JURNAL CITA HUKUM (Indonesian Law Journal)
FSH UIN Syarif Hidayatullah Jakarta
Vol. 11 No. 3 (2023), pp., DOI:

Legal Regulation Experience of Individual Countries of The European Region Regarding Implementation of International Standards for Ensuring Criminological and Criminal-Legal Protection of Justice

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10.15408/jch.v10i2.27811

Abstract. The article describes experience of Germany and Austria in implementing international standards for ensuring criminological and

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Received: October 10, 2023, revised: December 30, 2023, accepted: August 10, 2024, Published: August 30, 2024.

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criminal-legal protection of justice. A set of general scientific and specific scientific research methods were used in the preparation of this article in order to define special subjects authorized to carry out such criminological activities, peculiarities of their interaction with the police and other law enforcement agencies, to reveal the content of legislative mandates regarding organization and functioning of the Court Security Services and their counterparts, as well as that of the legislation on criminal liability for criminal offenses against justice. The purpose of this work is to determine promising directions for increasing efficiency of implementing criminological and criminal-legal protection of justice by authorized subjects in Ukraine, which has become especially important in the sphere of ensuring national security under martial law, taking into account positive experience of such European region countries as Germany and Austria regarding implementation of international standards recognized by the international community in this area. Based on the results of the research, prospective directions for improving the activity of the Court Security Service of Ukraine, its interaction with the National Police and other subjects of the state sector and non-state sector in provision of criminological protection of justice, as well as the legislation of Ukraine on criminal liability for criminal offenses against justice, taking into account experience of Germany and Austria regarding implementation of standards recognized by the international community in this area.

Key words: Criminological Protection of Justice; Court Security; Court Security Service; National Police of Ukraine; Criminal Offenses Against Justice.

Pengalaman Regulasi Hukum Negara-negara di Kawasan Eropa Mengenai Penerapan Standar Internasional untuk Memastikan Perlindungan Kriminologi dan Hukum Pidana atas Keadilan

Abstrak. Artikel ini menguraikan pengalaman Jerman dan Austria dalam menerapkan standar internasional untuk memastikan perlindungan hukum pidana dan kriminologis terhadap keadilan. Seperangkat metode penelitian ilmiah umum dan khusus digunakan dalam penyusunan artikel ini untuk menentukan subjek khusus yang berwenang untuk melaksanakan kegiatan kriminologis tersebut, kekhasan interaksi mereka dengan polisi dan lembaga

penegak hukum lainnya, untuk mengungkap isi mandat legislatif mengenai organisasi dan fungsi Layanan Keamanan Pengadilan dan mitra-mitranya, serta undang-undang tentang tanggung jawab pidana atas pelanggaran pidana terhadap keadilan. Tujuan dari karya ini adalah untuk menentukan arah yang menjanjikan untuk meningkatkan efisiensi penerapan perlindungan hukum pidana dan kriminologis terhadap keadilan oleh subjek yang berwenang di Ukraina, yang telah menjadi sangat penting dalam bidang memastikan keamanan nasional di bawah darurat militer, dengan mempertimbangkan pengalaman positif negara-negara kawasan Eropa seperti Jerman dan Austria mengenai penerapan standar internasional yang diakui oleh masyarakat internasional di bidang ini. Berdasarkan hasil penelitian, arah prospektif untuk meningkatkan aktivitas Dinas Keamanan Pengadilan Ukraina, interaksinya dengan Kepolisian Nasional dan subjek lain dari sektor negara dan sektor non-negara dalam penyediaan perlindungan kriminologis terhadap keadilan, serta undang-undang Ukraina tentang pertanggungjawaban pidana atas tindak pidana terhadap keadilan, dengan mempertimbangkan pengalaman Jerman dan Austria terkait penerapan standar yang diakui oleh masyarakat internasional di bidang ini.

Kata kunci: perlindungan kriminologis terhadap keadilan; keamanan pengadilan; Dinas Keamanan Pengadilan; Kepolisian Nasional Ukraina; tindak pidana terhadap keadilan.

