UDC 343.352
DOI: 10.33270/01211192.113

Signs of the subject of bribery provocation: Some issues of qualification and law enforcement

V. Veretiannikov*
Researcher of the Lugansk State University of Internal Affairs named after E.A. Didorenko, Sievierodonetsk, Ukraine
https://orcid.org/ 0000-0001-7513-2292

■ **Abstract**. The purpose of the scientific research is to critically analyse the features of the subject of bribery provocation in the context of legal assessment and practical application of Article 370 of the Criminal Code of Ukraine. Methodology. The research comprehensively uses the following methods of scientific knowledge: historical, terminological, system-structural, and Aristotelian. Scientific originality. Based on a comprehensive legal analysis of the content of the features of the subject of the crime under Art. 370 of the Criminal Code of Ukraine, in particular by exploring the history of regulation and analysis of developments in the relevant area of law enforcement practice, the author improved the position outlined in the legal literature that in the current version of the provision on the provocation of bribery should be abandoned the features of the specific subject of this crime (official) in favour of including the features of the general subject. Conclussions. It is proposed to provide in part 1 of the updated construction of the criminal law prohibition on the provocation of bribery the signs of the general subject of provocation of bribery, and in part 2 of the relevant article to include a reference to a specific subject – a law enforcement official. From a de lege ferenda point of view, it has been substantiated that in Part 2 of Article 370 of the Criminal Code of Ukraine the term “law enforcement official” should be substituted with the more appropriate term “employee of a law enforcement agency”. In addition, based on the results of the study of the relevant area of law enforcement practice, a proposal was made to develop improved material and procedural criteria for identifying signs of unacceptable provocation in the actions of authorised employees of law enforcement agencies

■ **Keywords**: provocation of bribery; specific subject of crime; employee of law enforcement agency; law enforcement practice; judicial practice

■ Introduction

Manifestations of corruption have varying degrees of adverse impact on society [1]. Therewith, provocation of actions intended for corruption abuse is a manifestation of no less adverse, or rather socially dangerous behaviour.

The definition of the socio-legal nature of corruption, its essential features, the definition of the scientific definition of the concept of “corruption”, and the establishment of relationships with other legal phenomena is fundamental both for the study of the legal nature of corruption and for practical activities in the field of combating this phenomenon [2].

Provocation of bribery is a deliberate unilateral activity (actions) of an official intended to simulate the behaviour of a person to offer, promise or provide an unlawful benefit or accept an offer, promise or receive such a benefit to exposing the person who offered, promised, provided an unlawful benefit or accepted an offer, promise or received such a benefit if the provoked person is not guilty [3].

Historically, liability for provoking corrupt behaviour was provided only for public officials. Such an approach can be explained by the fact that the criminal law issues under consideration were aggravated,

■ **Suggested Citation:**
Veretiannikov, V. (2021). Signs of the subject of bribery provocation: Some issues of qualification and law enforcement. *Scientific Journal of the National Academy of Internal Affairs,* 26(2), 113-120. doi: 10.33270/01211192.113.

■ *Corresponding author

■ Received: 03.01.2021; Revised: 04.29.2021; Accepted: 05.20.2021

and therefore discussed in the context of the adverse reaction of society to the activities of employees of the bodies engaged in operational and investigative (intelligence) activities. Currently, unlike the Criminal Code of Ukraine, the legislators of some states – former Soviet republics associate provocation of bribery (bribery) with the actions of a private person, understanding it as an attempt to provide money, securities, or other property or an attempt to provide property services to an official without their consent to establish artificial evidence of a crime or blackmail (for example, Article 350 of the Criminal Code of the Republic of Armenia). Moreover, some sources quite rightly outline the conclusion that by using such a description of the crime, the legislator simply postpones the moment of its completion to an earlier stage, thus not linking the elements of bribery provocation with a particular reaction of the provoked person.

In modern conditions, the problem of the provocative behaviour of individuals acquires universal content and additional relevance due to the activation of civil society on the issue of combating corruption. Therewith, it is no secret that under the guise of active anti-corruption slogans, they can be easily used for provocative purposes, to "settle scores" with competitors, for personal or professional revenge, etc. Therefore, the responsibility for the provocation of bribery should be universal in terms of the interpretation of the signs of the subject of this crime. The specifics of the qualification of provocation should fully cover the behaviour of both law enforcement officers who provoke officials to further expose them, and private individuals who resort to such methods of "reprisal" against their "enemies".

