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THE DEPUTY'S IMMUNITY AS THE FACTOR OF POLITICAL CORRUPTION: NATIONAL LEGISLATION AND EUROPEAN PRACTICES

The author in the article focuses on theoretical and practical approaches to the immunity as the factor of political corruption in Ukraine. It is noted that in spite of some positive developments in the issue of reforming anti-corruption legislation and bringing with EU standards, in general anti-corruption policy in Ukraine is not effective enough and requires further reform. Also stated that one of the main challenges in the context of real anti-corruption changes should be proper implementation of the new anti-corruption legislation and ensuring the implement recommendations of European institutions for its improvement (regulation of procedure for liability for corruption offenses persons who have immunity (inviolability); ensuring transparency for financing of political parties and election campaigns; clear separation of administrative and criminal liability for corruption offenses, etc.).

Keywords: parliamentary inviolability; immunity; corruption; European standards; anti-corruption legislation.

The revolutionary events in the country in 2013–2014, the adaptation of anti-corruption legislation to EU standards and striving to overcome public manifestation of corruption at all levels of government caused the urgent need to reform the anti-corruption legislation and the establishment of appropriate and effective bodies on combating against corruption. Thus, in October 2014 the Parliament of Ukraine adopted a number of laws to combat corruption, including: the Law of Ukraine «On principles of state for

Anticorruption Policy in Ukraine (Anti-corruption Strategy) on the 2014–2017 years»; The Law of Ukraine «On Prevention of Corruption»; The Law of Ukraine «On the National Anti-Corruption Bureau of Ukraine» and others.

The significant and positive innovation of political life in Ukraine was the established cooperation between public authorities and civil society. However, despite the progress, the Ukraine still has to solve problem of constructing an effective system of control over corruption in high places, to solve the issue of deprivation of immunity of deputies and bring to justice for committing crime, including corruption [1, p. 5].

It was indicated in analytical report of the President of Ukraine to the Verkhovna Rada of Ukraine «On the internal and external situation of Ukraine in 2015». Thus, the President emphasized that the anti-corruption policy in Ukraine is not effective enough and needs further reform. One of the main objectives in the context of real anti-corruption changes should be proper implementation of the new anti-corruption legislation and ensuring the implementation of recommendations of European institutions for its improvement (regulation of procedure for prosecution for corruption of persons with immunity (inviolability); ensuring transparency for financing of political parties and election campaigns; clear separation of administrative and criminal liability for corruption offenses, etc.) [2, p. 5].

Of course, the parliamentary immunity can not be considered as manifestation of political corruption, but under certain conditions it becomes a factor of corruption. On the one hand, it protects the deputy from persecution, including committing acts of corruption, and on the other hand it is the opportunity for corruption in the granting consent of Parliament to bring the deputy to justice (cases of «corporate solidarity» or rather «political revenge») [3–4].

Removing immunity has long been one of the cornerstones of the debate that waged between society and political environment. The parties argue both for and against of the initiative [5].

Some researchers for example L. Arkusha [6], M. Melnick [7], V. Lunyeyev, indicate the fact that [8] – the higher the position of corrupt, the more opportunities he has to avoid punishment or find

legal cover for his crimes or aspect. In this regard, some experts stress the simplification of procedures for removal of parliamentary immunity in case when deputy violated something, and strengthen control over the activities of deputies, including their income and expenses [9].

Citizens and expert that were polled by the Razumkov Center accepted that the abolition of parliamentary immunity is one of the most effective means of combating political corruption [10].

The results of the study «Omnibus» and according to citizens found that the most corrupt in Ukraine is the Verkhovna Rada of Ukraine (54,2 %) and the Cabinet of Ministers of Ukraine (44,9 %). Given the public attitudes the President of Ukraine was submitted to the Verkhovna Rada of Ukraine the draft «Law on Amendments to the Constitution of Ukraine» (concerning immunity of National Deputies of Ukraine and Judges). The draft law offered the amendment to Article 80 of the Constitution of Ukraine and lies in the abolition of parliamentary immunity and procedural immunity of National Deputies of Ukraine [11].

In this respect, one should pay attention to the fact that, indeed, the issue of bringing the National Deputies of Ukraine to criminal liability only with the consent of the Verkhovna Rada of Ukraine would be resolved, because such immunity is disproportionate and extends beyond what is necessary in a democratic society [12]. However, the legislator abolishes all procedural immunities of deputies of Ukraine, which exist to protect them from arrest or detention.

The Venice Commission in the report on the scope and deprivation parliamentary immunity notes that the main historical justification for the presence of procedural rules on parliamentary immunity is the protection of Parliament as an institution from undue pressure from the executive (the King) including protection from pressure by state prosecutors as part of the executive. This ground also includes protection of the parliamentary opposition, which usually is the minority of undue pressure from the ruling majority. Moreover, it protects members of parliament from political abuse by

other parties that may occur, for example, in the form of unfounded accusations of committing crimes by political opponents [12].

There is defined limit of the immunity from investigation, prosecution and adjudication of case related to corruption and to the degree that is necessary in a democratic society in international standard [13].

