

Это исправление должно быть коренным, связанным с процессом позитивных изменений, которые происходят в личности несовершеннолетнего и создают у него готовность к самоуправляемому правопослушному поведению. У несовершеннолетних, совершивших преступление, в процессе исполнения наказания должна сформироваться отрицательная оценка не только к своему уголовно-противоправному деянию, но и вообще отношение к совершению общественно опасных деяний, предусмотренных Уголовным кодексом Украины, а также устойчивая положительная общественная установка, которая должна удерживать их от совершения правонарушений.

Ключевые слова: цель наказания, несовершеннолетние осужденные, преступление, назначения наказания, исправления, перевоспитания.

Chuprynskyi B. The Goals of the Punishment Measures Applied to Juveniles. The article deals with the scientific analysis of the issues of determining the purpose of imposing punishment on the juveniles. The emphasis is laid on the individual characteristics and moral qualities of the minors. The author argues that the priority should be assigned to the corrective measures, re-educating a juvenile offender and applying punishment, as one of the elements of the juvenile punishment system, only when the preceding measures proved to be insufficient. The study of the foreign experience in achieving the purpose of punishing juvenile offenders contributes to deeper understanding of the issue. The importance is placed on the general and specific preventive measures for the minors since the key purpose of punishing juveniles is to correct their social conduct. This correction should be radical and corresponding to the process of positive changes in the personality of a minor and are aimed at developing his willingness to self-control, obedient behavior. Juvenile offenders punishment is aimed at developing in them critical assessment not only of their own conduct, but also form critical attitude towards committing socially dangerous acts stipulated by the Criminal Code of Ukraine, in general. The study of the concept of juvenile punishment goals proves that formation of a stable, positive social motivation might prevent them from committing new offenses in the future.

Key words: goals of punishment, juvenile convicts, crime, punishment, correction, rehabilitation.

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Concept and Significance of Subject of Proof in Criminal Proceeding Concerning the Unlawful Interference with the Organization or Holding of Assemblies, Rallies, Marches and Demonstrations

The exercise of freedom of peaceful assembly by citizens of Ukraine, which manifests itself in organizing and conducting rallies, campaigns and demonstrations, is protected by the criminal legislation of Ukraine. In the article the concept of subject of proof in criminal proceedings concerning the illegal interference with the organization or holding of meetings, rallies, campaigns and demonstrations and its significance is researched. The authors also made an attempt to provide the definition of the above mention concept itself.

Key words: the subject of proof, the concept of the subject of proof, the meaning of the subject of proof, the freedom of peaceful assembly, evidence.

Formulation of scientific problem and its meaning. Peaceful assemblies in their varieties, such as rallies, marches and demonstrations, at the present stage of development of Ukrainian society, are becoming increasingly important as collective forms of self-organization, social activism of the people, and its massive expression of will. The appearance of the institute of freedom of peaceful assembly must be associated with the process of formation of traditional liberal values, which have received a powerful positive impact due to the European bourgeois revolutions of the XVIII-XIX centuries. This freedom has a long history of development both in Ukrainian domestic law and in the legislation of Western democracies.

The mentioned problems were dealt with by domestic and foreign scientists, such as V.O. Popelyushko, S.M. Stakhovsky, F.P. Gutsenko, O.V. Bahanets, M.N. Rosen, L.E. Vladimirov, P.I. Lublin, Yu.M. Groshevoy.

Statement of the purpose and objectives of the article. The purpose of this article is to research

the notion and characteristics of the subject of proof in criminal proceedings concerning the illegal interference with the organization or holding of meetings, rallies, campaigns and demonstrations, its significance, and attempt to provide the own definition of this concept.

The basic material and justification of the results of the study. Recalling the historical experience of foreign countries in the establishment of the freedom of peaceful assembly, first of all the city-states of Ancient Greece, which in the history of state and law are referred to as early democracies, are worth mentioning. Aristotle in his work «Politics» investigated the democratic system of Athens (as of IV century BC). Citizens were endowed with many rights, including political ones, which included the right to assembly, as one of the forms of democracy in Athens was the People's Assembly, which solved the most important issues of the state's existence. At this meeting citizens also were able to exchange information, wishes and claim requirements to the authorities [1, p. 230]. The freedom of peaceful assembly has achieved the highest development in the Greek cities-states.

On the territory of Ukraine, the freedom of peaceful assembly began with the introduction of «viche» in Kievan Rus – a community meeting to address socio-political issues. However, over time, the influence of European movements in privity also impacted Ukrainian lands: with the development of feudal relations, the role of the «viche» gradually diminished, and the population fell under the control of the feudal lord.

