

CHAPTER 2

LEGAL REGULATION OF THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE IN THE AREA OF PREVENTION

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INTRODUCTION

At the present stage of the development of our society, the role and importance of legal regulation of the activities of the National Police of Ukraine in the context of prevention become particularly topical in building rule-of-law state as the main feature of the model of rule-of-law state is the high-level legal regulation of social relations. The aim of consolidation of the rule of law, enjoyment of civil rights and freedoms in the relations with the bodies of the National Police of Ukraine (hereinafter referred to as “the NP of Ukraine”) is to determine the main forms and activity areas of its bodies, structural units and officials which would ensure the daily democratic regime of these relations on the basis of consolidation of the rule of law, firmness of the constitutional rights and freedoms of man and citizen. The effectiveness of preventive police measures of the activities of bodies of the NP of Ukraine depends on the perfection of the statutory regulation of police activity, the clarity of legal instructions, the availability of a developed system of legislation and the relevant by-laws in this area.

The issues concerning the organisation of legal regulation of the activities in the state, society, including in internal affair bodies and police, were covered in research papers of the following leading scholars: O. F. Andriiko, O. M. Bandurka, V. I. Varenko, I. P. Holosnichenko, Ye. V. Dodina, R. A. Kaliuzhnyi, A. P. Kliushnichenko, A. M. Kolodii, A. T. Kuzmuk, V. V. Kopieichykov, M. V. Koval, A. T. Komziuk, M. V. Korniienko, S. L. Lysenkov, O. V. Nehodchenko, S. V. Petkov, P. M. Rabinovych, Yu. I. Rymarenko, O. F. Skakun, O. D. Tykhomyrov, I. M. Shopina, Yu. S. Shemshuchenko, V. K. Shkarupa and others, and the determination of the essence and peculiarities of preventive police measures and police measures of coercion was the focus area of both

domestic and foreign scholars such as O.M. Bandurka, D.M. Bakhrakha, Ye.O. Bezsmertnyi, H.P. Bondarenko, I.O. Halahan, Ye.V. Dodin, A.T. Komziuk, V.K. Kolpakov, L.V. Koval, O.P. Korenev, O.M. Lunov, O.P. Sherhin, O.M. Yakuba and other administrative law scholars. However, administrative and legal aspects of preventive police measures are still undeveloped or controversial.

2.1. Legal regulation of police activities

Scientific legal literature considers *legal regulation* (from the Latin *regulare* – to direct, organize) as one of the main means of state influence on social relations in order to adjust them according to the interests of man, society and the state. Legal regulation is ensured by virtue of a specially made state mechanism. The main component elements of this mechanism are a) rules of law fixed in the laws and other legal acts that determine the model of alternative and necessary behaviour of a subject of social relations (the rules of law are the basis of the mechanism of legal norms); b) legal facts, that is, specific life circumstances related to the implementation, alteration or termination of legal relations; c) the very legal relations, that is, social relations, indirect norms of law; d) acts of exercise of rights and obligations of subjects of social relations, that is, the actions of the subjects within the limits of the instructions of relevant legal norms; d) legal sanctions against violators of the rules of law¹⁵. The word *to regulate* is interpreted as to harmonize something, to manage something, to subordinate it to a particular system via relevant rules¹⁶.

The subject of *legal regulation* is a certain form of social relations, which is fixed by a relevant group of legal norms. The subject of *legal regulation* is understood as the way of the influence of legal norms on social relations¹⁷. Under the conditions of forming of the foundations of the state of law in Ukraine, the role and significance of legal regulation of social relations become of particular relevance. The feature of high-level legal regulation of social relations is the main feature of the model of the state that is characterised as a rule-of-law state¹⁸.

¹⁵ Shemshuchenko Yu.S. *Velykyi entsyklopedychnyi yurydychnyi slovnyk* / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv: TOV Vydavnytstvo Yurydychna dumka, 2007. S. 692.

¹⁶ *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy* / uklad. i holov. red. V.T. Busel. Kyiv; Irpin: VTF Perun, 2002. S. 1020–1021.

¹⁷ *Bolshoj yuridicheskij enciklopedicheskij slovar*. Moskva: Knizhnyj mir, 2005. S. 473.

¹⁸ *Teoriia derzhavy i prava: Pidruchnyk* / S.L. Lysenkov, A.M. Kolodii, O.D. Tykhomyrov, V.S. Kovalskiy; Za red. S.L. Lysenkova. Kyiv: Yurinkom Inter, 2005. S. 290.

