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CRIMINAL LIABILITY OF PUBLIC OFFICIALS IN FOREIGN CRIMINAL LAW: A COMPARATIVE LEGAL ANALYSIS

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Annotation:
This thesis is devoted to a comparative legal analysis of the criminal liability of public officials in the criminal legislation of foreign states. Within the framework of the study, the criminal laws of several Western European countries, the United States, Japan, and selected Asian states are examined with regard to the legal status of public officials as subjects of crime and the grounds for their criminal liability. Particular attention is paid to corruption-related offenses and to international legal standards, primarily the provisions of the United Nations Convention against Corruption, as well as their correlation with national criminal legislation. The paper also analyzes the legal content and significance of the concepts of "public official" and "responsible official," highlighting differences in their interpretation and application across various legal systems. The conclusions drawn in the thesis contribute to a more accurate qualification of official crimes and may serve to improve law enforcement practice and criminal legislation.

Keywords: public official, responsible official, corruption, abuse of official authority, subject of crime, special subject, comparative criminal law, criminal legislation.

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In the context of globalization and the growing complexity of public administration, ensuring the legality and transparency of the activities of public officials has become a matter of particular importance. Crimes committed through the abuse of official authority pose a serious threat not only to the effective functioning of state institutions but also to public trust in government and the rule of law. For this reason, the institution of criminal liability of public officials occupies a central place in modern criminal law.

The criminal liability of officials is entrenched in the criminal legislation of a number of foreign states. Within the framework of this research, the issue of criminal liability of officials in the criminal legislation of several Western European states, namely Germany, Denmark, Sweden, Switzerland, the Netherlands, Spain, Great Britain, France, as well as the United States, Japan, and the People's Republic of China, was analyzed. The analysis of the criminal liability of officials as subjects of crime in the criminal legislation of foreign states demonstrates that, in the criminal legislation of the above-mentioned countries, the issue of criminal liability of officials is characterized by diversity and a certain degree of inconsistency. In all of these foreign states, socially dangerous acts related to the abuse of official authority give rise to criminal liability under criminal law provisions [1].

It should be noted that in foreign countries official crimes are referred to under the term corruption and encompass several criminal acts committed by officials[2].

Such socially dangerous acts are enshrined in the United Nations Convention against Corruption and include "Bribery of national public officials"; Article 16 "Bribery of foreign public officials and officials of public international organizations"; Article 17 "Embezzlement, misappropriation or other diversion of property by a public official"; Article 18 "Trading in influence"; Article 19

"Abuse of functions"; Article 21 "Bribery in the private sector"; Article 22 "Embezzlement of property in the private sector"; Article 23 paragraph 1 "Laundering of proceeds of crime"; Article 24 "Concealment"; Article 25 "Obstruction of justice"; and Article 27 entitled "Participation and attempt".

In turn, these acts are also regarded as criminal offenses under the criminal legislation of Uzbekistan, and the current criminal law establishes criminal liability for such acts. However, according to the content of the legislative act on accession to the United Nations Convention against Corruption, the Republic of Uzbekistan did not accede to Article 20 of the Convention, which criminalizes "Illicit enrichment", and Article 26, which provides for "Liability of legal persons".

In addition to the conventional forms of corruption such as bribery and abuse of official position, the following manifestations of corruption in practice may be distinguished: the direct participation of officials, public service employees, and deputies in commercial activities for the purpose of obtaining personal or corporate benefit; the use of official position to transfer public funds to commercial structures with the intent of misappropriation; granting privileges to one's own corporate (political, religious, national, and similar) group at the expense of state resources; the use of official position to exert pressure on mass media in order to obtain personal or corporate benefit; the use by officials and public service employees of fictitious persons and relatives in commercial structures for the purpose of personal enrichment; the use of official position to manipulate information (distortion, withholding, delaying disclosure, and similar actions) for personal or corporate gain; the promotion of decisions on the adoption of normative acts in narrow group interests; and the allocation of state financial and material resources to the electoral funds of certain candidates.

In the United States, the "kickback" form of official crime is quite widespread. Its scheme is very simple: participants in a criminal conspiracy verbally agree to conclude a transaction at certain prices, while the official contract is signed at inflated prices. A portion of the difference is transferred to the officials who authorized the transaction, that is, a concealed bribe is given. The necessity to protect public authorities from the harmful effects of corruption compelled the United States government to designate the fight against corruption as one of the priority directions of state policy as early as the nineteenth century. However, active efforts in this direction began only by the middle of the twentieth century. It is noteworthy that United States law provides not only for conflicts of interest arising while a public servant performs official duties, but also for the occurrence of such situations involving a person who has ceased service in public authorities. The administration of the White House, in turn, has continuously been combating allegations concerning the unlawful use of funds allocated for political campaigns.

In developed countries such as France, Germany, Great Britain, Italy, Japan, and the United States, the corruption of officials in public service also occurs frequently. For example, in the second half of the 1990s in Germany, nearly two thousand officials were formally subjected to criminal proceedings and investigation for official crimes [3].

According to available data, Finland is considered one of the countries with the lowest level of corruption. In Finland, three to four criminal cases related to bribery are examined annually. It is noteworthy that in the period from 1980 to 1989, eighty-one individuals were punished for accepting bribes, and forty-nine individuals were punished for giving bribes.

However, in countries belonging to the continental legal family, such as France, Italy, and Germany, official crimes are regarded as among the crimes posing the highest level of social danger.

According to the Criminal Code of France adopted in 1992, various types of official crimes are defined, including bribery, abuse of official authority, disclosure of official secrets or attempts to commit such acts, and other forms.

