

## **INTERNATIONAL EXPERIENCE IN KEEPING PUBLIC ORDER IN COURTS: WHAT PROSPECT FOR IMPLEMENTATION UNDER UKRAINIAN LAW?**

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### **ABSTRACT**

This article articulates that there is the need to abridge the situation of international experience in protecting and keeping public order in courts and also in ensuring the possibilities of its application in Ukraine. In order for us to have a concrete understanding of this concepts, it has been concluded that there is currently any world practice of the most effective and universal mechanism for ensuring and keeping public order in courts. This activity in most countries is usually entrusted to several services or law enforcement agencies. The experience of protecting and keeping public order in courts has been distinguished, which must be taken into account for the development of the Ukrainian Judicial Protection Service, where close and trusting relations has been established between the law enforcement service in courts and the judges of a particular court; carrying out of the protection of public order should include not only ensuring the court premises with a sufficient number of highly professional security guards, but also its (court) equipment with the necessary technical and electronic devices; the judicial protection service should closely interact with law enforcement agencies of both state and local level, especially in regions with a high crime situation; the implementation of activities to ensure and keep public order in courts should be based on the relevant special conceptual and program documents, should provide specific approaches to risk assessment and forms and methods of responding to them.

**Keywords:** International experience; Public order; Courts; Legislation; Legal regulation.

## EXPERIÊNCIA INTERNACIONAL NA MANUTENÇÃO DA ORDEM PÚBLICA NOS TRIBUNAIS: QUAIS AS PERSPECTIVAS DE IMPLEMENTAÇÃO NA LEI UCRANIANA?

### RESUMO

Este artigo articula que há necessidade de abreviar a situação da experiência internacional na proteção e manutenção da ordem pública nos tribunais e também na garantia das possibilidades de sua aplicação na Ucrânia. Para que possamos ter uma compreensão concreta destes conceitos, concluiu-se que existe atualmente uma prática mundial do mecanismo mais eficaz e universal para garantir e manter a ordem pública nos tribunais. Esta atividade, na maioria dos países, é geralmente confiada a vários serviços ou agências de aplicação da lei. Foi destacada a experiência de proteção e manutenção da ordem pública nos tribunais, que deve ser tida em conta para o desenvolvimento do Serviço de Proteção Judiciária Ucrânio, onde foram estabelecidas relações estreitas e de confiança entre o serviço de aplicação da lei nos tribunais e os juizes de um tribunal específico; a execução da proteção da ordem pública deverá incluir não só a garantia de que as instalações do tribunal tenham um número suficiente de guardas de segurança altamente profissionais, mas também o seu equipamento (do tribunal) com os dispositivos técnicos e eletrônicos necessários; o serviço de proteção judicial deve interagir estreitamente com as autoridades responsáveis pela aplicação da lei, tanto a nível estatal como local, especialmente em regiões com uma situação de elevada criminalidade; a implementação de atividades para garantir e manter a ordem pública nos tribunais deve basear-se nos documentos conceituais e programáticos especiais relevantes, deve fornecer abordagens específicas para a avaliação de riscos e formas e métodos de resposta a eles.

**Palavras-chave:** Experiência internacional; Ordem pública; Tribunais; Legislação; Regulamentação legal.

### 1 INTRODUCTION

#### *Establishing the Problematic in Protecting and Keeping Public Order*

The potency of instituting an Improvement in the system of law enforcement agencies, including internal affairs agencies, is one of the main tasks of reforming the law enforcement mechanism in the world in general, and the Ukrainian Government in particular. The priority of reforming the law enforcement system of Ukraine, according to the researchers, is to bring it in line with the main tendencies that summarize the experience for organizing and functioning of law enforcement systems of foreign countries, as well as in line with international legal standards of carrying out law enforcement activities (BONDARENKO, 2004, p. 3). The issue that should be emphasized here is that, even though there has been enormous and laudable efforts that has been put in place by European Countries and that of Ukraine in particular in ensuring that public order should be safeguarded within the judicial or

court premises, such protection has experienced lots of difficulties when it comes to the level of enforcement. Most of the time those vested with the powers and competence in ensuring this order encountered enormous difficulties which affects gravely the rendering of justice. The situation experienced during this period has been the most topical reason for studying and borrowing positive experience in the field of organizational construction and functioning of law enforcement agencies systems of foreign countries. This has been provoked as well as identifying the ways to use such experience to reform and develop the law enforcement agencies system of Ukraine taking into account the national characteristics of our country, where the special significance is due to foreign policy guidelines of Ukraine and, above all, due to the desire to join the European Union (BONDARENKO, 2004, p. 3). All the above stated is also applied to the issues of protecting and keeping public order in courts, i.e. it means that the improvement of this activity should also be addressed from the standpoint of studying international experience in this area.

