встановлених в державі правил поведінки (адже декларації перебувають у вільному доступі, ознайомитись із ними може кожен бажаючий).

На підставі викладеного вище можна зробити висновок про те, що досвід Грузії в частині регулювання кримінальної відповідальності за декларування недостовірної інформації та неподання суб'єктом декларування відповідної декларації виглядає доволі цікавим. Так, наприклад, модернізація ст. 366^3 КК України можлива шляхом проєктування у неї положень ст. 355 КК Грузії в частині закріплення в диспозиції вказівки про те, що неподання суб'єктом декларування декларації особи, уповноваженої на виконання функцій держави або місцевого самоврядування карається у випадку, якщо воно вчинене після накладення адміністративного стягнення за те саме діяння.

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THE SOCIAL SIGNIFICANCE OF THE ORGANIZATION OF OPERATIONAL METHODS OF COMBATING CORRUPTION

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At present, corruption in Ukraine has grown significantly, the sphere of risks and seriousness of threats has expanded, and such negative phenomena have penetrated into all spheres of society. At the same time, in practice there is an active appeal of the defense to establish criminal

provocation in the actions of law enforcement officers. Indeed, in criminal cases of corruption, one often has to face a situation where the commission of a crime by a person is provoked by law enforcement officers. This is a fairly common phenomenon in cases of crimes such as offering, providing or receiving illegal benefits. official or a person related to him. At the same time, the case file shows that the consent was obtained as a result of active actions in circumstances that indicate that without the intervention of law enforcement officers intent to obtain or transfer illegal benefits would not have arisen and the crime would not have been committed. Due to the relatively high efficiency of such an operational measure as controlled bribery, law enforcement officials use it to detect bribery or commercial bribery. It should be noted that such actions can lead to the arbitrariness of law enforcement officers, to exceeding their official powers, significantly restricting the constitutional rights and interests of officials in respect of whom the above-mentioned method of combating corruption. In such circumstances, those responsible for the abuse should be held liable, including criminal liability in the event of provocation.

At the same time, it should be noted that in the process of bringing people to justice for provoking bribery today there are also many problems. The term "provocation" is used in various spheres of life: diplomacy, medicine, military affairs and law. In legal activity, provocation is understood as incitement, incitement of certain groups, organizations to actions that can lead to serious consequences [1, p. 336]. Most often it is associated with the activities of law enforcement agencies. The legal essence of provocative acts should be considered in relation to this illegal act with the operational and investigative legislation [2, p.83-84;], as it is essential and relevant for further improvement of law enforcement practice. Operational experiment is defined by modern legal scholars as a way to obtain information. In an artificial situation, a person, reasonably suspected of bribery, is faced with a voluntary choice of certain actions, and the staff of operational units check the information about his illegal behavior.

It is possible that the implementation of such measures to combat corruption-related crimes may be accompanied by their desire at all costs to achieve personal performance and results in the detection and investigation of these crimes. The presence of negative subjective factors related to law enforcement, which in some cases are accompanied by active provocative actions, leads to violations of the law.

The public danger of provoking bribery is that the provocateur’s actions are aimed at creating false evidence of a crime in the form of receiving an offer, transfer or receiving a bribe against a knowingly innocent official, resulting in unfounded suspicions, inspections by law enforcement agencies. as well as for the initiation of criminal proceedings and proceedings thereon,

which may lead to a violation of the principles of justice. Therefore, criminalizing the provocation of bribery as a dangerous public act is a very important step to prevent abuse and arbitrariness in the field of anti-corruption activities. However, given the current state of relevant legislation and the public perception of such a need, there are significant difficulties in establishing, documenting and proving the fact that an official intentionally creates conditions for offering or giving a bribe. Scientists and practitioners have not developed a methodology for detecting and investigating such crimes. Problems, first of all, arise when proving the direct intent and purpose of a criminal act, which are mandatory features of this crime. Therefore, some scholars emphasize the need to exclude criminal liability for provoking bribery. This decision is usually justified by increasing the efficiency of law enforcement agencies to identify bribe-takers and bring them to justice [3, p. 98]. In support of this position is the argument that an honest official who is offered a bribe will never agree to accept it, even in the case of persistent provocative actions. He is by no means deprived of the opportunity to choose a socially useful option of behavior – by refusing a bribe, and thus successfully pass the test [4, p. 157].

