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Regulation of the provocation of a crime in the criminal legislation of foreign countries: what should Kazakhstan take into account?

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Abstract

Relevance. The issue of provocation of a criminal offence in scientific discourse has attracted the attention of lawyers for quite a long time. It should be noted that it does not lose its relevance, since with the development of social relations, as well as changes in legal approaches to the performance of the functions of criminal law, only its development occurs. Moreover, at the moment there is no single approach to this category in the international community, namely regarding the appropriateness of regulating its use in society.

Purpose. The purpose of the work was described as conducting a comparative analysis of the features of the legislative consolidation of the provocation of a criminal offence in the legal acts of different states in order to use their experience in Kazakhstan.

Methodology. For this purpose, the methods of analysis and synthesis, comparison, deduction, formal legal, generalization were involved in the work.

Results. As a result, it was possible to study approaches to the category of provocation of a criminal offence in countries belonging to the Anglo-Saxon and Romano-Germanic legal families, as well as members of the Commonwealth of Independent States. In addition, the experience of states that do not regulate such a mechanism, in particular, make its application impossible, was studied. In the course of the analysis, attention was focused on the approaches that foreign states use regarding the provocation of a criminal offence and are a priority for Kazakhstan. The expediency of legislative consolidation of the above mechanism in the regulatory framework of Kazakhstan, as well as ways to implement this process, was established.

Conclusions. The practical value of the work was revealed in the possibility of using it by the legislators of Kazakhstan in reforming the sphere of criminal law, as well as by scientists in the course of studying the problem of provocation of a criminal offence.

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Introduction

The issue of the advisability of using the provocation of a criminal offence has several dimensions, in particular legal and moral. It is these features that determine the relevance of its research and solution, since it concerns several important areas of society at once, both regulated by laws and moral principles. Thus, the provocation of a criminal offence is currently in the ideological plane of both scientists and practitioners, since it concerns the unresolved issue of the possibility of justifying criminal means to achieve a noble goal [1]. Considering that the scientific discourse is only filled with the works of lawyers on this issue, it is still the subject of active discussions. It is rather difficult to establish the date when it originated in the criminal law of different states, since this issue acquires new properties over time. It is this factor that contributes to its active spread at the moment and necessitates its elimination by regulation, in particular, directly in the legislation of Kazakhstan [2-4].

To this end, an analysis was made of the publications of various authors who have already tried to uncover and resolve the issue of the features of the provocation of a criminal offence. In particular, R. Rosenberg [5], studied the content and essence of this category. He managed to characterize the properties that reveal the purpose and process of provocation of the offence. In addition, the researcher described its role in solving criminal cases and reducing the level of crime in society. In turn, J. Barton-Crosby and H. Hirtenlehner [6] found that provocation has a negative impact on the development of criminal law, since it does not correspond to the principles of the latter. They argued that the nobility of the goal cannot be identified with the negative consequences of the activities performed for its implementation. Thus, they believe that the regulation of such a category in the legislation of the state is an unacceptable measure. M. Muftuler-Bac and C. Muftuler [7] in his study gives examples of states in which provocation is provided for by the criminal law. Moreover, they prove the advantages of this approach, as well as its use by legal authorities. Researchers adhere to the position that provocation plays an important role in solving criminal cases.

According to N.Z. Siubayeva et al. [8], the provocation of a criminal offence may apply in Kazakhstan. In their work, the authors give examples of the Commonwealth of Independent States (CIS) countries, as well as European countries, whose experience indicates the effectiveness of the regulation of this category in national legal acts. K. Ambos et al. [9] drew attention to the experience of Germany in regulating the issue of legal enforcement, as well as the implementation and provocation of a criminal offence. The authors of the study were able to establish on the basis of what approaches and through what tools the implementation of the above process takes place. Also, attention was drawn to the study by F. Mégret [10], who managed to determine how the European Court of Human Rights (ECHR) interprets the provocation of a criminal offence. The findings made it possible to characterize the position of the above-mentioned element regarding the expediency and logic of using the provocation of a criminal offence in a legal, democratic society. Accordingly, he proposed a classification of criteria and features that law enforcement agencies and courts should take into account when exercising their professional powers.

