

UDC 343.92

DOI 10.31733/2078-3566-2022-5-190-197



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FOREIGN EXPERIENCE OF CRIMINOLOGICAL PROTECTION OF JUSTICE

Юлія Христова. ЗАРУБІЖНИЙ ДОСВІД КРИМІНОЛОГІЧНОГО ЗАХИСТУ ПРАВОСУДДЯ. Висвітлено досвід здійснення уповноваженими суб'єктами заходів захисту правосуддя від потенційних загроз та особливостей їх взаємодії в США, Канаді, Франції, Англії, Уельсі та Італії для вирішення питання щодо підвищення ефективності роботи новоствореного державного органу з правоохоронними функціями – Служби судової охорони України, а також удосконалення порядку його взаємодії з Національною поліцією та іншими органами системи МВС України.

Запропоновано під забезпеченням кримінологічного захисту правосуддя розуміти діяльність щодо формування ефективної системи протидії криміногенним впливам і кримінальним правопорушенням проти правосуддя для забезпечення його незалежності та практичного утвердження принципу верховенства права під час здійснення судочинства, зокрема, щодо надання визначеному для забезпечення безпеки правосуддя суб'єкту повноважень для припинення та запобігання правопорушенням і злочинам; його взаємодії з іншими суб'єктами у системі протидії кримінальним правопорушенням проти правосуддя; завчасного виявлення та протидії можливим загрозам.

Наголошено на необхідності надання Службі судової охорони України права безпосередньо здійснювати оперативно-розшукову діяльність для належного забезпечення здійснення заходів із запобігання загрозам особистій безпеці суддів, членів їх сімей, працівників суду, майна об'єктів охорони, виявлення та нейтралізації таких загроз, а також здійснення спеціальних заходів щодо забезпечення безпеки суддів і працівників апарату суду. Встановлено, що функції кримінологічного захисту правосуддя в зазначених країнах переважно покладається на спеціальні уповноважені суб'єкти (служби судової безпеки/охорони), але регулюється по-різному.

Констатовано, що з огляду на визначення перспектив щодо удосконалення регулювання здійснення цієї кримінологічної функції в Україні становить інтерес і потребує подальших наукових розвідок зарубіжний досвід залучення приватних охоронних компаній до її здійснення, практика делегування відповідних повноважень співробітникам поліції та взаємодії спеціальних уповноважених суб'єктів забезпечення безпеки правосуддя з іншими правоохоронними органами, а особливо – досвід здійснення аналітичної розвідки співробітниками відділу судової безпеки Служби маршалів США шляхом прогнозування можливих загроз для судової системи та запобігання їм.

Ключові слова: кримінологічний захист, правосуддя, потенційна небезпека, Служба судової охорони.

Relevance of the study. Despite the fact that Ukraine has made an obligation to take all appropriate measures to implement and guarantee the basic principles of judicial independence approved by the resolutions of the United Nations General Assembly in 1985 [1], to implement the recommendations of the Committee of Ministers of the Council of Europe on ensuring protecting and strengthening the independence of judges (1994) [2], guaranteeing their safety, in particular, the protection of courts and judges who may become or have already become victims of threats or acts of violence (2010) [3], as well as provide protective mechanisms against the exercise of undue influence on decision-making by judges according to paragraph 26 of the Memorandum on Economic and Financial Policy (2020) [4], today there is still no effective mechanism for ensuring criminological protection of justice. Instead, the problem of ensuring the personal safety of judges and their family members, court employees and trial participants has become particularly acute in the conditions of martial law in Ukraine, which is evidenced, in particular, by a rapid increase (by 18.5 times) from January to August 2022 of visitor attempts

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bring into judicial institutions prohibited items, including weapons – 2,429 units compared to 131 units for the same period in 2021, which pose a potential danger to judges and participants in the trial [5–6].

The relevance of the scientific and theoretical development of foreign experience of criminological protection of justice is due to the need to improve the activities of the new state body with law enforcement functions created in 2019 – the Judicial Protection Service of Ukraine, which is a special actor in the mechanism to ensure it, as well as the order of interaction of the newly created actor with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

Recent publications review. Such scientists as V. Akhmedov, V. Borisov, S. Didyk, O. Dudorov, M. Dzhafarova, O. Reznik, O. Kalman, N. Karpova, O. Kvasha, S. Knyzhenko, A. Malomuzh, S. Miroschnychenko, V. Navrotskyi, V. Osadchyi, L. Palyukh, O. Tytarenko, V. Tyutyugin, M. Shepitko, O. Shurko and others paid attention in their works to certain problems of criminological protection of justice. At the same time, the urgent issues of ensuring the personal safety of judges and their family members, court employees and trial participants, which have become especially acute under the conditions of martial law in Ukraine, determine the need to study foreign experience in this area.

