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ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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THE MODERN STAGE IN THE MECHANISM OF LEGAL REGULATION OF THE POLICING

The article is devoted to studying of the specific character of the current stage in the mechanism of legal regulation of police activity necessitates the creation of an effective state policy in this area. And it should also be noted that special importance is also emphasized by the fact that in modern society, which is characterized by state organization, basic management activities are mediated by legal regulation, since only with the help of law, which, thanks to a number of its own essential features, is the most effective means of regulating social relations, and as well as legal tools, it is possible to ensure the optimal functioning of the social system and the achievement of the goals set for society.

At the current stage of the formation of Ukraine as a democratic, legal state, new state-building processes require restructuring and a significant increase in the level of efficiency and quality of law enforcement agencies. First of all, these requirements concern the newly created police force – the most numerous law enforcement unit, since its performance of tasks is primarily related to the implementation of a number of principles based on the recognition of universal human values: dignified treatment of the person, strengthening the protection of the rights and freedoms of citizens, various forms of property and other priorities of a legal, democratic society defined by the Constitution of Ukraine.

It should be noted that in the legal literature, the mechanism is a certain systemic phenomenon that has its own structural content and is a set of certain processes, and therefore the mechanism, as an integral phenomenon, is dynamic and aimed at achieving a certain predetermined goal. Also, one of the most important prerequisites for the effectiveness of the mechanism of legal regulation of police activity is the guarantee of comprehensive and coordinated legal support of the police administration, namely the development of the appropriate regulatory and legal framework. It should be noted that at the current stage in the mechanism of police activity there are many acts and agreements that regulate police activity, and it is at the level of normative legal acts and international agreements that the priority areas of the police regulation mechanism should be created, and the circle of subjects responsible for its implementation should be determined, the ways of interaction of police bodies and units should be established, problematic issues related to police activities should be outlined, and ways of solving them should be proposed.

Key words: *The policing, mechanism, legal framework, influence, social relations, international legal documents.*

Statement of the problem. Pluralism in the development of the appropriate legal framework and the creation of priority areas of the police regulation mechanism.

The well-known researcher E. G. Lukyanova assumes that the mechanism is an element of the general mechanism of legal regulation, a relatively independent

subsystem of legal means that comes into effect at some stages of general legal regulation, in cases of obstacles to the normal implementation of legal norms, and which is characterized by protective orientation [1, c. 192]. According to the position of the scientist V. B. Averyanov, a mechanism should be understood as a certain set of mutually coordinated relations, methods and means that ensure the proper functioning of the system, or a complex system formation that organically combines various constituent elements [2, c. 36].

Yu. M. Todyka notes that the use of the category "mechanism" in legal literature is connected with the realization that it is not enough to have material norms, a developed system of legislation, clear mechanisms for their implementation are also needed, which fully applies to the legal sphere as well [3, c. 337]. V. S. Nersesyantsa points out that a mechanism is always some functional characteristic of an object, therefore it should be used not for a structural description of the organ system, but for clarifying the functional specificity of various parts [4, c. 487].

The aim – According to the analysis, it should be understood that scientists consider the mechanism itself as a set of certain phenomena and processes. At the same time, the mechanism is a complex system that includes smaller elements that can be considered both as separate systems and as a whole. In addition, it is observed that the mechanism is an integral part of legal regulation.

Mostly, in the legal literature, the mechanism of legal regulation is understood as a set of legal means by which the state exerts legal influence on social relations [5, c. 488]. V. M. Gorsheneva, who researched the methods and organizational forms of legal regulation, came to the well-founded conclusion that the mechanism of legal regulation is the methods of influence, realization of rights, as well as intermediate links – legal personality, legal facts and legal relations that translate normative the right to order social relations [6, c. 50-55].

Researcher O. V. Malko believes that the mechanism of legal regulation is a system of legal means organized in the most con-

sistent manner with the aim of regulating social relations and promoting the satisfaction of the interests of legal subjects [7, c. 470-473].

It should be noted that in fact any social relations that arise in modern society are subject to legal influence from the state. The purpose of exercising such influence, of course, is not the desire of the state in the person of the relevant authorities to exert pressure on the process of the emergence and development of social relations, but attempts to direct them within the limits of the law, timely prevent, detect and stop possible attempts to violate (both intentionally and unintentionally) requirements of legislation. The state exerts a legal influence on social relations that arise and develop in various spheres of life, with the help of a set of rules established in the norms of relevant legal acts.

It is obvious that the study of the mechanism of legal regulation of police activity is impossible without establishing its constituent elements. As noted by A. M. Chorna, the identification of the constituent elements of a legal mechanism...must be preceded by an analysis of the approaches of scientists regarding the structure of such a mechanism [8, c. 97].