The formed goal of the work concerned the analysis of international experience in the context of regulation in the legislations of different states of such a mechanism as the provocation of a criminal offence and the use of its results in Kazakhstan. The following tasks were formed in the study:

– establishing the content of the concept of “provocation of a criminal offence”;

– describing its main features and properties;

– determining the norms in the laws of the states regulating it;

– describing the features of the implementation of the provocation of a criminal offence;

– establishing rational approaches to the regulation of this mechanism in Kazakhstan, as well as its effective future implementation.

Materials and Methods

The method of analysis provides for the possibility of studying all the necessary elements of the object of study. Such concepts as provocation, criminal offence, as well as provocation of a criminal offence were singled out. Due to this, it was possible to study their main features and characteristics, as well as to establish methods for their consolidation in the legislation of different countries. The synthesis method, in contrast to the previous approach, made it possible to explore the above concepts in interconnection and unity. Due to this, it was possible to establish the relationship between them, in particular, to track common and distinctive features. It was important to establish the significance of the provocation of a criminal offence in order to qualitatively study the mechanisms similar in features, which are reflected in the legislative documents of foreign states.

The comparison method was used to compare the experience of different states belonging to both the Anglo-Saxon and Romano-Germanic legal systems. On its basis, the general and distinctive features in the approaches of a number of states to the regulation of the provocation of a criminal offence were studied. Moreover, due to this method, the ways of fixing this mechanism in the legislation of the states were compared. Thus, it was possible to determine the most effective and rational among them for the society of Kazakhstan. Since the object of study relates to the legal dimension, the work had to analyse a number of legislative provisions and norms, as well as special terms. For this, a formal legal method was used, which made it possible to correctly interpret the content of various foreign and national legal documents. Among them, attention was paid to such documents as: German Code of Criminal Procedure [11]; Basic Law for the Federal Republic of Germany [12]; Model Penal Code [13]; Penal Law of New York [14]; Criminal Code of Ukraine [15]; Criminal Code of the Republic of Belarus [16]; Criminal Code of Georgia [17]; Criminal Code of the

Republic of Kazakhstan [18]; Criminal Code of the Republic of Tajikistan [19].

The formation of the logical structure of the study took place on the basis of the deduction method. This made it possible to determine a rational plan of work and reveal all the necessary elements of the topic under study. In particular, at the beginning of the study, the theoretical content of the fundamental concepts was established and considered, and then their role and place in the legislations of different countries were established. The generalization method not only made it possible to form logical conclusions, but also to establish the most promising vectors for using international experience in regulating the provocation of a criminal offence in Kazakhstan.

The study was divided into three stages. At the first stage, a general theoretical analysis of the object of scientific work took place, namely, the content and signs of provocation of a criminal offence were studied, according to the approaches of foreign legislators. At the second stage, the features of their consolidation in the legal acts of different states were studied. Also, priority methods and directions were established for fixing the provocation of a criminal offence in the criminal regulatory legal acts of Kazakhstan. In addition, a discussion was held, which was based on an analysis of the positions of scientists regarding the significance and expediency of using provocation directly in the criminal process. At the third stage, the conclusions were determined, which included the main results obtained during the work. Priority directions for the continuation of scientific work on this topic were also identified.

Results

Analysis of international experience involves taking into account a number of features of states, in particular, their legislation and approaches to the regulation of social relations. This process requires the implementation of a systematic analysis of the aspects on the basis of which the regulation of legal institutions takes place in the legal acts of different countries. Firstly, attention was paid to the experience of Germany, namely the use in it of the provocation of a criminal offence [20; 21].

