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Tatarov Oleh,

Doctor of Law, Professor

ORCID: <https://orcid.org/0000-0001-8491-4931>

CONCLUSION AND CONSIDERATION BY THE COURT OF AN AGREEMENT IN CRIMINAL PROCEEDINGS ON THE APPLICATION OF CRIMINAL LAW MEASURES TO A LEGAL ENTITY IN A SPECIAL PROCEDURE

The article identifies the peculiarities of concluding and considering by a court of law an agreement in criminal proceedings on application of criminal law measures to a legal entity under a special procedure, and also the problems of regulatory regulation of these procedures. It is noted that Article 483-17 of the CPC of Ukraine, providing for the possibility of concluding an agreement in criminal proceedings on the application of criminal legal measures to a legal entity under a special procedure, introduces a new type of agreement into criminal proceedings of Ukraine (in addition to the existing plea agreement and conciliation agreement) – an agreement on the application of criminal legal measures to a legal entity. The author examines the key features of the latter. Based on the analysis of the provisions of Chapter 37-1 of the CPC of Ukraine regarding the agreement on application of criminal law measures to a legal entity, the author identifies a number of problematic issues, namely: 1) optional nature of the obligation to cooperate for the conclusion of an agreement; 2) incorrect wording ‘type and amount of measures’; 3) failure to correct the wording ‘the prosecutor has the right to postpone the referral to court ... completion of other investigative actions ...’, which has different interpretations in science and practice; 4) lack of grounds for refusal to approve the agreement; 5) uncertainty of the wording that the court must provide the reasons that it proceeded from when deciding on the compliance of the agreement with the requirements of the CPC of Ukraine and the law; 6) lack of provisions on proving the grounds for approval of the agreement. To correct the last of the above shortcomings, Article 483-19 of the CPC of Ukraine should contain an exhaustive list of grounds for refusal to approve the agreement, taking into account the specifics of criminal proceedings regarding the application of criminal law measures to a legal entity in a special procedure.

Key words: criminal proceedings, legal entity, court, agreement, prosecutor, criminal offence, criminal law measures.

Relevance of the study. The new Chapter of the CPC of Ukraine [1] ‘Criminal Proceedings on the Application of Criminal Law Measures to a Legal Entity in a Special Procedure’ (as amended by Law of Ukraine No. 4111-IX of 4 December 2024 [2]) enshrines a special form of a special procedure for criminal proceedings known since 2012 – proceedings based on agreements. Given the prevalence of this procedure in criminal proceedings, it is possible to predict its application in the future under Chapter 37-1 of the CPC of Ukraine. An analysis of the provisions of this chapter regarding agreements shows that they are based on the long-standing provisions of Chapter 35 of the CPC of Ukraine. These provisions, despite their effectiveness, have been repeatedly amended and supplemented (for example, by the Laws of Ukraine No. 1950-VIII dated 16 March 2017 [3], No. 4033-IX dated 29 October 2024 [4], etc.), and some of their provisions are criticized in scientific and practical studies. Therefore, it is important to evaluate these provisions in the light of the existing practice of applying Chapter 35 of the CPC of Ukraine.

The state of study. Theoretical and practical issues of criminal proceedings based on agreements are covered in the works of I. V. Hloviuk, V. O. Hryniuk, M. I. Demura, I. O. Kislitsyna, V. V. Kolodchyn, A. V. Lapkin, O. O. Leliak, O. Lytvyn, V. Navrotska, R. Novak, E. Povzyk, V. Ryba-

lok, H. Sayenko, M. Sirotkina, M. Taus, I. Titka, A. Trekke, A. Tumanianets, G. Tyurin, P. Kholodil, etc. Proceedings against legal entities (according to the regulations to the Law of Ukraine dated 4 December 2024 No. 4111-IX [2]) were considered by S. E. Ablamskyi, K. L. Buhaichuk, I. V. Hloviuk, A. V. Danylenko, Z. A. Zahyney-Zabolotenko, I. V. Kozakova, I. V. Leshukova, O. V. Panchenko, M. E. Panko, O. P. Provotorov, I. V. Chernychenko, O. O. Yukhno, A. M. Yashchenko, and others. At the same time, the provisions of the chapter ‘Criminal proceedings on the application of criminal law measures to a legal entity in a special procedure’ have not been practically studied.

