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CORRUPTION CRIMES IN UKRAINE: special types of dismissal

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The monograph is devoted to the study of theoretical and practical problems of special types of exemption from criminal liability for corruption crimes. The conceptual apparatus of investigated "encouraging" institute and its compliance with the basic principles of criminal law and international legal standards are analyzed. Given the foreign experience, the proposals on improving the current criminal legislation of Ukraine are formulated in the part that defines the order, conditions and grounds for the application of the exemption from criminal liability for corruption crimes.

The work is of interest to law enforcement officials, researchers, post-graduate students (adjuncts), students and teachers of higher education institutions, as well as all those interested in criminal law issues.

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The list of conditional abbreviations

par. − paragraph

SCU – The Supreme Court of Ukraine

EU – The European Union

CC – The Criminal Code

CPC – The Criminal Procedure Code

UN – The United Nations

USA – The United States of America

art. − article

FRG – The Federal Republic of Germany

pt. − part

The introduction

There is a fundamental modernization of the country and an effective and efficient state administration system is formed, capable of implementing systemic and consistent solutions in conditions of European integration, which is the basis of Ukraine's foreign policy identity. One of the main factors in this process is the reformation of the anticorruption criminal legislation of our state, the latest changes of which directly affected the norms of the CC of Ukraine.

In these circumstances, the formation of reliable theoretical and methodological foundations of a new study for the native criminal legislation of special types of exemption from criminal liability for corruption crimes is the most actual. The solution of this issue is necessary to assess the significance of these provisions as an element of the national criminal justice system, clarification of the directions of development of the criminal anticorruption policy of the state.

The carrying out of these scientific developments is conditioned by the necessity of a comprehensive study of the essence of mitigating the criminal legal impact on persons, who committed by corruption crimes; correct understanding of its practical implementation.

The works of such well-known domestic and foreign scientists as: H. Alikperov, Yu. V. Baulin, O. I. Boitsov, Ya. M. Brainin, K. K. Vavylov, G. B. Vittenberg, L. V. Golovko, V. Gorzhey, E. Dadakayev, T. T. Dubinin, V. Yegorov, S. G. Kelina, N. F. Kuznyetsova, V. I. Kurlyandskyi, V. Kushnaryov, I. Ye. Mezentseva, I. Petruhin, S. N. Sabanin, V. V. Skybytskyi, V. Tertyshnyk, D. Filin and act. will be the theoretical background for the

study.

Separate aspects of the institutes of release from criminal-liability and incentive norms in general are covered in the monographs P. V. Khryapinsky "Encouraged norms in the criminal legislation of Ukraine" (2009), O. S. Kozak "The effectiveness of the release from criminal liability in Ukraine" (2009) and A. V. Savchenko "Corruption crimes (criminal-law characteristic)" (2016); in the doctoral dissertations M. I. Melnyk "Criminological and criminal-law problems of combating corruption" (2002), P. L. Fris "Criminal-law politic of Ukraine" (2005), O. Yu. Busol "Countering corruption in the context of a modern anti-corruption strategy in Ukraine" (2015). Recently, some types of the exemption from criminal liability were investigated at the dissertation level by M. Ye. Grygor'yeva, O. O. Zhytnyi, Zh. V. Madrychenko, O. V. Naden, O. V. Perepadya and O. O. Yamkova.

The works of these scientists are fundamental, but there is a need for thorough theoretical and applied developments of encouraging norms for corruption crimes, the list of which in 2015 was enshrined in the CC of Ukraine, in modern Ukrainian science of criminal law.

Simultaneously, there are no complex monographic studies devoted to the problems of special types of the exemption from criminal liability, despite the importance of combating corruption in connection with democratic transformations and the formation of a legal state of Ukraine and as well as the presence of significant scientific interest in anti-corruption processes in the domestic of criminal-law science.

The purpose of the work was to develop the substantiated scientific and practical bases of special types of exemption

from criminal liability for corruption crimes and to clarify the role and place of this institute in the mechanism of the realisation of criminal law functions through the way of comprehensive criminal-law analysis.

The data from empirical studies obtained during the questioning of 306 law enforcement officers (Prosecutor's Office, National Militia and Security Service of Ukraine) in the different regions of Ukraine and other statistical and analytical materials of relevant judicial and investigative practices, reference-publicistic and periodicals and author's personal practical experience in the position of deputy prosecutor of the Rivne region are used in the monograph.

The scientific results, which are obtained by the author in the study process, are used: in the educational process − during the teaching of criminal law and related special courses and for the preparation of textbooks and manuals on relevant themes; in lawmaking − proposals have been made for amendments and additions to the current legislation, in particular to the articles of the Criminal Code of Ukraine, which determine the procedure for exemption from criminal liability for corruption crimes; in practical work − to improve the activities of law enforcement agencies for the application in practice of special types of exemption from criminal liability for corruption crimes.

Section 1

General characteristics of the exemption from criminal liability for corruption crimes

1.1. The concepts, grounds and conditions of the exemption from criminal liability for corruption crimes

The relevance of the theme of the study is related to the change in the direction of world and national criminal policy in the direction of the primary protection of the rights, freedom and interests of the victim, individualization of criminal responsibility and punishment. New forms and methods of state response to a crime committed to prevent or reduce the consequences of a crime are looked for. Considerable attention has been paid to changes and additions to the institute of release from criminal liability in the new criminal legislation. The existence in the CC of Ukraine of special cases of release from criminal liability is substantiated by the desire to compromise with the offender in order to achieve a more significant result than bringing the criminal responsibility of the perpetrator. Wider scope of factors, which are taken into account in determining the legal consequences of a crime, is comprised in the modern practice. It includes the expression of will and the personal qualities of the offender, manifested not only during the commission of

the crime, but also after it. The economic and legal situation prior to the commission of the crime and other factors are taken into account. The rules of law, which encourage citizens to be active in the prevention, disclosure and investigation of crimes, improves.

In these circumstances, the most actual is the formation of reliable theoretical and methodological foundations of such an encouraging institute as special types of exemptions from criminal liability for corruption crimes. The solving of this question is necessary to assess the meaning of these provisions to be an element of the national criminal-legal justice system, clarifying the directions of development of the criminal anticorruption policy of the country.

Of course, the grounds and conditions have utmost importance for the exemption from criminal liability for corruption crimes, since the direct application of these norms directly depends on these basic categories.

The problems in determining the grounds and conditions for exemption from criminal liability were paid attention by domestic and foreign scholars such as Kh. Alikperov, Yu. Baulin, V. Horzhey, E. Dadakayev, V. Yegorov, O. Zhytnyi, V. Kyshnaryov, I. Petrukhin, V. Tertyshnyk, D. Filin, P. Khryapynskyi and etc.

One of the forms of counteraction to crime was the application of not only measures that change or supplement the punishment, but also those that absolutely exclude criminal prosecution at the begining of the XX century and at the begining of the XXI century. For example, the alternative

is to release a person who committed a crime from criminal liability for this crime.[1]

There are different views on the definition of exemption from criminal liability in the theory of criminal law. So, O. O. Dudorov defines it as a refusal of the state in the person of the competent authorities from the conviction of the person who committed the crime without using criminal-law means of compulsory nature, regulated by criminal and criminal-procedural law.[2] S. S. Yatsenko formulates the concept of exemption from criminal liability to be an implemented in accordance with the criminal and criminal procedure law denial of the state in the person of the relevant court from the application of criminal law measures to those people who committed crimes.[3] Yu. V. Baulin's opinion is that, the refusal of the state, which is provided by the law, from the person's appliance who committed a crime, restrictions on certain rights and freedoms determined by the CC of Ukraine.[4] O. F. Kovitidi understands the legal consequences of a crime envisaged by law, which consists of the country's refusal to condemn the person who committed the crime and without

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 185.

[2] Kryminalne pravo Ukrainy. Zahalna chastyna : pidruchnyk / Yu. V. Aleksandrov [ta in.] ; red. Ya. Yu. Kondratiev. – Kyiv : Pravovi dzherela, 2002. – S. 254–255.

[3] Yatsenko S. Chy vidpovidaie Konstytutsii Ukrainy instytut zvilnennia vid kryminalnoi vidpovidalnosti / S. Yatsenko // Pravo Ukrainy. – 2011. – № 9–10. – S. 167–168.

[4] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 187.

using criminal-law measures that may be imposed on her in connection with her conviction.[1]

The exemption from criminal liability is dismissal of a person from a negative assessment of his conduct in the form of a conviction by S. H. Kelina.[2]

N. F. Kuznetsova explains this legal appellation as the release of a person who committed a crime, but then lost his public danger due to a number of circumstances specified in the criminal law.[3]

The objective necessity of the existence of this institution in legal science is explained in different ways. The basis of exemption from legal liability is its humanization in the general theory of law; institute of dismissal from liability see as a means of implementing the principle of individualization in the legal mechanism.[4]

As a manifestation of the principle of humanism, the Institute for the exemption from criminal liability is also considered in the science of criminal law.[5] It seems to be the humanism as one of the principles of criminal law and to be individualization as a component of the principle of justice,

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[1] Kovitidi O. F. Okremi problemy kryminalno-pravovoho rehuliuvannia zvilnennia vid kryminalnoi vidpovidalnosti nepovnolitnikh / O. F. Kovitidi // Pidpryiemnytstvo, hospodarstvo i pravo. – 2004. – № 3. – S. 97.

[2] Kelyna S. H. Teoretycheskye voprosy osvobozhdenyia ot uholovnoi otvetstvennosty / S. H. Kelyna. – Moskva : [b. y.], 1974. – S. 90.

[3] Kurs uholovnoho prava. Obshchaia chast. T. 2. Uchenye o nakazanyy : uchebnyk dlia vuzov / pod red. d-ra yuryd. nauk, prof. N. F. Kuznetsovoi y dr. – Moskva : ZERTsALO, 1999. – S. 147.

[4] Troytskaia M. Yu. Ynstytut osvobozhdenyia ot yurydycheskoi otvetstvennosty y mekhanyzm eho realyzatsyy v rossyiskom zakonodatelstve : avtoref. dys. … kand. yuryd. nauk / Troytskaia M. Yu. – Moskva, 2012. – S. 7.

[5] Maltsev V. V. Problemy osvobozhdenyia ot uholovnoi otvetstvennosty y nakazanyia v uholovnom prave / V. V. Maltsev. – Volhohrad : [b. y.], 2004. – S. 79.

given the variety of forms of expression, cannot be her explanation for the refusal of the country to condemn a person for the crime committed by this person.

Kh. D. Alikperov notes that all the norms of the investigated institute are a normative reflection of the idea of a compromise in the concept of modern criminal-legal struggle against crime.[1]

It is difficult to argue with it, but the idea of a compromise in the fight against crime is also being implemented in other criminal law institutes (for example, in special rules for the imposition of a punishment when entering into a pre-trial agreement about cooperation, in the institute of exemption from punishment). In addition, the compromise, dictated not by material, but by other (processual, operational-searchetive, etc.) reasons, does not always give a positive effect.

In addition, the compromise, dictated not by material, but by other (processual, operational-searchetive, etc.) reasons, does not always give a positive effect.

Therefore, each of the analyzed concepts of exemption from criminal liability for crimes in general has its rational basis, but there is a need to define this concept directly for corruption crimes. The difference in understanding is related to the changes that have already been made to the CC of Ukraine for the implementation of international obligations to combat corruption (in particular, the fixing of the list of articles related to corruption crimes and the definition of restrictions on the application of encouraging norms for them

[1] Alykperov Kh. Novui UK: problemu osvobozhdenyia ot uholovnoi otvetstvennosty / Kh. Alykperov // Zakonnost. – 1999. – № 4. – S. 13.

of the general part and foreseeing criminal-law measures concerning legal entities, etc.).

So, the exemption from criminal liability for corruption crimes is regulated by criminal and criminal-procedure legislation, the refusal of the state through the competent authorities from the appointment of a person who committed a corruption offense, punishment and the imposition of criminal legal measures against legal entities.

The considerable experience is already accumulated considerable experience in the application of the norms that provide for the release of a person from criminal responsibility in the science of criminal law, but significant changes in anti-corruption legislation have made many innovations in the norms of the Criminal Code of Ukraine.

The considerable experience in applying the norms that provide for the exemption of a person from criminal liability has already been accumulated in the science of criminal law, but significant changes in anti-corruption legislation have made many innovations in the norms of the CC of Ukraine. The above changes are related to the fact that since October 2014 a number of extremely important laws have been passed which can be considered the largest legislative reform in the field of combating corruption during the existence of a new independent Ukrainian state, such as: Laws of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine Regarding the Inevitability of Punishment for Certain Crimes Against the Basics of National Security and Corruption Crimes (the Law on conviction in absentia)" (dated 07.10.2014), "On the Principles of State Anti-Corruption Policy in Ukraine (Anti Corruption Strategy) for 2014−2017"; "On the National Anti-Corruption Bureau of

Ukraine"; "On Prevention of Corruption"; "On Amending Certain Legislative Acts of Ukraine Concerning the Definition of Final Beneficiaries of Legal Persons and Public Figures"; "On Prevention and Counteraction to the Legalization (Laundering) of the Income derived by Terrorism, Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction" (dated 14.10.2014), "On Amendments to Certain Legislative Acts of Ukraine to Ensure the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" (dated 02.02.2015).

These laws introduced radical changes to some articles of the Criminal Code of Ukraine; in particular, the concept of "corruption crimes" was introduced at the legislative level in the note to Art. 45 of the CC of Ukraine.

The opportunities to investigate at their levels special types of exemption from criminal liability for corruption crimes appeared for scientists and practitioners for the first time.

Of course, the very scientific and practical analysis is the most valuable and significant, however, taking into account the insignificant time elapsed since the introduction of most of the proposed changes to the law in effect and the law coming into force (in particular, the term "corruption crimes" dated 02.02.2015) similar results and generalizations are only in perspective. However, now a scientifically substantiated study of such basic categories of exemption from criminal liability as the grounds and conditions will allow us to determine the main aspects of which the application of these norms depends.

It states that corruption crimes in accordance with this Code are crimes provided by articles 191, 262, 308, 312, 313,

320, 357, 410; in the case of their commission by misuse of official position, as well as crimes provided for in articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code, in the note to Art. 45 of the CC of Ukraine "Exemption from criminal liability in connection with effective repentance".

Most of the above-mentioned articles of the CC of Ukraine don't provide for special grounds and conditions for exemption from criminal liability. Such articles of the Criminal Code of Ukraine are art. 191 "The misappropriation, embezzlement or possession of property by way of abuse of office"; art. 262 "The abduction, misappropriation, extortion of firearms, ammunition, explosives or radioactive materials or possession of them by fraud or abuse of office"; art. 308 "The abduction, misappropriation, extortion of narcotic drugs, psychotropic substances or their analogues or taking them by possession by fraud or abuse of office"; art. 312 "The abduction, misappropriation, extortion of pre-cursors or possession of them by fraud or abuse of office"; art. 313 "The abduction, misappropriation, extortion of equipment intended for the manufacture of narcotic drugs, psychotropic substances or their analogues, or taking possession by fraud or abuse of office and other unlawful actions with such equipment"; art. 320 "The violation of established rules of circulation of narcotic drugs, psychotropic substances, their analogues or precursors"; art. 357 "The abduction, misappropriation, extortion of documents, stamps, seals, seizure by fraud or abuse of office, or damage to them"; art. 410 "The abduction, misappropriation, extortion by a servicemen of weapons, ammunition, explosives or other military assets, means of transportation, military and special equipment or

other military property, as well as possession of them by means of fraud or abuse of office."

Part two of the note of art. 45 of the CC of Ukraine contains the majority of articles, which also don't provide for special grounds and conditions for the above-mentioned exemption the guilty, in particular: art. 210 "The misuse of public funds, incurring the expenditure of budget or providing loans from the budget without established budget appointments or excessing of them"; art. 364 "The abuse of power or office"; art. 364-1 "The abuse of powers by a public official of a legal entity of private law irrespective of the organizational and legal form"; art. 365-2 "The abuse of powers by an official who provides public services"; art. 368 "The adoption of an official offer, promise or obtaining unlawful benefit by an office"; art. 368-2 "The illicit enrichment".

Art. 354 "The bribing a worker at enterprises, organizations and institutions" which is specified in the note of Art. 45 CC of Ukraine (in fact), directly contains the grounds and conditions for exemption from criminal liability for corruption crimes.

Thus, in part 5 of Art. 354 of the Criminal Code of Ukraine states that a person who has offered, promised or obtained unlawful benefit is exempted from criminal liability for crimes stipulated by articles 354, 368-3 "The bribing an office of a legal entity of private law irrespective of the organizational and legal form"; 368-4 "The bribing an official who provides public services"; 369 "The offer, promise or obtaining unlawful benefit given to an office"; 369-2 "Abuse of influence" of this Code, if after offering, promising or obtaining unlawful benefit, the person voluntarily informed the

law enforcement agency (before receiving other sources of information) about this crime and actively contributed to the disclosure of an offense committed by a person who obtained unlawful benefits or accepted her offer or promise.

The specified exemption does not apply if the offer, promise or unlawful benefit were committed in relation to persons specified in part 4 of art. 18 of this Code. So a person cannot be exempted from criminal liability if the offer, promise or unlawful gain has been committed against officials who are officials of foreign countries ((persons who occupy positions in the legislative, executive or judicial branches of a foreign state, including jurors, other persons who carry out the functions of the state for a foreign state, in particular for a state body or state enterprise), by foreign arbitration judges, persons authorized to resolve civil, commercial or labor disputes in foreign countries in an order, alternative judicial, officials of international organizations (by employees of an international organization or by any other persons authorized by such organization to act on its behalf), as well as by members of international parliamentary assemblies, to which Ukraine is a member, and by judges and officers of international courts. Speaking about the general characteristics of the exemption from criminal liability for corruption crimes, the grounds and conditions of application of this legal institution are subjects to study, first of all. In view of this, let's dwell on the formulation of the essence of the concepts of "ground" and "condition".

An academic explanatory dictionary defines the basis as the main thing, based on what is based on something; a

scientific basis as something that explains, justifies actions, behavior, etc. somebody.[1]

Note that in the legal sense, in relation to legal liability, the basis has a triune essence: normative, factual and procedural.[2] The simultaneous presence of all these components is a prerequisite for the application of the exemption of a person from legal (in our case, criminal) liability.

The normative basis − is the presence of a rule of law, which provides for the possibility of exemption from criminal liability.

The actual basis − is the availability of conditions for exemption from the offense (actually committed deed).

The procedural basis – is the availability of implementing law, which specifies the general requirements of incentives into the legal rules of criminal law (contains conditions), determines the procedure for exemption from criminal liability.

The condition is inextricably linked with the essence of the grounds for exemption from criminal liability. The condition is a thing, which forms the cause or creates the possibility of its action, and this connection is conditioned with the consequence; the condition is a requirement, a proposal put forward by one party, negotiating about something, as well as when entering into an agreement, a contract, by an academic explanatory dictionary.[3]

[1] Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy / uklad. i holov. red. V. T. Busel. – Kyiv ; Irpin : VTF “Perun”, 2005. – S. 20.

[2] Skakun O. F. Teoriia derzhavy i prava : pidruchnyk : per. z ros. / O. F. Skakun. – Kharkiv : Konsum, 2001. – S. 472.

[3] Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy / uklad. i holov. red. V. T. Busel. – Kyiv ; Irpin : VTF “Perun”, 2005. – S. 20.

Under the notion of "cause" understand the thing that determines directly, generates another thing − the consequence.[1]

Taking into account the clarified interpretation of these basic concepts of "grounds" and "conditions" for exemption from criminal liability for corruption crimes, we can outline their general characteristics:

− the normative basis is availability, where the incentive legal rules of criminal law is contained in art. 354 of the CC of Ukraine;

− the factual basis is the presence taken together provided for conditions for exemption from criminal liability in Part 5 of Art. 354 of the Criminal Code of Ukraine 1) after a proposal, a promise or an unlawful benefit; 2) before obtaining information about this crime from other sources by the relevant body; 3) a voluntary of crime report; 4) active assistance in disclosing a crime;

− the procedural basis is the norms of law, in particular the CPC of Ukraine, which determine the procedure for exemption from criminal liability.

Speaking about the grounds for exemption from criminal liability, there are many controversial views about the conditionality of their existence in criminal law among scientists. Yu. V. Baranov considers the general ground for exemption from criminal liability "something positive that happened in the subject, which is enshrined in the legal formulation".[2] In this, the author specifies that the general basis for all types of exemption from criminal liability is the

[1] Kryminalne pravo Ukrainy. Zahalna chastyna : pidruchnyk / Yu. V. Aleksandrov [ta in.] ; red. Ya. Yu. Kondratiev. – Kyiv : Pravovi dzherela, 2002. – S. 381.

[2] Entsyklopedyia uholovnoho prava. T. 10. Osvobozhdenye ot uholovnoi otvetstvennosty y nakazanyia. − SPb. : [b. y.], 2008. – S. 19.

loss former public danger of the person committed the crime, although it is only mentioned in Art. 48 of the CC of Ukraine (exemption from criminal liability in connection with the change in the situation).[1]

N. F. Kuznetsova notes, that the general basis for all types of exemption from criminal liability is the loss former public danger of the person committed the crime. In connection with this fact, there is no need to apply criminal liability measures to person.[2] Indeed, the public danger of a person is the objective quality, a category that, under the influence of objective or subjective circumstances, can identify a certain change. So, if the person who committed the crime, after that, made a certain positive post-criminal behavior on restoring the primary (criminal) status of the objects of the criminal law (paid wages, scholarships, pensions or other payments; paid taxes, fees, other obligatory payments, and also compensated the damage inflicted by the state on their untimely payment; handed in weapons to the authorities, military supplies or explosive devices, etc.), then obviously the public danger of this person is changing.

Most scholars are looking for the basis of exemption in a public dangerous act committed or in the person who committed it, and they see the person of an act in a small public danger or person. Thus, K. K. Vavilov, investigating this problem, believes that such grounds (common to all types of exemption) consist of a small public danger of the crime or the person who committed it. He proposes to divide the

[1] Right there.

[2] Kurs uholovnoho prava. Obshchaia chast. T. 2. Uchenye o nakazanyy : uchebnyk dlia vuzov / pod red. d-ra yuryd. nauk, prof. N. F. Kuznetsovoi y dr. – Moskva : ZERTsALO, 1999. – S. 154–155.

grounds for exemption from criminal liability for the formal (legal) (the norms of substantive law, which provide for the exemption) and material (those legal facts, the existence of which involves the application of the rules on dismissal, that is, the circumstances that most characterize the committed criminal act or the person who committed it, make it appropriate that type of release and indicate a small degree of social danger of the act or the person who committed it).[1]

S. G. Kelin substantiates the concept of two general (universal) grounds for exemption from criminal liability, which can only be applied in aggregate. She includes to them: 1) a small public danger of the committed crime; 2) the absence or small public danger of a person who, as a result, does not need remedying at all, or can be remedied without the use of a punishment.[2] N. A. Yegorova notes that the basis for exemption from criminal liability for most of its types may be both the named grounds in aggregate and each separately.[3]

V. V. Svyerchkov, believing that, supports this position the general basis for exemption from criminal liability "alternatively consists of the following subjective and objective features: a) subjective − the absence, loss or reduction of danger (harm) of a person for society, b)

[1] Vavylov K. K. Osnovanyia osvobozhdenyia ot uholovnoi otvetstvennosty po sovetskomu pravu : avtoref. dys. ... kand. yuryd. nauk / Vavylov K. K. – Leningrad, 1964. – S. 14.

[2] Kelyna S. H. Teoretycheskye voprosy osvobozhdenyia ot uholovnoi otvetstvennosty / S. H. Kelyna. – Moskva : [b. y.], 1974. – S. 90.

[3] Ehorova N. A. Dyfferentsyatsyia y unyfykatsyia uholovnoi otvetstvennosty za upravlencheskye prestuplenyia (zakonodatelnyi aspekt) / N. A. Ehorova. – Volhohrad : [b. y.], 2010. – S. 32.

objective − the loss or reduction of harm (public danger) of the committed act on the time of exemption".[1]

O. Zhitnyi, investigating the problem of exemption from criminal liability in connection with the repentance, argues the position of the existence of a general ground for exemption from criminal liability. In his opinion, the grounds for exemption from criminal liability should be established taking into account the formal and criminal-political parties. In this regard, the formal (legal) grounds for exemption are the norms of substantive law governing the exemption from criminal liability. They are the legal form of the factual (material) basis for exemption from criminal liability, which is inappropriate to extend the criminal legal relationship between the state and the person who committed the crime and the implementation of the criminal liability of this person in connection with the achievement of certain desired results for society.[2]

Given the scope of our research, the essence of the existence of a general ground for exemption from criminal liability for corruption crimes is proposed to be precisely such a solution to the problem of corruption in our state.

Since for those people who committed corruptive crimes, it should be exempted from liability and punishment, in particular with the bail bond, in connection with the effective

[1] Sverchkov V. V. Kontseptualnye osnovy reshenyia problem osvobozhdenyia ot uholovnoi otvetstvennosty : avtoref. dys. … d-ra yuryd. nauk [Elektronnyi resurs] / Sverchkov V. V. − N. Novhorod, 2008. – Rezhym dostupa : http://www.dissers.ru/avtoreferati-dissertatsii-yuridicheskie/a352.php

[2] Zhytnyi O. O. Zvilnennia vid kryminalnoi vidpovidalnosti u zviazku z diiovym kaiattiam / O. O. Zhytnyi. – Kharkiv : Vyd-vo Nats. un-tu vnutr. sprav, 2004. – S. 12.

repentance, trial, etc. (Law of Ukraine "On the framework of state anti-corruption policy in Ukraine (Anticorruption Strategy) for 2014–2017" of 14.10.2014[1]). Only special types of exemption from criminal liability for corruption crimes remain as the only measure to combat corruption with the help of such special incentive norms of criminal law.

It is worth noting that none of the special types of exemption from criminal liability for corruption crimes is not an effective repent in its pure form. In this case, a particularly careful research needs any of the conditions that, in the complex, may be the actual basis for the application of such exemption to the guilty person.

Analyzing the above considerations, we share the opinion of A. A. Yashchenko that the small public danger of the committed act and the person who committed it is not a general (universal) basis for exemption from criminal liability. Because of the application of special types of exemption provided for in the articles of the special part of the CC, neither a person nor the acts committed by him do not lose their public danger.[2] The accent should be shifted from the characteristics of the criminal act to assess the post-criminal behavior of the individual. The basis for exemption

[1] Pro zasady derzhavnoi antykoruptsiinoi polityky v Ukraini (Antykoruptsiina stratehiia) na 2014–2017 roky : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 46. – S. 2047. – Rezhym dostupu : http://zakon1.rada.gov.ua/laws/show/1699-18

[2] Iashchenko A. M. Prymyrennia z poterpilym u mekhanizmi kryminalno-pravovoho rehuliuvannia : avtoref. dys. ... kand. yuryd. nauk [Elektronnyi resurs] / Yashchenko A. M. – Kyiv, 2006. – Rezhym dostupu : http://inter.criminology.onua.edu.ua/?p=2052

is not the commission socially dangerous acts, and certain socially useful actions of a person. Therefore, we agree with the statement that the commission of an act, which does not constitute a major public danger, can't be the basis for the exemption from criminal liability, neither in combination with the small public danger of the person who committed the act and separately, since the law allows for exemption not because the person committed an act that does not represent a major public danger, but only under the condition of a positive post-criminal behavior of a person.[1]

This approach corresponds to the content of the concept of a universal basis for special types of exemption from criminal liability for corruption crimes. Accordingly, such a universal reason is a positive post-criminal behavior of the individual.

Particular attention deserves an exclusion from the list of necessary conditions for exemption from criminal liability for corruption crimes. It is the availability of extortion of unlawful benefit. Until recently, such a condition was traditional for domestic incentives into rules of criminal law, so to speak. The refusal of the legislator from its foresight in the future is evidence of a counteraction by the state not only by the passive adoption of unlawful benefits, but also by active bribery.

Consequently, the essence and meaning of the basic concepts of the institute of the exemption from criminal liability for corruption crimes are revealed. They are "grounds" and "conditions". The three-pronged essence of the grounds for such exemption (normative, factual and

[1] Right there.

procedural) is highlighted. The approaches to the analysis of goals, objectives and grounds for the use of special types of exemption from criminal liability as one of the areas of implementation of state anti-corruption policy are also substantiated. The results of such research are consistent with the principles of criminal law (the benefits of mitigating circumstances, the saving of criminal repression, etc.) and generally accepted norms of international law and confirmation of the implementation of the anti-corruption strategy of Ukraine.

1.2. The compliance of the exemption from criminal liability for corruption crimes with the basic principles of criminal law

The search for new, effective methods and ways of combating corruption is an urgent problem for modern Ukraine. Over the past few years, the number of changes taking place in the field of fighting corruption has exceeded the measures taken over the past ten years. However, qualitative transformations have not become visible to every citizen yet.

The results of such reforms can be felt under the condition of radical innovations in preventing such a socially dangerous thing as corruption. At the same time, the principles of criminal law, which are fundamental for the given branch and basic for the state in general, must remain inviolable.

As criminal norms in combating corruption, as evidenced by domestic experience and international practice, are among the most effective, one should outline the correlation of special types of exemption from criminal liability with the principles of criminal law. Determining the role and meaning of these incentive norms for national legislation.

The principles of criminal law recognize the most general basis of criminal law, established by law or directly from it, and which follow, and which have a direct action, a direct regulatory function.[1] All principles of criminal law can be divided into general and special. Based on the allowed scope of work, we will give a more detailed description to some of the principles, which is determined by the chosen subject of research.

General principles are inherent not only in criminal law, but also in other branches of law. They are: rule of law, legality, equality of citizens before the law, inevitability of liability, principles of justice, humanism and democracy.

The principle of the rule of law means that in the implementation of counteraction to corruption people, their rights and freedoms are recognized as the highest social values and determine the content and direction of anti-corruption activities the rule of law can't possess other means of combating corruption, except legal ones. In view of this, unacceptable are the means to fight corruption, which, although they may prove to be effective, but are contrary to the constitutional principles of the functioning of the state and

[1] Kryminalne pravo Ukrainy. (Osoblyva chastyna) : pidruchnyk / kol. avtoriv A. V. Bailov, A. A. Vasyliev, O. O. Zhytnyi ta in. ; za zah. red. O. M. Lytvynova ; nauk. red. serii O. M. Bandurka. – Kharkiv : KhNUVS, 2011. – S. 25.

society. That is, all anti-corruption measures should be based on the provisions of the Constitution and Laws of Ukraine. Accordingly, the exemption from criminal liability for corruption crimes has the right to exist and to be implement only if the principle of the rule of law is first and foremost in conformity. This correspondence appears in the consolidation to national legislation of special types of exemption from criminal liability for corruption crimes. The specified norms of exemptions are directly in line with international standards, in particular the Council of Europe Convention on Criminal Liability for Corruption 1999, The UN Convention against Corruption 2003, the United Nations Convention against Transnational Organized Crime 2000, the Convention of the Organization for Economic Co-operation and Development on combating the bribery of officials of foreign states in conducting international business operations in 1997.[1]

[1] Kryminalna konventsiia Rady Yevropy pro borotbu z koruptsiieiu vid 27 sich. 1999 r., ratyfikovana iz zaiavoiu Zakonom № 252-V (252-16) vid 18.10.2006, VVR, 2006, № 50, st. 497 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/994_101

Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

Konventsiia Orhanizatsii Obiednanykh Natsii proty transnatsionalnoi orhanizovanoi zlochynnosti (ukr/ros) : pryiniata rezoliutsiieiu 55/25 Heneralnoi Asamblei vid 15 lyst. 2000 r., ratyfikovana Zakonom № 1433-IV (1433-15) vid 04.02.2004 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/995_789

Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid

The principle of legality derives from the provisions of the Universal Declaration of Human Rights. "No one can be found guilty of committing a crime and can't be punished other than by a court sentence and in accordance with the law". At present, the special types of exemption from criminal liability for corruption crimes are enshrined in the Special Part of the Criminal Code of Ukraine (articles 354, 368-3, 368-4, 369, 369-2). They are the legal basis for the use of incentive measures.

The principle of equality of citizens before the law. The person who committed the crime is subject to criminal liability irrespective of sex, race, nationality, language, origin, property status and position, place of residence, religion or belief, membership of a public association or other circumstances. The equality of citizens before the law is ensured primarily by the recognition of the presence of a person's act of the crime, provided by law, the only reason for bringing him to criminal responsibility in the national criminal law. Recognizing the crime as a legal guarantee of the principle of equality of citizens before the criminal law generates a number of requirements, which must comply with both legislative and law enforcement activities. The law describing the signs of a crime must: firstly, give such signs sufficiently completely; secondly, the description should be as clear as possible; thirdly, when describing the features of the crime, indicate only the objective and subjective features of the crime and relate to the circumstances that determine the individual characteristics of the persons who committed such an act.

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21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5.rada.gov.ua/laws/show/998_154

These requirements are important for distinguishing criminal behavior from non-criminal, immoral or other, which entails another, less severe legal liability. In addition, equality of requirements for the recognition of an act by a corrupt crime against any person must equally and simply determine the conditions for exemption from the investigated criminal liability. To a certain extent, this principle has been respected through the definition of one encouraging norm as universal for a number of other corruption crimes. In particular, these provisions were enshrined in Part 5 of Art. 354 of the CC of Ukraine and for articles 368-3, 368-4, 369, 369-2. Previously, a note with special conditions for exemption from criminal liability contained each article.

The principle of democracy is manifested in criminal law in such forms: participation of representatives of public associations and individuals in the imposition of a punishment, its execution and, in particular, in exemption from criminal liability (transfer to bail), exemption from punishment.

The realization of the criminal-law policy on combating corruption based on this principle of democracy is connected, in particular, with the provisions enshrined in the General Part of the CC of Ukraine regarding the exemption from criminal liability and the imposition of a punishment. Section IX of this Code in articles 45−48, 69, 74, 75, 79, 81, 82, and 86 of the CC of Ukraine establishes the procedure and grounds for exemption from criminal liability, in addition to corruption crimes.

Given these restrictions, which are included by the General Part of the CC of Ukraine on corruption crimes in matters of exemption from punishment and the imposition of

a milder punishment, the most prominent principle of democracy is revealed in special incentive norms in the special part of the said Code.

The essence of another principle (humanism) is to recognize the value of a person (not only the person who committed the crime, but above all the victim). In particular, it is expressed in the fact that the punishment, which provides for a significant restriction of the legal status of the convicted person, pursues one goal − to protect the interests of other, law-abiding citizens, from criminal encroachments.

The humanism extends equally to the person who committed the crime, to the victim, the witness, etc. in the criminal law. At the same time, this question lets out of scientist's sight and all the attention is constructed on a humane attitude to the person who committed the crime. Consequently, the modern view on the principle of humanism in criminal law is to add the some provisions to the last one, such as:

− ensuring human rights by criminal law;

− humanization of the criminal-law policy of the state;

− reduction of the number of persons subject to criminal liability (due to special types of exemption from criminal liability for corruption crimes, etc.);

− limitation of the measures applied to the person who committed the crime only by the minimum necessary and sufficient to achieve the objectives, their correction and prevention;

− development and introduction of alternative criminal sanctions against the person who committed the crime;

– the prohibition of modeling and the application of any measures of influence on the person who committed the crime in order to inflict physical or mental suffering.

The principle of inevitability of criminal liability lies in the fact that the person who committed the crime is punishable in criminal confiscation. Under the latter one should understand the timely bringing the offender to liability, and the fact that before the criminal law no one should have privileges. Scientists, who studied the problem of the principle of inevitability of liability, rightly concluded that his further fate is closely linked with the institute of exemption from criminal liability. Those who insist on the appropriateness of direct consolidation of this principle in the text of the CC, try to prove that the institute of exemption from criminal liability does not contradict, but also fully corresponds to the concept of inevitability of responsibility.[1]

Summarizing everything, we note that the domestic criminal law operates the principle of inevitability of liability, the essence of which is that the person who committed the crime must be brought to the criminal or other responsibility that is associated with the using criminal nature actions against such persons. However, the analysis of the norms of art. 51 of the CC of Ukraine, as well as the characteristics of special types of exemption from criminal liability, gives grounds for refusing from this principle and developing more flexible forms of exemption liability for the committed crime.

The principle of justice means that the criminal punishment or other criminal law measures applicable to the

[1] Onyshchuk O. O. Kontseptualni zasady zapobihannia ta protydii koruptsii v Ukraini / O. O. Onyshchuk // Advokat. – 2010. – № 9. – S. 37.

criminal must correspond to the degree of public danger of the crime, as well as the person of the criminal. The same principle, in particular, means that no one can be twice brought to criminal liability for the same criminal act.

Most authors of special studies emphasize the special importance of the principle of justice for criminal law as the most important principle of state and public life.[1]

You should be operate the principle of justice, explicitly and clearly understanding its structure, not substituting humanism, which should ensure criminal law's «image» fair in the eyes of citizens. Therefore, you should not put it above other criminal-law principles.

In determining the scope of crimes, that is, when carrying out criminalization (decriminalization) of socially dangerous acts, it is necessary, along with other requirements of criminalization (decriminalization), which are carefully elaborated by the science of criminal law, to take into account the requirements of social justice as an element of social consciousness. Ignoring this circumstance leads to the fact that the criminal-law prohibition does not receive support and approval from the population; as a result, it is not adhered by citizens and employees of state bodies.