Currently, the issue of liability of the so-called agent provocateur used by an official to provoke bribery has not been unanimously resolved in the literature. Such a person is not considered a specific subject of the crime under Art. 370 of the Criminal Code of Ukraine, and therefore they are subject to criminal liability only for incitement to give or receive an undue advantage in the presence of other elements of these crimes and, admittedly, a sign of complicity. Thus, the author concludes, if such a person only established the conditions, but did not induce the giving - receiving of unlawful benefit, then their criminal liability should be excluded due to the lack of signs of corpus delicti [4].

In the national criminal law science, the following scholars considered the problematic issues related to the definition of the subjective composition of bribery provocation: O. Alyoshyna, P. Andrushko, S. Babych, Y. Baulin, Y. Grodetskyi, O. Grudzura, O. Dudorov, N. Yegorov, P. Zagodirenko, K. Zadoya, V. Kyrychko, V. Komar, O. Lemeshko, M. Melnyk, V. Navrotskyi, V. Osadchyi, O. Okhotnikova, A. Panova, V. Trepak, O. Us, M. Khavroniuk and other authors.

Based on a comprehensive legal analysis of the content of the features of the subject of the crime under Art. 370 of the Criminal Code of Ukraine, in particular by referring to the history of regulation and analysis of developments in the relevant area of law enforcement practice, the author improved the position expressed in the legal literature that in the current version of the provision on the provocation of bribery should be abandoned the features of the specific subject of this crime (official) in favour of including the features of the general subject.

■ Outline of the Main Material

Some modern corruption crimes require new approaches to their detection, investigation and suppression [5]. Bribery provocation is no exception.

It is well-known that the subject of the crime under Art. 370 of the Criminal Code of Ukraine has specific features - this provision refers to an official in the field of public or private law.

According to the actual (not legal) subject composition, provocative actions can be divided into those committed by: 1) immediate officials of operational and investigative bodies in the process of conducting operational and investigative activities; 2) persons who assist operational and investigative bodies on a confidential basis (secret agents) [6].

Therewith, there are proposals in the scientific literature to provide for criminal liability for the general subject for committing this crime. In particular, O. Grudzur notes that a general subject de facto can commit the crime in question, as it is not necessary to use official or authoritative powers, the authority of the position held or official position, causing damage to both the main and additional object of the crime in question.

According to the scientist, the acts committed by such a subject are not characterised by a lower degree of public danger than those committed by an official. It is explained by the fact that in both cases the giving or receiving of undue advantage is due to artificially established circumstances that do not differ in their content [7].

According to O. Kvasha, a person who establishes external circumstances for committing a corruption offence is not an official but only performs in the interests of the latter. Accordingly, such a person cannot be held liable under Art. 370 of the Criminal Code of Ukraine, which establishes the grounds for liability for an official as a specific entity. In this case, the provocateur is not subject to criminal liability at all, as their actions are not incitement to a corruption offence in the absence of immediate influence (connection) on the person [8]. This statement seems somewhat radical and insufficiently substantiated, especially given the explicit reference of the legislator to the actions of the official. Instead, the actions of other persons who do not have the features of a specific entity should be legally assessed by reference to the provisions on the types of complicity (Article 27 of the Criminal Code of Ukraine).

In a conditionally secondary, technical and legal context, notably, in Art. 365 of the Criminal Code of Ukraine the legislator uses the term "law enforcement officer" to describe the subject of the crime, and in Part 2 of Art. 370 of the Criminal Code of Ukraine – "law enforcement officer". It seems that K. Zadoya rightly notes that both concepts have the same meaning, as all law enforcement officers are officials, at least by performing the functions of a representative of the authorities. Thus, de lege ferenda in Part 2 of Article 370 of the Criminal Code of Ukraine the sign "law enforcement officer" should be replaced by the sign "employee of law enforcement agency" [9]. Such an approach seems to be in line with a logical and systematic interpretation of criminal law.

