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METHODS OF PROVOCATION OF BRIBERY AND THE SUBJECT OF THE OFFENSE (ART. 370 OF THE CRIMINAL CODE OF UKRAINE)

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The article addresses the issues of typical methods of provocation of bribery and specifics the subject of the offence with determination of essence and importance in forensic science the terms of methods of commission the offence, the subject of the offence, and then with the help of the analysis of specifics of mechanism of provocation of bribery allocate the typical methods of its commission and the subject of provocation of bribery under the Article 370 of the Criminal Code of Ukraine.

Different approaches of scientists about interpretation of the term of method of commission the offence have been researched into. The author focuses on fact that most of scientists try to represent connection between the action of offender and other elements of mechanism of offence like purpose, motive and other characteristics of offender, situation, instruments and tools which are used to achieve criminal intent.

The author also emphasizes the forensic aspect of researching of methods of commission offences because this knowledge allows to build typical model of act, imagine content of subject's act, mechanism of formation of traces and as a result to determine the ways and method of investigation.

The most common methods of preparation to commit the preparation of bribery have been established. The author focuses on necessity to distinguish between the methods of provocation of bribery and adjacent criminal offences. Certain action can be treated as to bring knowingly innocent to criminal responsibility combined with artificial creation of evidence of prosecution.

Special attention is given to methods of concealment of provocation of bribery. The author agrees that they can commit both on preparatory phase and during directly its commission or immediately after commission. Moreover, such actions pursue one goal – to hide the fact of commission the crime, to hide the criminal nature of committed actions, to hide involvement of criminal person in commission offence, to hide the traces of crime.

The author comes to the conclusion that the methods of direct commission provocation of bribery appear in active form of offender's conduct and are connected with using authority and opportunities of officials.

Keywords: provocation of bribery, methods of provocation, subject of offence, mechanism of provocation of bribery

Introduction. According to the statistical data of the Office of the Prosecutor General, in 2013, 6 criminal offenses were registered under Art. 370 of the Criminal Code of Ukraine (of which a notice of suspicion was not served in any criminal proceedings); in 2014, respectively, 8 (0); in 2015 – 10 (0); in 2016 – 23(1); in 2017 – 39 (1); in 2018 – 52 (2); in 2019 – 55 (0); in 2020 – 42 (0); in January–May 2021 – 18 (0). The given statistical information emphasizes that, unfortunately, the activity of pre-trial investigation of provocations of bribery

is ineffective, because in 247 criminal proceedings, only 4 reports of suspicion were served. The outline clearly indicates the need for a forensic analysis of provocations of bribery and the development of forensic recommendations for their detection and investigation in order to optimize the activities of law enforcement and judicial bodies.

Analysis of the results of recent studies. The theoretical basis of the study is the work of domestic and foreign scientists in the field of criminology, criminal process and the theory of operational and investigative activity, who considered the conceptual issues of detection and investigation of crimes in general. Among them: O.P. Babikov, R. S. Belkin, P. D. Bilenchuk, D. A. Bondarenko, A. F. Volobuev, A. E. Golubov, M. V. Danshin, V. A. Zhuravel, A. V. Ishchenko, L. M. Kazanska, N. I. Klymenko, I. I. Kogutych, A. V. Kurman, and others.

The mentioned authors did not deal with the issue of clarifying the content of typical methods of provocation of bribery and the specifics of the subject of the considered criminal offense.

The purpose of this article is to research the content of typical methods of provocation of bribery and to clarify the specifics of the subject of the criminal offense provided for in Art. 370 of the Criminal Code of Ukraine.

Presenting main material. There is no doubt that such an element of the forensic characterization of provocation of bribery as methods of its commission is informative and important in an applied sense. At the same time, based on the content of Part 1 of Art. 370 of the Criminal Code of Ukraine, methods of incitement to commit bribery are directly related to an offer, promise or provision of an unlawful benefit, which means the existence of a close relationship between the methods of committing the crime and the object of the offense. That

is why we consider it necessary to consider the specified elements of forensic characteristics together.