Another group of authors notes that the use of special types of exemption from criminal liability undermines the constitutional principle of presumption of innocence, since

[1] Kruhlykov L. L. Aktualnye voprosy otvetstvennosty za vziatochnychestvo v svete monohrafycheskykh yssledovanyi y yzmenenyi v zakonodatelstve poslednykh let [Elektronnyi resurs] / L. L. Kruhlykov, A. V. Yvanchyn, M. V. Remyzov. – Rezhym dostupa : http://defence-line.ru/uploads/files/actual-quest.pdf

one can't exempt a person from criminal responsibility for an crime if he has not been found guilty of commission yet.[1]

S. S. Yatsenko proposes, "in order to eliminate the conflicts between the provisions of the CC and the CPC, on the one hand, and the provisions of the Constitution of Ukraine (this refers to the principle of the rule of law enshrined therein – art. 8 and the principle of presumption of innocence – art. 62), on the second hand, to consider the question about possibility of taking into account the legislative experience of foreign countries, in particular, with regard to the possibility of refusing from the institute of exemption from criminal liability, expanding the scope of the institution of exemption from punishment, improving other means of criminal legal regulation on the committed crime, the existence of which is established by the court sentence".[2]

Y. V. Baulin, speaking of the violation of the principle of presumption of innocence, found out what lying is in this violation. He noted that at least nine components had to be attributed to the content of the above principle, and none of them can be violated when a person was exempted from criminal liability for the following reasons: 1) the person is

[1] Laryn A. M. Prezumptsyia nevynovnosty y prekrashchenye uholovnoho dela po nereabylytyruiushchym osnovanyiam / A. M. Laryn // Sud y prymenenye zakona / redkol. : S. H. Kelyna y dr. – Moskva : Yzd-vo Yn-ta hosudarstva y prava AN SSSR, 1982. – S. 93.

Petrukhyn Y. L. Prezumptsyia nevynovnosty – konstytutsyonnyi pryntsyp sovetskoho uholovnoho protsessa / Y. L. Petrukhyn // Sovetskoe hosudarstvo y pravo. – 1978. – № 12. – S. 23.

[2] Yatsenko S. Chy vidpovidaie Konstytutsii Ukrainy instytut zvilnennia vid kryminalnoi vidpovidalnosti / S. Yatsenko // Pravo Ukrainy. – 2011. – № 9–10. – S. 167.

not obliged to prove his innocence in the committed; 2) such a person only has the right to prove the existence of grounds for exemption from criminal liability and has the right to give evidence regarding this, the refusal of it does not justify her being convicted; 3) such person is not duty to prove his innocence and it is impossible to obtain evidence from such person through the use of violence, threats and other unlawful measures; 4) the charge can't be based on the evidence obtained illegally and on assumptions, too; 5) the admission of guilt by perpetrator cannot be served as a basis of the indictment, since the conviction do not result here at all; 6) all doubts concerning the proof of the guilty person continue to be construed in its favor; 7) the court does not decide the question about the proof of participation of the accused in committing a crime, because the court does not rule the sentence; 8) the fact of bringing a person to participate in a case as a suspect, accused, election of a preventive measure against her and further exemption her from criminal liability shall not be considered as proof of her guilt or as a punishment; 9) after the exemption of a person from criminal liability, you can not treat her to be guilty, as well as you can not say about her to be a criminal in public, in mass media and in any official documents.[1]

In the current CC of Ukraine, exemption from criminal liability actually exists as a waiver of criminal prosecution. In agreeing to this, let us draw attention to the fact that the exemption from criminal prosecution is the institute of criminal procedural law, which in material criminal law can

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 197–198.

manifest itself not only the institute of criminal procedural law, which in material criminal law can manifest itself not only in exemption from punishment, but also the exclusion of criminal liability and release from liability. In this case, the exemption from criminal liability can't have place after the conviction of a person, since from the moment of obtaining of legal force by a verdict the person is already a person who is subject to criminal liability. Consequently, person can no longer be freed from liability, and it can only be said about the possibility of exemption from punishment as an integral part of such liability.[1]

In addition, an exemption from criminal liability is not possible if the person who committed the crime denies this (for example, article 7, article 284 of the CPC of Ukraine). Thus, such a person has the right to object to the exemption from criminal liability, after which the case is obeyed in the general order and may well end with an acquittal.[2]

Therefore, by determining the ratio of special types of exemption from criminal liability for corruption crimes to such a general principle as a presumption of innocence, we conclude that the said exemption corresponds to this principle and does not violate it.

Let's consider the compliance of special types of exemption from criminal liability for crimes to the special principles of criminal law:

− the principle of the legislative definition of a crime (there is no crime not provided for by the Law) − one of the

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. − № 1 (1). – S. 198.

[2] Right there.

most important general principles of criminal law. It is defined in articles 1, 2, 3 and 11 of the CC of Ukraine. The implementation of this principle leaves no place for an analogy to the criminal law, which, by the way, is explicitly prohibited in part 4 of art. 3 of the CC of Ukraine. A person may be convicted only for an act committed by him that contains the crime, provided by the CC. The provisions of note art. 45 of the Criminal Code of Ukraine determine which particular crimes belong to corruption to date;

– the principle of personal responsibility – criminal liability is possible only for their own actions (inaction). No one can be held accountable for a crime committed by another person. This principle follows directly from the contents of part 2 of art. 2 CC: "A person is considered to be innocent of committing a crime and can't be subjected to criminal punishment until her guilt is proved in a lawful manner and established by a guilty verdict of a court". The principle of personal responsibility applies to those who committed crimes. The organizer, the instigator, and the accomplice also bear criminal liability only for acts committed by them personally. However, due to the fact that the crime was committed in conjunction with the executor, personal actions committed by them of this kind are appraised not only on their own but also from the point of view of their contribution to joint criminal activity.

This principle is especially important for special types of exemption from criminal liability for corruption crimes, since personal responsibility is foresaw the personal liberation from it. That is, another person can't exempt person from further criminal liability by reporting a crime committed by this

person. First, it is important to comply with for the principle of personal responsibility is in cases where a corruption offense is committed in a group of accomplices. Of course, we can consider a situation in which each of the accomplices carried out parallel reporting of a corruption crime separately. In such circumstances, the special exemption applies to everyone;

− the principle of fault liability − criminal liability comes only in the presence of guilt, that is, only if the person refers to the crime and its consequences deliberately or carelessly (art. 23 of the CC of Ukraine).

The methodological basis of this principle is the provision on the recognized independence of human consciousness in the choice of goals and methods of its behavior, the adoption and implementation of decisions. The concrete situation generates a volitional act not in itself, but only "refracting" through interests, views, habits, peculiarities of the psyche and other individual traits of the individual.[1] In this regard, in questions of the exemption from criminal liability for corruption crimes, the very subjective attitude of the person to her committed, will be decisive in determining how actively she contributes to the disclosure of a particular crime;

− the principle of subjective sanity most convincingly acts with the excess of the performer. The partners are not

[1] Kruhlykov L. L. Aktualnye voprosy otvetstvennosty za vziatochnychestvo v svete monohrafycheskykh yssledovanyi y yzmenenyi v zakonodatelstve poslednykh let [Elektronnyi resurs] / L. L. Kruhlykov, A. V. Yvanchyn, M. V. Remyzov. – Rezhym dostupa : http://defence-line.ru/uploads/files/actual-quest.pdf

liable for the performer's actions that were not covered by their intent;

− the principle of full responsibility − means the requirement to blame the person for everything committed by it, regardless of how much of the criminal-law norms it is provided for. Accordingly, exemption from criminal liability is possible subject to the principle of full exemption from it;

− the principle of the advantage of mitigating liability of circumstances. In the competition between aggravating and mitigating the mitigating circumstances, the preference is to mitigate the circumstances of the crime. The implementation of this principle in the area of combating both crime in general and corruption in particular is indicated in part 3 of art. 66 of the CC of Ukraine "Circumstances that mitigate the punishment": "If any of the circumstances that mitigate the punishment is stipulated in the Article of the Special Part of this Code as a sign of a crime affecting its qualification, the court can't once again take it into account when imposing the sentence as such, which softens it";

− the principle of greater punishment of a group crime. Its compliance to the special exemption from criminal liability for corruption crimes has a manifestation of the obligation of the person who committed the act in the group, to expose other accomplices. At the same time, such disclosure deprives participants of the opportunity to be exempted from criminal liability;

− the principle of full compensation for damage caused by a crime is a partial implementation of the new concept of a criminal law − the concept of protection, the replacement of the punitive function of the criminal law with the function of protection, the function of restoration of violated rights and

interests of the person. It is possible to agree with professor M. Korzhanskyi that the norm, which would be contained this principle, could have the following wording: "Irrespective of the measure and type of punishment imposed by the court, the person who caused damage by the crime to be harmed is obliged to compensate for the damage caused by this crime in full, as well as all expenses for the conduct of inquiry, investigation and court".[1]

This principle has not been taken into account in the norms that determine the special types of exemption from criminal liability for corruption crimes. That is, for a perpetrator there is no obligatory condition that would require compensating for the damage caused. Such omission is substantial and requires the appropriate amendments to the articles of the CC of Ukraine, which determine the procedure for the application of these special types of exemption, with the indisputable foresight of full compensation for the damage caused by the corruption crime;

− the principle of economies criminal repressions − is a practical definition of the optimal most appropriate level of economic and cultural development of society, the limits for separating the crime from non-criminal acts (actions, inaction), the abroad between criminalization and the decriminalization of crimes. Of course, a punishment imposed by a court should not leave the person a sense of non-punishment for a crime.

Thus, the essence of the principle of economies the criminal repression is to recognize the person, his rights and

[1] Korzhanskyi M. Y. Pro pryntsypy kryminalnoho prava Ukrainy / M. Y. Korzhanskyi // Pravo Ukrainy. – 1995. – № 11. – S. 71.

freedoms and legitimate interests as the highest social value for the state. This provision demands a criminal law to, firstly, not to punish the perpetrator by criminally-law sanctions, but to protect and restore the rights and interests of citizens who have been violated as a result of a crime, and, secondly, to apply measures of state coercion, to create in perpetrator's consciousness positive socially useful installations, including him in society as a full-fledged person, who respects and fulfills the normative prescriptions of this society to the perpetrator in the commission of a crime.

Analyzing the general and special principles of criminal law, we can note that in the field of combating corruption, each of them, undoubtedly, has a manifestation. During the study, we didn't find direct contradictions between the special types of exemption from criminal liability for corruption crimes and the fundamental ideas of criminal law. However, the principles that are key in such a relationship with the specified incentive norms deserve special attention. Among these principles, we can distinguish the followings: the principle of the rule of law, the correspondence of which appears in the consolidation by national legislation of special types of exemption from criminal liability for corruption crimes, which also directly meets the international standards of proper Conventions.[1]

[1] Kryminalna konventsiia Rady Yevropy pro borotbu z koruptsiieiu vid 27 sich. 1999 r., ratyfikovana iz zaiavoiu Zakonom № 252-V (252-16) vid 18.10.2006, VVR, 2006, № 50, st. 497 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/994_101

Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r.,

The principle of legality according to which special types of exemption from criminal liability for corruption crimes are enshrined in the Special Part of the CC of Ukraine regarding such articles 354, 368-3, 368-4, 369, 369-2. The principle of equality of citizens before the law manifests itself in equal and identical conditions in one incentive norm (part 5 of article 354 of the CC of Ukraine), which extends to a number of other corruption crimes (articles 368-3, 368-4, 369, 369-2 of the CC Ukraine). Taking into account the restrictions contained in the General Part of the Criminal Code of Ukraine on corruption crimes in matters of exemption from punishment and the imposition of a milder punishment, the principle of democracy is most notably manifested in the special incentive norms of the this code.

The modern view on the principle of humanism of criminal law consists in the inclusion of the following provisions:

a) the ensuring human rights by the criminal law;

b) the humanization of the criminal-law policy of the state, namely: reduction of the number of persons subject to

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VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

Konventsiia Orhanizatsii Obiednanykh Natsii proty transnatsionalnoi orhanizovanoi zlochynnosti (ukr/ros) : pryiniata rezoliutsiieiu 55/25 Heneralnoi Asamblei vid 15 lyst. 2000 r., ratyfikovana Zakonom № 1433-IV (1433-15) vid 04.02.2004 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/995_789

Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5. rada.gov.ua/laws/show/998_154

criminal liability (due to special types of exemption from criminal liability for corruption crimes, etc.).

The principle of inevitability of criminal liability is closely linked to the institute of exemption from criminal liability, since the latter plays a precautionary role and contributes to the detection of traditionally latent corruption crimes. When the person who gives the unlawful benefit reports about it, is exempted from criminal liability, thus denouncing the official who wishes to receive (or received) such a benefit.

The principle of justice is manifested in the criminalization (decriminalization) of corrupt acts, taking into account the requirements of social justice as an element of public consciousness, in order for social approval of the position of the legislator was manifested in the further practical realization of norms, in particular, the in encouraged nature.

The principle of the legislative definition of the crime is respected in part, since from the legislative consolidation of corruption crimes in the note of art. 45 of the Criminal Code of Ukraine, the scientific circles are seriously criticizing this definition. Scientists note out that the notion of a corrupt crime is absent and there is only an enumeration of certain articles of the code, which some scientists reasonably consider it to be incomplete. Therefore, the use of special types of exemption from criminal liability for corruption offenses directly depends on such listing. Accordingly, the more complete the listing is, the range of special types of exemption is the wider.

The principle of personal responsibility is related to the influence of punishment on the perpetrator and may not always be negative. The principle of fault liability in matters

of exemption from criminal liability for corruption crimes is manifested in the subjective attitude of the person to the committed and will continue to be crucial in determining the necessary condition for dismissal, as availability of active assistance to the crime disclosure.

The principle of the advantage of mitigating liability of the circumstances for corrupt crimes is limited by the conditions set forth in the Article of the Special Part of the CC of Ukraine. The principle of full compensation for damage caused by a crime should be ensured regardless of the exemption of a person from liability for corruption crimes. The principle of economies criminal repressions should ensure, in all circumstances, the absence of a person's feeling of non-punishment, especially when applied to her exemption from criminal liability. Therefore, it is crucial to consolidate the full compensation for the damage caused by a crime in a criminal law, which will avoid the feeling of non-punishment or even impunity in the guilty person.

1.3. Comparative-legal characteristic exemption from criminal liability for corruption crimes under the criminal law of Ukraine and under the norms of other countries

The studies of legislation foreign countries have become very relevant today. The comparative-legal characteristic allows us to determine the positive experience of other states and to implement it in the national legislation. Yu. V. Baulin noted that the understanding of reality is impossible without

mastering the past and other experience, and the experience − without comparisons.[1]

The development of the Institute for the exemption from criminal liability for corruption crimes stays without attention. To a certain extent, such a situation is conditioned by the position that corrupt officials should be punished without relaxation of punishment. However, the study of foreign normative and legal provisions attests to the opposite approach of some states, which justifies itself in practice. Taking into account that it is expedient to investigate the best practices of those countries, which have successfully countered corruption, comparisons, were made with the Scandinavian countries, in particular Finland, Denmark, Sweden, the Netherlands and some other European countries: Lithuania, Latvia, Estonia, the Federal Republic of Germany, Romania, the Republic of Belarus, France, Great Britain, and the USA.

Finland and Denmark divided among themselves the first place in the Index of corruption-relatedness in 2012, indicating a minimum level of corruption in the country, according to the authoritative data of the non-governmental organization "Transparency International". In the fourth, sixth, seventh, and ninth places, respectively, were Sweden, Switzerland, Norway, and the Netherlands. These countries belong to the "Scandinavian" system of law.[2]

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[1] Baulin Yu. V. Peredmova do monohrafii / Yu. V. Baulin // Khavroniuk M. I. Kryminalne zakonodavstvo Ukrainy ta inshykh derzhav kontynentalnoi Yevropy : porivnialnyi analiz, problemy harmonizatsii / M. I. Khavroniuk. – Kyiv : Yurystkonsult, 2006. – S. 9.

[2] Veibert S. Y. Uholovnaia polytyka skandynavskykh stran v oblasty protyvodeistvyia korruptsyi / S. Y. Veibert // Deiatelnost orhanov hosudarstvennoi vlasty po protyvodeistvyiu orhanyzovannoi prestupnosty :

Finland, as a member of the EU, is a party to all the main European Union legislation on combating organized crime and corruption. However, the implementation of European laws in the national legal system is carried out by this country fairly well. The main principle of this process is the organic combination of national legislation of Finland with the general European one with the least possible changes of first. For the Finnish legal system, laws aren't characterized by the use of the term "struggle" with the definition of a particular type of crime.[1] The Finnish legislator laid down the principles of prevention and caution in the commission of crimes in each normative-legal act, which determine the specific sphere of activity, and not the type of crime. According to the provisions of the Criminal Code of Finland, for the commission of actions that may qualify as "corruption", there are of the sanctions from fines to imprisonment for up to four years depending on the degree of public danger of a crime.[2]

A genuine guarantee of protection of persons who assist the authorities in combating corruption is also facilitated for the low level of corruption in public authorities and the administration of Finland.[3] Concerning the implementation of

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materyaly V Mezhdunar. nauch.-prakt. ynternet konf. (Ekaterynburh, 26 marta – 3 apr. 2013 h.). – Ekaterynburh : Ural. yn-t − fylyal RANKhyHS pry Prezydente RF, 2013. – S. 22−23.

[1] Vidpovidalnist za koruptsiini diiannia, pravovi zasady vidshkoduvannia zbytkiv, zavdanykh vnaslidok yikh vchynennia : navch.-metod. materialy / Yu. V. Baskakova, V. M. Havryliuk, P. V. Kachanova, H. O. Usatyi ; uporiad. O. V. Zhur. – Kyiv : NADU, 2013. – S. 39−40.

[2] Antykoruptsiine zakonodavstvo: mizhnarodni standarty ta yikh zaprovadzhennia v Ukraini : metod. posib. / uklad. : V. I. Hryhoriev, M. A. Mykytiuk, H. O. Honcharuk. – Kyiv : [b. v.], 2013. – S. 12.

[3] Bocharnykov Y. V. Zarubezhnyi opyt protyvodeistvyia korruptsyi / Y. V. Bocharnykov // Analytycheskyi vestnyk Analytycheskoho upravlenyia

the requirements of the Convention against Corruption in 2003, the United Nations Review Panel on the Prevention of Corruption[1] made observations on Finland that could be considered in terms of further development of the anti-corruption system, including those related to the Institute of exemption from liability (punishment) of persons for corruption crimes. In particular, for Finland is recommended to:

– to consider the possibility of exemption from punishment of persons who committed acts of corruption in the event of their voluntary and active cooperation with law-enforcement bodies;

– to consider extending the scope of the domestic law on mitigating punishments of persons who committed corruptive crimes in the event that they voluntarily and substantially assist law enforcement authorities in investigating crimes committed by other persons who are in one court cause and in a gathering evidence.[2]

Apparata Soveta Federatsyi Federalnoho Sobranyia Rossyiskoi Federatsyi. – 2007. – № 6 (351). – S. 45.

[1] Reziume stranovykh dokladov (zapyska sekretaryata OON), podhotovlennoe v ramkakh Konferentsyy hosudarstv – uchastnykov Konventsyy Orhanyzatsyy Ob'yedynennykh Natsyi protyv korruptsyy, Hruppoi po obzoru khoda osushchestvlenyia Konventsyy Orhanyzatsyy Ob'yedynennykh Natsyi protyv korruptsyy 7 yiunia 2011 hoda (h. Vena) [Elektronnyi resurs]. – Rezhym dostupa : http://sartraccc.ru/Pub_inter/unvscorr.files/V1183527r.pdf

[2] Bocharnykov Y. V. Zarubezhnyi opyt protyvodeistvyia korruptsyi / Y. V. Bocharnykov // Analytycheskyi vestnyk Analytycheskoho upravlenyia Apparata Soveta Federatsyi Federalnoho Sobranyia Rossyiskoi Federatsyi. – 2007. – № 6 (351). – S. 45.

Importance has ethics, respect for work and disrespect for tricks, dishonesty, and unjustified agility in the enriched ones in Finland. Finns believe that taking a bribe means losing self-esteem even if nobody knows about it. There are municipalities with a population of only 200, but they have self-government. The principle of the election of local administrations really works here (corruption often flourishes at the local level).[1]

Thus, the experience of Finland confirms that in this country, however, as in other developed democracies, the main factor in counteracting corruption is, first of all, honest power. It is also a system of interaction between government, civil society, traditions and values of the nation. Honest power does not depend on personality, it is laid in the culture, mentality of the people. Actually, the Ukrainian state is trying to capture such an approach for its citizens. The conducted studies confirmed that this is the most effective and most powerful way. The report of Transparency International about Corruption in Denmark in 2012[2] draws the following conclusions, which are of interest to our study, precisely because of the prism of the exemption from criminal liability for corruption crimes:

1. The Danish national system of "incorruptibility" is "healthy", which is largely due to the strong culture of state administration. Danish institutions have a relatively small

[1] Nevmerzhytskyi Ye. Problemy retseptsii antykoruptsiinykh mekhanizmiv rozvynenykh krain v ukrainsku praktyku [Elektronnyi resurs] / Ye. Nevmerzhytskyi // Viche. – 2011. – № 19. – Rezhym dostupu : http://www.viche.info/journal/2731/

[2] Kristensen M. B. National integrity system assessment Denmark [Electronic resource] / M. B. Kristensen. – 2012. – Access mode : http://archive.transparency.org/policy_research/nis/nis_reports_by_country/

number of regulatory requirements that establish formal rules of conduct and the principles of countering corruption. However, despite the low degree of formalization, there is a strong practice of incorruptibility, because if management culture weakens, certain rules that make the system as a whole "invulnerable" begin to operate.

2. Corruption is not considered a serious problem in Denmark and therefore it is not a theme that has a great influence on social processes and interests. Bribes and payments for accelerating the procedure for access to public goods and services are practically absent.

3. The study showed that it is difficult to distinguish between punitive measures for obtaining attractive gifts and other benefits, in particular, in the form of additional entertainment. Judicial decisions that show administrative practice and criminal justice are not numerous and, as a rule, consist of an order of restoration of justice and payment of compensations.

Several recommendations were suggested in the report on the upgrading of the anti-corruption system. At the same study in Denmark[1]:

− protection and counseling of informants. Provision is made for the establishment of advisory bodies (where the Transparency International Department of Denmark will take an active part), which can be visited by employees of both private and public organizations, if they have information about the commission of a corruption offense − a fact of corruption;

[1] Kristensen M. B. National integrity system assessment Denmark [Electronic resource] / M. B. Kristensen. – 2012. – Access mode : http://archive.transparency.org/policy_research/nis/nis_reports_by_country/

− transparency of acceptance of gifts. Transparency International regards creating a list of gifts that are allowed to be presented to officials to be an effective anti-corruption measure about Denmark. This listing must be registered and published.

With regard to the strategy of Swedish in the field of combating corruption, such measures should be recognized as the most successful and possible for implementation as[1]:

1. By the middle of the XIX century, Sweden was considered a country that is full of corruption. However, after the elite and the leadership of the country adopted a strategic decision on the complete modernization of the country, a set of measures aimed at the complete exclusion of mercantile considerations from officials was developed and started to be implemented. The state regulation was based on the incentives for honest and responsible management − through taxes, privileges and subsidies, and not through prohibitions and permits received from authorities. Citizens have been given access to internal documents of public administration, which allows everyone to understand how the state works, and most importantly − an independent and efficient system of justice was created.

2. At the same time, the Swedish parliament and the government set high ethical standards for officials and began to enforce them. In a few years, honesty has become a prestigious norm among the state bureaucracy. Salaries of

[1] Veibert S. Y. Uholovnaia polytyka skandynavskykh stran v oblasty protyvodeistvyia korruptsyi / S. Y. Veibert // Deiatelnost orhanov hosudarstvennoi vlasty po protyvodeistvyiu orhanyzovannoi prestupnosty : materyaly V Mezhdunar. nauch.-prakt. ynternet konf. (Ekaterynburh, 26 marta – 3 apr. 2013 h.). – Ekaterynburh : Ural. yn-t − fylyal RANKhyHS pry Prezydente RF, 2013. – S. 27−28.

officials initially exceeded the earnings of workers by 12−15 times. However, over time, the purposeful efforts of the government of the country, this difference has fallen to twofold. Today, Sweden has one of the lowest levels of corruption in the world.

3. In Sweden, the church and public opinion play a major role in combating corruption, thanks to which any businessman who has been able to ern a very high income in a short period or to an official whose income is substantially lower than his expenses are suspected. In addition, public opinion, first, will force such an official to leave the post and will not allow him to ever get a job either in the civil service or in private business. The public opinion has transformed manifestations of corruption and dishonesty to be extremely rare fact of private business and in state administration. The legislative measures or criminal penalties couldn't achieve such a result.

In fact, such an approach to the complet rejection of corruption by Ukrainian society is enshrined in the Law of Ukraine "On the Principles of State Anti-Corruption Policy in Ukraine (Anticorruption Strategy) for 2014−2017", such as:

− conduct on a regular basis information campaigns aimed at various social groups and aimed at eliminating tolerant attitude towards corruption, increasing the level of cooperation between authorities and citizens in countering corruption;

− develop and implement on a permanent basis special programs aimed at providing entrepreneurs with access to the necessary information, in particular on administrative procedures, rights and obligations of entrepreneurs, formation

of the consciousness of non-acceptance of corrupt behavior, and encouragement to inform about corruption cases.[1]

By comparing national and foreign legislation about the consolidation of a special institute of exemption from criminal liability for corruption crimes, we can note that special incentive norms of criminal legislation of foreign countries are envisaged in Special Parts, if the CC has such a division or in special sections of the CC, which provide for liability for certain crimes. These norms, as a rule, on the grounds of positive behavior of a person determine the minimization of criminal-law encumbrance, which is directly implemented in the exemption from liability, punishment or mitigation of the latter. The most widespread practice in criminal law is an exemption from punishment or its mitigation. The less common and more typical for the post-Soviet states is an exemption from liability.

Exemption from liability or punishment is regulated in the criminal (penitentiary), criminal-procedural law and special laws of foreign states. The peculiarity lies in the fact that the exemption from liability and punishment in foreign law is not different. Comparison of the criminal legislation of the Baltic states has shown that the CC of Latvia provides for exemption from criminal liability and punishment (Chapter VI), in the CC of Lithuania - exemption from criminal liability (Chapter VI) and release from punishment (Chapter

[1] Pro zasady derzhavnoi antykoruptsiinoi polityky v Ukraini (Antykoruptsiina stratehiia) na 2014–2017 roky : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 46. – S. 2047. – Rezhym dostupu : http://zakon1.rada.gov.ua/laws/show/1699-18

X), and the Penal Code of Estonia only exemption from punishment and his serving (Chapter V).[1]

We also note that most foreign legislations does not distinguish individual incentive norms for corruption crimes. This is explained by the general attitude towards corruption in foreign countries at the legislative level. Similarly, in most countries there are no separate laws on the prevention of corruption, special anti-corruption expertise, and electronic declaration of property. Instead, the provisions of general laws, normative (criminological) expertise, and electronic tax declaration are applied. Therefore, we analyzed the special types of exemptions from related socially dangerous acts related to corruption crimes. The CC of the Federal Republic of Germany in the Special Part provides for 20 types of special exemption from punishment or mitigation. In particular, an optional mitigation or exemption from punishment is provided for in cases where the person voluntarily and significantly contributes to the termination of the further existence of the criminal association or the committing of punishable act committed which corresponds to the purposes of such association (Part 1, Paragraph 6, § 129); voluntarily and in a timely manner provided to her the information to the appropriate institution about punishable acts that can be prevented (Part 2, Paragraph 6, § 129). If the person who committed the act reaches its goal because of

[1] Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 215.

terminating the existence of such an association, or it is achieved without its efforts, then such person is not punished.[1]

The French Criminal Code provides for exemption from, or mitigation of, the punitive conduct of a perpetrator if a person who participated in a criminal group prior to commencing any criminal proceeding discloses a group or conspiracy to the competent authority and will allow the establishment of other accomplices (art. 450-2).[2]

The CC of France provides for exemption from, or mitigation of, the punishment if the person who participated in a criminal group before any criminal acts, related to prosecution, opens up a group or conspiracy to the competent authority and will allow the establish other accomplices (art. 450-2).[3]

The CC of the Holland includes that criminal prosecution may be terminated if the offender fulfills one or more of the

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[1] Khavroniuk M. I. Kryminalne zakonodavstvo Ukrainy ta inshykh derzhav kontynentalnoi Yevropy: porivnialnyi analiz, problemy harmonizatsii : monohrafiia / M. I. Khavroniuk. – Kyiv : Yurystkonsult, 2006. – S. 284.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 75.

[2] Krylova N. E. Uholovnoye pravo sovremennykh zarubezhnykh stran (Anhlyy, SShA, Frantsyy, Hermanyy) : ucheb. posobiye / N. E. Krylova, A. V. Serebrennykova. – Moskva : Zertsalo, 1997. – S. 71.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 76.

[3] Krylova N. E. Uholovnoye pravo sovremennykh zarubezhnykh stran (Anhlyy, SShA, Frantsyy, Hermanyy) : ucheb. posobiye / N. E. Krylova, A. V. Serebrennykova. – Moskva : Zertsalo, 1997. – S. 71.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 76.

conditions before the trial of the case, which are imposed by the prosecutor: a) payment of money to the state, the size of which can't be less than five guilders, but not more than the maximum fine; b) the waiver of the right to objects which are seized and which are subject to confiscation or exclusion from circulation; c) refusal of items subject to confiscation or payment their value to the country; d) full payment of money to the state or the transfer of the objects subject to arrest, in order to deprive the accused of all or part of the proceeds of crime, including cost savings; e) full or partial compensation for damage caused by a crime (art. 74 of the Criminal Code).[1]

CC of Latvia in part 4 of art. 58 directly indicates the possibility exemption a person from liability in the cases specified in the Special Part of this Code. Directly in the Special Part of the Criminal Code there are five special types of exemption, four of which are of a facilitative nature. Yes, art. 235 dtermines that a person who voluntarily transferred firearms, ammunition to it, pneumatic weapons of high power, explosive substances or explosive devices, manufactured without proper permission, shall be exempted from criminal liability in the absence in her actions of crime; art. 254 provides that a person who has voluntarily transferred narcotic drugs or psychotropic substances or voluntarily informed about their acquisition, preservation, transportation or transferring is exempted from criminal liability for the use, acquisition, preservation, transportation or transfer of these substances; art. 324 determines that a bribe-taker is exempted

[1] Uholovnyi kodeks Hollandyy / nauch. red. B. V. Volzhenkyn. – SPb. : Iurydycheskyi tsentr Press, 2002. – 510 s.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 77.

from criminal liability if he has been object of soliciting a bribe or if a person voluntarily declared what happened after giving a bribe. A person who offered a bribe is exempted from criminal liability if she voluntarily informed about what happened; part 3 of art. 324 determines the exemption from the liability of the intermediary and accomplice in bribery, if they will voluntarily report on what has happened after committing criminal acts.[1]

The special part of the CC of Lithuania is provided for the exemption of the person who participated in the rebellion for the purpose of a coup if he voluntarily informed the state authority of important information of the preparation of a coup (part 3, art. 114); a person who bribed a civil servant, if it is solicited from her, provoked a bribe, and if she offered, promised or gave a bribe with the knowledge of the law enforcement body (part 4, art. 227); a person who participated in the commission of a crime by a criminal group or belongs to a criminal group but at the same time made a sincere confession of the crime, provided the law enforcement authorities with valuable information that allowed the cessation of a criminal group's activity or held its members to accountable. The person who participated in the murder or was already exempted from criminal liability is not exempted from liability (part 4 of art. 249); a person who has manufactured, purchased and stored narcotic or psychotropic substances and voluntarily applied to the hospital for medical assistance or to a state authority for the purpose of give of

[1] Uholovnyi kodeks Hollandyy / nauch. red. B. V. Volzhenkyn. – SPb. : Iurydycheskyi tsentr Press, 2002. – 510 s.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 77.

narcotic or psychotropic substances that were illegally acquired or stored (part 3 of art. 259).[1]

It should be noted that a large number of norms on the exemption from liability or punishment of persons is provided for in the CPC and special laws. For example, according to art. 706-32 the CPC of France in 1958 the police officers, who exempts from criminal liability, who with the purpose of disclosing criminal drug abuse behavior , buy, store, transport or transfer drugs to persons involved in illicit drug trafficking, with the exception of incitement[2]; in accordance with § 371 of the Provisions on Taxes and Duties of the Federal Republic of Germany in 1977, a person exempts from a criminal liability, who is charged for tax evasion and informed the financial authorities of the incorrect, incomplete or missed data previously filed for tax purposes.[3]

According to art. 5 chapter 29 of the CC of Sweden, among the circumstances affecting the imposition of a punishment, it is taken into account, whether the accused sought to do everything in his power to prevent, correct or limit the harmful effects of a crime, and whether the accused had

[1] Uholovnyi kodeks Hollandyy / nauch. red. B. V. Volzhenkyn. – SPb. : Iurydycheskyi tsentr Press, 2002. – 510 s.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 77–78.

[2] Khavroniuk M. I. Kryminalne zakonodavstvo Ukrainy ta inshykh derzhav kontynentalnoi Yevropy: porivnialnyi analiz, problemy harmonizatsii : monohrafiia / M. I. Khavroniuk. – Kyiv : Yurystkonsult, 2006. – S. 416.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 78.

[3] Right there.

voluntarily impersonated himself (paragraphs 2 and 31 art. 5 of the CC).[1]

The CC of Poland provides for ordinary and extraordinary circumstances that affect the imposition of punishment as a mitigating circumstance. Thus, § 2 and 3 of art. 53 as a normal mitigating circumstance, recognizes the perpetrator's behavior after committing a crime, in particular efforts to eliminate harm or to re-establish another way of social justice, the court also takes into account the positive results of the mediation between the victim and the perpetrator or the consent between them.[2]

The legal basis for combating corruption and money laundering in Egypt is the Law of combating corruption and money laundering № 80 of 2002. According to art. 10 and 17, a person who provided information about suspicious financial transfers can't be engaged to liability. The perpetrator of the crime of money laundering should be exempted from punishment if he himself notifies the competent authorities of the crime. He is also exempted from punishment if the competent authorities were aware of a crime, but obtaining information from that person made it possible to identify and

[1] Right there.

[2] Khavroniuk M. I. Kryminalne zakonodavstvo Ukrainy ta inshykh derzhav kontynentalnoi Yevropy: porivnialnyi analiz, problemy harmonizatsii : monohrafiia / M. I. Khavroniuk. – Kyiv : Yurystkonsult, 2006. – S. 416.

Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 78–79.

arrest other perpetrators or confiscate the money that was the object of a crime.[1]

By the way, Belarusian legislators, introducing the possibility of exemption from criminal liability for some crimes against property, in particular for theft, fraud, embezzlement through abuse of authority and appropriation of property or wasting of property[2], chose such an option. Thus, in note 5 to Chapter 24, "Crimes against property" of Section VIII "Crimes against property and against the order of economic activity", it is indicated that a person who committed a crime is provided for in part 1 of art. 205, part 1, art. 209, part 1, art. 210, part 1 of art. 211, or part 1 of art. 214 of the CC of the Republic of Belarus, if this person appeared with repentance, actively contributed to the detection of the crime or completely compensated the damages, is exempted from criminal liability.[3]

Particular attention in the study of the legal framework of foreign countries deserve the norms that determine the procedure for bringing criminal liability of legal entities for committing acts of corruption and, in particular, the prospect of their exemption from such liability. It should be emphasized that of the 27 EU states in the legislation more than half

[1] Bauman E. V. Opyt borby s korruptsyei v stranakh s razvytoi ekonomykoi [Elektronnyi resurs] / E. V. Bauman. – Rezhym dostupa : http://kizilov-inc.ru/sites/default/files/gm_articles/opyt_borby.pdf

[2] Leonenko I. Rozshyrennia spetsialnykh pidstav zvilnennia vid kryminalnoi vidpovidalnosti – efektyvnyi zasib protydii zlochynnosti v Ukraini [Elektronnyi resurs] / I. Leonenko // Viche. – 2013. – № 12. – Rezhym dostupu : http://www.viche.info/ journal/3719/

[3] Uholovnyi kodeks Respublyky Belarus ot 9 yiulia 1999 h. № 275-Z [Elektronnyi resurs]. – Rezhym dostupa : http://eta lonline.by/?type= text&regnum=HK9900275#load_text_none_1_

of them provide for the possibility of bringing legal persons to criminal liability. Thus, a legal entity is liable to criminal liability in such European states as: a) members of the EU (Kingdom of Belgium, the United Kingdom of Great Britain and Northern Ireland, the Republic of Hungary, the Kingdom of Denmark, the Republic of Ireland, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Poland, Romania, the Republic of Slovenia, the Republic of Finland, the French Republic, The Kingdom of Sweden, the Republic of Estonia); b) are not members of the EU (Republic of Albania, Republic of Iceland, Republic of Macedonia, Republic of Moldova, Kingdom of Norway, Republic of Croatia, Republic of Montenegro); c) which provides quasi-criminal, that is, administrative and criminal liability of legal entities (the Austrian Republic, the Italian Republic, the Kingdom of Spain, the Federal Republic of Germany).[1]

However, lawmakers of foreign countries have ignored the concept of guilt, the definition of the possibility of a legal entity to be the subject of a crime or the possibility only to be subject to criminal liability, the grounds for the dismissal of legal persons from liability, the possibility of using the notion of relapse of crime to the legal person, conviction, etc.

