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СОДЕРЖАНИЕ

7) the stolen things, victims body, and other assumptions types.

During the analyzing the scientist's thoughts in the criminalistics area we suppose that the forensic version validation rules may be complemented with such statements as:

1) the forensic versions may be checked parallel, but with considering the certain period of time, during which all of the measures may be realized about their verification;

2) the forensic versions verification process must be dynamic and flexible;

3) the analogy usage during the forensic versions verification must be used only in the comlex with the factual base;

4) the versions verification must take place only in accordance with the actual legislation in way of conducting the secret investigative (search) activities;

5) the versions may be checked not only by the investigator, and the other subjects, that can construct them.

Conclusions. Nowadays, such scientific category, as the forensic version is very important during the trial and pretrial investigations. All the subjects of the forensic version construction must support all the principles, rules, functions implementation to establish the objective truth in the criminal investigation. The forensic version is quite effective for searching the weapons, persons, physical evidence, and other things that may be stolen in the victim. That's why it's necessary to realize and be able to use this scientific category correctly and purposively.

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WAYS TO INCREASE EFFICIENCY OF THE NATIONAL ANTI-CORRUPTION BUREAU OF UKRAINE. INTERNATIONAL EXPERIENCE

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Summary

The article deals with current issues of reforming of the National Anti-Corruption Bureau of Ukraine. The authors analyzed the work of the Bureau in recent years, national and international legal framework, experience of foreign countries in the fight against crimes similar to those investigated by the detectives of the Bureau. There are the proposals to amend the national legislation of Ukraine to improve and facilitate the work of detectives of the Bureau. As a positive example authors considered the experience of the Republic of Singapore, the Republic of Poland and Malaysia. At the end of the article, the authors offer 8 ways in which the efficiency of investigation of crimes, which are under the jurisdiction of the National Anti-Corruption Bureau, may be increased.

Key words: National Anti-Corruption Bureau of Ukraine, anti-corruption activity, law enforcement sector reformation, criminal law, criminal process.

Аннотация

В статье рассматриваются актуальные вопросы реформирования Национального антикоррупционного бюро Украины. Авторы проанализировали работу бюро за последнее время, национальную и международную правовые базы, опыт зарубежных стран в борьбе с преступлениями, подобными тем, которые расследуются детективами бюро. Вносятся предложения по внесению изменений в национальное законодательство Украины для улучшения и облегчения работы детективов бюро. В качестве позитивного примера приводятся опыт Республики Сингапур, Республики Польша и Малайзии. В конце статьи авторы предлагают 8 путей, следуя которым, по их мнению, можно повысить эффективность расследования преступлений, попадающих под юрисдикцию Национального антикоррупционного бюро Украины.

Ключевые слова: Национальное антикоррупционное бюро Украины, антикоррупционная деятельность, реформа правоохранительного сектора, уголовное право, уголовный процесс.

The problem of corruption is one of the oldest in the history of mankind. It starts its history from the time of primitive society and does not lose its relevance till the present day.

Since the end of the XVIII century there was a crucial time for the society attitude to corruption in the Western Europe. From that moment the society began to have an increasing impact on the quality of the government apparatus and shifted its attention to the relationship of the political elite and big business [1].

In the second half of the XX century corruption became a significant problem in the context of globalization. The fight against corruption has moved from the category of national to international rank. Local methods of fighting against devastating effects of corrupted activity became almost impossible.

For the last 15 years, the problem of corruption is in the focus of society in general and politicians, scientists and law enforcers are engaged in it in particular. Nowadays it is a serious international problem that requires a joint approach and needs certain anti-corruption instruments of a global character. Corruption does not recognize national borders. It is pervasive. Therefore, the study and analysis of

the global practice of fighting against corruption is essential.

Fighting against corruption has not just turned into a problem of international importance. The main criterion for making this issue on the agenda of the international community is the great and increasingly growing influence of this phenomenon on the global development.

It is important to determine the impact of corruption on the scope of global development. It plays a key role in understanding the problem. Corruption is a serious threat to the national security and entails serious negative economic, social and political results.

In modern society, there is a plenty of different studies, monitors, ranking countries in terms of corruption. Among a large number of corruption studies the most preferred for an overall picture of the world's situation and identifying corruption factors are studies of the international organization Transparency International.

Transparency International is a non-profit independent organization, which studies and fights against corruption at the international level and on the scale of separate countries, one of its goals is to achieve greater transparency and accountability.