This choice is not accidental, it is due to the well-established in this state, both scientific and normative organization of criminal law regulation, which is characterized by particular efficiency. At the moment, German Code of Criminal Procedure [11] does not define specific features of the behaviour and activities of individuals that could clearly be attributed to provocation. Given this, it can be argued that these legal acts do not provide foundations on the basis of which it would be possible to distinguish between the provocation of a criminal offence on the grounds of legality and illegality. At the same time, some guidelines are still regulated by law and relate to the fixing of provocation in a certain list of criminal norms. Among them, select Article 110 of the German Code of Criminal Procedure [11], the content of which concerns the procedural status, rights, and obligations of undercover police agents to investigate certain types of criminal offences. A systematic analysis of the above articles of the German criminal law allows us to establish that the purpose of provocation is to influence a person who is preparing for the implementation of a criminal offence so that she performs her tasks in unfavourable conditions for her. In this context, it is important to note that provocation is not used by law enforcement agencies to incite a law-abiding person to encroach on public relations and the rights of other citizens.

Thus, the task of provoking a criminal offence, according to the approaches of German legislators, is revealed in the direction of the agent of his actions not to achieve the main goal of the crime, but to prevent a person from committing socially dangerous actions and the onset of negative consequences. Special attention was paid to the analysis of the approaches of German legislators to prevent abuse of official position and exceeding the prescribed limits by law enforcement officers when provoking a criminal offence. In this context, personal criminal liability is provided for such agents who take actions at their own discretion, which can provoke socially negative consequences. In addition, changes in the algorithm of the agent's actions must be agreed with the head of the relevant sector of the criminal police, and also authorized by the prosecutor. It can be argued that although the German criminal law does not directly establish the provocation of a criminal offence, it indirectly regulates the legality of such a method. This conclusion is based on the provisions of Article 20(3) of the Basic Law for the Federal Republic of Germany [12]

, which establishes the principle of the rule of law in the state, which is revealed in the requirement for law enforcement agencies to carry out effective and rational criminal prosecution with strict adherence to constitutional provisions and methods of criminal procedure. The number of provocations of a criminal offence in Germany over the past three years reaches about 103 cases, which indicates the use of this mechanism, but with a special caveat [22].

The next country whose legislation was analysed in this study is the United States. In this state, the provocation of a criminal offence is one of the most common ways to implement the criminal regulation of public relations. According to the legislation, this method is divided into two types, namely legal and illegal. The first one is the operational-search activity of the United States, which is characterized by the absence of approaches based on the principles of persuading or inducing a citizen to commit a criminal offence. Characteristic subjects using the method described above are such law enforcement structures as: Federal Bureau of Investigation; Central Intelligence Agency; Drug Enforcement Administration. The second type of use of provocation, according to United States criminal law, is illegal, which is subject to a strict criminal law prohibition. Accordingly, it provides for liability for law enforcement officers who exceed the powers granted to them, as well as using prohibited methods and ways of influencing persons [23]. As for statistical data, in the United States for 2021-2022, the number of realized provocations of crimes reaches about 18-20% of the total number of criminal cases [24].

It should be noted that a characteristic feature of the criminal legislation of the United States and their criminal legal system is a two-level structure. This sign suggests that its component is not only federal legislation, but also state criminal codes. Thus, in the United States, there is no single universal approach that will apply to all persons

affected by provocation. However, in the Model Penal Code [13], the essential features are established, and the content of the above concept is disclosed. Thus, the provocation of a criminal offence in the United States is understood as the activity of a public entity, which is entrusted by law with special powers to be exercised in order to withdraw the necessary evidence against a person who is trying to realize criminal intentions by infringing on public relations. In addition, attention should be paid to the content of Article 2.13 of the Model Penal Code [13], regulating the recommendation for state officials to enshrine in their codes a rule on the provocation of a criminal offence. An example of the implementation of this recommendation is paragraph 40.05 of Article 40 of the Penal Law of New York [14], which provides for such a type of operational activity as "Involvement in the trap". Its essence is revealed in the implementation of the prosecution of a person preparing to commit a crime, in order to influence him, as well as to prevent the onset of socially negative consequences. It is important to understand that such activity is characterized by active actions on the part of law enforcement officers, which may be manifested in the inducement or incitement of a certain citizen. Provided that such a person does not react to such actions on the part of employees, and also does not reveal attempts to carry out criminal plans, he is not liable.

