

ДІЯЛЬНІСТЬ ПРАЦІВНИКІВ ПРАВООХОРОННИХ ОРГАНІВ

UDC 351.741(477)

Loshytskyi M. – Doctor of Law, Professor,
Professor of the Department of Administrative
Law and Procedure of the National Academy
of Internal Affairs, Kiev, Ukraine

CONTENTS AND DIRECTIONS OF POLICE ACTIVITY IN TERMS OF REFORMING THE LAW ENFORCEMENT SYSTEM OF UKRAINE

The basic goal of creating a state, which is establishing and maintaining a certain order. Thus, one of the main functions of the state defined public order, which belongs to the circle of public relations.

Keywords: protection of public order, public relations, reform.

Each country creates its rule of law, and the need to strengthen it is caused by the interests of civil society and the state. Understanding the complexity of the problem of providing the required level of law and order in society determines the need for a qualitatively new concept of organization and activity of bodies of state power. Therefore, in Ukraine, to ensure the proper order, which meets current requirements, is one of the important functions of the state, the implementation of which involves all state bodies, officials and citizens.

In this regard, in the sphere of public order, solving the problem of associated with providing organizational and legal principles of police activity of police bodies and departments is especially important.

In Ukraine, important issues of legal regulation of public order protection have been studied in the works of M. I. Anufriev, O. M. Bandurko, E. V. Belozerova, V. T. Bilous, I. P. Holosnichenko, V. L. Hroholskoho, S. M. Gusarov, O. F. Dolzhenkov, A. P. Klyushnychenka, N. V. Kornienko, Y. F. Kravchenko, Ostapenko, V. P. Pyetkov, S. V. Pyetkov, A. M. Podolyako, T. O. Protsenko, H. P. Yarmaki, O. N. Yarmysh and other authors.

Nevertheless, unfortunately, nowadays scientists differ in the general understanding of the nature and importance of organizational and legal principles of police activity, a number of major issues are not investigated, and available scientific researches are not systemic and superficial.

The purpose of this study is a comprehensive analysis of the organizational and legal framework of police activity in terms of reforming the law enforcement system of Ukraine.

Regardless of any theory of state origin, the main purpose of its creation is establishing and maintaining a certain order. Based on these assumptions, one of the main functions of state is the protection of public order. This function is included in the range of public relations, namely relations between government and a citizen. To be exact, people (citizens) have delegated certain natural functions of power to state, and consequently expects the authorities to ensure own safety. Such security means to prevent any disturbance of human rights and rights of those who are under state protection.

To create such comfortable, correct and corresponding to legal postulates conditions of existence of both entire society and every citizen, state, its institutions, bodies and representatives must perform series of complex actions traditionally called public order.

Modern tendencies in Ukraine development enable to state ongoing reforming of political, social, economic and organizational basis of public life. Somehow, these processes affect the state of relations in society since transition period is always associated with the lack of social stability, aggravation of social conflicts and deterioration of criminal situation. Under such circumstances, state's ability to maintain public order and ensure the rule of law becomes important, because this is prerequisite for strengthening order and harmony. The specifics of implementing this function is in need to balance between the duty of state to protect public interests and necessity to protect fundamental human and citizens' rights and freedoms, recognized as the highest social values. Considering the rules of art. 92, 116 of the Constitution of Ukraine, public order acts as the purpose of the state. Simultaneously we can emphasize that its content in current legislation is not singled out explicitly, and the very Law and legal regulations are fixed in a number of normative acts.

In this regard, solving problem related to determining the content of policing becomes especially important.

Partially all state establishments are engaged in law enforcement activity. For example, alongside the Ministry of Internal Affairs, not being a law enforcement body, Education and Science Ministry implement certain tasks performed law enforcement activities, such as making registration and licensing. The same can be said about the Ministry of Health and other authorities.

However, there is a specialized law enforcement activity carried out as primary by certain institutions. The concept of «law enforcement activity» is relatively new that came to legal vocabulary in the late 50's – early 60's. That is why this concept is not clearly fixed in science and legislation and remains controversial [1, p. 6].

Law enforcement activity is a set of measures aimed at protecting certain values and objects mentioned in law. These objects are public (social) order, public (social) security, personal safety, human rights and freedoms and state border etc.

Law enforcement activity is carried out not in any way, but only through the application of legal means of influence determined by law. The concept «the security» includes three components:

- 1) supervision, the use of direct coercion measures;
- 2) sentencing;
- 3) execution of the sentence.

This activity is called law enforcement, because it concerns based on law protection of objects specified in law.

Law enforcement activity is implemented in accordance with established procedural and legal order in compliance with certain procedures. Deciding on application or non- application of any means of enforcement, the competent authority (official) must adhere to certain rules prescribed by law. These are the rules of administrative practice, criminal and civil procedure.

