

and practical conference of students, postgraduates and young scientists. Kyiv, October 18, 2014. K. : National Academy of Public Prosecutor's Office of Ukraine, 2013. P. 357-360.

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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

by official position and it is related to realization by her the official duties.

Official abuse belongs to the crimes with material composition and after part. 1 century 364 Criminal Code confesses complete from the moment of infliction of substantial harm to the rights, freedoms and interests of physical persons or state, public interests or interests of legal entities.

The subjective side of official abuse is characterized the intentional or mixed form of guilt. Thus an act (action or inactivity) is accomplished with direct intention, and psychical relation guilty to the consequences envisaged in parts 1 and 2 articles 364 Criminal Code, can be educed in both form intention and carelessnesses. On the whole a crime ponderable to the century 364 KK confesses intentional. The obligatory sign of subjective side of official abuse are certain reasons: a) mercenary motives; б) other personal interests; в) interests of the third persons.

Mercenary motives show a soba aspiration of official person by a way you-the use of the official position despite interests of service to get illegal material.

Other personal interests appear in aspiration of official person by the use of official position to get the benefit of non-material character (advancement after service, receipt of reward, overseas business trip and others like that) and can be conditioned by such motives, as a careerism, protectionism, nepotism. Other personal interests can be the revenges also caused by sense, to envy, pomposity, aspirations to avoid responsibility for sufferet errors and defects in-process.

Under interests of the third persons it follows to understand aspiration of official person by the illegal use of the official position to please the authority and others like that.

In part 3 art. 364 Criminal Code the envisaged responsibility for official abuse, perfect the worker of law enforcement authority. According to the century of 2 Laws Ukraine «About the state protecting of justiciaries and law enforcement authorities» from Decembers, 23 in 1993 to the number of the last the taken organs of office of public prosecutor, internal affairs, security Service, custom authorities, organs of guard of state boundary, tax service, organs and establishment of implementation of punishments, fish protection,

forest guard, and also other organs that carry out law enforcement or law-enforcement function . Thus, for qualification of act after part. From a part 364 Criminal Code must be set, that: a) crime is perfect the worker of law enforcement authority; б) this worker is an official person; в) a perfect by him act contains the signs of objective and subjective parties of crime, envisaged century 364 Criminal Code

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THE ESSENCE OF FINANCIAL FRAUD IN COMMERCIAL BANKS

Financial fraud is a carefully concealed process of losing financial security and the entire financial position of a commercial bank, which can be a reason for its bankruptcy. In Ukraine there is no systematic accounting of financial fraud in commercial banks by its typical designs. Available studies on such financial fraud cases are only fragmentary, since they depend on the subject of the accumulation of fragmentary information and the purposeful processing of such information in accordance with its authority. The distinction between lists, classifications and typologies of financial fraud does not allow organizing measures to detect, counteract and prevent it with sufficient accuracy, without exhaustion of a commercial bank by unnecessary or insufficient measures of struggle. We divide the main tools used in the schemes of theft of funds from commercial banks and the methods of theft: the main tools for theft of funds in commercial banks: 1) «garbage» securities (stocks, bills); 2) debt obligations of enterprises with signs of fictitiousness; 3) transfer of claim right; 4) converting cash into cash; the most common ways of stealing money from banking institutions are: a) issuing bank loans to borrowers affiliated with the owners of