

UDC 351.754

Abdulkadirova E. – Postgraduate Student of the Department of Administrative Law and Process of the National Academy of Internal Affairs, Kyiv, Ukraine

REGULATORY SUPPORT OF PATROL POLICE ACTIVITIES DURING THE DISPOSAL OF LEGAL PROCEEDINGS

The article is devoted to the legal regulation of cases by patrol police, provides a list of legal acts and describes the criteria by which they are divided.

Keywords: legislative act, patrol police, law, consideration of cases, administrative offense.

At the current stage of Ukrainian law enforcement system development special attention must be paid to regulatory support of its structural units' activities in order to order to improve its overall efficiency. Among these structural units and agencies the National Police of Ukraine is defined as prioritized as the relevant regulatory requires extra attention from legislator and experts – currently a whole set of new legislative acts is undergoing the process of adoption along with numerous amendments presented to the applicable legislative acts. It is known that almost all of these amendments cause the «chain reaction», resulting in multiple legislative gaps and contradictions. As patrol police is directly subordinated to the National Police of Ukraine [1], it seems obvious that its regulatory is prone to similar «diseases» and requires improvement through extended analysis and further revision.

This issue was studied by V. Averianov, O. Andriiko, O. Bandurka, V. Beschastnyi, Y. Bytiak, I. Holosnichenko, T. Hurzhii, S. Husarov, Y. Dodin, R. Kaliuzhnyi, L. Koval, T. Kolomoiets, V. Kolpakov, A. Komziuk, O. Kuzmenko, Y. Kurinnyi, V. Kurylo, D. Lukianets, O. Ostapenko, M. Pluhatyr, V. Pietkov, S. Pietkov, O. Strelchenko, M. Tyshchenko, A. Vasyliiev, M. Verbenskyi, V. Zui and other. Despite the valuable theoretical and practical contribution made by the abovementioned scholars, the regulatory support issue

still requires comprehensive analysis in the scope of further research.

The aim of the article is to filter the legislative acts regulating the patrol police activities during the disposal of legal proceedings from the general patrol police legal framework.

In order to clarify the abovementioned issues we offer for the start to specify the definition of regulatory support. There are numerous interpretations provided by scholars – almost every scientist studied this concept and provided one's own vision of its interpretation.

N. Savinova presents regulatory support as complex of political and legal measures aimed to regulate certain category of social relationship in specific society. She assumes that these measures are, first of all, aimed to achieve a certain level of security in terms of social relationship through application of legal norms [2]. The definition of «regulatory support» must be analyzed also in its statutory scope along and as a system of interconnections and transformations of natural and subjective law [3, p. 238].

The definition of regulatory support in the area of administrative activity is analyzed as norms of administrative law defining the content and formats off relevant activity, interpreting and enforcement acts, relevant administrative-legal relations and institutions, its establishment and management [4, p. 5]; as legal, organizational, technical and other types of measures taken by the state bodies to regulate the relations in the process of establishment of structure, functions of relevant system and activity, regulation of basic activity performance and relations through legal norms [5, p. 7].

Analyzing the administrative regulatory support, V. Kyrchenko studies the legislative acts which directly regulate the administrative-legal relations [6, p. 8]. A. Fillipov understands administrative regulatory support as mechanism of administrative-legal regulation of social relations which comprises legal norms, legal relations, process of the legal norms implementation through defined forms and methods of administrative regulatory support [7, p. 10].

Specific differences are traced after analyzing the regulatory support based on coverage of administrative-legal relations by statutory acts of separate regulation area. Currently the research of regulatory support concept has not been popular among the scholars – we must mention the research made by V. Lipkan on national security issues where he analyzes the essence of regulatory support

concept in chosen area [3, p. 239] and presents list of key regulatory support characteristics:

- includes legal regulation and law enforcement as management tool in the area of national security;
- promotes search of ways to improve the existing and developed legal norms required to regulate completion of new tasks in the area of national security;
- fully and adequately reflects the essence and concept of national security issues regarding the specific social relations;
- basis of regulatory support of national security is presented as legal instrument for achievement of actual structuring of national security system;
- process of establishment and support of constructive organizational and functional characteristics of the national security system, in the fixed scope, ensured with legal measures influence;
- system of regulatory support is presented as set of laws and by-laws forming the legal environment for the national security system functioning and fulfill the intended purpose [8, p. 239].

Therefore, regulatory support is a set of laws and by-laws forming the legal environment and proper fulfillment of the intended purpose [9, p. 168].

