

Shisha Natalia, Cadet
of the National
Academy of Internal
Affairs

PROSECUTION OF A KNOWINGLY INNOCENT PERSON

According to Art. 29 of the Constitution of Ukraine - every person has the right to freedom and personal integrity. [1, p. 38] Illegal detentions, driving, or taking into custody violate the important constitutional rights of a person. In addition to the Constitution of Ukraine, this right is enshrined in Art. 3 of the

Universal Declaration of Human Rights 1948, Art. 9 of the International Covenant on Civil and Political Rights of 1966 and Art. 5 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Therefore, the prosecution of a person who is knowingly innocent of criminal responsibility is a gross violation of the Constitution and constitutes an abuse of the powers of the authorities provided to officials in the field of criminal justice.

The aim of the study is to clarify the correct understanding of Art. 372 of the Criminal Code, that is, the prosecution is knowingly innocent of criminal responsibility.

Article 62 of the Constitution of Ukraine declares that a person is considered innocent in committing a crime and can not be subjected to criminal punishment until her guilt is proved in a lawful manner and established by a conviction of a court [1, p. 52]. The prosecution can not be based on evidence obtained illegally. In case of violation of these requirements comes the responsibility for Art. 372 CC as a special form (in relation to Article 364 of the Criminal Code) of abuse of office.

The main direct object of the crime is social relations in the field of justice concerning the lawful activity of the investigator or prosecutor, aimed at ensuring the rights and fundamental freedoms of man and citizen. An additional object of this crime against justice may be social relations in the sphere of protection of life, health, will, personal integrity, honor and dignity of a person, property rights, authority of law enforcement bodies, etc.

The objective aspect of the crime is to bring a person, who is knowingly innocent of criminal responsibility, an investigator, prosecutor or other person authorized by that law. Prosecution is one of the stages of criminal proceedings, which begins with the moment when a person is informed of a suspicion of committing a criminal offense. Composition of the crime provided for in Part 1 of Art. 372 of the Criminal Code is a formal one. An offense is deemed to be terminated from the moment of giving a person a written notice of suspicion of committing a crime in accordance with art. 278 CPC. In the case of writing a written notice of suspicion of a knowingly

innocent act of a guilty person, it should be considered as preparation for a crime and qualify under Part 1 of Art. 14 centuries 372 CC.

The subject of a crime is special. They may be an official who has the right to prosecute: an investigator, a prosecutor, another person authorized by the law. Under the "other person authorized by the law", which attracts a person who is knowingly innocent of criminal responsibility, the legislator seems to have in mind the person who conducts the inquiry in accordance with the provisions of Part 3 of Art. 38 CPC. which according to articles 276-278 of the CPC has the right to make allegations of suspicion.

The subjective aspect of the crime. Despite the fact that Art. 372 of the Criminal Code does not contain a special reference to the form of guilt, the crime under consideration can be committed only intentionally because of the use in the construction of Part 1 of Art. 372 words "knowingly". Kind of intentions - straightforward. Qualifying signs of a crime (Part 2 of Article 372 of the Criminal Code) are: 1) combination with a prosecution of a serious or particularly serious crime; 2) combination with the artificial creation of evidence of the prosecution; 3) combination with other falsification.

The motives of the perpetrator can be different (revenge, jealousy, selfishness, careerism) and do not affect the qualification of the crime, but they should be taken into account when imposing a punishment. If the bringing of the innocent person to criminal liability was the result of a person's mistake, the committed do not contain the crime envisaged in art. 372 of the Criminal Code, and in the presence of appropriate signs may be qualified under Art. 367 CC. If an act is manifested in not involving a criminal charge of a deliberately guilty person, it contains evidence of a crime that is not stipulated in art. 372, and Art. 364 CC.

Victim of crime under Art. 372 CC is a person who is not guilty of committing the crime that she is being charged with. At the same time, this may be the person who did not commit any crime at all, and such that he committed another crime than the one for which he was prosecuted. Therefore, the prosecution of a person against

whom there is evidence of his guilt, but in violation of the procedural law established by law, can not qualify under Art. 372 of the Criminal Code and other necessary conditions may be regarded as a crime stipulated by art. 364 BC. Application of Art. 372 of the Criminal Code is also excluded in the case of the allegedly innocent non-criminal, but other types of legal liability (disciplinary, administrative, civil-law). In other necessary conditions such actions may contain signs of a crime envisaged by art. 364 CC.

The analysis of articles 276-278 of the CPC, which regulate the implementation of a suspicion report, indicates that the objective side of the crime under art. 372 of the Criminal Code is characterized only by the active behavior of the subject, which consists in committing such acts as: a) drawing up a written notice of suspicion (Article 277 CPC); and b) handing this message to a person suspected of committing a particular criminal offense (Part. Article 42, Article 278 of the CPC). So, according to Art. 372 of the CC shall be punishable by a crime with a formal composition, which shall be deemed to be terminated from the very moment when the written notification of suspicion is presented (presented) to a person who is suspected of committing a criminal offense. Any consequences of this crime are outside its objective party and can only be taken into account by the court when sentencing [2, p. 1].

The public danger of bringing a knowingly innocent criminal responsibility is that officials who are authorized by law for actions such as prosecution use these powers in relation to a person who did not commit a crime than grossly violate the rights and freedoms of this person, generate her and other people's sense of social and legal insecurity undermine the belief in justice and the legality of justice. In its legal nature, this crime is a special form of abuse of power or office, for which the responsibility comes under Art. 364 CCU.

List of references:

1. The Constitution of Ukraine: as of January 3, 2017: corresponds to the officer. the text. Kyiv: Legal unity, 2017. 79 p.
2. Legal portal-library of Ukraine online with the latest legal literature for study, work and consultation: electron. kind. URL: [http : //mego.info/material/status-372](http://mego.info/material/status-372).