The purpose of the article is to identify the peculiarities of concluding and reviewing by a court of an agreement in criminal proceedings on application of criminal law measures to a legal entity under a special procedure, and also the problems of regulatory regulation of these procedures.

Summary of the main material. According to Part 2 of Article 96-3 of the Criminal Code of Ukraine, the grounds for applying criminal law measures to a legal entity, regardless of bringing an individual to criminal liability, are the established factual circumstances that indicate:

1) the commission by its authorized person, its founder (participant), ultimate beneficial owner or member of the supervisory board on behalf of and/or in the interests of the

legal entity of a socially dangerous act that falls within the scope of an act under Articles 209, 369, 369-2 in relation to officials under part four of Article 18 of the Criminal Code of Ukraine;

2) failure to ensure that the authorized person of a legal entity fulfils the obligations imposed on the legal entity by law or the legal entity's constituent documents to take measures to prevent corruption, which resulted in the commission on behalf of and/or in the interests of the legal entity of a socially dangerous act falling within the scope of an act under Articles 209, 369, 369-2 in relation to officials under part 4 of Article 18 of the Criminal Code of Ukraine;

3) failure to ensure the fulfillment of the duties assigned to the authorized person of a legal entity by law or the constituent documents of the legal entity to supervise and/or control the actions of persons acting on behalf of the legal entity or on behalf of its authorized persons, members of its collegial bodies or employees, which led to the commission on behalf and/or in the interests of the legal entity of a socially dangerous act falling within the elements of an act under Art. 209, 369, 369-2 in relation to officials under part 4 of Article 18 of the Criminal Code of Ukraine;

4) committing a socially dangerous act on behalf of and/or in the interests of a legal entity that falls within the scope of an act under Articles 209, 369, 369-2 in relation to officials under Part 4 of Article 18 of the Criminal Code of Ukraine with the consent of its authorized persons, founder (participant), ultimate beneficial owner, member of the supervisory board.

Article 483-17 of the CPC of Ukraine, providing for the possibility of concluding an agreement in criminal proceedings on the application of criminal legal measures to a legal entity in a special procedure, introduces a new type of agreement in criminal proceedings of Ukraine (in addition to the existing plea agreement and conciliation agreement): an agreement on the application of criminal legal measures to a legal entity.

This agreement has a number of features that should be considered in more detail.

1. A condition for entering into an agreement is the existence of grounds for applying criminal legal measures to a legal entity under Article 96-3 of the Criminal Code of Ukraine.

Despite the fact that it is not explicitly stated in part 1 of Art. 483-17 of the CPC of Ukraine, it is important that the general conditions of criminal proceedings regarding the application of criminal legal measures to a legal entity in a special procedure are met. This includes ones, provided for in part 2 of Article 483-1 of the CPC of Ukraine (which, by the way, contains a reference only to part 2 of Art. 96-3 of the Criminal Code of Ukraine), as well as the requirements of Part 2 of Art. 483-3 of the CPC of Ukraine regarding the signs of a criminal offense that falls under the signs of an act under Articles 209, 369, 369-2 in relation to officials under Part 4 of Art. 18 of the Criminal Code of Ukraine, in connection with which it is envisaged to apply criminal legal measures to a legal entity in a special procedure.

2. The parties are the prosecutor and the legal entity. For comparison, according to Article 469 of the CPC of Ukraine, the conclusion of a plea agreement in criminal proceedings against an authorized person of a legal entity that has committed a criminal offense in connection with which proceedings are being conducted against a legal entity is not allowed. In the same special procedure of criminal proceedings, unlike general proceedings based on agreements, a legal entity is a party to the agreement. Moreover, part 2 of Article 483-17 of the CPC of Ukraine

regulates that the prosecutor is obliged to inform the representative of the legal entity about the right to enter into an agreement, explain the mechanism of its implementation and not to obstruct its conclusion. This provision practically repeats part 7 of Article 469 of the CPC of Ukraine: the investigator and prosecutor are obliged to inform the suspect and the victim of their right to reconciliation, explain the mechanism for its implementation and not to obstruct the conclusion of a reconciliation agreement. However, for a reconciliation agreement where the prosecution is not a party, such a non-interference clause is quite logical, however, it is not logical for proceedings on the application of criminal legal measures to a legal entity in a special procedure, since the prosecutor is a party and cannot interfere with the conclusion of the agreement. If the prosecutor does not see any grounds for concluding the agreement, this is not an obstruction to its conclusion, but rather the prosecutor's discretion.

