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Research Article

Experience of the Judicial Security Service in the Prevention of Illegal Activities with Drugs in Ukraine under Martial Law (Criminological Aspect and Criminal Law Aspect)

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Abstract

Background: The article describes the experience of criminological activity in the sphere of prevention of anti-illegal drug use in Ukraine of the Judicial Security Service, a special subject of ensuring security of justice.

Methods: The basis of the methodological support for the study of criminological aspect and criminal-law aspects of the experience of the Court Security Service of Ukraine in the prevention of illegal activities with drugs is a set of general scientific and special scientific methods of cognition, such as dialectical method, special legal method, comparative legal method and statistical method. The totality of the specified research methods was used in the preparation of this article in order to clarify content and provide characteristics of such activities in Ukraine, as well as to reveal the dynamics of criminal offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors based on the information of the official statistical reporting provided by the Prosecutor General's Office of Ukraine for 2019-2023. The purpose of this work was to determine promising directions for improving effectiveness of the criminological activity of the Court Security Service in the sphere of prevention of illegal activities with drugs in Ukraine, which has become especially important in the field of ensuring national security under martial law.

Results: A stable tendency to increase the number of registered criminal offenses in this area of drug crime from 28,155 (in 2019) to 39,069 (in 2023) and their relative share in the overall structure of crime from 6.3% (in 2019) to 9.5% (in 2022) has been stated. It is substantiated that in the conditions of martial law in Ukraine, the importance of the Court Security Service in the field of combating crime, including the prevention of illegal activities with drugs, has increased. Thus, according to the results of the analysis of the generalized results of the activity of the Court Security Service of Ukraine for the period 2020–2023, it has been established that

106 court visitors who tried to enter court institutions with substances similar to narcotic drugs were detained by employees of these institutions and handed over to the National Police of Ukraine. It was established that, firstly, a significant part of the visitors who tried to get to court institutions with substances similar to narcotic/psychotropic substances are persons who came to court hearings in cases as the accused persons. The specified substances were discovered by employees of the Court Security Service as a result of their cursory inspection and/or inspection of their belongings; secondly, the alleged drug distributors (people who tried to make a stash of drugs, graffiti with the name of Telegram channels and sites where narcotic substances can be purchased) were discovered by employees of the Court Security Service during implementation of measures aimed at ensuring protection of the territory adjacent to buildings of the court institutions (patrol, video surveillance, etc.).

Conclusion: Thus, the generalized results of the analysis of the statistical data of activities performed by the Security Service of Ukraine regarding the prevention of illegal activities with drugs for the period 2020-2023 give grounds to assert the positive experience of the Service in this area. This result was largely facilitated by the modernization of the mechanism of interaction between the National Police and the Court Security Service under the martial law conditions, as well as by the cooperation of the Court Security Service with the EU Advisory Mission in Ukraine during the information campaign "Your Safety is our Work". In our opinion further research into the issues of cooperation between the Court Security Service and units of the National Guard of Ukraine in matters of preventing the smuggling of narcotics into court institutions under martial law can be considered promising. According to the results of research of the criminal law aspect of the prevention of illegal activities with drugs in Ukraine under martial law, it has been established that the strengthening of criminal liability for drug crimes, as well as establishing criminal liability for inaction of a law enforcement officers or authorized officials, or other authorized persons in relation to illegal activities in in

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trafficking of narcotic drugs by employees of the Court

Security Service of Ukraine is due to the full-scale invasion

of the aggressor state into Ukraine, which brought many

new challenges in fighting against crime in general and

drug crime in particular, as well as due to a stable tendency to increase in the number of recorded criminal offenses in

this area from 28,155 (in 2019) to 39,069 (in 2023) and

their relative share in the overall crime structure from 6.3%

(in 2019) to 9.5% (in 2022) (Figure 1) (Table 1).

the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors and other criminal offenses against health of the population will contribute to reducing the level of illegal trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, and this will also strengthen the responsibility of persons who commit these criminal offenses.

Keywords: Drug crime; Criminological protection of justice; Court security; Court security service; National police of Ukraine; National guard of Ukraine; Criminal offenses in the sphere of illegal activities with drugs

Introduction

The specificity of measures aimed at preventing illegal

Table 1: The dynamics of criminal offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, recorded in Ukraine for the period 2019-2023 according to the data of the "Unified Report on Criminal Offenses. Form No. 1", posted on the official web portal of the Office of the Prosecutor General's Office of Ukraine.)