From the point of view of realization of the freedom of peaceful assembly, the history of Zaporizhian Sich in XVI-XVII centuries is also interesting, as at that time meetings of whole community of Sich Cossacks were actively held. In fact, no important decision was made without the consent of all members of the Sich. It is important to consider the significance of the democratic nature of this institution on the territory of Ukraine during the period of total feudalism and domination within the territory of Ukraine of the Polish–Lithuanian Commonwealth (second half of the XVI - first half of the XVII century).

After the National Liberation War of 1648-1657, the role and significance of the Cossack councils is gradually decreasing, and the time interval between their holding is only increasing. Provision of the mechanism of realization of freedom of peaceful assembly in the Hetmanate can be observed through the role of the Cossack councils, as the forms of democracy, since the more power the main gathering of the state will have, the more objectively it is possible to assess the state of realization of the freedom of assembly at the local level. During this period there were Cossack and military councils, which purpose was to solve, first of all, foreign policy issues [10, p. 28].

For the first time, at the constitutional level, the freedom of peaceful assembly was enshrined in the Constitution of the Ukrainian People's Republic of 1918 [2], although such institution was known to Ukrainian society long before (the aforementioned «viche» in Kievan Rus, the Cossacks' meeting in Sich, the parish assembly in the Russian Empire, the first imperial regulations on freedom of assembly). During the Soviet period, the institute of freedom of peaceful assembly has undergone significant restrictions. The new stage in the development of institution of freedom of peaceful assembly is associated with the proclamation of Ukraine's independence and the further consolidation of the freedom of peaceful assembly at the constitutional level.

In accordance with the article 39 of the Constitution of Ukraine, citizens shall have the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations upon notifying executive or local self-government bodies in advance. Restrictions on the exercise of this freedom may be established by a court in accordance with law and only in the interests of national security and public order, for the purpose of prevention of disturbances or crimes, protection of the health of the population, or protection of the rights and freedoms of other persons. Article 340 of the Criminal Code of Ukraine provides a liability for illegal interference with the organization or holding of assemblies, rallies, marches and demonstrations, if the act was committed by an official or by the use of physical violence [6].

The effectiveness of application of the criminal law directly depends on the proper and successful implementation of procedural law in practice. According to the Part 1 of Article 91 of the Criminal Procedural Code of Ukraine, subject of proof is a set of circumstances to be proved in criminal proceedings that forms an integral part of a criminal proceeding concerning the unlawful interference with the organization or holding of meetings, rallies, campaigns and demonstrations [8].

Definition of the concept of the subject of proof in criminal proceeding regarding the illegal impediment to the organization or holding of meetings, rallies, campaigns and demonstrations is important, since the resolution on the subject of proof is the answer to the question of what is to be proved in the criminal proceedings, which phenomena of the external world must be known in order to achieve the tasks of criminal justice.

A.R. Belkov points out that the subject of proof is a benchmark in finding the circumstances of the case, which, like the investigation plan, serves as one of the means of organizing an investigation [4, p. 30].

Under part 1 of the article 91 «Circumstances to be proved in criminal proceedings» the following shall be proved in criminal proceedings: 1) occurrence of criminal offence (when, where, how a criminal offence has been committed and under what circumstances); 2) degree of guilt of the accused in the commission of criminal offence, form of guilt, motive and purpose of the criminal offense; 3) type and amount of damage caused by criminal offence, as well as amount of procedural expenses; 4) circumstances which aggravate, mitigate the committed criminal offense, characterize the person of the accused, toughen or mitigate punishment, preclude criminal liability or shall be grounds for terminating the criminal proceedings; 5) circumstances that shall be grounds for relief from criminal liability or punishment. 6) the circumstances confirming that cash, valuables and other property subject to special confiscation have been gained as a result of commission of a criminal violation and/or are proceeds from such property or that they were designed (used) to induce a person to commission of a criminal violation, finance and/or provide logistical support to a criminal violation or remunerate its commission, or are an object of a criminal violation related inter alia to their illicit circulation or seeking, manufacturing, adjusting or use as means or instruments of criminal violation; 7) the circumstances that are grounds for application of criminal law measures to legal persons [8].

Despite the normative statement of the subject of proof, legal literature covers various approaches to defining the concept of the subject of proof. Thus, the subject of proof is understood as a range of circumstances that are subjected to investigation and establishment in a criminal case in order to properly solve it [7, p. 131; 2, p. 29]; as the establishment of factual circumstances [13, p. 130]. Other authors, in particular G.F. Gorsky, believe that the subject of proof constitutes a set of facts and circumstances that should be proved in criminal proceedings [2, p. 70].