O. Us develops this thesis, noting that in several articles of the Special Part of the Criminal Code of Ukraine, a law enforcement officer is either the subject of the relevant crime (for example, Article 365) or the victim of a crime (for example, Article 342). In addition, in the articles of the Criminal Code of Ukraine that contain references to "law enforcement agencies", except for part 2 of Article 370 of the Criminal Code of Ukraine, only the term "law enforcement officer" is used (part 2 of Article 22, p. 2 of Article 57, Articles 342, 343, 345, 347-349, part 2 of Article 353, Articles 365, 380 of the Criminal Code of Ukraine). Based on this, the author raises a reasonable question: can a law enforcement officer not be an official? And further, referring to the relevant provisions of Part 3 of Art. 18 of the Criminal Code, subpar. 2, par. 1 of the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of bribery" of April 26, 2002, No. 5, and the provisions of regulations governing the activities of individual law enforcement agencies, O. Us concludes that it is unlikely that a law enforcement officer may not be recognised as an official [10].

If a private person induces another person to bribe, they can be prosecuted for incitement to commit a crime under Part 4 of Article 27 and Article 368 of the Criminal Code of Ukraine or Article 369 of the Criminal Code of Ukraine. If the person who establishes the circumstances or conditions for the provision - receipt of the unlawful benefit is not an official, but only acts in the interests of the latter, then, as already mentioned above, they cannot be held liable under Art. 370 of the Criminal Code of Ukraine, the subject of which is a specific one, namely an official.

In the relevant comparative legal context, the following should be noted. If, by Art. 370 of the Criminal Code of Ukraine, the subject of provocation of bribery is exclusively an official, then according to the legislation of most foreign countries, the subject of the crime under study is a general, that is, a natural sane person who has reached the age of criminal responsibility. O. Hrydzur positively perceives this position, as in fact, he writes, provocative actions can be committed by any person and it does not necessarily have to be officials. Thus, this researcher is convinced that the domestic Criminal Code should consider the legislative provisions of foreign countries regarding the recognition of the general subject of the crime as the subject of provocation of bribery. It is explained primarily by the fact that Art. 370 of the Criminal Code of Ukraine does not cover the cases of establishment of circumstances and conditions by the general subject of the crime, which causes the offer or receipt of undue advantage. Therefore, this results in a fundamentally different legal assessment of virtually identical acts [7].

In modern conditions, from the standpoint of de lege lata, if the incitement of a person to offer, promise or provide an undue benefit or acceptance of an offer, promise or receipt of such a benefit is committed to exposing another person by an individual who is not an official (it applies to a person who performs professional activities related to the provision of public services), or even an official, but without using their official position, the act can be regarded as incitement to commit a crime under Art. 354, 368, 368-3, 368-4, 369 or Art. 369-2 of the Criminal Code of Ukraine and qualified concerning Part 4 of Art. 27 of the Criminal Code of Ukraine. After all, this criminal law provision implies that the instigator can act, guided by different motives and, therewith, pursuing different purposes, one of which may be to expose the offender.

Such unequal qualification causes some contradictions, as when qualifying such an action as complicity, there are no subjective signs of complicity in these crimes, there is no single intent, and there is no desired consequence for all accomplices. Therefore, such actions cannot be qualified as incitement to the relevant crimes [11]. The analysis of law enforcement practice, especially regarding the involvement of "prepared" persons in provocative actions by law enforcement officers, indicates the objective necessity to provide for liability for provocation of bribery for such persons. The following example highlights this demand.

Thus, the Prydniprovskyi District Court of Cherkasy found the Head of the State Architectural and Construction Control Inspectorate in Cherkasy region (hereinafter – the Inspectorate) M. not guilty of committing a criminal offence under Part 4 of Art. 368 of the Criminal Code of Ukraine. M. was charged with the fact that working as the head of the Inspectorate, being an official in a responsible position, having the power and authority granted to him, contrary to the interests of the service, acting intentionally, for selfish motives, for personal enrichment, he demanded from the director of "Budgarant-2000" LLC R. money for 80 thousand hryvnias for the adoption of a positive decision on the commissioning of the building used for office space.

The accused M. pleaded not guilty and explained in court that the Inspectorate had been repeatedly approached by developer R. with documents for commissioning the building. These documents were not accepted due to certain deficiencies. On 18 June 2013, M. came to work to say goodbye to the employees, as he was dismissed. On the street, he met V., who invited him to sit in the car, but M. did not agree and went into the building, going up the stairs to the Inspectorate. The SSU officers grabbed him on the stairs, pressed his face to the wall and handcuffed him. About 10-15 minutes later, he was turned away from the wall and saw a package under his feet, but immediately told the investigator and witnesses who arrived there that he had nothing to do with the package and its contents. Subsequently, all the participants moved to the office of M., where the investigator found the money in the package.

