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THE COMPARATIVE ASPECT OF THE CONDUCTING OF THE SECRET INVESTIGATIVE ACTIONS IN THE STRUGGLE AGAINST CORRUPTION

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SUMMARY

In the article the research of the secret investigative (search) actions in the struggle against corruption is carried out. The international experience of the struggle against corruption, corruption indicators in the Russian Federation, Latvia, Lithuania, Poland, Estonia, as well as the practice of the law bodies is analysed. The analysis of the criminal procedure legislation of the Republic of Moldova, the countries of Western Europe (Italy, France, Germany, Great Britain), as well as the United States, is carried out. The measures of change of the criminal procedural legislation of Ukraine are given, the secret investigative (search) actions that contribute to the investigation of corruption crimes are analyzed. The analysis of recent research and publications on the subject is determined. The analysis of the law rules of the Criminal Procedure Code of Ukraine is carried out. It was installed, that the Criminal Procedure Code of Ukraine provides for a number of secret investigative (search) actions, that contribute to the investigation of corruption crimes (Chapter 21). It is said, that the new secret investigative (search) action – monitoring of bank accounts (the article 269-1 of the Code of Criminal Procedure of Ukraine) is of particular interest. It is concluded, that the countries of Europe, including Ukraine, are actively fighting corruption phenomena, but unfortunately, in Ukraine this activity takes place in difficult conditions of political and economic crisis and faces with various obstacles. The reforms that are carried out are not so effective. These circumstances require from scientists and practitioners to consolidate efforts aimed at studying the international experience of combating corruption and the purposeful implementation of its results in the legislative work of the parliament.

Key words: corruption, corruption crimes, secret investigative (search) actions, detectives, the National Anti-Corruption Bureau.

СРАВНИТЕЛЬНЫЙ АСПЕКТ ИСПОЛЬЗОВАНИЯ НЕГЛАСНЫХ СЛЕДСТВЕННЫХ ДЕЙСТВИЙ В БОРЬБЕ С КОРРУПЦИЕЙ

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АННОТАЦИЯ

Дана характеристика изменениям уголовно-процессуального законодательства Украины, проанализированы негласные следственные (розыскные) действия, способствующие расследованию коррупционных преступлений.

Ключевые слова: коррупция, коррупционные преступления, негласные следственные действия, детективы, Национальное антикоррупционное бюро.

REZUMAT

Se dau caracteristicile schimbărilor în legislația procesuală penală din Ucraina, se analizează acțiunile de investigație (investigative) nescrise care facilitează investigarea crimelor de corupție.

Cuvinte cheie: corupție, infracțiuni de corupție, acțiuni de investigație secrete, detectivi, Biroul Național Anticorupție.

Issue. Today the modern democratic society is characterized by the development of science, technology, IT-technology. Unfortunately, corruption is on the way to the implementing of the economic development programs. This negative phenomenon poisons both the system of state bodies and the structure of private business. According to a research, that was conducted by the international audit and consulting company “Ernst & Young”, Ukraine ranked 7th place in the anti-corruption rating, Russia – 18th, Latvia ranked 19th place,

Lithuania – 21, Poland – 23, Estonia – 32 [1]. These indicators show that measures to counteract this negative phenomenon are extremely inefficient, and require the state authorities to take cardinal actions, that are aimed at overcoming of it. So the secret investigative (search) actions take a special place in the struggle against corruption.

Analysis of recent research and publications. The problems of the institute of the proceedings of the secret investigative (search) actions were explored by many Ukrainian scientists:

Y.P. Alenin, R.S. Belkin, V.D. Bernas, S.V. Bobotov, V.V. Gevko, A.Y. Dubinsky, V.S. Zelenetsky, L.M. Lobyko, Y.D. Lukyanchikov, K.B. Kalinovsky, M.A. Pogoretsky, I.V. Servetsky, V.M. Stratonov, B.A. Filimonov, S.A. Shaypher, V.P. Shibiko, N. Henkel, S. Roksin, K. Peters, E. Schluchter and others.

Unsolved problem. However, the separate issues of the conducting of the secret investigative actions in the struggle against corruption require further research for new approaches to detecting,



preventing, disclosing and investigating the criminal offenses.