## **2 QUESTIONING THE NECESSITY OF PUBLIC ORDER IN COURT AND THE POSSIBLE RESULTS ANALYSIS**

Efficiently and concisely, the existence of some problematic issues of ensuring the protection and keeping public order in courts were necessary in the scientific works of: H. V. Atamanchuk, S. P. Bybyk, I. V. Bondarenko, O. I. Halahan, Yu. M. Hroshovyi, M. V. Korniienko, M. V. Kravchuk, O. S. Litoshenko, V. M. Malinovska, M. A. Pohoretskyi, O. I. Skopnenko, O. I. Ulianov, V. M. Fesiunin, S. P. Chernykh and many others. However, despite the large number of scientific developments, there are no comprehensive developments in the legal literature, which are focused on international experience of protecting and keeping public order in courts. All of these works were out in having an inside and understanding as to how works are carried out when dealing with public order. The question is not just stating that there is a need enforcing or maintaining public order within the court premises, rather there is that tendency in ensuring that this order should really been maintain so that the *raison dieter* of justice should be attain. It is one thing to have public order; it is the other in ensuring that such order is maintained. Even though the court of Ukraine has exercised laudable efforts in ensuring public order in court, there are still some difficulties faced in ensuring this since they have to examine and implement what has been taking place at the international levels. The issue of public order in court is an applaudable position that any country under the umbrella of law enforcement will be able in ensuring for

the proper management and application of justice. There is lots a court stands to gain in making sure that justice is properly handled through public order. The question one is obliged in asking is in finding out on what becomes of the criminal justice system in case issues of public order is affecting in the court. The State of Ukraine through its credible laws and policies has seen to that public order in the court room should be maintained.

Several methods and ways have been used by the state of Ukraine in seeing into that, under no circumstances should the court deviate from this essential and fundamental right as to public order.

### **3 DEVELOPING AND RECOGNING PUBLIC ORDER AS AN ESSENTIAL TOOL OF PUBLIC ORDER**

Maintaining civil order is both a duty of the state and a justifying basis for state power, including criminal law power. But civil order is understood to have a normative dimension. Peace is more than merely the absence of disorder; it is order on just terms, achieved by legitimate means. That sets the stage for the paradox of the state using its order-preserving power to breach the civil order, notably through unlawful uses of force by police. This tactic is explicit in the collective demand 'no justice no peace' employed throughout English-speaking democracies, a demand that often calls for greater use of criminal sanctions to repair the civil order. Western democracies aspire to be ethically pluralist, but strains of illiberal populism, such as those apparent now in many of those democracies, make it even harder to reach a sustainable settlement on the terms for a practice and process of just civil peace (BROWN, 2020, p. 85).

The study of the experience of a number of foreign countries demonstrates that this activity is carried out by both special judicial agencies (services) and police units. For this reason, it is important in using the works of other countries which sets as a model and standard when issues of public order are concerned. A succinct and understanding position is that experienced within the European Union, with France as a point of reference operating under a unitary, parliamentary-presidential Republic. The French Parliament exercises the most part of the legislative power and can partially control the activities of the Government. It consists of the Senate (Upper House), which has 321 senators, and the National Assembly (Lower House), which has 577 MPs elected by the majority voting system (has two rounds) by direct, universal, equal and secret ballot for five-year term. 555 MPs out of them are elected in single-member constituencies in the metropolis and 22 in overseas departments and

territories. Executive power is exercised by the President and the Council of Ministers (Government). The Government consists of the Prime Minister – the head of the Government, the ministers who are in charge of the ministries, and the secretaries of state, who are in charge of the divisions of certain ministries. The president appoints the prime minister and, on his recommendation, ministers. The President appoints the Prime Minister and, on his recommendation, the ministers. Regarding the judicial power, it is exercised by: civil courts, general courts; special courts; administrative courts (Kovbasiuk; Orlaty, 2015).

In essence, the main issue here or none of contention is not in examining and showing the need of all these means of public order. Presenting them is one thing, ensuring applicability is the other. There is that tendency on the part of the law in ensuring enforcement of this judicial principle within the confines of the court. Many Dates has shown laudable efforts in matters relating to public order, and the state of Ukraine has never been an exception. The safety of the court is essential and of greater buttress.

