

Criminal proceedings № 52020000000000473

08.01.23 p. 3 art. 27, p. 1 art. 369-2 of Criminal Code of Ukraine (CC)

Court: High Anticorruption Court

Head Judge: S.M.Moysaka, **Judges:** O.Ya.Salandyak, K.U.Shirok.

Date: 08.01.23

Case: № 991/1297/22

Proceedings № 1-КП/991/81/22

Type of document: Verdict

Accused: Zlochevskiy Mikola Vyacheslavovich, born 04.14.66, the last place of residence: 22 Giasemion, Panaretos Tanos Mansion, G1, Germasogeya, Lissamol, Cyprus.

Fable: 03.01.22 an indictment was received by the High Anticorruption Court, charging Zlochevskiy with committing criminal offenses under p. 3 art. 27, p. 1 art. 369-2 CC. (title 1, page 1).

In accordance with the protocol for the automated distribution of court cases between judges from 03.01.22, a panel of judges consisting of S.M.Moysaka, O.Ya.Salandyak and T.R.Khamsin was appointed to consider criminal proceedings.

The High Anticorruption Court (Determination from 03.09.2023) scheduled a preparatory hearing (title 1, page 91) and (Determination from 04.04.2023) granted Khamsin's application for the judge's self-recusal.

In accordance with the protocol for the repeated automated distribution of court cases between judges, a new judge K.U.Shirok was appointed to consider the court case.

03.06.23 the court received an indictment changing the charge in the criminal proceedings № 52020000000000473 from 07.28.2020 on the charge of Zlochevskiy of committing a criminal offense under p. 3 art. 27, p. 1 art. 369-2 CC (title 24, page 167-187).

07.17.23 the court received a plea agreement concluded between the prosecutor of the 4th Department of procedural guidance, pressing charges and representation in courts of Special anti-corruption Prosecution service of General Prosecutor I.M.Garvanko and the accused Zlochevskiy with the participation of the defense attorney A.D.Oshedshaya (title 44, page 128-141).

According to the amended indictment, during the period from 06.01.20 till 06.12.20 Zlochevskiy is accused of conspiring with O.M.Masurova (06.17.21 was convicted by The High Anticorruption Court for committing a criminal offense under p. 4 art. 369 CC) and A.V.Kicha (03.28.23 was convicted by The High Anticorruption Court for committing a criminal offense under p. 3 art. 27, p. 4 art. 369 CC), with the purpose of providing undue advantages to any person for influencing the adoption of a procedural decision, as well as an authorized person in the proceedings № 42014000000001590 regarding its termination, in his own interests, directed the commission of a crime, directing the actions of Masurova and Kichey, by approving them in the implementation of the specified criminal intent.

Approximately at the beginning of April 2020 (a more precise date has not been established), Masurova informed Zlochevskiy about the possibility of her acquaintances to influence the adoption by authorized persons (officials of Special anti-corruption Prosecution service (SAP) and National anti-corruption Office (NAO)) of procedural decisions in the proceedings № 4201400000001590, namely on its termination, but specifically with him, and what the nature of such assistance would be, was not mentioned.

At the same time, Masurova reported that for such influence, her friends need to transfer cash (total amount \$ 6 000 000 (six million USD)). However, she did not tell Zlochevskiy whether these 'influential people' planned to transfer that cash or part of it to SAP and NAO officials, or whether they would keep them for themselves.

Zlochevskiy agreed with this proposal of Masurova and allowed her, together with Kicha, to take, at its own discretion, the actions necessary to achieve the specified goal. Masurova, going beyond the limits of the agreements with Zlochevskiy and without notifying him, 06.01.20 entered into a preliminary conspiracy with NAME3 (materials, related to NAME3, are separated into a separate proceeding). The purpose of such a conspiracy was to find a person who, for a fee, would help in making procedural decisions in the above-mentioned criminal proceedings in favor of Zlochevskiy.

NAME3, in pursuance of a common intention with Masurova, during telephone conversations told R.B.Kharchenko, information about whom was changed in accordance with p. 1 art. 15 the Ukraine Law "About the safety ensuring of persons, taking part in criminal proceedings" (title 39, page 5) that specific persons, whom she did not name, offered to provide her funds for changing jurisdiction in criminal proceedings № 4201400000001590 or for terminating that proceedings in relation to Zlochevskiy.