Years	Published criminal offenses			Dynamics			
	in the sphere of drug trafficking	Total	Relative share	Absolute growth in comparison with the previous year (+/-)	Growth rate in comparison with the previous year (%)	Growth rate in comparison with the previous year (+/-%)	
2019	28155	444130	6.3	-	-	-	
2020	27569	360622	7.6	-586	97.90%	-2.10%	
2021	28544	321443	8.9	975	103.50%	3.50%	
2022	34354	362636	9.5	5810	120.40%	20.40%	
2023	39069	475595	8.2	4715	113.70%	13.70%	

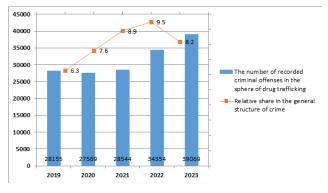


Figure 1: Dynamics of the number of criminal offenses in the sphere of drug trafficking in Ukraine from 2019 to 2023

A significant contribution to development of theoretical problems of drug crimes in Ukraine was made by the following scientists: A.M. Babenko (2018), I. Bogatyrev (2023), Y.O. Hladkova et al. (2022), S.P. Rashevskyi et al. (2020), V.V. Kuzyk et al. (2023), H. M. Sobko et al. (2023), Ya.V. Stupnyk et al. (2022), etc. [1-7]. However, the analysis of the latest research and publications shows that the experience of the Court Security Service of Ukraine in prevention of illegal activities with drugs under martial law has not yet been the subject of a thorough study, which especially actualizes the scientific interest in the mentioned issue.

Methods

The basis of researching criminological aspect and criminal-law aspect of the experience of the Court Security Service of Ukraine in the prevention of illegal activities with drugs in conditions of martial law is a set of general scientific and special scientific methods

of cognition, such as dialectical method, special legal method, comparative legal method and statistical method. 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 functioning 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 comparative legal method their similarities and differences were revealed. The statistical method made it possible to carry out an analysis of aggregated statistical indicators on the dynamics of the number of criminal offenses in the sphere of illegal activities with drugs in Ukraine from 2019 to 2023, as well as results of activities performed by the Court Security Service of Ukraine in the prevention of illegal activities with drugs during the same period.

Results and Discussion

First of all, we should note that in Ukraine, the Court Security Service was created in 2019 for the purpose of carrying out such a criminological function as ensuring the personal safety of judges and their family members, court employees, protection and maintenance of public order in courts, as well as ensuring safety of participants in the court process. This newly created state body in the justice system is accountable to the High Council of Justice and under the control of the State Judicial Administration of Ukraine [8].

In the conditions of martial law in Ukraine, the importance of the Court Security Service in the field of combating crime, including the prevention of illegal activities with drugs, has increased [9]. Thus, according to the results of the analysis of the generalized results of the activity of the Court Security Service of Ukraine for the period 2020–2023, it has been established that 106 court visitors who tried to enter court institutions with substances similar to narcotic drugs were detained by employees of these institutions and handed over to the National Police of Ukraine [10].

Based on the results of the analysis of the actual circumstances of the specified events, the following was established:

1. Significant part of the visitors who tried to get to court institutions with substances similar to narcotic/psychotropic substances are persons who came to court hearings in cases as the accused persons. The specified substances were discovered by employees of the Court Security Service as a result of their cursory inspection and/or inspection of their belongings. For example, on 27th November, 2020, in the Bilotserkivskyi City and District Court of the Kyiv Region, during a cursory inspection of a minor defendant who, accompanied by his mother and a lawyer, came to a court session (where a case was being considered based on the fact that he had committed a robbery attack) court guards found 2 bundles with a substance of plant origin, outwardly this bundle was similar to a drug substance;

- the young man's actions were limited and a crime scene investigation team of the National Police was called to the building of justice [11].
- 2. Alleged drug distributors (persons who tried to make a stash of drugs, graffiti with the name of Telegram channels and sites where narcotic substances can be purchased) were discovered by employees of the Court Security Service during implementation of measures aimed at ensuring protection of the territory adjacent to buildings of the court institutions (patrol, video surveillance, etc.). For example, on 11th August, 2021, during a patrol of the territory adjacent to the Samarskyi District Court of the Dnipropetrovsk Region, employees of the Court Security Service detained a man trying to make a stash with methamphetamine, and this man was taken to the police station [12].

Along with this, as a positive experience of the activities of the Court Security Service of Ukraine in the sphere of prevention of illegal activities with drugs it should be noted that in 2023, the number of persons who tried to enter court institutions with substances similar to narcotics and alleged drug distributors, who were detained and handed over to the employees of the National Police of Ukraine, significantly decreased to the lowest indicator for the studied period (Table 2).

