

Corruption as a Social and Legal Phenomenon

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Abstract: The corruption as a social phenomenon of the use by officials the entrusted rights and power-holding opportunities for personal enrichment is analyzed in this study. The normative and legislative definition of the corruption consists in abuse of office, giving or taking the bribes, abuse of authority, commercial bribery or other types of misuse of power, conflicting with legitimate interests of society and state.

Key words: Corruption, bribe-taker official (copyist), robber (thief), merchant, priest, main figures, soldier, (athlete), national legends, two, 4000 years' prescription

INTRODUCTION

Imperfection of the society and low efficiency of the state promote an aggravation of numerous problems not at the level of the state only but also at the level of a global world. Very often, they are intersected and intertwined with both objective factors (mass informatization and communication, industrialization and culture) and subjective factors in which human merits and faults of are harmonized and opposed. By faults, we understand the corruption. According to researchers of this subject, corruption is the worst thing in transitional societies. We share this view but we are not inclined to connect all problems with corruption only as it is one of the links in a long chain of economic, social and spiritual issues.

It is true for Kazakhstan where the long way of social changes is followed by permanent balancing between crisis and the short periods of stability that provokes numerous social anomalies: a criminalization of society, a social inequality and corruption that is systematized and connected with imperfection of society and the man particularly.

If to consider the historical aspect of the phenomenon, it is clear that the corruption was an actual problem of the society and state at all times. In accordance with historical records, the corruption is inferior to war only. The bribe-taker official (copyist), the robber (thief), the merchant and the priest are the main figures along with warriors (epic heroes) in national legends of 2 or 4000 years' prescription.

The public danger of corruption is extremely high. The world community documents emphasize that corruption has exclusively adverse effect on economy; it undermines the efficiency of all types of government decisions and programs, damages the morale of society, loosens the trust of citizens to the government and authorities; destroys the principle of law and impartial justice.

According to estimation of the experts, practically all domestic and foreign researchers are unanimous: the corruption level of modern Kazakhstan is extremely high (Agybayev, 2003). Now there are grounds to expect that the corruption in Kazakhstan is one of the highest in the world. Indirectly, it is confirmed by the fact that law enforcement agencies accumulated the huge amount of the materials which are waiting for an appropriate period before the changing of a political situation.

The characteristic feature of the corruption crime is the highest level of its latency. According to experts, the size of the revealed cases of bribery in relation to their actual level fluctuates from 0.002-5%.

Kazakhstan has considerable scientific results in solving the problems connected with corruption so, a number of investigations is devoted to a phenomenon of the Kazakhstani corruption; foreign corruption activity is also studied by representatives of various social sciences (Alaukhanov, 2009).

The reason of a keen interest in a corruption phenomenon can be connected with problems of a public administration. Without solving the problems of corruption there is no chance to solve the problems of

management. It is also necessary to note that corruption is usually emerging and developing during the period of political regimes change, due to recessionary tendencies in economy and policy, bureaucratization of society and the state. Practically all public relations established and protected by the law might be the objects of corruption.

“Corruption” is rather social or criminological concept, than legal one, therefore, it should be considered not as a concrete body of the crime but as a phenomenon (Alaukhanov, 2009).

One of the serious problems of establishment of the Kazakhstani constitutional state is the problem of corruption escalating. It has negative impact on all sides of economic, political, legal and spiritual life of the state; it aggravates complex problems of a transition period (Begaliyev, 2007).

The corruption existed all the times; it was predetermined by historical development of society. It exists, improves and develops systematically.

Perhaps, the first person who used the term of “corruption” in relation to politics was Aristotle, defining tyranny as the corrupted (“spoiled”) form of a monarchy. Machiavelli, Russo and many other thinkers wrote about it. According to Charles Montesquieu, “the experience of centuries shows that any person possessing the power is inclined to abuse it and he goes in this direction till the breaking point” (Burlakov and Kropachev, 2005).

Therefore, the monuments of the law of the countries of the Ancient East contained the norms directed on suppression of corrupted behavior of the officials. For example, the code Hammurabi by the tsar of Babylon (28th century BC) imposed sanctions on the judge who abused the official position. The theme of the corruption is found in documents of Jerusalem of the 6th century BC in Bible texts and antique history (Golikov and Karasyov, 2005). Corruption, according to I.A. Bogdanov and A.P. Kalinin, became one of the reasons of disintegration of the Roman Empire (Bogdanov and Kalinin, 2003).

The Soviet period was noted by two splashes in corruption crime: the first falls on the 20th years the time of the new economic policy and the second for the 70-80th years the period of stagnation and decomposition of the Soviet System.

Nowadays, the extending political and economic cooperation between the states turned corruption into the international problem. The illegal corruption relations infringe the interests and welfare not one but many countries of the world. Any state in the world cannot be insured from the corruption fact. Corruption is peculiar to all countries, irrespective of a geographical position, political system and level of economic development.