Опыт правового регулирования отдельных стран Европейского региона по внедрению международных стандартов обеспечения криминологической и уголовно-правовой защиты правосудия

Аннотация. В статье рассмотрен опыт Германии и Австрии по внедрению международных стандартов обеспечения криминологической и уголовно-правовой защиты правосудия. При подготовке статьи использован комплекс общенаучных и частнонаучных методов исследования с целью определения специальных субъектов, уполномоченных на осуществление такой криминологической деятельности, особенностей их взаимодействия с полицией и другими правоохранительными органами, раскрытия содержания законодательных полномочий по организации и функционированию служб охраны судов и их аналогов, а также законодательства об уголовной ответственности за уголовные преступления против правосудия. Целью данной работы является определение перспективных направлений повышения эффективности осуществления криминологической и уголовно-правовой защиты

правосудия уполномоченными субъектами в Украине, что стало особенно актуальным в сфере обеспечения национальной безопасности в условиях военного положения, с учетом позитивного опыта таких стран европейского региона, как Германия и Австрия, по внедрению международных стандартов, признанных мировым сообществом в этой сфере. По результатам исследования определены перспективные направления совершенствования деятельности Службы охраны судов Украины, ее взаимодействия с Национальной полицией и другими субъектами государственного и негосударственного секторов в обеспечении криминологической защиты правосудия, а также законодательства Украины об уголовной ответственности за уголовные преступления против правосудия с учетом опыта Германии и Австрии по внедрению признанных международным сообществом стандартов в этой сфере.

Ключевые слова: Административно-правовой режим; Законодательство; Вопросы государственного управления; Борьба с терроризмом; Война в Украине.

A. INTRODUCTION

Security management in the sphere of justice remains an unchanged priority for many countries of the world, as well as an important topic of international forums (Report of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice 2021) to ensure independence of judicial bodies (The main principles of independence of judicial bodies, 1985).

It is important that two significant groups of priority tasks have coincided for Ukraine at the moment: the first one is related to the state's course towards European and Euro-Atlantic integration, which brought the urgent need for judicial reform to the agenda (Strategy for development of the justice system and constitutional judiciary for 2021–2023; On speeding up judicial reform and overcoming manifestations of corruption in the justice system in 2023); the second one relates to ensuring the protection of justice in the special conditions of martial law and the de-occupation of the territories of Ukraine, which places an additional burden on the newly created Judicial Security Service and other entities authorized to perform this criminological function and requires effective and coordinated measures to be applied. The above points determine relevance of the scientific and theoretical understanding of the experience acquired by the European region

countries in ensuring protection of justice for further determination of promising directions in increasing the efficiency of implementing the criminological function of protection of justice by authorized subjects in Ukraine which has become especially important in the sphere of ensuring national security in conditions of martial law, respectively to the standards recognized by the progressive international community in this area.

First of all, let's note that there is no unified international document on the security of justice. However, certain elements of the standards for ensuring security of justice were reflected in international documents (which differ in their legal force and scope) dedicated to the standards of independence of the judiciary and judges. In particular, they were reflected in paragraphs 2.11 of the Basic principles of independence of judicial bodies, approved by resolutions 40/32 and 40/146 of the UN General Assembly (1985) as "the prohibition of undue influence, inducements, pressure, threats or interference in the activities of judicial bodies during decision of cases transferred to them from any side and for any reason", "guarantees of the security of judicial bodies" (The main principles of independence of judicial bodies 1985), in point 5 of the Recommendations on the effective implementation of the Basic Principles on the independence of judicial bodies, adopted by the UN Economic and Social Council resolution 1989/60 and approved by the UN General Assembly resolution (1989) as "provision by the state of the resources necessary to provide judges with a decent level of personal security" (Recommendations on the effective implementation of the Basic Principles regarding independence of judicial bodies 1989); in Article 8 of the Universal Charter of the Judge, adopted by the Central Council of the International Association of Judges (1999) as "Security of office" (The Universal Charter of Judges, 1999) etc.

