FOREIGN EXPERIENCE OF CRIMINAL RESPONSIBILITY FOR OBSTACLING THE APPEARANCE OF A WITNESS, VICTIM, EXPERT, SPECIALIST, FORCING

Kovalenko D.A. - candidate of the Department of Criminal Law of the National Academy of Internal Affair

При исследовании уголовных кодексов зарубежных государств и их сопоставления, сравнения отдельных их норм со ст. 386 УК Украины, дает возможность усовершенствовать отечественное уголовное законодательство, которое отвечало бы требованиям современности в борьбе с преступностью. Украина выбрала направление на участие в международных правительственных и неправительственных организациях и основной сферой функционирования которых, является формирование политики в области выработки международных стандартов справедливого судопроизводства и обеспечения его охраны осуществления всеми государствами-участниками. Поэтому необходимость обновления законодательного регулирования общественных отношений, приведение национального законодательства к европейским стандартам и является неоспоримым основательным доказательством необходимости активизации работы в области сравнительного правоведения. Сравнительно-правовые исследования актуальны в процессе осуществления любых научных анализов, в том числе и по уголовно-правовой охране порядка получения доказательств в уголовном производстве, в частности по уголовно-правовой ответственности за такое деяние, как препятствование явке участников уголовного судопроизводства, принуждение их к отказу от дачи показаний или заключения, предусмотренной ст. 386 УК Украины. Ценность сравнительного правоведения как раз и состоит в том, чтобы выявить разного рода нюансы в законодательном регулировании уголовно-правовых отношений, специфику тех или иных юридических категорий, своеобразие правовых дефиниций, сравнить содержание, которое вкладывается законодателями разных стран, на примере, УК Азербайджана, УК Беларусии, УК Грузии, УК Казахстана, УК Литвы, УК Молдовы, УК РФ, УК Таджикистана, УК Узбекистана. Главный фактор - это необходимость обновления законодательного регулирования общественных отношений, приведение национального законодательства к европейским стандартам, поиск возможностей избежать ошибок тех государств, которые успешно прошли соответствующий период развития, евроинтеграция.

На сегодняшний день, в уголовном законодательстве зарубежных государств предусмотрено разветвленную систему уголовно-правовых норм, охраняющих порядок получения доказательств в уголовном производстве. Но опираясь на это, можно с уверенностью констатировать тот факт, что многие законодательные решения могут быть использованы для совершенствования уголовно-правовой охраны порядка получения доказательств в уголовном производстве и в нашей стране, в частности по уголовно-правовой ответственности за такие деяния, как воспрепятствование явке участников уголовного производства, принуждение их к отказу от дачи показаний или заключения. Уголовное законодательство проанализированных стран устанавливают ответственность за такие деяния, как воспрепятствование явке участников уголовного производства, принуждение их к отказу от дачи показаний или заключения, что касается нашего законодательства, то это ст. 386 УК Украины в сравнении со ст.

299 УК Азербайджана, ст.ст. 403, 404 УК Беларуси, ст. 372 УК Грузии, ст. 422 УК Казахстана, ст. ст. 233, 234 УК Литвы, ст.ст.302, 307, 309 УК РФ, ст.ст. 350, 353 УК Таджикистана, ч. 2 ст. 238 УК Узбекистана. Итак, подведем итог сравнительного анализа в УК Беларуси, Литвы и Таджикистана ответственность за такие деяния предусмотрена в самостоятельных статьях, а в УК Узбекистана – в последней части ст. 238 «Лжесвидетельство». Поэтому, выделены такие положительные аспекты, которые могут быть использованы для совершенствования отечественного уголовного законодательства предусмотрены в иностранном уголовном законодательстве, а именно: определение круга потерпевших от принуждение давать показания (УК Азербайджана, Казахстана) конкретизация способов принуждения к даче показания (УК Азербайджана, Казахстана, РФ); криминализация принуждение к даче экспертом любого вывода (истинного или ложного) (УК Беларуси) наличие стимулирующей нормы за дачу заведомо ложного показания, заключения или заведомо неправильного перевода (УК Азербайджана, Таджикистана, РФ); признание специалиста субъектом пострадавшим уголовного преступления против (УК РФ); наличие нормы-ограничения за дачу заведомо ложного показания, заключения или заведомо неправильного перевода (УК Азербайджана) предвидения ответственности за подкуп и принуждение давать показания в самостоятельных частях одной статьи или в самостоятельных статьях (УК Азербайджана, Беларуси, Грузии, Казахстана, Таджикистана, РФ); криминализация принуждение к уклонению от дачи показаний (УК Азербайджана, Казахстана) уточнения цели подкупа (УК Азербайджана, Казахстана, Таджикистана, РФ); закрепление таких квалифицирующих признаков заведомо ложного показания, заключения и заведомо неправильного перевода, как совершение соответствующих деяний по уголовному делу о коррупционных уголовных преступлениях, принуждение и подкупа свидетеля, эксперта, переводчика (УК Казахстана) или из корыстных побуждений (УК Казахстана, Таджикистана).