It is important to note that the practice of complete abolition of parliamentary immunity from prosecution as a whole is not typical of most European countries: it practiced, particularly in countries with Anglo-Saxon legal system (such as the United Kingdom, where immunity extends only to arrest in civil proceedings). By contrast, in most European countries the institute of parliamentary immunity is enshrined at constitutional level or in law.

In most European countries, parliamentary immunity is limited. For example, in Belgium, Greece, Luxembourg, Portugal, Sweden, Finland, it covers only the period of parliamentary sessions while committing a crime in the intercessional period not protect deputies from prosecution or application of sanctions, from which protects the immune system.

In some countries the effect of immunity is covered only residence time at the meeting of the deputy parliament and the travel time to or from Parliament (Iceland, Norway and Ireland) and in case of commitment of serious crimes (felonies) or treason during this period the as deputy immunity not be available. The action of immunity in most European countries is not applied to cases of flagrante delicto, when the deputy arrested or directly at the crime scene or the day after the crime. These countries include Albania, Austria, Belgium, Bulgaria, Greece, Denmark, Spain, Italy, Latvia, Lithuania, Luxembourg, Germany, Poland, Portugal, Romania, Slovakia, Hungary, France, Czech Republic, Sweden (if the deputy has pleaded guilty).

In some European countries the effect immunity isn't applied to cases of certain types of offenses such as small (insignificant) offenses or crimes which do not involve imprisonment (France, Luxembourg), or offenses for which is set the responsibility of

imprisonment for a specified period. In Sweden the detention of the deputy at the crime scene, for which punishment of imprisonment is the term of 2 years, provides no possibility for exercising the right of immunity. A similar approach is used in Finland (offense punished by imprisonment for 6 months), Portugal (offense is punishable by imprisonment for 3 years or more), Croatia, Serbia, Montenegro, Macedonia, Slovenia (in these countries action of immunity is not applied to cases of detention at the scene of crimes for which the responsibility is imprisonment for 5 years or more).

During the 1990s the legislation of a number of European countries had made a number of changes which provide for the possibility of investigation in criminal cases against members of parliament, without the prior consent of Parliament (or when the Chamber member is a deputy). The countries where immunity not protect deputies from the investigation include, in particular, Belgium, Greece, Finland, France, Portugal.

The procedure for initiating the removal of parliamentary immunity and decision-making procedures of removal of immunity in different European countries defined differently. Common is that the final decision taken by Parliament by the majority of votes; in most cases it is based on the recommendations of the parliamentary committee. The initiative for removal of immunity may originate from different entities such as the Attorney General, Ministry of Justice (Denmark, Luxembourg, France and Germany), President of the Supreme Court (Spain), etc. But in some countries the bodies and officials conducting the investigation have right of direct appeal to parliament (Finland) [14, p. 5–6].

Therefore, come to the conclusion that foreign experience in this sphere could be remarkable factor in the conditions of implementation of anti-corruption measures in Ukraine. However, it is also important to remember the famous words of Shevchenko about the fact that people should take into account the experience of others and also remember about their own. Foreign experience is rich and varied, of course, society has to learn and use, but the national heritage should be aware and use too.

Thus not much credits need to be done in order to point out the fact that the Constitution of Ukraine should be clearly reflected the principle according to which the parliamentary immunity shall not prevent the investigative authorities to conduct the preliminary investigation (detective) action in the case of detention deputy at the crime scene.

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Депутатський імунітет як чинник політичної корупції: національне законодавство та європейська практика

Досліджено питання депутатського імунітету як чинника політичної корупції в Україні. Наголошено на тому, що незважаючи на певні позитивні зміни в питанні реформування антикорупційного законодавства та приведення його до стандартів Європейського Союзу, загалом антикорупційна політика в Україні є недостатньо ефективною та потребує подальшого реформування. Констатовано, що одним із основних завдань у контексті здійснення реальних антикорупційних змін має стати належне впровадження нового антикорупційного законодавства та забезпечення виконання рекомендацій європейських інституцій щодо його вдосконалення. Аргументовано необхідність відображення в Конституції України принципу, відповідно до якого депутатський імунітет не повинен перешкоджати органам

досудового розслідування проводити слідчі (розшукові) дії у разі затримання депутата на місці вчинення злочину.

Ключові слова: депутатська недоторканість; імунітет; корупція; європейські стандарти; антикорупційне законодавство.

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Депутатский иммунитет как фактор политической коррупции: национальное законодательство и европейская практика

Исследованы вопросы депутатского иммунитета как фактора политической коррупции в Украине. Аргументировано внимание на том, что несмотря на некоторые положительные изменения в вопросе реформирования антикоррупционного законодательства и приведения к стандартам Европейского Союза, в общем антикоррупционная политика в Украине является недостаточно эффективной и требует дальнейшего реформирования. Констатировано факт, что одной из основных задач в контексте осуществления реальных антикоррупционных изменений должно стать надлежащее внедрение нового антикоррупционного законодательства и обеспечения выполнения рекомендаций европейских институтов по его усовершенствованию. Аргументирована необходимость отображения в Конституции Украины принципа, в соответствии с которым депутатский иммунитет не должен препятствовать органам досудебного расследования проводить следственные (розыскные) действия в случае задержания депутата на месте совершения преступления.

Ключевые слова: депутатская неприкосновенность; иммунитет; коррупция; европейские стандарты; антикоррупционное законодательство.