Taking into account the fact that the specified international documents were the subject of our consideration in the previous publication, without resorting to a re-analysis of their content, as well as of the different points of view of scientists on this issue and the justification of their own position, we note that the main special international principles of ensuring security of justice should include the following: a) ensuring personal safety of judges; b) ensuring various levels of security in the buildings

(premises/territories) of courts (depending on the type of cases considered), as well as ensuring zonal security measures; c) provision by the state of adequate resource support for measures related to ensuring a decent level of personal security for judges; d) prohibition of undue influence on judges, inducements, pressure, threats or interference in the activities of judicial bodies during the resolution of cases assigned to them; e) ensuring safety of judges' private life and confidentiality; f) ensuring security and protection of data systems and organizational systems, including electronic justice (Khrystova, 2023: 239).

In Ukraine, in 2019, a new state body was created in the justice system, accountable to the Supreme Council of Justice and controlled by the State Judicial Administration of Ukraine – the Court Security Service (On the judiciary and the status of judges in 2016); this body was created for provision of personal security of judges, members of their families and court employees, for protection and maintenance of public order in courts, as well as for ensuring safety of participants in court processes. However, if necessary, during the performance of tasks and functions entrusted to the specified special entity, other such entities (law enforcement subjects) may be additionally involved; in particular, these are such entities as the National Police of Ukraine, the National Guard of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine; and the procedure of interaction with these entities is regulated by a joint order (On the approval of the Procedure for interaction of the Court Security Service with the National Police of Ukraine, the National Guard of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine during performance of tasks and functions by the Court Security Service 2020).

The presented analysis of the experience of individual countries of the European region in this area was carried out based on the author's understanding of the provision of criminological protection of justice as an activity for the formation of an effective system of countering criminogenic influences and criminal offenses against justice in order for ensuring its independence and for practical affirmation of the rule of law principle during judicial proceedings, in particular, regarding granting of the following powers to the subject (entity) determined

for ensuring security of justice: to stop and prevent offenses and crimes, to perform interaction with other subjects and entities in the system of combating criminal offenses against justice; perform early detection and countermeasures against possible threats (Khrystova, 2022: 192), based on studying relevant international documents, foreign and Ukrainian legislation.

B. METHODS

The research is based on the groundwork of foreign and Ukrainian researchers on methodological approaches to ensuring criminological security, criminal-legal protection of justice, as well as analysis of the competence of the Court Security Services and their counterparts in terms of the effectiveness of the tasks assigned to them. In this article, we will consider the experience of implementing international standards for provision of criminological and criminal-legal protection of justice in such countries of the European region as Germany and Austria.

The methodological basis of this work is presented as a set of general scientific and special scientific methods of cognition. In particular, with the help of the dialectical method, the subjects authorized to ensure security of justice in various countries of the European region, as well as peculiarities of their interaction with the police and other law enforcement agencies, were determined; the use of the special legal method of cognition made it possible to reveal the content of legislative mandates regarding organization and functioning of the Court Security Services and their counterparts, and thanks to the method of comparative jurisprudence, their similarities and differences were revealed. Research of German and Austrian legislation on criminal liability for criminal offenses against justice was also carried out using the comparative legal method.

C. RESULT AND DISCUSSION

First of all, it should be noted that in the European region countries, the need to intensify cooperation between police forces and Security staff in courts is constantly being updated. In particular, in 2023 alone, several incidents related to security occurred in German courts, for example, as a result of two cases

of escape of defendants from the courthouse in Bavaria, the Minister of Justice ordered to perform a comprehensive security review of all courts, and also emphasized the need to review operational concepts of security in cooperation with the police (Friz, 2023). In the same year, during the announcement of the sentence at the Ludenscheid District Court, the defendant jumped over the barrier to the judge's desk and attacked the judge, knocking him to the ground, biting his hand and trying to hit him (Tylchyk *et al*., 2022).

This attack was stopped by police officers who were present in the courtroom as witnesses in the case under consideration (Krumm, 2023). A similar high-profile extraordinary incident happened in Ukraine this year. In particular, in the Shevchenkivskyi District Court of Kyiv, the accused made an attempt to escape from custody in the court premises with the help of an explosive device, as a result of the explosion he died on the spot, and two law enforcement officers were injured (About the extraordinary event that occurred on 05 July, 2023 in the Shevchenkivsky District Court of Kyiv and regarding the duration of the trial). At the same time, it should be emphasized that it was possible to prevent human casualties among the meeting participants, judges, staff members, and court visitors thanks to the coordinated actions of representatives of the National Police, special-purpose divisions, and representatives of the Court Security Service (Salnikov, 2023).