We will begin by clarifying the content of typical methods of provocation of bribery and the features of the subject of the offense by establishing the essence and meaning in forensic science of the concepts "methods of committing a criminal offense", "subject of offense", and later, with the help of an analysis of the specifics of the mechanism of provocation of bribery, we will distinguish the typical methods of its commission and the subject encroachment.

The methods of committing a criminal offense are a kind of external manifestation of the skills and knowledge of the criminal, which leads to leaving traces in the environment. Being the core of the crime mechanism, it shows the qualitative side of the criminal act, its essence, which is the main action aimed at achieving a criminal result [1, p.172], because, as O. O. Posashkov notes, "an illegal act cannot to be committed by itself, it always manifests itself in certain actions or, on the contrary, inaction of the subject who commits it. Therefore, the nature, content and sequence of such behavioral acts arouses keen interest in forensic science" [2, p. 57]. This emphasizes the forensic aspect of studying the methods of committing illegal acts, since their knowledge allows you to build a typical model of the act, to imagine the content of the subject's actions, the mechanism of the formation of traces, and as a result to determine the ways and methods of investigation [3, p. 110]. That is why it is important for criminology, based on the obtained information about the way the crime was committed, to determine the trace picture of this event, to obtain data about the identity of the criminal, about the object of the criminal offense, about the circumstances of the crime, etc. [4, p. 250], because this will allow for the formation of recommendations for the prevention, detection and investigation of criminal offenses [5, p. 149], to develop tactical recommendations regarding the conduct of investigative (search) actions, to predict the mechanism of committing a specific type of criminal offense, to distinguish similar compositions of criminal offenses [6, p. 84].

When defining the concept of the method of committing a criminal offense, one should be aware that it not only reflects to the greatest extent the form of the external manifestation of the act, but also indicates individual features inherent only to it [7, p.36]. As noted in the scientific literature, information about the methods of committing an illegal act is a source of patterns of evidence, reflecting the process of achieving the goal [8, p. 12]. It is not for nothing that O. V. Pchelina notes that the method of committing a crime as a reflection of an illegal act in the external environment gives an idea of the process of preparation, direct commission and concealment of the crime [9, p. 291].

M. I. Yenikeev interprets the method of committing the crime as a system of modes, actions, operational complexes determined by the purpose and motives of actions, mental and physical qualities of a person, in which the psychophysiological and characterological features of a person, his knowledge, skills, skills, habits and attitude to various manifestations of reality are revealed [10, p. 105]. A. N. Khalikov also proposes to understand the methods of committing a criminal offense as a system, which, in his opinion, includes individual techniques and methods of illegal actions, enshrined in criminal law and aimed at achieving a criminal result with the use of selected tools and means in the conditions of a specific material situation and subject environment. In fact, in the given interpretations of the method of committing a criminal offense, scientists tried to depict the relationship between the actions of the criminal and other elements of the mechanism of the offense, namely: with the goals, motives and other features of the criminal's personality, the environment, tools and means used to achieve the criminal intent. Moreover, A. N. Khalikov limits the offender's system of actions exclusively to the objective side of the criminal offense defined in the law on criminal liability [11, p. 48]. However, from the point of view of criminology, methods of illegal action, including provocation of bribery, include not only actions (inaction) that are necessary and sufficient for their criminal qualification, but all actions that reflect the process of making a

