

UDC 343.537
DOI: 10.33270/04202002.8

Official as a Subject of Misuse of Budget Funds, Implementation of Budget Expenditures, or Provision of Loans from the Budget Without Established Budget Assignments or With Their Excess

Volodymyr Khomenko

National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine

Abstract

The purpose of the study is a criminal-legal analysis and characterisation of an official as a subject of misuse of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget assignments or with their excess. The study used a set of scientific methods: terminological, system-structural, formal-logical, and comparative-legal. The list of persons who can be subjects of misuse of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget assignments or with their excess is considered; officials of economic entities – legal entities of the non-budget field that receive subsidies or subventions as budget funds are allocated; officials of legal entities of the non-budget field, who are delegated the right to dispose of budget funds in accordance with the current legislation. The list of persons who may be accomplices in the misuse of budget funds is given – among employees of a budget institution, controlling, and financial bodies: State Audit Service of Ukraine, the State Treasury Service, and the State Treasury of Ukraine. The feature of committing misuse of budget funds by an official, conducting budget expenditures or providing loans from the budget without established budget assignments or exceeding them is determined, which consists in the adjacent commission of offences against property and official crimes. Classified officials who commit misuse of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget assignments or with their excess: chief managers of budget funds; lower-level managers; recipients of budget funds; other officials (not managers) of state authorities, budgetary institutions, and institutions, enterprises, organisations that receive targeted budget funds

Keywords:

budget; misuse of budget funds; subject of a crime; official; budgetary institutions

Article's History

Received: xx.xx.2021
Revised: xx.xx.xxxx
Accepted: xx.xx.xxxx

Suggest Citation:

Khomenko, V. (2021). Official as a subject of misuse of budget funds, implementation of budget expenditures, or provision of loans from the budget without established budget assignments or with their excess. *Law Journal of the National Academy of Internal Affairs*, 20(2), 56-63

*Corresponding author

Introduction

In the 21st century, an unprecedented rise in the level of the economy and its globalisation is observed, especially considering the processes of trade and migration [1]. Under these conditions, the financial component of the economic system has considerable weight. Finance is the main driving force of the economy. Financial innovations and financial and digital technologies transform the way of life, work, demand, and production of goods and services [2].

Substantial transformations of the Ukrainian state, due to drastic changes in approaches to both external and internal financial and political doctrine, are designed not only to bring innovations to the development of the state but also to solve a number of problematic issues, which, accordingly, will allow Ukraine to enter the pan-European and international community, increase its investment attractiveness.

A factor influencing the country's business climate is the state investment policy, which is implemented, in particular, through budget investments aimed at stimulating economic growth in the long term. Their main goal is to ensure the development of the real sector of the economy and social field. Budget investments can also be used as a tool to accelerate growth during an economic downturn [3].

Despite certain positive findings in the public field and the implementation of social reforms, the development vector should be aimed at the economy, which will ensure the filling of budgets at all levels [4].

Admittedly, the key aspect in the implementation of innovations is the issue of legitimacy and legal protection, and the financing of measures that will contribute to the development of society. The experience of development of most European countries testifies to two main prerequisites for ensuring the financial legitimacy of transformations: the search for the latest sources of obtaining financial resources, and the fight against corruption turnover of funds, especially in the use of budget funds [5].

Thus, in 2019, 23 misuses of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget assignments or with their excess were recorded (Art. 210 of the Criminal Code of Ukraine), 4 criminal proceedings were closed, while no person was served with a notice of suspicion. However, as of May 2020, 4 crimes under Art. 210 of the Criminal Code of Ukraine were registered, only one person was served with a notice of suspicion [6].

This indicates problems in law enforcement practice regarding the disclosure of misuse of budget funds, which is mainly associated with the identification of the persons who committed them, and the establishment of an evidence base for their guilt.

Researchers and practitioners note that the purpose of mercenary crimes in the field of economy

is increasingly to withdraw funds from the budget in legal forms of economic activity or powers to control this activity using the official position of officials. Misuse of budget funds is a criminal activity that has certain characteristics. First of all, these are acts related to the commission of other crimes, such as abuse of official position, obtaining illegal benefits, evasion of taxes, fees, and other mandatory payments.