So, for example, the researcher T. A. Frantzuz-Yakovets points out that the content of the mechanism of legal protection is a system of means aimed at the protection and implementation of basic legal norms and institutions promulgated at the level of constitutional laws aimed at determining the place and role of a person from the point of view of guaranteeing her rights in the system of social relations. At the same time, the author includes the following among the elements of the mechanism of legal regulation: the mechanism of protection, the mechanism of regulation and the mechanism of realization of constitutional and legal status [9, c. 127-128].

Researcher L. M. Shestopalova believes that the structural elements of the mechanism under study are legal norms, legal relations, acts of realization of rights and obligations, acts of applying the law, legality, legal awareness and legal culture

[10, с. 157-158]. At the same time, Z. Gladun refers to the structure of the mechanism of legal regulation as legal norms, legal facts, legal relations, norms of legal interpretation, implementation of legal norms [11, с. 89].

Thus, in modern legal doctrine, scientists distinguish mandatory and optional elements of the structure of the mechanism of legal regulation. Yes, the following are mandatory: legal norms; legal relations and acts of implementation of rights and obligations of subjects. In turn, the list of optional includes: norms of interpretation; principles of law; acts of application of the law; legality; legal awareness and legal culture.

In the mechanism of legal regulation of police activity, two components can be distinguished – static and dynamic. The static component includes legal norms that regulate the specifics of police management. Other elements of the legal mechanism of the police (institutional component, principles, forms and methods, legal relations and resource component) act as a dynamic component. The mechanism of legal regulation of police activity is dynamics, ensuring the real functioning of the entire static unity of elements. The effectiveness of the entire legal mechanism depends on the combination of static and dynamic clearing. An integral part of the mechanism of legal regulation of police activity is legal support, that is, a static component. Its special importance is emphasized by the fact that in modern society, which is characterized by state organization, basic management activities are mediated by legal regulation, since only with the help of law, which, thanks to a number of its own essential features, is the most effective means of regulating social relations, as well as legal tools, it is possible to ensure optimal the functioning of the social system and the achievement of society's goals [12].

The content of the legal provision of police regulation consists in the formation of the necessary legal framework, which would create the necessary conditions for the functioning of the entire system of police bodies, comprehensively regulate the features of the distribution of functions between individual bodies and units, as well as the

specifics of their performance of the duties assigned to them.

Police activity, like any other activity, must be regulated by relevant international treaties and legal acts, that is, the procedure and specifics of its implementation must be clearly defined at the legislative level. A normative-legal act, according to its legal nature, is divided into laws and subordinate normative-legal acts. Laws, which occupy a leading place in the system of normative legal acts, are normative legal acts of the highest representative body of state power (or civil society, directly of the people), which regulate the most important issues of public life, establish the rights and obligations of citizens, have a higher legal validity and are adopted in compliance with a special legislative procedure [4, с. 316]. In addition, the normative legal act establishes the procedure for concluding, implementing and terminating international treaties of Ukraine with the aim of properly securing national interests, implementing goals, tasks and principles of foreign policy.

In addition, the mechanism of legal regulation of police activity is provided by international legal acts. The specified regulatory legal acts are divided into those that determine the standards for ensuring human rights and freedoms (in particular, in police activities), the organization of the activities of police bodies, and those that establish the specifics of police interaction of different states in combating crime and ensuring law and order. These documents serve as the legal basis for interaction or international cooperation of Ukrainian authorities with the police of other countries [6, с. 189].

The international normative legal acts, the norms of which are aimed at establishing an effective management process of police bodies, include the United Nations Convention against Corruption of October 31, 2003, the Declaration on the Police of May 8, 1979, the European Code of Police Ethics of 19 of September 2001, the Code of Conduct of Law Enforcement Officials of December 17, 1979, etc.

The departmental regulations include the instruction on the organization of the interaction of pre-trial investigation bodies with other bodies and units of the National

Police of Ukraine in the prevention of criminal offenses, their detection and investigation, which was approved by the order of the Ministry of Internal Affairs of Ukraine dated July 7, 2017 № 575 [13].

The specified regulatory legal act established the main principles of cooperation, including: 1) quick, complete and impartial investigation of criminal offenses; 2) the independence of the investigator in procedural activities, interference in which persons who do not have legal authority to do so is prohibited; 3) optimal use of the available capabilities of pre-trial investigation bodies and operational units of the National Police of Ukraine in the prevention, detection and investigation of criminal offenses; 4) compliance with the general principles of criminal proceedings; 5) ensuring non-disclosure of pre-trial investigation data [14];

Instructions on the procedure for sending representatives of the National Central Bureau of Interpol to the International Criminal Police Organization – Interpol, approved by the order of the Ministry of Internal Affairs of Ukraine from the 29 of November 2018 № 968 [15].