Moving on to the analysis of the experience acquired by the countries of the European region regarding implementing standards of ensuring the security of justice recognized by the international community, it should be noted that in most of these countries execution of this criminological function is entrusted to special entities, - Court Security Services and their counterparts, each of them having its own features of organization and functioning (Kobrusieva *et al*., 2021).

Thus, in Germany, the task of maintaining security and order in court buildings, including the corresponding associated enclosed outdoor areas, is carried out by the Judicial Sergeant Service. In addition, employees under a collective agreement (for example, in the courts and prosecutors' offices of the state of Brandenburg (Chapter XI of the Service Regulations for Sergeant

Service 2011) and employees of the general judicial service can be involved in the performance of security tasks and equated to the court security services, (e.g. in accordance with the content of paragraph 28 “Powers in relation to prisoners and detainees” and paragraph 29 “Application of direct coercion” of the Justice Act in the state of Berlin (Justice Act in the state of Berlin, 2021).

Organization and functioning of the above mentioned service is regulated at the level of the law of the respective federal state (by the Act on the Powers of the Sergeant Service, adopted by the Parliament of the state of Brandenburg 2019) and/or by a decree, issued by the minister of justice of the respective state (for example, Service Regulations for the Sergeant’s Service 2011), taking into account the requirements of the Constitution of the federal state on the protection of personal rights and data protection, as well as by relevant provisions of federal legislation, for example, the Law Regulating the Status of Civil Servants in the Federal States (The Law Regulating the Status of Civil Servants in the Federal States, 2008).

For comparison, in Ukraine, in the absence of the law “On the Court Security Service” the legal status of this service is regulated by separate provisions of such normative legal acts as the Law of Ukraine “On the Judiciary and the Status of Judges” (Chapter 4 “Court Security Service” of Section XI “Organizational Support to the Activities of Courts”) (On the Judiciary and the Status of Judges, 2016); Regulation “On the Court Security Service”, approved by the Decision of the Supreme Council of Justice (Regulation on the Court Security Service, 2019); as well as the Laws of Ukraine “On the National Police” (in terms of the use of coercive police measures, etc.), “On security activities”, “On civil service”, “On trade unions, their rights and guarantees of activity”, “On prevention of corruption” (Horbalinskiy *et al*., 2023).

According to the results of the analysis of the legal support of the organization and functioning of special entities authorized to carry out criminological activities to ensure security of justice carried out within the scope of this research, it is necessary to note the positive experience of Germany regarding the regulation at the legislative level of the legal status of the Security staff of the Judicial Sergeant Service and the general judicial service, in terms of their performance of security tasks as law enforcement officers,

as well as the determination of their powers at the legislative level (for example, in Section 5 “Security and Order” of the Law on Justice in the state of Berlin (Justice Act in the state of Berlin 2021); subparagraph 1.1. (b) Paragraph 1 “Tasks” of the Service regulations on the service of a sergeant of the Ministry of Justice of the state of Rhineland-Palatinate (Service regulations on the service of a sergeant of the Ministry of Justice of the state of Rhineland-Palatinate 2021) etc.

For example, in Ukraine, the issue of the legal status of Court Security Service staff members still remains without a proper solution, which has been repeatedly emphasized by scientists who devoted their works to the research of this issue (Titarenko, 2021), as well as by the leadership of the Service, with proposals made to include it in the list of law enforcement agencies provided for in Part 1 of Article 2 of the Law of Ukraine “On State Protection of Court Employees and Law Enforcement Agencies”, supplementing it in the prescribed manner with the text of the appropriate content (Matviichuk *et al*., 2022).

