Busol Olena,
Head of the Department of Special-Legal Disciplines of the Scientific-Training Humanitarian Institute of the Taurida National V. I. Vernadsky University, Doctor of Juridical Science, Senior Research Fellow

PROBLEM OF CRIMINALIZATION OF TRANSNATIONAL CORRUPTION AS A CRIME AGAINST HUMANITY

With the continuous processes of globalization, participation in corrupt acts of legal entities, in particular in international commercial transactions, has become a sort of a trend nowadays.

Transnational corporations influence the internal policies of states, incite artificial interethnic, inter-religious and border conflicts and state coups in a corrupt way. The activities of transnational corporations as part of criminal groups lead to economic destabilization of certain regions of the developing countries and even to the «capture» of states.

It should be noted that the well-being of a particular state does not depend so much on economic processes within the state as on the world financial processes. Transnational corruption represents a danger to the entire international community and therefore it requires the establishment of a criminal liability for such a crime, in particular at the national level.

Here the certain correlation with the international law can be traced. The composition of the crime in international criminal law does not go against the generally accepted definitions of the crime in the domestic theory of criminal law [1].

There are already glimpses of hope in the world in counteracting corrupt crimes committed by multinational corporations. As an example, one can recall here the UK Bribery Act of 2011, as well as the Foreign Corrupt Practices Act of the USA of 1977.

The International Criminal Court has exclusive jurisdiction over individuals [2] and therefore the direct possibility of bringing transnational companies to liability through this institution is excluded. The prosecution is carried out only for the most serious crimes, namely, genocide, crimes against humanity, war crimes and aggression.

This, however, does not exclude the possibility that individual shareholders or responsible managers of the corporation may be prosecuted as well. The criminal liability of legal entities in international law for crimes against humanity derives from the contractual law and general principles of criminal law, which has taken its place in the documents of the International Criminal Tribunal and includes the criminal liability of the chairman and other members of the legal entity, as well as a legal entity in the form of monetary sanctions and it provides for compensation or refund of damages to the injured party.

It is very complicated to apply criminal-law measures against legal entities under the criminal law of Ukraine, despite the detailed regulation of this institution in the norms of Section XV-1 of the General Part of the Criminal Code of Ukraine [3, 4]. Therefore, it is necessary to secure, at the level of an international agreement between developed countries, the recognition of a criminal offense for the companies and their subsidiaries who commit acts of corruption abroad. The category of special constituents of transnational corruption should include such crimes as an act against humanity. To criminalize transnational corruption, there is a lack of appropriate action at the international level, primarily because of the reluctance of world elites [5]. Corporations can legally be held criminally liable for their role (with applied corruption practices) in bringing up the population to starvation, illness and failure to provide proper medical care that results in death. Thus, corruption, according to international law, can take the form of a crime against humanity committed by non-state performers. This possibility greatly extends the jurisdiction of national courts and gives a legitimate right to consider such cases in the International Criminal Court.

Список використаних джерел

1. Гравина А. А.Транснаціональна корупція як склад міжнародного злочину [Електронний ресурс] / А. А. Гравіна. – Режим доступу: https://cyberleninka.ru/article/v/transnatsionalnaya-korruptsiya-kak-sostav-mezhdunarodnogo-prestupleniya.

2. Римский статут международного уголовного суда: междунар.документ от 17 июля 1998 года [Электронный ресурс]. – Режим доступа: http://zakon2.rada.gov.ua/laws/show/995_588.

3. Загіней З.А. Особливості застосування заходів кримінально-правового характеру щодо юридичних осіб за КК України [Електронний ресурс] / З.А. Загіней. – Режим доступу: http://ivpz.org/images/pdf/zbirnik_konf_2017.pdf.

4. Кримінальний кодекс України : Закон України від 05 квітня 2001 р. № 2341-III // Відомості Верховної Ради України. – 2001. – № 25–26. – Ст. 131.

5. Bantekas Ilias. Corruption as an International Crime and Crime against Humanity / Ilias Bantekas // Journal of International Criminal Justice. – 2006. – 1 of 19. – Mode of access: https://static1.squarespace.com/static/5728c7b18259b5e0087689a6/t/57b0f469414fb58fb6c6aa8a/1471214698155/corruption+article+JICJUS.pdf. – Title from the screen.