

assessment and qualification under art. 364 of the Criminal Code of Ukraine.

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### **FORCING AS ONE OF THE FORMS OF THE OBJECTIVE SIDE OF THE CRIME, STIPULATED IN ARTICLE 386 OF THE CRIMINAL CODE OF UKRAINE**

Concerning the encroachment stipulated by art. 386 of the Criminal Code of Ukraine «Prevention of the appearance of a witness, victim, expert, forcing them to refuse to testify or conclude», then bribery is one of the forms of this crime, which is directly foreseen in the disposition of Part 1 of Art. 386 of the Criminal Code - ... bribing a witness, victim or expert for the same purpose ... Analyzing precisely this form of the said crime against justice, it should be noted that, taking into account the etymology of the word «bribe», as well as in the context of the use of the corresponding term in the disposition of the articles of the Special Part of the Criminal Code of Ukraine We shall single out such essential features of this concept. Bribing is committed against an individual. In the case of the transfer of a certain remuneration for acts committed by a legal entity, they bribe individuals who own or work from them. Regarding Art. 386 of the Criminal Code of Ukraine is a witness, victim, expert. Other participants in the proceedings can not be victims of this crime. By bribery, the impact on the person being bribed is applied. The achievement of an agreement between the person who buys and

the person being bribed occurs before the performance of the actions in favor of the first person. Direct transfer of certain values, the provision of services occurs either before or after the imprisonment of a person who is bribed. If the object of bribery is transferred to the moment of such actions, then it is called a preliminary bribery, and if after - a bribe-reward. The subject of bribery may be only an individual. In this case, it can be transmitted directly to it, and through the intermediary. Such a person may represent the interests of a legal entity, manage it or be a member of a governing body or unit. That is, bribery can be committed both in their interests and in the interests of third parties

Forcing is a psychological effect on the consciousness and will of the persons specified in art. 386 of the Criminal Code, which is aimed at inciting them to refuse to give or to give knowingly false testimony or conclusion and is carried out by means of threats of murder, violence, destruction of property or disclosure of information that will reproach a victim or his close relatives. Such methods of coercion as the threat of violence, the destruction of property, are covered by the signs of art. 386 of the Criminal Code, and coercion through the threat of murder (if there are real reasons to fear its implementation) forms an ideal set of crimes provided for in Art. 386 of the Criminal Code and the corresponding part of Art. 129 CK. In aggregate, it should be qualified and threatened with the murder of a witness, a victim, an expert or their close relatives, who expressed his or her reasons for retaliation for earlier testimony or conclusion. The threat of disclosure of information that defames the victim or his relatives (blackmail) qualifies only under Art. 386 of the Criminal Code is intimidating the disclosure of such information which, according to the victim himself, humiliates his honor and dignity and which he wishes to keep secret.

List of forms of coercion specified in Art. 386 of the Criminal Code, is exhaustive and therefore only their use guilty testifies to the presence of the composition of the crime, envisaged by this article of the Criminal Code. If, however, to refuse to give or to give knowingly false testimony or conclusion, the person is inclined in another way (for example, by persuasion or intimidation by eviction from an apartment, the dissolution of a marriage, etc.), the qualification is not qualified according to Art. 386 of the Criminal Code, but as

incitement (Part 4 of Article 27 of the Criminal Code) to the crime provided for in Art. 384 or Part 1 of Art. 385 QC. Both coercion and bribery, as referred to in Art. 386 of the Criminal Code, in essence, are also special types of incitement to refuse to give or to give knowingly false testimony or conclusion, but given that they are allocated in the separate composition of the crime, their commission is covered by the features of Art. 386 of the Criminal Code and does not require additional qualification.

If, by coercion, the witness or expert refused to give testimony or opinion or the same individuals, as well as the victim, gave a knowingly false indication or conclusion, then their responsibility under Part 1 of Art. 385 or under art. 384 of the Criminal Code comes on condition that there are no grounds for applying Articles 39-41 of the Criminal Code.

It is advisable, in our opinion, to supplement Part 1 of Art. 386 of the Criminal Code of Ukraine with the words «Prevention of the appearance of a witness, victim, expert to court, bodies of pre-trial investigation, interim investigators and a special temporary investigation commission of the Verkhovna Rada of Ukraine, forcing them to refuse to give evidence or conclusion, disclosure of information that may cause significant harm the rights and legitimate interests of the victim or his relatives, as well as to the provision of knowingly false testimony or conclusion by threatening the death, violence, destruction of the property of these persons or their close relatives or the disclosure of information that reproaches them, or the bribing of a witness, victim or expert for the same purpose, as well as a threat to commit the said acts of revenge for the earlier evidence or conclusion. «

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#### **GENERAL QUALIFICATION OF THE ARTICLE 364 MISFEASANCE OR BY OFFICIAL POSITION**

In obedience to a note 1 official persons are persons, that carry out the functions of public agents constantly or temporally, and also hug constantly or temporally on enterprises, in establishments or organizations regardless of pattern of ownership the positions related to implementation of organizationally-prescriptive or administrative duties, or carry out such duties after the special authorities. Also foreigners or persons without citizenship, that carry out the duties marked in a point 1 this note, confess official persons. By substantial harm in the articles 364, 365, 367, if she consists in infliction of material losses, such harm that in one hundred and more than times exceeds untaxed a minimum of acuestss of citizens is considered.

By heavy consequences in the articles 364-367, if they consist in after- infliction of material losses, such that in two hundred fifty and more than times exceed untaxed a minimum of acuestss of citizens are considered.

The objective side of misfeasance or by official position (farther is official abuse) appears in an act (to the action or inactivity) that: 1) accomplished with the use of power or official position; 2) comes true within the limits of the plenary powers given to the person ex officio or in connection with implementation by her official duties; 3) conflicts with interests of service; 4) causes substantial harm or pulls heavy consequences; 5) is in causal connection with the marked consequences.

In the article 364 Criminal Code is specified on the feasance of official abuse by the use of the power given to her an official person or official position. Therefore any not act of official person can be confessed official abuses, but only such that was conditioned her