The purpose of the study is criminal-legal analysis and characterisation of an official as a subject of misuse of budget funds, implementation of budget expenditures, or provision of loans from the budget without established budget assignments or with their excess; classification of subjects of crime under Art. 210 of the Criminal Code of Ukraine.

Results and Discussion

The most common type of violation of budget legislation is the misuse of budget funds as one of the components of economic crime. The state attaches great importance to the protection of economic interests and the protection of budgetary legal relations, as evidenced by the variety of types of legal liability provided for their violation [7].

The wording of the articles of the current Criminal Code of 2001, concerning the violation of the legislation on the budget system and the publication of normative legal or administrative acts that change budget revenues and expenditures contrary to the procedure established by law, with minor changes reproduced the dispositions of Art. 80-3 and 80-4 of the Criminal Code of Ukraine of 1960, which were supplemented in accordance with the Law of Ukraine of October 7, 1997, "On amendments to the Criminal and Criminal Procedure Codes of Ukraine to strengthen the fight against violations of budget legislation". Chapter 1 of the Special part of the Criminal Code of 1960 "Crimes against the state" contained Art. 80-3 and 80-4. A substantial innovation of the Criminal Code of 2001 in this aspect is the increase of large and especially large sizes as a characteristic of the subject of criminal violation of the legislation on the budget system from one hundred and a thousand non-taxable minimum incomes of citizens to, respectively, one thousand and three thousand such minimums, which means partial decriminalisation of the analysed encroachment.

The peculiarity of this crime is that the majority of persons who are brought to criminal responsibility for its commission are heads of bodies and divisions of relevant state institutions and enterprises that have the right to sign financial documents [8].

The subject of a crime under Art. 210 of the Criminal Code of Ukraine is special: it can only be recognised as an official who has the right to dispose of budget funds [5]. Such a subject can be any official who has the right to dispose of budget funds,

in particular, the relevant officials of enterprises, institutions and organisations that are financed from the budget and who, according to the current budget legislation, are managers or recipients of budget funds. Budgetary institutions represented by their managers are trustees of budget funds, authorised to receive budget allocations, take budget obligations, and conduct expenditures from the budget.

The subjects of the crime under Art. 210 of the Criminal Code of Ukraine may also be officials of economic entities – legal entities of the non-budgetary field if the subsidies or subventions received by them as budget funds are not spent by them in accordance with their intended purpose. If there are also signs of fraud with financial resources in the actions of such persons, the committed crime must be qualified according to the totality of crimes – on the relevant parts of Art. 210 and Art. 222 of the Criminal Code of Ukraine. The commission of acts provided for by the disposition of part 1 of Art. 210 of the Criminal Code of Ukraine by officials who are not managers or recipients of budget funds is qualified as the abuse of power or official authority, since they perform actions that fall within the competence of a higher official or an official of another department (while these actions, according to subparagraph “a” of section 2 of paragraph 4 of the resolution of the Plenum of the Supreme Court of Ukraine of December 27, 19956 No. 12 “On judicial practice in cases of abuse of power or official authority”, should be qualified in this way).

The legislation of Ukraine on criminal liability contains the definition of an official in a note to Art. 364 of the Criminal Code of Ukraine, according to which officials are persons who permanently, temporarily, or under special authority perform the functions of representatives of government or local self-government, and hold permanent or temporary positions in state authorities, local self-government bodies, state or municipal enterprises, institutions or organisations related to the performance of organisational-administrative or economic-administrative functions, or perform such functions under special powers, which a person is given by an authorised state authority, a local self-government body, a central public administration body with a special status, authorised a body or authorised person of an enterprise, institution, organisation, court, or law [9].

A person is an official not only when they perform the relevant functions or duties permanently, but also when they do so temporarily or under special authority, provided that these functions or duties are assigned to them in accordance with the procedure established by law by a competent body or a competent official. The holding of a certain position or assignment to temporarily perform the relevant duties must be formalised by an appropriate

decision (order, resolution, etc.). First of all, these are officials – heads and chief accountants (heads of financial divisions) of budgetary institutions authorised to receive budget allocations, take budget obligations and conduct budget expenditures.