The primary responsibility for ensuring and keeping public order, including in French courts, rests with the police. The French police are a complex system run by the Ministry of Interior. Police functions in France are performed by the National Police and the National Gendarmerie. The National Gendarmerie is subordinated to the Ministry of Defense, and the Main Directorate of the National Gendarmerie is under the command of the military districts (defense zones) in the regions. The Minister of Interior is appointed by the President of the Republic and is one of the leading members of the Government. The French Ministry of Interior includes:

*the General Directorate of the National Police; the General Directorate of Local Teams;*  
*the Directorate of Public Safety;*  
*the Directorate of Regulation and Law;*  
*the Central Management Directorate;*  
*the Directorate of Police Personnel and Educational Institutions;*  
*the Directorate of Technical Services.*

This situation here is that France with its unique and potentials when dealing with public order is exercising some degree of competence and efficiency in ensuring order. The situation is clear that those vested with authority in ensuring this order are really exercising that competence and efficiency, but that is not our main concern as far as this write up is concerned. The question we should be asking is in ascertaining whether will all these machineries put in place by the French government in seeing to that public order is enforce in the court premises, are there any ramifications and nuances when implementing the various mechanisms in the court room? If one is to ensure that public order is done, then it will of

essence in putting into operation all the available mechanisms needed in ensuring this order. A wonderful and applaud can be grounded to the French government where there have ensured this public order by putting into place two police systems: administrative and judicial (criminal) ones. The administrative police deals with crime prevention and performs other preventive functions. It is interesting that despite the name “judicial police”, this unit solves, above all, the task of criminal prosecution, rather than keeping public order in courts (KUZMENKO; PASTUKH; KORYSTIN, 2014). The Central Directorate of the Judicial Police (la Direction centrale de la police judiciaire - DCPJ) also known as the “Judicial Police” (Police Judiciaire) includes: central departments in the Ministry and; 12 territorial divisions (9 interregional and 3 regional judicial police departments). The judicial police has broad territorial jurisdiction; it is not limited to a judicial district and covers several districts or the entire territory of the country. The functions of the judicial police include the fight against: organized crime, banditry, pimping, trade in cultural property; trade in stolen vehicles and documents; terrorism and its financing; drug trafficking; causing damage to a person or property; kidnapping; illegal sale of weapons, explosives; fraud; counterfeiting of banknotes; crimes in the field of labor; smuggling; cybercrime and bank card fraud. The jurisdiction of the judicial police also includes the search for persons (BIRIUKOV, 2009).

Besides, France has a well-developed system of municipal police (local self-government police). The municipal police are fully supported by local budgets, and the main work on keeping public order in cities and other settlements is its scope of responsibility; it closely interacts with the National Police (KUZMENKO; PASTUKH; KORYSTIN *et al.*, 2014).

On the more convenient and pleasant platform will be in looking and examining the situation experienced in Next, the United States of America, which is one of the most economically developed countries in the world. Unlike the previous France, the United States is a federal State as a State with a well define and establish federal system has shown its force of enforcement in traverse its constitution, the system of authorities and administration. The main law of the country is the US Constitution, which is one of the oldest current constitutions in the world. It was adopted in 1787 and entered into force on 4 March 1789. The US Constitution guarantees citizens basic rights and freedoms: inviolability of person, home, property, freedom of religion, speech and press, etc. The Constitution clearly enshrines the principle of separation of powers between the legislative, executive and judicial branches of power, which act in accordance with their authorities and independently of each other. Since 1789, the US Constitution has been amended 27 times, the first 10 of which were

adopted in 1791 and together formed the famous “Bill of Rights”. This document was approved by the Congress in 1789 and ratified by 11 states by the end of 1791 (KOVBASIUK; ZAHORODNIUK, 2011, p. 5). Regulations on the system of federal courts are enshrined in the Art. 3 of the US Constitution and is worded as follows:

The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Guided by this wording, the first Congress divided the country into districts and established federal courts in each of them. This is the origin of the modern system of courts, which has currently the following composition (KOVBASIUK; ZAHORODNIUK, 2011, p. 30):

The Supreme Court, 11 courts of appeal, 91 district courts and 3 courts with special powers. The Congress still retains the right to establish and abolish federal courts, as well as to determine the number of courts in the federal justice system. The only restriction in this area exists regarding the Supreme Court, which cannot be revoked by any decision of the Congress members.

The main law enforcement agencies in the United States, as in most other modern democratic countries, are the police agencies and services. Thus, the Federal Bureau of Investigation at the national level is the main government agency responsible for investigating all criminal offenses against federal laws, except for those entrusted with the investigation to other services. This means that the FBI plays a central role in the fight against crime and in the fair administration of justice in the United States. The FBI is headed by the Director appointed by the President of the United States. The FBI is organizationally part of the Department of Justice, but in fact acts independently. The Director of the FBI is directly the chief of the planning and inspection divisions; public relations division. He has a Deputy Director on administrative issues and a Deputy Director on investigations. The FBI Deputy Director on administrative issues is responsible for the work of the following divisions: finance and human resources, identification, personnel training, technical services, administrative services, laboratories, records, and archives. The FBI’s Deputy Director on investigations is responsible for criminal investigations, special investigations, search, and manages the FBI’s field agencies and offices (KUZMENKO; PASTUKH; KORYSTIN *et al.*, 2014).

