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COMPARATIVE ANALYSIS OF SEPARATE PROVISIONS OF UKRAINIAN AND FOREIGN COUNTRIES CRIMINAL LEGISLATION RELATED TO THE SUBJECT OF CRIME

In criminal law, subject of crime is an obligatory element of any crime content. Criminal code of Ukrainian Soviet Socialist Republic had no definition thereof and in only in the Criminal Code of Ukraine in 2001, the legislator defined the notion of crime subject and foreseen a separate section IV in its general part, defining and explaining all main issues related to this phenomena - definitions and types of crime subject (art. 18); arbitrability and immunity from jurisdiction (art. 19); limited arbitrability (art. 20); peculiarities of criminal responsibility for crimes, performed in state of intoxication (art. 21); and age of persons for application of criminal responsibility (art. 22).

Subject of crime according to p. 1 art. 18 CC of Ukraine «is a physical person, subject to jurisdiction, who conducted a crime at the age when according to Criminal code a criminal «responsibility» may occur. On the basis of this legislative definition, necessary signs for a subject of crime are as follows: 1) physical person, 2) arbitrability, 3) age of person since which criminal responsibility may occur.

Arbitrability is a mental state of person in which such person at the time of conducting a crime could be aware of his/hers actions (inactivity) and control them. Accordingly a person immune from criminal responsibility is such who during conduction of a socially dangerous act, foreseen by CC of Ukraine was in a state of immunity from jurisdiction and could not be aware of his/hers actions (inactivity) or control them as a result of chronic mental illness, temporary mental disorder, mental handicap or other mental sicknesses. Under general rules of criminal responsibility all persons who reached the age of sixteen on the moment of criminal activity performance are subjects to criminal responsibility. P. 2 art. 22

Criminal code of Ukraine describes all types of criminal activities resulting in criminal responsibility at the age of fourteen. Special subject is a person who has special (peculiar) signs besides of obligatory general ones. Such special (peculiar) signs are described in articles of Special Criminal code section for peculiar crimes content.

Legal persons in Ukraine are not subjects of crime; however, other means of criminal-legal origin may be applied to them (fines, property confiscation, and liquidation).

Notion of crime subject is not similar for all countries of the world. Each country defines the crime subject in their own ways or in general refers to one of objective signs elements. Yet a distinctive feature for all the countries, are the signs of a crime subject in criminal law, namely a physical person, age since which a criminal responsibility is applied and issues related to person's arbitrability. However each country independently sets its own criteria for each of these signs. For example, each country has different age limits, although in some of them, such limits are the same (Russia and Ukraine). Another difference is that in some countries, criminal responsibilities of legal persons is foreseen, which differs from Ukraine, Russia, Germany. Criminal legislation of such countries as: Russia, Lithuania, Belorussia, Moldova as well as Ukraine define that a person who reached the age of 16 and in cases, foreseen by the law - 14 years. The difference is only in the list of deeds which are subjects of criminal responsibility if committed by persons at the age of 14-16 years.

Arbitrability in the legal point of view is a notion with plenty of meanings. From one point, arbitrability means a possibility of convicting a person for a crime, committed by him/her. From the other side - a capability of person to bear responsibility for committed crimes. Criminal law of Eastern European countries provides definitions, according to which a person is immune to jurisdiction at the moment of committing a crime, namely the: mental illness, mental handicap or heavily «impaired judgment» as a result of which such person was unable to realize the unlawfulness of its deeds or act with understanding of such unlawfulness (Switzerland, Austria); through any mental or neuro-psyhic disorder was unable to control or realize its actions (France). Similar definitions are provided in CC of Denmark, Norway

and Finland. As we see, they indicate only medical criteria of jurisdiction immunity.

Requirements of defining legal persons as criminal responsibility subjects are foreseen by many norms of international law. Besides that, latest trends of international legislation testify that UN Conventions increasingly refer to enhancing legal person's criminal responsibility. Therefore, criminal responsibility of legal persons is not restricted, but instead often encouraged.

CC of European countries majority were approved before criminal responsibility of legal persons was considered a necessity. As a result of this and some other reasons, Criminal Codes of European countries usually lack sections, dedicated to these issues and when the necessity of such responsibility arises, these issues are governed by separate articles. It is explicitly defined that criminal responsibilities of legal persons cannot cancel criminal responsibility of physical person, committing, planning or promoting criminal activities. There are countries which adopted so called quasi-criminal responsibility of legal persons. Such countries are for example Federal Republic of Germany, Switzerland and partially Spain (where only punitive measures are applied to legal persons, instead of punishments), and also Italy and Belgium (in Italy such is possible only in cases of violation of legislation about freedom of competition, and in Belgium - for violation of tax, customs and agricultural legislations). In general, sanctions to legal persons under CC of foreign countries preferably have preventive means instead of oppressive and destructive by leaving a chance to correct their behavior and to conduct further activities in accordance with the law. This goal however requires comprehensive collective and criminal sanctions, complying with other branches of law, including civil and administrative.

In order to improve provisions of national Ukrainian legislation related to responsibilities of legal persons we suggest to: take optimum use of international experience related to this issue; adopt corresponding amendments to CC of Ukraine, related to the part of creating separate articles about general principles of criminal responsibility of legal persons and types of corresponding punishments; extend and specify the list of crimes (legal offences) for which legal persons may be liable.