

THE SITUATION OF BRINGING TO JUSTICE OF A DELIBERATELY INNOCENT PERSON

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Annotation. The aim of the work is the research such a feature of the objective side as the situation of a criminal offense provided for in Article 372 of the Criminal Code of Ukraine. The topicality is due to the lack of scientific development of the situation of bringing to justice of a deliberately innocent person, which leads to its neglect in practical activities when establishing the objective side of the crime.

The methodological basis of the study is the complex of such methods as empirical, general logical and special legal methods, since the research of the problem of the situation requires the use of a wide toolkit of methodology. For example, empirical methods were used to study the practical implementation of normative prescriptions in judicial practice. The comparative legal method was necessary for a qualitative comparison of adjacent and competing criminal offenses in order to distinguish them. In addition, the terminological approach was applied to clarify the definition of the situation, which was not only contained in the science of criminal law for its unambiguous understanding.

The article consistently examines the general concept of the circumstances of the commission of a crime in various aspects, first of all, in criminal law and criminalistics, as well as the need to establish the situation during the investigation of all criminal offenses, regardless of its fixation in the disposition of an article of the Special Part of the Criminal Code of Ukraine. It was analyzed the circumstances of the commission of the crime provided for in Article 372 of the Criminal Code of Ukraine, which is not enshrined in the specified article, but directly follows from its content and is the obligatory feature of the objective side, because the commission of this crime outside the pre-trial investigation excludes qualification by this article of the Criminal Code. The practical significance of the research lies in the theoretical provision of pre-trial investigation and trial with the aim of properly establishing all the circumstances relevant to the case and the correct qualification of a person's actions under Article 372 of the Criminal Code of Ukraine. According to the results of the conducted research, the definition of the situation of bringing to justice of a deliberately innocent person is singled out. It was determined that the commission of this crime is possible only during and under the conditions of a pre-trial investigation, which would simultaneously be the stage of criminal proceedings, the period of time of its conduct, and the procedural activity of authorized persons.

Key words: Criminal Law, criminal offence, bringing to justice of a deliberately innocent person, situation of committing a criminal offense, pre-trial investigation

1. Introduction.

The legislator at the disposition of the article of Art. 372 of the Criminal Code of Ukraine directly established only such the feature of the objective side as a public dangerous act. Other features of the objective side, including the circumstances of the commission of the crime, logically follow from the content of the article, which does not diminish the importance of their establishment in each case of the qualification of the guilty person's actions under this article.

This approach corresponds to the position of M. V. Shepitko that "the situation as a sign of the objective side of the corpus delict can be reflected textually in the disposition of the article of the Criminal Code of

Ukraine. In the same way, the situation can be hidden in a set of other features of the corpus delict - an object, a specific act, additional features of a special subject, etc. In the first and second cases, the content of the situation can be revealed only by referring to the legislation of Ukraine" [1, p. 203].

The necessity to establish the circumstances at the investigation of each criminal offense is enshrined in Clause 1, Part 1, Article 91 of the Criminal Procedure Code of Ukraine, since the event of the criminal offense (time, place, method and other circumstances of the commission of the criminal offense) is specified among the circumstances that must be proven in criminal proceedings.

It follows to agree from O.O. Astakhova that "in law enforcement practice, the significance of such a feature of the objective side as a situation of commission of crime is expressed in the fact that it must be established in every criminal proceeding, regardless of whether it is obligatory or an optional feature of the corresponding type of crime. In each case, establishing the situation of the commission of the crime ensures the specification of the public dangerous act (action or inaction), contributes to the clarification of the public dangerous consequences and other objective and subjective features of the crime" [2, p. 86-87].

In the Great explanatory dictionary of the modern Ukrainian language, the situation is defined as a set of conditions under which something happens [3, p.652]. The new explanatory dictionary of the Ukrainian language provides a similar definition [4, p.52]. Other synonymous meanings are given in dictionaries [3, 4] as conditions of someone's life; the situation at the place of hostilities, determined by their course, the ratio of combat forces, their location, the nature of the terrain; furniture, decorations and household items, which hardly refers to the criminal law or criminalistics meaning of this term.

However, "the situation of the commission of a crime are the object of study of such sciences as criminal law, criminology, criminal procedural law, criminalistics. Each of them singles out its subject of research in this object of knowledge. In this context, it should be noted that the norms of the legislation on criminal responsibility and, accordingly, the provisions of the doctrine of criminal law as substantive law are fundamental in relation to criminal procedural law, criminology and criminalistics" [5, p. 50].

2. Analysis of scientific publications.

The corpus delict of bringing to justice of a deliberately innocent person was studied by experts in the field of criminal law either separately or in the system of other criminal offenses against justice. But part of the research was carried out before the adoption of the Criminal Procedure Code of Ukraine in 2012 (M.Y. Korzhanskyi [6], M.I. Bazhanov [7], V.I. Borysov, V.I. Tiutiuhin [8], V.V. Kuznetsov, M.V. Siyploki [9], M.P. Dzhuhan [10], S.S. Miroshnychenko [11]). At the same time, scientists did not pay much attention to the study of all the signs of the objective side of this criminal offense, except for the act, even in modern researches (P.P. Andrushko [12], D.O. Balobanova [13], L.M. Paliukh [14], S. I. Kravchenko [15]). The specified signs were ignored, as they are not provided for by the legislator in the disposition of Article 372 of the Criminal Code of Ukraine. M. V. Shepitko [1] at the same time notes about the situation of bringing to justice of a deliberately innocent person, however, these issues have not been further researched in the scientific literature, therefore they remain relevant.

