

PRZESTĘPCZE TENDENCJE ODNOŚNIE DO ŚWIADKÓW W UKRAINIE

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Adnotacja. Na podstawie analizy statystycznych wskaźników, co charakteryzuje kryminogenną sytuację w Ukrainie, stan walki z przestępczością, formy przeciwdziałania organomścigania i uogólniania naukowych wyników ojczystych na zagranicznych badaczy udowodniono obecność postępującej tendencji do faktycznego zwiększenia przestępczości w Ukrainie. Ustalono przyczynę zaznaczonej dynamiki, a mianowicie pewność przestępców w bezkarności przez bezsilność organów państwowych i systemu ochrony porządku prawnego efektywnie przeciwdziałać przestępczości. Świadek przedłuża zajmować główne miejsce w systemie dowodów i domawiania w kryminalnym prowadzeniu, a, zatem, poddaje się sprzecznemu z prawem wpływowi od strony nie zainteresowanych jaźni w sprawiedliwym i prawnym przed sądowym śledztwie i kryminalnym sądownictwie. Formy sprzecznego z prawem wpływu na świadka obierają się zależnie od okoliczności przestępstwa, a ich wyniki bezpośrednio wpływają na pełność i obiektywizm ustalenia prawdy w kryminalnym prowadzeniu. Określono charakterystyczne zagrożenia świadkowi w Ukrainie w związku z wykonaniem ostatnim procesualnych praw i obowiązków w kryminalnym prowadzeniu. Udowodniono, że główną utajoną przyczyną faz przestępstwa odnośnie do świadków jest nienależne informowanie organów ścigania przez nieobecność zaufania ludności do państwowych instytucji, które powołane walczyć z przestępczością.

Słowa kluczowe: przestępstwo, kryminalne prowadzenie, świadek, pokazy, zagrożenie, groźba, gwałt.

CRIMINAL TENDENCIES ARE IN RELATION TO WITNESSES IN UKRAINE

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Abstract. On the basis of analysis of statistical indexes that characterize a criminogenic situation in Ukraine, state of fight against criminality, the forms of counteraction to law enforcement authorities and generalization of scientific results of home on foreign researchers are well-proven presence of making progress tendency to the actual increase of criminality in Ukraine. Reason of the marked dynamics is set, namely confidence of criminals in impunity through insolvency of public organs and law-enforcement system effectively to counteract to criminality. A witness continues to occupy a basic place in the system of proofs and finishing telling in criminal realization and consequently, yields to unlawful influence from the side of disinterested persons in just and legal pre-trial investigation and criminal rule-making. The forms of unlawful influence on a witness are elected depending on the circumstances of crime, and their results directly influence on plenitude and objectivity of establishment of truth in criminal realization. Characteristic threats are certain to the witness in Ukraine in connection with implementation last of judicial rights and duties in criminal realization. It is well-proven that principal reason of latentness of the stages of crime in relation to witnesses

is the improper informing of law enforcement authorities for lack of trust of population to the state institutes, what called to contest with criminality.

Keywords: crime, criminal realization, witness, shows, threat, threat, violence.

ЗЛОЧИННІ ТЕНДЕНЦІЇ СТОСОВНО СВІДКІВ В УКРАЇНІ

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Анотація. На основі аналізу статистичних показників, що характеризують криміногенну ситуацію в Україні, стан боротьби зі злочинністю, форми протидії правоохоронним органам та узагальнення наукових результатів вітчизняних та зарубіжних дослідників доведено наявність прогресуючої тенденції до фактичного збільшення злочинності в Україні. Встановлено причину зазначеної динаміки, а саме впевненість злочинців у безкарності через неспроможність державних органів та правоохоронної системи ефективно протидіяти злочинності. Свідок продовжує займати основне місце в системі доказів та доказування у кримінальному провадженні, а, відтак, піддається протиправному впливу зі сторони незацікавлених осіб у справедливому та законному досудовому розслідуванні та кримінальному судочинстві. Форми протиправного впливу на свідка обираються залежно від обставин злочину, а їх результати безпосередньо впливають на повноту та об'єктивність встановлення істини у кримінальному провадженні. Визначено характерні загрози свідку в Україні у зв'язку із виконанням останнім процесуальних прав і обов'язків у кримінальному провадженні. Доведено, що основною причиною латентності стадій злочину стосовно свідків є неналежне інформування правоохоронних органів через відсутність довіри населення до державних інституцій, які покликані боротися із злочинністю.