Only in rare cases can one find rules that would surely be of interest to the legislator of our state for the possible introduction of such a liability in Ukraine. Thus, the provisions of relapse of a criminal offense of the legal person can be found in French law. The valid CC of France in articles 132-12−132-15 provides for punishment of a legal entity for

[1] Hryshchuk V. K. Kryminalna vidpovidalnist yurydychnykh osib: porivnialno-pravove doslidzhennia : monohrafiia / V. K. Hryshchuk, O. F. Pasieka. – Lviv : Lviv. derzh. un-t vnutrishnikh sprav, 2013. – 248 s.

the relapse of its criminal behavior, for example, in the case when an individual convicted a legal entity for a crime or misdemeanor for which the law provides for a more severe punishment in the case of committing the crime (art. 132-12).[1]

The same provision is contained in art. 146 of the CC of Romania, which states that in the event of a relapse a legal person is punishable twice more than punishment, predicted for this crime, but does not exceed the maximum amount of a fine.[2]

In addition, the CC of France provides for the liability of legal entities for attempting an offense, as well as for complicity in the commission of a crime; for acts that are characterized as attempt and carelessness. In case of deliberate actions against a legal entity and an individual, the institute of complicity is used.[3]

Worthy of note is also the provisions of art. 150 of the CC of Romania concerning the rehabilitation of a legal entity. This article states that rehabilitation of a legal entity is possible, if the legal person does not commit other crimes within three years from the date of the serving of principal and additional sentences (if the person will not make any punishment).[4]

[1] Hryshchuk V. K. Kryminalna vidpovidalnist yurydychnykh osib: porivnialno-pravove doslidzhennia : monohrafiia / V. K. Hryshchuk, O. F. Pasieka. – Lviv : Lviv. derzh. un-t vnutrishnikh sprav, 2013. – 248 s.

[2] Right there.

[3] Namysłowska-Gabrysiak Barbara. Odpowiedzialność karna osób prawnych / Barbara Namysłowska-Gabrysiak. – Warszawa : C. H. Beck, 2003. – R. 77.

[4] Hryshchuk V. K. Kryminalna vidpovidalnist yurydychnykh osib: porivnialno-pravove doslidzhennia : monohrafiia / V. K. Hryshchuk, O. F. Pasieka. – Lviv : Lviv. derzh. un-t vnutrishnikh sprav, 2013. – 248 s.

Consequently, a comparative analysis of the exemption from criminal liability for corruption crimes in Ukraine and some other countries makes it possible to draw the following conclusions: the use of incentive norms in Scandinavian countries is directed at informants (the so-called disclosers), against the corruptors, and the widespread using is the formation of citizens of the general rejection of a corrupt way of behavior. For Ukraine, these directions are acceptable and fixed at the legislative level, but practically are not realized.

The conclusions to the section 1

The analysis of the concepts of exemption from criminal liability for crimes in general has determined the need for the formulation of this concept directly for corruption crimes. The difference in understanding is related to the changes that have already been made to the Criminal Code of Ukraine for the implementation of international obligations to combat corruption (in particular, the consolidation of the list of articles related to corruption crimes and the setting of restrictions against the application of the incentive norms of the general part, anticipation of criminal-legal measures against legal entities, etc.). Consequently, the exemption from criminal liability for corruption crimes is refusal regulated by the criminal and criminal-procedural of the state, in the person of the competent authorities, about the appointment to the person who committed the corruption crime, the punishment and the application measures of a criminal nature against the legal entities.

The essence and significance of the basic concepts of the Institute for the exemption from criminal liability for corruption crimes such as “grounds” and “conditions” are

revealed. It is highlighted, what is the three-pronged nature of the grounds for this exemption (normative, factual and procedural).

Analyzing the general and special principles of criminal law, we can note that in the field of combating corruption, each of them undoubtedly has a manifestation. During the study, there were no direct contradictions between the special types of exemption from criminal liability for corruption crimes and the fundamental ideas of criminal law. However, the principles that are key to these incentive norms deserve special attention:

− the principle of the rule of law, the compliance of which appears in the consolidation by national legislation of special types of exemption from criminal liability for corruption crimes, which also directly meets the international standards of proper Conventions;[1]

[1] Kryminalna konventsiia Rady Yevropy pro borotbu z koruptsiieiu vid 27 sich. 1999 r., ratyfikovana iz zaiavoiu Zakonom № 252-V (252-16) vid 18.10.2006, VVR, 2006, № 50, st. 497 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/994_101

Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

Konventsiia Orhanizatsii Obiednanykh Natsii proty transnatsionalnoi orhanizovanoi zlochynnosti (ukr/ros) : pryiniata rezoliutsiieiu 55/25 Heneralnoi Asamblei vid 15 lyst. 2000 r., ratyfikovana Zakonom № 1433-IV (1433-15) vid 04.02.2004 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/995_789

Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5. rada.gov.ua/laws/show/998_154

− the principle of equality of citizens before the law is manifested in equal and identical determination of conditions in one incentive norm (art. 354 of the CC of Ukraine), which extends to a number of other corruption crimes;

− the principle of democracy is most notably manifested in the special incentive norms of the CC of Ukraine, taking into account the restrictions that the General Part on corruption crimes in matters of exemption from punishment and the imposition of a milder punishment contains;

− the principle of humanism in criminal law is manifested in reducing the number of persons subject to criminal liability, in particular through special types of exemption from criminal liability for corruption crimes;

− the principle of inevitability of criminal liability is closely linked with the Institute for exemption from criminal liability, since the latter plays a precautionary role and contributes to the detection of traditionally latent corruption crimes. When a person who gives undue advantage like the proper notification, she is exempt from criminal liability, and the official, who is exposed by her, on the contrary, is attracted;

− the principle of justice is manifested in the course of criminalization (decriminalization) of corrupt acts, taking into account the requirements of social justice as an element of public consciousness, in order that social approval of the position of the legislator was manifested in the further practical realization of norms, in particular, in the encouraging nature, etc.

Having conducted a comparative analysis of the exemption from criminal liability for corruption crimes in Ukraine and in some European countries, we note the main thing: the application of incentive norms in Scandinavian

countries is directed at informants (the so-called disclosers), against the corruptors, and the widespread using is the formation of citizens of the general rejection of a corrupt way of behavior. For Ukraine, these directions are acceptable and fixed at the legislative level, but practically are not realized.

Consequently, the results obtained correspond to the principles of criminal law and universally accepted norms of international law and confirm the realization of the anti-corruption strategy of Ukraine.

Section 2

The classification and meaning of special types of exemption from criminal liability for corruption crimes in the criminal law system

2.1. The classification of special types of exemption from criminal liability for corruption crimes

The normative grouping (association in the one norm) of special types of exemption from criminal liability for corruption crimes is positive for both the science of criminal law and for solving practical tasks. This will contribute to the effectiveness of prevention and counteraction to corruption, as it is an important step in solving the issues of qualification of a corruption crime; contributes to the correct assessment of corrupt acts and their delineation with other types of corruption offenses, including the administrative offences; will provide for cases in which the inevitability of punishment for committing socially dangerous acts of corruption is unjustified and inappropriate; has a measure effect on officials who are inclined to commit corrupt acts; is essential for the

harmonization of the Ukrainian legal system with the right of EU member states.[1]

In substantiating the need for the classification of special types of exemption from criminal liability for corruption crimes, we will agree with V. M. Kudryavtsev and V. V. Luneev that the classification allows us to see the investigated phenomena in scientifically justified and structured use, to identify their interconnection and supervisory framework, understand them as parts of the whole and, based on the notion of this integrity, predict the presence of missing links, that is, to diagnose and predict new phenomena.[2]

The special types of exemption from criminal liability are provided for by the relevant norms of the Special Part of the CC of Ukraine. These articles are contained in different sections of the Special Part, but indeed they are mostly homogeneous: these are special cases of active repentance when the subject carries out specific positive aftercriminal acts provided for by the criminal law in order to exempt from criminal liability.

Some authors see the reason for the appearence analysed norms in the need of the fight against specific crimes that are difficult to disclose and investigate. Therefore, they consider the use of special types of exemption from criminal liability

[1] Zakharchuk O. Z. Normatyvne zakriplennia koruptsiinykh zlochyniv za zakonodavstvom Ukrainy ta yikh klasyfikatsiia [Elektronnyi resurs] / O. Z. Zakharchuk. – 2015. – Rezhym dostupu : http://ena.lp.edu.ua:8080/.../ntb/.../007_033_038.pdf

[2] Kudriavtsev V. N. O krymynolohycheskoi klassyfykatsyy prestuplenyi / V. N. Kudriavtsev, V. V. Luneev // Hosudarstvo y pravo. – 2005. – № 6. – S. 54.

by a compromise, which the state is forced to compromise to ensure the disclosure of these crimes.[1]

The legislator, introducing to the criminal law the encouraged norms, of course, pursues the goal of preventing criminal acts and ensuring the disclosure of latent crimes, but above all, he should set the task of social reorientation of the offender − his refusal to continue the crime or voluntary report of the commission of an offence. In addition, with the help of his active actions, he seeks the solving the crime and restoring the legal relations brought by criminal acts.

Despite the almost identical legal implications of the fact of the application in respect of a person to any type of exemption from criminal liability, it is important to determine the conditions under which it applies to a person. A large number of types of exemption from criminal liability, existing in the current legislation, poses to law enforcers an important practical task of the correct and accurate choice of its type in each particular case. The solution to this question is precisely the classification of the types of such exemption.

Let's name and characterize the criteria for the classification of the incentive norms for corruption crimes.

By the area of dissemination distinguish:

1) the general types of exemptions from criminal liability provided for in the General Part of the CC of Ukraine (articles 45−48, 97, 106). Taking into account changes made in the CC of Ukraine on corruption crimes[2], the general types of

[1] Hadzhyev S. N. Osvobozhdenye ot uholovnoi otvetstvennosty pry terroryzme y zakhvate zalozhnykov / S. N. Hadzhyev // Advokat. – 2003. – № 8. – S. 19.

[2] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo zabezpechennia diialnosti Natsionalnoho antykoruptsiinoho

exemption from criminal liability to them are not applied, in particular, exemption in connection with the effective repentance of art. 45; of reconciliation between the offender and the victim; with the bailing the person (art. 47); with the the changing situation (art. 48);

2) the special types of exemption from criminal liability for corruption crimes provided for in the Special Part of the CC of Ukraine (pt. 5, art. 354).

According to this criterion of classification, it becomes obvious that special types of exemption are the only possible incentive norms in the area of combating corruption.

By the nature of the possibility of exemption from criminal liability, distinguish:

1) the obligatory (mandatory) types of the exemption from criminal liability (articles of the CC of Ukraine 45, 46; pt. 1, articles 2, 49, pt. 1, articles 2, 106, pt. 2, art. 111, pt. 2 of the Constitution 114, pt. 3 of art. 175, pt. 4 of art. 212, pt. 4 of art. 212-1, pt. 2, art. 255, pt. 2, art. 258-3, pt. 6, art. 260; pt. 3 of art. 263, pt. 4 of art. 289, pt. 5, art. 307, pt. 4, art. 309, pt. 4, art. 311, pt. 5, art. 354, pt. 4, art. 401, of art. 45, 46; pt. 1, 2, art. 49). In these cases, in the presence of the consent of the person, the court is obliged to exempt her from criminal liability;

2) the non-binding (optional, discretionary) types of exemption from criminal liability (articles of the CC of Ukraine 47, 48, pt. 4 of articles 49, 97, as well as pt. 4 of art. 401 (regarding articles 47, 48, part 4 of art. 49). In this case,

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biuro Ukrainy ta Natsionalnoho ahentstva z pytan zapobihannia koruptsii : Zakon Ukrainy vid 12 liut. 2015 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon3.rada. gov.ua/laws/show/198-19/paran39#n39

with the consent of the person, the court has the right to exempt her from criminal liability.

The criterion under consideration allows us to determine the place occupied by a special exemption from criminal liability for corruption crimes, as indicated in part 5 of art. 354 of the CC of Ukraine, since it is obligatory. Accordingly, this criterion determines the significant impact of this norm in the mechanism of law-enforcement.

Based on the availability or absence of certain conditions for exemption from criminal liability, we have:

1) the conditional exemption from criminal liability (art. 47 of the CC of Ukraine: provided that the person during the year from the day it is transferred to the bonds will justify the trust of the collective, will not deviate from re-education measures and will not violate public order; art. 97 of the CC of Ukraine: if the court admits that the reform the juvenile is possible without the use of punishment, by applying to him coercive measures of re-educational nature; pt. 4 of art. 401 (only with respect to art. 47));

2) the unconditional exemption from criminal liability (articles of the CC of Ukraine 45, 46, 48, 49, 106, pt. 2 of art. 111, pt. 2 of art. 114, pt. 3 of art. 175, pt. 4 of art. 212, pt. 4 of art. 212-1; pt. 2 of art. 255, pt. 2 of art. 258-3, pt. 6 of art. 260, pt. 3 of art. 263, pt. 4 of art. 289, pt. 4, art. 307, pt. 4, art. 309, pt. 4 of art. 311; pt. 5 of art. 354; pt. 4 of art. 401 (regarding the articles of the CC of Ukraine 45, 46, 48, 49).

The analysied special type of exemption from criminal liability for corruption crimes relates to the unconditional exemption. Accordingly, such affiliation attest the validity of the application of the guilty person. Since the latter has the confidence that as a result of the use of part 5 of art. 354 of

the CC of Ukraine, the court will not require from her and will expect no actions to confirm the exemption in the future.

Depending on the nature of the appearing of conditions for exemption from criminal liability, distinguish the types of exemption from criminal liability:

1) the conditions of application which arise in connection with the presence of events determined by law (articles of the CC of Ukraine 48, 49, 97, 106, pt. 4 of art. 401 (in respect of articles 48, 49));

2) the conditions of which are connected with the positive post-criminal behavior of the person (articles of the CC of Ukraine 45−47, pt. 2 of art. 111, pt. 2 of art. 114, pt. 3 of art. 175, pt. 4 of art. 212, pt. 4 of art. 212-1, pt. 2 of art. 255, pt. 2 of art. 258-3, pt. 6 of art. 260, pt. 3 of art. 263, pt. 4 of art. 289, pt. 4, art. 307; pt. 4, art. 309, pt. 4, art. 311, pt. 5, art. 354, pt. 4, art. 401 (regarding articles 45−47)).

Between these types of exemption is a fundamental difference, for the first one - there are needed events that often do not depend solely on the will of the perpetrator, and accordingly they are less important for preventing the commission of similar crimes. Instead, the second type, which in itself is exempted from criminal liability for corruption crimes, on the contrary, directly depends on the will of the perpetrator, since it is associated with the positive post-criminal behavior of such a person.

In the General Part of the CC of Ukraine, there are 10 general types of exemption from criminal liability, since they are of general importance types of crimes and criminals. A Special part of the CC of Ukraine provides for 21 special

types of exemption of a person from criminal liability, which applies to certain crimes in the presence of appropriate grounds.[1]

It should be noted that the tendency to increase the number of special types of exemption of a person from criminal liability was controversial. Some researchers propose to follow this path, gradually changing only the theoretical constructions of the General Part on the exemption from criminal liability of the clear and meaningful provisions of the Special Part. Others, by contrast, advocate the unification of these types of exemption by means of generalization of special grounds and consolidation of them in the General Part of the CC of Ukraine.[2]

Each type of exemption from criminal liability is characterized by the precondition inherent in only this type and reason, so each type is used independently and cannot replace each other or connect with another.

With regard to the special conditions for exemption from criminal liability, they are enshrined in the notes or parts of the articles of the CC of Ukraine contained in different sections. Therefore, they are disparated and unsystematic. In order to systematize, organize, analyze the appropriate grounds for exemption from criminal liability, it is necessary to classify the special conditions for exemption from criminal liability. Some scholars suggest allocating five groups of such special conditions of active repentance.

The first group of conditions is an active repentance associated with an encroachment on human freedom as based

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 186.

[2] Right there.

directly on or an additional object. The second group of conditions for exemption is an active repentance for bribing, offering, promising or gaining unlawful benefits. The third group of conditions is an active repentance associated with a crime report. The fourth group of conditions is an active repentance at the stage of an unfinished crime. Fifth group of conditions is associated with the stage of a completed crime in the view of actions to stop criminal activity.[1]

P. V. Khryapinsky proposes a more detailed classification, indicating that the encouraging norms of the Special Part of the CC of Ukraine form an independent institute of exemption from criminal liability, the originality of which is to combine the commission of a certain type of crime with the implementation of the specified in the law positive post-criminal behavior. The criteria for such a classification include: 1) the cessation of criminal behavior; 2) a voluntary notification of a crime; 3) self-excuse in a crime; 4) disclosure of other persons guilty of committing a crime; 5) neutralization, minimization or reimbursement of socially dangerous consequences (taxes, fees, compulsory payments, financial sanctions, penalty interest, etc.); 6) removal from the uncontrolled circulation of items with special status of circulation (repositories of state secrets, narcotics, psychotropic substances, weapons, ammunition, etc.); 7) general and special prevention of the commission of new

[1] Hryshyn D. A. Problemnye voprosy klassyfykatsyi y prymenenyia spetsyalnykh vydov osvobozhdenyia ot uholovnoi otvetstvennosty // Nauch. vestn. Ural. akad. hos. sluzhby: polytolohyia, ekonomyka, sotsyolohyia, pravo. – 2012. – № 1 (18), mart. – S. 319.

crimes.[1] Obviously, each type of special exemption from criminal liability has its own specific application circumstances.

Let's note that some of the above-mentioned provisions are aimed at achieving not one, but several (complex) socially useful results (for example, part 4 of article 289 of the CC of Ukraine). We agree with O. O. Dudorov that the way of formulation in the Special Part of the CC of Ukraine justifies the exemption of a person from criminal liability; the differences between them depend, first, on the specificity of a particular crime and the purpose determined by the state for a particular type of exemption.[2] Indeed, the requirement of voluntary surrender of prohibited things in circulation as an element of the basis for certain types of exemption from criminal liability is formulated in relation to the commission of a number of crimes in which the unlawful treatment of a particular item (weapons, ammunition, narcotic drugs, psychotropic substances, etc.) threatens subjects of criminal-law enforcement. The issuance of such items to the authorities prevents possible damage to public relations, which contributes to the realization of the protective function of criminal law.

Today, the classification of incentive norms for corruption crimes is directly linked to the legal definition of the concept of "corruption crimes", from which the depended

[1] Khriapinskyi P. V. Spetsialne zvilnennia vid vidpovidalnosti u kryminalnomu pravi ta zakonodavstvi Ukrainy : navch. posib. / P. V. Khriapinskyi. – Zaporizhzhia : ZNU KSK-Alians, 2011. – S. 157.

[2] Dudorov O. O. Vybrani pratsi z kryminalnoho prava / O. O. Dudorov ; perednie slovo d-ra yuryd. nauk, prof. V. O. Navrotskoho ; MVS Ukrainy ; Luhan. derzh. un-t vnutr. sprav im. E. O. Didorenka. – Luhansk : RVV LDUVS im. E. O. Didorenka, 2010. – S. 741.

classification criterion as whether or not the article contains a special type of exemption from criminal liability for a particular corruption crime. According to this criterion, we can structure as follows:

1) the corruption crimes, which do not provide for special grounds and conditions for exemption from criminal liability. They are spelled out the following articles of the CC of Ukraine: art. 191 "The assignment, embezzlement or possession of property by way of abuse of office"; art. 262 "The abduction, appropriation, extortion of firearms, ammunition, explosives or radioactive materials or possession of them by fraud or abuse of office"; art. 308 "The abduction, appropriation, extortion of narcotic drugs, psychotropic substances or their analogues or its taking possession by fraud or abuse of office"; art. 312 "The abduction, appropriation, extortion or possession precursors by fraud or abuse of office"; art. 313 "The abduction, appropriation, extortion of equipment intended for the manufacture of narcotic drugs, psychotropic substances or their analogues, or its taking possession by fraud or abuse of office and other unlawful actions with such equipment"; art. 320 "The violation of established rules of circulation of narcotic drugs, psychotropic substances, their analogues or precursors"; art. 357 "The abduction, appropriation, extortion of documents, stamps, seals its taking possession by fraud or abuse of office or damage to them"; art. 410 "The abduction, appropriation, extortion by a serviceman of weapons, ammunition, explosives or other military materials, means of transport, military and special equipment, or other military property, as well as its taking possession by fraud or abuse of office"; art. 210 "The misuse of budget funds, incur the budget expendi-

tures or granting of credits from the budget without established budget appropriations or with its excess"; art. 364 "The abuse of power or of abuse of office"; art. 364-1 "The abuse of authority of a legal entity of private law irrespective of the organizational and legal form by the office"; art. 365-2 "The abuse of authority by persons providing public services"; art. 368 "The adoption of an offer, promise or receipt of an unlawful benefit by an official"; art. 368-2 "The illicit enrichment";

2) the corruption crimes, which provide for special grounds and conditions for exemption from criminal liability, are interpreted by the articles of the CC of Ukraine: art. 354 "The bribing an employee of an enterprise, institution or organization", art. 368-3 "The bribing of an official of a legal entity of private law irrespective of the organizative-legal form"; art. 368-4 "The bribing of the person providing public services"; art. 369 "The offer, promise or provision of unlawful benefit to an official"; art. 369-2 "The undue influence".

That is from the mentioned in the note of art. 45 of the CC of Ukraine in the list of 14 corruption cases, only five components of socially dangerous acts contain provisions on special types of exemption from criminal liability, which are specified in part 5 of art. 354.

Therefore, summing up the classification of special types of exemption from criminal liability for corruption crimes, we can determine the significance of this type of affiliation of special norms of exemption for corruption crimes in the legal mechanism.

Therefore, summing up the classification of special types of exemption from criminal liability for corruption crimes, we

can determine the significance of independence of this type of special exemptions for corruption crimes in the law enforcement mechanism. Thus, based on the area of dissemination, it is obvious that special types of exemption are the only possible incentive rules in the field of combating corruption. Accordingly, it increases their value for practice. The criterion of the nature of the possibility of exemption from criminal liability allows us to characterize the place of a special exemption from criminal liability for corruption crimes (part 5 of art. 354 of the CC of Ukraine) as mandatory. It is also determined the importance of this norm in the law enforcement mechanism by this. Based on the availability or absence of certain conditions for exemption from criminal liability, the special type of dismissal examined falls within unconditional. This availability proves the effectiveness of the guilty person. Since the latter has the confidence that because of the court use part 5 of art. 354 of the CC of Ukraine it will not be required action will be expected in the future to confirm the exemption. By the nature of the appearing the conditions for exemption from criminal liability, the conditions of the application of a special incentive norm for corruption crimes related to the positive post-criminal behavior of a person. That is, they depend directly on the will of the perpetrator, and not the events determined by law.

In general, a Special part of the CC of Ukraine provides for 21 special types of exemption of a person from criminal liability. However, we can note that, since each such type of exemption is characterized by inherent only for it preconditions and grounds; it is used independently and cannot replace each other. From the note stated in the art. 45 of the CC of Ukraine the list of 14 corruption crimes, only

five crimes that are the specified socially dangerous acts are provided in the incentive norm of part 5 of art. 354 of the CC of Ukraine and belong to the special types of exemption. Accordingly, the extension of the application of this special type of exemption is appropriate and justified for the practice.

2.2. The distinction of special types of the exemption from criminal liability for corruption crimes from adjacent criminal law institutes

The distinction of special types of the exemption from criminal liability for corruption crimes from adjacent criminal law institutes is the failure to bring to justice of a person: lack of jurisdiction of a criminal case for the courts of Ukraine (part 4 of art. 6 of the CC of Ukraine); preparation for a minor crime (part 2 of art. 14 of the CC of Ukraine), voluntary refusal to commit an unfinished crime (art. 17 of the CC of Ukraine), minor act (part 2 of art. 11 of the CC of Ukraine), committing an act in a state of insanity (part 2 of art. 19 of the CC of Ukraine), non-attainment a person of the age of criminal liability (art. 22 of the CC of Ukraine), the use of compulsory measures of an educational nature to persons who, before reaching the age from which criminal liability may be possible, the accomplices' voluntary refusal (art. 31 of the CC of Ukraine), the existence of circumstances that exclude the crime act (section VIII of the General Part of the CC of Ukraine), as well as cases provided for in part 2 of art. 385 and part 2 of art. 396 of the CC of Ukraine.

The delimitation of special types of exemption from criminal liability for corruption crimes from the lack of courts' of Ukraine jurisdiction of a criminal case (part 4, art. 6 of the CC of Ukraine) is based on who committed the crime. Only criminal cases against the diplomatic representatives of foreign countries are not subject to the jurisdiction of the courts of Ukraine. In the part 4 of art. 18 of the CC of Ukraine states that officials of foreign states (persons who hold positions in the legislative, executive or judicial bodies of a foreign state, including jurors, other persons performing functions of the state or the foreign state, in particular for public authority or for public enterprise) foreign arbitration judges, persons authorized to settle civil, commercial or labor disputes in foreign countries in an order, alternative judicial, officials of international organizations (employees of an international organization or any other person authorized to act on its behalf), as well as members of international parliamentary the assemblies to which Ukraine is a part, judges and officials of international courts.

That is, diplomatic representatives of foreign states can not be a priori exempted from criminal liability for corruption crimes, while the subjects of part 4 of art. 18 of the CC of Ukraine are subjects to a special incentive rule, which is contained in part 5 of art. 354 of the CC of Ukraine.

Of particular interest is the delineation of preparation for a minor crime (part 2 of art. 14 of the CC of Ukraine) from a special exemption for a corruption crime. Because of the first parts of the articles 354, 368-3, 368-4, 369-2 of the CC of Ukraine precisely are referred to minor crimes from the list of corruption crimes, which are subject to a special incentive norm. In addition, it is important to find out how to separate

between the offer or the promise of unlawful benefits from preparation to its provision.

Part 3 of the note of art. 354 of the CC of Ukraine stipulates that under the proposal in articles 354, 368, 368-3-370 it should be understood that a statement to an employee of an enterprise, institution or organization, a person who renders public services or an official, who intent to provide unlawful benefits, but the promise is expressing such an intention with a statement on the time, place, manner of giving unlawful benefit.

Part 1 of art. 14 of the CC of Ukraine states that preparing for a crime is the search or adaptation of instruments or means, the search for accomplices or a conspiracy to commit a crime, eliminating obstacles, or any other intentional creation of conditions to commit a crime.

Thus, from the moment the direct expression to the employee of the enterprise, institution or organization, to the person providing the public service or to the official person intent on the unlawful gainfulness, the formal composition of the said corruption crimes is completed and applied only a special norm in the practice. Prior to this, if there is a search for accomplices or there is conspiracy to commit a corruption crime, it does not entail criminal liability, since it is a preparation for a minor crime (in particular, the provisions of the first articles 354, 368-3, 368-4, 369-2 of the CC of Ukraine).

The ratio of voluntary refusal to commit an incomplete crime (art. 17 of the CC of Ukraine) and a special exemption for corruption crimes is close to the aforementioned criteria for delineating. Similarly, the moment of acknowledgment of a corrupt crime as a complete one is decisive in the said

delineation. However, this already applies not only to individual parts of individual articles from the list of corruption crimes, but to all of them in accordance with the note of art. 45 of the CC of Ukraine.

No less important is the correlation of the special exemption for corruption crimes, with the exclusion of criminal liability as an insignificance of the act (part 2 of art. 11 of the CC of Ukraine). The key here is the fact that the CC of Ukraine does not contain the minimum amount of unlawful benefits. Therefore, exemption from criminal liability is possible, if the offered, promised or proposed unlawful benefits are not insignificant.

The need to distinguish between unlawful benefits and "ordinary gift" is obvious. It became especially actual after the dramatic changes in anti-corruption legislation from 2013, which consisted of the exclusion from the CC of Ukraine of the notion of bribe, the appearance of a notion unlawful benefit for the new criminal-law law. The continuation of such significant transformations was the refusal of the legislator in 2015 from the definition of the minimum size necessary for the qualification of articles, which provided for criminal liability for such actions (articles 354, 364-1, 365-2, 368, 368-3, 368-4, 369, 369-2 of the CC of Ukraine). There is no clear value limit for unlawful benefits and the absence of a corrupt crime connected with unlawful profit (promise, offer, provision or receipt), are resolved on the basis of part 2 of art. 11 of the CC of Ukraine, which defines the notion of insignificance of an act.

However, we note that the lack of unlawful benefits does not clearly indicate that there will be no crime. And, conversely, a gift worth over UAH 1,000 does not imply a ban

on its adoption by an official through criminal liability. To delineation between these categories, let's turn to their definitions. The Law of Ukraine "On Prevention of Corruption" of October 14, 2014 provides: "Unlawful benefit is money or other property, benefits, privileges, services, intangible assets, any other benefits of immaterial or non-monetary nature that promise, offer, provide or receive without legal reasons; gift is money or other property, benefits, benefits, services, intangible assets, which provide / receive free of charge or at a price lower than the minimum market price".[1]

Consequently, from the above terms we can point out the fundamental difference that exists between them: only unlawful benefits can be of immaterial or non-monetary nature. In addition, the remark that a gift is given / received at a price below the minimum market value, indicates its value characteristic.

In resolving the issue of the responsibility of guilty officials in corruption, action (or inaction) of which are not conditioned by prior agreement, particular attention should be paid to the motives of the representative and to the object of the most unlawful benefit. The motive to bribe an official clearly indicating the actions that falling within the norms of the criminal law. At the same time, on the part of the official, a monetary motive to get rich directly points to the corrupt nature of the actions. Unfortunately, today the CC of Ukraine does not contain a separate indication in the articles on corruption crimes on the obligatory availability of the

[1] Pro zapobihannia koruptsii : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon0.rada.gov.ua/laws/show/1700-18

monetary motive. Other scholars have already pointed out this need several times.[1]

Speaking about the motives for receiving gifts, we must be guided by the provisions of the aforementioned Law of Ukraine "On prevention of corruption", which stipulates restrictions on their receipt (art. 23): persons authorized to perform functions of the state or local self-government, can not, directly or through other persons, to demand, request, receive gifts for oneself or persons close to them from legal entities or natural persons in connection with such person's making activities related to the performance of state functions or local government functions. That is, if this restriction is violated regardless of the cost of the donated, it can be regarded as unlawful benefit and subsequently qualifies accordingly (except for monetary actions).

Also, this law in art. 24 "Prevention of the receipt of unlawful benefits or gifts and treatment with it" defines an algorithm of actions that, in our opinion, makes it possible to determine that an official does not intend to illegally enrich himself. Thus, a person authorized to perform functions of the state or local self-government, persons who are equated to them in the event of receiving an offer of unlawful benefit or

[1] Mezentseva I. Vyznachennia predmeta koruptsiinykh zlochyniv [Elektronnyi resurs] / I. Mezentseva // Visnyk Natsionalnoi akademii prokuratury Ukrainy. – 2014. – № 5. – S. 76–81. – Rezhym dostupu : http://nbuv.gov.ua/UJRN/Vnapu_2014_5_13

Ruban K. P. Rozmezhuvannia podarunka vid nepravomirnoi vyhody yak predmeta koruptsiinykh zlochyniv / K. P. Ruban // Aktualni pytannia derzhavotvorennia v Ukraini : materialy Mizhnar. nauk.-prakt. konf. (20 trav. 2016 r.) : v 3-kh t. T. 3. – Kyiv : VPTs "Kyivskyi universytet", 2016. – S. 47–48.

gift, regardless of private interests, are obliged to take such measures immediately: 1) to refuse the offer; 2) if it is possible, to identify the person who made the offer; 3) to bring witnesses, if it is possible, including from the number of employees; 4) to inform in writing about the proposal of the direct manager (if any) or the head of the relevant body, enterprise, institution, organization, specially authorized counter-corruption actors.

We agree with I. Ye. Mezentseva statement, K. P. Ruban, that the criterion for distinguishing unlawful benefits and a gift to an official are the motives that are guided by the provider and the recipient.[1] The commission of an act in a state of insanity (part 2 of art. 19 of the CC of Ukraine), non-attainment by a person of the minimum age for criminal liability (art. 22 of the CC of Ukraine), the imposition of coercive measures of an educational nature to persons of the minimum age for criminal liability, are the cases, stipulated in part 2 of art. 385 and part 2 of art. 396 of the CC of Ukraine are not particularly important for comparison with the special types of exemption from criminal liability for corruption crimes as previously analyzed, so we

[1] Mezentseva I. Vyznachennia predmeta koruptsiinykh zlochyniv [Elektronnyi resurs] / I. Mezentseva // Visnyk Natsionalnoi akademii prokuratury Ukrainy. – 2014. – № 5. – S. 76–81. – Rezhym dostupu : http://nbuv.gov.ua/UJRN/Vnapu_2014_5_13

Ruban K. P. Rozmezhuvannia podarunka vid nepravomirnoi vyhody yak predmeta koruptsiinykh zlochyniv / K. P. Ruban // Aktualni pytannia derzhavotvorennia v Ukraini : materialy Mizhnar. nauk.-prakt. konf. (20 trav. 2016 r.) : v 3-kh t. T. 3. – Kyiv : VPTs “Kyivskyi universytet”, 2016. – S. 47–48.

don't give their characteristics. It is obvious that such cases are lacking in the practice.

Yu. V. Baulin notes that it is unlikely that exemption from criminal liability is an institute (means) of differentiation of criminal liability. First, the subject of such differentiation is the legislator. In the norms, enshrined in the CC of Ukraine, differentiating in advance, to commit a crime, potential criminal liability for different types of crimes and criminals. The exemption from criminal liability is the prerogative of the court, which not only does not apply the scale of differentiation of criminal liability, which was laid down by the legislator, but, in fact, refuses to impose on that person the restrictions of person's rights and freedoms, which the legislator has foreseen for the crime committed by this person. Thus, the court does not differentiate the criminal liability to this person, but based on the law individualizes the approach to determining the fate of the person who committed the crime, in particular, exempting him from criminal liability.[1]

Proceeding from the potential and real vision of the types of criminal liability Yu. V. Baulin, one can state that the person is freed from the potential liability, because the exemption of such liability takes place until the initial moment of real criminal liability, namely, until the moment of committing binding court judgment.[2]

There is no sentence − there is no real criminal liability, and therefore the person is exempted from potential criminal liability. Such liability is already in potency, which is

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 192.

[2] Right there.

enshrined in the sanction of the criminal law, but this potency does not become valid, as the court does not convict but decide to terminate the proceedings by article (art. 288 of the CPC of Ukraine). The above gives reason to believe that exemption from criminal liability would mean the exemption of a person only from future potential liability. Another conclusion was reached by M. Ye. Grigorieva, who observes, "the exemption of a person from criminal liability in connection with person's active repentance refers to the form of exemption from real criminal liability".[1] The exemption from real criminal liability is, in essence, exempted from the imposition of a punishment or exemption from serving a sentence, or exemption from further serving a sentence or early striking from the record.[2] It is this logic that is subject to the structure of the General part of the CC of Ukraine, in which section IX "The exemption from criminal liability" is located in front of Section X "The punishment and its types", while section XII is entitled "The exemption from punishment and its execution".

According to V. M. Kuts, another sign should be added to the legislative formula of the crime, conventionally speaking, "procedure": the crime is considered only a socially dangerous act committed by the object, recognized as a perpetrator by a guilty sentence of a court, which come into

[1] Hryhorieva M. Ye. Zvilnennia osoby vid kryminalnoi vidpovidalnosti u zviazku z yii diiovym kaiattiam : avtoref. dys. ... kand. yuryd. nauk : 12.00.08 / Hryhorieva M. Ye. – Kharkiv, 2007. – 20 s.

[2] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 194.

force. No acts, no matter how dangerous they may be, are crimes.[1]

When a criminal law states a "person who committed a crime", in so doing not always necessary to have a conviction, how would that never before been asserted. A striking example of this is art. 38 of the CC of Ukraine, which provides for the exclusion of criminal liability for the detention of a person who committed a crime. In this case, a private individual carries out the recognition of a person as a perpetrator of a crime immediately after his commission, but such actions are not considered to be in violation of the principle of presumption of innocence. Therefore, one can not speak of a violation of this principle, and when the court (and not ordinary citizen, as during apprehend the criminal), by exempting a person from criminal liability, notes the availability evidence of a crime in this person's act.[2]

Since the exemption from criminal liability can take place only before a court judgment enters into force, then a person who is exempted from such liability naturally is considered as who does not have a criminal record (art. 88 of the CC). Person's earlier committed criminal act is considered legally insignificant and is forgotten. Thus, an earlier committed crime can not be taken into account in determining the crimes' repetition. In accordance with part 4 of art. 32 of the CC of Ukraine, "There is no repetition, if a person was exempted from a criminal liability by the earlier committed

[1] Kuts V. Poniattia koruptsiinykh zlochyniv ta yikh vydy / V. Kuts, Ya. Trynova // Visnyk Natsionalnoi akademii prokuratury Ukrainy : problemy sohodennia, teoriia, praktyka, zhyttia akademii. – 2012. – № 4. – S. 34.

[2] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 198.

crime on the grounds established by the law ...". The same crime committed earlier is not taken into account in determining the totality of crimes. According to part 1 of art. 33 of the CC of Ukraine, in determining the aggregate "it is not taken into account the crimes for which the person was exempted from criminal liability on the grounds established by the law". In addition, in connection with this, when sentencing for a person who after exemption from a criminal liability committed a new offense, an earlier committed crime can not be recognized as a circumstance of an aggravating punishment.[1] At the same time, the exemption of a person from criminal liability does not attest by the acquittal, since the criminal proceedings are terminated from non-exculpatory grounds for a person, that is, not without the occurrence of a crime and the absence of crime in the act of the person. About that, S. I. Zeldov drew attention to the fact that the exemption from criminal liability "extinguish" the criminal-law significance of fact of the commission of the crime, while preserving its criminological significance and civil-law consequences of the tort.[2] Indeed, the exemption of a person from criminal liability for a committed crime does not exclude the possibility of accountability it, for example, to civil law liability for causing property damage or to disciplinary liability in accordance with the law.

Yu. V. Baulin proposed to separate the exemption of a person from criminal liability and the exclusion of criminal

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 203.