The research paper's objective is taking into account the results of the analysis of the experience of the USA, Canada, England, Wales, Italy and France regarding the implementation of criminological protection of justice in terms of the organization of the activities of special actors in the mechanism to ensure it, to substantiate proposals for increasing the efficiency of the work of the newly created state body with law enforcement functions – the Judicial Security Service of Ukraine, as well as improving the order of its interaction with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

Discussion. Security of justice is an important guarantee of ensuring its independence. Despite the determination by the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023 of the main principles and directions for the further sustainable functioning and development of the justice system, taking into account the best international standards and practices [7], a number of problems concerning the ensuring of its criminological protection still remain without proper resolving.

To achieve the formulated purpose, first of all, it is necessary to find out the scope and meaning of such basic concepts as "criminological security" and "criminological protection", a significant contribution to the scientific development of which belongs to such scientists as O. Kostenko, O. Lytvynov, T. Melnychuk, S. Mozol, M. Pakhnin, D. Prokofyeva-Yanchilenko, O. Tytarenko, V. Shablystiy and others.

In particular, the phenomenon of criminological security and the scientific foundations to ensure it became the subject doctoral thesis in Law by S. Mozol [8]. This scholar interprets the concept of "criminological security" as a state and condition of the system's vital activity, which are determined by the quality of the implementation of its self-regulatory functions; as the system's ability to maintain a stable, steady state under adverse external and internal criminal influences and describes its ability to solve problems of the society's vital activities safety [9, p. 223], and "criminological protection" as a set of measures taken with the aim of eliminating conditions that contribute to the emergence of criminal manifestations [10, p. 19].

V. Shablystiy, considering at the monographic level the issue of the essence and content of human security as a comprehensive concept, which is a prerequisite for the realization of his/her rights and freedoms, as well as a guarantee of the fulfillment of duties, has paid special attention to clarifying the content of the concept and the constituent elements of criminological security. This researcher notes that criminological security is fully aimed at creating a system of comprehensive protection of citizens, society, and the nation from various threats adequate to modern criminological processes and phenomena, most of which are specified in the Special Part of the Criminal Law [11, p. 87].

The scientist considers the object of danger, criminal threats and their sources, actors of security, the state of criminological protection of objects and subjects of criminal influence, measures to prevent criminal offenses, as well as victimological prevention [11, p. 88].

M. Pakhnin, studying the concept and structure of the mechanism for ensuring criminological protection of mass media in Ukraine, states that criminological protection of a certain area includes the following main elements: objects of protection, purpose of protection, criminological threats, system of measures to influence the threat (system of criminological protection measures), organizational and legal foundations of criminological protection [12,

p. 75]. The results of the analysis of the approaches suggested by some researchers (S. Mozol [10], M. Pakhnin [12], O. Tytarenko [13], V. Shablystiy [11]) regarding the definition of the content of the concept and constituent elements of criminological of security provide grounds for the conclusion that the ensuring of criminological protection of justice should be understood as activities aimed at building an effective system of combatting criminogenic influences and criminal offenses against justice in order to ensure its independence and the practical affirmation of the principle of the rule of law during the implementation of judicial proceedings, in particular, concerning the granting of powers to the entity determined to ensure the security of justice to stop and prevent offenses and crimes; his/her interaction with other actors in the system of combating criminal offenses against justice; early detection and combatting possible threats.

The Judicial Security Service is a special authorized actor that, together with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine, ensures the safety of justice in Ukraine. The main tasks of the Judicial Security Service are: 1) to maintain public order in the court; 2) to stop showing contempt of court; 3) to guard court premises, bodies and institutions of the justice system; 4) to perform functions related to state ensuring of personal safety of judges and members of their families, court employees; 5) to ensure the safety of trial participants [14].

Given the similarities with the organization of the activities of the Judicial Protection Service in Ukraine as a state body in the justice system, the Canadian model of security deserves special mention. In particular, in most provinces and territories of Canada, the protection of courts and trial participants is ensured by specialized services of sheriffs who cooperate with the police. For example, under the court protection laws of the provinces of New Brunswick, Manitoba, Newfoundland and Labrador, court protection officers are the sheriffs, deputy sheriffs or sheriff officers appointed under the Sheriffs Act, police officers appointed under the Police Act, and members of the Royal Canadian Mounted Police (agent de sécurité du tribunal), stationed in the specified provinces [15-17].

