

# ORGANIZATIONAL AND LEGAL ASPECTS OF ESTABLISHMENT AND FUNCTIONING OF JUDICIAL PROTECTION SERVICE IN UKRAINE

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## ABSTRACT

*The article deals with the organizational and legal aspects of the establishment and functioning of Judicial Protection Service in Ukraine. In particular, the main stages of the establishment and functioning of the State Judicial Protection Service, aimed at the protection of the premises of the Court, the judiciary and judicial institutions, the performance of functions of state protection of the personal security of judges and their families, court employees, and the protection of the judicial proceedings are shown. Some provisions of the normative legal acts of the Ukrainian legislation (the Law of Ukraine On Judiciary and Status of Judges, Regulations on the Judicial Protection Service, Regulations on the career of the officers of the Judicial Protection Service) regarding the legal status, structure and features of functioning of the Judicial Protection Service are disclosed. The peculiarities of the legal regulation of the activity of the Judicial Protection Service are analyzed by normative legal acts of different legal force; the attention is paid to some aspects of the coherence of their separate rules.*

**Keyword:** Court, Justice, Judicial Protection Service, Supreme Council of Justice, State Judicial Administration.

## INTRODUCTION

The proper administration of justice is an important index of quality, efficiency and effectiveness of justice. The basic legal frameworks of such provision are fixed at the constitutional level, namely Article 130 of the Constitution of Ukraine, of 28 June 1996, according to which the state provides the establishment and the proper conditions for the functioning of the courts and the activities of judges (Constitution of Ukraine, 1996). An important guarantee of the independence of the judiciary, as well as the condition of judicial protection of the rights, fundamental freedoms and legitimate interests of the individual and the citizen is foreseen in the principle of independence of judges and their inviolability (Articles 126, 129 of the Constitution of Ukraine).

The proper administration of justice with the observance of law and morality in order to restore justice and law in public relations requires the creation of appropriate conditions for this.

In this context, the organizational support of the activities of the court, judges and the judicial process plays an important role.

### **Problem Statement**

In 2015, there was a complete liquidation of the special units of the Ministry of Internal Affairs of Ukraine named “*Hryfon*”, which were engaged in the protection of the courts. The lack of judicial protection opened up free access to the premises of the courts for the persons who obstructed the work of judges by disrupting court hearings, by violations of public order, etc.

One of the factors influencing on the possibility of a free, unimpeded and fast realization of the right to judicial protection is the law-enforcement securing of the judiciary in Ukraine. In order to ensure the safety of the court and the participants of the judicial proceedings, a Judicial Protection Service has been established in Ukraine. It is young institution in the law-enforcement system. Taking this fact into account, it is relevant to study the issues of organizational and legal aspects of the establishment of the Judicial Protection Service and to determine the peculiarities of the functioning of this state body.

### **LITERATURE REVIEW**

The main intergovernmental structure of the Council of Europe which is responsible for the proper functioning of the judiciary is The European Committee on Legal Co-operation (CDCJ). The activities of CDCJ members, as the representatives of the Ministry of Justice, are aimed at ensuring an appropriate level of communication between the government and the judiciary at the national level. In 2015 at the second report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe the lack of judicial independence in many European countries was noted to be the one of the greatest challenges for the democratic society nowadays. For this purpose, the Council of Europe has developed a Plan of Action on “*Strengthening Judicial Independence and Impartiality*” to support member states in implementing of such measures. The CDCJ has prepared, and the Council of Europe has approved on November 17, 2010 Recommendation CM/Rec (Legislations, 2010) 12 on judges: independence, efficiency and responsibilities. The Plan of Action was approved at the High-Level Conference of Ministers of Justice and Representatives of the Judiciary (Judicial independence and impartiality). Thus, the executive power and the legislature have a duty to guarantee the independence of judges and to prevent actions that may undermine the independence of the judiciary or the public's confidence in it (Legislations, 2010).