Ключові слова: злочин, кримінальне провадження, свідок, покази, загроза, погроза, насильство.

Introduction. Socio-legal disorganization of the rule of law in society causes not only serious changes in the quantitative indicators of crime, but also prompts the transformation of its structure by increasing the proportion of violent encroachments, as well as criminal offenses aimed at counteracting the establishment of legal justice in Ukraine. Of particular concern is the demoralizing effect caused by the mentioned encroachments not only on the participants in criminal proceedings and legal proceedings, law enforcement officers, but also on active representatives of the population who are indifferent to the public position in the fight against crime. The spread of crime, and especially of its dangerous forms, such as terrorism, murder, robbery, drug trafficking, trafficking in human beings, weapons, etc., causes a legitimate concern for every citizen, the psycho-physiological tension of a person that interferes with normal work, social communication and rest. We emphasize that any danger causes a person to be in need of protection.

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M. Kurkin, T. Kurovska, M. Levitskaya, T. Lidovets, E. Lukianchikov, I. Malyutin, V. Malyarenko, V. Marinov, A. Matveev, V. Morgun, V. Nor, E. Orishchenko, T. Panasyuk, T. Patsalova, S. Pashkov, N. Pelipenko, V. Pentegov, I. Petrukhnin, M. Polyakov, V. Savchenko, M. Svirin, G. Sereda, A. Sizonenko, V. Smirsky, M. Starchikov, V. Stratonov, I. Stokov, A. Strutts, R. Tragniuk, V. Uvarov, L. Udalova, A. Usenko, M. Tsakhlo, V. Chornous, I. Schwab, L. Shestopalova, R. Shehavitsov, O. Shilo, D. Shilova, T. Shimko, V. Shkarupa, A. Shpotakivska, M. Shumylo, L. Shcherbyna. However, this problem has not yet been properly addressed.

The purpose of the article is to reveal the forms and content of criminal tendencies in relation to witnesses in Ukraine, which affect the completeness and objectivity of the implementation and enforcement of the last procedural rights and obligations in criminal proceedings.

Main part. The realization of this goal involves the consistent solution of such tasks - to generalize and characterize threats to the witness as a participant in criminal proceedings, taking into account current criminal tendencies and the criminal situation in general in Ukraine.

Taking into account the topic of research, goals and objectives, the following methods have been used, in particular, the dialectical method has allowed to consider all components of the problems in the dynamics, to reveal their interconnection and interdependence and contributed to the understanding of the relevance of the research; the dialectical method contributed to the knowledge of the unlawful tendencies regarding the influence on the witness; the systematic method determines the structuring of the threats of the witness; logical-legal method was used to deepen the understanding of the conceptual apparatus of the study; the statistical method summarizes the data of operative and investigative practice, and the sociological method was used during the questioning and analysis of the survey materials of the employees of the operational units and the organs of the pre-trial investigation of the National Police.

Materials of the presented research contain the scientific and theoretical background, which consists of scientific works of domestic and foreign specialists in the field of criminal procedural, criminal law, operative-search activity, legal statistics, criminalistics, criminology, psychology, other branch legal sciences; the normative basis, which is based on the provisions of the Constitution of Ukraine, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, current legislative and sub-normative legal acts defining criminal-law, criminal-procedural, forensic, operative-and-search basis for the protection of witnesses; an empirical basis consisting of the results of the generalization of the operational police, the official and investigative practice of the units of the National Police, the official statistics of the General Prosecutor's Office and the Ministry of Internal Affairs of Ukraine for 2012-2018, the actual data of the survey materials of the territorial units of the National Security Police, the results of the questionnaire 100 investigators and officers of the operational units of the National Police of Lviv, Volyn, Rivne, Ternopil, Ivano-Frankivsk regions and the results of the analysis of materials of 100 criminal proceedings and 15 cases of operational proceedings.

