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Administrative and Legal Regulation of Gender Policy in Police Activities

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■ **Abstract.** The steady increase in the number of administrative offences committed on the basis of gender, the victims of which are the most vulnerable strata of citizens, which demonstrated the lack of effective state activity in preventing and counteracting gender-based violence, prompted an analysis of the specifics of administrative and legal regulation of gender policy in police activity and the development of ways to improve it. The purpose of the study is to provide scientifically substantiated conclusions on optimising the administrative and legal regulation of gender policy in police activities. The methodology of this paper consists of a complete and coordinated system of general philosophical (dialectical, analysis, and synthesis) and special methods (historical and legal, logical and semantic, special legal, formal logical, hermeneutical, comparative and legal, modelling, and forecasting) this allowed properly analysing the subject of the study, the data of a survey of employees of the National Police of Ukraine to determine regulatory mechanisms for ensuring equality based on gender, the specifics of administrative and legal regulation of the gender policy of the police in this area of legal relations. The study defines the essence of administrative and legal regulation of gender policy in police activities. It is noted that it is the norms of administrative law that determine the powers of the police officer and other subjects of gender policy implementation, while ensuring the proper behaviour of subjects of influence by administrative coercion measures. It is determined that the object of administrative and legal relations should be considered the behaviour of participants in legal relations that are regulated and implemented through the provisions of administrative law. An integrated approach to the issue of administrative and legal regulation of gender policy in police activities is noted, which is not limited to the legislative consolidation of mutual rights and obligations, but is also implemented by studying and addressing the specific needs of both sexes, the active role of the National Police of Ukraine in this process. Arguments are given regarding the implementation of a balanced gender parity policy in the police

■ **Keywords:** gender equality; administrative law; powers; gender-based violence; administrative coercion measures

■ Introduction

Gender equality is one of the fundamental principles of human rights, but inequality between men and women, as well as between people of different gender identities, is observed in all countries and most often results in a lack of equal opportunities and gross violations of human rights. According to the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", "gender equality is interpreted as the equal

legal status of women and men and equal opportunities for its implementation, which allows persons of both sexes to take equal part in all spheres of society's life. The main components of equal rights of women and men are the absence of restrictions or privileges based on gender, equal conditions for the realisation of equal rights of women and men" [1].

In the Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 3 defines "gender" [2] as "socially established roles, behaviours, activities, and characteristics that a certain society considers appropriate for women and men. The principle of gender equality is reflected in Articles 3, 21, 24, 51 of the Constitution of Ukraine. In particular, Article 3 of the Basic Law establishes the equality of men and women

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in all spheres of life [3], and Part 3 of Article 24 of the Constitution of Ukraine states that equality of rights of women and men is ensured by providing women with equal opportunities with men in socio-political and cultural activities, in obtaining education and training, in work and remuneration for it, etc.” [3].

In the 21st century, the policy of gender equality is being implemented quite effectively at the international level. It is implemented by various institutional units, through legal mechanisms defined in strategies, conventions, and other documents aimed at continuous work to overcome gender discrimination. Important in view of this problem are the studies by Ukrainian and foreign researchers in the field of administrative law, who raised the issue of gender equality. In particular, the paper by O. Perunova “Basic principles of general preventive measures in the field of gender-based violence” is devoted to the content of the fundamental principles that must be observed in the application of measures to prevent cases of gender-based violence [4]. N. Orlovska, Yu. Stepanova study “Issues of gender equality in the light of United Nations Security Council Resolution 1325 and related resolutions” included a scientific analysis of international documents, which create a system of complementary legal norms aimed at ensuring gender equality in all spheres of public life [5]. S. Kruhova has investigated and provided a detailed definition of “ensuring equal rights of men and women” [6]. K. Husieva, and I. Horbach-Kudria proposed a model for complementing the functions of authorised units of the National Police and differentiating their actions in the general mechanism of preventive activities provided for by the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” [7]. V. Bass, S. Bratel et al. have investigated the regulatory framework aimed at ensuring gender equality in the National Police of Ukraine [8].

Some conclusions regarding the mechanisms of administrative and legal regulation of gender policy in police activities became possible due to the use of the best practices of foreign researchers, in particular, regarding: methods for overcoming gender stereotypes in relation to children in the Scandinavian countries [9]; developing a balance between men and women in various spheres of life [10].

