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International legal framework of fight against corruption

Abstract: The article is devoted to the analysis of international legal documents on fight against corruption at the global and regional levels. The role of international law enforcement cooperation and the efforts of individual international organizations are highlighted.

Keywords: corruption; corruption crime; organized crime; fighting corruption; international legal instruments.

More than 6 billion people live today in countries with serious problems in the field of corruption [23, p. 1]. In the foreword to the United Nations Convention against Corruption adopted by the General Assembly resolution of October 31, 2003, Kofi Annan, then Secretary General of the United Nations, wrote: "Corruption is a terrible plague that strikes society in a variety of ways, undermining the foundations of democracy and the rule of law. It leads to the violation of human rights, impedes the work of markets, worsens the quality of life and creates conditions for the prosperity of organized crime, terrorism and other phenomena that threaten human security in all countries - large and small, rich and poor - but has the most devastating effect in developing countries. Corruption inflicts disproportionate damage to the poor, as it diverts funds for development,

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deprives the government of the ability to provide basic services, it is the nutrient soil for inequality and injustice and hinders the flow of foreign investment and assistance. Corruption is one of the main causes of low economic indicators, as well as one of the main overt impediments to poverty alleviation and development" [2; 9, p. 120].

Indeed, corruption is a very big problem. However, there is also "the reverse side of the coin". If the state has certain levers, then practically it can use any problem in its own interests [8, p.11]. The problem of corruption is no exception. In this case, the levers are international and national anti-corruption legislation and ratings issued by international rating agencies and various non-governmental organizations such as "Transparency International" [23, p.1].

International legal acts on fighting corruption can be classified according to their areas of activity and legal significance to the following groups:

- universal international legal acts of a legally binding nature (the UN Convention against Corruption) and universal international acts of "soft law" (resolutions, declarations, recommendations, codes of conduct for UN officials and other international organizations);

- regional international legal acts of a legally binding nature (regional anti-corruption conventions) and regional international acts of "soft law" (resolutions, recommendations, declarations and codes of conduct) [3, p. 34, 35, 36].

According to the literature, historically the process of developing the international legal framework for fighting and combating corruption consists of 4 stages:

- 1/ The 1950-60 period, when international organizations first began to pay attention to the frequent facts of bribery of state officials in international commercial and financial transactions. Since that time, the United States, many European countries (Great Britain, Belgium, Germany, Scandinavian countries,



France, Portugal and others), Singapore, Thailand and Japan have made the fight against corruption a priority in their state policy.

2 / In the 70s of the last century, the United Nations is trying to develop a legal definition of corruption and the preparation of international agreements to combat it. On December 17, 1979, the resolution of the UN General Assembly adopted the "Code of Conduct for Law Enforcement Officials". Ten years later, the UN Economic and Social Council resolution of May 24, 1989 approved the "Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials". Although a comprehensive anti-corruption convention cannot be created, but during this period, it is for the first time that Member States of the United Nations are proposed to make corrupt acts punishable [1, p.1].

3 / The period of 1980-1990, when the UN General Assembly adopts the Declaration on Combating Corruption and Bribery in International Commercial Transactions of 16 December 1996 and the International Code of Conduct for Public Officials of 12 December 1996.

4 / Since the beginning of the XXI century, when in 2003 the first universal UN Convention against Corruption was adopted, which crowns the previous law-making work. To date, 160 countries, including Azerbaijan, have become parties to this Convention. Taking into account the total number of UN member states (193), it can be said about the very high degree of universality of this document, which does not happen often the UN practice.

It can be stated that the UN Convention is the most comprehensive international document in the field of combating corruption. Countries that have signed and ratified this convention are obliged to provide for criminal liability for all crimes recognized in accordance with this Convention in their domestic legislation. This international legal document contains many items that can be interpreted in two ways, but serious results have been achieved. First, the main result that can be recognized is that all parties to the convention are obliged to



adopt national anti-corruption legislation that corresponds to this convention. And secondly, despite the protection of the sovereignty of states, under certain conditions it implies the operation of the anti-corruption legislation of one state in the territory of another. As indicated above, at the moment the United States is the most active in the possibilities of this convention through its national legislation. The mechanisms contained in it allow the US to obtain additional levers of influence on foreign individuals and legal entities, on the investment climate of other states, on their foreign and domestic policies through the application of this law to their officials [1; 12, p.102; 16].

