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CRIMINAL LEGAL PROTECTION OF PROFESSIONAL ACTIVITIES OF LAW ENFORCEMENT OFFICERS AS OBJECT OF SCIENTIFIC RESEARCH

Кирбятєв О. Кримінально-правовий захист професійної діяльності працівників правоохоронних органів як об'єкт наукового дослідження. Обґрунтовано доцільність проведення комплексного монографічного дослідження проблеми кримінально-правового захисту професійної діяльності працівників правоохоронних органів.

Ключові слова: право, обов'язки, відповідальність, злочин, покарання, повага, працівники правоохоронних органів, професійна діяльність.

Formulation of the problem. The Constitution of Ukraine proclaimed in article 17 that protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security, shall be the most important function of the State and a matter of concern for all the Ukrainian people. Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be determined by law.

Such a thesis of the Constitution shows that ensuring the proper functioning of society is priority task of its members, who have not only rights but also duties. The only mention of law enforcement agencies in the Constitution of Ukraine testifies to their role in ensuring state security. However, it is impossible for Ukrainian citizens to implement their rights, forgetting their duties – this led to a crisis of respect to authorities, in the case of law enforcement officers – impossibility of proper fulfilment of their professional duties.

The purpose of the article is substantiating the feasibility of conducting a complex monographic study of problem of criminal legal protection of professional activity of law enforcement officers.

State of research. The methodological background for the preparation of the dissertation and the substantiation of its results will be the scientific works of Ukrainian scientists: P. P. Andrushko, M. I. Bazhanov, O. M. Bandurka, Yu. V. Baulin, V. S. Batyrhareieva, I. H. Bohatyrov, V. M. Burdin, S. B. Havrysh, V. O. Hlushkov, V. K. Hryshchuk, N. O. Hutorova, L. M. Demydova, S. F. Denysov, T. A. Denysova, O. M. Dzhuzha, O. O. Dudorov, O. O. Zhytniy, V. P. Yemelianov, V. M. Karchevskyy, O. V. Kozachenko, M. Y. Korzhanskyy, V. V. Kuznetsov, V. M. Kuts, O. M. Lytvak, O. M. Lytvynov, S. Ya. Lykhova, V. K. Matviichuk, P. S. Matyshevskyy, M. I. Melnyka, V. A. Myslyvyu, A. A. Muzyka, V. O. Navrotskyy, Yu. V. Nikitin, A. M. Orlean, Ye. O. Pysmenskyy, A. V. Savchenko, V. V. Stashys, Ye. L. Streltsov, V. M. Trubnikov, V. O. Tulyakov, V. I. Tyutyuhin, Ye. V. Fesenko, P. L. Fris, M. I. Khavroniuk, P. V. Khriapinsky, H. V. Chebotaryova, V. V. Shablysty, V. I. Shakun, S. S. Yatsenko and others.

Also, we should highlight V. I. Osadchy and his doctoral dissertation “Problems of Criminal and Legal Protection of Law Enforcement Activities”[1], defended in 2004, in which complex scientific research of problems criminal legal protection law enforcement activity has been conducted. The content of such protection has been clarified. The essence of law enforcement activity as object of crimes has been revealed. System analysis of crimes against law enforcement activity has been carried out. Necessity, possibility and feasibility of creating independent Institute of Special Part of Criminal Law “Crimes against law enforcement activity” have been substantiated, proposes about improvement of current criminal law have been formulated.

In turn, we plan to focus on the theoretical and applied principles of criminal legal protection of professional activity of law enforcement officers within articles 342, 343, 345, 347-349 of the Criminal Code of Ukraine Section XV “Crimes against the authority of government, local government, associations of citizens and crimes against journalists” of the Special Part of the Criminal Code of Ukraine.

Main part. The events in Ukraine during 2013-2014 caused a surge in national consciousness and patriotism unprecedented in the history of independence. Representatives of civil society got real leverage of influence on the state, completely and sometimes overly realizing the rule of law. Sometimes we have to talk about the withdrawal of the state with the laws into the background. Some members of society started using freedom, which was granted to them by the law, as a tool of demonstration of strength and arbitrariness, while completely ignoring the laws, norms of morality, customs that are legitimized by society. The submission of society about the crime and punishment for dangerous acts simply catastrophically ceased to coincide with the requirements of the state in this area. Right became a measure of freedom as permissiveness, which does not correspond to the ideas of the rule of law [2, p. 255].