Legal framework of patrol police activity comprises laws and by-laws which present a specific hierarchic structure and regulate the activity of the mentioned unit. These are: the Law of Ukraine «On National Police» No. 580-VIII dated 02.07.2015; Code of Administrative Offences of Ukraine No. 8073-X dated 0712.1984; Decree of the Cabinet of Ministers of Ukraine No. 877 dated 28.10.2015 «On Adoption of Directive on National Police»; NPU Order No. 73 dated 06.11.2015 «On Adoption of Directive on Patrol Police Department (in edition of the NPU Order No. 1114 dated 31.10.2016 «On Amendments to Directive on Patrol Police Department»); Decree of the Cabinet of Ministers of Ukraine No. 1102 dated 17.12.2008 «On Adoption of Procedure of Vehicle Temporary Holding and Storage at Special Parkings»; Decree of the Cabinet of Ministers of Ukraine No. 1103 dated 17.12.2008 «On Adoption of Procedure of Vehicle Drivers Referral for Intoxication Detection Examination»; Decree of the Cabinet of Ministers of Ukraine No. 1086 dated 17.12.2008 «On Adoption of Procedure of Temporary Extraction of Driver's License and its Restoration»; Order of MIA of Ukraine No. 1395 dated 07.11.2015 «On Adoption of

Instruction on Documentation of Administrative Offences Related to Traffic Safety and not Fixed Automatically»; Order of MIA of Ukraine No. 451 dated 29.11.2007 «On Adoption of Instruction on Organization of State Traffic Inspection Activities Related to Control of Compulsory Motor TPL Insurance and «Green Card» Insurance Certificates»; Order of MIA of Ukraine No. 1376 dated 06.11.2015 «On Adoption of Instruction on Documentation of Administrative Offences in Police Units»; Order of MIA of Ukraine and Ministry of Health of Ukraine No. 1452/735 dated 09.11.2015 «On Adoption of Instruction on Detection of Drivers' Intoxication» [10]. But, taking into account the aim of our research, we consider it appropriate to separate the legislative acts which comprise the legal background for patrol police in the course of consideration the cases on administrative offences.

Without any doubt, Constitution of Ukraine is the highest legislative act in the hierarchy of norms regulating the social relations in the abovementioned area. Thus, Art. 6 claims that legislative, executive and judiciary bodies exercise their authorities within the scope defined by the Constitution of Ukraine and in accordance with the Ukrainian legislation [11].

Constitution of Ukraine is followed by the international agreements and treaties in the hierarchy of legislative acts. It is known that international treaties are incorporated into national legislation only after ratified by Verkhovna Rada of Ukraine. The issue of international and constitutional law balancing is settled in Art. 9 of the Constitution of Ukraine [12, p. 567–568]: «Applicable international treaties, bindingness of which is approved by Verkhovna Rada of Ukraine, are a part of national legislation of Ukraine. It is allowed to enter the international agreements, which contradict the provisions of the Constitution of Ukraine, only after amending the Constitution of Ukraine» [11].

International agreements are followed by Ukrainian laws and codes. Among the basic laws comprising the legal background for patrol police in the course of consideration the cases on administrative offences we consider it necessary to mention the Law of Ukraine «On National Police» No. 580-VIII dated 02.07.2015; the Law of Ukraine «On Traffic» No. 3353-XI dated 30.06.1993; Code of Ukraine on Administrative Offences No. 8073-X dated 07.12.1984, etc.

Laws and codes are followed by decrees issued by the Cabinet of Ministers of Ukraine: Decree of the Cabinet of Ministers of Ukraine

No. 877 dated 28.10.2015 «On Adoption of Directive on National Police»; Decree of the Cabinet of Ministers of Ukraine No. 1306 dated 10.10.2001 «On Traffic»; Decree of the Cabinet of Ministers of Ukraine No. 1102 dated 17.12.2008 «On Adoption of Procedure of Vehicle Temporary Holding and Storage at Special Parkings»; Decree of the Cabinet of Ministers of Ukraine No. 1086 dated 17.12.2008 «On Adoption of Procedure of Temporary Extraction of Driver's License and its Restoration».

Orders of MIA of Ukraine are placed at the bottom of the hierarchical structure: Order of MIA of Ukraine No. 1395 dated 07.11.2015 «On Adoption of Instruction on Documentation of Administrative Offences Related to Traffic Safety and not Fixed Automatically»; Order of MIA of Ukraine No. 451 dated 29.11.2007 «On Adoption of Instruction on Organization of State Traffic Inspection Activities Related to Control of Compulsory Motor TPL Insurance and «Green Card» Insurance Certificates»; Order of MIA of Ukraine No. 1376 dated 06.11.2015 «On Adoption of Instruction on Documentation of Administrative Offences in Police Units».