The position of law and *legal regulation* in the organisation of any activity in the state and society, in particular of police, has been frequently mentioned in scientific literature. Thus, O.F. Skakun considers legal regulation as the adjustment of social relations, their legal consolidation, protection and development, which are carried out by virtue of law and a complex of legal means¹⁹. And A.T. Komziuk notes that legal regulation is a specific influence which is exercised by law as a special statutory institutional regulator. The peculiarity of legal regulation lies in the fact that it, *first*, is a kind of social regulation which has purposeful, organized, productive nature according to its social nature, and, *secondly*, is carried out using a purposeful system of means that really express the very essence of law as a normative institutional body – the regulator²⁰.

Thus, *legal regulation* is the effect of law on social relations with the aid of certain legal means, first of all, the norms of law²¹. O.M. Bandurka reasonably marks: “Legal regulation guarantees the distribution of supervisory powers between different authorities and services, officials and establishes certain relations between them”²². K.F. Skvortsova states: “Legal regulation in any spheres of the state activity should concern not only the definition of rights and obligations of subjects of legal relations but also the elaboration of this system as well as the main issues of the organization of activities of its particular parts”²³. It is worth mentioning that one of the initial, source elements of legal regulation is the legal rules that constitute the regulatory framework, the core of the mechanism of legal regulation.

Consequently, studying the definitions of legal regulation, we **conclude** and understand the concept of **legal regulation** *as an adjustment of social relations, which is realized by the state with the use of law and a complex of legal means, their legal consolidation, protection and development.*

Features of legal regulation:

- 1) it is a kind of social regulation;
- 2) it is implemented by civil society or state;

¹⁹ Skakun O.F. *Teoriya hosudarstva y prava: uchebnyk*. Kharkov: Konsum. Un-t vnutr. del. 2000. S.529.

²⁰ Kozmiuk A.T. *Administrativnyi prymus v pravookhoronni diialnosti militsii v Ukraini: dys. ... d-ra yuryd. nauk: 12.00.07 / Kharkiv, nats. un-t vnutr. sprav. Kharkiv, 2002. S. 59.*

²¹ *Zahalna teoriia derzhavy i prava / za red. V.V. Kopieichykova*. Kyiv: Yurinkom, 1997. S. 217.

²² Bandurka O.M. *Teoriia i praktyka upravlinnia orhanamy vnutrishnikh sprav Ukrainy*. Kharkiv, 2004. S. 57.

²³ *Problemy effektivnosti nadzora / Pod red. K.F. Skvortsova*. Moskva: Yurid. lit., 1977. S. 32.

3) it has a) *regulatory-effective nature* which is carried out through a holistic system of legal means that ensure the implementation of rules of law in order to achieve the desired goal (result); b) *organizational nature* – the relations between actors acquire a certain legal form (the norms of law fixe the measure of alternative or proper conduct) via legal regulation; c) *purposeful nature* – it is aimed at satisfying rights, freedoms, legal interests of subjects of law; d) *specific nature* – it is always connected with real (particular) legal relations.

We understand the **methods of legal regulation** as a complex of techniques which help to adjust social relations of the particular type.

The following **main methods of legal regulation** are usually defined in legal literature:

- **centralized regulation** (*method of subordination or imperative method*) –the

adjustment is carried out from the top to the bottom based on authoritative imperative principles (most often this method is used in administrative law). Means of centralized regulation are legal acts (laws and subordinate legislation). It involves fixing prohibitions, obligations, penalties (most often this method is used in police activities both in administrative and criminal law);

- **decentralized regulation** (*method of coordination or dispositive method*) – participants of legal relations influence the course and process of such regulation by concluding contracts, implementing unilateral lawful legal actions (most often this method is used in civil law). The main means of decentralized regulation is individual acts.

Techniques or ways of regulating relations with the state reveal the specifics of regulation methods and find their special expression in the norms of law. There are **three classic ways of legal regulation**: *permission, obligation and prohibition*. Consequently, direct **forms of implementation of the rules of law** – *use, execution, and compliance*, meet the above three types of legal regulation.