Despite the fact that the Canadian model is recognized as one of the most influential and progressive judicial security systems (as an example, the Sheriff's Office of British Columbia) [18], among the unresolved problems Canadian experts named access to operational intelligence information for timely prevention of threats. In particular, since there is no separate structure for collecting classified operational information, sheriffs can use information from the mounted police, which has access to a single federal database. In this context, interaction between sheriffs and the police is important, so a joint working group on the development and exchange of operational information of the federal database has been made in the province [19].

Incidentally, we note that our previous publications also emphasized the need to grant the Judicial Security Service of Ukraine the right to directly carry out operational-search activities to properly ensure the implementation of measures to prevent threats to the personal safety of judges, their family members, court employees, property of security objects, detection and neutralization of such threats, as well as the implementation of special measures to ensure the safety of judges and court personnel [5].

In the United States of America, judicial security and protection for federal judges, jurors, other members of the federal judiciary, and Supreme Court justices when they are beyond Washington DC is ensured by Chief Inspectors, Deputy Marshals, Intelligence Analysts and Court Security Officers of the Marshals Service by anticipating and preventing potential threats to the judicial system. So, for example, in 2021, the US Marshals Service assessed 3,168 identified threats to the security of justice and performed 972 protective operations, as a result of which 371 protective proceedings were initiated to investigate existing or potential criminal activity, compared to 4,261 threats in 2020, which on 81 % more than in 2016 (2357 threats) and 233 % more than in 2008 (1278 threats) [20].

In response to a sharp increase in the number of threats and inappropriate messages against federal judges, jurors, and other members of the federal judiciary, the U.S. Congress has approved funding for the Marshals Service to upgrade home security systems at judges' residences and improve the agency's ability to detect and investigate online threats against judges and court premises. In addition, in order to improve the protection of judges and the independence of the judiciary guaranteed by the Constitution, the US Congress passed the Daniel Aderl Judicial Security and Privacy Act of 2021 (the Act), which is designed to protect the personal information of judges in federal databases and limit data aggregators from its resale [21]. The main purpose of this Act is to improve the security of federal judges, including senior, recalled, or retired federal judges, as well as their immediate family members, to ensure that federal judges are able to fairly administer justice without fear of personal reprisals from individuals aggrieved by decisions that they adopt during the performance of their state

duties [22].

The Criminal Intelligence Division of the US Marshals Service processes threat information using the Warrant Information Network (a central law enforcement information system). The US Marshals Service also administers the Federal Witness Security Program. For their part, the court security officers who ensure security at the entrance to the federal courthouse under contract to the US Marshals Service are employees of private security companies. At the state level, the police may be involved in personal security for the judge. For this purpose, the state legislatures adopt relevant laws. For example, Judge Julie Kocurek's Court and Courtroom Security Act of 2017 (Texas) provided for the involvement of any authorized police officer in ensuring personal security for a judge [23].

It should be noted that in many states the security of both courthouses and courtrooms is the responsibility of the sheriff under whose jurisdiction they are located (§ 53.1-120 (A) Code of Virginia [24], Article 1.2. "County Court Security Contra Costa" (26625.2 - 26625.9) of the Government Code of the State of California [25], § 30.15 of the Statute of Florida [26], etc.). A municipal police chief may also be appointed ex officio marshal for court security (§ 11-28-107 Oklahoma Statutes (2014) [27]; § 12-32 Code of Ordinances of the City of Shawnee, Oklahoma [28]. Also, if necessary, by the state governor's decision, the National Guard units may be involved in providing assistance to local law enforcement agencies in ensuring the trial security [29]. The practice of involving private security guards to protect justice from potential threats is effectively implemented in most countries of Western Europe. For example, in England and Wales, judicial security and law enforcement in the courthouse are provided by court security officers, who can be either civil servants of Her Majesty's Courts and Tribunals Service or employees of private security companies working under a contract concluded with the Lord Chancellor (Article 51 of Chapter 4 "Court security" of the Courts Act 2003) [30].

In addition, regarding a significant increase in the level of threats, the British government systematically takes measures to improve the judges' personal security, as well as the protection of their homes [31]. In particular, according to the results of a survey of judges conducted by the Judicial Institute of University College London (The Judicial Institute of University College London), it has been found that in 2016, most of them (51 %) were concerned about their personal safety related to the performance of their professional duties connections while working in court, compared to 42 % in 2020. As a positive note, it should be noted that during the specified period, the share of judges concerned about their treatment in social networks decreased from 15 % to 9 %, while those concerned about their personal safety outside the court remained unchanged (37 %) [32, p. 16].

