

CLASSIFICATION FEATURES OF CRIMINAL OFFENSES AGAINST THE AUTHORITY OF STATE PROTECTION DEPARTMENT OF UKRAINE

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Key words:

State Protection Department of Ukraine, criminal offenses against servicemen and employees of State Protection Department, criminal legal protection, authority, state protection, state security activities, classification

Problem statement. Effective performance of duties and tasks by servicemen of State Protection Department of Ukraine (hereinafter - SPD) in the process of state protection requires its proper criminal protection. After all, in the context of the Joint Forces Operation in the east of our country, the growing volume of tasks set by the state leadership before SPD of Ukraine, there is a need to investigate the problem of modern criminal law protection of SPD authority. This problem is not accidental. Let's remember at least the resonant murder of one of the heads of the Main Intelligence Directorate of the Ministry of Defense of Ukraine Maksym Shapoval (former serviceman of the SPD of Ukraine), which was committed on June 27, 2017 in Kyiv¹. Thus, the real threats to the life and health of servicemen and employees of SPD of Ukraine are constantly emerging. Therefore we will try to consider modern criminal law protection of authority of SPD of Ukraine.

Recent research and publications analysis. In Ukraine, similar or identical topics were considered in the works of S.V. Antonov, S.V. Vladimirenko, V.A. Gorbunov, D.Yu. Gurenko, I.M. Zalyalov, I.M. Izai, M.M. Komarnytsky, VM Mamchur, M.A. Mykytyuk, V.I. Osadchy, M.V. Syploki, V.O. Chayka, I.M. Chub, S.S. Yatsenko. Paying tribute to the work of these scientists, we note that a number of relevant issues remain controversial and in need of further research.

The purpose of the article to analyze the provisions of the current Criminal Code of Ukraine in terms of regulation of liability for criminal offenses against servicemen of the State Protection Department of Ukraine.

Presentation of the main material. In every country, the statesmen who exercise the powers of state representatives and head various branches of government need special protection. In accordance with the law² the State Protection Department of Ukraine (hereinafter - SPD) was established to carry out this type of security activity in Ukraine in accordance with the law. This law approved the structure and number of security units of public authorities, officials and security facilities. The procedure for the protection of public authorities and officials is determined by a separate law. According to it, state protection of state authorities of Ukraine and officials is a system of organizational and legal, regime, operational and investigative, engineering and technical and other measures carried out by specially authorized state bodies to ensure the proper functioning of state authorities of Ukraine, security officials and facilities defined by this law³.

State protection is provided to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine and the Supreme Court of Ukraine.

State guarding is also provided for heads of foreign states, parliaments and governments and members of their families, foreign ministers and heads of international organizations (other officials of international organizations) who arrive in Ukraine or are on its territory as part of official delegations or visit Ukraine at the invitation of public authorities. The list of officials of international organizations subject to state protection is determined by the President of Ukraine. Regarding the protection of such persons,

¹ Burdyga I. What is known about the murder of a military intelligence colonel in Kyiv. Deutsche Welle, June 27, 2017. URL: <http://www.dw.com/uk/what-knows-about-the-killing-of-a-Colonel-of-Military-Intelligence-in-Kiev/a-39444700-0>.

² On the General Structure and Number of the Department of State Protection of Ukraine: Law of Ukraine of 17.11.2005 № 3106-IV.VVR. 2006. № 2 - 3. P. 50.

³ On State Protection of Public Authorities of Ukraine and Officials: Law of Ukraine of March 4, 1998. URL: <http://zakon3.rada.gov.ua/laws/show/160/98-бп>

the President of Ukraine issues a relevant decree⁴. The decree establishes that the Department of State Protection of Ukraine provides state guarding in case of arrival in Ukraine or stay on its territory of the following leaders of international organizations, such as Secretary General of the United Nations (UN), Secretary General of the Organization for Security and Cooperation in Europe (OSCE), Secretary General of the North Atlantic Treaty Organization (NATO), Secretary General of the Council of Europe, President of the European Commission and President of the International Criminal Court⁵.