3. Both the prosecutor and the representative of the legal entity may initiate the agreement. There are certain issues here related to the fact that, according to Art. 483-2 of the CPC of Ukraine, a representative of a legal entity is involved in criminal proceedings, however, in the absence of a representative of the legal entity in respect of which the proceedings are being conducted, designated by the legal entity, the investigator, prosecutor, investigating judge or court is obliged to ensure the participation of a defense counsel in criminal proceedings regarding the application of criminal legal measures to a legal entity in a special manner. Art. 483-17 of the CPC of Ukraine does not refer to a defense council, but only to a representative. This also applies to some other articles of this chapter, because if these articles are literally interpreted, the defense council appointed to represent the interests of a legal entity in respect of which proceedings are being conducted to apply criminal legal measures in a special procedure, has no right to participate in familiarization with the materials, preparatory court hearing, trial, as well as to receive a copy of the act on the application of criminal legal measures to a legal entity and the register of pre-trial investigation materials [5]. It seems that the mention of a representative in Art. 483-17 of the CPC of Ukraine is not controversial, as in the above examples, because only the legal entity itself can decide whether to enter into an agreement, and only a freely chosen representative, and not a defense counsel provided by the state, can realize this will. Otherwise, there are doubts as to whether the legal entity's will is expressed. In other words, it is impossible to conclude a plea bargain if a defense counsel, rather than a representative of the legal entity, participates in the criminal proceedings and contradicts the requirements of the law.

4. Time limitations: the conclusion of the agreement may be initiated at any time after the issuance of a decision on the criminal proceedings on the application of criminal legal measures to a legal entity in a special procedure before the court enters the conference room to make a decision (part 1 of Article 483-17 of the CPC of Ukraine).

5. The circumstances to be taken into account by the prosecutor when concluding the agreement are defined in Article 483-18 of the CPC of Ukraine and include: 1) the extent and nature of the assistance of the legal entity by the prosecution during the pre-trial investigation; 2) the provision by the legal entity of all necessary information to identify the individuals who committed the criminal offense; 3) the nature of the socially dangerous act that falls under the signs of a criminal offense, the circumstances of which are related to the legal entity; 4) the existence of a public

interest in ensuring a faster pre-trial investigation and trial, and exposing more criminal offenses. If we compare the last point with Article 470 of the CPC of Ukraine for plea bargaining, we will find the following provision: the existence of a public interest in preventing, detecting or stopping more criminal offenses or other more serious criminal offenses. This wording seems to be unsuccessful, as it only refers to the vague action of 'prevention' (which is difficult to assess empirically), as well as the detection of criminal offenses, which does not take into account the need for their effective investigation. Therefore, we support its absence in Art. 483-18 of the CPC of Ukraine.

With regard to the speed of pre-trial investigation, it is reasonable to believe that the prosecutor should pay special attention to the need to avoid conflicts between the task of expediting criminal proceedings and ensuring their completeness, since the former sometimes excludes the latter [6, p. 88]. It should be noted that the wording 'existence of public interest', which is traditional for proceedings based on agreements, is used. It should be noted that there is a position that it is inexpedient to normatively consolidate the circumstances defined in clauses 3, 4, part 1 of Article 470 of the CPC of Ukraine as those which should be taken into account by the prosecutor when concluding a plea agreement, and which are characterized by the existence of a public interest in ensuring a faster pre-trial investigation and trial, exposing more criminal offenses, preventing, detecting or stopping more criminal offenses or other more serious criminal offenses. After all, detection, suppression and exposure of all criminal offenses without exception, subject to reasonable time limits, always constitutes the content of the public interest, which is embodied and realized in the tasks and principles of law enforcement agencies. It requires clarification in each case of the prosecutor's decision to enter into a plea agreement. The consequence of expanding the relevant discretionary powers of the prosecutor by granting him the right to determine and assess the existence of public interest in criminal proceedings may be an unreasonable refusal to conclude a plea agreement [7, p. 134]. It is quite appropriate for the interpretation of Art. 483-18 of the CPC of Ukraine.