Ключевые слова: уголовная ответственность, воспрепятствование, принуждение, свидетель, потерпевший, эксперт, специалист, отказ, показания, УК Украины, УК Азербайджана, УК Беларуси, УК Грузии, УК Казахстана, УК Литвы, УК РФ, УК Таджикистана, УК Узбекистана.

Research of criminal codes of foreign states and comparison, comparison of their separate norms with Art. 386 of the Criminal Code of Ukraine will provide an opportunity to improve domestic criminal legislation that would meet modern requirements in the fight against crime. Ukraine has chosen the direction of participation in international governmental and non-governmental organizations and the main area of operation of which is the formation of policy in the field of developing international standards of fair trial and ensuring the protection of its implementation by all member states. Therefore, the need to update the legislative regulation of public relations, bringing national legislation to European standards is indisputable solid evidence of the need to intensify work in the field of comparative law. Comparative legal research is relevant in the process of conducting any scientific analysis, including the criminal law protection of the procedure for obtaining evidence in criminal proceedings, in particular on criminal liability for such an act as preventing the appearance of participants in criminal proceedings, forcing them to refuse to testify or conclude. The value of comparative jurisprudence is precisely to identify various nuances in the legislative regulation of criminal relations, the specifics of certain legal categories, the originality of legal definitions, to compare the content of the legislators of different countries, namely, for example, the Criminal Code of Azerbaijan , Criminal Code of Belarus, Criminal Code of Georgia, Criminal Code of Kazakhstan, Criminal Code of Lithuania, Criminal Code of Moldova, Criminal Code of the Russian Federation, Criminal Code of Tajikistan, Criminal Code of Uzbekistan. The main factor is the need to update the legislative regulation of public relations, bring national legislation to European standards, find ways to avoid the mistakes of those countries that have successfully passed the relevant period of development, European integration.

Key words: criminal liability, obstruction, appearance, coercion, witness, victim, expert, specialist, refusal, testimony, Criminal Code of Ukraine, Criminal Code of Azerbaijan, Criminal Code of Belarus, Criminal Code of Georgia, Criminal Code of Kazakhstan, Criminal Code of Lithuania, Criminal Code of Tajikistan, Criminal Code of Uzbekistan, Criminal Code of Belarus.

Cercetarea codurilor penale ale statelor străine și compararea, compararea normelor lor separate cu art. 386 din Codul penal al Ucrainei va oferi o oportunitate de a îmbunătăți legislația penală internă care ar îndeplini cerințele moderne în lupta împotriva criminalității. Ucraina a ales direcția de participare la organizațiile internaționale guvernamentale și neguvernamentale și a cărei principală zonă de operare este formarea politicii în domeniul dezvoltării standardelor internaționale de proces echitabil și asigurarea protecției implementării sale de către toți stări. Prin urmare, necesitatea de a actualiza reglementarea legislativă a relațiilor publice, aducând legislația națională la standardele europene este o dovadă solidă incontestabilă a necesității intensificării activității în domeniul dreptului comparat. Cercetarea juridică comparativă este relevantă în procesul de desfășurare a oricărei analize științifice, inclusiv a protecției legii penale a procedurii de obținere a probelor în cadrul procedurilor penale, în special cu privire la răspunderea penală pentru un astfel de act care împiedică apariția participanților la procedurile penale, forțându-i a refuza să depună mărturie sau să încheie. Valoarea jurisprudenței comparative este tocmai identificarea diferitelor nuanțe în reglementarea legislativă a raporturilor penale, specificul anumitor categorii juridice, originalitatea definițiilor juridice, compararea conținutului legislatorilor din diferite țări, și anume, de exemplu, Codul Azerbaidjanului, Codul penal al Belarusului, Codul penal al Georgiei, Codul penal al Kazahstanului, Codul penal al Lituaniei, Codul penal al Moldovei, Codul penal al Federației Ruse, Codul penal al Tadjikistanului, Codul penal al Uzbekistanului. Principalul factor este necesitatea de a actualiza reglementarea legislativă a relațiilor publice, de a aduce legislația națională la standardele europene, de a găsi modalități de a evita greșelile acelor țări care au trecut cu succes perioada relevantă de dezvoltare, integrarea europeană.