Moreover, *legal regulation of police activities in Ukraine* provides for: *first*, taking into account the fact that legal norms are both a means and a basic tool for the management of social objects and, at the same time, a regulator of police activity, a set of social norms and procedures for their implementation, which ensure the adequate functioning and development of systems in accordance with the conditions of their existence. The state

empowers government bodies and their officials – subjects of the police activities, with certain powers (obligations and specific rights) by means of legal norms within the limits of authority and in the manner provided by the Constitution and laws of Ukraine;

Second, provision of the system of state bodies of legislative, executive and judicial branches of power by public prosecution service and the National Police as one of the executive authorities. At the same time, the current legislative and statutory regulation of police activity in Ukraine, including the bodies of the National Police, plays an important role because the effectiveness of legal regulation often depends on the perfection of its legal basis, clarity of instructions, availability of a developed system of legal norms. Legal norms ensure:

- the definition of the system of police powers for guaranteeing the implementation of preventive police measures by police bodies and units;
- the distribution of the functions between units of a certain police body and their employees for conducting preventive police measures;
- the consolidation of the system of objects and subjects of police activity of the National Police staff.

Third, clarification of the number of social relations which appear, that is, the definition of the *subject of legal regulation* covering all social relations which objectively may be subjected to the statutory-organisational influence due to their nature. Under socio-political conditions, they need such a kind of influence which is conducted with the use of legal norms and other legal means.

Fourthly, conclusion about the role of law in regulating police activity in Ukraine which is carried out by virtue of legal norms which are in the process of legal recognition: 1) the systems of powers of police officers towards the exercise of their rights; 2) forms, types, focus areas and permissible limits of police activity in implementing preventive police measures; 3) the systems of objects and subjects of law-enforcement activity of police officers; 4) the distribution of supervisory functions between units of a certain body and their employees; 5) the main interoperation specifications and coordination of subjects of police activities in exercising preventive police measures; 6) legal protection of the interests of the subjects-participants of police relations; 7) the *systems of preventive police measures* in the interests of the rule of law, protection

of human and civil rights and freedoms, interests of society and the state as well as the stability of social relations.

Now, the bodies of the NP of Ukraine act within a certain territory and, accordingly, are accountable and controlled by the executive authorities and, first of all, by the Cabinet of Ministers of Ukraine. Bodies of the NP of Ukraine as a subject of police activities are distinguished by a range of features. *First*, these are bodies which carry out control and supervisory functions; *secondly*, they continuously exercise special state authoritative powers towards non-subordinated entities, which are obliged to comply with the decisions adopted by the bodies of the NP of Ukraine within their competence. In other words, it is referred to supra-departmental nature of powers. It is necessary to understand that this body is in vertical interrelations, in particular, there are internally subordinated relations within the body, as well as control functions related to its activities.

Thus, *modern police activity in Ukraine is characterized by the features as follows:*

- it is based on the Constitution and laws of Ukraine;
- it is aimed at objects whose structure depends on the particular stage of the historical development of the society and political factors;
- in our society, its content is organically connected with law and legal consciousness and it clearly expresses the inextricable connection of the state and law, their mutual influence;
- it is a state policy;
- it is formed and realized under the influence of a whole complex of objective and subjective factors (legal awareness of man and citizen and society as a whole, state of crime, economic development of the state, personnel policy (recruitment and appointment), political leadership of the state, its attitude to this issue;
- it is implemented through management, organizational and legal means and by using *preventive police measures* as well as police measures of state coercion, etc.

At the same time, the legal regulation of police activity in Ukraine is included in legislative and legal acts which are different in the form, nature and legal force. According to the form, legal norms elaborated to regulate relations in the sphere of law enforcement police activity in the context of prevention, and legal acts are a way of fixing and their action is the place

of their stay in the socio-legal dimension of the national legal system. In addition, legal acts reveal the essence of legal norms, provisions of law enforcement practice as well as individual instructions, decisions of certain officials.

For example, according to Art. 3 of the Law of Ukraine “On National Police” dated 02.07.2015 № 580-VIII, it is noted that police activity is guided by the Constitution of Ukraine, international agreements of Ukraine obligatory nature of which is confirmed by the Verkhovna Rada of Ukraine, the above Law and other laws of Ukraine, acts of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine and relevant acts of the Ministry of Internal Affairs of Ukraine, other legal acts²⁴.

