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COMPARATIVE-LEGAL CHARACTERISTIC EXEMPTION FROM CRIMINAL LIABILITY FOR CORRUPTION CRIMES UNDER THE CRIMINAL LAW OF UKRAINE AND UNDER THE NORMS OF OTHER COUNTRIES

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SUMMARY

The article investigate the International Convention of the Council of Europe, The United Nations, the OECD on countering corruption, which contain provisions on release from criminal liability for corruption crimes. The author examines the ratio between the norms of the national legislation and the specified standards. Disclosed the perspective of further implementations of the data of international regulations in the laws of Ukraine.

Key words: corruption crimes, incentive rules, exemption from criminal liability, voluntary reporting of crime, active assistance in disclosure of crimes.

ПОРІВНЯЛЬНО-ПРАВОВА ХАРАКТЕРИСТИКА ЗВІЛЬНЕННЯ ВІД КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА КОРУПЦІЙНІ ЗЛОЧИНИ ЗА КРИМІНАЛЬНИМ ПРАВОМ УКРАЇНИ ТА НОРМАМИ ІНШИХ КРАЇН

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АНОТАЦІЯ

У статті досліджуються міжнародні конвенції Ради Європи, Організації Об'єднаних Націй, Організації економічного співробітництва та розвитку з питань протидії корупції, які містять положення про звільнення від кримінальної відповідальності за корупційні злочини. Автор розглядає співвідношення між нормами національного законодавства та зазначеними стандартами. Розкрито перспективу подальшої імплементації даних міжнародних приписів у законах України.

Ключові слова: корупційні злочини, заохочувальні норми, звільнення від кримінальної відповідальності, добровільне повідомлення про злочин, активне сприяння розкриттю злочину.

REZUMAT

Articolul examinează convențiile internaționale ale Consiliului European, ONU, OCDE privind combaterea corupției, care conține dispoziții privind scutirea de răspundere penală pentru infracțiunile de corupție. Autorul analizează corelația dintre normele legislației naționale și standardele specificate. Se dezvăluie perspectiva implementării ulterioare a acestor prescripții internaționale în legislația Ucrainei.

Cuvinte cheie: infracțiuni legate de corupție, reglementările de stimulare, scutirea de răspundere penală, raportarea voluntară a unei infracțiuni, asistență activă în rezolvarea crimei.

Statement of a problem. The relevance of a question of a ratio of special types of release from criminal liability for corruption crimes in Ukraine with international legal standards is caused by those reforms, which continue in our state. Development of the effective national legislation directed to implementation of the international rules in particular on anti-corruption is the requirement of today for legislators.

Analysis of recent research and publications. In the theory of criminal law, significant attention to issues of release from criminal liability for corruption crimes was paying attention so scientists like H. Alikperov, Y. Baulin, J. Brainin, K. Vavilov, N. Gutorova, I. Mezentseva, V. Egorov, S. Kelina, A. Savchenko, V. Skybytskyu, however, a comparative analysis of the given Institute with the norms of international law, none of them did.

The purpose of article is the research of the international standards concerning release from criminal liability for cor-

ruption crimes and definitions of their ratio with standards of the national legislation.

Presentation of the main material. The studies of legislation foreign countries have become very relevant today. The comparative-legal characteristic allows us to determine the positive experience of other states and to implement it in the national legislation. Y. Baulin noted that the understanding of reality is impossible without mastering the past and other experience, and the experience – without comparisons [2, p. 9].

The development of the Institute for the exemption from criminal liability for corruption crimes stays without attention. To a certain extent, such a situation is conditioned by the position that corrupt officials should be punished without relaxation of punishment. However, the study of foreign normative and legal provisions attests to the opposite approach of some states, which justifies itself in practice. Taking into account that it is expedient to investigate the best practices of those

countries, which have successfully countered corruption, comparisons, were made with the Scandinavian countries, in particular Finland, Denmark, Sweden, the Netherlands and some other European countries: Lithuania, Latvia, Estonia, the Federal Republic of Germany, Romania, the Republic of Belarus, France, Great Britain and the USA.