[2] Zeldov S. Y. Osvobozhdenye ot nakazanyia y eho otbyvanyia / S. Y. Zeldov. – Moskva : [b. y.], 1982. – S. 102.

liability.[1] Taking into account these criteria, we have made a separation between the exemption of a person from criminal liability for corruption crimes and the exclusion of such liability on the following properties:

1) when a person is exempted from criminal liability, it is initially stated about his committing a corruption crime, and then about person's committing of certain actions encouraged by the state (timely, voluntary notification about crime, etc. – part 5 of art. 354 of the CC of Ukraine), that is, the presence of a precondition and a ground for exemption of a person from criminal liability. In the exclusion of criminal liability of a person it is indicated that the act is not a crime, that is, there is no ground for criminal liability for damage caused to objects of criminal-law protection;

2) the exemption from criminal liability for corruption crimes is possible only to a small part of such socially dangerous acts in cases provided for in the Special part of the CC of Ukraine on corruption crimes (this is only part 5 of art. 354 of the CC of Ukraine). That is, the list of these cases is too limited. At the same time, grounds for exclusion of criminal liability are provided not only in the CC of Ukraine, but also in other laws and law-regulations of Ukraine, that is, the list of grounds for the exclusion of criminal liability is not limited only by the CC of Ukraine. To such acts, we can include those that affirm the delineation of corruption offenses and corruption-related offenses. In particular, it is the Law of Ukraine "On prevention of corruption", which defines the notion of potential and real conflict that is not corruption,

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 205–206.

however, affects the objectivity or impartiality of decision-making, or the commission or non-commission of actions in execution of these powers;

3) according to a general assessment voiced by Yu. V. Baulin, exemption from criminal liability may be mandatory or discretionary. Instead, the exclusion of criminal liability, by contrast, is always the duty of the state. However, the special exemption from criminal liability for corruption crimes in case of observance and enforcement of the foreseen reasons of the conditions becomes mandatory for use;

4) the exemption from criminal liability for corruption crimes does not rehabilitate a person before the state and society. The exclusion of criminal liability is always based on rehabilitation grounds, namely: lack of ground for criminal liability;

5) the exemption from criminal liability for corruption crimes does not exempt a person of civil-legal, disciplinary and other legal liability for the damage caused. The exclusion of criminal liability, as a rule, entails the exclusion of other legal liability for damage caused by the object of criminal-law protection, except in cases provided by the law.

Let's note that we do not share the proposal of some automotive markets to consider voluntary renunciation of a crime as a one of the types of exemption from criminal liability. Since the legislator uses precisely the wording "the person is not subject to criminal liability", and not "exempted from it".

Regarding the correlation of the institute of the exemption from criminal liability and the institute of exemption from punishment. The legislator, having placed these institutes in two separate sections, thus distinguished the

concept of "criminal liability" and "punishment". Indeed, they are quite close in content, but they are not identical. The need for a clear distinguishing between the rules on exemption from criminal liability and punishment was due to the fact that the institutes referred to by their legal characteristics differ significantly in the range of participants in the process, authorized to decide on the exemption from liability and punishment, and by the stages of criminal justice, in during which the adoption of the considered decisions is allowed.

A person who first committed a crime of a small or medium severity may be exempted from criminal liability if, after committing a crime, he voluntarily has surrendered, facilitated the disclosure of the crime, reimbursed the harm done, and ceased to be socially dangerous as a result of an active repentance and stopped being social dangerous.

It should be noted that in the literature there is an opinion on the expediency of expanding the list of special cases of active repentance. The authors, investigating the institute of active repentance, propose to further improve the criminal law by increasing the relevant norms-notes of the Special part of the CC of Ukraine, proposing to apply this criminal legal incentive to a number of other norms.

The possibility of exemption from criminal liability under the norms of the Special part of the CC of Ukraine should be envisaged in a separate article, not in the article on active repentance, since, as already noted, in the basis of some special cases of exemption from criminal liability is the availability of circumstances different from this type of positive after crime behavior that determines their other legal nature.

The main thing in the admission of guilt is that, according to V. K. Kolomiets, "it is not a personal admission of guilt

anywhere, but a cessation of a certain act and recognition of own participation in it".[1] The legislator, in resolving the issue of the exemption of a person who committed the crime, places the condition of the application of the incentive norms the lack in the actions of the subject of another composition of the crime. It is, if in the actions of considered subject contains the composition of another crime. That is, if the actions of the subject contains the composition of another crime, then he is subject to criminal liability.

However, the modern wording of the special norm on the exemption from criminal liability for corruption crimes (part 5 of art. 354 of the CC of Ukraine) does not contain any conditions for committing a corruption crime for the first time or the person's acts should not contain signs of another crime. We believe that in this case this is an omission of the legislator, which should be corrected by introducing appropriate amendments to the said article of the CC of Ukraine.

A common general condition for exemption from criminal liability is the redress. However, for special types of exemption from criminal liability for corruption, it is not anticipated at all. We can also note this fact as a gap in the formulation of this incentive norm. In order to argue the need to include the condition of compensation for damage from a corrupt crime, we give a characteristic of this condition:

1) the voluntary of actions of the person who committed the crime. It is irrelevant whether they are committed by the perpetrator or under the influence of other persons, such as law enforcement officers, who could explain the legal

[1] Kolomiiets V. Yavka z povynnoiu : nove traktuvannia / V. Kolomiiets // Vidomosti Verkhovnoi Rady. – 2001. – № 10. – S. 35.

meaning of this circumstance if it contained in the norm. Their influence is not coercion, nor does it restrict freedom of the will and actions of the subject. Therefore, law enforcement officers should set themselves the task - by the way, of clarifying the provisions of the law to help the person who committed the crime to know the importance, necessity and expediency of such socially useful behavior as compensation for damage;

2) the activity of the person who committed the crime. The compensation for damage must be done on its own and with the means of the perpetrator. Passive behavior can not be put into the merit of the subject. It is also not expedient to disseminate the criminal-law consequences of reparation by one accomplice to a crime (by virtue of solidarity material liability) to other accomplices;

3) the full compensation for damage caused by a crime. In the law, similar norms do not indicate, in whole or in part, the damage caused by a crime must be compensated. In our opinion, compensation for damage as a sign of exemption from criminal liability for corruption crimes should be taken into account only if the guilty party has fully compensated for the damage caused by such a socially dangerous act. The partial compensation for damages should be a mitigating circumstance.

It should be noted separately that the addition to a criminal proceeding of only one receipt of the making amount of money for repayment of the pecuniary damage without reference to other important circumstances is clearly insufficient and can not serve as proof of the correct perception of the personality of his socially-dangerous act. The testimony from the perpetrator, the victim (if it is

available in the case) must confirm the desire of the subject of the crime to compensate for the damage.

It should be noted about the correlation of special types of exemption from criminal liability for corruption crimes with the bringing of a legal person to criminal liability.

There is no clearly defined position on this issue in the literature. S. G. Kelina, for example, notes that any punishment (fine, liquidation, etc.) applied to a legal entity does not exempt the head of the company from giving a punishment, which instructed to sell, say, spoiled canned fish, as a result of which poisoned many buyers. Therefore, in the CC of Ukraine, in her opinion, it should be necessarily noted that in cases provided by law, subjects of criminal liability, along with individuals, are legal entities.[1]

We agree with the explanations provided by V. K. Gryshchuk, O. F. Pasyeka, that, first, every individual must be subject to liability, who, within the limits of his authority, took part in the adoption of a collective decision, which was committed dangerous act stipulated by the CC of Ukraine irrespective of the number of persons included in the collegial body, taking into account the provisions of articles 26−31 of the CC of Ukraine; secondly, the members of the collegial body who voted against such a decision, abstained or did not vote at all are not subjects to liability; thirdly, the degree of guilt, the nature of the actions and other circumstances relevant to the qualification of the act must be established for each official who participated in the adoption of such a

[1] Kelyna S. H. Otvetstvennost yurydycheskykh lyts v proekte novoho Uholovnoho kodeksa Rossyiskoi Federatsyy / S. H. Kelyna // Uholovnoe pravo : novye ydey. – Moskva : YHP RAN, 1994. – S. 59.

collegial decision; fourthly, a legal entity in this case is liable to criminal liability after a binding court judgement regarding individuals who participated in a collective decision if it is proved that this decision was taken by an appropriate and sufficient number of votes for its legal competences.[1]

According to the art. 96-4 "Legal entities to which criminal-law measures are applied" of the CC of Ukraine measures of a criminal-law nature in cases stipulated in clauses 1 and 2 of part 1 of art. 96-3 of the CC of Ukraine, can be applied by a court to a company, institution or organization, in addition to state bodies, authorities of the Autonomous Republic of Crimea, bodies of local self-government, organizations established by them in the established procedure, which are fully kept at the expense of the state or local budgets, the funds for compulsory State insurance, the Guarantee Fund for individuals' deposits, as well as international organizations.

The measures criminal-legal nature in the cases provided for in paragraphs 3 and 4 part 1 of art. 96-3 of the CC of Ukraine, can be applied by the court to subjects of private and public law of residents and non-residents of Ukraine, including enterprises, institutions or organizations, state bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies, organizations established by them in the established manner, funds, as well as international organizations, other legal entities established in accordance with the requirements of national or international law.

[1] Hryshchuk V. K. Kryminalna vidpovidalnist yurydychnykh osib: porivnialno-pravove doslidzhennia : monohrafiia / V. K. Hryshchuk, O. F. Pasieka. – Lviv : Lviv. derzh. un-t vnutrishnikh sprav, 2013. – 248 s.

If a state or a subject state-owned entity owns more than 25 percent in a legal person or a legal entity is effectively controlled by a state or a subject state-owned entity, then this legal entity is civil liable for the unlawful benefit and damage inflicted a crime committed by a state, subjects of state property or public administration.

Consequently, the criminalization for a corruption crime does not exempt from criminal liability for the criminal crime of the individual. As well as bringing criminal liability of an individual does not exempt from a criminal liability the legal person.

2.3. The criterions and conditions of efficiency of special types of the exemption from criminal liability for corruption crimes

The development of modern criminal-law opinion, the practice of law-making and the application of the criminal law convince the existence of a twin trend in counteraction to crime. The first of them continues the classical relationship between crime and punishment. This concerns, first, the commission of particularly grave and grave crimes and their criminal-law consequences. In cases of minor crimes and crimes of a moderate nature, society is often interested in resolving arose conflict in another way than punishment. In this case, of course, the rights and legitimate interests of the injured person and society must be respected.[1]

The identification of the goals of the institute for dismissal and the means of achieving them naturally makes

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 199.

for scientists a rather puzzling problem of the effectiveness of this institute.[1]

The concepts of "performance evaluation" and "effectiveness" are not identical, since the assessment of effectiveness is a system of actions aimed at identifying qualitative signs of an object; the effectiveness is an appreciable category, determined by a system of actions aimed at identifying qualitative signs of the subject, and points to its positive property.[2]

Exploring the effectiveness of the exemption of criminal liability for corruption crimes, it is necessary to speak not about the regulated effectiveness of the legal norms, but about the effectiveness of the entire mechanism of legal regulation exemption from criminal liability.

The concept of "the criteria", "the indicators" and "the conditions" for the effectiveness of exemption from criminal liability vary, since "the criteria" are signs, "the indicators" are empirical data, and "the conditions" are a system of circumstances relating to the mechanism of legal regulation exemption from criminal liability for corruption crimes.[3]

Taking into account O. S. Kozak's proposed general criteria of effectiveness for exemption from criminal liability,[4] we can characterize the criteria for the effectiveness of

[1] Kozak O. S. Poniattia efektyvnosti mekhanizmu pravovoho rehuliuvannia zvilnennia vid kryminalnoi vidpovidalnosti / O. S. Kozak // Slidcha diialnist: problemy teorii i praktyky : materialy nauk.-prakt. konf. ta «kruhloho stolu». – Dnipropetrovsk : [b. v.], 2008. – S. 41–43.

[2] Kozak O. S. Zvilnennia vid kryminalnoi vidpovidalnosti : avtoref. dys. ... kand. yuryd. nauk : spets. 12.00.08 / Kozak O. S. – Dnipropetrovsk, 2008. – S. 11.

[3] Right there. – S. 17.

[4] Right there. – S. 15.

exemption from criminal liability for corruption crimes: 1) the achievement of the result, namely, preventing the commission of new corruption crimes by persons who were previously exempted from criminal liability for similar socially dangerous acts. The result is predetermined by the goals and means provided by the institute for the exemption of criminal liability, in particular means of encouraging positive post-criminal behavior of the person who committed a corruption crime; 2) the activity of the courts in relation to the realization of the tasks assigned to them, consisting in the competence and coherence of the work of the subjects of the application of the exemption from criminal liability for corruption crimes. At the same time, it should stress the need to that it is necessary to determine the criteria for the same application by judicial-investigative bodies of the incentive rules for corruption crimes. This, above all, can be achieved by adopting the relevant order of the plenum of the SCU.

Let's say that we can speak about the criteria, indicators and conditions of the effectiveness of the incentive norms for corruption crimes, based on a purely theoretical foundation. Since the making analysis of empirical data is not possible due to the insignificant time elapsed since the legislator's adoption of the very concept of corruption crimes and changes that affected the provisions on exemption from criminal liability provided by the General and Special parts of the CC of Ukraine. Accordingly, there is no adequate volume of practical results of the activity of judicial-investigative bodies in the given sphere, which would allow receiving solid conclusions during the research.

The analysis of the basic views on the notion of the conditions of the effectiveness of the norm of law allowed to

state that the conditions for the release of criminal responsibility are the system of circumstances that determine the effectiveness of the mechanism of its legal regulation, affect on the ability to achieve the goals by appropriate means and results of exemption from criminal liability by appropriate means, and also include conditions of effectiveness of the norm of the law, conditions of effectiveness of legal relations and acts of realization of rights and obligations.

To the conditions of the effectiveness of the legal norms of the institute for exemption from criminal liability for corruption crimes include its detailed legal regulation, which is understood as the consistency of the norms of material and procedural law, which provide for the type of special exemption, and also the compliance of such norms with the general tendencies of the state criminal policy of state and needs of society.

The prerequisite for the effective and correct application of this institute is the consistency of its content, as foreseen in the norms of the CC of Ukraine, and its time, which is regulated by the norms of the CPC of Ukraine.

The legislator limited the possibility of applying the analyzed types of special exemption from criminal liability in time. In particular, the general content of the notification of suspicion is disclosed in the provisions of articles 276−279 of the CC of Ukraine. Before conducting a complex of investigative actions, in art. 278 of the CPC of Ukraine provided for two possible procedures for the implementation of such a report of a crime, in particular of a corruption crime: 1) a written notification of suspicion is delivered at the day of its making by the investigator or prosecutor, and in the case of

impossibility of such a delivering − in the manner provided by the CPC of Ukraine for the delivery of communications; 2) a written notification of suspicion a detained person shall be delivered not later than twenty four hours from the moment of his detention.

Thus, the content of the above norms allows to determine the notice of suspicion as a procesual act, which constitutes a certain way of proving by the investigator or prosecutor to the attention of a certain individual the content of the offense that this person have probably committed.

However, from the point of view of increasing the effectiveness of the special types of exemption from criminal liability stipulated in these norms, it is advisable not simply to replace the wording "to prosecution" with "... the notification her of the suspicion of committing a crime ..." and to introduce in these special types of dismissal, an approach that would allow to extend the possible time limits for committing positive post-criminal acts and not reduce them to the initial stages of criminal proceedings.

The arguments in favor of such an approach can be as follows:

1) the limitation of the fulfil the conditions of exemption the moment of the notification of suspicion virtually nullifies the possibility of applying such special types of exemption, as the guilty person is given very little time to fulfill the conditions for exemption;

2) the social positivity of post-criminal acts does not change depending on the moment of their commission, which is determined by the stage of criminal proceedings, whether they will be committed before the notification of suspicion or before the court decides on the appointment of a trial (in accordance with part 1, art. 316 of the CPC of Ukraine), or to

a court's decision in a criminal proceeding. In any case, the main objective of the institution's exemption from criminal liability is achieved − the corrections the person of the perpetrator (special prevention) and other persons (general prevention) without the application of a criminal-law punishment. At the same time, in terms of humanization of criminal liability legislation, it would be entirely justified to limit the possibility of fulfilling the conditions for exemption from criminal liability by the verdict of the court;

3) part 2 of art. 286 of the CPC of Ukraine states: "Having established at the stage of pre-trial investigation the grounds for exemption from criminal liability and getting the consent of the suspect to such an exemption, the prosecutor makes a request for exemption from criminal liability and fully without pre-trial investigation sends him to court". Consequently, the application of the exemption procedure can be carried out subject to two procedural conditions: the presence of a status of suspect's to a person and obtaining his consent to the application of the exemption. This means that the guilty person must first comply with the conditions of exemption provided for in the CC of Ukraine, and then she will be served with a notification about suspicion that, according to part 1 of art. 42 of the CPC of Ukraine will mean the getting of the suspect's legal status, and after that, she may be asked to agree to the application of the use of institution of exemption against her. As a result, in the norms of the CC of Ukraine, which provide for special types of exemption, the situation is established in which a person, even that who is conscientiously mistaken in the lawfulness of his actions, for example, in case of non-payment of taxes, is already obliged

to make positive post-criminal acts in order to be able to be exemption from criminal liability.

This approach seems inappropriate, since no fault of the perpetrator is required to make any criminal-law assessment of her actions, which asks the question of the lawfulness of the claim by the state to a person for positive post-criminal acts. An additional argument in this regard may be that the implementation of the notification about suspicion of its content corresponds to this stage of criminal proceedings (as envisaged by the CPC of Ukraine in 1960) as initiating criminal proceedings against a person.

By the Law of 18.04.2013[1] in articles 354, 368-3, 368-4, 369 the provision providing for "violation of the criminal case against it" as the final moment of realization by the guilty person of the conditions for exemption from criminal liability, was replaced by the provisions "before the moment notification to her about the suspicion ...". Thus, "the initiation criminal proceedings against a person" was foreseen by the CPC of Ukraine in 1960 and was carried out after the criminal case was initiated on the fact of taking into account the available evidence that the individual was guilty of committing a particular criminal offense, therefore the position of the legislator was fully justified, where the guilty person's realization was granted the conditions for exemption until the person was charged with a crime that could have

[1] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo pryvedennia natsionalnoho zakonodavstva u vidpovidnist iz standartamy Kryminalnoi konventsii pro borotbu z koruptsiieiu : Zakon Ukrainy vid 18 kvit. 2013 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 10. – S. 119. – Rezhym dostupu : http://zakon2.rada.gov.ua/laws/show/221-18

occurred only after a criminal case had been instituted against a person.

Taking into account the stated in part 4 of art. 212 and part 4 of art. 212-1 of the CC of Ukraine, which provides for special types of exemption from criminal liability, the final moment of possible realization of the conditions for dismissal, related to the passing of criminal proceedings, it is advisable to indicate a ruling of a court verdict.[1]

Recently, domestic scientists consider criminal-law policy as part of the state policy of Ukraine in the field of combating corruption crime. In particular, I. Ye. Mezentseva proposes to define the subject of criminal-legal policy in the field of counteraction to corruption crime as encompassing the creation, theoretical redefinition and substantiation of the doctrinal and program levels of the concept of criminal-law struggle against this type of crime.[2] In addition, the structure of the criminal-law policy in the field of combating corruption, in its opinion, consists of the strategy of counteraction to corruption crimes; of anti-corruption criminal law; of public participation in the prevention and prevention of

[1] Kutsevych M. P. Problemy zastosuvannia zvilnennia vid kryminalnoi vidpovidalnosti za ukhylennia vid splaty podatkiv, zboriv (oboviazkovykh platezhiv) ta strakhovykh vneskiv, poviazani z diieiu novoho KPK Ukrainy [Elektronnyi resurs] / M. P. Kutsevych // Yevropeiski perspektyvy. – 2013. – № 11. – Rezhym dostupu : http://www.irbis-nbuv.gov.ua/.../cgiirbis_64.exe?

[2] Mezentseva I. Ye. Uholovno-pravovaia polytyka kak chast hosudarstvennoi polytyky Ukrayny v sfere protyvodeistvyia korruptsyonnoi prestupnosty [Elektronnyi resurs] / I. Ye. Mezentseva // Legea si Viata. – 2016. – № 1. – S. 67. – Rezhym dostupa : http://www.legeasiviata.in.ua/archive/2016/1-3/17

corruption crimes; of anti-corruption law enforcement and law-enforcement activities of the relevant authorities.[1]

Other elements of anti-corruption policy, such as: the activity of control bodies, the monitoring of the state of corruption, an anti-corruption education and upbringing in criminal-law policy in this area are not apply. In addition, the anticorruption activity of civil society structures can not, at present, be a component of criminal-law policy in the area of combating corruption, since these structures are deprived of these powers.[2]

On the basis of the above considerations, we can conclude that for the conditions of effectiveness of exemption from criminal liability for corruption crimes, the greatest interest is the correspondence of this institute with an anticorruption policy that is essentially intersectional.

The realization of anticorruption policy, the scientists call the relevant strategies, indicating the following components[3]:

− the public awareness of the danger of corruption and its consequences (awareness);

− the warning and prevention of corruption (good governance);

− the rule of law and protection of citizens' rights (termination).

The institute for exemption from criminal liability for corruption crimes refers to the aforementioned components of

[1] Right there. – S. 67−68.

[2] Right there. – S. 68−69.

[3] Hornyi M. B. Stratehyi protyvodeistvyia korruptsyi: rol ynstytutov hrazhdanskoho obshchestva [Elektronnyi resurs] / M. B. Hornyi. – Rezhym dostupa : http://www.hse.ru/data/2015/03/11/1106911686/%D0%93%D0%BE%D1%80%D0%BD%D1%8B%D0%B9%20%D1%81%D1%82%D1%80%D0%B0%D1

anti-corruption policy strategies as follows: public awareness of the danger of corruption and its consequences (awareness) is primarily due to the level of citizens' legal awareness; the need for legal education, in particular regarding corruption, was confirmed by the survey. The results of the survey showed respondents' opinion that there is an urgent need to change the legal awareness of Ukrainians to reject corruption, regardless of active or passive form; determination and bringing to practical workers of state and local self-government, as well as ordinary citizens, an algorithm for detecting (observing) corruption facts (see annex B).

That is, we can state that one of the conditions of the effectiveness of the legal relations of the institute is the exemption of criminal liability for corruption crimes is the level of legal consciousness of citizens. The main legally defined condition is to define the provisions of the Law of Ukraine "On the principles of state anti-corruption policy in Ukraine (anticorruption strategy) for 2014−2017", which consist in forming the consciousness of the non-acceptance of the corruption behavior, encouraging to the informing about facts of corruption. According to the results of studies conducted in Ukraine in recent years, more than half of the population is inclined to commit corruption offenses if this can contribute to solving the problem. Provided that effectively explain can change the attitude towards such practices as unacceptable corruption, and thus, the anti-corruption potential of society will increase significantly.[1]

[1] Pro zasady derzhavnoi antykoruptsiinoi polityky v Ukraini (Anty-koruptsiina stratehiia) na 2014−2017 roky : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. –

The conditions of the effectiveness of acts of realization of rights and obligations can be defined as the state-power activities of the competent authorities to ensure the effective realization of the norms on the exemption of a person from criminal liability for corruption crimes, which is in prosecutorial supervision, judicial and departmental control during the exemption from criminal liability. In their questionnaires, law enforcement officials pointed to the need for the same definition by the courts of the rules of substantiation in judicial decisions of corruption facts. This testifies to the need for an adoption an appropriate clarification to the Plenary Session of the Supreme Court of Ukraine regarding the questions of the application of anti-corruption norms, which is lacking in practice (see annex B).

Considering the significance of the above provisions on special types of exemption from criminal liability for corruption crimes, we propose to understand them as a means aimed at strengthening the criminal law protection of social relations from the most dangerous manifestations of corruption crime. Persons' awareness of the fact that they can be exempted from criminal liability for committing one or the other crimes induces them to timely prevent the possible socially dangerous consequences, as well as to assist the pre-trial investigation authorities and the court in the disclosure of this category of crimes.[1]

№ 46. – S. 2047. – Rezhym dostupu : http://zakon1.rada.gov.ua/laws/show/1699-18

[1] Leonenko I. Rozshyrennia spetsialnykh pidstav zvilnennia vid kryminalnoi vidpovidalnosti – efektyvnyi zasib protydii zlochynnosti v Ukraini [Elektronnyi resurs] / I. Leonenko // Viche. – 2013. – № 12. – Rezhym dostupu : http://www.viche.info/ journal/3719/

An individual approach to the application of the relevant norms on the exemption from criminal liability not only does not from law enforcement from criminal encroachments, but also, on the contrary, promotes a successful counteraction to crime and can achieve the objectives of punishment without its actual application.[1]

The discovery of the goals of the investigated institute and the means of their achievement naturally made the problem of the research of the effectiveness of this institute.[2]

Significant developments regarding the objectives of exemption were made in the candidate's thesis O. S. Kozak. It distributes goals depending on the legal ground for exemption on general and special. General goals are inherent in all types of exemption from criminal liability; special ones are imposed on some types of exemption from criminal liability additionally.

The general objectives are as follows: a) correction of persons who committed a crime is an initial one, which predetermines the existence of a relevant incentive norm in

[1] Baulin Yu. V. Zvilnennia vid kryminalnoi vidpovidalnosti / Yu. V. Baulin // Visnyk Asotsiatsii kryminalnoho prava Ukrainy. – 2013. – № 1 (1). – S. 186.

[2] Kozak O. S. Poniattia efektyvnosti mekhanizmu pravovoho rehuliuvannia zvilnennia vid kryminalnoi vidpovidalnosti / O. S. Kozak // Slidcha diialnist : problemy teorii i praktyky : materialy nauk.-prakt. konf. ta «kruhloho stolu». – Dnipropetrovsk : [b. v.], 2008. – S. 41–43.

Lemeshko O. M. Problemy zabezpechennia yakosti ta pidvyshchennia efektyvnosti zastosuvannia zakonodavstva pro zvilnennia vid kryminalnoi vidpovidalnosti / O. M. Lemeshko // Pravovi zasady pidvyshchennia borotby zi zlochynnistiu v Ukraini : materialy nauk. konf. (15 trav. 2008 r.). – Kharkiv : [b. v.], 2008. – S. 40–42.

Kozak O. S. Efektyvnist zvilnennia vid kryminalnoi vidpovidalnosti v Ukraini : monohrafiia / O. S. Kozak ; red. O. M. Bandurka. – Kyiv : Osvita Ukrainy, 2009. – 204 s.

the criminal law, and further serves as the basis for the exemption of a person from criminal liability; b) special (private) prevention, which is to encourage the perpetrators of crimes, to identify positive post-criminal behavior, in proving their correction, to refuse to continue criminal activity in the future; c) the general-preventive influence extending to the circle of persons who are bearers of positive criminal liability and is realized in two directions: the first is carried out by encouraging a wide range of perpetrators of crimes before stopping the criminal activity and revealing positive post-criminal behavior; the second is carried out within the framework of a special preventive measure by proving the inevitability of assigning on the person the obligation to be prosecuted.[1]

The specific objectives of the exemption from criminal liability are: a) the prevention of inevitable harm that may be caused to a basis of national and public security (part 2 of art. 114, part 2 of art. 255, part 2 of art. 258-3, part 6 of art. 260 of the CC of Ukraine); b) the compensation for the pecuniary damage inflicted by the crime (part 3 of art. 175, part 4 of art. 212, part 4 of art. 289 of the CC of Ukraine); c) the prevention of the illegal circulation of weapons, ammunition, explosives or explosive devices, as well as narcotic drugs, psychotropic substances or their analogues (part 3 of art. 263, part 4, art. 307, part 4, art. 309, part 4 art. 311 of the CC of Ukraine); d) the reduction of latency of crimes in the sphere of official activity (part 3 of art. 369 of the CC of Ukraine); e) the

[1] Kozak O. S. Zvilnennia vid kryminalnoi vidpovidalnosti : avtoref. dys. ... kand. yuryd. nauk : spets. 12.00.08 / Kozak O. S. – Dnipropetrovsk, 2008. – S. 14.

prevention of crimes committed by servicemen (part 4 of art. 401 of the CC of Ukraine).[1]

In general, while agreeing on the above-mentioned developments, however, given the recent changes in the anti-corruption legislation, the special purpose of exemption from criminal liability for crimes in the area of official activity has been expanded accordingly, namely: reducing the latency of corruption crimes (part 5 of art. 354 of the CC Ukraine).

In 1976, A. V. Barkov (one of the first mover in the field of scientific research on this issue) wrote that, in contrast to the norms on the exemption from criminal liability contained in the General Part of the CC of Ukraine, cases of such exemption in the norms of the Special Part are not a result assessment of the personality of the perpetrator and the crime committed by him, and an incentive to assist the judiciary in disclosing the crime.[2]

V. Yu. Ivonin's (1992) dissertation stresses that the criminal-law norms, which provides for special types of exemption from criminal liability, are an incentive norms by their legal nature.[3]

Taking into account the proposed P. V. Khryapinskyi arguments about the social and legal preconditions for special types of exemption from criminal liability of members of

[1] Right there.

[2] Borkov V. Novaia redaktsyia norm ob otvetstvennosty za vziatochnychestvo: problemy prymenenyia / V. Borkov // Uholovnoe pravo. – 2011. – № 4. – S. 13–14.

[3] Yvonyn V. Yu. Osvobozhdenye ot uholovnoi otvetstvennosty po normam Osobennoi chasty ulovnoho zakonodatelstva y eho prymenenye orhanamy vnutrennykh del : avtoref. dys. ... kand. yuryd. nauk : spets. 12.00.08 / Yvonyn V. Yu. – Moskva, 1992. – S. 8.

organized groups and criminal organizations[1], we arrive at the conclusion that special types of exemption from criminal liability for corruption crimes are inherent in the social and legal preconditions. It is formed from the following factors:

– social (the need to detect, prevent, disclose and investigate corruption crimes);

– criminal-law (public danger of corruption crimes, economy of criminal repression);

– criminological (high degree of latency of these crimes and the complexity of preventing them);

– criminal-procedural and operational-search (complexity of detection, disclosure and investigation of corruption crimes);

– international-legal (requirements and recommendations of international normative legal acts in the field of combating corruption).

Considering the significance of the above provisions on special types of exemption from criminal liability for corruption crimes, we propose to understand them as a means aimed at strengthening the criminal law protection of social relations from the most dangerous manifestations of corruption crime.

In the literature, the statements made (and they deserve attention) on the inexpediency of unconditional cessation of all criminal-law consequences because of the exemption from criminal liability. Some authors believe that, since the institution of exemption from criminal liability does not comply with the principle of inevitability of liability for the

[1] Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 115.

committed, it would be advisable that the provisions of the General Part of the CC, which provide for the exemption from criminal liability of person, stipulates that the person after exemption from the criminal liability two or three years felt the invisible sword of the criminal law.[1]

Taking into account the above statements, we will express our position based on the results of the survey of law enforcement officers. In order to determine what is needed to effectively counteract corruption in Ukraine, respondents were offered four options, the largest number of responses received the option of "introduction of dramatically severer sanctions" – 44,4 %. Further on descending order: making of the system of public control – 27,5 %; the option proposed by the questioned people- an increase in wages for officials – 20,9 %; the exclusion of any possibility of exemption from criminal liability for corruption crimes – 17,6 %; the expansion of the possibility of exemption from criminal liability for all corruption crimes – 4,6 % (see annex B).

Thus, the decisive influence on the validity (effectiveness) of the incentive norms on corruption crimes has a tool to stimulation. The fear of harsh sanctions and awareness of the fact that they can be exempted from criminal liability for corruption crimes prompts them to timely avoid possible socially dangerous consequences, as well as to assist pre-trial investigation authorities and the court in disclosing crimes (if a criminal offense has already taken place).

Consequently, the criteria and conditions for the effectiveness of special types of exemption from criminal

[1] Hryhorieva M. Ye. Zvilnennia osoby vid kryminalnoi vidpovidalnosti u zviazku z yii diiovym kaiattiam : avtoref. dys. ... kand. yuryd. nauk : 12.00.08 / Hryhorieva M. Ye. – Kharkiv, 2007. – 20 s.

liability for corruption crimes have a significant social conditionality and are directly related to the legal awareness and legal culture of the Ukrainian population.

An additional explanation is that corruption in Ukraine has features that distinguish it from corruption in developed countries. Without identifying them, it is impossible to develop adequate anti-corruption measures. The corruption in our state is the corruption of the type of crisis. That is, that: a) is generated by the crisis of modern Ukrainian society (and not only by the imperfection of criminal justice); b) is able to deepen this crisis, having the ability to negate any political, economic, legal and moral reforms. In addition, in this is a threat to the national security.[1]

The crisis of Ukrainian society is a consequence of the crisis of social culture of citizens, which includes, in particular, the political, economic, legal, moral culture of citizens. There is a pattern: what is the social culture of citizens and such is social life. Consequently, corruption-type crisis that struck contemporary Ukraine has the basis for a significant stratum of citizens deprived of proper social culture and therefore they are affected by arbitrariness and illusions that manifest themselves in the form of corruption. It is precisely the lack of citizens' proper political, economic, legal, and moral culture that they have, for example, Swedes or Germans, who are now a breeding ground for corruption-type crisis in Ukraine. Such corruption constitutes a major threat to the Ukrainian nation, in particular to its political, economic, legal, moral and cultural fundamentals. In the near future, one can see that even the problems that arise around

[1] Kostenko O. Koruptsiia v Ukraini – osnovnyi antyukrainskyi faktor [Elektronnyi resurs] / O. Kostenko. – Rezhym dostupu : http://narodna.pravda.com.ua/politics/47ecdd7bdfcfc/view_print/

the Ukrainian language in Ukraine have a "corruption component".

The crisis-type corruption in Ukraine, which affects not only the state, but also civil society and the Ukrainian nation itself, precedes the fact that counteraction technology must be adequat developed to counteract this type of corruption (and not corruption at all), in order to effectively counteract it. In addition, here it is worth turning to the world experience. In particular, the anti-corruption technology of the crisis type, used by F. Roosevelt within the so-called "New deal", was used to bring the United States out of the Great depression of 1929−1933.[1]

There is no such approach in Ukraine yet. Current anti-corruption activities are not adequate to the current "Ukrainian" corruption. It boils down to blind manipulation of changes in legislation (which has the form of its improvement) and chaotic actions in "improving" the institutions of criminal justice (law enforcement). More than a decade years of experience of such an opposition testifies to its infertility. Consequently, ignoring the patterns of the existence of crisis-type corruption in Ukraine leads to voluntarism in opposing it (in particular, to the legislative, as well as political, which manifests itself in the unsystematic reform of the institutions of criminal justice).[2]

An analysis of the practice of combating corruption in Ukraine shows that it is not based on adequate ideas about the

[1] Kostenko O. Shchodo antykoruptsiinoho potentsialu "liudskoho faktoru", abo pro "kamin, yakym znevazhyly budivnychi" [Elektronnyi resurs] / O. Kostenko. – Rezhym dostupu : https://www.facebook.com/permalink.php?story_fbid=1700120673544963&id=1614195908804107

[2] Kostenko O. Koruptsiia v Ukraini – osnovnyi antyukrainskyi faktor [Elektronnyi resurs] / O. Kostenko. – Rezhym dostupu : http://narodna.pravda.com.ua/politics/47ecdd7bdfcfc/view_print/

roots of corruption. In particular, the factor of corruption activity of citizens is not taken into account, and therefore all reduces to corrupt activity of officials (official) persons. This means that from the strategy and anti-corruption tactics there is such a potential as "activities aimed at reducing the corruption activity of citizens", which we consider to be crucial to counteracting the crisis-type corruption. The truth is obvious: the less bribes will be given, the less they will be taken. In other words: so many bribes are taken, because of people give many bribes.

Inclusion of the potential of "activity aimed at reducing the corruption activity of citizens" to the anti-corruption system involves the deployment of activities for the formation of the anticorruption culture of citizens (for example, in the form of the development and implementation of a special "Program for the formation of anticorruption culture in Ukraine", taking into account foreign experience, in particular the experience of forming "anti-mafios culture" in the Italian city of Palermo).[1]

The need for such an approach to improve the fight against corruption in Ukraine follows from the development of the Institute of State and Law. V. M. Koretsky's doctrine of combating crime, which is expressed by the formula: "social culture of citizens plus criminal justice". This so-called cultural doctrine is as follows: if in Ukraine no conditions are created for the development of the social (that is, political, economic, legal, moral) culture of citizens, then no constitutional, legislative, judicial, administrative or other

[1] Kostenko O. Shchodo antykoruptsiinoho potentsialu "liudskoho faktoru", abo pro "kamin, yakym znevazhyly budivnychi" [Elektronnyi resurs] / O. Kostenko. – Rezhym dostupu : https://www.facebook.com/permalink.php?story_fbid=1700120673544963&id=1614195908804107

reforms will have anti-criminal, in particular and anticorruption effect, and therefore will not have any at all. To help our state can only reforms such as "New Deal" by F. Roosevelt, which have exactly the anti-corruption potential, that is, create conditions for the development of the political, economic, legal, moral culture of citizens.[1]

Proceeding from the "cultural" doctrine of combating crime (and corruption), it is necessary to point out the pattern: criminal justice is effective as much as insofar as the social culture of citizens under which they understand political, economic, legal and moral culture. According to this doctrine, no "perfection" of criminal justice (i. e., improvement of anti-corruption legislation and anti-corruption institutions) will give no effect if the anticorruption culture of citizens will not be properly developed in Ukraine.[2]

The conclusions to the section 2

Consequently, the criteria for classification of exemption from criminal liability are disclosed and it is determined what significance this affiliation of special types for exemptions for corruption crimes in the mechanism of law enforcement is. Thus, based on the defining of field of distribution, it is clear that it is the special types of exemption that are the only possible incentive norms in the field of combating corruption. Accordingly, it increases their value for practice. The criterion of the nature of the possibility of exemption from criminal liability allows us to characterize the place of a special

[1] Kostenko O. Shchodo antykoruptsiinoho potentsialu "liudskoho faktoru", abo pro "kamin, yakym znevazhyly budivnychi" [Elektronnyi resurs] / O. Kostenko. – Rezhym dostupu : https://www.facebook.com/permalink.php?story_fbid=1700120673544963&id=1614195908804107

[2] Right there.

exemption from criminal liability for corruption crimes (part 5 of art. 354 of the CC of Ukraine) as mandatory. In turn, this determines the importance of this norm in the mechanism of law enforcement. Based on the presence or absence of certain conditions for exemption from criminal liability, a special type of dismissal is considered to be unconditional. This affiliation testifies to the effectiveness to the guilty person. Since the latter has the confidence that as a result of the use by court the part 5 of art. 354 of the CC of Ukraine it will not be required from it and no further action will be expected in the future to confirm the exemption. By the nature of creation of the conditions for exemption from criminal liability − the conditions of the application of a special incentive norm for corruption crimes related to positive post-criminal behavior of a person. That is, they depend directly on the will of the perpetrator, and not the events determined by law.