Thus, the analysis allows us to establish that the provocation of a criminal offence is typical not only for the laws of countries belonging to the Romano-Germanic legal family, but also for the Anglo-Saxon [25]. Moreover, it is in the United States that this institution is one of the most developed, since it is expressed in different forms and approaches. This factor makes it possible to promptly respond to possible social risks, as well as to identify potential criminals. However, it should be understood that the provocation of a criminal offence in the United States has been carried out by special agents and law enforcement agencies for more than 30 years, which is why their experience is rational and well-established, and can be effectively used in other countries, including Kazakhstan.

In addition, attention should be paid to approaches to regulating the provocation of a criminal offence in the countries of the Commonwealth of Independent States. To a greater extent, their position is divided into two types, namely the one that does not provide for criminal liability for the provocation of a crime and the one that fixes it. At the same time, the content, andessence of the category of provocation are quite similar in the interpretation of the laws of each of them. Thus, in Ukraine, this phenomenon is mostly characterized by features that are formed on the basis of the names of criminal norms, and their place in the structure of the Criminal Code of Ukraine [16]. Given the content of this norm, the concept of provocation in it means the special formation by an official of the conditions and factors that determine the implementation of such actions as offering or directly receiving a bribe in order to hold the person who committed this act accountable [26-28].

Attention was also paid to the position of the Criminal Code of the Republic of Belarus [16], namely Article 396, which establishes the procedure for provoking a bribe or bribery. Its essence is identical to the previous one, since its ultimate goal is to attract to slowness the person who has committed a bribe or offered a bribe. It is this type of provocation of a criminal offence that is one of the most common among law enforcement states of the CIS [29]. As for the CIS countries, which the provocation of a criminal offence in both the public and private sectors is prohibited in, they include Kyrgyzstan and Tajikistan. At the same time, the law enforcement agencies of these states still resort to such actions. However, in this context, the provocation of a crime must be considered not in its classical sense, but in the right of "promoting bribery", which such bodies are vested with under the law. Thus, it is revealed in the fact that from the moment the agents establish the current or probable fact of bribery, they are involved in criminal activities. Police officers operate either undercover or in cooperation with an entity cooperating with law enforcement. However, the purpose of such activity is identical to the provocation of a crime, since it consists in establishing the fact that a crime has been committed by a specific person in order to bring him to justice [30; 31].

Special attention should be paid to Georgia, since it is the only CIS member state that provides for criminal liability for the provocation of a criminal act of any kind and composition. Unlike Kyrgyzstan and Tajikistan, the Georgian criminal legislation does not contain alternative norms regarding the influence on a person who prepares a crime, with the aim of applying punishment to him in the future. This is provided for in Article 145 of the Criminal Code of Georgia [17], which in turn is included in section XXIII entitled "Crimes against human rights and freedoms". Given its content, the provocation of a criminal offence consists in inducing a citizen to commit a criminal act in order to apply a certain type of criminal punishment to it. For persons committing such a provocation in Georgia, liability is provided in the form of imprisonment for a term of one to three years. In Georgia, in the period from 2019 to 2022, several cases were recorded, namely 17 attempts to commit provocations by law enforcement agencies in various areas, including financial [32; 33]. This indicator is quite low, which indicates that authorized persons comply with the prohibitions enshrined in the law.

As for Kazakhstan, as well as its criminal legislation in the field of provocation of a crime, it should be noted that at the moment such activities of law enforcement agencies are prohibited. This comes from the content of Article 412 of the Criminal Code of the Republic of Kazakhstan [18], updated on October 6, 2020. It provides for criminal liability for special subjects, namely officials engaged in operational-search activities or pre-trial investigation, who influenced a citizen, which provoked the commission of a criminal offence by the latter. At the same time, the norm defines the obligatory goal of such activity, which consists in the subsequent exposure and prosecution or blackmail of the person who committed the criminal act.