Having analysed the judicial-investigative and operational-search practice, L. Mishchenko & M. Telitsyn [10] noted that heads of municipal and state executive authorities permitted to distribute relevant funds were mainly brought to criminal responsibility for the misuse of budget funds – 47.8% of the total number of sentences for 2019; chief doctors of healthcare institutions – 23.7%; heads of state institutions – 13.1%; heads of commercial organisations – 11.8%. Investigating this list, considering the position of the person involved in the structure of a legal entity, it was discovered that the misuse of budget funds is mainly conducted by managers (84.85%), much less by chief accountants (12.12%). Another study conducted by A.M. Kyslyi & Yu.V. Fedorchuk [11] regarding the identity of offenders who commit criminal offences related to embezzlement of budget funds during the procurement of medical equipment and medicines demonstrated that these are employees of the healthcare sector (chief physician, chief accountant, economist, lawyer, who are often members of the tender committee, and officials authorised to take medicines in terms of quantity and quality), and employees of contractors (heads of these enterprises, persons who sign acts of acceptance of inventory values in terms of quantity and quality).

The study of the provisions of the legislation of Ukraine on criminal liability has shown that criminal offences related to the misuse of budget funds are committed by officials who are authorised to conduct budget expenditures.

This is due to the requirement of part 1 of Art. 22 of the Budget Code of Ukraine (hereinafter referred to as the BC), which states that for the implementation of programmes and activities at the expense of budget funds, budget allocations are provided to budget managers. Regarding the scope of rights granted, there are head managers of budget funds and managers of budget funds at lower levels.

Researchers divide officials who commit inappropriate use of budget funds according to the following criteria:

- chief managers of budget funds, managers of budget funds of the lower level, officials of recipients of budget funds [12];
- heads and chief accountants (heads of financial divisions) of budgetary institutions authorised to receive budget allocations, take budget obligations and implement budget expenditures; officials of recipients of budget funds – business entities, public or other organisations that do not have the status of a

budget institution, but are authorised by the administrator of budget funds to implement activities provided for in the budget programme, and receive budget funds for their implementation – the distribution of these persons depending on the purpose of budget funds, the grounds for their receipt, and social and role competence (purpose, state programmes, etc.) [13];

- persons considering their official status and powers in relation to budget funds (higher and lower levels) [14];

- officials who:

- directly take part in the establishment, distribution, and use of budget funds (authorised persons);

- encroach on budget funds “from the outside”, using certain economic mechanisms (entrepreneurs) [15];

- several groups of persons according to the criterion of competence to perform operations, direct holders of budget funds, and performers of works and services [16].

The subjects of a crime under Art. 210 of the Criminal Code of Ukraine in the scientific literature are:

- officials of local financial bodies, i.e., institutions that, in accordance with the legislation of Ukraine, perform the functions of local budgeting, monitoring the expenditure of funds by budget managers, and other functions related to the management of local budget funds;

- heads of budgetary institutions and organisations that manage budget funds in accordance with approved estimates and allocation plans;

- officials of non-budgetary legal entities who, according to the current legislation, are delegated the right to dispose of budget funds (officials of non-state enterprises that provide housing and communal services and transfer budget funds to their accounts in the form of housing subsidies accrued to the population);

- officials of enterprises, institutions, and organisations without the status of budgetary, but in accordance with the established procedure through the managers of funds receive budgetary funds for certain programmes, and financial assistance at the expense of budgetary funds in the form of subsidies, subsidies, and subventions [17].

Consequently, misuse of budget funds is committed, first of all, by managers of budget funds (head managers of budget funds represented by heads of budget institutions). A business entity, public or other organisation without the status of a budget institution, is authorised by the administrator of budget funds to implement the activities provided for in the budget programme, receives budget funds for their implementation, and is the recipient of budget funds (paragraph 38 of part 1 of Art. 2 of the BC of Ukraine). As a result of applying the

programme-target method in the budget process, budget managers acquire the status of responsible performers of budget programmes (Art. 20 of the BC of Ukraine). The chief administrator of budget funds, in coordination with the central executive authority, determines the responsible executor of budget programmes that ensures the establishment of state budget policy (the local financial authority). A public or other organisation without the status of a budget institution is authorised by the administrator of budget funds to implement the activities provided for in the budget programme and receives budget funds for their implementation (paragraph 38 of part 1 of Art. 2 of the BC of Ukraine) [12].

Therewith, V.A. Nechitailo [12] divides all officials who commit these crimes into the following categories: 1) managers of budget funds: chief managers of budget funds and managers of budget funds of the lower level; 2) officials of recipients of budget funds; 3) persons who commit crimes due to official negligence.

