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4. Гуржій Т. О., Бодров Ю. В. Поняття та сутність принципів адміністративно-правового регулювання. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2023. Вип. 79. Ч. 2. С. 41–48.

5. Коломоець Т. О., Баранчик П. О. Принципи адміністративного права: монографія. Запоріжжя : Сору Art, 2012. 203 с.

6. Основи адміністративного судочинства та адміністративного права : навч. посіб. / за заг. ред. Р. О. Куйбіди, В. І. Шишкіна. Київ : Старий світ, 2006. 576 с.

7. Шарая А. А. Поняття принципів адміністративного права в сучасній доктрині. *Вісник Запорізького національного університету. Юридичні науки*. 2013. № 1 (I). С. 115–118.

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## **OBTAINING AN UNLAWFUL BENEFIT AS AN OFFENCE COMMITTED IN THE SPHERE OF OFFICIAL ACTIVITY**

One of the most common crimes committed in the sphere of official activity is obtaining unlawful benefit. This crime poses a significant public danger, as it undermines the foundations of law and order, reduces the level of trust in government agencies and promotes corruption.

In accordance with the provisions of the current criminal legislation of Ukraine, liability for obtaining an unlawful benefit, as well as for accepting an offer or promise of such benefit by officials is regulated by Article 368 of the Criminal Code of Ukraine. This article is included in Chapter XVII ‘Criminal Offences in the Field of Official Activities and Professional Activities Related to the Provision of Public Services’, which defines the legal framework for combating corruption offences [1].

It is worth noting that the receipt of unlawful benefit is defined as the acceptance by an official of material or non-material benefits, advantages, or services in exchange for performing or refraining

from performing actions that fall within the scope of their official duties. The primary purpose of obtaining unlawful benefit is the personal enrichment of the official or the advancement of the interests of third parties.

When providing a legal description of the crime, it should be noted that it covers the following key elements: 1) the object of the crime, i.e. social relations that ensure the proper functioning of the state apparatus, local self-government bodies or enterprises; 2) the objective side, which is the actions of an official aimed at accepting an unlawful benefit, as well as using their official position to achieve personal interests; 3) the subject of the crime, which is a special subject, namely, an official with administrative or managerial powers; and 4) the subjective side, which is an intentional form of guilt and is expressed in the awareness of the unlawful nature of their actions and the desire to obtain an unlawful benefit.

According to E. O. Ushkanenko, who provides a forensic characteristic of acceptance of an offer, promise or receipt of an unlawful benefit by judges, such a characteristic contains certain elements, the main ones being: 1) the identity of the offender; 2) the method of preparation, direct commission and concealment of a criminal offence; 3) the trace picture; 4) the circumstances of the offence; 5) the subject of the offence [2, c. 535].

In this context, it is appropriate to draw attention to the signs of unlawful benefit. Thus, the unlawful benefit may take various forms: money, property, benefits, services or other benefits. An important feature is that such benefits are not provided for by law or contract and are provided with the aim of influencing the official to make certain decisions or take certain actions.

It is worth noting that an unlawful benefit can be either direct (e.g. transfer of money) or indirect (e.g. provision of services or discounts). In any case, the fact of a connection between the actions of the official and the benefits received is important. O. Bobrovnyk also draws attention to this aspect, revealing the peculiarities of proving by the investigator the acceptance of an offer, promise or receipt of an undue benefit by an official in a pre-trial investigation [3, c. 28–34].

Describing the issue of obtaining unlawful benefit as a crime committed in the sphere of official activity, it is necessary to pay attention to the criminal liability provided for the commission of this crime.

Under Ukrainian law, the receipt of an unlawful benefit is punishable by a term of imprisonment ranging from two to twelve years, depending on the gravity of the offence and the circumstances of its commission. In addition, supplementary forms of punishment are provided for, including fines, confiscation of property, and disqualification from holding certain positions or engaging in certain types of activity [1].

An important aspect of the qualification of this crime is the need to take into account a number of circumstances, including:

- The amount of the unlawful benefit (significant, large or especially large).

- Abuse of official position.
- Committing a crime by a group of persons or repeatedly.

At the same time, it should be emphasised that proving the receipt of an improper benefit is a complex process that requires careful collection of evidence. The main types of evidence in such cases are:

- Testimony of witnesses or victims.
- Material evidence (money, documents).
- Audio and video recordings.
- Expert opinions.

An important aspect is ensuring compliance with the law during the conduct of operational-search measures and investigative actions. Non-compliance with procedural norms may lead to the evidence being declared inadmissible, as noted by O. V. Bobrovnyk [3, с. 28–34].

Thus, it is worth emphasising that effective counteraction to obtaining unlawful benefits requires a comprehensive approach. It should be noted that the main areas of prevention of this type of crime should be considered:

1. Strengthening control over the activities of officials.
2. Improving anti-corruption legislation.
3. Conducting awareness-raising activities among the population.
4. Use of modern technologies to monitor the activities of government agencies.

In addition, it is important to build intolerance to corruption in society and raise the level of legal awareness of citizens.

The foregoing provides grounds to conclude that the receipt of unlawful benefit is a serious offence causing harm not only to individual citizens or organisations but also to society as a whole. The effective fight against this phenomenon is possible only if the law is strictly enforced, transparency of public authorities is increased and the public is actively involved in exposing corruption. Only through joint efforts can an appropriate level of law and order and justice in society be ensured.

### **Bibliography:**

1. Кримінальний кодекс України від 5 квітня 2001 року № 2341-III. *Відомості Верховної Ради України*. 2001. № 25–26. Ст. 131.
2. Ушканенко Е. О. Криміналістична характеристика прийняття пропозиції, обіцянки або одержання суддями неправомірної вигоди. *Право і суспільство*. 2024. № 2. С. 532–540.
3. Бобровник О. В. Доказування слідчим прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою у досудовому розслідуванні. *Вісник кримінального судочинства*. 2017. № 3. С. 28–34.