This position of the legislator is justified by the fact that representatives of law enforcement agencies in most cases abused the possibility of provocation in order to improve performance. According to the authors of this article, this approach is expedient and logical, as also evidenced by the indicators of the Prosecutor General's Office taken for 2019-2020 [34]. In particular, it was found that eight pre-trial investigations were initiated for such illegal activities by law enforcement agencies, and only two criminal cases were sent to the tribunal alone. However, the authors

consider it appropriate to use in Kazakhstan the experience of the countries that were considered in this study. Firstly, it is necessary to divide the concept of provocation of a criminal offence into permissible and inadmissible. It is advisable to do this by amending Part 1 of Article 412-1 of the Criminal Code of the Republic of Kazakhstan [18]. This approach allows determining the conditions under which provocation can be used by law enforcement agencies. For example, it is worth fixing that the use of such a tool is possible if a person has a criminal record or was suspected of a criminal act similar to that which is the object of provocation. In addition, using the experience of the United States, it is advisable in Kazakhstan to form a separate branch in the structure of law enforcement agencies, the direction of which would be the activities of undercover agents. Given this, there is a need to develop and legislate the regulations, as well as the legal framework for the work of such persons. In this context, it implies the establishment of a clear algorithm of actions, as well as the entire process of provocation, which must be consistent with the relevant leadership. According to the authors, this approach will help to avoid independent commission by law enforcement officers of acts aimed at persuading persons to commit a crime.

At the same time, it is important to immediately provide for a mechanism for the responsibility of officials in case they exceed their powers of authority, as well as deviate from the established procedure. Using the experience of the CIS countries, which is mostly aimed at combating bribery, Kazakhstan also needs to consolidate this mechanism. It is meant to add to Criminal Code of the Republic of Kazakhstan [18] a rule that provides for the possibility of provocations of bribery or bribery by law enforcement agencies in order to bring to justice the person who commits such an act. At the same time, in order to avoid violating the rights and freedoms of citizens, it is important to provide and consolidate a clear mechanism for the implementation of such a provocation. It is important to give only a certain number of subjects such powers in order to avoid the abuse of this right among a wide range of law enforcement officers. Based on the success of international experience and the proposed approaches, it is expected that the provocation of a crime in Kazakhstan will be rationally used, with strict observance of its boundaries provided for in the legislation.

Discussion

In their study, S. Sattler et al. [35] analysedthe provocation of a criminal offence in the context of the ethical and legal aspect. The authors proved that the implementation and use of the facts established in the process of carrying out investigative search actions, which are characterized by the properties of provocation of a crime, are unacceptable in a democratic society. Thus, they argued that the provocation had a negative impact on the moral principles of the rule of law. According to the authors, this mechanism arbitrarily violates the constitutional rights and freedoms of a person, such as respect for his honour and dignity, personal integrity. As a result, the authority of the state is undermined in the international political arena, as well as in international organizations. This is explained by the fact that in a democratic legal society, the highest value is the rights of people, including their proper observance by other subjects. In addition, they noted that the use of provocation of a crime is an approach that is contrary to the general principles of criminal proceedings. In conclusion, this institution is losing trust in society, which makes it impossible for the normal functioning of law enforcement agencies, as well as the courts. The authors of this article agree with the above position, since they believe that the implementation of a provocation really negatively affects the legal consciousness, as well as the legal culture of citizens. The most acute problem in this context is that the involvement of the investigating authorities in the above activities can contribute to an artificial increase in the number of considered and resolved criminal offences, which in turn provokes the application of penalties to innocent citizens.

M. Buromenskiy and V. Gutnyk [36], in their scientific work, studied the experience of ECHR and its position on the provocation of a criminal offence. They managed to establish that incitement is realized under the condition that law enforcement officers are not limited solely to investigating the activities of criminals, without influencing the latter, but actively produce it on the consciousness of a citizen so that he realizes a criminal act. In this context, the ECHR proposes to distinguish between the active and passive activities of pre-trial investigation bodies according to established criteria. Firstly, they should include motives, namely the grounds for the implementation of covert search actions. These may include the fact of an objective assumption that a citizen is engaged in criminal activity. However, in this case, special attention must be paid, or it is possible to verify this information, due to data on a previous criminal attack. The next criterion is the beginning of covert investigative activities, during which law enforcement officers commit joint criminal acts or only incite a specific subject to them in order to obtain the necessary amount of evidence [37-40]. As a result, this will establish the guilt of citizens in the commission of a crime. Particular attention is drawn to the activities of pre-trial investigation bodies. This is explained by the fact that it cannot be implemented passively, provided that the pre-trial investigation bodies initiate an appeal to a certain subject. M. Buromenskiy and V. Gutnyk argue that this classification makes it possible to establish the content and features of an illegal provocation, as well as to deduct it from the legitimate actions of law enforcement officers. As a result, this makes it possible to achieve unambiguity in the qualification of the activities of pre-trial investigation bodies.