This division is of interest for describing criminal offences related to the misuse of budget funds committed in complicity. The first group of subjects includes officials authorised by the state to use budget funds for their intended purpose (managers of budget funds and officials of recipients of budget funds). The second group includes persons who do not have the authority to use budget funds but are considered accomplices in the illegal activities of the subjects of the first group. These may be officials of the State Treasury Service of Ukraine, local financial authorities, or business entities of all forms of ownership that produce or supply goods (works, services) to meet priority state needs.

Officials who commit misuse of budget funds hold head positions in budgetary institutions, organisations, and enterprises. Accomplices are mostly their deputies, heads of departments, services, or other persons holding responsible positions in budget structures, chief accountants and their deputies, senior accountants. Criminals are persons who are well-versed in the field of their official activities, have corrupt connections in public authorities at various levels, and, above all, in law enforcement agencies.

Potential accomplices of such offences are mainly heads of economic planning departments and chief accountants of budgetary institutions involved in the use of budget funds in the field of budgeting and conducting financial and economic operations. Usually, such persons have a higher economic or other professional education and practical experience in the financial sector. Officials of the State Treasury Service of Ukraine and local financial authorities may also be accomplices in the misuse of budget funds. This is due to the fact that in compliance with the requirements of Art. 112, 113 of the BC of

Ukraine and to improve the coordination of actions of the State Treasury of Ukraine and the State Audit Service of Ukraine during the implementation of control over the accounting procedure, reporting on the implementation of budgets and estimates, conducting operations with budget funds, the State Treasury of Ukraine at the payment of bills of managers and recipients of budget funds stage in accordance with the order of the State Treasury of Ukraine and the the Main Control and Revision Office of Ukraine dated December 14, 2004, No. 215/338 "On certain issues of interaction between the State Treasury of Ukraine and the Main Control and Revision Office of Ukraine", conduct control, namely: check the sufficiency of grounds for making payments (availability of supporting documents, compliance by managers of funds with the requirements of regulations governing the budget process), compliance of payments with the requirements of accounting and control over obligations, and the correctness of registration of settlement documents. Such employees, for personal benefits, provide unjustified permits for unjustified spending of budget funds.

Moreover, the preventive function of bringing an official to criminal responsibility and assigning them a sentence is important. Ultimately, the subject of misuse of budget funds is an official of the recipient of these funds, and the presence of a criminal record for this crime will be an obstacle to the offender filling positions in the civil (municipal) service. Such a restriction is a real way to prevent the commission of crimes [18]. Evidence of the unwillingness of an official to treat the performance of their functional duties in good faith is the commission of a crime during their tenure in the civil service, which is an audacious challenge to society, and therefore requires a response from the law [19].

Officials of the State Treasury of Ukraine, in addition to crimes under Art. 210 of the Criminal Code of Ukraine, in the form of complicity in the misuse of budget funds, may also commit crimes in the field of official activity, for example, official negligence (Art. 367 of the Criminal Code), acceptance of an offer, promise, or acquisition of illegal benefits by an official (Art. 368 of the Criminal Code).

Thus, misuse of budget funds is committed, first of all, by managers of budget funds (head managers of budget funds and managers of budget funds of a lower level) and officials of recipients of budget funds. The head managers of budget funds are budgetary institutions represented by their managers, who, in accordance with the BC of Ukraine, receive powers by establishing budget assignments (paragraph 18 of part 1 of Art. 2 of the BC of Ukraine). They define the network of lower-level budget managers and recipients of budget funds, considering the requirements for the establishment of a unified

register of budget managers and recipients of budget funds and the data of such a register (part 3 of Art. 10 of the BC of Ukraine).

The scientific literature states that the abuse of budget funds by an official of an institution (organisation) who is not a manager or recipient of budget funds should be considered a separate crime in the field of official activity. The same criminal-legal assessment should be provided (if there are grounds) to the actions of officials of those enterprises (institutions, organisations) who, in accordance with the concluded contracts, perform work (provide services) for budgetary institutions or recipients of budgetary funds, since the funds transferred to the bank accounts of such enterprises (institutions, organisations) lose the status of budgetary as the subject of the crime under consideration. For example, this applies to performers of a state order – business entities of all forms of ownership that produce or supply goods (perform works, provide services) to meet priority state needs [20]. In some cases, persons who commit criminal offences related to the misuse of budget funds include officials who violate the requirements of budget legislation unintentionally due to official negligence. This refers to cases of misuse of budget funds due to non-performance (improper performance) of official duties due to improper (negligent) attitude to them.

