

Case No. 991/2657/23

Proceedings 1-kp/991/43/23

SENTENCE

IN THE NAME OF UKRAINE

March 28, 2023, Kyiv

The High Anti-Corruption Court is a collegium consisting of:

chaired by V.V. Maslova,

judges - I.L. Strogo, L.M. Fedorak,

participants in criminal proceedings:

secretary of the court session - O.S. Pavlenko,

prosecutor - O.A. Ivanyushchenko,

the accused is Kicha A.V.,

defenders - E.A. Shtokalov, Y.M. Bilyavskiy, N.S. Kulchytskyi,

Lysak O.M., Terefenko O.R.,

having examined in a closed court session in the courtroom criminal proceedings No. 5202000000000362 on the charge of: Kichi Andrii Volodymyrovych, born on August 30, 1980, native of the village of Ozarychi, Konotop district, Sumy region, which is registered at the address: Kyiv, ave. Hryhorenko, building 26-A, sq. 246, and actually lives at the address: Kyiv, st. Truskavetska, building 6-B, sq. 1602, works as a lawyer, married, conscripted, in the commission of a criminal offense provided for in Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code,

#### INSTALLATION:

The wording of the indictment and the part of the article of the Law of Ukraine on criminal responsibility, which provides for a criminal offense of which a person is accused As of 01.06.2020 and thereafter by detectives of the National Bureau of Ukraine (hereinafter - NABU) under the procedural guidance of prosecutors of the Specialized Anti-Corruption Prosecutor's Office of the Prosecutor General's Office (hereinafter - SAP) a pre-trial investigation was carried out in criminal proceedings No. 42014000000001590, within which Person 1 was notified in 2019 of suspicion of committing the crimes provided for in Part 4 of Art. 28, Part 3 of Art. 209; Part 4 of Art. 28, Part 5 of Art. 191 of the Criminal Code. Thus, at a time and place not determined by the pre-trial investigation, but no later than 12.06.2020, Kicha A.V., acting deliberately in the interests of Person 1, entered into a conspiracy with Person 2 and Person 3 with the aim of ensuring the granting of an unlawful benefit in a particularly large amount to officials to persons of law enforcement agencies for making procedural decisions in criminal proceedings No. 42014000000001590 in favor of Person 1, thereby agreeing to commit a serious corruption crime by a group of persons.

Person 2 for the purpose of implementing a joint agreement with Person 3 and Kich A.V. criminal intent, and also realizing that he would not be able to bring it to its logical conclusion on his own, starting on June 1, 2020, he offered R.B. Kharchenko (Y.S. Shevchenko) to submit a proposal to change jurisdiction or close

criminal proceedings No. 4201400000001590 to officials of the SAP and NABU. Understanding the illegality of Person 2's actions, Kharchenko R.B. On 03.06.2020, he applied to the law enforcement agencies with a corresponding statement. In the period from 01.06.2020 to 11.06.2020, during telephone conversations and personal meetings, which took place in the premises of the Department of Internal Affairs of the State Police in Kyiv on the street Sholudenka, 33/19, Person 2 agreed with R.B. Kharchenko. The final amount of unlawful benefit, which will be provided for the closure of criminal proceedings No. 4201400000001590 in the part concerning Person 1, namely 5,000,000 US dollars, and also agreed with R.B. Kharchenko. All organizational issues regarding the transfer of illegal benefits and the closing of criminal proceedings against Person 1, including the fact that such a decision will be made by the Deputy Prosecutor General - the head of the SAP Kholodnytskyi N.I.

12.06.2020 Kicha A.V. learned from Person 3 about the need for his personal participation in the meeting with R.B. Kharchenko, which will take place in the office of Person 2, with the aim of ensuring the implementation of a joint criminal intent and personal control over the legal correctness of the closing of the criminal proceedings against Person 1 and ensuring the actual transfer of illegal benefits, that is, funds in the amount of 5,000,000 US dollars.

On June 12, 2020, A.V. Kicha, implementing a joint criminal intent, together with Person 2 and Person 3 met with R.B. Kharchenko. In the building of GU DPS in the city of Kyiv on the street Sholudenka, 33/19, Kyiv, namely: in the office of Person 1, after which he received from R.B. Kharchenko. resolution of the Deputy Prosecutor General - head of the SAP Kholodnytskyi N.I. dated 12.06.2020 on the closure of criminal proceedings No. 4201400000001590 on the suspicion of Person 1 in the commission of crimes provided for in Part 4 of Art. 28, Part 3 of Art. 209; Part 4 of Art. 28, Part 5 of Art. 191 of the Criminal Code. So, at least from this moment Kich A.V. was aware that the decision to close the criminal proceedings would be made by the Deputy Prosecutor General - the head of the SAP Kholodnytskyi N.I. After getting acquainted with the text of the specified resolution, A.V. Kich, continuing the implementation of the joint criminal intent, with advice and instructions, contributing to the commission of a criminal offense by other accomplices, reported that he had comments on the legal grounds for closing the proceedings set out in the resolution (clause 3, part 1, article 284 of the Criminal Procedure Code instead of clause 2, part 1 of Article 284 of the Criminal Code of the Criminal Code) and that consideration of his comments is a condition for handing over R.B. Kharchenko illegitimate benefit for Kholodnytskyi N.I.