A special part of the CC of Ukraine provides for 21 special type of exemption of a person from criminal liability, and the tendency to increase this number has a controversial assessment. However, we are convinced that since each such type of its prerequisites and grounds characterize exemption, it is used independently and can not replace each other. From the note stated in the art. 45 of the CC of Ukraine in the list of 14 corruption crimes, only in five components of these socially dangerous acts are provided in the incentive norm of part 5 of art. 354 of the CC of Ukraine and belong to a special type of exemption. Accordingly, the increased use of this special type of exemption is expedient and justified for practice.

Considering the issue of delineation of special types of exemption from criminal liability for corruption crimes from related criminal-law institutes, the criteria that this special

institute will distinguish has been investigated. In particular, the distinction was drawn between the exemption from criminal liability for corruption crimes and the exclusion of criminal liability of a person. In case of the exemption of a person from criminal liability, it is initially noted the committing a corruption crime, and then the person's committing of certain actions encouraged by the state (timely, voluntary notification of a certain crime, etc. − part 5 of art. 354 of the CC of Ukraine), that is, it is noted of a preconditions and grounds to exemption a person from criminal liability. In the exclusion of criminal liability of a person it is noted that the act is not a crime, hence there is no grounds for criminal liability for damage caused to objects of criminal-law protection. The exemption from criminal liability for corruption crimes is possible only with respect to a small part of such socially dangerous actions in cases provided for in the Special part of the CC of Ukraine. That is, the list of these cases is too limited. Special exemption from criminal liability for corruption crimes in case of observance and enforcement of the foreseen grounds of the conditions becomes (as well as the exclusion of criminal liability) binding for use. In addition, this type of exemption does not rehabilitate a person before the state and society and does not relieve a person of civil-legal, disciplinary and other legal liability for the damage caused.

The criteria and conditions for the effectiveness of special types of the exemption from criminal liability for corruption crimes have a significant social conditionality and are directly related to the legal awareness and legal culture of the population of Ukraine.

Section 3

The application of the institute of the exemption from criminal liability for corruption crimes and the ways to improve it

3.1. The application of the institute of the exemption from criminal liability for corruption crimes

The analysis of modern criminal law and other legal, social and political processes in Ukraine gives grounds for the conclusion that the process of formation and development of criminal-law institutes passes one of its active phases. Institutes of criminal law have come a long way of their historical formation. They did not occur simultaneously, but are the result of the adaptation of this branch of law to the conditions of a social situation that is constantly changing. It should be noted that the institute of exemption from criminal liability does not commit the decriminalization, but frees certain persons from liability for the crime, that they committed. Therefore, the exemption from criminal liability does not mean justification of a person or recognition of her innocent. The some grounds for exemption from criminal liability are not rehabilitated certain in the CC of Ukraine. The forms and types of positive behavior are legally enshrined and in case of execution it by person in full, it should be a

"incentive" reaction from the state as an exemption from criminal liability.

It should be noted that the general ground for the exemption of a person who committed a crime from criminal liability for corruption crimes under the norms of the Special part of the CC of Ukraine is the inappropriate involvement of him in court liability and the enforcement of coercive measures of criminal-law influence to him. In resolving the issue of exemption from criminal liability, not only a criminal act and a number of legally significant circumstances related to its implementation, but also the characteristics of the guilty person and his conduct before or after the commission of the crime shall be assessed.

In the theory of criminal law, the following scientists paid much attention to studying the problem of exemption from criminal liability: Yu. V. Baulin, A. I. Boitsov, Ya. M. Brainin, K. K. Vavylov, B. Vittenberg, L. V. Golovko, T. T. Dubinin, S. Kelina, N. F. Kuznyetsova, S. N. Sabanin, V. V. Skibitskyi and others. Recently, some types of exemption from criminal liability at the level of the dissertation were investigated by M. Ye. Grigorieva, A. A. Zhitniy, P. V. Khryapinskyi and others.

The criminal-law institute is a normative decorated structural element of the criminal law field. The signs of this institution should be the considered idea-normative and appropriate to him social meaning. The second sign of the institute is the plurality of norms that make up it. The third sign of the criminal law institute is its focus on solving

detailed intra-industry problems and external social tasks for the indicated sphere of policy.[1]

Today one of the trends of criminal legislation can be called the rationing of cross-sectoral institutes. This is due to the fact that the individual elements of the criminal-law methods of management are "superimposed" on the subject of another branch of law or are the result of applying to the regulation of criminal law relations methods of other branches of law.

Despite the use of blanket dispositions in criminal law, in many cases we precisely can talk about inter-branch institutions. One of the most striking examples is the institute of criminal liability for corruption crimes. This institute can and should, in our opinion, be considered cross-sectoral. In V. M. Kyrychka's opinion, two groups of features are characteristic of corruption crimes: a) the composition of the crime provided for by the CC; b) the signs of a corruption offense[2] are stipulated in art. 1 of the Law of Ukraine "On prevention of corruption" of October 14, 2014.[3] Similarly is opinion of V. M. Kuts, who points out that a corruption crime is a socially dangerous act that contains signs of corruption and corruption offence, what is envisaged in the special part of the

[1] Lykhova S. Ya. Rozvytok kryminalno-pravovykh instytutiv v Ukraini na suchasnomu etapi [Elektronnyi resurs] / S. Ya. Lykhova. – Rezhym dostupu : http://conference.nau.edu.ua/index.php/TL/PRAVVYMIR/paper/viewFile/1498/879

[2] Kyrychko V. M. Kryminalna vidpovidalnist za koruptsiiu / V. M. Kyrychko. – Kharkiv : Pravo, 2013. – S. 14.

[3] Pro zapobihannia koruptsii : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon0.rada.gov.ua/laws/show/1700-18

Criminal Code of Ukraine.[1] I. Ye. Mezentseva[2] defends the same position.

In addition, the cross-sectoral nature of the specified institute is due to the relationship with the criminal-procedural norms, which in many respects determine the direct practical implementation of special types of exemption from criminal liability for corruption crimes. The procedural ground for termination of a criminal prosecution is the execution of a guilty set of necessary and sufficient conditions (or the form and type of positive behavior of the perpetrator, or the circumstance were preceding the commission of a crime) included in the construction of relevant norm of exemption. Taken together, they testify to the lack of expediency to lay the claiming all legal arising for the perpetrator from the criminal acts committed the official condemnation of a person and recognition him to be a criminal, his appointment of a punishment, the availability of criminal record. The procedural form of wrapping a similar ground is the decision of the authorized authority contained in the resolution (adopting) on the termination of criminal prosecution. The issue of exemption a person from criminal liability in special cases can be resolved both at pre-trial stages and in the order of preliminary hearing of materials of criminal proceedings and in court proceedings.

[1] Kurs uholovnoho prava. Obshchaia chast. T. 2. Uchenye o nakazanyy : uchebnyk dlia vuzov / pod red. d-ra yuryd. nauk, prof. N. F. Kuznetsovoi y dr. – Moskva : ZERTsALO, 1999. – S. 35.

[2] Mezentseva I. Vyznachennia predmeta koruptsiinykh zlochyniv [Elektronnyi resurs] / I. Mezentseva // Visnyk Natsionalnoi akademii prokuratury Ukrainy. – 2014. – № 5. – S. 76–81. – Rezhym dostupu : http://nbuv.gov.ua/UJRN/Vnapu_2014_5_13

One of the most urgent reasons for application of the institute to exempt from criminal liability for corruption crimes is the subject's voluntary notification of a crime committed by him to the relevant official.

A number of articles of the CPC provides answers to questions about an authority whose servant is endowed with the right to report suspicion. In particular, according to part 4 of art. 22 CPC the prosecutor reports to a person about suspicion of committing a criminal offense. In cases provided for by the CPC, a person may be informed of a suspicion of committing a criminal offense by an investigator in agreement with the prosecutor. Consequently, the authorities from whose official is entitled to report suspicion under the law are the Procuracy (article 11 (2), 36 of the CPC), Interior, Security, bodies supervising the observance of tax legislation, state investigation bureau, investigating officers of investigative units of performing preliminary inquiries and carrying out pre-trial investigation (art. 38 CPC), and authorized to notify the person, in agreement with the prosecutor, of suspicion (paragraph 6 of article 2, 40 of the CPC).[1]

That is, the addressee of the voluntary notification should be the inquiry authority, investigator, prosecutor, judge or court (including special anti-corruption bodies such as the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, etc.), and the content of the notification should include information about crime.

[1] Osadchyi V. I. Kryminalno-pravova kharakterystyka ta kvalifikatsiia pidkupu pratsivnyka pidpryiemstva, ustanovy chy orhanizatsii (st. 354 KK Ukrainy) / V. I. Osadchyi // Yurydychnyi visnyk. – 2015. – № 2 (35). – S. 147.

It should be clarified whithin what much time a person should report a crime committed by this person − given bribery of an employee of an enterprise, institution or organization − in order to be exempted from criminal liability. According to art. 214 of the CPC of Ukraine, the investigator, the prosecutor immediately, but not later than 24 hours after the submission of the application, the notification of a criminal offense committed or, after an self-identification of him from any source of circumstances that may indicate the commission of a criminal crime, is obliged to make the relevant information to the a single register of pre-trial investigations and initiate an investigation (part 1). Pre-trial investigation commences from the moment of entering information into the Unified Register of pre-trial investigations. The provisions about the Unified Register of Pre-trial Investigations, the procedure for its formation and maintenance are approved by the General Prosecutor's Office of Ukraine, with the consent of the Ministry of Internal Affairs of Ukraine, the SBU, the body, that supervising the compliance with tax legislation (part 2). The carrying out pre-trial investigation before the entering of information in the register or without such an entering is not allowed and entails the liability established by law (part 3).[1]

Consequently, information about the crime should be made immediately, but not later than 24 hours, into the Unified Register of Pre-trial Investigations. This register is in

[1] Osadchyi V. I. Kryminalno-pravova kharakterystyka ta kvalifikatsiia pidkupu pratsivnyka pidpryiemstva, ustanovy chy orhanizatsii (st. 354 KK Ukrainy) / V. I. Osadchyi // Yurydychnyi visnyk. – 2015. – № 2 (35). – S. 47.

accordance with the Regulation on the procedure for conducting the Uniform Register of Pre-trial Investigations, approved by the order of the General Prosecutor of Ukraine № 69 dated August 17, 2012 (with the changes approved by the orders of the General Prosecutor of Ukraine dated November 14, 2012, № 113, dd. 25.01.2013, № 13, dated 25.04.2013 № 54, 09.09.2014 № 95) and is created, in particular, with the purpose of providing a uniform record of criminal offenses.

In other words, only the data of this Register document the fact of the committed crime.

That is, from the moment of registration of a crime in the Register the body whose official is entitled under the law to report suspicion has documented information about this crime.

For example, there is a designated law-enforcement position in which a person is not exempted from criminal liability for giving a bribe on the grounds of a voluntary application, if she has reported about it on interrogation in another case, believing that this is known for the investigating authorities.[1] It is difficult to agree with this statement. Since the key is the voluntary nature of such a message and motives play a secondary role, and may be different (fear of liability, revenge, mistakes, etc.).

[1] Postanovlenye Plenuma Verkhovnoho Suda Rossyiskoi Federatsyy ot 9 yiulia 2013 h. № 24 "O sudebnoi praktyke po delam o vziatochnychestve y ob ynykh korruptsyonnykh prestuplenyiakh" [Elektronnyi resurs]. – Rezhym dostupa : http://www. rg.ru/2013/07/17/verhovny-sud-dok.html

At the same time, we emphasize that in order to properly resolve the issue of exemption of a person from criminal liability, it is necessary to take into account the circumstances in which is the person who committed the crime is present. Hypothetically, one can imagine a situation where a body whose official by the law has the right to report suspicion becomes aware of a crime committed at the time of its commission, and information about it can be immediately added to the said Register. However, for person who committed the crime and this person wants to declare about it voluntarily is necessary to have some time for doing it. For example, the call, the personally appearing in organ, the transmission information about the crime committed with somebody. In addition, this condition must be taken into consideration.

In general, the time during which a person voluntarily reports about crime committed by her should be determined taking into account the requirements of art. 214 CPC, but with the obligatory regard of the person's ability to report about crime committed by her. The current criminal law does not require the prompt notification of the committed as a condition for the exemption of the provider of giving unlawful gain (bribery) from criminal liability. It is only necessary that this notification be voluntary, and the form and time of the message do not have a value. The presence of a person in circumstances that objectively prevent her from voluntarily reporting about the crime committed by her (sudden illness, committing a crime against her, natural or fabricated disasters, etc.), it should not exclude the person's possibility of exemption from criminal liability.[1]

[1] Osadchyi V. I. Kryminalno-pravova kharakterystyka ta kvalifikatsiia pidkupu pratsivnyka pidpryiemstva, ustanovy chy orhanizatsii (st. 354

These notes are conditioned by the need for the complete fixing of such criminal acts in order to expose the recipients of unlawful gain (bribery) and protect the legitimate interests of others. In this regard, the motive of a voluntary statement will not be meaningful.

An active assistance in the disclosure and (or) investigation of a crime is one of the mandatory conditions for the exemption of liability for crimes provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine. When establishing this sign, it is necessary that the perpetrator commit the act by the way of action. Actions may be different and objectively depend on the circumstances of the offense, for example, a message about the place of storage of the subject of the crime (unlawful benefit) or about other participants who were involved in the commission of the crime. The person's non-compliance with condition precludes the use of the said notes.[1]

We will note that the activity of the guilty in this case is a qualitative criterion. In a broad sense, activity (from Latin activus - active) is a certain human activity.[2] More specifically, an activity is the social quality of the individual, embodied to the ability to carry out socially meaningful actions.

KK Ukrainy) / V. I. Osadchyi // Yurydychnyi visnyk. – 2015. – № 2 (35). – S. 147–148.

[1] Sabanyn S. N. Nekotorye problemy zakonodatelnoi rehlamentatsyy spetsyalnykh vydov osvobozhdenyia ot uholovnoi otvetstvennosty / S. N. Sabanyn, D. A. Hryshyn // Yurydycheskaia nauka y pravookhranytelnaia praktyka. – 2012. – № 2. – S. 59–66.

[2] Ozhehov S. Y. Tolkovyi slovar russkoho yazyka / S. Y. Ozhehov, N. Yu. Shvedova. – Moskva : [b. y.], 1995. – S. 647.

We can assume that the legislator, who use the term "active assistance" to the disclosure and (or) investigation of the crime, has pointed to the initiatory prosecution of the perpetrators, aimed at maximally simplifying the activities of law enforcement agencies in establishing the circumstances of the crime, exposing the perpetrators, finding the property and other values, obtained in a criminal way, in order to economy of forces and means of criminal justice. In addition, attention should be paid to the fact that the law in part 5 of art. 354 of the CC of Ukraine established condition of "active assistance in the disclosure of the crime", and our proposed supplement to the note in the form of "and (or) investigation" is an author's. There is no need to change this norm in view of the interpretation of the "disclosure of a crime" from the stage of detection until the judgment of the court against the perpetrators. Consequently, the investigation conducted is an integral part of the disclosure of such a corruption crime. Based on the foregoing, the application of the institute for exemption from criminal liability for these crimes depends on the implementation of the disclosure process in practice. Such clarification should be set forth in the Resolution of the Plenary Session of the Supreme Court of Ukraine for the same understanding and application of the characteristic features (conditions).

Since the absence of such official clarifications does not clarify the situation, and active assistance in the disclosure of the crime may consist of giving detailed and reliable evidence about the circumstances of the committed crimes, and regardless of the subsequent behavior of the person, in particular, in the course of the trial of a criminal case. In

addition, a person must fully acknowledge his guilt of the commission of the alleged criminal act.

We believe that active assistance in the disclosure of a crime is expressed in the actions of the perpetrator with providing the previously unknown information to investigative authorities. At the same time, the legislator reasonably provides the qualitative side of this condition. On the part of the perpetrator, assistance the disclosure of a criminal act may be voluntary or forced, explicit or implicit, proactive or on the instructions of law enforcement agencies. These actions can be realized by the person in various forms, for example, indication of the location of the tools of the crime, the disclosure of accomplices, preventing the advancing of damage, assistance in conducting investigative and operational-search activities, providing physical evidence in the criminal case, etc.

If assistance to law enforcement agencies by the guilty party did not lead to positive results (for example, despite it, it was not possible to detain accomplices or to find the means of committing a crime or other necessary evidence), this circumstance in itself should not prevent the application of the exemption from criminal liability for a corruption crime. The key issue is perpetrator's providing information, his actions to facilitation the disclosure of the corruption crime. Since it is impossible to achieve the expected results from purely objective circumstances, in particular, the accomplice can not be detained, since he went abroad, some of the physical evidence was physically liquidated by the innocent, etc.

It is also necessary to pay attention to cases of an attempt to obtain an unlawful benefit (bribery). The subject requires the person the item of the benefit (bribery), and the latter informs the body that has the right to report the suspicion.

Then, with the knowledge and control of the relevant authorities, they are forwarded to an official by the authorities for the disclosure and detention of the perpetrator at the crime scene. In this case, there is the fact of committing a crime, for example, an attempt to obtain an unlawful benefit (bribery). It can be considered that in such cases, the person who facilitated the law enforcement agencies in exposing the perpetrator and carrying out operational-search activities should not be brought to criminal liability.

We agree with those scholars who believe that the conditions for the use of active repentance in many cases do not meet the conditions for the application of special types of exemption from criminal liability, enshrined in the Special Part of the CC of Ukraine, in our case - corruption crimes.[1]

The problem is the exemption from the criminal liability of the intermediary in obtaining unlawful benefits. According to V. M. Borkov, considering that it is a question of the grounds for the exemption of liability, precisely because of the mediation in obtaining a bribe, it turns out that the subject stops his crime committing. The cessation of crimes is carried out at the stage of an attempt or during the development of its objective side. The cessation may be aimed at preventing socially dangerous consequences, minimizing them. Therefore, speaking about the termination of an assault already committed is not entirely correct.[2] However, this statement concerns only the receipt of a bribe, with regard to unlawful benefits (after the introduction of amendments to the

[1] Antonov A. H. Deiatelnoe raskaianye kak osnovanye osvobozhdenyia ot uholovnoi otvetstvennosty : avtoref. dys. … kand. yuryd. nauk / Antonov A. H. – Tomsk, 2000. – S. 17.

[2] Borkov V. Novaia redaktsyia norm ob otvetstvennosty za vziatochnychestvo: problemy prymenenyia / V. Borkov // Uholovnoe pravo. – 2011. – № 4. – S. 9–14.

CC of Ukraine in 2013), there is a different situation.[1] Because since the receipt is considered to have been completed already from the moment of granting consent for receiving − acceptance of the offer / promise. Accordingly, the legislator truncated time that could be used to prevent socially dangerous consequences. We consider this issue in relation to the article specified in part 5 of art. 354 of the CC of Ukraine. There is no article in this list. 368 of the CC of Ukraine, which previously was defined the criminal liability for receiving a bribe, and today "The official's adoption of a proposal, promise or obtaining an unlawful benefit". Accordingly, now can be no any exemption of criminal liability for an official's obtaining an unlawful benefit.

For the application of this institute, it is important to delineate between the cases provided for by the CC of Ukraine exemptions from criminal liability and cases where, in accordance with this code, the exemption is impossible at all, for example: insignificance of the act (part 2 of art. 11), committing an act in a state of insanity (part 2 of art. 19), failure to achieve the person of the age of criminal liability (art. 22), the presence of circumstances excluding criminality of an act (chapter VIII of the General part), as well as cases where the person is not subject to such liability (part 2 of art. 385, part 2 of art. 396 of the CC of Ukraine). The exemption from criminal liability should be separated from the exemption of the convicted from punishment and serving the

[1] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo pryvedennia natsionalnoho zakonodavstva u vidpovidnist iz standartamy Kryminalnoi konventsii pro borotbu z koruptsiieiu : Zakon Ukrainy vid 18 kvit. 2013 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 10. – S. 119. – Rezhym dostupu : http://zakon2.rada.gov.ua/laws/show/221-18

sentence on the basis of the provisions of chapter XII or articles 104, 105, 107 of the General part of the CC of Ukraine.

The describing the use of the institute for exemption from criminal liability for corruption crimes, it should be noted that the above-mentioned criminal norms do not include the conditions associated with committing a crime of this type for the first time. Since the secondary exemption from criminal liability on non-exculpatory grounds is impossible, given that the person has not realized the opportunity given to her by the state to rehabilitate.

The person, who first committed the crime, from a legal point of view, should also recognize a person who before had committed a criminal act but: a) was acquitted by the court regarding the charge; b) was lawfully exempted from criminal liability; c) was rehabilitated; d) was convicted without a sentencing or exempted from punishment; e) has completed a sentence for acts, the crime and punishment of which was removed by law (in accordance with part 3 and part 4, art. 88 of the CC of Ukraine, it is admitted as such is with no criminal record).

Consequently, the additional condition for the special types of exemption from criminal liability for corruption crimes it is necessary to consolidate a ban on the exemption of criminal liability of participants who previously committed similar socially dangerous acts.

At the same time, it important for the practice of applying this institute is the distinction the totality of crimes from continuing to give away or to receive several methods of unlawful remuneration in commercial bribery. As a one of the only continuing crimes should, in particular, be to qualify

systematic getting the unlawful benefit from the same person for the general patronage or acquiescence, if the said actions that the said actions were merged by a single intent. It should be noted that in obtaining an unlawful benefit for general patronage or acquiescence, the concrete action (inaction) for which it was received at the time of its adoption is not stipulated between the one who gives and the recipient, but only they are understood like probable and possible in the future.

General patronage in employment may be manifested, in particular, in the ungrounded appointment subordinate, including a violation of the established order, to a higher position, to include him in the lists of persons who are submitted for incentive payments. For example, to condoning in employment includes the consent of an official of a control body do not to apply measures of exemption that fall within its authority in identify of a violation of a person who gives this official an unlawful benefit.

To the general patronage or condoning in employment include actions (inaction) that may be committed by an official in favor of both subordinates and other persons who are subject to supervisory, control or other functions of the representative of the government, as well as his organizational-regulatory functions.

There is no set of crimes in cases when unlawful profit from a commercial bribe is received or transferred of several persons, but by the commission of one act (act of inactivity) in the general interest of these persons. It can not qualify as the only continuing crime of receiving simultaneously, including through an intermediary of an unlawful benefit, also in commercial bribery from several persons, if in the interests

of each of them an official or person performing administrative functions in a commercial or in other organization, the separate action goes on (act of inactivity). The committed in such circumstances, it forms a set of crimes.

The independent in its application is the aspect of committing a corrupt crime by a group of individuals in deciding on their exemption from criminal liability. An unlawful gain or object of commercial bribery shall be deemed to have been obtained by a group of persons under a previous conspiracy if two or more officials or two or more persons who involved in the crime engaged in a managerial function in a commercial or other organization who have agreed in advance to jointly commit the crime by way of the acceptance by each of the members of the group of part of the unlawful remuneration, for the commission of each of them actions (inaction) on the service in favor of the transfer of the illegal remuneration of the person or persons who are submitted. In qualifying the actions of these persons, it does not matter what amount was received by each of the members of the criminal group, as well as the person, who gave a benefit, understood that several officials involved in the receipt of unlawful benefits.

If two or more officials for objective reasons can not carry out the same action (inaction) in favor of the transmission, then should this indicator be set? The answer to this question about qualification, as in the other and the explanation of judicial-investigation practice, is absent.

Concerning the exemption of a member (participants) of the group, that will be the first condition of voluntary

notification of a corruption crime to the relevant bodies. In addition, fulfillment of the next condition − active assistance in the disclosure of a crime − can become one of the obstacles to the use of exemption of other participants (party) of the group. Because of the fact that it requires the person to actively promote the disclosure of accomplices.

A separate issue for the application of this exemption institute is the full reimbursement of harm damages or elimination of the harm suffered. As well as the condition of preventing the exemption of a repeated commission of a corruption crime, legislator lost the condition of compensation for committed damage by the guilty. This reimbursement consists in subject's of crime voluntary satisfaction, substantiated claims of the victim about the compensation of the material and moral damage caused by the crime, and in smoothing it in another way, for example, by public apologies for the insult. The full reimbursement of the damages may consist in restoring the initial state of the damaged subject (for example, repairing thing), repairing damaged property, returning stolen items, replacing them with other or approximately equivalent of value, paying the corresponding amount of money, or in another form of compensation. The complete elimination of the caused damage is predicted by other means of repairing harm, for example, by public apologies for the insult, etc.

In doing so, you should not predict the possibility of reimbursing a damage by the other persons, including close relatives. As that would be contrary to the principle of criminal law (the individuality of responsibility).

The consideration of a possible variant of action in practice when the official receives remuneration for the use of exclusively personal relationship, not related to his official

position, deserves the particular attention. The official's acceptance of money, services of property nature, etc. for committing of actions (inaction), although related to the performance of his professional duties, but does not belong to the powers of a representative of power, organizational or administrative-economic functions, does not form a composition of unlawful benefit. The promotion of an official owing to his position, committing actions (inaction) in favor of a person benefits or represents to them the persons, is expressed in use by the recipient of authority and other opportunities for a position to exercise influence on other officials in order to carry out these specified actions (inactivity) in the service. Such influence consists in inducing another official to commit the corresponding actions (inaction) by means of persuasion, promises, coercion, etc. This fact can not be qualified according to articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine. Since in these cases, the abolition of an official's committing an unlawful action (inaction) in the service may, if there are grounds for doing so, lead to criminal liability for other crimes (for example, incitement to abuse of office or excess of authority). Accordingly, the possibility of applying to such a subject a special norm of exemption from criminal liability for corruption crimes is excluded.

Analyzing the judicial practice of the use of this institute, one can distinguish the following general moments: when making a decision to exemption the perpetrator from criminal liability in general and in special cases, in particular, the courts, as a rule, refer to the repentance of the perpetrator in the committed crime, the presence of young children or other relatives on the his maintenance, the disability of perpetrator, positive characteristics from the work place, learning or live,

provokes the behavior of the perpetrator himself (if any).[1] However, in regulations on the closure of criminal proceedings, judges do not always motivate how the damage caused to a victim is compensated, and also do not always find out the defendant is pleading guilty of committing a crime, and whether he agrees in closing the criminal case on the basis of a special norm of exemption from criminal liability. In some of the cases, which was studied by us, the courts were restricted by noting the availability of conditions for special conditions for exemption, without naming them and not motivating their decision, and in other cases – the even parts of these conditions (in one case was that, the guilty had previously been convicted, in the other case was that, the guilty did not compensate for losses, but only had to commit to reimburse it in the future).[2] In our opinion, this testifies to the problems of law-enforcement practice due to imperfections of the norms of criminal legislation themselves, as well as due to the lack of clarification to the Plenum of the Supreme Court of Ukraine, as has been repeatedly noted by the works earlier.

Positive for law-enforcement practice is the combining of the conditions for exemption from criminal liability for five

[1] Uzahalnennia sudovoi praktyky rozghliadu sprav pro administratyvni koruptsiini pravoporushennia ta deiaki zlochyny, peredbacheni rozdilom XVII Kryminalnoho kodeksu Ukrainy za 2013 rik. – Boryspilskym miskraionnym sudom Kyivskoi oblasti [Elektronnyi resurs]. – Rezhym dostupu : http://zib.com.ua/ua/print/57263-uzagalnennya_sudovoi_praktiki_rozglyadu_sprav_pro_administra.html

[2] Uzahalnennia sudovoi praktyky zastosuvannia Zhydachivskym raionnym sudom zakonodavstva pro vidpovidalnist za okremi koruptsiini zlochyny ta pravoporushennia u spravakh, rozghlianutykh sudom v 2013 rotsi i pershomu pivrichchi 2014 roku [Elektronnyi resurs]. – Rezhym dostupu : http://gd.lv.court.gov.ua/userfiles/file/sud1307/pdf/Yzahalnennja/yz_korypcia_2014.pdf

corruption crimes in the one incentive norm − part 5 of art. 354 of the CC of Ukraine. However, this approach excludes the existence of a special exemption for most of such crimes, namely: 15 articles from the specified list in the note to art. 45 of the CC of Ukraine. Arguing the necessity of the existence of this incentive institute as an effective instrument for detecting latent corruption crime, it is expedient to extend the possibility of applying a special exemption by creating a single incentive norm that would distribute to a more numerous group of corruption crimes, the subject of which is designated in detail, in particular by I. Ye. Mezentseva[1] and confirms the wider use of this institute.

If the person, who transferred the property, which was provided property rights, which undertook the services of a property nature for the commission of an official (inaction) in the service, was aware that these values are not intended for the illegal enrichment of an official or his relatives or his close, committed by him does not form a corrupt crime.

In the event that the indicated person has received the values for making actions (inaction) which in reality it can not carry out due to the lack of official authority and the impossibility to use his official position, such actions, if there is intent to acquire the values should be qualified as a fraud committed a person with using his official position. The owner of the values transferred to him in these cases is responsible for the offer / promise or the giving of unlawful bribery or commercial bribery. This qualification rule is often

[1] Mezentseva I. Vyznachennia predmeta koruptsiinykh zlochyniv [Elektronnyi resurs] / I. Mezentseva // Visnyk Natsionalnoi akademii prokuratury Ukrainy. – 2014. – № 5. – S. 76–81. – Rezhym dostupu : http://nbuv.gov.ua/UJRN/Vnapu_2014_5_13

known and widely used in judicial-investigative practice. However, it is necessary to indicate the existing limitations in applying the institute of exemption of authority against the fraudster. Since a priori, he is not able to be exempted from criminal liability, with compliance with the conditions for reporting a corruption crime to the appropriate authorities, actively promoting disclosure. Given the fact that fraud, provided by art. 190 of the CC of Ukraine, does not have such an encouraging special type of exemption of the guilty person.

Also, in the case where the person promised or offered mediation in the provision of unlawful benefits, deliberately did not intend to convey the values as a subject of a crime to an official or intermediary and, having received the specified values, made it in own favor, the committed should be qualified as a fraud which is not coupled with corruption crimes.

The criminal-legal grounds for promoting the disclosure and investigation of a crime of a person who committed crimes, as conditions for his exemption from criminal liability, are:

1) the voluntary nature of his actions (the initiative can give from both the person who committed the crime and other persons, for example, officers of the investigation body, the prosecutor's office and the court, most importantly, that the person must have a choice of a variant of his behavior);

2) the completeness of providing possible and effective assistance to law enforcement agencies, which is to give of truthful testimony, to participate in conducting investigative actions; to assist in establishing all factual circumstances relevant to the case; to detect guns, traces and subjects of crime; to expose other accomplices of the crime and their

role; to search of property acquired by criminal means; to clarify the causes and conditions that contribute to the commission of crime. Therefore, if a person who committed a crime in a group with unidentified perpetrators is assisting an investigation, for example, in the full return of an unlawful reward or represents a tool to commit a crime, but refuses to name accomplices, such a person can not be exempted from criminal liability, and his actions to facilitate the disclosure of a crime should be recognized only to be circumstances that mitigate the punishment.

To disclose means to identify, to make known, to explain anything secret, unknown, etc. (any crime or person, who committed a crime or it is possible to be some persons). The current design of the incentive norm provided in art. 354 of the CC of Ukraine, demands from practitioners the unauthorized wide interpretation of this term, in particular the inclusion of the investigation process into it. About what assistance in disclosure of a crime can we speak, if the perpetrator is detained directly at the crime scene? The person's assistance (the person, who has committed a crime) to law enforcement agencies in establishing the circumstances of the committed crime is, in such cases, facilitating the investigation of an already disclosed crime. Not without reason the legislator has identified that a notification on a crime from a corruptor must precede the active promotion of the disclosure of a crime, that has been translated in combination "and".

In this regard, we disagree with some authors who propose to change the criminal law by replacing "and" with the "and (or)" in the text. In our view, the implementation of such a proposal, on the contrary, will lead to dispute and lead to

different assessments of the provisions of the law. The solution of this issue is seen in the correct interpretation of the law. We have already noted in the study, analyzing the conditions for the application of exemption from criminal liability in art. 354 of the CC of Ukraine, that the legislator provides for a mandatory set of actions that constitute a positive post-criminal behavior of the perpetrator, in the event that he could really do it.

It is necessary to detailer review understand the application of specified conditions, if at least one of them can not be executed by the corruptor for objective reasons. Since the research of preliminary materials of the generalization of investigative-judicial practice shows that the provisions of the law, which exempts from criminal liability, apply to cases where a person objectively could not fulfill some part of the terms of the application of the incentive norm associated with the regulation of his post-crime behavior.

There are many examples where perform in excess of authority or abuse of official authority has a reduced degree of social danger in law-enforcement practice. In a number of cases, persons who committed the above crimes came from pseudo-interests of the service. In this case, there are doubts and the existing signs of the subjective side as an intention. In this regard, the introduction of a special ground for exemption from criminal liability seems appropriate to.

The generalization of the judicial practice in consideration of criminal cases concerning offences with signs of corruption acts (articles 364, 365 and 368 of the CC of Ukraine), carried out by the Supreme Court of Ukraine, has shown that the courts generally adhere to the legal foundations and the procedure for the exemption of persons from criminal liability established by the criminal procedure

law. However, some courts still permit a violation of the law. For example, when B. is exempted from criminal liability under part 1 of art. 368 of the CC, in connection with the changing situation and with the closing the case, the Kyiv District Court of Poltava did not discuss the issue of possibility of applying art. 7 CPC, did not explain to the defendant what could be the consequences of the exemption from criminal liability as a result of the changing situation, that is, from the non-exculpatory grounds, the court did not motivate his decision in why exactly was the changing situation and why it led to the loss of social danger of the committed action. This order of the district court was quashed by the court of appeal with the referral of the case for a new trial.[1]

For example, the Putylsk district court of Chernivtsi Oblast, by order of May 21, 2007, closed the criminal case against V. under part 1 of art. 190 of the CC on the ground of art. 48 of the CC and exempted him from criminal liability in connection with the changing situation. Bodies of pre-trial investigation charged B. under part 2 of art. 368 of the CC in that he, working of the chief of the Chernivtsi oblast department of forestry, in June-August 2004 received from the private entrepreneur B. the bribe in the form of furniture with the total cost of 12 thousands UAH, from the allocation of the forest area. B. and his wife were interrogated as witnesses

[1] Sudova praktyka rozghliadu kryminalnykh sprav pro sluzhbovi zlochyny z oznakamy koruptsiinykh diian (statti 364, 365 ta 368 Kryminalnoho kodeksu Ukrainy), a takozh sprav pro administratyvnu vidpovidalnist za porushennia vymoh Zakonu vid 5 zhovtnia 1995 r. "Pro borotbu z koruptsiieiu" vid 2007 r. : Verkhovnyi Sud Ukrainy [Elektronnyi resurs]. – Rezhym dostupu : http://www.scourt.gov.ua/clients/vs.nsf/3adf2d0e52f68d76c2256c080037bac9/366f13d23201180fc2257607002b6eb0?OpenDocument

(they were not recognized by the victims) and they confirmed the fact of the transfer the bribe to V. The other in the court session the prosecutor groundlessly changed the prosecution of V. from the part 2 of art. 368 of the CC to the part 1 of art. 190 of the CC, as a result of which V. factually managed to avoid liability for the crime committed and he continues to work in a position of chief. witnesses also confirmed this fact in the case. There are doubts about the qualifications of the deputy general director of the state enterprise "Chernivtsi Regional scientific and production center of standardization, metrology and certification" S., who was convicted under part 1 of the article 368 of CC to a fine of 12 thousands 750 UAH. In the court hearing, the witness K. confirmed that the convict demanded him $ 2,000 and he transferred them to him, having previously applied to the law enforcement agencies to disclose S. as a bribe extortionist. Other witnesses confirmed the fact of the receipt of S. bribe by extortion in the court session. Despite this, the prosecutor changed convict's prosecution from part 2 of art. 368 to part 1 of art. 368 of CC. In addition, in this case, the court, without reference to art. 69 of the CC, did not appoint S. additional punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities, as a result of which the convict remained in office, where he received a bribe.[1]

[1] Sudova praktyka rozghliadu kryminalnykh sprav pro sluzhbovi zlochyny z oznakamy koruptsiinykh diian (statti 364, 365 ta 368 Kryminalnoho kodeksu Ukrainy), a takozh sprav pro administratyvnu vidpovidalnist za porushennia vymoh Zakonu vid 5 zhovtnia 1995 r. "Pro borotbu z koruptsiieiu" vid 2007 r. : Verkhovnyi Sud Ukrainy [Elektronnyi resurs]. – Rezhym dostupu : http://www.scourt.gov.ua/clients/vs.nsf/3adf2d0e52f68d76c2256c080037bac9/366f13d23201180fc2257607002b6eb0?OpenDocument

During 2013, Zhydachivsk district court of Lviv oblast received one indictment in criminal proceedings on suspicion of committing a criminal offense, stipulated in part 3 of art. 368 of the CC of Ukraine and one request for exemption from criminal liability pursuant to art. 49 of the CC of Ukraine on suspicion of committing a criminal offense, stipulated in part 1 of art. 366 of the CC of Ukraine.

