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**THE CREATION OF ARTIFICIAL BARRIERS AS A FORM
OF MANIFESTATION OF OBJECTIVE SIDE OF IMPEDIMENT
OF ACTIVITIES OF PEOPLE'S DEPUTY OF UKRAINE
AND DEPUTY OF LOCAL COUNCIL**

The objective side of crime envisaged Art. 351 of the Criminal Code of Ukraine is characterized by a socially dangerous act, which may be manifested in one of the following forms: 1) non-fulfillment of legal requirements; 2) creation of artificial obstacles; 3) provision of knowingly false information. One of the forms of a socially dangerous act is the creation of artificial obstacles in the work of the people's deputy of Ukraine or a deputy of the local council (Part 1 of Article 351 of the Criminal Code of Ukraine) or a committee or a temporary investigative commission of the Verkhovna Rada of Ukraine (Part 2 of Article 351 of the Criminal Code of Ukraine). The essence of a socially dangerous act in this form is creation.

In Ukrainian language, «creation» is understood as: 1) to give life, to exist for some reason, to form something; 2) to make, to do anything; 3) build, construct something; 4) invent, produce, display something new, previously unknown; 5) creative work to give existence to scientific or artistic creation, to create; 6) to lay the beginning of the existence of something, to organize something to establish; 7) form the formation of something; 8) make it possible, available, prepare something, provide something; 9) cause, cause something, be the cause of something; 10) define, determine basically, giving any signs of properties [4, p. 676–677].

Along with rather broad «general» understanding of creation as an act, it finds a certain concretization in the aspect of objective side of syllables of crimes provided by the Criminal Code of Ukraine. In particular, «creation» as a socially dangerous act is mentioned in composition of crimes envisaged by the articles: 205, 255, 256, 258-3, 260, 302, 351, 351-1, 361-1, 372, 383, 384, 442 of the Criminal Code of Ukraine. In addition, creation as a sign of a socially dangerous act can also occur in case of extortion of improper advantage (Articles 354, 368, 368-3, 368-4 of the Criminal Code of Ukraine). Also, the act in form of creation was characteristic of provocation of bribery in previous edition of Art. 370 of the Criminal Code of Ukraine.

Socially dangerous acts in form of creation are close to an act in the form of an organization and under certain conditions may coincide with it. In particular, the organization of an armed gang represents a system of interconnected actions, which resulted in creation of a criminal group that meets all objective and subjective features of the gang. That is, under such

conditions, an organization is perceived as an act of creation. This idea is supported also in writings of scientists, as well as in the provisions of law enforcement guidelines [3]. However, such a coincidence is far from always and, despite its similarity, «creation» and «organization» are somewhat different socially dangerous acts and cannot be fully identified.

So, according to A. Voznyuk, creation, in the context of the creation of an organized group or a criminal organization, should be considered as a set of actions aimed at the emergence (formation, foundation, formation) of the association, including through transformation or conquest (association) of existing independent one from one organized group for the purpose of committing crimes [1, p. 98].

As we see most of described approaches, determine creation as active actions aimed at generation, emergence of a certain effect. In fact, the same may also apply to creation of artificial obstacles in the work of people's deputy of Ukraine, a deputy of the local council or committee or a temporary investigative commission of the Verkhovna Rada of Ukraine. Indeed, creating barriers to work is possible not only through action, but also through inactivity. For example, an official may not fulfill the duties assigned to him and thus create obstacles in the robots of relevant authorities or local self-government or officials. Not always such non-fulfillment of duties is associated with non-compliance with the lawful demands of a people's deputy of Ukraine, a deputy of a local council, committee or temporary investigative commission of the Verkhovna Rada of Ukraine, since such requirements may not always be given.

As regards the direction of the creation itself, the disposition of Part 1 and Part 2 of Art. 351 of the Criminal Code of Ukraine indicate that creation is focused on artificial obstacles in work. The obstacle in Ukrainian language is understood as: 1) that overrides the movement, intercepts the path, closes the access to somewhere; obstacle; 2) the fact that prevents the implementation of anything, a nuisance [4, p. 322]. Obstacles in context of the offense stipulated in Art. 351 of the Criminal Code of Ukraine should be considered as factors, circumstances or conditions that interfere with performance of work by relevant authorities or officials.

