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PROBLEMS OF DETECTION AND INVESTIGATION OF CRIMES AGAINST JUSTICE AFFECTED BY PROFESSIONAL LITIGANTS

The problems of detecting and investigating crimes against justice committed by professional participants in legal proceedings were researched. The commission of these crimes by a judge, prosecutor, lawyer or other professional participants in the legal proceedings significantly increases the degree of public danger, and also complicates the detection of such criminal behavior and subsequent investigation. This is due to the special professional status of such persons, their inclusion in pre-trial and judicial procedures, daily work with colleagues, who in the future should identify and investigate crimes against justice. That is why the article draws attention to the existing special procedures and problems of investigating crimes against justice, provided for professional participants in legal proceedings (production).

Particular attention was paid to the peculiarities of the procedures related to the need for investigating authorities in cooperation with the High Council of Justice, which is authorized by the relevant law to carry out the functions of removing judges from administering justice, giving consent to detain a judge, etc. It is also important to notify the judge of the suspicion that the General the prosecutor or his deputy. Also important is the need to notify the judge of a suspicion that the Attorney General or his deputy is conducting. It was also interesting that the direct requirement of the law is sometimes violated by ignoring it by representatives of law enforcement bodies, which entails various consequences (for the examples given in the article).

Keywords: crimes against justice, crime detection, crime investigation, professional participant in legal proceedings, judge, prosecutor, lawyer, procedural legislation.

Formulation of Research Problem. Detection and investigation of crimes against justice perpetrated by professional litigants have, in practice, significant complications, which include specific criminal and judicial proceedings, the existence of preventive mechanisms against violations of the principles of such litigants. Existence of certain incentives and counterbalances in this system does not, as a whole, give the expected result to the public regarding the transparency of the work of the judicial and law enforcement agencies, reducing the level of corruption in these bodies and clearing them of unprofessional personnel. For problem accessing, it is necessary to pay attention to the availability of statistical data on the investigation of crimes against justice committed by professional litigants and the practice of applying special procedural rules that ensure the independence of these persons.

Analysis of recent researches and publications. In solving their problems the investigation of crimes against justice was addressed in their works O. Ya. Baev[1], S. A. Knizhenko[2], M. Kh. Mustafayev[3], S. V. Nekrasov[4] and others. In general, this problem was not investigated in the context of the coverage of the investigation of crimes against justice committed by professional participants in the proceedings (proceedings). With the adoption of the Criminal Procedural Code of Ukraine(2012), the stage of initiation of criminal proceedings has become a particular problem, which is related to the detection of crimes against justice and the application of special procedures for professional litigants.

Some attention was paid to the study of these problems by S. E. Ablamsky, T. G. Fomin, R. P. Chicha, O. O. Yukhno and others.[5]

Research Purpose. The Research purpose is to investigate the problems of detecting and investigating crimes against justice committed by professional litigants.

Main content presentation. The problems of initiating pre-trial investigation, investigative and procedural actions against professional litigants (proceedings) are related to the existence of specific procedures in the Criminal Procedural Code of Ukraine for some of them. The Criminal Procedural Code of Ukraine of Ukraine provides for 37 sections, which regulate the issues of criminal proceedings against certain categories of persons.

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[1] *Baev O. Ja.* Metodicheskie osnovy i tipovye programmy rassledovanija prinuzhdenija k dache pokazanij [Methodological foundations and typical programs for investigating coercion to testify]. Moskva : Jurlitinform, 2013. S. 90–169 [in Russian].

[2] *Knyzhenko O. S.* Osoblyvosti rozsliduvannia zlochyniv proty pravosuddia, shcho vchyniaiutsia shliakhom porushennia poriadku vidbuvannia pokarannia abo poperednoho uviaznennia [Features of investigation of crimes against justice, which are committed by violation of the order of serving a sentence or pre-trial detention]. Forum prava. 2016. № 3. S. 121–125 [in Ukrainian].

[3] *Mustafaev M. H.* Kriminalisticheskaja harakteristika prestupnoj dejatel'nosti protiv pravosudija, sovershennoj rabotnikami pravoohranitel'nyh organov [Forensic characteristics of criminal activity against justice committed by law enforcement official]. Problemy v rossijskom zakonodatel'stve. 2011. № 5. S. 196–202 [in Russian].

