

INTERNATIONAL LEGAL STANDARDS OF RESPONSIBILITY FOR BRIBERY

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ABSTRACT

The problem of corruption crimes and their effective eradication remains one of the important issues on the world stage. The complexity of the fight against corruption is due not only to differences in the mentality and degree of corruption in different countries, but also to different approaches to criminalizing corruption crimes. In this context, it is important to conduct an in-depth analysis of the experience of foreign countries in criminalizing corruption in order to identify effective control mechanisms and the possibility of their implementation into national legislation.

INTRODUCTION

Looking at the criminal legislation of some countries, it can be highlighted that bribery is the most common type of corruption crimes. The criminal codes of various States pay attention not only to active but also passive bribery. For example, in Belgium, where active and passive bribery are distinguished in detail, the offer or request of a bribe is already considered a crime, and the concomitant violation of the duties of a person holding public functions emphasizes the presence of complex regulatory regulations¹.

In Spanish criminal law, bribery is also differentiated depending on the legality of actions in exchange for a bribe. There is a difference between joining a tribe in exchange for violating official duties and violating obligations, which gives the law additional aspects².

In Ireland, bribery liability is also a comprehensive approach encompassing active and passive bribery. It is important to note that criminal punishment is provided not only for committing a crime in the interests of a person involved in giving a bribe, but also for causing harm to third parties³.

Lithuanian criminal law, in turn, introduces additional difficulties, toughening the

¹ Criminal Code of the Kingdom of Belgium (1867, as of 2018) (French version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8240/file/Belgium_CC_1867_am2018_fr.pdf

² Criminal Code of the Kingdom of Spain (1995, as of 2013) (English version) // [Electronic resource] URL: https://www.legislationline.org/download/id/6443/file/Spain_CC_am2013_en.pdf

³ Criminal Justice (Corruption Offences) Act 2018 (enacted on 5th June 2018) // [Electronic resource] URL: <http://www.irishstatutebook.ie/eli/2018/act/9/enacted/en/html>

punishment for bribery, depending on the legality or illegality of the actions committed⁴. The existence of rules on liability with aggravating circumstances with a significant amount of bribes demonstrates the rigidity of legislative approaches.

In the United States, legislation also clearly establishes liability for bribery of officials and witnesses. Article 201 of the U.S. Code regulates crimes and criminal prosecution in detail, including aspects such as receiving, giving, promising or requesting bribes, creating the basis for a comprehensive approach to combating corruption⁵.

Thus, an in-depth analysis of the criminal codes of various countries allows us to identify a variety of approaches to criminalizing corruption, including the distinction between active and passive bribery, as well as additional complications in the form of aggravating circumstances depending on the amount of the bribe. This analysis can serve as a basis for the development of effective anti-corruption strategies at the national level.

Chilean legislation provides special measures of responsibility for crimes related to bribery, classifying them depending on the nature of the subject of the bribe. According to Article 248 of the Chilean Criminal Code, there is a division between receiving a bribe in intangible and tangible form, which indicates the thorough regulation of this category of crimes. This approach allows the law to more effectively combat various forms of corruption and expresses the State's willingness to support the integrity of justice⁶.

Hong Kong's criminal law seeks to limit bribery-related crimes by establishing a clear list of actions that fall under this crime. In accordance with article 4 of the Bribery Prevention Act of 1971, any natural person deprived of legal authority or grounds is obliged to provide various types of bribes to a public official, which demonstrates the principled nature of regulating this issue⁷.

Article 129 of the Criminal Code of South Korea, concerning bribery, is not limited only to receiving a bribe, including responsibility for extortion and the promise of a bribe. This highlights the wide range of acts considered crimes, which provides additional tools for law enforcement officers to effectively combat corruption⁸.