The UN Convention against Corruption of October 31, 2003, is the first legally binding anti-corruption agreement used at the world level. States have committed themselves to implementing effective anti-corruption measures that affect law-making and law enforcement. These measures contribute to the improvement of prevention and criminalization, international cooperation, law enforcement, property restitution, technical assistance and information exchange.

The United Nations Convention against Corruption contains a list of criminalized acts of corruption, which includes (chapter 3): bribery of national public officials; bribery of foreign public officials and officials of public international organizations; theft, misappropriation or other misuse of property by a public official; abuse of influence for mercenary purposes; abuse of power; illegal enrichment; bribery in the private sector; theft of property in the private sector; money laundering, concealment of proceeds from crime; obstruction of the administration of justice.

Other international legal instruments relating to corruption include the Convention on the Suppression of Bribery of Bribes to Foreign Public Officials in the Conduct of International Business Transactions, adopted on November 21, 1997, by the Organization for Economic Cooperation and Development (OECD); General recommendations on measures to combat corruption and ensure integrity



of judicial and security officials, adopted on February 24-26, 1999 at the Global Forum on Fighting Corruption in Washington, USA; Code of Good Practices for the Transparency of Monetary and Financial Policies: the Declaration of Principles, adopted by the Interim Committee of the International Monetary Fund (IMF) on 26 September 1999 and others [18, p.1].

Thus, corruption as an international crime is subject to the regulatory impact of international criminal law as a separate, independent type of international crime. In this regard, the generally accepted doctrinal definition of a crime of an international character as an act provided for by international treaties, not related to crimes against humanity, peace and security, but encroaching on normal relations between states, damaging peaceful cooperation in various areas of relations, applies to corruption [18, p.88; 26, p.234; 27, p.15]. Today international cooperation in the fight against corruption seems to be the most relevant direction of counteraction to this phenomenon. This situation exists because corruption has now become an international phenomenon and transnational in nature, although the methods of fighting it continue to remain predominantly national. According to the UN Charter (1945) and the international legal instruments adopted by it, all states should support and develop cooperation with each other in accordance with the purposes and principles of the UN Charter, other international legal instruments and UN commitments, including in the field of struggle against corruption [25, p.1].

The regional level is represented by documents of regional international organizations, such as the Council of Europe, the European Union, the Organization of American States (OAS), the CIS, the Shanghai Cooperation Organization, etc. Anti-corruption initiatives within the CIS and European organizations are of the greatest importance for the Republic of Azerbaijan. Among the anti-corruption instruments of the European Union (EU) is the 1995 Convention on the Protection of the Financial Interests of the European



Community. The Convention and the Protocols annexed to it determined the Community's understanding of the concepts of fraud, corruption and money-laundering. Corruption is understood as bribery in the Convention. Among the measures taken by the EU to strengthen its anti-corruption policy, we also note the adoption of the Convention on the Fight against Corruption among the functionaries of the European Community and the functionaries of the EU member states. This Convention was signed in 1997 within the framework of intergovernmental cooperation on the basis of the Maastricht Agreements [10, p.1].

Another important component of cooperation on the European continent is participation in the activities of the Council of Europe (CE) and related institutions. The fight against crime and, in particular, corruption is one of the main activities of the Council of Europe. At the 19th Conference of European Ministers of Justice (La Valletta, Malta, 1994), it was noted that corruption was a threat to democracy and human rights. The Council of Europe called on Member States to respond adequately to this threat. In the light of these recommendations, the Council of Ministers of the Council of Europe created the Interdisciplinary Group on Corruption (IGC), which was tasked with examining appropriate measures that could be included in the international program of action against corruption in September 1994. The results of the work of the group formed the basis for the Program of Action against Corruption, approved by the Committee of Ministers in 1996. On 6 November 1997, at its 101st session, the Committee of Ministers adopted Resolution (97) 24 on guidelines for combating corruption, finalizing the development of international legal instruments in pursuance of the Program of Action against Corruption. In the same Resolution, 20 principles of fighting corruption in the pan-European space are named. Like any set of principles, the mentioned provisions only determine the starting points that should guide the member states in building their anti-corruption policy. On their basis, two significant international legal documents were drawn up, which laid the foundation