Also worthy of special attention is the experience of the legal regulation of the leaders’ obligation to hold quarterly meetings of all service employees to discuss the current regulations on the sergeant’s service, analyze the practice of application of these regulations, and deepen existing knowledge (Chapter IX “Service Meetings” of the Service Regulations for Sergeant Service of the state of Brandenburg (Service Regulations for Sergeant Service, 2011).

The experience of development and presentation of the framework concept of security for courts and law enforcement agencies by the Berlin Senates in 2018 should be taken as a positive point (Zadyraka *et al*., 2023). (Framework concept of security for courts and law enforcement agencies in Berlin 2018); this concept developed with the involvement of both representatives from the specified spheres of activity and independent experts allows to make fundamental, innovative decisions to solve important issues for ensuring security of Justice (The response of the Berlin Senate to the written request of MP Mike Penn 2019). In particular, it is noteworthy that the stated security concept is based on the design characteristics of court buildings (for example, the size and risks associated with their

use), proposed are minimum safety standards for the construction of court buildings and government bodies, as well as for the entrance control, alarm systems, emergency action plans, court sergeant's service, etc. The implementation of this Concept is monitored by a steering committee for judicial security issues, which updates it and responds to changes in the security situation in the justice system of Berlin (The response of the Berlin Senate to the written request of MP Mike Penn 2019).

In Austria, the entities specifically authorized to carry out security checks in court buildings are the control bodies, represented by both court employees appointed for this purpose by the court building administrator, as well as by employees of security companies entrusted by the heads of higher regional courts to carry out security inspections under the contract approved by the Federal Minister of Justice (§§ 3, 9 Court Organization Act, 1896).

It is worth noting that the first subsection of the first section of the Austrian Court Organization Act is dedicated to security in court buildings and external court proceedings, which thereby emphasizes its importance for the organization of the administration of justice. Also worthy of attention is the regulation at the legislative level of the specifics of documenting and registering attacks and serious threats against justice and prosecutor's offices, as well as other employees working in the judicial system and participants in court proceedings, as well as any other form of violent confrontation, damage to property in a court or prosecutor's office and in the adjacent territories (§ 15 Court Organization Act 1896). It also states that more detailed requirements for security standards in court buildings should be regulated by the Federal Minister of Justice in security instructions (Leheza *et al*., 2022).

Speaking about the criminal-legal protection of justice, it should be noted that the German Criminal Code does not have a separate section dedicated to such norms. They are scattered in different sections of its Special Part. Thus, the norms on criminal liability for acts that interfere with justice are contained in the following sections: the seventh one "Offences against public order", the ninth one "False unsworn testimony and perjury", the tenth one "Casting false suspicion", the twenty-first one "Aiding

after the fact and handling stolen goods" and the thirtieth one "Offenses committed in public office" (Law of Germany, 1998). For comparison, in the Special Part of the Criminal Code of Ukraine, there is a separate chapter XVIII "Criminal offenses against justice" (Law of Ukraine, 2001).

Regarding the differentiation of criminal responsibility both for criminal offenses against justice and for corruption criminal offenses committed by a special subject - judges, the norms of section 332 "Taking bribes" of the Special Part of the German Criminal Code are worth noting; according to the second part of this section judges are subject to a more severe punishment in the form of imprisonment for a term of one to ten years (Law of Germany, 1998).

In turn, the criminal liability of judges for violating the law to the benefit of the parties or detriment of the parties during the conduct or resolution of a legal case is provided for in section 339 "Judicial perversion of justice" of the thirtieth Chapter "Offenses committed in public office" of the Special Part of the German Criminal Code. For the commission of a mentioned act, punishment is prescribed in the form of deprivation of liberty for a term of one to five years (Law of Germany, 1998).

For comparison, in Ukraine, Article 375 "Provision by a judge (judges) of a knowingly unjust sentence, decision, ruling or resolution" of the Special Part of the Criminal Code, which determines responsibility for taking such actions for selfish motives and other personal interests, is excluded (Law of Ukraine, 2001), since the Constitutional Court of Ukraine recognized it as inconsistent with the Constitution of Ukraine (it is unconstitutional), creating risks and opportunities to influence judges due to the vagueness and ambiguity of the disposition (Decision of the Constitutional Court 2020). Thus, today in Ukraine, the issue of criminal liability of a judge for a notoriously unjust decision has remained without proper legislative regulation. Currently, the agenda of the Verkhovna Rada of Ukraine includes four draft laws (No. 3500; No. 3500-1; No. 3500-2; No. 3500-3) on making relevant changes to the Criminal Code (On the agenda of the tenth session of the Verkhovna Rada of Ukraine of the ninth convocation 2023).

