



АКТУАЛЬНІ ПИТАННЯ КРИМІНАЛЬНОЇ ЮСТИЦІЇ

UDK [343.19:351.74](477)



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CRIMINAL AND LEGAL PROTECTION OF LAW ENFORCEMENT OFFICERS: CURRENT STATE AND PERSPECTIVES OF IMPROVEMENT

The issues of guaranteeing protection of law enforcement officers have been considered in the article. The author has provided examples of its solution in some countries and has made propositions concerning the ways of improving legislation in this sphere.

Key words: *authority, law enforcement agencies, protection of law enforcement officers.*

Problem's setting. The ability of Ukrainian state to fulfill obligations for the citizens designated by the domestic Constitution, to solve social conflicts, to organize the normal functioning of the society as well as interacting with other

subjects of international law, to participate in maintaining regional and world peace largely depends on the efficiency of the public apparatus of management of social processes and control over them. Thus, one of the important parts of the mechanism, which assists to fulfill the main tasks of the state is law enforcement system. The significance of this socio-legal institution is difficult to overestimate. The phrase has become winged that law enforcement agencies – are a thin line, a barrier that separates the world from rampant anarchy. There are many examples in the history, where omission of law enforcement agencies paralyzed the life of entire cities or even countries. This confirms the experience of many countries. In particular, let's remember the Liverpool police strike in the UK. As you know, in 1919 they stopped working, went out to the streets and demanded higher wages, as a result, the number of crimes dramatically increased – murders, robberies, thefts, etc. In Denmark in 1944 after the divisions of Nazi army and SS occupied all police stations and arrested police officers thieves began to «dominate» on the streets. Another country is the USA. In 1977 in New York during the «big blackout» the light was off for 24 hours that made impossible the work of police services, the result was almost the same – disorder, tyranny, the criminals had a free hand [1, p. 11].

The effectiveness of fulfilling the law enforcement function of the state depends not only on logistics, equipment, personnel strengthening, financing of the relevant agencies and institutions. An important component is its legal guaranteeing, including a special criminal and legal protection of law enforcement sphere, which should be aimed at creating conditions for the safe performance of their official duties by the employees and optimal operation of the relevant authorities and departments. It is not a secret that if the state protects the rights and legitimate interests of law enforcement officers very reliably then it significantly affects the readiness of these subjects to perform service tasks, their level of dedication and professionalism. Moreover, the relatives of law enforcement officers should be also under the protection of the criminal law, which is an additional guarantee for the protection of these persons and ensuring impeccable execution of their duties in the sphere of of keeping the law and order.

Considering the constant complication of external conditions, affecting the work of domestic law enforcement officers and taking into account the long period of mistrust and (unfortunately) decrease in respect for the authority of the state in general and its law enforcement system in particular, the cases of resistance to the officers of law enforcement agencies, efforts of offenders to take revenge to them or their close relatives for performing their official duties have spread in Ukraine. The low level of effectiveness of the law enforcement system in Ukraine and the quality of implementation of its functions that for a long time caused fair complaints from the community, were at least due to the insufficient degree of protection of this system's officers, as a result due to their low motivation to address often the risk, associated with the threats to personal security, life, health, property and other wealth of operative and service tasks. Thus, the provision of criminal and legal protection of law enforcement officers should be one of the priorities of the state towards building an effective model of law enforcement system.