Implementation of law enforcement activities is assigned to specially authorized state bodies with appropriately trained officials.

To be precise, law enforcement activity includes all forms of supervision (prosecutorial, administrative, judicial, financial, etc.) of compliance of legal acts by citizens and officials, consideration of misconduct by competent authorities, crime detection, preventive work, work concerning suspension, application of legal responsibility to offenders, consideration on the merits of legal conflicts and imposition of state and authorized process on them, organization of their execution etc.

In the system of state authorities, a group of specialized agencies is created to carry out law enforcement activity.

In Ukraine, the range of law enforcement agencies is quite extensive and characterized by occurrence of bodies, which belong to different branches of government. Along with executive authorities, for example, the Interior Ministry and Security Service, it includes prosecutorial, customs bodies, notaries, lawyers etc.

The concept of law enforcement activity covers the concept of policing. These concepts are very similar, but not identical. Not all law enforcement agencies can be called the police. Two characteristic features determine distinguishing of the police from the law enforcement bodies. First, the bodies that implement police activities (the Ministry of Internal Affairs, the Security Service, ORO, the Customs, the Border Guard Service) are the part of executive power and perform administrative, executive activity, but through the use of specific measures.

Second, the court, the procuracy, the notary do not apply administrative coercion directly, but make state and power decisions. On the contrary, the police can apply not only direct coercion, but also under certain prescribed by law situations can use weapons. Police does not make decisions that allow application of force; it just applies this coercion directly. As an essential feature of the police, coercion is supplemented by such a feature as «arms». Rendered to the police as subsystem of executive power the right to use force to achieve the legitimate objectives is its main distinguishing feature that allows this structure to occupy a special place in the system of law enforcement bodies [2].

Third, another equally important distinguishing feature of the police, according to M. I. Eropkin, more important than direct coercion, is administrative and supervisory activity of the police, both overt and covert, that warn disturbances [3].

Police activity is exercised by bodies, which form a system consisting of three subsystems: 1) general police (the National Police directly); 2) bodies, some of which perform police tasks in society (customs agencies, the executive service, the sanitary and epidemiological surveillance) 3) special services (the Security Service and the foreign intelligence).

Mentioned features enable to perceive police activity as a category that needs to be granted with the status of basic administrative and legal category, with all the following from here

attributes. The return of this category into the administrative and legal conceptual apparatus shall be useful both for law enforcement practices of executive bodies and for administrative and legal science.

According to sociological research conducted by the Institute of Sociology of the National Academy of Sciences of Ukraine, the level of public confidence in the militia in 2013 was 5,3 % and after the events of Euromaidan, this figure fell to 0,8 %. The reason behind this was systemic deficiencies in the activity of internal affairs bodies, duplicating functions of various departments in the Ministry of Internal Affairs, inefficient system of administrative decisions acceptance, which does not influence crime situation in the country. By 2016, unfortunately, official data on this problem does not exist. Our analysis of the cut-off sociological survey of average citizens shows significant fluctuations and ambiguous attitude towards the police.

All of this requires radical change in the principles of the entire system of the Ministry of Internal Affairs of Ukraine. European integration of Ukraine obliges our country to ensure the effective functioning of institutions that guarantee the rule of law, observance of the rights and freedoms of citizens and their effective protection. One of these issues is the formation of the Ministry of Internal Affairs as civil bodies according to European standard.

For this purpose, the Cabinet of Ministers of Ukraine October 22, 2014 approved the Development Strategy of bodies of Internal Affairs of Ukraine and the Concept of urgent measures of reforming the Ministry of Internal Affairs. The reform of the Ministry intends to discard all the unnecessary, and take all the most useful for the Ministry of Internal Affairs. The realization of the Concept will be achieved through the implementation of the best practices of European countries, the transition from punitive to service functions and provision of manageability and unity for the system.

The implementation of the abovementioned strategic documents will form a functional and effective system of European type police, qualitatively improve law enforcement activity, and improve the efficiency and timeliness of responses to modern challenges and threats.

Police is an integral part of any state, which plays a central role in ensuring internal security. Every nation that created statehood inevitably faces a need in a special organization, the purpose of which is to combat the disturbances and public order.

The evolutionary development of the state caused the separation of a police aspect of its activity due to intention to streamline public relations to ensure law enforcement and security of citizens, to create proper conditions for personal realization of subjective rights and freedoms.

One of the major tasks of the state remains modern development of an efficient police system, which agents are empowered by legitimate use of coercion in protecting the public good and combating existing threats (hazards).

Nowadays in law enforcement, the focus on the needs of population is the basis of function of the police organization's goal forming. Target setting to meet the needs of people allows to fill with concrete context abstract goals of police organizations determined by current legislation (such as the protection of life, health, rights and freedoms, property, interests of society and the state from criminal encroachments); to detail them making equal to tasks with direct solutions; to define priorities, trends, strategies of policing clearly.

