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INTERNATIONAL PRACTICES OF CONCEPTUALIZATION OF THE PHENOMENON OF CORRUPTION

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Марченко О. МІЖНАРОДНА ПРАКТИКА КОНЦЕПТУАЛІЗАЦІЇ ФЕНОМЕНА КОРУПЦІЇ. Ефективна протидія корупції є однією з найактуальніших проблем сучасності. Водночас недостатнє наукове обґрунтування понятійного апарату досліджень в означеному напрямі та відсутність коректного інструментарію вимірювання об'ємів розповсюдження корупційних діянь призводить до нівелювання державних програм протидії корупції і антикорупційної політики в цілому. У статті досліджено ступінь категоріальної визначеності поняття «корупція» на основі досвіду концептуалізації феномену корупції у міжнародних програмних документах та наукових працях сучасних зарубіжних дослідників. Цінною підтримкою для вирішення складних завдань боротьби із корупцією в українських реаліях є досвід інших країн і та теоретична й методологічна база, яка вже напрацьована європейськими дослідниками.

Автором здійснено спробу виявити глибинні причини недостатньої дієвості антикорупційних програм, що мають теоретико-методологічний і національно обумовлений характер. Досліджується проблема боротьби із корупцією в її глобальному, загальносоціальному вимірі і водночас на прикладі українського досвіду доводиться необхідність розробки обґрунтованої методології дослідження рівня корупції з урахуванням національної специфіки.

Ключові слова: корупція, протидія корупції, міжнародно-правовий акт, криміналізація корупційних діянь.

Formulation of the problem. Effective counteraction to corruption is not impossible without systemic research of the essential signs and without manifestations of corruption as a negative social phenomenon, and as a result, definition of the concept of "corruption". When Ukraine proclaimed its independence, this concept has become widespread in domestic legal literature, speeches by politicians and leaders of the state.

At the same time, the exact notion of this phenomenon is not invent until now, despite the large number of attempts.

Appeal to the conceptual foundations of international program documents on combating corruption, as well as the conceptual apparatus of foreign research on this issue, will, firstly, reveal the main tendencies in substantiating the essence and meaningful content of "corruption" in criminology at the international level; and secondly, analyze the prospects of categorical certainty of this concept in the national science.

Analysis of recent research and publications. M.I. Melnik ("Criminological and criminal-legal problems of counteraction to corruption", 2002) [1], S.S. Cherniavsky "Theoretical and practical bases of the technique of investigation of financial fraud", 2010) [2], V.M. Lischenko ("Evidence in the pre-trial stages of the criminal process in cases of bribery", 2011) [3], Bousol O.Yu. (Countering Corruption Crime in Ukraine in the Context of a Modern Anti-Corruption Strategy, 2015) [4]and others.

In addition, scientific works of L.I. Arkusha, A.V. Haiduk, O.M. Bandurka, O.O. Dulskii, O.G. Kalman, M.I. Kamlika, I.M. Kozyakova, E.V. Nevmerzhitsky, O.Ya. Prokhorenko, A.I. Redka, V.V.Sokurenko, M.I. Havronyuk, as well as foreign scholars B. Volzhenkina, O. Gredeland, A. Zhiganova, M. Kostennikova, R. Klitgard, V. Miler are devoted to the issue of counteraction to corruption.

At the same time, due attention is not paid to the study of approaches to the definition of "corruption" in international legal acts regulating anti-corruption activities in the European legal space. Nowadays' trends in the study of corruption by foreign scholars require more thought study as well.

The purpose of the study: to establish the degree of categorical certainty of the concept

of "corruption" based on the experience of conceptualizing the phenomenon of corruption in international program documents and scientific works of modern foreign researchers.

Basic material of research. One of the first international documents in which the definition of the concept of corruption was given was the Code of Conduct for Law Enforcement Officials, adopted by the Resolution of the General Assembly of the United Nations of December 17, 1979. In this document, the notion of corruption is used in the sense of bribery: "Although the notion of corruption should be determined in accordance with national law, it should be understood that it covers committing or not taking certain action in the performance of duties or in connection with the performance of these duties as a result of getting gifts that are required or accepted, promises or incentives, or their illegitimate receipt every time when such action or inactivity takes place" (Article 7, paragraph "b").

