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ADMINISTRATIVE AND LEGAL MAINTENANCE OF PUBLIC ORDER BY LAW ENFORCEMENT BODIES OF UKRAINE

Using analysis of the current Ukrainian legislation, the author discloses the problem of administrative and legal maintenance of public order by law enforcement bodies of the state. Furthermore, the study of the Law of Ukraine «On National Police» has determined the necessity to justify the definition of «public order».

Keywords: public order, civic order, state, law enforcement agencies, public relations.

Due to modern political and ideological changes in Ukraine, the issues of protection of human and civil rights and freedoms are of considerable relevance. Moreover, the effective functioning of the law enforcement system that not only meets current requirements, but also takes into account the latest achievements of legal science is crucial. In recent times, social transformations of Ukrainian society have had a significant impact on the development of law that consecutively required to update fundamental basis of social relations administrative and legal regulation. The objective of the article is to analyze regulatory framework, which ensures the implementation of the rights and freedoms of citizens during public order operations. Therefore, the rights and freedoms of citizens as one of important elements of public order maintenance methodology is defined in accordance with the Law of Ukraine «On National Police», as well as the notion of public order and its relationship with the definition of «public order» are disclosed.

Developing in accordance with the Constitution – principles of a sovereign and independent, democratic, social and legal state – Ukraine provides citizens with a wide range of rights and freedoms that are exercised in various spheres of social, political and economic life. Obviously, one of the most important indicators of

civilized society is the veracity of the rights and freedoms insurance, and therefore the state should always take appropriate and effective measures for their protection and security. That is why most countries of the world pay considerable attention to improving the organization and activities of law enforcement bodies.

As practice demonstrates, a large part of the rights and freedoms of citizens are implemented in the rule of law, which stipulates a special responsibility of the state to create a stable civil society in general.

Considering the current political situation in the country, the reform of the Ukrainian law enforcement system convincingly demonstrates that without strengthening the rule of law, it is impossible to overcome the negative trends of social and economic development as well as effectively solve topical issues of economy, interethnic relations, corruption and crime.

Therefore, maintenance of law and order is one of the state priorities, which determines not only implementation of actual guarantees of the rights and freedoms of citizens, but also development of democratic foundations of society's functioning and establishment of the principle of social justice.

Aimed at European integration and therefore compliance of law enforcement bodies with European standards of law enforcement, Ukraine encounters profound changes in social, economic, political and legal conditions of law enforcement system functioning that have led to creation of such unit as the National Police of Ukraine regulated by the Law of Ukraine from July 2, 2015 «On the National Police». Notably, this law defines bases of law and order as part of not the civic but public order of the country. De facto, the definition of «public order», which has not previously been used in legal acts of the state, prevents the existence of the term «hromadskyi» [community, civic] order, which is still used in other regulations.

Maintenance of public order is a priority among tasks under authority of not only the National Police of Ukraine but also other state bodies. However, the crime rate, unstable economic situation and other negative factors indicate inefficient problem-solving by the state. One of the reasons is the lack of unified terminology in law enforcement at the legislative level, in particular the lack of a single definition of the public order concept.

Nevertheless, in law enforcement practice and legal doctrine there is no single approach to the definition of the content of public

order. scientists also differ in their approach regarding the concept and content of the definition of «public order».

Some aspects of the definition of the concept and features of the order were studied by such scientists as V. Averianov, O. Bandurka, O. Bezpalova, Yu. Bytiak, A. Holovin, I. Holosnichenko, A. Hubanov, S. Denysiuk, A. Dolhopolov, O. Dotsenko, O. Drozd, M. Yeropkin, V. Zarosylo, D. Kablov, S. Kivalov, O. Kliuiev, L. Koval, V. Kozytskyi, F. Kolontaievskiy, V. Kolpakov, A. Komziuk, Ya. Kondratiev, V. Konoplov, A. Koreniev, M. Korniienko, V. Kostiuik, T. Kravtsova, O. Kuzmenko, K. Levchenko, M. Loshytskyi, N. Matiukhina, O. Muzychuk, Yu. Nebeskyi, V. Olefir, V. Plishkin, A. Podoliaka, L. Popov, O. Pronevych, O. Riabchenko, I. Senchuk, A. Serhieiev, V. Sichkar, A. Starodubtsev.

In the scientific literature, public order is often formulated as reflection of fundamental social principles in moral, religious, economic, political and legal environment. According to the Ukrainian terminological dictionary, public order is a system of social relations regulated by moral and legal norms aimed at guaranteeing public safety and peace, protecting honor and dignity of citizens, and normal conditions for the activities of state and non-governmental organizations [1].

The author of the article argues that the definition of «public order» is related to the notion of «hromadskyi [community, civic] order» but not identical to it. Moreover, the presence of statements «hromadskyi [community, civic] order» and «public order» in one scientific and legislative space contributes to misunderstanding, semantic substitutions, synonymizing of different meanings of concepts, creates legal conflict and becomes a barrier to the development of a one or another scientific knowledge.

It is noteworthy that there is no single interpretation of the notion of «hromadskyi» [community, civic] order in legal science as well. Although the scientific environment tends to the idea that the basis of public order is social relations regulated by law and other social norms [2].

Whereas public order is characterized by such a condition of social relations ordering, in which each person, state body, local self-government body and their officials voluntarily adhere to legal, moral and ethical norms, cultural and other social rules, and comply with related requirements to achieve public safety and general well-being.

The absence of a single legal definition of this concept in law enforcement and particularly in maintenance of public order causes differences in legal approach to delimitation of competences and powers of law enforcement, duplication and conflict between different subjects of public order enforcement. The legislator's unclear and controversial use of the term «public order» complicates solution of theoretical and practical problems.

