 2) A specific person who can be a member of organized crime often provides psychological coercion to a civil servant and gives bribes and rewards

Let's pay attention to the use by the subjects of corruption of their official position for their own benefit, the status of corrupt officials, the benefits that the corrupt official received, the goal of bribery, the frequency and spread of corruption, in order to differentiate the types and origins of corruption.

Types of corruption: 1) a person who uses his status for his own benefit; 2) state corruption; 3) commercial corruption; 4) political corruption.

Initiator of corruption relations: 1) Request (extortion) of bribes on the initiative of an official; 2) bribery on the initiative of the petitioner.

The subject-bribe-taker: 1) an individual bribe (by a citizen); 2) entrepreneurial bribe (by a legal firm); 3) criminal bribery (from criminal entrepreneurs - for example, drug mafia).

Types of bribes: 1) cash bribes; 2) exchange of services (patronage, nepotism).

The purpose of the bribe-taker when giving bribes: 1) a bribe for acceleration (the bribe-taker must perform some work quickly); 2) Bribe for braking (the bribe-taker must stop the execution of some case, so he violates his official duties); 3) a bribe for indulgence (the bribe-taker in his service should stop «looking for dirt under the nails» of some person).

The degree of centralization of corruption relations: 1) decentralized corruption (each bribe-taker acts on his own initiative); 2) centralized corruption «from the bottom up» (bribes regularly collected by subordinate officials, are divided between them and more upstream); 3) centralized corruption «from the top down» (bribes regularly collected by senior officials, partially transferred to their subordinates).

The level of distribution corruption: 1) grassroots corruption (in the lower and middle echelons of power); 2) apical corruption (among high-ranking officials and politicians); 3) international corruption (in the sphere of world economic relations).

The degree of regularity of corruption links: 1) episodic corruption; 2) systematic (institutional) corruption; 3) kleptocracy (corruption as an integral component of power relations). For kleptocracy, lobbyism is characteristic.

When studying the problem of corruption, the question arises: what are the causes of corruption and why is this phenomenon implemented in this way. In the course of investigating the causes of corruption, we face a number of difficulties. Sometimes it is difficult to determine whether the fact is the cause or the consequence of corruption. The causes of corruption are systematized and include the following classifications: 1) socio-economic, political, organized; 2) legislative reasons; 3) cultural and ethical factors. Let's discuss about each of these reasons.

Socio-economic reasons. As analysis of the specifics of corruption shows, the level of corruption in the country is directly related to the level of economic development. But, on the contrary, one can find a fact. According to a study conducted by the International Monetary Fund, corruption is the main obstacle to the development of the country's economy. It was also found that corruption will reduce the wave of investment in the country, dissolve talented people for useless work and allow inefficient use of rich natural resources, as well as restrict reform to increase structural economic prosperity. Good provision of the country with natural resources (forests, minerals and water) is also a factor in the development of corruption. There are two ways to look at such wealth in the country. On the one hand, the existence of rich natural resources in the country should become the basis for the economic prosperity of the country and lead to a reduction in corruption. On the other hand, natural riches attract subjects of corruption. A study conducted by the International Monetary Fund showed that corruption reduces the annual income of the state, since there are opportunities to not pay taxes, to get rid of tax benefits or the tax authorities are working poorly. One of the most important reasons for the spread of corruption is the volume of salaries of public and private sector employees. Of course, because of low wages, officials are looking for additional sources of income, in which case officials abuse their official duties and receive bribes. Since the incomes of civil servants are great to ensure the safety and stability of their position, they prevent the bribery of their employees: during the service they encourage those who ideally fulfill their duties, offer to give a reward, legally raise the post. In this case, officials try not to violate the law, to be competent, fair and honest.

The educational system is one of the most important achievements of the economy. The higher the level of education in the country, the less frequent violations of the moral and humane and legal norms. Therefore, we can say that there is a link between the degree of education of society and the level of development of corruption. In view of the foregoing, we can say:

– Negative socio-economic prerequisites are the causes of the emergence, development and spread of corruption in any country.

– However, as we have seen, socio-economic factors are likely to be instruments used to prevent corruption in certain circumstances.