It must be noted that the procedure of case consideration may vary with respect to the perpetrator's identity, type of administrative offence and other factors. Regulatory support of patrol police involvement in the case consideration process is similarly affected by various factors. It is necessary to analyze it using a good example – for example, there is a foreign citizen who enjoys diplomatic immunity. Please note that the algorithm of patrol police officer actions taken to hold this person administratively liable is absolutely different from the similar situation involving an average citizen – therefore, police officer's actions and relevant decisions are regulated by different legislative acts. It is worth to mention that in this case the decision to impose a penalty or other sanctions will be made by the authorized official presenting the state citizenship of which is granted to the perpetrator upon condition that it is stipulated by the bilateral international agreement between the related states. We consider that legal framework of administrative cases consideration by patrol police must be divided into international (international agreements and treaties, bindingness of which is approved by Verkhovna Rada of Ukraine) and national (legislative acts drafted and adopted by the legislative bodies of Ukraine).

Next factor influencing the variability of legal framework of administrative cases consideration – the type of offence considered.

According to the Code of Administrative Offences of Ukraine, patrol police officers are authorized to review cases in different areas of social relations: traffic violations and other offences in the scope of patrol police competence. This division is based mostly on complex of instructions regulating the procedure of the abovementioned offences documentation. For example, the procedure of documentation of administrative offences related to traffic safety which are not fixed automatically by the patrol police is regulated by the provisions of Instruction on Documentation of Administrative Offences Related to Traffic Safety and not Fixed Automatically adopted by the MIA of Ukraine (order No. 1395 dated 07.11.2015) [12, p. 114]. Other types of offences are documented in accordance with the provisions of Instruction on Documentation of Administrative Offences in Police Units adopted by the MIA of Ukraine (order No. 1376 dated 06.11.2015).

All the abovementioned criteria define not only the procedure of case consideration but also the selection of legal framework for patrol police in order to ensure correct and objective interpretation of the case circumstances.

We selected legislative acts and by-laws which directly regulate the procedure of administrative case consideration by the patrol police officers, but these legislative acts still require expanded analysis – despite the variability of statutory instruments applied by the patrol police, some issues are still not settled. For example, Art. 265 of the Code of Administrative Offences of Ukraine states that items and documents defined as the actual object of the offence and detected during arrest, personal or facility search, are extracted by the staff of agencies mentioned in Art. 234¹, 234², 244⁴, 262 and 264 of the Code of Administrative Offences of Ukraine. Extracted items and documents are stored till the initiation of administrative case consideration procedure, established by the Cabinet of Ministers of Ukraine on agreement with the State Judicial Administration of Ukraine; depending on the consideration results, these items and documents are subjected to seizure or returned to the owner (destroyed in some cases), if extraction was paid-up – subjected to disposal. Extracted orders, medals, USSR honorary rank breastplates, honorary certificated of UkrSSR Verkhovna Rada Presidium, honorary ranks of Ukraine, distinctive badges of the President of Ukraine, award weapons must be returned to owner

upon the completion of case consideration – if the owner is not identified, these items are sent respectively to the Administration of the President of Ukraine. Distilled spirits, including the home-made, and manufacturing equipment is subjected for destruction by the police upon the completion of case consideration [8].

We must mention that in the second part of this article the legislator explains that extraction of items and documents must be properly documented (report on administrative offence, examination or administrative detention) [8]. We partially agree with this statement on mandatory fixation of extraction of items and documents in the report on administrative offence or administrative detention as it corresponds to the certain provisions of Instruction on Documentation of Administrative Offences in Police Units containing the templates of the abovementioned reports. But the issue of separate report provision for this procedural question is still not settled due to the absence of mentioned document.

The procedure of police care formalization is also unsettled. Art. 41 of the Law of Ukraine «On National Police» states that procedure of police care must be properly documented defining the exact place, date and time (hrs/min); grounds, description of extracted weapons or other items; applications or complaints of a person (if submitted), absence or presence of detectable bodily injuries report is signed by the police officer and the person. Report copy is provided immediately to the person (against signature). If a person is identified as mentally disabled or there are any doubts concerning one's sound mind or disposition, no signature is required from the person and no copy of it is provided – the abovementioned actions are delegated to the person or agency stipulated by second paragraph of part 1 of this article.

In this case we still face substantial problems with relevant legislative framework regulating the abovementioned procedures.

These gaps obstruct considerably the completion of law enforcement tasks and negatively affect its image in community, blocking the development of the state mechanism in general.

To conclude the abovementioned, we state that:

1. Regulatory support of patrol police activities during the disposal of legal proceedings is a set of legislative acts and bylaws subjected to specific hierarchy and establishing the legal environment for the relevant authorities to be properly exercised.