Today, in our opinion, *the basic legal acts regulating police activity in Ukraine*, should be divided into **seven interrelated groups**:

1. ***Basic constitutional***: *the Declaration of State Sovereignty of Ukraine dated 16.07.1990 №. 55-XII*²⁵ was the basis for the new Constitution of Ukraine, the laws of Ukraine and defined the legal concerns of Ukraine in completing international agreements; the Constitution of Ukraine dated 28.06.1996 № 254к / 96-BP²⁶ where the first, third and thirteenth chapters contain the norms constituting the constitutional and legal institution of the foundations of the constitutional system of Ukraine. These very norms are the superior legal basis for the activities of law enforcement bodies and, in particular, for bodies empowered by the state with certain police functions in order to ensure the internal security of the state. The legal provisions of the Fundamental Law of Ukraine play a decisive role in police activity since all laws, as well as other legal acts regulating the basic principles of police activity in Ukraine, are adopted under and in accordance with the Constitution of Ukraine;

2. ***International legal acts ratified by Ukraine in accordance with a procedure prescribed by law***. It is worth mentioning that *first*, the current international legal acts (conventions, declarations, agreements etc.) ratified by Ukraine is a part of the national legislation of our state, which are legal

²⁴ Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

²⁵ Deklaratsiia pro derzhavnyi suverenitet Ukrainy: pryiniata Verkhovnoiu Radoiu Ukrainiskoi RSR vid 16 chervnia 1990 r. № 55–KhII. Vidomosti Verkhovnoi Rady Ukrainiskoi RSR vid 31.07.1990. № 31. St. 429.

²⁶ Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

norms regulating police activity. *Second*, law enforcement bodies, including agencies of the NP of Ukraine, cooperate with law enforcement bodies of foreign countries and international organisations using ratified international legal acts. At the same time, law enforcement bodies as subjects of police activity in Ukraine can submit *requests, orders, requirements* to the international organisations and law enforcement agencies with the purpose of ensuring coordination of cooperation concerning issues of their competence. *For example*, it may refer to the extradition of a person who committed a crime or crimes within our territory etc.

3. ***Codified laws of Ukraine and laws of Ukraine***. The concept of ***codification of legislation*** should be understood as a complex of *laws, codes, bylaws* adopted by the executive power of Ukraine that have to consolidate democratic foundations, which are recognized by many countries of the world and are the basis of a particular kind of police activity. In turn, ***laws of Ukraine*** are legal acts of supreme legal force regulating the most important social relations through lay down rules of general effect which are adopted in a special order (legislative body) or directly by the people. According to the approved world practice, in Ukraine, laws (as well as other legal acts) are adopted on the basis of the Constitution of Ukraine²⁷ and have to conform to it. *For example*, legal norms of the Law of Ukraine “On National Police” dated July 2, 2015²⁸, regulated the activity of the National Police of Ukraine in the context of prevention.

4. ***Resolutions of the Verkhovna Rada of Ukraine***. These are legal act which are adopted by the Verkhovna Rada of Ukraine. According to Art. 91 of the Constitution of Ukraine²⁹, the Parliament of Ukraine adopts laws, resolutions and other acts by the majority of its constitutional composition.

5. ***Decrees of the President of Ukraine***. These are normative legal acts of the Chief of the Ukrainian state issued towards the most important issues that fall within his competence. Decrees may have both normative and non-normative (law enforcement) nature.

²⁷ Konstitutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

²⁸ Pro Natsionalnu politsiuu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

²⁹ Konstitutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

6. *Decrees and ordinances of the Cabinet of Ministers of Ukraine.*

These are legal acts of the Government of Ukraine. According to Art. 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine issues binding resolutions and ordinances within the limits of its competence. The Prime Minister of Ukraine signs the acts of the Cabinet of Ministers of Ukraine and they are subjected to the registration according to the procedure prescribed by law.

7. *Orders and ordinances of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine.* These are legal acts of the above central executive bodies (hereinafter referred to as “the CEBs”) which are obligatory for the implementation of bodies, units and officials subordinated to the CEBs.

Thus, legal regulation of the NP of Ukraine in the context of prevention is ensured by virtue of a specially made state mechanism the main component of which is current norms of law enshrined in laws and other legal acts, which are regulated by a considerable amount of normative acts differing by many features: *title, legal effect, adoption order, entry into force* etc.

