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Place Of Civil-Law Tools In The Anti-Corruption System

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ABSTRACT

The article analyzes the prospects for the use of civil-law tools in the fight against corruption, along with criminal law and administrative-legal means. The author, covering the issue of civil law enforcement, such as the invalidity of a transaction, confiscation, the fight against corruption, studies the legislation of foreign countries and, on the basis of this, puts forward proposals for improving the Civil Code of the Republic of Uzbekistan.

KEYWORDS

Corruption, confiscation, sanction, transaction, crime, offense, legal means, property, property right, court order, measures of legal influence.

INTRODUCTION

The tasks, functions and principles of civil law set forth in Article 1 of the Civil Code, by their very nature, do not provide for the purpose of repressive action against the offender, therefore, civil law sanctions are not punitive and are aimed at full compensation for damages and restoration of the situation before the violation. Civil law instruments and civil law do not independently regulate and resolve issues of detection and prevention of corruption offenses, but play a supporting role in restoring the legal status before the

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commission of these offenses and contribute to the full compensation of damages. The norms of civil law, together with the norms of criminal and criminal procedure law, can form an additional legal instrument in the fight against corruption, but in this regard they cannot be an alternative to the norms of criminal or administrative law.

The fight against corruption offenses and corruption-related crimes forms a complex task of harmonization of all areas of legislation. First of all, in the doctrine of law and jurisprudence requires an in-depth analysis and clarification of the concept and types of corruption offenses. The regime of strict observance of human and civil rights and freedoms, the rule of law and order, the celebration of the constitutional principle of inviolability of property, so in the end, civil law sanctions for corruption offenses can be applied only in cases where the offender is determined on the basis of the procedures and procedures established by law and proven by a court document that entered into force.

From time immemorial, anti-corruption measures have been criminal in nature. Of course, such an approach is justified, because corruption offenses are qualified as an act punishable by a criminal offense. In addition, corruption schemes lead to a decline in the prestige of the civil service and a loss of public confidence in them, which increases the public's interest in exposing and eliminating corruption offenses. As noted above, the social risk of corruption offenses is high, as their commission not only reduces the importance and necessity of public authorities, but also leads to the link of criminal behavior with the state apparatus. This, in turn, undermines the authority of state bodies in the field of law and order.

Today, the national civil law system fails to provide optimal and effective mechanisms to combat corruption. In this regard, Article 20 of the Convention against Corruption, adopted by the United Nations Resolution of 31 October 2003, states, that illegal acquisition of wealth by a public official of each State Party, i.e. accumulation of a large amount of wealth from his legal income, in other words, if an official fail to provide a reasonable basis for the acquisition of such wealth, the possibility of taking legal action to criminalize his or her actions should be considered. Of course, the fact that this norm proposes to determine the guilt in criminal proceedings through the property, civil status of a civil servant or his close relatives raises a number of issues. That is, according to the provisions of this Convention, the fact that the property is the property of an individual is a sufficient basis for proving guilt. This, at the same time, denies the fundamental importance of the presumption of innocence and leads to civil law becoming a controversial tool in the performance of criminal and criminal-procedural law functions. In our opinion, such an approach does not have a sufficient legal and logical basis, as the growing social danger of corruption offenses and their expansion in various forms require the creation of new methods and tools against corruption.

If we pay attention to the legislation of some countries in this regard, we can see that the grounds for the transfer of illicitly acquired wealth to state revenue have been identified. For example, according to Article 235, Part 2, Clause 8 of the Civil Code of the Russian Federation, money, valuables, other property and income shall be transferred to the income of the Russian Federation by a court decision in accordance with the anti-corruption legislation of the Russian Federation, unless

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information confirming the legality of their acquisition is provided.