In the majority of the foreign countries, the law enforcement structures are responsible for judicial protection. In particular, the positive experience of Canada has been used to implement the judicial protection actions in Ukraine and to establish the Judicial Protection Service accordingly. Ensuring the safety of judges in these countries is an important component of the effectiveness of justice. After all, the principle of independence of the judiciary presupposes precisely the inadmissibility of the pressure and threats that may influence on the decision-making of judges. In Canada, the judicial protection authority is the Sheriff's Office. The sheriff is a court officer whose work is focused on the security of the judiciary, court staff, the public, and persons in custody. Sheriffs are responsible for:

1. The court's security;
2. The transportation of prisoners to institutions and from all levels of the courts;
3. The delivery of certain civil and criminal documents;
4. The execution of court's decisions.

The Court services officers spend most of their time in the courtroom. These officers help to ensure that the hearings are calm and orderly. They ensure that court proceedings are conducted safely and without interruption.

The important criteria for the selection of sheriffs are: the ability to work in a team, the proactiveness, the integrity, the self-controlling, the ability to manage conflicts, the willingness to learn throughout life, the commitment to the interests of the organization. As a result of the interview, the candidates may receive a preliminary job offer for further examination or placement. The sheriffs with a certain length of service are required in turn the undergo the advanced training which presuppose the test of physical training, weapon skills, control over the use of force, communication skills. The Canadian model of the courts' security is effective and progressive (Savilova, 2019).

## METHODOLOGY

The basis for research of the organizational and legal aspects of the establishment of the Judicial Protection Service in Ukraine and the peculiarities of the functioning of this public authority were based on historical, formal-legal and comparative-legal methods. In particular, the main stages of the establishment and functioning of the state court protection system, which is aimed at the protection of the premises of the court, bodies and institutions of the justice system, perform the functions of state protection of personal security of judges and their families, court staff, security of the judicial proceedings are distinguished using the historical method. The disclosure of the provisions of the normative legal acts of the Ukrainian legislation concerning the legal status, the structure and the peculiarities of the functioning of the Judicial Protection Service was made using the formal legal method. The comparative-legal method made it possible to analyze the peculiarities of the legal regulation of the activity of the Judicial Protection Service by legal acts of different legal force, as well as to focus on some aspects of the coherence of their individual rules.

## FINDINGS AND DISCUSSIONS

There have been several legislative changes on the way to the establishment of the Judicial Protection Service in Ukraine. For the first time, the issue of the organization of protection of court employees was given the particular attention in 1997. Pursuant to the order of the Ministry of Internal Affairs of Ukraine of July 23, 1997 No. 467 (repealed), special police units were set up in the structure of the public security police to ensure the safety of court employees, law enforcement agencies, persons involved in criminal proceedings, their families and close relatives. The Order also provided for the approval of the Provisional Regulation on this subdivision (Law, 1997).

The Order of the Ministry of Internal Affairs of Ukraine of November 19, 2003 No. 1390 (repealed) has approved the Regulation on the special unit of the judicial police "Hryfon". One of the main tasks of this unit was to provide the security measures in court proceedings of

judiciary, for law-enforcement officials, other law-executive or law-enforcement agencies, their families and close relatives; taking the necessary steps to ensure the security of the judge, his family members, the preservation of their property, if such statement will be received from the judge, etc. Regulations on the special unit of the judicial police “*Hryfon*” (Legislations, 2003).

In 2015, there was a complete liquidation of special units of the Ministry of Internal Affairs of Ukraine “*Hryfon*” engaged in the protection of the courts. The lack of judicial protection opened up free access to the premises of the courts to the persons who obstructed the work of judges by disrupting court hearings, the violations of public order, etc.

From November 9, 2015, the protection of courts, other authorities and institutions of the judicial system, as well as judicial expertise institutions, was carried out by units of the National Guard and the National Police in accordance with the Resolution of the Cabinet of Ministers of Ukraine “*On Security of Courts, Other Authorities and Institutions of the Judiciary and the Authorities of Judicial Expertise*” of November 9, 2015 No. 906 (repealed) (Legislations, 2015).