In court, M. insisted that he was the victim of provocative actions by the SSU officers, who used his hostile relationship with the developer R., and used V., who was instructed to hand him a package with money under some pretext. In this regard, V. insisted that they both sit down in the car. Since he disagreed and moved away from V. inside the building, he thus disrupted the planned operation. Due to this, the SSU officers detained him and kept him for some time on the stairs, during which time they took a bag with money from V. and threw it under his feet. The court concluded that since the accused M. claimed that a provocation had been committed against him with the involvement of the "intermediary" V., who was assigned the role of transferring the funds to him, the pre-trial investigation body was obliged to prove the absence of provocation, and the court, accordingly, was obliged to verify the accused's allegations.

The court noted that the facts and circumstances indicate that the version of the prosecution is not the only one, and the arguments of the defence about the provocation of the crime are not perceived as completely incredible, as a result of which the court believes that according to Part 4 of Article 17 of the CPC of Ukraine, all doubts about the proof of the person's guilt are interpreted in favour of such a person. In addition, it was noted that the rest of the evidence (witness testimony, inspection reports and delivery of funds) in their totality were insufficient, in the court's opinion, to convict. Accordingly, the court delivered an acquittal due to the lack of proof that M. had committed a criminal offence under Part 4 of Article 368 of the Criminal Code of Ukraine [12].

It should be noted that the actions of law enforcement officers who use an instigator in the process of bribery provocation can be assessed as the organisation of a provoked crime, since such persons at least supervise the preparation of the instigator.

Therewith, many domestic authors, who develop the problem of provocation of crimes, raise the question of the expediency of amending Article 370 of the Criminal Code of Ukraine to recognise as the subject of a crime an official, and other persons who have reached the age of criminal responsibility.

For this purpose, it is proposed, for example, a situation, which is quite real in practice, when a driver deliberately violates traffic rules to expose a patrol police officer, thus establishing a situation that causes the driver to offer and further transfer an illegal benefit to a police officer. In this way, the circumstance established by the driver in its content is not essentially different from the circumstance that would have been established by an official. Notably, the acts committed by such an entity are not characterised by a lower degree of public danger than those committed by an official, as in both cases, the giving or receiving of undue advantage is due to artificially constructed circumstances that do not differ in their content.

From the standpoint of de lege lata, a private person who acted as a provocateur may be liable as an accomplice of an official who, with the provocative purpose, organised the provision or receipt of an undue advantage. In the legal literature, the question of whether the elements of provocation should be linked exclusively to the unlawful conduct of an official or, on the contrary, to the conduct of any private person is generally debated. By the way, the non-prosecution of private persons for provocation of bribery in the 20s of the last century was justified by the fact that the legislation of those times (and, incidentally, the current criminal legislation of Ukraine) did not provide for a special provision on liability for provocation committed by private persons, although they knew the rules on liability for incitement to commit a crime.

Notably, if incitement of a person to offer, promise or give an undue advantage or acceptance of an offer, promise or receipt of such an advantage is committed to exposing another person by a person who is not an official (the above applies to a person who performs professional activities related to the provision of public services), or even by an official, but without using their official position, the act may qualify as incitement to commit a crime under Art. 354, 368, 368-3, 368-4, 369 or 369-2 of the Criminal Code of Ukraine, and be qualified concerning Part 4 of Article 27 of the Criminal Code of Ukraine. After all, as O. Dudorov rightly notes, it follows from this criminal law provides that the instigator can act, guided by different motivations and pursuing different purposes [13].

The analysis of the materials of law enforcement practice, and the positions expressed in the criminal law doctrine on this issue indicates that the signs that allow qualifying the actions of the prosecutor, investigator or employees of operational units as a provocation of a crime should include 1) the purpose of encouraging a person to commit a crime; 2) an active form of behaviour of these persons, which consists in influencing a person, persuading, inducing them to commit a crime; 3) the absence of a person's inclination and desire to commit a crime in the presence of a real opportunity to commit it; 4) the availability of sufficient evidence that in the absence of the initiative of the above persons, the crime would not have been committed [14].

In proceedings on crimes related to the provision or receipt of undue benefits from the defence, there are often statements about provocative actions against the accused by law enforcement agencies, which are seen as signs of provocation of bribery. Sometimes the court is critical of these statements, believing that they may be based on assumptions and form a defence tactic due to attempts to evade responsibility.