Transparency International offices were set up in many countries around the world. They all share a single anti-corruption ideology aimed to establish a common base transparency regime, primarily in the financial sector. This is the most extensive organization that explores a long time corruption fight in various spheres of life and indicates possible solutions of the identified problems.

Transparency International and the Gallup International published their researches of the level of corruption in the world in 2015. According to the results over a third of Ukrainian citizens bribed (near 35%) [3]. This is one of the reasons why we should pay so much attention to such phenomenon as corruption.

The list of corruption crimes is clearly defined. According to the note of the Art. 45 of the Criminal Code of Ukraine unlawful acts (which are foreseen in the § 2 of the Art. 191, § 2 of the Art. 262, § 2 of the Art. 308, § 2 of the Art. 312, § 2 of the Art. 313, § 2 of the Art. 320, § 1 of the Art. 357 and § 2 of the Art. 410 of the Criminal Code of Ukraine if these crimes are committed by malpractice and in the Art. 354, 364, 364-1, 365-2, 368-370) are considered to be corruption crimes [4].

We believe that mentioned list should be reviewed for the following reasons.

According to the Law of Ukraine «On Prevention of Corruption» corruption offense is an act that contains signs of corruption and which is committed by a person referred to the Art. 3 of this Law, for which the law establishes criminal, disciplinary and/or civil liability [5].

Art. 216 of the Criminal Procedure Code of Ukraine defines investigative jurisdiction (competence) [6]. Detectives of the National Anti-Corruption Bureau of Ukraine carry out pre-trial investigation of crimes under articles 191, 206-2, 209, 210, 211, 354 (concerning the employees of legal entities of public law), 364, 366-1, 368, 368-2, 369, 369- 2, 410 of the Criminal Code of Ukraine, if at least one of these conditions which are provided in §5 of the Art. 216 of the CPC of Ukraine are available [6].

It should be noted that in accordance with the Art. 12 and Art. 45 of the Criminal Code of Ukraine, the unlawful acts which are provided in § 1 and § 2 of the Art. 191, § 1 of the Art. 211,§ 2 and § 4 of the Art. 354, § 1 of the Art.364, § 1 of the Art.368, § 2 of the Art.368-2, § 1 of the Art. 369, § 2 of the Art. 369-2of the Criminal Code of Ukraine can be defined as medium grave offenses, acts in the § 1 of the Art. 210, § 1 and § 3 of the Art. 354, Art.366-1, § 1 of the Art. 368-2, § 1 and 3 Art. 354, 366-1, § 1of the Art. 368-2, § 1 art. 369-2 of the Criminal Code of Ukraine can be qualified only as minor offenses [5].

So, doubtfulness of the whole range of corruption offenses, and even the fact that a significant number of corruption crimes are medium grave or even minor offenses creates obstacles for the success of the National Anti-Corruption Bureau of Ukraine in investigation of crimes attributed to the jurisdiction of this body.

However, the Criminal Procedure Code contains an exception that applies to procedure of issuing a permission from investigating judge. According to Art. 250 of the CPC of Ukraine in the exceptional and urgent cases related to saving human life and preventing the committing of grave or especially grave crime as provided for by Sections I, II, VI, VII (art. 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine, a covert investigative (detective) action may be initiated before investigating judge adopts an act in cases provided in this Code, upon decision of investigator approved by prosecutor, or upon decision of public prosecutor. In such case, public prosecutor must immediately after the initiation of such covert investigative (detective) action, apply to investigating judge with an appropriate pleading [6].

The exceptional and urgent cases related to saving human life and preventing the committing of grave or especially grave crime under specific chapters of the Special Part of the Criminal Code are the defining conditions for the application of Art. 250 of the CPC of Ukraine [6].

Thus, corruption crime under Art. 410 of the Criminal Code of Ukraine (Stealing, embezzlement, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or other munitions, or abuse of office/ rank) committed by a military official/ serviceman with an abuse of authority is a grave crime, but Chapter XIX «Criminal offenses against the established procedure of military service (military crimes)» isn't in the list of chapters of the Criminal Code of Ukraine, as defined in Art. 250 of the CPC of Ukraine, which allows initiating covert investigative (detective) actions before investigating judge adopts an act [4].

The majority of corruption crimes assigned to the jurisdiction of the National Anti-Corruption Bureau of Ukraine are medium grave or minor offenses. However, the functioning of the National Anti-Corruption Bureau of Ukraine means that the crime should be committed by the person identified in § 5 of the Art. 216 of the CPC of Ukraine [6]. Usually these persons who commit corruption offenses are wealthy and have a high level of personal data protection and typically also have personal security. So, it is impossible for detectives of the National Anti-Corruption Bureau of Ukraine to investigate these corruption crimes without conducting a covert investigative (detective) action. In addition, corruption is a highly latent crime which is difficult to investigate and disclose without appropriate covert measures.