6. Content of the agreement. The agreement on the application of criminal legal measures to a legal entity shall specify its parties, a socially dangerous act falling under the signs of a criminal offense and its legal qualification, recognition by the legal entity of its connection with a socially dangerous act, the obligations of the legal entity to cooperate in exposing a criminal offense committed by individuals (if there were appropriate agreements), the agreed type and amount of criminal legal measures, the term of its application (for additional (non-criminal) measures). Questions arise because, again, the obligation to cooperate is optional (although the illogic of this approach has already been pointed out [8, p. 65]). Given that criminal proceedings are carried out separately in respect of a legal entity, the optionality of cooperation seems debatable. In addition, the wording 'type of measure' is rather unfortunate, because if we are talking about the application of one possible type, the correct wording is 'type of measure', if several – 'types of measures'.

7. Proceedings based on an agreement in pre-trial investigation. Pursuant to Article 483-19 of the CPC of Ukraine, if an agreement is reached during the pre-trial investigation, the act on the application of criminal legal measures to a legal entity with the agreement signed by the parties is immediately sent to the court. The prosecutor has the right to postpone the submission to the court of an act on the

application of criminal legal measures to a legal entity with an agreement signed by the parties until an expert opinion is obtained or other investigative actions necessary to collect and record evidence that may be lost with the passage of time or that cannot be carried out later without materially affecting their result in the event that the court refuses to approve the agreement. Unfortunately, this wording does not take into account the relevant scientific criticism [8, p. 112–115; 9, p. 229; 10, p. 166–167] of the similar wording of Part 1 of Art. 474 of the CPC of Ukraine, and the proposals to amend this provision [8, p. 115; 11, p. 411].

8. Proceedings based on the agreement in court. According to Art. 483-13 of the CPC of Ukraine, the court in the preparatory hearing has the authority to approve the agreement or refuse to approve the agreement and return the criminal proceedings to the prosecutor for further pre-trial investigation. The preparatory court hearing is held with the participation of the prosecutor and a representative of the legal entity. Taking into account the interpretation of a similar provision in the Resolution of the Plenum of the High Specialized Court of Ukraine for Civil and Criminal Cases 'On the Practice of Conducting Criminal Proceedings by Courts on the Basis of Agreements', the court may schedule a trial in the general procedure if the prosecutor files a motion related to the absence of the need to continue the pre-trial investigation due to its actual completion (paragraph 18) [12].

Without defining the subject matter of proof (this is typical for general criminal proceedings based on agreements, although there are relevant proposals in science [13, p. 11]), Art. 483-19 of the CPC of Ukraine provides that before deciding to approve an agreement on the application of criminal legal measures to a legal entity, the court during the court hearing must find out from the representative of the legal entity whether he fully understands 1) that the legal entity has the right to a trial, during which the prosecutor is obliged to prove each circumstance regarding the existence of grounds for applying criminal legal measures to it, and it has the right to defense; 2) the consequences of concluding and approving agreements provided for in part three of Article 483-18 of the CPC of Ukraine; 3) the types of criminal legal measures that will be applied to the legal entity if the agreement is approved by the court. If the court is convinced that the agreement can be approved, it shall issue a ruling approving the agreement and imposing the types of criminal legal measures agreed by the parties.

However, the articles of this chapter of the CPC of Ukraine do not specify on the basis of which data the court can be convinced of this. It is surprising that the quoted article does not contain any grounds for refusal to approve the agreement, as well as a reference to part 7 of Article 474 of the CPC of Ukraine. Moreover, the decision to refuse to approve the agreement is provided for by law. Therefore, in Art. 483-19 of the CPC of Ukraine it is necessary either to provide the grounds for refusal to approve the agreements or to make a reference to Part 7 of Art. 474 of the CPC of Ukraine. The first option is more appropriate, as it will reflect the specifics of the grounds for refusing to approve the agreement specifically for criminal proceedings regarding the application of criminal legal measures to a legal entity in a special procedure.

