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The essence and content of illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations and forensic aspects of its analysis

Сутність та зміст незаконного перешкоджання організації або проведенню зборів, мітингів, походів і демонстрацій та криміналістичні аспекти його аналізу

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Abstract

The aim of the article lies in improving the institution of pre-trial investigation in particular and criminal liability for committing illegal obstruction of the organization or holding of meetings, rallies, marches and demonstrations in general. The object of the analysis is the social relations that arise in the process of organizing or holding meetings, rallies, marches and demonstrations by citizens of Ukraine. Methodology. Taking into account the outlined research object, it is considered appropriate to use the following methods: analysis, logical, interpretation, system analyzes, hermeneutic, generalization. Research results. The article, based on the examination of the scientific views and the relevant legal basis, outlines the essence and content of illegal obstruction of the organization or holding of meetings, rallies, marches and demonstrations and the forensic aspects of its analysis. Practical implementation. The content of obstruction is aimed at

Анотація

Метою статті є удосконалення інституту досудового розслідування зокрема та кримінальної відповідальності за вчинення незаконного перешкоджання організації чи проведенню зборів, мітингів, походів і демонстрацій загалом. Об'єктом аналізу є суспільні відносини, що виникають у процесі організації чи проведення зборів, мітингів, походів і демонстрацій громадян України. Методологія. Зважаючи на окреслений об'єкт дослідження, доцільним вбачається застосування наступних методів: аналізу, логічного, тлумачення, системного аналізу, герменевтичного, узагальнення. Результати дослідження. У статті, на підставі характеристики наукових позицій учених і дослідників, а також нормативно-правового підґрунтя окреслено сутність та зміст незаконного перешкоджання організації або проведенню зборів, мітингів, походів і демонстрацій та криміналістичні аспекти його

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impossibility of the realization of the relevant rights, which is characterized by the intention, understanding by the person, who does this, all the features of the activity, its focus and anticipation of a positive result. Value/originality. These characteristics are treated as elements of a criminal offence through the prism of provisions and rules of criminal law and play a main or auxiliary role both in the qualification of such an act and during the conduct of a pre-trial investigation depending on objective circumstances and certainty in the legislation of Ukraine.

Keywords: criminal prosecution, forensics, obstruction, peaceful assembly, pre-trial investigation.

Introduction

The rights and freedoms of an individual and a citizen determine the content and orientation of the public policy and fundamentally regulate the functioning of all State processes, and that is why, even under the conditions of Covid-19 pandemic, which threatens the lives and health of people, the stable functioning of economic mechanisms, and the social existence of society (Kharytonov et al., 2021, p. 158) and full-scale military operations in connection with the Russian army's invasion on the territory of independent and sovereign Ukrainian lands, they remain a priority.

Modernity demonstrates that even the right to assemble peacefully, unarmed, can not only be a tool for influencing public policy and individual politicians and statesmen, but can also serve as a means of countering the invasion of occupation troops (in particular, the most famous example is the Kherson public, when citizens prevented enemies from entering the city by holding meeting).

Within the proposed object of the article, we will consider certain aspects of pre-trial investigation of illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations and the forensic aspects of its analysis, since its significant public resonance cause the need for additional scientific investigations and studies, which may affect the formation of a positive trend towards the disclosure of the specified facts of committing criminal offenses in the future.

аналізу. Практичні наслідки. Зміст перешкоджання спрямовується на унеможливлення реалізації відповідних прав, що характеризується умислом, розумінням особою, що це вчиняє всіх супутніх характеристик своєї діяльності, її цілеспрямованості та очікування на позитивний результат такої діяльності. Цінність/оригінальність. Крізь призму положень і норм кримінального права, дані характеристики трактуються як елементи складу кримінального правопорушення й у залежності від об'єктивних обставин і визначеності в законодавстві України грають основну чи допоміжну роль як у кваліфікації такого діяння так і під час здійснення досудового розслідування безпосередньо.

Ключові слова: кримінальне переслідування, криміналістика перешкоджання, мирні зібрання, досудове розслідування.

It should be noted that the number of recorded criminal proceedings under this article of the Criminal Code of Ukraine is insignificant in the general structure of crime in Ukraine (in 2013 – 1; in 2014 – 39; in 2015 – 21; in 2016 – 12; in 2017 – 179; in 2018 – 14; in 2019 – 4; in 2020 – 3; in 2021 and during 2022 – 0) (Attorney General's Office, 2022), but has a significant public resonance.

On the other hand, the dynamics of the process of disclosure of relevant criminal proceedings is of particular concern, since more than 273 facts have been recorded in the last 10 years, whereas only 43 persons were served with suspicion (this indicator is critically low).