Political reasons. Practice has shown that corruption affects the economic and political development of the state. Political factors that contribute to the development of corruption can be characterized by features of the state structure. Corruption associated with the democratization of society has «new» spheres of influence - allocation of funds for political parties and electoral status crimes, electoral fraud and the development of a system of political sponsors to ensure the majority of votes in elections. The process of democratization involves the transfer of some powers of the central government to regional and local authorities for carrying out political activities that would allow some leaders to abolish their new constitutional powers. Such an opinion can be confirmed by the state of Switzerland, in which the root of democracy is deeply rooted. Historical sources show that a sharp change in the forms of government is accompanied by a state of law, and people have suffered from political instability for decades. Social and political freedoms in the state, as a rule, represent a sense of citizenship as a full member of the state, for exercising power and for participating in the affairs of society. Social and legal control as an anti-corruption tool is widely developed in Japan and the United States.

So, from the above, we can come to the following conclusions:

- An open society with free will is a guarantee of a very low level of corruption in the country;
- the political crisis, the frequent change of governments, leaders are the key condition for corruption;
- the constant change of the country's main political course leads to the instability of the socio-economic situation in the country;

Organizational and institutional reasons. Recent studies have shown that corruption is absorbed into the institutional foundations of statehood, due to the inefficiency and lack of organization of their service, the lack of accuracy in reporting and management, corruption is spreading. Let's talk about the factors of state intervention in the national economy. In the case of wide distribution of state powers in the economic sphere, the prerequisites for the development of corruption appear, and this is a way to avoid state restrictions. The more restrictions, the more widespread the scope and the rooting of corruption. In countries where the legislative system is based on Anglo-Saxon law (Britain, USA, Canada, Australia, New Zealand), there is almost no bureaucratic hindrance, during investigations, openness is excessive, so the level of corruption is low. It is well known that the authorities and the control over corruption are closely related. Corruption is an indicator of the weakness of power. The absence of a specific institutional organization, detailed regulation of activities, the uncontrollability of offenses and the refusal to respond to a committed crime lead to the inability to manage and develop corruption.

Legislative factors. Corruption is an enemy towards society, firstly, causing great financial damage to society, and secondly, damaging the authority of the state and the moral decline of state power. Due to the inefficient organization of the state apparatus, there may be shortcomings in legal regulation. The shortcomings of legislative regulation include the lack of a system of sanctions and sanctions for the commission of corrupt transactions in the legislation of some countries, the lack of clear rules and regulations on the repayment of civil service. This situation is especially effective in the combination of entrepreneurial activity and close connection of the work of the authorities with organized crime. Favoritism, protectionism and lobbying are developing in this respect. In addition, nepotism and political motivation are spread out. Corruption is becoming a habitual norm. Law enforcement agencies in many cases are themselves surrounded by corruption. Firstly, the opposing forces lack institutional corruption. Secondly, the subjects of corruption are forced to obey their laws by law enforcement agencies.

Most of the perpetrators of the crime are not punished, and their criminal cases continue. In most cases, the judiciary can not make separate and independent decisions regarding the subject of corruption. A number of independent countries (independent prosecutors in the United States, Hong Kong, Singapore, Malaysia, Taiwan) have made significant progress in fighting corruption. When creating such an institution, the authorities and property, the problems of politics and money should be systematically resolved.

Combating corruption for any civilized society is one of the most pressing issues. Without a doubt, corruption is a threat to national security, which eliminates the start and achievement of the eradication of the state. Therefore, one of the main priorities of the state policy of the Kazakh state is struggle against this evil.

There is no place for corruption in our society. This phenomenon can only be counteracted effectively by combining all the efforts of the society and using all the means to stop it so that it can not be further frustrated.

It's been a quarter of a century since we became an independent state, we grew up and showed ourselves to the whole world. In the past, thanks to the active policy of the President of the Republic of Kazakhstan Nursultan Nazarbayev, measures were taken to deepen and strengthen our state, the state and social status of the state were adjusted and occupied the international arena. We were recognized by our unity, consent and peace. Choosing the right path for social development, he set himself the goal of recovering from various diseases that have arisen in our time. This is the way of fighting corruption, initiated by the head of state.