[4] Rukovodstvo dlja sledovatelej [Guide for investigators] / pod red. N. A. Selivanova, V. A. Snetkova. Moskva : iNFRA-M, 1997. S. 711–726 [in Russian].

[5] Osoblyvosti dosudovoho rozsliduvannia shchodo okremoi katehoriii osib [Features of the pre-trial investigation into a particular category of persons]. Naukovo-metodychni rekomendatsii. Kharkiv : KhNUVS. 60 s. [in Ukrainian].

According to Art. 480 of the Criminal Procedural Code of Ukraine the special procedure of criminal proceedings applies to the following subjects of crimes against justice: 1) a judge, a judge of the Constitutional Court of Ukraine, as well as a juror while performing their duties in court, the Chairman, the Deputy Chairman, a member of the High Council of Justice, the President, Deputy Chairman, member of the High Qualifications Commission of Judges of Ukraine; 2) the lawyer; 3) the Prosecutor General, his deputy, the Prosecutor of the Specialized Anti-Corruption Prosecutor's Office; 4) Directors and employees of the National Anti-Corruption Bureau of Ukraine. According to Art. 481 Criminal Procedural Code of Ukraine, in criminal proceedings, the following are subject to proof: 1) by a lawyer – by the Prosecutor General, his deputy, the head of the regional prosecutor's office within the limits of his powers; 2) the Prosecutor of the Specialized Anti-Corruption Prosecutor's Office, the Director or another NABU employee, the Deputy Prosecutor General – the Prosecutor General (acting Prosecutor General);

3) a judge, a judge of the Constitutional Court of Ukraine, a jury during his/her duties in court, the Chairman, the Deputy Chairman, a member of the High Council of Justice, the Chairman, the Deputy Chairman, a member of the High Qualification COMMISSION of Judges of Ukraine, the NABU employees – the Prosecutor General or his deputy;

Failure to notify suspected officials of the suspected procedure may lead to their acquittal on the appropriate charges. An example would be the verdict handed down by the Svyatoshinsky District Court of Kyiv on April 8, 2016, alleging that a judge was deliberately unlawful in imposing an administrative penalty. The judge was justified in that the defense party had been artificially restricted in the right to collect and present evidence on a par with the prosecution (violation of the principle of the speediness of criminal proceedings)[1] – no suspicion had been notified within a reasonable time. In addition, it was found out at the hearing that the report on the suspicion of a professional judge had not been drafted or served by the Deputy Prosecutor General of Ukraine, who also did not have the status of a prosecutor in specific criminal proceedings. According to the judge who upheld the conviction on charges of committing a crime against justice under Art. 375 of the Criminal Code of Ukraine, this led to the absence of real procedural control on the part of the Deputy Prosecutor

[1]The aforementioned mistake made at the stage of pre-trial investigation of a crime against justice can be attributed to procedural or tactical errors of the investigator and the prosecutor. It was the unsuccessful choice of time to notify a judge of suspicion and establish his status as a suspect that, in combination with other circumstances, led to the acquittal of the case.

General of Ukraine, which resulted in the incompleteness of the pre-trial investigation and violations of the procedural law which cannot be eliminated[1].

The practice of rendering acquittals in the above circumstances was violated with the Supreme Court attempt to change approaches in ignoring the requirements of the procedural law regarding notification of a judge's suspicion, which should be exercised under Art. 481 of the Criminal Code of Ukraine. For example, in its 2018 Annual Report, the High Council of Justice noted that Prosecutor General or his deputy independently draw up reports of the judge's suspicion, but delegate it to another prosecutor. It is interesting to note that the decision of the panel of judges of the Administrative Cassation Court in administrative case 800/536/17 found, which unjustifiably substantiated its position with the general provisions of Art. 36, 40 of the Criminal Procedural Code of Ukraine of Ukraine, stating that the prosecutor is authorized to instruct the investigator, the body of pre-trial investigation, and the investigator is obliged to execute the prosecutor's order. In the court's view, this indicates that there is no need to notify the Attorney General or his deputy of the suspicion. A similar position was taken by the panel of judges of the Supreme Administrative Court of Cassation in Administrative Case 9901/679/18[2]. It is clear that this approach of the Supreme Court not only contradicts the practice of judges dealing with criminal cases, but also leads to a disregard for the principles of legality, the rule of law and the independence of judges. It is impossible to allow a special rule to be blocked in implementation because of the rationale that this provision is not formulated in a general rule. It is clear that this approach of the Supreme Court in these decisions at least contains a grave error.