Thus, it was established that persons who may be subjects of misuse of budget funds, implementation of budget expenditures, or provision of loans from the budget without established budget assignments or with their excess are officials of economic entities – legal entities of the non-budget field that receive subsidies, subsidies or subventions as budget funds; officials of legal entities of the non-budget field, who, according to the current legislation, are delegated the right to dispose of budget funds. Persons who may be accomplices in the misuse of budget funds are employees of a budget institution, controlling and financial bodies: the State Audit Service, the State Treasury Service, and the State Treasury of Ukraine. The specific feature of committing misuse of budget funds by an official, conducting budget expenditures or providing loans from the budget without established budget assignments or exceeding them was identified, which consists in the adjacent commission of offences against property and official crimes.

Conclusions

Thus, officials who commit misuse of budget funds, conduct budget expenditures, or provide loans from the budget without established budget assignments or with their excess (considering their official status and competence in relation to budget funds) were classified into certain categories:

- chief managers of budget funds; heads of ministries and departments, other central bodies – according to the state budget (the list of which is defined by the BC, provided that during this budget period the law or budget decision establishes budget assignments for them); heads of local bodies – local budgets;
- lower-level managers whose management area includes other lower-level managers: heads of state executive bodies at the regional level – according to the state budget; heads of district bodies – local budgets; heads of budgetary institutions;
- recipients of budget funds; heads of enterprises, institutions, and organisations, regardless of the form of ownership, who receive budget funds as various types of targeted financial assistance – subsidies, subventions, loans, budget loans, and for conducting centralised
- activities or implementation of programmes provided for in the budget;
- other officials (not executives) of state authorities, budgetary institutions, enterprises, organisations

that receive targeted budget funds: chief accountants, heads of financial and economic divisions, heads of structural divisions of institutions that are not themselves managers (recipients) of budget funds; officials of departments of the Ministry of Finance of Ukraine, local bodies of the State Treasury of Ukraine, who, in accordance with the legislation, are required to perform functions to ensure the targeted use of financing budget expenditures, servicing accounts of state and local budgets, budget and non-budget institutions.

The commission of misuse of budget funds, the implementation of budget expenditures or the provision of loans from the budget without established assignments or with their excess is a fragrant violation by officials of budget legislation and the commission of related offences in the field of property and official crimes. Such officials, in addition to crimes under Art. 210 of the Criminal Code of Ukraine, in the form of complicity in the misuse of budget funds, also commit crimes in the field of official activity.

References

- [1] Babiak, A.V., Zhyvko, Z.B., & Yosypiv, A.O. (2010). *Counteraction to crimes committed in the budget sphere*. Lviv: Lviv State University of Internal Affairs
- [2] Baier, F.J. (2020). Foreign Direct Investment and Tax: OECD Gravity Modelling in a World with International Financial Institutions. *Athens Journal of Business & Economics*, 6(1), 45-72.
- [3] Dehtiar, Ya.R. (2016). Budget offenses as grounds for liability under current legislation of Ukraine. *Economics and Law*, 1(43), 19-24.
- [4] Dovban, I.M. (2019). Crime of civil servants as a holistic complex phenomenon. *South Ukrainian Law Journal*, 4(1), 102-104.
- [5] Filippov, D.I. (2019). Financial innovations in terms of development of digital economy. *Creative Economy*, 8(3), 1503-1520.
- [6] Khomenko, V.P. (2016) Criminal liability for misuse of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget allocations or with their excess. *Scientific Bulletin of the National Academy of Internal Affairs*, 1, 120-131.
- [7] Khomutenko, V., & Khomutenko, A. (2020). Budget investments in the context of investment attractiveness of Ukraine. In *Formation of Modern Scientific Thought: Proceedings of the International Scientific Conference* (pp. 17-19). Kropyvnytskyi: National University.
- [8] Criminal Code of Ukraine. No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
- [9] Kulakov, V.V., Len, V.V., & Miroshnychenko, S.S. (2011). *Prevention of crimes related to illegal use of budget funds*. Zaporizhzhia: Dniprmetallurh.
- [10] Kyslyi, A.M., & Fedorchuk, Yu.V. (2017). Operational and investigative description of crimes related to embezzlement of budget funds during the procurement of medical equipment and medicines. *Legal Journal of the National Academy of Internal Affairs*, 2(14), 218-230.
- [11] Melnyk, M.I., & Khavroniuk, M.I. (2012). *Scientific and practical commentary on the Criminal Code of Ukraine*. Kyiv: Yuryd. dumka.
- [12] Mischenko, L., & Telicyn, N. (2019). Features of operational-investigative characteristics of crimes related to misappropriation of budget funds and state extra-budgetary funds, posing a threat to the economic security of the state. *The Economy Under Guard*, 3(10), 25-31.
- [13] Moisieiev, Ye.M., Tatsii, V.Ya., & Shemshuchenko, Yu.S. (2009). *International police encyclopedia*. Vol. 1-10. Kyiv: Atika.
- [14] Nechytailo, V.A. (2013). Characteristics of persons who commit misuse of budget funds. *Scientific Bulletin of the National Academy of Internal Affairs*, 4, 133-143.