In the context of the Netherlands, Sweden, Turkey and Azerbaijan, where mediation in the

⁴ Criminal Code of Lithuania (2000, amended 2017) (English version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf

⁵ Title 18 of the United States Code – Crimes And Criminal Procedure // [Electronic resource] URL: <https://uscode.house.gov/browse/prelim@title18&edition=prelim>

⁶ Código Penal de Chile // [Electronic resource] URL: <https://www.leychile.cl/Navegar?idNorma=1984>

⁷ Cap. 201 Prevention of Bribery Ordinance // [Electronic resource] URL: <https://oelawhk.lib.hku.hk/items/show/2838>

⁸ Republic of Korea: Criminal Code [Republic of Korea], 3 October 1953 // [Electronic resource] URL: <https://www.refworld.org/docid/3f49e3ed4.html> [accessed 7 May 2020]

field of bribery is not considered as a separate crime, but is qualified as assistance in bribery, the desire of legislators to comprehensively regulate these issues, including aspects of complicity in bribery, is emphasized.

It is important to note that the Dutch criminal law distinguishes the crime of bribing judges as an independent crime, which emphasizes the importance of punishment for such acts (article 364) ⁹.

In Singapore's legislation, as well as in Hong Kong's legislation, crimes related to bribery are limited to establishing a clear list of actions, which contributes to stricter control over manifestations of corruption. This trend is also evident in Malaysia's Anti-Corruption Commission Act of 2009.

Thus, an in-depth analysis of the legislative norms of various countries highlights the diversity of approaches to regulating interrelated issues of bribery and bribery, which reflects not only the specifics of each country, but also the desire of society and legislators to effectively counter corruption manifestations.

Moreover, in addition to accepting and giving bribes, this law provides for liability for requesting, accepting or promising to accept bribes, as well as for promising bribes or offering bribes. The criminal legislation of most countries, including Malaysia, India, Singapore, Belgium, Ireland, Romania, China, Chile, Ukraine, Azerbaijan and Georgia, also classifies the case when a bribe was given or received in favor of third parties as a criminal act.

If we look at the articles of the criminal legislation of individual States, including Azerbaijan and Armenia, which establish responsibility for receiving bribes, we can testify that their prescriptions, in addition to bribes, also cover such actions as patronage or promotion.

In the criminal law of many states, in addition to receiving and giving bribes, actions such as asking for a bribe, offering, accepting an offer, promising to give a bribe and accepting such a promise are also reflected as an act deserving punishment. After all, we can see similar norms in the legislation of Belgium, Ireland, Romania, Malaysia, India, Singapore, China, Hong Kong, Chile, Armenia, Ukraine, Azerbaijan and Georgia.

We also see that in some foreign countries administrative responsibility has been established for less significant manifestations of corruption. In particular, in accordance with the legislation of Kazakhstan, acceptance by an official as a gift of property, property rights or other property interest in an amount not exceeding two-month calculation indices, without

⁹ Criminal Code of the Kingdom of Netherlands (1881, amended 2012) (English version) // [Electronic resource] URL: https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf

prior consent for committing an act (inaction) within his competence, or granting him the above-mentioned interest is not a crime and is the basis for bringing to administrative responsibility or disciplinary responsibility¹⁰.

We can see the experience of establishing criminal liability for the illegal accumulation of wealth in the legislation of a number of foreign countries. In particular, the norms providing for liability for such acts are reflected in the legislation of many Latin American States. After all, according to article 286 of the Argentine Criminal Code, any person is criminally liable if he cannot prove the origin of any wealth for himself or a third person, when required, in order to conceal its origin, and if the amount of this wealth exceeds his salary and other income during the term, not exceeding 2 years from the date of termination of his powers. This takes into account not only money, things or goods of a person, but also repaid debts and other obligations that have been fulfilled¹¹.

Article 412 of the Colombian Criminal Code is called "illegal enrichment", according to which any public servant who performed public duties while in public service or during this time or during the next two years, achieved an unjustified increase in wealth for himself or someone else, unless such behavior is recognized as a crime. another type of violation, which is illegal, entails liability for enrichment.

On the other hand, the criminal law of Chile establishes liability for improper and unjustified increase in the property of an official in the performance of his official duties.