Cuvinte cheie: răspundere penală, obstrucție, înfățișare, constrângere, martor, victimă, expert, specialist, refuz, mărturie, Codul penal al Ucrainei, Codul penal al Azerbaidjanului, Codul penal al Belarusului, Codul penal al Georgiei, Codul penal al Kazahstanului, Penal Codul Lituaniei, Codul penal al Tadjikistanului, Codul penal al Uzbekistanului, Codul penal al Belarusului.

Formulation of the problem. Ukraine has chosen the direction of participation in international governmental and non-governmental organizations and the main area of operation of which is the formation of policy in the field of developing international standards of fair trial and ensuring the protection of its implementation by all member states. For full membership in the EU, Ukraine needs to adhere not only to universally recognized world standards of justice, but also to effectively adapt national legislation in the field of preventing its violation to the standards of the European Union. One of the criminal offenses against justice, the legislator provides criminal liability for obstructing the appearance of a witness, victim, expert, specialist, forcing them to refuse to testify or conclude (Article 386 of the Criminal Code) [1] and which directly encroaches on the procedure for obtaining evidence in criminal proceedings. Research of criminal codes of foreign states and comparison of their separate norms with the Criminal Code of Ukraine, namely with the criminal offense provided by Art. 386 of the Criminal Code of Ukraine.

Analysis of recent research and publications. The theoretical basis were scientific works, in particular, such scientists as: N.. Alekseeva, O. Dudorov, Z. Zaginey, O. Knizhenko, M. Korzhansky, O. Kostenko, M. Melnik, M. Khavronyuk, O. Vakulyk, M. Shepitko, O. Chuchaev and others.

The purpose of the article. is a comparative legal analysis of the Criminal Code of Ukraine and criminal codes of foreign countries (Criminal Code of Azerbaijan, Criminal Code of Belarus, Criminal Code of Georgia, Criminal Code of Kazakhstan, Lithuanian Criminal Code, Criminal Code, Tajikistan, Criminal Code of Uzbekistan) in terms of criminal law protection in order to obtain criminal proceedings, on the establishment of criminal liability for criminal offenses that encroach on the procedure for obtaining evidence in criminal proceedings, in particular, on criminal liability for such an act as preventing the appearance of participants in criminal proceedings, forcing them to refuse to testify or conclude and drawing conclusions on improving the criminal legislation of Ukraine.

Presenting main material. Comparative legal research is relevant in the process of conducting any scientific analysis, including the criminal law protection of the procedure for obtaining evidence in criminal proceedings, in particular on criminal liability for such acts as preventing the appearance of participants in criminal proceedings, forcing them to refuse to testify or conclude. The value of comparative jurisprudence is precisely to identify various nuances in the legislative regulation of criminal law, the specifics of certain legal categories, the uniqueness of legal definitions, to compare the content of the legislators of different countries. Carrying out this study, it is important to analyze the Criminal Codes of other countries in terms of criminal law protection of evidence in criminal proceedings, to establish criminal liability for criminal offenses that encroach on the procedure for obtaining evidence in criminal proceedings, in particular criminal liability. acts as an obstacle to the appearance of participants in criminal proceedings, forcing them to refuse to testify or conclude. After all, their legislation was formed in the same way over a considerable period of time, but has its own peculiarities. For this purpose, the relevant norms provided for in the Criminal Code of Georgia, the Republic of Lithuania, the Republic of Azerbaijan, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and the Russian Federation were considered.