Unfortunately, examples of such legal arbitrariness are more than we would like. This is the use of violence to deputies of all levels, which sometimes grows into a danger to the lives of such persons, blocking the work of strategically important enterprises, demonstration of defenselessness of representatives of judicial authorities and law enforcement by attempts to seize their premises and the submission of unclear requirements to their leaders and more.

Indeed, the events of recent years in Ukraine show unprecedented activation of civil society, which is accompanied by implementation of the right to peaceful meeting, free expression of their views and beliefs. Such kind of events quite often has overgrown into fight with representatives of authority, who performed their duties on the protection of public order. Exceeding of official authority by individual representatives of law enforcement agencies during those events was one of the reasons that led to crisis of respect for person empowered. Reports about insult, beatings, infliction of bodily injury to a certain degree of severity to a law enforcement officer, while performing professional duties, have become almost regular in the media [3, p.7].

More than five years have passed from the beginning of the tragic events in Ukraine, but the situation with the confidence of the law-enforcers in the protection of his professional activity has only become more complicated. For example, police officers hear threats every day about opening criminal proceedings against them for exceeding official authority during lawful arrest of a person, who reasonably was suspected of committing an administrative or criminal offense, they used special tool – chains. The detained person appeals against the actions of the officer in a court, in most cases complaint is satisfied and criminal proceedings under P. 2 Art. 365 Criminal Code of Ukraine is opened against policeman – as abuse of official authority by a law enforcement officer combined with the use of a special tools or violence. The situation became so critical that from 2018 officers quite often refused from using chains because of fear to be punished for performing their professional duties. It is not even about applying and using of firearms.

For this reason, it should be agreed the statement that the definition of the conditions of legality of causing harm by law enforcement officers or the establishment of the fact of unlawful acts committed by such entities, should be carried out taking into account the provisions of the Law of Ukraine “About national police” [4] and other laws, that establish authority of law enforcement agencies. In order to specific tasks are taken into account, in the performance of which they are entitled to harm the object of criminal legal protection, it is necessary to establish a provision at section VIII of General part of Criminal Code of Ukraine according to which conditions of legality of circumstances, which exclude crime of the actions of law enforcement officers, are determined taking into account to legislation of Ukraine, which regulated their legal status. Such kind of additions will provide an opportunity to systematically take into account in legislation of Ukraine about criminal liability the availability of specific reasons and conditions of legality of harming the object of criminal legal protection by the law enforcement officers [5, p.50].

However, often victims of hooliganism that related to the resistance of the representatives of the authority or public, who perform duties on protection of civil order, or other citizens, who stop hooligan actions, are police officers, relation to whom, even not society, but representatives of prosecutor’s office or court, is accompanied by planting permanent sense of disability and inferiority, that often leads to qualification of an attack on their lives and health as malicious failure to meet requirements i.e. administrative offense [3, p. 36-37].

Nowadays, social psychology and a certain level of public legal consciousness are such that, for example, blocking of transports, individual cases of group breach of the public order by society are recognized as socially positive behavior, as means of influencing government for making them to accept lawful managerial acts. Also in the regards, the use of violence against officers of National police and servicemen of the National Guard of Ukraine, who protect public order during such acts of civil disobedience, is sometimes perceived by society

as a norm. Such situation is unacceptable and threatening [3, p.45].

Direct, apparent neglect of citizen's freedoms is not the only reason for imperfection in the country's legal system. An important point of non-fulfillment of the law (including the so-called fundamental human rights) is tradition of selectivity of the legal consciousness, which was recorded by soviet researchers in 1974. When they gave generalized indicators of citizen's solidarity to the criminal law in comparison with the criminal procedure law, it was established that the indicators of solidarity by criminal law are ten times higher. In other words, the mass consciousness regarded the repressive aspect of law as more important than the guarantee of it. Today law-abiding Ukrainian citizens, as in USSR, imagine themselves as victims more easily than the accused. This is precisely the reason for legal nihilism of many citizens, the negative attitude to the right of the accused to qualified protection, to the presumption of innocence. A serious cause of defective law enforcement in the sphere of human rights in Ukraine is the post-totalitarian tradition as the use of the lower level of regulations-provisions and recommendations of department legal act – not international obligations of the state of Ukraine, not clear provisions of the Constitution and even not requirements of the law [6].