Subsequently, Kharchenko and NAME3 negotiated regarding the amount of unjustified benefit for changing the jurisdiction or for terminating criminal proceedings. They agreed on the form in which the proceedings № 4201400000001590 should be discontinued.

06.05.2020 NAME3 notified Masurova of the information received from Kharchenko and asked her about a specific method for terminating criminal proceedings № 4201400000001590. After this, NAME3 and Kharchenko clarified among themselves that the persons who represent Zlochevskiy must transfer cash (total amount \$ 5 000 000 (five million USD) to NAO officials for the termination of the criminal proceedings № 4201400000001590 in relation to Zlochevskiy, to which NAME3, without being personally acquainted with Zlochevskiy and, accordingly, without bringing this about before his knowledge, answered affirmative. During the same conversation, NAME3 reported that he had spoken with persons representing Zlochevskiy, who reported that money would be transferred from them in exchange for an appropriate decree to terminate criminal proceedings.

Subsequently, NAME3 notified Masurova about the details of the conversation with Kharchenko. Masurova, going beyond their common intention

with Zlochevskiy, without informing him about the specifics of the actions related to the termination of criminal proceedings against him, informed Kicha should part with her in the preparation of draft procedural documents for termination criminal proceedings in relation to Zlochevskiy and the decision with the latter on the transfer of unlawful benefits to her acquaintance for assisting them in terminating criminal proceedings № 4201400000001590 in relation to Zlochevskiy.

On the same day, 06.12.20 Masurova, Kicha and NAME3 met Kharchenko in the Headquarters of Traffic Police building, located at: Sholudenko str., 33/19, Kiev, where they received a resolution of deputy of General Prosecutor – Chief of SAP N.I.Kholodnitsky from 06.12.20 about the termination of criminal proceedings on suspicion Zlochevskiy committing crimes under p. 4 art. 28 p. 3 art. 209, p. 4 art. 28 p. 5 art. 191 CC.

After familiarizing themselves with the text of the resolution, Masurova with Kicha during the conversation told NAME3 and Kharchenko that they had proposals regarding the legal basis for terminating the proceedings, and that taking into account their proposals is a condition for transferring unjustified benefits to Kharchenko in order to influence them on Kholodnitsky.

After this, Zlochevskiy, being confident that Masurova was acting in accordance with the agreements reached with him, not being aware that cash (total amount \$ 6 000 000 (six million USD) would be transferred to Kholodnitsky, instructed Masurova to direct the further actions of other accomplices in the crime regarding the transfer of funds to Masurova acquaintances for influence officials of SAP and NAO, in order to terminate criminal proceedings № 4201400000001590.

On the same day, while in the Headquarters of Traffic Police building, Kharchenko showed Kicha, NAME3 and Masurova a resolution of deputy of General Prosecutor – Chief of SAP Kholodnitsky, That took into account their proposals. Masurova, having read the text of the resolution, reported that the resolution meets their requirements.

After that, NAME3 took Kharchenko to a separate room, where, realizing that the cash (total amount \$ 5 000 000 (five million USD) was intended for further transfer to Kholodnitsky, she gave Kharchenko the opportunity to count the money, \$ 1 000 000 (one million USD) of which she subsequently decided to keep for herself.

After this, NAME3 and Kharchenko returned to the room where Masurova and Kicha were. At this time Masurova began to insist that the transfer of the previously determined by NAME3 amount of unjustified benefit to Kharchenko (for its transfer to Kholodnitsky) could be carried out only after the data on the termination of criminal proceedings № 4201400000001590 was displayed in the Unified Register of Pre-trial Investigations. However, in the end, Masurova approved the transfer of such unjustified benefit to Kharchenko without fulfilling the previous condition.

After this, NAME3, reliably understanding that the funds (total amount \$ 5 000 000 (five million) are intended to be transferred to Kholodnitsky as an unjustified benefit for making the specified procedural decision, took Kharchenko

to the place of transfer of money, handed over money to him cash (total amount \$ 5 000 000 (five million USD) and kept \$ 1 000 000 (one million USD) for herself from the total amount of money that was transferred to her to facilitate the adoption of the specified procedural decision.