for a pan-European anti-corruption policy. It is, first of all, the CE Convention on Criminal Responsibility for Corruption, which was adopted on January 27, 1999 in Strasbourg and has already been signed by the overwhelming majority of member countries of the organization. Azerbaijan joined and ratified this Convention in 2003, and in 2012 the RA Prosecutor General signed the Additional Protocol to it. Secondly, the Council of Europe Convention on Civil Liability for Corruption, adopted on September 9, 1999. This document provides for civil-law measures to compensate for damage caused by acts of corruption. Azerbaijan joined and signed the same Convention [14, p.10, 15, 17]. Invited European countries, not yet part of the Council of Europe, and non-European states (the United States, Canada, Japan and other countries took part in their development) can be participants in both conventions.

In order to combat these violations in the most effective way, the parties to the Convention are obliged to make appropriate changes to the domestic law regulating complicity in corruption, criminal jurisdiction in such cases: liability of legal entities, sanctions and other measures of influence; protection of persons and witnesses who cooperate with justice; measures to facilitate the collection of evidence and confiscation of proceeds; specialization of bodies and officials in the fight against corruption; ensuring the cooperation of law enforcement bodies within the country.

The preamble to the Criminal Law Convention on Corruption emphasizes the need to prioritize general criminal policies aimed at protecting society from corruption, including the adoption of appropriate legislation and preventive measures. It also speaks of the threat posed by corruption for the rule of law, democracy, human rights, social justice, economic development, moral standards. The purpose of the Convention is to expand, intensify and ensure properly functioning international cooperation in the criminal law of the countries parties to the Convention, with a view to prevent threats to the rule of law, democracy and



human rights, effective public administration, the principles of equality and social justice, competition, economic development and the threat to the stability of democratic institutions and the moral foundations of society. In section II, "Measures that need to be adopted at the national level," 13 types of corruption crimes were identified: active bribery of national government officials (art. 2), passive bribery of national government officials (art. 3), bribery of members of national state assemblies (art. 4), bribery of foreign state officials and members of foreign state assemblies (art. 5, art 6), active and passive bribery in the private sector (art. 7, art. 8), bribery of officials of international organizations (art. 9), bribery of members of international parliamentary assemblies (art. 10), bribery of judges and officials of international courts (art. 11). Separate articles provide for *corpus delicti* - use of office for mercenary purposes (art. 12), laundering of proceeds from corruption crimes (art. 13) and crimes related to transactions with accounts (art. 14). However, the Convention does not exclude the state party from exercising any criminal jurisdiction in accordance with its national law with respect to other corruptional offenses [11; 14, p.1].

The analysis of the criminal law norms established by the Convention (Articles 2-11) indicates that the Convention expands the range of subjects of corruption crimes. Article 27 of the Convention establishes the procedure for the extradition of persons who have committed corruption crimes, qualified as such in accordance with this Convention.

In this connection, it is necessary to note the importance of this Convention, since after its signing by the states, the perpetrators of corruption crimes can no longer use the territory of these countries in order to avoid criminal prosecution (as was the case in the absence of a bilateral agreement on extradition between specific countries) [22, p.185]. The International Organization for Combating Corruption, the Group of States Against Corruption (GRECO), is responsible for monitoring the implementation of the provisions of the Criminal Law Convention.



However, it should be noted that the fight against corruption, which is mainly carried out by measures of a criminal-legal nature, is not effective. On the contrary, it can become dangerous for society and states, since it will not completely eliminate the corruption of the state apparatus, but will only raise the rates for corruption actions on the part of officials. This also does not solve the problem of professional and moral training of civil servants, as well as the development of methods for minimizing the corruption behaviour of government officials.

The first attempt to define general international standards in the field of civil law and corruption is the Convention on Civil Liability for Corruption. Article 2 characterizes corruption as a demand, offering, giving or accepting, directly or indirectly, a bribe or other undue advantage that distorts the proper performance of duties by the recipient of a bribe or undue advantage [14; 22, p.80;]. The aim of the Convention is to create effective remedies for persons who have suffered damage as a result of acts of corruption, allowing them to protect their rights and interests, including the possibility of obtaining compensation for damage.

