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INTERNATIONAL PRACTICE FOR COMBATING CORRUPTION IN THE PRIVATE SPHERE

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Introduction. Among the most pressing social problems facing modern Ukraine, corruption is a priority, it is not only closely linked to organized and economic crime, as seen from the analysis of normative legal documents (Criminal Code of Ukraine, Law of Ukraine "On purification of power", Law of Ukraine "On Prevention of Corruption", Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", Law of Ukraine "On Civil Service"), from analytical researches (Analytical reports of the National Agency on Issues of corruption prevention), from programs, devoted to combating this socially dangerous phenomenon, which in general negatively affects the state, society, every citizen of Ukraine.

Last 2017 year, Ukraine ranked 130th out of 180 countries (along with Iran and Myanmar) in the Corruption Perception Index, drawn up by the international organization Transparency International. At the same time, corruption in the country has gained positive dynamics during 10 years, taking into consideration that in 2007 Ukraine ranked 118th place in this ranking [18].

It should also be noted that Ernst & Young, an international audit firm, traditionally portrays Ukraine to the most corrupt countries in the world [19], and the very issue of corruption has become the most acute issue affecting the national security of the country, the prospects for its economic and political development.

In recent years, B. M. Holovkin, S. O. Baranov, Yu.V. Demyanchuk, L. A. Zubkova, I. V. Masliy and others have considered the criminological problems of combating corruption in Ukraine.

The problems of combating corruption in the economic sphere are considered in the writings of L. V. Raietska, M. V. Pobuta, V. G. Khakhanovskyi and others.

At the same time, there is a certain shortage of studies devoted to the analysis of international experience in combating corruption in the business sector of the economy.

Thus, the **purpose** of this article is to study the practical and relevant aspects of counteracting corruption in the private sphere of foreign economy.

Presenting main material. Nowadays, many western researchers recognize corruption as a multi-faceted criminological problem that impedes the stability, the growth and the competitiveness of the economy. It complicates investment, leads to unjustified increases in costs for companies and ultimately entails serious legal and reputational risks. Corrupt practices harm all commercial enterprises, including large and small companies, international and national corporations. Corruption is recognized as the most serious obstacle to doing business in 22 out of 144 countries [17] and at the European level more than 4 out of 10 companies consider corruption to be a problem for doing business, and this also applies to patronage and nepotism. When asked whether corruption is a problem for doing business, 50 % of construction companies and 33 % of telecommunications and information technology companies responded that it is a serious problem for the present. The smaller the company, the more often, corruption and nepotism become a problem for doing business [16].

Based on the foregoing it should be noted that the fight against corruption is of strategic importance to business. Based on the opinion of Western experts [14; 15; 16], it is possible to distinguish the following criminological reasons that most contribute to corruption in the sphere of private entrepreneurship:

1) bureaucratic obstacles and obstacles in the process of solving certain issues of entrepreneurial activity;

2) growth and significant manifestations of corruption throughout the system of social relations;

3) the desire of entrepreneurs to quickly resolve, and with the benefit, certain issues of their activities, if this decision depends on other persons;

4) imperfection of the legislation regulating entrepreneurial activity;

5) lack of real support for the development of private business by the state;

6) reluctance of entrepreneurs to turn to the law enforcement authorities for the facts of corruption they had to face;

7) moral and legal "negligence" of the entrepreneurs themselves;

8) engagement of certain subjects of private business by state bodies or individual state officials;

9) lack of internal effective mechanisms of counteraction to corruption in the sphere of private entrepreneurship;

10) lack of a fully competitive competitive market environment;

11) engagement of certain subjects of private business with criminal structures;

12) closeness of the activities of private entrepreneurship from society.

Thus, the manifestation of corruption in the field of private entrepreneurship is affected most of all by artificial barriers created by officials of certain bodies of state power and management, with which businessmen have to contact in the process of their activities, all sorts of difficulties and obstacles in the process of solving those or other issues that have become the subject of referral to them by relevant entrepreneurs. At the same time, such behavior of state officials organically complements, to a certain extent, the aspirations of businessmen themselves to quickly, and most importantly, advantageously to resolve for themselves the issues of their activities, concerning which a corresponding decision of the state authorities and their officials is necessary. In this regard, it is necessary to define the causal links of the manifestation of corruption in the relations between the state and private business as mutually determinative.