At the same time, it should be noted that the current criminal legislation does not directly contain norms that would provide for liability for criminal offenses against the authority of SPD. The law emphasizes encroachments on statesmen, law enforcement officers or other persons that perform security functions, persons which are involved in criminal proceedings, judges and their relatives who have been granted protection, etc. These *corpus delicti* are located in different sections of the Special Part of the Criminal Code of Ukraine. In these criminal offenses, the legislator sees not only the encroachment on the life, health and property of an individual as a member of society, but also on the order of government, the fundamental principles of the Ukrainian state. However, the application of these norms is complicated by the certain provisions of current legislation interpretation problems.

Therefore, it is quite logical that the subject of our study is the criminal offenses against the authority of SPD of Ukraine.

Based on this, it should be noted: first, it is impossible to limit the criminal protection of general constitutional rights and freedoms (for example, life or health) of servicemen and employees of SPD of Ukraine;

- secondly, the criminal law protection of the authority of SPD of Ukraine is carried out in connection with the performance of certain duties by employees and servicemen of SPD. However, these individuals have different official duties. Therefore, special legal protection of such persons, in accordance with the provisions of the Law of Ukraine "On State Protection of Public Authorities of Ukraine and Officials" of March 4, 1998, due to their state protection of public authorities of Ukraine, security of officials and objects defined by the specified normative act. In our opinion, the wording of the relevant norms of the Criminal Code of Ukraine, which provide criminal liability for certain actions against law enforcement officers "in connection with the performance of official duties", needs to be improved, because the performance of such duties is not always identical to the performance of state protection by servicemen and employees of SPD. That is, we are interested in special criminal law norms that protect the authority of SPD of Ukraine (main direct object) through the criminal law protection of rights and freedoms (mandatory additional direct object) of servicemen and employees of SPD as special victims of criminal offenses;
- thirdly, a special victim of a criminal offense is not only a serviceman, but also an employee of SPD of Ukraine. In accordance with Part 1 of Art. 11 of the Law of Ukraine "On State Protection of Public Authorities of Ukraine and Officials" of March 4, 1998 SPD of Ukraine is a state law enforcement agency of special purpose⁶. That is, the SPDU servicemen should be referred to the criminal law category "law enforcement officer". The issue of criminal legal protection of SPDU remains open. The answer to this question is given by Part 5 of Article 20 of the Law of Ukraine "On State Protection of Public Authorities of Ukraine and Officials" of March 4, 1998: "Employees of the SPD of Ukraine, whose functional responsibilities are not directly related to the implementation of state protection in relation to public authorities of Ukraine, security of officials and facilities specified by this Law, in case of their involvement in the implementation of state protection, enjoy the rights that are provided to servicemen of the SPD of Ukraine in accordance with paragraphs 1, 2, 4, 5 of Article 18 of this Law. In these cases, they are subject to the rights and guarantees provided for servicemen of SPD of Ukraine"⁷. That is, an SPDU employee during the implementation of state protection is an employee of a law enforcement agency;
- fourth, a special place is occupied by criminal offenses committed by SPD servicemen against the same persons. This category of criminal offenses against the procedure established by law for the conduct or military service is assigned to another legal category "military criminal offenses"⁸.

⁴ On Implementation of State Protection of Heads of International Organizations Arriving in Ukraine or Staying on its Territory: Decree of the President of Ukraine of 21.06.2006 № 563/2006 // DB "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL:<http://zakon.rada.gov.ua/laws/show/563/2006>

⁵ Siyploki M.V. Criminal and legal protection of security activities in Ukraine: monograph. Kharkiv: Panov, 2019. P.61.

⁶ On the General Structure and Number of the Department of State Protection of Ukraine: Law of Ukraine of 17.11.2005 № 3106-IV.VVR. 2006. № 2 - 3. P. 50.

⁷ On the General Structure P. 50.