The Convention is divided into three chapters that cover: measures taken at the national level, international cooperation and monitoring of implementation, and final provisions. When ratifying the Convention, States commit themselves to incorporating its principles and norms into their domestic legislation, taking into account their own specific circumstances.

The Convention addresses the following issues:

- responsibility (including state responsibility for acts of corruption committed by public officials);
- carelessness of the victim: reduction of compensation or refusal in it, depending on the circumstances;
- legal force of transactions;
- protection of officials reporting corruption;
- clarity and accuracy of reports and audits;



- receipt of evidence;

-training of courts on preserving the property necessary for the implementation of the final order and maintaining the status quo until the issues under consideration are resolved;

-the international cooperation.

The GRECO Group will monitor the implementation of commitments undertaken by participating States by acceding to the Convention. This Convention is open to the member states of the Council of Europe, the non-member states that participated in its preparation (Belarus, Bosnia and Herzegovina, Canada, Vatican, Japan, Mexico and the United States of America), as well as for the EU. States that are not yet members of GRECO, upon ratification of the Convention, automatically become members of GRECO as of the date of entry into force of the Convention [10, p.1].

Thus, the Council of Europe creates a model for harmonizing legal norms aimed both at transnational and intra-state corruption, primarily with a view to creating favourable conditions for providing more effective legal mutual assistance in the geographical limits that it achieves [21, p. 85].

Considering the measures taken by the CoE to combat corruption, it is worth mentioning the Model Code of Conduct for Civil Servants adopted by the CoE Committee of Ministers on May 11, 2000. It defines the ethical conditions in which a public service is to be carried out, establishes ethical standards for public officials persons and standards of informing the public about their behaviour.

The CIS countries also unite in the fight against corruption, taking into account the common historical past and the political and legal understanding of the problem. On December 8, 1998, at the 12th plenary meeting of the Inter-parliamentary Assembly of the CIS (IPA), a model law on "Countering the Legalization (Laundering) of Proceeds Obtained Illegally" was adopted, and on November 25, 1998, an Agreement on Cooperation of the CIS Member States in



the Fight with crime was signed in Moscow. In the following years IPA adopted two more model laws:

- "On Combating Corruption" (XIII plenary session of the IPA CIS, April 3, 1999).

- "On the fundamentals of legislation on anti-corruption policy" (XXII plenary session of the IPA CIS, November 15, 2003) [19, 20, p.15].

The Resolution of the Inter-parliamentary Assembly of the CIS Member States No. 38-17 "On Recommendations for the Improvement of Legislation of the CIS Member States in the Sphere of Counteracting Corruption" was adopted on November 23, 2012. Each participating state develops and implements anti-corruption policies that promote the proper management of public affairs, integrity, transparency and accountability.

In these documents, the CIS member states express their concern over the scale and trends in the development of crime, especially in its organized forms, and proceed from the need to ensure proper state management, the establishment of democratic principles, publicity and control, and the strengthening of citizens' trust in power. The Model Law "On the Fundamentals of Legislation on Anti-Corruption Policy" establishes the principle of disinterested and responsible service for persons with public status, citizens, people and the state, with the realization that corruption poses a serious threat to national security, the functioning of public authority on the basis of law and right, the rule of law, democracy and human rights, equality and social justice, hampers economic development and threatens the foundations of a market economy. The authorities' striving for self-restraint, creation of stable legal bases for preventing corruption and improving national legislation, taking into account the norms of international law on combating corruption, are confirmed. In our opinion, a clear example of this is the development of the very notion of corruption is given in the first chapters of the model laws of 1999 and 2003 "General Provisions". If in the model



law of 1999, corruption is defined as "the taking personally or through intermediaries of property benefits and benefits by state officials and persons equated to them, using their official powers and related opportunities, as well as bribing those persons..." in the model law of 2003 it is characterized as "bribery, any illegal use by a person of its public status associated with obtaining benefits (property, services or benefits and / or benefits, including non-property nature) both for themselves and for their loved ones in spite of the legitimate interests of society and the state...". Unfortunately, some conceptual moments, as well as other important in our opinion, provisions from these model laws were not taken into account in the adoption of the 2004 AR Law on Combating Corruption [6, p.1].

