УДК 343.9.01
DOI https://doi.org/10.37687/2413-6433.2022-1-2.4

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ANTI-CORRUPTION IN FOREIGN COUNTRIES: THE GENESIS OF LEGISLATIVE DEVELOPMENT

ПРОТИДІЯ КОРУПЦІЇ У ЗАРУБІЖНИХ КРАЇНАХ: ГЕНЕЗА ЗАКОНОДАВЧОГО РОЗВИТКУ

The article is devoted to the study of trends in the development of legislation of foreign countries in the field of combating corruption. It is emphasized that the fight against corruption abroad is carried out by various methods of punitive and preventive nature. Punitive, criminal and legal methods used in all countries of the world to combat various manifestations of corruption do not lose relevance, as evidenced by the legislative experience of foreign countries in recent years. No less important is the prevention of corruption in the public and private spheres, the formation of anti-corruption culture in society. All over the world, anti-corruption legislation is aimed at legal support for solving such tasks as preventing (primary and secondary) acts of a corruption nature, punishment for corruption as for unlawful action (a set of acts). It has been proven that the influence on the formation of European law has exerted and continues the approach developed in Anglo-American theory, which has undoubtedly influenced the wording of standards fixed in international conventions and treaties, especially in terms of the use of the institution of civil confiscation. It is established that a special place among anti-corruption acts is the legislation on protection and encouragement of persons reporting on the facts of corruption, which in some states has already firmly entered the arsenal of measures aimed at preventing corruption (USA (Sarbaines Law – Oxley and Dodd-Franko Law), Romania, Republic of Korea), and in others it is just beginning to form (Belarus, Kazakhstan).

Based on the analysis of the main directions of criminal policy of a number of states in the field of combating corruption, the main trends in the development of legislation of these countries are identified. First of all, we should talk about the establishment of a legal definition of corruption acts, the development of a list of such acts and their differentiation in separate chapters (sections) of national criminal laws. Lawmakers of other countries change the approach to defining "corruption crime" in the context of criminal codes, establishing in special anti-corruption laws an exhaustive list of "corruption offenses." As an example, we can give the Law of Belarus on the fight against corruption. Still, the attention of the legislators of the CIS member states to the criminalization of new anti-corruption criminal acts in the direction of recommendations of international anti-corruption standards does not diminish.

Key words: *legislation, counteraction, corruption, corruption crime, corruption offense.*

Стаття присвячена дослідженню тенденцій розвитку законодавства зарубіжних країн у сфері протидії корупції. Наголошено, що протидія корупції за кордоном здійснюється різноманітними методами карального і профілактичного характеру. Каральні, кримінально-правові методи, що застосовуються у всіх державах світу для боротьби з різними проявами корупції, не втрачають актуальності, про що свідчить законодавчий досвід зарубіжних країн останніх років. Не менш важливу роль відіграє профілактика корупційної діяльності в публічній і приватній сферах, формування антикорупційної культури в суспільстві. У всьому світі антикорупційне законодавство націлене на юридичне забезпечення вирішення таких завдань, як запобігання (первинне і вторинне) діянь корупційного характеру, покарання за корупцію як за протиправне діяння (сукупність діянь). Доведено, що вплив на формування європейського законодавства чинив і продовжує чинити підхід, вироблений в англо-американської теорії, що вплинула безсумнівно і на формулювання стандартів, закріплених у міжнародних конвенціях і договорах, особливо в частині, що стосується використання інституту цивільної конфіскації. Встановлено, що особливе місце серед антикорупційних актів займає законодавство про захист та заохочення осіб, що

повідомляють про факти корупції, яка в одних державах вже міцно увійшла в арсенал заходів, спрямованих на запобігання корупції (США (Закон Сарбейнса – Окслі і Закон Додда – Франка), Румунія, Республіка Корея), а в інших тільки починає формуватися (Білорусь, Казахстан).

На основі аналізу основних напрямків кримінальної політики ряду держав у сфері протидії корупції виділено основні тенденції розвитку законодавства цих країн. Насамперед, слід говорити про встановлення легальної дефініції корупційних діянь, про розробку переліку таких діянь та їх диференціації в окремих главах (розділах) національних кримінальних законів. Законодавці інших держав змінюють підхід до визначення «корупційний злочин» у контексті кримінальних кодексів, встановлюючи в спеціальних антикорупційних законах вичерпний перелік «корупційних правопорушень». Як приклад можна навести Закон Білорусії про боротьбу з корупцією. Як і раніше не слабшає увага законодавців держав – учасників СНД до криміналізації нових антикорупційних кримінальних діянь у руслі рекомендацій міжнародних антикорупційних стандартів.

