

Analysis of Sanctions of Corruption Crimes Related to Bribery and Other Types of Illegal Remuneration

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Abstract: The article examines the problem of the lack of systematic approach of the legislator in the presentation of sanctions for corruption crimes related to the giving and receipt of bribes and other types of illegal remuneration, which was formed as a result of inconsistent actions of the legislator in the reform of criminal legislation, the lack of a unified approach to understanding these crimes, non-compliance with a number of theoretical foundations for the construction of sanctions in terms of the choice of punishments, establishing their terms and proportions. The purpose of this article is to establish a link between the sanctions imposed for the commission of corruption offences related to bribery and other types of illegal remuneration, the actual penalties applied, and to ensure the objectives of punishment. It is established that unnecessarily broad «range» of punishments results in unnecessarily broad judiciary inquiry. Criminals effectively use gaps in legislation or other problems of juridical regulation, this way punishments applied for them are unable to provide restoration of social justice, correcting convicts and preventing them from committing new crimes. This makes criminal responsibility for these crimes ineffective and makes punishments for them a determinant of the commission of such crimes. With the extensive use of analysis methods, comparative-legal research, legal modelling, a study of sanctions has been conducted and conclusions have been drawn that approaches to their establishment should be changed, and the nature of the crimes committed should be taken into account. In particular, it is recommended to reduce the number of alternative punishments, increase the size and duration of minimum penalties in sanctions, reducing the opportunities for judicial discretion.

1 INTRODUCTION

Sanctions of corruption-related bribery and other forms of bribery are an essential element in their prevention system. At the same time, the legislator is manifesting a clear inconsistency in determining the types of punishments, their size and timing. In fact, changes and additions in this part are made without studying the fundamental reasons for this. In this regard, sanctions do not have a proper impact on the perpetrators of these crimes, which makes it impossible to solve the tasks of restoring social justice, correcting the convict, preventing the commitment of new crimes. There is now a clear need to examine the sanctions imposed for these crimes in order to improve criminal responsibility.

2 MATERIALS AND METHODS

The article is prepared using analysis methods (mostly critical), comparative-legal research, legal modeling, and synthesis.

3 RESULTS AND DISCUSSION

The analysis of the publications of scholars and practitioners on the issue of the use of punishments for corruption crimes, in particular those related to bribery and other types of illegal remuneration, makes it possible to identify several positions existing today on the issue. The first view reflects the opinion that «the liberalism of judges is criticized or there are calls for increased criminal and legal sanctions for

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crimes of corruption» (A.I. Dolgova, 2003; P.S. Yani, 2001; V.V. Luneev 2007; P. Blavatsky 2001.). The excessively radical-liberal approach to both the judicial reform itself and the subsequent changes in the criminal law, including the imposition of criminal penalties for corruption crimes, is not perceived by such scientists as A.I. Alekseyev, V.S. Ovchinsky, E.F. Pobegailo (A. I. Alekseyev, V.S. Ovchinsky, E.F. Pobegailo 2006.), B.Y. Gavrilov (B.Y. Gavrilov 2008.). At the same time, there is the exact opposite position that «the adoption of repressive measures of a criminal nature to corruption by public servants should be almost at the last level in the fight against corruption» (A.V. Kurakin). In his turn, a well-known researcher of corruption phenomena in society, G.A. Satarov, not denying the negative sides of the «force» war on corruption, draws attention to the need to develop and implement a comprehensive or mixed strategy to counter it, involving criminal repression (S.Y. Novikov).

The scientific and practical interest represents S.V. Maksimov's point of view on sanctions for crimes of corruption, which proposes a fundamental shift from preferential use in the construction of legal norms alternatives to certain sanctions to the preferential use of alternative absolutely defined sanctions (e.g., imprisonment for two years or correctional work for one year) (S.V. Maximov 2008.). This approach appears to significantly limit the differentiation of criminal responsibility and narrows the scope of judicial discretion.

At the same time, it is worth agreeing with those authors who speak about those changes in the criminal law, which resulted in the exclusion of the lower limits of the penalty of imprisonment, enshrined in the sanctions of a significant number of criminal and legal norms, which establish responsibility, including for serious and especially serious crimes, which significantly expanded the boundaries of judicial discretion (B.Y. Gavrilov 2020.).

If we pay attention to the sanction of Part 2 of Article 141 of the Criminal Code of the Russian Federation, which establishes responsibility for the obstruction of the exercise of voting rights or the work of electoral commissions, coupled with bribery, it can be concluded that it enshrines a penalty of up to five years in prison. In this sanction, the penalty in the form of a fine is of interest. On December 8, 2003, Federal Law No. 162-FL set a fine of up to two hundred thousand rubles, allowing judges to appoint it in the amount of five to two hundred thousand rubles, i.e. this possibility implies a fairly broad judicial discretion in sentencing in the form of a fine.

Further, it should be said that in 2012, the Federal Law No. 106-FL the amount of the penalty in the form of a fine provided in the sanction of Part 2 of Article 141 of the Criminal Code of the Russian Federation, was set from one hundred thousand to three hundred thousand rubles, i.e. indicating its lower and upper borders.