Thus, for example, the court found no signs of provocation in the actions of N., who, acting under the control of law enforcement agencies, handed over USD 1,500 to S., allegedly to further transfer this amount to the chief doctor of the district hospital for N.'s employment as a paramedic.

The court established that there were no reasons to conclude that N., since the beginning of her contact with the accused, had been acting as an agent of the state on the instructions of the police or prosecutor's office, or otherwise under their control, or that she had any ulterior motives. Thus, this case, the court noted, does not concern undercover police agents, but rather relates to the actions of a private person acting under the supervision of the police, duly registered.

In addition, as noted by the court, from the materials examined by the court, provided by the defence, namely printouts of telephone connections between C. and N., it is not seen that N. went beyond passive behaviour and persuaded the accused S. to commit a crime. Moreover, there is no evidence in the case file that law enforcement officers did not limit themselves to a passive investigation solely to establish the crime, but influenced S., persuading her to commit the crime [15]. In other cases, the courts, on the contrary, react to the statements of provocation and make reasonable decisions on them. Therewith, even in such cases, the practice of courts is not sustainable.

Thus, for example, P. and S. were accused of incitement to give an undue advantage to an official who holds a responsible position (Part 4 of Article 27, Part 3 of Article 369 of the Criminal Code of Ukraine). According to the verdict of the Smila City District Court of Cherkasy region, they were declared not guilty of committing the crimes. However, their defender's request for a separate court ruling to conduct an inspection and possible prosecution under Art. 199, 370 of the Criminal Code of Ukraine against S. (police agent) and employees of the Ministry of Internal Affairs of Ukraine in the Cherkasy region, who were involved in the provocation of illegal benefits and counterfeiting of currency, was dismissed by the court. The court noted that the possibility of adopting the relevant resolution was regulated in Article 278 of the CPC of Ukraine (1960), which is now invalid. Therewith, the court stated that the testimony of witness S. and other evidence in this proceeding were obtained as a result of provocation [16].

Such a somewhat inconsistent practice of domestic courts of lower instances should encourage experts in the field of substantive and procedural law to think about the unified detailed criteria for identifying signs of inadmissible provocation in the actions of authorised law enforcement officers.

The national literature highlights the lack of mechanisms in the current CPC of Ukraine to respond to using methods of provocative behaviour by law enforcement officers, similar to those provided for in the CPC of Ukraine of 1960. Therewith, as noted, the actions of the court in the latter example are in line with the requirements of the ECHR practice of thoroughly checking allegations of provocation by law enforcement officers, ensuring the accused the right to a full and objective examination of the circumstances of the case that may indicate the existence of provocation (Hladun, 2019). In the context of improving the relevant area of law enforcement, it should be emphasised that in each acquittal, in which signs of provocation were established, the courts must properly substantiate their decisions with the relevant case law of the ECHR [17].

Finally, the following point should be emphasised: by Part 5 of Art. 354 of the Criminal Code of Ukraine, a person is exempted from liability for providing undue advantage if they then voluntarily reported their actions to law enforcement agencies. This provision exempts from criminal prosecution a "provoker" who may not be an official but on their initiative gives a bribe to an official to inform the competent authorities. Therewith, Art. 370 of the Criminal Code of Ukraine provides for the liability of officials for provoking bribery. Here again, the gap in criminal law regulation, admitted by the legislator, can be traced.

If the provoker "caused" the crime and by their actions "established" the criminal, then the elimination of their participation in the crime should be the neutralisation of the criminal factors that they caused. On the one hand, it should be the prevention of crime, and on the other – timely establishment of grounds for the release of the provoked person from criminal liability. The combination of these factors can be achieved only in one way – by persuading the person provoked by them to stop voluntarily preparing for a crime or attempted crime. Only in this way, the adverse criminal consequences of participation in the commission of a crime can be eliminated for the said person. For different types of accomplices who were provoked to participate in a crime, specific forms of voluntary refusal will have their specifics. For example, for the perpetrator of the crime - it is the immediate suspension of acts of preparation for a crime or attempted crime. For the provoked organiser, instigator or abettor, this should be the elimination of their participation in the crime provided for by law, which will result in the suspension of the crime.