⁸ Legal principles of interaction of servicemen of State Protection Department of Ukraine with representatives of mass media: textbook / Gorova OB etc. Uzhhorod: RIK-U. 2021. p.157-158.

Considering the issue of classification of criminal offenses against the authority of SPD, it is necessary to determine what exactly is meant by the classification of criminal offenses. In this regard, Professor L.N. Kryvochenko noted: "The very concept of crimes' classification lies in the basis of the content of certain crimes' categories, its qualities, features, relationships, criminal legal consequences. However, this general concept cannot be given without taking into account the peculiarities of classification in general as a specific method of research, as a method of objects' cognition to be classified, without establishing general laws of construction of any classification, its logical basis... Classification in general is a certain systematization of knowledge about the objects to be classified, or a systematization of the objects themselves (objects, qualities). However, systematization is only the external side of the classification (therefore, the classification cannot be reduced to a simple systematization). According to its content, classification is a stage of knowing the essence of the objects to be classified, in establishing their objective features"¹.

Any classification must have some theoretical and practical significance. "Classification is the first and most important step that a researcher of any broad and diverse group of phenomena must take as a method of study, classification has a double meaning for scientific research: from the outside - it is a technique that contributes to the study of system and order; from the inside - it is a technique that determines the completeness and correctness of the study conclusions"².

The classification of crimes against state security activities must meet the following classification criteria:

- 1) its classification should be based on a single classification criterion; in each case there are several important criteria for classification, such criteria are the type of object of the crime, the subject of the crime, the method of crime committing, etc.;
- 2) whatever categories these crimes belong to, they must be within the general concept of the crime, its qualities and consequences; in addition, these crimes in general should give an idea of the general concept of the crime and its features;
- 3) each category of crimes must have its own scope, its own specifics; the meaning of each category of crimes must be unambiguous; the range of criminal legal consequences of each category of crimes must be determined;
- 4) classification must have a certain sequence of categories of crimes; this sequence should be such as to reveal the patterns of crimes' categories creation;
- 5) classification should be clear, have understandable grounds for classification³.

We believe that these rules should be followed when considering the classification of criminal offenses against the SPD authority. Violations of the established procedure for state protection can be committed both "from outside" and "from within", that is it can be committed by servicemen and employees of SPD, as well as other persons. Motive and purpose allow us to divide the following criminal offenses into two types: criminal offenses committed against the relevant officials ("outside") in connection with the performance of their official duties (Articles 342, 343, 345, 347, 348, 349, 402-406, 410-412, 414, 415, 418, 420-421, 423-426, 431 of the Criminal Code of Ukraine), and other criminal offenses that are not related to the official activities of such persons.

In turn, according to the subject, such criminal offenses are divided into: criminal offenses committed ("from within") by special entities - servicemen of SPD of Ukraine (Articles 402-406, 410-412, 414, 415, 418, 420-421, 423-426, 431 of CCU) and criminal offenses committed by other entities (not necessarily by servicemen of SPD of Ukraine).

Obviously, the subject of meticulous analysis of further research should be criminal offenses that directly encroach on the authority of the state protection subject (SPD of Ukraine). The norms that provide for liability for such encroachments are provided for in Section XV of the Criminal Code of Ukraine. The generic object of such criminal offenses is the authority of state bodies, the specific object is the authority of law enforcement agencies, the main direct object is the authority of state protection subject.

Determining the list of criminal legal norms that establish liability for encroachment on the authority of state protection subject, it should be noted that these are: Part 2, 3 of Art. 342, Part 1,2 Article 343, Parts 1-4 of Art. 345, Part 1, 2 of Article 347, Art. 348, Art.349 of Criminal Code of Ukraine. The analysis of obligatory additional direct objects of criminal offenses which are put under legal protection by the specified norms, allows to offer their list: 1) the life of a law enforcement officer (Part 2 of Article 347, Article 348 of the Criminal Code of Ukraine); the life of a close relative of a law enforcement officer (Part 2 of Article 347, Article 348 of the Criminal Code of Ukraine); 2) health of a law enforcement officer (Part 3 of Article

¹ Krivochenko L.N. Classification of crimes: monograph. Kharkiv: Jurid. Inst., 1979. P.5.