In addition, Kicha A.V. provided specific proposals for correcting the wording of the specified resolution, and also offered to independently ensure the production of the text of such a resolution or provide it in electronic form to R.B. Kharchenko. to ensure the signing of this text by N.I. Kholodnytskyi. At the same time, Kicha A.V. in his own hand, realizing the illegality of his actions, not having the authority to enter any data or corrections to the resolutions of the law enforcement body, made changes in the copy of the resolution on the closure of the criminal proceedings against Person 1 and demanded that they be made in the original document, defined this as a condition for the transfer of an unlawful

benefit , therefore, with his advice and instructions, he contributed to the commission of a criminal offense.

After presentation by R.B. Kharchenko on the same day Kichi A.V., Person 2 and Person 3 of the resolution of the Deputy Prosecutor General - head of the SAP Kholodnytskyi N.I., in which the mentioned remarks were taken into account, Kich A.V. and Person 3 agreed that she met their requirements, so Person 2, continuing the implementation of their joint criminal intent, took R.B. Kharchenko in the parking lot of GU DPS in Kyiv, where he provided an opportunity to transfer the funds that were intended for further transfer to N.I. Kholodnytskyi and, if necessary, to the Prosecutor General for failure to take measures to cancel the decision.

After that Person 2 with R.B. Kharchenko returned to the premises in the building of the State Police Department in Kyiv, where Kich A.V. continued to stay. with Person 3. At that time, A.V. Kicha, expressing his joint opinion with Person 3, began to insist on the fact that the previously stipulated between Person 2 and R.B. Kharchenko the amount of unlawful benefit can be provided only after the closure of criminal proceedings No. 4201400000001590 is reflected in the Unified Register of Pretrial Investigations on the basis of Clause 2, Part 1, Article 284 of the Criminal Procedure Code, however, later Kicha A.V. and Person 3 consented to the transfer of such unlawful benefit to R.B. Kharchenko for Kholodnytskyi N.I. without the fulfillment of this condition, namely with the reflection in EPDP as the basis of such closure, Clause 3, Part 1, Art. 284 of the CCP. After that, Person 2, being an official of a state body, authorized to perform the functions of the state, completing the implementation of their joint agreement with A.V. Kich and Person 3 of criminal intent, conducted by R.B. Kharchenko to the place of transfer of funds, transferred to him funds in the amount of 5,000,000 US dollars (which, according to the official exchange rate of the UAH in relation to foreign currencies of the National Bank of Ukraine on 06/12/2020, amounted to UAH 132,999,500), for transfer to N.I. Kholodnytskyi as an illegal benefit for taking the specified procedural decision to close the criminal proceedings and, if necessary, to the Prosecutor General, for not taking measures to cancel the decision, and also kept 1,000,000 US dollars for himself (which according to the official exchange rate of the UAH for foreign currencies of the National Bank of Ukraine as of June 12, 2020, amounted to UAH 26,599,900) from the total amount of funds that were provided to him to facilitate the rendering of the specified procedural decision.

On the basis of the above, Kich A.V. is charged with aiding and abetting the granting of an unlawful benefit to a person in a particularly responsible position, for having acted in the interests of a third party using the power granted to him, with a prior conspiracy by a group of persons, i.e. with the commission of a criminal offense, provided for in Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code.

Information about the concluded agreement, its details, content and the determined measure of punishment.

According to the materials of the criminal proceedings, on March 24, 2023, between the prosecutor of the fourth department of the management of procedural

management, maintenance of the state prosecution and representation in the court of the SAP Ivanyushchenko O.A., who on the basis of Art. 37 of the Criminal Procedure Code was determined by the prosecutor in this criminal proceeding and the accused A.V. Kicha, with the participation of the accused's defender - lawyer Ya.M. Bilyavskiy a plea deal was entered into.

The plea agreement defines the circumstances essential for the criminal proceedings, which are taken into account by the prosecutor when deciding on the conclusion of the agreement, namely:

1) the degree and nature of Kichi A.V.'s assistance in conducting criminal proceedings against him and other persons;

2) the undisputed recognition of A.V. Kichea of his guilt in the criminal offense charged against him;

3) the degree of severity of the crime incriminated against Kichi A.V., in particular, the appropriateness of the criminal offense (crime), according to Part 4 of Art. 12 of the Criminal Code to something that is not particularly serious;

4) absence of material damage caused as a result of committing the incriminated criminal offense;

5) there is a public interest in quick court proceedings, which will ensure full, timely and inevitable punishment of Kichi A.V. for committing a criminal offence;

6) presence of public interest in preventing repeated commission of criminal offenses both by the accused and by other persons. According to the plea agreement, the accused Kicha A.V. undertakes:

- part of the information that is subject to protection from disclosure (Part 2 of Article 2 of the Law of Ukraine "On Access to Court Decisions") is excluded, since the case was considered in a closed court session in order to preserve secrecy protected by law (Part 4 Part 2 Article 27 of the CPC);

- within 5 days after the approval of the plea agreement by the High Anti-Corruption Court, transfer (including ensuring the transfer by third parties) UAH 100,000,000 to a special account opened by the National Bank of Ukraine in support of the Armed Forces of Ukraine (UNITED24 "Army of Drones" project).

No material damage was caused by the incriminated criminal offenses and there are no grounds for civil liability, in this regard there are no grounds for exemption from civil liability.