So, prevention of the committing corruption crimes should be the

exceptional and urgent case when the covert investigative (detective) actions may be initiated before investigating judge adopts a ruling. Also, it is necessary to establish a list of corruption crimes, recommendations of international organizations and investigative and judicial practice should betaken into account.

By the moment of independency in 1965, Singapore had found itself in situation somewhat similar to the post-Soviet Ukraine's. The country was in a very difficult economic situation and was thoroughly flourished with illegality. Legislation was imported from the British colonizers of distant England, police were not able to stand up the organized crime and most officials were involved into corruption schemes. Population had low level of education and skills to defend its rights [2].

Currently Singapore is an authoritarian state, it holds a leading place in the world rank due to the absence of corruption, economical freedom and the high level of development. Example of Singapore shows how we can reduce corruption to a very low level in just a few years due to the political will, effective anti-corruption legislation and integrity of independent agencies.

By way of background, Singapore's main anti-corruption statutes – the Prevention of Corruption Act (PCA) and the Penal Code – cover both private and public bribery, and target both givers and recipients of bribes. Gratification is defined broadly to cover both financial and other benefits and, so long as the mental element of "corruptly" can be established beyond reasonable doubt, an offence would potentially be made out. The twin test of corrupt intent (objective) and corrupt knowledge (subjective) would only be satisfied if the prosecution could prove that the acts of the perpetrator would be considered corrupt by a reasonable third party, and that the perpetrator himself knew that his acts were corrupt [7].

The key provision in the PCA giving extraterritorial effect to the corruption offences is section 37, which provides that a Singapore citizen paying a bribe overseas will be treated as if the bribe had been paid in Singapore. More alarmingly, section 29 of the PCA when read with sections 108A and 108B of the Penal Code - which deals with the abetment of corruption offences - can attach criminal liability to a person who, from Singapore, instigates the commission of a bribery offence overseas in relation to the affairs or on behalf of a principal residing in Singapore; or who, if based abroad, instigates the commission of a bribery offence in Singapore. The derivative abetment offence therefore significantly enlarges the extraterritorial jurisdiction of Singapore anti-corruption laws. The qualifications to such broad jurisdiction is that the prosecution is likely to pursue cases which have a material impact on Singapore as the resources of the enforcement agencies are limited, and there are inherent difficulties in obtaining evidence from abroad - discretionary factors which would be unwise for any person doing business in Singapore and the Asian region to overly rely on to avoid legal liability [8].

The reach of Singapore's anti-corruption legislation is further broadened by the presumptions in sections 8 and 9 of the PCA. Section 8 of the PCA provides, in any case where gratification is given to or received by a public official, such gratification shall be deemed to have been given or received corruptly (as an inducement or reward) unless the contrary is proved. Section 9 of the PCA (which applies to both givers and receivers of gratification) states that, in relation to transactions with agents, an offence is committed once it is proved that gratification is either given or received (as the case may be) - even if the agent did not ultimately do or refrain from doing the act in question, or had in fact had no authority to so act [8].

Another topic discussed was the divergent enforcement approaches which range from the prosecution of individuals to a clear policy shift in some jurisdictions such as the UK and US which seek to impose corporate criminal liability by placing the burden on corporations to take adequate steps to prevent bribery and corruption by employees and associated third parties. Singapore's anti-corruption laws are broad enough to cover both natural and legal persons. However, enforcement action has historically focused on the prosecution of individuals, not corporations, due partly to the evidential challenges in proving the directing mind and will of a corporation.

Given the potential for the imposition of corporate criminal liability in the US and UK, the prosecution in these jurisdictions use, or are intending to introduce, Deferred Prosecution Agreements (DPAs) as a tool at their disposal in their arsenal of prosecutorial options. Under DPAs, corporate offenders are given the chance to institute corporate reforms, implement compliance systems and cooperate in investigations in exchange for a temporary pardon against the charges or a full acquittal. The AGC is studying the merits of introducing DPAs in Singapore and, if so, this will likely have significant implications for the imposing of corporate criminal liability in Singapore since DPAs, by their very nature, are targeted at corporations. As mentioned above, it is in the interest of prosecutors to allocate their resources in the most efficient way possible; in this regard, DPAs have a clear role as an effective way of trial settlement in appropriate cases.