Consequently, the legislation of Ukraine in legal regulation of activity of the of NP of Ukraine in the context of prevention is based on the Fundamental Law of Ukraine and is a complex of laws and bylaws, which legally influence social relations by virtue of legal norms. All legal rules have the same ultimate goal but their content, establishment order and influence on the processes of legal regulation of police activities in the sphere of effect and mechanisms of dissemination in law differ. By the aid of law, the state endows subjects of police activity of the National Police and its employees with particular powers (obligations and specific rights) within the limits of which they implement police activity and are guided by the laws of Ukraine, international agreements of Ukraine the binding nature of which is confirmed by the Verkhovna Rada of Ukraine, acts of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine as well as legal acts (orders, ordinances, instructions) issued by the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine, other legal acts.

2.2. Preventive police measure in the activity of the police

Today, the main *goals* of the introduction of preventive police measures at the present stage of the activity of the NP of Ukraine is to reorient its employees to be reliable defenders of human and civil rights and freedoms. The Fundamental Law of Ukraine consolidates that assertion and protection of human and civil rights and freedoms is the main state duty and defines a person, his/her life and health, honor and dignity, inviolability and security as the highest social value³⁰.

At the same time, protection of human and civil rights and freedoms is the main *goal* of police activities as well as the main essential feature of the bodies of the NP of Ukraine which serve for the society observing the rule of law in their activities. The goal involves not only an individual duty to protect the rights but also the availability of restrictions in police activities during implementing tasks and functions. It should be emphasized that the introduction of the institute of police preventive measures in the activity of the NP of Ukraine for the characterization of the tasks of police agencies shows attempts to change the philosophy of this type of activity of the law enforcement agency – to transform its functions regarding the use of preventive police measures by police officers in order to eliminate offenses.

The conceptual foundations of preventive police measures directly derive from the provisions provided by the Declaration on Police³¹. The *aim* of police activity is to promote security and reduce the number of cases of civil disturbances; reduction of crime rate and crime severity; to promote the administration of justice in such a way as to maintain public confidence in the law³².

One of the decisive steps towards reforming law-enforcement bodies of our state was the adoption of the Law of Ukraine “On National Police” dated July 2, 2015, No. 580-VIII³³ (hereinafter referred to as “the Law on Police”) where the novel of legal regulation was the separation of *section V “police measures”*. The current norms of the above law indicate that the

³⁰ Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

³¹ Pro Yevropeiskyi kodeks politseiskoi etyky: Rekomendatsiia Rec (2001) 10 Komitetu Ministriv derzhavam-uchasnytsiam Rady Yevropy (Ukhvalena Komitetom ministriv 19 veresnia 2001 na 765-mu zasidanni zastupnykiv ministriv). URL: <http://pravo.org.ua/files/Criminal%20justice/rec1.pdf> (data zvernennia 11.03.2019).

³² Core issues in policing / ed. by Leisman F., Loveday B., Savage S. 2nd ed. Harlow : Longman, 2000. 337 p.

³³ Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

police also use police preventive as well as coercive measures within its competence in order to protect human rights and freedoms, prevent threats to public security and order or terminate their violation.

Now the legal regulation of the activity of the NP of Ukraine in the context of prevention is primarily carried out in accordance with articles 30–40 of the Law on Police³⁴, which establishes the new institute of preventive police measures the essence and legal enforcement of which needs scientific thorough comprehension because it is characterized as by disadvantages of statutory legal regulation as by the complexity of practical implementation.

However, the legislator determined that a **police measure** is an action or a set of preventive or coercive measures that restrict certain human rights and freedoms and are used by a police officer in accordance with the law to ensure the exercise of police powers³⁵. The aim of the police measure is an immediate and effective solution to the issues, situation locally, using measures prescribed by the law, aimed at obtaining prompt result in protecting human and civil rights and freedoms, combating crime, maintaining public safety and order.

Today, the term “prevention” is not fixed in the current legislation of Ukraine but widely used and applied by criminologist scholars and criminal law experts. In English “prevent” means “prevention, admonishment”. “Prevention” is a foreign word and has Latin origin from an etymological point of view. Therefore, it is necessary to beat out its meaning from Latin. Thus, *prevention* (Latin *praeventio*, from *praevenire* – to anticipate, admonish) means “crimes prevention”. The term “prevention” is also used in science as an absolute synonym for the term “crime prevention”³⁶.

At the same time, the term “prevention” is used in legal science to determine the system of measures aimed at preventing offenses: 1) a set of measures that contribute to eliminating causes of offences commission; 2) the action of administrative, criminal punishment in counteracting offenses.

Whereas, the term *crime prevention* is interpreted as a social activity which involves eliminating causes and conditions of crime. It is a kind of

³⁴ Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

³⁵ Tam zhe.