The Finnish legislator laid down the principles of prevention and caution in the commission of crimes in each normative-legal act, which determine the specific sphere of activity, and not the type of crime. According to the provisions of the Criminal Code of Finland, for the commission of actions that may qualify as “corruption”, there are of the sanctions from fines to imprisonment for up to four years depending on the degree of public danger of a crime [1, p. 12].

A genuine guarantee of protection of persons who assist the authorities in combating corruption is also facilitated for the low level of corruption in public authorities and the administration of Finland [4, p. 45]. Concerning the implementation of the requirements of the Convention against Corruption in 2003, the United Nations Review Panel on the Prevention of Corruption [10] made observations on Finland that could be considered in terms of further development of the anti-corruption system, including those related to the Institute of exemption from liability (punishment) of persons for corruption crimes. In particular, for Finland is recommended:

- to consider the possibility of exemption from punishment of persons who committed acts of corruption in the event of their voluntary and active cooperation with law-enforcement bodies;

- to consider extending the scope of the domestic law on mitigating punishments of persons who committed corruptive crimes in the event that they voluntarily and substantially assist law enforcement authorities in investigating crimes committed by other persons who are in one court cause and in a gathering evidence [4, p. 45].

The report of Transparency International about Corruption in Denmark in 2012 [19] draws the following conclusions, which are of interest to our study, precisely because of the prism of the exemption from criminal liability for corruption crimes:

The Danish national system of “incorruptibility” is “healthy”, which is largely due to the strong culture of state administration. Danish institutions have a relatively small number of regulatory requirements that establish formal rules of conduct and the principles of countering corruption. However, despite the low degree of formalization, there is a strong practice of incorruptibility, because if management culture weakens, certain rules that make the system as a whole “invulnerable” begin to operate.

Corruption is not considered a serious problem in Denmark and therefore it is not a theme that has a great influence on social processes and interests. Bribes and payments for accelerating the procedure for access to public goods and services are practically absent.

The study showed that it is difficult to distinguish between punitive measures for obtaining attractive gifts and other benefits, in particular, in the form of additional entertainment. Judicial decisions that show administrative practice and criminal justice are not numerous and, as a rule, consist of an order of restoration of justice and payment of compensations.

Several recommendations were suggested in the report on the upgrading of the anti-corruption system. At the same study in Denmark [19]:

- Protection and counseling of informants. Provision is made for the establishment of advisory bodies (where the Transparency International Department of Denmark will take an active part), which can be visited by employees of both private and public organizations, if they have information about

the commission of a corruption offense – a fact of corruption;

- Transparency of acceptance of gifts. Transparency International regards creating a list of gifts that are allowed to be presented to officials to be an effective anti-corruption measure about Denmark. This listing must be registered and published.

With regard to the strategy of Swedish in the field of combating corruption, such measures should be recognized as the most successful and possible for implementation as [5, p. 27–28].

By the middle of the XIX century, Sweden was considered a country that is full of corruption. However, after the elite and the leadership of the country adopted a strategic decision on the complete modernization of the country, a set of measures aimed at the complete exclusion of mercantile considerations from officials was developed and started to be implemented. The state regulation was based on the incentives for honest and responsible management – through taxes, privileges and subsidies, and not through prohibitions and permits received from authorities. Citizens have been given access to internal documents of public administration, which allows everyone to understand how the state works, and most importantly – an independent and efficient system of justice was created.

At the same time, the Swedish parliament and the government set high ethical standards for officials and began to enforce them. In a few years, honesty has become a prestigious norm among the state bureaucracy. Salaries of officials initially exceeded the earnings of workers by 12–15 times. However, over time, the purposeful efforts of the government of the country, this difference has fallen to twofold. Today, Sweden has one of the lowest levels of corruption in the world.