Table 2: Generalized results of the activities performed by the Court Security Service of Ukraine regarding prevention of illegal trafficking of narcotic drugs and psychotropic substances for the period 2020–2023. (According to the annual reports of the Court Security Service of Ukraine, information from the press center, posted on the official web portal of the judicial power of Ukraine.)

-	2020	2021	2022	2023
The number of justice system units where security is provided	468	590	585	639
The number of persons who tried to enter court institutions with narcotic/psychotropic- like substances and alleged distributors of narcotic/psychotropic substances who were detained and handed over to the National Police of Ukraine	18	32	49	7

Such a positive result was largely facilitated by cooperation of the Court Security Service with the EU Advisory Mission in Ukraine, within the framework of the two-month information campaign "Your Security is our Work", which lasted from October to November 2022, with the aim of drawing public attention to security issues in courts and forming understanding why and how the Court Security Service works to ensure safety of every person. In particular, a series of podcasts based on real criminal cases, including the podcast "Hunters for drug traffickers" was prepared for the prevention of attempts to smuggle narcotic substances into court institutions [13,14].

We would like to note that the general results of the information campaign "Your Security is our Work" were as follows:

 Increasing the awareness of Ukrainians about the work of the Court Security Service to reduce security threats in courts, which have increased since the beginning of the Russian invasion? In particular, according to the second wave of sociological research conducted in December 2022, now 10% more Ukrainians say that during the Russian invasion, the importance of the Court Security Service increased (from 34% of respondents in July 2022 to 44% in December 2022). In addition, 87% of court visitors called it necessary to carry out mandatory inspections, and also recognize importance of the Service's work.

2. reduction by 20% of attempts to bring dangerous objects to court institutions [15].

In terms of the researched positive experience of the Judicial Security Service in the prevention of illegal activities with drugs in Ukraine, a significant practical role belongs the modernization of the mechanism of interaction between the National Police and the Court Security Service in the conditions of martial law. In particular, we should note that in the pre-war period, the interaction between the specified subjects was carried out in the following directions:

1. Access to the territory of the facilities of special cars and access of the territorial bodies (subdivisions)

of the police to the premises of the facilities, escort (convoy) at the facilities of detained and arrested persons;

- Maintenance of public safety and order during court proceedings, cessation of disrespect for the court, ensuring safety of participants in the court process;
- 3. Ensuring public safety and order at facilities;
- 4. Blocking objects in case of committing (probability of committing) group violations of public safety and order, mass riots, criminal and administrative offenses, terrorist threats, occurrence of emergency situations, fires and other dangerous events, as well as termination of the specified illegal acts and liquidation of the consequences events in accordance with competence;
- Repelling an attack on objects and persons being protected, freeing objects and hostages in case of capture;
- Detention of offenders who illegally entered facilities, encroached on the property of courts, bodies and institutions of the justice system, committed criminal or administrative offenses at the facility;
- 7. State provision of personal safety of protected persons [16].

During the martial law, the National Police of Ukraine was given new powers, including escorting and guarding in the courtroom of 2 new categories of persons-accused persons and persons sentenced to imprisonment, and this led to emergence of a new direction of interaction with the Court Security Service [17].

In order to further optimize activities performed by subjects of criminological protection of justice, including in the sphere of prevention of illegal activities with drugs in Ukraine, and in view of the increase in the risks of the work of the Court Security Service in the conditions of martial law, a special attention should be paid to the problem of overcoming the selective spread of the norms of the Law of Ukraine "On the National Police" on employees of the Court Security Service when they perform their duties [18]. In particular, in order to increase capabilities of the Court Security Service of Ukraine as a special subject of criminological protection of justice, including prevention of smuggling narcotic drugs into court institutions, it is advisable, in accordance with the procedure established by law, to authorize its employees to carry out cursory inspections of things or a vehicles being in possession of the territory of the court by means of visual inspection of the respective items and/or vehicles or by means of visual inspection of the interior and trunk of the vehicles. Secondly, in accordance with the procedure established by law, employees of the Court Security Service of Ukraine should be authorized to require citizens to leave the premises of the court, bodies and institutions of the justice system, as well as to limit their access to the specified territory in compliance with the requirements specified in the Law of Ukraine "On the National Police" [18]. Thirdly,

positive foreign experience regarding the practice of delegation and other powers of employees of the Judicial Security Service of Ukraine should be introduced into the national legislation for employees of the National Police and military personnel of the National Guard, who already have sufficient experience in ensuring the security of judicial bodies, as well as for employees of private security companies in a special period during martial law actions (if necessary) [19].