A.Y. Zabelov [41] paid special attention to international law. In his research, he studied approaches to fixing the concept of provocation of a criminal offence in Spanish law. Thus, its provisions provide that a provocation of a crime is an incitement to a criminal act in front of numerous citizens or a direct incitement of a subject to commit a crime under pressure from the press, radio or other means intended to make information public. Given the analysis of this norm, it can be established that a mandatory element of this criminal offence in Spain is the place and setting. This indicates that more attention is focused on the number of persons against whom provocation is used, and not on their exposure. Given this, the provocation of a crime is possible only with respect to a significant number of citizens, as well as due to the

influence of tools designed to disseminate information. According to the author, such an approach of the legislator is not entirely appropriate, since the analysis of the composition of the criminal act described above allows us to establish that, in terms of its object, it is more in line with criminal offences that encroach on public security.

M. Migliorati [42] also studied foreign criminal law. In her research, she established the common features of provocation in the legislation of Norway and in the Kingdom of Denmark. Thus, she found that the category of provocation of a criminal offence in them is used in the context of incitement by a state or official subject of his subordinate in order to implement the latter's official criminal act. It is important to note that such activities do not have links with the goal of exposing the perpetrator. Thus, M. Migliorati found that such a property is a feature of the object of provocation in the above criminal laws, since it concerns the responsibility and penalties applied to special subjects for inducing a subordinate to commit an official criminal offence.

Criminal Code of the Lithuanian Republic [43] was studied by L. Arkusha and O. Torbas [44]. The authors determined the content of the category “provocation” within its limits. They found that it is used in articles providing for liability for bribery, as well as requirements. Thus, they are identified to a certain extent and acquire similar features. They received such a conclusion through the analysis of the Criminal Code of the Lithuanian Republic, which in turn provides for the liability of officials or other persons in positions of authority who, for personal gain, have taken, promised or negotiated bribery, and also demanded or incited bribery for the performance of a certain number of official powers. Given the analysis of this norm, L. Arkusha and O. Torbas found that the category of provocation of a criminal offence covers the activities of civil servants and other officials, with the aim of creating conditions under which the relevant entity is obliged to provide a bribe. Thus, this indicates that provocation, according to the Criminal Code of the Lithuanian Republic, does not aim to identify the perpetrator, which in turn is similar to the position of the Norwegian and Danish legislators.

Researchers V.S. Kartavtsev et al. [45], studied in their work the experience of the CIS countries in perpetuating provocation. They focused their attention on the Republic of Tajikistan, which analysed section XIII “Crimes against state power”, in chapter 30 “Crimes against state power, interests of the public service” of the Criminal Code of the Republic of Tajikistan [19]. According to the provisions of Article 321 of the Criminal Code of the Republic of Tajikistan [19] entitled “Provocation of a bribe”, for persons who tried to provide a state or official, such a subject of an international organization or a foreign state with property elements to form special evidence of obtaining property benefits, liability is provided. Particular attention should be paid to the fact that in the Criminal Code of the Republic of Tajikistan [19], the act, namely the provocation of a bribe, refers to criminal offences against state power, as well as the interests of the public service. According to the authors, this approach is quite logical and appropriate, since it correctly defines the object of criminal activity, namely public relations in the sphere of state regulation.

The discussion held indicates the absence of a unanimous decision among legislators of different countries regarding the advisability of using the provocation of a criminal offence or vice versa, fastening responsibility for this type of activity. Thus, the positions of scientists are more characterized by the peculiarities of the legal families of the countries they analyse. According to the authors, it is these features that play an important role in determining government approaches to the provocation of a crime in various areas, in particular public administration.