In Sweden, the church and public opinion play a major role in combating corruption, thanks to which any businessman who has been able to earn a very high income in a short period or to an official whose income is substantially lower than his expenses are suspected. In addition, public opinion, first, will force such an official to leave the post and will not allow him to ever get a job either in the civil service or in private business. The public opinion has transformed manifestations of corruption and dishonesty to be extremely rare fact of private business and in state administration. The legislative measures or criminal penalties couldn't achieve such a result.

In fact, such an approach to the complete rejection of corruption by Ukrainian society is enshrined in the Law of Ukraine “On the Principles of State Anti-Corruption Policy in Ukraine (Anticorruption Strategy) for 2014–2017”, such as:

- Conduct on a regular basis information campaigns aimed at various social groups and aimed at eliminating tolerant attitude towards corruption, increasing the level of cooperation between authorities and citizens in countering corruption;

- Develop and implement on a permanent basis special programs aimed at providing entrepreneurs with access to the necessary information, in particular on administrative procedures, rights and obligations of entrepreneurs, formation of the consciousness of non-acceptance of corrupt behavior, and encouragement to inform about corruption cases [9].

By comparing national and foreign legislation about the consolidation of a special institute of exemption from criminal liability for corruption crimes, we can note that special incentive norms of criminal legislation of foreign countries are envisaged in Special Parts, if the CC has such a division or in special sections of the CC, which provide for liability for certain crimes. These norms, as a rule, on the grounds of positive behavior of a person determine the minimization of criminal-law encumbrance, which is directly implemented in the exemption from liability, punishment or mitigation of the latter. The most widespread practice in criminal law is an exemption from punishment or its mitigation. The less common and more typical for the post-Soviet states is an exemption from liability.

Exemption from liability or punishment is regulated in the criminal (penitentiary), criminal-procedural law and special laws of foreign states. The peculiarity lies in the fact that the exemption from liability and punishment in foreign law is not different. Comparison of the criminal legislation of the Baltic states has shown that the CC of Latvia provides for exemption from criminal liability and punishment (Chapter VI), in the CC of Lithuania – exemption from criminal liability (Chapter VI) and release from punishment (Chapter X), and the Penal Code of Estonia only exemption from punishment and his serving (Chapter V) [18, p. 215].

We also note that most foreign legislations does not distinguish individual incentive norms for corruption crimes. This is explained by the general attitude towards corruption in foreign countries at the legislative level. Similarly, in most countries there are no separate laws on the prevention of corruption, special anti-corruption expertise, and electronic declaration of property. Instead, the provisions of general laws, normative (criminological) expertise, and electronic tax declaration are applied. Therefore, we analyzed the special types of exemptions from related socially dangerous acts related to corruption crimes. The CC of the Federal Republic of Germany in the Special Part provides for 20 types of special exemption from punishment or mitigation. In particular, an optional mitigation or exemption from punishment is provided for in cases where the person voluntarily and significantly contributes to the termination of the further existence of the criminal association or the committing of punishable act committed which corresponds to the purposes of such association (Part 1, Paragraph 6, § 129); voluntarily and in a timely manner provided to her the information to the appropriate institution about punishable acts that can be prevented (Part 2, Paragraph 6, § 129). If the person who committed the act reaches its goal because of terminating the existence of such an association, or it is achieved without its efforts, then such person is not punished [16, p. 17; 18, p. 75].

The French Criminal Code provides for exemption from, or mitigation of, the punitive conduct of a perpetrator if a person who participated in a criminal group prior to commencing any criminal proceeding discloses a group or conspiracy to the competent authority and will allow the establishment of other accomplices (Article 450–2) [7, p. 71; 18, p. 76].

The CC of France provides for exemption from, or mitigation of, the punishment if the person who participated in a criminal group before any criminal acts, related to prosecution, opens up a group or conspiracy to the competent authority and will allow the establish other accomplices (Article 450–2) [7, p. 71; 18, p. 76].