According to Chinese law, any civil servant whose property or expenses exceed his legitimate income is obliged to explain the sources of his property in case the difference is too large, if he cannot prove that the sources are legitimate, a part of it exceeding his legitimate income is considered illegal wealth. Any government employee must inform the State in due course about their funds held in a bank outside China¹².

In accordance with the Hong Kong Bribery Prevention Act of 1971, any executive or employee who leads a disproportionately high lifestyle or owns such property in connection with his position at the same time or previously held will be found to have committed a crime if he fails to provide sufficient explanations to the court in the above-mentioned bribery case¹³.

According to Indian criminal law, a civil servant or any other person acting on his behalf is

¹⁰ The Criminal Code of the Republic of Kazakhstan (Adopted on July 3, 2014) // [Electronic resource] URL: https://online.zakon.kz/document/?doc_id=31575252#pos=5;-106 (date of application: 07.05.2020).

¹¹ Código Penal de la Nación Argentina - Ley 11.179 (T.O. 1984 actualizado) // [Electronic resource] URL: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>

¹² Criminal Law of the People's Republic of China (July 1, 1979) // [Electronic resource] URL: <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>

¹³ Cap. 201 Prevention of Bribery Ordinance // [Electronic resource] URL: <https://oelawhk.lib.hku.hk/items/show/2838>

prosecuted if he cannot prove the legitimate source of the property in question by owning property in excess of his income at the time of holding public office. This rule emphasizes the importance of proving the legality of the acquisition of property during the period of holding a certain position, limiting the period of responsibility¹⁴.

Thus, article 32 of the Malaysian Anti-Corruption Act of 1997 establishes the right of the prosecutor to require civil servants to indicate the source of property exceeding their income, taking into account their position. This indicates the desire of legislators to control illegal enrichment during the period of public service¹⁵.

In Lithuania, according to article 189¹ of the Criminal Code, a person who owns property must explain the source if its value exceeds 500 minimum wages and does not originate from a legitimate source. The law also provides for an incentive provision that removes liability in the case of voluntary transfer of information about the origin of property.

Lithuanian legislation on illicit enrichment applies not only to officials, but also to any person. This indicates a universal desire to combat illicit enrichment¹⁶.

Illegal enrichment is also a crime in the criminal legislation of Armenia, and Article 310¹ of the Criminal Code of Armenia provides for liability for a significant increase in property unjustified by legitimate income. It is important to note that the legislation provides for liability even for dubious circumstances, which underlines the seriousness of the fight against illegal enrichment¹⁷.

The laws of States such as Ukraine impose limits on the amount, setting significant amounts as a criterion of liability. In the case of Ukraine, a person holding a public position is held accountable if his assets exceed six thousand rubles compared to his legitimate income. This allows for the establishment of clear standards for the definition of illicit enrichment in the context of specific legislation¹⁸.

Thus, the norms of the criminal legislation of various countries indicate strict measures to prevent and punish illicit enrichment. They establish clear rules for proving the legality of the sources of property, especially during the period of public service, and impose liability depending on the amount of excess of legitimate income.

¹⁴ Prevention of Corruption Act, 1988 // [Electronic resource] URL: <http://legislative.gov.in/sites/default/files/A1988-49.pdf>

¹⁵ Malaysian Anti-Corruption Commission Act 2009 (As at 1 June 2015) // [Electronic resource] URL: [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20694%20%20\(15_5_2015\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20694%20%20(15_5_2015).pdf)

¹⁶ Criminal Code of Lithuania (2000, amended 2017) (English version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf

¹⁷ The Criminal Code of the Republic of Armenia (Adopted on April 18, 2003) // [Electronic resource] URL: <https://www.arlis.am/documentview.aspx?docid=63312> (date of application: 07.05.2020).

¹⁸ Criminal Code of Ukraine No. 2341-III dated April 5, 2001 (Adopted on April 18, 2003) // [Electronic resource] URL: http://continent-online.com/Document/?doc_id=30418109 (date of application: 07.05.2020).