In Ukraine, the problem of creating an effective regulatory mechanism for protecting the rights of victims of gender-based violence remains urgent. On a theoretical level, this phenomenon is subject to learning and reconsideration to further improve it. At the same time, the problems of administrative and legal regulation of gender policy in the activities of the National Police remain relevant. In particular, the main problem today is the lack of a clear legislative framework for this activity. Unfortunately, Ukraine has not yet developed a unified approach that provides the necessary requirements for legislators and law

enforcers to take into account the specific gender characteristics of offenders in a way that respects the principles of equality of responsibility and punishment regardless of gender but does not violate the principles of equality, humanity, and justice (for example, when it comes to special sociodemographic and physiological statuses – pregnancy, presence of young children, etc.). These categories of persons were and still are actually the most vulnerable among other offenders.

The purpose of the study – to provide scientifically substantiated conclusions on optimising the administrative and legal regulation of gender policy in police activities. To achieve this goal, the following tasks were defined: to formulate a definition of administrative and legal regulation of gender policy in police activities; to determine the object of administrative and legal support for gender equality; to outline ways to improve the mechanism for ensuring equal rights and opportunities for men by the National Police of Ukraine.

■ Materials and Methods

The methodological basis of the study is formed by general scientific and special methods of research. The dialectical method was used to carry out theoretical and legal characteristics of administrative and legal regulation of gender policy in police activities. The study also uses such general philosophical methods: analysis and synthesis (research of legal regulation of gender policy and investigation of its course as an administrative and legal regulation, features of the object of administrative and legal support for gender equality, etc.). The application of the historical and legal method allowed the study to find out the evolution of the normative and legal development of compliance problems of gender equality by the police. The logical and semantic method allowed building, deepening, and concretising of the vocabulary. The special legal method contributed to a detailed analysis of the current state of legislative provisions, due to which proposals were developed to eliminate existing theoretical and legal contradictions, and conflicts in legislative acts. Formal logical and hermeneutical methods provided an in-depth analysis of the current legislation on ensuring gender equality by the National Police of Ukraine and contributed to the identification of critical problems and comments. The modelling and forecasting methods were aimed at forming suggestions and recommendations based on the results of identified problem aspects. The comparative legal method was used to determine the most promising ways to introduce the positive experience of implementation of gender policy into national legislation.

The empirical basis of the study was a summary of the results of interviewing 58 employees of the National Police, namely inspectors of juvenile prevention and district police officers of the Headquarters of the National Police in Khmelnytsk, Zhytomyr, and

Vinnitsia regions, who prevent and counteract violence in the field of family relations on the issues of: regulatory mechanisms for ensuring equal rights and opportunities for women and men; features of administrative and legal regulation of gender policy in police activities; prevention and counteraction to gender-based violence.

■ Results and Discussion

Administrative and legal regulation of gender policy in police activities

An extreme manifestation of gender discrimination, which is most often faced by units of the National Police of Ukraine, is gender-based violence, which remains one of the most acute social problems, affecting not only women but also men and children [11]. It is one of the most serious violations of human rights.

The definition of “gender-based violence” is contained in the legal system of the European Union in Directive 2012/29/EC of the European Parliament and of the Council of 2012, which contains generally recognised international standards for the observance of the rights and freedoms of victims of crime. This document recognises gender-based violence as a form of discrimination and violation of the fundamental freedoms of the injured person, which is directed against any person on the basis of gender, gender identity, or gender expression, or if it affects persons of particular sex disproportionately [12].

The above underlines the recognition as victims of gender-based violence not only of women but also of men. This does not exclude the possibility that minors, including those of the same sex, may also become victims of such violence. The conclusion is that the terms “gender-based violence” and “gender-specific violence” are not synonymous. The latter term covers the concept of “gender-specific violence”, which indicates the specifics of belonging to the opposite sex in the case of gender-based violence.

Given the understanding of the essence of the gender-specific approach to the regulation of social relations, the administrative and legal means of preventing and suppressing offences in this area are aimed at influencing the circumstances arising in relations between opposing sexes, namely: identifying the causes and conditions that have contributed to the emergence of conflict, influencing the behaviour of those inclined to commit offences, developing an effective mechanism for the prevention and suppression of these offences by the police. At the same time, the subjects of prevention are endowed with appropriate powers to choose and apply the most effective means of administrative and legal influence, depending on the specific situation.

Typical general social and legal features of gender-based violence should include: destructive impact on the rights and legitimate interests of a woman/man

by a person of the opposite sex; aimed at violating the rights and freedoms of women and men by gender, orientation; finds expression in various forms (physical, economic, psychological, sexual) and spheres of life (cultural, social, political, etc.); characterised by both action and inaction.

