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The identity of the criminal as an element of the forensic characteristics of the crime under Article 368 of the Criminal Code of Ukraine

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Abstract

The purpose of this research is a systematic analysis of the identity of the criminal as an element of the forensic characteristics of the crime provided for in Article 368 of the Criminal Code of Ukraine. Terminological, systemic-structural, formal-logical, comparative-legal, statistical methods were used during the processing of materials in the research. It has been proven that the identity of the criminal is one of the most important elements of the forensic characterization of the crimes provided for in Article 368 of the Criminal Code of Ukraine. It was determined that the criminal's identity as an element of his forensic characteristics in the case of acceptance of an offer, promise or receipt of an unlawful benefit is distinguished by specific features in the set of biological, psychological and social properties of the individual. It is claimed that criminals of this kind are: mostly men, who in most cases occupy managerial positions; persons with a low level of cultural awareness, focused on meeting personal financial and economic needs, commit crimes mostly alone, less often in small groups of persons, more often as an official, and one who provides or offers to provide an illegal benefit, while equally trying to hide the commission of such crimes. The necessity of studying all elements of their forensic characteristics and establishing relationships between them is substantiated

Keywords:

forensic characteristics; identity of the criminal; illegal benefit; corruption

Introduction

In At the current stage of Ukraine's development as an independent, legal, democratic state, under the influence of political, economic, social and other factors, a number of threats arise that pose a real threat to national security and the transformation of Ukraine on the path of European integration.

The phenomenon of corruption is a particular public danger, since the commission of corruption offenses leads to the destruction of the financial system, undermines the trust of citizens in the state, and destroys

the ability of officials to conscientiously fulfil their duties to protect national interests. than for personal enrichment.

Today, the fight against corruption is a priority task of national policy, as it affects all spheres of society and requires systemic institutional changes aimed at changing public consciousness. Only the elimination of corruption as a phenomenon will contribute to the introduction of new standards of behavior of civil servants and the restoration of trust in state institutions. The current state of development of systemic corruption

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in Ukraine requires drastic changes in the organization of anti-corruption measures [1].

One of the types of corruption offenses, the consequences of which have become particularly relevant today, is the acceptance of an offer, promise or receipt of an illegal benefit by an official (Article 368 of the Criminal Code of Ukraine), which differs from other self-interested crimes by a high level of latency, which significantly complicates its course investigation. As a rule, two persons are involved in the commission of such crimes – the one who provides the unlawful benefit and the one who receives it. They are equally interested in concealing criminal activities. The purpose of this research is a systematic analysis of the identity of the criminal as an element of the forensic characteristics of the crime provided for in Article 368 of the Criminal Code of Ukraine.

To achieve this goal, it is necessary:

1. Reveal the concept of “person of the criminal” as an element of the forensic characteristics of the crime provided for in Article 368 of the Criminal Code of Ukraine.
2. Provide a description of the criminal's identity as an element of the forensic description of the crime provided for in Article 368 of the Criminal Code of Ukraine.

Presentation of Main Material

The commission of crimes provided for in Article 368 of the Criminal Code of Ukraine encroaches on the foundations of the social order, guarantees of constitutional rights and freedoms of man and citizen, on the functioning of the relevant branch of government and the state administration system as a whole.

Obtaining an undue advantage has various forms. According to the criminal law, the subject of such a crime is all kinds of material goods, for example: 1) property, in particular, seized from free circulation – money, valuables and other things; 2) the right of ownership (for example, documents giving the right to receive property, use it or demand the fulfilment of obligations, etc.); 3) any actions of a property nature (for example, transfer of property assets, refusal of them, refusal of ownership rights, free provision of services, payment of sanatorium-resort or tourist vouchers, admission and education of children in foreign or domestic educational institutions), construction or repair work, etc.) [2]. Thus, according to case No. 520/15000/19 of the Kyiv District Court of Odesa, PERSON_1 is charged with the fact that on 01/14/2019 in the period from 3:30 p.m. to 3:35 p.m., for selfish reasons and for the purpose of personal enrichment, realizing the illegality of his own actions, using the official position given to him, while being in room 501 of the Kyiv VP in the city of Odesa of the GNP of the Odesa region at the address N appealed to the citizen PERSON_2 with a request to provide himself with an unlawful monetary benefit in the amount of 800 US dollars. 02/04/2019 at approximately 9:30 p.m. under the same circumstances, while staying at the