The acquisition of assets in the context of criminal law is defined as the process of transferring ownership of these assets to a person authorized to perform the functions of State or local government. This may also include individuals or legal entities acting on behalf of or on behalf of an authorized person, as well as performing actions aimed at managing these assets.

In the criminal legislation of Ukraine, assets are defined as cash, property rights, intangible assets, including cryptocurrencies, as well as the reduction of financial obligations and the performance of works and services in relation to the specified authorized person. This broad definition of assets makes it possible to take into account a variety of forms of ownership and other tangible assets.

In some countries, including Belgium, abuse of office is considered an independent crime. Article 247 of the Belgian Criminal Code clearly defines this *corpus delicti*, emphasizing the impact on a representative of public authority using a real or perceived official position. The norm is extensive, including addressing issues related to authority and actions beyond the authority of officials.

The Belgian approach to liability for abuse of position is broad and covers various scenarios. The legislation of this country lays down the principle of responsibility for actions that are not related to authority, but abuse of official position. This ensures that all forms of abuse are criminalized¹⁹.

Italian, Hong Kong, Romanian, and Singaporean legislation, on the contrary, provide that abuse of position may be committed by any person occupying the relevant position or presumed to have such a position. This further highlights the wide scope of responsibility for such crimes.

The crime of abuse of office includes active and passive forms, as, for example, in the French Criminal Code. Passive forms may include accepting or requesting a reward, position, gift, or advantage from a person using their position. These forms of acts are considered violations, regardless of whether the person offering the bribe has a position or not²⁰.

In Lithuania, article 226 of the Criminal Code provides for criminal liability for abuse of position, taking into account social status, family relations, official status and ties with State bodies or international organizations. This emphasizes taking into account the specific

¹⁹ Criminal Code of the Kingdom of Belgium (1867, as of 2018) (French version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8240/file/Belgium_CC_1867_am2018_fr.pdf

²⁰ Criminal Code of the French Republic (as of January 2020) (French version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8546/file/France_CC_am012020_fr.pdf

circumstances that affect the degree of responsibility for abuse²¹.

Thus, a comparative analysis of the criminal legislation of different countries makes it possible to identify features in the definition of assets, the nature and forms of abuse of office, as well as a variety of approaches to establishing responsibility. The introduction of broad and precise definitions in the legislation of countries contributes to a more effective fight against corruption and abuse of power.

The legislation of several countries, including Romania, Singapore, Ukraine, Georgia and Armenia, in the framework of criminal prosecution of abuse of office, extends responsibility not only for obtaining and providing advantages in exchange for the influence of officials, but also for a request, promise, offer, as well as for accepting offers or promises of this kind.

The Malaysian experience points to a narrow group of people interested in abuse of office, limited to the offender himself, his relatives and acquaintances, according to the legislation of this state.

Ukrainian and Azerbaijani legislation provide that if the abuse of official position is aimed at influencing an authority performing State functions or an official of such an authority, then it is considered a crime. Article 3112 of the Criminal Code of Armenia expands the concept of crime not only to achieve a specific solution, but also evaluates such acts as completed crimes. Georgian criminal law also considers abuse of official position as a completed crime, regardless of whether the actions in question were committed or the effect manifested led to the intended result at the time of the commission of actions aimed at abuse of official position²².

Concluding the discussion, it is important to emphasize that when analyzing the legislation of foreign countries on establishing criminal liability for corruption, it is necessary to take into account existing norms of national legislation and meaningfully introduce new norms. This will not only ensure compliance with legal norms, but also increase the effectiveness of measures aimed at combating corruption in various societies.

²¹ Criminal Code of Lithuania (2000, amended 2017) (English version) // [Electronic resource] URL: https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf

²² The Criminal Code of Georgia (Date of adoption: 07/22/1999) // [Electronic resource] URL: <https://matsne.gov.ge/ka/document/download/16426/143/ru/pdf> (date of application: 07.05.2020).