Thus, Zlochevskiy, acting by prior conspiracy of Masurova and Kicha without being aware of Masurova going beyond their initial intent and without being notified that funds (total amount \$ 5 000 000 (five million USD) were being transferred to deputy of General Prosecutor – Chief of SAP Kholodnitsky, believing that an unjustified benefit was being transferred through Masurova to a third person, which, for the provision of such benefits, will influence the decision to terminate criminal proceedings № 4201400000001590 by SAP and NAO officials.

Thus, Zlochevskiy is accused of committing a criminal offense under p. 3 art. 27, p. 1 art. 369-2 CC organizing the provision of unlawful benefits to a person who promises (agrees) for such benefits to influence the adoption of a procedural decision.

07.17.23 The High Anticorruption Court received a plea agreement signed on 07.17.23 by prosecutor of Special anti-corruption Prosecution service of General Prosecutor I.M.Garvanko and on 07.13.23 by accused Zlochevskiy with the participation of defense attorney Oshedshaya in the manner prescribed by art. 468, 469, 470, 472, 473, 476 of Criminal Procedure Code of Ukraine (CPC).

The agreement formulates the accusation and qualification of Zlochevskiy's actions, indicating the articles of the law on criminal liability, which are identical to those given in the indictment. In accordance with this agreement, the prosecutor and the accused reached an agreement regarding the wording of the charge, all the circumstances significant for this criminal proceeding and the legal qualification of the actions of the accused.

In addition to the agreement, Zlochevskiy undertook to unconditionally admit his guilt to the extent of the charges brought at the time of trial.

When concluding the agreement, the prosecutor took into account:

the extent and nature of Zlochevskiy's participation in the conduct of criminal proceedings against him;

the severity of the crime imputed to Zlochevskiy, including that it is not serious;

Zlochevskiy 's unconditional recognition of his guilt in the criminal offense charged to him;

absence of material damage caused as a result of the commission of an imputed criminal offense; the obvious public interest in ensuring a speedy trial that will ensure the full, timely and inevitable punishment of Zlochevskiy and in preventing the re-offending of a criminal offense, both by the accused himself and by others;

circumstance mitigating the punishment of Zlochevskiy is sincere repentance, as well as mitigating circumstances that may be recognized as such by the court - this is the voluntary payment by the accused, as a result of cooperation with prosecutors of Special anti-corruption Prosecution service of General

Prosecutor, of funds in the amount of 500 000 000 (five hundred million) UAH official account of National Bank of Ukraine to support the armed forces of Ukraine on 03.30.23 and 05.10.23;

provision of charitable assistance by Zlochevskiy's family members on their personal initiative, using an organization, for the needs of armed forces of Ukraine, total amount 160 557 187 (five hundred million) UAH;

absence of aggravating circumstances;

the fact that the accused has never been prosecuted.

Taking into account the above circumstances, the parties came to an agreement regarding the imposition of Zlochevskiy's punishment provided for by p. 1 art. 369-2 CC sanction, in the form of a fine in the amount of 4000 tax-free minimum income of citizens, which will amount to 68000 UAH.

At the court hearing, the prosecutor asked to approve the plea agreement, indicating that in drawing up the agreement, the prosecution was guided primarily by the public interest in ensuring a speedy judicial review, since currently about 400 GB of digital information remains uninvestigated in criminal proceedings. Researching this amount of information requires considerable time. At the same time, when signing the agreement, the degree and nature of the participation of the accused in the conduct of criminal proceedings against him, Zlochevskiy's unconditional recognition of his guilt in the crime charged to him, the absence of material damage resulting from the commission of the crime, the severity of the criminal offense, which is not serious, were also taken into account a crime. The prosecutor also explained the amount of the fine and indicated that the amount agreed upon by the parties in no way violates the rights of the accused, but is intended to demonstrate the inevitability and severity of punishment for the crimes committed. The parties jointly agreed on the specified amount of the fine, which is 68000 UAH.