One of the important conditions for solving the problems of criminal proceedings is to ensure the implementation of procedural rights with a witness, which is extremely problematic when a person is intimidated and impossible in the event of death of the latter. The activity of counteraction to criminal proceedings in the form of unlawful

influence on its participants is confirmed by statistics of crimes against justice, in particular, in 2016, registered: 506 crimes under st.383 of the Criminal Code of Ukraine; 637 - under art. 384 of the Criminal Code of Ukraine; 23 - for art. 385 of the Criminal Code of Ukraine; 56 - for art. 386 of the Criminal Code of Ukraine. Over the past four years, 3 facts were registered in the Unified Register of Pre-trial Investigations on the basis of Art. 380 of the Criminal Code of Ukraine; 7 - on the grounds of Art. 381 of the Criminal Code of Ukraine; 80 - on the grounds of Art. 387 of the Criminal Code of Ukraine; 27 - for art. 129 of the Criminal Code of Ukraine (threat of killing witnesses). In some cases, there were 2 murder cases, 11 - bodily injuries (varying degrees) of witnesses (*Yedynyj zvit GPU, 2017*).

At the beginning of 2017, long-term protection measures were carried out in Ukraine for about 300 people (only over a quarter are employees of the court or law enforcement agencies) (*Zastosuvannya zasobiv zahystu osib, 2017, s.8*). State witness protection continues to be one of the constitutional guarantees of ensuring the administration of justice and the inevitability of punishment. The share of crime prevention offenses against witnesses in the structure of criminal tendencies is relatively small, however, law enforcement agencies annually register more and more such cases, which mostly remain unpunished. The necessity of improving the state system in this area is practically simultaneously confirmed by representatives of the General Prosecutor's Office, the Ministry of Internal Affairs, the Security Service of Ukraine, and public experts. An example of the failure to protect a witness is the fact of the assassination of Denis Voronenkov, an ex-deputy of the State Duma of the Russian Federation, a citizen of Russia and Ukraine, which clearly demonstrated the criminal self-confidence and negligence of Ukrainian law enforcement agencies in the field of securing valuable witnesses. And this is a negative signal for anyone who is potentially willing to cooperate with the investigation authorities and testify against the perpetrators (*Nevdalyj zahyst Denysa Voronenkova, 2017, s. 1*).

During 2016, in Ukraine law enforcement agencies registered 1124401 criminal offenses. Almost every second registered criminal offense has taken a decision to close criminal proceedings under rehabilitation conditions, that is, in the absence of an event or a crime, or a person's involvement in its implementation, in 531797 cases, or 47.3% (for comparison: in 2015 - in 528132 (48.3%), in 2014 - in 608297 (53.5%), and in 2013 - in 989496 (63.6%)) (*Analysts stan zlochynnosti, struktury i dynamiky za 2013-2016 rr ., s. 1 to 2*). In 2015, in Lviv region, 254 criminal proceedings were filed against 249 law enforcement officers, of which: 193 were the Internal Affairs (National Police) of Ukraine; Prosecutor's Office - 11; Security Service of Ukraine - 1; State Tax Service - 21; State Customs Service - 13; State Penitentiary Service - 10; employees of other law-enforcement agencies - 5. Analysis of criminal-qualification features the following: abuse of power or official position (Article 364 of the Criminal Code of Ukraine) - 42 proceedings; excess of authority or official position (Article 365 of the Criminal Code of Ukraine) - 63; service negligence (Article 367 of the Criminal Code of Ukraine) - 22; 28 - related to unlawful benefits (Articles 368-370 of the Criminal Code of Ukraine); 32 - other crimes in the sphere of official activity. The most typical ways of avoiding the pre-trial investigation of the said crimes are as follows: five criminal proceedings (paragraph 1 of Article 280 of the CPC of Ukraine) were suspended for suspect's illness, six proceedings were suspended (paragraph 2 of Article 280 of the CPC of Ukraine) for not establishing the location of the suspect, evasion of the suspect from the investigation;

refusal to apply preventive measure - detention: refusal by the prosecutors to support the petition - 7 cases; refusal of the court from taking from the guard - 8; Cancellation by the Court of Appeal of a court decision on detention - 13 (*Zvitnist` orgiv dosudovogo rozsliduvannya, 2015 r., p. 2-6*).

