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**DISTINGUISHING BETWEEN EMBEZZLEMENT, MISAPPROPRIATION,  
OR SEIZURE OF PROPERTY THROUGH ABUSE OF OFFICIAL POSITION  
AND ILLEGAL USE TO OBTAIN PROFIT FROM HUMANITARIAN AID,  
CHARITABLE DONATIONS, OR FREE ASSISTANCE**

This article explores the nuanced legal distinctions between two criminal offenses under Ukrainian law: embezzlement, misappropriation, or seizure of property through abuse of official position (Article 191 of the Criminal Code of Ukraine) and illegal use of property to obtain profit from humanitarian aid, charitable donations, or free assistance (Article 201-2 of the Criminal Code of Ukraine). The analysis delves into the objective and subjective elements of each offense, emphasizing differences in the nature of the acts, their legal consequences, and the underlying motivations.

The discussion begins by examining the objects of the offenses, elucidating how Article 191 focuses on instances related to abuse of official position, while Article 201-2 addresses situations concerning the illicit use of property for personal gain from humanitarian activities. The article scrutinizes the legal framework, emphasizing that while both offenses aim to prevent abuse of property, they apply to distinct scenarios and involve different legal considerations.

The objective aspect of the offenses is scrutinized, highlighting the specific actions covered by each provision. Emphasis is placed on the acts of appropriation, expenditure, or seizure of property under Article 191, contrasting with the diverse forms of illegal use delineated in Article 201-2, such as sale, utilization, or entering other legal transactions.

The subjective dimension is thoroughly examined, distinguishing the mental states and motivations behind each offense. The article underscores the requirement of direct intent and selfish motives for embezzlement, misappropriation, or seizure of property under Article 191, while underscoring the need to establish illicit intentions and motives for personal gain in cases falling under Article 201-2.

Legal implications and judicial precedents are explored to elucidate the burden of proof required for each offense. The article underscores the necessity for prosecutors to present compelling and admissible evidence, including the status of the accused as a public official, the objective aspects of the offenses, and proof of unlawful enrichment.

The study concludes by summarizing the distinct characteristics of the analyzed offenses, positioning Article 191 as a general provision and Article 201-2 as a specific one. It emphasizes the importance of these legal distinctions in ensuring a fair and just application of criminal law in cases involving the misuse of property in different contexts.

**Key words:** *embezzlement, misappropriation, property, seizure of property, abuse of official position, illegal use to obtain profit, humanitarian aid, charitable donation, free assistance.*



**Шаповалова Н. М. Відмежування привласнення, розтрата майна або заволодіння ним шляхом зловживання службовим становищем від незаконного використання з метою отримання прибутку гуманітарної допомоги, благодійних пожертв або безоплатної допомоги**

У цій статті досліджуються тонкі правові відмінності між двома кримінальними правопорушеннями за українським законодавством: розтрата, привласнення або заволодіння майном шляхом зловживання службовим становищем (стаття 191 Кримінального кодексу України) та незаконне використання майна з метою отримання прибутку від гуманітарної допомоги, благодійні пожертви або безоплатна допомога (ст. 201-2 КК України). Аналіз заглиблюється в об'єктивні та суб'єктивні складові кожного правопорушення, наголошуючи на відмінностях у характері діянь, їх правових наслідках та мотивації, що лежить в основі.

Обговорення починається з розгляду об'єктів правопорушень, з'ясовуючи, як стаття 191 зосереджена на випадках, пов'язаних із зловживанням службовим становищем, а стаття 201-2 стосується ситуацій, пов'язаних із незаконним використанням майна в особистих цілях від гуманітарної діяльності. У статті детально розглядається законодавча база, підкреслюючи, що, хоча обидва правопорушення спрямовані на запобігання зловживанню власністю, вони застосовуються до різних сценаріїв і містять різні правові міркування.

Досліджено об'єктивну сторону правопорушень із виділенням конкретних дій, передбачених кожною нормою. Наголошується на діях привласнення, розтрата або заволодіння майном згідно зі статтею 191, що контрастує з різноманітними формами незаконного використання, визначеними у статті 201-2, такими як продаж, використання або укладення інших юридичних операцій.