During the first half of 2014, Zhydachivsk district court of Lviv oblast received one indictment in a criminal proceeding on suspicion of committing a criminal offense envisaged in the part 2 of art. 364, part 2 of art. 366 of the CC of Ukraine.[1] Thus, by a decision of the Zhydachivsk district court of 30.05.2013, the prosecutor's request to exempt the suspected citizen Y. from criminal liability for criminal offense provided for in part 1 of art. 366 of the CC of Ukraine, in connection with the expiration of the limitation period, was satisfied. In the preparatory trial it was established that Ya. was charged with the fact that during 2008 he was a military commissioner of the united district military commissariat of Zhydachivsk-Mykolaiv, that is, a military official, contrary to the requirements of the law, repeatedly, with aware of the socially dangerous nature of his actions, anticipating their social dangerous consequences and desiring their onset, misusing his position in the interests of third parties, Ya. made other forgery of official documents, as well as the issuance of known to be false official documents, which

[1] Uzahalnennia sudovoi praktyky zastosuvannia Zhydachivskym raionnym sudom zakonodavstva pro vidpovidalnist za okremi koruptsiini zlochyny ta pravoporushennia u spravakh, rozghlianutykh sudom v 2013 rotsi i pershomu pivrichchi 2014 roku [Elektronnyi resurs]. – Rezhym dostupu : http://gd.lv.court.gov.ua/userfiles/file/sud1307/pdf/Yzahalnennja/yz_korypcia_2014.pdf

became the reason for the avoiding to perform of citizens of A. V. Berezhanskyi, A. D. Machinskyi, R. I. Mykhailov, R. B. Kacharaba and R. M. Gvozdyka for military service. The actions of a citizen Ya. were qualified by part 1 of art. 366 of the CC of Ukraine by the bodies of the pre-trial investigation.

Consequently, the development of a dismissal institution, which is rooted in on the mechanisms of customary law, procedures and principles of complex social technology will, moreover, allow reduce the costs of prosecution for minor acts and minor crimes, which are necessary for the organization of the fight against serious corruption crimes, as well as to reduce extremely high overload of courts and investigation. In connection with this, it is proposed to provide for the following general conditions: the voluntary notification; an active assistance in the disclosure of crimes (including detection, prevention for and investigation); the first committing a corruption crime; the compensation for damages (if any). The specified conditions only in the complex form are the basis for exemption from criminal liability. Therefore, the release from criminal liability does not mean justification of a person or recognition of him innocent.

The article argues that the institute of exemption from criminal liability for corruption crimes refers to intersectoral. Such a classification determines the mechanism of application, which certainly is related to the norms of criminal-procedural and anti-corruption legislative acts.

A detailed characteristic of the conditions for exemption from criminal liability for corruption crimes allowed focusing on the practical application of these norms by the judicial-investigative bodies. The voluntariness of notification of a corruption crime (stipulated by articles 354, 368-3, 368-4,

369, 369-2 of the CC of Ukraine) is a primary condition for the exemption of a person from criminal liability. This requires the establishment of the fact of voluntariness, with separating motives that play a minor role and may be different.

In determining active assistance for the disclosure of a corruption crime, a guilty person needs to commit actions that would confirm this fact. The actions can be different and objectively depend on the circumstances of the crime, for example, a notification about the place of storage of the subject of the crime (unlawful benefit) or about other participants who were involved in its commission, the finding of property and other values obtained in a criminal way.

An additional condition for special types of exemption from criminal liability for corruption crimes is to consolidate the ban on the exemption of criminal liability of participants who previously committed similar socially dangerous acts.

In an order to save the forces and means of criminal justice, it is recommended that such explanations be set forth in the resolution of the Plenum of the Supreme Court of Ukraine to have the same understanding and application of a special exemption from criminal liability for corruption crimes.

In our opinion, it is useful to extend the possibility of applying a special exemption by establishment a single incentive norm in the CC of Ukraine, which would be extended to a more numerous group of corruption crimes.

3.2. The conformity of application of the institute of the exemption from criminal liability

for corruption crimes with the European standards and generally accepted norms

The urgency of the issue of the correlation of special types of exemption from criminal liability for corruption crimes in Ukraine with international legal standards is conditioned by the reforms that are continuing in our country. It is the development of effective national legislation aimed at the implementation of the international rules, in particular the fight against corruption, is a requirement for lawmakers today. In addition, the need for a clear and common understanding of the norms established by the relevant conventions requires research and search for in this area. A comparative analysis of the compliance of Ukraine's current anti-corruption legislation with these standards is based on the research of the provisions of such international conventions against corruption as: the Council of Europe Convention on criminal liability for corruption, 1999; the UN Convention against corruption 2003; the Convention of the Organization for Economic Cooperation and Development for combating bribery of officials of foreign states in conducting international business operations 1997 (hereinafter referred to as the Council of Europe Convention, the UN Convention, the OECD Convention),[1] as well as the criminal-law norms

[1] Kryminalna konventsiia Rady Yevropy pro borotbu z koruptsiieiu vid 27 sich. 1999 r., ratyfikovana iz zaiavoiu Zakonom № 252-V (252-16) vid 18.10.2006, VVR, 2006, № 50, st. 497 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/994_101

Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

regulating the issue of the exemption of liability for corruption crimes in some other countries. According to the recommendations in the field of criminal legislation and the criminalization of corruption, all countries are recommended to amend their national legislation to comply with international standards, established by the OECD Convention on combating bribery giving to foreign public officials in committing to international business transactions; the Council of Europe Convention on criminal liability for corruption and the UN Convention against corruption (hereinafter referred to as the OECD Convention, the Council of Europe Convention and the UN Convention).

Legally, Ukraine, as a state party to the above-mentioned conventions, intended intention to bring international anti-corruption measures in line with international standards of the fight against corruption as defined in the Law of Ukraine "On the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014−2017" of October 14 2014.[1] The

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Konventsiia Orhanizatsii Obiednanykh Natsii proty transnatsionalnoi orhanizovanoi zlochynnosti (ukr/ros) : pryiniata rezoliutsiieiu 55/25 Heneralnoi Asamblei vid 15 lyst. 2000 r., ratyfikovana Zakonom № 1433-IV (1433-15) vid 04.02.2004 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/995_789

Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5. rada.gov.ua/laws/show/998_154

[1] Pro zasady derzhavnoi antykoruptsiinoi polityky v Ukraini (Anty-koruptsiina stratehiia) na 2014−2017 roky : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 46. – S. 2047. – Rezhym dostupu : http://zakon1.rada.gov.ua/laws/show/1699-18

analysis of anti-corruption reforms in Eastern Europe and Central Asia with the definition of achievements and problem for 2008−2013 under the Istanbul plan of fight against corruption is covered in the OECD report of 23.09.2013.[1] The introduction to specified sphere of representatives of public in had a manifestation in the preparation by a group of independent experts "An alternative report on the evaluation of the effectiveness of state anti-corruption policy".[2]

For the international community, the problem of combating corruption continues to be one of the most urgent. Ukraine does not remained indifferent to this area, and to solve it has chosen the difficult path of radical reforms. Over the past few years, a number of legislative acts have been adopted that have determined radical changes, in particular, in criminal norms. Given the topic of the study, we note that the primary is the change in the grounds and circumstances of exemption from criminal liability for corruption crimes (articles 45−48 of the CC of Ukraine). That is, a significant number of specified circumstances ceased to apply to persons who committed corrupt crimes (in connection with the effective repentance, reconciliation of the perpetrator with the victim, the transfer person on bail, the change of situation). The grounds for special types of exemption from criminal

[1] Borba s korruptsyei v Vostochnoi Evrope y Tsentralnoi Azyi [Elektronnyi resurs] // Stambulskyi plan deistvyi po borbe s korruptsyei: dostyzhenyia y problemy – OECD, 2008. – Rezhym dostupa : http://www.oecd.org/corruption/acn/ library/41603502.pdf

[2] Alternatyvnyi (tinovyi) zvit pro vykonannia Ukrainoiu rekomendatsii, nadanykh za rezultatamy tretoho raundu otsiniuvannia v ramkakh Stambulskoho planu dii Antykoruptsiinoi merezhi OESR dlia krain Skhidnoi Yevropy ta Tsentralnoi Azii. Rezultaty hromadskoi otsinky stanom na liutyi 2014 [Elektronnyi resurs] / za zah. red. R. Riaboshapky, O. Khmary. – Rezhym dostupu : http://pravo.org.ua/files/Corruption/oecd_ukraine_3rd_round.pdf

liability for corruption crimes have been changed directly, namely: articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine. In fact, the list of these rehabilitation grounds and conditions has been reduced. This approach of the domestic legislator is generally in line with the requirements of the investigated fundamental conventions of issues on combating corruption. Since the provisions on exemption from liability are considered in these acts very briefly, in addition, the Criminal Convention of the Council of Europe concerning the exemption from criminal liability has no specific provisions.[1] The OECD Convention, in comments 8 and 9, recognizes the justification of some circumstances that exempts from criminal liability.[2] The exemption from criminal liability in the UN Convention 2003 is governed by the provision of art. 30 (9), in which the following is due to: nothing affects the principle that the definition of offenses under this Convention and the application of legal objections or other legal principles defining the legality of actions are within the sphere of domestic law of each state party, but the criminal prosecution and punishment of such crimes are committed in accordance with this legislation.[3]

[1] Kryminalna konventsiia Rady Yevropy pro borotbu z koruptsiieiu vid 27 sich. 1999 r., ratyfikovana iz zaiavoiu Zakonom № 252-V (252-16) vid 18.10.2006, VVR, 2006, № 50, st. 497 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada. gov.ua/laws/show/994_101

[2] Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5. rada.gov.ua/laws/show/998_154

[3] Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

That is, the admissibility of legal circumstances (objections of defense), which exempt from criminal liability, are interpreted differently by international conventions, but exactly the UN Convention gives the states parties the greatest freedom. It gives the states the opportunity to determine what grounds (objections) may be acceptable in qualification of the crimes (corruption − the author's note). Actually, taking into account such an international standard, the domestic legislator has substantially reduced the list of incentive norms in the general part of the CC of Ukraine on corruption crimes.

On the other hand, the OECD Convention allows for only two circumstances, which exempts from criminal liability for the bribery of a foreign official, which are defined in the comments. One of them applies in cases where the advantage is allowed for or required in accordance with the applicable law or regulations, including case law, in the country of a foreign official (comment 8). Another circumstance applies for to "Minor incentive payments" (i. e. "... in order to obtain or to keep the ability to conduct activities, for example, issuing licenses or permits ...").[1]

It should be noted that the anti-corruption action plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was adopted in September 2003 in Istanbul under the auspices of the OECD anti-corruption for the countries of Eastern Europe and Central Asia. The Council of Europe Convention and the

[1] Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5.rada.gov.ua/laws/show/998_154

UN Convention against Corruption are actual for all the countries specified in the Istanbul plan of actions.

Particularly suitable for these countries is the condition of (in the convention is the term "protection" − the author's note) effective repentance (that is, the person who committed the crime is exempted from liability if he voluntarily informed the authorities about it). This condition (protection) applies for a person (usually a bribe provider) who informed the authorities in a corruption crime practically immediately after its commission by him.[1]

Such an early admission of guilt completely rehabilitates such a person. The purpose of this approach is to encourage the notification of corruption crimes. Because of that, it is very difficult to detect the corruption, such a measure contributes to the informing by the corrupter about their crimes. A corrupter is given the opportunity to avoid punishment at the expense of the disclosure of the identity of a corrupt official who is ultimately brought to justice. However, in some jurisdictions it is considered that this is too high a price. Those who give false charges in the hope that further investigation will undermine the official's reputation can abuse such protection. Therefore, some countries take into account effective repentance not as a final ground for exemption from punishment but only as a factor mitigating the guilt in sentencing. In the conventions, the countries of the Istanbul Plan of Action are invited to consider the adoption of

[1] Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

a similar approach to the application of the condition "effective repentance".[1]

Ukraine has enshrined this condition in part 5 of art. 354 "Bribing an employee of an enterprise, institution or organization", namely: before the receiving from other sources information about this crime by an authority whose an official according to the law has the right to notify suspicion, − the person volunteered to declare about happened to such body and actively contributed to the disclosure of the crime − a person is exempted from criminal liability for crimes provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine.

Let's indicate that the recent changes in the CC of Ukraine regarding the grounds for exemption from criminal liability of a person who committed active bribery (offered, promised or provided unlawful benefit to special subject), testify to the use of such an unusual reception by the legislator as the union of all of them in paragraph 5 of the note of art. 354 of the CC of Ukraine. Until recently, every article on bribery and art. 369 of the CC of Ukraine have contained parts, which provided for incentive norms for the exemption of the provider of unlawful benefit from liability in the presence of certain conditions. What has changed: 1) the timeframe for a voluntary statement − from the moment of notification of suspicion until the moment of receiving information about this crime, and therefore these frameworks

[1] Pro zasady derzhavnoi antykoruptsiinoi polityky v Ukraini (Anty-koruptsiina stratehiia) na 2014–2017 roky : Zakon Ukrainy vid 14 zhovt. 2014 r. [Elektronnyi resurs] // Vidomosti Verkhovnoi Rady. – 2014. – № 46. – S. 2047. – Rezhym dostupu : http://zakon1.rada.gov.ua/laws/show/1699-18

have decreased significantly; 2) the duty of the person has appeared to actively contribute to the disclosure of the crime; 3) there is no ground for the extortion of the relevant person of an unlawful benefit. These changes, in our opinion, are exactly in line with the international standard of understanding "effective repentance", which is envisaged by the UN Convention 2003.[1]

The OECD working group on fight of bribery poses doubts about the validity of the use of effective repentance relatively such a crime as the bribery of a foreign public official.[2] It is explained by the fact that, besides the country of same official, no other country will have jurisdiction to bring this person to liability. Actually, this international standard is reflected in the national legislation − part 5 of art. 354 of the CC of Ukraine, where it is stated that the exemption does not apply if the offer, promise or provision of unlawful benefit were committed in relation to the persons specified in part 4 of art. 18 of the CC of Ukraine. Such subjects are just officials of foreign states(persons who occupy positions in the legislative, executive or judicial body of a foreign state, including jurors, other persons who carry out functions of the state for a foreign state, in particular for a state body or state enterprise); foreign arbitration judges, persons authorized to settle civil, commercial or labor disputes in foreign states in

[1] Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

[2] Konventsiia z borotby z pidkupom posadovykh osib inozemnykh derzhav u razi provedennia mizhnarodnykh dilovykh [...] Belhiia, Kanada, Koreia, Respublika [...]; Konventsiia, Komentar, Rekomendatsii [...] vid 21 lyst. 1997 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5. rada.gov.ua/laws/show/998_154

an order, which is alternative for judicial, officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies, to which Ukraine is a party, and judges and officials of international courts.

Particularly, we should say about the international standards for provoking a bribe (unlawful) benefit that differs from the provisions enshrined in national legislation. Representatives of the GRECO group noticed that there are no similar norms in Western, Southern and Northern Europe. The crucial to this issue is the discretion of the court, as far as such provocation is responsible for giving a bribe. For example, in Germany, if a police officer offers a bribe, and a colleague is filming him to obtain evidence, it is not enough. In the understanding of the court, bribery involves the intention of an official to execute for any action to get bribe. Other situations without proof of such intention are not considered a bribe giving. The evidence obtained in the provocation of a bribe is excluded from consideration.[1]

Let's note, that on the provisions that contain the conventions mentioned earlier regarding the need to delineate between blackmail (extortion) of a bribe. In Germany, an official who demanded a bribe, using pressure or coercion, will be punished for blackmail and demand of a bribe. These are two separate crimes. Regarding the actions of the briber, the object of blackmail is not always exempted from punishment, because everything depends on what kind of

[1] Borba s korruptsyei v Vostochnoi Evrope y Tsentralnoi Azyi [Elektronnyi resurs] // Stambulskyi plan deistvyi po borbe s korruptsyei: dostyzhenyia y problemy – OECD, 2008. – Rezhym dostupa : // http://www.oecd.org/corruption/acn/ library/41603502.pdf

coercion took place. For example, if an official requires a bribe for license extension, this is not an excuse for a bribe, and a briber may be punished. Another thing is if the requirement is accompanied by the threats. In Germany, the exemption from punishment is foreseen only if it is possible to prove that the person appeared in a dangerous situation.[1] The question of the criminal liability of the victim from the extortion of unlawful benefits should be resolved using the provisions of art. 40 of the CC of Ukraine concerning psychological duress. In particular, the act or omission of a person who caused damage to law-enforcement interests is not a crime and is not committed under the direct influence of physical duress, because of which a person was unable to manage his actions. The issue of criminal liability of a person for causing damage to law-enforcement interests, if this person incurred physically coerced, as a result of which she retained the opportunity to manage her actions, as well as he incurred psychological duress, is resolved in compliance with provisions of art. 39 "The extreme need" of the CC of Ukraine. At the end, it should be noticed that the availability of provisions on the exemption from criminal liability for corruption crimes in international conventions is explained by the authorities' aspiration to maximally identify specified socially dangerous actions that have high latency in any state. For Ukraine, the specified direction is similarly a priority. The ensuring its implementation also consists in detecting a passive bribery of an official through the person's admission of guilt who committed an active bribery.

[1] Borba s korruptsyei v Vostochnoi Evrope y Tsentralnoi Azyi [Elektronnyi resurs] // Stambulskyi plan deistvyi po borbe s korruptsyei: dostyzhenyia y problemy – OECD, 2008. – Rezhym dostupa : // http://www.oecd.org/corruption/acn/ library/41603502.pdf

The anti-money laundering law № 80 of 2002 is the legal basis in the field of for combating corruption and money laundering in Egypt. According to articles 10 and 17, a person who has provided information about suspicious financial transfers can not be held liable. The perpetrator of the crime of money laundering should be exempted from punishment if he himself will notify the competent authorities of the commission of the crime. He is also exempted from punishment if the competent authorities were aware of a crime, but obtaining information from that person made it possible to identify and arrest other perpetrators or confiscate the money that was the object of a crime.[1]

Speaking about the criminalization of corruption in accordance with international-legal standards, let's also say about immunities predictions and about other grounds for exemption from liability.[2]

Consequently, an analysis of the provisions of the above-mentioned international-legal documents shows that a little attention has been given to the issue of exemption from criminal liability for corruption crimes. There are no specific incentive provisions in the 1999 Council of Europe Convention. The 1997 OECD Convention allows for only two circumstances, which exempt from criminal liability for the

[1] Bauman E. V. Opyt borby s korruptsyei v stranakh s razvytoi ekonomykoi [Elektronnyi resurs] / E. V. Bauman. – Rezhym dostupa : http://kizilov-inc.ru/sites/default/files/ gm_articles/opyt_borby.pdf

[2] Alternatyvnyi (tinovyi) zvit pro vykonannia Ukrainoiu rekomendatsii, nadanykh za rezultatamy tretoho raundu otsiniuvannia v ramkakh Stambulskoho planu dii Antykoruptsiinoi merezhi OESR dlia krain Skhidnoi Yevropy ta Tsentralnoi Azii. Rezultaty hromadskoi otsinky stanom na liutyi 2014 [Elektronnyi resurs] / za zah. red. R. Riaboshapky, O. Khmary. – Rezhym dostupu : http://pravo.org.ua/files/Corruption/oecd_ukraine_3rd_round.pdf

bribery of a foreign official. The 2003 UN Convention provides the States parties with the greatest freedom to determine in the national legislation the grounds for exemption from criminal liability for corruption crimes.

In addition, considerable experience with regard to criminal liability of legal entities, as well as the order of their exemption, has been established in the USA. These provisions are contained in the USA federal law on the fight against corruption in international activities that have an extraterritorial effect, that is, its jurisdiction apply to beyond the borders of the USA − the USA law "Foreign Corrupt Practices Act" of May 5, 1977.

In 1998, the Law was amended to bring it into line with the OECD Convention "On combating bribery of foreign public officials in international business transactions". The amended widened the scope of the Law, as well as regulated objects. Thus, any natural persons or companies are subject to jurisdiction, regardless of nationality. A non-USA company is subject to the Law if it operates in the USA if the shares of the company are prized on the USA stock exchange and if it acts on behalf of an American company.[1]

The FCPA excludes from the composition of forbidden payments "Promoting payments", the purpose of which is "Speeding up or ensuring the performance of day-to-day actions of the public authorities". The term "everyday act of public authorities" is defined as "an act usually carried out by a foreign official", for example: obtaining permits, licenses or

[1] Zakon SShA o borbe s korruptsyei v mezhdunarodnoi deiatelnosty y eho deistvye : Klyfford Chans SNH Lymyted, mart 2010 h. [Elektronnyi resurs]. – Rezhym dostupa : http://sartraccc.ru/Law_ex/kzcorr_us.pdf

other official documents. The promotional payment is intended to induce an official to perform an action that he is obliged to do in other equal conditions, in contrast to the actions performed by him at his own discretion, such as the awarding of a business to a company or the continuation of business with it.

Thus, the USA company found itself guilty of violating the FCPA when making a payment to a public official in order to obtain the remaining payments by the state under the contract. Despite the previously existing contractual obligation to hold the payment, the decision about payment and the timing of payment of the overdue amount were recognized to be as accepted by the public official at his discretion, and, accordingly, the payment was not recognized as a "Promoting payment".[1]

There contains two provisions that can be used as a direct argument to protect individuals accused of its violation in the USA law "Foreign Corrupt Practices Act" (FCPA). The first provision stipulates that the payment in question is lawful in accordance with the written laws or normative-law acts of the respective state. Companies can not use this situation for their protection in the absence of a written law on the legality of payment, or if they refer to the fact that payments or "gifts" of this kind are usual practice and are widely used. In practice, this situation is difficult to use because written laws usually do not contain direct permits for payments to public officials, and the accused company bears the burden of proving the lawfulness of the application of this provision.

[1] Right there.

The second provision applies in cases where a payment or gift to an official is classified as reasonable and conscientious expenses and is directly related to:

− promotion to the market, demonstration or clarification of the properties of products or services;

− signing or executing a contract with the government of the country or its body.[1]

For example, the payment of travel expenses and accommodation costs to a state customer in connection with his trip to the USA for the inspection of the payer's objects, as well as the receipt of small gifts in the form of samples of products that are accused (if such gifts are reasonable in the light of deal) are usually considered to be fair costs.[2]

"Conscious ignoring", "Deliberate negligence", or "deliberate ignorance" about criminal acts or suspicious circumstances, may be sufficient ground for recognition a violation by a company or an individual of the FCPA. So companies may be charged with availability of information on the actions of their business partners that they could obtain because of a reasonable complex check.

There is indicated in it that organizations and persons associated with it "on their own" and "independently" are liable to criminal liability for corruption acts (chapter 15 of the USA Law, section 78dd-1 and the next). Criminal

[1] Tupchiienko D. L. Zakon SShA "Pro borotbu z praktykoiu koruptsii za kordonom": detalna kharakterystyka, sanktsii ta eksterytorialnist zastosuvannia [Elektronnyi resurs] / D. L. Tupchiienko // Pravo i suspilstvo. – 2015. – № 4. – Rezhym dostupu : http://www.pravoisuspilstvo.org.ua/archive/2015/4_2015/part_1/24.pdf

[2] Zakon SShA o borbe s korruptsyei v mezhdunarodnoi deiatelnosty y eho deistvye : Klyfford Chans SNH Lymyted, mart 2010 h. [Elektronnyi resurs]. – Rezhym dostupa : http://sartraccc.ru/Law_ex/kzcorr_us.pdf

prosecution of individuals who are executors, instigators, participants in active bribery or money laundering does not exempt from criminal liability of the organization.[1] The Law "On Foreign Corrupt Practices Act" (FCPA) provides criminal-law, and civil sanctions to legal persons. In the event of a criminal prosecution to the legal person is given a fine of up to $ 2,5 million USA for violation of FCPA rules of account maintenance and $ 2 million USA for violating the conditions of specified the FCPA provisions on bribery.

The practice of concluding a corporation is quite widespread, i. e. "Agreements on the confession of guilty" with the obligation to reimburse the established damage from illegal activity in exchange for the refusal of the prosecutors to prosecute specific individuals. It is precisely this practice that was used in the process of investigating the activities of the corporation, and the outskirts of New York were contaminated by garbage and waste production.[2]

Such agreements on the recognition of guilt between the corporation and the prosecution party federal criminal law allows in the case of committing serious crimes (felonies). As stated in paragraph 9 of the USA procurator's guide, that is normative act with an expository nature containing general provisions on the investigation of federal crimes, there are procedural agreements on the exemption of a corporation from criminal prosecution, which should be concluded where the legal entity proposed voluntary cooperation is in the

[1] Hryshchuk V. K. Kryminalna vidpovidalnist yurydychnykh osib: porivnialno-pravove doslidzhennia : monohrafiia / V. K. Hryshchuk, O. F. Pasieka. – Lviv : Lviv. derzh. un-t vnutrishnikh sprav, 2013. – 248 s.

[2] Nykyforov B. S. Sovremennoe amerykanskoe uholovnoe pravo / B. S. Nykyforov, F. M. Reshetnykov. – Moskva : Nauka, 1990. – S. 55.

interests of society, and other means of obtaining consent for such cooperation are inaccessible or ineffective. The essence of such an agreement is the total or partial recognition of the offending corporation's guilt (which promotes successful investigation and conviction) in exchange for reducing the scope of the charge and/or changing or reducing the amount of the criminal sanction.

According to D. V. Kamenskyi, American judicial practice also knows cases where the agreement on the confession of guilty was concluded between the party of the state prosecution and the agent of the corporation, who was an individual, in exchange for provision of evidence of a criminal acts by the corporation, as well as in exchange for guarantee to act to be a witness to the prosecution side during a judicial process against their company. Such an agent receives legal "privileges" in the form of exemption from criminal liability or reduction of the amount of charges against him, the changing the type and amount of punishment. The subject of such an agreement is the criminal prosecution of the offender corporation.[1]

An issue of extraterritorial application the law of UK Bribery Act 2010 and the USA Law "On Fighting the Practice of Corruption Abroad" are important for any legal and physical residents of Ukraine which has an economic interest that related to the USA or the United Kingdom. Ukrainian legal entities and individuals must take preventive measures now if they want to provide services as the agents, consultants or other service providers for American or British companies, if they seek to establish joint ventures with American or

[1] Kamenskyi D. V. Korporatsiia yak subiekt federalnykh podatkovykh zlochyniv u SShA / D. V. Kamenskyi // Kryminalne pravo Ukrainy. – 2006. – № 4. – S. 45.

British partners, if they try to position themselves in the eyes of the American or British side as objects for mergers or acquisitions,

Ukrainian legal entities and individuals must take preventive measures now if they want to provide services as an agents, consultants or other service providers for American or English companies, if they seek to establish joint ventures with American or English partners, if they try to position themselves in the eyes of the American or English side as objects for mergers or acquisitions, if they intend to issue shares on the American or English stock exchange or otherwise operate in the USA or the United Kingdom.[1]

Individuals who are not USA or UK nationals are also subject to the FCPA or to the UK Bribery Act if they engage in any act of unlawful payment. This does not mean that they must be physically present in the territory of USA or the United Kingdom.

The simple sending an email to the USA or transferring money through a correspondent account in an American bank may prove to be sufficient reason that allows bringing a foreign legal or natural person to liability for a FCPA or UK Bribery Act.

Secondly, Ukrainian companies seeking to conduct business with persons subject to the FCPA or the UK Bribery Act should not risk breaching FCPA or UK Bribery Act requirements that outweigh the potential benefits of

[1] Tupchiienko D. L. Deiaki pytannia eksterytorialnosti zastosuvannia zakonu pro khabarnytstvo Velykoi Brytanii (uk bribery act 2010) ta Zakonu SShA "pro borotbu z praktykoiu koruptsii za kordonom" [Elektronnyi resurs] / D. L. Tupchiienko // Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. – 2015. – Vyp. 32. – T. 3. – Rezhym dostupu : dspace.uzhnu. edu.ua/.../DEIaKI%20PYTANNIa

cooperation. Having evidence that a partner is paying a bribe or even considering a bribe to be an acceptable tool of business, an American or English company is required to conduct an internal investigation, which may take years and needs tens of millions of dollars.[1]

Of particular interest in recognizing, a legal entity to be a subject of a crime is the Recommendation № R88 (18) of the Committee of Ministers of the member countries of the Council of Europe on the liability of enterprises − legal entities for offenses committed by them during the conduct of economic activity of December 20, 1988, adopted at 420 meeting of deputy ministers, and the Memorandum with comments to this Recommendation.

In these international documents refer to the criminal liability of enterprises − legal entities that conduct economic activities. In art. 17 of the Memorandum with comments explicitly states that these recommendations do not apply to institutions that carry out government functions or are endowed with supreme authority.

In the first section "The liability" and in the second section "The penalty causes", the appendix to Recommendation № R (88) 18 outlines ten principles on which the criminal liability of legal entities should be based.

One of these principles states that an enterprise - a legal entity should be exempted from liability in cases where the company's governing bodies were not involved in the commission of the offense and took all necessary measures to prevent its commission. Also, the principle of cumulative liability. The criminalization of an enterprise - a legal entity

[1] Right there.

should not exempt from criminal liability individuals involved in the commission of a crime. In particular, officials of the administration of this enterprise may be subject to criminal liability for failure to perform out their duties.

The criminalization of a legal entity must be carried out in the event that the nature of the offense, the degree of blame on the part of the enterprise, the consequences of the offense require the imposition of criminal sanctions. At the same time, as emphasized by the experts who have developed this Recommendation, it is necessary to depart from the traditional concept of guilt, instead, to apply a liability system, which based on social guilt.

The next international act is the Naples political Declaration and the global action plan against organized transnational crime of December 23, 1994. In his art. 15, states that for states, as a means to strengthen the capacity to fight organized crime at the national level and to improve cooperation at the international level, it should be envisaged the punishment for involvement in criminal associations or for criminal conspiracy and criminal liability for legal entities in their national criminal law. In art. 39 detailing the possibility of securing exemptions, namely, States should consider adopting legislative and regulatory measures that would allow limit financial secrecy to contribute to the effective fight against money laundering and the development of international cooperation. Such measures should also provide the mandatory application of the "know your customer" rule, as well as the detection and provision of information about suspicious financial transactions, while ensuring that the representatives of financial institutions are fully exempted from any liability for the good-faith provision of information

about such agreements, with the exception of gross negligence. In addition, states give priority to measures aimed at preventing the transfer operations of money laundering from strictly controlled banks to uncontrolled commercial and professional organizations providing financial services.

To this end, States should ensure the conduct of theoretical and applied research to identify those commercial organizations that can be used for money laundering and to determine the appropriateness of dissemination requirements for the provision of information and other requirements for other possible spheres of economic activity, in addition, the activities of banking and financial institutions.[1]

UN Framework Convention against organized crime of July 21, 1997 in art. 3 notes that each state party to the treaty is considering the introduction of criminal penalties in its internal criminal law for the possibility of bringing to liability of legal entities who profit from organized crime or act as a cover for a criminal organization.

The Criminal Convention on the fight against corruption of the Council of Europe of January 27, 1999, ratified by the Verkhovna Rada of Ukraine with the statement of October 18, 2006 in art. 18 notes that each party will take such legislative and other measures as may be necessary to ensure the liability of legal entities for criminal offenses provided by this Convention- the giving of a bribe, abuse of influence and money laundering committed in their favor by any individual who acted independently or as a representative of that body of

[1] Neapolska politychna deklaratsiia i Hlobalnyi plan dii proty orhanizovanoi transnatsionalnoi zlochynnosti vid 23 hrud. 1994 r. [Elektronnyi resurs]. – Rezhym dostupu : http://zakon5.rada.gov.ua/laws/show/995_787?nreg=995_787&find=1&text=%E7%E2%B3%EB%FC%ED&x=0&y=0#w12

a legal entity and who holds a leading position in this legal entity, using the representative powers of legal entity or powers to make decisions on behalf of the legal entity; the powers to exercise control over the activities of a legal entity, as well as control of involving such an individual in the aforementioned offenses as an accomplice or instigator. Unless the cases provided for in paragraph 1, each party will take the necessary measures to ensure the liability of the legal entity, when the inadequate control from the side of an individual referred to in paragraph 1 has led to the commission of the criminal offenses referred to in paragraph 1 in the interests of this legal entity, by an individual that is subject to it. The liability of a legal entity will not exclude criminal prosecution of individuals who commit crimes, incite or take part in its committing.

Each party will provide appointment to legal entities brought to liability in accordance with paragraphs 1 and 2 of art. 18, effective, adequate and deterrent criminal or non-criminal sanctions and measures, including fines (part 2 art. 19).

Each party will take such legislative and other measures as may be necessary to ensure the confiscation or other means of extracting the means of committing criminal crimes and proceeds derived from criminal crimes (established by this Convention) or property the value of which corresponds to such incomes (part 3 of the article).

Similar norms on criminal liability of legal entities, in particular in art. 10 are contained in the UN Convention against transnational organized crime, adopted by General Assembly resolution 55/25 of 15 November 2000, ratified by the Verkhovna Rada of Ukraine with reservations and

declarations by the Law № 1433-IV (1433-15) of February 4, 2004.

Directive 2001/97 / EC of the European parliament and of the Council of 4 December 2001 amending Council Directive 91/308 / EEC on the prevention of the use of the financial system for the purpose of money laundering (art. 9).

If, in accordance with this Directive, an institution or a legal entity or an official or head of such institution or legal entity will share in good faith the information referred to in articles 6 and 7 with the authorities responsible for combating money laundering, then this will not imply violation of the any disclosure limit which imposed by the agreement or any other legislative, which regulate, or by administrative regulation and this institution or legal entity, or its official or head are exempt from all liability.[1]

On July 22, 2003, the Council of the EU adopted a "The framework decision on combating corruption in the private sector", which discloses the concept of "active" and "passive" corruption and sanctions for its commission. The specified decision provides for immediate criminal liability of legal entities for committing corrupt acts in their favor by any individual.[2]

[1] Dyrektyva 2001/97/IeS Yevropeiskoho Parlamentu i Rady Yevropeiskoho Soiuzu, yaka vnosyt zminy v Dyrektyvu Rady 91/308 / IeES shchodo zapobihannia vykorystanniu finansovoi systemy z metoiu vidmyvannia hroshei [Elektronnyi resurs] // Deklaratsiia Komisii vid 4 hrud. 2001 r. – Rezhym dostupu : http://zakon5.rada.gov.ua/laws/show/994_501

[2] Ramkove rishennia Rady № 2003/568 / PVD pro borotbu z koruptsiieiu v pryvatnomu sektori vid 22 lyp. 2003 : pryiniate Yevropeiskym Soiuzom [Elektronnyi resurs]. – Rezhym dostupu : http://zakon3.rada.gov.ua/laws/show/994_945?nreg=994_945&find=1&text=%EE%F1%E2%EE%E1%EE%E6&x=0&y=0

In art. 26 of the UN Convention against corruption of October 31, 2003, which ratified by the Verkhovna Rada of Ukraine with statements, by the law of October 18, 2006, also referred to the criminal liability of legal persons.[1]

The Verkhovna Rada of Ukraine has ratified a part of the mentioned international documents, their implementation concerning bringing and exemption a legal entity from criminal liability, including for corruption crimes, is enshrined in provisions of section XIV-1 "The measures of criminal-legal nature concerning legal entities" of the CC of Ukraine.

In particular, the art. 96-3 "Grounds for application to legal entities of measures of a criminal-legal nature" of the CC of Ukraine determines that the following grounds are: 1) the its committing by an authorized person on behalf and in the interests of a legal entity of any of the crimes provided for in articles 209 and 306, parts 1 and 2 of art. 368-3, parts 1 and 2 of art. 368-4, art. 369 and 369-2 of this Code; 2) failure to provide the performance of duties entrusted to its authorized person by the law or the constituent documents of a legal entity responsibilities in relation to taking measures to prevent corruption, which led to the commission of any of the crimes provided for in articles 209 and 306, parts 1 and 2 of art. 368-3, parts 1 and 2 of art. 368-4, articles 369 and 369-2 of this Code; 3) the committing by its authorized person on behalf of the legal entity of any of the crimes provided for in articles 258-258-5 of this Code; 4) the committing by its authorized person on behalf of the legal entity or in the interests of a legal entity of any of the crimes provided for in articles 109,

[1] Konventsiia Orhanizatsii Obiednanykh Natsii proty koruptsii vid 31 zhovt. 2003 r., ratyfikovanoi Zakonom № 251-V (251-16) vid 18.10.2006 r., VVR, 2006, № 50, st. 496 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon4.rada.gov.ua/laws/show/995_c16

110, 113, 146, 147, parts 2-4 of art. 159-1, articles 160, 260, 262, 436, 437, 438, 442, 444, 447 of this Code.

In the note to art. 96-3 of the CC of Ukraine states that under the authorized persons of a legal entity one should understand the officials of the legal entity, as well as other persons who, in accordance with the law, the constituent documents of a legal entity or an agreement, have the right to act on behalf of the legal entity.