And so, let's dwell separately on the characteristics of the criminal law of each state, first, consider the Criminal Code of Azerbaijan, the Criminal Code of the Republic of Azerbaijan contains Art. 299 "Bribery or coercion to evade testimony, to give false testimony or conclusion or incorrect translation, the features of criminalization of the above sex are: the establishment of criminal liability for obstructing the appearance of the persons concerned; anticipation of liability for bribery and coercion in independent parts of one article; clarification of the purpose of bribery: criminalization not only of coercion to give false testimony, conclusion or incorrect translation, but also coercion to evade testimony; methods of coercion: blackmail, threat of murder, damage to health, destruction or damage to the property of these persons or their relatives; qualifying signs of coercion: the use of violence that is not dangerous to life and health and violence that is dangerous to life and health; determining the consequences of disclosure of pre-trial investigation data - causing moral or material damage to the person concerned [8]. In the Criminal Code of Belarus disclosure of this issue is provided in Art. 403, 404 of the Criminal Code, the features of criminalization of the above articles are: criminalization of coercion to give an expert any opinion (true or false); qualifying signs of coercion to testify: combined with violence, bullying or torture; criminal liability in one article for three alternative acts: forcing a witness, victim or expert to refuse to testify or report or to give false testimony or opinion or to bribe them, or to threaten to take the above actions in retaliation for previously given testimony or conclusion; methods of coercion: threat of murder, violence, destruction or damage to the property of these persons or their relatives, dissemination of defamatory or disclosure of other information that these persons wish to keep secret [4]. The Criminal Code of Georgia provides for Art. 372, which reveals the peculiarities of criminalization, namely: in a separate part of the article such acts as bribery of a witness, expert, translator or forcing them to give false testimony or conclusion or to intentionally incorrect translation or refusal to testify or change them; the means of coercion or bribery include the offer of any property gain or threat of murder, violence, damage or destruction of their property or other threat; qualifying signs of coercion: the commission of this act in combination with the use of violence [2]. The Criminal Code of Kazakhstan provides for Art. 354 "Bribery or coercion to give false testimony or evasion of testimony, false conclusion or incorrect translation" features of criminalization are: establishment of responsibility for other forms of socially dangerous acts in addition to coercion to testify: obstruction of a person in voluntary testimony, voluntary statement crime or coercion to refuse to testify, coercion of an expert to give an opinion; indication of the method of coercion only in relation to illegal actions in relation to giving an expert opinion: threat, blackmail, other illegal actions; the subject of coercion to testify: the prosecutor or the person conducting the pre-trial investigation; the subject of giving a knowingly false conclusion is not only an expert but also a specialist; no criminal liability for the refusal of the expert and the translator to give an opinion or make a translation; establishment of criminal liability for bribery of relevant persons, as well as for forcing them to testify or conclude in a separate article (in its various parts); clarification of the purpose of bribery: the purpose of giving false testimony, false conclusion or incorrect translation;

establishment of criminal liability not only for coercion to give false testimony, conclusion or incorrect translation, but also for coercion to evade testimony; methods of coercion to such evasion: blackmail, threat of murder, causing harm to health, destruction of property of these persons or their relatives; qualifying features of coercion and bribery: combination with violence that is not dangerous and dangerous to life and health, committed by a group of persons with prior conspiracy, combined with accusation of committing a corruption, serious or especially serious crime [5].

In the Criminal Code Art. Art. 350 of the Criminal Code of Tajikistan establishing criminal liability in one article (in different parts) for bribery and coercion; purpose of bribery and coercion: giving false testimony by a witness, false conclusion by an expert, incorrect translation by a translator; criminalization of coercion to testify; methods of coercion: blackmail, threat of murder, threat of harm to health, threat of destruction of property of these persons and their relatives; differentiation of criminal liability for coercion depending on the type of violence used (which is not dangerous or is dangerous to the life or health of the person), as well as whether it is committed by an organized group [9]. In the Criminal Code of Uzbekistan in Part 2 of Art. 238 "False Testimony" provides for liability for bribing a witness to give false testimony or an expert to give a false opinion or an interpreter to misinterpret and for forcing false testimony by mentally or physically influencing them or their close relatives [6]. As for the Criminal Code of the Russian Federation, it is provided by Art. 309 of the Criminal Code, where a person is subject to punishment for bribery or coercion to testify or evasion of testimony or to incorrect translation. Part 1 of Art. 309 of the Criminal Code provides for liability for bribery of a witness, a victim in order to give false testimony or an expert in order to give him a false opinion or an interpreter in order to make an incorrect translation. For part 2 of Art. 309 of the Criminal Code determines the punishment for forcing the same persons for the same purpose to give false testimony, expert opinion or translation by a translator. Qualifying features of this crime are the commission of acts specified in Part 1-2 of Art. 309 of the Criminal Code with the use of violence dangerous to life or health of these persons (Part 3 of Article 309), as well as committed by an organized group or with the use of violence dangerous to life or health of these persons (Part 4 of Art. 309). This rule is similar to Art. 386 of the Criminal Code of Ukraine, but is not identical, as the disposition of Art. 386 of the Criminal Code of Ukraine is somewhat broader than the disposition of Art. 309 of the Criminal Code, but, instead, Art. 386 of the Criminal Code of Ukraine does not contain qualifying features of this criminal offense. Peculiarities are: establishment of responsibility for coercion to testify or conclusion, for knowingly false conclusion or testimony not only of an expert, but also of a specialist; methods of coercion: threat, blackmail or other illegal actions; subject of coercion: the investigator, the person conducting the inquiry, as well as another person, with the knowledge or tacit consent of the investigator or the person conducting the inquiry; qualifying features of crimes: a combination of the relevant act with violence, slaughter or torture (Article 302 of the Criminal Code), a combination with the accusation of a person in a serious or particularly serious crime; the victims of bribery and coercion to testify are not only experts but also specialists; clarification of the purpose of bribery: the purpose of giving false testimony, the purpose of giving a false conclusion or the purpose of incorrect translation; establishment of criminal liability not only for coercion to give false testimony, conclusion or incorrect translation, but also for coercion to evade testimony [7]. The Criminal Code of the Republic of Lithuania provides for liability for the following crimes: Art. 233 "Influence on a witness, victim, expert, specialist or translator" provides for criminal liability for influencing the victim, a representative of the state or a legal entity to reconcile with the perpetrator, if it was carried out with violence or other coercion [3].