At the same time, through the prism of the forms of completion of the corresponding pre-trial investigation, it should be noted that only 22 proceedings were referred to the court during this period, while 42 were terminated, which undoubtedly indicates the high complexity of conducting pre-trial investigation of the corresponding category of criminal offenses and requires significant scientific analysis of problems in the main criminological directions.

Methodology

Considering the stated object of the Article, the use of the analysis approach makes it possible to investigate the scholars' thoughts on the institution of criminal liability for obstructing the organization or holding peaceful assemblies.

Logical method helps to highlight the main tendencies and regularities of implementing people's right to peaceful meetings at all phases of the society development, as well as to establish the meaning and essence of illegal obstruction as a form of activity of a person (several persons) in the context of committing a corresponding criminal offense.

The method of interpretation is used in the clarification of legal instruments constituting the institution of bringing to criminal liability for obstructing the organization and holding peaceful assemblies.

System analyzes method makes it possible to systematize the core outcomes and to determine the procedure for making them/

Hermeneutic approach is used for equating the scientists' opinion about the investigated issue.

The generalization method makes it possible to develop suggestions for eliminating the identified flaws and solving the stated problem.

Literature Review

The issue of the essence and content of illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations has not been studied in detail. Instead, some problematic issues of the functioning of the institution of peaceful assemblies within various branches of law (administrative, constitutional, as well as theory and philosophy of law) are quite popular. Among the most global studies that essentially demonstrate the category of "organization and holding peaceful assembly", a significant contribution was made by such researchers as Filoretova ("Peaceful assembly as an object of administrative courts protection") (2021), Melnyk ("The right to freedom of peaceful assembly: theory and practice") (2015); Shcarnega ("Proceedings for the right to peaceful assembly") (2016), Sereda ("The right to peaceful assembly: theoretical, practical and comparative aspects") (2019), Zahorodniuk ("The constitutional right of citizens to assemblies, rallies, marches, and demonstrations: questions of theory and practice") (2021) and other.

At the same time, it should be emphasized that these researchers devote a significant part of their works to the topics directly related to law enforcement. However, criminal and legal institutions for the protection of the right to assemble peacefully, unarmed, namely the

development of forensic methods of conducting pre-trial investigation of illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations remain outside the field attention of scientists.

In our opinion, taking into account the popularity of the implementation of the corresponding right by the citizens of Ukraine, its significance and functionality, as well as its fundamental role in the defense of state interests, territorial integrity and sovereignty of Ukraine in the conditions of a full-scale invasion of Russia, it is extremely important to work out the main ways and methods of improving the corresponding institution, in particular, by the development of the understanding of the essential (conceptual and terminological) categories.

Thus, the aim of the article lies in improving the institution of pre-trial investigation in particular and criminal liability for committing illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations in general by analyzing the scientific views of the researchers, the results of law enforcement, the relevant regulatory and legal basis and other important foundations within the science of criminology.

The object of the analysis is the social relations that arise in the process of organizing or holding meetings, rallies, marches and demonstrations by citizens of Ukraine.

Results and Discussion

The outlined directions, in the context of providing a scientific characterization of the main theoretical and applied aspects of the formation of the forensic methodology of conducting a pre-trial investigation of illegal obstruction of the organization or the holding of meetings, rallies, marches and demonstrations, require a thorough analysis of the conceptual and categorical apparatus through the prism of Ukrainian legislation and law enforcement practice, that is why we propose to begin with an understanding of the term "obstruction" in the legal context in general and through the prism of the object of a scientific article, in particular.

Ermolaeva-Zadorozhna (2017), researching issues related to the obstruction of the official activities of law enforcement officers, draws attention to the fact that the unifying feature of this social phenomenon is that it covers numerous specific types of socially dangerous illegal behavior (acts and activities), related to

illegal influence on the proper performance of official duties by law enforcement officers. Accordingly, attention should be paid to the fact that a similar set of features can be applied in the context of a pre-trial investigation of unlawful obstruction of the organization and conduct of a peaceful assembly, since this socio-legal act is defined as illegal and criminally punishable; such acts are directed by the subject in relation to the expected result not only in relation to the organization of such assembly, but also to prevent the exercise of social will in the form of meetings, rallies or other forms of peaceful assembly.