According to the polls of prosecutors and investigators, 40% of the crimes against life and health of the person had an unlawful influence on the witnesses. It was committed in the following forms: 43% - violence; 8% - threat of disclosure of information; 24% - bribing. As a result of such actions, about 30% of people changed their testimony and up to 30% avoided participating in criminal proceedings (*Blazhivs`ky`j, Yaky`mchuk, Koz`yakov, Turkot, 2014, p. 208*). The actual questioning of police officers made it clear that 37% of respondents considered a high level of counteraction to the investigation of criminal offenses, and 29% - low. 73% of the respondents claim high level of latency of crimes against participants in criminal proceedings and legal proceedings, and 63% - as witnesses in criminal proceedings. At the same time, the typical forms of counteraction to the investigation of crimes, which are most commonly encountered in practice, 63% of respondents consider the various corruption influences on participants in criminal proceedings; 34% - other unlawful (physical, psychological) influences. In the investigation (accompaniment) of crimes against life and health, the following forms of unlawful influence on a witness were most commonly encountered: a threat to the health of a witness (51%), a threat to the life of a witness (25%), bribing a witness (4%); in the investigation (accompaniment) of crime in the field of official activity - bribing a witness (87%), a threat to the health of a witness (7%), a threat to the life of a witness (2%); in the investigation (accompaniment) of crimes in the field of economic activity - bribing a witness (76%), a threat to the health of a witness (7%), a threat to the life of a witness (3%); in the investigation (accompaniment) of crimes in the sphere of drug trafficking - a threat to the health of a witness (81%), bribing a witness (6%), a threat to the life of a witness (5%); in the investigation (accompaniment) of crimes committed by organized groups, □ a threat to the health of a witness (49%), a threat to the life of a witness (23%), bribing a witness (8%).

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crime in the field of official activity - bribing a witness (87%), a threat to the health of a witness (7%), a threat to the life of a witness (2%); in the investigation (accompaniment) of crimes in the field of economic activity - bribing a witness (76%), a threat to the health of a witness (7%), a threat to the life of a witness (3%); in the investigation (accompaniment) of crimes in the sphere of drug trafficking - a threat to the health of a witness (81%), bribing a witness (6%), a threat to the life of a witness (5%); in the investigation (accompaniment) of crimes committed by organized groups, □ a threat to the health of a witness (49%), a threat to the life of a witness (23%), bribing a witness (8%).

Earlier, the researchers found that sources of information for criminals on the process of investigation of crimes, distributed as follows: former law enforcement officers - 53%; mass media - 43%; previously convicted - 35%; employees of operational divisions - 15%; investigators - 14%; lawyers - 30%; former investigators - 22%; other law enforcement officers - 38%; criminals who independently exposed methods of operative-search activity - 11%; comrades, friends, relatives - 6%; inevitable carrying out of operational measures - 12% (Bednyakov, 1991, s. 73). In most cases (80%) witnesses refuse to testify because of the use of physical and psychological influence of criminals (their surroundings) and corrupt investigators, prosecutors and judicial authorities. Society does not deny the fact that representatives of different levels of law-enforcement bodies have significant powers and information capabilities that they can be familiar with all investigative (investigatory) investigations conducted to expose guilty people and exercise state influence over them. In addition, knowledge of operative and investigative practices allows them to influence the course of the investigation and to create separate problems with such investigative actions as interrogation, search, arrest of bank accounts, etc. (Xaly'kov, 2011, s. 336).

The main reasons that adversely affect the rapid, complete and unbiased investigation of crimes and the adoption of objective judgments are, at present, the presence of pressure from criminals and their environment on participants in criminal proceedings to conceal unlawful acts known to witnesses or eyewitnesses, forcing them to give false impressions or to abandon evidence altogether. According to the results of the poll of police officers, the main objective of countering the investigation of crimes is the closure of criminal proceedings (52%), the deliberate failure to establish a crime organizer and bring to justice the perpetrators of a crime (37%), stop the pre-trial investigation (11%). Often, the result of the unlawful influence on the witness is the change or refusal to give testimony (92%), the physical neutralization of the witness (2%) rarely happens.