Pursuant to the requirements of the Law of Ukraine “*On Judiciary and Status of Judges*” of June 2, 2016 No. 1402-VIII, the Decree of the Ministry of Internal Affairs of Ukraine of December 26, 2016 No. 1352 approved the Provisional Procedure for Ensuring the Protection of Courts, Authorities and Institutions of the Judicial System, as well as the maintenance of public order there (repealed). According to this Procedure of maintaining public order in court, the termination of disrespect for the court, as well as the protection of the court’s premises, authorities and institutions of the justice system, performing the functions of state protection of the personal security of judges and their families, court employees, securing the members of the trial is executed by the units of the National Police and the National Guard (Legislations, 2016).

With the adoption of the Law of Ukraine “*On Amendments to the Law of Ukraine “On Judiciary and Status of Judges”*” in connection with the adoption of the Law of Ukraine “*On the Supreme Anticorruption Court*” of July 12, 2018 No. 2509-VIII, the status of the Judicial Service was fixed for the first time at the legislative level of the Law of Ukraine (Law of Ukraine, 2018).

To this date, the legal regulation of the issues of the legal status, the structure and the features of the functioning of the Judicial Protection Service is carried out in accordance with the provisions of the Law of Ukraine “*On Judicial System and Status of Judges*” of June 2, 2016 No. 1402-VIII (hereinafter-the Law) and are specified in Regulation on the Judicial Protection Service, approved by the decision of the High Council of Justice of April 4, 2019 No. 1051/0/15-19 (hereinafter-the Regulations).

The legal status of the Judicial Protection Service is governed by the provisions of separate Chapter 4, Section XI, “*Organizational Support for the Activities of the Courts*” of the Law. From the analysis of Article 160 of the Law, the main tasks of the Judicial Protection Service are:

1. The maintaining of the public order in court;
2. The termination of disrespect for the court;
3. The protection of court’s premises, bodies and institutions of the justice system;
4. The performing of the functions of state protection of the personal security of judges and their families, of the court staff;
5. Ensuring the safety of litigants in the court (Law of Ukraine, 2016).

The legislator defines the Judicial Protection Service (hereinafter-the Service) as the government body in the justice system to ensure the protection and maintenance of public order in the courts (Part 1, Article 161 of the Law).

The Head of the Service oversees the activities of this body. The appointment to the post of the Head is held in the form of open competition and the dismissal is executed by the High Council of Justice. It is important to note that the appointment and dismissal of the Deputy Head is carried out in the same manner in accordance with the latter's proposal (Law of Ukraine, 2016).

The organizational structure of the Service is represented by the central governing body (Central Office) and territorial units (territorial offices). The Central office of the Service is a legal entity that has a seal with the image of the State Emblem of Ukraine and its name, its own forms, independent balance and accounts in the bodies of the State Treasury Service of Ukraine. The decision-making on the establishment of territorial units of the Service is within the competence of the Head of the Service, but necessarily requires the agreement of the State Judicial Administration of Ukraine (Legislations, 2019).

It is important to note that the Law and the Regulations define the legal status of territorial units. Thus, according to the Regulations, the territorial units of the Service are formed as legal entities, having a seal with the image of the State Emblem of Ukraine and their name, their own forms, independent balance and accounts in the bodies of the State Treasury Service of Ukraine (Legislations, 2019). In its turn, the Law provides two variants of the formation of territorial units:

1. As legal entities;
2. As structural subdivisions of the central governing body of the Service, which do not have the status of a legal entity (Law of Ukraine, 2016).