This document is of a recommendatory nature, and the content of the concept of corruption is reduced to bribery in the narrow sense: "The expression" act of corruption "should be understood as reflecting an attempt to bribe" (Article 7, paragraph "c").

Subsequently, the main areas of the fight against corruption were outlined in Resolution No. 7 "Corruption in Public Administration", adopted by the United Nations Congressional Committee on the Prevention of Crime and the Treatment of Offenders, held from August 27 to September 7, 1990. The recommendations set out in this document are of fundamental importance for each State to assess the adequacy of its criminal law and criminal-procedure legislation in order to respond to all types of corruption and ensure that appropriate sanctions are applied. Despite the fact that neither the concept of corruption nor the list of acts recommended for criminalization is not presented in this document, there has been a tendency to define a single set of measures and actions to combat corruption.

An analysis of the experience of conceptualizing the phenomenon of corruption, presented in the scientific works of contemporary foreign researchers, is important to establish categorical certainty of the notion of "corruption". In the scientific article, Liz Campbell, a researcher from the UK, "Current Legal Problems" (2016), provides a thorough analysis of existing approaches to understanding corruption in modern criminology. The author focuses on the definition of corruption by the National Agency for Combating Crime (NCA) of Great Britain, which coordinates the activities of law enforcement agencies in the fight against organized crime.

In the latest National Strategic Assessment, the NCA defines corruption as "the ability of an individual or group to distort the process or function of an organization to achieve a criminal purpose." Such an interpretation of corruption seems broad and general. Draws attention to several important semantic accents, which became the subject of criticism from the author of the article. The focus on "ability" raises the question: how to determine who is capable of such actions, how much such potential is subject to fixation and measurement, under which conditions ability must already be perceived as an attempt of action or action?

Another focus is on the subject of corruption: there is no indication of a public office in the definition, that is, any person or group may be the subject of corruption. The priority for the drafters of a document is a criminal act [5, c.117].

In the last «National strategic estimation» NCA determines a corruption how to distort «ability of individual or groups process or function of organization for achievement of criminal purpose».

Such interpretation of corruption is wide and general. A few important accents which are an object for criticism from the side of author of the article come into a notice. Concentrating of attention on «ability» causes a question: how to define, who is apt at such actions, as far as such potential ability is subject fixing and measuring, what terms ability already must be perceived at as an attempt of action or action?

Other accent touches the subject of corruption: in determination there is not pointing on a public place, that any person or group can be the subject of corruption actions. Is there priority for compilers a document - criminal act [5, c.118].

In determination of NCA we can look after actualization of corruption as such criminal acts which harm a production process and remove key principles of functioning of organization. The author of the article marks correctness of such accent, in fact, on her opinion's, a corruption can be considered criminal and come into the notice of organs of criminal justice only then, when touches a process or functions, carried out organization, but not personal relations.

Drew conclusion an author, that determination of corruption, presented NCA in his state-of-the-art review, can become a starting point in conceptualization of concept, however is

not complete.

Going near measuring of corruption is added criticism in the article, in particular methodology of Transparency International, the study of public idea is fixed in basis of which.

An author asks about that, as far as objective, impartial and grounded from point of knowledge of ordinary citizen with the real state of affairs and anticorruption activity of the proper organs of power in that or other professional industry presented in Indexes of measuring of corruption results.

Other researcher, D.-A. Leyn, in the article «Corruption in the article: a new analysis» (Open Journal of Political Science, 2017) is probed by a concept «corruption» on the basis of analysis of the existent going near interpretation of this concept unit both in academic editions, like Oxford Thesaurus and to the accepted methodology of well-known international projects, that determinations of index of corrupted have for an object (Transparency International).

A researcher establishes, that sense of concept «corruption», judging on certificate literature, a «graft» is, however much a synonyms which answers this concept is utterly wide: «crime», «offence», «dishonesty», «falsification», «unscrupulousness», «deception», «swindle», «bribery», «contractual crime» [6, p.158]. Such significance draws «washing out» of concept of corruption and in results it is not understood.

