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THE ISSUE OF UNDERSTANDING THE CONTENT OF THE
SUBJECT OF CRIME IN 370 ARTICLE OF CRIMINAL CODE
OF UKRAINE «PROVOCATION OF BRIBERY»

The article 370 of the Criminal Code of Ukraine «a Provocation of bribery» provides for liability for provocation of bribery, that are actions of an official person (actions of the officials of law enforcement agencies) with the inciting person to offer,

promise or giving undue advantage or accepting the offer, promise or receipt of such a benefit, then to expose the one who offered, promised, gave the unlawful advantage or accepted the offer, promise or received such benefits.

The subject of this crime is official. The concept of «official» is disclosed in article 18 of the Criminal Code of Ukraine and in the note to article 364 of the Criminal Code of Ukraine. So, in the note to article 364 of the Criminal Code of Ukraine official person is determined as the persons who permanently, temporarily or by special authority perform functions of representatives of authorities or local self-government and permanently or temporarily have their places in the bodies of state power, bodies of local self-government, at state or communal enterprises, institutions or organisations, places connected with performance of organisational-administrative or administrative-economic functions, or perform such functions by special authority, which is given to the person by the authority of state power, local self-government body, the Central body of state administration with special status, the competent authority or authorised person of the enterprise, institution, organisation, court or by law. The given understanding of the concept of «official» applies to the dispositions of articles 3 64, 3 68, 3 68², 3 69 of Criminal Code of Ukraine.

As you can see, the above list does not contain the 370 article of the Criminal Code of Ukraine. Apparently that to understand the meaning of the subject of the crime under the article 370 of the Criminal Code of Ukraine we need to apply to the disposition of part 3 of article 18 of the Criminal Code of Ukraine. According to the 3d part of article 18 of the Criminal Code of Ukraine, officials are persons who permanently, temporarily or by special authority perform functions of representatives of government or local authorities, and also permanently or temporarily occupy places in organs of state power, bodies of local self-government, at enterprises, institutions or organisations, places connected with performance organisational-administrative or administrative-economic functions, or perform such functions by special authority, which is given to the person by the authority of state power, local self-government body,

the Central body of state administration with special status, the competent authority or authorised person of the enterprise, institution, organisation, court or by law.

Comparing definition of what constitutes «officials» in the view of article 18 and article 364 of the Criminal Code of Ukraine it is necessary to ascertain the difference in the list of persons who are recognised as the subjects of the relevant acts. Thus, in contrast to article 18 of the Criminal Code of Ukraine, in the article 364 of the Criminal Code the legislator refers to officials people who permanently, temporarily hold positions in the organisations associated with the implementation of administrative or organisational-administrative functions. But in article 18 of the Criminal Code of Ukraine, this category of officials is not defined. According to the Civil Code of Ukraine the concept «organisation» has a fairly broad meaning. In particular, organisations can be: enterprises, companies, legal entities under private and public law. That is, the list of officials presented in the note to article 364 of the Criminal Code is wider than the list in article 18 of the Criminal Code of Ukraine.

Based on the objective side of the crime content in the article 370 of the Criminal Code of Ukraine it should be mentioned that of course the provocation of bribery can be committed also by the officials defined in the note to article 364 of the Criminal Code of Ukraine. In particular those who permanently, temporarily hold positions in the organisations associated with the implementation of administrative or organisational-administrative functions. That is why we consider that the subject provocation of bribery needs unification, in particular within section XVII «Crimes in the Sphere of Service and Professional Activities Related to the Providing of Public Services» of the Criminal Code of Ukraine. Specifically, it requires the coordination of the contents of the provocation of bribery subject with other articles of section XVII of the Criminal Code of Ukraine where the subject of crime is a service person.