In the Criminal Code of Austria, in contrast to the criminal legislation of Germany, the rules on responsibility for criminal offenses against justice are allocated to a separate (twenty-first) section “Criminal acts against justice” (Law of Austria, 1974). When it comes to the experience of Austria regarding the criminal-legal protection of justice, a positive point in our opinion consists in establishment of the responsibility (in § 301 of the Criminal Code) for prohibited publication of a message about the content of a court hearing, which was closed to the public, about the discussion of court proceedings in a printed edition, on the radio or in another way accessible to the general public (Law of Austria, 1974).

D. CONCLUSIONS

According to the results of analyzing experience of individual countries of the European region (Germany and Austria) regarding the implementation of international standards for ensuring criminological and criminal-legal protection of justice, the following can be stated:

- in the mentioned countries execution of this criminological function is entrusted to specially authorized services in the system of the Ministry of Justice. In particular, in Germany it is the Judicial Sergeant Service “Justizwachtmeisterdienstes”, which can involve both court sergeants and security staff equivalent to them under a collective agreement (vergleichbare tariflich Beschäftigte), as well as employees of the general judicial service (“allgemeinen Justizdienstes”), and in Austria, these are the control bodies “Kontrollorgane”, represented by both court employees and employees of security companies;

- in Germany, there is a separate law dedicated to legal regulation of the status of these services and their employees, and a framework concept of security for courts and law enforcement agencies has been implemented. In Austria, the powers and tasks of control bodies, as well as security measures in court buildings and external court proceedings are defined in the Court Organization Act;

- In contrast to the criminal legislation of Austria the Criminal Code of Germany does not have a separate section

dedicated to criminal acts against justice. Norms on responsibility for such acts are scattered in different sections of its Special Part;

- in general, a comparative analysis of the criminal legislation of Germany, Austria and Ukraine demonstrated that different types and sizes of punishments were established for certain similar criminal offenses against justice, which is due to the state policy of these countries regarding the criminal-legal protection of justice.

In order to improve activity of the Court Security Service of Ukraine, taking into account the standards of ensuring security of justice recognized by the international community, we consider that it would be prospective to introduce the following points of foreign experience to the national legislation:

- development (in cooperation with subjects and independent experts involved in the implementation of the criminological function of ensuring security of justice) and implementation of the Concept of ensuring security and countering criminal offenses against justice in Ukraine this concept should presuppose determination of minimum security standards for construction of court buildings, ensuring their various levels security, including alarm systems, security systems, data protection systems and organizational systems, including electronic justice, as well as zonal security measures, emergency action plans, standards for training and advanced training of employees of the Court Security Service, their interaction with employees of the National Police, the National Guard, the State Emergency Service of Ukraine, the Security Service of Ukraine. In addition, in order to monitor changes in the security situation and promptly respond to such changes (at the local, regional, and national levels), it is advisable to create a separate subcommittee on justice and security of judicial activities within the structure of the Verkhovna Rada Committee on Legal Policy and Justice considering issues of judicial system;

- regulation at the legislative level of the status of the Court Security Service and its employees as one of the bodies with law enforcement functions and the classification of its staff as employees of a law enforcement agency;

- preservation of the monopoly on issues of ensuring criminological security of justice by a special entity - the Court

Security Service, but with the possibility for other entities of the state and non-state sectors to be involved in this activity;

As for the improvement of the criminal-legal provision of the security of justice, within the existing new judicial reform, which lasts from 2021 to 2023, it should be considered appropriate to provide for the appropriate differentiation of criminal liability in the current Criminal Code of Ukraine both for criminal offenses against justice and for corruption criminal offenses committed by a special subject - judges.

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