According to the agreement, the mitigating circumstances of Kichi A.V.'s punishment are sincere remorse, proper procedural behavior, both during the pre-trial investigation and during the trial, the transfer of funds in the amount of UAH 31,360,050 to a special account of the Armed Forces of Ukraine that the accused is brought to criminal responsibility for the first time.

Taking into account the above circumstances, the parties reached an agreement on appointing the accused Kichi A.V. punishment under Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code in the form of imprisonment for a term of 5 years without confiscation of property with release from serving a sentence with probation in accordance with Art. 75 of the Criminal Code with a probationary period and imposing on the accused the duties provided for in Art. 76 of the Criminal Code.

The accused agreed to the imposition of the specified punishment.

Consequences of concluding and approving a plea agreement.

During the consideration of the criminal proceedings, based on the plea agreement and as a result of interviewing the parties to the criminal proceedings, the court found that the parties knew and understood that:

1) in accordance with Art. 473 of the Criminal Procedure Code, the consequence of concluding and approving this agreement for the prosecutor and the accused is the restriction of their right to appeal the verdict in accordance with the provisions of Part 4 of Article 394 and Part 3 of Art. 424 of the Criminal Procedure Code, and for the accused - also his refusal to exercise the rights provided for in paragraphs 1, 4 of clause 1 of part 4 of Article 474 of the CCP.

2) restrictions in accordance with Part 4 of Art. 394 of the Code of Criminal Procedure there is the right to appeal the verdict of the court of first instance on the basis of this agreement between the prosecutor and the accused on admission of guilt: the accused, his defense attorney exclusively on the grounds of: the imposition of a punishment by the court that is more severe than agreed upon by the parties to the agreement; passing a verdict without his consent to the imposition of punishment; non-fulfillment by the court of the requirements established by parts 5-7 of Art. 474 of the Criminal Code, including not explaining to him the consequences of concluding an agreement; by the prosecutor solely on the grounds of: the court assigning a punishment that is less severe than agreed upon by the parties to the agreement; approval of the agreement by the court in the proceedings in which, according to Part 4 of Art. 469 of the Code of Criminal Procedure the agreement cannot be concluded;

3) restrictions in accordance with Part 3 of Art. 424 of the Code of Criminal Procedure has the right to appeal in the cassation procedure the verdict of the court of first instance on the basis of an agreement after its revision in the appeal procedure, as well as the court decision of the court of appeal instance based on the results of the review of the appeal: by the convicted person, his defender, legal representative exclusively on the grounds of: the imposition of punishment by the court, stricter than agreed by the parties to the agreement; passing a verdict without his consent to the imposition of punishment; non-fulfillment by the court of the requirements established by parts 5-7 of Art. 474 of the Criminal Code, including not explaining to him the consequences of concluding an agreement; by the prosecutor exclusively on the grounds of: the court assigning a punishment less severe than agreed upon by the parties to the agreement; approval of the agreement by the court in the proceedings in which, according to Part 4 of Art. 469 of the Code of Criminal Procedure the agreement cannot be concluded;

4) the consequences of non-fulfillment of the agreement provided for in Art. 476 of the CCP. According to the agreement, the accused understands that intentional non-fulfillment of the agreement is the basis for his criminal liability under Art. 389-1 of the Criminal Code.

The accused reported that he knows and understands the consequences of concluding this agreement in the form of a refusal to exercise the rights provided for in Clause 1, Part 4 of Art. 474 of the Criminal Procedure Code and confirmed that he understands:

1) that he has the right to a trial, during which the prosecutor is obliged to prove every circumstance regarding the criminal offense of which he is accused, and he has the following rights: to remain silent, and the fact of silence will not have any evidentiary value for the court; to have a defense attorney, including to obtain legal aid free of charge in the manner and in the cases provided for by law, or to defend oneself; to interrogate the prosecution's witnesses during the trial, submit a motion to summon witnesses and submit evidence testifying in his favor;

2) the consequences of concluding and approving the agreement provided for in Art. 473 of the Code of Civil Procedure, and defined in the agreement;

3) the nature of the charge to which he pleads guilty;

4) the type of punishment, as well as other measures that will be applied to him in case of approval of the agreement by the court. Motives from which the court proceeded when deciding on the compliance of the agreement with the requirements of the Code of Criminal Procedure and the law and passing the sentence, and the provisions of the law that guided it.

When deciding the issue of approving a plea agreement, the court proceeds from this. According to Art. 468 of the Criminal Procedure Code in criminal proceedings, a plea agreement may be concluded between the prosecutor and the accused.

The court established that Kicha A.V. is accused of committing a criminal offense provided for in Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code, namely: aiding and abetting the granting of an unlawful benefit to a person in a particularly responsible position, for his actions in the interests of a third party using the power granted to him, following a prior collusion by a group of persons.

Accused Kicha A.V. at the court session, he unconditionally admitted his guilt, confirmed his consent to the imposition of the agreed punishment, as well as the fact that he fully understands his rights, which are provided for in Part 4 of Art. 474 of the Criminal Procedure Code, the consequences of the conclusion and approval of the agreement, the nature of the charge to which he pleaded guilty, the type of punishment that will be applied to him, if the agreement is approved.