The supreme legal force of the law is that all by-laws are adopted on the basis of laws and should not be contrary to their content (Legislations, 2009). Thus, in case of adoption of by-law normative-legal acts, including the Regulations, the specification of its individual norms is made by the means of creating new regulations in order to detail the rules of the law. Therefore, in the context of the issue under consideration, we believe that it necessary to note that the issue of the establishment of territorial units of the Service is more explicitly stated in the Law than in the Regulations, not the other way around.

It is important to determine whom the Judicial Protection Service reports to and which public authority oversees its activities. From the content of Article 152 of the Law, one of the powers of the State Judicial Administration of Ukraine is to control the activity of the Judicial Protection Service. The approval of the Regulation on the Judicial Protection Service is within the competence of the High Council of Justice in accordance with Article 3 of the Law of Ukraine “*On the High Council of Justice*” of December 21, 2016 № 1798-VIII (Law of Ukraine, 2016). Thus, the Judicial Protection Service is accountable to the High Council of Justice and is under the control of the State Judicial Administration of Ukraine.

General principles for the service at the Judicial Protection Service, including the list of special ranks of officers at the Judicial Protection Service, are enshrined in the Law and are specified in a separate Regulation on service of the officers at the Judicial Protection Service, approved by the decision of the High Council of Justice of April, 4 2019, No 1052/0/15-19.

## RECOMMENDATIONS

The analysis of two legal acts, which regulate the issues of the legal status, the structure and the peculiarities of the functioning of the Judicial Protection Service, allows us to note the following: most of the provisions of the Law are duplicated in the Regulation, in particular the determination of the legal status of the Judicial Protection Service:

1. The definition of a public authority;
2. Its administration;
3. Organizational structure;
4. The tasks;
5. Powers.

Meanwhile, the powers of the Judicial Protection Service are more detailed in the Regulation, at the same time their list is more simplified in the Law. In addition, the Regulation defines the organizational authorities of the Deputy Heads.

The general principles for the service at the Judicial Protection Service, including the list of special ranks of officers of the Judicial Protection Service, are enshrined in the Law and specified in a separate Regulation on the passage of service by the officers of the Judicial Protection Service, approved by the decision of the High Council of Justice of April, 4 2019, No 1052/0/15-19. The Law has a provision that provides social protection of members of the Judicial Protection Service. The provision of the Regulation on the service at the Judicial Protection Service only states that the social and legal protection of employees and their families is provided in accordance with the law. However, the nature and procedure of such protection has not been disclosed.

Thus, we consider it necessary to pay attention to the following. Most provisions of the Law are duplicated in the Regulation. However, for example, the issue of establishing territorial units of the Service is more explicit in the Law than in the Regulations. In the Regulation, as in the normative legal act, the provisions of the Law should be specified and not the other way around. The same thing is with the issue on social protection of the Judicial Protection Service staff, which is disclosed in the Law. Meanwhile, the provision on service regulations of the Judicial Protection Service staff only states that the social and legal protection of employees and their families is provided in accordance with the law. The nature and procedure of such protection has not been disclosed, but in this case, it would be more appropriate to prescribe it in the Regulation.

## CONCLUSION

There have been several legislative changes on the way to the establishment of the Judicial Protection Service in Ukraine. This is primarily due to the fact that prior to the establishment of such a state judicial protection authority, relied on:

1. Special police units in the public security militia (July 1997-October 2003);
2. The special unit of the judicial police “*Hryfon*” (November 2003-October 2015);
3. The National Guard and the National Police units (November 2015-June 2018).

Since July 2018, the legislative changes have come into force and they firstly determined the legal status of the Judicial Protection Service.

As of this date, regulatory management of the issues on the legal status, the structure and the features of the functioning of the Judicial Protection Service is carried out in accordance with the provisions of the Law of Ukraine "On Judiciary and Status of Judges", the Regulation on the Judicial Protection Service, the Regulation on the passing of the service by the officers of the Judicial Protection Service and the Resolution of the Cabinet of Ministers of Ukraine "On the financial support of the Judicial Protection Service staff".

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