3. The aim of the work is the research of such a feature of the objective side as the situation of bringing to justice of a deliberately innocent person and consistent justification of the need to establish it in each specific criminal offense to ensure its correct qualification and separation from other corpus delict of criminal offenses.

4. Review and discussion.

In order to distinguish the situation of the commission of the criminal offense provided for in Article 372 of the Criminal Code of Ukraine, it is necessary to first refer to the general understanding of the

situation. Thus, according to O. O. Maslova, "in a generalized form, the situation is a systemic formation in its content, which is the result of the interaction of the elements of reality - people, material objects, natural and climatic and other factors, the quantitative and qualitative characteristics of which determine its main properties and form. Since the origins of the situation lie in the natural and social environment, it is hardly justified to attribute it exclusively to criminal law phenomena. However, its inherent properties, which affect the crime or the person who commits it, give the situation a direct criminal-legal significance" [16, p. 163].

At the same time, according to the definition proposed by M. I. Panov, "the situation of the commission of a criminal offense are specific objective and objective conditions in which a criminal offense is committed. In some cases, the situation indicates the conditions in which the act takes place (for example, in a combat environment, in captivity, when ships collide), in others, the situation indicates the conditions in which the victim is (for example, being in a life-threatening condition, performance of public duty)" [17, p. 160].

From the definitions of the situation of the commission of a crime provided by various authors, O.O. Astakhova singled out the following important components: 1) a set of objective conditions (circumstances) described in the law, or such conditions arising from the content of the law, in which an external act of criminal behavior; 2) a coincidence of events and circumstances under which the crime is committed; 3) such conditions (factors) that acquire criminal law significance [5, p. 58].

In general, "the situation of the commission of a crime are usually formed from several elements significant in the criminal law sense. However, its criminal-legal properties and external forms depend on their quantitative and qualitative characteristics, as well as on the degree of influence of all elements on the formation of the properties of the situation" [16, p. 162]. Thus, O.O. Maslova illustrates this "on the example of a road situation, in the creation of which various elements are involved - a vehicle, pedestrians, engineering and technical means of traffic regulation, but the main quality of a road situation is its danger, and it is determined by the vehicle as a source of increased danger" [16, p. 162].

At the same time, V.A. Dyntu draws attention to the fact that "the situation of the crime are one of the main elements of the criminalistics characterization of crimes, since it significantly affects the behavior of the criminal and his choice of the object, method, means of the crime" [18, p. 14], which in a certain sense complements the criminal law characteristics of the situation.

Studying this issue, V.O. Peletskyi emphasizes that "under the situation of the commission of a crime in the forensic aspect is understood a system of various types of interacting objects, phenomena and processes that characterize the place, time, material, natural -climatic, household and other environmental conditions, behavioral characteristics of indirect participants in an illegal event, psychological relationships between them and other factors of objective reality that determine the possibility, conditions and other circumstances of committing a crime" [19, p. 250].

As V.Yu. Shepitko notes, "the situation of the crime as an element of criminalistics characteristics means the objective circumstances, conditions in which a criminal event takes place (place, time, factors of the physical environment, etc.)" [20, p.532]. "The situation of the crime is also considered as part of the material environment, which includes, in addition to the area of the territory, a collection of various things and objects, the behavior of the participants of a certain action, psychological relationships and relationships between them. The situation of the crime as a set of material objects at the scene of the crime reflects the mechanism of the criminal event (mechanism of the crime), the characteristics of the person of the criminal (criminals) and other participants (victims, eyewitnesses, etc.)" [20, p. 533].

V.A. Dyntu attributes the material, micro-social, and moral-psychological environment to the structure of the situation of the crime in the criminalistics aspect. "The material environment is a set of interconnected objects, phenomena and processes of the material world in which actions were taken to prepare, implement and further conceal a crime in a certain system of spatial and temporal coordinates. The micro-social environment is a microsystem that represents the immediate social environment of a criminal offense at the stage of its preparation, commission, and concealment. The moral and psychological environment is a set of psychological and moral states, moods, relationships between people and the person of the criminal during the period of preparation, implementation and concealment of the crime" [18, p. 14-15].

Returning to the criminal law aspects, it should be noted that according to I.I. Mytrofanov, "the place of the crime and the time of the crime are important for determining the situation of the crime, based on the understanding of space as their organic unity when neither time nor the territory cannot exist without each other (for war crimes - the time of battle and the battlefield). The place and time of its commission perform an important formalizing function in the situation of the commission of a crime. In some cases, they make it possible to distinguish a section of the situation that is significant in the criminal law sense, in others, they form spatial and temporal boundaries, within which the influence of the situation of the commission of a criminal delict on the degree of its public danger, which is fundamental for criminal law, is realized" [21, p. 110]. That is, we are talking about a certain unity and interconnectedness of the situation, place and time of committing a criminal offense.