This act of legislation defines the legal principles of the procedure for sending employees of the National Police of Ukraine to the General Secretariat of the International Criminal Police Organization Interpol. The approval of the specified instruction on the procedure for sending representatives of the National Central Bureau of Interpol to the International Criminal Police Organization – Interpol is related to the fulfillment of the task – establishing coordination of the interaction of law enforcement agencies of Ukraine with the competent authorities of foreign countries on issues that belong to the competence of the Interpol;

Instructions on the organization of service as part of international operations to maintain peace and security by national personnel from the number of police officers, military personnel of the National Guard of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine dated July 31, 2019 № 639 [16]. The procedure for sending liaison officers to the European Police Office, approved by the order of the

Ministry of Internal Affairs of Ukraine dated October 29, 2019 No. 905 [16] and others.

The mechanism of action of the law in influencing the consciousness and behavior of addressees has several aspects: informative, valuable, stimulating, coercive. The informational aspect of the influence of law on behavior is considered, first of all, from the point of view of cognitive activity. After all, law is one of the types of social information, which means knowledge, messages, information about the social form of matter and all its other forms, to the extent that they are covered by the orbit of social life [15, c. 245].

Thus, the model of behavior contained in the rule of law informs a person of the state's position on this issue, indicates the existence of certain definitions approved by society and the state, means of achieving certain goals, and informs about the consequences of behavior. The value (axiological) aspect of the operation of law consists in its influence on the convictions of a person, on his worldview orientations and attitudes, feelings and emotions.

Therefore, the value expressed in law cannot suggest legal tactics of behavior, instead, it indicates its strategy. Valuable ideas enter the legal and moral consciousness of a person and become an integral part of his psychology. Legal values are able to influence the most distant links of the causal relationship, which consists of the genesis of behavior: needs, interests, goals, the choice of means and the execution of an act [16, c. 114].

Complementing the informative and valuable aspects of the action of the law, stimulating and coercive, in turn, affect not only the intellect and emotions, but also the will of the executor. The stimulating effect of law is expressed in the legal recognition, provision and protection of lawful acts, and in the material and moral encouragement of acts useful to society. Coercion consists in the possibility of applying state coercive measures in those cases when a person does not fulfill the legal obligations assigned to him, when there are obstacles in the exercise of subjective legal rights [16, c. 201].

Conclusions. So, it can be stated that legal police activity is carried out with the

help of national and international legal acts, as well as departmental contracts, instructions and agreements. However, despite numerous international legal documents, in some places certain issues of international cooperation of bodies and units of the National Police of Ukraine remain unsettled at the national level, which currently needs improvement.

References:

1. Державне управління в Україні : навч. можливо / за зах. червоний. В. Б. Авер'янова. Київ : СОМІ, 2010. 310 с.
2. Тодука Ю. М. Конституція України – основний закон господарства й суспільства : навч. пособ. Харків : Факт, 2011. 382 с
3. Проблеми теорії права та держави: підручник для вузів / за заг. червоний. В. С. Нерсесянца. Миколаїв.: Норма, 2014. 832 с. 207
4. Теорія господарства і права : навчальний посібник / під ред. Н. Ю. Матузов, А. В. Малько. М. : Юрист, 2014. 512 с
5. Чорна А. М. Адміністративно-правовий механізм забезпечення прав суб'єктів підприємницької діяльності у сфері оподаткування : дис. ... д-ра юрид. наук : 12.00.07. Харків, 2018. 427 с.
6. Француз-Яковець Т. А. Забезпечення конституційно-правового статусу людини і громадянина в Україні : дис. ... канд. юрид. наук : 12.00.02. Острог, 2006. 209 с.
7. Шестопалова Л. М. Теорія держави та права : навч. можливо Київ : Презент, 2006. 197 с.
8. Адміністративне право України в сучасних умовах (виклики початку XXI століття) : монографія / [В. В. Галуцько, В. І. Олефір, М. П. Пихтін, О. О. Онищук, Ю. І. В. Гридасов, М. М. Новіков, У. О. Палієнко, І. А. Домін, О. М. Єщук] ; за зах. червоний. В. В. Галуцька. Херсон : Херсон. міська друкарня, 2010. 378 с.
9. Ванчук І.Д. Спосіб правового регулювання:окремі аспекти / І.Д. Ванчук // Юридичний науковий електронний журнал. – 2014. – № 1. – С. 8. – [Електронний ресурс]. – Режим доступу : http://www.lsej.org.ua/1_2014/01.pdf.
10. Інструкція з організації взаємодії органів досудового розслідування з іншими органами та підрозділами Національної поліції України в забороні кримінальним правопорушенням, їх виявленні та розслідуванні : наказ Міністерства внутрішніх справ України від 07.07.2017 р. № 575 // База даних «Законодавство України». URL: <https://zakon.rada.gov.ua/laws/show/z0937-17> (дані звернення: 20.02.2022)
11. Інструкція з організації взаємодії органів досудового розслідування з іншими органами та підрозділами Національної поліції України в забороні кримінальним правопорушенням, їх виявленні та розслідуванні : наказ Міністерства внутрішніх справ України від 07.07.2017 р. № 575 // База даних «Законодавство України». URL: <https://zakon.rada.gov.ua/laws/show/z0937-17> (дані звернення: 20.02.2022)
12. Інструкція про порядок направлення представників Національного центрального бюро Інтерполу до Міжнародної організації кримінальної поліції – Інтерпол : наказ Міністерства внутрішніх справ України від 29.11.2018 р. № 96 // База даних «Законодавство України». URL: <https://zakon.rada.gov.ua/laws/show/z1447-18> (дата звернення: 20.02.2022).
13. Інструкція з організації проходження служби у складі міжнародних операцій з підтримання миру і безпеки національним персоналом із числа поліцейських, військовослужбовців Національної гвардії України : наказ.
14. Міністерства внутрішніх справ України від 31.07.2019 р. № 639 // База даних «Законодавство України». URL: <https://zakon.rada.gov.ua/laws/show/z1089-19#Текст> (дані звернення: 20.02.2022)
15. Про затвердження Порядку управління офіцерів зв'язку до Європейського поліцейського офісу : наказ Міністерства внутрішніх справ України від 29.10.2019 р. № 905 // База даних «Законодавство України». URL: <https://zakon.rada.gov.ua/laws/show/z1158-19#Текст> (дані звернення: 21.02.2022)
16. Парсонс Т. Сім'я, соціалізація та процес взаємодії / Т. Парсонс, Р. Бейлз. – Колумбія, 1955. – 246 с.

Товпига Л. Сучасний етап в механізмі правового регулювання діяльності поліції

Стаття присвячена дослідженню специфіки сучасного етапу механізму правового регулювання діяльності міліції, що зумовлює необхідність формування ефективної державної політики у цій сфері. Причому слід також зазначити, що особливе значення набуває також той факт, що в сучасному суспільстві, яке характеризується державною організацією, основна управлінська діяльність опосередковується правовим регулюванням, оскільки лише за допомогою права, яке завдяки ряду за своїми сутнісними ознаками є найефективнішим засобом регулювання суспільних відносин, і, як і правовий інструментарій, дає змогу забезпечити оптимальне функціонування соціальної системи та досягнення поставлених перед суспільством цілей.

На сучасному етапі становлення України як демократичної правової держави нові державотворчі процеси вимагають перебудови та суттєвого підвищення рівня ефективності та якості діяльності правоохоронних органів. Насамперед, ці вимоги стосуються новоствореної міліції – найчисельнішого правоохоронного підрозділу, адже виконання її завдань пов'язане насамперед із реалізацією низки принципів, які ґрунтуються на визнанні загальнолюдських цінностей: гідне ставлення до особистості, посилення захисту прав і свобод громадян, різних форм власності та інших пріоритетів правового, демократичного суспільства, визначених Конституцією України. Слід зазначити, що в юридичній літературі під механізмом розуміють певне системне явище, яке має власний структурний зміст і являє собою сукупність певних процесів, а тому механізм, як цілісне явище, є динамічним і спрямованим на досягнення певної наперед визначеної мета. Також однією з найважливіших передумов ефективності механізму правового регулювання діяльності поліції є забезпечення всебічного та злагодженого правового забезпечення діяльності органів внутрішніх справ, а саме розробка відповідної нормативно-правової бази. Слід зазначити, що на сучасному етапі в механізмі діяльності поліції існує багато актів та угод, які регулюють діяльність поліції, і саме на рівні нормативно-правових актів та міжнародних угод слід визначити пріоритетні напрями механізму регулювання діяльності поліції. створено та визначено коло суб'єктів, відповідальних за його реалізацію, встановлено шляхи взаємодії органів та підрозділів поліції, окреслено проблемні питання діяльності поліції та запропоновано шляхи їх вирішення.

Ключові слова: поліція, механізм, правова база, вплив, зв'язки з громадськістю, міжнародно-правові документи.