Суб'єктивний вимір ретельно досліджується, розрізняючи психічні стани та мотивацію кожного правопорушення. У статті наголошується на обов'язковості наявності прямого умислу та корисливих мотивів розтрата, привласнення чи заволодіння майном згідно зі статтею 191, а також наголошується на необхідності встановлення протиправних намірів та мети для отримання особистої вигоди у випадках, передбачених статтею 201-2.

Правові наслідки та судові прецеденти досліджуються, щоб з'ясувати тягар доведення, необхідний для кожного правопорушення. У статті наголошується на необхідності подання прокурором переконливих і допустимих доказів, зокрема щодо статусу обвинуваченого як посадової особи, об'єктивної сторони вчиненого злочину та доказів незаконного збагачення.

Дослідження завершується узагальненням відмінних характеристик проаналізованих правопорушень, позиціонуючи статтю 191 як загальне положення, а статтю 201-2 як окреме. Він наголошує на важливості цих правових відмінностей у забезпеченні чесного та справедливого застосування кримінального права в різних контекстах.

**Ключові слова:** привласнення, розтрата, майно, заволодіння майном, шляхом зловживання службовим становищем, незаконне використання з метою отримання прибутку, гуманітарна допомога, благодійна пожертва, безоплатна допомога.

**Introduction.** Before the introduction of Article 201-2 of the Criminal Code of Ukraine, actions related to the sale of goods (items) of humanitarian aid or the use of charitable donations, free assistance, or the conclusion of other agreements regarding the disposal of such property for the purpose of gaining profit fell under the relevant sections of Article 191 of the Criminal Code of Ukraine. They were qualified as misappropriation, embezzlement, or seizure of property through



abuse of official position [1, c. 26]. The introduction of a new article in the Criminal Code of Ukraine raises the following questions:

**Intention to Mitigate Punishment:** did the legislator intend to mitigate the primary punishment for the unlawful use of humanitarian aid during a state of war? If such actions were qualified under Article 191, they would fall under Part 4 (committed during a state of war) and would be punishable by imprisonment for a term of five to eight years. Instead, under Part 3 of Article 201-2 of the Criminal Code of Ukraine, they are punished by imprisonment for a term of five to seven years. Furthermore, if the value of the subject of the criminal offense exceeds 600 non-taxable minimum incomes of citizens, according to Part 5 of Article 191, misappropriation, embezzlement, or seizure of it would entail imprisonment for a term of 7 to 12 years. However, under Article 201-2, such actions are still qualified under Part 3 and are punished by imprisonment for a term of 7 to 12 years.

**Qualification of Misappropriation:** how should misappropriation, embezzlement, or seizure through abuse of official position, committed concerning humanitarian aid with a value up to 350 non-taxable minimum incomes of citizens (the minimum “threshold” under Article 201-2 of the Criminal Code of Ukraine), be correctly qualified? If they are qualified under Part 4 of Article 191, the embezzlement of smaller amounts of humanitarian aid would be punished more severely than embezzlement of larger amounts, which is qualified under Part 3 of Article 201-2. On the other hand, if it is considered that the illegal handling of humanitarian aid with a value up to 350 non-taxable minimum incomes is decriminalized [2, c. 19].

**Problem Statement.** Considering the mentioned considerations, the question of distinguishing misappropriation, embezzlement, or seizure of property through abuse of official position from the illegal use to gain profit of humanitarian aid, charitable donations, or free assistance becomes more relevant.

**Research Findings.** For proper qualification, it is important to distinguish misappropriation, embezzlement, or seizure of property through abuse of official position (Article 191 of the Criminal Code of Ukraine) from the illegal use to gain profit from humanitarian aid, charitable donations, or free assistance, as defined in Article 201-2 of the Criminal Code of Ukraine. First and foremost, let's compare the objects. In the first criminal offence, the generic object is societal relations in the sphere of property law. An additional mandatory object, according to Part 2 of Article 191 of the Criminal Code, may include the proper (adequate) activities of state authorities, local self-government bodies, associations of citizens, as well as individual organizations, institutions, and enterprises, regardless of their form of ownership [3, c. 81]. On the other hand, the object of illegal use to gain profit from humanitarian aid, charitable donations, or free assistance, as distinct from related offenses, is societal relations in the sphere of economic activity.