In the context of the threatening state of crime and changes in its nature, the widespread way of counteracting the investigation is the unlawful influence on witnesses, which became a norm that significantly affects the level of public confidence in law enforcement agencies, creates real prerequisites for the growth of latent crime (Panasyuk, 2009, s.) At the same time, according to own research, the main motive, which most contributes to the diligent fulfillment by the person of the procedural duties of a witness, is the desire to punish a crime against a close person (92%), very rarely - belief in justice (3%). Today witnesses are one of the most widespread sources of evidence in criminal proceedings and legal proceedings, despite the fact that for a long time it has been thought that such a way of establishing truth is imperfect. It is the willingness of witnesses to assist in the investigation is a vital element of its

effectiveness (Kovalenko, 2006, s. 362). A witness as a participant in criminal justice plays a crucial role in solving one of the priority tasks of criminal justice - establishing the truth and restoring the picture of the accomplished (Babeczky, 2017, s. 19). Despite the use in the procedure of evidence of material evidence and documents, expert opinions, the results of the review of the place of the event and the investigator of the experiment - evidence that reproduce the objective picture and less subject to change, the main source of evidence base remains and will remain the testimony of witnesses (Poxod`ko, Miroshny`chenko, 2013, s. 217).

The Criminal Procedural Code of Ukraine (Article 65) states that a witness is an individual who knows or may be known circumstances that are subject to proving in the course of criminal proceedings and which is called for giving testimony (Kry`minal`ny`j procesual`ny`j Code, 2017, s. 47). Evidence of witnesses belongs to the category of "valuable evidence" that reflects the personality of the participant in the criminal process, which in turn affects the process of forming testimony and the possibility of obtaining, verifying and using the investigator in the process of proof. A witness is a participant in a criminal process that does not have the status of a victim, accused, suspect, and who knows any circumstances that are subject to establishment in the case, and there are no circumstances that exclude the possibility of his interrogation. Any citizen of Ukraine, if he became an eyewitness of the investigated event, regardless of his position (prosecutor, head of local administration, judge, president of the state, etc.) can be questioned as a witness. A person who knows any circumstances in the case must be questioned as a witness and may not have a different procedural status other than being a witness (Terty`shny`k, 2014, s. 296). A witness as a procedural person is "generated" by the very fact of a crime, and therefore it is irreplaceable. A person called by an investigator, prosecutor or court, as a witness, is required to appear in the specified place and time and give true evidence of circumstances known to her in the case (Article 67 of the CPC of Ukraine). For the refusal to testify and for giving knowingly false testimony, the witness bears criminal responsibility (Articles 384, 385 of the Criminal Code of Ukraine) (Nastil`na kny`ga slidchogo, 2011, s. 638). The witness has constitutional rights (Article 63 of the Constitution of Ukraine) and is not responsible for refusing to testify or explain his or her family members or close relatives circle determined by law. An investigator, a prosecutor and a court before interrogation of such persons are obliged to explain to them the right to refuse to testify, as indicated in the minutes of the interrogation or in the journal of the court session (Slovny`k yury`dy`chny`x terminiv i ponyat, 2013, s. 484-448). A witness is constantly under the influence of psychological, mental and physical stress. The presence of factors of extreme, deformation under the influence of external morality is required from a person of solid self-discipline, a developed sense of duty.

However, in practice, widespread cases of witnesses use or threaten to use physical or psychological violence to change testimony in favor of a suspect (accused) or even even to refuse to give testimony. Such pressure can be carried out not only on the part of the accused; law enforcement agencies sometimes also resort to unlawful influence on these participants in the criminal process. Often, fearful of unlawful influence, witnesses either refuse to testify or give knowingly false testimony (Paczalova, 2006, s. 138). Forms of unlawful pressure on witnesses during the investigation of crimes are chosen depending on the circumstances. This is due to the existing criminal situation, the type of criminal activity, the establishment or non-

establishment of the law-enforcement bodies of the specific circumstances of the criminal event, the taking of certain persons in custody, etc. (Shhur, 2005, p.25).

