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SPECIALTY OF QUALIFICATION OF A CRIME OF ILLEGAL ENRICHMENT UNDER ARTICLE 368-2 OF THE CRIMINAL CODE OF UKRAINE

As a result of the electronic declaration of incomes of officials of Ukraine, the urgent issue at present is their responsibility for Illegal enrichment. Actuality of consideration of this issue is explained by the increased interest of international organizations, in particular the IMF, which with difficult arguments (granting / not granting regular loans), actually accused Ukraine in the fact that after the announcement of civil servants in the actions of which are signs of a crime of illegal enrichment was not held criminally responsible and the money they declared aren't confiscated. One of the reasons for the lack of effective counteraction to corruption in this aspect is the problematic issues of the application of Art. 368-2 of the Criminal Code of Ukraine.

Significant contribution to the interpretation of the features of the crime file provided for in Art. 368-2 of the Criminal Code of Ukraine were made by such scholars as I. A. Vartlytska, D. O. Garbazy, O. P. Denega, O.O. Dudorov, V. M. Kirchko, M.V. Kocheriv, V. Kubalsky, D.G. Mikhailenko, M. I. Khavronyuk, I. M. Yasin and others. At the same time, a number of problem issues for the enforcement of this norms remain unresolved. In connection with the ratification by Ukraine of October 18, 2006 of the UN Convention against Corruption in 2003 [1], the criminalization of illegal enrichment was carried out.

A detailed analysis of illegal enrichment (from 2013), showed that "the main importance in Art. 20 Conventions have the words intentional unlawful enrichment which means that it is a matter of responsibility for actions - enrichment of a person which are: a) unlawful at the time of enrichment; B) intentional, which means awareness of the social danger of such enrichment at the time of its commission [2, c. 144]. It is these signs that are grounded in the basis of the objective side of the crime envisaged in Art. 368-2 of the Criminal Code of Ukraine. In addition, the legislator also took into account such a sign, referred to in Art. 20 of the Convention as a significant amount of illegal enrichment. Consequently, only a conventional prescription for lack of rational justification of a person's actions was not reflected in Art. 368-2 CC, so far as this could lead to a violation of the norms of the Constitution of Ukraine. In this part Ukraine has not violated its international obligations, because compliance with them is a condition for their implementation is to adhere to its constitution and fundamental principles of its legal system, as literally stated in Art. 20 of the Convention " [3, c. 226-227].

January 25, 2015 Art. 368-2 of the Criminal Code received a new version, in which it is determined that illegal enrichment - This is the acquisition by a person authorized to perform functions of the state or local self-government in property of property, the value of which significantly exceeds the income of a person derived from legal sources, or the transfer of such property to close relatives. According to the note of Art. 368-2 of the Criminal Code a significant amount exceeding the amount of income specified in the declaration of income, property, expenses and financial obligations for the relevant period, filed by a person in accordance with the procedure established by the Law of Ukraine "On Prevention Corruption " [4]. February 12, 2015 to Art. 368-2 of the Criminal Code were amended, which came into force on March 4, 2015. According to these changes illicit enrichment is considered as "acquisition by a person authorized to perform functions of the state or local self-government, the ownership of assets at a significant amount, the legitimacy of the grounds for which is not proved by evidence, as well as the transfer of such assets to any other person." According to the note of Art. 368-2 CC the Assets in significant size is funds or other property and also the income from them if their value exceeds one thousand non-taxable minimum incomes of citizens [5].

The systematic changes in determining the nature and extent of illegal enrichment today lead to the emergence of problematic issues in the course of law enforcement activities.

We consider that if a person committed an illegal enrichment at the moment of action of art. 368-1 of the Criminal Code of Ukraine edition of 2011, art. 368-2 of the Criminal Code of Ukraine edition of 2011, 2013, 2015 the object of the crime is the wrongful benefit (in the future assets) will be calculated in accordance with the note of Art. 368-1 of the Criminal Code edition of 2011 and the notes to Art. 368-2 of the Criminal Code edition of 2011, 2013, 2015.

Consequently, it is need to establish whether, at the time of receipt acquisition and at the time of transfer the subject of a crime, provided by Art. 368-1 (from 2011) or Art. 368-2 (edition of 2011, 2013, 2015) in that quantitative expression, in significant size or in a particularly large size, which was indicated in the note of the specified norms. If the subject of the crime corresponds to the specified size, then it is possible to qualify the actions of the person as the transfer of assets to another person, the legality of the grounds of which the acquisition of which is not confirmed by the evidence received, acquired by her property until 04.03.2015 as illegal enrichment.

List of references

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2. Kirichko VM Legislative virus in the system of the Criminal Code of Ukraine: the definition and actualization of the problem on
Example of art. 3682 CC "illegal enrichment". Problems of legality. 2016 133. P. 142-151.
3. Kirichko V.M. Criminal responsibility for corruption. Kharkiv: Right, 2013. 424. pp.
4. On Preventing Corruption: The Law of Ukraine dated October 14, 2014, No. 766-VIII of the DB "Legislation of Ukraine" / VR Of Ukraine. URL: <http://zakon.rada.gov.ua/laws/show/1700-18> (date of treatment: 09.02.2017).
5. The Criminal Code of Ukraine of 05.05.2004 // The DB "Legislation of Ukraine" / The Verkhovna Rada of Ukraine.URL:
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