Peculiarities of the procedure for criminal prosecution, detention and election of a preventive measure are stipulated in Art. 482 of the Criminal Procedural Code of Ukraine. Thus, in Part 1 of Art. 482 of the Criminal Procedural Code of Ukraine states that the detention of a judge or his detention in custody or arrest shall be carried out with the consent of the Supreme Council of Justice, and without the consent of the High Council of Justice, a judge may not be detained or detained in custody or sentenced to trial by court time or immediately after committing a grave or particularly grave crime. Judge arrested on suspicion of criminal misconduct should be released immediately after finding out his identity,

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[1]Archive of Svyatoshinsky District Court of Kyiv, Case № 759/15166/15–к

[2] Dyv.: Ofitsiinyi sait Vyshchoi rady pravosuddia [The official site of the High Council of Justice] URL : http://www.vru.gov.ua /content/file/Щорічна_доповідь_за_2018_рік.pdf (data zvernennia 28.08.2019).

except: 1) if High Council of Justice has agreed to detain a judge in connection with such an act; 2) the detention of a judge during or immediately after committing a serious or particularly serious crime, if such detention is necessary to prevent the commission of the crime, to avert or prevent the consequences of the crime or to preserve the evidence of this crime. The judge should be released immediately if the purpose of such detention (preventing the commission of the crime, preventing or preventing the consequences of the crime or ensuring the preservation of the evidence of that crime) is achieved[1].

The High Council of Justice according to Art.: 1, 2, Art. 59 of the Law of Ukraine *On the High Council of Justice* considers the submission of consent to the detention of a judge, his detention or arrest no later than five days from the day of receipt of the application, and consideration of the submission of consent to the detention of a judge, his detention or detention. arrest is carried out by the High Council of Justice without summoning a judge. The High Council of Justice may, if necessary, summon a judge for clarification. The date, time and place of the consideration of the request shall be notified immediately to the Prosecutor General or his deputy.

It is interesting that under Art. 60, 62 of the Law of Ukraine *On the High Council of Justice* the procedure for deciding whether to consent to the detention of a judge, to detain him in custody or to arrest is somewhat complicated, since such a decision is not only announced to the sitting at the hearing but should be delivered immediately to the Attorney General, his Deputy or authorized prosecutor. In addition, such a decision may be appealed against in the manner prescribed by the criminal procedural law, as part of an appeal against the relevant order of the investigating judge to detain the judge, detain him in custody or arrest. All of this can lead to the loss of the effect of suddenness in the pre-trial investigation of criminal offenses committed by judges. The Supreme Court of Justice Annual Report on the State of Independence of Judges in Ukraine in 2017 indicated that in 2017, the Supreme Court of Justice received 14 submissions from the Prosecutor General Office to consent to the detention and/or detention of a judge. Based on the above submissions, the Supreme Judicial Council gave consent to the detention of 8 judges,

[1] Protokol. Yurydychnyi internet-resurs.URL : https://protocol.ua/ru/generalna_prokuratura_povidomila_vishchu_radu_pravosuddya_pro_svoyu_pravovu_pozitsiyu_shchodo_poryadku_zatrimannya_suddi_utrimannya_yogo_pid_vartoyu_chi_areshtom/ (data zvernennia 28.08.2019).

mainly on suspicion of committing corruption offenses[1] (Articles 190, 258–3, 358, 368, 369 of the Criminal Code of Ukraine). The lack of appeal to the High Council of Justice for consent to the detention and / or detention of a judge during the pre-trial investigation of crimes against justice may be explained by the unwillingness of persons conducting pre-trial investigations of this category of cases. This conclusion is based on the fact that the number of recorded crimes against justice committed by judges is increasing. Thus, according to the statistics of the Prosecutor General Office of Ukraine, crimes under Art. 375 of the Criminal Code of Ukraine (ruling by a judge (judges) knowingly an unjust verdict, decision, decision or ruling): in 2015 – 206 (22 reported suspicion); in 2016 – 174 (7 reported suspicion); in 2017 – 285 (12 reported suspicion)[2]. Availability of appeals from the Deputy Prosecutor General, the head of the Specialized Anti-Corruption Prosecutor Office is linked to the specific profile of the newly created body.