The above emphasizes the fact that contrary to the will of one or more persons, the absence of a legal prohibition to carry out such actions and the availability of all legal tools for the realization of the corresponding constitutional right, the meaning of obstruction is aimed at impossibility of the realization of the corresponding rights, characterized by intent, the understanding by the person that he (she) commits all the accompanying all the associated characteristics of his (her) activity, its focus and expectations for a positive result of such activity. These characteristics are interpreted as elements of the composition of a criminal offense and, depending on the objective circumstances and certainty in the legislation of Ukraine play a basic or auxiliary role both in the qualification of such an act and during the conduct of a pre-trial investigation directly.

It is important, in our opinion, to pay attention to the fact that hindering the organization or holding of meetings, rallies, marches and demonstrations is of an illegal nature. This characteristic is understood by us in two aspects: narrow one (outlined above) lies in the fact that the content and essence of the illegality of the activity of the subject of a criminal offense is determined by objective factors (for example, in the form of abuse of official position or use of physical violence), while broad one (proposed by the scientific community) is that the legality of meetings, rallies, marches and demonstrations, which is obstructed, is the basis for bringing a person to criminal responsibility, since if the conduct was prohibited, the activity to prevent it automatically acquires legal features.

Similarly, the Constitution of Ukraine (Law of Ukraine No. 254k/96-VR, 1996) interprets the mentioned situation, enshrining that restrictions on the exercise of this right may be established by a court in accordance with the law and only in the interests of national security and public order,

with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons. Accordingly, the circumstances determining the specified types of gatherings as illegal (those that were legally restricted) and the actions aimed at preventing such gatherings are mutually exclusive.

The composition of the criminal offense that entails responsibility contains a number of large but substantively crowded categories such as “organization” and “holding” meetings, rallies, marches and demonstrations. At the same time, in addition to the fact that the composition of the corresponding criminal offense does not include responsibility for similar actions in relation to other forms of realization of the constitutional right to assemble peacefully, unarmed, in our opinion, organization and implementation processes should be described, noting the likely ways to discourage them.

The Constitutional Court of Ukraine (2001) significantly expanded by its decision the understanding of some basic categories and aspects, namely, regarding the need for advance notification (period from the day of such notification to the date of holding the mass meeting) to the executive authorities or local self-government through the organizers of mass assemblies. Besides, the court emphasized that “the period of advance notice should be sufficient for executive authorities or local self-government to determine to what extent the holding of such gatherings complies with the law”, as well as “definition of specific advance notice dates, taking into account specifics of the forms peaceful assemblies, their mass, place, time, etc., are the subject of legislative regulation”. This distinction, which appears in the legislation of Ukraine, serves as a direct indication of one of the ways of committing this criminal offense, reflecting the meaning of such obstruction. The commission of this act by an official of a local self-government body, whose competence overlaps with the authority to decide, in accordance with the law, issues regarding holding of meetings, rallies, and demonstrations, sports, entertainment and other mass events; exercising control over the provision of public safety and order, reflects the fact of using official position and functional responsibilities, rights and powers aimed at ensuring the implementation of the corresponding right, namely its initial stage – carrying out organizational actions regarding the further holding of the meeting.

Among the most widespread methods of precisely this type of obstruction to the holding of peaceful assemblies may be: failure to accept (not register) a report of a peaceful assembly; late notification of the ban on holding a peaceful assembly; lack of motivation for the ban on such gathering, etc.

Previously highlighted interpretations of the essence and content of various forms of holding peaceful assemblies, taking into account the division defined by the legislation of Ukraine, enable a preliminary analysis of the methods and means that can be used to prevent holding of assemblies, including their specific features.

Taking into account the identity of the concepts “meeting” and “assembly”, which are meaningfully identical in essence and are literally interpreted as the temporary presence of two or more persons in any public or other place not prohibited by the legislation of Ukraine for the purpose of publicly demonstrating their views on the issues important to society, as well as the relevance (with the exception of certain features of the content of the meeting) of the concept of a rally as a form of peaceful assembly (Drozd et al., 2022). It should be noted that the meaning of preventing an assembly (meeting) or rally lies in, for the most part: simultaneous holding of a certain event by the decision of other persons in the same place that was planned for the holding of a peaceful meeting; intimidation and destructive motivation of the participants of meetings (assemblies) or rallies with the aim of influencing the turnout; preliminary creation of artificial circumstances, which will give signs of public danger and threat to State and national interests to such a peaceful assembly; integration into the circle of persons, who gather peacefully, as provocateurs (including those who possess weapons or objects similar to them) with the aim of creating real grounds for law enforcement agencies to prosecute them for related criminal offenses.

Besides, it should be noted that the proposed forms of hindering organizing or holding meetings, rallies, marches and demonstrations clearly reflect the content of such activity and form a basic idea about it, while hindering marches and demonstrations can be done in similar ways, taking into account certain features that are proposed to be explored later.