At the same time, the content of the obstacles themselves, that is, the factors, circumstances or conditions, may be completely different, the main thing is only their ability to hinder the work or to interfere with its carrying out. According to S. Horyanuj interference in the context of election campaigning should be seen as the creation of any obstacles in the process of propaganda, including those that manifest themselves in disrupting the holding of meetings, rallies or meetings with candidates [2, p. 206].

Therefore, any obstacles in the work that arise precisely as a result of the perpetrator's actions should be considered as obstacles. The same obstacles in work can be:

a) new, that is, those that did not exist before and arose only under the influence of acts of the subject;

b) those that existed before, however, were terminated for various reasons and restored (renewed their influence) under the influence of acts of the subject.

By their nature and legal significance, such obstacles are the same and do not affect qualifications.

That is, the creation of obstacles, as a sign of the objective side of the crime, provided for in Art. 351 of the Criminal Code of Ukraine, should be considered a bit broader and cover not only the formation of new (those that did not exist before) factors, circumstances, conditions, but also the restoration of the impact of previously existing obstacles.

Of course, such a position may seem rather controversial and cause a lot of objections, as the restoration of the influence of previously existing factors, circumstances and conditions can not be considered a creation in its pure form. However, an extremely narrow understanding of creation of obstacles, in fact, will lead to a gap in criminal law protection of people's deputy of Ukraine, a deputy of local council, committee or temporary investigative commission of the Verkhovna Rada of Ukraine.

In particular, a narrow understanding of term «creation» will lead to fact that objective side of investigated crime will not be covered by the acts of the subject, which did not cause the emergence of new factors, circumstances or conditions, but only restored their previous influence. For example, one can cite the situation when a servant restores the discontinued instruction of the previous leadership about a certain procedure of activity in relations with people's deputies of Ukraine, deputies of local councils, committees or temporary investigative commissions of the Verkhovna Rada of Ukraine, which contained obstacles for the work of the latter. It is obvious that such acts, in their content and degree of social danger, are as close as possible to the creation of obstacles. However, the narrow understanding of the creation does not allow to cover and give a legal assessment of the acts, which consisted only in restoring the impact of existing obstacles (factors, circumstances, conditions). Thus, creation of obstacles should be considered more widely and mean that such obstacles (factors, circumstances, conditions) had not existed or ceased previously, and as a result of acts of guilty, they arise or restoration of their influence.

Specification of sign of artificiality of interference in dispositions of Part 1 and Part 2 of Art. 351 of the Criminal Code of Ukraine is superfluous.

This is explained by the following. First, the word «artificial» in the Ukrainian language means: 1) made by the human hand; 2) looks like this; 3) similar to natural; 4) false, fictitious, false; 5) devoid of simplicity, naturalness [4, p. 553]. Secondly, if obstacles are created – it already means that they arise under the influence of human actions, and not under the influence of natural factors or coincidence of circumstances, and therefore are artificial.

In this way, we arrive at conclusion that the obstacles created by themselves are artificial, and therefore mention of this feature in the text of the criminal law is absolutely superfluous. On this basis, we can formulate a proposal to exclude from the dispositions of Part 1 and Part 2 of Art. 351 of the Criminal Code of Ukraine the words «artificial».

Under such conditions, creation of an obstacle should be considered as an act (actions and inactivity) aimed at creating any factors, circumstances or conditions that impede the work of the people's deputy of Ukraine, a deputy of the local council, committee or temporary investigative commission of the Verkhovna Rada of Ukraine and which did not exist before, as well as on the restoration of the influence of factors, circumstances or conditions that existed before, but whose influence was discontinued.

Methods of creating obstacles, the content of the obstacles themselves, the nature and mode of their influence on the work of the above subjects may be completely different and in essence, do not affect the qualifications. Only the content of acts concerning the creation of factors, circumstances and conditions, as well as negative influence of latter, which prevents the work of said bodies or officials, remains determining factor here.

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