From the above comparative analysis it is possible to offer some preliminary recommendations for improving the current article. 386 of the Criminal code of Ukraine, in particular, it is offered to specify the list of the persons concerning "victim" and to recognize also "specialist" and "translator", besides, it is necessary to pay attention to missing qualifying signs of a criminal offense, delimitation of punishment for the specified socially dangerous acts , in this regard, it is proposed to differentiate the responsibility for certain socially dangerous acts in separate articles or independent parts of one article. Speaking of bribery as a way of committing this criminal offense, the disposition of the article states "bribery of a witness, victim or expert for the same purpose", but for a more convenient classification of a criminal offense under this article it is advisable to specify the purpose of bribery and separate it.

Conclusions and suggestions. Summing up the above, we will focus on some principles relating to the criminal law of foreign countries, as today in these countries there is an extensive system of criminal law, which protects the procedure for obtaining evidence in criminal proceedings. But based on this, it is safe to say that many legislative decisions can be used to improve the criminal law protection of the procedure for obtaining evidence in criminal proceedings in our country, in particular on criminal liability for acts such as obstruction of the occurrence participants in criminal proceedings, forcing them to refuse to testify or conclude.

The criminal codes of the analyzed states establish responsibility for such actions as obstructing the appearance of participants in criminal proceedings, forcing them to refuse to testify or conclude: Art. 386 of the Criminal Code of Ukraine, 299 of the Criminal Code of Azerbaijan, 403, 404 of the Criminal Code of Belarus, 372 of the Criminal Code of Georgia, 422 of the Criminal Code of Kazakhstan, 233, 234 of the Criminal Code of Lithuania, 302, 307, 309 of the Criminal Code, 350, 353 of the Criminal Code of Tajikistan. 238 of the Criminal Code of Uzbekistan. Thus, in the Criminal Code of Belarus, Lithuania and Tajikistan, the responsibility for such acts is provided in separate articles, and in the Criminal Code of Uzbekistan - in the permanent part of Article 238 "False Testimony". Therefore, the following positive aspects that can be used to improve domestic criminal law are identified: determining the range of victims of coercion to testify (Criminal Code of Azerbaijan, Kazakhstan); specification of methods of coercion to testify (Criminal Code of Azerbaijan, Kazakhstan, Russia); criminalization of forcing an expert to give any opinion (true or false) (Criminal Code of Belarus); the presence of an incentive rule for giving knowingly false testimony, conclusion or knowingly incorrect translation (Criminal Code of Azerbaijan, Tajikistan, Russia); recognition of a specialist as a victim of a criminal offense against (Criminal Code); the presence of a norm-restriction for giving a knowingly false testimony, conclusion or knowingly incorrect translation (Criminal Code of Azerbaijan); provision of liability for bribery and coercion to testify in separate parts of one article or in separate articles (Criminal Code of Azerbaijan, Belarus, Georgia, Kazakhstan, Tajikistan, Russia); criminalization of coercion to evade testifying (Criminal Code of Azerbaijan, Kazakhstan); clarification of the purpose of bribery (Criminal Code of Azerbaijan, Kazakhstan, Tajikistan, Russia); consolidation of such qualifying features of knowingly false testimony, conclusion and knowingly incorrect translation, as committing relevant acts in a criminal case of corruption, coercion and bribery of a witness, expert, translator (Criminal Code of Kazakhstan) or for selfish motives (Criminal Code of Kazakhstan, Tajikistan).

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