At present, the current provisions of the Criminal Code of Ukraine on the voluntary refusal of accomplices in a crime do not properly address the issue of voluntary refusal of the provocateur and therefore require appropriate improvement. Some suggestions have already been made in the literature. For example, O. Alyoshina proposes to supplement Article 31 of the Criminal Code of Ukraine with Part 4 as follows: "It is not recognised as a voluntary refusal of the organiser or instigator to prevent the commission of a crime or timely notification by them of the relevant state authorities of a crime being prepared or committed if by such means these persons tried to achieve the provocative purpose of exposing another accomplice or causing them material or non-material damage" [18]. In general, the justified desire of the scientist to solve the problem under study requires some clarification. The above provision emphasises the cases when the actions of the provoker cannot be considered a voluntary refusal. Therewith, the question arises: can the provoker voluntarily abandon the crime at all? It seems that it is inappropriate to deprive them of such an opportunity. Admittedly, the domestic author does not propose this, as the proposed rule implies that in case of prevention of a crime or timely notification of the relevant authorities about a crime being prepared or committed without a provocative purpose, the provoker's actions should be considered a voluntary refusal.

In addition, the position on the expediency of improving the provisions of the criminal law in terms of regulating the rules on the voluntary refusal of the provocateur from unlawful behavior was reasonably supported.

Conclusions

Among all manifestations of corruption, corruption criminal offences are the most dangerous, therefore, ensuring criminal law protection of public relations from corruption criminal offences is a priority of modern criminal law policy in Ukraine [19].

Summarising the provisions considered in this research, the idea of expanding the circle of subjects of provocation of bribery by excluding the indication of an official as a specific subject under Part 1 of Article 370 of the Criminal Code of Ukraine should be supported. Therewith, considering that the provocation is performed mainly by law enforcement officers, the first part of the updated construction of the criminal law prohibition on provocation should provide for the signs of the general subject of provocation of bribery, and Part 2 should indicate the law enforcement official.

Such an approach will not exclude possible situations of the complicity of a provocateur - an individual and a provocateur - a law enforcement officer (for example, provocative actions of co-perpetrators by prior agreement between them).

In general, the position expressed in the legal literature should be supported that provocative activity is possible in any intentional crime, and the circle of subjects of provocation is unjustifiably narrowed by the legislator only to officials. Considering the above, the idea of the necessity to supplement the text of the Criminal Code of Ukraine with a provision that would provide for criminal liability of any person (general subject of the crime) for provoking any other (not only official) person to commit any crime was supported.

In addition, based on the results of a critical study of the relevant area of law enforcement practice, a proposal was made to develop detailed material and procedural criteria for identifying signs of unacceptable provocation in the actions of authorised law enforcement officers.

References

[1] Aloshyna, O.I. (2007). Provocation of crime (criminal law research). *Candidate's thesis.* Kharkiv.

[2] Cherniavskyi, S.S., & Vozniuk, A.A. (2019). Foreign experience of legal counteraction to illicit enrichment. *Law Journal of the National Academy of Internal Affairs, 1 (17),* 79-89. doi: 10.33270/04191701.79.

[3] Hladun, O.Z., Plotnikova, V.P., & Arushanian, K.K. (et al.). (2019). *Provocation of a crime: the practice of the European Court of Human Rights and national courts.* Kyiv: Nats. akad. prokuratury Ukrainy.

[4] Hrudzur, O.M. (2011). Criminal law analyses of bribery provocation. *Candidate's thesis.* Kyiv.

[5] Huivan, P.D. (2019). On the issue of qualifying corruption provocation. *Research Notes of Tavrichesky National University Named After V.I. Vernadsky*, 1(30), 87-92.

[6] Kartavtsev, V.S., Tomchuk, I.O., & Prytula, S.A. (2020). Criminal law analysis of bribery provocation under the legislation of Ukraine and foreign countries. *Law and Society*, 4, 227-235. doi: 10.32842/2078-3736/2020.4.33.