Reformation is linked with the development of legal ensuring of police activity, prevailing trend towards decentralization, and classical construction of the organization.

The main objective of departments, designed to ensure public order and public safety, is the guarantee of internal order in the state that involves following functions:

prevention, detection, suppression of crimes and other disturbances, identification and detention of individuals who have committed them;

definition of tactics and strategies to ensure public order;

prevention of disturbances;

supervision of the observance of current legislation by citizens and officials of enterprises, institutions and organizations regardless of ownership and supervision of individuals with antisocial behavior.

The guiding principle of strengthening statehood in Ukraine, protection of rights, freedoms and legal interests of citizens, implementing the rule of law in all spheres of public life is one of the main in state establishment.

Each country forms its legal order, while the need to strengthen it is driven by the interests of civil society and the state. Understanding the complexity of the issue of providing the required level of legal order in society determines the need for a qualitatively new concept of organization and activity of public authorities. Therefore, to ensure

adequate public order in Ukraine, which meets nowadays standards, is one of important functions of the state, the implementation of which involves all state bodies, officials and citizens.

Thus, it should be noted that the police activity of the state has appeared from the need to protect public order. The state must constantly take care of order in danger of losing its credibility in the eyes of the population and even in danger of own death.

Accordingly, the following conceptual basis of the implementation of police activity in terms of the reform can be offered [4].

Closely linked with social needs of society, *the police of modern democratic states* more rapidly reacts to changes in the crime situation. However, in foreign countries, the measures of permanent control over the work of police departments are implemented that help improve police activity in general.

Police activity should be based on *international law and European standards of policing*, police achievements of the world police community. It is also a dire need of considering the fundamental changes in Ukrainian society under present conditions, increasing the efficiency and publicity of power, the priority of the rights and freedoms of human and citizen.

In Europe, a trend to *integrate police and civil society* and make it closer to people is observed. In some states, this objective is achieved by means of «domiciliary» police. One of the main tools for achieving this objective is to give the police the status of public service, not just the body that is responsible for applying the law.

The activity of the police as an executive body should be directed to perform state functions such as: 1) creation appropriate conditions for full exercise of rights and freedoms by citizens; 2) provision of diverse administrative services; 3) exercising a kind of «internal» control over the implementation of the duties in relation to human rights and freedoms by administrative bodies and their officials; 4) taking appropriate measures of administrative response to citizens' appealing decisions and actions that violate their rights and freedoms. Maintaining public order, the police contributes to human rights protection, so that people can fulfil their rights and freedoms. In addition, the police can protect specific rights such as the right to life, preventing and detecting crimes that threaten or violate that right. Apart from the use of strong measures to protect human rights, the police must respect their rights while performing their duties.

The police function of the state is implemented through police activity that is regulated by rules of administrative law and executive

and administrative activity of state structures with the relevant authorities' competence. Implementing appropriate function of the state, Police activity is, on the one hand, the prevention and suppression of acts infringing current welfare, on the other – promotion of further development of the national good. Comprehensive analysis of different approaches to the understanding of the police function of the state allowed concluding that the purpose of the police function of the state is primarily to ensure internal order and security.

The police is a part of executive power exercising specific administration that is protection of public order through administrative supervision.

In Ukraine to improve police activity a number organizational measures aimed at restructuring services and departments of internal affairs should also be conducted.

Efficiency of police activity is inextricably linked with the need of clearly established organization of work of all its units and departments on scientific basis. Organization of protecting public order is a complex exercise of administrative functions to ensure effective, coherent and purposeful activity of units and departments of police concerning direct protection of the rule of law and combat against crime. Efficiency of the activity of units and departments of the patrol police can be achieved only as a result of close cooperation with other police services, state bodies and public organizations, and constant communication with the people.

REFERENCES

1. Gutsenko, K. F., & Kovalenko, M. A. (1999). *Pravoohranitelnyie organyi [Law Enforcement]*. Moscow: Zertsalo [in Russian].
2. Deklaratsiya o politsii [Declaration on the Police]. (n.d.). zakon4.rada.gov.ua. Retrieved from <http://zakon4.rada.gov.ua> [in Russian].
3. Eropkin, M. I. (1965). *Upravlenie v oblasti ohranyi obschestvennogo poryadka [Management in the field of public order]*. Moscow: Yurid. lit [in Russian].
4. Loshytskyi, M. V. (2013). *Teoretyk-pravovi zasady administratyvno-politseiskoi diialnosti derzhavy [Theoretical and legal principles of administrative policing state]*. Kyiv: MP Lesia [in Ukrainian].

Стаття надійшла до редколегії 31.10.2016