According to separate investigations of the current activity of investigating authorities, in most cases there are situations where witnesses refuse to testify or evade procedural actions, change their previous testimonies, provide incomplete or insufficiently clear indications in view of the actual or potential threat of application in the course of criminal proceedings to them, members of their families, close relatives of violence or other forms of unlawful influence on the part of interested persons (Orlean, 2016, p. 87). Forms of counteraction to the investigation of crimes are expressed in coercion to give false testimonies, to suppress known facts, to refuse to testify (Raty`nov, 1967, s. 167), to conceal crimes by destroying the ideal (people) sources of information about a crime (Ovechky`n, 1975 , s. 5), deliberate unlawful activity on the psychological or physical influence on witnesses, victims and other participants in the criminal process in order to interfere with the resolution of the tasks of the investigation (Belky`n, 1997, s. 129), the terrorization of witnesses, victims and their relatives, physical elimination witnesses and victims in order to force them to refuse to testify or to change earlier the evidence (Mizhnarodna policejs`ka ency`klopediya, 2009, s. 810), the use of threats and the use of physical and mental violence, which are extreme methods related to threats and real physical impact, as well as the physical elimination of certain individuals. These methods can be applied to all participants in criminal proceedings, including to witnesses.

Consequently, investigative and judicial practice confirms that today witnesses use different forms of violence, both physical and mental. Physical abuse includes beatings, bodily injuries, torture; to mental violence - intimidation and threats. The threat is ñ a kind of mental violence, which represents a gross promise to cause any evil, trouble. Threats to murder, causing serious bodily harm, destruction of property - are the most dangerous types of threats that are a serious crime and punishable in a criminal way (Bilenchuk, Kurko, OstroLucz`ky`j, 2015, s. 179).

Man (the same witness) lives in a society in which both social and legal injustice reigns. The unwillingness to assist law enforcement agencies is usually conditioned by the fact that the witness as a participant in the criminal process does not believe in the effectiveness of his participation in the case; does not believe that the guilty will bear responsibility; seeks to avoid the negative consequences associated with the duties of witnesses (the loss of time due to repeated calls to inconvenient time, feelings, discomfort in connection with the need to be distracted from ordinary occupations, excitement at interrogations, the need to expose the perpetrators, fear of revenge, etc.); afraid to be alert in business; is afraid of unjustified and incorrect treatment by law enforcement officers (multiple, without valid reasons, long-term and long-awaited expectations, neglect of his official and family duties, disrespectful tone, etc.); knows about the insufficiently high authority of investigative and judicial bodies, etc. (Raty`nov, Adamov, 1976, s. 42-43). This is only part of the problems that people are forced to survive and try to decide when living in a society. In this regard, the main component of ensuring the safety of persons involved in criminal proceedings and legal proceedings is the implementation by law enforcement agencies of measures aimed at protecting the life, health, housing and property of individuals from unlawful encroachment, in order to create the necessary conditions for proper administration of justice. In addition, when analyzing the motives for providing false testimony to the

employee of the operational unit (investigator, prosecutor), it is necessary to draw attention to the fact that the formation of their material often occurs in critical situations that cause a person with strong emotional reactions. A peculiar form of such a reaction is tension and confusion. A person who has witnessed a crime, in particular, a violent one, is in a state of tension, but all its mental processes seem to be inhibited (Psy`xologiya slidchoyi diyal`nosti, 2009, s. 157). Awareness of danger is a fear in man. Fear is a state of excitement, anxiety, anxiety, caused by the expectation of something unpleasant, undesirable (Suchasny`j tlumachny`j slovny`k, 2008, s. 835). Fear can have a different effect on the process of witnessing testimony. In some cases, under the influence of fear, events are perceived with exaggeration, distorted, in others they are badly or not memorized at all, and in the third, they are perceived and evaluated correctly, adequately (Psy`xologiya slidchoyi diyal`nosti, 2009, s. 158). The fear is objectively caused by individual threats to the life and health of the witness's face. The term "threat" has several interpretations, in particular: a rough, decisive promise to inflict some kind of evil and trouble; threats, praise; possibility or inevitability of occurrence of something dangerous, annoying; something that can cause some kind of evil, trouble, danger (synonym - a threat) (*Slovny`k yury`dy`chny`x terminiv i ponyat`*, 2013, p. 303). The threat as an external factor of danger for a person takes into account his particular psychological state (*Zelenecz`ky`j, Kurkin, 2004, p. 26*). A characteristic feature of danger is a particular threat to a particular person (witness), members of his family, close relatives in connection with the possibility of depriving them of their lives, causing damage to their health, destroying property, belonging to their home or other values and goods.