The accused also explained that the conclusion of the agreement by the parties is voluntary, that is, it is not the result of the use of violence, coercion, threats or the result of promises or action of any circumstances other than those provided for in the agreement.

Defender Bilyavskiy Y.M. fully confirmed the circumstances indicated by his client. In accordance with Part 7 of Art. 474 of the Code of Civil Procedure, the court checks the agreement for compliance with the requirements of this Code and/or the law. The court refuses to approve the agreement if: 1) the terms of the agreement contradict the requirements of this Code and/or the law, including incorrect legal qualification of a criminal offense that is more serious than the one for which the possibility of concluding an agreement is provided;

2) the terms of the agreement do not correspond to the interests of society;

3) the terms of the agreement violate the rights, freedoms or interests of the parties or other persons; 4) there are reasonable grounds to believe that the conclusion of the agreement was not voluntary, or the parties did not reconcile;

5) obvious impossibility of the accused to fulfill the obligations assumed under the agreement;

6) there are no factual grounds for admitting guilt. According to Part 4 of Art. 469 of the Code of Criminal Procedure, a plea agreement between the prosecutor and the accused may be concluded in the proceedings, in particular, with regard to serious crimes, to which, according to Art. 12 of the Criminal Code includes the crime committed by the accused. There are no victims in the criminal proceedings. The court, reviewing the plea agreement for compliance with the law, found that the terms of the agreement did not conflict with the requirements of the Criminal Procedure Code and/or the law, based on this.

The punishment agreed upon by the parties in the agreement meets the requirements of Articles 63, 65, 66, 75, 76, 77 of the Criminal Code, given the following.

The Supreme Court in its ruling dated 04/19/2019 in case No. 443/1407/18 indicated that the general principles of sentencing give the court the right to choose the form of criminal liability. This function is discretionary by its legal nature, as it requires taking into account and evaluating the specific circumstances of the case, the degree of gravity of the crime committed, the identity of the culprit, and the circumstances affecting the punishment. According to Part 5 of Art. 65 of the Criminal Code, in the event that a plea agreement is approved by a verdict, the court shall impose a punishment agreed upon by the parties to the agreement.

In accordance with Clause 1, Part 1, Art. 66 of the Criminal Code when imposing a punishment, mitigating circumstances are recognized, including, sincere remorse or active assistance in the detection of criminal offenses. According to judicial practice, sincere remorse means that a person admits his guilt on all counts of the indictment brought against him, gives truthful testimony, sincerely regrets what he has done, negatively assesses the criminal offense, wants to correct the situation that has arisen, demonstrates readiness to suffer punishment.

Actions of the guilty person, aimed at providing assistance to the pre-trial investigation bodies and the court in establishing the truth in the case, in conducting a quick, complete and impartial investigation of the committed criminal offense and in the trial, are an active contribution to the disclosure of a criminal offense. This behavior may consist, in particular, in: reporting all episodes and circumstances of the commission of a criminal offense, exposing other accomplices; determining the role of each of them in committing a criminal offense;

messages about their location; assistance in their detention;

issuance of tools and means of committing a criminal offense, property obtained by criminal means.

The question of whether there was an active contribution to the detection of a criminal offense, and whether the remorse was sincere, is to be decided depending on the circumstances of the specific criminal proceedings.

Taking into account the above, evaluating the behavior and role of Kichi A.V. at the stage of the pre-trial investigation, as well as his position during the consideration of the plea agreement, the opinion of the prosecutor, who noted that

the confessions of the accused Kichi A.V. at the stage of court proceedings can significantly help to establish the circumstances of the commission of a criminal offense, the court comes to the conclusion that the behavior and attitude of Kichi A.V. to the criminal offense committed by him really indicate the presence of sincere remorse and active assistance in the detection of the criminal offense.

According to Art. 37 of the United Nations Convention against Corruption, each State Party shall consider providing for the possibility of mitigation, in appropriate cases, of the punishment of an accused person who substantially cooperates in an investigation or prosecution in connection with any a crime defined by this Convention.

Under such circumstances, the court recognizes that there are mitigating circumstances in this criminal proceeding.

Along with this, the list of circumstances that mitigate the punishment is given in Part 1 of Article 66 of the Criminal Code is not exhaustive and, taking into account the principle of humanism, serves only as a guideline for the court.

When imposing a punishment, the court may recognize that it is mitigated by other circumstances not specified in the first part of this article (Part 2 of Article 66 of the Criminal Code).

Thus, from the materials of the criminal proceedings, it was established that during the trial, the accused and his defenders initiated motions to change the preventive measure and transfer funds in the amount of UAH 31,360,050.00 to a special account of the Armed Forces of Ukraine, which were approved by the court.

Therefore, the court considers it possible to recognize the voluntary actions of the accused, aimed at helping the Armed Forces of Ukraine during the martial law in Ukraine, as a circumstance mitigating the punishment.

In addition, when imposing a punishment, the court also takes into account data regarding the identity of the accused, in particular, the fact that Kicha A.V. is being criminally prosecuted for the first time, has a higher legal education, is married, works as a lawyer, is appointed vice-president of the Hockey Federation of Ukraine, is an experienced hockey referee, has minor children to support, faithfully performed his procedural duties during the pre-trial investigation and court proceedings.

Taking into account the above, the punishment agreed upon by the parties in the agreement meets the requirements of Articles 63 and 65 of the Criminal Code.