It cannot but be recognised that today there are no complete and detailed statistics on the frequency of cases of gender-based violence, due to such reasons as: lack of a unified approach in attributing a particular manifestation of violence to gender-based violence; insufficient awareness of the role of law enforcement agencies and other institutions in preventing violence and rehabilitating its victims, which leads to the recurrence of such cases, which are not always considered by statistics as separate acts of violence; unwillingness of victims to report the use of gender-based violence to them. Registration of cases of violence is also difficult because it can be difficult to classify certain acts of violence as criminal acts (regular verbal or psychological bullying or insults).

In order to investigate and determine the issues of administrative and legal support of gender equality by the National Police, it is also necessary to find out what is meant by the concept of “legal support” and “legal regulation”, to find out the main regulatory documents which regulate the legal relations of the sexes in various spheres of public life.

In the general sense, legal support should be understood as the purposeful influence on people's behaviour and public relations through legal means [13, p. 327; 14; 15]. Legal regulation (from Latin reguläre – “direction, ordering”) is understood as one of the main means of power influence on public relations in order to regulate them in the interests of a person, society, and the state [16, p. 40]. This understanding of this category will be used when researching the issues of division.

In the legislation of Ukraine, the term “gender equality” first appeared in the resolution of the Cabinet of Ministers of Ukraine “On the National Action Plan for the advancement of women and promotion of gender equality in society for 2001-2005” of May 6, 2001 [17].

An extremely important conceptual value in the regulatory framework is the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” of 09/08/2005 [1], which defined the institutional and legal foundations of gender relations in society and outlined the main grounds of state gender policy, the authorities responsible for its implementation.

The Law of Ukraine “On the Principles of Preventing and Combating Discrimination in Ukraine” dated 09/06/2012 [18] establishes the principles of preventing and countering discrimination in Ukraine, defines its main forms, and subjects with powers to prevent and counteract discrimination, etc. [19].

“National strategy in the field of human rights” [20], approved by the decree of the president of Ukraine on 08/25/2015, is important primarily because it contains relevant provisions (sections “ensuring equal rights and opportunities for women and men”, “countering gender-based violence, human trafficking and slavery”, “countering domestic violence”, “ensuring the rights of the child”), which reflect the strategic directions of the state in the implementation of gender policy.

A landmark regulatory document in ensuring gender equality in the field of family and household relations is the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, which entered into force on 01/08/2018, introducing a comprehensive approach to combating domestic violence [19]. According to the Law, “the new legislation on preventing and countering domestic violence, regardless of the fact of cohabitation, applies to the following persons: spouses; former spouses; brides; mother (father) or children of one of the spouses (former spouses) and another of the spouses (former spouses); persons who live together (lived) in the same family, but are not (were not) married to each other, their parents and children; persons who have a common child (children); parents (mother, father) and child (children); grandfather (grandmother) and grandson (granddaughter); great-grandfather (great-grandmother) and great-grandson (great-granddaughter); stepfather (stepmother) and stepson (stepdaughter); siblings; other relatives: uncle (aunt) and nephew (niece), cousins, great-grandfather (grandmother) and great-grandson (granddaughter); children of spouses, former spouses, brides, persons who have a common child (children) who are not common or adopted; guardians, their children and persons who are (were) under guardianship; foster children parents, parents-educators, foster carers, their children and foster children, children-pupils, children living (lived) in the family of a foster carer” [19].

This Law also provides for expanding the powers of the National Police of Ukraine. Thus, the new powers of the police include “cancellation of permits for the right to purchase, store, carry weapons and ammunition to their owners in case of domestic violence, as well as the seizure of weapons and ammunition in accordance with the procedure established by law. Police officers can enter a person’s home without a reasoned court decision in urgent cases related to the termination of the committed act of domestic violence, in case of immediate danger to the life or health of the injured person” [19].

Thus, the importance of the specified regulatory document [19] is seen first of all in a comprehensive approach to combating gender-based violence in the family and household sphere regarding: expanding the circle of abusers; introducing urgent prohibiting and restrictive prescriptions for the abuser; taking such

a person on preventive registration and implementing preventive measures against them, in particular, passing a programme for abusers; expanding the list and capabilities of subjects with powers to prevent and counteract such violence, etc.