The aim of the article is to determine the international experience of the implementation of the secret investigative (search) actions in the struggle against corruption.

Main body. In this regard, Ukrainian lawmakers have taken decisive measures, that are primarily aimed at changes in the criminal procedure legislation. First, special bodies – detectives and internal control units of the National Anti-Corruption Bureau have been made to investigate criminal proceedings for crimes, that are related to corruption as a pre-trial investigation body (the article 38 of the Criminal Procedure Code of Ukraine). Secondly, according to the rules of their jurisdiction their competence includes the investigation of such crimes: assignment, embezzlement of property or possession of it by abuse of an official position; the unlawful seizure of the property of an enterprise, institution or organization; legalization (laundering) of proceeds from crime; misappropriation of the budgetary funds, implementation of budget expenditures or provision of the loans from the budget without fixed budget assignments or with the exceeding of them; the adoption of the normative legal acts, that decrease budget receipts or increasing budget expenditures contrary to the law; abuse of power or official position; the declaring of the inaccurate information; acceptance of a proposal, a promise or receipt of an improper benefit by an official; illegal enrichment; abuse of influence, etc. (part 5 of the article 216 of the Code of Criminal Procedure of Ukraine) [2]. It is noteworthy, that the circle of subjects of these crimes, according to the rules of the jurisdiction, is limited by the officials of the highest ranks and categories, deputies, judges, prosecutors, officers of law enforcement agencies and armed forces, and others. Also detectives of the National Anti-Corruption Bureau have the right to investigate the proceedings, if the amount of the crime subject or the harm, that was caused by it is more than five hundred minimum wages. That is, these cases represent a special importance and have a great public resonance due to the legal status of the person, who committed it and of the amount of damage to the state. Thirdly, the prosecutor of the Specialized

Anti-corruption Prosecutor's Office is called to conduct procedural supervision and supervision of the implementation of the pre-trial investigation [3]. It should be noted that the prosecutor is appointed by open tender by the members of the commission, that consist of representatives of the Council of Prosecutors of Ukraine and persons, who are identified by the Verkhovna Rada of Ukraine (the article 81 of the Law of Ukraine "About the Prosecutor's Office"). It is worth to believe, that such a selection procedure will help to appoint the most professional and highly moral candidates.

And, finally, the Criminal Procedure Code of Ukraine provides for a number of secret investigative (search) actions (here in after – the SISA), that contribute to the investigation of corruption crimes (Chapter 21). The new secret investigative (search) action – monitoring of bank accounts (the article 269-1 of the Code of Criminal Procedure of Ukraine) is of particular interest. If there is a reasonable suspicion, that a person carries out criminal acts using a bank account or for the purpose of locating or identifying property, that is the subject of confiscation or special confiscation in some criminal proceedings, that are referred to the jurisdiction of the National Anti-Corruption Bureau of Ukraine, the prosecutor may apply to the investigating judge to make a decision of the monitoring of bank accounts. According to this resolution the bank is obliged to provide the National Anti-Corruption Bureau of Ukraine in the current regime with information on one or several bank accounts. The information about transactions, that are made on bank accounts must be reported to the National Anti-Corruption Bureau of Ukraine before the relevant operation is performed, and in case of impossibility – immediately after its implementation. This SISA should be distinguished from state financial monitoring, which is a set of measures, that are carried out by state financial monitoring entities and aimed at performance of the requirements of legislation in the field of preventing and combating money laundering, financing of terrorism and the proliferation of weapons of mass destruction [4]. The latter is widely distributed in European countries and is carried out by financial intelligence authorities.

The main problem of the conducting of the mentioned monitoring in Ukraine is the high cost of the procedure itself. The additional costs arise due to the fact, that for monitoring of assets and transfer of results to the competent authority the technical equipment is necessary. The cost of the monitoring procedure also increases the necessity for additional staff. In addition, the cases of information leakage from employees to interested persons are not uncommon. Unfortunately, the practice of the monitoring of the bank accounts as SISA has not yet been worked out, therefore, problems, that may arise in the course of their conduct, are yet to be encountered. It is interesting, that in Moldova such events are conducted in accordance with the law on special investigative actions [5].