Regarding the subject of the criminal offense covered by Article 191 of the Criminal Code of Ukraine, responsibility for the commission of which is outlined, the Plenum of the Supreme Court of Ukraine has previously concluded that the subject of misappropriation and embezzlement is solely the property of another person that was legitimately in the possession of an individual and about which they exercised authority over disposal, management, supply, use, or storage, etc. [4]. However, these conclusions did not settle the issue regarding the subject of this criminal offense. Instead, the subject of illegal use for the purpose of gaining profit from humanitarian aid, charitable donations, or free assistance is specific, namely humanitarian aid, charitable donations, and free assistance, a detailed analysis of which has already been conducted in Chapter 2 of the dissertation. Thus, based on the analyzed criminal offenses, it can be concluded that Article 191 of the Criminal Code of Ukraine is general, while the provision of Article 201-2 of the Criminal Code of Ukraine is specific. However, they both share the common goal of preventing the unlawful use of property and entail different degrees of liability depending on the nature and circumstances of the offense.

As for the objective side, the offense for which liability is provided under Article 191 of the Criminal Code of Ukraine has three forms of expression:

1) misappropriation of someone else's property entrusted to an individual or in their possession (Part 1 of Article 191);



2) embezzlement of someone else's property by the specified individual (Part 1 of Article 191);

3) misappropriation, embezzlement, or seizure of someone else's property by abusing official position by a public official (Part 2 of Article 191).

Misappropriation involves the unlawful and gratuitous taking of someone else's property that was lawfully in the possession of the perpetrator. This is done with the intention of further using it for personal gain or for the benefit of third parties, aiming to improve one's own financial situation through the stolen property [5].

Embezzlement involves the unlawful and gratuitous spending by the perpetrator of someone else's property entrusted to them or in their possession. This leads to the improvement of the financial situation of other individuals through the illegal expenditure of misappropriated property. To qualify an action as misappropriation or embezzlement, the property must be entrusted to or in the possession of the perpetrator. The authority to dispose of, manage, deliver, or keep the property may arise from employment duties, civil agreements, or special mandates [5].

Misappropriation and embezzlement committed through abuse of official position constitute the elements of the criminal offense under Part 2 of Article 191 of the Criminal Code of Ukraine. In this case, the misappropriation of someone else's property occurs through the unauthorized use of an official position, even if the property itself was not entrusted or under the control of the guilty party. This is distinct from misappropriation or embezzlement, where the property must be entrusted or under the control of the guilty party for the action to be qualified [5].

The misappropriation of someone else's property through the abuse of official position by a public official may encompass property that was not entrusted or under the control of the guilty party but is subject to management or disposition through their official position. This distinctive feature of the offense highlights that the authority to control or dispose of the property arises from the official position held by the individual [5].

Therefore, both articles involve the commission of illegal actions regarding the subject of a specific criminal offense. However, while Article 191 of the Criminal Code of Ukraine includes misappropriation, embezzlement, or seizure of another's property through the abuse of an official position as forms of the objective side of the offense, Article 201-2 of the Criminal Code of Ukraine holds different forms of responsibility: sale, use, or conclusion of other legal acts. In other words, if the forms of misappropriation, embezzlement, or seizure of property through the abuse of an official position are a priori illegal, as evidenced by their formulation, the forms of illegal use to obtain a profit from humanitarian aid, charitable donations, or free assistance are legal (sale, conclusion of legal acts). The illegality in this case lies in the manner of their use, legislative prohibition on sales, etc.

Regarding the subject of the analyzed offenses, the subject of misappropriation, embezzlement, or seizure of property through the abuse of an official position (Part 1 of Article 191 of the Criminal Code of Ukraine) is a natural person who has reached the age of 16, and the property that becomes the subject of this offense was entrusted or under their control. The act of extracting, alienating, spending, or consuming someone else's property by a person who does not have specific authority over that property and only had access to it (for example, a guard, security guard, loader, wardrobe attendant, etc.) or performed purely technical functions related to transportation (driver, combine operator, etc.) should be qualified as open or secret theft. In addition, under the provisions of Articles 185, 186 or 187.