For comparison, in other countries, implementation of the specified criminological function is entrusted either to specially authorized services mainly in the system of the Ministry of Justice, which are analogous to the Court Security Service in Ukraine, or to police units. 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, as well as employees of the general judicial service; and in Austria, these are the control bodies "Kontrollorgane", represented by both court employees and employees of security companies. In the United States of America, court security and protection for federal judges, jurors, other members of the federal judiciary, and Supreme Court justices when they are outside Washington, D.C. is provided by the US Marshals Service-Judicial Security Devision. In England and Wales, the entities specifically empowered to ensure the conduct of court proceedings without interference or delay, maintenance of order and the safety of any person in a court building are court security officers, who may not only be civil servants of Her Majesty's Courts and Tribunals Service, but also employees of private security companies under contract concluded with the Lord Chancellor. In France security of judicial proceedings and the maintenance of law and order is ensured by gendarmes and police. In Australia, the safe and orderly functioning of federal courts and tribunals is also ensured by security officers, who are persons appointed to this position by the Chief Administrative Officer of the Court, or by members of the Australian Federal Police, or protection service officers or special protection service officers. In New Zealand, court security officers are a special entity for ensuring the security of justice. In most provinces and territories of Canada, protection of courts and participants in court proceedings is provided by specialized services of sheriffs who cooperate with the police [20].

In contrast to Ukraine, in the countries of Northern Europe, for example, Finland, Denmark, Sweden, Norway, courts are not obliged to organize inspections of visitors on a permanent basis. In the event of such a need, such checks (inspections) are authorized to be carried out by security inspectors, who can be either police officers, or persons who have undergone appropriate training, employed by the court, or other persons in accordance with the court's decision, but upon approval of their candidacy with the police on the basis of their reliability and professional suitability [21].

Regarding the criminal-legal aspect of countering drug

crime in Ukraine, first of all, we note that Chapter XIII of the Criminal Code of Ukraine deals with criminal offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors and other criminal offenses against public health [22].

The fact that since the introduction of martial law, norms of this chapter have not yet undergone changes, unlike many norms of other chapters of the same code, for example norms of the Chapter VI "Criminal Offenses Against Property" were supplemented by the legislator with the qualifier "in conditions of martial law or state of emergency" and a more severe type and amount of punishment for their commission was determined. Therefore, today, the type and amount of punishment for committing a drug crime in conditions of martial law or a state of emergency can be assigned by the court exclusively within the scope of the sanction of the relevant criminal law norm and taking into account this circumstance, as one that burdens it (clause 11 part 1 of Article 67 of the Criminal Code of Ukraine [23].

At the same time, with the aim of improving and strengthening responsibility for criminal offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, as well as reducing the level of crime and reducing abuses in this sphere, the relevant draft law No. 10236 of 09/11/2023 was submitted to the Verkhovna Rada of Ukraine for consideration; and based on the results of consideration in the first reading on 22/05/2024 this draft law was taken (adopted) as the basis, and it is now being prepared for the second reading [24].

In particular, the draft law proposes to make the following changes to Chapter XIII "Criminal Offenses Related to Trafficking Narcotics, Psychotropic Substances, their Analogues or Precursors and other Offenses against Public Health":

- To strengthen criminal liability for illegal production, manufacture, acquisition, storage, transportation or forwarding of precursors by increasing the upper limit of possible punishment in the form of a fine from 50 (the current version of the sanction part 1 of Art. 311 of the Criminal Code of Ukraine) up to 500 taxfree minimum incomes of citizens (sanction of part 1 Art. 311 of the Criminal Code of Ukraine in the draft version); to replace an alternative type of punishmentrestriction of freedom for a period of up to 3 years and 50 (the current version of the sanction, part 1 of Art. 311 of the Criminal Code of Ukraine) with a more severe, deprivation of liberty for a term of up to 3 years (sanction of part 1 of Art. 311 of the Criminal Code of Ukraine in the draft version); to increase the lower and upper limits of the term of imprisonment in the form of deprivation of liberty for the commission of the specified criminal offense in the presence of qualified and especially qualified signs provided for in parts 2 and 3 of Art. 311 of the Criminal Code of Ukraine [25].
- 2. to strengthen criminal liability for violations of the