Ключові слова: *законодавство, протидія, корупція, корупційний злочин, корупційне правопорушення.*

Combating corruption abroad is carried out by various punitive and preventive methods. Punitive, criminal law methods used in all countries of the world to combat various manifestations of corruption do not lose their relevance, as evidenced by the legislative experience of foreign countries in recent years. An equally important role is played by the prevention of corruption in the public and private spheres, the formation of an anti-corruption culture in society.

All over the world, anti-corruption legislation is aimed at legally ensuring the solution of such tasks as prevention (primary and secondary) of acts of a corrupt nature, punishment for corruption as an illegal act (set of acts). Despite the fact that the array of anti-corruption legislation is extremely large and varies from state to state, several general blocks of sectoral anti-corruption acts can be identified:

– criminal legislation (Criminal Code), which includes norms on the responsibility of individuals and legal entities for actively and passively receiving illegal benefits, bribing foreign officials, trading in influence, laundering criminal proceeds, etc., as well as separate criminal legal acts issued along with codes (Australia, Germany, Italy, Canada, USA, France, etc.) or without such codes (Great Britain, Ireland). For example, the British Bribery Act of 2010 [1] was completely innovative, especially in terms of criminal liability of legal entities, and in terms of requirements it is recognized as much stricter than the OECD Convention on Combating Bribery of Foreign Officials in the Implementation of International Commercial Transactions, as it does not establishes a statute of limitations for criminal prosecution and does not contain any prescriptions regarding immunity from criminal prosecution for either members of parliament, judges or prosecutors [2];

– legislation regulating the sphere of private law, which provides for sanctions for corruption offenses related to auditing, corporate ethics, etc. (Australia, Brazil, Great Britain, Italy, Canada, Slovenia, USA, South Africa);

– legislation regulating the interaction of state authorities and non-state institutions, in particular lobbying;

– legislation regulating issues of the public sphere, namely electoral law [3], civil service, conflict of interests (Australia, Great Britain, Georgia, Moldova, Republic of Korea, USA, France, Czech Republic, etc.). These laws often apply not only to civil servants, but also to top managers of state-owned companies. Thus, in accordance with the Law of the French Republic on the transparency of public life dated October 11, 2013 [4], the heads and managers of public institutions of an industrial and commercial nature are required to annually submit to the Higher Body for the Transparency of Public Life a declaration of conflict of interests and property status, which includes income and expenses for the reporting period. This requirement also applies to shareholder groups with the majority participation of the state and local collectives. The draft of the new French law on transparency, the fight against corruption and the modernization of the economy [5], published March 30, 2016, aimed at further strengthening the fight against corruption and provides for: the organization of a special service responsible for preventing corruption and providing assistance in its detection; creating a register of lobbyists; protection and financing of informants, etc.

Another block is the anti-money laundering legislation, which is also successfully applied to the proceeds of international and national corruption. The analysis of foreign legislation provides grounds for the conclusion that in recent years not only states belonging to the family of common law, but also countries traditionally belonging to the continental legal system, use the norms of criminal, criminal procedural and civil procedural legislation for the purpose of freezing, arresting and confiscating the proceeds obtained from the laundering of corruption. This is primarily due to the fact that many states are changing their legislation in this area with the aim of unifying it to facilitate further use.

At the same time, the approach developed in the Anglo-American theory had and continues to influence the formation of European legislation, which undoubtedly influenced the formulation of standards enshrined in international conventions and treaties, especially in the part related to the use of the institution of civil confiscation.

The publication of complex acts in certain states, in which the legislator tried as much as possible to cover the public and private spheres of state life, attracts attention: the Italian Laws on the Prevention of Corruption and the Fight against Lawlessness in the State Administration of 2012 and on Crimes Against State Administration, Mafia Associations type and erroneous reporting of 2015 [6]; the Slovenian Law on Integrity and Countering Corruption of 2010 [7]; laws of EAEU member states – Law of the Republic of Belarus dated July 15, 2015 No. 305-Z "On Combating Corruption" [8] (hereinafter – Law of Belarus on Combating Corruption), Law of the Republic of Kazakhstan dated November 18, 2015 No. 410-V ZRK "On Combating Corruption" [9] (hereinafter – the Law of Kazakhstan on Combating Corruption), etc.

A special place among anti-corruption acts is occupied by the legislation on the protection and encouragement of persons who report facts of corruption, which in some states has already firmly entered the arsenal of measures aimed at preventing corruption (USA (Sarbanes-Oxley Act and Dodd-Frank Act), Romania, Republic of Korea), and in others it is just beginning to form (Belarus, Kazakhstan).