Therefore, the court comes to the conclusion that it is necessary to assign to the accused A.V. Kichi, punishment for the commission of a criminal offense provided for in Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code, in the form of 5 years of imprisonment without confiscation of property.

Such a punishment, in the opinion of the court, will correspond to the degree of severity of the crime committed. Without applying confiscation of property to the accused as an additional punishment, the court takes into account that the parties stipulated the adoption of a decision on the release of the accused from serving a sentence with probation, and Art. 77 of the Criminal Code provides an exhaustive list of additional punishments that can be imposed in such a case, among which there is no confiscation of property.



In accordance with Part 1 of Art. 75 of the Criminal Code, if the court, except in cases of conviction for a corruption criminal offense, when imposing a sentence of imprisonment for a term of no more than five years, taking into account the gravity of the criminal offense, the identity of the culprit and other circumstances of the case, reaches a conclusion about the possibility of correction of the convicted person without serving punishment, he can make a decision on exemption from serving a probationary sentence. Part 2 of the same article establishes that the court makes a decision on exemption from serving a sentence with probation in the case of approval of a reconciliation agreement or an admission of guilt, if the parties to the agreement have agreed, in particular, on imprisonment for a term of no more than five years, and exemption from serving a probationary sentence was also agreed upon.

That is, exemption from serving a sentence with probation on the basis of Part 2 of Art. 75 of the Criminal Code meets the requirements of the Criminal Code, since, unlike the first part of this article, the legislator did not limit the right of the court to make a decision on exemption from serving a sentence with probation in the event of approval of a plea agreement for committing a corruption criminal offense, if the parties to the agreement agreed on a prison sentence freedom for a term of no more than five years, and exemption from serving a sentence with probation has also been agreed upon.

The general principles of sentencing, defined in Art. 65 of the Criminal Code, grant the court the right to choose one of the forms of implementation of criminal responsibility - to impose punishment or release from punishment or from serving it, the task of which is to correct the accused and prevent new criminal offenses. This function is discretionary by its legal nature, as it requires taking into account and assessing the specific circumstances of the case, the degree of gravity of the committed criminal offense, the identity of the culprit, and the circumstances affecting the punishment. The implementation of this function constitutes the law-enforcing intellectual and volitional activity of the court, within the framework of which a decision is made on the possibility of applying Art. 75 of the Criminal Code, according to the content of which the court can make a decision on release from serving a sentence with probation only if a punishment of a certain type and size is prescribed, the gravity of the criminal offense, the identity of the culprit and other circumstances of the case are taken into account, and all these data together lead to the conclusion about the possibility of correction of the convict without serving a sentence. This legal position is set out in the Supreme Court's decision dated 04/18/2019 in case No. 361/2382/2016-k.

Taking into account the above, taking into account the seriousness of the crime committed by A.V. Kicha. of a criminal offense, the identity of the culprit, the presence of several mitigating circumstances, namely: sincere remorse, active assistance in the detection of criminal offenses, transfer of funds in the amount of UAH 31,360,050 to a special account of the Armed Forces of Ukraine, the court comes to a conclusion on the possibility of Kichi's correction A.V. without serving a sentence and about the possibility of his release from serving a sentence with probation, according to Art. 75 of the Criminal Code with a probationary period of 1 year and imposing on the accused the duties provided for in Art. 76 of the

Criminal Code. Regarding the compliance of the terms of the agreement with the interests of society, the court considers it necessary to note the following.

The public interest in the criminal process is understood as a certain benefit both for society as a whole and for a specific person, in particular. Public interest is what prompts one to act in this way and not otherwise for the good of the whole society and for the good of an individual person, it is what is the driving force of the criminal process, determines its dynamics.

The prosecutor must take into account the nature and gravity of the charges in relation to the public interest in the criminal proceedings under investigation. The state, in the form of law enforcement agencies, is interested in exposing more criminal offenses, reducing the level of crime, in connection with which the prosecutor must always take into account the possibility of speeding up the pre-trial investigation and trial in the event that the accused admits his guilt. In the event that the guilty person has information about the commission of serious criminal offenses by other persons, the prosecutor should give priority to this circumstance, since the disclosure of a more serious offense is more important for the state than the conviction of a person for a less serious criminal offense.

Also, one of the signs of public interest is the accelerated consideration of criminal proceedings, reducing the burden on the court, prosecutors and lawyers, which in turn becomes an effective tool in the fight against corruption, as it ensures the inevitability of punishment for the accused and helps speed up the investigation of other episodes of criminal offenses.

Analyzing the above, the court believes that the conclusion of the agreement by the prosecutor is in the interests of society, because it will facilitate speedy court proceedings, stimulate other suspects or accused persons to enter into plea agreements in order to facilitate the conduct of criminal proceedings and obtain for themselves a lighter sentence or release from its occurrence, etc. Fulfillment of the terms of the agreement by the accused will provide an opportunity to expose a greater number of criminal offenses. In addition, it will ensure that the accused and other persons are brought to justice for the committed criminal offenses, will contribute to the correction of the accused and prevent the commission of new criminal offenses. This will influence other persons' awareness of the punishment of illegal acts, contribute to the formation of anti-corruption legal awareness in society and testify to the inevitability of punishment. This will also fully ensure the purpose of criminal proceedings provided for in Art. 2 of the Criminal Procedure Code, according to which the tasks of criminal proceedings are to protect the person, society and the state from criminal offenses, to protect the rights, freedoms and legitimate interests of the participants in criminal proceedings, as well as to ensure a quick, complete and impartial investigation and trial, so that everyone who committed a criminal offense, was prosecuted to the extent of his guilt, no innocent person was charged or convicted, no person was subjected to unjustified procedural coercion, and that due process of law was applied to each participant in the criminal proceedings.