The Supreme Council of Justice also temporarily removes a judge from the administration of justice in connection with criminal prosecution (Article 63 of the Law of Ukraine: *On the Supreme Council of Justice*).

The Supreme Council of Justice may grant such suspension for a period not exceeding two months on the basis of a reasoned request from the Prosecutor General or his deputy. At the stage of court proceedings, the period of suspension is set before the entry into force of a court sentence or the closure of criminal proceedings. The Supreme Council of Justice shall consider the request for the temporary removal of a judge from the administration of justice in connection with criminal prosecution immediately, but not later than seven days from the date of receipt of the request. The Supreme Court of Justice Annual Report on the State of Independence of Judges in Ukraine for 2017 stated that in 2017 the High Judicial Council considered 22 requests by the Deputy Prosecutor General for temporary removal of judges from criminal justice in connection with criminal prosecution. In 18 cases, the Council decided to temporarily remove judges from office for the duration, taking into account the procedural time limits for pre-trial investigation[3]. At the same time, the

[1] Dyv.: Ofitsiinyi sait Vyshchoi rady pravosuddia [The official site of the High Council of Justice]. URL : http://www.vru.gov.ua/content/file/Щорічна_доповідь_за_2017_рік_.pdf (data zvernennia 28.02.2018) [in Ukrainian].

[2] Dyv.: Ofitsiinyi sait Heneralnoi prokuratury Ukrainy [the official site of the Prosecutor General's Office]. URL : https://www.gp.gov.ua/ua/statinfo.html pdf (data zvernennia 28.02.2018) [in Ukrainian].

[3] Dyv.: Ofitsiinyi sait Vyshchoi rady pravosuddia [The official site of the High Council of Justice]: http://www.vru.gov.ua/ content/file/

Council of Judges of Ukraine drew attention to the discretionary powers of the Supreme Council of Justice regarding the disciplinary responsibility of judges. Of concern is the fact that the discretionary powers may also relate to the powers of the High Council of Justice with respect to its other powers, which may influence decision-making in criminal proceedings.

The analysis of the provisions of the legislation on bringing a judge (judges) to criminal liability for committing crimes against justice indicates that there are specific procedures in conducting pre-trial investigation and judicial review. Such special procedures provided for by the Criminal Procedural Code of Ukraine indicate the inequality of judges suspected of committing crimes in comparison with other suspects (accused). At the same time, such necessity is caused by the overcoming of judicial immunity and immunity, which is dictated by the status of judges and allows to be independent in the administration of justice.

The issue of informing state and other bodies or officials about the application of a preventive measure and the adoption of a sentence is also regulated separately. According to the Art. 483 of the Criminal Procedural Code of Ukraine of Ukraine are reported in relation to lawyers; respective bodies of advocate self-government, and in relation to other categories of persons provided by Art. 480 Criminal Procedural Code of Ukraine of Ukraine are the bodies and officials who have elected or appointed them or are responsible for replacing their positions.

Considering that the detection of crimes against justice has a particular complication, provided that they are committed by professional participants in the proceedings (proceedings), the need to refer to the official statistical sources of information regarding the results of the pre-trial investigation or trial. Thus, according to the statistics of the Office of the Prosecutor General of Ukraine, criminal offenses in the field of justice committed by judges, including deliberately rendering an unlawful sentence, decision, decision or ruling – 11 (2015), 8 (2016), 5 (2017), bribery[1] under Art. 368-370 of the Criminal Code of Ukraine – 5 (2015), 7 (2016), 4 (2017), other criminal offenses in the field of judicial activity – 1 (2015), 0 (2016)), 2 (2017). Thus, the statistics of the Prosecutor General Office of Ukraine already attribute more crimes to the field of justice than provided for in Chapter XVIII of the Criminal Code of Ukraine. This is confirmed by the materials of criminal proceedings, the qualification of the behavior of judges indicating that the purpose of

Щорічна_доповідь_за_2017_рік_.pdf (data zvernennia 28.02.2018) [in Ukrainian].