The study of the practice of the law enforcement agencies and criminal procedure legislation of Western Europe shows, that in these countries since the early 90 in the last century special actions began to be applied, that make it possible to obtain information about crimes, including corruption. Subsequently, this information was considered as the evidence in the consideration of a criminal case in court. For example, the Law of the Italian Republic "About Making of the Urgent Amendments to the Code of Criminal Procedure and Measures to Combat Mafia Crime" allows law enforcement agencies to take a different measures (public and private) to obtain information about criminal activity, using technical means of control and information recording and use results in criminal procedural proving [6].

In Germany criminal procedural and operational-search activities are not delimited. All secret and not secret actions of authorized persons are carried out with the purpose of revealing and detection of the crimes, in the order that is determined by the Criminal Procedure Code of the FRG. Inquiry is carried out by the prosecutor, and the police conduct operative search activity. For the most part the police have the right to use the operational search measures, that are determined by the Criminal Procedure law of Germany by the judicial decisions. The activity of the police is related to the search for information carriers, that after their procedural consolidation – legalization – can become evidence in the case [7].



The grounds and procedural order of the conduction of the secret investigative (search) actions are governed by §§ 100a-110a of the Criminal Procedure law of Germany. When a prosecutor carries out an inquiry he (she) has the right to disclose and review correspondence and also to listen and record telephone conversations. Control over telecommunication means is provided for in §100a of the Criminal Procedure law of Germany in the presence of suspicion of the committing a crime, that is based on a factual data, and only in the cases of serious crimes is determined in the law (such as a threat to peace, treason, a threat to a law state, crimes against public order, war crimes, money forgers, murder, robbery, extortion, etc). In addition, this investigative (search) action may be used to establish the circumstances of the commission of a crime or to establish the location of the suspect person, if it is difficult to do it in other ways. Listening and recording of the telephone conversations in accordance with § 100b of the Criminal Procedure law of Germany may be conducted only with the permission of a judge, and in an urgent situation – with the permission of the prosecutor with subsequent judicial confirmation within three days [8].

The Criminal Procedure law of Germany also regulates “measures, that are taken without a person’s knowledge”. These measures include, in accordance with § 100c: photographing and video shooting of a person, using other special technical means for observing and establishing the circumstances of the case. These measures are carried out only by a court decision, for the reasons, that are determined by the Criminal Procedure law of Germany. After completion, the prosecutor’s office reports to the highest instances of justice about the nature, extent, duration and results of the measures taken, as well as the fact, that the participants informed about the implicit actions. After completing of these measures the prosecutor has to report in writing to the organs of justice of the higher authority about cause, scope, duration and results of the measures, that were taken, and also about the fact of the notification of the participants about the secret investigative (search) actions. The federal government annually reports to the Bundestag on the basis of the reports from the land governments about the conducting of the investigative (search)

actions actions [8]. In our opinion, such procedure of the report strengthens the control over the lawfulness of these measures and increases the responsibility of the police and the prosecutor’s office in investigating of the crimes.

The Criminal Procedure Law of the Republic of Lithuania provides for the procedure of “secret pre-trial investigation” and the using of technical means of the recording information in the course of the production of individual investigative actions [9]. The investigation of crimes in the USA and the UK provides for the using of secret means of obtaining information, such as the control of telecommunications, oral conversations, visual observation, the using of confidential cooperation, etc [10].

Interestingly, that one third of all evidence, that are used by the French court to disclose a person’s fault in committing of an offense is obtained precisely through actions taken in an secret manner [11]. In each of these countries the main condition of the conducting of secret actions is the existence of strong grounds and judicial control over their conduct.

Conclusions. Thus, the countries of Europe, including Ukraine, are actively fighting corruption phenomena. Unfortunately, in Ukraine, this activity takes place in difficult conditions of political and economic crisis and faces with various obstacles. The reforms, that are carried out, are not so effective, and for the most part remain “on paper”. These circumstances require from scientists and practitioners to consolidate efforts aimed at studying the international experience of combating corruption and the purposeful implementation of its results in the legislative work of the parliament.

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