In addition, the prosecutor confirmed the voluntariness of the agreement on his part and the absence of any pressure on him.

Accused Zlochevskiy stated that he understood the charges of plea agreement. He fully admitted his guilt and confirmed the circumstances of the committed crime. He explained that, in fact, being familiar with Masurova and Kicha, he ensured the transfer of unlawful benefits to them in the form of funds in the amount of \$ 6 000 000 (six million), which the latter had to hand over to a third party for influencing decision-making by officials to make a decision in another criminal proceeding in his favor. The accused did not know Kharchenko, did not communicate with him, and was not aware from his subordinates that the funds were transferred to Kharchenko for further transfer to the head of SAP. He sincerely repented of what he had done. Requested approval of the plea agreement. He referred to his agreement with the amount of the fine and the voluntariness of concluding a plea agreement without any influence, pressure or threats. Reported the financial ability to pay the required fine in the amount of 68000 UAH, which is provided for by the p. 1 art. 369-2 CC sanction at the time of drawing up the plea agreement.

Also, accused Zlochevskiy indicated that he understood the rights specified in p. 4 art. 474 CPC associated with the approval of the agreement. Among other things, he said that he fully understands that he has the right to a full judicial review, in which the prosecutor is obliged to cite every circumstance regarding the criminal proceedings of which he is accused; has the right to remain silent and the fact of silence will not have any evidentiary value for the court; has the right to question prosecution witnesses during the judicial investigation; has the right to file a motion to call witnesses and present evidence that testifies in his favor. Assuring that he fully understands the consequences of drawing up and approving the agreement specified in art. 473 CPC, as well as the consequences of its non-fulfillment, provided for by art. 476 CPC.

The agreement between the prosecutor and the accused was drawn up and signed on 07.17.23 by prosecutor and on 07.13.23 by Zlochevskiy in the presence of the defense attorney Oshedshaya, that is evidenced by the signatures of the latter in the text of the agreement.

According to the provisions of art. 12 CC., the crime committed by the accused Zlochevskiy, in terms of severity, belongs to the category of non-serious crimes.

At the same time, judges also established that the accused had not previously been brought to criminal liability, was not registered with a psychiatrist, and was supported by an elderly father.

A circumstance that mitigates the punishment of accused Zlochevskiy according to art. 12 CC is sincere repentance.

According to art. 66 CC, the court did not establish circumstances that aggravate the punishment of accused Zlochevskiy.

The court found that the alleged criminal offense did not cause material damage and there were no grounds for civil liability.

Having examined the terms of the plea agreement, the materials presented in the criminal proceedings, and having heard the explanations of the parties to the criminal proceedings, the court came to the conclusion that the terms of the agreement concluded between the prosecutor and accused Zlochevskiy meet the public interests based on the following.

First of all, the approval of a plea agreement in this particular case will reduce the time it takes to complete the consideration of criminal proceedings as a non-serious crime, minimize the expenditure of public funds, personal resources of participants in criminal proceedings, and also reduce the burden on the prosecutor's office and the court.

In addition, as stated in the agreement itself and confirmed by the examined payment orders № 03 from 03.30.23, № 3 from 05.10.23, the accused, as a result of cooperation with prosecutors of Special anti-corruption Prosecution service of General Prosecutor, voluntarily transferred funds in the amount of 500 000 000 UAH to the official account of National Bank of Ukraine to support the armed forces of Ukraine. Also, on his personal initiative, one of the organizations, which is controlled by members of his family, provided charitable assistance to the armed

forces of Ukraine for a total amount of 160 557 187 UAH (title 44, pages 215-216, 146-214).

The above, in conditions of full-scale military aggression of Russian Federation, is directly related to the well-being, stability and security of Ukrainian society.

Also, taking into account the unconditional recognition of his guilt by the accused, the severity of the offense committed, the transfer of a significant amount of money to the needs of the Ukrainian armed forces, in this case indicates the inappropriateness of using the general procedure for considering criminal proceedings.

According to the court, the nature and severity of the crime charged to the accused, the identity of the perpetrator, his position before the commission of the act, and the giving of truthful testimony to the court indicate his desire to improve.