³⁶ Tykhyi V.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. S. 700.

social control and social prevention of anti-social behaviour, including one which is manifested in the commission of offenses.

Crime prevention is an integral part of the function of state of law in ensuring law and order, protection of human and civil rights and freedoms, and its subject is causes and conditions of crime, a separate crime. Crime prevention is also distinguished by the scale (sphere) of its implementation. Based on this feature, there is crime prevention carried out within a country scale, particular region, a separate object, a particular individual³⁷.

To a greater extent, prevention is a typical for administrative preventive measures in relation to the counteraction to administrative offenses in various spheres that determines the topicality of thorough and comprehensive study of many problematic issues of police activity regarding the use of preventive police measures.

We believe that under the framework of theory of administrative law, *police measures* should be understood as actions of authorized bodies or officials aimed at coercive ensuring of public security and order, prevention and counteraction to offenses. The police measures are quite numerous and diverse. By their very nature, they belong to the measures of direct crime prevention or administrative coercion and, therefore, they are not actions of administrative or any other responsibility. The use of administrative police measures of prevention makes it impossible or delays the commission of an offense.

It is essential to note that preventive measures hold almost the most important place in the activities of police bodies. A.T. Komziuk marks that they provide for, in the cases established by the law, the application of restrictions to citizens and organizations and this is their coercive nature, although, there is a lack of offenses. Professor Y. S. Riabov says that the essence of preventive measures as instructions, which are contained in the disposition of the norms of administrative law, the implementation of which is enforced strictly on the lawful grounds by the authorized state bodies (their representatives) in the case of certain circumstances in order to prevent offenses and secure public safety³⁸. We can't agree absolutely with this statement. Thus, D.M. Bakhrakha denies the availability of preventive measures which he attributes to prohibitions, norms of law as

³⁷ Zakaliuk A.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. S. 280.

³⁸ Riabov Yu.S. Administrativno-predupreditelnye mery. Teoreticheskie voprosy. Perm: Kn. yzd-vo, 1974. S. 45.

they allegedly focus not on an individual but on all (or many) citizens, and the general prohibitions do not cause specific legal relations, so there can't be coercion beyond specific legal relations³⁹.

The Law on Police defines that *the police can use the following preventive measures*: 1) personal identity verification; 2) examination of a person; 3) superficial inspection and examination; 4) vehicle stop; 5) the requirement to leave the place and limit access to the particular territory; 6) restriction of movement of a person, vehicle or actual possession of an object; 7) penetration into residential space or other person's property; 8) verification of compliance with the requirements of the authorization system of internal affairs bodies; 9) use of technical devices and equipment with the functions of photography and filming, video recordings, means of photography and filming, video recording; 10) verification of compliance with the restrictions established by the law with regard to persons who are under administrative supervision and other categories of persons; 11) police custody.

However, a police officer must immediately inform a person about police measure in plain language as well as clarify the right to healthcare, give reason, challenge the actions of the police officer, notify other persons about place of residence immediately. A police officer may skip notification of the rights and their clarification if there are reasonable grounds to believe that a person cannot realise own actions and control them.

The current Regulation on the National Police of Ukraine adopted by the Resolution of the Cabinet of Ministers of Ukraine dated October 28, 2015 № 877⁴⁰ doesn't have norms regulating legal support of preventive police measures and police coercive measures which are foundation in the current legal norms "Section V – Police measures" of the Law of Ukraine "On National Police" dated July 2, 2015⁴¹. In our opinion, it is necessary to amend and supplement it. Thus, paragraph 4 "The National Police in accordance with its tasks" should be extended by sub-paragraphs 12-1 and 12-2 of the Regulation on the National Police approved by the Resolution of the Cabinet of Ministers of Ukraine dated October 28, 2015 № 877

³⁹ Bakhrakh D.N. Admynstratyvnaia otvetstvennost. Perm, 1966. S. 13.

⁴⁰ Pro zatverdzhennia Polozhennia pro Natsionalnu politsiiu: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 877. Ofitsiinyi visnyk Ukrainy vid 17.11.2015. № 89. S. 34..

⁴¹ Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

(Official bulletin of Ukraine dated November 17, 2015, № 89, Article 2971), see below in the text.