In addition, according to the content of the agreement, the accused undertakes to transfer UAH 100,000,000 to a special account of the Armed Forces of Ukraine, which will contribute to repelling the armed aggression of the Russian

Federation against Ukraine during the period of martial law, which also largely indicates the compliance of the conditions agreements in the interests of society.

The court further notes that from the plea agreement examined at the court hearing and the explanations of the parties, it can be seen that the terms of the agreement do not violate the rights, freedoms or interests of the parties or other persons, in particular, and given that the circumstances of the indictment in accordance with Art. 17 of the Criminal Procedure Code cannot be used to prove the guilt of any person other than the accused in this proceeding.

Regarding the presumption of innocence of persons mentioned in this judgment in one way or another and who are not participants in this criminal proceeding, the court notes the following.

The European Court of Human Rights (hereinafter referred to as the ECtHR) in paragraph 90 of the decision in the case "Natsvlishvili and Togonidze v. Georgia" dated 04/29/2014 (application No. 9043/05) noted that there can be nothing improper in the very process of concluding agreements regarding indictments or measures of punishment... In this regard, the Court is of the opinion that plea agreements not only provide such significant advantages as speeding up criminal cases and reducing the burden on courts, prosecutors and lawyers, but can also, if properly applied, become a successful tool in the fight against corruption and organized crime and contribute to reducing the number of punishments imposed and, as a result, the number of prisoners.

In accordance with Part 1 of Art. 17 of the Code of Criminal Procedure, a person is considered innocent of committing a criminal offense and may not be subject to criminal punishment until his guilt is proven in accordance with the procedure provided for by this Code and established by a court verdict that has entered into force.

According to the practice of the ECtHR, the presumption of innocence is considered violated if the court decision reflects the opinion that a person is guilty of committing a crime before his guilt is proven in accordance with the law.

At the same time, even in the absence of official conclusions, some assumption that the court considers the person guilty is sufficient (decision of 23.03.1983 in the case of Minelli v. Switzerland, No. 8660/79, paragraph 37; decision of 18.12.2008 in the case of Nerattini v. Greece", No. 43529/07, paragraph 23; decision of 04.14.2009 in the case "Didu v. Romania", paragraph 41).

The previous expression of such an opinion by the court inevitably violates the presumption of innocence (judgment dated 27.02.2007 "Neshtak v. Slovakia", No. 65559/01, paragraph 88; decision dated 02.06.2007 in the case "Harycki v. Poland", No. 14348/02, paragraph 66) .

In the decision in the case "Karaman v. Germany" dated February 27, 2014, the ECtHR noted that when considering complex criminal cases involving several participants who cannot appear before the court together, the court's reference to the participation of third parties, whose charges may be considered separately later, may be necessary to determine the guilt of the defendants... ..If the court has to mention the facts of the involvement of third parties, it should avoid providing

information in a larger volume than is necessary to resolve the question of the legal responsibility of the persons who are accused in this case ( item 64).

In addition, in the decision in the case "Navalny and Ofitserov v. Russia" dated 23.02.2016, the ECtHR established that a condition for judicial review of separate proceedings is that the facts established in a case in which a person did not participate do not have the properties of the principle of *resjudicata* (paragraph 105), that is, they do not have prejudicial significance for criminal proceedings that are carried out against other co-conspirators.

As evidenced by the position of the ECtHR in many cases, the main component of the right to a court is the right of access, in the sense that a person should be provided with the opportunity to go to court to resolve a certain issue, and that the state should not create legal or practical obstacles to this rights

Passing this sentence, the court also takes into account the legal position of the Supreme Court, expressed in the decision of 15.04.2020 in case No. 344/2514/19, according to which, in particular, the right of the accused to admit his guilt in committing a criminal offense and enter into a plea agreement provided by the current criminal procedural law and can be freely used by it in accordance with the principle of dispositiveness. Non-admission of guilt by other persons in criminal proceedings cannot be a reason that makes it impossible or difficult to exercise the right of the accused to enter into a plea agreement.

And therefore, the court, exercising the relevant right of the accused, considers it possible to approve a plea agreement in this proceeding, despite the fact that the circumstances of the actions in which the court finds the accused guilty are related to other persons. After all, the court does not establish any circumstances regarding the latter. Otherwise, the conclusion of an agreement in this proceeding will be impossible at all, and the accused will be arbitrarily deprived of such a right, which is part of the right to a fair trial.

Along with this, the court also notes that this verdict cannot be a proper and admissible proof of involvement in the commission of any criminal offense by persons who are not participants in this criminal proceeding. This conclusion of the court is based on the fact that according to Part 2 of Art. 94 of the Code of Criminal Procedure, no evidence has a predetermined force. And according to Art. 90 of the Criminal Procedure Code, only decisions of a national court or an international judicial institution, which establish a violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine, have prejudicial significance in criminal proceedings. Whereas the verdict passed in this criminal proceeding is not such a decision.