Despite the fact that the crime is corruption according to art. 45 CC, there is no legal prohibition on entering into plea agreements and their approval by the court.

Under the terms of the agreement, the parties reached an agreement regarding the imposition of Zlochevskiy punishment in the form of a fine in the amount of 4000 tax-free minimum income of citizens, which is 68000 UAH.

When assigning punishment, the following were taken into account:

1) provisions of p. 1 (3) art. 65 CC, namely:

- the nature and severity of the crime committed; the identity of the accused, his behavior after the crime; the presence of circumstances that mitigate punishment - sincere repentance. At the same time, the circumstances that aggravate Zlochevskiy's punishment have not been established;

2) provisions p. 5 art. 65 CC, that if the verdict approves an agreement on reconciliation or admission of guilt, the court imposes a punishment agreed upon by the parties to the agreement;

3) provisions p. 5 art. 68 CC, namely, that when assigning punishment to accomplices of a criminal offense, the court, guided by the provisions of Articles 65-67 of this Code, takes into account the nature and degree of participation of each of them in the commission of a criminal offense.

Sanction of p. 3 art. 27, p. 1 art. 369-2 CC provides for punishment in the form of a fine from 1000 to 4000 tax-free minimum incomes of citizens or restriction of freedom for a period of two to five years, or imprisonment for a term of up to two years. The parties agreed on a penalty in the form of a fine in the amount of 4000 tax-free minimum income of citizens, which will amount to 68000 UAH. This agreed upon penalty exceeds the minimum and maximum amount of the fine provided for by the version of art. 369-1 CC, which was in force at the time of the commission of the charged criminal offense.

When resolving the question of whether the punishment agreed upon by the parties is necessary and sufficient to correct the personality and prevent new crimes, the court takes into account the personality of the accused, circumstances that mitigate the punishment, and the absence of circumstances that aggravate the punishment.

So Zlochevskiy:

- sincerely repented of committing the crime charged to him;
- no previous convictions (title 24 page 154);
- is not registered with a narcologist or psychiatrist (title 24 page 158-159);
- carries out active charitable and volunteer activities.

According to the court, the agreements of the parties to the agreement regarding the agreed punishment do not go beyond the general principles of sentencing established by the Ukraine Law on criminal liability and the conditions for concluding a plea agreement. The prescribed penalty has a specific expression. The nature and circumstances of the application of the specified penalty in the form of a fine in the amount of 68000 UAH, which was determined at the time of drawing up the agreement, are entirely accepted by the accused and correspond to his wishes. The rules on the nature and amount of the fine to the accused were explained by the court in the presence of defense attorneys, who also supported the position of the accused and do not see this as a violation of criminal law.

Therefore, the punishment determined by the parties in its type and size corresponds to the nature of the gravity of the committed act and the personality of the accused, as well as the general principles of its purpose established by the Law of Ukraine on criminal liability, to ensure the achievement of the purpose of its application.

RESOLUTIVE PART:

Approve the agreement to plead guilty in criminal proceedings, entered into the Unified Register of Pre-trial Investigations under No. 5202000000000473 from 07.28.20, concluded between the accused Zlochevskiy Mikola Vyacheslavovich and the prosecutor of Special anti-corruption Prosecution service of General Prosecutor Garvanko Igor Mironovich.

Zlochevskiy Mikola Vyacheslavovich is found guilty of committing a crime under p. 3 art. 27 and p. 1 art. 369-2 CC, sentenced to a fine in the amount of 4000 tax-free minimum income of citizens, in the amount of 68000 UAH.

Cancel the arrest imposed by the decision of the investigating judge of The High Anticorruption Court, (case № 991/1344/21, the proceedings № 1-кк/991/1373/21) on the funds in the account 007.7711396 in the foreign banking organization «Union Bancaire Privee, UBP SA», the owner of which is Zlochevskiy.

Cancel the preventive measure in the form of detention chosen for accused Zlochevskiy by the decision of the investigating judge of The High Anticorruption Court from 08.17.20 (case № 991/6803/20 the proceedings № 1-кк/991/6992/20).

Store documents and electronic media in criminal proceedings.