2. Regulatory support of this stage can be changed due to influence of different factors (perpetrator's identity, type of administrative offence etc).

3. Regulatory support of patrol police activities during the disposal of legal proceedings is characterized with certain gaps – absence of report on items and documents extraction and report on police care. This problem can be solved by relevant amendments to the Instruction on documentation of traffic-related administrative offences which were not fixed automatically (approved by the Decree of the MIA of Ukraine No. 1395 dated 07.11.2015) and Instruction on documentation of internal administrative offences (approved by the Decree of the MIA of Ukraine No. 1376 dated 06.11.2015).

REFERENCES

1. Instruksiiia pro patrolni обов'язky MVS [Instruction on Patrol Duty of MIA]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/z0777-15> [in Ukrainian].
2. Savinova, N. Vyznachennia rehuliatornoj pidtrymky informatsiinoho suspilstva [Definition of Regulatory Support of Information Society]. *Pravovyi portal Ukrainy, Legal Portal of Ukraine*. Retrieved from http://urzona.com/index.php?option=com_content&view=article&id=477:201101134025&catid=57:20100611164554&Itemid=66 [in Ukrainian].
3. Lipkan, V. (2009). *Natsionalna bezpeka Ukrainy [National Security of Ukraine]* (2nd ed., rev.). Kyiv, KNT [in Ukrainian].
4. Khokhlenko, O. (2010). Administratyvno-rehuliatorna pidtrymka diialnosti mistsevykh administratsii u osvithnii sferi [Administrative regulatory support of local administrations' activities in educational area]. *Doctor's thesis*. Kyiv [in Ukrainian].
5. Khytra, I. (2011). Administratyvne rehuliatyvne zabezpechennia bankivskoi diialnosti v Ukraini [Administrative regulatory support of bank activities in Ukraine]. *Doctor's thesis*. Kyiv [in Ukrainian].
6. Kyrychenko, V. (2011). Administratyvno-rehuliatorna pidtrymka pryntsyphu gendemoho balansu v pravookhoronni diialnosti [Administrative regulatory support of gender balance principle in law enforcement activity]. *Doctor's thesis*. Zaporizhia [in Ukrainian].
7. Fillipov, A. (2010). Administratyvne rehuliatorne zabezpechennia protsedur bezpeky tsyvilnoi aviatsii v Ukraini [Administrative regulatory support of civil aviation safety procedures in Ukraine]. *Doctor's thesis*. Irpin [in Ukrainian].
8. Kodeks Ukrainy pro administratyvni pravoporushennia: vid 7 hrud. 1984 r. No. 8073-X [Code of Administrative Offences of Ukraine from December 7, 1984, No. 8073-X]. (n.d.). *zakon1.rada.gov.ua*. Retrieved from <http://zakon1.rada.gov.ua/laws/show/80731-10> [in Ukrainian].
9. Dmytriev, A. (2016). Pryntsypty ta pravove rehuliuвання diialnosti ahentstv NUU v haluzi borotby z orhanizovanoi zlochynnistiu [Principles and legal regulation of NPU agencies activity in the area of organized crime control]. *Zhurnal*

kryminolohichnoi asotsiatsii Ukrainy, Journal of Criminological Association of Ukraine, 1(12), 164-174 [in Ukrainian].

10. Patrolna politsiia Ukrainy [Patrol Police of Ukraine]. (n.d.). *patrol.police.gov.ua*. Retrieved from <https://patrol.police.gov.ua/ru/faq/normatyvno-pravova-baza-diyalnosti-patrolnoyi-politsiyi> [in Ukrainian].

11. Konstytutsiia Ukrainy: vid 28 cherv. 1996 r. [Constitution of Ukraine from June 28, 1996]. (n.d.). *zakon4.rada.gov.ua*. Retrieved from <http://zakon4.rada.gov.ua/laws/show/254к/96-вр/page> [in Ukrainian].

12. Teslenko, V. (2017). Vzaiemodiia mizhnarodnoho ta natsionalnoho zakonodavstva [Interaction of International and National Legislation]. *Molodyi vchenyi, Young scientist, 3(43), 566-570 [in Ukrainian].*

Стаття надійшла до редколегії 14.11.2017

Абдулкадірова Е. Е. – ад'юнкт кафедри адміністративного права і процесу Національної академії внутрішніх справ, м. Київ

Правове регулювання діяльності патрульної поліції під час розгляду справ

Описано правове регулювання розгляду справ патрульними поліцейськими. Надано перелік нормативно-правових актів і визначено критерії, за якими їх поділяють.

Ключові слова: нормативно-правовий акт, патрульна поліція, закон, розгляд справ, адміністративне правопорушення.