The CC of the Holland includes that criminal prosecution may be terminated if the offender fulfills one or more of the conditions before the trial of the case, which are imposed by the prosecutor: a) payment of money to the state, the size of which can't be less than five guilders, but not more than the maximum fine; b) the waiver of the right to objects which are seized and which are subject to confiscation or exclusion from circulation; c) refusal of items subject to confiscation or payment their value to the country; d) full payment of money to the state or the transfer of the objects subject to arrest, in order to deprive the accused of all or part of the proceeds of crime, including cost savings; e) full or partial compensation for damage caused by a crime (Article 74 of the Criminal Code) [11; 18, p. 77].

CC of Latvia in Part 4 of Art. 58 directly indicates the possibility exemption a person from liability in the cases specified in the Special Part of this Code. Directly in the Special Part of the Criminal Code there are five special types of exemption, four of which are of a facilitative nature. Yes, Art. 235 determines that a person who voluntarily transferred firearms, ammunition to it, pneumatic weapons of high power, explosive substances or explosive devices, manufactured without proper permission,

shall be exempted from criminal liability in the absence in her actions of crime; art. 254 provides that a person who has voluntarily transferred narcotic drugs or psychotropic substances or voluntarily informed about their acquisition, preservation, transportation or transferring is exempted from criminal liability for the use, acquisition, preservation, transportation or transfer of these substances; Art. 324 determines that a bribe-taker is exempted from criminal liability if he has been object of soliciting a bribe or if a person voluntarily declared what happened after giving a bribe. A person who offered a bribe is exempted from criminal liability if she voluntarily informed about what happened; part 3 of art. 324 determines the exemption from the liability of the intermediary and accomplice in bribery, if they will voluntarily report on what has happened after committing criminal acts [12; 18 p. 77].

The special part of the CC of Lithuania is provided for the exemption of the person who participated in the rebellion for the purpose of a coup if he voluntarily informed the state authority of important information of the preparation of a coup (Part 3, Article 114); a person who bribed a civil servant, if it is solicited from her, provoked a bribe, and if she offered, promised or gave a bribe with the knowledge of the law enforcement body (part 4, article 227); a person who participated in the commission of a crime by a criminal group or belongs to a criminal group but at the same time made a sincere confession of the crime, provided the law enforcement authorities with valuable information that allowed the cessation of a criminal group's activity or held its members to accountable. The person who participated in the murder or was already exempted from criminal liability is not exempted from liability (part 4 of article 249); a person who has manufactured, purchased and stored narcotic or psychotropic substances and voluntarily applied to the hospital for medical assistance or to a state authority for the purpose of give of narcotic or psychotropic substances that were illegally acquired or stored (Part 3 of Article 259) [13; 18, p. 77–78].

It should be noted that a large number of norms on the exemption from liability or punishment of persons is provided for in the CPC and special laws. For example, according to art. 706–32 The CPC of France in 1958 the police officers, who exempts from criminal liability, who with the purpose of disclosing criminal drug abuse behavior, buy, store, transport or transfer drugs to persons involved in illicit drug trafficking, with the exception of incitement [16; 18, p. 78]; in accordance with § 371 of the Provisions on Taxes and Duties of the Federal Republic of Germany in 1977, a person exempts from a criminal liability, who is charged for tax evasion and informed the financial authorities of the incorrect, incomplete or missed data previously filed for tax purposes [16, p. 416; 18, p. 78].

According to Art. 5 Chapter 29 of the CC of Sweden, among the circumstances affecting the imposition of a punishment, it is taken into account, whether the accused sought to do everything in his power to prevent, correct or limit the harmful effects of a crime, and whether the accused had voluntarily impersonated himself (paragraphs 2 and 3 1 Article 5 of the CC) [15; 18, p. 78].

The CC of Poland provides for ordinary and extraordinary circumstances that affect the imposition of punishment as a mitigating circumstance. Thus, § 2 and 3 of art. 53 as a normal mitigating circumstance, recognizes the perpetrator's behavior after committing a crime, in particular efforts to eliminate harm or to re-establish another way of social justice, the court also takes into account the positive results of the mediation between the victim and the perpetrator or the consent between them [15; 18, p. 78–79].

