

## Совершенствование уголовного законодательства об ответственности за должностные преступления: опыт зарубежных стран

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**Аннотация.** Авторам выделяется общие подходы к определению специального субъекта должностных преступлений в законодательствах зарубежных стран: дается сравнительная характеристика имеющихся признаков понятия «должностного лица» как специального субъекта должностных преступлений в законодательствах Франции, Германии, США и Японии; выделяется общий признак с акцентом на возможность перспективной преступности для законодательства РФ.

Делается особый акцент на анализ дифференциации ответственности за должностные преступления в зависимости от признаков специального субъекта в праве Японии. Выносятся ряд предложений о введении в УК РФ собирательного понятия должностного лица с классифицирующей его идеей.

Проводится анализ зарубежного опыта по вопросам регламентации ответственности за должностные преступления в законодательствах Франции, Германии, США и Японии, а также стран — «бывших» республик СССР; выделяется общий признак с акцентом на особенности техники построения составов, возможность перспективной преступности. Выносятся ряд предложений по совершенствованию состава преступлений, предусмотренного ст. 285 УК РФ.

**Ключевые слова:** должностные преступления, злоупотребление должностными полномочиями, опыт зарубежных стран, регламентация ответственности, классифицирующий признак.

Согласно данным Индекса восприятия коррупции за 2016 г., опубликованному Transparency International, «коррупция по-прежнему господствует в мире». Коррупция на высшем уровне определяется как злоупотребление властью в высших эшелонах государственной системы, которое приносит выгоду немногочисленной элите за счет большинства, нанося серьезный и обширный ущерб отдельным гражданам и всему обществу<sup>1</sup>.

Актуальность изучения должностных злоупотреблений, составляющих основу коррупционных преступлений, обусловлена глубокими изменениями экономических условий хозяйствования. Всеохватывающая интеграция экономики вызывает необходимость поиска и внедрения новых подходов обеспечения экономической безопасности всего сообщества, повышения правосознания и уровня правового развития в целом.

В результате принимаемых мер в Российской Федерации, к сожалению, снижение уровня преступлений коррупционной направленности не происходит. Согласно статистической отчетности Генеральной Прокуратуры РФ за 2016 г. на 1,4%

увеличилось количество указанных преступлений, удельный вес которых в общем числе зарегистрированных преступлений составил 1,5% (32 924 ед.)<sup>2</sup>.

При этом, по состоянию на 1 января 2017 г. в РФ по ст. 285 УК РФ — злоупотребление должностными полномочиями — зарегистрировано 2 273 преступления. При этом последние три года (данные за 2013–2016 гг.) количество зарегистрированных преступлений по данной статье практически не изменяется<sup>3</sup>.

Должностные преступления как общественное явление существуют во всех странах современно-го мира, а проблема уголовной ответственности лиц, совершающих данные преступления, остается актуальной также и в зарубежных государствах вне зависимости от их политического устройства<sup>4</sup>.

Вместе с тем, до сих пор не существует единого подхода к определению самого специального субъекта этих преступлений — должностного лица. Уголовное законодательство зарубежных стран неоднозначно регулирует ответственность должностных лиц за совершение злоупотребления должностными полномочиями. Для совершен-

<sup>1</sup> Индекс восприятия коррупции за 2016 г.: Пороговый круг коррупции и неравенства должен быть разорван. Укрепление позиций политиков-популистов во многих странах является тревожащим предупреждением [Электронный ресурс] // Transparency International / АНО Центр «Трансперенси Интернешнл-Р». Москва, 25.01.2017; [http://www.transparency.org/news/pressrelease/corruption\\_perception\\_index\\_2016\\_vicious\\_circle\\_of\\_corruption\\_and\\_bribe](http://www.transparency.org/news/pressrelease/corruption_perception_index_2016_vicious_circle_of_corruption_and_bribe).

<sup>2</sup> Статистический сборник Генеральной прокуратуры РФ: Состояние преступности в России за январь–декабрь 2016 г. [Электронный ресурс] // Генеральная прокуратура РФ, Москва.

<sup>3</sup> Портал правовой статистики Генеральной прокуратуры РФ [Электронный ресурс] // Генеральная прокуратура РФ, Москва; <http://crimestat.ru>.

<sup>4</sup> Шуха К. Понятие должностных преступлений. Пенза: Изд. Пензенского университета, 2006. 320 с.

# Poniatie I Osobennosti Konstitutsionnopravovoi Otvetstvennosti Problemy Robii Opyt Zarubezhnykh Stran

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