decision to commit an offense, preparation to him and the implementation of measures aimed at the implementation of the assigned tasks, as well as indicate the attitude of the person to the committed actions throughout the entire process of their commission. Quite often, they try to reveal the essence of the methods of a criminal offense by pointing out that they are acts of behavior, techniques, operations, etc., united for a certain purpose, which determine the order, methods, and process of their application [12, p. 225]. At the same time, some scientists clarify the nature of such actions, such as those that are legally defined and structured [7, p. 37]. In our opinion, it is correct to distinguish two approaches to the interpretation of the concept and content of the methods of committing a criminal offense - in a narrow and broad sense. In the first case, the specified term is reduced exclusively to how a socially dangerous act is committed [13, p. 71], and in its essence fully corresponds to the criminal law definition of methods. In the second case, we are talking about a set of actions aimed at preparation, direct execution and concealment [14, p. 39]. The last approach to the interpretation of the method of commission is the most informative in the forensic aspect. After all, "by the method of committing a crime in the forensic sense, it is expedient to understand the objectively and subjectively determined system of behavior of the subject before, at the time and after the commission of the crime, which leaves various kinds of characteristic traces on the outside and with the help of forensic means and techniques allows you to get an idea about the essence of the event that took place, the peculiarity of the criminal behavior of the offender, his individual personal data and, accordingly, to determine the most optimal methods of solving the tasks of solving the crime" [15, p. 68].

Taking into account the above, we believe that typical methods of provocation of bribery are a set of actions united by a common plan and determined by the status of the criminal, the powers and capabilities of the official and his motivation, preparatory actions, direct incitement

to an offer (acceptance of an offer), a promise or providing (receiving) an illegal benefit and exposing a person, as well as concealing the specified acts.

Indeed, in order to ensure the achievement of a positive result, any activity must be carefully prepared. Illegal activity, in particular related to the provocation of bribery, is no exception. The immediate commission of a criminal offense is preceded by a decision to commit a provocation of bribery and the taking of all measures aimed at ensuring the possibility of realizing one's illegal plan.

Based on empirical data on the investigation of bribery provocations, it was established that in 91.9% of cases, the commission of the specified criminal offenses involves preliminary preparation. In particular, the most widespread methods of preparation for committing bribery provocation are the selection of victims (100%); determination of methods, tools and means of incitement to offer, promise or provide an unlawful benefit or accept an offer, promise or receive such a benefit (100%); collecting the necessary information, in particular compromising information for blackmailing a person (92%); entering into a conspiracy with other persons to commit acts aimed at inciting a person to commit offenses related to the offer, promise or provision (receipt) of an unlawful benefit, and its exposure (87.5%); planning of illegal activity (51.8%). As for the methods of direct provocation of bribery, it is important to note that they are somewhat similar to of related actions, such as inciting other criminal offenses or legitimate actions of law enforcement officials. In the scientific literature, there are still lively discussions about the expediency of decriminalizing the provocation of bribery, focusing on the fact that this is a way of fighting criminal wrongdoing, especially corruption. At the same time, opponents of such a position emphasize the inadmissibility of using previously illegal levers of influence when confronting criminal offenses, such as creating favorable conditions for committing illegal acts. After all, a person who incites another to commit a crime in order to capture him at the time of commission and bring him to justice

commits an act that is not only incompatible with the idea of the normal functions of authorities, but also contains all the signs of the concept of incitement to a crime [16, p. 349]. In this context, the following statement deserves attention - "fighting crime with criminal methods does not befit a democratic legal state" [17, p. 484].

It is necessary to distinguish methods of provocation of bribery from related criminal offenses. In particular, as O. O. Dudorov points out, the disposition of Art. 370 of the Criminal Code of Ukraine does not cover cases of throwing an object allegedly as an illegal benefit into a person's office or car, handing over this object to a person by deception, transferring money to a person's bank account without notifying him of this, underestimating the value of the service provided, as reported by the person to whom it was provided, does not know, etc. Such actions can be regarded as bringing a known innocent person to criminal responsibility, combined with the artificial creation of evidence for the prosecution, or as a knowingly false report of the commission of a crime, combined with the artificial creation of evidence for the prosecution, and qualify, accordingly, under Part 2 of Article 372 and Part 2 of Art. 383 of the Criminal Code of Ukraine [18, p. 81].

The methods of directly perpetrating provocation of bribery find their expression in the active form of the criminal's behavior and are associated with the use of the powers and capabilities of an official. In other words, as O. V. Us points out, "it is necessary to identify the connection between the act of an official and his official activity, which is manifested in the fact that such an act: a) is always determined by the official position or official powers of the subject and b) are committed contrary to the interests of the service, the interests of a legal entity under private law [19, p. 67]. The specified feature in the method of direct commission distinguishes provocation of bribery from other criminal offenses.