In addition, to optimise the response to gender-based violence, the Code of Ukraine on Administrative Offences is supplemented with Article 39-1 (Appointment for passing a programme for a person who has committed domestic violence or gender-based violence) [22], according to which, “in the case of domestic violence or gender-based violence, the court, when deciding whether to impose a penalty for an administrative offence, has the right to simultaneously decide whether to send a person who has committed domestic violence or gender-based violence to pass a programme for such persons provided for by the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” [19] or by Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” [1]. In addition, the fine was returned as a type of penalty in Art. 173-2 in the amended version “commission of domestic violence, gender-based violence, failure to comply with an urgent prohibition order or failure to notify about the place of their temporary stay [22].

Important in strategic terms is the Concept of the state social programme for preventing and countering domestic violence and gender-based violence for the period up to 2023 of 10/10/2018 [23] its goal is to reduce the prevalence of domestic violence and gender-based violence, develop a system for preventing and countering domestic violence and gender-based violence in accordance with international standards and the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” [19] in the context of decentralisation.

Strategically important is “achievement of effective implementation of gender equality policies and empowerment for women and men in Council of Europe member states by supporting the implementation of existing instruments and strengthening the Council of Europe’s gender equality regulatory framework under the leadership of the Gender Equality Commission (GEC). The main focus during 2018-2023 was on the following strategic areas: prevention of gender stereotypes and sexism and combating such phenomena; prevention and combating violence against women and domestic violence; ensuring equal access of women to justice; achieving balanced participation of women and men in political and public decision-making; protecting the rights of migrants, refugees, and women seeking asylum; implementing a strategy to achieve gender equality in all policies and measures” [24].

Notably, legal regulation acquires its own characteristics depending on the branch of law, the norms of which are used to regulate the relevant legal

relations. It is “administrative and legal regulation that characterises the special legal mechanism of influence of administrative law on the behaviour and activities of its addressees” [25, p. 237]. According to the practical opinion of V. Halunko, “the sphere of administrative and legal regulation includes relations that reflect the individual public needs of individuals and legal entities; third parties whose rights and freedoms are violated first; the general public interest of the state and the Ukrainian people as a whole; which implement the imperative and power competence of public administration and the mutual public interests of all non-governmental participants in administrative and legal relations, each of which must go to a certain infringement of their interests to meet the interests of the other; which require compliance with certain rules established by the state in administrative and legal norms” [25, p. 238].

It is worth noting that administrative law deals with many aspects of gender equality, or rather inequality, since it covers an extremely wide range of public relations with its regulatory influence and has no clear boundaries. Basically, administrative law studies everything related to the organisation and functioning of the executive branch at all its levels, paying considerable attention to issues related to the civil service and the procedure for its passage. Ultimately, a third set of issues can be identified that has recently emerged as a separate branch of law: administrative responsibility or administrative tort law, where there are particularly many gender-specific problems and an extremely high risk of neglect.

Object of administrative and legal support for gender equality

Administrative and legal regulation has its own objects of regulation. In the dictionary, the category “object” (Latin – objectum) is defined as what the cognitive and transformative activity of a person (subject) is aimed at [26, p. 187]; the phenomenon to which the action of law (object of law) is directed [27, p. 803]. Managerial activity of the state, which is regulated and implemented through the norms of administrative law on the spread of public relations based on gender ideas in various spheres of life, which, in fact, is the object of administrative and legal support for gender equality. Every action of the police, as participants in administrative and managerial legal relations, is aimed at achieving certain legal consequences.

Administrative and legal regulation is permissible only if and within those limits, if it does not violate the fundamental rights and freedoms of the individual. Interference in this sphere can only be carried out based on the law and be reasonably justified. The intervention of the police is justified by the need to stop the illegal act in order to protect the health, rights, and legitimate interests of the person and further prevent it on the part of the offender. For example, when receiving a message about a conflict based on gender in the sphere of family and household relations, the

police are obliged to respond even when they believe that such information indicated in the appeal is groundless or imaginary [28, p. 207].

The Constitution of Ukraine and international laws and regulations define the most general and basic rights and freedoms of a person and citizen, including those that are mandatory for the exercise of their powers by the police. The legal basis for the protection of citizens' rights is best laid down in the Law of Ukraine “On the National Police”, which contains a number of progressive points in terms of ensuring the rights of individuals when police measures are applied to them. In particular, according to Article 7 of this Law, “police officers are prohibited under any circumstances from facilitating, committing, inciting, or tolerating any form of torture, cruel, inhuman or degrading treatment or punishment” [29]. “In the activities of the police, any privileges or restrictions are prohibited on the grounds of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds” (Article 5 of the Law of Ukraine “On the National Police”) [29].

Ensuring gender equality requires not only legislative consolidation, but also a comprehensive investigation of its nature, a comprehensive and balanced approach to solving specific gender problems. Among other things, one of the most important issues is ensuring equal rights and opportunities for men and women by the National Police.