Conclusions

As a result of the study, it was possible to study the approaches of different countries to fixing in their legislation the responsibility for the provocation of a criminal offence. It was found that the countries of the Anglo-Saxon, Romano-Germanic legal families, as well as the CIS countries, are characterized by different interpretations of the concept of provocation. This is due to the legal features emanating from the approaches used in foreign countries.

Given this, Basic law for the Federal Republic of Germany provides for rules that establish the powers, as well as the features of the activities of undercover police. This fact leads to the conclusion that in Germany a provocation can be committed by law enforcement agencies, but it is not directly provided for in the criminal law. In order to avoid abuse of power by authorized persons, Germany provides for liability for agents who violate the established procedure and infringe on the rights of innocent citizens. The work also studied the approaches of the United States, for which the provocation of a criminal offence is an important and common tool for committing law enforcement crimes and exposing the perpetrators. However, it should be defined that the Model Penal Code provides for the division of provocation into lawful and unlawful, for the commission of the latter, strict criminal liability is provided for officials. In addition, the experience of the CIS countries, which has a number of differences, was studied. In particular, in Ukraine, the mechanism of provocation is provided exclusively in the context of bribing a person with power or other official powers. In turn, the legislator also provides for this type of provocation and establishes responsibility for persons who have become the object of provocation. The Criminal Code of the Republic of Tajikistan is characterized by prohibitions that exclude the possibility of using such an approach by law enforcement agencies. However, the authors found that they carry out provocations indirectly, in the context of exercising the right to “promote bribery”. The most categorical to provocation of a crime is the Criminal Code of Georgia, since it prohibits any manifestation of provocation by authorized persons, and also establishes responsibility for them in the form of imprisonment.

After examining all approaches, it was found that in Kazakhstan at the moment the commission of a provocation of a crime is a prohibited activity. However, the authors believe that it is advisable to use it in this state, especially in the field of combating corruption. A prerequisite in this context is the regulation of a clear algorithm for the implementation of provocation, the

establishment of a specific number of employees who can carry it out, as well as the establishment of responsibility for violations of the established procedure by them. In subsequent studies, it is necessary to distinguish between the concepts of lawful and unlawful provocation of a criminal offence, as well as to reveal their features.

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Conflict of Interest
None.

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Регламентація провокації злочину в кримінальному законодавстві зарубіжних країн: що варто врахувати Казахстану?

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Анотація

Актуальність. Питання провокації кримінального правопорушення в науковому дискурсі привертає увагу правників вже досить давно. Слід зазначити, що вона не втрачає своєї актуальності, оскільки з розвитком суспільних відносин, а також зміною правових підходів до виконання функцій кримінального права відбувається лише її розвиток. Більше того, наразі у міжнародному співтоваристві не існує єдиного підходу до цієї категорії, а саме щодо доцільності регулювання її застосування у суспільстві.

Мета роботи. Метою роботи є проведення порівняльного аналізу особливостей законодавчого закріплення провокації кримінального правопорушення в нормативно-правових актах різних держав з метою використання їх досвіду в Казахстані.

Методологія. З цією метою в роботі було використано методи аналізу та синтезу, порівняння, дедукції, формально-юридичний, узагальнення.

Результати. У результаті вдалося дослідити підходи до категорії провокації кримінального правопорушення в країнах, що належать до англосаксонської та романо-германської правових сімей, а також членів Співдружності Незалежних Держав. Крім того, вивчався досвід держав, які не врегульовують такий механізм, зокрема, унеможливлюють його застосування. У ході аналізу увагу було зосереджено на підходах, які застосовуються іноземними державами щодо провокації кримінального правопорушення і є пріоритетними для Казахстану. Встановлено доцільність законодавчого закріплення зазначеного механізму в нормативній базі Казахстану, а також шляхи реалізації цього процесу.

Висновки. Практична цінність роботи полягає у можливості її використання законодавцем Казахстану при реформуванні сфери кримінального права, а також науковцями під час дослідження проблеми провокації кримінального правопорушення.

Ключові слова: правозастосовча практика; міжнародний досвід; підбурювання; нормативно-правові акти; злочин.