Since we previously noted that the march is a form of peaceful assembly aimed to publicly demonstrate the view of one or more persons regarding important social problems, the vector

of State policy, has a route and is carried out by the way of movement of participants from the initial to the endpoint (Romanov, 2021), it is logical to assume that one of the most widespread ways of preventing such a peaceful assembly as a march can be the creation of obstacles on the route of movement, or knowingly improperly laying such a route by the persons responsible for it (for example, impassable terrain).

A demonstration is a visual reproduction of any elements, objects, images, and other manifestations during a peaceful assembly (in the form of meetings, rallies, marches, etc.), including with the help of video, sound amplification, and any other equipment. That is, demonstration, as a form of expressing view during a meeting, aims to interpret the oral position on a problematic social issue, for example, by demonstrating posters or other symbolic objects, as well as holding public performances, etc. (Drozd et al., 2022). Accordingly, obstruction of the demonstration, in our opinion, mainly lies in the measures taken to eliminate the tools of the demonstration (posters, costumes for performances, sound-amplifying and video-reproducing equipment and other props that enable the demonstration of something and are the main tool of such a process).

Based on the analysis of 43 criminal proceedings for unlawful interference with an organization or holding meetings, rallies, marches and demonstrations, we can state that the most common ways of committing the relevant offense are:

forceful obstruction of holding (60% of cases), which is associated with the forcible seizure of sound amplification equipment, posters, symbols (about 60%), often – physical influence on persons, aimed at forcing them to leave the meeting and refuse to implement the relevant rights (a little more than 40%);

obstruction of the organization of a peaceful assembly in the preparatory stage, since such activity is more often associated with the use of official position by relevant officials (in 40% of cases in general); taking into account the significant public resonance and attention of society to the realization of the right to assemble peacefully, any actions are carried out in this way, can be documented, and the persons involved in such interference can be identified;

interesting is the fact of illegal obstruction to the preparation of a peaceful assembly with the use of official powers (typical of the times of

Ukrainian statehood in the period of 2010 – 2014); for example, by placing at the place of the peaceful assembly the dimensional structures or simultaneous holding of another event on the initiative of self-government bodies or State authorities.

Thus, it should be noted that the content and essence of illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations lies in the implementation of a certain activity or omission in relation to the process of orderly and unimpeded implementation of the constitutional right to assemble peacefully aimed at intentionally causing its non-realization.

Conclusions

Thus, on the basis of the research, we stress on the need to comprehensively improve the functioning of the institution of criminal liability for illegal obstruction of the organization or holding meetings, rallies, marches and demonstrations. The analysis of the essence and content of illegal obstruction of the specified types of exercise of the right to assemble peacefully, unarmed, made it possible to justify a number of important scientific and theoretical provisions, the most significant, in our opinion, among which are the following:

1. The content of obstruction is aimed at impossibility of the realization of the relevant rights, which is characterized by the intention, understanding by the person, who does this, all the features of the activity, its focus and anticipation of a positive result. These characteristics are interpreted as the elements of the composition of a criminal offense and, depending on the objective circumstances and certainty in the legislation of Ukraine, play a main or auxiliary role both in the qualification of such an act and during the conduct of a pre-trial investigation.
2. The decisive factor in defining the illegality of obstruction is the legality of the peaceful assembly itself. We understand this in two aspects: narrow one (outlined above) lies in the fact that the content and essence of the illegality of the activity of the subject of a criminal offense is determined by objective factors (for example, in the form of abuse of official position or use of physical violence), while broad one (proposed by the scientific community) is that the legality of meetings, rallies, marches and demonstrations, which is obstructed, is the basis for bringing a

person to criminal responsibility, since if the conduct was prohibited, the activity to prevent it automatically acquires legal features.

3. Clearly negative presence in the list of forms of criminal offence of specific types of peaceful assembly, which significantly reduces the possibility of bringing to criminal liability those guilty of obstructing the exercise of the right to assemble peacefully in other, more progressive forms (for example, car races). The proposal for improvement lies in the fact that the composition of the corresponding article of the Criminal Code of Ukraine should be expanded by defining the object specifically illegal obstruction of the right to peaceful assembly.

Besides, given the gravity of the committed criminal offense, as well as the importance and high social significance of the institution of peaceful assembly in Ukrainian society, it is logical to increase criminal responsibility for the specified act and divide its modalities and other circumstances into a number of stable theoretical and legal constructions (separate parts of the article), which would not only add the necessary additional penalties to the main ones, but greatly simplify enforcement in general.

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