Western experts draw attention to the devastating impact of corruption practices on the business environment, requiring rigid measures by government and entrepreneurs to reduce corruption risk.

It is noted that traditional criminal law measures, aimed at punishing a particular subject of entrepreneurial activity, are far from always effective, and western companies are often involved in corruption offenses committed on their behalf by their own leaders or employees, to prove their involvement to committing corruptive crimes is difficult. Such situations arise, as a rule, when implementing multi-stage commercial transactions requiring a large number of approvals with state authorities, obtaining permits, licenses, etc. At the same time corporations often provide illegal rewards to high-ranking officials, for example, for the possibility of obtaining an important contract and concession.

It should be noted that world practice demonstrates many examples of the fact that not only individuals, but also corporate (collective) entities are subjects of corruption crimes.

First, the company concerned may give a bribe for listing it on the list of participants in a future tender for the right to receive an important contract and limit the number of its participants.

Secondly, it can pay for the receipt of confidential information about the maximum and minimum price thresholds, average price proposals and criteria for evaluating investment projects.

Thirdly, with the help of a bribe, it is possible to force the officials in this way to determine the terms of the tender, so that the bribe-maker turns out to be the only candidate who fully satisfies all requirements.

Fourthly, the company can simply buy itself a victory in the tender. Finally, after winning a contract, a company may, for a bribe, achieve overestimation of prices or privileges when receiving the quality of the product (products, services).

Here are some examples. In Indonesia, two German companies paid a bribe to an official of the state oil company at a rate of 20 % of the cost of contracts for the construction of a steel mill. In Zimbabwe, a conspiracy between high-ranking officials of the Ministry of Postal and Telecommunications and the Swedish telecommunications company allowed the latter to circumvent the strict requirements of the announced

tender. According to some reports, the amount of "rollback" was $ 761 million. In a big corruption scandal in Singapore, several transnational companies and a high-level civil servant official have been involved. An official was bribed for providing confidential information about future tenders. However, it was not possible for law enforcement agencies to prove the involvement of specific entrepreneurs in participating in these corruption schemes [9, p. 33].

In such cases, western anti-corruption practice uses the liability mechanism for corporative responsibility for relevant corruption-related criminal offenses, which is a mandatory requirement of the Council of Europe Convention on Criminal Liability for Corruption (Article 18), the OECD Convention on Combating Corruption bribery (Article 2) and the United Nations Convention against Corruption (Article 26).

Let's pay attention to the fact that the common feature for all European countries, except Great Britain and Netherlands, is that the concept of criminal liability of a legal entity is relatively new. Without taking into account the two exceptions mentioned above, France was the first European country to introduce the theory of corporate criminal responsibility in 1994. In 1999, followed by Belgium, in 2001 – Italy, 2003 – Poland, in 2006 – Romania, in 2010 – Luxembourg and Spain, in 2012 – Czech Republic. Even in the UK, a country where legal entities have long been held to have criminal responsibility, most of the offenses, for which such liability comes, have been documented in legislation only in recent years. In Holland, until 1976, legal entities were liable only for tax offenses [5].

Corporate responsibility tools assume that responsibility for committing corrupt crimes lies with the entire corporation, used in Western practice when it comes to accountability for fraud, economic crime, money laundering, and so on. In identifying and prosecuting the real individuals who commit corrupt acts in commercial transactions, corporate responsibility helps to overcome the difficulties associated with complex structure and misunderstood decision-making in large companies, allows to confiscate assets, impose economic sanctions on companies that commit corruption acts [9].

Legislators of many foreign countries have expanded the scope of criminal prosecution for corruption crimes, including corporate (col-

lective) units in the number of their subjects. Thus, corporate criminal responsibility for corruption crimes is established by Art. 504bis (Corruption in the Private Sector) of the Criminal Code of Belgium; Art. 435-2, 435-3, 435-4 (Active corruption) of the Criminal Code of France; Art. 225 (bribery) and art. 227 (graft) of the Criminal Code of the Republic of Lithuania; Art. 353 (Active bribery) of the Criminal Code of Macedonia; Art. 391 (Transfer of property to state bodies, state-owned companies, enterprises, industrial organizations, people's associations, or the issuance of various commissions, agency fees in the course of conducting economic activities in violation of state establishments in order to obtain unlawful benefits) and Art. 393 (Bringing a bribe for the purpose of obtaining illegal gain or violating state regulations) of the Criminal Code of the People's Republic of China and other legislative acts [12].