According to the current Italian legislation, private security guards are also involved in the surveillance of courts, which is recognized as an additional security service (Part 3 of Article 256-bis of the Consolidated text of laws on public security with amendments regarding security guards, surveillance institutes and private investigations, introduced by the Decree of the President of the Republic of August 4, 2008 No. 153 [33]).

In France, the security of judicial proceedings and the maintenance of law and order are ensured by gendarmes and policemen, who, during the consideration of high-profile cases by the courts, can also take special security measures in case of possible protests near the court buildings or terrorist activities directed against the process. For example, in 2022, roadblocks were set up around the Palace of Justice in Paris to ensure security during the trial of the terrorism case, which lasted almost 10 months, and the number of involved police officers reached 1,000 [34].

Conclusions. Thus, the results of the analysis of the experience of the USA, Canada, England, Wales, Italy, and France show that the carrying out of the function of criminological protection of justice is mainly entrusted to special authorized entities (court security/guard services), but it is regulated differently. In view of the definition of prospects for improving the regulation of the implementation of this criminological function in Ukraine, the foreign experience of involving private security companies in its implementation, the practice of delegating the relevant powers to police officers and the interaction of special authorized actors of ensuring the security of justice with other law enforcement agencies is of interest and requires further scientific research intelligence.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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Submitted 17.11.2022

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ABSTRACT

The article summarizes the experience of the implementation of measures to protect justice from potential threats by authorized subjects and the peculiarities of their interaction in the USA, Canada, France, England, Wales and Italy in order to solve the issue of increasing the efficiency of the work of the newly created state body with law enforcement functions – the Judicial Protection Service of Ukraine, and as well as improving the order of its interaction with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

It is suggested, that the provision of criminological protection of justice should be understood as activities related to the formation of an effective system of countering criminogenic influences and criminal offenses against justice to ensure its independence and the practical affirmation of the principle of the rule of law during the implementation of judicial proceedings, in particular, regarding the granting of powers to the subject determined to ensure the security of justice to terminate and prevention of offenses and crimes; his interaction with other subjects in the system of combating criminal offenses against justice; early detection and countermeasures against possible threats.

It was established that for improving the implementation of this criminological function in Ukraine, the foreign experience of involving private security companies in the practice of delegating the relevant powers to police officers, and the interaction of special authorized subjects of ensuring the security of justice are of interest and require further scientific research.

Keywords: *criminological protection, justice, potential danger, Court Security Service.*

UDC 343.46

DOI 10.31733/2078-3566-2022-5-197-202



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THEORETICAL APPROACHES TO THE RESEARCH OF COMBATING CRIMINAL OFFENSES COMMITTED BY ORGANIZED GROUPS AND CRIMINAL ORGANIZATIONS

Володимир Єфімов, Дмитро Санакоєв. ТЕОРЕТИЧНІ ПІДХОДИ ДОСЛІДЖЕННЯ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ, ЩО ВЧИНЯЮТЬСЯ ОРГАНІЗОВАНИМИ ГРУПАМИ ТА ЗЛОЧИННИМИ ОРГАНІЗАЦІЯМИ. На сьогодні в європейських країнах упроваджується комплексний (інтеграційний) підхід, що поєднує запобіжні і репресивні заходи. Саме вони охоплюються терміном «протидія». Чому саме цей термін, а тому що, це загальне родове поняття, яке охоплює діяльність, спрямовану на мінімізацію протиріч та чинників, які породжують або сприяють злочинності, на скорочення окремих видів злочинів шляхом недопущення їх вчинення на різних стадіях злочинної поведінки (заходи запобігання злочинності), а також адекватні заходи реагування на вже скоєні злочини (репресивний підхід). Однак багато в чому погляди вітчизняних вчених на теоретичному рівні збігаються із позиціями зарубіжних учених. Тим не менш до цього часу проблемою в Україні залишається впровадження наукових розробок і рекомендацій у практику діяльності суб'єктів протидії організованій злочинності, прийняття нормативних актів.

Щодо аналізу злочинності, то він застосовується як ефективний запобіжний засіб, який забезпечує цілий ряд методів і заходів для розуміння глибини сутності складних відносин між підозрілою особою, злочинною діяльністю та обставинами, що сприяли їй. Такий аналіз злочинності

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