The analysis of data obtained by human rights organizations in 2015 shows that mental violence in the form of threats against witnesses and their relatives remains an integral part of the work of law enforcement officers themselves, but its scale has decreased compared to 2010. Thus, in 2015, 14 cases of blackmail were revealed. he became a witness, and 59 - when his friend, relative, was the victim. Regarding the amount of intimidation, threats from law enforcement officers themselves, the study revealed 119 cases (8 per cent for witnesses and 111 for relatives and relatives). The same is true of cases of abuse and humiliation, - 182 cases (9 - for witnesses and 173 - relatives and relatives) (*Monitory`ng nezakonnogo nasy`l`stva v organax vnutrishnix sprav Ukrayiny`*, 2015, p. 26). The same tendency was reflected in the estimated number of people who were victims of torture during the investigation. According to data from the survey, in 2011 their number exceeded 100 thousand. In 2015, the number of those against whom the torture was used during the investigation decreased to 62 thousand (*Monitory`ng nezakonnogo nasy`l`stva v organax vnutrishnix sprav Ukrayiny`*, 2015, s. 28). It can be noted that anyone is not insured from violence. Thus, if, in general, 55.5% of the respondents indicated that they were subjected to psychological violence, those who were delivered by police to the suspect's status, such 73.5%, invited as a witness - 56.7%, were in a temporary detention center - 60.0%, He was in a detention center - 57.6% (*Monitory`ng nezakonnogo nasy`l`stva v organax vnutrishnix sprav Ukrayiny`*, 2015, p. 40).

During the investigation of crimes, there are threats to the participants in the criminal proceedings. Threats come in different directions: murder, beating, damage or destruction of property, rape, distribution of confidential information about a person - object of influence, etc. They may concern both the participants in the criminal

proceedings, and their relatives and relatives. The most diverse forms of notification are: oral warning, anonymous phone calls, letters, notes, SMS or Internet messages, etc. Sometimes criminals or their followers use more sophisticated methods of transmitting information to subjects of influence, for example, for a long time several people are near the house (apartments of a participant in criminal proceedings) and are observing or accompanying the person without any communication with her. Gestures and facial expressions may be used to convey the threat - this is especially true during investigative actions in which a participant directly contacts a potential source of threat, for example, during simultaneous interrogations of two or more interrogated persons or the identification of suspects can warn the witness to be invisible to the investigator's gestures, a threatening smile, a glance to express danger, to use encoded in content, but understandable to the potential victim of a word, sentence, mention of certain names of people, etc. Thus, we can talk about specific threats, the forms of expression of which can be documented (oral statement, letter, telephone call, note, etc.) and which themselves contain signs of a separate crime, for example, the threat of murder (Article 129 of the Criminal Code of Ukraine) or the destruction of property (Article 195 of the Criminal Code of Ukraine). But there are threats and uncertainties that are expressed in forms that do not imply any legal liability, such as threats with gestures, facial expressions or eyesight. Such methods of influence are quite difficult to oppose anything. Scientists point out that the threat of murder involves intimidation (oral, written, gesture, demonstration of weapons or other dangerous items, etc.) of another person who perceives this threat as concrete and real, which can be realized at any moment or in the near future. To accurately assess the reality of the threat, it needs to be established that the victim or the person present at that time had all the necessary grounds to fear its implementation. It should take into account the degree of perception of the threat to the victim, the way, character, place, time, atmosphere and intensity of her statement, the nature of the previous relationship between the guilty and victim (Naukovo-prakty`chny`j comment Kry`minal`nogo Code Ukrayiny`, 2017, s. 313). To threaten the destruction of property, it is necessary to attribute the actions of the suspect, which consist in clear or written communications (Internet mail, SMS, demonstration of the Molotov cocktail, etc.), the facts must really confirm the intention of another person to be immediate or something that may happen in the near future, the destruction of certain property, which is alien to the guilty. In this case, the victim should perceive such influence as real and concrete, that is, it should have all the real reasons to fear the implementation of this threat (Naukovo-prakty`chny`j comment Kry`minal`nogo Code Ukrayiny`, 2017, s. 443). At the same time, danger is understood as the threat of causing someone to harm or condition when someone is in danger (*Kun`ch, 2007, s 488; Ozhegov, 1973, p. 413*).