At the same time, the issue of the situation of crimes against justice is not comprehensively researched in science. This issue was studied by M. V. Shepitko, who notes that "the situation permeates crimes against justice. It was this feature of the corpus delict that influenced the formation of a separate group of crimes encroaching on the sphere of justice. Pointing out the special conditions for committing a specific act allows you to point to a sign of public danger, which makes it illegal, guilty and punishable – and as a result - a crime" [1, p. 202].

However, the problem of the situation of the commission of a criminal offense, specifically provided for in Article 372 of the Criminal Code of Ukraine, has not been reflected in the domestic science of criminal law. Also, this issue has not been resolved in any way by judicial practice.

In our opinion, bringing to justice of a deliberately innocent person in any case takes place in **the situation of a pre-trial investigation**. This is a necessary condition, a situation in which both the subject of the crime and the victim of it are at the same time. It is impossible to commit a criminal offense provided for in Article 372 of the Criminal Code of Ukraine without conducting a pre-trial investigation.

According to Clause 5 of Part 1 of Article 3 of the Criminal Procedure Code of Ukraine, the pre-trial investigation is a stage of criminal proceedings that begins with the entry of information about a criminal offense into the Unified Register of Pre-trial Investigations and ends with the closure of criminal proceedings or the sending to court of an indictment, a request for the application of coercive measures measures of a medical or educational nature, a request to release a person from criminal responsibility, a request to close criminal proceedings.

But it follows to agree with position of V.V. Vapnyarchuk that "the pre-trial investigation can be considered as a stage of criminal proceedings and as an activity" [22, p. 268].

At the same time, "the pre-trial investigation as an activity is the activity of the pre-trial investigation bodies, the prosecutor, regulated by the criminal procedural law, aimed at a quick, complete and impartial establishment of the circumstances of the committed criminal offense, so that everyone who has committed a criminal offense is brought to justice in the extent of one's guilt ..., as well as the activities of other participants in the criminal proceedings, aimed at ensuring the fulfillment of the specified tasks" [22, p. 268-269].

In the context of the situation of the commission of a crime, pre-trial investigation can be considered as a complex concept that reflects a certain procedural activity of authorized bodies, which takes place in a certain period of time, has a beginning (entering information into the Unified register of pre-trial investigations) and an end (making a decision to close criminal proceedings or appeal to the court), that is, it is simultaneously a stage of criminal proceedings.

Moreover, these provisions are identical for both forms of pre-trial investigation provided for in Article 215 of the Criminal Procedure Code of Ukraine - pre-trial investigation for crimes and inquiry for criminal misdemeanors.

It should also be noted that in this case there is a certain unity of the situation and the time of the commission of the crime, since bringing a person to justice will be carried out in a certain period of time, which will be covered by the general time (period) of the pre-trial investigation. And in this sense, the pre-trial investigation must be considered as the situation, the setting of the commission of the crime, which has certain time limits and covers the conditions under which investigative and search actions can be

carried out, including secret and procedural actions, notification to a person of suspicion, which begins the stage of bringing to justice.

Understanding the possibility of bringing a deliberately innocent person to justice only when conducting a pre-trial investigation ensures the correctness of the qualification of the crime, because if certain actions outwardly correspond to the construction provided for in Article 372 of the Criminal Code of Ukraine, but were committed in a different situation, for example, in the absence of a pre-trial investigation at all, or before its commencement or after the end, or by a person who is not procedurally related to the pre-trial investigation, the presence of this corpus delict is excluded.

In the presence of signs of other types of criminal offenses, the actions of persons may be qualified under articles 358, 364, 366 or other articles of the Criminal Code of Ukraine or may not fall under the criminal law qualification at all. Thus, the situation of bringing to justice a deliberately innocent person is a mandatory sign of an objective side, the absence of which entails the absence of this corpus delict.

5. Conclusions.

The situation of the commission of a criminal offense provided for in Article 372 of the Criminal Code of Ukraine should be understood as the specific circumstances and conditions of a pre-trial investigation in the form of an inquiry or a pre-trial investigation, as a result of which an innocent person is informed of the suspicion of committing a certain criminal offense, which occurs during the time period after the relevant information is submitted to the Unified Register of Pretrial Investigations, by persons who have a defined procedural status and formally act in accordance with the requirements of the Criminal Procedure Code of Ukraine. That is, the persons (both the subject of the crime and the victim) are actually “submerged” in the pre-trial investigation, which, in this sense, will simultaneously be the stage of the criminal proceedings, and the time period of its conduct, and the procedural activity of the authorized persons.

The situation of the commission of the research crime exclusively during and under the conditions of the pre-trial investigation directly follows from the disposition of the article and does not require its additional confirmation or clarification, but is subject to mandatory awareness and establishment for the correct qualification of the actions of guilty persons.

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