[7] Khavroniuk, M.I. (Ed.). (2016). *Desktop book of a detective, prosecutor, judge: commentary on anti-corruption legislation.* Kyiv: Dakor.
[8] Kvasha, O.O. (2013). *Complicity in crime: structure and responsibility*. Luhansk: RVV LDUVS im. E.O. Didorenka.
[9] Shepotko, M.A. (2021). Regarding the establishment of the essence of the provocation of bribery. *Pravo i suspilstvo, Law and Society*, 1, 204-210. doi: 10.32842/2078-3736/2021.1.32.
[10] Sviderskyi, O., & Lubentsov, A. (2020). The Impact of Corruption on the Development of Legal and Economic Systems of State. *Baltic Journal of Economic Studies*, 1(6), 125-129. doi: 10.30525/2256-0742/2020-6-1-125-129.
[11] Us, O.V. (2005). Kryminalna vidpovidalnist za pidburiuvannia do zlochynu [Criminal liability for crime incitement]. *Candidate's thesis.* Kharkiv.
[12] Us, O.V. (2015). Corruption provocation: analyses of crime and issues of legal examination. *Legal Herald of International Humanitarian University*, 16(2), 66-70.
[13] Veretiannikov, V.O. (2020). Interpretation of the criminal offense provocation in the practice of the European Court of Human Rights (in the context of part 1 of article 6 of the Convention on the protection of human rights and fundamental freedoms). *Herald of Luhansk State University of Internal Affairs Named After E.O. Didorenko*, 4(92), 93-104. doi: 10.33766/2524- 0323.92.93-104.
[14] Vozniuk, A.A. (2019). Psychological theories of explaining corruption. *Yurydychna psykholohiia, Legal Psychology*, 2(25), 7-15. doi: 10.33270/03192502.7.
[15] Vozniuk, A.A. (2020). Corruption related criminal offenses: conceptual issues in the context of reforming the criminal legislation of Ukraine. *Legal Herald of the National Academy of Internal Affairs*, 2(20), 21-32. doi: 10.33270/04202002.21.
[16] Judgment of the Gluhivsky City-District Court of Sumy Region No. 576/1837/17. (2018, September). Retrieved from https://reyestr.court.gov.ua/Review/76792196.
[17] Judgment of the Prydniprovsky District Court of Cherkasy No. 711/8004/13-k. (2021, April). Retrieved from https://reyestr.court.gov.ua/Review/95949637.
[18] Judgement of Smilyansky City-District Court of Cherkasy Region. *(2017, August)*. Retrieved from https://reyestr.court.gov.ua/Review/68383908.
[19] Zadoia, K.P. (2014). *Judicial practice in cases of crimes in the field of official activities and professional activities related to the provision of public services: some trends, problems and prospects for improvement.* Kyiv: Ahrar Media Hrup

■ Список використаних джерел

[1] Альошина О. І. Провокація злочину (кримінально-правове дослідження) : дис. … канд. юрид. наук : 12.00.08. Харків, 2007. 204 с.
[2] Чернявський С. С., Вознюк А. А. Зарубіжний досвід правової протидії незаконному збагаченню. Юридичний часопис Національної академії внутрішніх справ. 2019. № 1 (17). С. 79–89. doi: 10.33270/04191701.79.
[3] Провокація вчинення злочину: практика ЄСПЛ та національних судів : наук.-практ. посіб. / [О. З. Гладун, В. П. Плотнікова, К. К. Арушанян та ін.]. Київ : Нац. акад. прокуратури України, 2019. 101 с.
[4] Грудзур О. М. Кримінально-правова характеристика провокації хабара : дис. … канд. юрид. наук : 12.00.08. Київ, 2011. 229 с.
[5] Гуйван П. Д. До питання про кваліфікацію провокації підкупу: європейський досвід. Вчені записки Таврійського національного університету імені В. І. Вернадського. 2019. Т. 30. № 1. С. 87–92. (Серія «Юридичні науки»).
[6] Картавцев В. С., Томчук І. О., Притула С. А. Кримінально-правовий аналіз провокації підкупу за законодавством України та зарубіжних країн. Право і суспільство. 2020. № 4. С. 227–235. doi: 10.32842/2078- 3736/2020.4.33.
[7] Настільна книга детектива, прокурора, судді: коментар антикорупційного законодавства / за ред. М. І. Хавронюка. Київ : Дакор, 2016. 496 с.
[8] Кваша О. О. Співучасть у злочині: структура та відповідальність : монографія. Луганськ : РВВ ЛДУВС ім. Е. О. Дідоренка, 2013. 560 с.
[9] Шепотько М. А. Щодо встановлення сутності провокації підкупу. Право і суспільство. 2021. № 1. С. 204–210. doi: 10.32842/2078-3736/2021.1.32.
[10] Sviderskyi O., Lubentsov A. The Impact of Corruption on the Development of Legal and Economic Systems of State. *Baltic Journal of Economic Studies.* 2020. № 1 (6). С. 125–129. doi: 10.30525/2256-0742/2020-6-1-125-129.