address indicated above, PERSON_1 independently reduced and finally determined the amount of illegitimate benefit in the amount of USD 300 (which according to official NBU data as of 02/04/2019 amounted to UAH 8,271.21) for his failure to act in the interests of PERSON_2, as one who provides an unlawful benefit by using the official position given to him, namely: for not conducting an investigation on the basis of the mandate of the Investigative Committee of the Kyiv District. GUNP in Odesa GUNP of Odesa region in criminal proceedings No. 12019160480000159 dated 01/13/2019 under Part 3 of Art. 185 of the Criminal Code of Ukraine regarding the conduct of investigative actions aimed at establishing the involvement of PERSON_2 in the commission of the specified criminal offense. Later, on 02/07/2019, in the period from 7:19 p.m. to 7:26 p.m., while on the fifth floor near office No. 501 in the building of the Kyiv Regional State Administration, Odesa, at the address: Odesa, str. Akademika Filatova, 15a, acting deliberately, for selfish reasons and for the purpose of personal enrichment, PERSON_1, in the manner established by him, personally received an unlawful benefit in the form of money in the amount of 300 US dollars from a citizen of Ukraine, PERSON_2 (which according to official NBU data as of 02/07/2019 amounted to UAH 8,08922) for not taking actions in the interests of PERSON_2 using the given official position, namely: for not conducting criminal proceedings No. 12019160480000159 dated 01/13/2019 under part 3 of Article 185 of the Criminal Code of Ukraine, investigative (search) actions, aimed at establishing the involvement of PERSON_2 in the commission of the specified criminal offense [3]. The results of the data analysis of the conducted survey of practical workers indicate that investigators, operational workers, medical experts, prosecutors quite often faced difficulties during pre-trial investigation in criminal proceedings regarding the acceptance of an offer, promise or receipt of undue benefit by an official. This is due, firstly, to the fact that practitioners do not have a sufficient amount of knowledge about the mechanism of committing a crime to accept an offer, promise or receive an undue benefit from an official regarding the means used by the subjects of such a crime, the peculiarities of the trace picture, etc.; secondly, the lack of a single method of investigation, the basis of which is the establishment of the forensic characteristics of this type of crime, which affects the effectiveness of their investigation.

Having analysed the materials of criminal proceedings on the fact of acceptance of an offer, promise or receipt of an illegal benefit by an official, in order to understand the specifics of the investigation of this crime, it is first necessary to investigate the forensic characteristics of this type of crime.

Aspects of the issue of forensic characterization of acceptance of an offer, promise, or receipt of undue benefit by an official were considered by such researchers

as V.I. Boyarov [4], V.A. Zhuravel [5], O.Yu. Tatarov [6], A.N. Khalikov [7], D.O. Shumeiko [8] and others. At the same time, the results of their research do not fully reveal the essence of such crimes, and also do not solve the problematic issues that arise in practice during the investigation of the facts of acceptance of an offer, promise or receipt of an undue benefit by a criminal or an official, since some researchers considered relevant issues in the conditions of the Criminal Code of 1960 and without taking into account the provisions of the current criminal procedural and criminal legislation of Ukraine, while others focused only on certain elements of the forensic characteristics of accepting an offer, promise or receiving an illegal benefit by an official.

Despite the large number of scientific approaches to defining the concept and content of forensic characteristics, the study agrees with the opinion of V.Yu. Shepitko, which is considered relevant today. Thus, the researcher defines the forensic characteristics as a system of information about certain types of crimes, features of the subject of the crime, motives, the object of the offense, the environment, criminal law techniques, which are important for the detection and disclosure of such acts in a forensic way. Means and methods. The essence of forensic characterization is that it is considered as a system containing signs and data about the natural connections of traces, which are expressed by the appropriate degree of reliability, established on the basis of the generalization of these materials of criminal proceedings, verified by investigative practice [9].