As for the criminal offense provided for in Part 2 of Article 191 of the Criminal Code of Ukraine, only an official can be its subject. The same situation applies to the subject of the offense related to illegal use for the purpose of obtaining a profit from humanitarian aid, charitable donations, or free assistance. Therefore, differentiation based on the subject would be impossible.

However, as accurately noted by L. Abakina-Pilyavska, there are certain difficulties in defining the subjective composition of illegal use to obtain a profit from humanitarian aid, charitable donations, or free assistance. The issue lies in the fact that various parties participate in social relations in the sphere of receiving and using humanitarian aid, according to the Law of Ukraine



“On Humanitarian Aid”: donors, recipients, and beneficiaries of humanitarian aid. It is important to note that among the recipients of humanitarian aid are only those legal entities registered in the Unified Register of Humanitarian Aid Recipients according to the procedure established by the Cabinet of Ministers of Ukraine. Therefore, the recognition of legal entities as subjects of the criminal offense provided for in Article 201-2 of the Criminal Code of Ukraine is excluded, as only a natural person who has reached the age of criminal responsibility can be the subject of this offense. In the context of donors, it is essential to emphasize that both legal and natural persons in Ukraine or abroad who voluntarily provide humanitarian aid to recipients in Ukraine or abroad can be donors.

As for the beneficiaries of humanitarian aid, they include both natural and legal persons who need this assistance and receive it directly. Therefore, the mentioned categories of donors, namely natural persons, and beneficiary individuals also cannot be recognized as subjects of the specified criminal offense, considering age restrictions for criminal responsibility. [6, c. 185]. Regarding the subjective aspect of misappropriation, embezzlement, or seizure of property through abuse of official position, it is characterized by direct intent and a selfish motive [7].

1) to substantiate the accusation under Part 2 of Article 191 of the Criminal Code of Ukraine, the prosecutor needs to present the court with appropriate, credible, sufficient, and admissible evidence that;

2) confirms the accused’s status as a public official, including official instructions, orders appointing them to the position, and a contract establishing full material responsibility;

3) demonstrates the objective side of embezzlement of someone else’s property, including the place, method, time, and circumstances, and establishes the cause-and-effect relationship between the accused’s official position, their status, intentional actions, and the consequences in the form of embezzlement;

4) confirms that because of the committed criminal offense, the public official unlawfully enriched themselves and/or other individuals, including bank statements, witness testimonies, and undeclared funds indicating the subjective side of selfish intent and the motive for illegal enrichment [8].

The court hearing included the examination of witness testimonies, which demonstrated:

The absence of embezzlement, as the witness intended to purchase timber officially after the logging, correctly processing the documents with the accused.

Testimonies indicating that the witnesses promised to issue a shipping invoice for the transportation of timber, testify to the absence of direct intent and selfish motives in the accused’s actions, as the prosecution did not prove how he could unlawfully enrich himself or others.

The court acquitted the defendant of Part 2 of Article 191 of the Criminal Code of Ukraine and justified him due to the absence of elements of a criminal offense (Decision of the Supreme Court of Ukraine dated January 22, 2020, No. 581/441/18 VS) [9].

Therefore, although both illegal uses to obtain profit from humanitarian aid, charitable donations, or free assistance, and embezzlement, misappropriation, or seizure of property through abuse of official position are intentional actions, additional qualifying features during the commission of the first involve intent, while during the commission of the second, they involve motive.

**Conclusions.** In summary, it should be noted that both analyzed articles are aimed at preventing abuse of others’ property, but they apply to different situations. Article 191 of the Criminal Code of Ukraine is oriented towards cases of embezzlement or seizure of property related to official positions, while Article 201-2 is aimed at preventing the illegal use of humanitarian aid and charitable donations for profit. The distinctions between illegal use to obtain profit from humanitarian aid, charitable donations, or free assistance, and embezzlement, misappropriation, or seizure of property through abuse of official position lie in the object, objective side, subjective side, punishment, and a common subject with qualifying features. The norm of Article 191 of the Criminal Code of Ukraine should be considered as general about the norm of Article 201-2 of the Criminal Code of Ukraine.



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