A policeman is empowered to withdraw weapon or other objects by means of which a person may do harm people around or himself/herself regardless of the fact whether they are forbidden in use. *A policeman is forbidden to search a person who is under police custody.* In addition, a protocol is drawn up on police custody where it shall be indicated as follows: place, date and exact time (hour and minutes) of the police action; grounds of application; description of the confiscated weapon or other objects; petitions, statements or complaints of the person, if any, the presence or lack of visible bodily injuries.

The above provides grounds for the formulation of the concept of “preventive activity” and “preventive police record” which will be presented below. The use of preventive measures by the police is not an end in itself but it complements the implementation of educational, informational and awareness-raising measures and is carried out on the principles of legality, necessity, proportionality, efficiency and observance of human rights and freedoms. Preventive police measures include, in the cases prescribed by law, the application of restrictions on certain rights and freedoms to people and organizations. This fact proves their coercive nature, although there are no offenses. In other words, these measures have a clear preventive orientation and are aimed at protecting the interests of public safety and order and avoiding commission of offenses. The essence of the preventive effect of the mentioned police measures is about, *firstly*, preventing illegal behaviour on the part of persons who are inclined to such behavior, and *secondly*, eliminating the causes contributing to the commission of offenses as well as creating conditions that exclude unlawful conduct.

It is worth mentioning the police are authorized to apply the following *police coercive measures* during the execution of their powers, which are specified by the law on police: 1) physical impact (force); 2) the use of special means; 3) the use of firearms.

Physical effect is the use of any physical force, as well as special methods of combating to stop illegal actions of offenders. *Special measures* such as police coercive measures are a set of devices, equipment and objects which are specially made, constructively designed and technically suitable for protecting people from the damage of various

objects, temporary (avertible) damage to a person (offender, opponent), inhibition or restriction of human freedom (psychological or physical) by influencing him/her or objects surrounding him/her with a clear regulation of grounds and rules for the use of such measures and working animals. *The use of firearms* is the most severe measure of coercion.

A police officer is empowered to keep, carry firearms as well as to apply and use it upon the condition he has had appropriate special training. The Minister of Internal Affairs of Ukraine establishes the procedure for storing and carrying firearms which are at police officer's disposal, the list of firearms and ammunition used in the activities of the police and rules of their affiliation⁴².

Compared to the measures of police coercion, which are a reaction to unlawful acts of a person and commission of offenses of both administrative and criminal nature, preventive police measures are used to avert and prevent offenses as well as to ensure the protection of human and civil rights and freedoms, action against crime, maintenance of public security and order. Preventive police measures do not involve the element of person's punishment they are applied to, and, moreover, their use is often not connected with the unlawful behaviour of specific individuals. Preventive police measures, which are not punitive, do not require establishment of offender's guilty as a mandatory condition of use, as well as other compulsory elements of an unlawful act. In order to use preventive police measures, there may be grounds arising due to the availability of conditions that is not a result of the commission of a particular offense by a person but may be directly related to his/her previous antisocial behaviour that indicates the possibility of offences commitment. Consequently, by applying preventive measures, police officers create the necessary conditions for ensuring the rule of law according to which a person, his/her rights and freedoms are recognized as the ultimate values and determine the content and focus of the state's activities. Analysis of definitions of police preventive measures makes it possible to conclude that there is an objective need to distinguish these measures as an independent type of administrative police activity. Now, it is essential to withdraw para. 7 (intrusion into a person's domicile or other property) from p. 1 of

⁴² Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

Art. 31 “Preventive police measures” of the law on police⁴³ because its fundamental legal norms contradict Art. 30 “Everyone shall be guaranteed the inviolability of his domicile” of the Constitution of Ukraine part 1 of which indicates “Intrusion into a person’s domicile or other property, inspection or search shall not be permitted except under a substantiated court decision”⁴⁴. Thus, legal norms of the Fundamental Law are norms of direct effect and, for this reason, it is necessary to exclude p. 7 of Art. 31 of the law on police.

CONCLUSIONS

We understand **legal regulation** as an adjustment of public relations carried out by the state through law and a set of legal means, their legal consolidation, protection and development. We understand *methods of legal regulation* as a set of methods and techniques which harmonise social relations of a relevant kind.

Now, it is necessary to amend and supplement Article 30 and Article 31 of the Law of Ukraine “On National Police” dated July 2, 2015, № 580-VIII (Bulletin of the Verkhovna Rada of Ukraine dated 09.10.2015, № 40–41, Article 379).