The Joint Chamber of the Criminal Court of Cassation as part of the Supreme Court in its decision dated 18.05.2020 in case No. 639/2837/19 indicated that data about persons contained in procedural documents drawn up by the investigator or prosecutor (indictment, notice of suspicion, etc.) in this or other criminal proceedings, cannot serve as a basis for recognizing a sentence based on an agreement on the recognition of guilt of one person as affecting the rights, freedoms and interests of other persons. These procedural documents, in contrast to the court verdict, contain the statement of the prosecution about the commission of

an act by a certain person, provided for by the law of Ukraine on criminal responsibility (clause 13, part 1, article 3 of the Criminal Procedure Code), with an outline of the circumstances that are subject to proof in criminal proceedings in compliance with the requirements of Articles 91, 92, 277, 291 of the Criminal Procedure Code.

In view of this, in order to prevent the violation of the presumption of innocence of persons who are not participants in this criminal proceeding, the court in the verdict excluded all data that would make it possible to identify the persons referred to in it in one way or another, except for information about the accused. The court also did not express an opinion in the verdict about the guilt of these persons in committing criminal offenses and did not make any assumptions in this regard. In fact, all wordings in the verdict are set out by the court in such a way as to clearly express its position and conclusions only in relation to the actions of the accused, without evaluating the actions of other persons or their criminal legal qualifications.

Also, the court established that the conclusion of the agreement by the parties is voluntary, that is, it is not the result of the use of violence, coercion, threats or the result of promises or action of any other circumstances than those provided for in the agreement. This was confirmed by the accused, his defense attorney and the prosecutor at the court hearing.

The accused confirmed the possibility of fulfilling all the obligations undertaken in accordance with the agreement, and the court did not establish any objective obstacles to this.

The factual circumstances described in the indictment, the wording of the accusation specified in the agreement, the confirmation of these circumstances by the accused and his admission of guilt, enable the court to conclude that there are factual grounds for the admission of guilt by the accused.

Therefore, there are no grounds for refusing to approve the agreement.

Other questions.

A civil lawsuit was not filed, physical evidence was not submitted to the court in the proceedings in which the agreement was executed.

In accordance with the decision of the investigating judge of the High Anti-Corruption Court dated 06.14.2020 to the accused Kichi A.V. a preventive measure was applied in the form of bail in the amount of UAH 40,358,400.

By the decision of the investigating judge of the Higher Anti-corruption Office dated 23.12.2020, the specified preventive measure was changed and applied to the accused Kichi A.V. preventive measure in the form of a deposit in the amount of UAH 34,361,394.

According to the court order dated 08.06.2021, the accused Kichi A.V. the precautionary measure in the form of bail in the amount of UAH 34,361,394 was changed to the preventive measure in the form of bail in the amount of UAH 31,360,050.

By court order dated 04.03.2022, the accused Kichi A.V. the precautionary measure in the form of bail in the amount of UAH 31,360,050 was changed to the preventive measure in the form of bail in the amount of UAH 28,360,050.

According to the judge's decision dated 22.03.2022, the accused Kichi A.V. the preventive measure in the form of a pledge was changed to a preventive measure in the form of a personal commitment.

Subsequently, the corresponding preventive measure ceased to be effective. In connection with the adoption of this sentence and non-appointment of punishment in the form of confiscation of property, the court considers it necessary, on the basis of Part 4 of Art. 174 of the Criminal Procedure Code, cancel the arrest imposed in accordance with the decisions of the investigating judge of the High Anti-Corruption Court:

- from 16.06.2020 to the parking space, basement (letter "A"), with a total area of 17.2 square meters, which is located at the address: Kyiv, str. Truskavetska, building 6-B, garage 120 (registration number of the real estate object 1348878180000); apartment No. 1602, which is located at the address: Kyiv, str. Truskavetska, building 6-B, with a total area of 130.6 square meters (registration number of the real estate object 1316154380000); apartment No. 111, which is located at the address: Kyiv, st. Saperne field, bldg. 12, with a total area of 45.7 square meters (registration number of the real estate object 977869280000); apartment No. 5, which is located at the address: Kyiv, st. Saperne field, bldg. 12, with a total area of 75.7 square meters (registration number of the real estate object 976738280000); apartment No. 149, which is located at the address: Kyiv, str. Gavro Laiosha, bldg. 1 (registration number of the real estate object 35110165); 1/2 apartment No. 53, which is located at the address: Kyiv, st. Zlatoustivska, building 30, with a total area of 60.6 square meters (registration number of the real estate object 776074180000); 1/2 apartment No. 27, which is located at the address: Kyiv, st. Shchorsa (Pechersk district), bldg. 36c, with a total area of 54.9 square meters (registration number of the real estate object 130445180382);

- from 06/24/2020 to the parking space, basement (letter "A"), with a total area of 17.8 square meters, which is located at the address: Kyiv, str. Truskavetska, building 6-B, garage 119 (registration number of the real estate object 1348777480000);

- from 01.29.2021 for an AUDI Q7 car, registration number AA5885ИИ, VIN WAUZZZ4M7GD053745, 2016;

- from June 19, 2020 to a gray iPhone mobile phone in a black case; funds in the amount of 4535 dollars. USA; funds in the amount of UAH 816; a Good Ram memory card with a capacity of 8 Gb; ADATA memory card with a capacity of 8 Gb; Kingston memory card with a capacity of 16 Gb; Ipad A2013 gray color in a case; Huawei Mobile WiFi USB modem; funds in the amount of 3140 dollars. USA.