In our opinion, such an approach has a certain basis, and this method of revocation of property rights in respect of wealth acquired as a result of illegal, corruption offenses can also have a specific effect. But in any case, the question of the mechanism of its implementation is problematic. Experts also express their views on this issue. According to them, the practice of applying the norm set out in Article 235, Part 2, Clause 8 of the Criminal Code of the Russian Federation has not yet been formed, as the application of this norm from the very beginning and the scope of its subjects have not been determined. This norm is of local significance and is considered to be misleading to the person on whom the court sentence for bribery came into force and is not a general norm applicable to all subjects of civil law (any third parties, counterparties of a person convicted of corruption offenses) [3].
In this regard, the Decree of the President of the Republic of Uzbekistan dated May 27, 2019 "On measures to further improve the system of combating corruption in the Republic of Uzbekistan" sets a number of tasks. In particular, the gradual introduction of a system of income declaration of civil servants and ensuring their adequate salaries, as well as improving the organizational and legal framework for resolving conflicts of interest in the civil service, it will be necessary to develop comprehensive measures to combat corruption, ensure cross-sectoral coherence and coordination of legal enforcement measures. In this case, attention should be paid to the application of confiscation measures.

It is well known that confiscation is usually understood as a punitive measure applied to a person who has committed a crime. However, it would not be correct to understand confiscation as a measure of public-legal influence only. In addition, the fact that confiscation is excluded from the Criminal Code as a criminal offense and exists only in civil law requires a new approach to its interpretation and application as a measure to combat corruption.

There are a number of comments in the legal literature on the nature of confiscation and its understanding and interpretation. In particular, according to Sh.G. Bagavudinov, at first glance, confiscation seems alien to civil law regulation because it applies to the field of public law in its application. However, on the other hand, confiscation, despite the fact that it is carried out by public authorities without regard to the will of the individual, primarily affects property relations and is therefore considered to be in the private interest. In addition, confiscation is recognized as the basis for the termination of property rights for certain individuals, as well as as a basis for the emergence of state property rights in respect of confiscated property. The correctness and legality of its application (including the improvement of the legislation in this area) will depend on the effectiveness of property rights as a civil law institution [1, - 15 c].

According to V.Yo. Ergashev, the legal basis for the application of confiscation of property is always the cause of the offense committed by the owner. Here, the concept of offense should be interpreted in a broad sense, it is manifested in criminal, administrative offenses or violations of customs regulations, as well as in cases of violation of civil law [5, - 140 p].

It should be noted that confiscation (confiscation, Latin confiscatio "confiscation

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in favor of the Latin treasury"), ie in cases provided by law, seizure of property from the owner without payment for a crime or other offense in accordance with a court decision is one of the grounds for termination of property rights, as defined in Article 204 of the Civil Code. It should be noted that there is a difference between confiscation and confiscation of property. First, as a rule, confiscation is a measure of confiscation of property, primarily obtained as a result of a crime, and differs from property sanctions arising from ordinary civil relations. Second, confiscation involves the removal of property from the owner in accordance with a court decision, and does not decide its subsequent fate, that is, the confiscated property. In other words, the question of who will receive the confiscated property, whether it will be transferred to state revenue or returned to the victim will be left open in the legislation. Because, as mentioned above, confiscation is included in the Civil Code as a method of annulment, not a method of acquisition of property rights. Third, the phrase "crime or other offense" in Article 204 of the Civil Code does not mean an act arising from a civil law relationship. This is because the term "offense" is used in CC only in two cases, i.e. in the expression of confiscation in Article 204 of the Civil Code and in Article 285 "Consequences of the compulsory seizure of mortgaged property". This means that the term "offense" is alien to civil law terms and categories. Therefore, it is inappropriate to apply confiscation to civil law relations. In this regard, it is necessary to pay attention to the following point, expressed in the commentary to Article 204 of the Civil Code:

The commission of a civil or administrative offense by the owner shall be grounds for confiscation. Confiscation is applied only in cases provided by law. The legal consequence of confiscation is the abolition of property rights of legal entities and individuals on the one hand, and the emergence of state property rights on confiscated property on the other [4, - 511 p].

Based on the above considerations, confiscation does not apply in civil law relations. In addition, it is inappropriate to associate the term offense with citizenship, ie the term "civil offense" is not considered legally and logically correct.