Analysis of the sanction, enshrined in the part. 3 Article 183 of the Criminal Code of the Russian Federation, which establishes responsibility for the illegal receipt and disclosure of information that constitutes commercial, tax or bank secrecy, committed out of self-interest, shows that the Federal Law of 29.06.2015 No. 193-FL significantly expanded the limits of the penalty in the form of a fine, currently the size of which is up to one million five hundred thousand rubles (before making changes to its size was up to one hundred thousand rubles). In the sanction of p.4 Article 183 of the Criminal Code of the Russian Federation we should pay attention to the term of imprisonment, which today is up to seven years, although before the changes made by the Federal Law from 07.12.2011 No. 420, the term of imprisonment was up to ten years, without specifying the lower border, i.e. these changes in the criminal law narrowed the term of imprisonment.

The sanctions stipulated in Parts 2 and 4 of Article 184 of the Criminal Code of the Russian Federation, which impose a penalty for exerting unlawful influence on the result of an official sporting event or a spectacular commercial competition, in the presence of qualifying features, which enshrine the term of imprisonment of up to seven years, draw attention to themselves. It should be noted that such a term of imprisonment in these sanctions was established as a result of changes of the criminal law by the Federal Law of 23.07.2013 No. 198-FL. Prior to these changes, the term of imprisonment for the commission of the act, provided for by Part 2 of Article 184 of the Criminal Code of the Russian Federation, amounted to five years, and the term of imprisonment for the commission of the act, provided for by Part 4 of Article 184 of the Criminal Code of the Russian Federation - up to two years.

In 2018, Article 200 of the Criminal Code of the Russian Federation appeared in the criminal law, establishing responsibility for bribing a contract service employee, a contract manager, a member of the procurement commission. There is an interesting fact, we should pay attention to, that sanctions implying responsibility for qualified and especially qualified contents of considered crime, contain punishment as imprisonment with terms without low borders. Thus, for the commission of an act stipulated

in p.2 Article 200 of the Criminal Code of the Russian Federation, the penalty is up to seven years in prison, p.3 Article 200 of the Criminal Code of the Russian Federation - for a period of up to eight years, p.5 Article 200 of the Criminal Code of the Russian Federation - a term of up to ten years.

In 2008, the above specified Federal Law No. 280-FL amended the sanction of p. 3 Article 204 of the Criminal Code of the Russian Federation, enshrining penalties for the commission of commercial bribery in the presence of qualifying features, namely, the lower limit of the penalty in prison and the term of this punishment up to seven years. Almost eight years later, the Federal Law of 03.06.2016 No. 324-FL Art. 204 of the Criminal Code of the Russian Federation was set out in the new version, including the change of the sanction of Article 3, namely, the limits of the sentence of imprisonment were set from three to seven years.

A study of the sanctions imposed for bribery shows that they also have prison terms with a wide range of individual crimes. For example, in the sanction of part 2 Article 290 of the Criminal Code of the Russian Federation in the version of the Federal Law of 04.05.2011 No. 97-FL, the penalty of imprisonment for up to six years is enshrined. Federal law of 04.05.2011 No. 97-FL Article 291 was supplemented by p.3, establishing responsibility for paying a bribe to an official, a foreign official or an official of a public international organization personally or through an intermediary for the commission of knowingly illegal acts (inaction), the sanction of which provides for a penalty of up to eight years imprisonment. In addition, the sanction of Part 3, Article 291 of the Criminal Code of the Russian Federation provides for a fine of up to one million five hundred thousand rubles, which also clearly shows a fairly broad judicial discretion in determining the size of the fine. In this regard, it is appropriate to give an example of the verdict of the Fokin District Court in Bryansk. The citizen B. was found guilty of a crime under p.3 Article 291 of the Criminal Code of the Russian Federation, for paying a bribe personally to an official for committing knowingly illegal acts, in a significant amount, and he was sentenced to a fine of only one hundred and fifty thousand rubles. It should be noted that the study of the judicial practice of applying a fine for the commission of a crime under Part 3, Article 291 of the Criminal Code of the Russian Federation, shows that the courts assign different sizes of the fine (one hundred thousand rubles, three hundred thousand rubles, etc.), while the circumstances of the act may be almost similar (V.V. Mercuriyev, T.G. Makhanov, V.S. Minskaya 2017.).

4 FINDINGS

Thus, the analysis of the existing criminal legislation leads to the conclusion of some positive trend, indicating that the legislative authorities adequately perceive criticism from the scientific community about excessively broad limits in the size and duration of penalties in the form of fines and imprisonment. In some sanctions of articles (p. 2 Article 141 of the Criminal Code of the Russian Federation, p. 3 of Article 204 of the Criminal Code of the Russian Federation), providing criminal responsibility for corruption crimes related to bribery and other types of illegal remuneration, the lower and upper limits of these types of punishments were established.

However, today there are sanctions in the criminal law, which enshrine responsibility for the types of crimes under consideration, where penalties with wide ranges of sizes and terms are provided, which negatively affects the formation of uniform jurisprudence. Such ranges of the size and duration of punishments, established in criminal and legal sanctions, result in clear disproportions in the size and timing of the penalties imposed by the courts and violate the criminal principle of justice. At the same time, this phenomenon with a high degree of obviousness carries a corruption component directly of the criminal law itself, which, in turn, is designed to fight corruption. It follows that sanctions should not be stiffened and the ranges of terms and sizes of punishments, enshrined in them, should not be expanded, but, on the contrary, narrowed and applied on the basis of the principle of justice.

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