Thus, corruption is a difficult socially political and socially legal phenomenon which appeared in ancient times and continued its existence in all countries of the world. Corruption as many other difficult phenomena, does not have a comprehensive definition. In scientific, educational and publicist literature, there is a huge methodological variety of corruption understanding and different interpretations of it are suggested. Even now, it is a complicated issue to provide an integrated concept of the corruption (Sattarov *et al.*, 2008).

Etymologically the term “corruption” comes from Latin which means, “damage”, “bribery”. These two words determine different understanding of corruption (Nukenov, 2009).

G.K. Mishin claims that the Latin term “corruptio” comes from two root words: cor (heart, soul, spirit and mind) and ruptum (to spoil to destroy and to deprave). Therefore, the corruption essence is not in bribery, bribability of public and other employees but in violation of unity (disintegration, decomposition, dissociation) of this or that object, including the government. Moreover, I believe that it is about disintegration of the spirituality of the officials who are not the members of the corrupted group but the part of the society (Mishin, 1991).

“Though the concept of corruption, according to the codes of conduct for public officials adopted by the united nations general assembly on December 17, 1978 has to be defined by the national law. It means the performance or failure of any actions on duties or because of these duties as a result of the demanded or accepted gifts, promises or incentives or their illegal receiving every time when such action or inaction takes place” (Rakhmetov *et al.*, 2014). In this case, corruption is understood as bribery, bribability of officials (public employees) and their conduct which is carried out in connection with earned or promised reward. The convention of the UN against a transnational organized crime adopted in Palermo of December 12-15, 2000 considers corruption as bribery (active or passive) and the council of Europe convention on corruption understands corruption as an abuse of power with the mercenary purposes (Lebedev and Kochubey, 2007).

According to B.V. Volzhenkin, corruption is the social phenomenon consisting in decomposition of the power when the public (municipal) officials and other persons who are entrusted to fulfill the state functions, use the official position, the status and authority of a post with mercenary purposes for personal enrichment or group interests (Volzhenkin, 2009).

A.I. Dolgova defines corruption as the social phenomenon which is characterized by bribery-bribability of the public or other officials and mercenary use of the office and authority power to suit personal,

group or corporate interests. Famous criminologist N.F. Kuznetsova (Petrova, 2007) also considers corruption as bribery of one person by another.

There is another approach to corruption activity, the parameters of which analyze corruption as the social wide-range phenomenon, than just a bribery or corrupt practice. According to D. Bailey, corruption represents an abuse of power to suit personal interests which is not necessarily to be of a material value and K. Friedrich thinks that a corruption is the deviant behavior connected with private motivation which means that private (individual, group) aims are realized at the expense of a society. J. Nye gives a detailed definition of the corruption: it is the behavior which is deviated from formal duties of a public role under the influence of the private material or status purposes. It violates the rules restraining certain kinds of activity according to private influence (Reva, 2002).

According to A.N. Agybayev, corruption is “a typical type of white-collar crime. Therefore, it is a high-latent, refined issue causing a huge damage. The corruption is something like a cancer tumor regenerating government and leading to irreversible changes” (Agybayev, 2003).

At the same time supporters of the functional and institutional approaches to corruption research (M. Weber, S. Huntington, Ya. Takovsky, L.M. Timofeev, etc.) observe a certain positive role of the corruption, especially in the developing societies. They see corruption as a way of elimination or reduction various bureaucratic obstacles of economic and political development. Some modern economists say about the usefulness of corruption also.

Therefore, it is claimed that corruption played a role of the greasing; facilitating the difficult transition from command system to the new economic way, and corruption kept the “balance in economy” (A.L. Livshits) (Stupina and Savenkov, 2010).

The problem of corruption represents the serious threat of government functioning, law supremacy, democracy and human rights; complicating the formation of the constitutional state and civil society. The annual address of the President of the Republic of Kazakhstan N. Nazarbayev to the nation highlighted the following: “in spite of initiated efforts, we still didn’t manage to eliminate one of the most serious obstacles of our development-corruption”.

Certainly, the corruption belongs to those factors which are capable to aggravate the political life of the state, economic and social problems in combination with other circumstances to destabilize the life of society. That is why the power structures and institutions of a civil society of the states of a high level of development pay

special attention to anti-corruption actions which don’t allow the corrupt officials to feel themselves comfortable. At the same time, it is impossible to exclude corruption from social practice.

The existence of corruption crime is defined by the general reasons which determine the crime. However, corruption like other types of crimes has the features in a complex of factors, defining its dynamics which it is hardly possible to range and determine their importance (Chershintsev, 2007).

The reasons generating the corruption in the countries of the democratic and economic reforms can be subdivided into three groups: economic, legal, social and moral.

CONCLUSION

Among the specified groups, the economic reasons take the first position. Economic and material benefits are often considered as obligatory components of such type of a crime as corruption. According to a number of scientists, corruption is the social phenomenon consisting in decomposition of the power when the public (municipal) officials and other persons entrusted on performance of the state functions use the official position, the status and official authority with mercenary purposes for personal enrichment (Chumakov, 2007). All public relations protected by the law can be the objects of criminal activity of the corrupted officials.