As noted by A.V. Starushkevich, forensic characterization reproduces data on individual elements of the composition of the crime mainly at the probable level, in particular: the identity of the criminal and the victim; ways of preparing, committing and concealing certain types of crimes; situationally determined, causally or otherwise connected with the crime event, the results of relevant changes in the situation, which have evidentiary value; attempts to hide traces of crimes used by criminals and information about other circumstances that may be useful for a full, comprehensive and objective investigation of criminal proceedings. An important factor in the formation of the forensic characteristics of crimes is the prediction of new ways of committing them, the identification of typical methods of criminals [10]. The study shows that the identity of the criminal is one of the most important elements of the forensic characterization, since its other elements: the method of commission, the situation, the place, the time, the identity of the victim – are derived from the criminal intent and the criminal act committed by the criminal.

It should be noted that the concepts of “person of criminal” and “subject of crime” are not equated here, since “subject of crime” is a criminal law concept (natural person who has committed a crime at the age from which criminal responsibility can arise), and

“personality of a criminal” is a criminological concept (it includes biological, psychological, and social characteristics of an individual).

The question of the concept of “the person of a criminal” remains debatable among criminologists, since there is no single clear approach to its definition.

Yes, A.V. Ivanytsia notes that the “personality of a criminal” is a broad concept that encompasses the essence of a person, a set of signs characterizing his moral and spiritual world in interaction with social and individual conditions of life, which in one way or another influenced the commission of a crime, criminality [11].

According to A.F. Zelinskyi, the person of the criminal can only be discussed in relation to a person guilty of committing a crime, who committed one or more deliberate, purposeful actions, provided for by the law on criminal liability, for the realization of a common motive [12].

As noted by I.M. Danshin and A.P. Zakaliuk, the personality of a criminal is a set of essential and established social properties and signs, socially significant biological and psychological features of an individual, which, objectively realized in a specific committed crime, give the specified act signs of public danger, and the culprit is socially dangerous, taking into account that the person is subject to criminal liability provided for by the criminal law [13].

Such approaches to determining the identity of a criminal are somewhat imprecise and contradictory from the point of view of criminology and require more detailed study, analysis and clarification. There are other, more accurate and acceptable forensic theories of defining and characterizing the identity of a criminal.

In particular, M.V. Saltevsyky proposed to consider the personality of the criminal as a sociobiological system, the properties and signs of which are embodied in the material environment and are used for the detection and investigation of crimes. These are physical, biological and social properties [14].

Investigating the identity of the criminal as an element of the forensic sign of acceptance of an offer, promise or receipt of undue benefit by an official, it is appropriate to note that such a sign is a combination of factors: gender, age, nationality, personality of the criminal, personality of the criminal, marital status, place of residence, social status, method life (circle of communication, habits, value priorities), economic situation (income level), etc. Under the influence of time and as a result of changes in the general political, economic, cultural and social conditions of public life, the characteristics of the criminal as an element of the forensic characteristics of acceptance of an offer, promise, receipt of undue benefit by an official have undergone some changes [15].

Data on the identity of the criminal, in particular, his behavior before, during the commission and after the acceptance by the official of an offer, promise or receipt of an unlawful benefit of accepting an offer,

promise or receipt of an unlawful benefit by an official are of great importance for the forensic characterization of crimes. The relationship between the person of the criminal and the person in whose interests the official commits criminal acts is also of great importance for forensic characterization. This enables the investigation to clearly plan the investigation, to put forward objective versions, to consistently and qualitatively carry out separate investigative (search) actions for the further disclosure of the crime and the exposure of the criminals. In the interrelationship and dependence between the elements of the forensic characteristics of the crime, the person of the criminal is a key link in the mechanism of obtaining an unlawful benefit, that is, deliberate and prepared actions. The person of the criminal – an official – will form the quantitative and qualitative content of other elements of forensic characteristics, which will influence the establishment of material and ideal traces of the crime [16].

Out of the investigated 56 (100%) criminal proceedings, in 68% of cases the offer, promise or acceptance of an illegal benefit by an official was made by a man, and only in 32% of cases by a woman. This can be explained by the fact that, firstly, the number of male officials, who occupy mainly management positions, exceeds the number of female officials, and secondly, women are less prone to the risk of accepting an offer, promise or receiving an undue benefit.

Among officials who commit such crimes, as a rule, officials with higher education and a high level of professional experience predominate [17].

Acceptance of an offer, promise, or receipt of an illegal benefit by an official is important for the criminalistic characterization of a criminal, when receiving an illegal benefit is a social deformation of a person, which manifests itself in a deviation from generally accepted principles of morality and ethics, a conscious and purposeful disregard for the principles of legality in official activities [18].