It should be noted that in Western practice of entrepreneurial activity, if companies do not take the necessary precautions or allow themselves to be involved in corruption, they face negative legal and commercial consequences. In particular, non-prevention of corruption can lead to the imposition of legal sanctions on a company and / or a corrupt employee (fine, imprisonment), to commercial restrictions (blacklists, prohibition on participation in public tenders), in addition, such companies have a reputable loss, which ultimately reduce the overall profitability of the business [13].

In this regard, Western experts draw attention to the fact that legal means of combating corruption should be used in parallel with illegal forms of counteraction to this phenomenon.

In this context, Western practice of combating corruption with the use of unfair means is of interest and, in particular, it is about programs of anti-corruption training of employees of corporate structures.

This form of countering corruption has proven its effectiveness in cases where companies that have adopted an anti-corruption program or code of business conduct, provide their employees and business partners with appropriate training on anti-corruption policies, values and procedures of the company.

The specific content and frequency of training are based on an assessment of corruption risks, which are individual for each company,

that allows to create customized corporate anti-corruption training programs.

Regular and compulsory educational activities ensure the formation of knowledge and experience among employees for the detection and response to corruption. The company's managers are obliged to participate in training in order to be able to form key corporative standards in the field of anti-corruption.

Highly-risked personnel, for example, managers of the procurement department, undergo an in-depth specialized training. The course examines HR standard situations in which there may be risks of corruption, dealt with practical examples, including those that exhibit the behavior of the company and individual employees in specific situations related to corruption risks.

For training, self-learning media channels, such as web sites, emails, or computer training courses, can be used. Such media channels should provide a simple and low-cost distribution of educational materials [4].

In order to increase the impact on the employees of companies, the training can be organized in special cases or for special reasons such as organizational changes (for example, the appointment of a new manager) or regular shareholders meetings. Training seminars should be documented in order to ensure that their effectiveness can be assessed. Suitable training documents and records will enable the company to protect itself best in cases of corruption charges, including procedures for liability for criminal offenses committed by executives and employees of the company.

In the process of implementing corporate anti-corruption policies, companies may face unfavorable competitive conditions and may even be subject to exposure by companies that do not adhere to anti-corruption standards. One of the opportunities to counteract such risks is to participate in joint events with partners who are in a similar situation and face similar problems.

Companies, corporations, and private entrepreneurs who take part in joint initiatives can more effectively achieve common goals than if they acted separately. Joint actions of private business aimed at combating corruption can be offset to a certain extent by the weak na-

tional anti-corruption legislation and the practice of combating corruption in the business sector. Joint anti-corruption initiatives can be implemented in the private sector based on the development of balanced standards of relationship with larger companies, with public authorities, may include joint support for companies and entrepreneurs facing corruption.

Within such initiatives, in Western countries, business associations of a specific region or business sector are created, which are becoming an important tool for enhancing the effectiveness of anti-corruption initiatives, business legal support, and the crucial issue of counteracting corruption [13].

The advantage of collective action is that they are more coordinated and cost-effective than self-sustaining efforts of corporations aimed at counteracting corruption. Business associations are becoming platforms for companies to reach agreements and commit themselves to compliance with ethical standards and other common anti-corruption measures.

Conclusions. Based on the above results of this study, the following conclusions can be drawn:

1. It is obvious that for the sphere of private entrepreneurship a rather large degree of corruption is characteristic. To a large extent, this is due to the desire of officials to obtain an illegal benefit from the use of their official position, as well as to low social responsibility of business, low level of development of legal consciousness of entrepreneurs, ready to solve their problems using complex corruption schemes.

2. Under these conditions, as the world practice shows, the problem of corruption can not always be solved, being based on classical instruments of criminal law influence. It is possible to solve these problems by introducing corporate responsibility tools into the national anti-corruption practice.

3. At the same time, the world experience in combating corruption in the field of private business speaks of the need to use non-legal instruments (anti-corruption training programs for personnel, creation of business associations) that can form an appropriate level of legal consciousness in the business environment, which is, in our time, the main condition of counteraction to corruption in the private economy.