9. Court decisions in proceedings based on an agreement. The specificity of the court decision is that the motivational part of the decision must contain: information on the circumstances of the socially dangerous act that falls under the signs of a criminal offense and its legal qualification, with which the legal entity is associated; information

on the agreement, its details, content and certain types of criminal law measures; the motives that the court proceeded from when deciding on the compliance of the agreement with the requirements of this Code and the law, and the provisions of the law by which it was guided. The operative part of the court decision based on the agreement must contain a decision to approve the agreement with its details, a decision to recognize the connection of the legal entity with a socially dangerous act that falls under the signs of a criminal offense and its legal qualification, a decision to impose the types of criminal legal measures agreed by the parties, as well as other information provided for in Article 483-15 of the CPC of Ukraine (part 3 of Article 483-19 of the CPC of Ukraine). As it can be seen, unlike the wording of Article 483-18 of the CPC of Ukraine, it refers to measures of a criminal law nature, which indicates the possibility of applying several of them. The wording that the court must provide the reasons that it proceeded from when deciding on the compliance of the agreement with the requirements of the CPC of Ukraine and the law is rather vague, given that the grounds for refusing to approve the agreement are not specified.

Conclusions. The analysis of the provisions of Chapter 37-1 of the CPC of Ukraine regarding the agreement on application of criminal legal measures to a legal entity shows that there are the following problematic issues: 1) optional nature of the obligation to cooperate for the conclusion of an agreement; 2) incorrect wording 'type and amount of measures'; 3) failure to correct the wording 'the prosecutor has the right to postpone the referral to court ... completion of other investigative actions ...', which has different interpretations in science and practice; 4) absence of grounds for refusal to approve the agreement; 5) uncertainty of the wording that the court must provide the reasons that it proceeded from when deciding on the compliance of the agreement with the requirements of the CPC of Ukraine and the law; 6) absence of provisions on proving the grounds for approval of the agreement. To correct the last of the listed shortcomings, Article 483-19 of the CPC of Ukraine should contain an exhaustive list of grounds for refusing to approve the agreement, taking into account the specifics of criminal proceedings on the application of criminal legal measures to a legal entity in a special procedure.

Bibliography

1. Кримінальний процесуальний кодекс України від 13 квітня 2012 року. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>
2. Про внесення змін до Кримінального кодексу України, Кримінального процесуального кодексу України та інших законодавчих актів України щодо вдосконалення механізмів притягнення юридичних осіб до відповідальності за підкуп посадових осіб іноземних держав: Закон України від 04.12.2024 р. № 4111-IX. URL: <https://zakon.rada.gov.ua/laws/show/4111-20#n118>
3. Про внесення змін до Кримінального процесуального кодексу України щодо удосконалення механізмів забезпечення завдань кримінального провадження: Закон України від 16.03.2017 р. № 1950-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1950-19#Text>
4. Про внесення змін до Кримінального кодексу України та Кримінального процесуального кодексу України щодо вдосконалення регулювання угод про визнання винуватості у кримінальних провадженнях щодо корупційних кримінальних правопорушень та кримінальних правопорушень, пов'язаних з корупцією: Закон України від 29.10.2024 р. № 4033-IX. URL: <https://zakon.rada.gov.ua/laws/show/4033-20#Text>
5. Гловюк І. В. Правнича допомога у разі застосування до юридичної особи заходів кримінально-правового характеру у спеціальному порядку. 2025. URL: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/pravnica-dopomoga-u-razi-zastosuvannia-do-iuridicnoyi-osobi-zaxodiv-kriminalno-pravovogo-harakteru-u-specialnomu-poriadku>
6. Тюрін Г. Є. Організаційно-правові основи участі прокурора у кримінальному провадженні на підставі угод: дис. ... канд. юрид. наук : 12.00.09. Харків, 2017. 250 с.
7. Трекке А. С. Кримінальне провадження на підставі угоди про визнання винуватості: дис. ... канд. юрид. наук : 12.00.09. Ірпінь, 2018. 247 с.
8. Холодило П. В. Кримінальне провадження на підставі угод про визнання винуватості: дис. ... канд. юрид. наук : 12.00.09. Київ, 2017. 296 с.
9. Лизак Я. В. Роль прокурора під час укладення угод про примирення та визнання винуватості. *Науковий вісник Херсонського державного університету. Серія «Юридичні науки»*. 2014. Вип. 1. С. 226–231.
10. Леляк О. О. Угода про визнання винуватості у кримінальному процесі України: дис. ... канд. юрид. наук : 12.00.09. Київ, 2015. 228 с.
11. Гловюк І. В. Кримінально-процесуальні функції: теорія, методологія та практика реалізації на основі положень Кримінального процесуального кодексу України 2012 р.: монографія. Одеса: Юридична література, 2015. 712 с.
12. Про практику здійснення судами кримінального провадження на підставі угод: Постанова Пленуму Вишого спеціалізованого суду України з розгляду цивільних і кримінальних справ від 11.12.2015 р. № 13. URL: <https://zakon.rada.gov.ua/laws/show/v0013740-15#Text>
13. Литвин О. В. Кримінально-процесуальне доказування у стадії судового розгляду: дис. ... канд. юрид. наук : 12.00.09. Одеса, 2016. 214 с.