In the part 2 of the note of art. 96-3 of the CC of Ukraine separately lists the crimes that are recognized to be committed in the interests of a legal entity, if they led to her obtaining an unlawful benefit or created conditions for obtaining such benefit, or were aimed at evasion from the liability which is stipulated by law. These crimes are envisaged by articles 109, 110, 113, 146, 147, parts 2−4 of art. 159-1, articles 160, 209, 260, 262, 306, part 1 and 2 of art. 368-3, parts 1 and 2 of art. 368-4, articles 369, 369-2, 436, 437, 438, 442, 444, 447 of the CC of Ukraine.

The fact that among the specified syllables referred to art. 209 "The legalization (laundering) of proceeds from crime" directly corresponds to the international standards considered above.

The provisions of art. 96-4 "The legal entities to which criminal-law nature measures are applied" of the CC of Ukraine are fully consistent with the previously specified generally recognized international legal norms previously indicated, in particular, it is specified that only legal entities should be the subjects of criminal liability. The domestic criminal-law legislation has cemented that measures criminal-law nature, in the cases provided for in paragraphs 1 and 2 part 1 of art. 96-3 of the CC of Ukraine, can be applied by a

court to a company, institution or organization, in addition to state bodies, authorities of the ARC, bodies of local self-government, organizations which are created by them in accordance with the established procedure, which are fully maintained by correspondingly state or local budgets, funds of compulsory state social insurance, the Guarantee Fund for individuals' deposits, as well as international organizations.

Measures criminal-legal nature in the cases, provided for in clauses 3 and 4 part 1 of art. 96-3 of this Code, may be applied by a court to subjects of private and public law of residents and non-residents of Ukraine, including companies, institutions or organizations, state bodies, authorities of the ARC, bodies of local self-government, organizations which are created by them in accordance with the established procedure, funds, as well as international organizations, other legal entities created in accordance with the requirements of national or international law.

If a state or a subject of public property owns more than 25 % of a legal entity or, the legal entity under effective control of a state or a subject of public property, then this legal entity is fully liable for the getting unlawful benefit and damage caused by the crime, that committed by the state, subjects of public property or public administration.

Given the topic of research, the most attention deserves art. 96-5 "Grounds for the exemption of a legal entity from the application of criminal-law nature measures" of the CC of Ukraine, which determined that a legal entity is exempt from the application of criminal-law measures, if from the day its commission by an individual committed any crime, specified in art. 96-3 of the CC of Ukraine, and before the day when the verdict comes into effect, expired the next terms:

1) three years − in the case of committing a crime of minor gravity;

2) five years − in the case of committing a crime of moderate gravity;

3) ten years − in the case of committing a grave crime;

4) fifteen years − in the case of committing a particularly grave crime.

In part 2 of art. 96-5 of the CC of Ukraine, it is detailed that the limitation period of application the measures of a criminal-legal nature to a legal entity shall be suspended if its authorized person, who has committed any offense specified in art. 96-3 of the CC of Ukraine, hides from the bodies of pre-trial investigation and the court for the purpose of evasion from criminal liability and his location is unknown. In such cases, the limitation period is resumed from the day of the establish the whereabouts of this authorized person. In addition, part 3 of art. 96-5 of the CC of Ukraine stipulates that the limitation period of application to a legal entity of criminal-law nature measures is interrupted if, before the expiration of the periods stipulated in paragraphs 1 and 2 of this article, the authorized person again committed any offense specified in art. 96-3 of this Code.

The part 4 of art. 96-5 of the CC of Ukraine enshrines that the calculation of the limitation in this case begins on the day the person's committing any crime specified in art. 96-3 of the CC of Ukraine. At the same time, the limitation periods are calculated separately for each crime.

However, the analysis of foreign legislative sources allows us to conclude that it is inappropriate to restrict the possibility of exemption of legal persons from criminal liability by only one ground - the terms of limitation.

According to the foreign experience of the application of this incentive institute, the grounds for such exemption may be the reconciliation of the perpetrator with the victim, the change in the situation and compensation for damage.

Partly these provisions are reflected in art. 96-10 "General rules for the use of criminal-law nature measures by legal entities" of the CC of Ukraine, which states that when application to a legal person criminal-law measures, the court takes into account the degree of gravity of an crime that is committed by its authorized person, the degree of the commission of a criminal intention, the amount committed damage, nature and amount of unlawful benefit which was received or could be obtained by a legal entity, measures taken by a legal entity to prevent a crime.

However, these rules confirm that, despite the listed in art. 96-10 of the CC of Ukraine, the guilty legal entity will be brought to criminal liability, and not exempted from it.

Thus, by determining the ratio of the special types of exemption from criminal liability for corruption crimes in Ukraine to international legal standards, we conclude that the norms of Ukrainian legislation partially meet the specified criteria. Since, in fact, the States Parties (primarily the countries of the Istanbul plan of action), at their discretion, reinforce norms that rehabilitate the person, who is guilty in corruption crime. Ukraine, reforming the current criminal-law framework, has reduced the list of circumstances on which a person may be exempted from criminal liability for corruption crimes in the General Part of the CC of Ukraine (articles 45−48). In addition, the circumstances of a special type of exemption from criminal liability for corruption crimes provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine were united. These circumstances are in line

with the content and significance of the international standard provided for by the 2003 UN Convention – "An effective repentance".

In addition, the presence of signs of extortion of an unlawful benefit by an official is no longer an incentive norm for Ukrainian legislation when exemption from the liability of the person who offers (promises or gives) such a benefit. Such an approach is inherent in the judicial investigation practice of some European countries, in particular Germany, where the mandatory requirement for qualification is the distinction between blackmail and provocation of unlawful benefits.

Instead, the grounds for exemption of legal persons from criminal liability, including for corruption crimes, in comparison with international legal standards, are limited to national legislation. The list of grounds for the exemption of a legal entity from the application of criminal-law measures (article 96-5 of the CC of Ukraine) contains only expiration of limitation periods. Although the practice of foreign countries has confirmed the effectiveness of applying also and the reconciliation with the victims (the so-called "blame recognition agreements" in the USA), and compensation of a damage (Germany, Romania), and the change of the situation (France, Great Britain).

3.3. The ways to improve the institute of the exemption from criminal liability for corruption crimes

Analysis of investigative and judicial practice shows that the anti-criminogenic potential of the institute for exemption from criminal liability only partially realizes, since the

legislator, constructing the analyzed norms, made a number of conceptual miscalculations and editorial mistakes. As a result, the institute of exemption from criminal liability has significant contradictions, and some of its norms conflicted not only with other articles of the CC of Ukraine, but also the norms of other branches of law.

As S. Ya. Sabanin noticed, exemption from criminal liability can then be considered justified and fair when it does not hinder the protection of the rights and freedoms of the individual, all rule of law and order from the criminal encroachments and at the same time helps to correct the guilty person, to prevent the commission of new crimes, in other words, when it meets the objectives of criminal law and allows you to achieve the goals of punishment without its real use of.[1]

For perspective of exemption from criminal liability was devoted the research of domestic lawyers, such as O. F. Bantyshev, Yu. V. Baulin, V. I. Borysov, G. B. Vittenberg, A. A. Voznyuk, O. M. Gotin, M. Ye. Grygorieva, Yu. V. Gorodetskyi, O. O. Dudorov, O. O. Zhytnyi, O. V. Kovitidi, O. S. Kozak, O. M. Lemeshko, A. A. Muzyka, O. V. Naden, G. O. Usatyi, V. P. Tyhyi, N. B. Hlystova, S. S. Yatsenko etc. Among foreign researchers should first be called Russian lawyers H. D. Alikperova, I. Sh. Galstyan, Yu. V. Golyka, L. V. Golovka, V. S. Yegorova, V. O. Yeleonskyi, A. V. Yendoltseva, I. E. Zvecharovskyi, S. G. Kelina, V. V. Maltsev, O. Z. Rybak, S. M. Sabanyn, R. O. Sabitova etc.

[1] Sabanyn S. N. Nekotorye problemy zakonodatelnoi rehlamentatsyy spetsyalnykh vydov osvobozhdenyia ot uholovnoi otvetstvennosty / S. N. Sabanyn, D. A. Hryshyn // Yurydycheskaia nauka y pravookhranytelnaia praktyka. – 2012. – № 2. – S. 62.

However, the attitude of scientists to the exemption from criminal liability varies from acceptance and proposals to its dissemination in the legislation on criminal liability (Yu. V. Baulin, V. I. Borisov, V. V. Stashys, etc.) to reject and proposals to refuse to it in favor or exemption from criminal punishment, or the replacement on the criminal-procedural "refusal of criminal prosecution" (Yu. V. Torop, L. I. Hruslova, S. S. Yatsenko, etc.).[1]

The current tendency to spread special types of exemption is ambiguous perceived by scientists. Many lawyers are proposing to go this way, gradually replacing the norms of the General part of the CC of Ukraine about the exemption from criminal liability to the more detailed provisions of the Special part, since this greatly facilitates the realization of the law in the exact accordance with their social and legal destination. Others, on the contrary, deny the prospect of development of special types of exemption in the Special part of the CC and advocate their unification by the way of generalizing the special grounds and consolidating them in the General part. In our opinion, both views are too categorical and therefore can not be received either by theory or by practice. There is no need to specifically note in the Special part of the CC the exemption from criminal liability in the case of committing crimes of a minor or medium gravity under an effective repentance or reconciliation with the victim. On the other hand, when establishing special types of exemption, the legislator pursues different, sometimes purely pragmatic goals, as is the case when exempting from criminal liability, if a person has paid taxes, fees (compulsory

[1] Khriapinskyi P. V. Zaokhochuvalni normy u kryminalnomu zakonodavstvi Ukrainy : monohrafiia / P. V. Khriapinskyi. – Kharkiv : Kharkiv yuryd., 2009. – S. 318.

payments), and also compensated the damage inflicted to the state by their untimely payment (financial sanctions, penalties) to bringing it to criminal liability (part 4 of art. 212 of the CC of Ukraine). Almost unattainable seems the purpose to unify all types of special exemption from criminal liability within the Special part of the CC. This will result in undue and inappropriate increase of special norms in the General part of the CC of Ukraine, their exorbitant granularity and will not correspond to domestic traditions of criminal law-making.

One of the problems, the scientific development of which will contribute to the deepening of knowledge about the special exemption from criminal liability, is to find out its place in the mechanism of the realization of the functions of criminal law. The solution of this issue is needed to assess the significance of specified provisions as an element of the national criminal-law system, clarification the directions of development of the criminal-law policy of the state. Insufficient attention to it in the doctrine to some extent contributed to the fact that the significance of specified provisions in counteracting criminal manifestations was diminished, did not form a sufficiently clear understanding of their targeted purpose. In addition, in law-enforcement practice, they are assessed as secondary, the possibility of application of which, under certain circumstances, can be ignored or made subject from subjective appreciation.

Thus, logical is the dissemination the special exemption on the grounds specified in part 4 of art. 212-1 of the CC of Ukraine, for abuse, if this resulted in the actual non-receipt of funds into budgets or state trust funds or insurance premiums for compulsory state pension insurance in particularly large amounts. Removing the obstacles to exemption from criminal liability depending on the size of the pecuniary damage

caused by economic or other non-violent property crimes is a promising direction for the dissemination of the incentive requirements of the Special part of the CC of Ukraine.[1] I must say that in 2010 the legislator has already introduced the appropriate changes to part 4 of art. 212 of the CC of Ukraine.

Exemption from criminal liability of persons who voluntarily paid for committed damage in a large or very large size will effectively promote full compensation of material and moral damages to victims of crime, the return of considerable funds to the sphere of legal social circulation, would make their criminal use impossible, for example, to finance shadow, forbidden, fictitious and other socially dangerous varieties of economic activity.[2]

The above examples confirm that a reduction in the level of crime in a state will only be possible if a person who commits a socially dangerous act, recognizing his guilt, will understand (feel) that the state is not an enemy from which he have to run, but is the subject with which can always be agreed (find a compromise solution). For such understanding will be facilitated by the gradual decriminalization of criminal legislation and the expansion of special grounds for exemption from criminal liability.

In view of the above, our position is to emphasize the exclusive meaning of the special exemption from criminal liability for corruption crimes as an incentive institute, which

[1] Leonenko I. Rozshyrennia spetsialnykh pidstav zvilnennia vid kryminalnoi vidpovidalnosti – efektyvnyi zasib protydii zlochynnosti v Ukraini [Elektronnyi resurs] / I. Leonenko // Viche. – 2013. – № 12. – Rezhym dostupu : http://www.viche.info/ journal/3719/

[2] Mytrofanov I. I. Problemy vykonannia sudovoho rishennia yak stadii realizatsii kryminalnoi vidpovidalnosti / I. I. Mytrofanov // Viche. – 2010. – № 4. – S. 22.

aims to promote the disclosure of facts of corruption. The reducing the high latency characteristic of this category of crimes is an indicator of the effectiveness of these measures.

Because corruption crimes are not only dangerous but also they are difficult in identification. All persons who deliberately participate in giving-obtaining an unlawful benefit (commercial bribery); their interests are interrelated and interdependent. To solve the problem of combating corruption crime, identification and bringing to liability of the most dangerous corruptors, it is necessary to break this interdependence, which is to a certain extent provided by the legislative provision on the special exemption from liability of these persons.

The confirmation of these conclusions is empirical data obtained during the questionnaire of 306 law enforcement officers (see supplement B). Most of them are representatives of the prosecutor's office (73,5 %) who hold positions of heads (deputies) of oblast and local public procuracy, chiefs (deputies) of departments and divisions, prosecutors of divisions, leading specialists, senior investigating and investigating bodies of the procuracy of the regional and local levels. Also, employees of the National police (19,6 %) who hold positions of heads (deputies) of departments and divisions, heads of pre-trial investigation bodies, senior investigators and investigators and inspectors of the bodies of the National police of the regional and local levels; SBU – 6,9 % (heads and deputies of heads of divisions, sectors, senior inspectors, chief specialists, leading specialists, deputy officers of the SBU of the regional level). Depending on the region in which respondents work, in the southern regions – 10,8 %, in the central regions – 18 %, in the west – 77,2 %.

For the period of work in practical units, the respondents were distributed as follows: to 2 years – 6,5 %; 2−5 years − 25,5 %; 5−10 years – 34 %; more than 10 years – 34 %.

The majority of respondents answered negatively the question about whether cases of exemption from criminal liability for corruption crimes occurred in their practice or colleagues' activities: the respondents did not come across – 61,4 %, happened in the work of their colleagues – 24,8 %, happened personally (that is, in their own practice the respondent had to send the relevant materials to the court to decide the issue of the exemption of the guilty person from criminal liability, in particular, under article 369 of the CC Ukraine) – 13,7 %. The results obtained in some cases exceed 100 %, because respondents were able to mark several variants in their responses. For example, the mentioned question has been answered positively at once, that cases of exemption from corruption crimes happened in the work of colleagues and happened personally.

Most of the respondents noted that today there is a tendency to increase the number of acts of corruption – 54,9 %; a large part noted that it is difficult to answer – 29,4 %; the smallest number of responses indicated that there were no such tendencies – 15,7 %.

To find out the opinion of law enforcement officials about the need for a special type of exemption from criminal liability for corruption crimes, we proposed four options for answers. Among them, the confident majority received the option "to detect hidden facts of corruption" – 66 %. Approximately the same number of positive responses were received, which provided: for encouraging the positive behavior of corruptors – 11,1 % and for the humane attitude to

the perpetrators – 9,8 %. The share of respondents who said that such norms are not needed took a fundamentally opposite position; the norms should be excluded from the CC of Ukraine – 18,3 %.

This distribution of answers, first, proves the importance of special types of exemption from criminal liability for corruption crimes as influential means for detecting specified category of socially dangerous actions, since the latter have a super-high level of latency. Namely the awareness of the need to find effective means of disclosure, to identify the facts associated with various actions upon unlawful profit, was persecuted and, as a result, confirmed scientific looking for in specified direction.

Consequently, the norm on the special exemption liability of corruption crimes in its direction is incentive, stimulating, by encouraging the perpetrator to active repentance, to compensation for harm, and the disclosure of accomplices.

The ways of optimization should take into account the counterbalance system, when the punishment for corruption crimes rises, and as a possibility of their avoidance improves mechanisms of special types of exemption from criminal liability for specified socially dangerous acts.

The specified survey of law enforcement officers carried out within the framework of scientific research allowed to confirm the importance of such a tool as the establishment of more severe sanctions (44,4 % of respondents) (see supplement B).

In addition, for the effectiveness of act of such incentives, it is necessary to optimize the limits of court consideration when imposing a criminal punishment and other criminal-law nature measures: to prohibit the probation, the release on

probation from serving a sentence for corruption crimes. We will name the most common manifestations of corruption offenses among judges: illegal receiving of material goods, services, privileges or other benefits in connection with the realization of functions for the administration to implement justice (deciding on exemption from criminal liability, the appointment of softer punishments than it is provided for by criminal law, the exemption from detention of suspects and accused persons, the election of preventive measures upon them, not related to restraint of liberty, assistance in organizing visits, meetings with lawyers); interference with the lawful activity of law enforcement officers in order to prevent them from performing official duties; assistance to economic entities, using the official position, in the implementation of entrepreneurial activities, including through the realization of "raider" schemes of illegal takeover by shareholders or third-party commercial structures of enterprises; illegal refusal to provide or providing knowingly false information (first of all, court decisions) on requests of law enforcement, state bodies, business entities and citizens in order to prevent them from fulfilling their official duties, the realization of their personal rights and freedoms.[1]

O. Yu. Busol, in his doctoral dissertation "Combating corruption crime in Ukraine in the context of a modern anti-corruption strategy" (2015), gives an assessment of the general grounds for exemption from criminal liability, and proposes to supplement art. 44 of the CC of Ukraine with the third part, in which to stipulate that exemption from criminal liability is not applicable in case of committing a criminal

[1] Lyst Heneralnoi Prokuratury Ukrainy vid 10 lystopada 2009 r. № 06/0-308 // Sprava MNDTs. – 2010. – № 15. – S. 17–27.

offense (crime) containing signs of corruption and corruption offense.[1] In addition, he notes the need to improve the wording of art. 45 of the CC of Ukraine, namely: substantiates the inexpediency of defining the list of corruption crimes in the note to this article, which should be excluded.[2]

Ways of improving the institute for exemption from criminal liability for corruption crimes are due to its novelty for domestic criminal law. Since only in 2015, the CC of Ukraine is enshrined the concept of corruption crimes in the note to art. 45 of the CC of Ukraine. As already noted, he was at once criticized in the scientific circles on the content and at the location.

Taking into account the results of the held research contained in the previous sections of the work, we propose to expand and detail the grounds and conditions for exemption from criminal liability for corruption crimes. Must be foreseen not taken into account in the current wording of art. 354 of the CC of Ukraine: "the person who first committed a corruption crime", "fully compensated for the damage caused by him or eliminated the damage if the action actually committed by him does not contain another crime". Note that during the survey, 60,8 % of respondents had replied positively that there was an availability of need to provide a mandatory condition for exemption from criminal liability "compensation for

[1] Busol O. Yu. Protydiia koruptsiinii zlochynnosti v Ukraini u konteksti suchasnoi antykoruptsiinoi stratehii : dys. ... d-ra yuryd. nauk : spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo" / Busol O. Yu. – Kyiv, 2015. – 479 s.

[2] Busol O. Yu. Protydiia koruptsiinii zlochynnosti v Ukraini u konteksti suchasnoi antykoruptsiinoi stratehii : dys. ... d-ra yuryd. nauk : spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo" / Busol O. Yu. – Kyiv, 2015. – 479 s.

damage caused by a corruption crime"; negative − 13,7 %; had found difficulty in replying – 26,1 % (see supplement B).

A significant number of respondents did not agree with the proposed option of providing a mandatory condition for the exemption of criminal liability "the person who first committed a corruption crime" – 47 %; however, not smaller a part of the responses had supported such a mandatory condition for the guilty person – 35,9 %, and had found difficulty in replying – 16,3 % (see supplement B).

Most questioned respondents by their answers had countered the need to anticipate the possibility of exemption from criminal liability for all corruption crimes listed in the note of art. 45 of the CC of Ukraine, − 59,5 %, had agreed with the proposed changes – 15,7 %, had found difficulty in replying – 23,5 % (see supplement B).

In order to determine how justified is the current placement in the criminal law of the incentive norm upon corruption crimes, respondents were asked to answer the following question: "Is justified foresees by the legislator a special type of exemption from criminal liability for corruption crimes in art. 354 of the Criminal Code of Ukraine?" Most of the questioned respondents agreed with the available variant of the location of the norms in the Code, answering "yes" – 54,9 %; the smaller number of responses denied such a systematization option, answering "no" – 24,2 %. And part of respondents abstained from the final assessment of the proposed situation, noting that it is difficult to answer – 18,3 % (see supplement B).

Accordingly, in the next question connected with the previous question about the expediency of providing a special type of exemption for corruption crimes in another article of the Section on offenses of the CC of Ukraine, the majority of

respondents had answered “no” – 42,5 %; had agreed – 32 %; had not determined with the answer − 23,5 % (see supplement B).

Summarizing the results derived from the research, theoretical and empirical results, we propose to change the location of the incentive norm for corruption crimes, envisaging it in the note to art. 44 of the CC of Ukraine. Accordingly, the concept of corruption crimes should be excluded from art. 354 of the CC of Ukraine part 5 and from art. 45 of the CC of Ukraine, logically also to place it on the note to art. 44 of the CC of Ukraine. So, the art. 44 of the CC of Ukraine, which is the initial one in the issues of exemption from criminal liability, will contain key concepts and definitions of corruption crimes and conditions, grounds for exempting a person from criminal liability for their committing. This will contribute to the necessary systematization in the criminal law.

Undoubtedly, the issue of defining the notion of corruption crimes is not the object of our study. However, this aspect can not be overlooked by us, because from the content (list of syllables) directly depends on the number of opportunities to use special types of exemption from the specified socially dangerous actions.

It is necessary to supplement the list of articles in the note, which belong to the corruption crimes by articles 209 and 366-1 of the CC of Ukraine. After all, they directly belong to the specified category of crimes on objective and subjective grounds.

Since the art. 369-2 of the CC is included in the list of corruption crimes we propose to exclude from its provisions obsolete norms. The note of the art. 369-2 of the CC of Ukraine contains a reference to the Law of Ukraine “On the

principles of prevention and counteraction of corruption", which has lapsed. This will eliminate the today's gap in the criminal law, which makes it impossible to apply this norm. The necessity of making specified changes was emphasized by the respondents during the polls, which as the practitioners directly indicated in the questionnaires about the need of exception of the reference to the outdated law in the note to the art. 369-2 of the CC of Ukraine (see supplement B).

Taking into account the mentioned changes, we will note the new wordings of the articles of the CC of Ukraine:

The article 44. The legal grounds and procedure for exemption from criminal liability.

1. A person, who has committed a crime, including a corruption crime, is exempted from criminal liability in cases provided for by this Code.

2. The exemption from criminal liability in cases stipulated by this Code shall be carried out exclusively by a court. Law establishes the procedure for exemption from criminal liability.

The note.

1. Corruption crimes in accordance with this Code are considered crimes provided for in articles 191, 262, 308, 312, 313, 320, 357, 410 in the case of their commission by abuse of office, as well as a crimes stipulated in articles 209, 210, 354, 364, 364-1, 365-2, 366-1, 368-369-2 of this Code.

2. A person who first committed a corruption crime is exempted from criminal liability if, until to receiving information from another sources about this crime by an authority, its an official, according to the law, had the right to report suspicion, has voluntarily declared what happened to such an authority and had actively contributed to the disclosure of the crime and fully compensated for the damage

caused by him or eliminated the caused damage, if an act actually committed by it does not contain another crime. The specified exemption does not apply in case the corruption crime was committed upon the persons certain in part 4 of art. 18 of this Code.

The article 369-2. An abuse of influence.

The note. Persons authorized to perform functions of a state are persons certain in clauses 1−3 of part 1 of article 3 of the Law of Ukraine "On prevention of corruption".

It should also be noted that the crime of abuse of influence was inconsistent with the Council of Europe Criminal Law Convention against corruption. The article 369-2 "An abuse of influence" of the CC of Ukraine covers cases of influencing decision-making only by persons authorized to perform functions of a state. At the same time, the Criminal Convention against corruption stipulates that it should be the same persons who may be subjects of passive bribery.[1]

To realize in practice the legislative provisions on increasing the maximum punishment for active and passive bribery, as well as to consider raising the extension of prosecution for individual corruption offenses.[2]

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[1] Alternatyvnyi (tinovyi) zvit pro vykonannia Ukrainoiu rekomendatsii, nadanykh za rezultatamy tretoho raundu otsiniuvannia v ramkakh Stambulskoho planu dii Antykoruptsiinoi merezhi OESR dlia krain Skhidnoi Yevropy ta Tsentralnoi Azii. Rezultaty hromadskoi otsinky stanom na liutyi 2014 [Elektronnyi resurs] / za zah. red. R. Riaboshapky, O. Khmary. – Rezhym dostupu : http://pravo.org.ua/files/Corruption/oecd_ukraine_3rd_round.pdf

[2] Alternatyvnyi (tinovyi) zvit pro vykonannia Ukrainoiu rekomendatsii, nadanykh za rezultatamy tretoho raundu otsiniuvannia v ramkakh Stambulskoho planu dii Antykoruptsiinoi merezhi OESR dlia krain Skhidnoi Yevropy ta Tsentralnoi Azii. Rezultaty hromadskoi otsinky stanom na liutyi 2014 [Elektronnyi resurs] / za zah. red. R. Riaboshapky, O. Khmary. –

All types of special exemption from criminal liability are unconditional. That is, the person who is exempted under these circumstances in the future is not imposed by any legal obligations. In addition, a person who was exempted from criminal liability on the grounds provided in the norms of the Special part of the CC, according to their legal status, is such that he did not commit any crime in the past. Any new crime, which committed by her, is committed for the first time. This position finds its consolidation in the current CC of Ukraine. Thus, according to part 1 of art. 33 of the CC of Ukraine, a crime for the commission of which a person was exempted from criminal liability by the grounds established by law, is not taken into account in the aggregate of crimes. In accordance with part 1 of art. 88 of the CC of Ukraine, since no conviction is imposed on them, the persons exempted from criminal liability of the person have no criminal record. In connection with the foregoing, we can not agree with the views of P. V. Hryapinskyi,[1] because special types of exemption from criminal liability are non-exculpatory circumstances, and the re-exemption is not used inappropriately.

Among the mandatory circumstances, which exempts the corruptor from criminal liability, there is a voluntary notification of the committed (part 5 of art. 354 of the CC of Ukraine). A voluntary notification is a notification made not coerced, but by own choice of person in his knowledge of

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Rezhym dostupu : http://pravo.org.ua/files/Corruption/oecd_ukraine_3rd_round.pdf

[1] Khriapinskyi P. V. Spetsialne zvilnennia vid vidpovidalnosti u kryminalnomu pravi ta zakonodavstvi Ukrainy : navch. posib. / P. V. Khriapinskyi. – Zaporizhzhia : ZNU KSK-Alians, 2011. – S. 17.

such circumstance that it is not known about the corruption crime by the relevant authorities at a certain moment. The voluntary turnout to the designated authorities of the person who has hid from the investigation in connection with the suspicion of such a crime, has being sought by the authorities and has decided to stop evasion from the investigation and the court, can not be the basis for the exemption of a criminal crime. Similar turnout can only serve a circumstance that mitigates punishment.

Practice shows that the motives of notifications of corruptors, that were committed by them can be very different. This is a repentance, an awareness of wrongness, the public danger of corruption, which arose because of the fear of criminal punishment in the event that the authorities in any way will be able to find out about the crime. However, more often, motives compel for notification corruption-related socially dangerous actions, are often prompted by changes in relations with a bribed official (vengeance, insult, envy).

In particular, it are often the cases that a notification of giving unlawful gain (commercial bribery) it is made because the recipient has not fulfilled the promise at all or did not do it the way the provider would like it. However, since in these cases the made notification is not because the committed is known to the authorities, it should be considered voluntary, and not forced. The person-provider and, in such cases, shall be exempted from criminal liability.[1]

[1] Putkova N. A. Osobennosty osvobozhdenyia ot uholovnoi otvet-stvennosty za posrednychestvo vo vziatke, sovershennoi orhanyzovannoi hruppoi / N. A. Putkova // Deiatelnost orhanov hosudarstvennoi vlasty po protyvodeistvyiu orhanyzovannoi prestupnosty : materyaly V Mezhdunar.

V. I. Zubkova expressed another and more substantiated opinion. She indicates that a voluntary statement can not be considered if it was made from initiative of official representatives of the authorities and the management, when the persons who offered, promised or gave unlawful benefit, are detected by operational or investigative way and recognized in the committed action. If the authorities are already known of such a fact of bribery and checks are under way, the provider's notification is not voluntary.[1]

The situation has certain features when an investigation is conducted on the concrete fact of giving-receiving of unlawful benefit, and the consequence has reason to believe that this fact was not the only one. In defining the range of other corruptors, the investigative bodies do not yet know which of them gave a bribe (unlawful benefits), and, by questioning the expected individuals, establish immediate providers. That is, at the time for conducting investigations, the fact of committing a crime by these individuals was not yet known. However, from this it should not be that their recognition about the giving of the item of the crime is voluntary, since the recipient of bribe (unlawful benefit) is already established.[2]

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nauch.-prakt. ynternet-konf. (Yekaterynburh, 26 marta – 3 apr. 2013 h.). – Yekaterynburh : Ural. yn-t – fylyal RANKhyHS pry Prezydente RF, 2013. – S. 117.

[1] Zubkova V. Y. Puty povyshenyia effektyvnosty borby so vziatochnychestvom y poboramy / V. Y. Zubkova // Sovetskoe hosudarstvo y pravo. – 1985. – № 4. – S. 81–82.

[2] Zubkova V. Y. Puty povyshenyia effektyvnosty borby so vziatochnychestvom y poboramy / V. Y. Zubkova // Sovetskoe hosudarstvo y pravo. – 1985. – № 4. – S. 82.

Another is the case when investigating authorities in the course of an investigation into the receipt of unlawful benefits by a certain official, through the mass media, appeal to the public with a request to inform about other unidentified facts of bribery (unlawful benefit). The notifications received from citizens after this announcement are voluntary.

Consequently, the circumstance determining the resolution of the issue is not the case when a communication about a committed corruption crime (in this case, it is undoubtedly about unlawful benefit (bribery)), but it matters that the subjective imagine of the applicant about the awareness of the authorities about the committed he is a crime. Therefore, if the applicant considers that it is unknown about the giving of unlawful benefit (bribery) and, therefore, acts solely based on his internal convictions voluntarily, then, despite his possible mistake, he shall be exempted from criminal liability.

If, in the opinion of the person, the law enforcement agencies have information about giving unlawful benefits (bribery) or inevitably should establish this fact, such a notification can not be recognized voluntary.

The Judicial College of the Supreme Court of Ukraine in defining the case of O. indicated that the person is not exempted from criminal liability for giving a bribe as a result of a voluntary statement, if she informed about the giving of a bribe on interrogation in another case (in connection with which he gave bribes), believing that it is known to the investigating authorities about.[1] However, the person who was

[1] Uzahalnennia sudovoi praktyky zastosuvannia Zhydachivskym raionnym sudom zakonodavstva pro vidpovidalnist za okremi koruptsiini zlochyny ta pravoporushennia u spravakh, rozghlianutykh sudom v

interrogated about the fact of receiving bribes and at the same time reported that she had given a bribe to another official; he was found as who voluntarily stated about a bribe.[1]

There happen cases when the provider of unlawful benefit (bribery), being disclosed in one episode, reports about other facts not previously known to the investigating authorities on interrogation, but in one way or another related to the crime, which is investigated (for example, the systematic bribing of an official, bribing for the same actions of other officials, etc.). Of course, in this case, the perpetrator must be liable for all episodes of bribery, and the notification made by him and active assistance in disclosing the crime serve merely as mitigating circumstances. However, if such a perpetrator reports about briberies, that are completely unrelated to the crime investigated, understanding that the authorities do not know about it, this is a voluntary statement.

In the special norm of the exemption from criminal liability for corruption crimes (part 5 of art. 354 of the CC of Ukraine) do not mention the accomplices. Based on the provisions of the General part and the Theory of Criminal Law, it can be argued that the principal provisions on criminal liability and exemption from it, are the same for all persons who participated in a crime, regardless of the specific role that

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2013 rotsi i pershomu pivrichchi 2014 roku [Elektronnyi resurs]. – Rezhym dostupu : http://gd.lv.court.gov.ua/userfiles/file/sud1307/pdf/Yzahalnennja/yz_korypcia_2014.pdf

[1] Uzahalnennia sudovoi praktyky rozghliadu sprav pro administratyvni koruptsiini pravoporushennia ta deiaki zlochyny, peredbacheni rozdilom XVII Kryminalnoho kodeksu Ukrainy za 2013 rik. – Boryspilskym miskraionnym sudom Kyivskoi oblasti [Elektronnyi resurs]. – Rezhym dostupu : http://zib.com.ua/ua/print/57263-uzagalnennya_sudovoi_praktiki_rozglyadu_ sprav_pro_ administra.html

was performed by them. Therefore, the accomplices of the provision of unlawful benefits (bribery) who voluntarily reported a crime, of course, are exempted from criminal liability based on part 5 of art. 354 of the CC of Ukraine. However, in voluntarily notification of a provider of unlawful benefit (bribery), other participants (co-executors, organizers, instigators, accomplices) from liability are not exempted, unless, of course, the notification is not made on behalf of all the accomplices or by agreement with them.

We offer our view on effective ways of improvement:

– the consolidation in the criminal law types of exemption from criminal liability, which are intended to solve only the task of disclosure of crimes;

– the exclusion of the possibility of existence in the law and the possibility of using "loopholes" in law-enforcement practice to stop criminal proceedings that have no judicial prospect owing to, for example, the impossibility of establishing evidences about the certain person's involvement of the commission of a crime.

We have a problem of conformity provisions of criminal-law and criminal-procedural norms, aimed at regulating closely related among themselves criminal-law and criminal-procedural institutes.

The respondents stressed the need to introduce specified changes during the questionnaire. The respondents expressed the following proposals: simplification of the system of gathering evidence (photo, video survey for the CPC of Ukraine); the definition in the CPC of Ukraine of the only possible preventive measure for those who committed a corruption crime in the form of only being held in custody; the ensuring proper protection of the participants in the

investigation judicial process from the influence of the person guilty for the corrupt crime (see supplement B).

Let's consider an example: when a person is previously exempted for the surrender of weapons (part 3 of art. 263 of the CC of Ukraine) commits a corrupt crime, then, in our opinion, there is no obstacles in exemption her from criminal liability for a corruption crime. However, if we comprehensively take into account the ways of improving the special types of exemption from criminal liability, which we have proposed in our work, namely: to expand the possibilities of using this institute for other corruption crimes, in particular upon to art. 262 of the CC of Ukraine. In this case, we also believe that the application of the exemption can be carried out. Therefore, this example shows our proposed expansion of ability to apply a special type of exemption from criminal liability for corruption crimes.

Our work is devoted precisely to defining "weak" places in the current wording of the incentive norms upon the corruption. Because the necessary improvements are aimed at increasing their effectiveness, but at the same time not reducing the importance of countering corruption for Ukrainian society. That is, the prediction of the most necessary grounds and conditions for the use of the institute of exemption with the achievement of the result as a correction of corrupt officials without be applied to them punishment.

Consequently, among the significant omissions in the wording of the grounds and conditions of the special exemption from criminal liability for corruption crimes, we can indicate the following:

1. The absence of a guidance indicating that "there is no another crime in the person's acts" among the grounds of

exemption. This definition is not new to the institute of exemption, but is not justifiably forgotten in the wording of part 5 of art. 354 of the CC of Ukraine.

2. Special exemptions can not be re-applied to the same person, and therefore requires the indication in the norm of the criminal law: "For the first time he committed actions foreseen as a corrupt crimes in the note to art. 45 of the CC of Ukraine".

3. The consolidation in the norm of a special type of exemption from criminal liability for corrupt crimes is the requirement of compensation for damages, if it was caused.

Today, the significant omissions in the formulations of the grounds and conditions for a special exemption from criminal liability for corruption crimes is the absence among the grounds for exemption an indication that "in the actions of a person there is no other crime" in the wording of part 5 of art. 354 of the CC of Ukraine. The special exemptions can not be applied for the second time to the same person, therefore requires the indication in the norm of the criminal law: "For the first time he committed acts foreseen as corrupt crimes in the note to art. 45 of the CC of Ukraine". The consolidation in norm of a special type of exemption from criminal liability for corruption crimes is the requirement of compensation for damages, if it was caused.

In the work considers the essence of the ground "voluntarily declared what has happened", based on which we conclude: the motives of the person in no way affect a finding of the availability of the specified ground. This may be fear, revenge, envy, jealousy, that is, anything. The crucial to further applying to the subject the exemption from criminal liability is precisely the establishment of voluntariness. At the same time, the confirmation is awareness of the person who reports the fact of the corruption crime committed by her, that to the

relevant authorities are not aware of its socially dangerous acts.

That is why the incentive requirements are mandatory, imperative for the court and do not leave any room for the "judicial discretion". In addition, incentive norms are issued as unconditional, and the court can not impose on a person exempt from criminal liability any obligations regarding further conduct. In case of exemption from criminal liability in accordance with part 4 of art. 32 of CC and part 1 of art. 33 of CC, person is considered such that has no criminal record.