As an alternative to criminalizing the provocation of bribery, these researchers propose to limit the qualification of incitement to commit a corruption crime as a form of complicity in it. They note that in the situation of inciting an employee to receive a bribe by a person who prepares a crime (bribery) and commits a crime (incitement to receive a bribe), the accomplice is the operative himself. " The legal basis for this conclusion is certain acts of legislation and guiding documents of higher judicial authorities. UN Anti-Corruption and Article 15 of the Council of Europe Criminal Law Convention on Corruption, which requires the state to take such measures at the level of national law as may be necessary to criminalize any participation in a crime, for example as a co-perpetrator. accomplice or instigator, as well as preparation and attempt to commit a crime of corruption.

If the provocation is considered from the standpoint of the type of complicity in the crime, it does not require allocation to a separate special rule [3, p. 99]. Actually, it can be done in the case of decriminalization of the act under Art. 370 of the Criminal Code, it will certainly be qualified as complicity in a corruption crime by incitement and will be assessed according to the rules of Art. 27 and the relevant article of the Criminal Code on corruption. But this approach is wrong because it does not take into account the legal consequences of such a qualification. And they, taking into account the current position of international law and national legal approach, developed on the basis of the case law of the European Court of Human Rights, significantly distinguish between the criminal penalties of an official

as an accomplice in a corruption crime and the consequences of provocation as illegal activity. When committing a crime, both the perpetrator and his accomplices are criminally liable. Therefore, with such a qualification, each of them will be responsible in their part, no incitement does not eliminate the criminal punishment of acts of corruption. Instead, the commission of a crime by an official, which consists in provoking bribery, in the modern approach, as a rule, excludes the criminal punishment of corruption.

To properly understand the content of this postulate, it is necessary to analyze the interpretation of the term "evidence" in criminal proceedings. Evidence in a criminal case is information obtained in the manner prescribed by law, on the basis of which the coroner, investigator, prosecutor and court establish the presence or absence of socially dangerous acts, guilt of the person and other circumstances relevant to the proper resolution of the case [5, p. 5]. Judgment cannot be based on inadmissible evidence. Meanwhile, in Part 3 of Art. 271 of the CPC states that things and documents obtained during the preparation and conduct of measures to control the commission of a crime by influencing a person's behavior through violence, threats, blackmail cannot be used in criminal proceedings. This means that the de facto recognition of provocative actions in a particular situation as criminal automatically eliminates the possibility of using as evidence the data collected as a result of provocation in criminal proceedings on corruption. An analysis of court decisions in recent years shows that most defendants charged with corruption offenses were acquitted if the actions of law enforcement officers contained a provocation of bribery, given the lack of evidence to prove their guilt.

The situation of responsibility of officials for provocative behavior (actions) is correctly assessed on the basis of positions determined by the European Court of Human Rights. In particular, the Court has developed criteria for distinguishing the provocation of a crime in order to expose it from permissible behavior. They are most fully set out in the judgment in the case of Bannikov v. Russia. In particular, it states that such a criterion is factual material, which indicates whether the representatives of the state, who conducted a covert operation within the framework of de facto passive behavior, remained or went beyond these limits by acting as provocative agents; an assessment of the procedure by which operational actions are permitted is provided. Attention is drawn to whether the law enforcement agency had data that would indicate the actions of a person aimed at committing a crime. Previous violations of the law by a person, adherence to the principles of adversarial proceedings and procedural equality of the parties in criminal proceedings should also be analyzed. The conduct of operatives is also taken into account: the accused must be acquitted if his actions were provoked by a person who has repeatedly participated in such

operations. In this case, the burden of proving that there was no provocation, provided that the arguments of the accused are not absolutely improbable, rests with the investigating authorities [6, paragraphs 37–39, 53].

The ECtHR therefore concluded that all evidence obtained as a result of provocation by law enforcement should be declared inadmissible, as it was obtained as a result of a substantial violation of the human right to a fair trial, as enshrined in Article 6 § 1 of the Convention. This allows individual researchers to interpret the status quo as follows: It is unlikely that this approach goes beyond the rule of non-application of evidence gathered as a result of provocation, especially since the criminal activity of the defendants can be proved by other evidence devoid of these defects.

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