References

1. Kryminalnyi protsesualnyi kodeks Ukrainy vid 13 kvitnia 2012 roku [Criminal Procedure Code of Ukraine: Law of Ukraine dated April 13, 2012]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> [in Ukrainian].
2. Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy, Kryminalnoho protsesualnoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo vdoskonalennia mekhanizmv prytiahnennia yurydychnykh osib do vidpovidalnosti za pidkup posadovykh osib inozemnykh derzhav: Zakon Ukrainy vid 04.12.2024 r. № 4111-IX [On Amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, and Other Legislative Acts of Ukraine to Improve Mechanisms

for Holding Legal Entities Accountable for Bribery of Foreign Public Officials: Law of Ukraine dated December 4, 2024, No. 4111-IX]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4111-20#n118> [in Ukrainian].

3. Pro vnesennia zmin do Kryminalnoho protsesualnoho kodeksu Ukrainy shchodo udoskonalennia mekhanizmv zabezpechennia zavdan kryminalnoho provadzhennia: Zakon Ukrainy vid 16.03.2017 r. № 1950-VIII [On Amendments to the Criminal Procedure Code of Ukraine to Improve Mechanisms for Ensuring the Objectives of Criminal Proceedings: Law of Ukraine dated March 16, 2017, No. 1950-VIII]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1950-19#Text> [in Ukrainian].

4. Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy ta Kryminalnoho protsesualnoho kodeksu Ukrainy shchodo vdoskonalennia rehuliuвання uгод pro vyznannia vynuvatosti u kryminalnykh provadzhenniakh shchodo koruptsiinykh kryminalnykh pravoporushen ta kryminalnykh pravoporushen, poviazanykh z koruptsiieiu: Zakon Ukrainy vid 29.10.2024 r. № 4033-IX [On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to Improve the Regulation of Plea Agreements in Criminal Proceedings for Corruption Offenses and Corruption-Related Offenses: Law of Ukraine dated October 29, 2024, No. 4033-IX]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4033-20#Text> [in Ukrainian].

5. Hloviuk, I. V. (2025). Pravnycha dopomoha u razi zastosuvannia do yurydychnoi osoby zakhodiv kryminalno-pravovoho kharakteru u spetsialnomu poriadku [Legal Assistance in the Application of Criminal Law Measures to a Legal Entity in a Special Procedure]. Retrieved from: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/pravnica-dopomoga-u-razi-zastosuvannia-do-iuridicnoyi-osobi-zakhodiv-kriminalno-pravovogo-xarakteru-u-specialnomu-poriadku> [in Ukrainian].

6. Tiurin, H. Ye. (2017). Orhanizatsiino-pravovi osnovy uchasti prokurora u kryminalnomu provadzhenni na pidstavi uгод [Organizational and Legal Principles of Prosecutor Participation in Criminal Proceedings Based on Agreements]. *Candidate's thesis*. Kharkiv [in Ukrainian].

7. Trekke, A. S. (2018). Kryminalne provadzhennia na pidstavi uгод pro vyznannia vynuvatosti [Criminal Proceedings Based on a Plea Agreement]. *Candidate's thesis*. Irpin [in Ukrainian].

8. Kholodylo, P. V. (2017). Kryminalne provadzhennia na pidstavi uгод pro vyznannia vynuvatosti [Criminal Proceedings Based on Plea Agreements]. *Candidate's thesis*. Kyiv [in Ukrainian].