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Symkina A. Ye. International Practice for Combating Corruption in the Private Sphere

The purpose of the article is to study the practical and relevant aspects of counteraction to corruption in the private sphere of the economy of foreign countries in our time. The article examines and analyzes the international practice of combating corruption in the private economy, which is a topical and complex criminological problem that impedes the stability and growth of the economy, reduces its competitiveness, complicates investment, leads to unjustified increase of costs for companies and ultimately causes serious legal and reputational risks and forms the basis for the criminalization of private business.

The arguments presented in favor of the need to improve this area of combating crime in the entrepreneurial sphere, described the reasons that form the basis for the inclusion of corruption in the sphere of private business, has become a separate feature of the criminal interaction between business and government officials.

It is noted that the problem of corruption can not always be solved, based on classical instruments of criminal law influence. It is possible to solve these problems by introducing corporate responsibility tools into the national anti-corruption practice.

On the basis of the research, it was concluded that it is necessary to use non-legal instruments (anti-corruption training programs for personnel, establishment of business associations) capable of forming an appropriate level of legal consciousness in the business environment, which is, in our time, the main condition for counteracting corruption in the private economy.

Key words: *corruption, private economy, counteraction, corporate responsibility, non-legal instruments.*

Симкіна А. Є. Міжнародна практика протидії корупції у приватній сфері

Метою статті є вивчення практичних і актуальних у наш час аспектів протидії корупції у приватній сфері економіки зарубіжних країн. У статті досліджена та проаналізована міжнародна практика протидії корупції у приватній сфері, яка є актуальною та складною кримінологічною проблемою, що перешкоджає стабільності та зростанню економіки, знижує її конкурентоспроможність, ускладнює інвестування, веде до необґрунтованого підвищення витрат для компаній і в кінцевому підсумку спричиняє серйозні правові та репутаційні ризики та формує підстави для криміналізації приватного бізнесу.

Наведено аргументи на користь необхідності вдосконалення даного напряму боротьби із злочинністю у підприємницькій сфері, описано причини, які формують підстави для того, щоб корупція ввійшла у сферу приватного бізнесу, стала окремою ознакою кримінальної взаємодії бізнесу та представників державної влади.

Зазначено, що не завжди проблеми корупції можливо вирішувати, спираючись на класичні інструменти кримінально-правового впливу. Вирішити ці проблеми можливо, впроваджуючи в національну практику протидії корупції інструменти корпоративної відповідальності.

На основі проведеного дослідження зроблено висновок про необхідність використання неюридичних інструментів (антикорупційних програм навчання персоналу, створення підприємницьких об’єднань), які здатні сформувати належний рівень правової свідомості у підприємницькому середовищі, що є в наш час головною умовою протидії корупції у сфері приватної економіки.

Ключові слова: *корупція, приватна сфера, протидія, корпоративна відповідальність, неюридичні інструменти.*

Сымкина А. Е. Международная практика противодействия коррупции в приватной сфере

Целью статьи является изучение практических и актуальних в наше время аспектов противодействия коррупции в приватной сфере экономики зарубежных стран. В статье исследована и проанализирована международная практика противодействия коррупции в сфере приватной экономики, которая является актуальной и сложной криминологической проблемой, препятствующей стабильности и росту экономики, снижает ее конкурентоспособность, затрудняет инвестирование, ведет к необоснованному повышению расходов для компаний и в конечном итоге влечет за собой серьезные правовые и репутационные риски и формирует основания для криминализации приватного бизнеса.

Приведены аргументы в пользу необходимости совершенствования данного направления борьбы с преступностью в приватной сфере, описаны причины, которые формируют основания для того, чтобы коррупция вошла в сферу приватного бизнеса, стала отдельным признаком уголовного взаимодействия бизнеса и представителей государственной власти.

Указано, что не всегда проблемы коррупции возможно решать, опираясь на классические инструменты уголовно-правового воздействия. Решить эти проб-

лемы можно, внедряя в национальную практику противодействия коррупции инструменты корпоративной ответственности.

На основе проведенного исследования сделан вывод о необходимости использования неюридических инструментов (антикоррупционных программ обучения персонала, создания предпринимательских объединений), которые способны сформировать надлежащий уровень правового сознания в предпринимательской среде, а также являются в наше время главным условием противодействия коррупции в приватной сфере.

Ключевые слова: *коррупция, приватная сфера, противодействие, корпоративная ответственность, неюридические инструменты.*

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