Since provocation of bribery is a type of criminal offense in the field of official activity, the methods of committing it are somewhat similar to the methods of committing official crimes. For example, we are talking about such methods as open disregard of normative legal acts that regulate the activity of an official; use of official position to obtain benefits (both material and moral); use of official powers contrary to the interests of the service; violation of the rights and legitimate interests of citizens and the state by failing to fulfill their official obligations [20, p.7]. The above fully reflects the essence of the methods of direct provocation of bribery, because, by committing the specified act, an official uses his powers and opportunities determined by the status and authority of the position held, violates the requirements of the law, acts against the interests of the service, in particular in law enforcement agencies, and violates the rights of persons who incites bribery.

Typical ways of directly perpetrating the provocation of bribery, according to the generalized results of the survey of law enforcement officers, are: 1) persuasion of a person to make an offer (accept an offer), promise or provide (obtain) an undue benefit by persuasion (2.7%), insinuation (57.1 %), giving advice and recommendations (70.5%) or 2) coercion by giving instructions (12.5%), deception (22.3%), blackmail (10.7%), threats (7.1%) .

In some cases, incitement to bribery occurs with the help of the commission of another criminal offense, in particular, bringing a known innocent person to criminal responsibility (Article 372 of the Criminal Code of Ukraine), which is expressed, as an example, in the artificial creation of prosecution evidence, other falsification. For example, on February 8, 2021, the applicant turned to the prosecutor's office with a statement about the crimes provided for in Part 2 of Art. 370, Part 2 of Art. 372 of the Criminal Code of Ukraine, committed in the opinion of the applicant against him by PERSON_2 and law enforcement officers, due to the provocation of bribery by the specified persons and the prosecution of an innocent person in connection with this, combined with the accusation of committing a serious crime and the

artificial creation of evidence [Case No. 591/965/21. Proceedings No. 1-ks/591/483/21. Materials of the Summer District Court of Sumy].

Influence on a person with the aim of persuading him to commit a criminal offense related to offering (accepting an offer), promising or providing (receiving) an unlawful benefit, may be carried out directly during personal meetings or indirectly by means of correspondence using messengers from social networks, in mobile applications, forwarding messages to e-mail addresses, etc.

The methods of exposing the actions of a person who offered, promised or gave an illegal benefit or accepted an offer, promise or received such a benefit are their recording using technical means (75.9%), applying to law enforcement agencies with a corresponding statement (86.6%) , conducting investigative (search), covert investigative (search) actions, other procedural actions (98.2%).

Regarding the methods of concealing the provocation of bribery, it is worth agreeing that they "... can be committed both at the stage of preparation and during their immediate commission or immediately after their commission. At the same time, such actions pursue a single goal - to hide the fact of committing a crime; to hide the criminal nature of the committed acts; to hide the involvement of the criminal in the commission of a criminal offense; to hide the traces of the crime" [21, p. 215]. In fact, the implementation of actions to conceal the provocation of bribery is one of the ways of countering the investigation of the specified criminal offenses, since in this way "concealment, destruction, masking or falsification of the traces of the crime and the criminal and their carriers" takes place.

The analysis of the materials of the studied category of criminal proceedings shows that in 45.3% of cases, actions to hide the provocation of bribery are not used, because the criminals

are convinced that the title of an official, official powers and related opportunities give them a certain inviolability, security and allow them to avoid criminal prosecution. The main ways of concealing the provocation of bribery are the use of corrupt connections (7%), disguised as legitimate actions (47.7%).

Along with the typical methods of provocation of bribery, the subject of the offense must also be considered, since the specified criminal offenses consist in inciting a person to commit illegal acts related to an offer, promise or provision (receipt) of an unlawful benefit, followed by its exposure. This is explained by the fact that "the subject of the offense and legislative regulation in criminalistic characteristics are important, since it reflects the essence of crimes and makes up the features of their commission" [22, p. 203].