- [15] Pasichnyk, Yu.V. (2018). Budget levers have an impact on life expectancy. *Scientific Notes of the National University "Ostroh Academy"*, 8(36), 69-73.
- [16] Pastushenko, A.A. (2019). Exemption from criminal liability with the imposition of a court fine for misappropriation of budget funds. *Legal Science and Practice*, 1(15), 63-67.
- [17] Stepaniuk, R.L. (2012). *Ensuring the investigation of crimes committed in the budget sphere of Ukraine*. Kharkiv: NikaNova.
- [18] Vasylynchuk, V.I. (2012). *Operational and investigative prevention of crimes in the budget sphere*. (2nd ed.). Kyiv: Zahrai.
- [19] Volobuiev, A.F., & Stepaniuk, R.L. (2003). Features of the mechanism of criminal violations of budget legislation. *Bulletin of the Academy of Legal Sciences of Ukraine*, 4(35), 198-208.
- [20] Unified reports of the Office of the Prosecutor General on criminal offenses in Ukraine for 2019 and January-May 2020). (2020). Retrieved from https://old.gp.gov.ua/ua/stst2011.html?_dir_id=114140&libid=100820&c=edit&_c=fo

Список використаних джерел

- [1] Babiak, A.V., Zhyvko, Z.B., & Yosypiv, A.O. (2010). *Counteraction to crimes committed in the budget sphere*. Lviv: Lviv State University of Internal Affairs
- [2] Baier, F.J. (2020). Foreign Direct Investment and Tax: OECD Gravity Modelling in a World with International Financial Institutions. *Athens Journal of Business & Economics*, 6(1), 45-72.
- [3] Dehtiar, Ya.R. (2016). Budget offenses as grounds for liability under current legislation of Ukraine. *Economics and Law*, 1(43), 19-24.
- [4] Dovban, I.M. (2019). Crime of civil servants as a holistic complex phenomenon. *South Ukrainian Law Journal*, 4(1), 102-104.
- [5] Filippov, D.I. (2019). Financial innovations in terms of development of digital economy. *Creative Economy*, 8(3), 1503-1520.
- [7] Хомутенко В., Хомутенко А. Бюджетні інвестиції в контексті інвестиційної привабливості України. *Формування сучасної наукової думки: матеріали Міжнар. наук. конф. МЦНД (Кропивницький, 31 січ. 2020)*. Кропивницький, 2020. С. 17–19.
- [8] Кримінальний кодекс України: Закон України від 5 квітня 2001 р. № 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [9] Запобігання злочинам, пов'язаним з незаконним використанням бюджетних коштів: наук.-практ. посіб. / В.В. Кулаков, В.В. Лень, С.С. Мірошніченко. Запоріжжя: Дніпр. металург, 2011. 289 с.
- [10] Кислий А.М., Федорчук Ю.В. Оперативно-розшукова характеристика злочинів, пов'язаних із розкраданням бюджетних коштів під час проведення закупівель медичного обладнання та ліків. *Юридичний часопис Національної академії внутрішніх справ*. 2017. Том 2. № 14. С. 218–230.
- [11] Науково-практичний коментар Кримінального кодексу України. 9-те вид., переробл. та доповн. / за ред. М.І. Мельника, М.І. Хавронюка. Київ: Юридична думка, 2012. 1316 с.
- [12] Mischenko L., Telicyn N. Features of operational-investigative characteristics of crimes related to misappropriation of budget funds and state extra-budgetary funds, posing a threat to the economic security of the state. *The economy under guard*. 2019. Vol. 3. No. 10. P. 25–31.
- [13] Міжнародна поліцейська енциклопедія: у 10 т. / відп. ред. Є.М. Мойсєєв, В.Я. Тацій, Ю.С. Шемшученко. Київ: Атіка, 2009.
- [14] Нечитайло В.А. Характеристика осіб, які вчиняють нецільове використання бюджетних коштів. *Науковий вісник Національної академії внутрішніх справ*. 2013. № 4. С. 133–143.
- [15] Пасічник Ю. В. Бюджетні важелі впливу на тривалість життя населення. *Наукові записки Національного університету «Острозька академія»*. 2018. Вип. 8. № 36. С. 69–73.
- [16] Пастушенко А.А. Освобождение от уголовной ответственности с назначением судебного штрафа за совершение нецелевого расходования бюджетных средств. *Юридическая наука и практика*. 2019. Том 15. № 1. С. 63–67.
- [17] Степанюк Р.Л. Забезпечення розслідування злочинів, вчинених у бюджетній сфері України : монографія / за заг. ред. А. Ф. Волобуєва. Харків: НікаНова, 2012. 382 с.