The mechanism of illegal behaviour of subjects of different genders, the psychological characteristics of each of them have significant differences, which excludes the use of uniform preventive measures of counteraction and requires the use of a gender approach (taking into account the biological, socio-psychological, and other characteristics of persons of different genders). Given this, the issues of maintaining a reasonable balance in the implementation of personnel policy regarding professional selection to the National Police do not lose their relevance, because it is no secret that, for example, the active involvement of women in reconciliation procedures in the event of family conflicts often has the best effect in countering such manifestations. At the same time, the insufficient number of women in certain police units makes it impossible to optimise activities in the field of prevention of gender-based violence.

The analysis of administrative and legal norms revealed the inconsistency of the gender approach of the legislator to their construction, which consists in particular in the absence of: a clear list of gender features that require differentiation of subjects of administrative responsibility; methods of the same type, systematic application of these features in the construction of norms of administrative and tort legislation. The above only highlights the high relevance of study on the issues outlined in the subsection, the search for the most effective mechanisms for preventing and

countering gender-based violence, and the development of optimal ways for such activities by the National Police.

■ Conclusions

The conducted study has yielded the following conclusions regarding the specifics of administrative and legal regulation: of gender policy in police activities:

1. Administrative and legal regulation of gender policy in police activities is a set of tools defined by the norms of administrative law that are used to ensure that authorised subjects of the National Police effectively regulate legal relations in the field under study. It is the norms of administrative law that establish the limits of the powers of a police officer and other authorised entities, establishing their rights and obligations, by ensuring the proper behaviour of subjects of influence by administrative coercion measures.

2. The object of administrative and legal support of gender equality is public relations based on gender ideas in any sphere covered by public management activities of the state. Accordingly, the object of administrative and legal relations is the behaviour of the participants in legal relations themselves (certain actions or abstinence from actions), which requires legal regulation and implementation through the norms of administrative law.

3. The promotion of gender equality is not limited to legislative consolidation and ensuring equal rights of women and men. An effective solution to this problem requires a thorough investigation and comprehensive solution of specific problems of the sexes, a balanced approach to ensuring equal rights and opportunities for men by the National Police of Ukraine, and gender balance in the implementation of personnel policy in the police.

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Адміністративно-правове регулювання гендерної політики в діяльності поліції

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■ **Анотація.** Стійке зростання кількості адміністративних правопорушень, учинених за ознакою статі, жертвами яких стають найбільш незахищені верстви громадян, засвідчує недостатньо ефективну діяльність держави в запобіганні та протидії гендерно зумовленому насильству. Здійснено аналіз особливостей адміністративно-правового регулювання гендерної політики в діяльності поліції та визначено шляхи його вдосконалення. Мета статті – надати науково обґрунтовані висновки щодо оптимізації адміністративно-правового регулювання гендерної політики в діяльності поліції. Методологію дослідження становить цілісна й узгоджена система загальнофілософських (діалектичний, аналізу, синтезу) та спеціальних методів (історико-правовий, логіко-семантичний, спеціально-юридичний, формально-логічний, герменевтичний, порівняльно-правовий, моделювання та прогнозування). Зазначений методологічний інструментарій дав змогу належно проаналізувати предмет дослідження, дані опитування працівників Національної поліції України щодо визначення законодавчих механізмів забезпечення рівності на основі гендеру, специфіки адміністративно-правового регулювання гендерної політики поліції в цій сфері правовідносин. Встановлено сутність адміністративно-правового регулювання гендерної політики в діяльності поліції. Зауважено, що саме норми адміністративного права визначають повноваження поліцейського та інших суб'єктів реалізації гендерної політики, забезпечуючи належну поведінку суб'єктів впливу заходами адміністративного примусу. Зауважено, що об'єктом адміністративно-правових відносин варто вважати поведінку учасників правовідносин, які регулюються та реалізуються за допомогою положень адміністративного права. Наголошено на комплексному підході до питання адміністративно-правового регулювання гендерної політики в діяльності поліції, що не обмежується законодавчим закріпленням взаємних прав та обов'язків, а реалізується шляхом вивчення та вирішення специфічних потреб обох статей, активною роллю в цьому процесі органів Національної поліції України. Наведено аргументи щодо реалізації органами поліції виваженої політики в цій сфері, тобто на умовах гендерного паритету

■ **Ключові слова:** гендерна рівність; адміністративне право; повноваження; гендерно обумовлене насильство; заходи адміністративного примусу