There is increasing international coordination between law enforcement agencies in different jurisdictions in the fight against cross-border corruption. The CPIB and prosecutors in Singapore have a good working relationship with their counterparts in Malaysia, Hong Kong and Indonesia and constantly network and build new links with other jurisdictions. Through the forging of such strong ties, the sharing of information and mutual legal assistance can only be further enhanced in a world where anti-corruption legislation is becoming increasingly extra-territorial in nature. One of the concerns pertaining to this area which was raised is the issue of "double jeopardy" (i.e. the risk that the same person may tried twice for the same offence) and what ought to be done to address this issue. In Singapore, section 37(2) of the PCA addresses this situation by stating that, once proceedings in respect of an act committed outside of Singapore have been commenced in Singapore, an application for extradition of that person for the same offence shall not lie.

Companies which do business in Asia using Singapore as their regional headquarters should take heed of both the local laws as well as the international laws which apply to their operations. Although the prosecution of bribery offences had historically focused on natural persons, the Singapore laws clearly apply to corporate bodies as well. If senior management is based in Singapore and business decisions are

also made here in respect of action taken in the Asian region, it may be evidentially less challenging to identify the directing mind and will of a company. Given the extraterritorial effect of Singapore corruption laws, the broadened scope for criminal liability through derivative abetment offences, the presumptions at sections 8 and 9 of the PCA and the potential introduction of DPAs in the future, it would be wise for companies to assess the bribery risks that they face and take steps to mitigate such risks through implementing adequate compliance frameworks which are designed to prevent and detect corrupt activities in business transactions, and effectively respond to bribery incidents as and when they occur.

Taking into account the fact that the Corrupt Practices Investigation Bureau uses a total compulsion, NABU has no opportunity to use such methods of investigation because of the Art. 7 of the CPC of Ukraine, which contains general principles of criminal proceedings, which ensure respect for human dignity, the right of liberty and security of person, privacy of correspondence and so on [6]. However, criminal liability for corruption offenses in Singapore is effective. The only possibility for detectives of NABU to investigate corruption crimes is to allow them to initiate covert investigative (detective) actions before investigating judge adopts a ruling.

Typically, agencies like the Singapore Corrupt Practices Investigation Bureau are created when corruption has penetrated to the court, the prosecutor's office, the police and security services. Almost all such agencies established in Asian countries have realized the threat of corruption, and only one such unit was created in New South Wales – one of the states of Australia [2].

Such bodies are usually independent of other law enforcement agencies and report directly to the supreme leader of the country. The most worthy and spotless frames are selected. Such bodies are given extraordinary powers for operational and investigative actions including the background of an effective system of public oversight over its operations.

It is hardly possible to reproduce the entire Singaporean, Malaysian or even Polish anti-corruption strategy, as these states have their own unique history, geographic location and characteristics of political management.

If Ukrainian government starts waging war against corruption in authoritarian patterns where is the guarantee that our political leaders will be so consistent as their foreign counterparts? And that the people of Ukraine, most of who considers corruption as the norm, will give a support? Implementation of measures on the real fight against corruption in Ukraine requires not only political will but also a huge administrative resources and money and do not always give initiators popularity.

Popularity of force among the general population in the background lawlessness over the years only grows. There is a danger that the initiators will take authoritarian methods as the most productive, promising to crack down the corruption once and for all, paving the corpses corrupt way to a bright future. The reliance only on force is counterproductive, the experience of China proved that.

Prosecution of corruption is only part of the system of measures to combat corruption. Especially in the time when the country's population does not trust the police and the judicial system. The mentality of the general population needs to be changed.

Beyond the immediate prosecution of corruption, anti-corruption organization conducts measures to prevent and control corruption: law revision, salary increase, effective propaganda of the rule of law and "clean hands". Real fight against corruption is not a campaign which has definite time. This is a direction of state activity which should be carried out continuously.

Now corruption in Ukraine reached the critical exponents. This is evidenced by at least the position of the country in the international rates of investment attractiveness. A similar situation in Singapore launched mechanism to combat corruption.

NABU has already done positive steps in this way. But in anyway imperfect legal framework, the unwillingness of the majority of the population of officials and latency put a spoke in the wheel on the way to the brilliant future.