For Azerbaijan, participation in international efforts to combat corruption is of great importance both in the light of the task of integration into the world community of civilized states, and in order to effectively confront corruption at the national level. Despite all the differences between the interests of Azerbaijan and many leading industrial countries of the West, in particular the United States, which are the engine of international anti-corruption initiatives, international cooperation in this field is mutually beneficial and necessary. The interest in effective counteraction to corruption is due to the common interests of Azerbaijan and the international community, in particular in matters of investment, economic development, mutual trade [15, p.10]. The fight against corruption, including at the international level, meets the requirements of the Constitution of Azerbaijan, which defines Azerbaijan as a legal democratic state, guaranteeing its citizens their rights and freedoms [17, p.1].

The most important prerequisite for the success of international cooperation in the fight against corruption is the cooperation of law enforcement agencies in the procedural and criminal areas. Objective prerequisites for development are created thanks to the activities of Interpol and Europol, the existence of numerous bilateral and multilateral agreements on cooperation between law enforcement agencies of



various states. The prerequisite for successful international cooperation in the fight against corruption is its scientific validity. This is impossible without combining the efforts of specialists, primarily lawyers and criminologists, in developing problems of combating corruption by national and international means. The interest of the scientific community to the problem of corruption is now greater than ever. International conferences and forums dedicated to the problems of corruption are held almost monthly in various regions of the world. At the international level, the United Nations Research Institute for Crime and Justice (UNICRI) is the leading organization coordinating scientific activities on combating crime and corruption. Non-governmental organizations, in particular Transparency International, have a significant role in international scientific cooperation in this field.

In recent years, the World Bank (WB) has played an active role in the fight against corruption. If until the mid-nineties the World Bank was unable to provide assistance in the fight against corruption, since it was considered a purely domestic problem, in recent years the situation has changed. In 2001, the WB created the Department for Combating Corruption, Fraud and Corporate Infringements as an independent investigative unit. This department conducts investigations on allegations of fraud and corruption in Bank-financed projects, as well as on allegations of violations committed by the staff of the institution and submits its findings to the Bank's management, and if necessary, the Department also reports the results of its investigations to the authorities of the Member State concerned, in those cases when in the course of the investigation facts are discovered that may indicate that the laws of the state were violated. In March 2007, the WB Board of Directors approved the Strategy on Improving Public Administration and Fighting Corruption. It calls for action in four key areas:

- support for good governance and anti-corruption at the country level,
- prevention of corruption in projects financed by the Bank,



- strengthening the role of the private sector in improving governance and combating corruption in the public sector,
- supporting global efforts to reduce corruption levels.

Globally, the Bank is the leading donor supporting the improvement of public sector management. In fiscal year 2008, the Bank allocated \$ 4.7 billion to support the improvement of public administration, including \$ 4.4 billion to improve public sector management, and \$ 304 million to strengthen the rule of law. This amounted to 19 percent of the total amount of credit resources provided by the Bank [24, p.1]. Thus, the World Bank, paying considerable attention to the problem of corruption and based on its own research, stated the need to treat corruption as "a symptom of the fundamental problems of the state", and not as the main or only factor determining "disease of society". In addition, by creating a global database of the world's existing governance models, the World Bank has systematized the scale of corruption and the ways in which it contributes to poverty, inequality and low levels of economic development, and has therefore developed a program of key reforms needed to improve public administration and fighting corruption.

As D. Kaufman points out, "it is obvious that, from the point of view of development, the fight against corruption and good governance bring an enormous dividend, capable of reaching about 400%: countries that achieve even modest success in controlling corruption in the long term can count four times a greater increase in per capita income and similar progress in reducing the level of child mortality and illiteracy [4, p.1].

Collective responsibility implies the cooperation of transnational corporations, the domestic private sector and international organizations with national governments and leaders interested in improving public administration. At one time, UN Secretary-General Kofi Annan argued that "skilful leadership is perhaps the single most important factor in eradicating poverty and promoting



development", and hence countering corruption [5, p.1]. Despite the fact that in recent years significant steps have been taken at various levels in uniting states into a single anti-corruption front, international cooperation in this field as a whole is on the formation stage. Today the question of developing a single international anti-corruption policy, which includes not only international legal mechanisms, but also a wide range of measures aimed at preventing corruption's manifestations, is on the agenda.

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