1. To supplement part 2 of Article 30 with paragraphs 2 and 3 as follows:

“Preventive police activity is the activity stipulated by the current legislation of Ukraine and aimed at *prevention* which is carried out before the formation of unlawful intentions, *averting* that occurs after the formation of unlawful intent before its implementation and through the commission of the offense, *cessation of offenses* committed after the commencement of the offense with possible application of preventive measures to persons, verification of compliance with the requirements established by law, restrictions, as well as with regard to persons who are in preventive register.

Preventive police register is a complex of measures implemented by the Unified Information System of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as “UIS of the MIA”), which is aimed at maintaining information subsystems of UIS of the MIA in an appropriate

⁴³ Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

⁴⁴ Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

technical condition regarding people who are in preventive registers and subjected to preventive activity of the National Police bodies”.

SUMMARY

The article studies the essence and content of legal regulation of activity of the National Police of Ukraine in the context of prevention, which is provided by means of a specially created state mechanism the main element of which is the rules of law consolidated in the laws and other legal acts determining the model of behaviour of the subject of public relations and police body in the context of prevention.

The author studies the essence of preventive police measures, their practical use and application by the police for the purpose of preventing, averting and cessation of offences, their role in ensuring public security and order in the state, crime prevention. It is presented the author's definition of the subject and concept of legal regulation, preventive police measures and preventive police register, and amendment of the current legislation of Ukraine is proposed.

REFERENCES

1. Shemshuchenko Yu.S. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv: TOV Vydavnytstvo Yurydychna dumka, 2007. 992 s.
2. Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy / uklad. i holov. red. V.T. Busel. Kyiv; Irpin: VTF Perun, 2002. 1440 s.
3. Bolshoj yuridicheskij enciklopedicheskij slovar. Moskva: Knizhnyj mir, 2005. 720 s.
4. Teoriia derzhavy i prava: Pidruchnyk / S.L. Lysenkov, A.M. Kolodii, O.D. Tykhomyrov, V.S. Kovalskyi; Za red. S.L. Lysenkova. Kyiv: Yurinkom Inter, 2005. 448 s.
5. Skakun O.F. Teoryia hosudarstva y prava: uchebnyk. Kharkov: Konsum. Un-t vnutr. del. 2000. 704 s.
6. Kozmiuk A.T. Administratyvnyi prymus v pravookhoronni diialnosti militsii v Ukraini: dys. ... d-ra yuryd. nauk: 12.00.07 / Kharkiv, nats. un-t vnutr. sprav. Kharkiv, 2002. 408 s.
7. Zahalna teoriia derzhavy i prava / za red. V.V. Kopieichykova. Kyiv: Yurinkom, 1997. 320 s.
8. Bandurka O.M. Teoriia i praktyka upravlinnia orhanamy vnutrishnikh sprav Ukrainy. Kharkiv, 2004. 780 s.

9. Problemy effektivnosti nadzora / Pod red. K.F. Skvortsova. Moskva: Yurid. lit., 1977. 160 s.
10. Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.
11. Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.
12. Deklaratsiia pro derzhavnyi suverenitet Ukrainy: pryiniata Verkhovnoiu Radoiu Ukrainiskoi RSR vid 16 chervnia 1990 r. № 55–KhII. Vidomosti Verkhovnoi Rady Ukrainiskoi RSR vid 31.07.1990. № 31. St. 429.
13. Pro Yevropeisky kodeks politseiskoi etyky: Rekomendatsiia Rec (2001) 10 Komitetu Ministriv derzhavam-uchasnytsiam Rady Yevropy (Ukhvalena Komitetom ministriv 19 veresnia 2001 na 765-mu zasidanni zastupnykiv ministriv). URL: <http://pravo.org.ua/files/Criminal%20justice/rec1.pdf> (data zvernennia 11.03.2019).
14. Core issues in policing / ed. by Leisman F., Loveday B., Savage S. – 2nd ed. – Harlow: Longman, 2000. 337 p.
15. Tykhyi V.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. 992 s.
16. Zakaliuk A.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. 992 s.
17. Riabov Yu.S. Administrativno-predupreditelnye mery. Teoreticheskie voprosy. Perm: Kn. yzd-vo, 1974. 81 s.
18. Bakhrakh D.N. Admynystratyvnaia otvetstvennost. Perm, 1966. 193 s.
19. Pro zatverdzhennia Polozhennia pro Natsionalnu politsiiu: zatv. postanovoioiu Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 877. Ofitsiyni visnyk Ukrainy vid 17.11.2015. № 89. S. 34.

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