The object of encroachment (the object of the crime) usually means materialized objects with which the commission of illegal acts is connected. In particular, in criminal law, one can find the interpretation of the subject of the crime as any things of the material world, with certain properties of which the law on criminal responsibility associates the presence in the actions of a person of signs of a specific composition of the crime [23, p. 93]. At the same time, the subject of the crime includes things of the material world, due to the influence of which the guilty person causes damage to certain social relations. However, taking into account the changes in criminal illegality, including the corruption orientation, increasingly among scientists there are positions on the need to include not only material objects in the subject of crime, but also other, non-material objects. The latter have an external appearance or can acquire it, and are also perceived by human senses or with the help of special technical means. That is, "the subject of criminal trespass can be both any material object and that which is characterized as intangible and constitutes a criminal interest" [24, p. 412].

As for the subject of the offense of bribery provocation, it can be both a materialized and an immaterial object. This follows from the content of the norms of the law on criminal liability.

Thus, the subject of encroachment for acts of corruption, as indicated by O.V. Us, is according to the note to Art. 3641 of the Criminal Code of Ukraine "illegal benefit - money or other property, advantages, benefits, services, intangible assets, any other benefits of an intangible or non-monetary nature that are offered, promised, given or received without legal grounds" [19, p. . 67; 172]. Accordingly, in accordance with the legal definition, the following signs of improper benefit can be distinguished: 1) improper benefit can be: a) money, b) benefits, c) privileges, d) services, e) intangible assets, e) other property; 2) these items are promised, offered, given or received without legal grounds.

At the same time, as K. G. Bykov emphasizes, a systematically forming feature of corruption crimes, as well as the provocation of bribery, is that such items are obtained by an official without legal grounds [25, p. 11]. Moreover, in the law on criminal liability, the content of unlawful benefit is indicated by listing the values (benefits) that are types of such benefit; a list of possible actions with these values; illegality of such actions; emphasizing its property nature (its value in all cases can be expressed in monetary terms). IN in the context of the above, it can be seen that the methods of provocation of bribery should be considered in an inextricable connection with the object of the offense, in particular, unlawful gain, since "in addition to clarifying the essence of the crime, it is difficult to correctly establish all those social relations to which the criminal offense is aimed. After all, the effect of the criminal act on the subject, the method of this act, as well as the physical (or intellectual) change of the subject along with other signs of the act allow in many cases to draw a conclusion about the nature of the crime, its social danger."

Separately, it should be emphasized that the unlawful benefit, being the object of the offense, is at the same time a means of committing the mentioned criminal offenses. In particular, as Yu. O. Chernega points out, "illegal benefit is not the subject of bribery in the proper sense of the term, since under active bribery it is a means of committing a crime, and under passive bribery it is the product of a person's criminal activity" [26, p. 116].

Conclusions. So, according to the results of summarizing the materials of criminal proceedings on the provocation of bribery, in 94.2% of cases, the unlawful benefit is money in cash, 3.5% - other property, 2.3% - advantages, benefits and services. The object of encroachment (illegal benefit) is a means of perpetrating provocation of bribery, which indicates its connection with the methods of perpetration.

Typical methods of bribery provocation can be defined as a set of things united by a common plan and determined by the status of the criminal, the powers and capabilities of the official and his motivation, preparatory actions, direct incitement to offer (acceptance of an offer), promise or giving (receiving) illegal benefits and exposure of the person, as well as concealment of the specified acts.

The specified methods of provocation of bribery are presented with information on the methods of preparation, direct commission (incitement to offer (acceptance of an offer), promise or giving (receiving) an undue benefit and exposing a person) and concealment of the specified actions. The methods of direct provocation of bribery find their expression in the active form of the criminal's behavior and are associated with the use of the powers and capabilities of an official. The methods of provocation of bribery are inextricably linked with the object of the offense. In particular, unlawful gain, being the object of encroachment, is at the same time a means of committing the mentioned criminal offenses. In 94.2% of cases, the

unlawful benefit is money in cash, 3.5% - other property, 2.3% - advantages, benefits and services.

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