Even considering that fact that Ukrainian Parliament recently has adopted the Law of Ukraine "On Prevention Of Corruption", Ukrainian legal base in this sphere is not perfect at all. At least, in the near future there should be created an effective witness and whistleblower protection program which will increase the effectiveness of the investigation of crimes under articles 191, 206-2, 209, 210, 211, 354 (concerning the employees of legal entities of public law), 364, 366-1, 368, 368-2, 369, 369- 2, 410 of the Criminal Code of Ukraine by the National Anti-Corruption Bureau.

In Singapore, the authoritarian methods work thanks to great and sincere desire of the political leadership to resist corruption. It is emphasized by a modest lifestyle. Every person convicted of committing corrupt acts is punished despite the size of bank accounts and position in the society. Otherwise the fight against corruption – only an appearance. Is a current Ukrainian government up to this?

Ways to increase efficiency of the crime investigation attributed to the jurisdiction of the NABU:

1) the note of the Art. 45 of the Criminal Code of Ukraine should be supplemented with all crimes that may contain corruption offense;

2) strengthening criminal liability for corruption offenses;

3) institute of the criminal misdemeanor should be amended to unload the pre-trial investigative agency;

5) amend the Criminal Procedure Code of Ukraine with a possibility to initiate covert investigative (detective) actions before investigating judge adopts a ruling in the case of preventing the commission of corruption crimes;

6) creation of an effective witness and whistleblower protection program;

7) educational work among board members of private and public sector to control corruption in their institutions, organizations or enterprises;

8) international cooperation of the NABU.

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ЭЛЕМЕНТЫ ПРАВА НА СПРАВЕДЛИВЫЙ СУД КАК ОСНОВА ФОРМИРОВАНИЯ СПРАВЕДЛИВОЙ СУДЕБНОЙ ПРОЦЕДУРЫ В АДМИНИСТРАТИВНОМ СУДОПРОИЗВОДСТВЕ УКРАИНЫ

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Summary

The article is devoted to the definition of the elements of the right to a fair trial as the basis for equitable judicial procedures in administrative proceedings of Ukraine, as well as their characteristics in this type of proceedings. The author analyzes the current civil procedural and administrative procedural legislation, practice of its application, the relevant provisions of the doctrine of civil and administrative proceedings. Special attention is paid to the positions of the European court of human rights in individual elements of the right to a fair trial. elements of the right to a fair trial, affecting the construction of a fair judicial procedure in administrative proceedings, the features of the specified items in accordance with the objectives of the administrative proceedingsare distinguished.

Key words: right to a fair trial, administrative proceedings, civil proceedings, judicial procedure, trial, court.

Аннотация

Статья посвящена определению состава элементов права на справедливый суд как основы формирования справедливой судебной процедуры в административном судопроизводстве Украины, а также их особенностям в данном виде судопроизводства. С этой целью проанализировано действующее гражданское процессуальное и административное процессуальное законодательство, практика его применения, соответствующие положения доктрины гражданского, административного судопроизводства. Особое внимание уделено позициям Европейского суда по правам человека относительно отдельных элементов права на справедливый суд. Отграничены элементы права на справедливый суд, влияющие на построение справедливой судебной процедуры в административном судопроизводстве, выделены особенности указанных элементов с учетом задач административного судопроизводства.

Ключевые слова: право на справедливый суд, административное судопроизводство, гражданское судопроизводство, судебная процедура, рассмотрение дела, суд.

Постановка проблемы. Согласно ч. 2 ст. 3 Конституции Украины от 28.06.1996 г. № 254к/96-ВР (далее – Конституция Украины) [1] обеспечение прав и свобод человека является главной обязанностью государства. К конституционным правам человека относится право на судебную защиту, нормативной основой которого можно считать положения, в частности, ч.ч. 1, 2 ст. 55 Конституции Украины. Указанное право не может быть реализовано без существования надлежащей процедуры рассмотрения дел в суде. Вопрос формирования справедливой судебной процедуры в отечественном судопроизводстве приобрел актуальность фактически с момента ратификации Украиной Конвенции о защите прав человека и основных свобод от 04.11.1950 г. № ETS N 005 (далее – ЕКПЧ) в 1997 г. [2кп041150ETS005]. В п. 1 ст. 6 ЕКПЧ определены принципы права на справедливый суд, которые стали указателем для определения соответствующих приоритетов в соответствующих отечественных программных документах, направленных на реформирование национальной судебной системы [3пкУ1005063612006; 4пс2762015]. Признавая ключевой характер указанных принципов для построения справедливой судебной процедуры в административных судах, следует отметить недостаточность научных исследований, посвященных указанной проблематике. Это предопределяет наличие проблем в практике