- [18] Василичук В.І. Оперативно-розшукова профілактика злочинів у бюджетній сфері: монографія. 2-ге вид. Київ: Заграй, 2012. 344 с.
- [19] Волобуєв А.Ф., Степанюк Р.Л. Особливості механізму злочинних порушень бюджетного законодавства. *Вісник Академії правових наук України*. 2003. Вип. 4. № 35. С. 198–208.
- [20] Єдині звіти Офісу Генерального прокурора про кримінальні правопорушення в Україні за 2019 рік і січень–травень 2020 року. URL: https://old.gp.gov.ua/ua/stst2011.html?dir_id=114140&libid=100820&c=edit&c=fo

Службова особа як суб'єкт нецільового використання бюджетних коштів, здійснення видатків бюджету чи надання кредитів з бюджету без встановлених бюджетних призначень або з їх перевищенням

Володимир Петрович Хоменко

Національна академія внутрішніх справ
03035, Солом'янська площа, 1, м. Київ, Україна

Анотація

Метою публікації є кримінально-правовий аналіз і характеристика службової особи як суб'єкта нецільового використання бюджетних коштів, здійснення видатків бюджету чи надання кредитів з бюджету без встановлених бюджетних призначень або з їх перевищенням. У статті використано комплекс наукових методів: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Розглянуто перелік осіб, які можуть бути суб'єктами нецільового використання бюджетних коштів, здійснення видатків бюджету чи надання кредитів з бюджету без встановлених бюджетних призначень або з їх перевищенням; виокремлено службових осіб суб'єктів господарської діяльності – юридичних осіб небюджетної сфери, що одержують дотації, субсидії чи субвенції як бюджетні кошти; службових осіб юридичних осіб небюджетної сфери, яким згідно з чинним законодавством делеговано право розпоряджатися бюджетними коштами. Наведено перелік осіб, які можуть бути співучасниками нецільового використання бюджетних коштів – як серед працівників бюджетної установи, так і контролюючих та фінансових органів: Державної аудиторської служби, Державної казначейської служби, Державного казначейства України. Визначено особливості вчинення службовою особою нецільового використання бюджетних коштів, здійснення видатків бюджету чи надання кредитів з бюджету без встановлених бюджетних призначень або з їх перевищенням, що полягає в суміжному вчиненні правопорушень проти власності та службових злочинів. Класифіковано службових осіб, які вчиняють нецільове використання бюджетних коштів, здійснення видатків бюджету чи надання кредитів з бюджету без встановлених бюджетних призначень або з їх перевищенням: головні розпорядники бюджетних коштів; розпорядники нижчого рівня; одержувачі бюджетних коштів; інші службові особи (не керівники) органів державної влади, бюджетних установ, а також установ, підприємств, організацій, які одержують цільові бюджетні кошти

Ключові слова:

бюджет; нецільове використання бюджетних коштів; суб'єкт злочину; службова особа; бюджетні установи