Nowadays Internal Affairs Agencies of Ukraine are experiencing a period of

radical reforms, radical restructuring in accordance with the best international standards. The society requires from their staff much more vigorous and effective fulfillment of their duties. In this connection there is an increase of loading on each of them in the sphere of professional and service practices that on the background of a crime surge due to the peculiarities of the modern socio-political stage of life of our country, greatly increases the risks to life, health, bodily integrity, other rights, benefits and legitimate interests of the representatives of domestic law enforcement agencies. In particular, already according to the first results of the new patrol police units' activities in Kyiv, Kharkiv, Lviv and other cities of Ukraine it becomes apparent that the number of contacts between police officers and citizens, including with offenders, is rapidly growing. Thus, considering the principle of continuity of the police activity, its officer is not entitled to refuse in the proceedings or postpone consideration of appeals on ensuring human rights and freedoms, legal entities, interests of the society and the state from illegal encroachments referring to weekend, holiday or day off or the end of working hours [2]. These circumstances affect the increase in situations during which or by the results of which there are threats to personal and official interests of a law enforcement officer. In this connection, the relevance of the issues of legal protection of persons, who speaking on behalf of the state within official and imperious relations, are directly involved in the implementation of its law enforcement function, has become more urgent. Inevitability of criminal liability for a number of socially dangerous encroachments against law enforcement relations takes a prominent place among the measures, the conduction of which is intended to contribute to solving this problem. Its bases are concentrated in the Section XV of the Special Part of the Criminal Code of Ukraine (hereinafter - CC), «Crimes against the Authority of the State Agencies, Local Self-Governments and Associations of Citizens», the provisions of which according to the practice are always in demand. Thus, only during the last year there were 23 268 crimes officially registered in the country, the liability for which is provided by the norms of the mentioned section. It also contains a number of specialized criminal and legal prohibitions, the implementation of which is intended to protect law enforcement officers.

Analysis of recent research and publications. The issues concerning protection of law enforcement activity in the theory of criminal law were the interest of M. I. Bazhanov, Yu. V. Baulin, L. P. Brych, Ye. M. Blazhivskiy, V. A. Horbunov, D. Yu. Hurenko, I. I. Davydovych, V. T. Dziuba, L. V. Dorosh, S. I. Diachuk, V. A. Klimenko, M. I. Korzhanskyi, M. I. Melnik, V. A. Navrotskyi, V. V. Stashys, M. I. Khavroniuk, S. S. Yatsenko and others. The most thorough study of these issues was made by V. I. Osadchyi (we mean his doctoral dissertation «Problems of Criminal and Legal Protection of Law Enforcement Activities» and the monograph «Criminal and Legal Protection of Law Enforcement Activities»). The papers of the mentioned experts cover a wide range of problems in the sphere of protecting the authority of government agencies in general and law enforcement activities in particular. However, not all of their sensible conclusions and propositions for the provision of the protection of law enforcement system and its representatives by criminal and legal measures are duly implemented in the legislation on criminal liability. So, let's

pay attention, first, to perfectness of the legal foundation for guaranteeing criminal and legal protection of the following basic personal benefits of a law enforcement officer as life, health, safety and bodily integrity.

Considering everything said the **objective of the article** is the study of providing recommendations on the matter of achieving the balance between law enforcement officers' duties and their rights, namely their right on protection.

The main part. As it is noted in professional literature, the generic object of crimes under the Section XV of the Special Part of the Criminal Code, is a group of social relations that arise between the state authorities, local self-governments, associations of citizens and individuals in connection with the execution of administrative and regulatory functions to protect the rights, freedoms and legitimate interests of individuals and legal entities [3, p. 449]. As we see, this kind of object of criminal and legal protection as law enforcement activity is «absorbed» by the mentioned above generic object in the domestic criminal law. However, it is quite clearly demonstrated in modern penal doctrine that a certain group of crimes described within this section infringes on a relatively isolated area of public relations, that is it has its own specific object that is directly related to the field of keeping public order. Therefore, many domestic scholars, who studied the provisions of the Section XV of the Special part of the Criminal Code of Ukraine, consider it necessary to use specific object to display the specifics of crimes against law enforcement officers. Thus, I. I. Davydovych isolates crimes under the Articles 342, 343, 345, 347-349, 350, 352 of the CC into a separate group according to the specific object of encroachments, which forms such components as «carried out official activity of the representatives of the authorities according to the law, in particular law enforcement officers, other officials and activities of public representatives for keeping public order; personal and property safety of the stated subjects of management activity and their relatives» [4, p. 8]. V. A. Horbunov characterizes the specific object of these crimes more laconically. To his mind these are relations composed from the proper execution of duties by law enforcement officers [5, p. 7]. Studying the norms combined by the mentioned specific object indicates that the center of gravity in their constructions is in the plane of violent encroachments against law enforcement officers and persons close to them. So, the conceptual provisions for the priority protection of state agents' personality (and their relatives) in relations to law enforcement are realized in the CC. This situation is quite justified, as recently there have been frequent cases of criminal combating law enforcement officers, the most common forms of which are violence, the threat of its use against law enforcement officers or their relatives. Frequent are the encroachments on the lives of law enforcement officers.