Note that for the person of a criminal who commits the crimes provided for in Article 368 of the Criminal Code of Ukraine, moral-psychological and social-role characteristics are of particular importance. Corruptors are mainly sociable people who easily establish social relationships, know how to control their own behavior, are not prone to manifestations of impulsivity, aggressiveness, emotional instability. The basis of motivation is a hypertrophied desire to satisfy one's own material needs, spiritual underdevelopment, indifference to the interests of others people, ambition, envy, greed, careerism, extortion, cult of money and other material values, thirst for the accumulation of profit and power [19].

The study agrees with researchers who distinguish the following main types of attitudes toward power that a criminal person has: the first type is characterized by a free, lawless attitude that allows violations bordering on abuse or crime (a person has a sense of

permissiveness and confidence that he has the right demand an unlawful benefit, and the right to receive it is considered as an indispensable concomitant attribute of his activity); the second type is characterized by the official's attitude towards his power with fear, which is associated with the fear of responsibility, loss of place, position (a person rarely makes decisions in power, trying to transfer them to another, especially decisions that are illegal, such persons involve intermediaries in crimes in order to to relieve oneself of possible responsibility); the third type of attitude of officials to their power is characterized as a norm, i.e. the disposition of power within the parameters and limits established by law and official functions. Such persons take a rather responsible attitude to their official duties, that is why they rarely become subjects of this category of crime [20].

The person of the criminal as an element of the forensic characteristic of accepting an offer, promise or receiving an illegal benefit is distinguished by a special social position, that is, giving the person of the criminal power, authorised to carry out administrative activities, which is conditioned by corruption risks. The social status of the criminal person is also important, which gives them specific social functions. It is the social status, position, and authority that determines the amount of illegal benefits [21].

It is proved that the identity of the criminal is one of the most important elements of the forensic characteristics of crimes under Article 368 of the Criminal Code of Ukraine.

Conclusions

1. Taking into account the above, it was established that the criminal's identity as an element of his criminalistic characteristics in the case of acceptance of an offer, promise or receipt of undue benefit is distinguished by specific features in the set of biological, psychological and social properties of the individual.

2. In view of the above, it can be concluded that the perpetrator in case of acceptance of an offer, promise or receipt of an illegal benefit is an official: mainly a man who holds a managerial position; a person with a low level of cultural awareness, focused on meeting personal financial and economic needs, commits a crime mostly alone, sometimes in small groups of people, often as an official or a person who provides or offers to provide an illegal benefit, and also tries to hide the commission of this type of crime.

3. In order to fully and comprehensively find out the circumstances of the acceptance of an offer, promise or receipt of an illegal benefit by an official, which are important for the further investigation, to perform the practical tasks assigned by the investigation, namely: planning the investigation, building investigative actions, exposing a criminal or a group of criminals, it is necessary to study all the elements of their criminal-legal characteristics and establish correlations between them.

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Анотація

Метою цієї статті є системний аналіз особи злочинця як елементу криміналістичної характеристики злочину, передбаченого статтею 368 Кримінального кодексу України. Під час опрацювання матеріалів статті застосовано термінологічний, системно-структурний, формально-логічний, порівняльно-правовий і статистичний методи. Обґрунтовано, що особа злочинця є одним із найважливіших елементів криміналістичної характеристики злочинів, передбачених статтею 368 Кримінального кодексу України. Визначено, що особа злочинця як елемент її криміналістичної характеристики в разі прийняття пропозиції, обіцянки або одержання неправомірної вигоди вирізняється специфічними ознаками в сукупності біологічних, психологічних і соціальних рис особистості. Аргументовано, що особою злочинця в таких злочинах є: переважно чоловіки, які здебільшого обіймають керівні посади; особи з низьким рівнем культурної свідомості, орієнтовані на задоволення особистих фінансово-економічних потреб, вчиняють злочин переважно одноосібно, інколи нечисленними групами осіб, часто як службова особа або яка надає чи пропонує надати неправомірну вигоду, причому однаково намагаються приховати вчинення такого роду злочинів. Обґрунтовано потребу в дослідженні всіх елементів їх криміналістичної характеристики та встановлення кореляційних зв'язків між ними.

Ключові слова:

криміналістична характеристика; особа злочинця; неправомірна вигода; корупція