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DEFINITION OF WORDING «DURING DUTIES EXECUTION», REFERRED TO IN ARTICLE 342 OF THE CRIMINAL CODE OF UKRAINE

The article substantiates the clause that, according to Article 342 of the Criminal Code of Ukraine, a ground of bringing a person to responsibility is presence of all constituent elements of offence in his/her actions, including such an element as executing his/her duties, imposed by law, at the moment of encroachment upon the aggrieved person. As concerns literature sources in this respect, the authors either limit themselves to a statement of the fact, that resistance is certainly to be made during duties execution by officials, or indicate that the notion «during duties execution for protection of public order» is narrower than the notion «due to duties execution» and means connection of violent actions with the duties, which are performed in the course of them; or refer to specific examples, when a public agent cannot be considered the one, carrying out his official duties.

In the author's opinion, a criterion of interpretation of the notion «during duties execution» is the nature of the aggrieved person's activity, i.e., in each case of encroachment it is necessary to find out, whether this activity is aimed at law order protection or personal motives.

Thus, the person aggrieved from resistance should be considered a public agent, an official of law enforcement agency, a state enforcement officer and an authorized person of the Depositors Insurance Fund, if they were performing their official duties and taking measures to protect public order at command or behest; a member of public organization protecting public order, state border and a serviceman – also, if they were performing their duties to protect public order. In this case, a crime is committed, if these persons are resisted both during execution of their duties and exercising of the rights, granted to them for the purpose of their tasks performance.

Keywords: resistance; aggrieved person; a person vested with powers of authority; during duties execution; due to official duties execution.