In France, with the aim of preventing and eliminating corruption within the public service system, in the 1990s a decision was adopted obliging all elected public officials and public service personnel susceptible to corruption to submit information on their property and income to independent bodies. In addition, legal and organizational foundations were established to ensure the wide disclosure of declarations on the income and property of high-ranking officials of the state apparatus. Forms of informing the general public about relations formalized or permits issued by administrative institutions were developed. On-the-spot payment of fines for violations of traffic rules was prohibited. In order to increase the effectiveness of state control as a method of preventing and eliminating corruption in the public service system, decisions were adopted to increase the number and enhance the qualifications of employees engaged in monitoring compliance with legality in prefectural services, as well as to grant prefectural services the right to delay the execution of documents whose content increases corruption risks. The Government of France adopted decisions to expand the powers of the Court of Accounts and to support efforts by enterprises to conduct internal audit and control measures aimed at protecting their employees from corruption risks. Furthermore, the Government of France decided to establish a Central Anti-Corruption Service under the Ministry of Justice.

The experience of Germany demonstrates that identifying sectors vulnerable to corruption, as well as establishing databases within the country's central bank

containing information on individuals and legal entities exposed for bribing public officials, may constitute the most effective organizational and legal measures for preventing corruption. This prevents them from obtaining public contracts under new names or different disguises, rotating managerial personnel, and establishing external units that exercise internal control over the activities of administrative staff [4].

The Russian Federation is one of the states among the former Soviet republics that is conducting an effective fight against corruption. In particular, in 1992 the Decree of the President of the Russian Federation "On Combating Corruption in the Public Service System" was promulgated, and in November 1997 the law "On Combating Corruption" was adopted by the State Duma of the Russian Federation in its third reading. At the same time, a Federal State Program aimed at strengthening the fight against corruption was developed.

This law consists of six chapters and thirty-eight articles and is aimed at protecting human and civil rights and freedoms, the interests of society, and state security by creating conditions for the prevention, detection, and suppression of corruption-related offenses, the elimination of their consequences, and the punishment of guilty persons.

In the initial period of its activity, the agency, along with combating crime and investigating criminal cases, also exercised supervision over the activities of subordinate divisions, and subsequently this function was transferred to the department of prosecutorial oversight over investigations within the prosecutor's offices.

In the criminal codes of foreign states, along with the concept of an official, the concept of a responsible official is also established. In particular, pursuant to Article 285 of the Criminal Code of the Russian Federation, public service officials are envisaged, understood as officials holding positions regulated by the

Constitution or by federal laws. In Article 307 of the Criminal Code of the Republic of Kazakhstan, the concept of a responsible official is provided for, which is defined as a person performing official functions determined by the Constitution of the Republic of Kazakhstan or by constitutional or other legislative norms.

In the Criminal Code of Ukraine, officials and officials of law enforcement bodies are distinguished from one another (in the appendix to Article 364). In the appendix to Article 304 of the Criminal Code of the Kyrgyz Republic, the concept of a responsible official is defined as positions in the public service or public bodies determined by the Constitution of the Kyrgyz Republic or by constitutional laws.

In every system of governance (state and non-state), professionally trained and knowledgeable specialists also serve, and these employees, by the nature of their official duties, are of significant importance in organizing specific spheres of public administration. In the works of scholars in the field of administrative law devoted to раскрытие the essence of an authority representative as an official, the term public official may also be encountered [5]. This concept is not a novelty in legal scholarship, as it has long existed in the legislation of foreign states: the laws of the United States, Belgium, France, Germany, the Netherlands, and India contain references to a public official, and even constitutional laws address the notion of “public servants of the state (professional officials)” [6]. The concept of public servants and their characteristics are determined by the possibility for every citizen to encounter such an official [7]. This characteristic is also reflected in the Criminal Code of the Republic of Uzbekistan; however, it is designated not as a public official, but under a different term. In particular, representatives of authority, as well as persons performing organizational-managerial or

administrative-economic functions within citizens' self-governing bodies, may be regarded as public officials.

In the criminal codes of foreign states, the concept of a responsible official is defined in a comprehensive manner. In particular, pursuant to Article 285 of the Criminal Code of the Russian Federation, officials in public service are understood as persons holding positions regulated by the Constitution or by federal laws. Article 307 of the Criminal Code of the Republic of Kazakhstan provides for the concept of a responsible official, stating that a responsible official shall be understood as a person performing official functions determined by the Constitution of the Republic of Kazakhstan or by constitutional or other legislative norms.

In the Criminal Code of Ukraine, officials and officials of law enforcement agencies are distinguished from one another (as provided in the note to Article 364). In the note to Article 304 of the Criminal Code of the Republic of Kyrgyzstan, a definition of a responsible official is given, according to which positions in public service or in state bodies determined by the Constitution of the Republic of Kyrgyzstan or by constitutional laws are to be understood as responsible official positions.

The analysis of foreign criminal legislation demonstrates that, despite the universal recognition of the social danger posed by official crimes, approaches to the criminal liability of public officials vary considerably depending on the legal system, form of government, and national legal traditions. In several states, the clear and comprehensive legal definition of concepts such as "public official" or "responsible official" facilitates the correct qualification of official crimes and enhances the effectiveness of criminal prosecution.

International experience also indicates that successful prevention of corruption-related offenses largely depends on the implementation of systemic measures,

including asset and income disclosure requirements, regulation of conflicts of interest, transparency in public procurement, and the strengthening of institutional oversight mechanisms. In this regard, a thorough study of advanced foreign practices and their adaptation to national legal systems may significantly contribute to improving criminal legislation and law enforcement mechanisms aimed at combating official crimes.

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