² Poznyshev S.V. Questions of doctrine of punishment: monograph. M.: T. Neumann Printing House, 1904. P.17.

³ Krivochenko L.N. Classification of crimes: monograph. Kharkiv: Jurid. Inst., 1979. P.14

342, Part 1-4 of Article 345, Part 2 of Article 347, Article 348 of the Criminal Code of Ukraine); health of a close relative of a law enforcement officer (parts 1-4 of Article 345, part 2 of Article 347, Article 348 of the Criminal Code of Ukraine); 3) the will, honor and dignity of a law enforcement officer (parts 2, 3 of Article 342, parts 1, 2 of Article 343, Article 349 of the Criminal Code of Ukraine); will, honor and dignity of a close relative of a law enforcement officer (parts 1, 2 of Article 343, Article 349 of the Criminal Code of Ukraine); 4) property of a law enforcement officer (Part 1 of Article 345, Part 1, 2 of Article 347 of the Criminal Code of Ukraine); property of a close relative of a law enforcement officer (Part 1 of Article 345, Part 1, Article 2 of Article 347 of the Criminal Code of Ukraine).

Conclusions. Summarizing the above, we note: first, a serviceman and an employee of the State Protection Department of Ukraine during the implementation of state protection are employees of law enforcement agencies; secondly, criminal offenses committed against the rights and freedoms of servicemen and employees of SPD of Ukraine are divided according to objective and subjective elements (signs) - the generic object of criminal offenses, purpose, motive and subject of criminal offenses (Articles 342, 243, 345, 347, 348, 349 of the Criminal Code of Ukraine); thirdly, encroachments on the established procedure for the implementation of state protection of SPD can be committed both "from outside" and "from within". The criminal offenses committed against the relevant officials ("outside") in connection with the performance of their official duties may include - Art. Art. 342, 343, 345, 347, 348, 349, 402-406, 410-412, 414, 415, 418, 420 - 421, 423 - 426, 431 of the Criminal Code of Ukraine and other criminal offenses not related to the official activities of such persons. Criminal offenses committed ("from within") by special entities - servicemen and employees of SPD of Ukraine may include Art. Art. 402-406, 410-412, 414, 415, 418, 420-421, 423-426, 431 of the Criminal Code of Ukraine and criminal offenses committed by other entities (not necessarily by servicemen of SPD of Ukraine).

Annotation.

The article analyzes the provisions of the current Criminal Code of Ukraine, in terms of regulation of liability for criminal offenses committed against servicemen and employees of State Protection Department of Ukraine.

Attention is focused on the fact that in the context of the Joint Forces Operation in the east of the country, as well as with the growing volume of tasks set by the state leadership to the State Protection Department of Ukraine due to constant, real threat to life and health of servicemen and employees of SPD of Ukraine, there is a need to study the problems of modern criminal law protection of the authority of SPD of Ukraine.

It is established that the current criminal legislation does not directly contain norms that would provide for liability for criminal offenses against the authority of State Protection Department. The law emphasizes encroachments on statesmen, law enforcement officers or other persons performing security functions, persons involved in criminal proceedings, judges and their relatives who have been granted protection, etc. The law emphasizes encroachments on statesmen, law enforcement officers or other persons performing security functions, persons involved in criminal proceedings, judges and their relatives who have been granted protection, etc.

The classification of criminal offenses against the authority of the SPD is considered there and it is established that encroachments on the established procedure of state protection can be committed both "outside" and "inside", that is it can be committed by servicemen and employees of the SPD and others.

It is concluded that a serviceman and an employee of the State Protection Department of Ukraine act as law enforcement officers during state protection implementation, and criminal offenses committed against their rights and freedoms are divided according to objective and subjective elements (characteristics).

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