However, due to the significant autonomy of US states, their police system is characterized by significant decentralization, i.e. a great role in maintaining law and order is

played not only by federal police services, including the FBI, but also by state police structures independent from the Federal Police. There are currently almost 40,000 police forces of various competencies in the United States. There is no rigid hierarchical connection between them either vertically or horizontally like in Ukraine.

U.S. police agencies can be grouped as follows: federal police agencies; state police agencies; county police agencies; police agencies of cities and towns of local type; police agencies of corporations and companies (private police). The activities of the US police agencies are tightly controlled by special agencies responsible for the legality and transparency of law enforcement agencies' activities. Such a control is exercised by the executive power, judges, prosecutor's office, lawyers, juries.

A special role in ensuring public order within the districts belongs to the Sheriff's Office, which is funded from the district budget. The sheriff, in agreement with the district administration, determines the amount of remuneration for junior sheriffs and the assistants (PLAKHOTNYK; CHUMAK, 2018). The jurisdiction of the Sheriff's Office extends to the entire county, while police divisions operate in cities and municipalities. The county sheriff is the head of the relevant office or department and has assistants, the number of whom depends on the size of the county. The sheriff himself recruits assistants. There are about 3,500 sheriff's offices in the United States with a capacity starting of 2 people. The sheriff is responsible not only for maintaining law and order in his locality (county), but also for patrolling highways, administering the county jail, sometimes collecting local taxes, acting as a bailiff, preparing jury lists for the court, etc. Sheriffs in their work are guided by the Constitution of the United States and state laws (TIUTIUNNYK; BONDARCHUK; BIMBIRAITÉ *et al.*, 2018, p. 172). The Sheriff's Office has a law enforcement division (includes patrol units, criminal investigation units, investigation units against property crimes, special investigation units, street crime units, fire brigades, rural representatives, etc.). Directorate of Services (includes the division of biographical inspections, civil services, weapons permitting units, division of photographing and fingerprinting at the request of the court, division of court protection, division of supervision over persons who have committed crimes against sexual freedom); division on managing correctional institutions; crisis management division (PLAKHOTNYK; CHUMAK, 2018).

It should also be noted that there is a special service in the United States, which ensures the security of justice. According to its data, the number of threats against court staff has doubled in the last 6 years, and almost 70 % of judges have received threats. The US Special Protective Operations Division is responsible for the physical protection of about

2,000 federal judges and 5,000 court personnel, as well as the security of 400 buildings. Each threat received is thoroughly analyzed and verified, and based on the results of the investigation, a decision is made to take the alleged perpetrator under 24-hour surveillance (KIM, 2012).

The Sheriff's Office in Canada, unlike the United States, is not a police agency, but a specialized judicial protection service that is established and operates within the judicial administration. In fact, this service is a judicial power agency as well as the Judicial Protection Service in Ukraine. Canadian sheriffs pay special attention to risk and threat assessment, security control, which includes 8 mandatory procedures, in particular security screening, security and training awareness issues, information security, physical security, etc. One of the main conditions for effective implementation of providing and keeping public order in Canadian courts by sheriffs, there is a need for establishing close interaction between them and judges, this interaction should be based on trust and mutual respect principles (SAVILOVA, 2019).

#### **4 CONCLUSION**

Summarizing the above stated, we can conclude that there is not currently any world practice of the most effective and universal mechanism for ensuring and keeping public order in courts. This activity in most countries is usually entrusted to several services or law enforcement agencies. However, it can be both specially created safeguarding services within the judicial power system and the relevant police units, i.e. the protection of courts in many countries is entrusted to the executive branch of power or municipal police units subordinated to the relevant local authorities. Highlighting the positive points that are important for considering the development of the Ukrainian Judicial Protection Service, we believe it necessary to pay attention to the following aspects:

- close and trusting relationships must be established between the law enforcement service carrying out the protection in the court and the judges of a particular court;
- carrying out the protection of public order should include both the provision of court premises with a sufficient number of highly professional security guards, and its (court) equipment with the necessary technical and electronic devices;
- the judicial protection service should closely interact with law enforcement agencies of both state and local level, especially in regions with a high crime situation;

- implementation of activities for ensuring and keeping public order in courts should be based on the relevant special conceptual and program documents, should provide specific approaches to risk assessment and forms and ways to respond to them.

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