Specialized studies of the quality of criminal and legal protection make it possible to reveal some of the gaps that exist in the legislation. Thus, it is indicated in the literature that indication in the Art. 347 of the CC for a close relative as a victim should be replaced by the indication on a close person for a law enforcement officer [5, p. 14] in order to provide, in particular, the completeness of relations' protection, concerning the proper execution of the duties by law enforcement officers, from the influence (we talk about the attempt to influence on their legitimate service activities), which can occur through encroachments on the

property of a person, whose interests are essential for law enforcement officers;; and an encroachment on the lives of people close to him (not just «close relatives», as it is required by the current edition of this norm) [6, p. 15], except encroachments on the life of a law enforcement officer, should be criminalized in the Art. 348 of the Criminal Code. It is stated in other scientific studies that the Art. 345 of the CC «Threats or violence against a law enforcement officer» lawmakers lost the following form of committing a corresponding encroachment as a threat to law enforcement officers by kidnapping or imprisonment. It is hard to disagree with the idea that «this threat has the same high degree of public danger as those listed in the first paragraph of the Art. 345 of the CC of Ukraine» [7, p. 167].

The study of the current domestic and foreign legislation, analysis of scientific and theoretical sources makes it possible to talk about the fact that the limits of criminal and legal protection of law enforcement activities should be broadened in the future. In particular, contradiction in the wording of the section's title that provides criminal liability for crimes against law enforcement officers, and the content of its regulations points on this. According to V. O. Navrotskyi the authority – is a generally accepted meaning, impact. Therefore, «the orders and instructions of competent managing agencies are executed without additional review and discussion, unquestioningly» [8, p. 576]. Consequently, the authority of the institutions stated in the Section XV of the Special Part of the CC (public authorities, local self-governments and associations of citizens) – is one of the necessary preconditions underlying their ability to manage social processes in not in advance defined spheres of public life. However, their authority is inseparable from the authority of those who represent the appropriate authorities or self-governments. However, this section of the CC does not provide liability for encroachments that are directed exclusively against the authority of these subjects, including against law enforcement officers. Meanwhile, the history of criminal law and foreign legislation are aware of relevant encroachments and examples of their restrictions. These are, in particular, the norms on liability for abuses of law enforcement officers. So, an abuse as an illegal behavior degrades the honor and dignity of a person or his relatives, undermining the authority to other members of the society, affects self-esteem. Thereby, committed against a law enforcement officer it can affect his service and professional activity and change attitudes of others to the authority of a law enforcement agency, which he represents. Let's recall that V. I. Osadchyi has already suggested to criminalize an abuse against a law enforcement officer in connection with fulfillment by him the official duties, as well as a member of a public organization in protecting public order and state border or a soldier in connection with their activities on keeping public order [9, p. 27]. Foreign experience of the organization of criminal and legal protection of the honor and dignity of the representatives of the state indicated in favor of such a proposition: the Art. 226 of the Criminal Code of the Republic of Poland provides liability for the abuse of an official during or in connection with the fulfillment of official duties [10, p. 112]; the Art. 275 of the Penitentiary Code of the Republic of Estonia provides liability for libel on government officials and other persons performing duties to protect public order and liability for their abuse [11]. Abuse of a representative of the authorities is criminalized in the Art. 318 of the Criminal

Code of the Republic of Armenia [12], the Art. 320 of the Criminal Code of the Republic of Kazakhstan [13], the Art. 330 of the Criminal Code of the Republic of Tajikistan [14]. As we can see the legislator in many foreign countries evaluates more balanced public danger of psychological impact on the representatives of the authorities (including those who perform their duties in the field of guaranteeing public order and public safety) by abuses and libels. In this case, the criminal and legal protection is spread not only on providing basic bases (life, health, property) of the officials (including law enforcement agencies' officers), but also on the protection of their personal honor and dignity. We believe that this experience can be implemented into criminal legislation of Ukraine.