[1] The statistics of the Prosecutor General's Office of Ukraine imply actions related to undue gain.

committing such crimes was the justice field. Thus, at the request of the High Council of Justice to temporarily remove a judge from Kyiv from the administration of justice and the materials attached to it, since October 18, 2017, an indictment is pending before the Shevchenkivsky District Court of Kyiv on the accusation of a judge, committed Part 2 of Art. 15, Part 3 of Art. 190 of the Criminal Code of Ukraine. According to the materials of the indictment, the judge was accused of acting in a deliberate manner for the purpose of unlawfully seizing the victim's money by abuse of trust and assured him of having friendly relations (to influence the necessary decision) with the chairman and the appellate judge. whose case was pending before the case, as well as the judges of the Supreme Economic Court of Ukraine, and received money from the victim without intending to actually commit and such actions[1]. Such apparent links to the justice sector are also traced in other criminal proceedings, which accuse judges, first of all, of corruption offenses in other countries, directly referred to as crimes against justice, because they do not encroach on their official or other activities. Identification of crimes against justice committed by professional judges may be indicated by data published by the Supreme Court of Ukraine. The status of judicial proceedings in Ukraine shows some problems with the quality of work of judges. Thus, the court of appeal overturned the verdicts of local courts (by number of persons) in 2015 – 5518 (in respect of material violations of the requirements of the criminal procedural law – 2972, the law on criminal liability – 970 was incorrectly applied, there was a discrepancy between the imposed punishment of the gravity of the criminal offense and the defendant's person – 750; the court findings were inconsistent with the facts of the case – 284); in 2016 – 5546 (one significant violation of the requirements of the criminal procedural law – 3078, incorrectly applied the law on criminal liability – 1024, there is a discrepancy between the imposed punishment of the gravity of the criminal offense and the person of the accused – 662, the discrepancy with the findings of the indictment – 239)[2].

Such a significant difference between the number of criminal proceedings initiated on the basis of criminal offenses by judges and the

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[1] Decision of the High Council of Justice "On the Temporary Removal of the Judge of the Kyiv City Economic Court L. Golovatyuk from the Execution of Justice in Respect of Criminal Proceedings" of 6.03.2018 № 711/0 / 15-18.

[2] Ofitsiinyi sait Verkhovnoho Sudu Ukrainy [The official site of the Supreme Court of Ukraine]. URL : http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/06eaa6c32d8de08ac22580e400490afc/$FiLE/Статистичний%20збірник%202016.pdf (data zvernennia 28.02.2018) [in Ukrainian].

abolition of sentences only by the appellate court may indicate a low professional level of judges, the need to improve the skills of judges of local and/or appellate courts, or to commit criminal offenses their encroachments on justice. Of course, in such a situation, the duty to monitor such sentences and other judgments in order to detect crimes against justice should be vested in a specially designated pre-trial investigation body (providing a mechanism of checks and balances through the control of the High Council of Justice).

Conclusions. Research on the problems of detecting and investigating crimes against justice by professional litigants has led to the conclusion that only a small proportion of them are identified and heard.

This is explained by the professional and professional status of such litigants (litigation), their legal knowledge, their tenure in the field of justice and their professional functions. In addition, the current incentives and counterbalances for securing and safeguarding their activities become a significant problem in the detection and investigation of crimes against justice committed by professional litigants.

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ПРОБЛЕМИ ВИЯВЛЕННЯ ТА РОЗСЛІДУВАННЯ ЗЛОЧИНІВ ПРОТИ ПРАВОСУДДЯ, ЩО ВЧИНЯЮТЬСЯ ПРОФЕСІЙНИМИ УЧАСНИКАМИ СУДОЧИНСТВА (ПРОВАДЖЕННЯ)

Досліджено проблеми виявлення та розслідування злочинів проти правосуддя, що вчиняються професійними учасниками судочинства (провадження). Вчинення цих злочинів суддею, прокурором, адвокатом або іншим професійним учасником процесу суттєво підвищує рівень суспільної небезпечності, а також істотно ускладнює саме виявлення такої злочинної поведінки та подальше розслідування. Саме тому в статті звернено увагу на наявні особливі процедури та проблеми розслідування злочинів проти правосуддя, вчинених професійними учасниками судочинства (провадження).

Ключові слова: злочини проти правосуддя, виявлення злочинів, розслідування злочинів, професійний учасник судочинства, суддя, прокурор, адвокат, процесуальне законодавство.

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