Therefore, fight against corruption should be considered as a civil duty for every citizen of Kazakhstan.

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Н.К. Оралбаев, Н.Н. Ниетуллаев

Сыбайлас жемқорлықтық құқықбұзушылықтардың анықтамасы, типологиясы және әлеуметтік-құқықтық табиғаты

Мақалада Қазақстандағы сыбайлас жемқорлық қылмыстық құқықбұзушылықтардың әлеуметтік-экономикалық себептері қарастырылған. Авторлар сыбайлас жемқорлық құбылысының этимологиялық тегін зерттеген. Сонымен бірге посткеңестік аймақта экономикалық қатынастардың дамуында, шетелдік инвестициялардың тартылуымен азаматтық қоғам институтының дамуында деструктивті роль атқаратын сыбайлас жемқорлық құқықбұзушылықтардың ерекше қарқынмен өсуіне, етек алуына себеп болған мән-жайларға өзіндік айрықша түсіндірме беруге талпыныс жасалған. Қоғамдық институттар мен қатынастардың дамуын, бірқатар тәуелсіз ізденушілердің ғылыми еңбектерін талдау нәтижесінде авторлар сыбайлас жемқорлық қылмыстық құқықбұзушылықтардың әлеуметтік-экономикалық, құқықтық және саяси себептері мен шарттарын жіктеуге талпыныс жасаған. Сол сияқты мақалада сыбайлас жемқорлық құбылыс ретінде әрқалай көрініс берген бұрынғы одақтас республикалар арасында да салыстырмалы талдау жасалған. Авторлар посткеңестік кеңістікте сыбайлас жемқорлық құбылысының үстіртін ғана, номенклатуралы сипатта зерттеліп келгенін, оның қорытындыларының басым көпшілігін де құбылыстың шынайы түр-сипатына пара-пар еместігіне назар аударады. Сыбайлас жемқорлыққа қарсы күрестің мерзімді, саяси топтардың ыркына қарай жүргізілуі сыбайлас жемқорлықпен іргелес құбылыстардың өршуіне әкеп соғады, сондай-ақ мемлекеттік биліктің де қабылдайтын шешімдеріне едәуір септігін тигізеді.

Кілт сөздер: сыбайлас жемқорлық, пара, паракорлық, қылмыстық құқық, қылмыстық жауапкершілік, сыбайлас жемқорлықтың даму тарихы, сыбайлас жемқорлықтық қатынастар, сыбайлас жемқорлықтың анықтамасы, сыбайлас жемқорлықтың типологиясы, сыбайлас жемқорлықтың әлеуметтік-құқықтық табиғаты.

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Определение, типология и социально-правовая природа коррупционных правонарушений

В статье рассматриваются социально-экономические причины коррупционных уголовных правонарушений в Казахстане. Авторы разбирают природу происхождения понятия коррупции в этимологическом смысле. Вместе с тем авторами дается оригинальное объяснение причин, вызвавших бурный рост коррупционных правонарушений в постсоветском регионе, который по своему масштабу играет деструктивную роль в развитии экономических отношений, привлечении иностранной инвестиции и развитии институтов гражданского общества. Авторы на основе анализа развития общественных институтов, отношений, научных трудов ряда независимых исследователей сделали попытку классифицировать социально-экономические, правовые и политические причины коррупционных правонарушений. Также в работе сделана попытка провести параллели между бывшими союзными республиками, где коррупционные явления проявили себя по-разному. Авторы отмечают поверхностность и номенклатурный характер исследований, проводимых в постсоветском пространстве, результаты которых во многих случаях могут не коррелироваться с реальным положением дел. Периодичность ведения борьбы с коррупцией, сильное влияние на кампанию по борьбе с преступностью, в том числе и против коррупции, оказывают негативное влияние на иные сферы общественной жизнедеятельности, а также на принятие решений государственными органами.

Ключевые слова: коррупция, взятка, взяточничество, уголовное право, уголовная ответственность, история развития коррупции, коррупционные отношения, закон о коррупции, определение коррупции, типология коррупции, социально-правовая природа коррупции.

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