

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

Румянцева Ю.Н.,

кандидат экономических наук,

доцент кафедры государственно-муниципального управления и предпринимательского права Всероссийского государственного университета юстиции (РПА Минюста России), Иркутский институт (филиал) E-mail: yurumyantseva@mail.ru

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 обществу¹.

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.)².

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 изменяется³.

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 устройства⁴.

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-

¹ Индекс восприятия коррупции за 2016 г.: Пороховый 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.transparencymedia.org/www/pressrelease/corruption_perception_index_2016_vicious_circle_of_corruption_and_bribe.

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

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

⁴ Шухаев К. Понятие должностных преступлений. Пенза: Изд. Пензенского университета, 2006. 320 с.

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