Analysis of the main directions of the criminal policy of a number of states in the field of anti-corruption makes it possible to highlight the main trends in the development of legislation in these countries. First of all, we should talk about establishing a legal definition of corrupt acts, about developing a list of such acts and their differentiation in individual chapters (sections) of national criminal laws.

The 2004 Law on Prevention and Combating Corruption [10] in one of the BRICS countries – the Republic of South Africa – increased responsibility for corruption and other crimes related to corruption. The law includes the general concept of "corruption" as a crime and in the following regulations specifies the content of corrupt activities depending on the circle of persons and prohibited acts committed by: 1) certain persons (state employees, foreign public officials; agents; deputies of the legislative body; employees of judicial and investigative bodies); 2) in connection with the provision or receipt of improper remuneration; 3) in connection with specific issues (testimony and evidence in court proceedings; contracts; public procurement and tenders; auctions; sports competitions; gambling; 4) in connection with a possible conflict of interest and other unacceptable activities (acquisition of private interest in a contract, agreement or investment of a state body; intimidating a witness; obstructing the investigation of a crime).

In addition, this law contains a number of other security measures, including those related to the preservation of property, which can probably become the subject of confiscation. In addition, with the aim of imposing certain restrictions, a register open to the public, controlled by the Ministry of Finance of South Africa, was established, containing information on individuals and companies found guilty of corrupt activities related to tenders and contracts.

Under threat of criminal punishment, officials are required to report to the police all acts of a corrupt nature that are or may be subject to the Law of 2004. Similar to the anti-corruption legislation of other foreign countries, the South African Law of 2004 is extraterritorial in nature. In the national legislation of individual CIS member states, as a rule, there is no single definition of the crime of corruption, and its definition is formulated by enumerating an exhaustive list of actions carried out by a person using his official position and (or) with the aim of obtaining benefits for himself or third parties . Legislators of one group of states make an attempt to define the "crime of corruption" directly within the criminal legislation (for example, Kazakhstan). There is also a broader approach, according to which corruption crimes are recognized as any intentional actions of officials aimed at illegally obtaining and providing material benefits and other advantages (in particular, Kyrgyzstan).

In the criminal laws of some CIS countries, the concept of a corruption crime is derived by the legislator grouping separate components of corruption acts into separate chapters based on the characteristics of official crime (Azerbaijan, Moldova).

Legislators of other countries are changing the approach to defining "corruption crime" in the context of criminal codes, establishing an exhaustive list of "corruption offenses" in special anti-corruption laws. As an example, the Law of Belarus on the fight against corruption can be cited. As before, the attention of the legislators of the CIS member states to the criminalization of new ones is not weakening anti-corruption criminal acts in line with the recommendations of international anti-corruption standards.

Developing such a complex problem, some countries have already resorted to criminalization as a finished form of bribery – promises and offers of improper advantages. For example, in the Criminal Code of Azerbaijan (Article 311 "Receiving a bribe (passive bribery)", Article 312 "Giving a bribe (active bribery)") and the Criminal Code of Moldova (Article 333 "Receiving a bribe", Article 334 "Giving a bribe") responsibility for the offer of any or material benefits or the promise (certification) of receiving them, firstly, is fixed in the provisions of the relevant criminal law norms and, secondly, is included in the concepts of "receiving a bribe" and "giving a bribe" [11] In the criminal legislation of other states, the possibility of criminalizing the offer and promise of a bribe still remains only at the level of scientific or legislative discussion, which may be due to difficulties in law enforcement practice [12].

Within the recommendations of the 2003 UN Convention against Corruption on the need to criminalize illegal enrichment (Article 20), the Criminal

Code of the Republic of Moldova dated April 18, 2002 No. 985-XV (Article 3302) is the "pioneer" in recognizing illegal enrichment as a criminal act Illegal Enrichment") [13] and the Criminal Code of the Kyrgyz Republic dated October 1, 1997 No. 68 (Article 308-1 "Illegal Enrichment") [14]. At the same time, the legislation of each of the mentioned countries, taking into account national legal principles, defines aspects of such criminalization in different ways [15]. It should be noted that modern international anti-corruption standards [16] approve and recommend the criminalization of acts of legal entities. This institution is included in the criminal legislation of only two CIS member states. For example, in Azerbaijan, criminal legal measures applied to legal entities are provided for in the General Part of the Criminal Code and in the criminal legal sense are considered as other criminal legal measures [17]. Another area of criminalization of the institution of criminal liability of legal entities can be traced in the criminal legislation of Moldova, where, along with natural persons, legal entities are recognized as the subjects of a crime, and the specifics of the appointment of certain types of punishment are provided for them.

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