In fact, there is situation, when the higher authorities, the prosecutor's office and the court force law enforcement officers to constantly feel their inferiority, little significance, disability. They are obligated to write statements about the malicious disobedience as an administrative offense, when during fulfillment of official duties received bodily injuries, spoiled uniform, which was purchased by their own expense.

It is only one side of the medal, but bigger and more important. Indeed, the behavior of individual law enforcement officers provokes others to actively counteract, until the non-recognition of police officer as a person who endowed with authority, more often through disrespect to the state, but in essence to himself first of all. Active part of the society, who more likely to hinder the proper fulfillment of a law enforcement officer's duties, perfectly knows its rights and requires their immediately implementation, but reminder about its duties is mainly caused aggression.

It is worth remembering that the public order starts with you, from the simple things, like, will not pass through the road to the forbidden sign of traffic lights, will clean up for the your pet after walk in the park, will throw garbage only in the urn etc. Only after that, when biggest part of the society will follow these elementary rules, we can talk about overcoming the crisis of trust to authority at all and to officers in particular. Unfortunately, so far this is not present, that is why scientific search of optimal system of criminal legal protection of professional activity of law enforcement officers is expediency.

Conclusions. So, we have made an attempt to justify the feasibility of conducting complex monographic research of problem of criminal legal protection of professional activity of law enforcement officers, in which will definitely focus on:

1. Problem of actually inactive articles of Criminal Code of Ukraine (342, 343, 345, 347-349), which are called to implement legal protection of officer's regulated activity during or in connection with fulfillment of professional duties.

2. Special attention will be paid to the problem of criminal legal dimension of the presumption of the correctness of the policeman and the problem of returning trust through the fear and respect of citizens to law enforcement officers.

3. There will be formulated definition and signs of institute of criminal legal protection of professional activity law enforcement officers within current Criminal Code of Ukraine without proposal to distinguish new section of special part of criminal law.

4. There will be attempt to measure effectiveness of system of criminal legal and criminological implementation of protection of professional activity of law enforcement officers by mathematic and sociological methods.

5. After the end of 2013, country lives in different social-economical and political conditions – nowadays there is global crisis of trust to representatives of authority. At the forefront of that distrust are the law enforcement agencies, representatives of which more often become victims of various crimes while or in connection with fulfillment of official duties.

6. From 2014, there have been created new law enforcement agencies in Ukraine – the National Agency for Prevention of Corruption, the Specialized Anti-Corruption Prosecutor's Office, the National Anti-Corruption Bureau of Ukraine, the National Bureau of Investigation, the prosecutor's office and police have been reorganized – legal implementation protection of their professional activity must be duly substantiated.

7. There will be borrowed from the positive experience of foreign countries regarding

the criminal-legal and criminological implementation of protection of professional activity of law enforcement officers.

8. All this in its totality testifies to feasibility of complex monographic research of problem of protection of professional activity of law enforcement officers.

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SUMMARY

Kyrbyatyev O. Criminal legal protection of professional activity of law enforcement officers as an object of scientific research. The expediency of carrying out of complex monographic research of the problem of criminal-legal protection of professional activity of law enforcement officers is substantiated.

Keywords: law, duties, responsibility, crime, punishment, respect, law enforcement officers, professional activity.

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АКТУАЛЬНІ ПИТАННЯ РЕАЛІЗАЦІЇ ЗАКОМУ УКРАЇНИ «ПРО ОПЕРАТИВНО-РОЗШУКОВУ ДІЯЛЬНІСТЬ»: ТЕОРІЯ ТА ПРАКТИКА

Досліджено актуальні питання реалізації Закону України «Про оперативно-розшукову діяльність». Наголошено, що прийняття закону спрямоване на вдосконалення правового регулювання оперативно-розшукової діяльності оперативних підрозділів Національної поліції України. Визначено, що зміни до Кримінального процесуального кодексу України зумовили внесення змін і до Закону «Про оперативно-розшукову діяльність», внаслідок чого на практиці виникли труднощі при реалізації оперативними підрозділами оперативно-розшукової діяльності.

Встановлено, що труднощі виникли і у слідчих підрозділів України, де використання матеріалів оперативно-розшукової діяльності неможливе без єдиного розуміння «результатів оперативно-розшукової діяльності».

Ключові слова: оперативно-розшукова діяльність, оперативні підрозділи, слідчі підрозділи, матеріали ОРД, негласні слідчі (розшукові) дії, результати ОРД, поліція.

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