The legal basis for combating corruption and money laundering in Egypt is the Law of combating corruption and money laundering № 80 of 2002. According to Articles 10 and 17, a

person who provided information about suspicious financial transfers can't be engaged to liability. The perpetrator of the crime of money laundering should be exempted from punishment if he himself notifies the competent authorities of the crime. He is also exempted from punishment if the competent authorities were aware of a crime, but obtaining information from that person made it possible to identify and arrest other perpetrators or confiscate the money that was the object of a crime [3].

By the way, Belarusian legislators, introducing the possibility of exemption from criminal liability for some crimes against property, in particular for theft, fraud, embezzlement through abuse of authority and appropriation of property or wasting of property, chose such an option. Thus, in note 5 to Chapter 24, "Crimes against property" of Section VIII "Crimes against property and against the order of economic activity", it is indicated that a person who committed a crime is provided for in part 1 of art. 205, part 1, art. 209, part 1, art. 210, part 1 of art. 211, or part 1 of art. 214 of the CC of the Republic of Belarus, if this person appeared with repentance, actively contributed to the detection of the crime or completely compensated the damages, is exempted from criminal liability [14].

Particular attention in the study of the legal framework of foreign countries deserve the norms that determine the procedure for bringing criminal liability of legal entities for committing acts of corruption and, in particular, the prospect of their exemption from such liability. It should be emphasized that of the 27 EU states in the legislation more than half of them provide for the possibility of bringing legal persons to criminal liability. Thus, a legal entity is liable to criminal liability in such European states as: a) members of the EU (Kingdom of Belgium, the United Kingdom of Great Britain and Northern Ireland, the Republic of Hungary, the Kingdom of Denmark, the Republic of Ireland, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Poland, Romania, the Republic of Slovenia, the Republic of Finland, the French Republic, The Kingdom of Sweden, the Republic of Estonia); b) are not members of the EU (Republic of Albania, Republic of Iceland, Republic of Macedonia, Republic of Moldova, Kingdom of Norway, Republic of Croatia, Republic of Montenegro); c) which provides quasi-criminal, that is, administrative and criminal liability of legal entities (the Austrian Republic, the Italian Republic, the Kingdom of Spain, the Federal Republic of Germany) [6].

However, lawmakers of foreign countries have ignored the concept of guilt, the definition of the possibility of a legal entity to be the subject of a crime or the possibility only to be subject to criminal liability, the grounds for the dismissal of legal persons from liability, the possibility of using the notion of relapse of crime to the legal person, conviction, etc.

Only in rare cases can one find rules that would surely be of interest to the legislator of our state for the possible introduction of such a liability in Ukraine. Thus, the provisions of relapse of a criminal offense of the legal person can be found in French law. The valid CC of France in articles 132–12–132–15 provides for punishment of a legal entity for the relapse of its criminal behavior, for example, in the case when an individual convicted a legal entity for a crime or misdemeanor for which the law provides for a more severe punishment in the case of committing the crime. (Articles 132–12) [6].

The same provision is contained in art. 146 of the CC of Romania, which states that in the event of a relapse a legal person is punishable twice more than punishment, predicted for this crime, but does not exceed the maximum amount of a fine [6].

In addition, the CC of France provides for the liability of legal entities for attempting an offense, as well as for complicity in the commission of a crime; for acts that are characterized as attempt and carelessness. In case of deliberate actions against

a legal entity and an individual, the institute of complicity is used [20].

Worthy of note is also the provisions of art. 150 of the CC of Romania concerning the rehabilitation of a legal entity. This article states that rehabilitation of a legal entity is possible, if the legal person does not commit other crimes within three years from the date of the serving of principal and additional sentences (if the person will not make any punishment) [6].

Consequently, a comparative analysis of the exemption from criminal liability for corruption crimes in Ukraine and some other countries makes it possible to draw the following conclusions: the use of incentive norms in Scandinavian countries is directed at informants (the so-called disclosers), against the corruptors, and the widespread using is the formation of citizens of the general rejection of a corrupt way of behavior. For Ukraine, these directions are acceptable and fixed at the legislative level, but practically are not realized.

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