[11] Ус О. В. Кримінальна відповідальність за підбурювання до злочину : дис канд. юрид. наук : 12.00.08. Харків, 2005. 227 с.
[12] Ус О. В. Провокація підкупу: аналіз складу злочину й питання кваліфікації. Науковий вісник Міжнародного гуманітарного університету. 2015. № 16. Т. 2. С. 66–70. (Серія «Юриспруденція»).
[13] Веретянніков В. О. Правозастосовне тлумачення провокації кримінального правопорушення в практиці Європейського суду з прав людини (в контексті ч. 1 ст. 6 Конвенції про захист прав людини і основоположних свобод). Вісник Луганського державного університету внутрішніх справ імені Е. О. Дідоренка. 2020. Вип. 4 (92). С. 93–104. doi: 10.33766/2524-0323.92.93-104.
[14] Вознюк А. А. Психологічні теорії пояснення корупції. Юридична психологія. № 2 (25). 2019. С. 7–15. doi: 10.33270/03192502.7.
[15] Вознюк А. А. Корупційні кримінальні правопорушення: концептуальні проблеми реформування кримінального законодавства України. Юридичний часопис Національної академії внутрішніх справ. 2020. № 2 (20). С. 21–32. doi: 10.33270/04202002.21.
[16] Вирок Глухівського міськрайонного суду Сумської області від 28 верес. 2018 р. Справа № 576/1837/17. URL: https://reyestr.court.gov.ua/Review/76792196.
[17] Вирок Придніпровського районного суду м. Черкаси від 1 квіт. 2021 р. Справа № 711/8004/13-к. URL: https://reyestr.court.gov.ua/Review/95949637.
[18] Вирок Смілянського міськрайонного суду Черкаської області від 21 серп. 2017 р. Справа № 712/1824/16-к. URL: https://reyestr.court.gov.ua/Review/68383908.
[19] Судова практика в справах про злочини у сфері службової діяльності та професійної діяльності, пов'язаної з наданням публічних послуг : окремі тенденції, проблеми та перспективи вдосконалення / наук. ред. К. П. Задоя. Київ : Аграр Медіа Груп, 2014. 135 с.

Ознаки суб'єкта провокації підкупу: деякі питання кваліфікації та правозастосування

В. О. Веретянніков

Здобувач Луганського державного університету внутрішніх справ імені Е. О. Дідоренка, м. Сєвєродонецьк
https://orcid.org/ 0000-0001-7513-2292

■ **Анотація**. Метою наукової статті є здійснення критичного аналізу ознак суб'єкта провокації підкупу в контексті юридичної оцінки та практичного застосування ст. 370 Кримінального кодексу України. Методологія. У статті комплексно використано такі методи наукового пізнання: історичний, термінологічний, системно-структурний, формально-логічний. Наукова новизна. На підставі комплексного юридичного аналізу змісту ознак суб'єкта складу злочину, передбаченого ст. 370 Кримінального кодексу України, зокрема шляхом вивчення історії нормативного регулювання й аналізу напрацювань у відповідному напрямі правозастосовної практики, автор удосконалив окреслену в юридичній літературі позицію щодо того, що в чинній редакції норми про провокацію підкупу варто відмовитися від ознак спеціального суб'єкта цього злочину (службової особи) на користь включення ознак загального суб'єкта. Висновки. Запропоновано в ч. 1 оновленої конструкції кримінально-правової заборони щодо провокації підкупу передбачити ознаки загального суб'єкта провокації підкупу, а в ч. 2 відповідної статті включити посилання на спеціального суб'єкта – службову особу правоохоронних органів. Із позицій de lege ferenda обґрунтовано, що в тексті ч. 2 ст. 370 КК України ознаку «службова особа правоохоронного органу» варто замінити більш прийнятною – «працівник правоохоронного органу». Також за результатами опрацювання відповідного напряму правозастосовної практики висловлено пропозицію розробити вдосконалені матеріально-процесуальні критерії виявлення ознак недопустимої провокації в діях уповноважених працівників правоохоронних органів

■ **Ключові слова**: провокація підкупу; спеціальний суб'єкт злочину; працівник правоохоронного органу; правозастосовна практика; судова практика