According to L.T. Ulyanov, the subject of proof is a set of circumstances that are subject to mandatory establishment in each criminal case, regardless of its specifics, and which are of legal significance for the decision on the merits of the case [14, p. 108]. A similar view is also expressed by S.M. Stakhovsky [11, p. 32].

V.O. Popelyushko under the subject of proof in criminal proceedings understands the system of facts and circumstances of objective reality, which has material (criminal and civil law) and procedural (criminal and civil procedural) value and are necessary and sufficient factual grounds for the resolution of criminal cases finally and substantively [9, p. 48]. Consequently, the subject of proof in criminal proceeding regarding unlawful interference with the organization or holding of meetings, rallies, campaigns and demonstrations are facts and circumstances that reflect the reality and have material and procedural importance for the full and impartial conduct of criminal proceedings.

According to D.G. Thalberg, one of the most important and essential parts of criminal justice is the doctrine of evidence, since all judicial proceedings in each individual case are directed at the collection, establishment and appraisal of evidence in order to achieve the truth about the facts of the crime and the guilt of a person [12, p. 58].

The subject of proof in criminal proceeding concerning unlawful interference with the organization or holding of meetings, rallies, campaigns and demonstrations is an integral part of a criminal investigation of the unlawful interference with the organization or conduct of meetings, rallies, campaigns and demonstrations. The ability to correctly identify the subject of proof in certain criminal proceeding, in particular, with regard to the unlawful interference with the organization or holding of meetings, rallies, campaigns and demonstrations, is an important ability of the subject who carries out a pre-trial investigation, since the determination of too wide range of circumstances that are subject of proof in criminal proceeding may lead to unreasonably long delays in the pre-trial investigation, and, vice versa, without taking into account the proof of circumstances which are really important for the establishment of truth in criminal proceedings, the subject who conducts a pre-trial investigation may come to incorrect conclusions about the events of the crime, etc.

Conclusions. Thus, the significance of the subject of proof in criminal proceeding concerning the unlawful interference with the organization or holding of meetings, rallies, campaigns and demonstrations is that it provides the direction of the criminal proceedings to establish circumstances that are really relevant to the case (discovers the event, the guilt of the accused, the kind and the size of the damage, etc.), affects the organization of pre-trial investigation and results in the achievement of the purpose of criminal proceedings.

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Гламазда П., Лавренюк Б. Поняття і значення предмету доказування в кримінальному провадженні щодо незаконного перешкоджання організації або проведенню зборів, мітингів, походів і демонстрацій. На сучасному етапі розвитку українського суспільства мирні зібрання активно використовуються з метою привернення уваги інших осіб (найчастіше – вищих органів державної влади) до насущних проблем держави і її громадян. У зв'язку з цим реалізація громадянами України свободи мирних зібрань проявляється в організації і проведенні мітингів, походів і демонстрацій, що охороняються кримінальним законодавством України. Ефективне використання норм матеріального права безпосередньо залежить від належного врегулювання того чи іншого явища нормами процесуального права. У статті досліджено поняття предмету доказування в кримінальному провадженні щодо незаконного перешкоджання організації або проведенню зборів, мітингів, походів і демонстрацій, його значення, а також зроблена спроба надати власне визначення аналізованого поняття.

Ключові слова: предмет доказування, поняття предмета доказування, значення предмета доказування, свобода мирних зібрань, докази.

Гламазда П., Лавренюк Б. Понятие и значение предмета доказывания в уголовном производстве относительно незаконного препятствования организации или проведению собраний, митингов, шествий и демонстраций. На современном этапе развития украинского общества мирные собрания активно используются в целях привлечения внимания других лиц (чаще всего – высших органов государственной власти) к насущным проблемам государства и его граждан. В связи с этим реализация гражданами Украины свободы мирных собраний проявляется в организации и проведении митингов, шествий и демонстраций, охраняемых уголовным законодательством Украины. Эффективное использование норм материального права напрямую зависит от надлежащего урегулирования того или иного явления нормами процессуального права. В статье исследовано понятие предмета доказывания в уголовном производстве относительно незаконного препятствования организации или проведению собраний, митингов, шествий и демонстраций и его значение, а также предпринята попытка предоставить собственное определение анализируемого понятия.

Ключевые слова: предмет доказывания, понятие предмета доказывания, значение предмета доказывания, свобода мирных собраний, доказательства.