In the national criminal law, the specified institutes, among others, are also comply with special types of exemption from criminal liability. A systemic feature of all special types is the incentive method, which with the development of criminal law began to spread as one of the two main, along with the traditional coercive, of methods of regulating criminal-legal relations. Yu. V. Golik is right, that without the encouragement of criminal justice loses its meaning, since any human efforts to settle their guilt to society will not receive support and at the end will gradually fade, and the punishment would exclusively be revenge.[1]

In highlighting the criminological component of the social conditionality of special types of exemption from criminal liability, it is first necessary to indicate on the public utility and legitimacy of "positive post-criminal behavior of a person", which is provided by the Special part of the CC. The public usefulness is determined by the direction of the person's behavior in active cooperation with law enforcement and justice system in the following areas: a) reliable notification of the commission of a crime; b) self-disclosure in

[1] Holyk Yu. V. Metod uholovnoho prava / Yu. V. Holyk // Zhurnal rossyiskoho prava. – 2000. – № 1. – S. 75.

the commission of a crime; c) the disclosure of other persons guilty of committing a crime; d) neutralization, minimization, reimbursement of socially dangerous consequences of property nature (taxes, fees, compulsory payments, financial sanctions, penalties, etc.) and non-property nature (international, ideological, political, etc. aspects); e) removal from the uncontrolled circulation of items with a special status of circulation (objects that are holders of state secrets, the narcotic drugs, the psychotropic substances, the weapons, the ammunition or the explosive devices); f) the general and special prevention of the commission of new crimes; g) the educational effect on the consciousness of the population in order to prevent the commission of crimes.

The well-known problem is the natural latency of such extremely socially dangerous crimes as state betrayal (art. 111 of the CC), an espionage (art. 114 of the CC), the creation of a criminal organization (art. 255 of the CC), the creation of unforeseen by the law paramilitary or armed formations (art. 260). The secrecy of committing such crimes, their high social danger, and the professional training of performers make it difficult to detect, disclose these crimes and proven guilty of parties, punish the perpetrators. The secrecy of committing such crimes, their high social danger, and the professional training of performers make it difficult to detect, disclose these crimes and proven guilty of parties, punish the perpetrators. Therefore, the legislator, as one of the high-impact factors in counteracting such crimes, had provided for the promotion of a special exemption from criminal liability by the conditions provided for by appropriate incentive requirements.

The humanistic factors fill each “cell” of the incentive requirements and are affected, at least, in the following: firstly, the choice of socially useful post-criminal behavior of

a person is solely a voluntary manifestation of personal will and can not be a forced step, in the conditions of the objective impossibility of continuing criminal activity or stem from by the actions of other persons. So, regarding the exemption from the criminal liability of the briber, the Plenum of the Supreme Court of Ukraine in part 2 of paragraph 21 of the resolution № 5 of April 26, 2002 "On judicial practice in cases about bribery" noted that it is considered to be voluntary the oral or written application to the bodies of internal affairs, the public prosecutor's office, another public authority with the right to institute criminal proceedings, that made on any motives, but not in connection with the fact that the bribe became known to the authorities or competent officials.[1] Secondly, the criminal law does not require a person to make extraordinary efforts in post-criminal behavior, which is the ground for the exemption of a person from criminal liability. In some cases, it is enough to commit one or two actions that are quite simple in the physical and mental aspects. Thus, according to part 3 of art. 263 of the CC a person should only voluntarily surrender over to the authorities weapons, ammunitions or explosive devices, in accordance with part 4 of art. 309 of the CC, to voluntarily apply to a hospital and start drug treatment. Third, the exemption of a person from criminal liability, in accordance with the incentive requirements of the Special Part of the CC, is an act of final forgiveness by the state of the person who committed the crime. That is why the incentive requirements are

[1] Pro sudovu praktyku v spravakh pro vykradennia ta inshe nezakonne povodzhennia zi zbroieiu, boiovymy prypasamy, vybukhovymy rechovynamy, vybukhovymy prystroiamy chy radioaktyvnymy materialamy : Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 kvit. 2002 r. № 3 [Elektronnyi resurs]. – Rezhym dostupu : http://zakon2.rada.gov.ua/laws/show/v0003700-02

mandatory, imperative for the court and do not leave any room for the "judicial discretion". In addition, incentive norms are issued as unconditional, and the court can not impose on a person exempt from criminal responsibility any obligations regarding further conduct. In case of exemption from criminal liability in accordance with part 4 of art. 32 of CC and part 1 of art. 33 of CC, person is considered such that has no criminal record. The entry into force of the regulation (definition) of the court on the exemption of a person from criminal liability is an act indicating the cessation of criminal law relationship between the perpetrator of a crime and the state. One of the legal consequences of exemption from criminal liability is determined by the fact that the fact of committing a crime loses any criminal-law importance.[1]

Consequently, since the Institute for exemption from criminal liability does not make decriminalization of the actions, but it exempts individuals from liability for the crime, that they committed. Thus, the exemption from criminal liability does not mean justification of a person or its recognition as innocent. The grounds for exemption from criminal liability, as identified in the CC of Ukraine, are not rehabilitated.

The conclusions to the section 3

The development of an exemption institute based on the mechanisms of customary law, the procedures and principles of complex social technology among other things, it will

[1] Holyk Yu. V. Metod uholovnoho prava / Yu. V. Holyk // Zhurnal rossyiskoho prava. – 2000. – № 1. – S. 76.

allow to reduce the costs of criminal prosecution for minor actions and minor crimes that are necessary for the organization of combating serious corruption crimes, as well as to reduce the extremely high workload of courts and investigations. In connection with this, it is proposed to provide the following general conditions: voluntary notification; active assistance in the disclosure of crimes (including detection, prevention and investigation); the committing a corruption crime for the first time; compensation for damages (if any). The specified conditions only in the complex form the ground for exemption from criminal liability. Therefore, the exemption from criminal liability does not mean justification of a person or recognition of him innocent.

In the work, the attribution of the institute of exemption from criminal liability for corruption crimes to inter-branch is substantiated. Such a classification determines the mechanism of application, which, certainly, is related to the norms of criminal-procedural and anti-corruption legislative acts.

A detailed characteristic of the conditions the exemption from criminal liability for corruption crimes allowed to focus attention on the practical application of these norms by the judicial investigative authorities. The voluntary notification of a corruption crime (provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine) is a priory condition for the exemption of a person from criminal liability. This requires the establishment of the fact of voluntariness, by separating motives that play a minor role and may be different.

In determining the active assistance to the disclosure of a corruption offense by a person, it is necessary in practice is the guilt's committing only the actions that confirming this

fact. Actions can be different and objectively depend on the circumstances of the crime, for example, a notification about the place of storage of the subject of the offense (unlawful benefit) or about other participants who were involved in its commission, the finding of property and of other values obtained in a criminal way.

An additional condition for special types of exemption from criminal liability for corruption crimes is necessary to consolidate the ban on the exemption of criminal liability of participants who previously committed similar socially dangerous acts.

In order to economy of the forces and means of criminal justice, it is recommended that such clarifications be presented forth in the Resolution of the Plenum of the Supreme Court of Ukraine to the common understanding and the application of a special exemption from criminal liability for corruption crimes.

It is advisable, in our opinion, to expand the possibility of applying a special exemption by creating a single incentive norm in the CC of Ukraine, which would be extended to a more numerous group of corruption crimes.

The analysis of the above-mentioned international legal provisions indicates that for the question of exemption from criminal liability for corruption crimes has been given little attention. There are no specific incentive provisions in the 1999 Council of Europe Convention. The 1997 OECD Convention allows for only two circumstances, which exempt from criminal liability for the bribing of a foreign official. The 2003 UN Convention provides the States parties with the greatest freedom to determine the grounds, conditions for

exemption from criminal liability for corruption crimes in the national legislation of the States parties.

Thus, by determining the correlation of the special types of exemption from criminal liability for corruption crimes in Ukraine with international legal standards, we conclude that the norms of the Ukrainian legislation partially meet the specified criteria. Since, in fact, the States parties (primarily the countries of the Istanbul Plan of Action), at their discretion, perpetuate standards that rehabilitate the person, who is guilty in a corrupt crime. Ukraine, reforming the current criminal-law framework, has reduced the list of circumstances on which a person may be exempted from criminal liability for corruption crimes in the General part of the CC of Ukraine (articles 45−48). In addition, the circumstances of a special type of exemption from criminal liability for such corrupt crimes that provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine had been united. These circumstances are corresponded in content to and meaning of the international standard provided for by the UN Convention 2003, is "effective repentance".

Also, the presence of signs of extortion of unlawful benefit by an official is no longer an incentive norm for Ukrainian legislation in the case of the exemption from liability of the person who offers (promises or gives) such a benefit. Such an approach is inherent in judicial investigation practice in some European countries, in particular Germany, where the mandatory requirement for qualification is the distinction between the blackmail and the provocation of unlawful benefits.

Consequently, the Institute for exemption from criminal liability does not make decriminalization of the actions, but it

exempts individuals from liability for the crime, that they committed. Thus, the exemption from criminal liability does not mean justification of a person or its recognition as innocent. The grounds for exemption from criminal liability, as identified in the CC of Ukraine, are not rehabilitated.

The conclusions

The process of formation and development of criminal-law institutes passes one of its active phases, and therefore requires a deep scientific research in this direction. Taking into account the specified requirements, the release of criminal liability for corruption crimes, the classification and significance of special types of this exemption, as well as the application of the specified institute and ways of its improvement, were studied.

On this basis, theoretical conclusions and practical recommendations and suggestions are developed, such as:

1. The exemption from criminal liability for corruption crimes is the refusal of the state through the competent authorities from the appointment of a person who committed a corruption crime, punishment and from the application of criminal law measures to legal persons, regulated by criminal and criminal procedural legislation.

2. The analysis of the provisions of international legal documents testifies that for the question of exemption from criminal liability for corruption crimes has been given little attention. There are no specific incentive provisions in the 1999 Council of Europe Convention. The 1997 OECD Convention allows for only two circumstances, which exempt from criminal liability for the bribing of a foreign official. The 2003 UN Convention provides the States parties with the greatest freedom to determine the grounds, conditions for exemption from criminal liability for corruption crimes in the national legislation of the States parties. The UN Convention against transnational organized crime of 2000 contains provisions on the criminal liability of legal entities.

Thus, by determining the correlation of the special types of exemption from criminal liability for corruption crimes in Ukraine with international legal standards, we conclude that the norms of the Ukrainian legislation partially meet the specified criteria. Since, in fact, the States parties (primarily the countries of the Istanbul Plan of Action), at their discretion, perpetuate standards that rehabilitate the person, who is guilty in a corrupt crime. Ukraine, reforming the current criminal-law framework, has reduced the list of circumstances on which a person may be exempted from criminal liability for corruption crimes in the General part of the CC of Ukraine (articles 45−48). In addition, the circumstances of a special type of exemption from criminal liability for such corrupt crimes that provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine had been united. These circumstances are corresponded in content to and meaning of the international standard provided for by the UN Convention 2003, is "effective repentance".

3. The triune essence of the grounds for a special exemption from criminal liability for corruption crimes (normative, factual and procedural) is highlighted. The simultaneous presence of all these components is a prerequisite for the application of the exemption of a person from criminal liability:

− the normative basis is availability, where the incentive legal rules of criminal law is contained in art. 354 of the CC of Ukraine;

− the factual basis is the presence taken together provided for conditions for exemption from criminal liability in part 5 of art. 354 of the CC of Ukraine 1) after a proposal, a promise

or an unlawful benefit; 2) before obtaining information about this crime from other sources by the relevant body; 3) a voluntary of crime report; 4) active assistance in disclosing a crime;

− the procedural basis is the norms of law, in particular the CPC of Ukraine, which determine the procedure for exemption from criminal liability.

4. The approaches to the analysis of goals, objectives and grounds for the use of special types of exemption from criminal liability as one of the areas of implementation of state anti-corruption policy are substantiated. The results of such research are consistent with the principles of criminal law (the benefits of mitigating circumstances, the saving of criminal repression, etc.) and generally accepted norms of international law and confirmation of the implementation of the anti-corruption strategy of Ukraine. Analyzing the general and special principles of criminal law, we noted that in the field of combating corruption, each of them, undoubtedly, has a manifestation. It was not find direct contradictions between the special types of exemption from criminal liability for corruption crimes and the fundamental ideas of criminal law. However, the principles that are key in such a relationship with the specified incentive norms deserve special attention, such as: the principle of the rule of law, the compliance of which appears in the consolidation by national legislation of special types of exemption from criminal liability for corruption crimes, which also directly meets the international standards of previously mentioned Conventions.

The principle of legality according to which special types of exemption from criminal liability for corruption crimes are enshrined in the Special Part of the CC of Ukraine regarding

such articles 354, 368-3, 368-4, 369, 369-2. The principle of equality of citizens before the law manifests itself in equal and identical conditions in one incentive norm (part 5 of art. 354 of the CC of Ukraine), which extends to a number of other corruption crimes (articles 368-3, 368-4, 369, 369-2 of the CC Ukraine). Taking into account the restrictions contained in the General Part of the Criminal Code of Ukraine on corruption crimes in matters of exemption from punishment and the imposition of a milder punishment, the principle of democracy is most notably manifested in the special incentive norms of the this code.

The modern view on the principle of humanism of criminal law consists in the inclusion of the following provisions:

a) the ensuring human rights by the criminal law;

b) the humanization of the criminal-law policy of the state, namely: reduction of the number of persons subject to criminal liability (due to special types of exemption from criminal liability for corruption crimes, etc.).

The principle of inevitability of criminal liability is closely linked to the institute of exemption from criminal liability, since the latter plays a precautionary role and contributes to the detection of traditionally latent corruption crimes. When the person who gives the unlawful benefit reports about it, is exempted from criminal liability, thus denouncing the official who wishes to receive (or received) such a benefit.

The principle of justice is manifested in the criminalization (decriminalization) of corrupt acts, taking into account the requirements of social justice as an element of public consciousness, in order for social approval of the

position of the legislator was manifested in the further practical realization of norms, in particular, the in encouraged nature.

The principle of the legislative definition of the crime is respected in part, since from the legislative consolidation of corruption crimes in the note of art. 45 of the Criminal Code of Ukraine, the scientific circles are seriously criticizing this definition. Scientists note out that the notion of a corrupt crime is absent and there is only an enumeration of certain articles of the code, which some scientists reasonably consider it to be incomplete. Therefore, the use of special types of exemption from criminal liability for corruption offenses directly depends on such listing. Accordingly, the more complete the listing is, the range of special types of exemption is the wider.

The principle of personal responsibility is related to the influence of punishment on the perpetrator and may not always be negative. The principle of fault liability in matters of exemption from criminal liability for corruption crimes is manifested in the subjective attitude of the person to the committed and will continue to be crucial in determining the necessary condition for dismissal, as availability of active assistance to the crime disclosure.

The principle of the advantage of mitigating liability of the circumstances for corrupt crimes is limited by the conditions set forth in the Article of the Special Part of the CC of Ukraine. The principle of full compensation for damage caused by a crime should be ensured regardless of the exemption of a person from liability for corruption crimes. The principle of economies criminal repressions should ensure, in all circumstances, the absence of a person's feeling of non-

punishment, especially when applied to her exemption from criminal liability.

5. A comparative analysis of the exemption from criminal liability for corruption crimes in Ukraine and some European countries(in particular Finland, Denmark, Sweden, Lithuania, Latvia, the Republic of Belarus and some others) allows you to identify individual important aspects: the use of incentive norms in Scandinavian countries is directed at informants (the so-called disclosers), against the corruptors, and the widespread using is the formation of citizens of the general rejection of a corrupt way of behavior. The criteria and conditions for the effectiveness of special types of exemption from criminal liability for corruption crimes have a significant social conditionality and are directly related to the legal awareness and legal culture of the Ukrainian population. The obtained results of the comparative analysis are directly correlated with the obtained data in a survey conducted by law enforcement officers (306 people). Respondents expressed in the questionnaires suggestions on the mandatory formation of a sense of justice of corruption among Ukrainians, regardless of active or passive form (see supplement B). For Ukraine, these directions are acceptable and fixed at the legislative level, but practically are not realized.

6. A sign of extortion of an unlawful benefit by an official, the presence of which is no longer necessary for Ukrainian legislation upon the guilty person is exempted from liability, was considered. Such an approach is inherent in judicial investigation practice in some European countries, in particular Germany, where the mandatory requirement for

qualification is the distinction between the blackmail and the provocation of unlawful benefits.

7. The criteria for classification of exemption from criminal liability are disclosed and it is determined what significance this affiliation of special types for exemptions for corruption crimes in the mechanism of law enforcement is. Thus, based on the defining of field of distribution, it is clear that it is the special types of exemption that are the only possible incentive norms in the field of combating corruption. Accordingly, it increases their value for practice. The criterion of the nature of the possibility of exemption from criminal liability allows us to characterize the place of a special exemption from criminal liability for corruption crimes (part 5 of art. 354 of the CC of Ukraine) as mandatory. In turn, this determines the importance of this norm in the mechanism of law enforcement. Based on the presence or absence of certain conditions for exemption from criminal liability, a special type of dismissal is considered to be unconditional. This affiliation testifies to the effectiveness to the guilty person. Since the latter has the confidence that as a result of the use by court the part 5 of art. 354 of the CC of Ukraine it will not be required from it and no further action will be expected in the future to confirm the exemption. By the nature of creation of the conditions for exemption from criminal liability - the conditions of the application of a special incentive norm for corruption crimes related to positive post-criminal behavior of a person. That is, they depend directly on the will of the perpetrator, and not the events determined by law.

8. In our opinion, it is useful to extend the possibility of applying a special exemption by establishment a single incentive norm in the CC of Ukraine, which would be

extended to a more numerous group of corruption crimes. A special part of the CC of Ukraine provides for 21 special type of exemption of a person from criminal liability, and the tendency to increase this number has a controversial assessment. However, it is noted that since each such type of its prerequisites and grounds characterize exemption, it is used independently and can not replace each other. From the note stated in the art. 45 of the CC of Ukraine in the list of 14 corruption crimes, only in five components of these socially dangerous acts are provided in the incentive norm of part 5 of art. 354 of the CC of Ukraine and belong to a special type of exemption. Accordingly, the increased use of this special type of exemption is expedient and justified for practice.

9. The essence and meaning of the basic concepts of the institute are disclosed of the work of criminal liability for corruption crimes – "grounds" and "conditions". The development of an exemption institute based on the mechanisms of customary law, the procedures and principles of complex social technology among other things, it will allow to reduce the costs of criminal prosecution for minor actions and minor crimes that are necessary for the organization of combating serious corruption crimes, as well as to reduce the extremely high workload of courts and investigations. In connection with this, it is proposed to provide the following general conditions: voluntary notification; active assistance in the disclosure of crimes (including detection, prevention and investigation); the committing a corruption crime for the first time; compensation for damages (if any). The specified conditions only in the complex form the ground for exemption from criminal liability. About availability of need to provide a

mandatory condition for exemption from criminal liability "compensation for damage caused by a corruption crime" 60,8 % of respondents had replied positively, negative − 13,7 %; had found difficulty in replying – 26,1 % (see supplement B).

10. The attribution of the institute of exemption from criminal liability for corruption crimes to inter-branch is substantiated. Such a classification determines the mechanism of application, which, certainly, is related to the norms of criminal-procedural and anti-corruption legislative acts. During the questionnaire respondents directly indicated out the need to simplify the system of gathering evidence (photo, video survey for the CPC of Ukraine); legislative consolidation of the minimum amount of unlawful benefit from which criminal liability should be incurred and the return of administrative responsibility for small bribes to officials; establishment electron interaction between citizens and officials, which would exclude an extra bureaucracy.

11. A detailed characteristic of the conditions the exemption from criminal liability for corruption crimes allowed to focus attention on the practical application of these norms by the judicial investigative authorities. The voluntary notification of a corruption crime (provided for in articles 354, 368-3, 368-4, 369, 369-2 of the CC of Ukraine) is a priory condition for the exemption of a person from criminal liability. This requires the establishment of the fact of voluntariness, by separating motives that play a minor role and may be different.

It is substantiated, that the motives of the person in no way affect a finding of the availability of the specified ground. This may be fear, revenge, envy, jealousy, that is, anything. The crucial to further applying to the subject the

exemption from criminal liability is precisely the establishment of voluntariness. At the same time, the confirmation is awareness of the person who reports the fact of the corruption crime committed by her, that to the relevant authorities are not aware of its socially dangerous actions.

In determining active assistance for the disclosure of a corruption crime, a guilty person needs to commit actions that would confirm this fact. The actions can be different and objectively depend on the circumstances of the crime, for example, a notification about the place of storage of the subject of the crime (unlawful benefit) or about other participants who were involved in its commission, the finding of property and other values obtained in a criminal way.

12. An additional condition for special types of exemption from criminal liability for corruption crimes is necessary to consolidate the ban on the exemption of criminal liability of participants who previously committed similar socially dangerous acts. Therefore, the exemption from criminal liability does not mean justification of a person or recognition of his innocence, and to provide an unlimited number of opportunities to be exempted from criminal liability is unjustified.

13. In order to economy of the forces and means of criminal justice, it is recommended that such clarifications be presented forth in the Resolution of the Plenum of the Supreme Court of Ukraine to the common understanding and the application of a special exemption from criminal liability for corruption crimes. In their questionnaires, law enforcement officials indicated to the need to define the uniform application of the courts of the rules of justification

of court decisions upon facts of corruption, since this is primarily lacked in practice (see supplement B).

14. The Institute for exemption from criminal liability does not make decriminalization of the actions, but it exempts individuals from liability for the crime, that they committed. Thus, the exemption from criminal liability does not mean justification of a person or its recognition as innocent, but the grounds for exemption from criminal liability, as identified in the CC of Ukraine, are not rehabilitated. Consequently, the norm on the special exemption liability of corruption crimes in its direction is incentive, stimulating, by encouraging the perpetrator to active repentance, to compensation for harm, and the disclosure of accomplices.

15. Based on the study of the theoretical positions and the analysis of international legal standards, in particular the 2003 UN Convention, the Criminal Convention of the Council of Europe 1999, the necessity of making significant changes in the very concept of corruption crimes was substantiated. Since from it directly depends that to which socially dangerous acts in the case of their commission can be applied exemption from criminal liability.

It was proposed to amend articles 44, 45, 354, 369-2 of the CC of Ukraine, in particular to supplement art. 44 by the note, which contains a list of corruption crimes and special grounds and terms for exemption from criminal liability for corruption crimes.

The need in changing of the placement of this incentive norm was argued, as it will contribute to the required systematization of the criminal law. And so, the art. 44 of the CC of Ukraine, which is the initial one in the issues of

exemption from criminal liability, will contain key concepts and definitions of corruption crimes and conditions, grounds for exempting a person from criminal liability for their committing. Accordingly, the part 5 should be removed from art. 354 of the CC of Ukraine and the concept of corruption crimes should be removed from art. 45 of the CC of Ukraine.

It was proven in the new wording of art. 44 of the CC of Ukraine that it must be foreseen not taken into account conditions in the current wording of art. 354 of the CC of Ukraine: "the person who first committed a corruption crime", "fully compensated for the damage caused by him or eliminated the damage if the action actually committed by him does not contain another crime".

It is proposed to supplement the list of articles in the note, which belong to corruption crimes by articles 209 and 366-1 of the CC of Ukraine. Because they directly belong to the specified category of crimes by an objective and subjective grounds.

Given these changes, art. 44 of the CC of Ukraine should be presented in the new wording:

The article 44. *The legal grounds and procedure for exemption from criminal liability.*

1. A person, who has committed a crime, including a corruption crime, is exempted from criminal liability in cases provided for by this Code.

2. The exemption from criminal liability in cases stipulated by this Code shall be carried out exclusively by a court. Law establishes the procedure for exemption from criminal liability.

The note.

1. Corruption crimes in accordance with this Code are considered crimes provided for in articles 191, 262, 308, 312, 313, 320, 357, 410 in the case of their commission by abuse of office, as well as a crimes stipulated in articles 209, 210, 354, 364, 364-1, 365-2, 366-1, 368-369-2 of this Code.

2. A person who first committed a corruption crime is exempted from criminal liability if, until to receiving information from another sources about this crime by an authority, its an official, according to the law, had the right to report suspicion, has voluntarily declared what happened to such an authority and had actively contributed to the disclosure of the crime and fully compensated for the damage caused by him or eliminated the caused damage, if an act actually committed by it does not contain another crime. The specified exemption does not apply in case the corruption crime was committed upon the persons certain in part four of art. 18 of this Code.

Taking into account that the art. 369-2 of the CC is included in the list of corruption crimes we propose to exclude from its provisions obsolete norms. The note of the art. 369-2 of the CC of Ukraine contains a reference to the Law of Ukraine "On the principles of prevention and counteraction of corruption", which has lapsed. This will eliminate the available gap in the criminal law, which makes it impossible to apply this norm.

The note to art. 369-2 of the CC of Ukraine is formulated with changes:

The article 369-2. *An abuse of influence.*

The note. Persons authorized to perform functions of a state are persons certain in clauses 1−3 of part 1 of article 3 of the Law of Ukraine "On prevention of corruption".

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Supplements

Supplement A

A questionnaire form for prosecutors

Dear Respondent!

In connection with the research on the topic "Special types of exemption from criminal liability for corruption crimes", we invite you to take part in the survey. Your opinion is important for us. We guarantee the confidentiality of received information. Answers will be used in a generalized form exclusively for scientific purposes.

In order to complete the questionnaire, you need to choose from the suggested answers in individual cases those with whom you personally agree (it can be several answers at once), in others - express your own opinion.

Thank you in advance for participating in the survey!

1. Specify your service and position:

The court	Prosecutor's office	National Police	State agency	Local government	Position
a	b	c	D	E	

2. Specify the region of Ukraine where you work?

a) South; b) North; c) West; d) East; e) the central region

3. Work experience in practical units.

To 2 years	2−5 years	5−10 years	More than 10 years

4. Have you encountered in your practice or your colleagues' activities with cases of exemption from criminal liability for corruption crimes?

Happened personally	Happened in the work of colleagues	Did not come across

Question	*Yes*	*Difficult to answer*	*No*

Question	*Yes*	*Difficult to answer*	*No*
5. Is there a tendency to increase the number of acts of corruption today?			
6. Is it justified, that the legislator provided for a special type of exemption from criminal liability for corruption crimes in art. 354 of the Criminal Code of Ukraine?			
7. Is it expedient to provide a special type of exemption from criminal liability for corruption crimes in other articles of Section on service crimes of the Criminal Code of Ukraine?			
8. Is there a need to provide a mandatory condition for exemption from criminal liability "compensation for damage caused by a corruption crime"?			
9. Is there a need to provide a mandatory condition for exemption from criminal liability "the person committed a corruption crime at first"?			
10. Should the possibility of exemption from criminal liability for all corruption crimes listed in the note of art. 45 of the Criminal Code of Ukraine be provide?			
11. In your opinion, are officials sufficiently informed about the special type of exemption from criminal liability for separate corruption crimes (part 5 of art. 355 of the Criminal Code of Ukraine)?			
12. In your opinion, are public sufficiently informed about the special type of exemption from criminal liability for separate corruption crimes (part 5 of art. 354 of the Criminal Code of			

Question	*Yes*	*Difficult to answer*	*No*
Ukraine)?			
13. Would the awareness of the possibility of exemption from criminal liability for corruption crimes affect the detection and disclosure of such crimes?			

14. What is the need for exist of a special kind exemption from criminal liability for corruption crimes?

a) to encourage the positive behavior of corruptionists;
b) to detect hidden facts of corruption;
c) for a humane attitude to blame;
d) such norms aren't need, they should be excluded from the Criminal Code of Ukraine

15. From which sources do you get information about anti-corruption legislation?

a) Media (television, radio, press);
b) communication with friends;
c) Internet;
d) official publications of the Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine and other state agency;
e) service classes.

16. Can you say that the application of exemption from criminal liability for corruption crimes is one of the effective measures to combat corruption in our country?

a) yes; b) no; c) difficult to answer;
d) Your version _____
_____
_____
_____.

17. In your opinion, what is needed for effectively counteract corruption in Ukraine?

a) introducing more strict sanctions;

b) exclusion of any possibility of exemption from criminal liability for all corruption crimes ;
c) creation of a system of public control;
d) expanding possibility of exemption from criminal liability for all corruption crimes;
e) Your version_____.

18. Your suggestions on improving legislation in the sphere of combating corruption:

_____
_____
_____
_____
_____
_____
____.

Part 5 of the art. 354 of the Criminal Code of Ukraine states that a person who has offered, promised or obtained unlawful benefit is exempted from criminal liability for crimes stipulated by articles 354, 368-3 , 368-4, 369 , 369-2 of this Code, if after offering, promising or obtaining unlawful benefit, the person voluntarily informed the law enforcement agency (before receiving other sources of information) about this crime and actively contributed to the disclosure of an offense committed by a person who obtained unlawful benefits or accepted her offer or promise.

The specified exemption does not apply if the offer, promise or unlawful benefit were committed in relation to persons specified in part 4 of art. 18 of this Code.

Note to art. 45 of the Criminal Code of Ukraine states that corruption crimes in accordance with CC are crimes provided by articles 191, 262, 308, 312, 313, 320, 357, 410; in the case of their commission by misuse of official position, and crimes provided for in articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code.

Supplement B

The results of a survey of law enforcement officers during a study on "Special types of exemption from criminal liability for corruption crimes"

During the research of the issues of exemption from criminal liability for corruption crimes were interviewed 306 law enforcement officers.

Most of respondents are representatives of the prosecutor's office (73,5 %) (here and next in the brackets is indicated the number of persons − 225) who hold positions of heads (deputies) of oblast and local public procuracy, chiefs (deputies) of departments and divisions, prosecutors of divisions, leading specialists, senior investigating and investigating bodies of the procuracy of the regional and local levels.

Also, the questionnaire was conducted with employees:

- of the National police 19,6 % (60) who hold positions of heads (deputies) of departments and divisions, heads of pre-trial investigation bodies, senior investigators and investigators and inspectors of the bodies of the National police of the regional and local levels;
- SBU – 6,9 % (21) , who hold positions of heads and deputies of heads of divisions, sectors, senior inspectors, chief specialists, leading specialists, deputy officers of the SBU of the regional level.

Depending on the region in which respondents work, the received data were distributed as follows: in the southern regions – 10,8 % (33), in the central regions – 18 % (55), in the west – 77,2 % (218).

For the period of work in practical units, the respondents were distributed as follows:

to 2 years – 6,5 % (20);
2−5 years – 25,5 % (78);
5−10 years – 34 % (104);
more than 10 years – 34 % (104).

The majority of respondents answered negatively the question about whether cases of exemption from criminal liability for corruption crimes occurred in their practice or colleagues' activities: the respondents did not come across – 61,4 % (188), happened in the work of their colleagues – 24,8 % (76), and the least responded that happened personally (that is, in their own practice the respondent had to send the relevant materials to the court to decide the issue of the exemption of the guilty person from

criminal liability, in particular, under article 369 of the CC Ukraine) – 13,7 % (42). The results obtained in some cases exceed 100 %, because respondents were able to mark several variants in their responses. For example, the mentioned question has been answered positively at once, that cases of exemption from corruption crimes happened in the work of colleagues and happened personally.

Most of the respondents noted that today there is a tendency to increase the number of acts of corruption – 54,9 % (168); a large part noted that it is difficult to answer – 29,4 % (90); the smallest number of responses indicated that there were no such tendencies – 15,7 % (48).

In order to determine how substantiated is the present deployment in the criminal law of the incentive norm for corruption crimes, respondents were invited to respond to the questions: "Is it justified, that the legislator provided for a special type of exemption from criminal liability for corruption crimes in art. 354 of the Criminal Code of Ukraine?". Most of the respondents agreed with the present version of the norm in the Code, answering "yes" – 54,9 % (168); the smaller number of responses denied such a systematization option, answering "no" – 24,2 % (74). And the part of respondents abstained from the final assessment of the proposed situation, noting that it is difficult to answer – 18,3 % (56).

Accordingly, on the next related to the previous question, the expediency of providing a special type of exemption for corruption crimes in another article of the section on service crimes of the CC of Ukraine, the majority of respondents answered "no" – 42,5 % (130); agreed, answering "yes" – 32 % (98); did not determine with the answer – 23,5 % (72).

About the availability of the need to provide a mandatory condition for exemption from criminal liability "compensation for damage caused by a corruption crime" positively answered 60,8 % (186) respondents; negatively − 13,7 % (42); did not determine with the answer − 26,1 % (80).

A large number of respondents did not agree with the proposed option of providing a mandatory condition for exemption from criminal liability "the person committed a corruption crime at first" − 47 % (144); but, not less part of the respondents supported such a

mandatory condition for the guilty person – 35,9 % (110), found difficulty in replying – 16,3 % (50).

Most respondents denied by their answers the need of prediction of possibility of exemption from criminal liability for all corruption crimes listed in the note of art. 45 of the CC of Ukraine – 59,5 % (182), agreed with proposed changes – 15,7 % (48), hesitated to answer – 23,5 % (72).

According to respondent's opinion, are officials sufficiently informed about the special type of exemption from criminal liability for separate corruption crimes (part 5 of art. 355 of the CC of Ukraine) negatively answered the large part – 45 % (138); positively – 30,7 % (94); hesitated to answer – 24,8 % (76).

With regard to similar awareness, but already to the public, the results obtained had been differed more cardinal in the direction of ignorance of ordinary citizens, it was confirmed by 74,5 % (228) of the respondents, denied – 5,9 % (18), hesitated to answer –19,6 % (60).

An enough part of respondents supported the proposed option in the questionnaire of raising awareness of the possibility of exemption from criminal liability for corruption crimes, in particular, will affect to increase the detection and disclosure of such crimes – 47 % (144); did not agree with such effectiveness − 22,2 % (68); did not determine with the final answer – 31,2 % (96).

In order to find out the opinion of law enforcement officers regarding the need of availability of special types of exemption from criminal liability for corruption crimes, four options were proposed. Among them, the confident majority was received: to identify hidden facts of corruption – 66 % (202). A cardinal opposite position was taken by the part of respondents who said that such standards are not needed; they should be excluded from the CC of Ukraine – 18,3 % (56). Approximately the same number of approved responses was received by the following options, which provided: to encourage positive behavior of corrupt officials – 11,1 % (34) and for a humane attitude to the guilty – 9,8 % (30).

This distribution of answers, first, proves the importance of special types of exemption from criminal liability for corruption crimes as influential means for detecting specified category of socially dangerous actions, since the latter have a super-high level

of latency. Namely the awareness of the need to find effective means of disclosure, to identify the facts associated with various actions upon unlawful profit, was persecuted and, as a result, confirmed scientific looking for in specified direction. To the question of which sources respondents receive information about anti-corruption legislation, the most responses belong to the official publications of the VRU, the CMU and other state bodies – 59,5 % (182), service classes – 52,3 % (160), Media (television, radio, press) – 36,6 % (112), communication with friends – 18,3 % (56). Such results highlighted the need to raise the level of awareness of officials about anti-corruption norms, including incentive, which was previously discussed by the official sources. They even confirmed that there has a deficit of special information that provided an interpretation of the practical application of anti-corruption norms adopted by the legislator. The notes let to approve about the specified facts to the author, that the respondents could mark at the end of the questionnaire.

Most of respondents denied the use of the exemption from criminal liability for corruption crimes as one of the effective measures to combat corruption in our state – 54,9 % (168), the large part hesitated with the answer – 26,1 % (80), positively answered – 14,4 % (44).

To determine the attitude of the respondents to what is needed to effectively combat corruption in Ukraine, four options were proposed. The option of "introducing more strict sanctions" – 44,4 % (136) received the largest number of responses. Next by the decrease: creation of a system of public control exclusion – 27,5 % (84); increase in wages for officials (option offered by respondents themselves) – 20,9 % (64); expanding possibility of exemption from criminal liability for all corruption crimes – 4,6 % (14).

At the end of questionnaire the respondents made suggestions on improving the legislation in the sphere on combating corruption in Ukraine. Among them deserve attention and analysis of, the following:

- the need to increase the wages of officials – 20,9 % (64);
- eliminating gaps in the criminal law, in particular excluding the outdated reference to a law that is no longer valid in the note to art. 369-2 of the CC of Ukraine;

- amendments to the Law of Ukraine "On the National anti-corruption bureau" on the clear definition of evaluation terms, which may involve difficulties with use;
- raising the standard of living of the population of Ukraine;
- the proper logistical support of persons authorized to perform functions of the state and local self-government;
- the changes in the legal conscience of Ukrainians to reject corruption, regardless of active or passive form;
- the defining and bringing to practitioners of state bodies and local self-government, as well as the algorithm of actions in detecting (observing) the facts of corruption to ordinary citizens;
- simplifying the system of gathering evidence (photo- video survey for the CPC of Ukraine);
- the necessity of legislative consolidation of the minimum amount of unlawful benefit from which criminal liability should be incurred and the return of administrative responsibility for small bribes of officials;
- the establishment of electronic forms of interaction between citizens and officials, which would exclude an extra bureaucracy;
- the determination of the same application of the rules of justification of court decisions on corruption facts by the courts. This demonstrates the need for an adoption of an appropriate clarification to the Plenary of the Supreme Court of Ukraine regarding the issues of an application of anti-corruption norms, which is lacking for practitioners;
- the prediction of holding a special check for elected positions;
- the verification of goodness of civil servants;
- the consolidating the confiscation of all property as a corruptor, and members of his family;
- the prohibition of corruptors to hold the life-long positions of government officials;
- in the Law of Ukraine "On prevention of corruption" to define the rights of authorized persons to use functions of the state or local self-government;

- to identify in the CPC of Ukraine that only possible security measure for the guilties, who committed the corruption crime, should be the imprisonment;
- the decriminalization of art. 370 of the CC of Ukraine;
- the establishment of rewards for the disclosers;
- an appropriate protection of participants in the investigation judicial process from the influence of the guilty person in a corrupt crime.

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