The author of the commentary, continuing his comments on the application of confiscation in civil law relations, states the following: confiscation shall be applied by a court as a measure of civil liability if it is established that the agreement concluded under the influence of deception, violence, intimidation or aggravation of the other party's representative is not valid [4, - 512 p].

In our opinion, the deception, coercion, intimidation mentioned in the second part of Article 123 of the Civil Code, an agreement entered into under the influence of a representative of one party with bad intentions, the property received from the other party under the complex agreement, as well as the transfer of property to the state revenue "has nothing to do with confiscation. This is because the "transfer of property to the state revenue" is a clear and only measure taken as a consequence of the invalidity of the agreement. In contrast, confiscation is used as a consequence of a crime or other offense, i.e. the scope of confiscation is broader and somewhat abstract.

However, it is not clear in civil law that the measure of confiscation is separate and independent of criminal and administrative law. In addition, the fact that the Republic of

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Uzbekistan has not yet ratified the Convention on Civil Liability for Corruption may lead to different interpretations of the application of civil law methods and tools in the fight against corruption. Because in this case, the legislation shows that there is no organized mechanism of civil law remedies for corruption offenses. For example, the legislation does not contain norms that allow to identify the victim in the commission of a corruption offense, special norms on corruption transactions (the composition and consequences of the transaction). In addition, the lack of developments in the theory of civil law on the concept and consequences of corrupt transactions leads to different interpretations in this regard.

The issue of interpretation of corrupt transactions under Article 116 of the Criminal Code is also neglected today in the practice of law and the theory of civil law. In particular, the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 17 of December 22, 2006 "On some issues arising in the implementation of legislative norms governing transactions in judicial practice" does not pay attention to this issue at all. In addition, this decision of the Plenum does not provide recommendations for a broader interpretation and interpretation of Article 116 of the Civil Code (invalidity of the agreement that does not meet the requirements of the legislation).

Commenting on Article 116 of the Criminal Code, Sh.M. Asyanov makes the following comments: the transaction is legal in both content and form, but the purpose makes it a very dangerous non-real transaction. However, such a goal does not always seem clear. This is not the usual legal purpose for the transaction. It is a matter of the parties intentionally committing an act constituting a criminal offense or other dangerous offense (administrative misconduct or illegal act) in order to achieve a legal result under the agreement (otherwise completely legal). Since this action is the same "dangerous result" necessary for the performance of the transaction, the transaction is considered to have been committed intentionally against the law or moral principles. The goal itself does not have the same consequences as the deal. Consequences are associated with efforts to enforce such an agreement. Thus, we are talking about the classification of civil law with the consequences of criminal acts, administrative acts and other serious offenses [4, - 324 p].

Indeed, an agreement entered into for the purpose of deliberately violating the principles of law and order or ethics may also be the result of a corruption offense. Therefore, this rule is generally expressed in the CC, and academician H.Rahmonkulov once acknowledged that it was introduced correctly and appropriately. He writes that it is important and expedient to have such a general rule in the law. No matter how much the law tries to specify the types and system of non-authentic transactions, it is impossible to cover them all by law, and given the fact that unrealistic transactions are not provided for in the law, such a general rule meets the requirements [2, - 88 p].

In our opinion, this opinion reflects the universality of the requirements of Article 116 of the Civil Code with regard to the invalidation of transactions concluded as a result of any criminal or administrative acts. However, it should be acknowledged that there is no specific provision for corruption in the CC, and that the issue has been interpreted in general by legal scholars.

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Returning to the issue of confiscation, confiscation is not a civil sanction (either an independent type or a separate form) or a measure of civil liability, but a separate legal consequence of a crime or offense, which is punishable by confiscation in criminal or administrative law. The CC confirms that the consequence of the confiscation is the revocation of the property right and thus determines the sanction established by law. However, the rules set out in Article 204 of the Civil Code should be clarified, as the application of this norm in practice is difficult due to the uncertainty of the scope of persons whose property can be confiscated, the ambiguity of the procedural form and type of jurisdiction.

Approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated March 22, 1993 No 151, adopted the Regulation "On the procedure for accounting, valuation and sale of confiscated, ownerless property, property and treasures transferred to the state under the right of inheritance". This Regulation stipulates that property confiscated on the basis of judgments, rulings and decisions of courts or decisions of other state bodies authorized by the current legislation shall be stored in special warehouses (bases) designated by regional and Tashkent city khokimiyats of the Council of Ministers of the Republic of Karakalpakstan.

However, this Regulation does not take into account the procedure of confiscation, procedures for the application of confiscation and other legal processes and circumstances.

According to the first part of Article 27 of the Code of Administrative Responsibility of the Republic of Uzbekistan, confiscation of an object or a direct object of an administrative offense is a compulsory transfer of the object to state ownership free of charge, which is applied by the district (city) administrative court. Items that do not belong to the offender's personal property may not be confiscated, except for items that have been withdrawn from circulation.

The confiscation provided for in the Code of Administrative Offenses is directed directly at "the object of the offense or the direct object of the offense" and strictly establishes the rule that the offender's personal property shall not be confiscated. It follows that in the case of an administrative offense, the confiscation is applied by the administrative court, and in its application the provisions of Article 27 of the CAO are sufficient.

If we pay attention to the state of expression of confiscation in the legislation, we can see that the legislation of foreign countries has more specific rules. For example, according to Article 354 of the Civil Code of Ukraine, entitled "Confiscation", in cases provided by law, the revocation (confiscation) of property rights may be applied as a sanction for a court decision for an offense against a person. The confiscated property is transferred to the state revenue without payment. The amount and procedure for confiscation of property shall be determined by law.

According to Article 244 of the Civil Code of Belarus, in cases provided by law, property can be confiscated without payment by the owner in the form of a sanction for a crime or other offense. Administrative confiscation of property is allowed in accordance with the conditions and procedures provided by law. The decision on administrative confiscation may be appealed in court.

It is obvious that the nature of the confiscation, the purpose of the unpaid seizure of property acquired as a result of the crime and the rules of transfer to the state

revenue, the rules of administrative confiscation can be considered as different from the norms established by the CC of Uzbekistan. Therefore, confiscation can be interpreted in civil law as the basis for the revocation of property rights in respect of property acquired as a result of a crime and offense committed by the offender and the offender, and it can be recognized as a civil law tool in the fight against corruption offenses.

Based on the above analysis, improve the provisions of Article 197 of the Civil Code "Grounds for revocation of property rights" and include a strict list of grounds for revocation of property rights, including Article 235 of the Criminal Code of the Russian Federation, Article 346 of the Criminal Code of Ukraine, Article 236 of the Criminal Code of Belarus , It is expedient to use the list of grounds for revocation of property rights established by Article 249 of the Civil Code of Kazakhstan, to determine the procedure for confiscation of property acquired as a result of a corruption offense. In our opinion, Article 197 of the Civil Code should be amended as follows:
Property rights are terminated by the owner's renunciation of his property in favor of another person, the owner's renunciation of property rights, the destruction or destruction of property, and in other cases provided by law, the loss of property rights to property.

Compulsory seizure of property from the owner on the grounds provided by law is not allowed, except in the following cases:

1) collection of property on obligations;
2) confiscation of property that may not belong to this person by law;
3) seizure of real estate in connection with the seizure of land due to improper use;
4) confiscation of cultural property, pets kept without ownership;
5) requisition;
6) confiscation;
7) transfer of money, valuables, other property and income to the income of the Republic of Uzbekistan by a court decision in accordance with the anti-corruption legislation of the Republic of Uzbekistan, unless information confirming the legality of their acquisition is provided;
8) transfer of money, valuables, other property and income to the income of the Republic of Uzbekistan by a court decision in accordance with the legislation of the Republic of Uzbekistan on combating terrorism, unless information confirming the legality of their acquisition is provided.

At the request of the owner, the property of citizens and legal entities may be transferred in the manner prescribed by the law on privatization of state-owned property.

Transfer of property owned by citizens and legal entities to state property shall be carried out after compensation of property fees and other damages in accordance with the procedure provided for by this Code.

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