The main reason of the corruption is a lack of real fight against this phenomenon, despite abundance of broadcasting programs and statements. The truth is the law enforcement agencies, financial bodies, judicial authorities and other central bodies are the links in the general chain of corruption and anti-corruption measures often contradict personal and group interests of the officials working there (Burlakov, 2005).

The reason of corruption as social and legal phenomenon covers the various factors rooting in the nature of the government and public administration and specifics of reforms which are carried out in modern society.

It should be noted that connection between corruption and the reasons generating it is bilateral. On the one hand, these reasons aggravate corruption manifestation and their solving promotes the reduction of corruption of the government. On the other hand, the growth of corruption will aggravate the problems of a transition period and prevent from solving it. It is possible to reduce and limit corruption only by solving the problems generating it and simultaneous decisive resistance to corruption will promote the solution of these problems.

The majority of the officials' (41.6%) says about inefficiency and imperfection of the system the state and laws. From 20.2-26.1% of civil officials by the main reasons of corruption understand a correlation of interests between officials and business and poor law culture of the most of Kazakhstani citizens. The minority of the respondents (12.1%) by reasons of corruption comprehend the greediness and immorality of the local officials.

The normative and legislative definition of the corruption consists in "abuse of office, giving or taking the bribes, abuse of authority, commercial bribery or other types of misuse of power, conflicting with legitimate interests of society and state for obtaining benefit in the form of money, values, service or other property rights for themselves or for the third parties or illegal granting such benefit to the specified person by other person" and also the commission of the specified acts from the name or in interests of the legal entity.

REFERENCES

- Agybayev, A.N., 2003. Criminal, Legal and Criminological Measures of Fight Against Corruption: Teaching Manual. Nauka Publisher, Almaty, Kazakhstan, Pages: 170.
- Alaukhanov, E.O., 2009. Anti-Corruption Legal Policy. Science Publisher, Almaty, Kazakhstan, Pages: 213.
- Begaliyev, B.A., 2007. Problems of Fight Against Fraud by the Legislation of the Republic of Kazakhstan. Science Publisher, Almaty, Kazakhstan, Pages: 181.
- Bogdanov, I.A. and A.P. Kalinin, 2003. Corruption in Russia, Socially Economic and Legal Aspects. Science publisher, Moscow, Pages: 330.
- Burlakov, A.V., 2005. The Condition and a Tendency of Official Crime in the Russian Federation. Modern law Publisher, Russia, Pages: 220.
- Burlakov, V.N. and N.M. Kropachev, 2005. Criminology: The Textbook. Saint Petersburg State University Press, Russia, Pages: 213.
- Chershintsev, V.S., 2007. Corruption and Russian Criminal Policy. J. Russian Investigat, 7: 34-37.
- Chumakov, A., 2007. Anti-Corruption Policy of Russia and its Priorities. Law and Right Publisher, Moscow, Russia, Pages: 88.
- Golikov, Yu.V. and V.I. Karasyov, 2005. Corruption as Mechanism of Social Degradation. Springer Publisher, NY., USA., Pages: 117.
- Lebedev, S.Ya. and M.A. Kochubey, 2007. Criminology: The Teaching Manual. Znanie Publisher, Moscow, Pages: 110.
- Mishin, G.K., 1991. Corruption: Concept, Essence, Restriction Measures. Nauka Puboisher, Moscow, Pages: 89.
- Nukenov, M.O., 2009. Corruption Crimes: Criminological, Criminal and Legal Analysis. Almaty Publisher, Kazakhstan, Pages: 68.
- Petrova, Yu.A., 2007. Corruption in Business. HR Management Publisher, Moscow, Russia, Pages: 150.
- Rakhmetov, S.M., M.R. Abilkairov and M.M. Kamnazarov, 2014. Corruption as Socially Negative Phenomenon. Astana Publisher, Kazakhstan, Pages: 180.
- Reva, A.M., 2002. Corruption as the Social Phenomenon of Society (The Review of Regulations and Literature) The Prevention of Corruption in Police: Materials of the International Scientific and Practical Seminar. Znanie Publisher, Moscow, Russia, Pages: 230.
- Sattarov, G.A., M.I. Levin and M.L. Tsirik, 2008. Russia and Corruption: Who Whom, The Brochure in the Russian Newspaper. Nauka Publisher, Russia, Pages: 180.
- Stupina, S.A. and R.S. Savenkov, 2010. Corruption Crime in Russia and Siberian Federal District Actual Problems of Prevention of Corruption in Russia at the Present Stage: The Collection of Materials of a Methodological Seminar. Krasnoyarsk State University, Russia, Pages: 180.
- Volzhenkin, B.V., 2009. Corruption as Social Phenomenon. Science Publisher, Moscow, Pages: 118.