established rules of circulation of narcotic drugs, psychotropic substances, their analogues or precursors, by increasing the lower limit of the amount of punishment in the form of a fine from 70 (the current version of the sanction part 1 of Art. 320 of the Criminal Code of Ukraine) up to 500 tax-free minimum incomes of citizens (sanction of part 1 of Art. 320 of the Criminal Code of Ukraine in the draft version), as well as to increase the lower and upper limit of the term of the alternative punishment, provided for by the sanction of this criminal law norm, in the form of deprivation of liberty from 1 years to 3 years (the current version of the sanction of part 1 of Art. 320 of the Criminal Code of Ukraine) for a period of 2 years to 6 years (sanction of part 1 of Art. 320 of the Criminal Code of Ukraine in the draft version). In addition, for the same actions, committed repeatedly, or if they caused a shortage of narcotic drugs, psychotropic substances, their analogues or precursors in large quantities, or led to the theft, appropriation, extortion of narcotic drugs, psychotropic substances, their analogues or precursors or possession by them by means of fraud or abuse by an official of his/her official position, to increase the lower limit of the amount of punishment in the form of a fine from 70 (the current version of the sanction, part 2 of Art. 320 of the Criminal Code of Ukraine) up to 500 tax-free minimum incomes of citizens (sanction of part 1 of Art. 320 of the Criminal Code of Ukraine in the draft version), as well as the upper limit of the amount of the specified punishmentfrom 120 (the current version of the sanction part 2 of Art. 320 of the Criminal Code of Ukraine) up to 1000 tax-free minimum incomes of citizens (sanction of part 2 of Art. 320 of the Criminal Code of Ukraine in the draft version), as well as to increase the lower and upper limit of the term of the alternative punishment, provided for by the sanction of this criminal law norm, in the form of deprivation of liberty from 3 years to 5 years (the current version of the sanction of part 1 of Art. 320 of the Criminal Code of Ukraine) for a period of 5 years to 10 years (sanction of part 1 of Art. 320 of the Criminal Code of Ukraine in the draft version);

3. supplement Chapter XVII "Criminal Offenses in the Field of Official Activity and Professional Activity Related to the Provision of Public Services" of this Code with a new article 3654 "Inactivity of a law enforcement officer or authorized official, or other authorized person in relation to illegal activities in the field of trafficking in drugs, psychotropic substances, their analogues and precursors and other criminal offenses against public health" [26].

At the same time, according to part 1 of new Article 365-4 of the Criminal Code of Ukraine (in the draft version) criminal acts include deliberate non-stopping by an employee of a law enforcement agency or an authorized official, or another authorized person of a criminal or other offense in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors,

and other criminal offenses against public health, as well as other intentional non-performance of actions, which should have been performed by this authorized person/ official (according to his/her official duties), if such an action caused a substantial damage. In turn, a substantial damage is proposed to be understood as a damage in the form of a person's evading responsibility provided for the commission of criminal offenses in the Chapter XIII of the Criminal Code, or other offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, poisonous or potent substances or poisonous or powerful medications, or if such a person contributed to the commission of these offenses by means of his/her intentional actions or inaction (clause 1 of annotation to the new article 365-4 of the Criminal Code of Ukraine [24].

Conclusion

According to the results of the analysis of the criminological and criminal-legal aspects of the experience of the Court Security Service in the prevention of illegal activities with drugs in Ukraine under martial law, the following can be stated:

- In 2023, the number of persons who tried to enter court institutions with narcotic-like substances and alleged drug distributors, who were detained by employees of the Court Security Service and handed over to the National Police of Ukraine, significantly decreased;
- In terms of the researched positive experience of the Judicial Security Service in the prevention of illegal activities with drugs in Ukraine, a significant practical role belongs the modernization of the mechanism of interaction between the National Police and the Court Security Service in the conditions of martial law;
- Further research into the issues of cooperation between the Court Security Service and units of the National Guard of Ukraine in matters of preventing the smuggling of narcotics into court institutions under martial law can be considered promising;
- The results of the cooperation of the Court Security Service with the EU Advisory Mission in Ukraine during the information campaign "Your Security is our work" demonstrate how effective communication can contribute to the work of state bodies in the justice system during war;
- Strengthening of criminal liability for drug crimes, as well as establishing criminal liability for inaction of a law enforcement officers or authorized officials, or other authorized persons in relation to illegal activities in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors and other criminal offenses against health of the population will contribute to reducing the level of illegal trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, and this will also strengthen the responsibility of persons who commit these criminal offenses.

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Conflict of Interest

Authors have no conflict of interest to declare.

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