The consequence of the assessment by the scientists of the normative design that determines the grounds for the application of security measures to the participants in the criminal proceedings, the generalization of the practice of applying security measures in criminal proceedings, is based on the conclusion that the lawmakers are not quite right in the possibility of taking security measures only in the presence of a "real" threat to a person, since in practice, cases where such a danger is probable, for example, in cases of investigation and judicial review of criminal a violation committed by an organized criminal group whose members used physical and psychological violence against people; in the presence of a criminal prosecution only one witness who directly

perceived the event of a criminal offense and can actually reproduce the picture of the offender; if one of the suspects unlike the other agreed to cooperate with the investigator, the prosecutor for the purpose of revealing the crime; in a situation where a person who committed a criminal offense has previously been prosecuted for unlawful influence on the participants in criminal proceedings, or measures to ensure criminal proceedings have been applied to prevent the unlawful pressure on the subjects of the criminal process (*Kachmar, 2017, p. 16*).

It is also important to note that, at a minimum, there are two entities assessing the existence of a threat: 1) the person against whom it is directed; 2) an official or a body that decides on the need for security measures. And, as practice shows, for the most part, it (evaluation) of these subjects is significantly different, or even is diametrically opposed (*Kry`minal`no-procesual`ny`j kodak Ukrainy`, 2003, s. 56*). The insecurity of individuals acting in the interests of justice or capable of contributing to the establishment of truth in the case induces them to refrain from fulfilling their civic duty (*Suxars`ky`j, Fedorova, 2007, s. 208*). Ensuring the security of the subjects (participants) of the criminal process is aimed at the effective implementation of their functions and the fulfillment of the tasks of legal proceedings (*Gry`n`kiv, 2009, s. 123*), that is, the creation of the necessary conditions for the proper administration of justice (*Lobojko, 2005, p. 125*).

Conclusions.

In a criminal proceeding, a witness is often exposed to unlawful influence, and the form of threat, the probability of its implementation, the subjects of execution directly depend on the criminal-legal qualification of the investigated act and the social status of persons involved in the crime (criminal offense). The forms of threats of the witness are diverse: from the simplest psychological threats, up to the murder. The reaction of a witness to a threat depends on his social and psychophysiological state.

Given the complex criminal situation in Ukraine, any threats to the witness by law enforcement agencies should be considered with high probability, as the result of such influence may be an inevitable harm to human health and life. Therefore, the problem of the effectiveness of ensuring the guarantees of the rights and obligations of a witness, their compliance with current criminal tendencies is one of the topical theoretical and practical organizational and legal problems, since without the existence of adequate guarantees the idea of deterring the growth of organized crime in Ukraine loses its meaning and the tasks of the law-enforcement system remain empty. idealistic declarations. And this state of affairs is considered a direct threat to the national security of society and the state as a whole at the level of the military aggression of the Russian Federation and corruption in Ukraine. Therefore, one of the priority directions of the state in the areas of ensuring legal justice and reforming law enforcement bodies should be the legislative introduction into Ukraine of the National Strategy in the form of long-term state organizational-legal and financial mechanisms for ensuring the participants of criminal proceedings.

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