Determination of corruption, which is in by basis of Corruption Perceptions Index (CPI) - To the index perception of corruption, no less wide: «a corruption is cumshawing for the sake of own benefit. Can be skilled variously (large, insignificant, political and others like that), depending on the amount of the lost money and to the sector which it takes place in».

At the same time the corruption acts of civil servants are subject in such indexes research, while a corruption in a private sector remains out of eyeshot societies. In the sector of market, the author of the article marks, with his multinational enterprises and financial institutes, there is a great number of types of rewards, which are in a «grey area» between legality and lawlessness.

«Indemnifications», «commissions», acceptable in activity of powerful corporations and enterprises, often is the hidden corruption with the purpose of receipt a proprietor or other persons of illegal benefit. Consequently, vagueness of concept «corruption», the wide spectrum of his values is drawn by selectivity in a fight against this phenomenon and creates terms for lobbying of interests of powerful corporations in the different sectors of economy [6, p. 161-162].

In scientific research of collective of authors under the title of «Corruption Typology: A Review of Literature» (Chinese Business Review, 2017) it is presented four to typology of corruption acts, most widespread in majority European countries. One of them includes a bribery, cumshawing, «favouratism» (assigning is for positions on the basis of the personal likings, but not professional qualities).

From one this typology the ramified of maintenance of concept «corruption» and wide circle of criminal acts which are interpreted as a corruption becomes obvious. Such determination of corruption is resulted in the article: «it is manipulation with the purpose of to extract the personal benefit due to other (state, organization, citizens), it is actions or inactivity, breach of trust, as a result of which both legal and ethics, obligations are violated for the sake of the personal, political, social or economic benefit» [7, p. 103].

Authors mark that a corruption is the universal for the whole world phenomenon. At the same time interpretation of this phenomenon is different in countries and even within the framework of the legal system of one country which results in appearance of plenty of classifications of corruption actions, and it considerably complicates a fight against a corruption both on international and on national, levels.

Conclusion. On the basis of the analysis of international program documents and modern scientific researches devoted to the actual issues of counteraction to corruption, the problematic aspects in the implementation of the formula “definition – measurement – counteraction to corruption” are grounded, which are hindering the state anti-corruption policy in many countries of the world, and in particular in Ukraine.

Domestic and foreign research workers specify on absence of compatible concept of corruption and on his arbitrary interpretation as on failing.

Although in a great deal exactly flexibility of quarantinable formulations allows states-participants to execute the accepted international obligations in relation to criminalization of corruption acts (and not only those, that directly transferred in conventions but also other, conditioned the specific of the national legal system), there is a requirement in the unique universal determination of corruption, in particular at the level of European Union.

Such determination will allow to set the unique general principles, methods, measures of fight and co-operations of the states, more effective to co-operate on questions delivery of criminals and from the whole package of other questions. At the level of national legislation maintenance of concept «corruption» must open up through the list of acts, which will represent the specific of the legal system of every separate state.

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Summary

The degree of categorical certainty of the notion of corruption was researched on the basis of the experience of conceptualization of the phenomenon of corruption in international program documents and scientific works of modern foreign researchers.

Keywords: *corruption, counteracting corruption, international legal act, corrupt acts criminalization.*



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CONCEPT OF LEGAL CONSCIOUSNESS IN PHILOSOPHY OF LAW OF BOGDAN KISTYAKIVSKY

Скиба Е. КОНЦЕПТ ПРАВОСВІДОМОСТІ У ФІЛОСОФІЇ ПРАВА Б. КІСТЯКІВСЬКОГО. Охарактеризовано основні характеристики категорій право, правосвідомість. Проаналізовано характеристики ідеї Б. Кістяківського про «живе право». Доведено, що правові категорії і ціннісні орієнтації є структурними елементами правосвідомості учасників суспільних відносин.

Визначено, що у ученні Кістяківського право – це система раціональних принципів. Вони включають базові апіорні категорії свідомості, якими керуються суб'єкти суспільних відносин в повсякденній реальності. Уточнено, що Б. Кістяківський розглядає правосвідомість як сукупність раціональних висновків і душевних переживань особистості, які викликають добровільне прийняття нею зобов'язань.

Ключові слова: *правосвідомість, природне право, апіорні категорії правосвідомості, живе право, позитивізм.*

Formulation of the problem. The development of Ukrainian statehood is characterized