Conclusions and perspectives of further research. Summing up the results of the conducted study, it must be emphasized that the new era of social and political development of Ukraine checks on the strength a lot of state institutions, including national law enforcement system. However, the guarantee for the effectiveness of initiated reforms must be acknowledged finding and ensuring a balance between law enforcement officers' duties and their rights, including the right on the effective criminal and legal protection.

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Стаття надійшла до редакції 09.09.2017.

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КРИМІНАЛЬНО-ПРАВОВИЙ ЗАХИСТ ПРАЦІВНИКІВ ПРАВООХОРОННИХ ОРГАНІВ: СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ УДОСКОНАЛЕННЯ.

Проблема пошуку оптимальної моделі функціонування правоохоронної системи має концептуальне значення через те, що вона напряму пов'язана з удосконаленням існуючого стану справ у протидії злочинності. При цьому вирішальним в системі функціонування є саме удосконалення організаційної структури суб'єктів, а також захист їх працівників, у тому числі кримінально-правовими засобами.

Сама ідея про необхідність удосконалення кримінально-правового захисту, як головний компонент всього механізму протидії злочинності, на сучасному етапі розвитку суспільства і держави навряд чи викликати серйозні заперечення. Така постановка питання, на наш погляд, витікає з необхідності проведення запланованої системної реформи державного апарату в цілому, складовою частиною якого є система протидії злочинності. У цьому зв'язку, торкнувшись даного питання, не можна не звернути увагу на проблему реформування в глобальнішому масштабі. Йдеться про спроби оптимізувати структуроутворюючі елементи системи правоохоронних органів, що може призвести до руйнування існуючого крихкого балансу в системі.

Вирішення цих питань служить неодмінною умовою для реформування системи кримінальної юстиції і, зокрема, перерозподілу владних повноважень. З викладеним важко не погодитися, адже стосовно даної системи основним організаційним показником її діяльності виступає якість, що характеризує

здатність даної ланки своїми діями підтримувати об'єкт в ефективно функціонуючому стані. Зрозуміло, обидва аспекти (організаційний і функціональний) при цьому знаходяться в тісному зв'язку між собою. Разом з тим змішувати їх і підміняти один одним було б неправильно. На практиці це приводить до знеособлення захисних дій і розмитості механізму, загальному валу показників, що не відображають специфіки реального стану справ. Сам кримінально-правовий захист при цьому функціонуватиме в значній мірі в холосту, не забезпечуючи ні безпеку, ні позитивні зміни в динаміці й структурі злочинності. Проте парадокс в даному випадку полягає в тому, що зміни в нашій країні подекуди відбуваються за відсутності концептуального бачення проблеми, організаційного механізму її вирішення, а часом і фінансово-матеріальних ресурсів реалізації окремих нововведень. Сказане означає, що на практиці одна з істотних складових, на що повинен бути націлений механізм удосконалення, по суті, розпилена, розмита великою кількістю вживаних заходів, що не мають єдиного вектора застосування. Саме в цьому, на наш погляд, полягає одна з причин низької ефективності правоохоронної діяльності.

Ключові слова: правоохоронні органи, кримінально-правовий захист, працівники, удосконалення.

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УГОЛОВНО-ПРАВОВАЯ ЗАЩИТА СОТРУДНИКОВ ПРАВООХРАНИТЕЛЬНЫХ ОРГАНОВ: СОВРЕМЕННОЕ СОСТОЯНИЕ И ПЕРСПЕКТИВЫ СОВЕРШЕНСТВОВАНИЯ.

Рассмотрены проблемы поиска оптимальной модели уголовно-правовой защиты сотрудников правоохранительных органов, а также предложены пути совершенствования существующего положения дел в противодействии преступности. При этом сделан акцент на совершенствовании организационной структуры субъектов, а также защите их сотрудников, в том числе уголовно-правовыми средствами.

Ключевые слова: правоохранительные органы, уголовно-правовая защита, сотрудники, совершенствование.