9. Lyzak, Ya. V. (2014). Rol prokurora pid chas ukladennia uгод pro prymyrennia ta vyznannia vynuvatosti [The Role of the Prosecutor in Concluding Reconciliation and Plea Agreements]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu. Seriiia «Iurydychni nauky»*, 1, 226–231 [in Ukrainian].

10. Leliak, O. O. (2015). Uhoda pro vyznannia vynuvatosti u kryminalnomu protsesi Ukrainy [Plea Agreement in the Criminal Process of Ukraine]. *Candidate's thesis*. Kyiv [in Ukrainian].

11. Hloviuk, I. V. (2015). Kryminalno-protsesualni funksi: teoriia, metodolohiia ta praktyka realizatsii na osnovi polozhen Kryminalnoho protsesualnoho kodeksu Ukrainy 2012 r. [Criminal Procedure Functions: Theory, Methodology, and Practice of Implementation Based on the Provisions of the 2012 Criminal Procedure Code of Ukraine]: monohrafiia. Odesa: Yurydychna literature [in Ukrainian].

12. Pro praktyku zdiisnennia sudamy kryminalnoho provadzhennia na pidstavi uгод: Postanova Plenumu Vysshchoho spetsializovanoho sudu Ukrainy z rozghliadu tsyvilnykh i kryminalnykh sprav vid 11.12.2015 r. № 13 [On the Practice of Criminal Proceedings Based on Agreements by the Courts: Resolution of the Plenum of the High Specialized Court of Ukraine for Civil and Criminal Cases dated December 11, 2015, No. 13]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/v0013740-15#Text> [in Ukrainian].

13. Lytvyn, O. V. (2016). Kryminalno-protsesualne dokazuvannia u stadii sudovoho rozghliadu [Criminal procedural evidence at the stage of judicial review]. *Candidate's thesis*. Odesa [in Ukrainian].

Татаров Олег Юрійович,

доктор юридичних наук, професор

ORCID: <https://orcid.org/0000-0001-8491-4931>

УКЛАДЕННЯ ТА РОЗГЛЯД СУДОМ УГОДИ В КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ ЩОДО ЗАСТОСУВАННЯ ДО ЮРИДИЧНОЇ ОСОБИ ЗАХОДІВ КРИМІНАЛЬНО-ПРАВОВОГО ХАРАКТЕРУ В СПЕЦІАЛЬНОМУ ПОРЯДКУ

У статті визначено особливості укладення та розгляду судом угоди в кримінальному провадженні щодо застосування до юридичної особи заходів кримінально-правового характеру в спеціальному порядку, а також проблеми нормативного регулювання цих процедур. Зауважено, що ст. 483-17 КПК України, передбачаючи можливість укладення угоди в кримінальному провадженні щодо застосування до юридичної особи заходів кримінально-правового характеру в спеціальному порядку, вводить у кримінальне провадження України новий різновид угоди (окрім наявної угоди про визнання винуватості й угоди про примирення) – угоду про застосування до юридичної особи заходів кримінально-правового характеру. Розглянуто ключові особливості останньої. На підставі аналізу положень глави 37-1 КПК України щодо угоди про застосування до юридичної особи заходів кримінально-правового характеру встановлено наявність низки проблемних питань, а саме: 1) факультативність обов'язку співпраці для укладення угоди; 2) некоректність формулювання «вид та розмір заходів»; 3) невиправлення формулювання «прокурор має право відкласти направлення до суду ... завершення проведення інших слідчих дій...», яке має різні тлумачення в науці та на практиці; 4) відсутність підстав для відмови в затвердженні угоди; 5) невизначеність формулювання, що суд має навести мотиви, з яких він виходив під час вирішення питання про відповідність угоди вимогам КПК України та закону; 6) відсутність положень щодо доказування підстав для

затвердження угоди. Для виправлення останнього з перелічених недоліків у ст. 483-19 КПК України слід вказати вичерпний перелік підстав для відмови в затвердженні угоди, урахувавши специфіку саме для кримінального провадження щодо застосування до юридичної особи заходів кримінально-правового характеру у спеціальному порядку.

Ключові слова: кримінальне провадження, юридична особа, суд, угода, прокурор, кримінальне правопорушення, заходи кримінально-правового характеру.

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