Public order enforcement is one of state functions, which is carried out through an extensive system of law enforcement bodies. Performing the function of public order enforcement, the state should consider that maintenance of public order as necessary condition for human life, existence of society and the state itself, therefore, it is necessary to carry out a complex of legal, organizational, personnel, economic, ideological, informational and other measures to protect and defend people, society and the state from unlawful encroachments [3].

Legal regulation of public order comprises specific activity of state bodies, such as the National Police, local self-government bodies, public organizations and individual citizens, related to the development of legal guidelines, establishment of certain rules of conduct and definition of legal means to enforce public order.

Nowadays, the legislative basis for enforcing public order by the National Police is the Law of Ukraine «On National Police», which establishes the role and place of police units in the mechanism of a modern state, creates a legal framework for reforming other executive bodies, defines new tasks for the implementation of state policy in protecting the rights and freedoms of citizens, interests of society and the state from criminal and other illegal acts, and partially establishes the category of «public order». According to the Law of Ukraine «On National Police», the term «public order» is used in such meanings: Art. 1: «The National Police of Ukraine (hereinafter – the police) is a central executive body that serves society by enforcing protection of human rights and freedoms, counteracting crime, maintaining public security and order.

Activities of the police are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine in accordance with the law».

– paragraph 1 part 1. Art. 2. Regarding the tasks of the police – «enforcing public safety and order»;

– paragraph 1 part 2 Art. 9. Regarding insurance of openness and transparency – «Police provides constant informing of public authorities, local governments and the public about its activities in security and protection of human rights, combating crime, enforcing public safety and order»;

– paragraph 1 part 1 Art. 16. Regarding the main powers of the Minister of Internal Affairs of Ukraine in relations with the police – «guarantees formulation of state policy in enforcing public safety and order, protection and defense of human rights and freedoms, the interests of society and the state, and the provision of police services and controls its implementation by the police»;

– paragraph 3 part 1 Art. 22. Regarding the main powers of the head of the police – «makes proposals to the Minister of Internal Affairs of Ukraine on guaranteeing the formulation of state policy in enforcement of public security and order, protection and defense of human rights and freedoms, as well as the interests of society and the state, crime prevention, the provision of police services»;

– paragraph 10 part 1 Art. 23. Regarding the main powers of the police – «takes measures to enforce public security and order in the streets, public gardens, parks, squares, stadiums, stations, airports, sea and river ports, and other public places»;

Art. 36. Regarding requirement to leave the place and restrictions on access to a specified territory: 1) policeman is empowered to require a person (persons) to leave a designated place for a specified period or to prohibit or restrict access to a specified territory or objects to persons, if necessary for the maintenance of public safety and order, protection of life and health of people, for preservation and fixation of the traces of the offense; 2) policeman can restrict or prohibit movement of traffic and pedestrians in certain parts of streets and roads in the case of detaining persons in accordance with the law for the period of accidents, other emergencies, if necessary, for maintenance of public safety and order, protection of life and health of people [4].

However, the activities of the National Police in public order enforcement should be regulated by other legal acts, first of all by the Constitution of Ukraine, which should oblige the state to maintain public order as a priority.

Moreover, it is necessary to use a wide range of legal rules from different branches of law, and above all administrative and criminal law that currently regulate only the public order category.

The author of the article argues that despite constant improving of current legislation and an array of Ukrainian legal acts, some acts still require substantial redrafting.

In this case, there is no proper balance between normative acts that ensure public and «hromadskyi» [community, civic] order. Contrary to expectations, the number of other subordinate acts does not decrease, but increases. They are accepted by many departments without sufficient legal elaboration.

The clear regulation of necessary measures aimed at organization and maintenance of public order is absent. Together with the specialization of legislation, which tends to grow, a significant disadvantage of the existing system of law, in our opinion, is the lack of its adequate unification. In particular, such an approach is necessary for regulations that normalize management of forces and means of the National Police in maintenance of public order. The author argues the highest legislative body of the state should adopt normative legal acts that would determine the powers of all state structures in planning and implementing measures aimed at maintenance of public order, or possible addition or modification of existing regulatory documents, which currently regulate the definition of «hromadskyi [community, civic] order».

Modern practice of governing the bodies of the National Police, which operate under conditions of maintaining public order, poses challenges to science. For effective management of public authorities that carry out tasks for the prevention of violations of public order, the totality of administrative actions developed is obviously not sufficient. The definition and scientific comprehension of such actions seem expedient that require a thorough analysis of the legislative experience of other states.

To conclude, system analysis and formal-logical method demonstrates that the whole state as a form of organization of social life is inextricably linked with enforcing the safety of citizens, establishing the rule of law, and protecting human rights and freedoms.

Ideally, as one of the main functions of the state maintenance of public order should be implemented through protection of public rights of a citizen, including protection of his administrative rights to

dignity, honor, freedom, personal safety and integrity, family life, permitted conduct and other rights stipulated by the Constitution of Ukraine [5].

Therefore, in the context of enforcing public order, the existing system of law-enforcement bodies in Ukraine is capable of responding to current challenges but needs to be improved first of all legally.

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Адміністративно-юридичне забезпечення громадського порядку правоохоронними органами України

Проаналізовано чинне законодавство України. Розкрито проблему адміністративно-правового забезпечення громадського порядку правоохоронними органами держави у контексті вивчення Закону України «Про Національну поліцію». Визначено необхідність обґрунтувати термін «громадський порядок».

Ключові слова: громадський порядок, держава, правоохоронні органи, зв'язки з громадськістю.