In connection with the cancellation of the seizure, the seized property is subject to return to Andrii Volodymyrovych Kichi.

Guided by Articles 314, 373, 374, 474-475 of the Criminal Code, the court  
E S T A B L I S H E D:

Approve the plea agreement dated March 24, 2023, concluded between the prosecutor Oleksandr Anatoliyovych Ivanyushchenko and the accused Andrii Volodymyrovych Kiche in criminal proceedings No. 5202000000000362.

Andrii Volodymyrovych Kicha is to be found guilty of committing a criminal offense provided for in Part 5 of Art. 27, Part 4 of Art. 369 of the Criminal Code.

On the basis of the plea agreement dated March 24, 2023, Kichi Andrii Volodymyrovych was sentenced to 5 (five) years of imprisonment without confiscation of property.

In accordance with parts 2 and 3 of Art. 75 of the Criminal Code to release the accused Kich Andriy Volodymyrovych from serving a sentence of 5 (five) years of imprisonment with probation and to determine a probationary period of 1 (one) year.

According to clauses 1, 2, part 1 of Art. 76 of the Criminal Code impose the following duties on Andriy Volodymyrovych Kicha: periodically appear for registration at the authorized probation authority at the place of residence, notify the authorized probation authority at the place of residence about a change of residence or work.

The preventive measure in the form of a personal commitment applied to the accused Kichi Andriy Volodymyrovych shall be deemed to have ceased to be effective.

Cancel the arrest imposed in accordance with the decisions of the investigating judge of the High Anti-Corruption Court:

- from 16.06.2020 to the parking space, basement (letter "A"), with a total area of 17.2 square meters, which is located at the address: Kyiv, str. Truskavetska, building 6-B, garage 120 (registration number of the real estate object 1348878180000); apartment No. 1602, which is located at the address: Kyiv, str. Truskavetska, building 6-B, with a total area of 130.6 square meters (registration number of the real estate object 1316154380000); apartment No. 111, which is located at the address: Kyiv, st. Saperne field, bldg. 12, with a total area of 45.7 square meters (registration number of the real estate object 977869280000); apartment No. 5, which is located at the address: Kyiv, st. Saperne field, bldg. 12, with a total area of 75.7 square meters (registration number of the real estate object 976738280000); apartment No. 149, which is located at the address: Kyiv, str. Gavro Laiosha, bldg. 1 (registration number of the real estate object 35110165); 1/2 apartment No. 53, which is located at the address: Kyiv, st. Zlatoustivska, building 30, with a total area of 60.6 square meters (registration number of the real estate object 776074180000); 1/2 apartment No. 27, which is located at the address: Kyiv, st. Shchorsa (Pechersk district), bldg. 36c, with a total area of 54.9 square meters (registration number of the real estate object 130445180382);

- from 06/24/2020 to the parking space, basement (letter "A"), with a total area of 17.8 square meters, which is located at the address: Kyiv, str. Truskavetska, building 6-B, garage 119 (registration number of the real estate object 1348777480000);

- from 01.29.2021 for an AUDI Q7 car, registration number AA5885ИH, VIN WAUZZZ4M7GD053745, 2016;

- from June 19, 2020 to a gray iPhone mobile phone in a black case; funds in the amount of 4535 dollars. USA; funds in the amount of UAH 816; a Good Ram memory card with a capacity of 8 Gb; ADATA memory card with a capacity of 8

Gb; Kingston memory card with a capacity of 16 Gb; Ipad A2013 gray color in a case; Huawei Mobile WiFi USB modem; funds in the amount of 3140 dollars. USA.

The judgment becomes legally binding after the expiry of the period for filing an appeal, if no such appeal has been filed. In the event of an appeal, the court decision, if it has not been annulled, becomes legally binding after the decision of the court of appeal.

The verdict can be appealed on the grounds provided for in Part 4 of Art. 394 of the Criminal Procedure Code, to the Appellate Chamber of the High Anti-Corruption Court through the High Anti-Corruption Court within thirty days from the date of its promulgation.

A copy of the verdict shall be delivered to the accused and the prosecutor immediately after its announcement.

Defense attorneys have the right to receive a copy of the verdict in court.

In accordance with the requirements of Art. 483 of the Criminal Procedure Code to inform the Council of Advocates of the Kyiv region about the passing of the verdict against Andrii Volodymyrovych Kichi. Explain to the participants of the proceedings that according to Art. 476 of the Criminal Procedure Code, in case of non-fulfillment of the plea agreement, the prosecutor has the right to appeal to the court that approved such an agreement with a request to cancel the sentence. A petition for annulment of the sentence, which approved the agreement, can be submitted within the statutory statute of limitations for bringing criminal liability for the commission of a criminal offense provided for in Part 4 of Art. 369 of the Criminal Code.

Deliberate non-fulfillment of the agreement is grounds for holding a person liable under Art. 389-1 of the Criminal Code.

Judges:

V.V. Maslov

I.L. Austere

L.M. Fedorak